

— Check against Delivery —

**Keynote speech by
The Hon. Anna Wu, Chairperson, Competition Commission
at Global Competition Review (GCR) Live Conference Hong Kong
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Good morning ladies and gentlemen,

My sincere thanks to GCR for inviting me to speak with you today.

1. The Road to December 2015

The idea of a competition law for Hong Kong first surfaced in 1994, when the Hong Kong Consumer Council commenced a series of studies on business competitiveness in Hong Kong. These studies looked into sectors such as banks, supermarkets, fuel, broadcasting, telecommunications, and residential property.

The Consumer Council studies confirmed the then widely held suspicion that despite the outward looking and free market in Hong Kong, there was a low level of competition especially in the non-traded sectors. It's findings also reflected fear that Hong Kong was becoming more and more high cost. A prominent banker said in 1996 that:

“The world does not owe us a living. Think of Hong Kong as a product. If this becomes too expensive, if it fails to offer good value for money, people will find alternatives”¹.

The liberalisation of the telecommunications market began in the 1990s. This brought in number portability, interconnectivity and shared use of network facilities and facilitated new entrants and technology into the market. A substantial and definitive drop in charges followed. There was also a partial success in liberalising bank deposit interest rates in Hong Kong at the time.

It was not until 2012 that the Competition Ordinance was finally enacted. The institutional architecture for the Commission was laid in 2014 and 2015. As many of you know, the Government has gazetted 14 December

¹ David Li of the Bank of East Asia, Dateline Hong Kong, South China Morning Post, 19 August 1996.

2015 as the Commencement Date for the Ordinance to come into full effect.

And we are ready.

One of the Commission's legislated pre-commencement tasks was preparing a set of six Guidelines on how it would interpret the Ordinance, and manage key processes. It is no secret to say this was a challenge. Many observed that we had no working experience to go by. While we had much expertise and international experience to draw upon, the Guidelines had to address Hong Kong's legal, economic and cultural context. One of the things that we have to be careful with was not to get 'lost in translation' literally! We publish our documents in both English and Chinese.

After two successive rounds of public consultation and consultation with LegCo, the Commission issued a final set of six Guidelines in English and Chinese in July 2015. These detailed Guidelines provide general guidance on how the Commission will interpret and apply relevant provisions of the Ordinance and the Commission's relevant procedures.

While serving as a key guide for market players, it is important to remember that these Guidelines are the Commission's interpretation of the law. Adjudication on contraventions and imposition of penalties and sanctions in Hong Kong belong to the Competition Tribunal.

Perhaps uniquely, the Guidelines also include a number of practical examples to help businesses understand how the sometimes esoteric language of competition laws is likely to apply in practice. These have been well received by many in Hong Kong.

The media has also used these examples to help explain how the Ordinance works - both in print and in news broadcasts. Seeing an animation on prime time news of our example using a small butcher to explain some of the factors to determine if someone has substantial market power was certainly a highlight.

In late July, we launched ten drama episodes of one-minute each on prime time TV to illustrate how the competition rules apply. The responses have been excellent. Commission has uploaded all the publicity

and advertisements released to date on its website. I encourage you to take a look for yourselves.

Hand in hand with community-wide outreach are the initiatives targeted at specific areas of the economy. We published an easy-to-follow pamphlet on the Competition Ordinance for SMEs in December 2014. The Commission has also hosted a series of competition law seminars specifically targeting SMEs. We will also be releasing a compliance toolkit to help SMEs comply with the law.

Likewise, trade associations have been an important part of our public engagement programme. Hong Kong has over 500 trade associations, whose members represent the vast majority of Hong Kong's economy.

The Commission has also made contributions to several policy debates. Based on the study of the market for building management services in Hong Kong's many large housing estates, a submission was made to the Government's public consultation in support of proposed changes likely to enhance competition in that market. The Commission also made a submission to the Government's public review into the future of the electricity market for liberalisation of the market.

It is clear from the questions we are receiving, both in public and in private, that there is a growing awareness and understanding of the Ordinance. We are also witnessing changes in people's behaviour in various sectors of the economy as they prepare to comply with the Ordinance.

2. Next steps

So with less than two months to go, what else are we working on?

