

Hong Kong Competition Law Series: Part 1

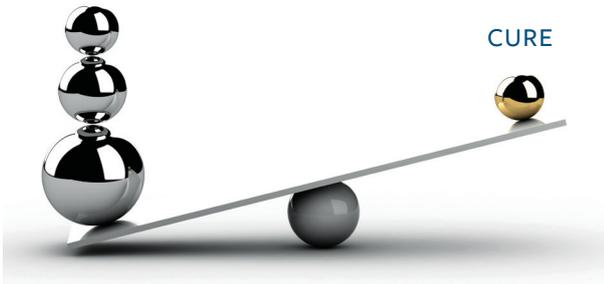
2015 - THE YEAR OF COMPETITION IN HONG KONG

Competition Starts Now

Prevention is Better than Cure

The impending commencement of Hong Kong's first cross-sector competition law brings to Hong Kong businesses a fresh challenge of managing competition law risk.

PREVENTION



As the saying goes, “prevention is better than cure”. Business performance is all about improving competitiveness in an evolving market. As competition lies at the core of business strategy, competition law risk management will inevitably become an element of success. The more you are alive to competition law considerations at the very inception of business strategy, the better you will be able to avoid the pitfalls and compete efficiently and intelligently at the outset.

Effective compliance generates value. Not only does it help you stay ahead of your competitors, it can also earn you a stellar reputation in the eyes of

consumers and save you millions in avoidable legal cost. Knowing your rights can also protect your business from unfair competition, for example, if your competitors gang up on you.

Fear Not, We Get It

Mayer Brown JSM understands the prospect of a new law that can be enforced against almost all business conduct can be daunting, especially as the types of conduct that potentially give rise to competition law risk are myriad.

To help businesses navigate the minefield of competition law and to cultivate a culture of compliance, Mayer Brown JSM will, throughout the next few months, publish a series of articles on the types of conduct to which the Conduct Rules will apply. Hopefully by the time the law comes into force, you will become something of an expert on competition law!

The Golden Rules

Before we delve into the specifics, we set out below fundamental “Golden Rules”, which are a basic but useful gauge of whether your intended conduct may entail competition law risk:

- Businesses should compete independently.
- Collaboration among independent businesses may be pro-competitive if there is good commercial

¹ The First Conduct Rule prohibits undertakings from making or giving effect to agreements or decisions or engaging in concerted practices that have as their object or effect the prevention, restriction or distortion of competition in Hong Kong; the Second Conduct Rule prohibits undertakings that have a substantial degree of market power in a market from engaging in conduct that has as its object or effect the prevention, restriction or distortion of competition in Hong Kong.

justification (usually this means consumer benefit, as well as efficiency gains or innovation):

- ✓ Lower prices
 - ✓ Increased choice
 - ✓ Improved product and/or service quality
 - ✓ Drives innovation
 - ✓ Benefits consumers
- Market power should not be used to exploit business partners or customers.

Next Week

Next week we kick off our series of articles with an overview of the Cardinal Sins, i.e., the four most serious types of anti-competitive conduct under the new Competition Ordinance (Cap. 619).

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