**RP02/09-10**

# *Competition policies in selected jurisdictions*

***25 June 2010***

**Prepared by**

**Jackie WU**

**Research and Library Services Division**
**Legislative Council Secretariat**

**5th Floor, Citibank Tower, 3 Garden Road, Central, Hong Kong**
**Telephone : (852) 2869 9644**
**Facsimile : (852) 2509 9268**
**Website : http://www.legco.gov.hk**
**E-mail : library@legco.gov.hk**

# Contents

# Executive summary

Prohibition on anti-competitive conduct

1. The jurisdictions studied, i.e. the European Union (EU), the United Kingdom (UK), and the United States (US) and Singapore, all have enacted cross-sector competition laws, which prohibit anti-competitive conduct such as price-fixing, bid-rigging and market allocation. Guidelines are usually issued to explain the application of the competition laws.

Merger control

2. Merger regulation is a common feature of the jurisdictions studied. The regulatory authorities are empowered to investigate and disapprove proposed mergers to ensure healthy competition. Either dollar or market share threshold is employed as the criterion for approval.

Exemptions and exclusions

3. The jurisdictions studied all have provided exemptions and exclusions to certain sectors and industries. The EU, the UK and Singapore provide exemptions for agreements from the prohibition on anti-competitive conducts if they yield economic benefits that outweigh the potential anti-competitive harm. The criteria adopted for providing such exemptions are similar, in that they primarily require that the agreements should contribute to improving production or distribution, or promoting technical or economic progress, but not eliminating competition substantially. As for the US, it may enact a federal statute on the exemptions of certain industries subsequent to the antitrust laws, based on the grounds of economic benefit.

4. In the EU, the UK and Singapore, their government is empowered to issue block exemption in respect of a category of agreements that is likely to yield economic benefit that outweighs any anti-competitive effect. On the other hand, the US does not adopt the approach of exempting certain sectors by means of block exemption regulation.

5. The EU, the UK and Singapore have permitted exclusions on grounds of public interest, if an undertaking concerned has been entrusted with the operation of public services or functioned as fiscal monopolies which raise revenues for their respective government. As regards the exclusion provided for fiscal monopoly, both the EU and the UK seldom have any such cases. On the other hand, the US may enact a federal statute subsequent to the antitrust laws for the exemptions, based on the consideration of public policy.

6. In the EU and the UK, if an undertaking concerned has been entrusted with the operation of public services, it is exempted from the competition law. The US government entities are exempted from the anti-trust laws on the rationale of sovereign immunity. Nonetheless, federal government departments and agencies seldom engage in the same sorts of commercial activities as private parties in the US. Singapore also provides exemptions to the government and statutory bodies from its competition law. There are concerns that such arrangement may create an unfair playing field for businesses, enabling the government-linked corporations to take up a substantial part of the economy to have an undue advantage.

Penalties for anti-competitive conduct

7. In the UK and the US, both civil penalty of fines and criminal penalty of fines and imprisonment are available, whereas civil penalty of fines is the only option available in the EU and Singapore. Among the selected jurisdictions, the levels of fine are often subject to a cap of 10% of the offending party's annual turnover for certain years. In relation to imprisonment, the UK imposes a punishment up to five years for serious cartel offence, while the US has a tougher penalty of up to 10 years in prison for anti-competitive conduct.

Enforcement mechanism

8. With the exception of the Competition Commission in the UK which is empowered to make decisions on merger proposals only, the regulatory authorities studied are empowered to investigate, determine and apply remedies in cases of infringing anti-competitive rules, and to approve merger proposals. If a person does not co-operate with the investigation, he or she is liable to a penalty. Such violations are criminal offence which is punishable by an imprisonment or a fine or both in the UK and Singapore, whereas a fine will be imposed in the EU and the US.

Leniency programme

9. The jurisdictions studied all have leniency programmes in place whereby companies that provide information about a cartel in which they have participated might receive full or partial immunity from fines.

Appeal procedure

10. The decisions of the enforcement bodies may be appealed to independent and impartial tribunals or courts. The UK and Singapore have implemented the same appeal mechanism, with the appeals being handled first by tribunals, which are specialist judicial bodies with cross-disciplinary expertise, and then by courts; whereas appeals in the EU and the US are handled by courts.

Matters relating to small and medium enterprises

11. In the selected jurisdictions, the regulatory authorities have not provided specific exemptions for small and medium enterprises in their respective competition laws. In any event, issues relating to small and medium enterprises have not been a major concern. It is a common practice in these jurisdictions to identify and exempt conduct that is of minor economic significance and thus unlikely to be anti-competitive.

Application of competition rules to ocean shipping conferences

12. The European Commission repealed the block exemption for ocean shipping conferences in October 2008. Henceforth, following the lead of the EU, the UK government has prohibited the tariff-regulating ocean shipping conferences. In both the US and Singapore, ocean shipping conferences are permitted. They are currently evaluating whether ocean shipping conferences should be continuously provided, partly due to the repeal of block exemption for ocean shipping conferences in the EU.

Institutional framework for enforcing the competition legislation

13. There are two types of organization structures for enforcing the competition legislation, which are a statutory public body governed by a management board and a government department. The Office of Fair Trading and the Competition Commission in the UK, the Fair Trade Commission in the US and the Competition Commission of Singapore belong to the former. On the other hand, the Directorate General for Competition in the EU and the Antitrust Division of the Department of Justice in the US belong to the latter type.

14. The regulatory authorities studied all receive government funding. The accountability arrangements of the regulatory authorities are also similar, which include: publishing an annual plan setting out their main objectives and priorities for the year ahead and an annual report of past performance; seeking the approval of the government/legislature regarding the annual budget; attending parliamentary meetings and answering questions; laying the annual report and financial accounts before the legislature; and being subject to the scrutiny of the national audit service.

# Competition policies in selected jurisdictions

## Chapter 1 – Introduction

### 1.1 Background

1.1.1 In the 1990s, the Government started conducting research on competition policy and considering whether Hong Kong should enact any competition law for maximizing the benefits of the society. Between 1993 and 1996, the Government commissioned the Consumer Council to undertake a series of studies on competition in Hong Kong[1]. In its final report, the Consumer Council recommended the adoption of a comprehensive competition policy and enactment of a general competition law in Hong Kong.

1.1.2 In December 1997, the Government established the Competition Policy Advisory Group[2] to review competition-related matters. In May 1998, the Competition Policy Advisory Group promulgated a Statement on Competition Policy, articulating the objective of the Government's competition policy as to enhance economic efficiency and free flow of trade, thereby benefiting consumer welfare, with the Government taking action only when market imperfections or distortions limited market accessibility or market contestability, and impaired economic efficiency or free trade, to the detriment of the overall interest of Hong Kong.

1.1.3 In 2000 and 2001, legislation was enacted to specifically prohibit certain types of anti-competitive conduct and the abuse of a dominant position in the telecommunications and broadcasting markets respectively. Apart from these two pieces of legislation, there remain no statutory procedures that the Government can take to reign in businesses engaging in restrictive practices in other sectors of the economy.

---

1 The Consumer Council completed six sectoral studies on the banking, supermarket, gas supply, broadcasting, telecommunications and private residential property markets.

2 The Competition Policy Advisory Group was established under the chairmanship of the Financial Secretary to provide a high-level and dedicated forum to review competition-related issues which had substantial policy or systemic implications, and to examine the extent to which more competition should be introduced in the public and private sectors.

1.1.4 To ensure that the competition policy would keep pace with time, serve the public interest and facilitate a business-friendly environment, the Competition Policy Advisory Group, in June 2005, appointed the Competition Policy Review Committee to, inter alia, make recommendations on the future direction for competition policy in Hong Kong. In June 2006, the Competition Policy Review Committee submitted its report to the Competition Policy Advisory Group, recommending that a new law with a clearly defined scope be introduced in Hong Kong to tackle anti-competitive conduct across all sectors.

1.1.5 In November 2006, the Government published the document "Promoting Competition – Maintaining our Economic Drive" for public consultation to gauge views on the need for Hong Kong to introduce a cross-sector competition law. The result of the consultation revealed that the majority of respondents supported the introduction of a cross-sector competition law and a stronger regulatory environment for competition. Nonetheless, there were some concerns in the business sector about the possible effects that the new law might have on business operations.

1.1.6 To allay the concerns of the business sector, the Government issued in May 2008 a paper entitled "Detailed Proposals for a Competition Law" for public consultation. The consultation paper presented the major provisions envisaged to form the basis of the new law.

1.1.7 The Government released a report on views collected during the public consultation in September 2008. According to the consultation findings, there remained broad support in the community for the introduction of a competition law. On the other hand, some respondents raised concerns regarding certain specific proposals. In the light of the feedback received from the public consultation, the Government considered making some modifications to the original proposals, particularly relating to the institutional framework and the exemption provisions in the *Competition Bill*. Based on the current schedule, the Government intends to introduce the *Competition Bill* into the Legislative Council in the 2009-2010 legislative session.

1.1.8 Against the above background, at its meeting on 15 October 2009, the Panel on Economic Development (Panel) requested the Research and Library Services Division (RLSD) to conduct a research study on competition policy in selected places to facilitate discussion on the topic by the Panel.

1.1.9 At the meeting of the Panel held on 16 November 2009, during the discussion of the proposed research outline on competition policy in selected jurisdictions, covering the United Kingdom (UK), the United States (US) and Singapore, the Panel requested RLSD to include the European Union (EU) and adjust the scope of the research incorporating Members' suggestions in the detailed study. As the widened scope of the proposed research undertaken covers a larger number of various aspects of the competition policy in these four jurisdictions, RLSD requires more time to compile the report. In this connection, as agreed by the Panel, RLSD has split the research into two phases. The first phase examines the framework of competition policy, and the second phase focuses on the implementation of competition policy in the selected jurisdictions. To provide Members with a full picture of the competition policies in the selected jurisdictions, RLSD presents the facts and findings of the two phases in this research report.

## 1.2 Jurisdictions studied in the research

1.2.1 The EU, the UK, the US and Singapore have been chosen in this research study. The EU, an economic and political union of 27 member states, is committed to implement the competition law which regulates the exercise of market power by large companies, governments or other economic entities to ensure the completion of the internal market, meaning the free flow of working people, goods, services and capital in a borderless Europe. Both the US and UK, with a long history of enforcing the competition law, have served as references to other places when they set up their own regulatory framework. Meanwhile, Singapore enacted its competition law as recently as 2004 and its implementation was in phases to allow time for the Singaporean government and businesses to prepare for the enforcement of the law. In view of the distinctive features exhibited in the implementation of competition policy in these four jurisdictions, their experience will be useful to Hong Kong.

