

Bills Committee on Competition Bill

Third meeting

**Monday, 29 November 2010, at 4:30 pm
in the Chamber of the Legislative Council Building**

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Competition Law and Land Policy

Problem

Whenever new legislation is proposed the pertinent question to ask is whether there is a problem which needs fixing. Does Hong Kong have a competition problem? On the one hand policy-makers, academics and members of the public have argued for competition law citing lack of competition in sectors such as supermarket retail, petrol stations, as well as market concentration in the energy, telecoms, transport and construction sectors. On the other hand, there are those who argue that Hong Kong has fared well without a comprehensive competition law and that, therefore, the status quo should be maintained. However, there is a widely held belief in the community that there is something seriously wrong with the state of competition in Hong Kong. Reality bears out the public's perception: In many areas of economic activity the state of competition is poor and it is reasonable and necessary for this Council to consider remedies.

Remedy

Before agreeing on an effective remedy, the problems afflicting competition in Hong Kong need to be studied a bit more closely. There are two main areas which need to be looked at, natural monopolies and non-natural monopolies. Energy, transport and telecoms all fall within the area of natural monopolies. That is to say that the market is naturally limited to a low number of participants. Thus, to protect consumers and businesses, government regulation is desirable in order to ensure the best service at the lowest price. But while these sectors ought to be regulated and while it can be argued that the Hong Kong government has not done a good job in regulating these sectors - as examples, one should look at the extraordinarily high profits guaranteed to the electricity suppliers, selling Hong Kong Telecom to Richard Li, allowing bus companies to merge, allowing ferry companies to discontinue services or not acting to remedy the fiasco of cross-harbour tunnel ownership and pricing – these sectors are best addressed through sector-specific legislation, as already done in the broadcasting and telecoms sectors. Natural monopolies do not justify a cross-sector competition law. Of course, the biggest monopolist, arguably natural, is the government itself. From the Hong Kong Mortgage Corporation, the Housing Authority, the Trade Development Council to the Urban Renewal Authority and many more, these are all government or quasi-government bodies, which, as we now know, have been exempted by way of clause three (3) of the Competition Bill. Thus, the Competition Bill will have no effect in fixing the distortions of competition caused by these bodies.

This leaves private, non-natural monopolies or oligopolies. The most common grievances one hears about relate to the property, construction, petrol, supermarket and other consumer retail sectors. While it may not be immediately apparent, there is a commonality between these sectors: the land system in Hong Kong. While the nexus between the land system and the property sector is apparent, supermarkets and consumer retail are also affected as the restrictive land system prices potential competitors and market entrants out of the market. Similarly, the close connection between property development and construction in many cases means that these sectors operate in symbiosis, restricting competition.

Can a cross-sector competition law help remedy competition problems in these areas? At first sight, and from a general perspective, it could, however, such broad analysis fails to take account of the unique situation we face in Hong Kong where we find a handful of families operating vertically integrated cartels with the general public having no choice but to buy goods and services from them. Let's look at some examples: Li Ka-Shing and his family own large parts of our port facilities, a duopoly supermarket and drug store chain, mobile phone networks, the former Hong Kong Telecom, Hong Kong Electric and a construction materials supplies business. Sun Hung Kai's Kwok family control Hong Kong's largest real estate developer, KMB, one of the world's largest private bus companies, various construction and engineering enterprises, as well as Smartone, the telecoms firm. I recently read that the two families I just mentioned supply 70 percent of new apartments. These are very serious issues affecting competition which this Council must start addressing. I could go on and talk about the other families too but given the time-constraint I will leave it at that. But, of course, the commonality amongst all of Hong Kong's family operated oligopolies is that they attained their wealth, influence and power through property and they continue to exercise them through property. All the areas I have mentioned, building of new apartments, construction supplies and materials, shopping malls, supermarkets, ferries, busses and utility companies are either natural monopolies or dependant on availability and affordability of property. For instance, how can I even contemplate competing with the existing supermarket duopoly without having the retail space to operate from? And how likely is it that those who control the land will lease it to me if I then use it to compete with their other interests? Not very. Ask yourselves, why aren't the Lis and the Kwoks engaged in banking or insurance? Because those sectors are not dependant on property or on a government conferred natural monopoly. Or, to put it another way, those sectors are competitive and therefore not attractive to our rent-seeking local oligopolies.

Thus the only question which this Council should ask itself is whether the Competition Bill will have any effect on breaking up existing property based cartels? Let's look at clause 21:

Abuse of market power

(1) An undertaking that has a substantial degree of market power in a market must not abuse that power by engaging in conduct that has as its object or effect the prevention, restriction or distortion of competition in Hong Kong.

(2) For the purpose of subsection (1), conduct may, in particular, constitute such an abuse if it involves—

(a) predatory behaviour towards competitors; or

(b) limiting production, markets or technical development to the prejudice of consumers.

The language used here is vague and indeterminate and my reading is that it would do nothing to contain, let alone, break up the property cartel. Vagueness and ambiguity are not problems which are unique to this Competition Bill, they are problems inherent to all competition laws which is why they are an ineffective and inappropriate means of tackling the specific problems we face in the form of the property cartel.

Conclusion

Thus, instead of wasting time and public money on this Bill, this Council should concentrate on what is really causing the competitive distortions in Hong Kong, namely the property cartels and government measures which aid the property cartel in the form of restricting land supply, discontinuation of the home-ownership scheme, lack of transparency in the land premium system, free land for certain parties and compulsory purchase of old properties to name a few. The solution to Hong Kong's competition problems is not this Bill, rather it is reform of the land system. So long as the land system remains as feudal, ill-transparent and inequitable as it is, competition will remain limited and this Bill will not change that.