



Competition and collaboration: Charting Hong Kong's competition enforcement landscape

Summary of the seminar jointly hosted by Freshfields Bruckhaus Deringer and the British Chamber of Commerce in Hong Kong.

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On 4 June 2024, Rasul Butt, Chief Executive Officer of the Hong Kong Competition Commission (the Commission), was the keynote speaker at a seminar co-hosted by Freshfields and the British Chamber of Commerce. A panel discussion followed with Lester Lee, Executive Director (Legal Services) of the Commission, Sandra Marco Colino, Associate Professor of the Chinese University of Hong Kong and Freshfields lawyers, Laurent Bougard, Counsel and Alastair Mordaunt, Partner, who moderated the discussion.

Mr. Butt's keynote speech and the ensuing panel discussion provided insights into the latest developments and trends under Hong Kong's competition regime, the digital economy, labour markets and issues arising during enforcement.

As Hong Kong's competition regime has now been on the books for nearly a decade, the Commission seems ready to enter into a new era of enforcement. In a nutshell:

- **Dawn raids are a reality, often with multiple agencies in attendance** – the Commission is undertaking regular dawn raids, and is increasingly partnering with other law enforcement agencies such as the Hong Kong Police Force and the Independent Commission Against Corruption. Businesses should dust off their compliance policies, make sure that they are aware of the different search and investigation powers that these respective agencies have, and what their legal obligations and defences are when subject to a raid;
- **Enforcement is expected to increase, as the Commission investigates more own-initiative cases using its own market intelligence** – the Commission has been making use of data screening techniques to assess bidding data for suspicious patterns that may be indicative of anticompetitive conduct in the recent government subsidies case ([Link](#)). It has also screened intelligence from other government departments and public bodies;
- **Cases are becoming more complex** – as the Commission's experience and expertise have developed, its enforcement is branching out from its initial focus on hard core cartel conduct to tackling other forms of anti-competitive conduct – eg in 2023, the Commission investigated and accepted commitments from Food Panda and Deliveroo in respect of online platforms providing food delivery services;
- **Major cases before Tribunal later this year expected to influence future enforcement** – the first cases relating to an abuse of substantial degree of market power and to resale price maintenance are set for substantive trial before the Competition Tribunal in the second half of 2024. They are expected to set important precedents for future enforcement in these areas;
- **The Commission's priority areas remain unchanged for the upcoming year**, focusing on anti-competitive conduct affecting livelihoods, taking advantage of Government or public funding, and relating to the digital economy.
 - **While the digital economy remains an enforcement focus**, the type of gatekeeper / market power concerns that are being investigated by overseas authorities, including through the introduction of new *ex ante* legislation, may be less likely in Hong Kong given the co-existence and prevalence of both Chinese and Western digital platforms meaning that the market is less concentrated than in other jurisdictions.
 - The **labour market continues to be monitored** for anti-competitive conduct and the Commission is taking note of overseas enforcement, although the US Federal Trade Commission's recent ban on non-compete clauses seems unlikely to be followed in Hong Kong at least in the short term.

- **Future cross-border enforcement collaboration between authorities on the cards** – given the close trading ties between Hong Kong and the Mainland, in particular in the Greater Bay Area, the prospect of the Commission and Mainland antitrust authorities conducting parallel / coordinated investigations into conduct spanning across the region appears increasingly likely.



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