

Competition law facts sheet

Hong Kong

March 2021





Main features of the law

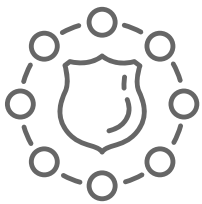
Prohibition on restrictive agreements, concerted practices, and abuse of market power

Merger control in the telecommunications sector

Judicial enforcement model

Extraterritorial effect

Wide-ranging investigation powers



Enforcement trends

Focus on cartels and bid-rigging

Increased use of alternative enforcement tools

Substantive provisions

Main rules

The Competition Ordinance provides for three main prohibitions:

- restrictive agreements and concerted practices;
- abuse of a substantial degree of market power; and
- mergers and acquisitions that substantially lessen competition in Hong Kong (limited to the telecommunications sector).

Restrictive agreements and concerted practices

The First Conduct Rule of the Competition Ordinance prohibits an undertaking (this includes any entity, including natural persons, engaged in economic activity) from making or giving effect to an agreement, engaging in a concerted practice, or as a member of an association of undertakings, making or giving effect to a decision of the association, if the object or effect of the agreement, concerted practice or decision is to prevent, restrict or distort competition in Hong Kong. Price fixing, market sharing, output restriction and bid-rigging are categorised as serious anticompetitive conduct.

Abuses of market power

The Second Conduct Rule of the Competition Ordinance prohibits an undertaking that has a substantial degree of market power in a market from abusing that power by engaging in conduct that has as its object or effect the prevention, restriction or distortion of competition in Hong Kong (such as predatory pricing, tying, bundling, refusal to deal, margin squeeze practices, and exclusive dealing).

Mergers and acquisitions in the telecommunications sector

The Merger Rule of the Competition Ordinance prohibits mergers and acquisitions that have, or are likely to have, the effect of substantially lessening competition in Hong Kong. The Merger Rule only applies to mergers involving telecommunications carrier licensees.

Sanctions

The competition law regime in Hong Kong adopts a judicial enforcement model, where sanctions and remedies can only be imposed by the Competition Tribunal. The Tribunal may impose a wide range of sanctions on undertakings (including individuals) found to have contravened the First or Second Conduct Rule or for their involvement in such contraventions. These include pecuniary penalties of up to 10 per cent of the total turnover obtained in Hong Kong for each year of infringement, up to a maximum of three years. Disqualification orders can also be imposed on directors for a period of up to five years.

Extraterritorial effect

The Competition Ordinance has extraterritorial reach in that it applies to activities conducted outside Hong Kong if they have the object or effect of preventing, restricting or distorting competition in Hong Kong.

Enforcement regime

Public and private enforcement

Under the Competition Ordinance, the Competition Commission and the Communications Authority have the power to investigate. Adjudicative powers are conferred on the courts, principally the Competition Tribunal.

The Competition Commission is the principal competition authority responsible for enforcing the Competition Ordinance through enforcement proceedings before the Competition Tribunal. It comprises five to 16 members appointed by the Chief Executive in Council. The Commission has the power to investigate, as well as powers to issue block exemption orders and decisions confirming individual exemption/exclusion status, issue implementation guidelines, and accept commitments and issue infringement notices.

The Communications Authority is the competition authority responsible for enforcing the Competition Ordinance in the telecommunications and broadcasting sectors. It has the same powers as the Commission under the Ordinance.

The Competition Tribunal is a specialised court within the Court of First Instance with the power to impose sanctions and order redress in cases brought before it by the Commission or the Communications Authority. The Tribunal also hear appeals against both competition authorities' decisions and hears follow-on private damages actions concerning contraventions of the conduct rules.

In Hong Kong, private litigants can only bring "follow-on" actions for damages suffered as a result of conduct in breach of the Competition Ordinance after the conduct has been ruled as a contravention of the competition rules by the Competition Tribunal.

Leniency

The Commission has adopted a leniency regime where undertakings and individuals, in exchange for their co-operation in a cartel investigation, can earn immunity from prosecution by the Commission, and thus avoid the risk of pecuniary penalties. The first leniency applicant to report a cartel before and after the Commission opens an initial assessment or investigation is referred to as a "Type 1" and "Type 2" applicant respectively.

A Type 1 applicant will be protected from potential follow-on actions while a Type 2 applicant will be required to admit to a contravention of the First Conduct Rule when the victims of the cartel bring follow-on actions. So far the Communications Authority has not adopted a leniency policy.

Investigation powers

The Commission and the Communications Authority have wide-ranging investigation powers, including the power to request the production of information and documents, the power to require the attendance of relevant persons at hearings before it and, after obtaining a warrant from a judge of the Court of First Instance, the power to enter and search premises.

Recent enforcement trends

Public and private enforcement

Cartel and bid-rigging

Since the entry into force of the Competition Ordinance, the enforcement actions brought by the Competition Commission before the Competition Tribunal have focused predominantly on cartel and bid-rigging activities. The Commission has also increasingly sought to take enforcement actions and impose individual liability against representatives of companies, and facilitators of anti-competitive activities in recent proceedings.

Alternative enforcement tools

The Commission has increasingly used non-judicial enforcement tools to resolve investigations that do not involve hard-core cartel conduct. The Commission accepted to close two investigations in return for commitments made by the companies involved to address the antitrust concerns raised by the Commission. For example, online travel agents have committed to remove "most favoured nation" clauses in their agreements with hotels in Hong Kong. The terminal operators who formed the Hong Kong Seaport Alliance have committed to keep prices and services at pre-alliance levels. The Commission also makes increasing use of processes under the Competition Ordinance alleviating the need for heavy court procedures, such as infringement notices or agreed statements of facts.

