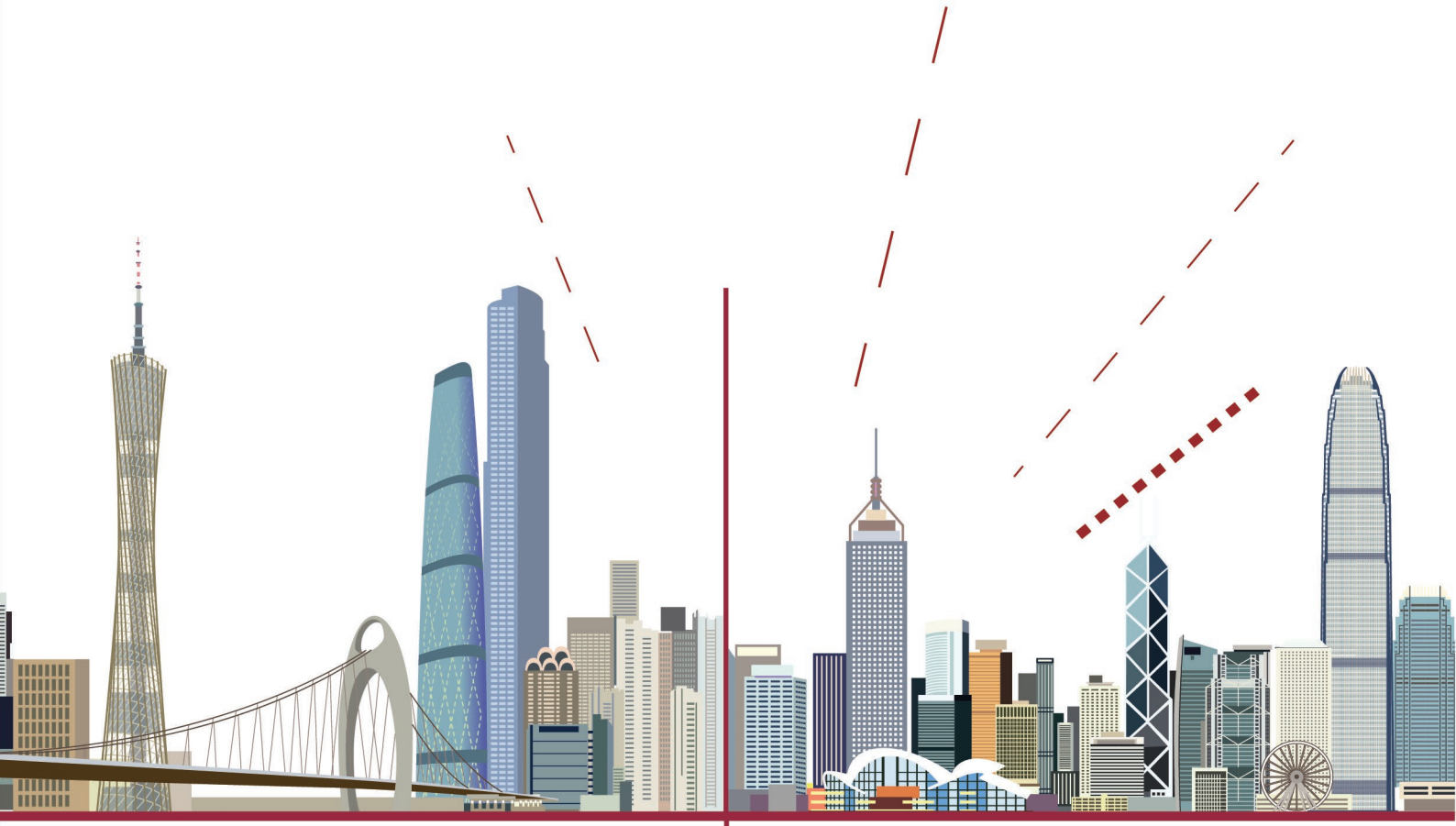

Competition Compliance Manual for Businesses in GUANGDONG | HONG KONG

广东省市场监督管理局

競爭事務委員會
COMPETITION COMMISSION

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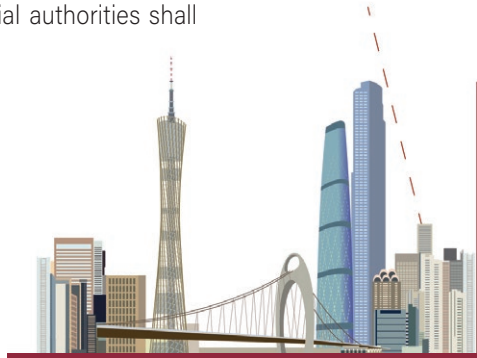
This Manual is jointly compiled by the Guangdong Administration for Market Regulation and the Competition Commission of Hong Kong. This Manual serves as a general guidance for the operations of businesses and is not mandatory. In the interpretation and application of the anti-monopoly/competition-related legal provisions of the Mainland and Hong Kong, the laws, regulations and policy documents of the relevant law enforcement agencies and/or judicial authorities shall prevail.



Foreword

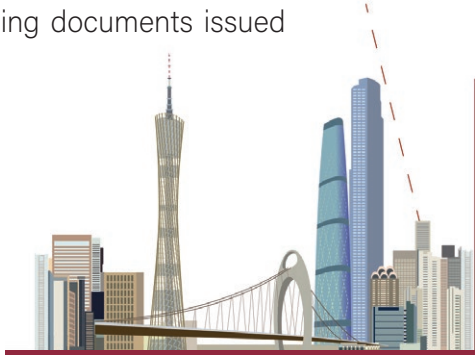
Guangdong Administration for Market Regulation

Anti-monopoly law is an important policy tool for market-economy countries to regulate the economy. Formulation and implementation of anti-monopoly law is a common practice of most countries or regions worldwide to protect fair competition in the market and maintain market competition. Strengthening anti-monopoly efforts and further taking forward the implementation of fair competition policies are the intrinsic requirements for improving the socialist market economy of China, accelerating the building of a unified national market and promoting the high-quality economic development in China. In the Report to the 20th National Congress of the Communist Party of China (the "**CPC**"), General Secretary XI Jinping made it clear that stronger action will be taken to fight against monopolies and unfair competition, break local protectionism and administrative monopolies, and law-based regulation and guidance will be conducted to promote the healthy development of capital. The series of decisions and arrangements made by the CPC Central Committee, with Comrade XI Jinping at its core, for strengthening anti-monopoly efforts and further taking forward the implementation of fair competition policies have provided the guiding thought and basic principle for anti-monopoly work in the new era.

In February 2019, as devised, deployed and promoted by General Secretary XI Jinping, the construction of the Guangdong-Hong Kong-Macao Greater Bay Area (the "**Greater Bay Area**") entered a new stage of full implementation and expedition. The official release of the Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area has indicated the path and direction for the current and future development of the Greater Bay Area and the cooperation between Guangdong, Hong Kong and Macao in respect of guiding ideology, basic principles, strategic positioning, development objectives and spatial layout. For the purposes of pushing forward the all-round development of the Greater Bay Area, creating a market-oriented and internationalized business environment based on the rule of law, promoting the regulatory connection between Guangdong, Hong Kong and Macao, and further facilitating the flow of production factors and personnel exchange throughout Guangdong, Hong Kong and Macao, the CPC Guangdong Provincial Committee and the People's Government of Guangdong Province have started the proactive and beneficial exploration aiming at seeking regulatory connection and mechanism alignment between Guangdong, Hong Kong and Macao, breaking the barriers and strengthening the organic linkage and communication between the three places.

Guangdong and Hong Kong are in two different jurisdictions that adopt different competition law systems and enforcement mechanisms. With a view to increasing the degree of market integration in the Greater Bay Area and promoting the Greater Bay Area's high quality development, the Guangdong Administration for Market Regulation has conducted a series of effective exchanges and cooperation with the Competition Commission of the Hong Kong Special Administrative Region (the "**Competition Commission**") in recent years. We jointly held the high-level seminar on competition policies in the Greater Bay Area in 2019. In 2021, Guangdong Administration for Market Regulation pushed ahead the release of the Implementation Plan of Guangdong Province to Further Promote the Advanced Implementation of Competition Policies in the Guangdong-Hong Kong-Macao Greater Bay Area, which has proposed working ideas to establish the Guangdong Committee for Competition Policies in the Guangdong-Hong Kong-Macao Greater Bay Area to coordinate the implementation of competition policies throughout regions and authorities within the Guangdong province and to promote the effective enforcement of competition laws and regulations in Guangdong, Hong Kong and Macao. In 2023, as part of the enhanced cooperation between Guangdong and Hong Kong in competition advocacy, we coordinated the compilation of this Competition Compliance Manual for Businesses in Guangdong and Hong Kong (this "**Manual**"). This Manual is intended to guide businesses in Guangdong and Hong Kong to develop a compliance culture of fair competition, establish and refine the competition compliance system, enhance the awareness of businesses of the harm of monopolistic activities and their capabilities to prevent and handle legal risks, promote the full implementation of the Anti-monopoly Law of the People's Republic of China (the "**Anti-monopoly Law**") and the Competition Ordinance (Cap. 619) (the "**Competition Ordinance**") in the Mainland and Hong Kong respectively and further strengthen the exchange between and accommodation of different legal systems and enforcement mechanisms in Guangdong and Hong Kong, so as to achieve a win-win situation through complementary cooperation.

This Manual is a careful collation and comprehensive interpretation of the competition laws and regulations of Guangdong and Hong Kong, and provides relevant advice and recommendations on competition compliance for businesses in Guangdong and Hong Kong based primarily on the Anti-monopoly Law and the Competition Ordinance. The last revisions to the Anti-monopoly Law took effect on August 1, 2022, and the Competition Ordinance came into effect in December 2015 in the Hong Kong Special Administrative Region. In compiling this Manual, reference is made to the Provisions on Prohibition of Monopoly Agreements, the Provisions on Prohibition of Abuse of Dominant Market Position, the Provisions on the Review of Concentrations of Undertakings and other rules released by the State Administration for Market Regulation (the "**SAMR**"), the Anti-monopoly Compliance Guidelines for Undertakings and other guiding documents issued



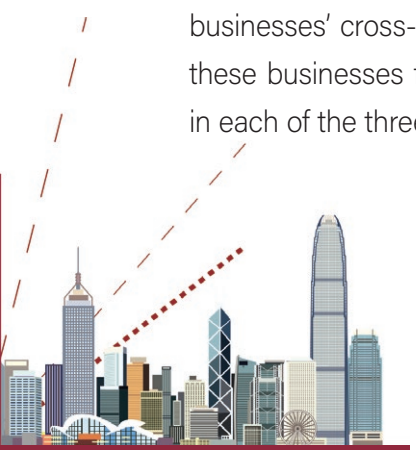
by the Anti-monopoly Commission of the State Council, as well as relevant provisions of the Guideline on the First Conduct Rule, the Guideline on the Second Conduct Rule, the Guideline on the Merger Rule and other guidance publications issued by the Competition Commission. Due to limitation on the length of this Manual, the Anti-unfair Competition Law of the People's Republic of China is not covered. We hope this Manual can guide businesses in Guangdong and Hong Kong to establish the concept of fair competition of their own volition, conduct business operations in accordance with the law, exercise honesty and good faith, compete legitimately, enhance competition-related risk awareness, further improve competition compliance and lay the foundation for accelerating the building of a unified national market.

This Manual is compiled on the basis of the enforcement practices of competition law and the experiences in competition advocacy in Guangdong and Hong Kong. Due to limited time and the level of editorial proficiency, this Manual is not all-inclusive and readers are welcome to provide their valuable feedback.

Competition Commission of the Hong Kong Special Administrative Region

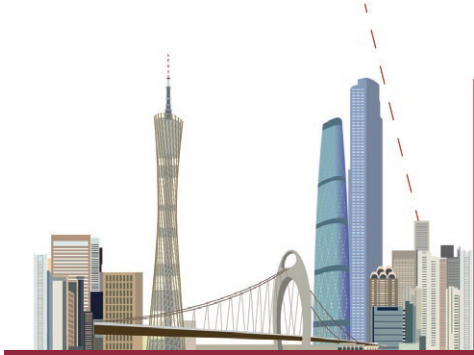
The Competition Commission is a statutory body established under the Competition Ordinance of the Hong Kong Special Administrative Region and is committed to promoting a competitive environment that is conducive to freedom of trade, efficiency and innovation, thus bringing more choices, and goods and services with better quality to consumers at lower prices. The Competition Commission is the principal agency enforcing the Competition Ordinance in the Hong Kong Special Administrative Region and is responsible for investigating conduct that may contravene the competition rules. In addition to law enforcement, the Competition Commission is also tasked with other important functions, including advocacy to foster a culture of competition and to encourage businesses in Hong Kong to establish appropriate internal control and risk management systems in order to ensure their compliance with the Competition Ordinance.

Business dealings are very common in the Greater Bay Area. As economic integration of Guangdong, Hong Kong and Macao deepens, an increasing number of Hong Kong businesses invest in and set up factories in Guangdong and Macao, while many Guangdong and Macao businesses' cross-border business activities cover the Hong Kong market. Against this backdrop, these businesses find it necessary to have a good understanding of the competition law regime in each of the three jurisdictions.



In 2017, the National Development and Reform Commission and the governments of Guangdong, Hong Kong and Macao jointly signed the Framework Agreement on Deepening Guangdong-Hong Kong-Macao Cooperation in the Development of the Greater Bay Area, setting the objectives and principles of cooperation for the development of the Greater Bay Area and defining the major areas of cooperation to push forward the development of the Greater Bay Area. In 2019, our country released the Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area, marking a new milestone of development of the Greater Bay Area. To implement the national strategy of building the Greater Bay Area and the basic principles under the Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area, the Competition Commission has been in close communication with the Guangdong competition authority and together we have been conducting competition policy and law enforcement exchanges and cooperation, to enhance implementation effectiveness, to promote a fair business environment, and to boost market vitality of the Greater Bay Area and overall social interests.

As mentioned by our Guangdong counterpart, this Manual is compiled by relevant authorities in Guangdong and Hong Kong drawing on the experiences in competition law enforcement and advocacy work in the past few years. In particular, the parts regarding the system and implementation of the competition laws in the Hong Kong Special Administrative Region are drafted by the Competition Commission. By way of this Manual, the Competition Commission wishes to carry out competition advocacy work collaboratively in Hong Kong and Guangdong in order to assist businesses, especially small and medium-sized businesses, in the Greater Bay Area in learning about and understanding the competition law regimes in Hong Kong and Guangdong and taking corresponding compliance measures. Enhancing effective implementation of the competition policies and laws in the Greater Bay Area will ultimately benefit all businesses, consumers and the society as a whole.



Chapter 1 Comparative Overview of the Anti-monopoly Law and the Competition Ordinance of Hong Kong

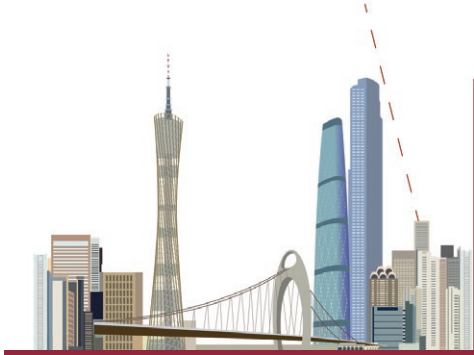
In order to help readers to gain a comprehensive and in-depth understanding of the Anti-monopoly Law and the Competition Ordinance of Hong Kong and to learn about the basic frameworks of the competition law systems in the two different jurisdictions, this Manual starts with a brief comparison of the Anti-monopoly Law and the Competition Ordinance of Hong Kong.

Brief Comparison of the Anti-monopoly Law and the Competition Ordinance of Hong Kong

	Anti-monopoly Law	Competition Ordinance of Hong Kong
Law enforcement mechanism	The State Council Anti-monopoly Enforcement Authority (the SAMR) shall be responsible for the unified anti-monopoly enforcement work. The State Council Anti-monopoly Enforcement Authority (the SAMR) may, in light of the work requirement, authorize the corresponding agencies at the level of province, autonomous region or municipality directly under the Central Government to perform relevant anti-monopoly enforcement tasks in accordance with provisions of the Anti-monopoly Law.	The Competition Ordinance provides that the Competition Commission and the Communications Authority of Hong Kong shall be in charge of the investigation and law enforcement under the Ordinance, and the Competition Tribunal under the High Court shall exercise the power to make decisions and impose penalties.
Private remedies	Standalone civil lawsuit and follow-on civil lawsuit	Follow-on civil action
Exclusion of specific entities from application	Article 69 of the Anti-monopoly Law provides that "this law does not apply to joint or concerted conducts by agricultural producers and rural economic organizations in the course of their business operations, such as the production, processing, sale, transportation, or storage of agricultural products."	The Competition Ordinance is not applicable to the conduct and policy measures of the government and most statutory bodies, and its subsidiary legislation also specifically excludes seven entities relating to activities of the stock exchange (including the Stock Exchange of Hong Kong Limited, Hong Kong Futures Exchange Limited, Hong Kong Securities Clearing Company Limited, HKFE Clearing Corporation Limited, the SEHK Options Clearing House Limited, OTC Clearing Hong Kong Limited and Hong Kong Exchanges and Clearing Limited) from the applicable scope of the law.

Brief Comparison of the Anti-monopoly Law and the Competition Ordinance of Hong Kong (cont'd)

	Anti-monopoly Law	Competition Ordinance of Hong Kong
Major prohibited/ prevented anti-competitive conducts	Monopoly agreements - Distinguishing between "horizontal" and "vertical" monopoly agreements	Anti-competitive agreements, concerted practices and decisions - Whether a conduct is illegal can be determined by whether it has an anti-competitive "object" or "effect" - Distinguishing between "serious anti-competitive conduct" and "non-serious anti-competitive conduct"
	Abuse of dominant market position - No distinction between "object" and "effect" of eliminating or restricting competition	Abuse of market power - Whether a conduct is illegal can be determined by whether it has an anti-competitive "object" or "effect"
	Concentration of undertakings that will, or likely will, have eliminative or restrictive effect on competition - The Anti-monopoly Law applies to concentration of undertakings in all sectors - Mandatory ex ante notification	Mergers that substantially lessen competition in Hong Kong - Currently, the Merger Rule only applies to mergers involving licensees in the telecommunications and broadcasting sectors - Voluntary notification
	Abuse of administrative power to eliminate or restrict competition	No similar provisions



Chapter 2 Anti-monopoly Law and Implementation Mechanism in the Mainland

I. Legislative purposes of the Anti-monopoly Law

The most direct legislative purpose of the Anti-monopoly Law is to prevent and curb monopolistic conduct, which in turn protects fair market competition. Article 1 of the Anti-monopoly Law provides that "this law is formulated for the purposes of preventing and curbing monopolistic conducts, protecting fair market competition, encouraging innovation, enhancing efficiency of economic operation, safeguarding consumer welfare and public interests, and promoting healthy development of the socialist market economy."

Monopolistic conducts regulated by the Anti-monopoly Law mainly include monopoly agreement reached between undertakings, abuse of dominant market position by undertakings, concentration of undertakings that will, or likely will, have eliminative or restrictive effect on competition, and abuse of administrative power to eliminate or restrict competition. As one of the subjects of anti-monopoly regulation, an "undertaking" is a natural person, legal person, or unincorporated organization engaging in production or dealing of goods or provision of services.

II. Main content of the Anti-monopoly Law

(I) Monopoly agreements

"Monopoly agreements" (or known as "anti-competitive agreements" in Hong Kong) prohibited by the Anti-monopoly Law refer to agreements, decisions or other concerted conducts which eliminate or restrict competition.

Agreements or decisions may be in written, oral or other forms.

"Agreement" generally refers to the concurrence of wills (or meeting of minds) in the form of written or oral agreement between two or more undertakings to eliminate or restrict competition; "decision" generally refers to a charter, organization decision or other forms of decision made by an industry association or other organizations, requiring its member businesses to jointly engage in the conduct of eliminating or restricting competition; "other concerted conducts" generally refer

to the coordinated and concerted conducts of undertakings through communication of intent or information exchange to eliminate or restrict competition, despite the absence of a written or oral agreement or decision.

Monopoly agreements are categorized into horizontal monopoly agreements and vertical monopoly agreements.

1. Prohibition of horizontal monopoly agreements

Horizontal monopoly agreement mainly refers to a monopoly agreement concluded between competing undertakings. It generally refers to an agreement concluded between undertakings at the same stage of a manufacturing or sales process, i.e. between competitors (between manufacturers, between wholesalers or between retailers).

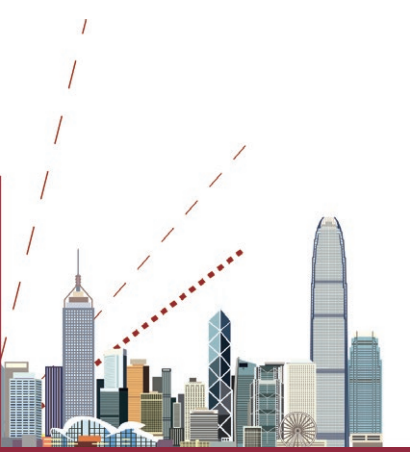
According to Article 17 of the Anti-monopoly Law, competing undertakings are prohibited from concluding the following monopoly agreements: ① fixing or changing product price; ② restricting production volume or sales volume; ③ allocating product sales markets or input procurement markets; ④ restricting the purchase of new technology or new equipment, or restricting the development of new technology or new product; ⑤ jointly boycotting a transaction; ⑥ any other monopoly agreement as determined by the SAMR.

Main Types of Horizontal Monopoly Agreement and Respective Manifestations

Types	Manifestations
Agreement between competing undertakings pertaining to fixing or changing product prices	① Fixing or changing price levels, the range of price changes, profit levels or discounts, handling charges and other fees; ② Adopting standard pricing formula, algorithms or platform rules; ③ Restricting pricing autonomy of the undertakings participating in the agreements; ④ Fixing or changing prices in other manners.
Agreement between competing undertakings pertaining to restricting production volumes or sales volumes of products	① Restricting the production volumes of products or particular types or models of products by such means as limiting production volumes, fixing production volumes or stopping production; ② Restricting sales volumes of products or particular types or models of products by such means as limiting the volumes of products to be put into the market; ③ Restricting the production volumes or sales volumes of products in other manners.

Main Types of Horizontal Monopoly Agreement and Respective Manifestations (cont'd)

Types	Manifestations
Agreement between competing undertakings pertaining to the allocation of sales markets or input procurement markets	① Allocating product sales by territory, market shares, target customers, sales revenues, sales profits or by product sales types, volume or time; ② Allocating the procurement of inputs (including raw materials, semi-finished products, parts and components, relevant equipment, etc.) by territory, category, volume, time or suppliers; ③ Allocating sales markets or input procurement markets in other manners. The above circumstances also apply to data, technologies and services, etc.
Agreement between competing undertakings pertaining to restricting the purchase of new technologies or new equipment, or restricting the development of new technologies or new products	① Restricting the purchase or use of new technologies or new techniques; ② Restricting the purchase, lease or use of new equipment or new products; ③ Restricting the investment in or research and development of new technologies, new processes or new products; ④ Refusing the use of new technologies, new processes, new equipment or new products; ⑤ Restricting the purchase of new technologies or new equipment or restricting the development of new technologies or new products in other manners.
Agreement between competing undertakings pertaining to joint boycotts	① Jointly refusing to supply or sell products to particular undertakings; ② Jointly refusing to purchase or sell the products of particular undertakings; ③ Jointly restricting particular undertakings from dealing with the undertakings which compete with the boycotting undertakings; ④ Conducting joint boycotts in other manners.
Competing undertakings make use of data and algorithms, technologies, platform rules and so on to conclude monopoly agreements as presented above through means such as communication of intent, exchange of sensitive information, coordination and consistency of conducts.	



