

# Competition law fact sheet

Hong Kong

May 2023





---

## Main features of the law

Prohibition on restrictive agreements, concerted practices, and abuse of market power

Merger control in the telecommunications sector

Judicial enforcement model

Extraterritorial effect

Wide-ranging investigation powers

---



---

## Enforcement trends

Focus on cartels and bid-rigging

Increased use of alternative enforcement tools

---

## Substantive provisions

### Main rules

The main source of competition law in Hong Kong is the Competition Ordinance (Cap 619). The Competition Ordinance provides for three main prohibitions:

- A prohibition on restrictive agreements and concerted practices;
- A prohibition on the abuse of a substantial degree of market power; and
- A prohibition on mergers and acquisitions that substantially lessen competition in Hong Kong (limited to the telecommunications sector).

### Restrictive agreements and concerted practices

The First Conduct Rule of the Competition Ordinance prohibits an undertaking (this includes any entity, including natural persons, engaged in economic activity) from making or giving effect to an agreement, engaging in a concerted practice, or as a member of an association of undertakings, making or giving effect to a decision of the association, if the object or effect of the agreement, concerted practice or decision is to prevent, restrict or distort competition in Hong Kong. The prohibition in the Ordinance does not make a distinction between “horizontal” restrictive arrangements (that means, between competitors) and “vertical” restrictive arrangements (that means, between a supplier and a customer or a supplier and a distributor). However the Ordinance lists as “serious anticompetitive conduct” price fixing, market sharing, output restriction and bid-rigging, each of which typically involve horizontal arrangements between competitors. This stricter approach towards horizontal restrictive arrangements is also reflected in the Competition Commission’s *Guideline on the First conduct rule*, whose main focus is on horizontal arrangements, with the law as interpreted by the Commission being less strict regarding vertical restrictions, except for conduct amounting to resale price maintenance (which involves the supplier fixing, maintaining or controlling the resale price of its products).

Restrictive agreements and practices that would otherwise be prohibited under the First Conduct Rule may benefit from a series of exceptions, including where they enhance overall economic efficiency, where they are made to comply with legal requirements, where they are necessary for the performance of a service of general economic interest, or where they are concluded between small enterprises.

### Abuses of market power

The Second Conduct Rule of the Competition Ordinance prohibits an undertaking that has a substantial degree of market power in a market from abusing that power by engaging in conduct that has as its object or effect the prevention, restriction or distortion of competition in Hong Kong (such as predatory pricing, tying, bundling, refusal to deal, margin squeeze practices, and exclusive dealing). The Competition Commission's interpretation reflected in its *Guideline on the Second conduct rule* shows that it is mainly concerned with exclusionary conduct (i.e. foreclosure of competitors), with no discussion in the Commission's guideline of exploitative abuses (i.e. exploiting one's market power to increase profits). It is also noteworthy that contrary to the approach adopted in some other jurisdictions, neither the Ordinance nor the Commission's guidance refers to a market share threshold that may be indicative of a substantial degree of market power.

Abusive practices that would otherwise be prohibited under the Second Conduct Rule may benefit from a series of exceptions, including where they are adopted to comply with legal requirements or where they are necessary for the performance of a service of general economic interest.

### Mergers and acquisitions in the telecommunications sector

The Merger Rule of the Competition Ordinance prohibits mergers and acquisitions that have, or are likely to have, the effect of substantially lessening competition in Hong Kong. The Merger Rule only applies to mergers involving telecommunications carrier licensees.

### Sanctions

The competition law regime in Hong Kong adopts a judicial enforcement model, where sanctions and remedies can only be imposed by the Competition Tribunal. The Tribunal may impose a wide range of sanctions on undertakings (including individuals) found to have contravened the First or Second Conduct Rule or for their involvement in such contraventions. These include pecuniary penalties of up to 10 per cent of the total turnover obtained in Hong Kong for each year of infringement, up to a maximum of three years. Disqualification orders can also be imposed on directors for a period of up to five years.