The Commission recently issued a Leniency Policy for Undertakings Engaged in Cartel Conduct in draft for public consultation. Our public consultation on the draft closed on 23 October 2015. After we consider the submissions that we have received, the Commission's finalized Leniency Policy will be published in the near future.

The Commission also plans to release an Enforcement Policy prior to 14 December 2015. This policy will supplement the Ordinance and Guidelines to provide guidance on how the Commission intends to

exercise its enforcement function in investigating possible contraventions of the Ordinance.

One question I am asked a lot is “What sector of the economy will the Commission tackle first?”

As a cross sector law and as a start up, we need to focus on compliance across the board and we do not intend to take a sectoral approach. I anticipate that we will be very much complaints driven. We will prioritise conduct that poses the greatest threat to Hong Kong’s economy and consumer welfare. And we will intervene in order to protect consumer welfare and to drive higher productivity growth. As a further demonstration of the Commission’s commitment to transparency, the Commission will explain its prioritisation principles to the public in the Enforcement Policy.

And while we do not have the power to conduct investigations or assess Applications for Decisions or Block Exemptions that conduct is exempt or excluded under the Ordinance, we are doing what we can to assist people prior to full commencement.

This includes, where people are intending to make such Applications to the Commission, being open to considering some material relevant to such Applications ahead of commencement.

On 28 Oct, we announced that in appropriate cases and subject to conditions, we may indicate that it would be unlikely for us to initiate enforcement action in respect of conduct existing at the date of commencement while we are considering an application. This transitional arrangement will be subject to review 6 months after commencement.

We are also actively considering the state of competition in a number of markets through our market study function.

3. Cooperation with international agencies

In today’s world, many companies have a presence in multiple jurisdictions. The global commercial grid involving all the brand names in e-business linking up consumers, retails shops and manufacturers all over the world is just mind boggling. And it is not just high tech or

complex goods where globalisation is evident. Even the production, distribution and sale of something as seemingly simple as a loaf of bread may involve over 30 services in a variety of countries.²

The international nature of HK's economy also makes it necessary for us to take a wider international perspective in our enforcement strategy. Our law in fact provides for extra territorial effect for actions taken outside our jurisdiction that result in effects felt within jurisdiction.

While this does not necessarily mean that every competition issue requires global collaboration, it is clear that some do. To be effective, we must engage with that reality and international cooperation becomes essential.

International enforcement cooperation between competition authorities, whether in the form of bilateral agreements or through multilateral platforms, has existed for decades as an important tool to enforce competition law efficiently. The Commission is a member and active participant of established networks, such as the International Competition Network. And within and outside such networks, we have and continue to develop links with many competition agencies around the world.

As the new kid on the block, the Commission is too new to make bold statements about the future of international cooperation. But I can say what we have experienced to date.

One area international cooperation takes place among agencies is to help new agencies implement their laws. Competition authorities in Asia and around the world have been exceptionally open and willing to assist us in establishing the Commission and discussing the sorts of challenges we face. They have also been willing to host our staff on secondment in active roles at their agencies, which is a great learning experience for us.

Like everyone else, we also witness the outcomes of international enforcement cooperation. To my mind, these outcomes have been remarkable despite differences in procedural and legal issues, traditions and language barriers. And we fully intend to play our part.

² Patrick Low, "A Loaf of Bread's Well Served Journey", South China Morning Post, 20 August 2014

For example, our draft Leniency Policy for Cartel Conduct specifically mentions that the Commission may, as a condition to entering into a leniency agreement, require a leniency applicant to offer waivers authorising the Commission to exchange confidential information with authorities in another jurisdictions.

Uniquely post 1997 Hong Kong is the only Chinese city with ‘common law characteristics’ and one of the key approaches adopted in this law is cross referencing it against international norms and best practices. Our competition law is similar to laws you would find in common law jurisdictions and the European Union. When it comes to litigating competition issues, we will be drawing from precedents overseas. This commonality in the law will facilitate international cooperation.

Conclusion

I’m a firm believer in the values of competition law and the key role the Ordinance will have in ensuring Hong Kong remains a competitive, dynamic and free market.

The law does more than to prohibit and punish bad behavior. It induces a change in culture and increases the public buy-in of the values of competition policies. We will be judged by the effectiveness of our enforcement actions as well as the force of our advocacy and the mindset change must begin well before enforcement. Our message is “ready, willing and able to comply” before and after the law’s full commencement.