2. Prohibition of vertical monopoly agreements

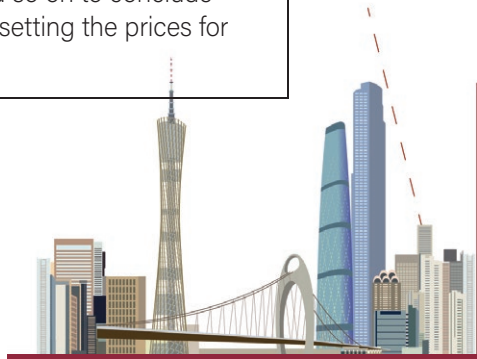
Vertical monopoly agreement mainly refers to a monopoly agreement concluded between an undertaking and its trading counterparty. It generally refers to an agreement between undertakings at different stages of a manufacturing or sales process (e.g. between the manufacturer and the wholesaler or between the wholesaler and the retailer).

According to Article 18 of the Anti-monopoly Law, undertakings are prohibited from concluding the monopoly agreements with their trading counterparty on: ① fixing product price for resale to third parties; ② setting minimum product price for resale to third parties; and ③ any other monopoly agreement as determined by the SAMR.

The agreement stipulated in Subparagraphs (1) and (2) of the first paragraph of Article 18 of the Anti-monopoly Law shall not be prohibited if the undertakings can prove that it does not have the effect of eliminating or restricting competition. Where an undertaking can prove that its market share in the relevant market is lower than the standard set by the SAMR, and that other conditions stipulated by the SAMR are met, the agreement shall not be prohibited.

Main Types of Vertical Monopoly Agreement and Respective Manifestations

Types	Manifestations
Agreement between undertakings and their trading counterparties pertaining to fixing product price for resale to third parties	Agreement on fixing price levels, the range of price changes, profit levels or discounts, handling charges and/or other fees for resale of products to third parties.
Agreement between undertakings and their trading counterparties pertaining to setting minimum product price for resale to third parties	Restricting minimum price for resale of products to third parties, or setting minimum price for resale of products to third parties by setting a limit on the range of price changes, profit levels or discounts, handling charges and/or other fees.
Agreement between undertakings and their trading counterparties pertaining to exclusive restriction, non-price restriction, etc.	Geographic restrictions or customer restrictions imposed by undertakings offering active pharmaceutical ingredients may constitute a vertical monopoly agreement.
Undertakings make use of data and algorithms, technologies, platform rules and so on to conclude monopoly agreements through means including fixing, limiting or automatically setting the prices for resale of products.	



3. Prohibition of organizing or assisting the conclusion of monopoly agreements (e.g. "hub and spoke agreements")

Hub and spoke agreements, i.e. agreements between upstream and downstream undertakings in an industrial chain, consist of vertical agreements in parallel to each other concluded by an undertaking (hub undertaking) with several upstream or downstream undertakings (spoke undertakings) respectively, by which the spoke undertakings reach horizontal collusion via the hub undertaking to achieve the purpose of eliminating or restricting competition.

According to Article 19 of the Anti-monopoly Law, "no undertaking may organize other undertakings to reach a monopoly agreement or provide them with substantive assistance for reaching a monopoly agreement." It mainly includes:

(1) An undertaking, which is not a party to the monopoly agreement, exercises a decisive or leading role in the process of concluding or implementing a monopoly agreement in respect of the scope, main content and performance conditions of such agreement;

(2) An undertaking signs agreements with more than one trading counterparty, which causes the trading counterparties with competitive relationship to communicate their intent or exchange their information through such undertaking, so as to conclude monopoly agreement;

(3) An undertaking organizes other undertakings to conclude a monopoly agreement in other manners.

Substantial assistance provided for other undertakings to conclude monopoly agreements includes providing necessary support, creating critical convenience, or other significant assistance.

4. Prohibition of trade associations from organizing the conclusion or implementation of monopoly agreements

Trade associations refer to all types of associations, academic societies, chambers of commerce, federations, promotion associations or other social-organization legal persons, comprised of economic organizations and individuals in the same industry, with functions of industry services and self-disciplinary administration.

According to Article 21 of the Anti-monopoly Law, trade associations should not organize the undertakings in such industry to engage in any monopolistic conduct prohibited by Chapter II of the Anti-monopoly Law. Circumstances where trade associations may be engaging in monopoly agreements mainly include:

(1) formulating and/or releasing articles of association, rules, decisions, notices, standards or other documents of trade associations which contain content that eliminates or restricts competition;

(2) convening, organizing or propelling undertakings in the industry to conclude agreements, resolutions, minutes, memoranda or other documents which contain content that eliminates or restricts competition;

(3) other behaviors of organizing undertakings in the industry to conclude or implement monopoly agreements.

5. Exemption of monopoly agreements

An agreement, decision or other concerted conduct among undertakings, despite its effect of eliminating or restricting competition, may be exempted under the Anti-monopoly Law if the undertakings can prove that its advantages in other aspects outweigh its adverse impact on competition.

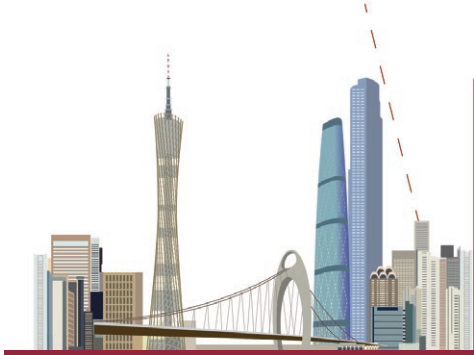
According to Article 20 of the Anti-monopoly Law, the provisions on monopoly agreements under the Anti-monopoly Law shall not be applicable to the agreements between undertakings, which they can prove to be concluded for one of the following purposes:

(1) technological improvement, or research and development of new products;

(2) product quality improvement, cost reduction and efficiency enhancement, or product specifications or standards unification, or implementation of specialization;

(3) enhancing operating efficiency of small or medium-sized undertakings or strengthening their competiveness;

(4) furthering public interests such as energy conservation, environmental protection, disaster relief or assistance to the indigent;



(5) relieving conditions resulting from serious sales decline or obvious overproduction due to economic recession;

(6) safeguarding its legitimate interests in the course of foreign trade and foreign economic cooperation;

(7) any other circumstance prescribed by relevant law or stipulated by the State Council.

For circumstances prescribed in items (1) through (5) above, relevant undertakings shall also prove that the agreement concluded will not seriously restrict competition in the relevant market, and will enable consumers to share the benefits so derived.

6. Risk and compliance advice

(1) **Paying attention to risks arising from potential competitors.** Potential competitors refer to undertakings that may enter the relevant market to compete. Where an undertaking concludes an agreement with any future competitive undertaking before its entering the relevant market, such agreement will risk being identified as a monopoly agreement.

(2) **Refraining from exchanging competitively sensitive information.** Undertakings should refrain from communicating or exchanging information directly with competitors or indirectly via a third party; avoid collecting, transferring or transmitting competitively sensitive information among competing trading counterparties; and expressly object to other competitors' proposals of exchanging information.

(3) **Proactively cooperating with the authority for enforcement of the Anti-monopoly Law, even if undertakings believe their monopoly agreements fall within the exempted circumstances.** If undertakings believe that relevant conducts fall within the exempted circumstances of monopoly agreements, they should prove that the advantages of the agreement in other aspects outweigh its adverse impact on competition. In addition, consideration needs to be given to the specific form in which the agreement achieves the said circumstance and the effect thereof, the causal relationship between the agreement and achievement of the said circumstance, whether the agreement is necessary for achieving the said circumstance and other factors that can prove that the agreement falls under the relevant circumstances. For example, to determine whether consumers can share the benefits derived from the agreement, consideration should be given to whether consumers can receive benefits in terms of price, quality, type and other aspects of the

product because of the conclusion or implementation of the agreement. Regardless of their belief that relevant monopoly agreements fall within the exempted circumstances during investigations by the authority for enforcement of the Anti-monopoly Law, undertakings should proactively cooperate with the authority for enforcement of the Anti-monopoly Law and prove that the monopoly agreements conform to the exempted circumstances.

(4) **Not touching the red line of eliminating or restricting competition carelessly.** Although Article 18 of the Anti-monopoly Law provides that "where an undertaking can prove that its market share in the relevant market is lower than the standard set by the State Council Anti-monopoly Enforcement Authority and that other conditions stipulated by the State Council Anti-monopoly Enforcement Authority are met, the agreement shall not be prohibited"; and even if the undertakings can prove that their conducts are within the applicable scope of safe harbor, undertakings should pay attention to the standard and conditions counted on by the authority for enforcement of the Anti-monopoly Law to define the relevant market and to calculate market share, and refrain from touching the red line of eliminating or restricting competition.

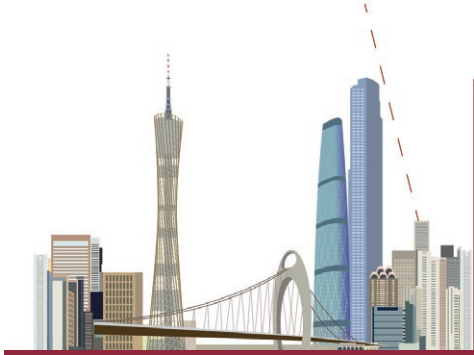
(II) Abuse of dominant market position

1. Dominant market position

Dominant market position (or known as "substantial degree of market power" in Hong Kong), refers to the market position of an undertaking which enables the undertaking to control the price or quantity of a product or other trade terms in the relevant market, or to impede or affect other undertakings' entry into the relevant market.

"Other trade terms" refer to other factors that can have a substantial impact on trade in the market, other than the price and quantity of a product, including variety and quality of the product, terms of payment, mode of delivery, after-sales services, trade options, technical constraints, and so on.

The reference of "imped[ing] or affect[ing] other undertakings' entry into the relevant market" includes excluding another undertaking from entering the relevant market, delaying another undertaking's entry into the relevant market within a reasonable period, or making another undertaking's entry into the relevant market at substantially increased costs and unable to conduct effective competition with the existing undertakings, etc.



(1) A finding of the dominant market position of an undertaking shall be based on the following factors:

① the undertaking's market share in the relevant market, and the competitiveness on the relevant market;

② the ability of the undertaking to control the product sale market or input procurement market;

③ the financial strength and technical resource of the undertaking;

④ the extent of other undertakings' reliance on the undertaking in their trade;

⑤ the degree of difficulty for other undertakings to enter the relevant market; and

⑥ other factors relevant to the finding of dominant market position of the undertaking.

(2) An undertaking may be presumed to have a dominant market position if:

① the undertaking's market share in the relevant market reaches 1/2;

② the combined market share of two undertakings in the relevant market reaches 2/3; or

③ the combined market share of three undertakings in the relevant market reaches 3/4.

In a circumstance set out in item ② or ③ of the previous paragraph, an undertaking with a market share of less than 1/10 shall not be presumed to have a dominant market position. Where an undertaking presumed to have a dominant market position can prove the contrary through evidence, such undertaking shall not be found to have a dominant market position.

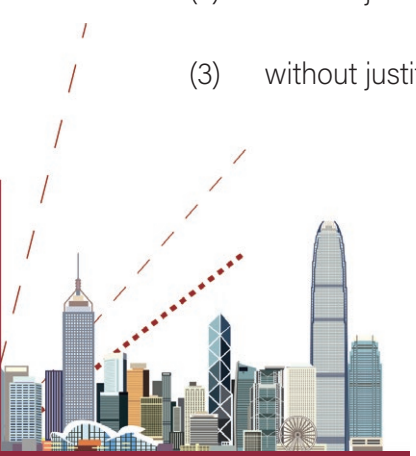
2. Prohibiting abuse of dominant market position

According to Article 22 of the Anti-monopoly Law, an undertaking/undertakings with dominant market position is/are prohibited from engaging in the following instances of abusing dominant market position/positions:

(1) selling a product at unfairly high price or buying a product at unfairly low price;

(2) without justifiable cause, selling a product at a price below cost;

(3) without justifiable cause, refusing to deal with a trading counterparty;



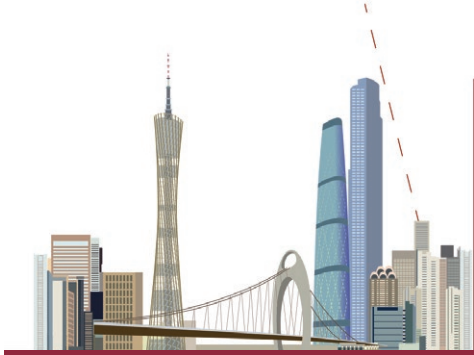
(4) without justifiable cause, requiring a trading counterparty to only deal with itself/themselves or its/their designated undertakings;

(5) without justifiable cause, tying the sale of products or imposing any other unreasonable trade terms in the course of a trade;

(6) without justifiable cause, discriminating among trading counterparties under the same conditions in respect of trade terms, such as price, etc.;

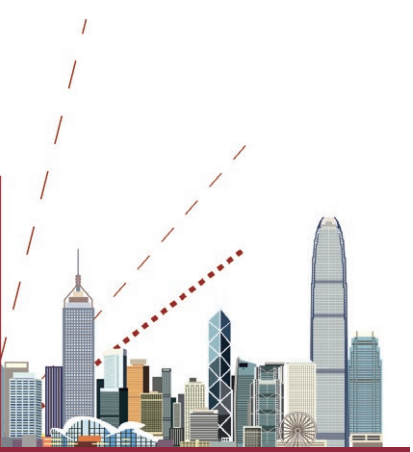
(7) any other instance of abuse of dominant market position as determined by the SAMR. In determining other instances of abuse of dominant market position, the following conditions shall be met concurrently: ① the undertaking(s) has/have dominant market position; ② the undertaking(s) has/have carried out a conduct which eliminates or restricts competition; ③ the undertaking(s) has/have carried out such conduct without justifiable cause; ④ the undertaking's/undertakings' conduct has eliminative or restrictive impact on market competition.

In determining "unfair" stated in item (1) and "justifiable cause" stated in items (2) through (7), the authority for enforcement of the Anti-monopoly Law shall take the following factors into account: ① whether the conduct concerned is stipulated by laws and regulations; ② the impact of the conduct concerned on national security, network security, etc.; ③ the impact of the conduct concerned on economic efficiency and economic development; ④ whether the conduct concerned is necessary for the undertaking's normal business operation and realization of normal economic return; ⑤ the impact of the conduct concerned on the undertaking's business development, future investment and innovation; ⑥ whether the conduct concerned can benefit the trading counterparties or consumers; and ⑦ the impact of the conduct concerned on public interests.



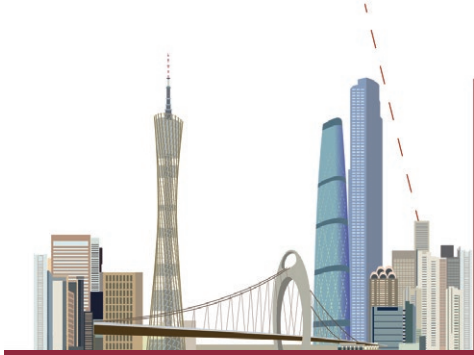
Typical Manifestations of Abuse of Dominant Market Position

Types of Abuse of Dominant Market Position	Manifestations
Selling a product at unfairly high price or buying a product at unfairly low price	
Selling a product at a price below cost without justifiable causes ("justifiable causes" include: ① reducing price in order to dispose of fresh or live products, seasonal products, expiring products or overstocks; ② sale of product at reduced price on account of debt discharge, change of product line, or business cessation; ③ promotional activity in order to promote a new product for a reasonable period; ④ any other cause that can justify the conduct).	
Refusing to deal with trading counterparties without justifiable causes ("justifiable causes" include: ① inability to trade due to objective causes such as force majeure; ② the trading counterparty has a bad credit record or its business condition suffers continuing deterioration, etc., thereby affecting transaction security; ③ dealing with the trading counterparty will cause improper detriment to the undertaking's interests; ④ the trading counterparty explicitly states not to or actually fails to abide by the fair, reasonable and non-discriminatory platform rules; ⑤ any other cause that can justify the conduct).	① Substantially reducing the existing trade volume with the trading counterparty; ② Delaying or suspending the existing transaction with the trading counterparty; ③ Refusing to engage in a new trade with the trading counterparty; ④ Setting restrictive conditions (such as the price unacceptable to the trading counterparty, repurchase of the product from the trading counterparty, or conducting other trade with the trading counterparty, etc.) such that its trading counterparty cannot viably continue the trade with such undertaking; or ⑤ Denying its trading counterparty's access to its essential facility on reasonable terms in the course of production and operation activities.



Typical Manifestations of Abuse of Dominant Market Position (cont'd)

Types of Abuse of Dominant Market Position	Manifestations
Restricting trading activities without justifiable causes ("justifiable causes" include: ① necessity for meeting product safety requirements; ② necessity for protecting intellectual property rights, trade secrets or data security; ③ necessity for protecting specific investments made for the transaction; ④ necessity for maintaining the reasonable operation model of the platform; ⑤ any other cause that can justify the conduct).	① Requiring a trading counterparty to deal exclusively with itself; ② Requiring a trading counterparty to deal exclusively with its designated undertaking; or ③ Requiring a trading counterparty not to engage in trade with a certain undertaking. The above instances of trade restriction may be in the form of imposing direct restriction or restriction in a disguised manner by taking punitive or incentive measures.
Tying the sale of products or imposing any other unreasonable trade terms in the course of a trade without justifiable causes ("justifiable causes" include: ① consistency with proper industry practices and trading customs; ② necessity for meeting product safety requirements; ③ necessity for implementing specific technologies; ④ necessity for protecting the interest of the trading counterparties and consumers; ⑤ any other cause that can justify the conduct).	① Selling different products as a bundle or package in contravention of trading customs, consumer habits or without regard to the functions of the products, through utilizing contractual rules, pop-ups or any unavoidable steps required for the operation, which are difficult for the trading counterparty to choose, alter or refuse; ② Imposing unreasonable restrictions on the term of the contract, payment method, product transportation and delivery method or method for provision of services, etc.; ③ Imposing unreasonable restrictions on the sales regions, target customers, and after-sales services of the products, etc.; ④ Charging unreasonable fees additional to prices in the course of the trade; or ⑤ Imposing trade terms irrelevant to the subject matter of the trade.



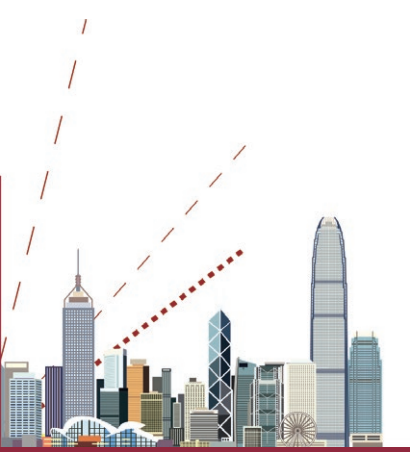
Typical Manifestations of Abuse of Dominant Market Position (cont'd)

Types of Abuse of Dominant Market Position	Manifestations
Discriminating among trading counterparties under the same conditions in respect of trade terms without justifiable causes ("justifiable causes" include: ① applying different trade terms based on the actual needs of the trading counterparties and in accordance with proper trading customs and industry practices; ② carrying out a promotional activity for a new user's initial trade within a reasonable period; ③ random trade conducted based on the platform rules of fairness, reasonableness and non-discrimination; ④ any other cause that can justify the conduct).	① Applying different trade prices, volumes, product categories or product grades; ② Applying different preferential terms such as volume discount; ③ Applying different payment terms or delivery methods; or ④ Applying different after-sales service terms such as different warranties and warranty periods, scope of repairs and repair schedule, supply of components and spare parts, technical guidance, etc.

3. Risk and compliance advice

(1) **Undertakings with large market shares should initiate self-assessment as to whether they have dominant market positions and take action accordingly.** Undertakings with large market shares may pre-emptively self-assess whether they have dominant market positions, take action accordingly and avoid the risk of contravening the Anti-monopoly Law.

(2) **Undertakings should take initiatives to achieve effective rectification, actively eliminate negative impacts and try to gain leniency.** If an undertaking is suspected of abusing dominant market position, it should actively cooperate with the authority for enforcement of the Anti-monopoly Law in investigation, proactively reflect on its business operation, ensure effective checking and rectification of each and every item in respect of internal compliance policies, make commitments to the authority for enforcement of the Anti-monopoly Law to take specific measures to eliminate the negative impact of the conduct within the proposed period and try to gain leniency.



(III) Concentration of undertakings

1. Concentration of undertakings

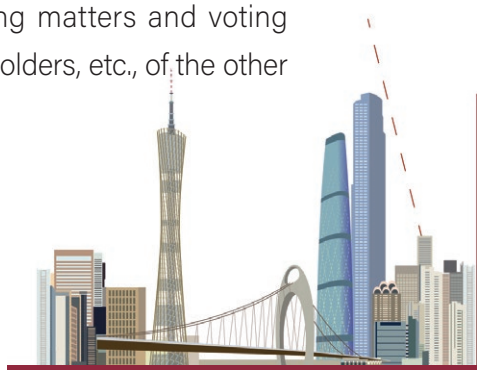
Concentration of undertakings (or known as "merger" in Hong Kong) generally refers to the business practices whereby an undertaking acquires control over another undertaking or has the power to exert decisive influence over another undertaking by way of, among other things, merger, purchase of shares or assets, or entering into an agreement. This includes three circumstances:

(1) **Merging of undertakings.** It generally refers to the merging of two or more undertakings into one undertaking by an agreement. It may take the form of merger by absorption and merger by new establishment. In the case of merger by absorption, an undertaking absorbs another undertaking and the absorbed undertaking is dissolved. In the case of merger by new establishment, two or more undertakings combine for the establishment of a new undertaking, and merging undertakings are dissolved.

(2) **Obtaining control over other undertaking(s) through acquisition of shares or assets.** An undertaking obtains the shares of another undertaking or several other undertakings through purchase, swap or other means and thus becomes the controlling shareholder and gains control over other undertaking(s), for example; or an undertaking obtains the assets of another undertaking or several other undertakings through purchase, swap, mortgage or other means and thus becomes the actual controller and gains control over other undertaking(s).

(3) **Acquiring control over or having the power to exert decisive influence on other undertaking(s) through contracts or other means.** An undertaking forms a relationship of controlling and being controlled with another undertaking or several other undertakings, through contracts such as entrusted operation and joint ownership, or other methods such as personnel arrangement and technology control, for example; or an undertaking obtains the ability to exercise decisive influence on the production and operation of other undertaking(s), thus de facto controlling businesses of other undertaking(s).

