On 14 June 2012, the Hong Kong Legislative Council adopted the Competition Ordinance. The Ordinance introduces a cross-sector competition law regime in Hong Kong.

The main features of the Ordinance are as follows:

- A prohibition on restrictive agreements and concerted practices (first conduct rule)
- A prohibition on the abuse of a substantial degree of market power (second conduct rule)
- A prohibition on anticompetitive mergers in the telecommunications sector
- A judicial enforcement model, where sanctions can only be imposed by a Competition Tribunal
- Limited exemptions for small- and medium-sized enterprises and a broad exclusion regime under which most statutory bodies do not fall within the scope of the Ordinance.

The Ordinance will enter into force at a date to be decided by the Government. The Ordinance will be implemented in phases, with the institutional provisions coming into force first to allow the authorities to be set up and to commence work on enforcement guidelines, which will be subject to public consultation. The substantive provisions will only come into force at a later date, probably not before late in 2013 or 2014, at which time guidelines should have been finalised.
**Timetable and application to existing agreements**

The Competition Ordinance will enter into force at a date that will be set separately by the Secretary for Commerce and Economic Development. Enforcement is not expected to begin in earnest before 2014.

The Government intends to adopt a phased-in approach, with the institutional provisions of the Ordinance coming into force first to allow the Competition Commission to be set up and to commence work on guidelines. The Competition Commission will then conduct public consultations on its proposed enforcement guidelines. The substantive provisions will only come into force after the guidelines have been finalised, probably some time in late 2013 or in 2014.

There is no grandfathering of existing agreements and practices. The Ordinance will apply to all conduct that is producing effects at the time its substantive provisions come into force. For example, long-term cooperation agreements, trade association decisions to collectively raise prices, or non-compete covenants that were adopted before the Ordinance’s effective date will be subject to the new law if they still have effects at the time the substantive provisions of the Ordinance come into force.

**The institutions**

The Competition Ordinance establishes two new dedicated competition authorities in Hong Kong, namely a Competition Commission, which investigates suspected infringements of the conduct rules, and a Competition Tribunal, which adjudicates cases brought forward by the Competition Commission and private damages actions.

**The Competition Commission**

The Commission is a new authority comprising between five and 16 members appointed by the Chief Executive.

One of the Commission’s principal tasks is to investigate possible infringements. It has wide-ranging investigation powers, including the power to order the production of documents and other information and to hear relevant persons. It will also have the power to conduct surprise on-site inspections (“dawn raids”) after obtaining a warrant from the Court of First Instance.

The Competition Commission's role is not limited to carry out investigations. The Commission is vested with some enforcement powers: it can accept commitments from undertakings in return for the Commission’s agreement not to bring proceedings before the Tribunal or to drop existing proceedings.

The Commission is also tasked with providing guidance through the adoption of guidelines. It can also issue individual guidance decisions as well as individual and block exemptions. Finally, it has an advocacy role, ie, it must promote public understanding of competition law and the adoption of compliance mechanisms by businesses.
The Commission has no powers to impose sanctions. Where an infringement is not terminated by way of a warning or a commitments procedure, the Commission may choose to seek a decision from the Competition Tribunal.

**The Competition Tribunal**

The Competition Tribunal is a new court established by the Ordinance. New judges are however unlikely to be appointed: the existing judges of the Court of First Instance will sit as a specialised jurisdiction, following specific procedures, likely to be less formal than in civil cases. The judges may also seek the assistance of specially qualified assessors when hearing competition cases.

The Tribunal hears administrative cases brought before it by the Competition Commission. The court has very extensive powers to impose sanctions and order redress in these cases.

The Tribunal also hears appeals against the decisions of the Competition Commission with respect to exemptions, exclusions, commitments and leniency.

Finally, the Tribunal adjudicates private follow-on damages actions and makes compensation orders in favour of those persons who can establish that they have suffered losses as a result of infringements of the conduct rules.

**Other institutions involved in the enforcement of the Competition Ordinance**

The Communications Authority has concurrent jurisdiction with the Competition Commission to investigate cases in the broadcasting and telecommunications sectors. The two authorities are required to conclude a memorandum of understanding for the purpose of co-ordinating the performance of their functions under the Ordinance.

