

# A Story About my Grandmother

## Introduction

We are born to compete. It is something we have to face up to as we begin to live in the world – having to “compete” with others for a school place, in sports, or in the workplace, as we move from adolescent into adulthood. In saying this I should add that fair and friendly competitiveness as usually in sports or in some other activities can be fun, healthy and noble. Through competition, we can learn from each other, share our talents which would result in a much more harmonious and healthy life. However, in the real world, people allow competition cloud their lives and push them into unhealthy attitudes and behaviour. Some of them may have an overwhelming desire to win others over to such an extent that they even use nefarious means to ensure that outcome.

In Hong Kong, the government had over the past adopted a Laissez-faire policy in which transactions between private parties are free from government intervention such as regulations, privileges, tariffs and subsidies. For a lengthy period, the government just adopted an approach of discouraging anti-competitive conduct through voluntary compliance by business community, which was later augmented by administrative guidelines promoting sustainable competition that were supposed to bring benefits to both the business sector and consumers. These policies and administrative guidelines have proved not very effective in addressing anti-competitive conduct in Hong Kong. In order to placate growing public concerns about possible cases of anti-competitive conduct and the difficulty in mounting effective investigations into anti-competitive complaints, the government formally enacted the competition law (“The Competition Ordinance”) in 2012 which prohibits undertakings from adopting conduct which has the object or effect of preventing, restricting or distorting competition in Hong Kong. The competition law finally came into effect at the end of 2015.

## The Competition Ordinance

The Competition Ordinance (the “CO”) is enforced by the Competition Commission (“the Commission”) and the Competition Tribunal (“the Tribunal”). The Commission has the dual functions of a promoter of competition and investigative body. The Tribunal is the superior court with primary jurisdiction to hear and adjudicate competition-related cases. The CO prohibits three categories of conduct:

1. **The First Conduct Rule** prohibits agreements and concerted practices that restrict competition, with special focus on serious cartel activity amongst competitors.
2. **The Second Conduct Rule** prohibits a business with substantial market power from abusing that power by engaging in conduct that restricts competition.
3. **The Merger Rule** prohibits mergers and acquisitions that have the effect of lessening competition.

## The story of my grandma

Grandma was born to an impoverished family and married my grandpa at her young age half a century ago. Grandpa died a few years after the marriage leaving her with two toddler sons. Along with the custom in the old days that a woman's virtue lay with her lack of knowledge, grandma did not receive any education. My grandparents lived in an old tenement flat in Wan Chai during the few years of their marriage. Grandma gave birth to my father and uncle during this period. As a driver and sole breadwinner for the family, grandpa struggled to make ends meet. He died of cancer when the two sons were two and one years old. Being a single mom with two kids, it was difficult for her to find a full-time employment. Failing to pay the rent for a few months, grandma was about to be driven out by the landlord. Fortunately, there was an old married couple operating a small grocery store in her neighbourhood who were in need of a store assistant as they were getting old. In the 1960s, Wan Chai was still a poor neighbourhood with shabby houses and dirty alleys. There were a lot of hawkers and dai pai dongs as well as small grocery stores selling beverages, snacks and cigarettes.

Grandma was hired by the old couple who lived in a loft above their store, which was also the warehouse. Moved by her plight, the couple allowed her and her two kids take residence at their loft. Through her indomitable courage, grandma quickly learnt the craft of the day-to-day store operation. The couple grew older and died one after the other and bequeathed their small store to grandma.

In the old days, the major sources of revenue of a small grocery store like grandma's were selling of beverages, cigarettes and snacks. There was keen competition from peers, not to mention the supermarkets which came into sight in the 1970s. In common with other small stores, grandma sold her products at lower prices with lower margins in order to boost volumes. The regulars were normally residents in the neighbourhood.

Regarding the supply of cigarettes, the wholesalers in Hong Kong did not deal with small stores at that time. Instead, their products are channelled through second-tier distributors who in turn supplied to retailers. However, it was a practice of the distributors that the supply of each pack of cigarettes was bundled with a box of matches. In other words, whenever retailers sourced cigarettes from distributors, they had to purchase an equivalent quantity of matches. The retailers then gave out a free box of matches to customers for every pack of cigarettes sold. However, the demand for matches declined steadily because of the availability of disposable lighters. Retailers often ended up with surplus stock of matches which they had to sell at steep discounts or hand out for free to other customers.

Cigarette trade is nothing difficult when compared with beverages. Grandma could get regular supply of cigarettes so long as she followed the bundling strategy of the distributors. In the old days, the production and distribution of key soft drink brands were dominated by three "bottlers and distributors" (hereunder called the "distributors") under various franchises. Retailers had to maintain an account with the distributors following certain vetting process. Grandma inherited the account from the old couple and was able to secure regular supply. It was not until the opening of a supermarket across the street from her store that the supply

flow took another twist. The supermarket was operated by a large, well-known supermarket chain in Hong Kong.

