

Competition Law Meeting – Representing **HK Noise**

Thank you honourable Chairman. Good evening. Allow me to start on a light note with a joke.

(Onion joke) A judge rules that God is in violation of antitrust laws, and is ordered to be broken up into several less powerful deities and demigods. The judge says, “the Evidence has convinced me that God has willfully thwarted competition from other deities, promoting His worship with such unfair scare tactics as threatening non-believers with eternal damnation. In the process, He has carved out for Himself an illegal *monotheopoly*.” The joke highlights a couple of issues about competition that we speak of today.

The exemptions are hypocrisy. Anti competition can best be defined as government attempts to limit market participation – and the exemptions work in the opposite direction. We all know the real culprit of anti competitive behavior is from the Government actions, putting this aside for a moment, the law is vague.

Taking a quick look at the UK competition law – the UK pursues cases, but its grocery store sector remains very similar to Hong Kong’s. After years of investigation in the UK and millions of dollars spent, they found no fundamental problem with competition in that sector and left as was, which is few players with a large share of the market. This demonstrates first and foremost that market share is not easy to define, and might not be problematic. Second, it highlights the fact that with or without competition laws, the two markets remain similar. Third, the high administrative costs and compliance costs don’t seem to outweigh any benefit – as in this case, there’s no benefit to be had. After the inquisition, the UK grocery sector remains as was. So what was the point other than to make a few lawyers some money and flex Competition Commission’s muscles?

We’ve heard before from within this very chamber that Hong Kong needs a competition law. I quote, “because other economies have it.” A law’s usefulness has really got to be identified better than that, and we should expect more from our legislators. It’s hard to compare Hong Kong’s economy, a F1 racecar, to that of a lemon. To improve it, you wouldn’t say, let’s replace its engine with the third place economy’s and give it the breaks from the second. In the same vein, you wouldn’t institute a law which was ill-defined, had high administration and compliance costs, and at the same time, had no proof of effectiveness. This brings up important questions into the principle of legal security and if they are being honoured.

The principle of legal security requires that law must be specifically precise to enable someone to be able to foresee the consequences that a given action may entail. That has been a very fundamental principle in Hong Kong, and it would be hard to look at this law, and say that it is easy for people to know when their conduct will be in breach. There’s a question about whether this law is really certain enough, and other jurisdictions might say, “yes, we believe that this law is and that’s why we have one,” but if I ask you individually, will you really think so? If I asked you to look at the US administration’s implementation of this law you wouldn’t be able to say so, as it swings in different directions with differing political parties in office. It’s not only a good piece of law because it’s highly vague but it’s

impossible to confine some of these complex concepts to one definition. It is an active, changing, market. Therefore, there is no one size fits all, as it actively changes.

It's impossible to second guess the market. If not even the all-knowing Almighty can second guess the market correctly – as God gave us, market participants, free will – it is impossible, as much as you might like to think, that legislators or the commission can do so. Regardless of the number of examples of supposed “guilty” market transgressions, which may not even exist, it will always be uncertain whether intensive competition will be wrongly persecuted as anti competitive behavior – and what you would lose in opportunity cost you will never know.

The law as it stands is overreaching and undefined. It does not set out to do the competition clean up it advises by not focusing on the Government actions, subsidiary bodies, land policy and otherwise. This law won't serve to benefit anyone but those barristers that will take on the cases. Please reconsider brining such an arbitrary law into Hong Kong. Undoubtedly you have a big job ahead of you and I applaud your efforts in advance.

Nicole Alpert

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