### Extraterritorial effect

The Competition Ordinance has extraterritorial reach in that it applies to activities conducted outside Hong Kong if they have the object or effect of preventing, restricting or distorting competition in Hong Kong.

## Enforcement regime

### Public and private enforcement

Under the Competition Ordinance, the Competition Commission and the Communications Authority have the power to investigate. Adjudicative powers are conferred on the courts, principally the Competition Tribunal.

#### The Competition Commission

It is the principal competition authority responsible for enforcing the Competition Ordinance through enforcement proceedings before the Competition Tribunal. It comprises five to 16 members appointed by the Chief Executive in Council. The Commission has the power to investigate, as well as powers to issue block exemption orders and decisions confirming individual exemption or exclusion status, issue implementation guidelines, and accept commitments and issue infringement notices.

#### The Communications Authority

It is the competition authority responsible for enforcing the Competition Ordinance in the telecommunications and broadcasting sectors. It has the same powers as the Commission under the Ordinance.

#### The Competition Tribunal

It is a specialised court within the Court of First Instance with the power to impose sanctions and order redress in cases brought before it by the Commission or the Communications Authority. The Tribunal also hears appeals against both competition authorities' decisions and hears follow-on private damages actions concerning contraventions of the conduct rules.

In Hong Kong, private litigants can only bring "follow-on" actions for damages suffered as a result of conduct in breach of the Competition Ordinance after the conduct has been ruled as a contravention of the competition rules by the Competition Tribunal.

### Leniency

The Commission has adopted policies encouraging parties to cooperate with its investigations in return for a reduction of sanctions. These policies are mainly available to parties participating in cartel conduct, such as price-fixing, market sharing or bid-rigging. They differ depending on whether a party is the first to assist the Commission.

### Immunity from prosecution

The Commission's *Leniency policy for undertakings engaged in cartel conduct* and *Leniency policy for individuals involved in cartel conduct* establishes a regime where undertakings and individuals, in exchange for their co-operation in a cartel investigation, can earn immunity from prosecution by the Commission, and thus avoid the risk of pecuniary penalties. The first leniency applicant to report a cartel before and after the Commission opens an initial assessment or investigation is referred to as a "Type 1" and "Type 2" applicant respectively. A Type 1 applicant will be protected from potential follow-on actions while a Type 2 applicant will be required to admit to a contravention of the First Conduct Rule when the victims of the cartel bring follow-on actions (a Type 2 applicant who is an individual and provides substantial assistance to the Commission's investigation and enforcement action will however not be required to admit to a contravention).

### Reduction in proposed sanctions

The Commission's *Cooperation and settlement policy for undertakings engaged in cartel conduct* provides benefits to undertakings that do not meet the conditions for application of the leniency policy and that cooperate with the Commission's investigation. These benefits principally take the form of a reduction in the amount of fines the Commission proposes to seek from the Competition Tribunal, as well as immunity from prosecution for individual employees and company officers. Successful applicants must cooperate with the Commission's investigation and apply jointly with the Commission to the Competition Tribunal for an order made by consent that the undertaking has contravened or been involved in a contravention of the First Conduct Rule.

So far the Communications Authority has not adopted formal leniency or cooperation policies.

### Investigation powers

The Commission and the Communications Authority have wide-ranging investigation powers, including the power to request the production of information and documents, the power to require the attendance of relevant persons at hearings before it and, after obtaining a warrant from a judge of the Court of First Instance, the power to enter and search premises.

## Recent enforcement trends

### Public and private enforcement

#### Cartel and bid-rigging

Since the entry into force of the Competition Ordinance, the enforcement actions brought by the Competition Commission before the Competition Tribunal have focused predominantly on cartel and bid-rigging activities. The Commission has also increasingly sought to take enforcement actions and impose individual liability against representatives of companies, and facilitators of anti-competitive activities in recent proceedings.

