

# Competition Regulation in Hong Kong

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# Content

- (I) Milestones in Hong Kong's (HK's) competition policies
- (II) The sector-specific approach of the HK Government
- (III) Does HK need a comprehensive competition regime ?
- (IV) International experience
- (V) Prospects for HK

# (I) Milestones (1)

- Milestones in HK's competition policies:
  - Various forms of franchise and scheme of control were issued in different years
  - 1974: the HK Consumer Council was established. It has no investigative or sanctioning power. Functions include “collecting, receiving and disseminating information concerning goods, services and irremovable property” (216.4.1(a)).
  - 1987 : The Broadcasting Authority (BA) was set up.
  - 1990's: Some of HK's enterprises became world-class.

## (I) Milestones (2)

- 1992: At HK Government's request, the Consumer Council began competition analysis for various sectors.
- 1993: The Telecommunications Authority (TA) was set up.
- 11/1996: After seven sectoral reports, the Consumer Council produced a summary report: "Fair Competition: the Key to HK's Prosperity" advocating the establishment of a competition law and competition authority.
- 1997: Formal response by the Government, and the establishment of COMPAG chaired by the FS.

## (I) Milestones (3)

- 5/1998: The SAR Government put forth the “Statement on Competition Policy”.
- 11/1999: In the concluding statement of Article IV consultation on HK, the IMF for the first time expressed concern about domestic competition in the SAR and praised the work of the Consumer Council.
- 2000: The power of the BA’s and TA’s in monitoring and sanctioning against anti-competitive power and abuse of dominance was enhanced through the amendments of ordinances.

## (I) Milestones (4)

- 2000: The European Parliament expressed concern for domestic competition in HK; while the IMF said it again for in concluding statement of the Article IV consultation.
- A debate emerged in HK, concentrating on the merits and demerits of sector-specific versus comprehensive competition policies. A small collection can be found on my website [www.hkbu.edu.hk/~sktsang](http://www.hkbu.edu.hk/~sktsang).

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## (II) HK's Sector-specific Approach (1)

- Regulation complemented by competition.
- Regulation has been based largely on rates of returns controls (in electricity, transport) , and price controls (in telecommunications).
- Competition policy is largely “sector specific”: telecommunications (buy-back of franchise from HK Telecom) and broadcasting



## (II) HK's Sector-specific Approach (2)

- There is no comprehensive, cross-sector competition law and an agency to implement it in the form of a competition authority (CA).
- Argument : No excessive interference in the market and maintenance of flexibility.
- To be fair, the changes in BA's and TA's power made them look like a “mini-CA”.

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# (III) A Comprehensive Competition Regime for HK? (1)

- Tradable versus non-tradable sectors: different meanings of freedom and competition.
- Dominant non-tradable sectors: real estates, energy, transport, legal and medical services, supermarket chains, banks etc.
- Traditionally, a small open economy (SOE) has to depend on regulation to guarantee reliable, reasonably-priced and agreeable supplies of non-tradable goods and services.

## (III) A Comprehensive Competition Regime for HK? (2)

- The trouble for a SOE is that because of the relatively small size of markets, thresholds of economies of scale and scope are lower and it is easier for market power of the incumbents to emerge, no matter how fair the power was achieved in the first place.
- The considerations of an SOE on regulation versus competition have to take into A/C:
  - (1) technological developments
  - (2) market dynamics
  - (3) changes in the boundaries of markets

# (III) A Comprehensive Competition Regime for HK? (3)

- (1) Technological developments : the “divorce” between natural monopoly and economies of scale (e.g. mini-generators). Implications: more competition plus better-informed regulation?
- (2) Market dynamics: conglomerates that transcend traditional boundaries of industries and even nations.
- (3) Boundaries of sectors: Both (1) and (2) are re-writing the definitions of sectors and markets. Sector-specific approach runs the risk of being outdated.

### (III) A Comprehensive Competition Regime for HK? (4)

- Of course, regulatory authorities are still necessary in more complicated sectors, which set standards, codes of practices and guidelines. But as far as competition is concerned, their rulings have to be consistent with a comprehensive competition law, subject to weavers or specific regulations.

## (III) A Comprehensive Competition Regime for HK? (5)

- Common counter-arguments in HK and responses
  - Excessive intervention: the competition law is just a rule book, and the authority a referee. The referee sanctions against wrong-doings, not to the players how to play.
  - “The problems are not serious!”: A typical counter-argument. But the concentration ratios in many sectors are a cause for worry. Without a proper complaint and redressing mechanisms, one never knows how serious the problem actually is.

# (III) A Comprehensive Competition Regime for HK? (6)

- A competition law and a competition authority are expensive: Ha Ha!
- Counter-attack: the problems of the sector-specific approach :
  - Lagged responses: after problems have become serious.
  - Inter-sectoral injustice: why price-fixing is illegal in telecommunications and broadcasting, but not in the many other business sectors?
  - Regulatory capture : Ha Ha!