## 1.3 Scope of the research

1.3.1 This research report examines the competition policies in the selected jurisdictions with respect to the following major aspects:

(a) overview of the competition law:

(i) legislative developments;

(ii) public views on the competition law; and

(iii) issues of concern.

(b) institutional framework for enforcing the competition legislation:

(i) mission;

(ii) functions and duties;

(iii) organization structure;

(iv) funding arrangement; and

(v) accountability arrangements.

(c) enforcement mechanism and appeal procedure:

(i) enforcement powers and process; and

(ii) appeal procedure.

## 1.4 Methodology

1.4.1 This research adopts a desk research method, which involves Internet research, literature review, documentation analysis and correspondence with relevant authorities.

# Chapter 2 – European Union

## 2.1 Overview of the competition law

Legislative developments

2.1.1 In 1957, six Western European countries[3] signed the *Treaty of the European Community* (*EC Treaty*) to form the European Community (EC), which over the last fifty years has grown into the European Union[4] (EU) of 27 member states. Much of the EC law is concerned with the elimination of obstacles to the free movement of goods, services, persons and capital, with the removal of these obstacles aiming at promoting competition within the EC. The corresponding major initiatives include the creation of the Euro and the establishment of a public procurement regime to enhance competition within the European economy. In addition to these macro rules, the *EC Treaty* also contains specific competition laws that apply to both undertakings and the member states themselves. There are four main policy areas of the competition law – anti-competitive agreements, abuse of dominant position, control of mergers and acquisitions, and monitor of state aid, which are specified in Articles 81 and 82 of the *EC Treaty*[5], the *Merger Regulation 139/2004* and Article 87 of the *EC Treaty* respectively.

*Article 81 of the Treaty of the European Community*

2.1.2 Article 81 of the *EC Treaty* prohibits agreements, arrangements and concerted business practices which appreciably prevent, restrict or distort competition and affect trade in the EU. Examples include agreements which:

(a) fix purchase or selling prices or other trading conditions;

(b) limit production, markets, technical development or investment;

(c) share markets or sources of supply between competitors; and

[3] The six countries were Belgium, France, Italy, Luxembourg, the Netherlands and West Germany.

[4] The EU was established by the Treaty of Maastricht in November 1993 upon the foundation of the EC. With over 500 million citizens, the EU generated an estimated 30% share of the nominal gross world product, amounting to HK$143.5 trillion in 2008.

[5] Articles 81 and 82 are formerly Articles 85 and 86 of the *EC Treaty*. Nonetheless, their contents have not been changed.

(d) apply discriminatory conditions to companies that are not parties to the agreement, placing them at a competitive disadvantage.

2.1.3 Businesses which infringe Article 81 are subject to civil penalty of fines of up to 10% of annual global turnover of the offending business. Nevertheless, the Article does not provide for the penalty option of imprisonment.

*Article 82 of the Treaty of the European Community*

2.1.4 Article 82 prohibits the abuse of a dominant position in the EU, and is applicable when all three of the following conditions are met:

(a) the company holds a dominant position, taking into account its market share and other factors, such as whether there are credible competitors, whether the company has its own distribution network and whether the company has favourable access to raw materials, allowing the company to evade normal competition;

(b) the company dominates the European market or a substantial part of it[6]; and

(c) the company abuses its position by, for example, overcharging customers, charging excessively low prices designed to squeeze out competitors or bar new entrants from the market, or granting discriminatory advantages to some customers.

2.1.5 Same as Article 81, the civil penalty involves fines of up to 10% of annual global turnover of the abusing business.

[6] The Commission has a general understanding that a 40% market share may be considered as the threshold of dominance. For details, see European Commission (2005) Directorate General for Competition discussion paper on the *application of Article 82 of the Treaty to exclusionary abuses.* p. 11

*Merger Regulation 139/2004*

2.1.6 While some mergers may expand markets and bring benefits to consumers, other mergers may reduce competition in a market, often by creating a dominant player, and harm consumers through higher prices, reduced choice and less innovation. Increased competition within the EU market is considered by the European Commission[7] (Commission) as an important factor to enhance the competitiveness of the European industry, improve the conditions of economic growth and raise the standard of living in the EU. Hence, the Commission is committed to examine proposed mergers which go beyond the national borders of any one member state to prevent harmful effects on competition.

2.1.7 The merger control system currently adopted in the EU can date back to the early 1970s when the Commission proposed that regulations[8] for the control of merger should be adopted. The issue was controversial as opinions differed substantially among member states on the extent to which mergers should be controlled at the Community level as opposed to domestically. It was not until December 1989 that the *Merger Regulation 4064/1989* was adopted, entering into force in September 1990. The *Merger Regulation 139/2004* amended the rules on merger control in a number of respects, in particular by making the allocation of jurisdiction between member states and the Commission more flexible and by amending the substantive test for the analysis of mergers.

2.1.8 Under the current merger control framework, the Commission has the exclusive power to investigate mergers with a Community dimension. The main benchmarks adopted for determining those mergers having a Community dimension are that the combined annual worldwide turnover of the merging companies is over €5 billion[9] (HK$54 billion) and that their combined annual Community-wide turnover is over €250 million (HK$2.7 billion). The Commission has to be notified of the agreement of a merger with a Community dimension before it can be put into effect.[10]

---

7 The Commission, an executive body of the EU, is responsible for proposing legislation, implementing decisions, upholding treaties and overseeing the general day-to-day running of the EU.

8 The *EC Treaty* does not contain any specific provisions on merger control, and the legal basis for passing merger regulations is found under Articles 83 and 308 of *the EC Treaty*.

9 The average exchange rate in 2009 was €1=HK$10.8.

10 The Commission currently receives between 200 and 300 notifications every year.

2.1.9 After an initial scrutiny period of 25 working days, the Commission will make a decision on either authorizing the transaction or, if it thinks that the concentration might result in a significant impediment to effective competition, initiating an in-depth investigation procedure which usually takes up to a further 90 working days.

2.1.10 At the end of this investigation procedure, the Commission may authorize the merger conditionally or unconditionally, or it may prohibit it, notably in cases where the companies have not been able to propose appropriate solutions to the concerns raised by the Commission. Conditions attached to the authorization frequently entail the sale to competitors of assets, shares and patents.

2.1.11 In effect, over 90% of notified cases are approved after the initial scrutiny period of 25 working days. Most cases going through the 90 working days' in-depth investigation procedure are resolved by a conditional authorization. Accordingly, there have only been 18 outright prohibitions since 1990.

*Article 87 of the Treaty of the European Community*

2.1.12 Article 87 of the *EC Treaty* contains the substantive rules governing state aid control[11], upholding the general principle that state aid is incompatible with the common market, as well as a list of possible exemption clauses. For example, state aid of up to €200,000 (HK$2.2 million) given to companies over a three-year period is not considered to be state aid as it is not large enough to have an effect on trade between member states. This simplification allows the Commission to focus on more important cases. Further, to ensure a coherent application of state aid rules across all member states, the Commission has published a number of guidelines such as *State Aid for Research and Development* and *State Aid for Environmental Protection* detailing the conditions for applying the exemption clauses.

[11] This legislation is a unique feature of the EU competition law regime. As the EU is made up of independent member states, both competition policy and the creation of the European single market could be rendered ineffective, if member states were free to support national companies as they deemed fit.

2.1.13 Under Article 87, the Commission has started a process of modernization and simplification of state aid procedures. To this end, the European Council[12] adopted the *Regulation No 994/98* in May 1998, which enables the Commission to apply the *Block Exemption Regulations*[13] to state aid. Under these regulations, the Commission can declare specific categories of state aid compatible with the *EC Treaty* if they clearly do not distort competition within the Community, thus exempting them from the requirement of obtaining the Commission's prior approval. As a result, for state aid that meets such condition, member states only have to submit information papers on the details of the implemented aid. For instance, the Commission has issued the *Block Exemption Regulation* for small and medium enterprise[14] (SME) aid.

*Exemptions and exclusions of anti-competitive conducts*

(A) Exemptions on grounds of economic benefit

2.1.13.1 Pursuant to Article 81(3) of the *EC Treaty*, the Commission provides certain exemptions and exclusions of anti-competitive conducts, which are prohibited under Article 81. The exemptions may be declared on the grounds of economic benefit, provided that the agreements contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and do not include unreasonable restraints that risk eliminating competition in respect of a substantial proportion of the products or services in question.

[12] The European Council, an assembly of heads of state or government of the member states, is an institution which provides the EU with the necessary impetus for its development. It defines the EU's policy agenda and has been considered to be the motor of European integration.

[13] Pursuant to Article 81(3) of the *EC Treaty*, both the European Council and the Commission are empowered to issue *Block Exemption Regulations.* In practice, the Commission will undertake this function.

[14] The EU defines SMEs as having fewer than 250 employees, with an annual turnover not exceeding €40 million (HK$432 million) and an annual balance-sheet total not exceeding €27 million (HK$291.6 million).

2.1.13.2 Through issuing the *Block Exemption Regulations*, the Commission specifies the conditions under which certain types of agreements are exempted from Article 81 of the *EC Treaty*. When an agreement fulfils the conditions set out in a *Block Exemption Regulation*, individual notification of that agreement to the Commission is not required. After a certain time period, the Commission will review whether the *Block Exemption Regulation* concerned should be continuously provided. The Commission has currently adopted the *Block Exemption Regulations* for certain vertical agreements[15], research and development, and technology transfer.

(B) Exclusion on grounds of public interest

2.1.13.3 Under Article 86(2) of the *EC Treaty*, the Commission provides exclusion on grounds of public interest, if an undertaking[16] concerned has been entrusted with the operation of public services or functioned as fiscal monopolies which raise revenues for a member state. In the EU context, public services are services that "*the authorities consider should be provided in all cases, whether or not there is an incentive for the private sector to do so, and the services must be widely available and not restricted to a class, or classes, of customer*"[17].

2.1.13.4 When implementing Article 86(2) of the *EC Treaty*, the EU member states are primarily responsible for defining what they regard as public services on the basis of the specific features of the activities concerned. However, their definitions are subject to the Commission's control for manifest errors[18] where member states specifically entrust undertakings within the meaning of Article 86(2). The precise definition of the particular task assigned to an entrusted undertaking is an important element for assessing whether, and to what extent, it is justified for a member state to grant exclusive rights to that undertaking in order to ensure the fulfilment of the task.

---

15 A vertical agreement is a term used in the competition law to denote agreements between firms up or down the supply chain from each other.

16 In the context of the EU competition law, any entity engaged in an economic activity, that is, an activity consisting in offering goods or services on a given market, regardless of its legal status and the way in which it is financed, is considered an undertaking.

