

## Hong Kong Competition Law Series: Part 8

2015 - THE YEAR OF COMPETITION IN HONG KONG

### Collective Boycott

#### Don't Gang Up!

A collective boycott, or a collective refusal to deal, occurs where two or more businesses collectively refuse to deal with a third party. While businesses are free to choose their business partners, ganging up to exclude an actual or potential competitor can be considered anti-competitive.



#### WHY BOYCOTT?

A boycott is an effective way of inflicting targeted harm on other players in a relevant market. There can be various reasons for effecting a boycott, including (1) to prevent market entry or to drive a player out of the market, (2) to enforce the terms of a cartel against a 'rogue' member (e.g., to punish discounting in violation of a price fixing arrangement), or (3) to prevent or delay innovation or new business models.

#### WHO IS USUALLY INVOLVED?

Collective boycotts may have a horizontal or vertical aspect, or both, or it may be driven by a trade association or consortium of businesses. Examples of the different forms a collective boycott can take include: (1) refusal of a trade or industry association to admit a new member; (2) an agreement among suppliers that impact customers; (3) an agreement among customers that impact a supplier; or (4) an agreement between competitor and a common supplier, or suppliers, to deny you access to an important resource or facility.

#### HOW DOES A BOYCOTT WORK?

Any form of conduct that involves ganging up to exclude an actual or potential competitor from the market without objective business justification may amount to a boycott, for example:

- Terminating business relationships with a third party in a coordinated manner;
- Setting exclusionary membership requirements to prevent a competitor from joining as a member; or
- Refusing to supply an important resource or facility<sup>1</sup>, or only supplying it on unreasonable terms.

<sup>1</sup> An important resource or facility is one which cannot be replaced at a comparable cost, e.g., essential raw materials, supplies, key distribution channels, infrastructure etc..

## IS A BOYCOTT EVER JUSTIFIABLE?

A collective boycott *may*, depending on the circumstances, be justifiable on the following grounds:

- Efficiency considerations such as establishing more efficient distribution channels, reducing costly supply arrangements or lowering product costs;
- Protecting the safety and security of a system or network; or
- Protecting incentives to invest and innovate.

## Next Week

Next week we will look at Resale Price Maintenance (RPM), a type of agreement commonly entered into between businesses operating at different levels of a relevant market.

## Contact Us



**Hannah Ha**

Partner

+852 2843 4378

[hannah.ha@mayerbrownjmsm.com](mailto:hannah.ha@mayerbrownjmsm.com)



**John Hickin**

Partner

+852 2843 2576

[john.hickin@mayerbrownjmsm.com](mailto:john.hickin@mayerbrownjmsm.com)

---

Mayer Brown JSM is part of Mayer Brown, a global legal services organisation, advising many of the world's largest companies, including a significant portion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies and more than half of the world's largest banks. Our legal services include banking and finance; corporate and securities; litigation and dispute resolution; antitrust and competition; employment and benefits; environmental; financial services regulatory and enforcement; government and global trade; intellectual property; real estate; tax; restructuring, bankruptcy and insolvency; and wealth management.

OFFICE LOCATIONS    AMERICAS: Charlotte, Chicago, Houston, Los Angeles, New York, Palo Alto, Washington DC  
ASIA: Bangkok, Beijing, Hanoi, Ho Chi Minh City, Hong Kong, Shanghai, Singapore  
EUROPE: Brussels, Düsseldorf, Frankfurt, London, Paris  
TAUIL & CHEQUER ADVOGADOS in association with Mayer Brown LLP: São Paulo, Rio de Janeiro

Please visit [www.mayerbrownjmsm.com](http://www.mayerbrownjmsm.com) for comprehensive contact information for all our offices.

This publication provides information and comments on legal issues and developments of interest to our clients and friends. The foregoing is intended to provide a general guide to the subject matter and is not intended to provide legal advice or be a substitute for specific advice concerning individual situations. Readers should seek legal advice before taking any action with respect to the matters discussed herein. Please also read the Mayer Brown JSM legal publications Disclaimer.

Mayer Brown is a global legal services provider comprising legal practices that are separate entities (the "Mayer Brown Practices"). The Mayer Brown Practices are: Mayer Brown LLP and Mayer Brown Europe-Brussels LLP, both limited liability partnerships established in Illinois USA; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales (authorized and regulated by the Solicitors Regulation Authority and registered in England and Wales number OC 303359); Mayer Brown, a SELAS established in France; Mayer Brown JSM, a Hong Kong partnership and its associated legal practices in Asia; and Tauil & Chequer Advogados, a Brazilian law partnership with which Mayer Brown is associated. Mayer Brown Consulting (Singapore) Pte. Ltd and its subsidiary, which are affiliated with Mayer Brown, provide customs and trade advisory and consultancy services, not legal services.

"Mayer Brown" and the Mayer Brown logo are the trademarks of the Mayer Brown Practices in their respective jurisdictions.