

COMPETITION ENFORCEMENT AGENCIES

HANDBOOK 2019

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ELIG Gürkaynak Attorneys-at-Law

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Competition Enforcement Agencies Handbook 2019

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Competition Enforcement Agencies Handbook 2019

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Global Competition Review's 2019 edition of the *Competition Enforcement Agencies Handbook* provides full contact details for competition agencies in over 100 jurisdictions, together with charts showing their structure and a Q&A explaining their funding and powers. The information has been provided by the agencies themselves and by a panel of specialist local contributors.

The *Competition Enforcement Agencies Handbook* is part of the *Global Competition Review* subscription service, which also includes online community and case news, enforcer interviews and rankings, bar surveys, data tools and more.

We would like to thank all those who have worked on the research and production of this publication: the enforcement agencies and our external contributors.

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Questions and answers

How long is the head of agency's term of office?

Ms Anna Wu, chairperson, was reappointed in 2018 on a two-year term.

When is he or she due for reappointment?

The chairperson's current term will end on 30 April 2020.

Which posts within the organisation are political appointments?

The Commission chairperson and members are appointed by the Chief Executive of the Hong Kong Special Administrative Region.

What is the agency's annual budget?

The agency received about HK\$131 million of subvention from the government for its operation in 2018–2019.

How many staff are employed by the agency?

As of December 2018, 58.

To whom does the head of the agency report?

The chairperson reports to the Chief Executive of the Hong Kong Special Administrative Region.

Do any industry-specific regulators have competition powers?

The Communications Authority shares jurisdiction with the Competition Commission in relation to the conduct of licensees under the Telecommunications Ordinance and Broadcasting Ordinance of Hong Kong.

If so, how do these relate to your agency's role?

The Communications Authority and Competition Commission have signed a memorandum of

understanding for coordinating the performance of their respective roles under their concurrent jurisdiction.

May politicians overrule or disregard authority's decisions? If they have ever exercised this right, describe the most recent example.

Politicians do not have any right to overrule or disregard the Competition Commission's decisions.

Does the law allow non-competition aims to be considered when your agency takes decisions?
No.

Which body hears appeals against the agency's decisions? Is there any form of judicial review beyond that mentioned above? If so, which body conducts this? Has any competition decision by the agency been overturned?

To prove a contravention of the Competition Ordinance, the Competition Commission must take proceedings in the Competition Tribunal. The Competition Commission is also empowered to issue decisions itself, including on applications from businesses as to whether or not the exclusions or exemptions in the Competition Ordinance apply. Many of these decisions are also reviewable by the Competition Tribunal. As of December 2018, the Competition Commission has made two decisions, one in relation to certain liner shipping agreements, the other relating to the industry code of conduct applicable to retail banking. The 30-day period for bringing a review of the decisions has expired and no application for a review has been made.

Has the authority ever blocked a proposed merger? If yes, please provide the most recent instances.

No. (Note: the merger rule applies only to undertakings in the telecommunications sector; see further below.)

Has the authority ever imposed conditions on a proposed merger? If yes, please provide the most recent instances.

No. (Note: the merger rule applies only to undertakings in the telecommunications sector; see further below.)

Has the authority conducted a Phase II investigation in any of its merger filings? If yes, please provide the most recent instances.

Since the full implementation of the Competition Ordinance on 14 December 2015, and up to 31 December 2018, the Communications Authority has looked into

several transactions under the Merger Rule, and considered that no further action was required.

Has the authority ever pursued a company based outside your jurisdiction for a cartel offence? If yes, please provide the most recent instances.

The Competition Commission has power to take action against companies outside Hong Kong for cartel offences involving conduct that has the object or effect of preventing, restricting or distorting competition in Hong Kong, but so far has not completed any cartel cases against companies based in another jurisdiction.

Do you operate an immunity and leniency programme? Whom should potential applicants contact? What discounts are available to companies that cooperate with cartel investigations?

The Competition Ordinance provides for leniency agreements. Under the Competition Commission's Cartel Leniency Policy, the Competition Commission will agree not to bring proceedings in the Competition Tribunal for a pecuniary penalty against the first cartel member who reports the cartel conduct to the Competition Commission and meets all the requirements for receiving leniency under the Policy. These requirements include fully cooperating with the Commission's investigation. Potential applicants should call the Competition Commission's Leniency Hotline at +852 3996 8010.

Is there a criminal enforcement track? If so, who is responsible for it? Does the authority conduct criminal investigations and prosecutions for cartel activity? If not, is there another authority in the country that does?

There is no criminal enforcement track. Under the Competition Ordinance, the Competition Commission is the only body that has the right to investigate the alleged contravention, and is the only body that can take first instance actions in the Competition Tribunal.

Are there any plans to reform the competition law?

The Competition Commission is working with the Hong Kong Special Administrative Region Government on the review of the Competition Ordinance and it is for the government to decide on the scope and timeline of the review.

When did the last review of the law occur?

Not applicable.

Do you have a separate economics team? If so, please give details.

The Competition Commission has an Economics and Policy division.

Has the authority conducted a dawn raid?

Yes.

Has the authority imposed penalties on officers or directors of companies for offences committed by the company? If yes, please provide the most recent instances.

Not to date, but the Competition Ordinance permits the Competition Commission to seek the imposition of pecuniary penalties against persons involved in a contravention as well as disqualification of a director of a company that contravenes the Competition Ordinance. In 2018, the Competition Commission commenced proceedings in the Competition Tribunal against three renovation companies and two individuals for alleged customer allocation and coordinated pricing in the provision of renovation services in a residential housing estate. It was the first time the Competition Commission brought direct enforcement action against individuals who were involved in the conduct.

What are the pre-merger notification thresholds, if any, for the buyer and seller involved in a merger?

There is no cross-sector merger control regime in Hong Kong. As indicated previously, the merger rule in the Competition Ordinance only applies where an undertaking that directly or indirectly holds a 'carrier licence' within the meaning of the Telecommunications Ordinance is involved in a merger. For such mergers, there are no pre-merger notification thresholds.

Are there any restrictions on investments that involve less than a majority stake in the business?

There are no specific restrictions on investments involving less than a majority stake, though such investments in the telecommunications sector could potentially be caught by the merger rule if the stake conferred 'control' over the acquired undertaking. In most cases, however, control would not arise with a less than majority stake.

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