### (III) A Comprehensive Competition Regime for HK? (7)

- Based on all the above considerations, the Hong Kong Consumer Council regard a comprehensive approach to building a competition regime is preferable to the sector-specific approach, because it is inter-sectoral, forward looking and less susceptible to “regulatory capture”. In terms of cost and benefit, it yields more synergy.
- A comprehensive competition regime is a way to stimulate the enhancement of efficiency in HK’s non-tradable sectors. It will benefit the whole economy in the long run.

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## (IV) International Experience (1)

- According to information compiled by the Consumer Council, there are at least over 50 countries and territories that have comprehensive competition laws, and they make up 80 % of world trade.
  - The Americas: USA, Canada, Mexico, Argentina, Brazil, Chile, Peru and Venezuela;
  - Asia: Japan, Korea, Taiwan, China, Thailand, Indonesia, India and Philippines;

## (IV) International Experience (2)

- Pacific: Australia, New Zealand, and Fiji;
- Europe: all members of EU, and most of eastern Europe including Russia;
- Middle East: Israel, Turkey;
- Africa: South Africa, Zimbabwe, and Algeria.

## (IV) International Experience (3)

- Coverage of competition laws:
  - structure: merger and acquisition
  - conduct: vertical and horizontal restraints
  - performance: e.g. abnormal profits

# (IV) International Experience (4)

Major foci:

- Monopolies and cartels
- Merger and acquisition
- Horizontal constraints: price fixing, bid rigging, output collusion, division of markets etc.
- Vertical restraints: resale price maintenance, tie-in sales, discriminatory supplies etc.
- Unfair trade practice: predatory pricing

## (IV) International Experience (5)

- Exemptions: on the basis of certain public interests, some structures, conduct or performance can be exempted from the competition law, e.g. R&D cartels.
- However, the process of granting exemptions should be transparent; and the exemptions should be regularly reviewed.

# (IV) International Experience (6)

- International tendencies
  - Focusing on anti-competitive conduct
  - Defining “hard core cartels”: price fixing, bid rigging, collusive restrictions on output and division of markets (basically horizontal restraints) (OECD)
  - Increasing transparency in the implementation of competition laws
  - Enhancing advocacy and education work of competition authorities
  - Promoting international cooperation in dealing with multinational cartels



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## (V) Prospects (1)

- International pressure on domestic competition in HK: IMF 、 EU 、 WTO.
- Political economy and geopolitics
  - outside fear of collusion and Chinese influence;
  - local resistance by vested interests and bureaucratic concerns of the government.
- Should and will HK establish a competition law and a competition authority?

## (V) Prospects (2)

- Three major models
  - US: the court approach ([www.usdoj.gov/atr](http://www.usdoj.gov/atr))
  - Australia: the hybrid court and agency approach ([www.accc.gov.au](http://www.accc.gov.au))
  - Taiwan: the agency approach ([www.ftc.gov.tw](http://www.ftc.gov.tw))

## (V) Prospects (3)

- **US's court approach** : the DoJ acts according to anti-trust laws to put the issues through courts; civil and criminal penalties co-exist.
- **Australia's hybrid approach**: The ACCC has partial autonomy; in most cases implementation through courts; only civil but no criminal penalties.
- **Taiwan's agency approach** : The FTC executes the Fair Trade Law; has autonomy on civil sanctions; criminal penalties to be through courts.

## (V) Prospects (4)

- In all three cases, there are appeal channels, as well as sectoral regulators.
- To HK, the US approach seems over-reliant on the court process and is comparatively expensive.
- As a start, and catering for HK's unique situation, a prototype mixture of the Australian and Taiwan model may be optimal. It should also first concentrate on what OECD calls hard core cartels.

## (V) Prospects (5)

- Recent statements by top government officials have all been discouraging (for a competition law and authority) and insistent (on the sector-specific approach), despite the heating up of debate.
- A good sign, though, is that the Government is adding more competition elements into its sector-specific approach.

## (V) Prospects (6)

- For Example, the Government has appointed a Telecommunications (Competition Provisions) Appeal Panel in accordance with sections M(2) and (5). “The Telecommunications Appeal Board is the first ever sector-specific appeal board on competition matters in Hong Kong. It provides an independent avenue for aggrieved parties to review the decision of the Telecommunications Authority on competition matters which may involve wider economic issues in addition to telecommunications policy.” (press release)

## (V) Prospects (7)

- Recently, the TA has also published a consultation paper on specifying the regulation regarding merger and acquisition in the industry, first starting with carrier licensees (network operators). The TA may consider extension of the regulation to non-carrier licensees (mainly service providers) later if there is serious concern.



## (V) Prospects (8)

- A compromise is not to have a comprehensive competition law; but a law against price fixing and bid rigging, a non-comprehensive, but also non-sector-specific law against the most notorious forms of anti-competitive behaviour.
- Even that may not have too much sympathy from the Government in the present economic climate.
- It will be a long haul.
- Thank you.