

Executive Summary

Direct Investigation Report

Food and Environmental Hygiene Department's Rental Management of Market Stalls

Foreword

Markets are closely related to our everyday life. At present, there are 99 markets (hereinafter referred to as “public markets”) managed by the Food and Environmental Hygiene Department (“FEHD”), representing about 45% of all publicly and privately operated markets in Hong Kong.

2. The overall occupancy rate of stalls in public markets stands at 90%. However, in recent years there have been media reports and public complaints from time to time of serious problems of idling stalls in public markets. Many stalls are either not operating or used for storage only, without selling foods or commodities to the public. In this light, we have conducted this direct investigation to examine FEHD’s rental management of market stalls, with a view to making recommendations for improvement.

Our Findings

3. All stalls in public markets are owned by the Government and let out by designated means to interested parties for operation. Stall tenants sign tenancy agreements with FEHD usually for a term of three years.

4. Public markets in the urban areas and the New Territories used to be managed by the Urban Council and Regional Council respectively, adopting different versions of tenancy agreements (hereinafter referred to as the “UCTA” and “RCTA”). Upon dissolution of the two Councils in 2000, FEHD took over the management of public markets and has introduced another two versions of tenancy agreements (hereinafter referred to as the “FEHD Old TA” and “FEHD New TA”). Tenants are allowed to renew the tenancy of their stalls using the pre-existing version of tenancy agreement. As a result, all four versions of tenancy agreements still exist.

5. Regarding FEHD's rental management of market stalls, we have identified the following five inadequacies.

I. Low Level of and Great Disparity among Stall Rentals Result in Unlevel Playing Field for Tenants

6. For historical reasons, the rentals of market stalls are generally at a low level, and there is a great disparity in rentals among stalls. The rentals for 76% of the stalls are lower than the reference open market rental ("OMR") as assessed by the Rating and Valuation Department. This contributes to years of deficits amounting to hundreds of millions of dollars incurred by public markets. Moreover, in 24 public markets, there exist concurrently monthly rentals below \$200 and over \$9,000. Some pertain to stalls in close proximity to each other, with similar sizes and selling the same category of commodities – a situation of unlevel playing field for tenants.

7. We find that the rental mechanism and rental freeze measures of FEHD are the major factors leading to the low level of and great disparity among market stall rentals.

Rental Mechanism

8. At present, most occupied stalls have been let through restricted auction or open auction. Restricted auction is a concessionary measure offered by the Government, usually restricted to hawkers or tenants required to be relocated under Government policy or special circumstances. The upset prices for restricted auction are normally at 75% of the OMR level while those for open auction, open to general public, are normally at the OMR level. For stalls which have been left vacant for six months and eight months or longer, the upset prices for open auction are at 80% and 60% of the OMR level respectively. Where upset prices of stalls are below the OMR level, the successful bidders are likely to be able to secure tenancies at rentals lower than the OMR level.

9. Information shows that nearly half (47%) of the stalls were auctioned at upset prices below the OMR level. For such stalls, FEHD does not have any mechanism to gradually realign their rentals with the OMR level, and in effect has been allowing those stalls to enjoy the lower rentals for prolonged periods.

Rental Freeze Measure

10. In 1998, the Government reduced the rentals of public market stalls by 30% across-the-board. All rentals were frozen at that level for 19 years until 30 June 2017, with the freeze measure extended for several times in the interim. The prolonged rental freeze means that the rentals of those stalls let out years ago are lagging far behind the OMR level. There is also a great disparity in rentals between such stalls and those let out in recent years.

11. During the rental freeze period, the rentals of all market stalls remained unchanged, including the concessionary rentals offered to those itinerant hawkers who had surrendered their licences to the Government and hence been re-sited to public markets (“re-sited hawkers”). Such concessionary rentals were meant for the first three years of tenancy only. However, many “re-sited hawkers” have been paying concessionary rentals of little more than \$100 per month for over ten years. Examples show that of two stalls in the same market, of the same size, being close to each other, selling the same category of commodities and with their levels of OMR being more or less the same, the stall let out through open auction is paying a rental as much as 70 to 90 times of that of the stall enjoying concessionary rental.

Latest Practice

12. Since 1 July 2017, FEHD has put in place a transitional arrangement for rental adjustment. Stall rentals will be adjusted upon renewal of tenancy agreement or on the due date for rental adjustment as specified in the tenancy agreement. The adjustment is based on the average of the year-on-year rates of change in Consumer Price Index (A) (“CPI Change Rate”) over the past 12 months (i.e. the 12-month period preceding the six months before the renewal of tenancy agreement or before the due date for rental adjustment). Nevertheless, the adjustment range for “CPI Change Rate” has in fact been insignificant (between -0.6% and +2.5% from January to December 2017) and is hardly conducive to improving the current situation where stall rentals fall significantly behind the OMR. Besides, by adopting the “CPI Change Rate” as a single point of reference in rental adjustment without taking into account factors such as the disparity between actual rentals and the OMR, it would be difficult to eliminate the problem of great discrepancy in stall rentals.

