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Safeguarding Competition
in the Hong Kong
Telcommunications Market

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Competition encourages economic efficiency

Competitive market characterized by

- quality products;
- continuous innovation;
- incentives for investment and
- downward pressure on price

No universal competition law in Hong Kong

Open economy and free enterprise

Targeted sector-specific competition regulation

on telecommunications and broadcasting
sectors

Telecommunications, a public utility

- fundamental to an economy and indispensable for modern life
- demand-side “network effects” and supply-side economies of scale
- high barriers to entry or exit, investment costs unrecoverable once incurred
- small number of service providers, inherently concentrated market power

Dominant market power held by incumbent

Industry-specific regulator

- focus on specific industry needs
- expertise in technical issues
- regulating the incumbent's market power

Dominant operator Regulation

- Checks and balances on the dominant operator's market power
- Tariff approval to prevent dominant operator from predatory pricing, cross-subsidization or leveraging of market power
- Facilitating new entrants to establish themselves in the market

Competition safeguards in the telecommunications sector

- Prohibition of anti-competitive conduct
- Prohibition of abuse of dominant position
- Prohibition of discrimination that has anti-competitive purpose or effect
- Prohibition of misleading or deceptive practices
- Proposed regulation of mergers and acquisitions

Telecommunications Ordinance

s. 7K

“A licensee shall not engage in conduct which ... has the purpose or effect of preventing or substantially restricting competition ...”

In assessing the above conduct, the TA shall have regard to

- price-fixing agreements;
- action preventing or restricting supply to competitors;
- market-sharing agreements.

Anti-competitive conduct

- Collusion - price-fixing, cartels, bid rigging and market sharing
- Other agreements which prevent or substantially restrict competition
- Prohibited by section 7K of the Telecommunications Ordinance

Telecommunications Ordinance

s. 7L

“A licensee in a dominant position ... shall not abuse its position.”

Dominant position means “able to act without significant competitive restraint”.

In assessing an abuse of dominance, the TA shall consider

- predatory pricing;
- price or other discrimination;
- harsh terms and conditions;
- conditional or tie-in arrangements.

Abuse of dominant position

- Unilateral conduct by dominant operator free from competitive constraints
- Example: predatory pricing to drive out existing competitors and inhibit new entry
- Prohibited by section 7L of the Telecommunications Ordinance

Telecommunications Ordinance

s. 7N

“... licensee ... in a dominant position ... shall not discriminate ...”

Discrimination relating to

- charges;
- performance characteristics;
- other terms and conditions of supply

is prohibited where such discrimination has the purpose or effect of preventing or substantially restricting competition.

Discriminatory behaviour

- Exclusive or selective arrangements, e.g. in distribution or supply
- Intention of obstructing new entry or limiting market accessibility
- Prohibited by section 7N of the Telecommunications Ordinance

Telecommunications Ordinance

s. 7M

“A licensee shall not engage in conduct which ... is misleading or deceptive ... including ... promoting, marketing or advertising the network, system, installation, customer equipment or service.”

Misleading and deceptive practices

- Misleading and deceptive advertising or marketing practices
- Prohibited by section 7M of the Telecommunications Ordinance

Mergers and acquisitions

- Most mergers may bring about economic efficiency and do not present competition problems
- Proposed regulatory framework to prevent market concentration which substantially lessens competition
- Assessment of potential conduct

Proposed Bill to regulate mergers and acquisitions

- Will only apply to carrier licences;
- No compulsory pre-notification;
- But prior approval can be sought;
- Guidelines to be issued.

Conclusions

- Hong Kong already served by a world-class telecommunications infrastructure
- Light-handed, transparent, and consultative approach in regulation
- Enforcement necessary to safeguard the competitive process

Thank you

Office of the Telecommunications Authority

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