

Report on Committee on Competition Law 2018

Report of work in 2018-2019

Competition law is fledging discipline in Hong Kong law. In 2018, the Competition Commission of Hong Kong continued its prosecution of two enforcement actions and commenced the third enforcement action, alleging the contravention of the first conduct rule by reason of the making and giving effect of a market sharing agreement in relation to provision of renovation services at a public housing estate by the respondents, before the Competition Tribunal. The Competition Commission also determined the application by the Hong Kong Association of Banks and the DTC Association for a decision on whether the first conduct rule applies to the giving effect of the Code of Banking Practice by virtue of the exclusion in Sch 1, s 2 to the Competition Ordinance (Cap 619) (the *legal requirements* exclusion), holding that the Code is not excluded from the application of the first conduct rule by or as a result of the legal requirements exclusion. Last, but not least, the Court of First Instance held in May 2018 that a defence based on an alleged contravention of the Competition Ordinance would not be struck out from the High Court Action and instead would be transferred to the Competition Tribunal for adjudication. A similar order was made in September 2018 in another High Court Action involving a similar allegation in the defence.

The primary functions of the Committee on Competition Law are to assist the Bar Council in dealing with matters relating to competition law in the course of its business and to promote and enhance the knowledge and know-how of the Membership of the Bar Association on competition law through activities including talks and secondment arrangements.

In 2018, the Committee on Competition Law assisted the Bar Council in considering whether a response should be made in the consultation of the Competition Commission in respect of the application for decision over the Code of Banking Practice mentioned above. Having conferred the matter with the Committee on Financial and Securities Law, a joint recommendation was made to the Bar Council not to submit a response. In the end, the Bar Council did not submit a response.

The Committee on Competition Law also organized talks on topics of competition law for the Membership. On 19 November 2018, Douglas Clark gave an interesting talk on the relationship between competition law (which is meant to combat monopolies and abusive dominance) and intellectual property law (which is meant to create monopolies of specified products of human creation). The Committee plans to hold a talk in January 2019 to round up the developments in competition law in 2018, which will include discussion not only on the enforcement actions heard in 2018 by counsel involved in the proceedings but also on the issues relating to pleading and preparing a defence of contravention of the Competition Ordinance in a High Court Action.

The current Chairman of the Committee on Competition Law has occupied the position since 2012. A succession plan is being implemented so that I can and **will** step down in favour of another pair of capable hands in 2020. It now remains for me to thank Members and the staff of the Bar Secretariat for supporting the work of the Committee.

Membership:

P Y Lo (Chairman)

Richard Khaw SC (Vice Chairman)

Catrina Lam (Vice Chairman)

Tony Ko

Raymond Chui

Queenie Lau

Connie Lee

Andrew Lynn

Carter Chim

Martin Kok

Kelvin Kwok

Stephanie Wong Hoi Ki

Peter Dong

P Y Lo

Chairman

Committee on Competition Law

3 December 2018