

European Competition Law Review

2017

Publication Review

Hong Kong Competition Law

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Subject: Competition law

***E.C.L.R. 531** For many years the argument of first the Hong Kong and now the Hong Kong SAR administration was that Hong Kong did not need a competition law. It was argued that the economy was so open that it remained extremely competitive (and in the case of many goods this was, and is, probably the case). This argument did not hold good for many services, and for sectors such as telecommunications (which benefited from a discrete competition/regulatory system), transport, and construction. It was also argued by significant parts of the business community that competition law would impose unnecessary costs and regulatory burdens on local business generally, and on small and medium sized enterprises in particular. With the introduction of the Anti-Monopoly Law in mainland China, and with a seemingly inexorable rise in the growth of competition law regimes in East Asia the mood changed, such that the Competition Ordinance was enacted in 2012, taking effect at the end of 2015. Although described in the Foreword to this book by Godfrey Lam (at the time President of the newly-created Hong Kong Competition Tribunal (HKCT)) as a "cross-sector competition law", and by the authors in the Preface as "a comprehensive competition law" it should be noted that, with the exception of the telecommunications sector, the Ordinance does *not* create a general merger control regime. It is however a substantial piece of legislation. ***E.C.L.R. 532**

It is perhaps not surprising that little has been written about this law; splendidly dynamic and exciting as Hong Kong is, it remains economically a small regime and developments in the regime have been overshadowed by the understandable interest generated in the law in China. In this setting therefore, the present work is greatly to be welcomed. Indeed, it is hard to see that there is room for another book on the substance and practice of competition law in Hong Kong—such that the authors have probably achieved that rare feat of writing a practitioner text with the status of being an instant classic. Given that the book was written before any enforcement decisions had been made or cases brought in the new regime (this is no longer the case—the HKCT has recently brought a case alleging bid-rigging against a number of information society companies) one can only hope that there is sufficient interest in Hong Kong's competition law to merit further editions. Relevant guidance *had been* published by the HKCT at the time of the writing of the book, and this is discussed throughout the book where it is relevant to do so.

This comprehensive work consists of eight chapters, the first setting out the general framework of the Competition Ordinance (which is itself fully reproduced in a substantial appendix), and the last offering a comparative overview of competition law in Hong Kong's near neighbours, China, Korea and Japan. As the authors note, in common with a number of recently-developed, or developing, regimes, there are strong similarities between the construction and wording of the law in the Ordinance with the competition law of the EU (other *specific* influences are noted at p.5), although the authors remain sensitive to "the relevance and limitations of international comparisons" (at p.1). Thus, at p.7 of this engaging chapter, the authors note that

"[i]mportant differentiators include culture, the relatively small size of the economy, the limited number of players in some industries, the prospects for trade with other countries, and the role of the State in the economy".

These differentiating factors inform the discussion of the law presented in this volume, and significantly shape the approach taken in Ch.7, "Competition and Hong Kong's major economic sectors".

The first two substantive chapters of the book deal with the First and Second Conduct Rules, which

sit at the heart of the Ordinance. The First Conduct Rule deals with agreements, and the Second with abuse of substantial market power. In the absence of case law at the time of writing the authors offer a careful and close textual analysis of the provisions, seeking to clarify the approaches likely to be taken based on the relevant experiences of appropriate jurisdictions, and rely further on the published guidance. Where the Ordinance departs from language used in other jurisdictions (presumably intentionally so), due weight is given to this. Thus, for example the authors discuss the use of the term "substantial market power", and the factors leading to the adoption of that term as opposed to "dominant position", fully in Ch.3.

The Merger Rule is explained in Ch.4. As noted above, this Rule applies only to undertakings holding a carrier licence in the telecommunications sector, and this is the one area in which there was practice prior to the introduction of the Ordinance. For those with an interest in this special sector, this chapter comprehensively deals with the relevant law. Chapter 6 is also focused on telecommunications, dealing with the Telco Rule, found in the Telecommunications Ordinance as amended by the Competition Ordinance. This Rule prohibits "exploitative conduct", but sits apart from the Second Conduct Rule of the Competition Ordinance, although there are clear links between the two.

Chapter 5 deals with the relevant procedures, both at the public and private level. As case law develops it is to be hoped that this may be expanded in future editions in the light of practice. Given the material available at the time of writing, the authors again present a full and clear discussion of the relevant law.

Chapter 7, the largest in the book, is excellent. Dealing with key sectors (construction, energy, financial services, retail, telecommunications and broadcasting, and transport) the authors concentrate on the areas in which Hong Kong's potent but small modern economy may expect to encounter competitive problems. Risks are clearly identified, and relevant principles and comparative case law are discussed fully.

This is an excellent book providing a comprehensive, detailed, and clear treatment of the relevant law in Hong Kong, setting the discussion firmly within its relevant socio-economic context. It is also very attractively presented by the publisher. I look forward to a second edition when the regime has had time to bed in, and when more cases have been brought at both the public and private level. It is significant that in June 2017 it was announced that Brent Snyder has been appointed as CEO of the HKCT for a three-year term. The authors are likely to have more material to work with during this period!

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E.C.L.R. 2017, 38(11), 531-532

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