

Guidelines to the Hong Kong Competition Ordinance: the Commission invites stakeholders' views

June 2014

The Hong Kong Competition Commission ("**Commission**") is setting to work on one of its crucial tasks in the implementation of the Competition Ordinance ("**Ordinance**"): drafting guidelines that will inform the market as to how the Commission expects to implement – and enforce – the Ordinance in practice. It is anticipated that the guidelines will address procedural issues including complaints, leniency applications and investigations, as well as guidance on exemptions.

To start the ball rolling, on 26 May 2014, the Commission has invited any interested stakeholders to submit their views and to provide information on trade practices in Hong Kong markets. The information gathered will assist the Commission in producing the draft guidelines, which are expected to be available towards the end of 2014. The Commission's paper "*Getting Prepared for the Full Implementation of the Competition Ordinance*," published on 26 May, requests in particular feedback from stakeholders on the following issues:

- common trade practices in Hong Kong which may have anti-competitive risk;
- experiences of vertical agreements, in particular resale price maintenance, and their efficiencies and risks;
- views on how to analyse market power and factors to take into account;
- experiences of information sharing and joint purchasing agreements;
- experiences of tying and bundling practices; and
- concerns on the application of the merger rule in telecommunications markets

The Commission aims to complete its preparatory work by the first half of 2015, and has provided the indicative timetable below.

May to July 2014

- publish information about the Ordinance and give context to the development of the guidelines;
- engage with major stakeholder groups; and

- obtain feedback from stakeholders and members of the public

September 2014 onwards

- publish draft guidelines; and
- consult with the Legislative Council, stakeholders and the public on the text of the draft guidelines

First half of 2015

- finalise the guidelines after consultation; and
- develop education and compliance tool kits

The Commission's objective is to publish practical guidelines that assist businesses in analysing their own market practices, with a view to determining whether their conduct may contravene the Ordinance. The guidelines will not form part of the legislation and they will not be binding on the Competition Tribunal or the Hong Kong courts, but could prove to be influential in practice. It is anticipated that the guidelines will evolve over time with the Commission's growing enforcement experience.

The Commission's paper has also provided an indication of the areas in which the Commission considers that it is likely to focus its energies, at least in the early period of its mandate. Those areas cover cases of:

- conduct that resulted in, or is likely to result in, substantial harm to consumers or businesses;
- conduct that has a substantial impact on the Hong Kong economy;
- conduct in concentrated markets in Hong Kong which restricts new entry or expansion in those markets;
- conduct that blatantly contravenes the law; and
- conduct where there is a history of previous contraventions of the Ordinance.

These 'markers' make it easier for businesses to kick-start their efforts to comply with the Ordinance, if they have not already done so.

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Beyond this initial stage, it is not difficult to anticipate that, during the period where the guidelines are drafted and discussed, some businesses will be keen to give input to the Commission to shape the content of the guidelines.

Once enacted, the guidelines will hopefully give the much-needed predictability and legal certainty for companies to ensure their business practices are fully in line with the requirements of the Ordinance after its complete entry into force anticipated for 2015.

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