17 Office of Fair Trading (2004j) pp. 10-11.

18 They refer to indisputable errors of judgment in complete disregard of the facts of the case and the applicable rule or law.

2.1.13.5 The EU does not have an exhaustive list of such exclusions. Nonetheless, an academic has provided some examples of exclusion on grounds of public interest such as postal services, pension schemes, waste materials treatment, and the transport sector which are not economically viable in their own right[19].

2.1.13.6 As for the exclusion provided for fiscal monopoly, according to the Office of Fair Trading of the United Kingdom, there are very few cases in the jurisprudence of the European courts or in the decisions of the Commission in which such monopoly exclusion has been considered. The main reason is that very few monopolies are established with the principal objective of raising revenue for the state.[20]

Public views on the competition law

2.1.14 Regarding public views on the objectives of the competition law, enquires have been sent to the Directorate General[21] for Competition under the Commission, the authority responsible for competition in the EU, and the Organisation for Economic Co-operation and Development (OECD). As at the publication of this research report, they have not replied.

2.1.15 In any event, it is noted that the EU has provided detailed information on its competition policies covering areas such as mergers, cartels, state aid and individual sectors, as well as some guide books entitled *EU competition policy and the consumer law*, *Annual report on competition policy* and *Competition policy in Europe* on its website. According to the Directorate General for Competition, this arrangement helps the public understand the objectives and basic concepts of the EU competition policy.

19 Whish (2009) pp. 234-235.

20 Office of Fair Trading (2004j) p. 14.

21 A Directorate General is a government department of the EU. Each department is headed by a Director General, who is a European Commissioner.

Issues of concern

*Enforcement problem*

2.1.16 In the mid-2000s[22], as the EU steadily grew in size and anti-competitive activities and market practices became more complex in nature, the Directorate General for Competition found itself unable to deal with the increased workload. Hence, the European Council delegated the duties of implementing the competition rules from the Directorate General for Competition to authorities within member states by adopting the *Council Regulation No. 1/2003* on the implementation of the rules on competition laid down in Articles 81 and 82 of the *EC Treaty* in December 2002. This *Council Regulation*, which came into effect in May 2004, has enabled national competition authorities and national courts of member states to apply Articles 81 and 82 of the *EC Treaty* in their entirety, which is considered as an important step in strengthening and reinforcing the competition policy in the EU. Meanwhile, the Directorate General for Competition has concentrated its efforts mainly on complex, Community-wide investigations and state aid issues.

2.1.17 The Commission has retained a role in the enforcement mechanism, which is to serve as the co-ordinating force in the newly created European Competition Network. This Network, made up of the member states plus the Commission, serves the purpose of establishing a continual dialogue among different enforcers and establishing a common approach of handling competition issues. In particular, members of the Network are committed to:

(a) inform each other of new anti-competition cases and envisaged enforcement decisions;

(b) co-ordinate investigations, where necessary; and

(c) discuss various issues of common interest.

[22] Eight Central and Eastern European countries, consisting of Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia and two Mediterranean islands of Malta and Cyprus, joined the EU in May 2004. This was the largest single enlargement of the EU in terms of people and number of countries.

*Merger control*

2.1.18 A major concern about the application of the competition law in the EU is on merger control, which has been criticized as based on protectionist reasons, rather than sound economic reasons. A controversial case is when the EU rejected a proposed merger of two United States (US) companies[23], General Electric and Honeywell, in 2001, which had been approved by the US authorities, because the Commission considered that the merger between those two companies would have severely reduced competition in the aerospace industry and resulted ultimately in higher prices for customers, particularly airlines.

2.1.19 At the time, the Antitrust Division of the US Department of Justice stated that the different concluding results in the General Electric and Honeywell case were not attributable to failings on the part of the Commission and the US Department of Justice to co-ordinate on the facts and analysis. Rather, they flowed from a substantive difference between the two agencies on the proper scope of antitrust enforcement. The Antitrust Division concluded that the merged firm would have offered better products and services at more attractive prices than either company could offer on its own, which is the essence of competition. The Commission, on the other hand, focused on how the merger would affect competitors, essentially concluding that the efficiencies and lower prices that would flow from the transaction were ultimately anti-competitive. In the view of the Antitrust Division, the EU's decision was antithetical to the goals of antitrust law enforcement.[24]

*Small and medium enterprises*

2.1.20 The Commission does not have any exemptions for SMEs engaging in anti-competitive conducts. In fact, the Commission considers that SMEs are rarely capable of appreciably affecting competition in the EU market because they are small in size. Nevertheless, the Commission has adopted the *Notice on Agreements of Minor Importance* under Article 81 of the *EC Treaty*. By defining those situations when agreements between companies are not prohibited by the *EC Treaty*, the *Notice* reduces the compliance burden for smaller companies without conspicuously restricting competition. At the same time, the Commission can avoid examining cases which have no interest from a competition policy point of view and is thus able to concentrate on more problematic agreements.

---

[23] Multi-national corporations planning to merge need approval from the Commission, irrespective of where they are headquartered. The criterion is hinged upon the amount of business they engage in within the EU.

[24] Department of Justice (2001).

2.1.21 The essence of the *Notice* is for the Commission to quantify, with the help of market-share thresholds, those agreements, decisions of associations of undertakings and concerted practices that do not constitute an appreciable restriction of competition. This approach is considered useful when it is necessary to exempt agreements that do not affect competition but are not covered by the *Block Exemption Regulations*.

2.1.22 Whilst the main criterion for exemption is the market-share threshold, compliance with other conditions must also be verified:

(a) thresholds of the combined market shares of 10% for agreements between competitors and 15% for agreements between non-competitors. As agreements between competitors may be prone to anti-competitive effects, the market-share threshold applicable to them is lower than that for agreements between non-competitors;

(b) thresholds of the combined market shares of 5% for agreements having a cumulative anti-competitive effect. If firms operate in sectors where there are already similar agreement networks, there is a considerable risk that competition will be restricted because of a cumulative effect; and

(c) there are no thresholds for agreements between SMEs.

2.1.23 The exemption does not apply to agreements between competitors aimed at limiting production or sales, fixing selling prices and restricting product supplies to customers; and agreements between non-competitors relating to the sale price of products[25], restriction of territory or customers, and restriction of sales in a selective distribution system.

2.1.24 On concerns of SMEs regarding accused anti-competitive conduct in the EU, RLSD has enquired the Directorate General for Competition, the European Competition Network and OECD on this issue. In response, OECD has stated that small businesses often support the competition law because they benefit from having an opportunity to enter the market and fairness among participants in the market. In the EU, there are seldom any reports about such concern.[26]

[25] However, maximum or recommended prices are generally authorized.

[26] As at the publication of this research report, the Directorate General for Competition and the European Competition Network have not replied.

*Application of competition rules to selected sectors*[27]

(A) Ocean shipping

2.1.24.1 Prior to 18 October 2008[28], there were *Block Exemption Regulations* provided for ocean shipping conferences[29] operating on trades to and from the EU. At the time, the justifications offered for the exemption were based on the assumption that conferences brought stability, ensuring reliable services of exporters which could not be achieved by other means. However, a thorough review of the shipping industry carried out by the Commission[30] demonstrated that ocean shipping was not unique as its cost structure did not differ substantially from that of other industries. There was also no evidence that the conference system led to more stable freight rates or more reliable shipping services than would be the case in a fully competitive market. The Commission hence concluded that the shipping industry did not need to be protected from competition.[31]

2.1.24.2 The Commission repealed the ocean shipping conference *Block Exemption Regulations* on 18 October 2008. Under the new business environment, it does not matter whether conferences are permitted in other jurisdictions. The fact that price-fixing is permitted elsewhere does not authorize it on trades to and from the EU and would not afford an effective defence in anti-competition proceedings. Nonetheless, the EU rule change does not prevent shipping lines from participating in price-fixing and capacity limiting conferences on non-EU trade routes.

---

27 The sectors selected are considered relevant to the Hong Kong economy.

28 The basic regulation covering ocean shipping conferences dates from 1986, permitting co-ordination of timetables and agreements about frequency of sailing and calls, allocation of sailing and calls among members, regulation of capacity and allocation of cargo or revenue.

29 An ocean shipping conference is described in the relevant *EC Regulation* (*Regulation 4056/86*) as a group of two or more vessel-operating carriers that provide an international liner service, for the carriage of cargo on a particular route or routes, within specified geographic limits, under a uniform or common tariff and conditions of carriage.

30 The process of reviewing the exemption from the *EC Treaty* competition rules for ocean shipping conferences, as laid down in *Council Regulation 4056/86*, was launched in March 2003 with the publication of a consultation paper entitled *Application of competition rules to maritime transport*. A White Paper on the *study on impact of repealing exemption for liner shipping conferences* was published in October 2004. The Commission adopted a legislative proposal of repealing the block exemption in December 2005. The European Parliament passed the proposal in July 2006, which provided a two-year transition period for shipping companies to make any necessary business arrangements.

31 See *Council Regulation No 1419/2006* of 25 September 2006 repealing *Regulation No 4056/86.*

2.1.24.3 With the demise of ocean shipping conferences in the EU, most shipping lines have decided to go it alone and issue their own charges. The elimination of anti-competition immunity is welcomed by shipper associations in the major trading markets such as the European Shippers Council and the National Industrial Transportation League in the United States as they have competitive prices available in the market.

(B) Electricity

2.1.24.4 In the 1990s, when most of the national electricity markets were monopolised, the Commission decided to open up these markets to competition gradually by:

(a) distinguishing clearly between competitive parts of the industry (e.g. supply to customers) and non-competitive parts (e.g. operation of the networks);

(b) obliging the operators of the non-competitive parts of the industry (e.g. the networks and other infrastructure) to allow third parties to have access to the infrastructure;

(c) freeing up the supply side of the market (e.g. removing barriers which prevent alternative suppliers from importing or producing energy);

(d) removing gradually any restrictions on customers from changing their supplier; and

(e) introducing independent regulators to monitor the sector.

2.1.24.5 The first liberalization directives of opening up the electricity market were adopted in 1996[32], with the objective of gradually introducing competition and creating an internal market for the generation, transmission and distribution of electricity. The second liberalisation directives were passed in 2003[33], calling for the speeding up of the liberalization process with a view to achieving a fully operational internal market. The Commission identified that the main obstacles of a fully operational and competitive internal market were related to issues of access to the network, pricing issues and different degrees of market opening between member states, and proposed to adopt a detailed timetable for the achievement of accurately defined objectives with a view to gradually but completely liberalizing the electricity market.

