

— Check against Delivery —

## **Global Competition in Asia's World City**

**Speech by Ms Anna Wu Hung-yuk  
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Distinguished guests, ladies and gentlemen, welcome to Hong Kong and my sincere thanks for this invitation to speak.

Your conference has come to Hong Kong at an important time for the Competition Commission. We have seen in recent weeks an explosion of media commentary on the Ordinance. The next two days of discussion are happening in parallel to an on-going intensive period of work for the Commission and a crucial point in the development of competition law in Hong Kong.

With so many of you here from overseas, I would like to focus my remarks today on the global nature of competition law and its enforcement in Hong Kong.

However, before I move onto that, let me update you on:

- where we are at;
- and what is our roadmap towards full commencement of the Competition Ordinance.

### **Getting Ready for Full Implementation**

Competition law in Hong Kong has long been “work in progress”. Since the 1990’s, there had been a growing movement within Hong Kong to push for a cross-industry competition regime starting with the Consumer Council studies on Hong Kong’s competitive environment.

After careful legislative scrutiny and an extensive public consultation process, finally in June 2012 the Competition Ordinance was enacted. Last summer, I was appointed as Chairperson along with 13 other Commission Members who have experience in industry, commerce, economics, law, small and medium enterprises and public policy. In addition, in July last year the President and Deputy President of the Competition Tribunal were appointed in order to begin the necessary preparations within the judiciary.

Since then, we at the Commission have been laying the foundations to establish a fully working and operational organisation. For the past year we have focussed on three main aspects:

- **First, a home.** With the support of a temporary seconded government team, we have established the Commission office, our internal procedures and the necessary financial and administrative systems.
- **Second, recruitment.** We have conducted a worldwide recruitment exercise for an executive team. We now have in place all our Senior and Executive Directors and other professional staff necessary for current activities. Hopefully, we will be able to announce the appointment of the Chief Executive Officer soon - our priority has been to find the right person to fill the post and we are working very hard on this.
- **Third, advocacy.** We have a statutory function to explain the benefits of competition and encouraging compliance to Hong Kong businesses. We have thus begun to help prepare Hong Kong for competition law through a number of meetings and seminars with Chambers, trade associations, and other SME and industry representatives.

With those cornerstones in place, we launched a month ago the “Engagement” phase of our preparations. Under the Ordinance, we are tasked to develop a set of guidelines that will set out:

- how the Commission will interpret the competition rules;
- what type of processes we will have in place for exclusion and exemption applications; and
- how we will deal with complaints and investigations.

We are working to ensure that our guidelines will be practical, understandable and useable for all the relevant stakeholders in Hong Kong.

Our Engagement Paper and Discussion Note, both of which are available on our website, aims at reaching out to businesses and the general public to explain our role and advocate the benefits and key elements of the Ordinance. We have invited feedback from all who have an interest in competition law in Hong Kong. In particular, we are seeking better information on common trade practices in Hong Kong for us to develop the draft guidelines. We expect to be ready in September to publish the drafts for formal consultation.

During that period we will be engaging with legislators as well as businesses and the general public. Based on the comments and feedback we receive, we will then publish the final version of the Guidelines alongside a number of other publications that will help businesses and the public understand the Ordinance and how the Commission will approach its enforcement.

The Commission's target is to complete all its preparatory work by the first half of 2015. The government and the Tribunal will also be undertaking preparatory work in parallel.

Until then, for those who have questioned whether competition law would be a reality here in Hong Kong, there can now be no doubt we are on a clear path to implementation. In recent weeks, we have been highlighting a simple message to the public and business: the Ordinance is coming, so be prepared.

But let me now turn to my main comments, on the theme of **“Global competition in Asia's world city”**.

Today I want to reassure Hong Kong businesses that they are not being singled out for our future enforcement actions. There have been some comments from the business community, trade associations and the media that Hong Kong companies may be disadvantaged by the Competition Ordinance. The claim is that we at the Commission will go for local “easy targets” and avoid multinationals with a presence in Hong Kong.

