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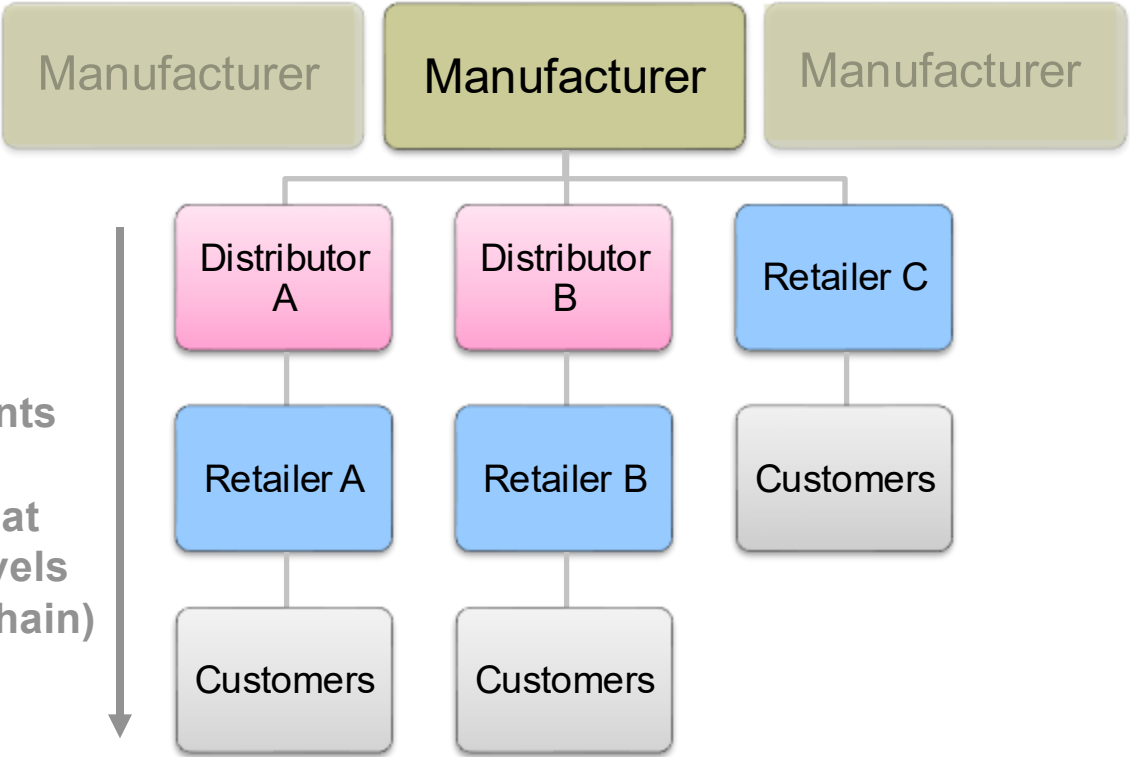
FDGA – Navigating Competition Risks in the F&B Sector

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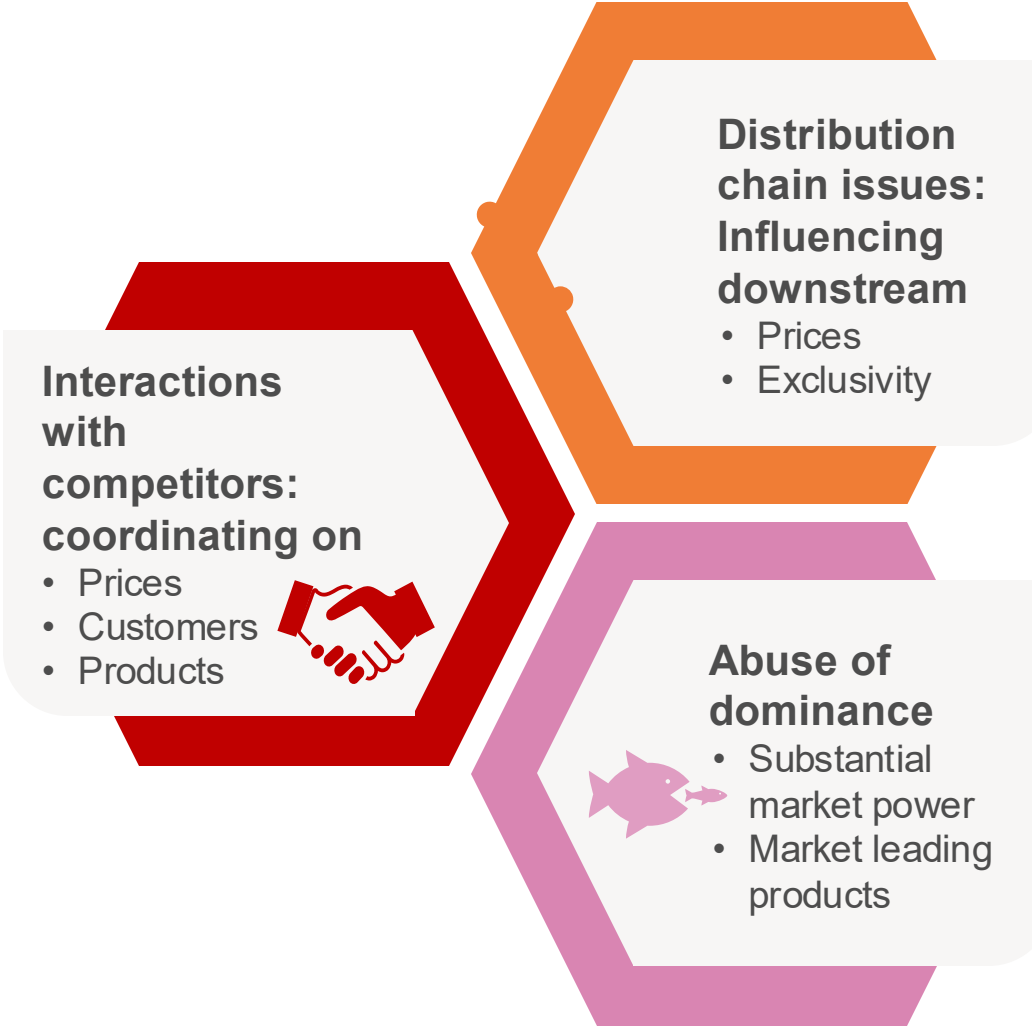
4 September 2025