2.1.24.6 In the mid-2000s, the Commission admitted that although progress had been made, competition was slow to take off, with markets remaining largely national, with relatively little cross-border trade, and highly concentrated. Companies trying to enter the markets, business leaders, parliamentarians, and consumer groups were concerned about the slow development of the wholesale electricity markets, high prices and limited choice for consumers. As such, the Commission launched a sector inquiry in 2005 to identify the barriers preventing more competition in these markets.

2.1.24.7 The final report of the sector inquiry, published in 2007, revealed serious distortions of competition in the sector, in particular:

(a) most wholesale markets remained national in scope, with high levels of concentration in generation, which gave scope for exercising market power;

(b) vertical integration of generation, supply and network activities, which reduced the incentives to trade, and for new companies to enter the market, remained a dominant feature in many electricity markets;

(c) the low level of cross-border trade was insufficient to exert pressure on (dominant) generators in national markets;

---

[32] For details, see *Directive 96/92/EC of the European Parliament and of European Council of 19 December 1996*.

[33] For details, see *Directive 96/92/EC of the European Parliament and of European Council of 26 June 2003*.

(d) there was a serious lack of reliable and timely information (transparency) in the electricity wholesale markets; and

(e) price-setting mechanism was complex, and many users had limited trust in those mechanisms.

2.1.24.8 Given the concerns identified in the sector inquiry, the Commission proposed further liberalization of the electricity sector in September 2007. Central to the proposals were measures aimed at ensuring the effective separation between the operation of electricity and gas transmission networks from supply and generation activities. To achieve this aim, the Commission proposed two options:

(A) Ownership unbundling

2.1.24.9 This option, preferred by the Commission, would prevent companies involved in transmission of electricity from being involved in energy generation or supply at the same time. In other words, such companies would be obliged to sell part of their assets.

(B) Independent system operator

2.1.24.10 Under the second option, companies involved in energy production and supply would be allowed to retain their network assets, but would lose control over how they were managed with commercial and investment decisions left to an independent company to be designated by national governments. However, the Commission warned that this arrangement would come at a higher price in terms of regulatory burdens:

(a) network owners had to follow decisions by the independent system operator to finance investments in transmission capacity, and;

(b) they had to comply with a 10-year network investment plan proposed by the national energy regulator.

2.1.24.11 The designation of the independent system operator by national governments would have to receive prior approval from the Commission to ensure a sufficient level of independence. In the end, the second option has been adopted and is being implemented. However, in some member states such as France and Germany, their respective liberalization programme has not been successfully implemented because of political opposition.

## 2.2 Institutional framework for enforcing the competition legislation

2.2.1 The task of enforcing the competition law has been entrusted to the Commission under Article 85 of the *EC Treaty*. In practice, the Commissioner for Competition[34] heads the Directorate General for Competition, which is responsible for establishing and implementing a coherent competition policy in the EU.

Mission

2.2.2 The mission of the Directorate General for Competition is to enforce the competition rules of the *EC Treaty*, in order to ensure that competition in the EU market is not distorted and that markets operate as efficiently as possible, thereby contributing to the welfare of consumers and to the competitiveness of the European economy.

Functions and duties

2.2.3 The Directorate General for Competition performs the following functions and duties:

(a) enforcing competition rules on antitrust, mergers, state infringements and state aid control;

(b) conducting sector inquiries into certain areas of the economy where competition does not appear to be functioning well;

(c) developing a competition policy encompassing a range of activities, including the design and review of procedural and substantive competition rules; the provision of internal guidance for the Commission's enforcement activities; the co-ordination of the actions of competent member states' authorities; and the external communication of the EU competition policy;

(d) advocating competition aimed at influencing regulatory processes both at the EU and national levels to ensure better and pro-competitive regulations; and

[34] The Commissioner for Competition is a political appointment. Like all commissioners, he or she is nominated by the President of the Commission and appointed by the Council of the EU for a five-year term, after the confirmation by the European Parliament.

(e) co-operating with competition authorities outside the EU, in particular to address the rise in multi-jurisdictional mergers and anti-competitive conduct across borders.

Organization structure

2.2.4 The senior management of the Directorate General for Competition consists of a Director General who oversees the daily businesses of the Directorate and three Deputy Directors General, who have responsibility for operations, mergers and antitrust, and state aid respectively. There is also a Chief Competition Economist[35]; who reports directly to the Director General, provides independent guidance on methodological issues of economics in the application of the EU competition rules and contributes to individual competition cases that involve complex quantitative analysis.

2.2.5 The Directorate General for Competition is divided into nine administrative units[36]:

(a) Directorate A is responsible for policy and strategic support including the European Competition Network, and for international relations;

(b) Directorates B to F are the operational units, each with responsibilities for particular sectors, which conduct cases under Articles 81 and 82 and the *Merger Regulation 139/2004*, other than cartel cases, and deal with state aid cases;

(c) Directorate G deals exclusively with cartels, detection and eradication of which is a major priority of the Commission;

(d) Directorate H is responsible for cohesion and enforcement issues arising in relation to state aid; and

(e) Directorate R is responsible for the registry, strategic planning and resources.

[35] His team consists of 21 economists.
[36] At the end of 2009, there were 783 staff members.

2.2.6 Formal decisions of the Directorate General for Competition must be vetted by the Legal Service of the Commission. The Legal Service represents the Commission in proceedings before the General Court[37] and the European Court of Justice[38].

Funding arrangement

2.2.7 The Commissioner for Competition is required to prepare an annual budget based on a number of considerations such as the multi-annual financial framework in force and the annual policy strategy and work programme for the Directorate General for Competition, and submit it to the Commission[39] for approval.

2.2.8 The Commission examines each departmental budget, if approved, consolidates them into the draft budget, and presents it to the budgetary authorities, comprised of the European Council and the European Parliament, which are empowered to amend and adopt the draft budget. In case of disagreement between the Council and the Parliament, a specific Conciliation Committee[40] is convened with the task of reaching agreement on a joint text within a period of 21 days, subject to the approval of the two budgetary authorities. If the joint text is rejected by the European Council, the European Parliament has the right to ultimately approve the budget. As regards the budget of the Directorate General for Competition, it amounted to €78.2 million (HK$844.6 million) in the financial year 2008-2009.

---

37 The General Court was previously known as the Court of First Instance. It was created to reduce the workload of the European Court of Justice by dealing with the cases with no political or constitutional importance and those involving complex facts. It is composed of 27 judges, at least one from each member state. The Judges are appointed for a renewable term of six years by common accord of the governments of the member states.

38 The European Court of Justice, being the highest court in the EU, consists of 27 Judges, at least one from each member state. The Judges are assisted by eight Advocates-General, who are responsible for presenting a legal opinion on the cases assigned to them. The Judges and Advocates-General are appointed by common accord of the governments of the member states and hold office for a renewable term of six years

39 The EU's financial resources come from three sources: (a) a uniform percentage rate applied to the gross national income of each member state, accounting for 76% of its total revenue in 2010; (b) duties charged on imports of products coming from a non-EU state, accounting for 12% of the total; and (c) a uniform percentage rate applied to each member state's value-added tax revenue, accounting for 12% of the total.

40 Under Article 251(4) of the *EC Treaty*, a Conciliation Committee may be set up between the European Council and the European Parliament to resolve any disagreement between the two institutions. The Committee comprises members of the Council and an equal number of representatives of the Parliament and is co-chaired by the President of the Council and the President of the Parliament.

Accountability arrangements

2.2.9 The Commissioner for Competition is accountable to the Commission in the following ways:

(a) presenting an *Annual Management Plan* setting out its key objectives for the year ahead, an *Annual Report on Competition Policy* providing information on matters of both policy and enforcement, and a review of the activities setting out their achievements and suggestions to remedy any shortcomings, as well as an *Annual Activity Report* presenting the achievements reached and the corresponding resources used by the Directorate General for a particular year's activities[41];

(b) attending parliamentary meetings and answering questions[42]; and

(c) being subject to the scrutiny of the Internal Audit Service of the Commission, which conducts audits and investigations of the programmes and operations of the Directorate General for Competition.

## 2.3 Enforcement mechanism and appeal procedure

Enforcement powers and process

2.3.1 Under Article 85 of the *EC Treaty*, the Commission is empowered to enforce the competition law. The investigation process may start from a complaint[43] or the Commission's own initiative of any violation of the law, with the investigation being conducted by the Directorate General of Competition.

2.3.2 The initial investigation principally involves soliciting documentary information from relevant parties. When requesting information, the Directorate General for Competition will state the basis and purpose of the request, specify the information requested and the deadline, and indicate the consequences of incorrect or misleading response.

---

41 These reports are also tabled at the European Parliament.

42 The Committee on Economic and Monetary Affairs is responsible for formulating rules on competition and state aid.

43 A complainant should provide his name and address, identify the firms and products concerned and describe clearly the practice he has observed, so as to help the Commission to detect problems in the market and start an investigation, if necessary.

2.3.3 In order to obtain information that companies are likely to conceal, the Directorate General for Competition may launch a "dawn raid". If a company does not co-operate, the use of force to gain entry requires an order from a national court. The Directorate General for Competition must describe the nature of the suspected infringement and the target's involvement in it and explain the need for the particular search. The national court can verify that coercive measures are not arbitrary or disproportionate; however, the court may not demand to see the evidence in the Commission's file. After obtaining approval from the relevant national court to conduct such a raid, the Commission is empowered to enter business premises, homes of individual directors, managers and staff, to examine physical records and take copies and extracts. The Directorate General for Competition can seal the premises during the search and ask the parties concerned to answer questions arisen.

2.3.4 Providing false or misleading information in an investigation, or failing to provide complete and accurate responses within the time set may result in fines of up to 1% of average annual turnover. Daily periodic penalties of up to 5% of average daily turnover may also be imposed to compel complete and accurate responses to a request by decision. Usually, penalties would accrue only if the recipient fails to respond within the time limit.

2.3.5 During the investigation of anti-competitive practices, the Commissioner for Competition has to take a formal step by issuing a Statement of Objections, in which the Commission informs the parties concerned in writing of the objections raised against them. The addressee of a Statement of Objections can make a reply in writing, setting out the facts known to it which are relevant to its defence against the objections raised by the Commission.

2.3.6 The party concerned may request an oral hearing to present their views about the case. The hearing is conducted by a Hearing Officer[44], in order to guarantee due process and the right of defence in the proceedings. Those in attendance of the hearing comprise primarily the complainant, respondents, investigating staff, and officials from national competition authorities of the member state.