To determine whether an undertaking acquires control over another undertaking or has the power to exert decisive influence on another undertaking, the following factors shall be considered: ① the transaction purpose and future plans; ② the shareholding structure of the other undertaking before and after the transaction and the changes thereof; ③ the voting matters and voting mechanism of the organs of authority, such as (general) meeting of shareholders, etc., of the other



undertaking, as well as its historical attendance rates and voting situations; ④ composition and voting mechanism of decision-making or managing bodies, such as the board of directors of the other undertaking as well as its historical attendance rates and voting situations; ⑤ appointment and dismissal of senior management personnel of the other undertaking; ⑥ the relationship between the shareholders and directors of the other undertakings, whether there is any exercise of voting right by proxy or any persons acting in concert; ⑦ whether there is any material business relationship or cooperation agreement between the undertaking and the other undertakings; and ⑧ other factors that shall be considered.

Two or more undertakings having control over or being able to exert decisive influence on another undertaking constitutes joint control over such other undertaking.

2. Anti-monopoly review of concentration of undertakings

Undertakings may implement concentrations through fair competition and voluntary association in accordance with the law to expand their business scale and improve their market competitiveness. However, concentrations of undertakings tend to result in the concentration of economic power and change in market structure that may have the effect of eliminating or restricting competition. The SAMR shall conduct necessary anti-monopoly review of concentrations of undertakings that meet the requirements for notification. In accordance with the Anti-monopoly Law and the Provisions on the Review of Concentrations of Undertakings, the SAMR is responsible for the anti-monopoly review of concentrations of undertakings, and investigation and handling of illegal implementation of concentrations of undertakings. The SAMR may, in light of its working needs, entrust the market regulation authorities of provinces, autonomous regions and municipalities directly under the Central Government to carry out the review of concentrations of undertakings.

3. Notification thresholds for concentration of undertakings

According to Article 26 of the Anti-monopoly Law, where a concentration of undertakings meets the notification thresholds prescribed by the State Council ("**notification thresholds**"), the participating undertakings shall make a notification to the SAMR, and should not consummate the concentration without such notification. Where a concentration of undertakings does not meet the notification thresholds, but there is evidence proving that the concentration has or may have the effect of eliminating or restricting competition, the SAMR may require the undertakings to notify. Where the undertakings fail to notify as prescribed above, the SAMR shall investigate in accordance with the law.

(1) Notification thresholds

In accordance with Article 3 of the Provisions of the State Council on Thresholds for Notification of Concentrations of Undertakings (note: the State Council is deliberating on new notification thresholds and the official provisions to be promulgated by the State Council shall prevail), if a concentration of undertakings reaches any of the following thresholds, the undertakings shall notify the concentration to the SAMR in advance and shall not implement the concentration in the absence of such notification: ① the combined worldwide turnover of all the undertakings participating in the concentration exceeds RMB 10 billion in the preceding fiscal year and the China-wide turnover of each of at least two of the undertakings exceeds RMB 400 million in the preceding fiscal year; or ② the combined China-wide turnover of all the undertakings participating in the concentration exceeds RMB 2 billion in the preceding fiscal year and the China-wide turnover of each of at least two of the undertakings exceeds RMB 400 million in the preceding fiscal year.

If a concentration of undertakings does not reach the notification thresholds specified above but, as proved by evidence, has or may have the effect of eliminating or restricting competition, the SAMR may require the undertakings to notify the concentration and remind the undertakings of it in writing.

(2) Two circumstances where notification is not required

One circumstance is where an undertaking participating in the concentration owns 50 percent or more of the voting equity or assets of each of the other participating undertakings. The other circumstance is where 50 percent or more of the voting equity or assets of each of the undertakings participating in the concentration are owned by the same non-participating undertaking.

4. Calculation of turnover

Turnover includes the revenue obtained by relevant undertakings from sale of products and provision of services in the preceding fiscal year, with relevant taxes and surcharges deducted. The aforementioned term "preceding fiscal year" refers to the fiscal year preceding the signing date of the concentration agreement.

The turnover of an undertaking participating in a concentration shall be the combined turnover of the undertaking and all the undertakings that have direct or indirect control relationship with such

undertaking at the time of notification, excluding the turnover generated between the aforesaid undertakings.

When an undertaking acquires a portion of another undertaking and the transferor no longer has control over such portion or is unable to exert decisive influence thereon, the turnover of the target undertaking shall only include the turnover of such portion.

Where there are other undertakings jointly controlled by the undertakings participating in a concentration, or by the undertakings participating in a concentration and those not participating in the concentration, the turnover of the undertakings participating in the concentration shall include the turnover between the jointly controlled undertaking and a third party undertaking, which shall only be calculated once and be apportioned equally among the jointly-controlling undertakings participating in the concentration.

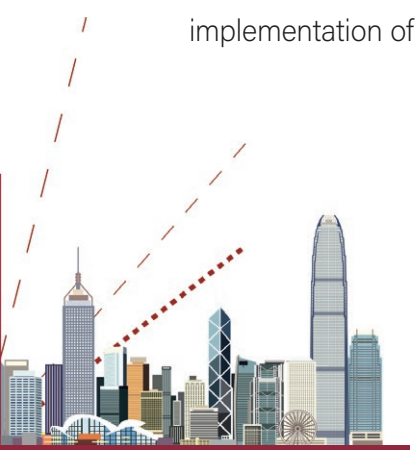
Calculation of the turnover of an undertaking in the financial sector shall be subject to the relevant provisions on the calculation of turnover for the notification of a concentration of undertakings in the financial sector.

5. Notification of concentration of undertakings

(1) Notification requirements

Where a concentration of undertakings reaches the notification thresholds stipulated by the State Council, the participating undertakings shall make a prior notification to the SAMR, and shall not implement the concentration without notification or before the concentration is approved.

Where a concentration of undertakings does not meet the notification thresholds, but evidence shows that the concentration has or may have the effect of eliminating or restricting competition, the SAMR may require the undertakings to make a notification and send a written notice to the undertakings accordingly. Where the concentration has not been implemented, the undertakings shall not implement the concentration without notification or before the concentration is approved. Where the concentration has been implemented, the undertakings shall notify within 120 days upon receiving the written notice, and take necessary measures to reduce the adverse effects of the concentration of undertakings on competition, including suspension of the implementation of the concentration of undertakings, etc.



Factors for determining whether a concentration of undertakings has been implemented include, but are not limited to, the completion of registration of market entity or change of relevant rights, assignment of senior management, actual participation in business decisions and management, exchange of sensitive information with the other undertakings, and substantial integration of business.

Concentrations of undertakings that have been implemented between the same undertakings within two years but individually do not meet the notification thresholds shall be deemed as one concentration. The time of the concentration shall commence from the last transaction, and the turnover of the participating undertakings shall be calculated by consolidating the multiple transactions. The aforesaid transactions carried out by an undertaking through other undertakings with which it has a control relationship shall be subject to the same provisions. The aforementioned term "within two years" shall refer to the period commencing from the date on which the first transaction is completed to the date on which an agreement is concluded for the last transaction.

(2) Notification obligor

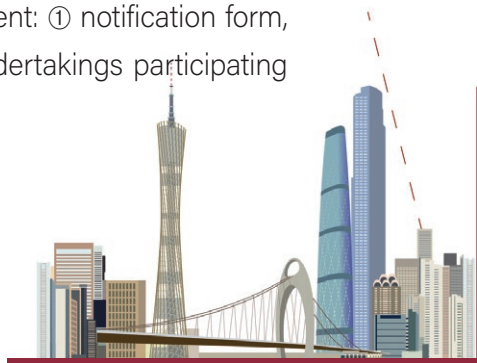
For a concentration of undertakings conducted by way of a merger, all the undertakings that participate in the merger shall be notification obligors; for a concentration of undertakings by other means, the undertaking that has obtained control or is able to exert decisive influence shall be the notification obligor, and other undertakings shall provide cooperation.

Where there are multiple notification obligors in connection with the same concentration of undertakings, one obligor may be entrusted to notify the concentration. Where the entrusted obligor fails to notify, other obligors are not exempted from the notification obligation. Where the obligor fails to notify the concentration, other undertakings participating in the concentration may make the notification.

The notification obligor may notify by itself or entrust the notification to an agent in accordance with the law. The notification obligor shall exercise a high level of prudence in selection of the notification agent. The notification agent shall be honest, trustworthy, and operate its business in compliance with the law.

(3) Notification documents and materials

The notification documents and materials shall include the following content: ① notification form, stating the name, domicile (place of business), business scope of the undertakings participating



in the concentration and the scheduled date of implementing the concentration, with the identification certificate or registration document of the notification obligor attached; in the case of an overseas notification obligor, the notarization documents issued by a local notary agency and relevant certification documents shall also be submitted. Where the notification is made by an agent, the power of attorney signed by the notification obligor shall be submitted; ② a description of the impact of the concentration on competition in the relevant market, including overview of the concentration; definition of relevant market; market shares and control power of the participating undertakings over the relevant market; major competitors and their market shares; market concentration ratio; market entry; current industrial development status; impact of the concentration on market competition structure, industrial development, technological progress, innovation, national economic development, consumers and other undertakings; and assessment of the impact of the concentration on competition in the relevant market and the basis thereof; ③ the concentration agreement, including various forms of documents in relation to the concentration agreement, such as agreements, contracts and corresponding supplementary documents; ④ the financial and accounting reports of the participating undertakings for the preceding fiscal year that have been audited by an accountant firm; and ⑤ other documents and materials to be submitted as required by the SAMR.

The notification obligor shall be responsible for the authenticity, accuracy and completeness of the notification documents and materials. The notification agent shall assist the notification obligor to verify the authenticity, accuracy and completeness of the documents and materials.

The notification obligor shall indicate the trade secrets, undisclosed information, confidential business information, personal privacy or personal information in the notification documents and materials, and concurrently submit the public version and the confidential version of the notification documents and materials. The notification documents and materials shall be in Chinese.

(4) Simple cases

A concentration of undertakings under any of the following circumstances may be notified as a simple case: ① where, in the same relevant market, the combined market share of all undertakings participating in the concentration is less than 15%; in the upstream and downstream markets, the market share of each undertaking participating in the concentration is less than 25%; further, in each market related to the transaction, the market share of each of the undertakings participating in the concentration, which are not in the same relevant market and do not have an upstream or downstream relationship, is less than 25%; ② where undertakings participating

in the concentration by way of establishing a joint venture outside the territory of China and the joint venture does not engage in economic activities within the territory of China; ③ where an undertaking participating in the concentration purchases the equity or assets of an overseas enterprise which does not engage in economic activities within the territory of China; ④ where a joint venture jointly controlled by two or more undertakings becomes controlled by one or more aforesaid undertakings through the concentration.

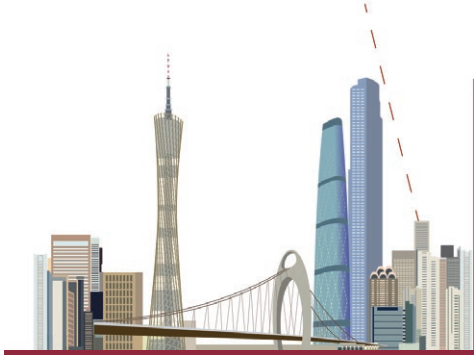
A concentration of undertakings that falls under a circumstance above but also falls under any of the following circumstances will not be deemed as a simple case: ① where a joint venture jointly controlled by two or more undertakings becomes controlled by one of the above said undertakings through the concentration, and such undertaking and the joint venture are competitors in the same relevant market, and their combined market share exceeds 15%; ② where it is difficult to define the relevant market involved in the concentration of undertakings; ③ where the concentration of undertakings may have adverse effect on market entry or technological progress; ④ where the concentration of undertakings may have adverse impact on consumers and other relevant undertakings; ⑤ where the concentration of undertakings may have adverse impact on national economic development; or ⑥ other circumstances that may have an adverse impact on market competition as deemed by the SAMR.

6. Process of anti-monopoly review of concentration of undertakings

(1) Acceptance

The SAMR will inspect the documents and materials submitted by a notification obligor. Where the notification documents and materials are found to be incomplete, the SAMR may require the notification obligor to supplement the documents and materials within a prescribed period. Failure by the notification obligor to supplement within the prescribed period shall be deemed as failure to notify.

Where the SAMR deems that the notification documents and materials meet the statutory requirements upon inspection, it shall accept the notification on the day when it receives the complete notification documents and materials and send a written notice to the notification obligor accordingly. Where a concentration of undertakings does not meet the notification thresholds, but the participating undertakings voluntarily notify the concentration of undertakings, and the SAMR deems it necessary to accept the case upon receipt and inspection of the



notification documents and materials, it shall review the case and issue a decision thereon in accordance with the Anti-monopoly Law.

After accepting simple cases, the SAMR will publish the basic information of the cases for a public notice period of ten days. The basic information of the case to be published shall be filled in by the notification obligor. For a simple case notification which does not meet the standard for simple cases, the SAMR will return the notification, and require the notification obligor to re-notify as a non-simple case.

(2) Preliminary review (30 days)

The SAMR shall, within 30 days from the accepting date, conduct a preliminary review of the notified concentration of undertakings, and decide whether to conduct further review, and send a written notice to the notification obligor(s) accordingly. The undertakings should not implement the concentration before a decision is made by the SAMR. The undertakings could implement the concentration where the SAMR makes a decision of no further review or fails to make a decision within the prescribed period.

Review of simple concentrations of undertakings is usually concluded at this stage.

(3) Further review (90 days)

Where the SAMR decides to conduct further review, it shall complete the review within 90 days from the decision date, and decide whether to prohibit the concentration, and send a written notice to the undertakings accordingly. Where the SAMR issues a decision to prohibit the concentration, it shall provide the reasons for such prohibition. Undertakings shall not implement the concentration during the period of SAMR's review.

(4) Extension of further review (60 days)

Under any of the following circumstances, the SAMR may send a written notice to the undertakings to extend the further review period set forth in the preceding paragraph for a period of no longer than 60 days: ① The undertakings agree to the extension of review period; ② The documents or materials submitted by the undertakings are inaccurate and require further verification; or ③ There has been a material change of the relevant circumstance(s) after the notification by the undertaking(s). The undertakings could implement the concentration if the SAMR fails to make a decision within the prescribed period.

(5) Suspension of the review ("stop-the-clock" mechanism)

In any of the following circumstances, the SAMR may suspend the review of the concentration, and inform the undertakings in writing: ① where the undertakings fail to submit documents and materials in accordance with the provisions, resulting in that the review cannot be conducted; ② where new circumstances and facts that have a major impact on the review of concentration arise, resulting in that the review cannot be conducted if unverified; ③ where restrictive conditions imposed on the concentration need to be further evaluated and the undertaking make a request for suspension. The period of review shall continue to be counted from the date on which the suspending circumstance terminates. The SAMR shall inform the undertakings in writing.

(6) Withdrawal of notification

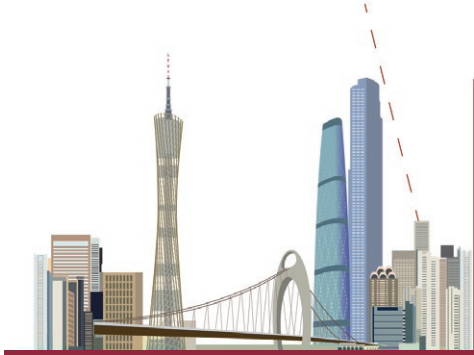
Before a review decision is issued by the SAMR, where the notification obligor requests to withdraw its notification, it shall submit a written application and state the reasons thereof. The notification obligor could withdraw its notification upon consent by the SAMR. Where there is any material change in the circumstances of the concentration or competition condition in the relevant market, and a new notification is required, the notification obligor shall apply for withdrawal. Upon withdrawal of the notification, the review procedure shall terminate. Consent by the SAMR to the withdrawal of notification shall not be deemed as approval of such concentration.

(7) SAMR's notice to participating undertakings

Where the SAMR considers that a concentration of undertakings has or may have the effect of eliminating or restricting competition, it shall inform the notification obligor, and set a reasonable period for the participating undertakings to submit their written opinions. The written opinions of the participating undertakings shall include the relevant facts and reasons, and corresponding evidence shall be provided. Where the participating undertakings fail to submit the written opinions within the prescribed period, they shall be deemed to have no objection.

7. Considerations in anti-monopoly review of concentration of undertakings

According to Article 33 of the Anti-monopoly Law, the following factors shall be taken into account in reviewing the concentration of undertakings:



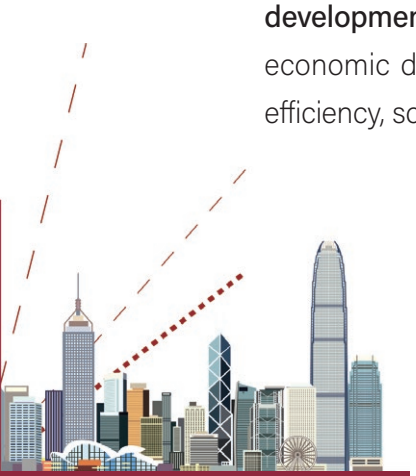
(1) **Market shares of the participating undertakings in the relevant market and their control power over the market.** For assessing the control power of the undertakings participating in a concentration over the market, the following factors can be considered: market shares of the undertakings, the degree of substitutability of products or services, the capability to control the sales market or the input procurement market, the financial and technical conditions, the ability to obtain and process data, as well as the structure of the relevant market, the production capacity of other undertakings, the downstream customers' purchasing capacity and capability of switching suppliers, the offsetting effect of entry by potential competitors, etc.

(2) **The level of concentration in the relevant market.** For assessing the level of concentration in a relevant market, factors which can be considered include the number of undertakings and their market shares in the relevant market.

(3) **The impact of the concentration of undertakings on market entry and technological progress.** For assessing the impact of a concentration of undertakings on market entry, factors which can be considered include the undertakings' influence in relation to market entry through control of production factors, sales and procurement channels, key technologies, key facilities, data, etc., and the likelihood, timeliness and adequacy of access. For assessing the impact of a concentration of undertakings on technological progress, its impact can be considered from aspects such as technological innovation dynamic and capability, investments in and utilization of technological research and development, technological resource integration, etc.

(4) **The impact of the concentration of undertakings on consumers and other relevant undertakings.** For assessing the impact of a concentration of undertakings on consumers, its impact on the quantity, price, quality and diversity of products or services can be considered. For assessing the impact of a concentration of undertakings on other relevant undertakings, its impact on the competition conditions can be considered, including market entry and transaction opportunities of other undertakings in the same relevant market, upstream and downstream markets, or associated markets.

(5) **The impact of the concentration of undertakings on the national economic development.** For assessing the impact of a concentration of undertakings on the national economic development, its impact may be considered from aspects such as economic efficiency, scale of operation, and the development of the relevant industries, etc.



(6) **Other factors affecting competition in the market which are to be considered, as determined by the SAMR.** The SAMR may comprehensively consider the impact of a concentration of undertakings on public interests, whether the participating undertakings are enterprises on the verge of bankruptcy and other factors.

For assessing the impact of a concentration of undertakings on competition, the ability, incentive, and likelihood of the relevant undertakings to eliminate or restrict competition individually or jointly shall be considered. Where a concentration involves upstream and downstream markets or associated markets, the authorities may examine the ability, incentive, and likelihood of the relevant undertakings to use their control power over one or more markets to eliminate or restrict competition in other market(s).

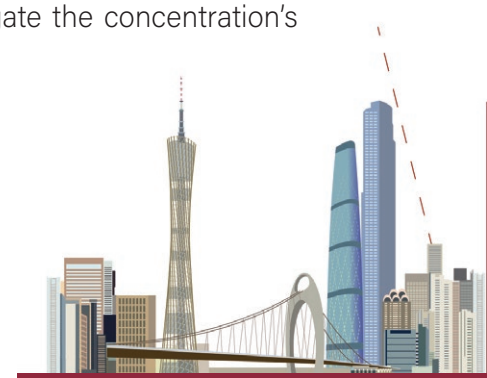
8. Four types of decision after review

(1) **Decision not to conduct further review.** At the stage of preliminary review, where the SAMR finds that a concentration of undertakings has no impact on competition, it could make the decision not to conduct further review.

(2) **Decision not to prohibit the concentration of undertakings.** At the stage of further review or extension of further review, where the SAMR finds that a concentration of undertakings has no impact on competition, it could make the decision not to prohibit the concentration of undertakings. Where the SAMR finds that a concentration of undertakings has or may have the effect of eliminating or restricting competition, but the participating undertakings can prove that the beneficial competitive impact of the concentration obviously exceeds its adverse competitive impact, or that the concentration is in the public interest, the SAMR could decide not to prohibit the concentration.

(3) **Decision to prohibit the concentration of undertakings.** The SAMR shall make a decision to prohibit the concentration of undertakings, where the concentration of undertakings has the effect of eliminating or restricting competition, and the participating undertakings can neither prove that the beneficial competitive impact of the concentration obviously exceeds its adverse competitive impact, nor prove that the concentration is in the public interest.

(4) **Decision to impose restrictive conditions on the concentration of undertakings.** Where the SAMR decides not to prohibit the concentration of undertakings, it may decide to impose thereon restrictive conditions which may mitigate the concentration's

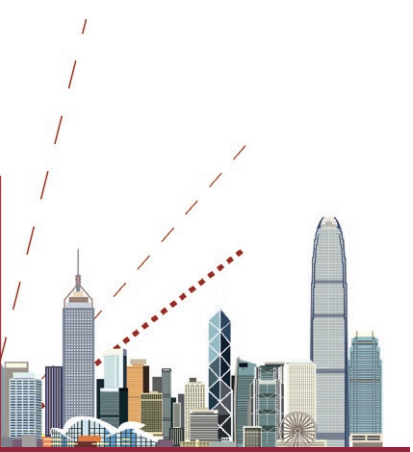


adverse competitive impact. In light of the specific circumstances of a concentration of undertakings, the restrictive conditions may include the following categories: ① structural conditions, such as divestiture of tangible assets, intangible assets such as intellectual property rights and data, or relevant rights and interests; ② behavioral conditions, such as opening access to its network, platform, or other infrastructure, licensing key technologies (including patents, know-how or other intellectual property rights), terminating an exclusive agreement, maintaining independent operations, modifying platform rules or algorithms, and committing to compatibility or not degrading the level of interoperability, etc.; and ③ comprehensive conditions combining structural conditions and behavioral conditions.

The SAMR shall publish in a timely manner the decision to prohibit a concentration of undertakings or the decision to impose restrictive conditions on a concentration of undertakings.

Main Manifestations of Illegal Implementation of Concentrations of Undertakings

Risk Types	Main Manifestations
Illegally implementing a concentration of undertakings without notification in accordance with the law	Undertakings fail to notify a concentration of undertakings to the authority for enforcement of the Anti-monopoly Law in advance as required by the Anti-Monopoly Law when the concentration reaches the notification thresholds prescribed by the State Council, and illegally implement the concentration of undertakings.
Illegally implementing a concentration of undertakings without making supplementary notification as required	The concentration of undertakings does not reach the notification thresholds prescribed by the State Council, but there is evidence proving that the concentration has or may have the effect of eliminating or restricting competition. The authority for enforcement of the Anti-monopoly Law requires undertakings to make a supplementary notification within 120 days, but the undertakings fail to make the supplementary notification in accordance with the Anti-monopoly Law.
Illegally implementing a concentration of undertakings without approval	Although participating undertakings notify a concentration of undertakings to the authority for enforcement of the Anti-monopoly Law, they implement the concentration before a decision is made (also called "gun-jumping" after notification).