#### Alternative enforcement tools

The Commission has increasingly used non-judicial enforcement tools to resolve investigations that do not involve hard-core cartel conduct. The Commission accepted to close three investigations in return for commitments made by the companies involved to address the competition concerns raised by the Commission. Online travel agents have committed to remove "most favoured nation" clauses in their agreements with hotels in Hong Kong. The terminal operators who formed the Hong Kong Seaport Alliance have committed to keep prices and services at pre-alliance levels. Car distributors have committed to remove warranty restrictions requiring maintenance and repair services to be carried out at authorised repair centres. The Commission also makes increasing use of processes under the Competition Ordinance alleviating the need for heavy court procedures, such as infringement notices or consent orders before the Competition Tribunal.

#### Private enforcement

In Hong Kong, private claims for damages suffered as a result of breach of the competition rules are only allowed if the Competition Tribunal has determined that there has been a contravention of the conduct rules. Competition law breaches can also be used as a defence in civil litigation. For instance Meyer, a wholesaler of diesel oil that was sued for non-payment of supplies by its supplier, alleged that its supplier was involved in a price-fixing cartel for the supply of industrial diesel oil as a reason for refusing to pay.

## Main enforcement actions taken by the Competition Commission since the entry into force of the Competition Ordinance

| Year | Type              | Nature                           | Details   |
|------|-------------------|----------------------------------|---|
| 2017 | Block exemption   | Liner shipping                   | A block exemption order for vessel sharing agreements (VSAs) between liner shipping companies to be excluded from the application of the First Conduct Rule was granted for a duration of five years.   |
| 2018 | Decision          | Banking code                     | Application for an individual exemption from the application of First Conduct Rule made by fourteen banking institutions in respect of the Code of Banking Practice was denied.   |
| 2019 | Decision          | Pharmaceutical                   | Application for an individual exemption from the application of the First Conduct Rule made by the Hong Kong Association of the Pharmaceutical Industry in relation to a proposed pharmaceutical sales survey was denied.   |
| 2017 | Court enforcement | IT sector bid-rigging            | Defendants entered into bid-rigging agreements in a tender for IT project. Four out of five defendants found to have contravened and were liable to pecuniary penalties ranging from HK\$187,740 to HK\$2.73m   |
| 2017 | Court enforcement | Housing decorators cartel        | Housing decorators allocated customers and coordinated prices for public housing projects. All ten defendants found to have contravened, with fines ranging from HK\$132,000 to HK\$740,000.  |
| 2018 | Court enforcement | Housing decorators cartel        | Three out of five defendants have settled their case by disposal of proceedings by consent, sanctions yet to be decided.  |
| 2019 | Court enforcement | Housing decorators cartel        | Six respondent companies and three individuals admitted liability. The six respondent companies were sanctioned with fines ranging from HK\$330,000 to HK\$598,000, while the two individuals were fined HK\$200,000 and HK\$600,000. The remaining individual was disqualified as director for 22 months.                          |
| 2020 | Commitments       | Online booking MFN clauses       | Online travel agents committed to remove "most favoured nation" clauses in their agreements with hotels in Hong Kong.   |
| 2020 | Commitments       | Port terminal operators alliance | The port terminal operators forming the Hong Kong Seaport Alliance committed to keep prices and services at pre-alliance levels.  |
| 2020 | Court enforcement | IT sector price-fixing           | Two defendants exchanged future price sensitive information and coordinated their return bids. Both defendants settled the case by summary procedure. Remedies include a fine of around HK\$37,000, requirement to implement competition compliance policy and requirement to provide compulsory competition training to employees. |