[44] The main roles of the Hearing Officer are to serve as a guarantor of rights of defence in the proceedings before the Commission, to ensure that: (a) interested parties are duly heard, in writing and orally; (b) all relevant arguments and facts presented by interested parties are duly considered; (c) information is treated confidentially when necessary and business secrets are protected; and (d) the affairs of interested parties are handled impartially, fairly and within a reasonable time.

2.3.7 After considering all the relevant evidences, the Directorate General of Competition has to prepare the draft decision and submit it to the Commissioner for Competition for approval. The Commissioner may seek independent opinion from the Hearing Officer and the Chief Competition Economist of the Commission. A final decision will be issued by the Commissioner for Competition. If the respondent is found guilty of infringing the competition law, he is subject to a maximum fine of 10% of the undertaking's global annual turnover.

*Leniency programme*

2.3.8 The EU has a leniency programme in place whereby companies that provide information about a cartel in which they participated might receive full or partial immunity from fines. According to the Commission, the leniency programme allows it not only to pierce the cloak of secrecy in which cartels operate but also to obtain insider evidence of the cartel infringement. In practice, the programme has a deterrent effect on cartel formation, and destabilizes the operation of existing cartels as it seeds distrust and suspicion among cartel members.

2.3.9 In order to obtain total immunity under the leniency programme, a company which participated in a cartel must be the first one to inform the Commission of an undetected cartel by providing sufficient information to allow the Commission to launch an inspection at the premises of the companies allegedly involved in the cartel. If the Commission has already been in possession of enough information to launch an inspection or is undertaking one, the company must provide evidence that enables the Commission to prove the cartel infringement. In any event, the company must fully co-operate with the Commission throughout the investigation procedure, provide it with all evidence in its possession and put an end to the infringement immediately. The co-operation with the Commission implies that the existence and the content of the application for the leniency programme cannot be disclosed to any other company.

2.3.10 Companies which do not qualify for immunity may benefit from a reduction in fines if they provide evidence that represents "significant added value" to that already in the Commission's possession and have terminated their participation in the cartel. An evidence is considered to be of a "significant added value" for the Commission when it reinforces its ability to prove the infringement. The first company to meet these conditions is granted 30% to 50% reduction, the second 20% to 30% and subsequent companies up to 20%.

Appeal procedure

2.3.11 The decisions on competition matters are subject to oversight by the General Court and the European Court of Justice[45]. The General Court hears appeals against the decisions of the Commissioner for Competition. It is authorized to review the case, and may cancel, reduce or increase the fine or periodic penalty payment imposed. Filing the court action does not by itself suspend the application of the decision. The parties can request that the General Court suspends the application of the decision pending appeal. In practice, the Commission usually agrees to suspend the fine pending appeal, on condition of providing a bank guarantee for the fine plus interest.

2.3.12 The European Court of Justice is tasked with hearing appeals against the General Court's rulings on points of law, which involve the application or interpretation of legal principles or statutes.[46] If the appeal is admissible and well founded, the Court of Justice will set aside the judgement of the General Court. Where the state of the proceedings so permits, the Court may decide the case itself. Otherwise, the Court must refer the case back to the General Court, which is bound by the decision given on appeal. For complicated competition cases, the whole judicial process may take years to complete.

[45] The websites of both the General Court and the European Court of Justice contain information on recent judgements of the Courts and details of the pending cases.

[46] It also deals with points of law referred to it by national courts under Article 234 of the *EC Treaty*.

# Chapter 3 – United Kingdom

## 3.1 Overview of the competition law

Legislative developments

3.1.1 The United Kingdom (UK) competition regulatory regime can be traced back to 1919 when the first piece of the competition statue, the *Profiteer*ing *Act*, was enacted to penalise unlawful raising of prices with the intention of controlling prices in the recovery period following World War I. During the Great Depression of the 1930s, the government endorsed cartelization to protect larger businesses.

3.1.2 Towards the end of World War II, the introduction of new competition rules was discussed, with a different objective from the previous ones. At the time, unemployment was a major issue, and the *Monopolies and Restrictive (Inquiry and Control) Act 1948* was enacted to establish the Monopolies and Restrictive Practices Commission[47] with the goal to enhance competition in the marketplace which would help attain full employment. The *1948 Act* authorized the Monopolies and Restrictive Practices Commission to investigate monopolies[48] and restrictive practices[49], and empowered the President of the Board of Trade[50] to examine the investigation findings and to determine the appropriate remedy.[51]

3.1.3 Following the enactment of the *1948 Act*, there were a number of amendments to the competition legislation. In 1955, the Monopolies and Restrictive Practices Commission published the *Report on Collective Discrimination*, which eventually led to the adoption of the *Restrictive Trade Practices Act 1956*. It was at this point that the treatment of monopoly situations and restrictive trade practices diverged, with the latter being subject to a stricter regime. The rationale behind this new piece of legislation was the need for effective sanctions.

---

47 This was the predecessor of the Competition Commission created by the *Competition Act 1998*.

48 A monopoly was defined as any business with a market share of 33% or more.

49 An example was that a monopoly pressured suppliers not to supply raw materials or final products to its competitors.

50 The Board of Trade is a committee of the Privy Council of the UK, originating as a committee of inquiry in the 17th century and evolving gradually into a government department with a diverse range of functions. It merged with the Ministry of Technology in 1970 to form the Department of Trade and Industry.

51 The Monopolies and Restrictive Practices Commission would investigate and report the findings to the President of the Board of Trade, who had the powers to make the final decisions or impose remedies.

3.1.4 The *Resale Prices Act* was passed in 1964, making it illegal for manufacturers to act in collusion to jointly maintain resale prices for their products to consumers, unless authorized by the Restrictive Practices Court in accordance with specified criteria. In 1965, the *Monopolies and Mergers Act* was introduced to empower the Monopolies and Restrictive Practices Commission to investigate actual or possible mergers where monopoly power would increase as a result. The *Restrictive Trade Practices Act 1968* was later passed to make various changes to the *1956 Act*, including the introduction of the provision that unregistered agreements would be voided in respect of any relevant restrictions.

3.1.5 An important piece of the competition legislation, the *Fair Trading Act 1973*, was enacted to create the role of the Director General of Fair Trading and to revise the institutional structure of the competition law in the UK. The creation of the office of the Director General of Fair Trading[52] meant that there would be a dedicated institution which, among its other roles, had responsibility for competition policy. Some other important provisions of the *1973 Act* were to empower the Secretary of State to bring the services sector within the scope of the *Restrictive Trade Practices Act* and to reduce the monopoly situation threshold from 33% to 25%. Following the *Fair Trading Act*, a further amendment to the competition legislation was made through the enactment of the *Restrictive Trade Practices Act 1976* which consolidated the legislation on resale price maintenance.

3.1.6 Another milestone was reached when the *Competition Act 1980* was enacted arising from two consultation documents known as the *Liesner Reports* of 1978 and 1979. The *Act* reduced the scope of applications of the anti-competitive practices, to the effect that a course of conduct should not be investigated where the person pursuing it had annual turnover of less than £10 million[53] (HK$122 million) or a market share of less than 25%. Previously the exclusion applied only when both criteria were satisfied, and the turnover threshold was £5 million (HK$61 million) lower. On the enforcement issue, the Director General was empowered to investigate and prosecute unlawful cartels.[54]

---

52 Under section 1 of the *Fair Trading Act*, many of the most important functions in the competition law were carried out in the name of the individual appointed by the Secretary of State to this position.

53 The average exchange rate in 2009 was £1=HK$12.2.

54 The most notable example was the substantial amount of fines imposed on a number of firms in the ready-mixed concrete sector in the early-1980s.

3.1.7 In the mid-1980s, there was concern that the legislation on restrictive trade practices was not effectively implemented, which led to the publication of a consultative document entitled *Review of Restrictive Trade Practices Policy* in 1988. In this paper, the government proposed that the policy on restrictive trade practices should be fundamentally altered to model upon Article 81 of the *Treaty of the European Community (EC Treaty)* to cover various types of restrictive trade practices in one single piece of legislation for effective implementation. After a period of consultation, the government published the paper *Opening Markets: New Policy on Restrictive Trade Practices* in which it confirmed its intention to change. However, no Bill was introduced due to the pressure exerted by the business community.

3.1.8 The next reform of the domestic competition law did not deal with restrictive trade practices, but rather with the control of firms with significant market power. In the consultative paper entitled *Abuse of Market Power: Document on Possible Legislative Options*, the government examined the case for introducing stronger provisions, modelled upon Article 82 of the *EC Treaty* to adopt a tougher merger control regime and reduce ministerial interruption in the enforcement. The responses to this consultation paper from the business community and other interested parties were varied and inconsistent. Hence, the government agreed that it would only seek to strengthen the existing legislation, the *Fair Trading Act* and the *Competition Act*, to deal with the issue of reinforcing merger control. Nevertheless, as in the case of the restrictive trade practices proposals, the government did not introduce any *Bill*, and the status quo of the law remained unchanged.

3.1.9 In the mid-1990s, the House of Commons Select Committee on Trade and Industry continued to express dissatisfaction towards the state of the competition law, and eventually undertook an inquiry in March 1995. Due to the mounting pressure from the legislature, the government announced in November 1995 to proceed with a consultation exercise on the fundamental reform of the domestic competition law, and in March 1996 it published a consultation document entitled *Tackling Cartels and the Abuse of Market Power: Implementing the Government's Policy for Competition Law Reform*. The paper reiterated the prior proposal of modelling legislation upon Article 81 of the *EC Treaty* to deal with the problems of restrictive trade practices and that the issue of market power should be addressed by strengthening the current law. During the period of consultation, a large number of responses were received from businesses, consumers' representatives, trade associations and legal firms. The government incorporated their inputs, and published an explanatory document *Tackling Cartels and the Abuse of Market Power: a Draft Bill*, which set out a draft Bill and a summary of the results of the consultation, in August 1996.

3.1.10 In the May 1997 general election, the Labour Party had a landslide victory, setting up the stage for replacing the Conservative government. The new Labour government was committed to reform and strengthen the competition law. As for restrictive trade practices, the government broadly agreed with its predecessor that a system modelled upon Article 81 of the *EC Treaty* should be introduced. In relation to the abuse of market power, the new government also intended to follow Article 82 of the *EC Treaty.*

3.1.11 A consultation document and a working draft *Competition Bill* were published in August 1997 and the *Bill* itself was published in October 1997. The *Competition Act* was enacted in November 1998 and entered fully into force in March 2000.