Private enforcement

In Hong Kong, private claims for damages suffered as a result of breach of the competition rules are only allowed if the Competition Tribunal has determined that there has been a contravention of the conduct rules. Competition law breaches can also be used as a defence in civil litigation. For instance Meyer, a wholesaler of diesel oil that was sued for non-payment of supplies by its supplier, alleged that its supplier was involved in a price-fixing cartel for the supply of industrial diesel oil as a reason for refusing to pay.

Summary of enforcement actions by the Competition Commission

Year	Type	Nature	Details
2017	Block exemption	Liner shipping	A block exemption order for vessel sharing agreements (VSAs) between liner shipping companies to be excluded from the application of the First Conduct Rule was granted for a duration of five years.
2018	Decision	Banking code	Application for an individual exemption from the application of First Conduct Rule made by fourteen banking institutions in respect of the Code of Banking Practice was denied.
2019	Decision	Pharmaceutical	Application for an individual exemption from the application of the First Conduct Rule made by the Hong Kong Association of the Pharmaceutical Industry in relation to a proposed pharmaceutical sales survey was denied.
2017	Court enforcement	IT sector bid-rigging	Defendants entered into bid-rigging agreements in a tender for IT project. Four out of five defendants found to have contravened and were liable to pecuniary penalties ranging from HK\$187,740 to HK\$2,730,000.
2017	Court enforcement	Housing decorators cartel	Housing decorators allocated customers and coordinated prices for public housing projects. All ten defendants found to have contravened, with fines ranging from HK\$132,000 to HK\$740,000.
2018	Court enforcement	Housing decorators cartel	Three out of five defendants have settled their case by disposal of proceedings by consent, sanctions yet to be decided.
2019	Court enforcement	Housing decorators cartel	Six respondent companies and three individuals admitted liability. The six respondent companies were sanctioned with fines ranging from HK\$330,000 to HK\$598,000, while the two individuals were fined HK\$200,000 and HK\$600,000. The remaining individual was disqualified as director for 22 months.
2020	Commitment	Online booking MFN clauses	Online travel agents committed to remove "most favoured nation" clauses in their agreements with hotels in Hong Kong.
2020	Commitment	Port terminal operators alliance	The port terminal operators forming the Hong Kong Seaport Alliance committed to keep prices and services at pre-alliance levels.
2020	Court enforcement	IT sector price-fixing	Two defendants exchanged future price sensitive information and coordinated their return bids. Both defendants settled the case by summary procedure. Remedies include a fine of around HK\$37,000, requirement to implement competition compliance policy and requirement to provide compulsory competition training to employees.
2020	Court enforcement	Textbook cartel	The Commission alleges that three companies and one individual engaged in price fixing, market sharing or bid-rigging in relation to sales of textbooks to students attending primary and secondary schools in Hong Kong. The proceedings are ongoing.

Year	Type	Nature	Details
2020	Court enforcement	Medical gas supplies	The Commission alleges that the defendant company, a supplier of medical gases to hospitals, holds a substantial degree of market power and abused such power by ceasing or limiting supplies to a downstream competitor on the related market for maintenance of medical gas pipeline systems. The proceedings are ongoing.
2021	Commitment	Tourist attractions and transportation tickets cartel	The Commission issues infringement notices and alleges that six hotel groups and a tour counter operator for facilitating a cartel arrangement between two competing travel service providers. The case is settled through commitments by the parties admitting the contravention of the First Conduct Rule, and committing to cease the anti-competitive conduct and to appoint an independent competition law compliance advisor.

Key information

Relevant legislation

The Competition Ordinance (Cap 619).

Competition authorities

Name of authorities and contact details

Competition Commission

19th Floor, South Island Place, No. 8 Wong Chuk Hang Road,
Wong Chuk Hang, Hong Kong
General line: +852 3462 2118
Leniency hotline: +852 3996 8010
Email: enquiry@compcomm.hk
Website: <https://www.compcomm.hk>

Communications Authority

20/F and 29/F, Wu Chung House, 213 Queen's Road East,
Wan Chai, Hong Kong
General line: +852 2961 6333
Website: <https://www.coms-auth.hk>

Relevant officials

Competition Commission

- Members of the Commission: Mr Chan Ka-yan Samuel (Chair), Professor K. C. Chan, Ms Chan Pui-kwan, Jennifer, Mr Chau Kwok-ming, Joe, Mr Hui Wah-kit, Michael, Mr Kwok Kwok-chuen, Ms Lam Yan-kay, Rachel, Mr Lui Siu-lun, Alan, Mr Ng Chun-tat, Roy, Ms Wong Hang-yee, Sandy, Mr Yung Kam-fai, Tony, Professor Vincent Lau Kin-nang, Mr Patrick Law Fu-yuen, Mr Jimmy Ng Wing-ka and Professor Anna Wong Wai-kwan.
- Executives of the Commission: Mr Rasul Butt (Senior Executive Director and acting Chief Executive Officer), Mr Jindrich Kloub (Executive Director (Operations)) and Mr Steven Parker (Executive Director (Legal Services)).

Communications Authority

- Members of the Authority: Ms Winnie Tam Wan-chi (Chair), Mr Clement Leung Cheuk-man (Vice-chair), Dr. Hubert Chan Chung-yee, Professor Karen Chan Ka-yin, Ms Amy Fung Dun-mi, Mr Stephen Hung Wan Shun, Professor Vincent Lau Kin-nang, Mrs Yvonne Law Shing Mo-han, Mr Benjamin Tang Kwok-bun, Mr Simon Wong Kwong-yeung and Mr Chaucer Leung Chung-yin.
- Executives of the Authority: Mr Chaucer Leung (Director-General of Communications), Mr Sanda Cheuk (Deputy Director-General (Telecommunications)) and Ms Helen Lai (Assistant Director (Market & Competition Branch)).

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