The Ordinance also grants powers to the Chief Executive in Council and to the Legislative Council. The Chief Executive in Council is empowered to subject any statutory body to the substantive provisions of the Ordinance. He or she can also exclude any specified persons from the application of the substantive rules and related liabilities under the Competition Ordinance through subsidiary legislation. Based on grounds of public policy or international obligations, the Chief Executive in Council can also issue administrative orders to grant individual exemptions, which are subject to the Legislative Council’s negative vetting. The Legislative Council has the right to be consulted before the Competition Commission issues any guidelines.

Authorised officers from the Competition Commission who have obtained a Court warrant to enter and search premises may call upon such other persons as they consider necessary to assist them. While the Ordinance is silent on this point, the Competition Commission might rely on this provision to require the assistance of the Hong Kong police.
**Persons subject to the Competition Ordinance**

**Entities involved in economic activities**
The Competition Ordinance will apply to “undertakings”, ie, any entity, regardless of its legal status or the way in which it is financed, that engages in economic activity.

The notion of undertaking is widely used by foreign competition regimes, including in the EU and China. It has been defined very broadly in EU competition law, and Hong Kong is likely to follow this broad interpretation. Trade associations, mutual insurance funds, banks, law societies, professional associations, sole proprietors and natural persons engaged in independent business activities, even the Government, have all been found to constitute undertakings under EU competition law when they engage in economic activities. Separate businesses and companies under the same control are likely to be considered as constituting a single undertaking.

**Undertakings wholly excluded from the Competition Ordinance**

**Statutory bodies**
The Ordinance excludes all “statutory bodies” from the scope of application of the substantive conduct rules, except for those statutory bodies listed in a separate regulation that will be adopted by the Chief Executive in Council. The statutory bodies that will be on that list will be subject in all or in part to the Competition Ordinance. Statutory bodies are persons, corporate or unincorporate, established under an Ordinance, or constituted or appointed by an Ordinance, but do not include companies, trustees, societies, co-operatives and trade unions. It is not clear how soon after enactment of the Ordinance such regulation will be adopted by the Chief Executive in Council: until such regulation enters into force, all statutory bodies are excluded from the Ordinance. Under current proposals, the Government will adopt a regulation that would subject the activities of six statutory bodies to the Ordinance, out of a total of 581 such bodies in Hong Kong.

It is noteworthy that the Ordinance, if enacted, would not exempt Government-owned undertakings unless these are statutory bodies. Commercial undertakings that are wholly or partly owned by the Government or by statutory bodies will only benefit from the exclusion if they fall within the definition of “statutory bodies”. Furthermore third parties involved in conduct jointly with statutory bodies will still be subject to the general competition rules.

**Other persons**
The Chief Executive in Council may, by regulation, disapply the main substantive provisions of the Ordinance in relation to all or part of the activities of any other person.
Undertakings partially excluded from the Competition Ordinance
Some undertakings are excluded from certain substantive provisions of the Ordinance on account of their size. Small enterprises benefit from a full exclusion from the prohibition on the abuse of a substantial degree of market power when their turnover does not exceed HK$40 million. They benefit from a partial exclusion from the prohibition on restrictive practices when certain specific conditions of size and conduct are met. These are explained further below.

Other undertakings will be partially excluded on account of their tasks. Undertakings entrusted with the operation of a service of general economic interest will also benefit from a partial exclusion from the two broad prohibition rules. The exclusion will only apply to the extent it is needed to allow the performance of such service. The conditions for this exclusion is explained further below.

The prohibition on restrictive agreements

The first conduct rule
The first conduct rule prohibits agreements and concerted practices among undertakings, as well as undertakings’ involvement in decisions of trade associations which have as their object or effect the prevention, restriction or distortion of competition in Hong Kong. The rule applies irrespective of whether the conduct took place in Hong Kong or abroad, as long as its object or effect is to prevent, restrict, or distort competition in Hong Kong.

Horizontal and vertical restrictive agreements are subject to the rule
The notion of agreement is broadly defined to include any arrangement or understanding, whether express or implied, written or oral. The Ordinance does not define the notion of concerted practice but it will likely be interpreted broadly, in line with EU precedent.

