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**FEATURE OPINION**

By Amit Chanda

# COMPETITIVE EXCLUSION

The Hong Kong government rejects suggestions that its policies have spawned cartels and other anti-competitive behaviour. But it is starting to acknowledge that the perception of an uneven playing field exists, at least with some stakeholders.



**H**ong Kong's financial service industries and capital markets may be on a par with those anywhere in the world, but a growing number of business leaders believe the government can and should do more to provide a level playing field in the domestic economy. The Hong Kong General Chamber of Commerce concluded a recent survey on the subject by remarking, "The status quo is not satisfactory in addressing the range of problems, whether real or perceived, related to competition."

Christine Loh, head of the Civic Exchange think-tank, goes further, arguing the central problem stems from the government's avoidance of an across-the-board pro-competition policy. Regulation and competition are two sides of the same coin, she says. Sectors where natural monopolies exist – such as power generation – will necessarily operate under different regulatory conditions to sectors where there are (or could be) a greater number of competing firms. In the first case, regulations should encourage innovation and optimisation, while in

the latter, the rules should ideally ensure new entrants do not face unreasonable barriers to market entry.

Loh accuses the Hong Kong government of adopting "an intellectually faulty concept of competition" by taking a sector-by-sector approach that unfairly favours dominant firms. Corporate governance campaigner David Webb similarly criticises the administration's inability to "distinguish between pro-market and pro-business policies," adding, "sometimes Adam Smith's invisible hand is simply not there."

### The fat of the land

The manipulation of market forces is most pronounced in a few business sectors, such as property development, an area where the government generates considerable public revenues. Regulations for land tendering processes and town planning have the effect of reducing competition to a small coterie of influential players.

Fewer than ten companies develop most of the territory's private real estate, having

acquired most of the remaining land to develop residential properties. By implementing rules that favour firms with substantial balance sheets and borrowing power, Loh argues, government policy sets the bar for market entry too high for all but a select group of property developers. Responding to this very charge four years ago, Financial Secretary Antony Leung underscored Loh's point by retorting, "it is true that a handful of large, local companies stand out in the [property development] market. But they each have vigorous competition strategies to promote the sale of new flats."

Competition among the sector's largest players may well be fierce, but the administration's insistence that its policies encourage a broader competitive climate ring hollow when viewed in the context of government development projects. In March 1999, then-Financial Secretary Donald Tsang unveiled three no-tender projects in what Webb describes as the "most interven-



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# Donald Tsang on competition

*To ensure our competition policy serves the public interest and provides a business-friendly environment, and in response to the views of legislative councillors and the public, we appointed a Competition Policy Review Committee a few months ago. The newly established independent committee, chaired by a non-official with members drawn from different sectors, is tasked to review the effectiveness of our existing competition policy. The committee will consider... whether the implementation of our policy is in line with the times, and whether available investigative powers are adequate. The committee will also draw on international experience and discuss the need to introduce in Hong Kong a comprehensive and cross-sector law on fair competition... The committee expects its review to be completed in mid-2006.*

(Policy address, 12 October 2005)

*If small- and medium-sized businesses feel they are being squeezed out or denied entry by bigger players, this will cause resentment and have a negative impact on our competitiveness and market diversity.*

(RTHK radio interview, 16 October 2005)



tionist and anti-competitive budget in three decades.” Two of the projects – the Cyberport and a North Point cruise terminal – were awarded without tender to Richard Li and his father, while the third was awarded to the Walt Disney Company. While the cruise terminal project was eventually scrapped, both the Cyberport and Hong Kong Disneyland have been completed in spite of public criticism and allegations of collusion.

### **The competition for competition law**

Debate over what Hong Kong should do to improve competition has been given added urgency thanks to international pressure from institutions like the World Trade Organisation. The WTO does not explicitly encourage members to establish formal competition laws, but Hong Kong’s position as a “progressive member” – and upcoming host of the WTO summit meeting in December – has fuelled expectations that it should be more involved in setting a pro-competition agenda.

In the international context, Hong Kong’s absence of competition legis-

*“The world’s freest economy is one of the few developed economies that has not enacted general anti-trust legislation.”*

lation is anomalous. Most members of the Organisation for Economic Cooperation and Development (OECD) and more than 80 WTO members have competition laws. Even Singapore – another award-winning “world’s freest economy” – responded to international pressure by enacting competition legislation late last year. To be fair, the focus of Singapore’s new law is to curb problematic behaviour like price-fixing and predatory pricing rather than regulating public sector and government entities, which account for a large portion of the city-state’s industry and are wholly exempt from the competition legislation. Even so, the mere fact of having such a law has had a positive impact on Singapore’s international image, leaving Hong Kong’s position even more isolated.

Competition policy has become an area

where Hong Kong is seen as playing defensively. Even strong supporters of the territory have noted a lack of progress. James Cunningham, the United States’ consul general, recently commented, “The world’s freest economy is one of the few developed economies that has not enacted general anti-trust legislation,” adding pointedly, “a more competitive environment may also attract more international companies.”

### **The rationale for change**

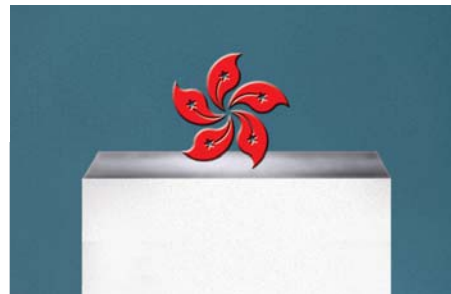
A recent study by the Hong Kong General Chamber of Commerce suggests businesses broadly support

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reforms to enhance competition. But the Chamber rejects the view that the government should enact specific competition legislation merely because others have done so, arguing that a “thorough understanding of the wide range of competition laws is needed before deliberating on what could be a suitable approach for Hong Kong.”

Instead of immediately creating new legislation, the Chamber says competition should be treated as a process of public policy development and addressed with a mixture of advocacy, institutional reinforcement and regulatory changes. The problem is the government has already formed a lightweight enforcement cadre – the Competition Advisory Group. Composed almost exclusively of administration officials, it lacks both the bite and bark required of a watchdog organisation.

Here’s the paradox: Hong Kong firms operating overseas enjoy competition laws of the kind their own government resists. The administration’s adherence to half-hearted, piecemeal solutions instead of a comprehensive strategy to improve the territory’s competitive landscape will inevitably come at a price. The inefficiency and higher opportunity costs resulting from the government’s failure to improve competition in the domestic economy could deter foreign investment in some areas, fuelling the impression that Hong Kong is losing its competitive edge. **A+**



## **The implications of a competition law**

Hong Kong does not have specific competition regulations on its statute books. Instead, individual industry regulators are charged with the oversight of competition issues. In the telecoms sector, for example, the Telecommunications Authority is responsible for enforcing fair competition provisions enshrined in the Telecommunications Ordinance. A more wide-ranging competition law might emphasise regulation of anti-competitive conduct (like price-fixing), abuse of dominant position, and merger and acquisition control. Its purpose would be to promote economic efficiency and consumer welfare by preventing behaviour that undermines normal competitive market practices. The most recent attempt to establish formal competition legislation failed four years ago following opposition from lawmakers.