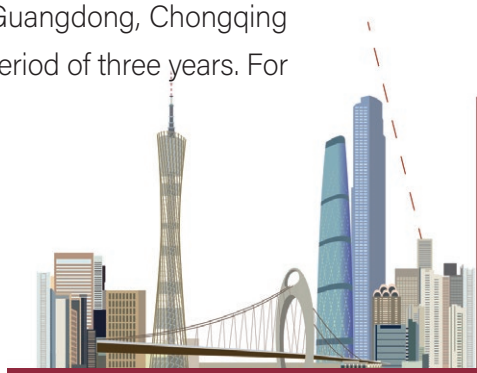
9. Risk and compliance advice

(1) **Accurately understanding the meaning of "concentration of undertakings".** A concentration of undertakings should not be simply construed as a merger or an acquisition among undertakings. Obtaining control over other undertaking(s) through acquisition of shares or assets, or acquiring control over or having the power to exert decisive influence on other undertaking(s) through contracts or other means also constitutes a concentration of undertakings regulated by the Anti-monopoly Law and should be notified to the authority for enforcement of the Anti-monopoly Law in accordance with the law if the notification thresholds are reached.

(2) **Accurately calculating turnovers.** For the purpose of the notification thresholds of a concentration of undertakings, the turnover of a participating undertaking in the preceding fiscal year is the sum of the turnovers generated in the preceding fiscal year by such participating undertaking, other undertaking(s) actually controlled by such participating undertaking, other undertaking(s) actually controlling such participating undertaking, other undertaking(s) actually controlled by undertakings actually controlling such participating undertaking, as well as other undertakings controlled jointly by two or more of the aforementioned undertakings. The turnover should not be simply construed as the turnover of such participating undertaking per se in the preceding fiscal year. Undertakings should not confuse "M&A target" with "turnover".

(3) **Assessing competitive effect in advance.** A concentration of undertakings may have the effect of eliminating or restricting competition even if it does not reach the notification thresholds. For example, for a concentrations of undertakings which concerns a niche market, even if the sizes of participating undertakings or the M&A target are not significant, their market shares are not necessarily low. Under this situation, the concentration may have the effect of eliminating or restricting competition. In the case of such concentration of undertakings, participating undertakings could conduct internal review of competition compliance, apply for consultation with the authority for enforcement of the Anti-monopoly Law, or engage a professional firm to assess the competitive effect, to avoid the risk of failure to notify in accordance with the law.

(4) **Consultation and notification.** In August 2022, the SAMR tested the water by delegating the authorities for enforcement of the Anti-monopoly Law in five provinces (municipalities directly under the Central Government), namely Beijing, Shanghai, Guangdong, Chongqing and Shaanxi, to review certain concentrations of undertakings for a period of three years. For



concentrations of undertakings meeting delegation conditions, notification obligor(s) shall make notifications to the SAMR. If consultation before notification is needed, notification obligor(s) may file an application for consultation with the SAMR or a delegated provincial level authority for enforcement of the Anti-monopoly Law as mentioned above. Online notifications can be made by the notification obligor(s) (URL: https://jyzjz.samr.gov.cn/homepage?redirect=%2Fdashboard) and are all accepted by the SAMR. If consultation after notification is needed, the notification obligor(s) may file an application for consultation with the SAMR or a delegated provincial level authority for enforcement of the Anti-monopoly Law as mentioned above. For concentrations of undertakings ineligible for delegation, the notification obligor(s) shall make notifications to the SAMR directly and apply to the SAMR for any consultation.

(5) **Submitting documents and materials as required.** When the authority for enforcement of the Anti-monopoly Law requires a notification obligor to provide some supplementary documents and materials during review, the notification obligor should actively cooperate, and provide the required documents and materials as required within the specified period, to ensure a smooth review progress by the authority for enforcement of the Anti-monopoly Law and to avoid delays or economic loss.

(6) **Implementing the concentration after receiving the review decision to avoid "gun-jumping".** Notification obligors should not implement the concentration of undertakings before the SAMR makes the review decision (to avoid "gun-jumping"). Even if simplified review procedure applies to a concentration of undertakings, notification obligor(s) should not implement the concentration and complete the registration of change in shareholders or rights until the SAMR makes the review decision. If notification obligor(s) implement(s) a concentration of undertakings before the review decision is made, the authority for enforcement of the Anti-monopoly Law will conduct investigation, and could require participating undertakings to stop implementing the concentration, or take other necessary measures.

(IV) Abuse of intellectual property rights by undertakings to eliminate or restrict competition

Intellectual property rights are intangible property rights, generally including patent, trademark, and copyright, etc. Intellectual property rights are proprietary and exclusive, that is, the exclusive rights granted by law to intellectual property rights holders to specific objects such as patents and trademarks. The intellectual property rights holders may exclusively enjoy or exercise their rights

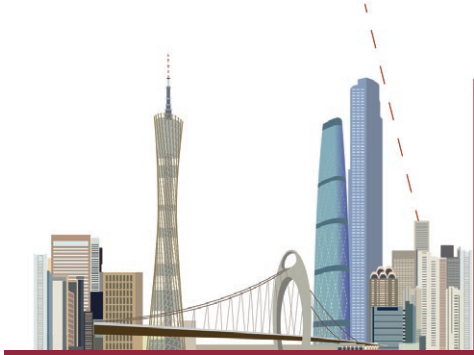
to the extent authorized by law. The law protects the exercise of intellectual property rights by undertakings in accordance with the law. However, this protection is not available to intellectual property rights holders who abuse their rights by going beyond the scope of their proprietary rights specified by law. Such conducts will be subject to the Anti-monopoly Law if they lead to the elimination or restriction of competition.

1. Common manifestations of abuse of intellectual property rights to eliminate or restrict competition

The abuse of intellectual property rights to eliminate or restrict competition refers to undertakings' exercise of intellectual property rights that violates the Anti-monopoly Law, such as through concluding monopoly agreements, abusing dominant market position, or implementing concentrations of undertakings that have or may have the effect of eliminating or restricting competition. According to the Provisions on Prohibition of Abuse of Intellectual Property Rights to Eliminate or Restrict Competition, the common manifestations of such conducts include:

(1) Undertakings, through exercising intellectual property rights, conclude a monopoly agreement prohibited by Article 17 and Paragraph 1 of Article 18 of the Anti-monopoly Law; or an undertaking, through exercising intellectual property rights, organizes other undertakings to conclude a monopoly agreement, or provides substantial assistance for other undertakings to conclude a monopoly agreement.

(2) An undertaking with dominant market position abuses its dominant market position to eliminate or restrict competition in the course of exercising intellectual property rights. This specifically includes: ① licensing intellectual property rights or selling products containing intellectual property rights at unfairly high prices to eliminate or restrict competition; ② without justifiable cause, refusing to license intellectual property right to other undertakings under reasonable conditions to eliminate or restrict competition; ③ without justifiable cause, imposing restrictions on trade to eliminate or restrict competition; ④ without justifiable cause, engaging in tie-in contrary to trade practices of the industry or field, or consumer habits, or without regard to the functions of products to eliminate or restrict competition; ⑤ without justifiable cause, imposing unreasonable restrictive conditions to eliminate or restrict competition; ⑥ without justifiable cause, discriminating among trading counterparties under the same conditions, to eliminate or restrict competition.



(3) Undertakings take advantage of a patent pool to eliminate or restrict competition in the course of exercising intellectual property rights. This specifically includes: ① members of a patent pool conclude a monopoly agreement prohibited by Article 17 or Paragraph 1 of Article 18 of the Anti-monopoly Law through exchange of competitively sensitive information such as price, output and market allocation; ② a patent pool management organization or a patent pool member holding dominant market position abuses its dominant market position by taking advantage of the patent pool to eliminate or restrict competition.

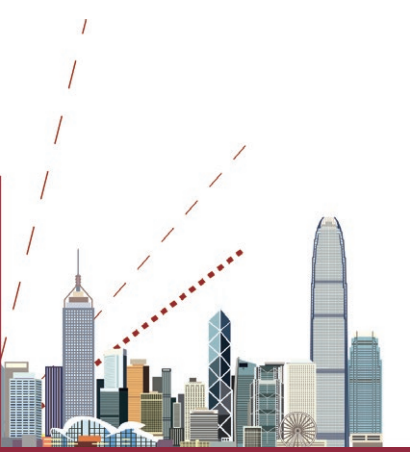
(4) Undertakings engage in monopolistic conduct by taking advantage of formulation and implementation of standards to eliminate or restrict competition in the course of exercising intellectual property rights. This specifically includes: ① undertakings, without justifiable cause, take advantage of the formulation and implementation of standards to conclude a monopoly agreement. ② an undertaking holding dominant market position abuses its dominant market position to eliminate or restrict competition in the course of formulation and implementation of standards.

If a concentration of undertakings involving intellectual property rights reaches the notification thresholds specified by the State Council, participating undertakings shall make a notification to the SAMR in advance and shall not implement the concentration without notification or without receiving the approval after notification.

Undertakings should not engage in monopolistic conducts prohibited by the Anti-monopoly Law and the Provisions on Prohibition of Abuse of Intellectual Property Rights to Eliminate or Restrict Competition when exercising copyrights and the rights relating to copyrights.

2. Risk and compliance advice

Undertakings should exercise intellectual property rights legally, reasonably and appropriately without going beyond the boundary of the rights or the boundaries and requirements of the Anti-monopoly Law, and prevent and stop abusing intellectual property rights to eliminate or restrict competition.



III. Anti-monopoly Law enforcement mechanism in the Mainland

The SAMR shall be responsible for the unified anti-monopoly enforcement work. Since November 2021, the SAMR has also been named the State Anti-monopoly Bureau to enrich the anti-monopoly supervision force. The SAMR may, in light of its work requirement, authorize the corresponding agencies at the level of province, autonomous region or municipality directly under the Central Government (administrations for market regulation of provinces, autonomous regions or municipalities directly under the Central Government) to perform relevant anti-monopoly enforcement tasks in accordance with the Anti-Monopoly Law.

IV. Consequences of violating the Anti-monopoly Law

(I) Legal liabilities for violating the Anti-monopoly Law

1. Legal liabilities for concluding, or concluding and implementing, monopoly agreements

Article 56 of the Anti-monopoly Law prescribes: "Where undertakings conclude and implement a monopoly agreement in violation of this Law, the authority for enforcement of the Anti-monopoly Law shall order the undertakings to cease the illegal conduct, confiscate any unlawful gains, and impose a fine of not less than 1% but not more than 10% of the turnover of the undertakings in the preceding year. Where an undertaking has no turnover in the preceding year, a fine up to RMB 5,000,000 may be imposed. Where the monopoly agreement has not been implemented, a fine up to RMB 3,000,000 may be imposed thereon. If the legal representative, person primarily in charge or directly liable person of the undertakings is personally responsible for reaching the monopoly agreement, a fine up to RMB 1,000,000 may be imposed.

The provisions of the previous paragraph apply to undertakings organizing other undertakings to conclude monopoly agreement, or providing substantive assistance to that effect.

Where an undertaking reports the relevant circumstances surrounding the conclusion of monopoly agreement on its own initiative, and provides important evidence to the authority for enforcement of the Anti-monopoly Law, such authority for enforcement of the Anti-monopoly Law may lessen or waive any penalty on such undertaking after taking account of the relevant factors.

Where an industry association organizes undertakings in the industry to conclude a monopoly agreement in violation of this Law, the authority for enforcement of the Anti-monopoly Law shall order it to correct its behavior and may impose thereon a fine up to RMB 3,000,000; and, where the conduct is egregious, the authority in charge of supervising society organizations may revoke its registration in accordance with the law."

2. Legal liabilities for abusing dominant market position

Article 57 of the Anti-monopoly Law prescribes: "Where an undertaking abuses its dominant market position in violation of this Law, the authority for enforcement of the Anti-monopoly Law shall order the undertaking to cease the illegal conduct, confiscate any unlawful gains, and impose a fine of not less than 1% but not more than 10% of the turnover of the undertaking in the preceding year."

3. Legal liabilities for implementing concentration of undertakings in violation of the law

Article 58 of the Anti-monopoly Law prescribes: "Where undertakings implement a concentration in violation of this Law, which has or may have the effect of eliminating or restricting competition, the State Council Anti-monopoly Enforcement Authority shall order cessation of the concentration, disposal of the relevant equity or assets within the prescribed period, transfer of business within the prescribed period, and the taking of other necessary measures to restore the pre-concentration status, and impose a fine of up to 10% of its turnover in the preceding year; if without the effect of eliminating or restricting competition, a fine of up to RMB 5,000,000 shall be imposed."

4. Punishment for refusing or impeding the investigation

Article 62 of the Anti-monopoly Law prescribes: "In the course of review and investigation carried out by the authority for enforcement of the Anti-monopoly Law in accordance with law, where an entity or individual refuses to provide the relevant materials or information, or provides false materials or information, or conceals, destroys or transfers evidence, or engages in any other conduct amounting to refusing or impeding the investigation, the authority for enforcement of the Anti-monopoly Law shall order such entity or individual to rectify the situation, and impose a fine of up to 1% of its turnover in the preceding year on the entity, or where the entity has no turnover or the turnover is hard to calculate in the preceding year, a fine of up to RMB 5,000,000; and for individuals, it shall impose a fine of up to RMB 500,000."

5. Punishment for especially serious violations

Article 63 of the Anti-monopoly Law prescribes: "If the violation of the provisions of this Law is especially serious, the impact is especially bad or the consequences are especially serious, the State Council Anti-monopoly Enforcement Authority may determine the specific amount of fine amounting to not less than two times but not more than five times the amount of the fine prescribed in Articles 56, 57, 58 and 62 of this Law."

6. Civil liability

Article 60 of the Anti-monopoly Law prescribes: "Where an undertaking implements a monopolistic conduct, thereby causing loss to a third party, the undertaking shall bear civil liability in accordance with the law."

7. Credit punishment

Article 64 of the Anti-monopoly Law prescribes: "Where an undertaking is subject to an administrative penalty for violating the provisions of this Law, it shall be recorded in the credit records in accordance with the relevant provisions of the State, and publicized to the society."

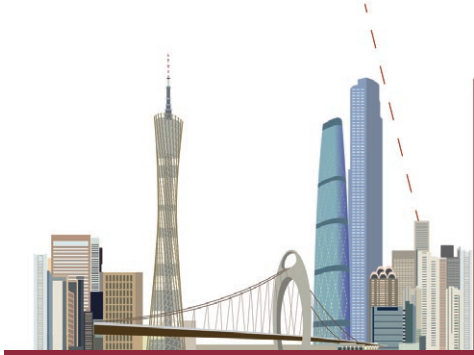
8. Criminal liability

Article 67 of the Anti-monopoly Law prescribes: "Whoever violates this Law and commits a crime shall be pursued for criminal liability according to the law."

(II) Risk and compliance advice

1. Establish a compliance evidence retention system

Businesses may establish a system for retention of compliance evidence of legal representatives, persons primarily in charge and directly liable persons, including decision-making duties, approval authorities, approval process, division of responsibilities, records retention and other internal competition compliance system so as to help businesses with top-down cultivation of the culture of competition compliance.



2. Fully cooperate with the authority for enforcement of the Anti-monopoly Law in investigations

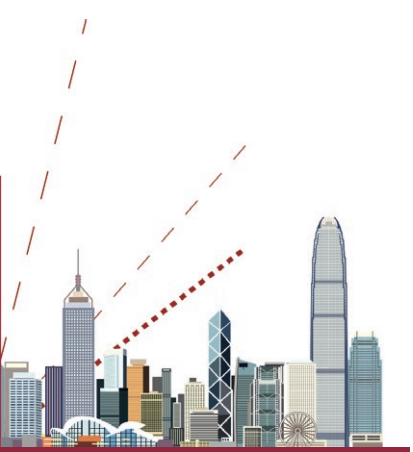
Active and voluntary cooperation in investigations are important factors that the authority for enforcement of the Anti-monopoly Law takes into consideration in making a decision on lighter or mitigated punishment. To avoid penalties, businesses concerned should cooperate actively and should not use violence or threats to obstruct an investigation, refuse to provide relevant materials or information, provide false materials or information, conceal or destroy or transfer accounting vouchers, accounting books, financial and accounting reports or other evidence during the investigation.

(III) Remedies for non-acceptance of the administrative penalty decisions

Article 65 of the Anti-monopoly Law prescribes: "Where the subject individual or entity does not accept a decision issued by the authority for enforcement of the Anti-monopoly Law pursuant to Articles 34 and 35, it may apply for administrative reconsideration in accordance with the law in the first instance; and, where the subject individual or entity still does not accept the administrative reconsideration decision, it may file an administrative lawsuit in accordance with the law.

Where the subject individual or entity does not accept the decisions other than those made by the authority for enforcement of the Anti-monopoly Law prescribed in the previous paragraph, it may apply for administrative reconsideration or file an administrative lawsuit in accordance with the law."

Undertakings should earnestly implement the decision made by the authority for enforcement of the Anti-monopoly Law on their monopolistic conducts. In accordance with relevant provisions of the Administrative Reconsideration Law and the Administrative Procedure Law, a citizen, legal person or other organization may apply to the competent administrative department for administrative reconsideration or file an administrative lawsuit before the people's court if he/it considers that a decision is inconsistent with facts, or the authority for enforcement of the Anti-monopoly Law inappropriately applies the law, or infringes his/its legitimate rights and interests.



Chapter 3 Competition Law Regime and Implementation in Hong Kong

I. Overview of the Competition Ordinance

The Competition Ordinance came into full force in Hong Kong on December 14, 2015 and mainly applies to undertakings. The Competition Ordinance prohibits conduct that prevents, restricts or distorts competition in Hong Kong, which is primarily manifested in the following three competition rules:

Competition Rule	Prohibited Conduct
First Conduct Rule	Anti-competitive agreement
Second Conduct Rule	Abuse of substantial degree of market power
Merger Rule (currently only applies to telecommunications sector)	Merger that substantially lessens competition

The conduct prohibited by the three competition rules are substantially the same as those under the first three requirements of the Anti-monopoly Law, which are also the three kinds of anti-competitive conduct expressly prohibited in most competition law regimes in the world. In contrast to the Anti-monopoly Law, the Competition Ordinance does not cover the conduct and policy initiatives of the government and most statutory bodies.

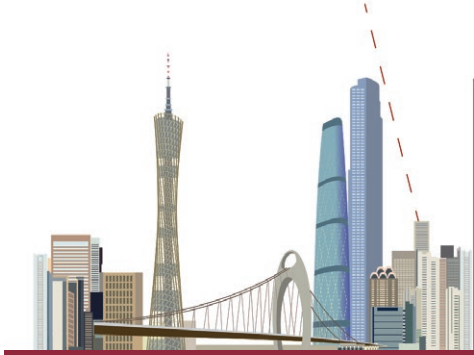
II. First Conduct Rule – prohibition of anti-competitive agreements

The First Conduct Rule prohibits an undertaking from making or giving effect to an agreement, concerted practice and trade association decision that has the object or effect of harming competition in Hong Kong (collectively, an "anti-competitive agreement", i.e. a "monopoly agreement" in the Mainland).

As a general proposition, there must be some form of conduct involving two or more "undertakings" for the First Conduct Rule to apply, which may be:

Contractual conduct (but a contract is not a prerequisite); or

Non-binding or legally unenforceable cooperation.



The definition and common forms of "undertaking" are set out in the following table:

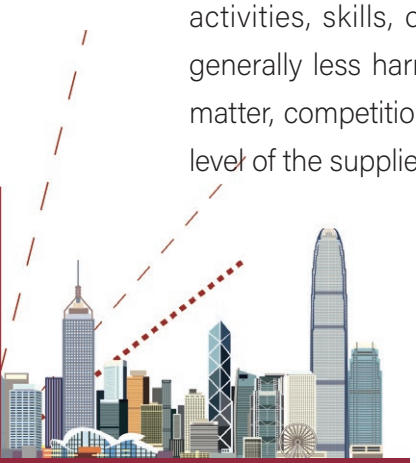
Definition of "undertaking"	According to the interpretation under section 2(1) of the Competition Ordinance, "undertaking" means any entity, regardless of its legal status or the way in which it is financed, engaged in "economic activity", and includes a natural person engaged in economic activity; The term undertaking is a broader concept than the term company although a company may be an undertaking. The key question is whether the entity is engaged in an "economic activity".
Definition of "economic activity"	This is generally understood to refer to any activity consisting of offering products or services in a market regardless of whether the activity is intended to earn a profit.
Examples of "undertaking"	Companies, groups of companies, partnerships, individuals operating as sole traders or subcontractors, co-operatives, societies, business chambers, trade associations and non-profit organizations.

An entity may be an undertaking for certain of its activities but may not be an undertaking for other activities. Where the relevant activities are economic, the entity is an undertaking with respect to those activities for the purposes of the Competition Ordinance.

(I) Agreement

The term "agreement" is a broad concept. According to the interpretation under section 2(1) of the Competition Ordinance, "agreement" includes any agreement, arrangement, understanding, promise or undertaking, whether express or implied, written or oral, and whether or not enforceable or intended to be enforceable by legal proceedings.

Although the concept of horizontal agreement or vertical agreement is not introduced in the Competition Ordinance, the Competition Commission points out in its Guideline on the First Conduct Rule that anti-competitive agreements prohibited by the First Conduct Rule include horizontal agreements and vertical agreements. Horizontal agreements are particularly likely to harm competition because they involve cooperation between competitors. However, horizontal agreements can also generate economic efficiencies, in particular, if they combine complementary activities, skills, or assets. Compared with horizontal agreements, vertical agreements are generally less harmful to competition while offering greater scope for efficiencies. As a general matter, competition concerns will only arise where there is some degree of market power at the level of the supplier, the buyer or at the level of both.



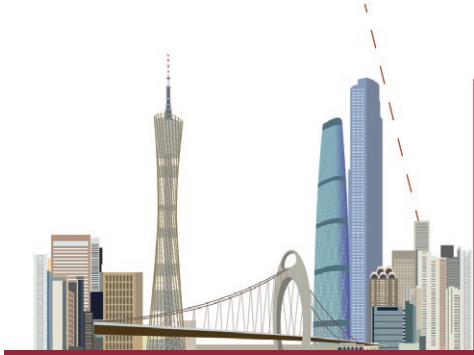
In determining whether there is an agreement, the Competition Commission will generally seek to determine whether there is a "meeting of minds" between the parties concerned. An agreement under the First Conduct Rule may exist whether or not there has been a physical meeting of the parties. An undertaking may be found to be party to an agreement or, in the alternative a concerted practice, if it attended a meeting at which an anti-competitive agreement is reached and it failed to sufficiently object to, and publicly distance itself from, the agreement or the discussions leading to the agreement. This may be the case regardless of whether it played an active part in the meeting or intended subsequently to implement the agreement. To effectively distance itself from the anti-competitive agreement in such a case, the undertaking must demonstrate that it had clearly indicated to its competitors that it participated in the relevant meeting without any anti-competitive intention. This may entail the undertaking evidencing that it had in fact withdrawn from the meeting once the anti-competitive nature of the meeting had become apparent.