The first conduct rule is of general application: it applies not only to arrangements between competitors (so-called horizontal agreements) but also to agreements between undertakings active at a different level in the production or distribution chain (so-called vertical agreements). During the legislative process the Government stated that vertical agreements are generally legitimate, and that the only two instances raising concern are when a supplier has market power and uses vertical restrictions to foreclose competitors, and when a supply agreement is entered into among competitors. It will ultimately be up to the new competition authorities to decide how the first conduct rule applies to vertical agreements.
Serious anticompetitive practices

Agreements and practices will infringe the first conduct rule only upon showing of their restrictive object or effect. In line with other jurisdictions, and with a view to enhance legal certainty, the Ordinance already signals that the following practices will be considered as serious anticompetitive conduct:

- fixing, maintaining, increasing, or controlling the price for the supply of goods or services
- allocating sales, territories, customers or markets for the production or supply of goods or services
- fixing, maintaining, controlling, preventing, limiting or eliminating the production or supply of goods or services
- bid rigging practices.

While the legal test remains the same for these serious anticompetitive practices, the procedure for sanctioning parties involved in this type of conduct is simplified, and sanctions are likely to be more severe.

The legislator’s intention by adopting a different procedure for serious anticompetitive practices is clearly to capture hardcore cartel conduct. However there is no express reference in the Ordinance itself that serious anticompetitive conduct is limited to horizontal agreements. It can therefore not be ruled out that certain vertical agreements (such as exclusive distribution agreements or resale price maintenance arrangements) might qualify as such, even though this was apparently not the legislator’s intention.

Exclusions and exemptions

The Ordinance provides for certain general exclusions from the first conduct rule. In addition, the Ordinance also provides for two specific exemptions grounds whereby the Chief Executive may authorise otherwise restrictive agreements.

General exclusion grounds

Agreements fulfilling the specific conditions for exclusion set out in Schedule 1 of the Ordinance will not be subject to the first conduct rule notwithstanding their possible restrictive effects. Parties may either self-assess whether their proposed agreements meet the conditions for exclusion or apply for a binding decision from the Competition Commission. The Commission will, however, not be obliged to consider the application unless it raises novel or otherwise unclear issues. The Commission also has the power to adopt block exemption orders, in which it confirms that a particular category of agreements meets the conditions to benefit from a general exclusion.
Schedule 1 provides for five categories of exclusions.

- **Agreements enhancing overall economic efficiency.** According to Schedule 1 of the Ordinance, the first conduct rule does not apply to agreements, concerted practices and decisions of trade associations that enhance overall economic efficiency. This criterion will be met where three cumulative conditions are met:
  - the agreement improves production, distribution or otherwise promotes technical or economic progress while allowing consumer a fair share of the resulting benefits
  - the agreement only imposes restrictions which are indispensable to reach the above objectives
  - the agreement does not result in the possibility to eliminate competition in respect of a substantial part of the goods or services in question.

Most competition law jurisdictions have a similar rule in place whereby restrictive agreements with redeeming benefits are nevertheless permissible. The specific exclusion conditions described above are modelled on the EU standard. The standard is slightly different from other Asian jurisdictions such as Singapore and Malaysia, which do not require that a fair share of the benefits accrue to consumers.

- **Compliance with other legal requirements.** The first conduct rule does not apply to agreements, concerted practices and decisions of trade associations, made for the purpose of complying with a legal requirement imposed by Hong Kong law or by or under any enactment in force in Hong Kong. This exclusion ground does not apply to agreements made to comply with a foreign or international law obligation or requirement.

- **Services of general economic interest.** Schedule 1 of the Ordinance further provides that the conduct rules do not apply to an undertaking entrusted by the Government with the operation of services of general economic interest, but only in so far as these rules would obstruct the performance of the particular tasks assigned to them. It remains unclear whether this exclusion only applies to those specific agreements deemed necessary for the performance of a service of general economic interest or whether the exclusion ground is broader and covers all activities relating to the said service.

- **Merger agreements.** The Ordinance does not provide for a cross-sector merger control regime. To rule out the possibility that merger activity might still be reviewed under the first conduct rule, Schedule 1 expressly provides that agreements to implement a merger are not caught under the first conduct rule. The notion of merger is defined in Schedule 7 of the Ordinance and refers to a situation where two or more undertakings cease to be independent of each other or where one undertaking acquires direct or indirect control over another undertaking or its assets.
• Agreements of lesser significance. The Ordinance provides for a regime whereby certain restrictive agreements, agreements, concerted practices and decisions of trade associations involving small enterprises will be excluded from the scope of application of the first conduct rule. This exclusion aims to reduce the compliance costs for SMEs. Two conditions must be fulfilled to benefit from this exclusion: (i) the agreement involves parties whose combined aggregate worldwide annual turnover is below HK$200 million; and (ii) the agreement does not involve “serious anticompetitive conduct”. The Government committed to review the exclusion threshold periodically.