|      |  |   |  |
|------|--|---|--|
| 2020 | Court enforcement                          | Textbook cartel                                       | The Commission alleges that three companies and one individual engaged in price fixing, market sharing or bid-rigging in relation to sales of textbooks to students attending primary and secondary schools in Hong Kong. The proceedings are ongoing.   |
| 2020 | Court enforcement                          | Medical gas supplies                                  | The Commission alleges that the defendant company, a supplier of medical gases to hospitals, holds a substantial degree of market power and abused of such power by ceasing or limiting supplies to a downstream competitor on the related market for maintenance of medical gas pipeline systems. The proceedings are ongoing.  |
| 2021 | Commitments following infringement notices | Tourist attractions and transportation tickets cartel | The Commission issued infringement notices alleging that six hotel groups and a tour counter operator facilitated a cartel arrangement between two competing travel service providers. The case was settled through commitments pursuant to which the settling parties admitted to a contravention of the First Conduct Rule, agreed to cease the anticompetitive conduct and to appoint an independent competition law compliance advisor.  |
| 2021 | Court enforcement                          | Inserters cartel                                      | The Commission issued proceedings against three companies for their participation in cartel conduct (agreement not to compete and exchange of competitively sensitive information) regarding the sale of inserters in Hong Kong. All three companies cooperated with the Commission, and the case was decided by way of a consent order adopted by the Competition Tribunal, including payment of pecuniary penalties ranging from HK\$808,000 to HK\$3.372m.  |
| 2021 | Court enforcement                          | Cleansing services cartel                             | The Commission alleges that two companies and three individuals exchanged commercially sensitive information in relation to tenders submitted to the Hong Kong Housing Authority for the procurement of cleansing services for public housing estates and other buildings under the Authority's management. The proceedings are ongoing.   |
| 2022 | Court enforcement                          | Tourist attractions and transportation tickets cartel | The Commission commenced proceedings against four companies and one individual in relation to the alleged tourist attractions and transportation tickets cartel, which already led to commitments by some parties in 2021. Two companies cooperated with the Commission and admitted liability. The case was decided in their respect by way of a consent order by the Competition Tribunal, including payment of pecuniary penalties of HK\$4.177m and HK\$1.6m respectively. An individual who cooperated with the Commission admitted liability and was disqualified (also by consent order) from acting as a director for three years. The proceedings for the two remaining defendants are ongoing. |

|      |                   |                                     |  |
|------|-------------------|-------------------------------------|--|
| 2022 | Court enforcement | Air-conditioning works cartel       | The Commission alleges that two companies and three of their employees fixed prices, shared markets and rigged bids in relation to the supply of air-conditioning works in Hong Kong. One company and its two employees admitted liability and entered into cooperation agreements with the Commission, including a proposal to seek a consent order for a pecuniary penalty of HK\$150m. The proceedings for the remaining defendants are ongoing.  |
| 2022 | Block exemption   | Liner shipping                      | The block exemption order for vessel sharing agreements (VSAs) between liner shipping companies initially granted in 2017 was renewed for a duration of four years.  |
| 2022 | Court enforcement | MSG powder resale price maintenance | The Commission alleges that a company engaged in resale price maintenance in supplying monosodium glutamate (MSG) powder to its two main local distributors. The Commission attempted to resolve the matter by issuing an infringement notice but the company failed to offer a commitment. The proceedings are ongoing.   |
| 2022 | Commitments       | Car warranties                      | In response to the Commission's investigation into the imposition of restrictive warranty terms and conditions on passenger car owners, seven car distributors committed not to enforce the existing warranty restrictions, and not to include them in new warranties issued to passenger car owners.  |
| 2023 | Court enforcement | IT sector bid-rigging               | The Commission alleges that four companies and three individuals engaged in practices including cover bidding when providing quotations for IT solutions in applications for government subsidies under the Distance Business Programme, which amounts to serious anticompetitive conduct in the form of price-fixing, marking sharing, bid-rigging and sharing of competitively sensitive information. One of the defendant companies has agreed to admit liability. The proceedings are ongoing. |

## Main enforcement actions by the Communications Authority

The Communications Authority is conferred concurrent jurisdiction to enforce the Competition Ordinance in respect of the conduct of undertakings operating in the telecommunications and broadcasting sectors, including mergers and acquisitions involving carrier licensees. In agreement with the Competition Commission, the Authority will take the lead on matters which fall within its concurrent jurisdiction with the Competition Commission. Since the coming into force of the Competition Ordinance, the Authority has so far not commenced any formal investigation concerning merger activities, but instead relied on informal engagement with the transaction parties and other third parties in conducting its inquiry. In the transaction concerning the acquisition by HKBN Limited of WTT Holding Corp. in 2018 where the Authority identified competition issues, the Authority decided not to commence an investigation or bring proceedings in relation to the transaction on account of the commitments offered by the parties.