Competition Act 1998

3.1.12 The *Competition Act 1998*[55] is the major piece of legislation underlying the competition policy in the UK. The *Act* provides an updated framework for identifying and dealing with restrictive business practices and abuse of a dominant market position. The prohibitions are enforced primarily by the Director General of Fair Trading, while the utility regulators have concurrent powers in their particular sectors[56]. Separately, this *Act* establishes a new public body, the Competition Commission, in 1999 to replace the Monopolies and Mergers Commission for investigating competition issues such as mergers and restrictive trade practices.

[55] The *Competition Act 1998* has replaced the *Restrictive Trade Practices Act 1976*, the *Resale Prices Act 1976*, the majority of the *Competition Act 1980* and related provisions in other legislation concerned with competition.

[56] The UK started creating utility regulators in the 1980s. Each of these utility regulators was established by a different *Act*, which set out the functions of the regulator and the sectoral minister, differing from industry to industry. Currently, there are utility regulators in the gas and electricity, water and sewerage, communications, and railway and air traffic services sectors.

3.1.13 One of the main purposes of this *Act* is to harmonize the UK with the EU on competition policies, with Chapter I and II of the *Act* mirroring Articles 81 and 82 of the *EC Treaty*:

(a) Chapter I of the *Act* prohibits restrictive trade practices engaged by companies operating within the UK that distort, restrict or prevent competition. Such practices are primarily in the form of horizontal agreements (agreements to collude between firms on the same level of the supply chain such as retailers or wholesalers). The purpose of these agreements could be to limit output, collusively share information, fix prices, tender collectively or share markets out; and

(b) Chapter II of the *Act* prohibits the abuse of a dominant position by a firm which employs practices such as predatory pricing, excessive pricing, refusal to supply, vertical restraints and price discrimination to maximise profit, gain competitive advantage or otherwise restrict competition. When investigating alleged breaches of Chapter II, the essence is for the Director General of Fair Trading to identify whether the firm concerned actually possesses a dominant market position.[57]

3.1.14 The financial penalty of violating the prohibitions specified in the *Act* is fines of up to 10% of annual turnover for three years.

Enterprise Act 2002

3.1.15 The Labour government's manifesto in the 2001 general election was to give more independence to the competition authorities, to tackle trading practices that harm consumers and to reform the insolvency laws. A consultation paper entitled *Productivity in the UK: Enterprise and the Productivity Challenge* was published in June 2001, which spelled out the government's intention to reform the economy by enhancing competition to promote the gross productivity.

[57] If a firm is found to have a market share in excess of 40%, it is generally considered a threat to competition. See Office of Fair Trading (2004c) p. 9.

3.1.16 The Labour government won the 2001 general election and subsequently enacted the *Enterprise Act 2002*, coming into effect in June 2003, to make major changes to competition and insolvency laws[58]. As for the domestic competition law, the *Act* introduced a number of reforms to the institutional architecture of the domestic system. It abolished the office of the Director General of Fair Trading and created a new corporate body, the Office of Fair Trading[59]. The *Act* conferred on the Competition Commission decision-making powers, including the making of final decisions, in relation to merger and market investigations. The *Act* created a new institution, the Competition Appeal Tribunal, which would have appellate and judicial review functions in relation to decisions of the Office of Fair Trading, the Competition Commission, the utility regulators and the Secretary of State.[60] The *Act* also reduced the powers of the Secretary of State on making decisions in competition law cases, particularly in relation to mergers.[61]

3.1.17 The *Act* contained new provisions for the investigation of mergers and markets, replacing the merger and monopoly provisions formerly contained in the *Fair Trading Act 1973*. To supplement and reinforce the *Competition Act 1998*, the *Act* introduced a new and separate criminal cartel offence[62] which, on indictment, could lead to imprisonment up to five years[63]. It provided for disqualification of company directors who knew or ought to have known of competition law infringements committed by their companies, and for enhancing the possibility of third parties, including consumer groups, to obtain remedies against anti-competitive behaviour.

---

58 The *Enterprise Act* made substantial amendments to the administration procedures for failing companies. The purpose was to enhance the creation of a rescue mechanism, so that insolvent companies could be saved, before their assets would be stripped and distributed to creditors.

59 The Director General's functions were transferred to the Office of Fair Trading accordingly.

60 The Competition Appeal Tribunal's decision may be appealed to the Court of Appeal in England, Wales and Northern Ireland, and to the Court of Session in Scotland.

61 The Minister of Trade and Industry in the past played a major role in competition policy, having final say over whether a particular merger was in the public interest. Under the *Enterprise Act 2002*, he only has powers to intervene if the proposed merger will affect the nation to the detriment of the public and national security.

62 The cartel offence is triable on indictment before a jury in the Crown Court, where a term of imprisonment of up to five years may be imposed or a fine, or in a Magistrate's Court, where the maximum prison sentence would be six months and a fine may be imposed. Prosecutions may be brought by the Serious Fraud Office which is a government department that investigates and prosecutes serious or complex fraud or the Office of Fair Trading. In practice, the Serious Fraud Office will undertake this function.

63 In June 2008, the UK had its first conviction under the criminal cartel regime, with three businessmen being sentenced to between 30 and 36 months imprisonment for involvement in an international cartel relating to marine hoses.

Competition Act 1998 and Other Enactments (Amendment) Regulations 2004

3.1.18 The European Council decentralised the implementation of the competition rules to member states by adopting the *Council Regulation No. 1/2003* on the implementation of the rules on competition laid down in Articles 81 and 82 of the *EC Treaty*[64] in December 2002. The *Council Regulation*, which came into effect in May 2004, has enabled national competition authorities and national courts to apply Articles 81 and 82 of the *EC Treaty* in their entirety.

3.1.19 The enactment of the *Competition Act 1998 and Other Enactments (Amendment) Regulations 2004* in the UK is for the purposes of implementing the *Council Regulation* for the alignment of the domestic competition regime defined in the *Competition Act 1998* and the European competition regime, which:

(a) provides for the direct applicability of Articles 81 and 82;

(b) sets out the powers of the European Commission, national competition authorities[65] and national courts;

(c) grants the Office of Fair Trading additional powers of investigation[66];

(d) limits periods for the imposition and enforcement of penalties; and

(e) deals with hearings and professional secrecy.

[64] The *Competition Act* prohibits anti-competitive behaviour that affects trade in the UK. Articles 81 and 82 prohibit anti-competitive behaviour that affects trade in the EU.

[65] The Office of Fair Trading is the principal designated enforcement agency, in cooperation with a number of utility regulators in their respective sectors, to enforce the *Competition Act 1998 and Other Enactments (Amendment) Regulations 2004*.

[66] Additional powers include: (a) adopting decision on the basis of legally-binding commitments as to companies' future behaviour and (b) conducting inspections at people's homes.

*Exemptions and exclusions of anti-competitive conducts*

(A) Exemptions on grounds of economic benefit

3.1.19.1 In line with the arrangements adopted in the European Union (EU), section 9(1) of the *Competition Act 1998* provides domestic exemptions[67] for agreements set out in Chapter I prohibition of the *Competition Act 1998* which contribute to improving production or distribution, or promote technical or economic progress, while allowing consumers a fair share of the resulting benefit, and do not include unreasonable restraints that risk eliminating competition in respect of a substantial proportion of the products or services in question.

3.1.19.2 To quality for an exemption, the parties to the agreement in question would need to show that the economic benefits involved have a direct link with the agreement, and that they are of a value out-weighting any anti-competitive effect.

3.1.19.3 The Secretary of State for Business, Enterprise and Regulatory Reform on recommendation from the Office of Fair Trading may issue block exemptions to the Chapter I prohibition. The only example of such block exemption to date is the *Public Transport Ticketing Schemes*[68] *Block Exemption Order*, which came into force from March 2001 to February 2011, allowing bus operators to agree on public transport ticketing schemes, subject to certain conditions such as ticket types[69]. It is envisaged that the operation of the block exemption will be reviewed before its expiry.

(B) Exclusion on grounds of public interest

3.1.19.4 According to Schedule 3 of the *Competition Act 1998*, exclusion on grounds of public interest may be granted, if an undertaking concerned has been entrusted with the operation of public services or functioned as revenue-producing monopolies[70] which raise revenues for the State. Such arrangement is in line with the practices exercised in the EU.

---

67 The EU *Block Exemption Regulations* also apply in the UK.

68 Ticketing schemes are written agreements between operators, allowing passengers to purchase tickets that can be used on the services offered by all participating operators. Without ticketing schemes, passengers would only be able to buy from each operator individual tickets valid for use only on that operator's services.

69 Such ticket types include: multi-operator travel-cards, multi-operator individual tickets, and short and long distance tickets.

70 The European Commission uses the term "fiscal monopolies", which has the same meaning as "revenue-producing monopolies" in the UK.

3.1.19.5 The Secretary of State for Business, Enterprise and Regulatory Reform is authorized to provide such exclusion, on recommendation from the Office of Fair Trading. The Office of Fair Trading has elaborated on the application of such exclusion in its guideline entitled *Services of general economic interest exclusion*.[71] According to the guideline, a public sector body will be considered to be an undertaking inasmuch as it carries out economic activities. The UK domestic competition law and Articles 81 and 82 of the *EC Treaty* prohibitions will not apply to the public sector body in so far as it carries out non-economic administrative or social functions.

3.1.19.6 When assessing whether the provision of state services is economic in nature or relates to non-economic administrative or social functions, the Office of Fair Trading will, while taking into account the particular circumstances of each case, consider how the characteristics of the service provided by the State meet the general principles established by the relevant EC jurisprudence.

3.1.19.7 According to the Office of Fair Trading, in considering whether state functions are economic or administrative, the main factor taken into account is the purpose of the entity.[72] For example, if an entity buying goods or services to provide a purely social activity, it is not considered engaging in economic activity, but serving an administrative purpose.

3.1.19.8 On the issue of a revenue-producing monopoly to be excluded from the prohibitions of the UK domestic competition law, the Office of Fair Trading states that an undertaking must have as its principal objective the raising of revenue for the state through the provision of a particular service. An undertaking must have been granted an exclusive right to provide the service, and hence be the monopoly provider of that service. A revenue-producing monopoly must also show that the application of the prohibitions of the domestic competition law would obstruct the performance, in law or in fact, of the particular tasks assigned to it.

3.1.19.9 As in the EU, the Office of Fair Trading has considered that it is unlikely that there are any revenue-producing monopolies in the UK. None of the privatized utilities[73] would qualify nor would they have done so when under state ownership, as the raising of revenue is not their principal objective.

---

71 Office of Fair Trading (2004j).

72 The legal status of a state organization and the way in which it is financed are not relevant considerations, neither is whether the organization is profit making.

73 The UK government has started privatization and liberalization of the utilities sector since the early 1980s, significantly reducing the number of services for which exclusive rights are held.