This exclusion to the benefit of SMEs is not as expansive as the de minimis regime found in other jurisdictions. Overseas competition legislation would also typically exclude practices that do not result in a substantial or appreciable restriction of competition. This is usually measured by reference to the market share of the parties involved. For example, non-hardcore horizontal restrictive practices involving parties whose combined market share is below 10 per cent would generally be excluded; and non-hardcore vertical restrictive practices would typically be excluded when they involve parties with respective market shares of below 15 to 30 per cent, depending on the jurisdictions. It will be up to the Competition Commission in its guidelines to decide whether it chooses to follow foreign practice, in which case it will be expected to adopt a broader de minimis regime by way of guidelines.

Specific exemption grounds
The Ordinance also provides for two specific exemption grounds. Unlike the general exclusions described above, these exemptions are not automatic. An order by the Chief Executive published in the Official Gazette is required for an exemption to apply. Such an order can be made subject to any conditions or limitations which the Chief Executive deems appropriate.

The first exemption ground allows the Chief Executive to exempt a specific agreement or a class of agreements from the scope of application of the first conduct rule if there are exceptional and compelling reasons of public policy for doing so. The second exemption ground is more specific and allows the Chief Executive to grant an exemption in order to avoid a conflict with an international obligation that directly or indirectly relates to Hong Kong.

The prohibition on the abuse of a substantial degree of market power
The second conduct rule
The second conduct rule prohibits undertakings that have a substantial degree of market power in a relevant market from engaging in conduct that has as its object or effect the prevention, restriction or distortion of competition in Hong Kong.
As with the first conduct rule, the prohibition also applies to conduct engaged in outside Hong Kong if it has as its object or effect the prevention, restriction or distortion of competition in Hong Kong.

Substantial degree of market power
The Ordinance refers to a “substantial degree of market power” test. During the legislative process the Government resisted calls to use the more commonly used “dominance” test, as such a test would lead to a high threshold for the Hong Kong economy. Arguing that several sectors of the economy have an oligopolistic structure, the Government stated that it wishes to retain a lower market power threshold in the Ordinance.

While the Ordinance does not define what a “substantial degree of market power” means, it lists the factors which the competition authorities may take into account when determining whether an undertaking has such power:

- the market share of the undertaking
- the undertaking’s power to make pricing and other decisions
- any barriers to entry to competitors into the relevant market.

The inclusion of these factors is useful to confirm that the Competition Commission and the Competition Tribunal are expected to adopt a methodology consistent with that used in other jurisdictions when assessing market power. However these factors are not indicative of the legal threshold above which a “substantial degree of market power” arises. Incidentally, the Ordinance mandates the use of the same factors when applying the dominance threshold, which is retained in the telecommunications sector.

While intent on adopting a lower threshold, the Government repeated during the legislative process that a market share of 40 per cent may be indicative of a substantial degree of market power, and that undertakings with a market share below 25 per cent should benefit from a safe harbour as they would be unlikely to possess market power.

The Competition Commission is expected to provide further guidance on the question in its guidelines on the application of the second conduct rule.

Abusive conduct
The Ordinance only prohibits the abuse of a substantial degree of market power. It does not prohibit undertakings from having market power or from striving to achieve it.

Interestingly, and despite the Government’s intent to concentrate on oligopolistic markets, the second conduct rule only refers to abuses by “[a]n undertaking” while some other jurisdictions – notably Singapore, the EU and the UK – apply the prohibition to an abuse “by one or more undertakings”. This suggests that the second conduct rule will not cover abuses in collective market power situations, ie, where several independent undertakings hold together a “substantial degree of market power.”
Another departure from foreign experience is that any abusive conduct that has the object or effect to prevent, restrict or distort competition in Hong Kong is prohibited. In many other jurisdictions, unilateral conduct is only challengeable upon demonstration of anticompetitive effects: in these jurisdictions, unilateral conduct whose “object” is anticompetitive will usually not be illegitimate unless it also produces restrictive effects.

