

## Competition Law Alert

Dear Clients & Friends

### Hong Kong competition regime taking shape: Introducing the new Competition Bill

On 2 July 2010, the Hong Kong government published the Competition Bill (the “**Bill**”). The Bill will be Hong Kong’s first general competition legislation and will be introduced into the Legislative Council on 14 July 2010.

Allen & Gledhill Head of Competition & Antitrust, Daren Shiau notes that, according to the Legislative Council Brief, the objective of the Bill is to prohibit and deter undertakings in all sectors from adopting abusive or other anti-competitive conduct which has the object or effect of preventing, restricting and distorting competition in Hong Kong. The Bill has defined “undertaking” to mean 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.

Set out below are some of the key features of the Bill:

- **Anti-competitive agreements:** The Bill prohibits anti-competitive agreements, concerted practices and decisions that prevent, restrict or distort competition in Hong Kong. Under the Bill, this prohibition is described as the “**First Conduct Rule**”.
- **Abuse of dominance:** An undertaking that has a substantial degree of market power in a market must not abuse that power by engaging in conduct that has, as its object or effect, the prevention, restriction or distortion of competition in Hong Kong. This prohibition is described as the “**Second Conduct Rule**”.
- **Prohibition against anti-competitive mergers:** There would be a prohibition against mergers or acquisitions applying only to carrier licences granted by the Hong Kong Telecommunications Authority that have, or are likely to have, the effect of substantially lessening competition in Hong Kong. This prohibition is described as the “**Merger Rule**”.
- **Anti-competitive activities outside Hong Kong:** Anti-competitive activities outside Hong Kong will be caught so long as they have an effect on competition in any market in Hong Kong.
- **Exclusions:** The First Conduct Rule and/or the Second Conduct Rule will not apply to any agreement that enhances or would be likely to enhance overall economic efficiency, or any agreement to the extent that it is made to comply with a legal requirement, or any undertaking entrusted by the government with the operation of services of general economic interest. The Merger Rule will not apply to any merger that enhances or would be likely to enhance overall economic efficiency.
- **Exemptions:** Agreements or conducts may be exempted from the First Conduct Rule and/or the Second Conduct Rule if there are exceptional and compelling reasons of public policy or if the agreements or conducts are required to avoid a conflict with international obligations. A merger may also be exempted from the Merger Rule if there are public policy grounds to do so.
- **Competition Commission and Competition Tribunal:** An independent statutory Competition Commission (the “**Commission**”) will be established to investigate and bring proceedings before the Competition Tribunal (the “**Tribunal**”) in respect of anti-competitive conduct either on receipt of

complaints, on its own initiative, or on referral from the government or a court. The Tribunal will be established within the Hong Kong Judiciary as a superior court of record to hear and adjudicate competition cases brought by the Commission, private actions as well as reviews of determination of the Commission.

- **Remedies:** The Tribunal will be empowered to apply a full range of remedies for contraventions of a competition rule, including pecuniary penalties not exceeding 10% of the turnover (including global turnover) of the undertaking(s) in breach of the competition rule for the year in which the contravention occurs, awards of damages to aggrieved parties, grant of interim injunctions during investigations or proceedings, termination or variation of an agreement or merger, and disqualification orders against directors and others who have contributed to the contravention of the competition rule.

### Reference materials

The following documents are available on the Hong Kong Legislative Council website [www.legco.gov.hk](http://www.legco.gov.hk):

- [Legislative Council Brief](#)
- [HK Competition Bill](#)

### Further information

Should you have any queries as to how this development may affect your business, please do not hesitate to get in touch with the following:

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*Asia 2010* have identified it as “a market-leading competition team, which has led the way on merger filing clearance since the establishment of the CCS’ merger control regime”. The practice has to-date acted in approximately three-quarters (15 out of 21) of all merger control notifications lodged with the CCS. Further, it was commissioned to establish the merger regimes under both Singapore’s Airport Competition Code as well as the country’s Media Market Competition Code. The practice has also defended clients in several landmark antitrust hearings.

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Yours faithfully  
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