# Hong Kong Competition Law Update

February 2015

## Hong Kong competition law to 'go live' in Q3 or Q4 of 2015

The Hong Kong Competition Commission (**HKCC**) is expected to begin enforcing the new Competition Ordinance during the second half of 2015. Implementation of a cross-sector competition law will be a watershed moment for one of the world's most open economies.

The Competition Ordinance will prohibit anticompetitive agreements and abuse of a dominant position. The prohibitions will apply to any behaviour which has an effect on competition in Hong Kong – the activity and/or parties need not be Hong Kong-based. Consistent with the current law, mergers will not be regulated unless they involve telecommunications businesses.

## Financial services in the spotlight

The HKCC is working with the Hong Kong Monetary Authority to determine the approach to competition enforcement in the financial sector. While the HKCC has not indicated its primary area of interest in the financial sector, in practice we would expect it to follow to a degree the approach of UK, US and EU regulators. This may include, for example, considering of issues such as:

- Financial benchmark manipulation. Global competition authorities have fined global banks more than US $4 billion for manipulation of LIBOR, EURIBOR and Yen LIBOR. Hong Kong and Singapore regulators have both previously investigated alleged benchmark manipulation of HIBOR and SIBOR respectively.
- Illegal information exchange. This may occur, for example in the context of loan syndication, or provision of future wholesale trading intentions (an issue in global investigations into the foreign exchange markets).
- Exploitation of market power, for example through control of essential trading data.

Subject to two major exceptions, the Competition Ordinance will apply to all financial sector operators. First, the Hong Kong Exchanges and Clearing will benefit from immunity. Second, the Monetary Authority is expected to mandate Hong Kong Interbank Clearing as the sole clearing services provider, in order to avoid potential abuse of market power concerns.

## Overview of enforcement approach

The HKCC will investigate suspected breaches and, where required, apply to the Competition Tribunal to impose penalties and/or other remedies. Maximum penalties include fines of up to 10% of Hong Kong turnover, commitments to vary behaviour, voiding of illegal contracts and disqualification of directors. Certain SMEs will benefit from exemptions from the law.

## HKCC will focus on multiple sectors

The HKCC has published draft enforcement guidelines and procedures for comment, with revised guidance expected in spring this year. The HKCC will take a hard line against Resale Price Maintenance and appears to be unlikely to apply market share-based exemptions to the law.

Separately to financial sector engagement, the HKCC has also made statements in relation to the oil and petrol markets, and has signalled its intent to tackle suspected bid rigging and information exchange in the real estate (particularly building management) and construction sectors.

## Implications

Businesses, including financial sector operators, should ensure compliance with the Competition Ordinance. Robust internal compliance can also give confidence to deploy competition law arguments in commercial negotiations.

## Contact us

The significant global convergence of competition law allows us to use our experience of international antitrust laws to deliver commercial risk-based advice to clients in emerging jurisdictions worldwide. For more information please get in touch.

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