The Ordinance provides two examples of abusive conduct. An undertaking with a substantial degree of market power may commit an abuse by engaging in “predatory behaviour towards competitors” or by “limiting production, markets or technical development to the prejudice of consumers”. This list is non-exhaustive, but it is noteworthy that these examples involve exclusionary conduct, ie, practices which have the object or effect of foreclosing competitors from the market, to the ultimate detriment of consumers. All of the examples of abuses provided by the Government during the legislative process the Government were also limited to exclusionary abuses. These included predatory pricing, tying, bundling, fidelity rebates, margin squeezes, refusal to supply, and refusal to grant access to essential facilities.

The examples provided in the Ordinance do not involve exploitative conduct, such as excessive pricing or other practices which involve the “exploitation” of customers. It will be up to the competition authorities to decide whether such conduct also falls under the second conduct rule. They may be influenced in this regard by the circumstance that the Ordinance has a specific provision prohibiting exploitative conduct by a dominant telecommunications licensee, which may indicate that such conduct would not be caught under the general second conduct rule.

Defences, exclusions and exemptions

General exclusion grounds

Grounds for exclusion from the scope of the second conduct rule are the same than those available under the first conduct rule, save for two differences. As with the exclusion grounds under the first conduct rule, parties may either self-assess whether the conditions for exclusion are met or apply for a binding decision from the Competition Commission. The Commission will, however, not be obliged to consider the application unless it raises novel or otherwise unclear issues.

Differences with the exclusions under the first conduct rule are as follows:

• The exclusion for enhancing overall economic efficiency is not available. However, while the Ordinance does not provide for a specific exclusion ground for enhancing overall economic efficiency, the Government explained during the legislative debate that it would expect the objective justification defence to be available to undertakings that have market power. In practice, this broad defence allows defendants to justify their actions based on practical reasons (a refusal to sell may be justified by the poor creditworthiness of a customer) or reasons of economic efficiency (economies of scale, operational costs, etc.).
Conduct of lesser significance. Undertakings whose worldwide annual turnover does not exceed HK$40 million during the last financial year will not be subject to the prohibition on the abuse of a substantial degree of market power. According to the Government, with the proposed threshold, nearly 95 per cent of all SMEs would be excluded from the application of the second conduct rule. The Government also committed to review the exclusion threshold periodically.

Specific exemption grounds
The same two specific exemption grounds already available under the first conduct rule are also available. The first exemption ground allows the Chief Executive to exempt a specific conduct or a class of conduct from the scope of application of the second conduct rule if there are exceptional and compelling reasons of public policy for doing so. The Chief Executive can also grant an exemption in order to avoid a conflict with an international obligation that directly or indirectly relates to Hong Kong.

Enforcement and investigation

Public enforcement

Competition Commission leads investigations
As explained, a Competition Commission will be set up to investigate and prosecute infringements before a Competition Tribunal. In the telecommunications and broadcasting sectors, the Commission will have concurrent jurisdiction with the Communications Authority.

Investigation and enforcement procedures
As already mentioned, the Commission has wide-ranging investigating powers, including the power to request information and documents, the power to request explanations, and, after obtaining a warrant from the Court of First Instance, the power to enter and search premises.

The enforcement procedure varies depending on the type of infringements.

Serious anticompetitive practices and alleged violations of the second conduct rule. Once its investigation is complete, if the Commission has reasonable cause to believe that a serious contravention of the first conduct rule has occurred (ie, the parties were involved in one or more of the four types of serious anticompetitive practice), or that a contravention of the second conduct rule has occurred, it has the choice of:

• bringing infringement proceedings in the Competition Tribunal and seeking the imposition of sanctions and any other redress that it sees fit or

• instead of directly bringing proceedings, issue an infringement notice to the person against whom it proposes to bring proceedings, offering not to bring those proceedings on condition that the person makes a commitment to comply with requirements of the notice.
If an infringement notice is issued, and if the parties under investigations accept the conditions of such notice (which may include the admission to a contravention of the relevant conduct rule, with consequences on its civil liability), the investigation may terminate by way of commitments.

For other violations of the first conduct rule, the Commission must first issue a warning notice. If the Commission has reasonable cause to believe that a contravention of the first conduct rule has occurred but that the conduct does not involve one of the four types of serious anticompetitive practice, it must first issue a warning notice to the parties under investigation.

The warning notice invites parties to cease the contravening conduct within a particular period of time. It is only if the parties refuse to modify their conduct, or if they repeat the conduct after the expiration of the warning period, that the Commission will be allowed to bring proceedings before the Tribunal or to issue an infringement notice. In any event, in these circumstances the Competition Commission can only bring proceedings in respect of conduct during the period that follows the expiration of the warning period.