The truth is that we have just one target in our sights: anti-competitive conduct that hurts Hong Kong businesses, consumers and the wider economy. In deciding if and when to intervene in a particular case, we will consider a range of “severity factors” – the first of which is whether there has been or will be substantial harm or impact in Hong Kong.

So, claiming we will target Hong Kong businesses misunderstands Hong Kong and misunderstands competition in a global context. And that is why I want to reset the narrative here today.

### **Hong Kong's trade flows**

Anyone who is even mildly familiar with the history of Hong Kong will know that external trade and freedom of the market matter a great to us.

Whether it be “globalisation” or “world trade” and by whatever label called, here in Hong Kong, we know, understand, and acutely feel the impact of business trends, market conduct and decisions made by companies and governments overseas.

Let me give you a couple of recent numbers I saw that reminded me of Hong Kong's global influences:

- Nearly 60% of the companies listed on our stock exchange are from outside of Hong Kong.

- There are over 7,000 non-Hong Kong companies operating here – a quarter of which have chosen Hong Kong as their regional headquarters; and
- Nearly 75% of goods imported into Hong Kong are not consumed locally but re-exported.

I'm not in the habit of citing Bill Clinton very often, but I think he got it right when he once described Hong Kong as "*Exhibit A in the case for global interdependence and its benefits*".

And just like Hong Kong, we know that most businesses no longer limit their view to a national perspective. Whether it is credit cards, search engines, e-commerce platforms or financial trading, fast paced technology and the internet's predominance in our daily lives have ensured a worldwide web of complex trading relationships.

With those global businesses ever expanding, compliance with local laws has become more challenging – especially when there may be new laws or perceived unpredictability in their enforcement. In responding to that shift, companies are now more often working with regional or global business models – trying to standardise and globalise their contracts and commercial practices.

But what does this all mean for competition law in Hong Kong?

I think it has two main consequences which I would like to explore.

- First, the wider reach of our investigations - Hong Kong's competition law cannot be confined to Hong Kong businesses.
- Second, global cartelists meeting or doing business here should no longer feel at home in Hong Kong.

### **The global reach of Hong Kong's Competition Ordinance**

As I indicated earlier, the speed and frequency of trade winds sweeping through Hong Kong means we are more likely to acutely feel the impact of anti-competitive behaviour that occurs beyond our border. Our Ordinance gives the Commission the power to investigate activities that impact on competition in Hong Kong – which is quite different from merely investigating activities in Hong Kong.

The Commission therefore will not limit itself to addresses in Hong Kong. I'll give you a couple of examples of where this could be relevant:

- **Market definition.** As you will be aware, correctly determining the relevant market is important in properly assessing anti-competitive impact. Particularly when we have ever deeper relationships with the rest of Asia, we will need to carefully analyse the geographic scope of any activities in our

investigations to ensure that we are looking at the right problem and at the right persons.

In some sectors, we may see a “market” as no more than a 15 minute travel radius or that it be confined to a specific district. Or, based on regulatory restrictions, Hong Kong itself may be the relevant market and no wider. But I am sure we can also envisage scenarios in which a wider market in some industries may stretch to a regional or global dimension.

- Another example relates to **abusive conduct**. It may be that a company holds significant market power outside Hong Kong. In theory, substantial market power in an antitrust market broader than Hong Kong may cause harm to consumers in Hong Kong. Especially if an export market into Hong Kong is highly concentrated, we will be keen to ensure that companies are not abusing that position to the detriment of our consumers or businesses.

Whether it is the US, EU or Mainland China, most antitrust agencies have a global reach. Indeed, from the business perspective, many companies increasingly want certainty at a regional, if not a global level. They particularly want consistency of outcomes to avoid divergent practices across their businesses. Therefore, they want to undertake their activities in compliance with the relevant antitrust laws - safe in the knowledge ‘if they can do it there, they can do it anywhere’.

### **No longer a home for cartelists**

Second, we want to make sure Hong Kong will no longer be a haven for international cartels. Where we consider there to be a strong Hong Kong nexus, we will not shy away from tackling international cartels.