Refresher – what is competition law about?

Horizontal Arrangements (between competitors)



Vertical Arrangements (between companies at different levels of supply chain)



Competition Enforcement in Hong Kong

Since the Competition Ordinance came into force in 2015...



15 cases brought to the Tribunal - **13 relate to cartel conduct**



Total fines imposed over **HKD 53 million**

Non-litigation remedies adopted in 6 cases, including accepting commitments from *Foodpanda/Deliveroo, Car Distributors, Hong Kong Seaport Alliance and Online Travel Agents*



16 investigations in the food and groceries sector since 2020

Global enforcement trends in the F&B sector



Coca-Cola is under investigation in Turkey for allegedly imposing **exclusivity on retail outlets** and thereby foreclosing competitors.



Pernod Ricard was alleged to have **incentivised Indian retailers** to exclude a rival's whisky brand via special discounts.



Red Bull is investigated by the European Commission for allegedly deploying “anti-competitive tactics” to unfairly prevent consumers from buying its rivals' drinks.



AB InBev is being probed by the Belgian authority for potential **abuse of dominance** in beer supply practices.



PepsiCo is facing a US antitrust complaint for allegedly providing Walmart **unfair price advantages** to the disadvantage of other retailers.



Nestlé, Danone and other FMCG brands were investigated in Brazil for alleged sharing of **employment-related sensitive information**.

Resale Price Maintenance – in focus

- > RPM (i.e. a supplier fixing the resale price or setting a minimum resale price) is **high risk** and likely to infringe competition law. These include where:



The supplier requires its distributors/resellers to follow a **fixed or a minimum resale price**



The supplier **grants rebates / discounts** to its distributors/resellers subject to the observance of recommended prices