**Leniency**

The Ordinance contemplates the introduction of a leniency regime where undertakings, in exchange for their co-operation in an investigation, would not face pecuniary penalties or would face reduced penalties. Detailed conditions for the grant of leniency will likely be spelled out by the Commission when it adopts implementing guidelines. It is to be regretted, however, that the Ordinance appears to consider the conclusion of written leniency agreements. This contrasts with most other leniency regimes that allow for an oral process. A written process entails significant risks of disclosure in civil litigation, which renders a leniency regime very unattractive for prospective applicants.

**Guidelines**

The Ordinance sets out very clear requirements for the Competition Commission to adopt a variety of guidelines concerning its enforcement of the conduct rules as well as on procedural issues. There is also a requirement that all guidelines be put to public consultation, including a consultation with the Legislative Council.

If it follows international practice, the Commission would be expected to explain in guidelines its policy on materiality thresholds, the definition of relevant markets, the factors used to establish the existence of a significant degree of market power, detailed conditions for the grant of leniency, etc. During the legislative process, the Government confirmed its view that guidelines will not be binding.

**Private enforcement**

Persons who have suffered loss or damage as a result of a contravention of the conduct rules will have a right of action. However, proceedings may only be brought after a contravention has been established (“follow-on actions”).
Under the Ordinance, it is not entirely clear whether parties to a contractual dispute could invoke a violation of the Competition Ordinance in support of their claim that a contractual clause (for example, an exclusivity provision) is void or voidable, without first having to wait for a decision from the Competition Commission or the Competition Tribunal.

Beneficiaries of leniency agreements will not be shielded from private enforcement. Parties who have admitted to an infringement as part of a settlement procedure will also not be shielded.

Sanctions

A range of remedies are available to the Competition Tribunal for contravention of a competition rule, including pecuniary penalties, award of damages, and interim injunctions during investigations or proceedings. The Commission has no power to impose sanctions.

Fines and other orders

The maximum penalty in relation to a “single contravention” is 10 per cent of the turnover of the undertaking concerned in Hong Kong for each year the infringement lasted, with a maximum of three years. The Tribunal’s sanctioning powers are not limited to fines: it may also order the disqualification of responsible directors for up to five years, award injunctions, declare agreements to be void, award damages, confiscate illegal profits, and order to pay the costs of the Commission’s investigation.

Extraordinary features of the sanctions regime

Three features of the sanctions regime under the Competition Ordinance are uncommon in foreign competition law regimes:

- The Competition Tribunal may, on its own motion, award damages to any person who has suffered damage as a result of a contravention. The Tribunal can also confiscate any illegal profits or any “loss avoided” and order them transferred to the Government or to any other person the Tribunal sees fit.

- Sanctions for “non-hardcore” anticompetitive agreements and concerted practices can only be imposed if parties ignore a warning notice issued by the Competition Commission. It is only if the parties continue their involvement in the practice after the expiry of a warning period, or if they repeat the conduct at a later stage, that the Competition Commission may seek the imposition of sanctions by the Tribunal - and in any case, proceedings may only be brought before the Tribunal in relation to the conduct which continued after the expiry of the warning period and not in respect of the conduct that preceded it.

- Finally, while the Ordinance concentrates on the behaviour of economic undertakings, pecuniary sanctions may in theory be imposed on any persons, including corporate and individuals.
Rules specific to the telecommunications sector

Mergers restrictive of competition in the telecommunications industry
The Ordinance comprises a sector-specific merger control regime: telecommunications carrier licensees are prohibited from carrying out a merger that has or is likely to have the effect of substantially lessening competition in Hong Kong.

Exempted mergers
Mergers involving telecommunications carrier licensees that substantially lessen competition in Hong Kong will still be allowed to proceed if the economic efficiencies that arise from the merger outweigh the merger’s restrictive effects. Mergers in the telecommunications sector that would otherwise be prohibited could still be exempted by the Chief Executive in Council for “exceptional and compelling reasons of public policy”.

Dominance and exploitative conduct in the telecommunications industry
As mentioned, the Ordinance retains the dominance standard in the telecommunications industry and introduces a provision specifically prohibiting abusive exploitative conduct by dominant telecommunications carrier licensees.
The purpose of this publication is to provide information as to developments in the law. It does not contain a full analysis of the law nor does it constitute an opinion of Norton Rose Hong Kong on the points of law discussed.

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