



ANTITRUST IN ASIA: ONE SIZE FITS ALL?

ASEAN, CHINA, HONG KONG, INDIA...

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Criminal standard of proof not insurmountable, Hong Kong antitrust chief says as he ponders bid for application of civil standard

By Xu Yuan

The burden of proving an antitrust violation beyond reasonable doubt before a court is weighty, but not impossible for Hong Kong's Competition Commission, its chief says.

Recent rulings on the first two cases brought by the regulator are proof that the "criminal standard, while high, is not insurmountable, especially in cartel cases," Competition Commission Chief Executive Brent Snyder told an antitrust conference today in Hong Kong.

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Snyder said that the regulator, which had argued before the judge that the applicable standard should be civil, was still assessing whether to appeal on that point and thinking about its impact on future enforcement.

"It's certainly possible to prove cases at that high standard," he said. "However, the higher standard does mean that the quality of the evidence that we present at trial is even more important."

5G won't snatch regulatory prerogative from Hong Kong's telecoms watchdog, chairwoman says

By Xu Yuan

The application of 5G technology in sectors other than telecommunications won't result in regulatory issues being beyond the purview of Hong Kong's communications watchdog, its chairwoman says.

"I don't think we will consider that the technology and the shaping of it will take this outside the ability or purview of the [Communications] Authority in a way that would leave it to be tackled by some other authority," Chairwoman Winne Tam of the Communications Authority told an antitrust conference today in Hong Kong.

Tam was answering a question on whether the development of fifth-generation mobile technology, which not only facilitates superior and added functionality among mobile devices but also the entire Internet of Things, would mean that related competition issues would slip beyond the authority of the telecoms regulator because 5G involves a wide range of sectors, including logistics, medical devices and driverless cars.

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Hong Kong's Communications Authority has concurrent jurisdiction with the city's Competition Commission, and ordinarily takes a lead role in antitrust enforcement in the telecommunications sector.

To read the full texts, visit MLex's website.

Reports by PaRR©

Hong Kong antitrust agency to further engage with government to facilitate competition

By Joyce Chen

The Hong Kong antitrust agency will engage more strongly with the government to facilitate greater competition in public schemes, Chief Executive Brent Snyder said in the Island state today (24 May).

Speaking at a conference –“Antitrust Asia: One Size Fits All”–co-organized by Concurrences Review, City University of Hong Kong Law School and the Hong Kong Competition Association, Snyder told the audience that the recent taxi scheme proposed by the Hong Kong government was “deeply flawed from a competition standpoint”.

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Thus, the competition watchdog is to put increasing focus on engaging and advising the government, the CEO added.

Singapore chief says labor market negatively impacted by competition

By Joyce Chen

Competition can be a “bad thing” for the labor market, the chief executive of Competition and Consumer Commission of Singapore (CCCS) said at a conference today (24 May) in Hong Kong.

Agreeing that antitrust agencies should closely monitor anticompetitive misconduct in the market, Han Li Toh said that boosting wage competition could drive salaries down and hurt labor.

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During the same session, the Chief Executive of the Competition Commission (CC) of Hong Kong also cautioned that both employers and employees should understand “the amount of collectiveness really needs to be limited” when it comes to collective bargaining agreements.

It could be subject to competition concerns if parties go “further than [what] is necessary,” he said, while agreeing that the commission generally has no objection to collective bargaining when it is achieved with full knowledge of both employers and employees.

Digital economy viewed as key focus area for antitrust agencies

By Freny Patel and Joyce Chen

Young agencies should not adopt a wait and watch approach to the digital economy if their jurisdictions are impacted, the UNCTAD's competition legal affairs officer Pierre Horna said in Hong Kong on Friday (24 May).

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Singapore's Chief Executive Han Li Toh told the same panel that digital is one of his agency's key focus areas, identifying algorithms as of equal relevance both to mergers and cartels, as machines could be fixing prices by themselves.