## Key information

### Relevant legislation

The Competition Ordinance (Cap 619)

### Name of authorities and basic contact details

#### Competition Commission

19th Floor, South Island Place,  
No. 8 Wong Chuk Hang Road, Wong Chuk Hang,  
Hong Kong

General line: 3462 2118

Leniency hotline: 3996 8010

Email: [enquiry@compcomm.hk](mailto:enquiry@compcomm.hk)

Web: [www.compcomm.hk](http://www.compcomm.hk)

#### Communications Authority

20th, 25th, 26th, and 29th floors, Wu Chung House,  
213 Queen's Road East, Wan Chai, Hong Kong

General line: 2961 6333

Email: [webmaster@ofca.gov.hk](mailto:webmaster@ofca.gov.hk)

Web: [www.coms-auth.hk](http://www.coms-auth.hk)

### Relevant officials and contacts

#### Competition Commission

##### Members of the Commission:

Mr Samuel Chan Ka-yan (Chairman),  
Professor K. C. Chan, Ms Jennifer Chan Pui-kwan,  
Professor Fong Yuk-fai, Ms Sabrina Ho Shuk-ying,  
Ms Rachel Lam Yan-kay SC, Professor Vincent Lau  
Kin-nang, Mr Patrick Law Fu-yuen, Mr Alan Lui Siu-lun,  
Mr Roy Ng Chun-tat, The Hon Jimmy Ng Wing-ka,  
Ms Sandy Wong Hang-ye, Professor Anna Wong  
Wai-kwan, Mr Eric Xin Yue-sheng and  
Mr Tony Yung Kam-fai.

##### Executives of the Commission:

Mr Rasul Butt (Chief Executive Officer),  
Mr Mark Mills (Executive Director (Legal Services)) and  
Mr Billy Woo (Executive Director (Policy and Advocacy)).

#### Communications Authority

##### Members of the Authority:

Ms Winnie Tam Wan-chi (Chair), Ms Eliza Lee Man-ching  
(Vice-chair), Dr. Hubert Chan Chung-ye, Mr Nicolas  
Chan Hiu-fung, Professor Karen Chan Ka-yin, Ms Amy  
Fung Dun-mi, Mr Michael Hui Wah-kit, Professor Vincent  
Lau Kin-nang, Mr Patrick Law Fu-yuen, Professor Leung  
Siu-fai, Mr Simon Wong Kwong-yeung and Mr Chaucer  
Leung Chung-yin.

##### Executives of the Authority:

Mr Chaucer Leung (Director-General of Communications),  
Mr Esmond Chiu (Deputy Director-General  
(Telecommunications)) and Mr Tony Li (Deputy Director-  
General (Broadcasting)).



## Contacts

### **Marc Waha**

#### **Partner**

Tel +852 3405 2508

[marc.waha@nortonrosefulbright.com](mailto:marc.waha@nortonrosefulbright.com)

### **Nicolas Cassauba**

#### **Counsel**

Tel +852 3405 2526

[nicolas.cassauba@nortonrosefulbright.com](mailto:nicolas.cassauba@nortonrosefulbright.com)

### **Joe Lee**

#### **Associate**

Tel +852 3405 2310

[joe.lee@nortonrosefulbright.com](mailto:joe.lee@nortonrosefulbright.com)