Grandma's store served the neighbourhood with a variety of popular beverages and snacks at comparatively low prices. It was frequented by aged residents and students living nearby. One day grandma was approached by an agent who claimed to represent the distributors alleging that she had priced her beverages too low! She was strongly advised to "make things right" by upping the prices to "normal" levels. He hinted that this was under the pressure of the supermarket chain. Determined to keep serving the aging and underprivileged neighbourhood with cheap products grandma chose to defy those "advices". Eventually the day came when the distributors cut off their supplies. Grandma was staggered and tried to contact the agent and the distributors to find a way out, but to no avail. The store was hit hard as beverage sales accounted for a significant part of the revenue. Endless adversities have toughened her up to become a tenacious person, grandma refused to resign herself to her fate. She reached out to other grocery stores in the district for alternative source of beverage supplies. Going from store to store, grandma hit snags everywhere. None of them would like to run the risk of offending the distributors for fear of being next on the ban list. Despite the setbacks, grandma persevered with her quest for supplies. She searched throughout the district and finally found an independent, medium-sized supermarket which was owned by a sole proprietor on the outskirts of Wan Chai. The supermarket had high inventory levels as it also supplied food and beverages to nearby offices in Causeway Bay. The owner was a righteous man and, moved by grandma's entreaties, agreed to resell some of his beverage inventory to her at cost, subject to certain conditions. Firstly, the resale was on cash basis while his inventory levels permitted and without any written agreement. Secondly, grandma should take delivery on her own in an unobtrusive manner. In other words, the owner didn't want such arrangement be exposed to the distributors or any other peers. As a matter of fact, grandma was not financially capable of taking delivery by any means other than using a metal pushcart. Before dawn every morning, she had to take the pushcart to the supermarket, which was five streets away from her store. The stock she ordered and paid for the day before was locked inside a metal container at the side of a dark alley beside the supermarket. The pushcart was then piled high with beverage containers and grandma pushed them all the way back to her store. Even though it was before the opening hours of any shops, she took a circuitous route to avoid passing any peer stores or outlets of the supermarket chain. Hamstrung by the size of her store and the loft, grandma couldn't afford to take inventory of more than one day's sales. Hence, she had to go through this process every day in order for her business to survive.

A glimmer of hope arrived in June 2012, with the passing of Hong Kong's first Competition Law after brewing for more than a decade. Grandma was in her 80s at that time. Plagued by the dominance of supermarket chain making it difficult for small retailers to survive, she had long for the government to make things right. Regrettably, her store had to close before the full commencement of the Competition Ordinance. The tenement building in which her store was located was acquired by a conglomerate for redevelopment into a residential complex. Ironically, it is the same conglomerate that owns the supermarket chain!

## Invoking the Competition Rules

Had the Competition Rules been in place during the time my grandma ran her store, she would have complained to the Competition Commission about the following anti-competitive conducts:

### 1. Contravention of the First Conduct Rule

- The major supermarket chains formed a cartel fixing product prices; shifting prices up and down in tandem.
- The beverage distributors, under the pressure of the supermarket chain, established a fixed or minimum resale price to be observed by the retailers. This constitutes vertical price restrictions having the object of harming competition.

### 2. Contravention of the Second Conduct Rule

- The beverage distributors had committed a "refusal to deal". Being the franchised suppliers of the beverages, they terminated an existing arrangement to supply their products to retailers who are unwilling to abide by their unreasonable terms.
- The cigarette distributors, with a substantial degree of market power, made the sale of cigarette products conditional upon the purchase of equivalent quantity of matches supplied by them. This constitutes "anti-competitive tying and bundling" as this may harm other suppliers of matches in the market and the profit margin of the retailers.

## An epilogue

My grandma passed away at the end of 2016. She spent most of her life struggling to keep her store afloat and bring up her two children. The Competition Rules coming into force during her lifetime was a great consolation to her. But my father asserted that today's Competition Rules are only the beginning of a long, deep and constant battle against oligopolies and social injustice. Early this year he quitted his job as an accountant and opened a mini supermarket in the old Wan Chai neighbourhood. I asked why he exited his comfort zone to venture into a competitive business again. "Maybe I would like to carry on the unfinished lifework of grandma," he beamed. He added that we must ensure a society that is fair and just, where everyone has a chance to move up and do well, regardless of where they start. Let's share his motto: ***"Every game has rules, fair players are winners"***.