Citing Uber Technologies sale of its ASEAN assets to its regional rival Grab, Toh said that one of the remedies imposed by the Competition and Consumer Commission of Singapore (CCCS) referenced algorithms.

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"With only one player left post merger, can you imagine how high the price would be during peak hours," Toh said, justifying why the CCCS had to impose remedies with regards to search pricing.

Hong Kong being a relatively new antitrust agency, has not prioritized the digital economy, Chief Executive Officer Brent Snyder told the audience.

Hong Kong antitrust authority assessing options in wake of first tribunal decisions

By Freny Patel

Hong Kong's antitrust authority is still assessing its next course of action and the impact of the Competition Tribunal's first two decisions on its future enforcement, the agency's chief executive officer said in Hong Kong today (24 May).

Last week the tribunal handed down two decisions, which were largely in favor of the Competition Commission, with 14 of the 15 named respondents found to have contravened the Competition Ordinance. Tribunal Chairman Justice Godfrey Lam found that a criminal level of proof applies to the commission's pecuniary penalty actions.

Chief Executive Officer Brent Snyder said that though the Commission had "argued

and believes that a civil standard of proof should apply to its cases, that does not mean that we have concluded that Justice Lam's ruling is wrong or that we are going to appeal".

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"In my experience trial cases are far stronger if the evidence of a leniency applicant is supplemented and corroborated by evidence that comes from companies and individuals that do not receive leniency and instead admit a contravention and are penalized," Snyder said.

The lack of clarity in Hong Kong's policy may have led to the lack of cooperation because the commission did not receive any corporate cooperation in connection with the first two cases, Snyder said. As a result, the Commission released its cooperation and settlement policy in late April, he added.

Hong Kong telecom regulator sees no major regulatory changes amid advent of 5G

By Joyce Chen

No "radical change" will be seen in the manner in which the Communication Authority (CA) of Hong Kong regulates the market despite the advent of 5G technology, Winnie Tam, chairperson of the authority, said in Hong Kong today (24 May).

Delivering the keynote at "Antitrust Asia: One Size Fits All" co-organized by Concurrences Review, City University of Hong Kong Law School and the Hong Kong Competition Association, Tam recognized the need to consider technologies such as the Internet of Things in market regulation, but there would be no significant changes in the CA's work as the nature of licensing work remains the same.

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The CA is currently one of the two competition watchdogs overseeing the Hong Kong communication market. The other agency is the Competition Commission (CC) of Hong Kong.

Asked if the two regulators would consolidate, Tam said it was unlikely for the time being. However, if the merger rule under the Competition Ordinance is made applicable to the broadcasting sector, the agencies will need to examine workloads and capabilities, as well as work out the best way for both parties to move forward.

To read the full texts, visit PaRR's website.

Report by GCR©

Hong Kong enforcer mulls appeal despite winning

By Charles McConnell

Hong Kong's competition watchdog remains undecided about whether it will appeal against a ruling that requires it to prove competition violations beyond a reasonable doubt, the enforcer's chief executive has said.

Hong Kong's Competition Commission successfully proved the existence of two cartels in its first cases ever under the Competition Ordinance, which came into effect in December 2015. One centred on bid-rigging for an information technology project, and the other on decoration services at a public housing estate in Hong Kong.

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Brent Snyder, chief executive of the Competition Commission, said today that the agency is assessing Justice Lam's position on the standard of proof. He spoke on a panel at the Concurrences conference on antitrust in Asia. "The commission has argued and believes that a civil standard of proof should apply to its cases, but that doesn't mean that we've concluded that Justice Lam's ruling is wrong or that we're going to appeal," Snyder said. "We're still assessing that and also thinking about its impact in our future enforcement."

He praised Justice Lam for publishing "extremely thorough and well-written" decisions that set foundational precedents on several issues. The rulings demonstrate "that a criminal standard, while high, is not insurmountable, especially in cartel cases," Snyder said.

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To read the full text, visit [GCR's website](#).