An anti-competitive arrangement might comprise a series of sub-agreements concluded by the undertakings in pursuit of a common objective of harming competition. Where this is the case, the Competition Commission may consider that the various sub-agreements form part of a single overarching agreement for the purposes of the First Conduct Rule.

(II) Concerted practice

The First Conduct Rule also applies to cooperation between undertakings which constitutes a concerted practice. A concerted practice is a form of cooperation, falling short of an agreement, where undertakings knowingly substitute practical cooperation for the risks of competition. Inherent in the concept of a concerted practice is the notion that undertakings should determine independently the strategy which they adopt in the market and in particular their policies as regards price, product quality and other competitive parameters.

A concerted practice typically involves an exchange of competitively sensitive information between competitors. Whether the exchange of such information is made as part of a concerted practice depends, however, on the circumstances of the case. The Competition Commission will likely conclude that there exists a concerted practice with the object of harming competition where competitively sensitive information such as an undertaking's planned prices or planned pricing strategy is exchanged between competitors in circumstances where:



① the information is given with the expectation or intention that the recipient will act on the information when determining its conduct in the market; and

② the recipient does act or intends to act on the information.

Without a legitimate business reason for an information exchange of this kind, the Competition Commission will likely infer from the information exchange that the party providing the relevant information had the requisite expectation or intention to influence a competitor's conduct in the market. Similarly, absent a legitimate business reason for taking receipt of the information exchanged or other evidence showing that the recipient did not act or intend to act on the information when determining its conduct in the market, the Competition Commission will likely infer that the recipient undertaking acted on or intended to act on the information exchanged.

Hypothetical example

Each calendar quarter, a number of private language schools in Hong Kong complete a survey, organized by one of the schools, which requests the schools to provide detailed information on their intended fee increases for the following quarter. The results of the survey are then distributed to each school that participated in the survey in advance of the schools finalizing their respective fee arrangements for the next quarter. The results of the survey show the proposed future fees for all participating schools by name.

Assuming there is no evidence of an agreement, the Competition Commission would consider the language schools' behavior as evidence of a concerted practice. In a competitive market, each language school would make its fee decisions independently. This would result in a range of fee levels at the different schools, and a variety of options for students in terms of price. The concerted practice has the effect of removing all uncertainty between the schools as to their respective fee-setting policies. This conduct harms competition and leads to higher prices.

It is notable that parallel behavior by competitors in the market (for example where their prices are similar) does not mean that the competitors are involved in a concerted practice or have made an agreement. If a market is highly competitive, it is to be expected that competitors will respond almost immediately to each other's pricing in the market. For example, if one competitor lowers its price, others are likely to respond to avoid losing customers. This behavior is the very essence of competition and is not a concerted practice.

(III) Decision of an association of undertakings

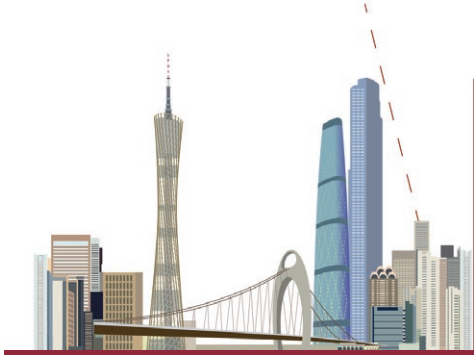
The First Conduct Rule also applies where an undertaking, as a member of an association of undertakings, makes or gives effect to a decision of the association which has the object or effect of harming competition, and this is intended to prohibit indirect anti-competitive cooperation between undertakings through an association. A trade association is an example of an association of undertakings. Members of trade associations are prohibited from making or giving effect to trade association decisions which harm competition.

The reference to an association of undertakings in the First Conduct Rule is not limited to any particular kind of association. An association of undertakings may also be an undertaking to the extent that it is engaged in economic activity, and may, in that capacity, contravene the First Conduct Rule by making or giving effect to an agreement or engaging in a concerted practice which has the object or effect of harming competition. Some trade or professional associations may have statutory or regulatory functions, but this mere fact does not mean that they are not associations of undertakings or that their decisions do not have the object or effect of harming competition. Common forms of associations of undertakings and their decisions are set out in the following table:

Examples of association of undertakings	Trade associations, cooperatives, professional associations or bodies, societies, associations without legal personality, associations of associations etc.
Examples of decision of association of undertakings	Constitution of the association, rules of the association, resolutions, rulings, decisions, guidelines or recommendations of the association, whether made by the board, members, a committee or an employee of the association

A decision of an association may fall within the First Conduct Rule even if it is non-binding. For example, recommended fee scales and "reference" prices of trade and professional associations are decisions of associations of undertakings which the Competition Commission would likely consider as having the object of harming competition.

Where undertakings, as members of an association of undertakings, make or give effect to a decision of the association of undertakings which has the object or effect of harming competition, the undertakings and the association may both incur liability under the Competition Ordinance.



Hypothetical example

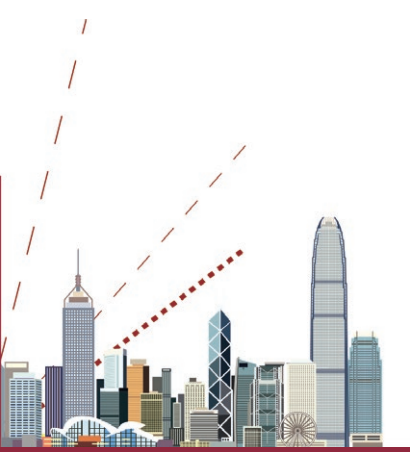
At the annual meeting of an association representing mooncake bakers, the association's executive proposed a non-binding resolution that encouraged members to introduce a price increase of HK$10 on all mooncakes in time for the Mid-Autumn Festival. The resolution was passed unanimously. The stated aim of the resolution was to support the association members' position in the market as manufacturers of a "premium" product and to protect members' profit margins. Association members generally implemented the price increase.

Although the resolution is non-binding and some members do not comply with it, the Competition Commission would consider the resolution as a decision of the association having the object of harming competition. The Competition Commission would also consider the conduct in the example to be serious anti-competitive conduct under the Competition Ordinance.

(IV) "Serious anti-competitive conduct"

Among the contraventions of the First Conduct Rule, the Competition Ordinance specifically defines a category of "serious anti-competitive conduct" to mean any conduct that consists of any of the following or any combination of the following:

Serious anti-competitive conduct	See interpretation under section 2(1) of the Competition Ordinance
Price fixing	Fixing, maintaining, increasing or controlling the price for the supply of goods or services
Market sharing	Allocating sales, territories, customers or markets for the production or supply of goods or services
Output restriction	Fixing, maintaining, controlling, preventing, limiting or eliminating the production or supply of goods or services
Bid-rigging (i.e. "collusive bidding" in the Mainland)	See interpretation under section 2(2) of the Competition Ordinance

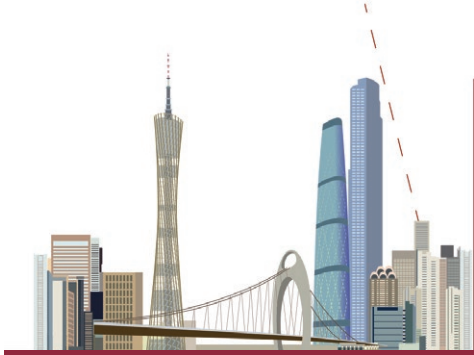


If a contravention of the First Conduct Rule is a "serious anti-competitive conduct" as stated above, the undertakings concerned will face the following legal consequences, including:

① Where a contravention of the First Conduct Rule is not a serious anti-competitive conduct, the undertakings that engaged in such conduct may benefit from an exclusion for "agreements of lesser significance" under section 5 of Schedule 1 to the Competition Ordinance, if their combined annual turnover does not exceed HK$200,000,000. On the contrary, where a contravention of the First Conduct Rule is a serious anti-competitive conduct, regardless of the combined annual turnover of the parties engaging in the agreement, an undertaking may not seek an exclusion from the application of the First Conduct Rule on the basis of "agreements of lesser significance";

② Where the combined annual turnover of the undertakings engaging in the conduct exceeds HK$200,000,000, section 82 of the Competition Ordinance requires the Competition Commission to issue a warning notice to the undertaking whose conduct is alleged to constitute a contravention of the First Conduct Rule which does not involve a serious anti-competitive conduct before bringing proceedings in the Competition Tribunal against the undertaking. This has an effect of giving the undertakings an opportunity to rectify the problem without being held liable for the contravention for which the warning notice was issued. On the contrary, where a contravention of the First Conduct Rule is a serious anti-competitive conduct, the Competition Commission may bring proceedings in the Competition Tribunal directly and need not issue a warning notice to the contravening undertaking in advance.

Other than the above serious anti-competitive conducts, the Competition Commission and the Communications Authority (while the Competition Commission is the principal competition authority responsible for enforcing the Competition Ordinance, it has concurrent jurisdiction with the Communications Authority in respect of the anti-competitive conduct of certain undertakings operating in the telecommunications and broadcasting sectors) have jointly issued the Guideline on the First Conduct Rule. The Guideline also sets out a detailed elaboration on other types of agreements and practices, such as joint buying, exchange of information, group boycotts (i.e. "joint boycotts" in the Mainland), membership of associations or standardization requirements, vertical restrictions, joint ventures and distribution arrangements, etc.



(V) Object or effect of harming competition

The First Conduct Rule requires that the Competition Commission must demonstrate that an agreement has either an anti-competitive object or an anti-competitive effect.

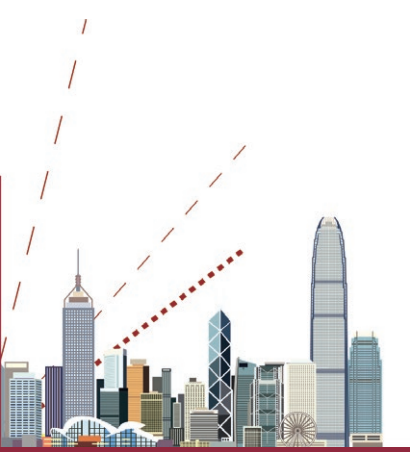
1. The object of harming competition

Certain types of agreement between undertakings can be regarded, by their very nature, to be harmful to the proper functioning of normal competition in the market. These agreements are considered to have the object of harming competition. Section 7(1) of the Competition Ordinance provides that if an agreement has more than one object, it will be capable of contravening the First Conduct Rule if any one of its objects is to harm competition.

Where it is shown that an agreement has the object of harming competition, the Competition Commission does not need to demonstrate that the agreement has anti-competitive effects. The agreement cannot be defended by the parties showing that the agreement does not in fact have any anti-competitive effects or that such effects are not likely to flow from the agreement.

Types of Agreement that Have the Object of Harming Competition and the Determining Factors

Types of agreement	Agreements between competitors to fix prices, to share markets, to restrict output or to rig bids have the object of harming competition. Agreements of this kind, often called "cartel" agreements, are inherently harmful to competition and are universally condemned. The exchange of competitively sensitive information between competitors, even without an agreement, is also a concerted practice with the object of harming competition. Where a vertical agreement involves direct or indirect resale price maintenance ("**RPM**"), it may have the object of harming competition. Whether this is in fact the case will depend on the content of the arrangement establishing the RPM, how it is implemented and the relevant context.

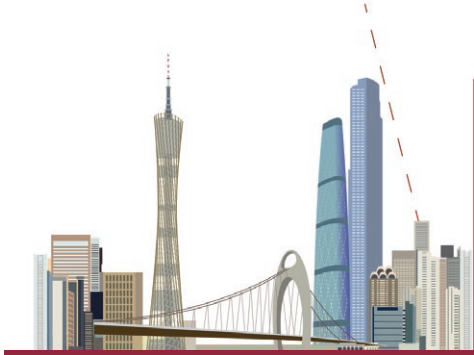


Types of Agreement that Have the Object of Harming Competition and the Determining Factors (cont'd)

Determining factors	Determining the object of an agreement requires an objective assessment of its aims and regard to the content of the agreement, the way it is implemented and its context (including both the economic and legal context), and the subjective intentions of the parties. (This is not to say that a subjective intention to harm competition can suffice to show an anti-competitive object. Evidence of subjective intent is merely a factor the Competition Commission can have regard to in its objective assessment of the aims of the conduct.) In examining the relevant context for an agreement, the following factors may show that an agreement does not have the object of harming competition: ① in the case of an agreement between parties at the same level of the supply chain, an examination of the relevant context reveals that the parties are neither competitors nor potential competitors; ② an examination of the relevant context reveals that at the relevant time there is in fact no competition in the market to be harmed; and/or ③ if the primary objective pursued by an agreement does not contravene the First Conduct Rule, any restrictions which are necessary and proportionate to achieving that primary objective do not have the object of harming competition. Such restrictions will also not contravene the First Conduct Rule. Section 7(2) of the Competition Ordinance provides that an anti-competitive object may be ascertained by inference. In practice, it will often be necessary to infer an anti-competitive object from the facts underlying the agreement and the specific circumstances in which it operates or will operate. An agreement may be considered to have an anti-competitive object, even if it is not implemented by the undertakings who are party to the agreement.

2. The effect of harming competition

If an agreement does not have an anti-competitive object, it may nevertheless contravene the First Conduct Rule if it has an anti-competitive effect. Section 7(3) of the Competition Ordinance provides that if an agreement has more than one effect, it is considered to have an anti-competitive effect if one of its effects is anti-competitive. When demonstrating that an agreement has an anti-competitive effect, the Competition Commission may consider not only any actual effects but also effects that are likely to flow from the agreement.



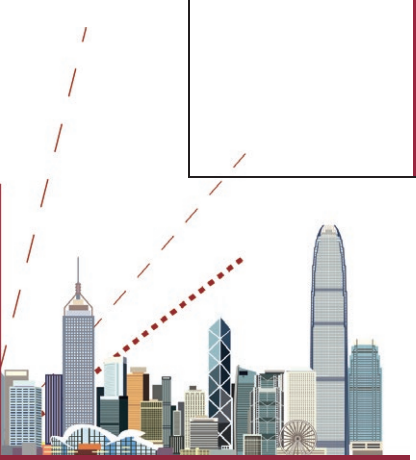
Anti-competitive effects on competition within a relevant market are likely to occur where it can be expected that, due to the agreement, one or more of the parties would be able profitably to raise prices or reduce output, product quality and variety or innovation. This will depend on several factors such as the nature and content of the agreement, the extent to which the parties individually or jointly have or obtain some degree of market power, and the extent to which the agreement contributes to the creation, maintenance or strengthening of that market power or allows the parties to exploit market power.

Where the effect of an agreement on the competitive process is insignificant, the Competition Commission considers that the agreement does not contravene the First Conduct Rule on the basis of its effects. For an agreement to have the effect of harming competition, the relevant effect must be more than minimal. This proposition does not apply in the case of an agreement having the object of harming competition. Parties to an agreement with the object of harming competition may not argue that their agreement does not contravene the First Conduct Rule merely, for example, because they happen to have a very small share of the relevant market. When considering whether an agreement has an effect on competition that is more than minimal, the Competition Commission may take into account the cumulative effect on competition of similar agreements in the relevant market and the contribution which the particular agreement under examination makes to the cumulative effect.

To avoid making or giving effect to an anti-competitive agreement that has the object or effect of harming competition in Hong Kong, businesses should pay attention to the scenarios in which the contravention of the First Conduct Rule set out below may be found:

Potential Risks in the Course of Dealing with Competitors

Risk Level	Conduct	Risk
High	A business or its staff discusses or agrees on matters of price or any element of price (e.g. discount, rebate or concession) with competitors.	Cartel risk (fix prices)
	A business or its staff discusses or agrees on volume or type of particular goods or services with competitors.	Cartel risk (restrict output)
	A business or its staff discusses or agrees who its customers are, which markets or customers it will or won't compete for with competitors.	Cartel risk (share markets)



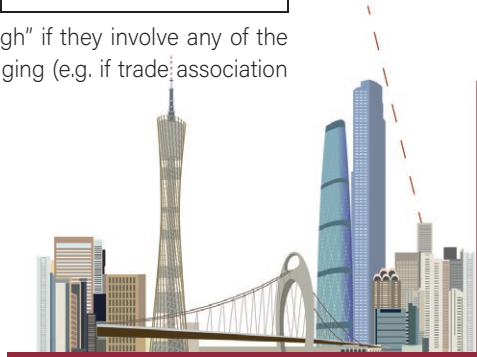
Potential Risks in the Course of Dealing with Competitors (cont'd)

Risk Level	Conduct	Risk
High	A business or its staff discusses tenders with competitors.	Cartel risk (rig bids)
	A business or its staff discusses or shares commercial secrets (e.g. future prices, future production plans etc.) with competitors.	Cartel risk (fix prices, restrict output)
Other (Medium – Low)	A business or its staff attends trade association or industry body meetings where representatives of competitors are also present and there is a risk that any of the above high risk conduct may occur.	Other anti-competitive risk
	A business enters into joint ventures with competitors.	Other anti-competitive risk
	A business has joint purchasing / selling agreements with competitors.	Other anti-competitive risk

Potential Risks in the Course of Dealing with Suppliers and Customers

Risk Level	Conduct	Risk
High	A business or its staff imposes fixed or minimum resale prices on distributors / retailers that sell its product(s).	Resale price maintenance risk
Other (Medium – Low)	A business or its staff recommends resale prices at which its distributors / retailers should sell its product(s).	Other anti-competitive risk
	A business or its staff imposes maximum resale prices on distributors / retailers that sell its product(s).	Other anti-competitive risk
	A business or its staff imposes restrictions as to where or to which customers a reseller or distributor can resell its product(s).	Other anti-competitive risk
	A business enters into exclusive agreements for long periods (e.g. over several years).	Other anti-competitive risk

Note: risks identified in the above tables as "medium" or "low" risks can be escalated to "high" if they involve any of the serious anti-competitive conduct, i.e. price fixing, output restriction, market sharing or bid-rigging (e.g. if trade association meetings provide competitors an opportunity to exchange future pricing information).



The Competition Commission's Guideline on the First Conduct Rule provides further detailed guidance on other anti-competitive risks.

III. Second Conduct Rule – prohibition of abuse of substantial market power

Under the Second Conduct Rule, undertakings with a substantial degree of market power are prohibited from abusing such power to engage in conduct that has the object or effect of harming competition in Hong Kong.

The Second Conduct Rule only applies where an undertaking has a substantial degree of market power in a market. Smaller undertakings are unlikely to have a substantial degree of market power. Thus, the commercial conduct of small and medium enterprises would be unlikely to contravene the Second Conduct Rule. Small and medium-sized enterprises may, however, be victims of abusive conduct under the Second Conduct Rule. As the Competition Ordinance places limits on the commercial conduct of undertakings with a substantial degree of market power that are not imposed on other undertakings, undertakings within scope of the rule are prohibited from engaging in conduct which, objectively, undertakings without a substantial degree of market power are free to engage in.

The Second Conduct Rule is not concerned with preventing firms from gaining market power or being able to exercise it to increase their profits for a time. The pursuit of market power and higher profits through innovation and competition is key to a prosperous free market economy. Nonetheless, the pursuit of profit may lead some undertakings with a substantial degree of market power to abuse that power with a view to protecting or increasing their position of power and profits. For example, a powerful undertaking may:

① seek to maintain its substantial degree of market power by abusing it to prevent challenges to its position by existing or new competitors; or

② leverage its substantial degree of market power in one market to prevent, restrict or distort competition in a second market instead of competing on the merits for customers in that second market.

The application of the Second Conduct Rule does not preclude the parallel application of the First Conduct Rule to the same conduct. Abusive conduct which takes the form of an agreement might also contravene the First Conduct Rule depending on the facts of the case.

(I) Defining the relevant market

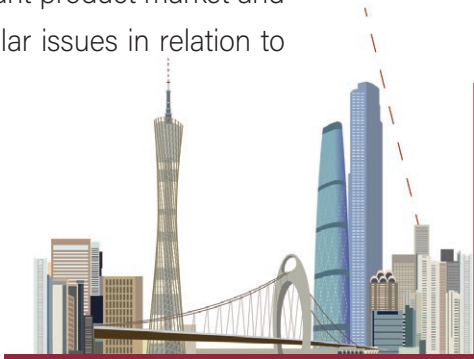
The purpose of defining the relevant market is to assist with identifying in a systematic way the competitive constraints that undertakings face when operating in a market, thus enabling the analysis of the market power of individual undertakings and the competitive effects of their conduct.

The relevant market within which to analyze market power or assess a given competition concern has both a product (including service) dimension and a geographic dimension. In this context, the relevant product market comprises all those products which are considered interchangeable or substitutable by buyers because of the products' characteristics, prices and intended use. The relevant geographic market comprises all those regions or areas where buyers would be able or willing to find substitutes for the products in question.

The relevant product and geographic market for a particular product may vary depending on the nature of the buyers and suppliers concerned by the conduct under examination and their position in the supply chain. For example, if conduct at the wholesale level is concerned, the relevant market is defined from the perspective of the wholesale buyers. If the concern is conduct at the retail level, the relevant market is defined from the perspective of buyers of retail products.

When defining the relevant market, the Competition Commission will generally have regard to its previous cases. Undertakings may, therefore, wish to use relevant markets defined in past cases as a guide to the Competition Commission's likely approach when assessing the impact of their conduct on competition and/or when assessing whether they might have a substantial degree of market power. That said, the way in which the relevant market for a particular product is defined depends on the specific facts of the case, and may vary from one case to the next based on the structure of the market, the preferences of buyers at the point in time under consideration and the particular competition concern for which the analysis is undertaken. For this reason, a defined relevant market in one case will not bind the Competition Commission in another.

The Competition Commission and the Communications Authority (while the Competition Commission is the principal competition authority responsible for enforcing the Competition Ordinance, it has concurrent jurisdiction with the Communications Authority in respect of the anti-competitive conduct of certain undertakings operating in the telecommunications and broadcasting sectors) have jointly issued the Guideline on the Second Conduct Rule to set out the specific approach of the Competition Commission in defining the relevant product market and relevant geographic market and to provide hypothetical examples. Particular issues in relation to market definition are also stated.



(II) Assessment of substantial market power

An undertaking does not operate in a vacuum. There is generally an ongoing rivalry between undertakings in a relevant market in terms of price, service, innovation and quality to which each undertaking must react if its products are to remain attractive to consumers. As a result, undertakings in a relevant market, both big and small, will usually be mutually constrained in their pricing, output and related commercial decisions by the activity or anticipated activity of other undertakings that compete in, or may compete in, that market.

A substantial degree of market power arises where an undertaking does not face sufficiently effective competitive constraints in the relevant market. Substantial market power can be thought of as the ability profitably (it means that the undertaking's conduct is profitable relative to the competitive level. This does not, however, imply that the undertaking with a substantial degree of market power is making a profit in absolute terms or in an accounting sense, which would depend on factors other than the conduct concerned) to charge prices above competitive levels, or to restrict output or quality below competitive levels, for a sustained period of time. Following generally accepted international practice, the Competition Commission would normally consider a sustained period to be two years. However, the relevant period may be shorter or longer depending on the facts, in particular with regard to the product and the circumstances of the market in question. This definition of a substantial degree of market power does not preclude the possibility of more than one undertaking having a substantial degree of market power in a relevant market, particularly if the market is highly concentrated with only a few large market participants.