### **Danyi Xu**

#### **Associate**

Tel +81 3 5218 6839

[danyi.xu@nortonrosefulbright.com](mailto:danyi.xu@nortonrosefulbright.com)

### **Lydia Fung**

#### **Knowledge Assistant - Legal**

Tel +852 3405 2527

[lydia.fung@nortonrosefulbright.com](mailto:lydia.fung@nortonrosefulbright.com)

---

**Our global offices**

Norton Rose Fulbright is a global law firm. We provide the world's preeminent corporations and financial institutions with a full business law service. We have more than 3000 lawyers and other legal staff based in Europe, the United States, Canada, Latin America, Asia, Australia, Africa and the Middle East.

---

**7000+**

People worldwide

---

**3000+**

Legal staff worldwide

---

**50+**

Offices

---

**Key industry strengths**

Financial institutions

Energy, infrastructure  
and resources

Transport

Technology

Life sciences and  
healthcare

Consumer markets



📍 Our office locations

### Europe

|            |            |
|------------|------------|
| Amsterdam  | London     |
| Athens     | Luxembourg |
| Brussels   | Milan      |
| Düsseldorf | Munich     |
| Frankfurt  | Paris      |
| Hamburg    | Piraeus    |
| Istanbul   | Warsaw     |

### United States

|             |               |
|-------------|---------------|
| Austin      | Minneapolis   |
| Chicago     | New York      |
| Dallas      | St Louis      |
| Denver      | San Antonio   |
| Houston     | San Francisco |
| Los Angeles | Washington DC |

### Canada

|          |           |
|----------|-----------|
| Calgary  | Québec    |
| Montréal | Toronto   |
| Ottawa   | Vancouver |

### Latin America

|             |
|-------------|
| Mexico City |
| São Paulo   |

### Asia Pacific

|                      |
|----------------------|
| Bangkok              |
| Beijing              |
| Brisbane             |
| Canberra             |
| Hong Kong            |
| Jakarta <sup>1</sup> |
| Melbourne            |
| Perth                |
| Shanghai             |
| Singapore            |
| Sydney               |
| Tokyo                |

### Africa

|                        |
|------------------------|
| Bujumbura <sup>3</sup> |
| Cape Town              |
| Casablanca             |
| Durban                 |
| Harare <sup>3</sup>    |
| Johannesburg           |
| Kampala <sup>3</sup>   |
| Nairobi <sup>3</sup>   |

### Middle East

|                     |
|---------------------|
| Dubai               |
| Riyadh <sup>2</sup> |

<sup>1</sup> TNB & Partners in association with Norton Rose Fulbright Australia

<sup>2</sup> Mohammed Al-Ghamdi Law Firm in association with Norton Rose Fulbright US LLP

<sup>3</sup> Alliances

## NORTON ROSE FULBRIGHT

Norton Rose Fulbright is a global law firm. We provide the world's preeminent corporations and financial institutions with a full business law service. We have more than 3500 lawyers and other legal staff based in Europe, the United States, Canada, Latin America, Asia, Australia, Africa and the Middle East.

**Law around the world**

[nortonrosefulbright.com](http://nortonrosefulbright.com)

Norton Rose Fulbright Verein, a Swiss verein, helps coordinate the activities of Norton Rose Fulbright members but does not itself provide legal services to clients. Norton Rose Fulbright has offices in more than 50 cities worldwide, including London, Houston, New York, Toronto, Mexico City, Hong Kong, Sydney and Johannesburg. For more information, see [nortonrosefulbright.com/legal-notices](http://nortonrosefulbright.com/legal-notices). The purpose of this communication is to provide information as to developments in the law. It does not contain a full analysis of the law nor does it constitute an opinion of any Norton Rose Fulbright entity on the points of law discussed. You must take specific legal advice on any particular matter which concerns you. If you require any advice or further information, please speak to your usual contact at Norton Rose Fulbright.

© Norton Rose Fulbright LLP. Extracts may be copied provided their source is acknowledged.  
51716\_EMEA - 05/23