13. We consider that FEHD should devise an effective and step-by-step rental adjustment mechanism in a comprehensive manner, with a view to resolving the

problems relating to market stall rentals so as to foster a healthier business environment enabling fair competition.

II. Automatic Tenancy Renewal Reduces Chances for Others to Rent Stalls

14. Under the current tenancy renewal system, FEHD will generally allow a tenant to renew his/her tenancy if he/she so wishes upon expiry of an existing tenancy. That means the stall concerned would not be put out for open auction.

15. Such system of automatic tenancy renewal, diminishing the chance for others to secure market stalls by open auction, may also undermine the motivation of stall tenants to improve their performance because of the lack of competition. This would in turn affect the competitiveness of public markets. We consider that FEHD should review this system of perpetual renewal of tenancy.

III. Succession Still Allowed for Most Stalls, Thus Affecting Other People's Right to Bid for the Operation of Those Stalls

16. Following the policies established by the Urban Council and Regional Council in early years, if a tenant who signed a UCTA, RCTA or FEHD Old TA passes away during the tenancy period, his/her designated successor or next of kin can apply to FEHD for succession of tenancy of the market stall concerned.

17. There are a total of 7,874 market stalls subject to the UCTA, RCTA or FEHD Old TA, representing 61% of the occupied stalls. With FEHD allowing succession for so many stalls, the right for public to bid for the operation of those stalls is affected.

18. We consider that FEHD should set up a database on the records of approved succession applications, so as to assess how much the tenancy succession system actually affects people's right to bid for the operation of market stalls. FEHD should also review its processing of tenancy succession applications and consider the need to make suitable adjustments to keep up with the times.

IV. No Limit on the Number of Stalls to be Rented by a Single Person Gives Rise to Abuses and Reduces Consumers' Points of Purchase

19. As at 1 July 2017, there were a total of 9,206 tenants renting 12,899 stalls in public markets. About 8% of the tenants were renting three or more stalls, totalling 3,159 stalls, which represent 24% of all occupied stalls.

20. FEHD sets no limit on the number of stalls that can be rented by a single person. This allows a tenant to rent multiple stalls in close proximity, and/or sell the same category of commodities, within the same market. In one case, a tenant rented as many as 23 stalls but used them only for storage. There was another case where two tenants occupied 45% of the wet goods stalls of a market all for floral business. The absence of a limit to the number of stalls that a tenant can rent may give rise to abuses of stalls and reduce customer choice.

21. FEHD could consider setting a reasonable limit to the number of stalls that a tenant can rent in a market, taking into account the actual situation of individual public markets (for example, allowing a tenant to rent only up to a certain percentage of stalls in the same market for selling the same category of commodities).

V. "Frozen Stalls" Left Idle for Years, Resulting in Serious Wastage of Public Resources

22. There are a total of 1,193 stalls (8% of all the stalls in public markets) withheld by FEHD (hereinafter referred to as "frozen stalls") for such reasons as relocation of existing tenants who are affected by large-scale works being carried out in markets, or the Government's review of the future development and use of markets. Among the "frozen stalls", 60% were in five public markets, and they had been withheld from letting out for 4 to 23 years.

23. Cases show that FEHD could not successfully carry out improvement works in certain markets because the tenants had refused to relocate to other stalls. However, it is in fact stated in the RCTA, FEHD Old TA and FEHD New TA that when the Government carries out maintenance, repairs or improvement works in public markets, tenants should at the Government's request close their stalls or relocate to other stalls. In the light of public interest, FEHD should not set aside or delay works just because of some tenants' personal interests. If a tenant unreasonably refuses to relocate to another stall, FEHD is obliged to take enforcement action in accordance with the

tenancy condition.

24. We consider that in order to stop such further wastage of public resources, FEHD should include the same clause in all versions of tenancy agreements (including the UCTA) so as to spell out the Government's power and responsibility for carrying out works in public markets, and set out the requirements and rules for tenants.

Recommendations

25. In the light of the above, The Ombudsman urges FEHD:

- (1) to review the practice of setting upset prices below the OMR level at auctions;
- (2) to devise a comprehensive and effective rental adjustment mechanism;
- (3) to review the current tenancy renewal system to allow more opportunities for the public to bid for stall tenancies, at the same time giving priority to existing tenants with satisfactory performance;
- (4) to set up a database to keep records of tenancy succession applications and review the processing of such applications;
- (5) to set a reasonable limit to the number of stalls that a tenant can rent in a market, taking into account the actual situation of individual markets; and
- (6) to include the same clause in all versions of tenancy agreements to spell out the Government's power and responsibility for carrying out works in public markets, and set out the requirements and rules for tenants.

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