Market power might equally arise on the buyer side of the market (known as monopsony power). A substantial degree of market power may exist where the buyer has the ability to obtain purchase prices below the competitive level for a sustained period of time.

Market power is a matter of degree. The degree of market power possessed by an undertaking will be assessed based on the circumstances of the case. An undertaking does not need to be a monopolist to have a substantial degree of market power. When assessing whether an undertaking has a substantial degree of market power, the Competition Commission will consider the extent to which that undertaking faces constraints on its ability profitably to sustain prices above competitive levels.

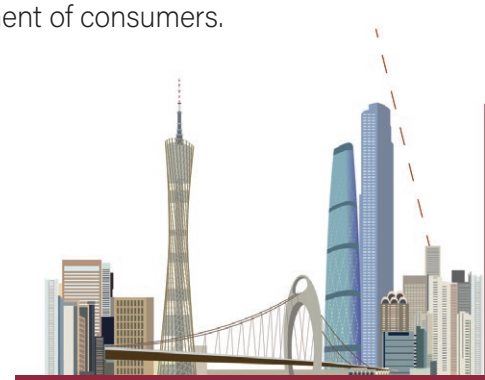
An assessment of market power comprises an analysis of several factors including market share of an undertaking, the undertaking's power to make pricing and other decisions, barriers to entry or expansion to competitors into the relevant market, countervailing buyer power, and market-

specific characteristics, etc. The Guideline on the Second Conduct Rule analyzes in detail the Competition Commission's practice in examining the above factors. The Competition Commission may consider other factors in the assessment of market power in a particular case.

(III) Abuse of substantial market power

To contravene the Second Conduct Rule, an undertaking must abuse its substantial market power by engaging in conduct that has the object or effect of harming competition in Hong Kong. Abusive conduct is potentially any conduct which has the object or effect of harming competition in Hong Kong. Therefore, similar to relevant provisions in the First Conduct Rule, the Competition Ordinance does not provide an exhaustive list of conduct in contravention of the Second Conduct Rule. The specific conduct under examination in a given case may also involve more than one type of abuse. The Guideline on the Second Conduct Rule introduces in detail several types of common conduct that may constitute an abuse. They include predatory pricing, tying or bundling, refusals to deal (e.g. a vertically integrated business with a substantial degree of upstream market power denying a downstream competitor access to supplies), margin squeeze (i.e. a vertically integrated business with a substantial degree of upstream market power increasing supply prices to squeeze the margin of a downstream competitor), etc., which are non-exhaustive examples. The Competition Commission's Guideline on the Second Conduct Rule provides further detailed guidance on other anti-competitive risks.

In general, it is possible for an undertaking with a substantial degree of market power in one market to commit an abuse in a different market. For example, it may be an abuse of substantial market power to tie two products together with a view to harming competition in the tied market. Abuse of substantial market power may in particular result in harm to competition through anti-competitive foreclosure. Anti-competitive foreclosure occurs when competitors, actual or potential, are denied access to buyers of their products or to suppliers as a result of the conduct of the undertaking with a substantial degree of market power. It should be clarified that where competitors are foreclosed from access to buyers or sources of supply simply as a result of the business efficacy of, and/or the provision of better products or services by, the undertaking with a substantial degree of market power, this will not be regarded as anti-competitive foreclosure. Additionally, for anti-competitive foreclosure to occur access to buyers or suppliers does not need to be entirely eliminated. Degraded or diminished access can be sufficient. Anti-competitive foreclosure can result in the undertaking with a substantial degree of market power being able to charge higher prices or in reduced product quality or choice, to the detriment of consumers.



When investigating cases of alleged abuse of a substantial degree of market power, the Competition Commission may consider whether the undertaking is able to demonstrate that the conduct concerned is indispensable and proportionate to the pursuit of some legitimate objective unconnected with the tendency of the conduct to harm competition. For example, a refusal to deal may not be abusive under the Second Conduct Rule where an undertaking with a substantial degree of market power refuses to supply a particular input to a customer because the customer is, as an objective matter, insufficiently creditworthy. Similarly, below cost pricing may not be abusive where the pricing policy is a genuine promotional offer of limited duration relating to the launch of a new product or entry into a new market. Below cost pricing is also unlikely to be abusive if the practice is genuinely intended to minimise losses in respect of obsolescent or deteriorating products.

While the Competition Ordinance makes provision for a general exclusion from the application of the First Conduct Rule for agreements enhancing overall economic efficiency in section 1 of Schedule 1, there is no comparable efficiency-based exclusion for conduct within scope of the Second Conduct Rule. Undertakings may, however, wish to argue that conduct does not in fact contravene the Second Conduct Rule because it entails efficiencies sufficient to guarantee no net harm to consumers. A key consideration will be whether the claimed efficiencies are in fact passed on to consumers – notwithstanding the market power of the undertaking concerned – and whether the undertaking with a substantial degree of market power can demonstrate in fact no net harm to consumers.

(IV) The object or effect of harming competition

Certain types of conduct by undertakings with a substantial degree of market power can be regarded, by their very nature, to be harmful to the proper functioning of normal competition in the market and such conduct is considered to have the object of harming competition. According to section 22(1) of the Competition Ordinance, if conduct has more than one object, it contravenes the Second Conduct Rule if one of its objects is to harm competition.

Where it is shown that certain conduct of an undertaking with substantial market power has the object of harming competition, the Competition Commission need not prove that the conduct has or is likely to have anti-competitive effects and it is sufficient for the Competition Commission to show that the conduct has the potential to harm or is capable of harming competition in the relevant context. The conduct cannot be defended by the relevant undertaking showing that the conduct does not in fact have any anti-competitive effects or that such effects are not likely to flow from the conduct.

If conduct does not have the object of harming competition, it will contravene the Second Conduct Rule if it nevertheless has the effect of harming competition. When demonstrating that conduct has an anti-competitive effect, the Competition Commission may consider not only any actual effects but also effects that are likely to flow from the conduct.

Conduct might have the actual or likely effect of harming competition where it results in or is likely to result in:

① higher prices;

② a restriction in output;

③ a reduction in product quality or variety; and/or

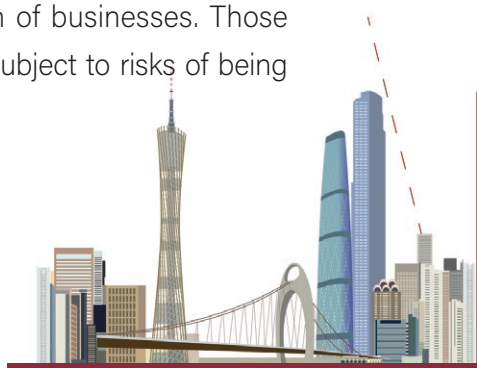
④ anti-competitive foreclosure.

For conduct to have the actual or likely effect of harming competition, it must harm the process of competition causing harm to consumers, and not simply harm an individual competitor. Consumers benefit when competitors have strong incentives to win the competitive battle against one another. In a highly competitive market some competitors will leave the market over time while new ones will enter. The Competition Ordinance is concerned with protecting competition in the market and not the commercial interests of particular market participants. Section 22(3) of the Competition Ordinance provides that if conduct has more than one effect, it will be capable of contravening the Second Conduct Rule if any one of its effects is to harm competition.

IV. Merger Rule

Mergers that have or are likely to have the effect of substantially lessening competition in Hong Kong (i.e. "concentration of undertakings" in the Mainland) are prohibited under the Competition Ordinance. The scope of application of the Merger Rule is currently limited to mergers involving a business directly or indirectly holding a carrier licence issued under the Telecommunications Ordinance. The Merger Rule does not apply if the economic efficiencies that arise from the merger outweigh the harm to competition.

Unlike the Anti-monopoly Law, businesses are not required under the Competition Ordinance to submit a notification of merger nor is there any provision on a threshold for notification. Whether or not to submit a notification is entirely a matter of voluntary decision of businesses. Those who choose to complete a merger without submitting a notification are subject to risks of being



required subsequently to dissolve the merger (i.e. divide the merged businesses) which may contravene the merger rule.

More guidance is provided in the Guideline on the Merger Rule jointly published by the Competition Commission and the Communications Authority on the scope of the Merger Rule, how to conduct competition assessments, as well as exclusions and exemptions under the Merger Rule.

V. Exclusions and exemptions under the Competition Ordinance

In addition to the exclusions for the government and a majority of statutory bodies referred to in Chapter 1, Schedule 1 of the Competition Ordinance provides the following statutory exclusions for conduct of undertakings generally subject to the First Conduct Rule and/or the Second Conduct Rule:

① agreements that enhance economic efficiency while allowing consumers a fair share of the benefits, are indispensable and do not eliminate competition (applying to the First Conduct Rule only);

② agreements and conduct in compliance with a legal requirement;

③ agreements or conduct related to the operation of services of general economic interest by an undertaking entrusted by the Government in so far as the conduct rule would obstruct their performance;

④ agreements or conduct resulting in mergers of businesses;

⑤ agreements or conduct of lesser significance.

In addition, the Competition Commission can also make a block exemption order on the basis of exclusion for enhancing overall economic efficiency to confirm that a particular category of agreement is excluded from the application of the First Conduct Rule as it falls within the scope of the exclusion. Such order may be issued on an application by a business or of the Competition Commission's own volition.

Sections 31 and 32 of the Competition Ordinance also authorize the Chief Executive in Council to make an order to exempt certain agreements or conduct from the conduct rules on grounds of public policy or international obligations. As at the publication of this Manual, the Chief Executive in Council has not made any such orders.

A business may self-assess whether its agreement or conduct meets the criteria for statutory exclusion and exemption. Among these exclusions, self-assessment of the applicability of exclusions for "agreements or conduct of lesser significance" based on turnover (as mentioned above) is the easiest and most relevant to small and medium-sized enterprises. If greater legal certainty is needed, it may also choose to apply to the Competition Commission under section 9 or section 24 of the Competition Ordinance for a decision on whether or not an agreement or conduct is excluded or exempt from the First Conduct Rule or the Second Conduct Rule. Applicants may approach the Competition Commission for an initial consultation prior to making an application. They are encouraged to seek independent legal advice before doing so. It may not be possible for the Competition Commission to make a decision if the information provided in an application is insufficient. Applicants should discuss with the Competition Commission during the initial consultation the scope of information required for the purposes of completing the application form.

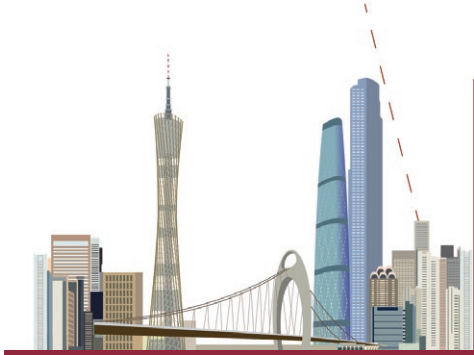
More details are provided for the statutory exclusions in the Guideline on the First Conduct Rule and the Guideline on the Second Conduct Rule, while detailed guidance for businesses applying for a Competition Commission decision and a block exemption order is provided in the Guideline on Applications for a Decision under Sections 9 and 24 (Exclusions and Exemptions) and Section 15 Block Exemption Orders.

VI. Enforcement mechanism of the Competition Ordinance

(I) Compulsory investigation powers of the Competition Commission

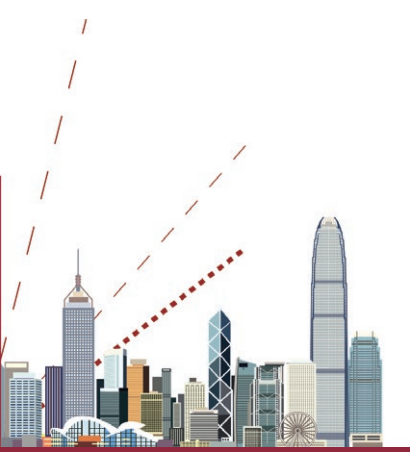
Unlike the Anti-monopoly Law, the Competition Ordinance adopts a judicial enforcement model to separate the powers of investigation (mainly by the Competition Commission which has concurrent jurisdiction with the Communications Authority in respect of competition cases in the broadcasting and telecommunications sectors) from those of adjudication and the imposition of penalties (by the Competition Tribunal).

When the Competition Commission receives intelligence on a contravention of the Competition Ordinance through a complaint from the public or other means and the criteria for conducting an investigation under section 39(2) of the Competition Ordinance are met, it may exercise compulsory investigation powers under the law in the following table:



Compulsory Investigation Powers

Compulsory Investigation Power	Manifested Forms
Obtain documents and information	Under section 41 of the Competition Ordinance, the Competition Commission may by notice in writing require any person to produce to it any document or a copy of any document, or to provide it with any specified information, relating to any matter it reasonably believes to be relevant to the investigation.
Require persons to attend before the Competition Commission	Under section 42 of the Competition Ordinance, the Competition Commission may, by notice in writing, require any person to attend before the Competition Commission, at a time and place specified in the notice, to answer questions relating to any matter it reasonably believes to be relevant to the investigation.
Enter and search premises	Under sections 48 and 50 of the Competition Ordinance, the Competition Commission may apply to the court for a search warrant to, for example, enter and search any premises specified in the warrant, and exercise other compulsory powers under section 50(1), including requiring any person on the premises to produce or make copies of any relevant documents, in the possession or under the control of that person, and to take possession of, among others, any computer or other thing that the Competition Commission has reasonable grounds for believing will afford evidence of a contravention of a competition rule.
Possible legal consequences of obstructing the Competition Commission's exercise of the above compulsory investigation power	
1. Under section 52 of the Competition Ordinance, a person who, without reasonable excuse, fails to comply with a requirement or prohibition imposed on that person under the above provisions commits an offence. The person is liable on conviction to a fine of up to HK$200,000 and to imprisonment for up to 1 year.	
2. Under sections 53 to 55 of the Competition Ordinance, a person commits an offence if the person destroys or falsifies documents, obstructs a search or provides false or misleading documents or information in the exercise of the compulsory investigation powers by the Competition Commission under the law. The person is liable on conviction to a fine of up to HK$1,000,000 and to imprisonment for up to 2 years.	



(II) Remedies

Upon investigation of a case, an appropriate remedy in the table below may be selected by the Competition Commission based on factors such as the severity of the case and the strength of evidence:

Remedies

Remedies	Manifested Forms
Commitments from businesses to rectify the conduct	Under section 60 of the Competition Ordinance, the Competition Commission may accept from a person a commitment to take or refrain from taking any action, that the Competition Commission considers appropriate to address its concerns about a possible contravention of a competition rule, and agree not to commence an investigation or, if an investigation has been commenced, to terminate it, or not to bring proceedings or to terminate proceedings brought in the Competition Tribunal.
Infringement notices	Under section 67 of the Competition Ordinance, where the Competition Commission has reasonable cause to believe that (a) a contravention of the first conduct rule has occurred and the contravention involves serious anti-competitive conduct; or (b) a contravention of the second conduct rule has occurred, and the Competition Commission has not yet brought proceedings in the Competition Tribunal in respect of the contravention, the Competition Commission may, instead of bringing those proceedings in the first instance, issue an infringement notice to the relevant business, offering not to bring those proceedings on condition that the person makes a commitment to comply with requirements of the notice.
Warning notices	Under section 82 of the Competition Ordinance, if the Competition Commission has reasonable cause to believe that a contravention of the first conduct rule has occurred and the contravention does not involve serious anti-competitive conduct, the Competition Commission must, before bringing proceedings in the Competition Tribunal against the undertaking whose conduct is alleged to constitute the contravention, issue a warning notice to the undertaking.
Competition Tribunal proceedings	The Competition Commission may bring legal proceedings in the Competition Tribunal for a contravention of a competition rule and apply to the Competition Tribunal for an appropriate penalty and other remedial orders against a person who has contravened or been involved in a contravention of a competition rule in accordance with the relevant terms under Part 6 of the Competition Ordinance.

Remedies such as accepting businesses' commitments to rectify the conduct and issuing infringement notices as well as warning notices require, to different extents, the businesses' cooperation with the Competition Commission's investigation and suggestions on rectification; the bringing of proceedings before the Competition Tribunal is usually reserved for severe cases or used as the last resort when the business does not accept the aforementioned remedies.

VII. Liability under the Competition Ordinance

After commencement of proceedings by the Competition Commission in the Competition Tribunal for an agreement or conduct that allegedly contravenes the Competition Ordinance, the Competition Tribunal may give different remedial orders against the businesses or individuals who are found liable for a contravention, including pecuniary penalties and director disqualification. According to Part 7 of the Competition Ordinance, civil actions in which victims of anti-competitive conduct seek damages may also be heard by the Competition Tribunal. However, such actions could only be commenced after determination by the Competition Tribunal of liability for the contravention and are therefore known as "follow-on actions". This is different from the implementation of the Anti-monopoly Law, under which businesses and individuals harmed could directly bring an action in court.

The Competition Ordinance not only provides for the penalties against the contravening businesses but also against individuals who have participated in a contravention. Various orders against the contravening businesses or individuals may be imposed at the discretion of the Competition Tribunal as required under Part 6 and Schedule 3 of the Competition Ordinance, including:

(I) Pecuniary penalty

The maximum pecuniary penalty for conduct which constitutes a single contravention is 10% of the turnover of the business obtained in Hong Kong for each year of the contravention, up to a maximum of three years. For more detailed guidance on how pecuniary penalty recommendations to the Competition Tribunal are made, please refer to the Policy on Recommended Pecuniary Penalties published by the Competition Commission.

(II) Director disqualification order

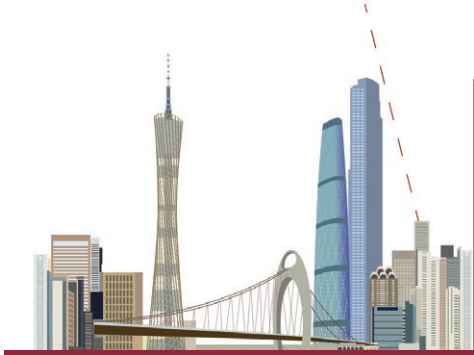
If the Competition Tribunal has determined that a business has contravened the Competition Ordinance and considers that the conduct of the director of the business makes him unfit to be concerned in the management of a company, it may make a disqualification order to disqualify the person from being a director or from holding a similar position in a company in Hong Kong for a period of up to 5 years.

(III) Injunction orders and orders requiring actions to be taken

The Competition Tribunal may restrain or prohibit a person who is found to have contravened or been involved in the contravention of a competition rule from continuing to engage in a similar contravention. It may also order them to take specific actions, for example, to implement a competition compliance program within the business and provide trainings to the employees and other relevant persons in order to reduce the risk of reoccurrence.

(IV) Order to pay the Competition Commission's investigation and litigation costs

The Competition Tribunal may order any person who has contravened or been involved in the contravention of a competition rule to pay the Competition Commissions' investigation and litigation costs.



Chapter 4 Recommendations to Guangdong and Hong Kong Businesses for Competition Compliance

For the purposes of guiding Guangdong and Hong Kong businesses to cultivate a compliance culture of fair competition, establish and strengthen the competition compliance system, enhance businesses' compliance awareness, improve the level of competition compliance and prevent risks concerning competition law, and safeguard the sustainable and sound development of Guangdong and Hong Kong businesses, the following recommendations to Guangdong and Hong Kong businesses for competition compliance are given in light of different characteristics of competition law in Guangdong and Hong Kong:

I. Advocating a culture of competition compliance

Competition compliance refers to the conformity of operation and management conducts of businesses and their employees to the provisions of the Anti-monopoly Law, other laws, regulations, rules, guidelines and other documents as well as the provisions and requirements of the Competition Ordinance and relevant conduct guidelines of Hong Kong.

Guangdong and Hong Kong businesses may devise their own competition compliance systems based on the competition law in the Mainland and Hong Kong, by taking into consideration the recommendations to businesses for competition compliance outlined in this Manual and the actual situations such as their business nature, size and market competition. They may implement competition compliance system in their daily operation and management, and improve compliance training, reporting, assessment, consultation, investigation, accountability and other operating mechanisms, so as to continuously enhance and refine the competition compliance system and effectively address competition-related risks arising from their actual operation.

Cultivation of a culture of competition compliance should be positioned at the core of competition compliance by Guangdong and Hong Kong businesses. They should proactively develop the concept of fair competition, operate businesses in accordance with the law, observe honesty and good faith and promote it to be part of their entrepreneurial culture and spirit. They should adopt various measures to develop the awareness of competition compliance among employees, heighten the sensitivity to the risk in relation to competition compliance and improve their level of competition compliance.

II. Approaches to competition compliance management

Competition compliance management refers to management activities carried out in an organized and planned manner in respect of the operation and management activities of businesses and their employees, including competition compliance measures, compliance management system, risk identification, compliance operation and compliance assurance, for the purposes of effectively preventing and reducing competition-related risks. The primary approaches are set out below.

(I) Risk prediction

1. Predicting risks in a structured manner

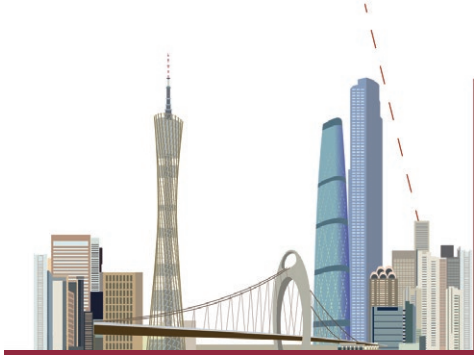
Risk prediction is the basis of competition compliance for businesses. Competition law risks vary by business and mainly depend on the characteristics of the trade concerned, business size, business activities, market competition, competition provisions of the relevant jurisdiction, etc. New risks may also arise in the event of M&A, development of new products, market expansion, etc. Businesses may assess the severity of risks, classify the risks into different categories and take different measures in response.

2. Establishing a risk identification mechanism for competition law compliance

Businesses are encouraged to make a comprehensive and systematic analysis of compliance risks as part of their operation and management activities, rules and regulations, decisions on significant matters, conclusion of important contracts, operation of major projects and other operation and management activities, and may conduct a competition compliance review to promptly prevent common risks and risks likely to lead to serious consequences.

3. Refining the content of competition compliance system

Businesses are encouraged to establish a competition compliance system, code of conduct and competition compliance mechanisms for projects in key areas, which cover all business areas, departments and branches.



4. Assessing the competition compliance system

Businesses are encouraged to regularly analyze the effectiveness of the competition compliance system, meticulously seek to uncover the causes of material or recurring compliance risks and violations, refine relevant systems, shore up vulnerabilities in management, strengthen process controls and undergo constant refinement and improvement.

5. Establishing a competition compliance consultation mechanism

A consultation can be made with those with responsibility for competition compliance matters in the business concerned when the business departments and the staff encounter competition law risks.