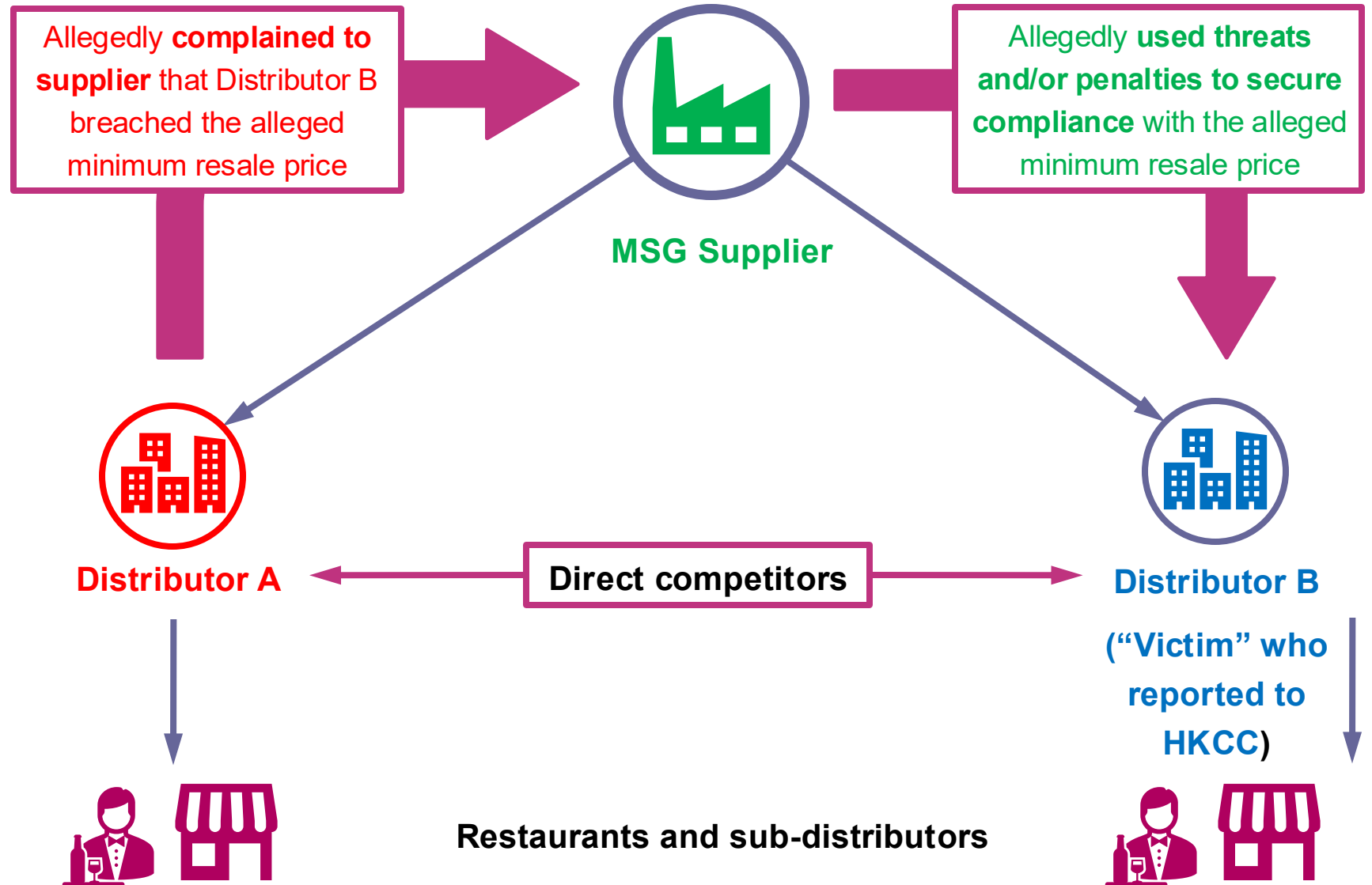
The supplier makes **threats, intimidates, warns, imposes penalties on, or delays/suspends delivery of products, or terminate contracts** to enforce recommended prices

- > **Recommended resale prices must be genuine** to be permissible – they **must not come with pressure, incentives, threats** by the manufacturer to stick to the recommended resale prices.

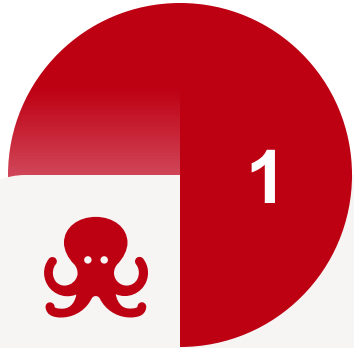
Resale Price Maintenance –Hub-and-spoke

The first RPM proceedings (Tien Chu, 2024)

Alleged three-way agreement between Tien Chu (manufacturer) and certain distributors to impose a minimum resale price on other distributors.



Our recent takeaways from enforcement in Hong Kong



Shapeshifters

A “refusal to deal” became a case of predatory pricing mid-trial; a case against RPM pivoted to be a “hub-and-spoke no poach arrangement”.

Be nimble and pre-empt potential range of allegations – even during the investigation stage.



Silence is not golden

Engage proactively with the regulator during investigation – show that you are willing to work with them.

Don’t always assume silence is a good thing. Hesitation may result in lost opportunities to mitigate risk.



Unhappy people = unpredictable

Investigations often arise due to complaints from competitors and counterparties (customers/suppliers/distributors).

Stay alert to competition law risk especially where the counterparty shows clear dissatisfaction with you.



Fight fire with fire

Regulators are increasingly well resourced e.g. HKCC always engages London Silk and uses overseas economists.

Be prepared to invest in the resources to rebut and resist an investigation.

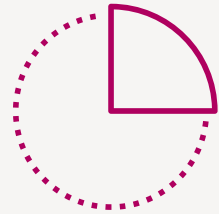


Words matter

Expect the regulator to rely on all available documents as potential evidence of anticompetitive conduct, including meeting minutes, internal-facing communications etc.

Particular caution around minutes, board papers or other formal documents.

Building an effective compliance programme



**Less than
25%**

of businesses surveyed by HKCC had put in specific measures to ensure compliance with competition law and/or provided related training.

(Jan 2025)

Compliance building blocks