Without naming and shaming again those involved, we all know a number of companies connected to Hong Kong that have been found to have engaged in anti-competitive behaviour. I am sure we can also point to examples where global cartels are likely to have impacted on the Hong Kong economy.

Indeed, I have heard that many international cartelists would often gather at Hong Kong hotels and dine in Hong Kong restaurants to fix prices or share international markets. In future, I hope they will be at our offices instead - applying for leniency and cooperating with our investigations. Or in the best scenario, we never need to see them as they have already implemented rigorous and effective compliance programmes.

I am thus convinced that global enforcement needs to respond to global business models. So let me now turn to how we at the Commission are likely to rise to those challenges.

## **Rising to the challenge.**

### **1. Our Guidelines**

The Commission is not planning on re-inventing the wheel. Our Ordinance was, and our Guidelines will be inspired and influenced by a number of established competition regimes from across the world. This includes the European Union, United Kingdom, Singapore and Australia.

However, let me not leave you with the impression that we will fall into a habit of applying “cookie-cutter” competition law. We will not simply transplant legal texts from overseas jurisdictions and expect them to work in Hong Kong. We are keen to understand how traditional antitrust principles and international best practices apply in the context of the Hong Kong economy. For example, we have often heard that ‘resale price maintenance’ is a common feature of distribution arrangements and that is *“just how business is done in Hong Kong”*.

Thus in the Hong Kong context, we are asking

- what are the efficiencies from what is, in essence, a form of price fixing; and
- Who benefits from such agreements – or more simply, is it consumers that bear the brunt of such restrictions.

We will thus be spending time in the coming months with the business community and other stakeholders to understand such behaviour better in our local context.

### **2. International engagement**

The second key plank of international enforcement is continuing our active engagement with overseas agencies and in international forums. As evidence of our commitment to learn and share best practices, we joined the International Competition Network as soon as we could in December 2013. We see the ICN as an important venue to promote common standards for our procedures, policies and goals and to minimise the risk of inconsistent outcomes in global investigations.

At a bilateral level, we have visited our colleagues in Singapore, Brussels, Paris and London – and have in the past month welcomed representatives to Hong Kong from the EU, SAIC and the OECD. I will be in the US next week and will be meeting with colleagues from the Department of Justice and Federal Trade Commission. We look forward to engaging further, particularly with other agencies from this region which may already have encountered some of the issues and obstacles we may face.

### **3. Case cooperation**

Third, we also see that once operational, there will be a pressing need to engage with agencies outside Hong Kong to exchange case-specific information and to coordinate

our investigations in the wider global network.

it is interesting to note that well-established authorities are regularly engaging with their colleagues elsewhere and indeed even have dedicated teams to do so. For example, the European Commission recently indicated that in 60% of its cartel cases, they had cooperated with at least one other agency outside the EU – including, other agencies here in Asia such as the Korea and Japan Fair Trade Commissions. [We only need to look at the on-going worldwide auto-parts cartel investigations as a recent live study of when coordination matters.]

There is no reason why Hong Kong in the future cannot be part of the coordinated efforts between different agencies around the world. In the longer-term, we are certain to consider formalising our relationships with other agencies through partnership and cooperation agreements to promote a uniform and consistent outcome.

[Similarly, the Commission will work towards examining how best to cooperate with other enforcement agencies in Hong Kong. As you will be aware, we share concurrent jurisdiction with the Communications Authority and before Commencement, will enter into a Memorandum of Understanding to be clearer on our respective roles when investigating companies active in the telecommunications sector. And in a wider sense, we realise that to ensure a joined-up approach to competition policy and law enforcement there may be a need to develop mechanisms for cooperation with, for example, the Consumer Council, the Independent Commission Against Corruption, the police force and other relevant statutory bodies.]

## **Conclusion**

In the coming months we look forward to hearing from you in business and the legal community in helping us ensure the Guidelines are fit for purpose. We want to work with you to create an environment that ensures companies are ready, willing, and able to comply with the Ordinance upon commencement.

We know we are on a learning curve here in Hong Kong in terms of educating, understanding and enforcing competition law. I am certain that we can gain a great deal from listening to your contributions and experiences from across Asia and beyond.

Thank you.

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