(II) Risk control

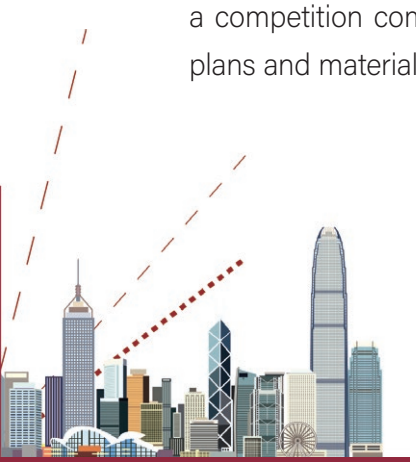
After prediction, assessment and classification of potential risks in monopolistic and anti-competitive conducts (hereinafter collectively referred to as "**anti-competitive conducts**"), businesses may explore and devise targeted control measures to reduce the risk of violating competition laws.

1. Establishing sound mechanisms for risk management

Businesses are encouraged to establish sound mechanisms for risk management and adopt appropriate measures to control and deal with identified, assessed and emerging risks. Businesses involved in anti-competitive conduct should cease the conduct immediately and adjust their business strategy and approaches, and may seek legal advice. They may also consider voluntarily reporting any violations to the competition authority and fully cooperating in investigation, thus obtaining the opportunity to apply for fine reduction or exemption.

2. Establishing a competition compliance training mechanism

Businesses are encouraged to provide competition compliance-specific education and establish a competition compliance training mechanism to incorporate relevant trainings in their training plans and materials.



3. Establishing a competition compliance assessment system

Businesses may establish a competition compliance assessment mechanism, and the assessment results can be used as an indicator of the businesses' overall performance and linked with employees' appraisal, appointment and dismissal, promotion, salary packages, etc.

4. Establishing an internal reporting system

Businesses may adopt appropriate methods to clarify the internal reporting policies for competition compliance, establish an internal reporting system and commit to keep the information of whistleblowers confidential and not to take unfavorable actions against employees on account of their reporting.

5. Designating persons and positions specifically responsible for competition compliance

Businesses may consider designating persons or setting up a specific department to take on competition compliance roles or incorporate such roles in the existing compliance system. Smaller businesses without the resources to set up a designated post may assign the corresponding duties to their senior executive.

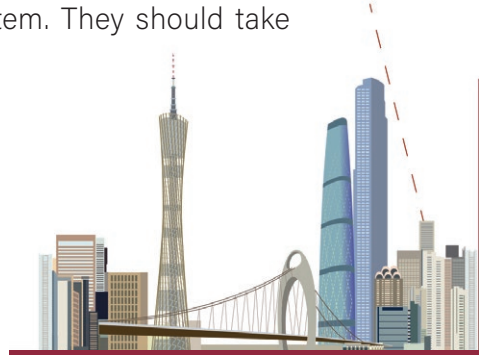
(III) Regular inspection

1. Establishing a compliance review system

Businesses may establish a competition compliance review mechanism in which a competition compliance unit is responsible for reviewing whether their major decisions on production and operation and important agreements to be signed, etc. conform to the Anti-monopoly Law, the Competition Ordinance in Hong Kong and other regulations.

2. Establishing a regular assessment system

Businesses may adopt appropriate methods for regular review of the effectiveness of their competition compliance system, and provide feedback on and responses to the review results, and continuously update and refine the competition compliance system. They should take



effective measures to promptly reduce competition compliance risks revealed in the assessments and stop the conducts posing such risks when necessary; when any competition compliance risks occur, the competition compliance unit and other business departments should actively cooperate in enforcement investigations, promptly take remedial measures in accordance with the law, and minimize risks and losses.

3. Reviewing business approaches and compliance plans regularly

Businesses may review business practices and competition compliance plans regularly through means such as external audit in light of changes in the market environment so as to continuously predict, assess and reduce competition law risks and make adjustments to compliance plans. If a business finds that it is likely to have engaged in an anti-competitive conduct, is under investigation by the competition authority or faces a lawsuit, or has developed a new business or conducted a merger, it should pay more attention to the review of its compliance plans.

III. Measures and actions to be taken when businesses find themselves engaging in anti-competitive conducts or are subject to enforcement investigation

If a Guangdong or Hong Kong business is involved in or engages in an anti-competitive conduct (particularly cartel conduct) or is subject to an enforcement investigation (particularly for cartel conduct), it should cease the relevant conduct immediately, consider reporting the conduct to the enforcement agency, actively cooperating in investigation and trying to seek leniency.

(I) Immediately ceasing anti-competitive conducts (particularly cartel conducts) and voluntarily reporting relevant conducts to the enforcement agency

When a business finds that it has engaged in anti-competitive conducts (particularly cartel conducts) through compliance check or internal reporting, it should immediately cease the relevant conducts and voluntarily report the conducts to the enforcement agency. Large businesses are encouraged to formulate contingency plans for anti-monopoly/anti-competitive investigations. If a business is already under an investigation by the enforcement agency when it discovers its anti-competitive conducts, it is encouraged to immediately kickstart the contingency plan, actively cooperate with the enforcement agency in the investigation, proactively propose

rectification measures to eliminate the anti-competitive impact and seek the opportunity to mitigate or be exempted from penalties.

(II) Actively cooperating in enforcement investigation

Businesses should comply with relevant investigations of the enforcement agency. They should actively cooperate in and appropriately respond to the investigations and shall not withhold relevant materials or information, provide false materials or information, conceal, destroy or transfer evidence, or engage in any other conducts to refuse to cooperate or obstruct the investigation.

(III) Applying to the enforcement agency for leniency

A business that voluntarily reports its violation and fully cooperates in the investigation may receive leniency from the enforcement agency in accordance with relevant legal provisions and policies in Guangdong and Hong Kong.

1. Leniency under the Anti-monopoly Law

According to Article 56 of the Anti-monopoly Law: "Where an undertaking reports the relevant circumstances surrounding the conclusion of monopoly agreement on its own initiative, and provides important evidence to the authority for enforcement of the Anti-monopoly Law, such authority for enforcement of the Anti-monopoly Law may lessen or waive any penalty on such undertaking after taking account of the relevant factors." Businesses involved in concluding, or organizing or facilitating the conclusion of, a monopoly agreement may apply to the enforcement agency for leniency before the authority opens the case file or initiates the investigation process in accordance with the Anti-monopoly Law, or after such opening of case file or initiation of investigation process but before the authority gives a prior notification on administrative punishment. However, the application shall be made before the notification on administrative punishment by the authority for enforcement of the Anti-monopoly Law. Important evidence refers to evidence yet to be discovered by the authority for enforcement of the Anti-monopoly Law that is vital to the opening of case file or finding the monopoly agreement (The Guidelines of the Anti-Monopoly Commission of the State Council on the Application of the Leniency Policy to Cases Involving Horizontal Monopoly Agreements and the Provisions on Prohibition of Monopoly Agreements set out further guides and specific provisions on the application of the leniency program in the Mainland). If an undertaking, on its own initiative, reports to the authority

for enforcement of the Anti-monopoly Law about the monopoly agreement reached and provides important evidence, the said authority may mitigate or exempt the undertaking from punishment as follows:

(1) First applicant: the fine may be fully exempted or reduced by not less than 80%;

(2) Second applicant: the fine may be reduced by 30%-50%;

(3) Third applicant: the fine may be reduced by 20%-30%.

2. Leniency in Hong Kong

Leniency policies in Hong Kong apply to cartel conducts, i.e. price fixing, market sharing, output restriction and bid-rigging. Leniency policies in Hong Kong apply to both undertakings and individuals. Leniency is available to the first applicant that voluntarily reports his or its participation in a contravention, while all the requirements are met. This means that the law enforcement agency will not initiate judicial proceedings against such applicant for penalties. Leniency is not available to subsequent undertakings while they may cooperate in enforcement investigation and apply for settlement according to the cooperation policy of the Competition Commission. Based on the order in which relevant businesses indicate to the Competition Commission their willingness to cooperate and the extent of their cooperation, the Competition Commission will exercise its discretion and recommend a discount of pecuniary penalty to the Competition Tribunal and the maximum discount rate is 50% (The Leniency Policy for Undertakings Engaged in Cartel Conduct, the Leniency Policy for Individuals Involved in Cartel Conduct and the Cooperation and Settlement Policy for Undertakings Engaged in Cartel Conduct published by the Competition Commission set out further guides for the application of the leniency policies of Hong Kong).

3. Filing applications to the law enforcement agencies in the Mainland and Hong Kong respectively

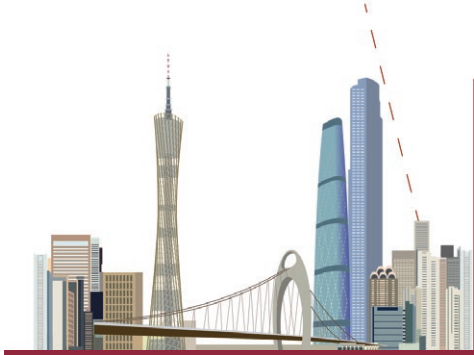
The Mainland and Hong Kong are two independent jurisdictions and adopt different leniency programs. When a business decides to voluntarily report its violation, it should determine the jurisdiction where relevant conduct has an impact on and file an application with corresponding enforcement agency; if relevant conduct has an impact on both jurisdictions and the business wishes to receive leniency in both jurisdictions, it shall file applications with the enforcement agencies in the two jurisdictions respectively.

(IV) Possible administrative or criminal liabilities for refusing or obstructing review and investigation

Both the authorities for enforcement of the Anti-monopoly Law of the Mainland and the Competition Commission of Hong Kong have the powers of investigation, such as requiring the subjects of investigation to provide information and entering the domiciles (places of business) of the subjects of investigation to gather information. If a business or an individual refuses to cooperate in or obstructs the investigation, or provides false documents or materials, it or he may be subject to administrative or criminal liability.

Article 62 of the Anti-monopoly Law prescribes: "In the course of review and investigation carried out by the authority for enforcement of the Anti-monopoly Law in accordance with law, where an entity or individual refuses to provide the relevant materials or information, or provides false materials or information, or conceals, destroys or transfers evidence, or engages in any other conduct amounting to refusing or impeding the investigation, the authority for enforcement of the Anti-monopoly Law shall order such entity or individual to rectify the situation, and impose a fine of up to 1% of its turnover in the preceding year on the entity, or where the entity has no turnover or the turnover is hard to calculate in the preceding year, a fine of up to RMB 5,000,000; and for individuals, it shall impose a fine of up to RMB 500,000." Article 63 of the Anti-monopoly Law prescribes: "If the violation of the provisions of this Law is especially serious, the impact is especially bad or the consequences are especially serious, the State Council Anti-monopoly Enforcement Authority may determine the specific amount of fine amounting to not less than two times but not more than five times the amount of the fine prescribed in Articles 56, 57, 58 and 62 of this Law." Article 67 states: "Whoever violates this Law and commits a crime shall be pursued for criminal liability according to the law."

Under the Competition Ordinance in Hong Kong, a person who, without reasonable excuse, fails to comply with a requirement imposed by the Competition Commission in the exercise of its compulsory investigative powers commits a criminal offence and is liable to a maximum fine of HK$200,000 and to imprisonment for 1 year; a person who, during the course of its investigation, provides false or misleading information to the Competition Commission, destroys, falsifies or conceals a document, obstructs a search, or discloses confidential information received from the Competition Commission commits a criminal offence and is liable to a maximum fine of HK$1,000,000 and to imprisonment for 2 years.



(V) Making rectification commitment to the enforcement agency

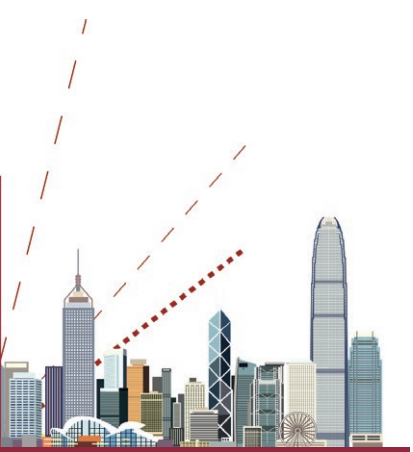
1. Commitment policies in the Mainland and Hong Kong

According to the Anti-monopoly Law and Hong Kong's Competition Ordinance, during the investigation process of enforcement agencies, a business in a case of alleged monopoly agreement or abuse of dominant market position may apply for a suspension of the investigation and make a commitment to adopt specific measures to eliminate the impact of its conduct within a period approved by the enforcement agency. A business may liaise with the enforcement agency before proposing a commitment. If the enforcement agency is of the view that the commitment of the business is sufficient to address its concerns, it can suspend the investigation. If the enforcement agency decides to suspend the investigation, it shall monitor the fulfillment of the commitments by the undertaking. If the undertaking has fulfilled the commitments, the enforcement agency could decide to terminate the investigation.

Commitment policy can save enforcement resources, improve enforcement efficiency and restore market competition in a highly efficient manner. The Guidelines of the Anti-Monopoly Commission of the State Council on Commitments from Undertakings Involved in Monopoly Cases, as well as the Guideline on Investigations, the Enforcement Policy and the Policy on Section 60 Commitments issued by the Competition Commission provide more guidelines for the commitment policies in the Mainland and Hong Kong respectively.

2. Commitment policies are not applicable to certain horizontal monopoly agreements

According to the Provisions on Prohibition of Monopoly Agreements, the commitment policy in the Mainland is not applicable to three types of horizontal monopoly agreements that are of significant harm to competition, namely those on fixing or changing prices of products, restricting the amount of products manufactured or marketed, and allocating the sales market or the input procurement market. The Policy on Section 60 Commitments issued by the Competition Commission states that it is very unlikely to accept a voluntary commitment from a business to resolve a case with respect to cartel conduct involving competitors.



IV. Dealing with and responding to harm arising from anti-competitive conducts

Any business, especially small and medium-sized businesses, may fall victim to anti-competitive conduct. If a Guangdong or Hong Kong business suffers harm from an anti-competitive conduct, it may file a report with the respective enforcement agency or a lawsuit with the competent court in respective jurisdiction.

(I) Provisions in the Mainland

1. Filing a report with the authority for enforcement of the Anti-monopoly Law

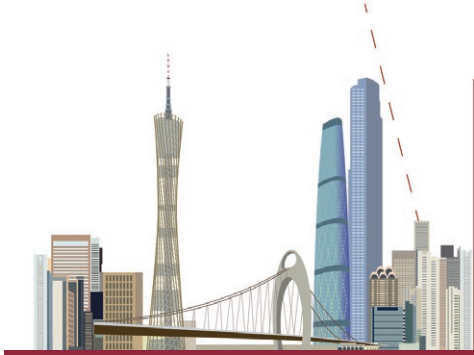
Article 46 of the Anti-monopoly Law states: "Any entity or individual is entitled to report a suspected monopolistic conduct to the authority for enforcement of the Anti-monopoly Law. The authority for enforcement of the Anti-monopoly Law shall keep the identity of the reporting entity or individual confidential. Where a report is in writing, accompanied by relevant facts and evidence, the authority for enforcement of the Anti-monopoly Law shall conduct necessary investigation."

A business may file a report with the SAMR or the local administration for market regulation at provincial level.

2. Filing a lawsuit with the people's court

If a monopolistic conduct causes loss to others (including businesses and natural persons), the victims may choose to report to the authority for enforcement of the Anti-monopoly Law or directly file a lawsuit with the court. After filing a report with the authority for enforcement of the Anti-monopoly Law to pursue administrative liability for the monopolistic conduct, the victim may further initiate a follow-on anti-monopoly civil lawsuit.

Before filing a complaint or initiate a lawsuit, a business may keep a record of the facts of contravention in various forms of storage media, collect and preserve evidence and consult a competition lawyer. Businesses that provide electronic evidence to the enforcement agency or the people's court in the Mainland shall comply with the relevant provisions of the Mainland laws.



(II) Provisions in Hong Kong

1. Making complaints to the Competition Commission

Businesses may complain to the Competition Commission by telephone, e-mail, post, or by completing an online form on the Competition Commission's official website. In addition, complaints may be made in person at the Competition Commission's office by appointment. The Competition Commission accepts complaints provided anonymously and maintains confidentiality of the complainants (the Guideline on Complaints of the Competition Commission provided further explanation).

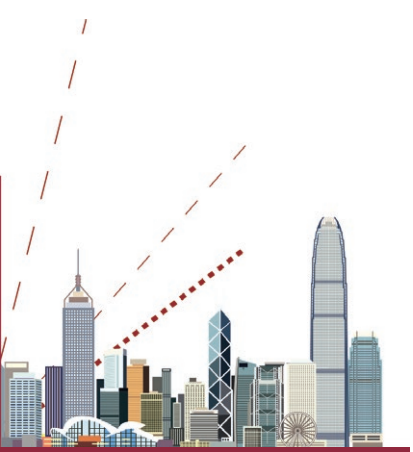
2. Initiating follow-on actions in the Competition Tribunal

After the Competition Tribunal makes a judgement that a conduct is a contravention of the Competition Ordinance, businesses or individuals who believe they have suffered damage as a result of the conduct may bring follow-on actions for damages.

(III) Reporting anti-competitive conducts

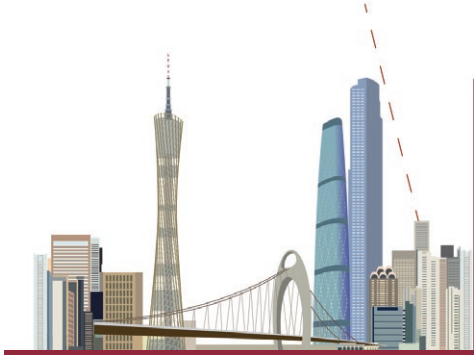
1. Reporting anti-competitive conducts of (Mainland or Hong Kong registered) businesses operating across Guangdong and Hong Kong

Mainland or Hong Kong registered businesses operating across Guangdong and Hong Kong, such as businesses in finance, transport (including port and shipping), tourism, import and export, overseas investment, tendering and bidding, technology and professional services, should comply with the Anti-monopoly Law and the Competition Ordinance and should not engage in anti-competitive conducts. If a business or an individual finds that a Mainland or Hong Kong business operating across Guangdong and Hong Kong has engaged in an anti-competitive conduct that is harmful to its or his own interest, a report can be made to the enforcement agency in its or his jurisdiction, and the enforcement agency in such jurisdiction has the right to conduct an investigation.



2. Reporting anti-competitive conducts of businesses registered overseas (which are registered neither in the Mainland nor in Hong Kong)

If a business registered outside the People's Republic of China (registered neither in the Mainland nor in Hong Kong) engages in an anti-competitive conduct, which has the impact of eliminating or restricting competition in the market of Guangdong or Hong Kong, and is harmful to the interests of Guangdong or Hong Kong businesses, such Guangdong and Hong Kong businesses may report to the enforcement agency in its jurisdiction.



Chapter 5 Appendices

I. Typical cases

(I) Typical monopoly cases in the Mainland

Case 1: Monopoly agreement between six furniture malls on joint boycotts

During a meal gathering, the persons in charge of six competing furniture malls shared the view that third-party marketing platforms had at the time seriously affected the normal operation of the furniture malls. The six malls therefore jointly signed a Notice to All Merchants on the grounds of regulating the operation order and protecting consumer rights. According to the Notice, all merchants were strictly prohibited from participating in any external sales events organized by the media, websites, and third-party marketing platforms. Where non-compliance is found, the merchants would be subject to rigorous investigation and punishment and be driven out by effective measures jointly adopted by the furniture malls. The conduct of the six furniture malls violated the relevant provisions of the Anti-monopoly Law by reaching a monopoly agreement on jointly boycotting the online transactions of the merchants. The six furniture malls were ordered to stop the illegal conduct and were fined a total of RMB 600,000.

Case 2: Monopoly agreement on collusive bidding between competitors

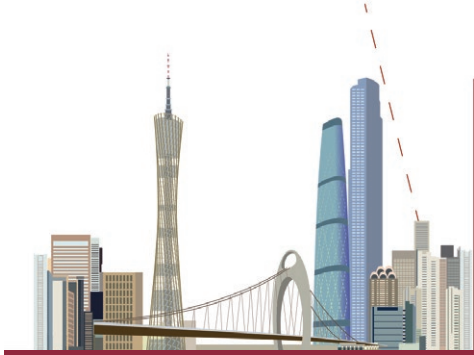
Two pharmaceutical companies are competitors in the market for the sale of a certain drug. The two competitors had several rounds of negotiations and concluded a "horizontal alliance" agreement on the grounds of "leveraging the advantages of co-opetition strategy and jointly developing the market with competitors". They agreed to communicate with each other on bids for a certain drug tender, not to engage in price wars, to implement price co-movement, divide the Mainland market according to sales regions in which they had traditional advantages, coordinate in the bidding and tendering in each other's sales market, and submit a high quote or refrain from submitting a quote in each other's sales market. As a result, the average supply price of the drug was inflated. The two pharmaceutical companies violated the relevant provisions of the Anti-monopoly Law by concluding and implementing a monopoly agreement through fixing or changing product prices and allocating the sales market, etc. The authority for enforcement of the Anti-monopoly Law fined them a total of RMB 57.05 million.

Case 3: Monopoly agreement of a trade association on restricting the amount of products manufactured

An association signed a Contract for Production Suspension and Rectification with some of its member businesses. Under the agreement, some member businesses suspended their production while some maintained their production. Those who maintained their production shall manufacture according to the production quota, sell at the agreed prices, and pay "support fee for production suspension" to those who suspended their production. The conduct of the association and some of its member businesses constituted a monopolistic agreement. The association and the relevant member businesses were ordered to cease implementation of the agreement and were fined a total of RMB 1.56 million. The "support fee for production suspension" was no longer provided.

Case 4: A trade association organizing members to conclude an agreement on fixing product prices, restricting the amount of products manufactured, allocating the sales market and joint boycotts

A ready mixed concrete association repeatedly issued Price Adjustment Notices to its member businesses, requiring them to raise the price of all grades of concrete according to the market trend and actual situations. Through the allocation of monthly output, the total output is determined according to the amount manufactured by each member, and the output of commercial concrete by member businesses was restricted. The monthly output of each member business was limited to 16.09%, 18.7%, 19.56%, 14.35%, 18.26% and 13.04% of the total output respectively. If a member business exceeded the output quota, the association would re-distribute the excess profit to member businesses whose sales did not reach the quota. The association also set up a sales center to undertake projects on a unified basis, issued notices that required its member businesses to purchase raw materials from the designated quarry, took various measures to prevent construction companies from purchasing from non-member businesses and jointly boycotted new businesses. The association and its member businesses committed monopolistic conduct by various means, which eliminated the free competition among manufacturers and broke the rule of fair market trade. The association was fined RMB 500,000 and suggestion was made for cancellation of its registration as a social-organization legal person; the relevant member businesses were ordered to stop the violations with unlawful gains confiscated and fines imposed totaling RMB 286 million.