Public views on the competition law

3.1.20 In the UK, both the Office of Fair Trading and the Competition Commission have provided a large number of guidelines on the competition law[74], press releases, consultation papers and research papers on important issues in their respective websites, as well as educational activities such as seminars or lectures to educate the public and businesses about the competition law. In their replies to the enquiry of the Research and Library Services Division (RLSD), the two authorities are not aware of any public misunderstandings about the law.

Issues of concern

*Upholding the principle of free competition*

3.1.21 There were views that in the financial crisis of 2007-2008, the government had too many interventions in the banking market[75], which might violate the principle of free competition. The Office of Fair Trading[76] states its views in the report entitled *Government in markets: a guide for policy makers* published in November 2009, and reconfirms the government's role in upholding free competition in markets.

3.1.22 The report finds that when markets work well, firms may thrive only by providing what consumers want in a better and more cost-effective way than their competitors. The case for competition is simply that, on average, it tends to provide better outcomes than alternative models. Nevertheless, left to themselves, markets do not always deliver the best outcomes for consumers and businesses, and thus the government has a legitimate role in shaping them to correct failures or achieve specific policy objectives.

[74] Examples of these guidelines are: *Abuse of a dominant position*, *Agreements and concerted practices*, and *Competing fairly.*

[75] Two examples were the use of public funds for supporting the Northern Rock Bank and the Bradford and Bingley Bank in 2008.

[76] One of the functions of the Office of Fair Trading, under section 7 of the *Enterprise Act 2002*, is to provide information and advice to the government on competition and consumer issues.

3.1.23 In the view of the Office of Fair Trading, a major challenge for policy makers is to identify the hidden costs of competition restrictions. While the policy benefits of particular interventions may be clear, the longer-term effects[77] on competition may be far harder to predict. The aim for policy makers should be to minimize the distortions to markets, subject to achieving the desired policy objective.

*Small and medium enterprises*

3.1.24 Under the current legislative framework, there are no specified exemptions for small and medium enterprises (SMEs) when applying the competition legislation. In any event, under sections 39 and 40 of the *Competition Act 1998*, the government enacted the *Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations* in 2000 so as to avoid the prohibition regime advocated in the *Act* being unduly burdensome on small businesses. The *Regulations* provide limited immunity from financial penalties for small agreements in relation to infringements of the Chapter I prohibition addressing restrictive trade practices, excluding price-fixing agreements, and for conduct of minor significance in relation to infringements of the Chapter II prohibition concerning the abuse of a dominant position.[78]

3.1.25 The term small agreements refers to agreements, other than price-fixing agreements, between undertakings whose combined annual turnover does not exceed £20 million (HK$244 million). Conduct is considered to be of minor significance if annual turnover of the undertaking concerned does not exceed £50 million (HK$610 million).

3.1.26 RLSD has enquired the Office of Fair Trading and the Competition Commission on whether there are any concerns of SMEs regarding accused anti-competitive conduct. The Office of Fair Trading has replied that treatment of SMEs is less of an issue for the Office of Fair Trading as it prioritizes its work and tends to take action against infringements involving major companies. In addition, it has undertaken educational programmes to help small businesses avoid anti-competitive practices.

---

77 Such long-term effects include: increased productivity, enhanced invocation and reduced consumer prices.

78 This immunity does not apply to any infringements of Article 81 or Article 82 of the *EC Treaty*, and thus small businesses with activities having an effect on trade between member states may be subject to penalties even in respect of small agreements or conduct of minor significance.

3.1.27 The Competition Commission has stated that at the beginning of an investigation, all interested parties are invited to submit evidence and make submissions to the Commission. Each inquiry has its own designated web page which contains submissions and documents published by the Competition Commission for the parties concerned and the public to access. At the completion of the investigation stage, the Competition Commission will publish a provisional findings report that sets out its proposed decision on the statutory questions it must answer, its reasoning and also the core background details necessary for an understanding of the inquiry. The parties involved in the inquiry and any other interested parties have an opportunity to respond to this document and voice their concerns before the Competition Commission publishes the final report.

3.1.28 In relation to the Competition Commission's inquiries involving SMEs, they may participate in inquiries relating to their own businesses. For example, SMEs were active in the Groceries Market Investigation[79] in 2006. Based on past experiences, SMEs might voice their concerns relating to the competition situation of a particular market, and the number of cases of accusing them for committing any anti-competitive practices was minimal.

3.1.29 RLSD has enquired the two leading business organizations in the UK, the Confederation of British Industry[80] and the Federation of Small Businesses[81], about their views on competition.[82] The Confederation of British Industry has replied that it has consistently supported an effective competition regime in the UK and welcomed the reforms introduced by the *Competition Act 1998* and the *Enterprise Act 2002*. SMEs, as well as consumers, may be victims of anti-competitive practices and it is important that they are protected under the competition law. In fact, there are rarely any cases of accusing SMEs of violating the competition law. The government's primary focus has been on cartels which are seen as causing greater economic damage, and the Confederation of British Industry supports this enforcement policy.

---

79 In that incident, smaller retailers raised concerns about the impact of the buying power of larger grocery retailers on competition.

80 It represents some 240 000 businesses that together employ around one-third of the private sector workforce.

81 The Federation, with 215 000 members, is the UK's largest campaigning pressure group promoting and protecting the interests of the self-employed and owners of small firms.

82 As at the publication of this report, the Federation of Small Businesses has not responded.

*Application of competition rules to selected sectors*

(A) Ocean shipping

3.1.29.1 As the UK is a member of the EU, the European Community-wide competition law applies identically in the UK as in the other member states. Henceforth, following the lead of the EU, the UK government has prohibited the tariff-regulating ocean shipping conferences since 18 October 2008.

(B) Utilities

3.1.29.2 Since the early 1980s, the UK has started privatization and liberalization of the utilities sector which consists of telecommunications, gas, electricity and water. As a result, these markets have been opened up for competition and the number of exclusive rights over aspects of services is reduced. The UK government has made such a move to achieve three goals: improving the efficiency of the utilities sector, delivering competitive prices to consumers and meeting the requirements laid down by the European Commission.

3.1.29.3 Utilities companies in the UK are usually operated subject to licences that impose obligations upon them, attempting to prevent any anti-competitive, discriminatory or exploitative conducts. Individual sectoral regulators monitor these licences and have powers to enforce compliance with them. In the event of disputes with regulated companies as to the appropriate terms for inclusion in a licence, the regulators can make a so-called 'modification reference' to the Competition Commission which will decide whether the matters concerned operate, or may be expected to operate, against the public interest, and, if so, whether the effects adverse to the public interest could be remedied by modifications to the licence.

3.1.29.4 In controlling the prices charged by the utilities companies, the UK government has set price caps that are adjusted at periodic price reviews, usually conducted every five years. The price control function is exercised through the 'inflation rate less a particular percentage as fixed by the relevant regulator'. Over a period of time, this formula should lead to a reduction in prices in real terms, thereby benefiting the consumer and forcing the privatized companies to increase efficiency in order to remain profitable.

## 3.2 Institutional framework for enforcing the competition legislation

3.2.1 The Office of Fair Trading and the Competition Commission are the two primary regulatory bodies for competition law enforcement.

The Office of Fair Trading

*Mission*

3.2.2 The mission of the Office of Fair Trading is to make markets work well for consumers.

*Functions and duties*

3.2.3 The functions of the Office of Fair Trading include:

(a) enforcing the competition and consumer protection rules;

(b) undertaking market studies to examine whether there are any anti-competitive trade in practice;

(c) obtaining, compiling and keeping under review information relating to the exercise of its functions;

(d) enhancing public awareness of the benefits of competition to consumers and the economy;

(e) providing information and advice to ministers; and

(f) promoting good consumer practice.

*Organization structure*

3.2.4 The governing body of the Office of Fair Trading is the Board which has a duty to keep under review the marketplace for goods and services in the UK with a view to identifying practices or behaviour that may adversely affect consumers' interests, and either take direct remedial action, or make recommendations to ministers for legislative changes.

3.2.5 The Board consists of a Chairman whose term is a four-year period and no fewer than four other members, appointed by the Secretary of State. The Secretary of State must also appoint a Chief Executive whose term is a five-year period.[83] There are 10 Board members in the current term: four of them (the Chairman, Chief Executive and two executive directors) are executive members, and six are non-executive members. The term of both executive and non-executive members ranges from three to five years, and they come from the fields of finance, retail businesses, police force, academia and legal services.

3.2.6 Under the leadership of the Board, there are three divisions[84] to carry out the daily businesses of the Office of Fair Trading:

(a) Markets and Projects Division considers competition and consumer matters across all sectors of the economy. It is responsible for undertaking casework, approving consumer codes, enforcing consumer protection law, performing market studies, investigating mergers, making market investigation references and investigating possible criminal cartel offences;

(b) Policy and Strategy Division provides economic, legal and policy advice to the Board for ensuring consistent application and development of powers, setting strategic direction and priorities, and influencing developments in policy and legislative change; and

(c) Corporate Services Division administers in-house services, including human resources, finance and procurement, facilities management, and information and technology, and operates the Consumer Direct[85] and the Office of Fair Trading enquiries centre.

*Funding arrangement*

3.2.7 The activities of the Office of Fair Trading are funded by parliamentary vote. In the 2008-2009 financial year, the total expenditure of the Office amounted to £57.9 million (HK$706.4 million).[86]

---

83 Since 2005, the positions of the Chief Executive and the Chairman have not been held by the same person.

84 The Office of Fair Trading had 587 staff members in March 2008. Within this establishment, 135 were involved in core competition enforcement work, and 25 were involved in general market studies which had competition and consumer implications.

85 It is an Office of Fair Trading-funded telephone and online service offering information and advice on consumer issues.

86 Since both the structure and budget of the Office of Fair Trading are not split between competition and consumer work, it is not possible to estimate the proportion of budget spent on competition-related work.

*Accountability arrangements*

3.2.8 Being a non-ministerial government body created to remove political interference in public affairs, the Office of Fair Trading is accountable to the Parliament and the government in a number of channels:

(a) attending parliamentary meetings and answering questions;

(b) providing evidence to select committees in support of parliamentary investigations;

(c) publishing an annual plan setting out its main objectives and priorities for the year ahead and an annual report on its activities and performance, and laying them before the Parliament; and

(d) being subject to the scrutiny of the National Audit Office, which conducts audits and investigations of the programmes and operations of the Office of Fair Trading.

Competition Commission

*Mission*

3.2.9 The mission of the Competition Commission is to help ensure healthy competition between companies in the UK for the benefit of companies, customers and the economy.