Case 5: Agreement concluded and implemented by seven liquefied petroleum gas businesses on fixing or changing product prices and allocating the sales market

Seven bottled liquefied petroleum gas businesses in a city reached a Cooperation Agreement for a term of 10 years after a series of negotiations. The agreement stipulated that one of the businesses would be responsible for purchasing gases, receiving phone calls and invoicing at a certain office location on a unified basis. Meanwhile, each of the seven businesses was responsible for its own delivery of gases at the same selling price and depositing its operating income in a designated account on a daily basis. Operating incomes of the seven undertakings were consolidated on a monthly basis. After deducting all common operating costs, the sales income was allocated based on the market shares and agreed percentages for calculation. The agreement reached by the seven undertakings harmed consumers' right of choice by allocating the market and eliminating or restricting market competition. Due to their conclusion and implementation of the agreement on allocating the sales market and unifying and changing prices, the seven liquefied petroleum gas undertakings were subject to fines totaling more than RMB 320,000. Specifically, fines imposed on the business responsible for purchasing gas on unified basis were reduced because it reported to the authority for enforcement of the Anti-monopoly Law without delay and provided key evidence.

Case 6: Contract declared void due to violation of relevant provisions of the Anti-monopoly Law

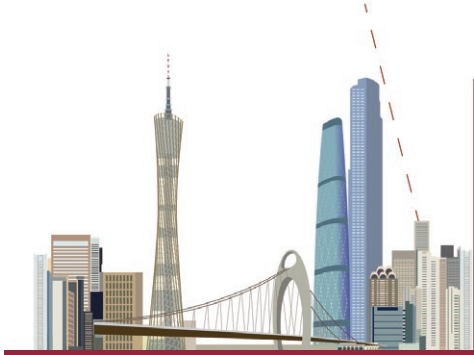
15 driver training companies in a city signed a joint venture agreement and a self-discipline pact, under which they agreed to jointly fund the establishment of a joint venture and to unify fee collection, management and allocation of the training industry in the city. They also agreed on terms regarding the share structure of the joint venture and fixed service prices, as well as a restriction on the free flow of training vehicles and coaches, etc. Two of the companies withdrew from the joint venture and filed a lawsuit, alleging that the joint venture of the other 13 driver training companies constituted monopolistic operation and requested that the joint venture agreement and the self-discipline pact be recognized as void. The court of the first instance only held that relevant provisions in the joint venture agreement and the self-discipline pact constituting horizontal monopoly agreement were void. The court of the second instance held that the joint venture was the main means through which driver training companies implemented the horizontal monopoly agreement and achieved market monopoly. Relevant provisions constituting horizontal monopoly agreement were inseparable from other provisions of the joint venture agreement and the self-discipline pact. The court eventually confirmed that both the joint venture agreement and the self-discipline pact were completely void. A contract shall become void if its terms violate the Anti-monopoly Law.

Case 7: Agreement on fixing resale price and restricting minimum resale price

From 2014 to 2020, Company A formulated the Distributor Management Rules, the Online Market Management Criteria and other documents relating to fixing resale prices and restricting minimum resale prices of products such as converters, wall switches, sockets and other products throughout China (excluding Hong Kong, Macao and Taiwan regions) and controlled product prices by means such as signing distribution contracts and written commitments with distributors. Distributors were required to comply with the price management mechanism formulated by Company A. Company A issued a price adjustment policy to all distributors and both online and offline distributors have put the price management and adjustment policies of Company A into practice. Company A also took measures such as strengthening assessment supervision, entrusting intermediaries to maintain prices and imposing punishment on distributors to further enhance the implementation of the price fixing and price restricting agreements. The conducts of Company A eliminated and restricted competition of the relevant products among distributors and at the retail level, which caused harm to the legitimate rights and interests of consumers and the social public interest. The conducts of Company A constituted conclusion and implementation of a monopoly agreement with the trading counterparties and Company A was ordered to stop the illegal conduct and subject to a fine equivalent to 3% of its sales in the Mainland, totaling RMB 294 million.

Case 8: Abuse of dominant market position by a company

A company possessed the standard-essential patented technologies for mobile communications and had 100% share in a patent market. When licensing to businesses engaging in production of mobile communications equipment, the company compulsorily bundled standard-essential patents with other non-standard-essential patents, and the licensing price was notably higher than that charged to businesses in other countries which are on equal footing in terms of trade. The company also required the licensed businesses to license back their own patented technologies for free. The company's conducts constituted abuses of dominant market position, which was serious in nature, far-reaching and long-lasting. The company was ordered to stop the illegal conducts and was fined 8% of its domestic sales in the preceding year, totaling RMB 6.088 billion.



Case 9: Selling products at unfairly high prices or buying products at unfairly low prices

A gas company charged high heating capacity expansion fee to residential users and charged unfairly high price for the installation of gas pipelines to non-residential users. Through punitive measures such as retroactive discounts and pay-without-negotiation clauses in contracts, the gas company restricted its trading counterparties to exclusively trade with itself and excluded gas sources or fuels provided by third parties. In addition, the company imposed unreasonable trading conditions without justifiable cause, setting the amount of prepayment by users and penalties for overdue payment. The gas company substantially increased the heating capacity expansion fee, resulting in a higher cost and lower income of residents, which seriously harmed the interests of residents, led to the elimination or restriction of market competition, thus constituting abuse of dominant market position, selling products at unfairly high prices more specifically. A fine of RMB 34.85644 million was imposed on the gas company and its unlawful gain in an amount of RMB 5.58578 million was confiscated.

Case 10: Water supplier restricting trade and imposing unreasonable trade conditions

A water supplier made use of its dominant market position in public water supply services in a specific area to restrict the relevant units to purchase secondary water supply equipment only from itself or its designated suppliers, restrict the relevant units to purchase water meters only from itself, charge deposits from temporary users and for installation of water meters from real estate developers, etc., in the process of providing water supply services. Relevant conducts of the water supplier impeded fair competition in the markets of water supply engineering materials and equipment, restricted engineering and construction units' freedom of choice and harmed the legitimate rights and interests of trading counterparties. The conducts of the water supplier constituted abuse of dominant market position and it was ordered to stop relevant illegal conducts. Its unlawful gain in an amount of RMB 141415.97 was confiscated and it was subject to a fine equivalent to 4% of its annual sales, totaling RMB 1627702.77.

Case 11: A company punished for failing to notify a concentration of undertakings in accordance with the law

Company A and Company B entered into an acquisition agreement, under which Company A acquired all shares of Company B for a total price of USD 1 billion. Such transaction reached

the notification thresholds prescribed in the Provisions of the State Council on Thresholds for Notification of Concentrations of Undertakings. However, Company A consummated the acquisition in the absence of the anti-monopoly notification of concentration of undertakings in accordance with the law. The conduct of Company A constituted implementation of a concentration of undertakings in the absence of a notification in accordance with the Anti-monopoly Law and was subject to a fine of RMB 300,000.

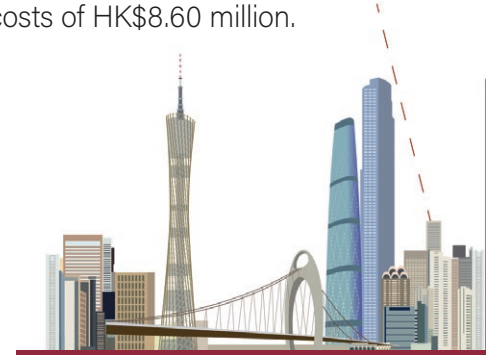
Case 12: Prohibition of the implementation of a concentration of undertakings

On July 10, 2021, the authority for enforcement of the Anti-monopoly Law prohibited the merger of Company A and Company B in accordance with the law. Company A and Company B were two leading game live streaming platforms in China. Company C was a majority shareholder with substantial control over the two platforms. The authority for enforcement of the Anti-monopoly Law was of the view that the merger would "strengthen the dominant position of Company C in the market of game live streaming and lead to elimination or restriction of competition", and "enable Company C to foreclose (competitors from) both upstream and downstream markets, which may lead to elimination or restriction of competition". Therefore, the authority for enforcement of the Anti-monopoly Law decided to prohibit the companies from implementing such concentration of undertakings.

(II) Typical cases of contravention of the Competition Ordinance in Hong Kong

Case 1: Bid-rigging by IT companies (Case No. CTEA 1/2017)

A social services organization in Hong Kong conducted a tender for the installation of a new IT system, with its procurement policy requiring at least five bidders. Among the distributors of the relevant software supplier, only one company intended to submit a bid. In order to satisfy the procurement policy of the procuring organization and enable the interested distributor to win the bid, the software supplier arranged for three other distributors to submit "dummy" bids. In 2017, the Competition Commission took the case to the Competition Tribunal, alleging that the five companies, including the software supplier, engaged in bid-rigging, a serious anti-competitive conduct. The Competition Tribunal ruled that four of the companies contravened the First Conduct Rule of the Competition Ordinance by engaging in bid-rigging and shall pay pecuniary penalties of HK$7.16 million and be liable for the Competition Commission's litigation costs of HK$8.60 million.



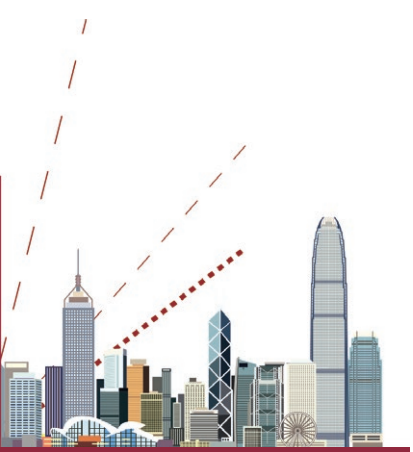
In this case, the Competition Tribunal clarified the standard of proof that applies to competition law cases. The Competition Tribunal pointed out that as pecuniary penalty decisions under the Competition Ordinance are criminal decisions, the Competition Commission shall apply the higher criminal standard of proof, i.e. "beyond reasonable doubt", as opposed to the civil standard of proof that applies in most jurisdictions.

Case 2: Three cases of market sharing and price fixing by renovation contractors (Case No. CTEA 2/2017, CTEA 1/2018 and CTEA 1/2019)

In three similar cases, the Competition Commission found that renovation contractors providing renovation services to 3 different housing estates colluded and decided amongst themselves which floors they would work on. According to their agreements, each contractor would only provide services to residents on its designated floors; when approached by residents from other floors, it would refuse to provide services and would refer them to the "pre-assigned" renovation contractor. The renovation contractors also colluded to set the prices for renovation packages and produced promotional flyers.

Upon receiving complaints from the residents, the Competition Commission launched some investigations and took the cases to the Competition Tribunal between 2017 and 2019, alleging the renovation contractors of engaging in serious anti-competitive conduct of market sharing and price fixing. The relevant individuals were added as respondents in the cases of CTEA 1/2018 and CTEA 1/2019. The Competition Tribunal found all renovation contractors liable for market sharing and price fixing in contravention of the First Conduct Rule of the Competition Ordinance, and ordered them to pay a pecuniary penalty; the individual respondents were also found to have contravened section 91 of the Competition Ordinance and director disqualification orders were made against them.

Some respondents in the case of CTEA 2/2017 made a defense on the basis of economic efficiency arising from the anti-competitive arrangements reached, and thus considered themselves not liable for the contravention. The Competition Tribunal pointed out that when raising economic efficiency as a defense, the respondents shall provide evidence in support and bear the burden of proof; as the respondents in the case failed to present convincing evidence, the Competition Tribunal did not accept their defense.



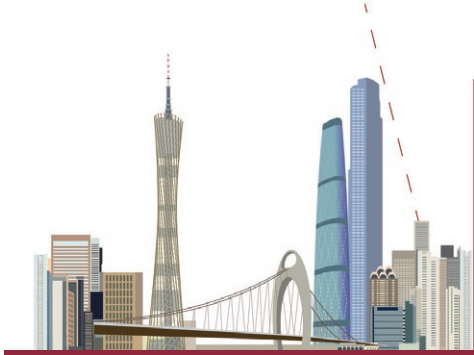
Case 3: Exchange of price information by IT companies (Case No. CTEA 1/2020)

A theme park in Hong Kong conducted a tender for the procurement of IT services. Under the instructions of a software supplier, two distributors exchanged their intended quotations before submitting their bids. Subsequently, one of the distributors lowered its quotation and won the project. The Competition Commission considered this type of exchange of future price information a contravention of the First Conduct Rule of the Competition Ordinance and a serious anti-competitive conduct.

This was the first case resulting from a leniency application in Hong Kong. One of the bidders having engaged in the exchange of price information applied to the Competition Commission for leniency and met all the requirements for receiving leniency. Therefore, the Competition Commission did not bring enforcement actions against this company and kept its information undisclosed to the general public.

This was the first time the Competition Commission made use of an infringement notice. According to section 67 of the Competition Ordinance, the Competition Commission may issue an infringement notice to an undertaking suspected of contravening the First Conduct Rule (limited to serious anti-competitive conduct only) or the Second Conduct Rule to require the undertaking to admit a contravention and make a commitment to rectify, in return for the Competition Commission not commencing proceedings against the undertaking. In this case, the software supplier accepted the infringement notice and committed to take steps to strengthen its competition compliance. As a result, it was not named as a respondent in the Competition Tribunal proceedings.

The third company involved in the case refused to accept the infringement notice and the Competition Commission brought proceedings against it before the Competition Tribunal, seeking pecuniary penalties and a director disqualification order against its director to prohibit him from being involved in the management of a company. In November 2020, with the respondents' admission of their liabilities, the Competition Tribunal ordered the company to pay a pecuniary penalty as well as the Competition Commission's litigation costs, and to adopt certain competition compliance and staff training measures.



II. Contact information of the anti-monopoly / competition law enforcement agencies of Guangdong and Hong Kong

(I) Mainland

1. State Administration for Market Regulation

Address: No. 8 Sanlihe East Road, Xicheng District, Beijing

Postal code: 100820

Tel: 010-88650000

State Administration for Market Regulation website: https://www.samr.gov.cn/

2. Guangdong Administration for Market Regulation

Correspondence address (for reporting): 26/F, Hongdun Building, No. 57 Tiyu West Road, Tianhe District, Guangzhou

Tel (for reporting): 020-12315

Email (for reporting): 12315@gd.gov.cn

Guangdong Administration for Market Regulation website: http://amr.gd.gov.cn/

(II) Hong Kong

1. Competition Commission

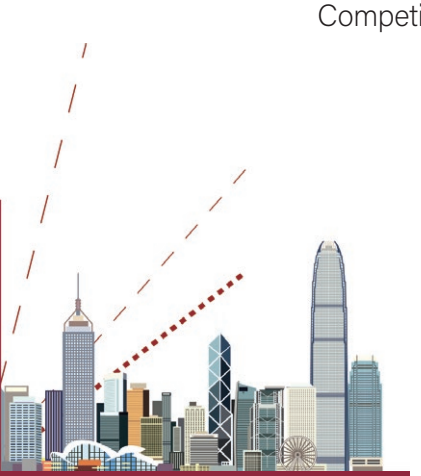
Address: 19/F, South Island Place, 8 Wong Chuk Hang Road, Wong Chuk Hang, Hong Kong

Tel: +852 3462 2118

Fax: +852 2522 4997

Email: enquiry@compcomm.hk

Competition Commission website: www.compcomm.hk



2. Other relevant websites

Competition Tribunal website: www.comptribunal.hk

Communications Authority website: www.coms-auth.hk

III. Lists of anti-monopoly / competition laws, regulations and documents in Guangdong and Hong Kong

(I) List of anti-monopoly laws, regulations, rules, guidelines, documents and judicial interpretations in the Mainland

1. Law

Anti-monopoly Law of the People's Republic of China

2. Administrative regulations

Provisions of the State Council on Thresholds for Notification of Concentrations of Undertakings (under revision by the State Council)

3. Departmental rules

(1) Measures for the Calculation of Turnover for Notification of Concentrations of Undertakings in the Financial Sector

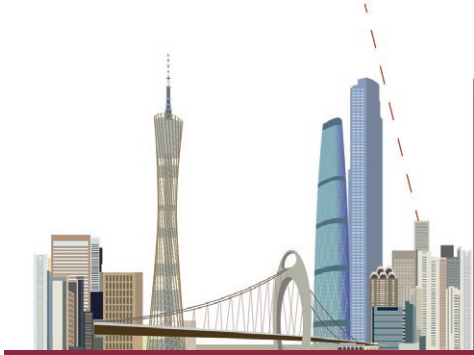
(2) Provisions on Prohibition of Monopoly Agreements

(3) Provisions on Prohibition of Abuse of Dominant Market Position

(4) Provisions on Prevention of Abuse of Administrative Power to Eliminate or Restrict Competition

(5) Provisions on the Review of Concentrations of Undertakings

(6) Provisions on Prohibition of Abuse of Intellectual Property Rights to Eliminate or Restrict Competition



4. Relevant guidelines

(1) Guidelines of the Anti-Monopoly Commission of the State Council on the Definition of Relevant Market

(2) Anti-monopoly Guidelines of the Anti-Monopoly Commission of the State Council on Automobile Industry

(3) Guidelines of the Anti-Monopoly Commission of the State Council on the Application of the Leniency Policy to Cases Involving Horizontal Monopoly Agreements

(4) Anti-monopoly Guidelines of the Anti-Monopoly Commission of the State Council on Intellectual Property Rights Field

(5) Guidelines of the Anti-Monopoly Commission of the State Council on Commitments from Undertakings Involved in Monopoly Cases

(6) Anti-monopoly Compliance Guidelines for Undertakings

(7) Anti-Monopoly Guidelines of the Anti-Monopoly Commission of the State Council on Platform Economy Sectors

(8) Anti-monopoly Guidelines of the Anti-Monopoly Commission of the State Council on Active Pharmaceutical Ingredients Sector

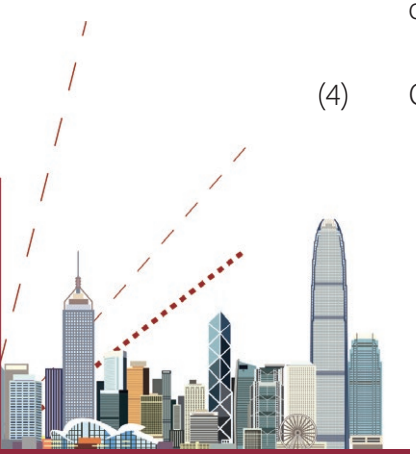
5. Documents

(1) Notice of the State Administration for Market Regulation on Authorization for Anti-monopoly Law Enforcement

(2) Guiding Opinions on Notification of Simple Cases concerning Concentrations of Undertakings

(3) Guiding Opinions on Standardizing Case Names for Notification of Concentrations of Undertakings

(4) Guiding Opinions on Notification of Concentrations of Undertakings



(5) Guiding Opinions on Notification Documents and Materials for Concentrations of Undertakings

(6) Notes on Implementing the Notification Form for Anti-monopoly Review of Concentration of Undertakings

(7) Overseas Anti-monopoly Compliance Guidelines for Enterprises

(8) Anti-monopoly Compliance Guidelines on Concentration of Undertakings

(9) Implementation Plan of the Guangdong Province to Further Promote the Advanced Implementation of Competition Policies in the Guangdong-Hong Kong-Macao Greater Bay Area

6. Judicial interpretations

Provisions of the Supreme People's Court on Several Issues Concerning the Application of Laws in the Trial of Civil Dispute Cases Arising from Monopolistic Conduct (The Supreme People's Court is currently drafting the Provisions of the Supreme People's Court on Several Issues Concerning the Application of Laws in the Trial of Civil Dispute Cases Involving Monopoly, and the judicial interpretations ultimately issued by the Supreme People's Court shall prevail)

(II) List of competition laws and guidelines in Hong Kong

1. Law

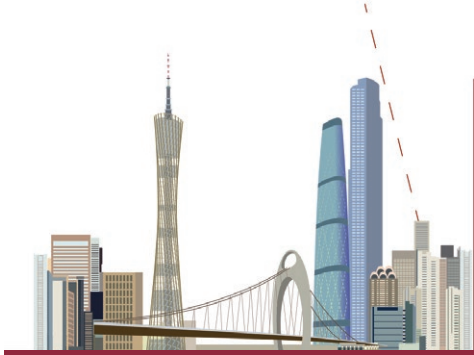
Competition Ordinance (Cap. 619) (14/12/2015) and related subsidiary legislation

2. Guidelines and guiding documents

(1) Guideline on the First Conduct Rule (27/7/2015)

(2) Guideline on the Second Conduct Rule (27/7/2015)

(3) Guideline on the Merger Rule (27/7/2015)



(4) Guideline on Applications for a Decision under Sections 9 and 24 (Exclusions and Exemptions) and Section 15 Block Exemption Orders (27/7/2015)

(5) Guideline on Complaints (27/7/2015)

(6) Guideline on Investigations (27/7/2015)

(7) How to Assess "Turnover" for Exclusions from the Competition Ordinance Conduct Rules (11/2015)

(8) Fees Payable for Making an Application to the Competition Commission (11/2015)

(9) Investigation Powers of the Competition Commission and Legal Professional Privilege (12/2015)

(10) Model Non-Collusion Clauses and Non-Collusive Tendering Certificate (1/2023)

3. Policy documents

(1) Enforcement Policy (19/11/2015)

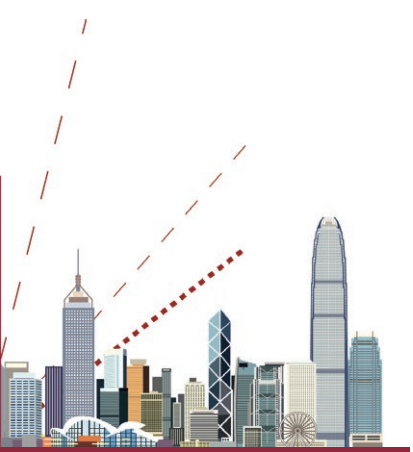
(2) Leniency Policy for Undertakings Engaged in Cartel Conduct (16/4/2020)

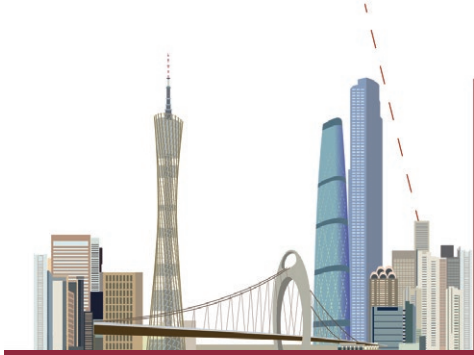
(3) Leniency Policy for Individuals Involved in Cartel Conduct (9/2022)

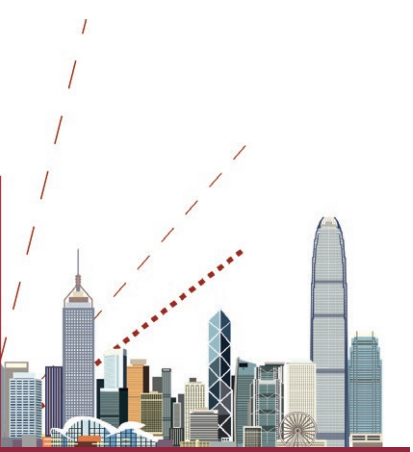
(4) Cooperation and Settlement Policy for Undertakings Engaged in Cartel Conduct (29/4/2019)

(5) Policy on Section 60 Commitments (10/11/2021)

(6) Policy on Recommended Pecuniary Penalties (22/6/2020)







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