*Functions and duties*

3.2.10 The Competition Commission investigates and addresses issues of concern in the following three areas:

(a) mergers – when larger companies will gain a more than 25% market share and where a merger appears likely to lead to a substantial lessening of competition in one or more markets in the UK. Under the *Enterprise Act*, after the merger investigation, the Competition Commission is empowered to accept or reject proposed mergers;

(b) markets – when it appears that competition may be prevented, distorted or restricted in a particular market; and

(c) regulated sectors – where aspects of the regulatory system may not be operating effectively or there are disputes between regulators and regulated companies.

3.2.11 The Competition Commission will initiate an inquiry when a concern is referred to it by another authority, which is usually the Office of Fair Trading. The Commission also investigates issues referred to it by the utility regulators, or by the Secretary of State. Under the existing framework, the Competition Commission cannot investigate companies or markets without a referral from one of these bodies.

*Organization structure*

3.2.12 The Competition Commission Council is the management board responsible for determining the Commission's plans and strategic direction, reviewing inquiries and discussing best practice among inquiry groups. The Competition Commission Council consists of nine members: the Chairman, four Deputy Chairmen, three non-executive members coming from the fields of academia, finance and legal services, and appointed by the Secretary of State for an eight-year term and the Chief Executive.

3.2.13 The Chief Executive manages and provides strategic leadership to the Competition Commission. Under his guidance, there are one Board and four Groups[87] performing distinctive functions:

(a) Operations Board which supports the Chief Executive in the operational management by setting budget and financial prioritisations, overseeing corporate services and preparing business and corporate plans;

(b) Finance and Regulation Group which provides expert advice to reference groups, and ensures that the Competition Commission remains abreast of regulatory and strategic financial issues and developments and formulates appropriate approaches to these issues for use in the Competition Commission's references. To assist the work of the Group, a team of some 40 Reporting Panel Members[88] is appointed by the Secretary of State on the basis of their expertise;

[87] The Competition Commission had 154 employees at the end of March 2009, including economists, business advisers and lawyers.

[88] Groups of at least three members are selected to undertake each inquiry, usually led by the Chairman or one of the Deputy Chairmen.

(c) Analysis Group which provides analytical inputs into the decision-making process during inquiries;

(d) Procedures and Practices Group which oversees the conduct of inquiries in order to ensure consistent practice across them; and

(e) Remedies Standing Group which handles remedies decisions and their implementation.

*Funding arrangement*

3.2.14 The source of funding for the Competition Commission is grant-in-aid received from the Department for Business, Innovation and Skills[89]. The total budget for the financial year 2009-2010 is around £20.5 million (HK$250.1 million).

*Accountability arrangements*

3.2.15 The Competition Commission is answerable to the Department for Business, Innovation and Skills and the Parliament by means of:

(a) providing its annual report and financial accounts, including information on main objectives, key performance targets, details of its specific activities, and a report on staffing and organizational changes;

(b) seeking the approval of the Department for Business, Innovation and Skills regarding the Corporate Plan detailing its objectives for the coming year;

(c) submitting an annual report and financial accounts to the Parliament; and

(d) being subject to the scrutiny of the National Audit Office.

[89] The Department for Business, Innovation and Skills was created in June 2009 from the merger of the Department for Business, Enterprise and Regulatory Reform and the Department for Innovation, Universities and Skills.

## 3.3 Enforcement mechanism and appeal procedure

Enforcement powers and process: Office of Fair Trading

3.3.1 The Office of Fair Trading can start an investigation if there are reasonable grounds for suspecting that the competition law has been breached. The investigation process may be initiated from a complaint received or following an inquiry that the Office of Fair Trading has started on its own initiative. The Office of Fair Trading is authorized under the *Competition Act 1998* and the *Enterprise Act 2002* to obtain the required information through a range of measures.

3.3.2 To solicit evidences from relevant parties, the Office of Fair Trading can send a written notice by post or fax, in which it should:

(a) tell the recipient what the investigation is about;

(b) specify or describe the documents and/or information that are required;

(c) give details of where and when they must be produced; and

(d) set out the offences that may be committed if the recipient fails to comply.

3.3.3 The Office of Fair Trading also has the powers to:

(a) ask for the required documents for the investigation;

(b) obtain information not only from the business suspected of committing an infringement but also from other parties such as competitors, customers or suppliers; and

(c) require past or present officers or employees of the business to give an explanation of any document that is produced.

3.3.4 The time allowed for the respondent to respond depends on the amount and complexity of the information required, and is typically within two to four weeks from receipt of the notice. If the recipient of the notice does not respond or refuses to produce the required information, they may be guilty of a criminal offence which is punishable by an imprisonment of up to two years or a fine.

3.3.5 The Office of Fair Trading may also enter business or domestic premises with a warrant from the High Court in England and Wales, the High Court in Northern Ireland or the Court of Session in Scotland. Once the Office of Fair Trading has gained the access, its officers are empowered to:

(a) search the premises for relevant documents;

(b) require anyone present to produce any documents such as invoices, minutes, diaries and travel records that are relevant to the investigation;

(c) take copies of, or extracts from, any document produced;

(d) ask for information on a computer to be reproduced in a form that can be read and taken away;

(e) compel any person to answer questions relevant to the investigation; and

(f) take any necessary steps to preserve or prevent interference with documents.

3.3.6 If the Office of Fair Trading suspects that the competition law has been infringed by certain parties, it will write to those concerned to explain the case against them and give them a chance to respond, both in writing and by meeting with the Office of Fair Trading officials.[90] When the Office of Fair Trading subsequently decides that there has been a breach of the competition law, it will notify the infringing businesses and publish the decision on its website. The Office of Fair Trading may issue directions, including ordering the businesses to change or terminate the offending agreement or stop the offending conduct. If a business fails to comply with the directions, the Office of Fair Trading will seek a court order to enforce them. Non-compliance with such an order is a contempt of court punishable by a maximum fine of up to 10% of an undertaking's average annual turnover in the UK for three years and/or an imprisonment of up to five years.

3.3.7 Alternatively, the Office of Fair Trading may conclude that there are no grounds for action. In this case, the Office of Fair Trading will notify those concerned and publish a decision to this effect on its website.

[90] In certain urgent circumstances, for example, where there is a real danger of serious permanent harm to a particular business, the Office of Fair Trading may require a business to comply with a temporary order to stop certain conduct while it is conducting the investigation.

*Leniency programme*

3.3.8 In line with the arrangement adopted in the EU, the UK government has provided a leniency programme to encourage businesses participating in cartel activities to terminate their involvement and inform the Office of Fair Trading about the operation of the cartel. In response to a participant in a cartel activity who is the first to come forward before the Office of Fair Trading commences an investigation, the Office of Fair Trading may grant total immunity from financial penalties for an infringement of Article 81 of the *EC Treaty* and/or the Chapter I prohibition set out in the *Competition Act 1998.* To qualify for the leniency programme, a business must co-operate fully with the investigation and stop their involvement in the cartel from the time they come forward. A business which is not the first to come forward before the Office of Fair Trading commences an investigation, or does not satisfy all of these conditions, may benefit from a reduction in the amount of the financial penalty imposed.

Enforcement powers and process: Competition Commission

3.3.9 Under the *Enterprise Act 2002*, the Competition Commission is empowered to conduct a full investigation to determine whether a merger has caused, or may be expected to cause, a substantial lessening of competition. The main stages of a merger investigation are summarized below:

(a) Information gathering and handling: the Competition Commission can require access to detailed information regarding the companies and markets in question. The Competition Commission has powers to issue notices requiring a person to attend at a certain time or place, to give evidence, or to produce documents. Failure to comply with the notice to provide evidence is subject to a fine;

(b) Hearings: hearings provide an opportunity for the parties concerned to explore in depth the key issues in an investigation, and to raise questions arising from written submissions, if any. Companies or their representatives are expected to answer the Competition Commission's questions about matters arising in the investigation;

(c) Publishing provisional findings: the *Enterprise Act 2002* imposes a duty on the Competition Commission to consult the parties concerned regarding its decisions on the competition questions and remedies. The Competition Commission will publish provisional findings to which parties are invited to respond within a period of not less than 21 days. The provisional findings may also contain proposals for remedies. If the parties concerned provide responses, the Competition Commission will consider them and re-examine whether or not the provisional findings should be altered. This might necessitate a further hearing with the parties concerned;

(d) Considering remedies: in the event of a finding that a merger does lead to a substantial lessening of competition, or that there is an adverse effect on competition arising from the features of a market, the Competition Commission must propose remedies to counter the adverse effects which are available on the Commission's website, and consult the parties concerned on its proposed remedies;

(e) Publishing final decision and report: the Competition Commission's final decision on the competition and remedies are published in its final report, together with the reasons for the decision. The parties concerned have to take remedial actions, if required, to complete the merger. The Competition Commission is empowered to block any merger which may cause a substantial lessening of competition. Final decision and report are published on the website; and

(f) Implementation of remedies: the Office of Fair Trading has a role in monitoring whether the parties concerned comply with the orders following a merger, and is responsible for maintaining a public register of all orders made, which will be available on its website.

Appeal procedure

3.3.10 Under section 12(1) of the *Enterprise Act 2002*, the Competition Appeal Tribunal[91] was established to replace the appeal tribunal of the Competition Commission (the Competition Commission Appeal Tribunals) in April 2003. The Competition Appeal Tribunal[92], being a specialist judicial body with cross-disciplinary expertise in law, economics, business and accountancy, is an independent statutory body funded by the government.

3.3.11 Appeals to the decisions of imposing a financial penalty and the amount of that penalty made by the Office of Fair Trading or a sectoral regulator[93] can be made to the Competition Appeal Tribunal. The appeals involve full reviews on the law and facts of the case by the Tribunal.[94] In other words, the Tribunal adopts the same principles as would be applied by a court on an application for judicial review.[95]

3.3.12 An appeal must be brought within a period specified in the *Competition Appeal Tribunal Rules*[96], currently two months from the date on which the undertaking is notified of the penalty decision. The Competition Appeal Tribunal can impose, revoke or vary the amount of a penalty. Appeals from the decisions of the Tribunal can be made to the Court of Appeal in England and Wales, the Court of Appeal in Northern Ireland, or the Court of Session in Scotland.

3.3.13 An appeal to the Competition Appeal Tribunal against the imposition or amount of a penalty will lead to a suspension of the penalty until the appeal is determined. The infringement decision itself will remain in effect, unless suspended by an interim order made by the Competition Appeal Tribunal or, in the case of a further appeal, the relevant appeal court.

---

91 To appeal against a criminal cartel offence, it is dealt by courts. For example, appeals against decisions of the Crown Court regarding an imprisonment or a fine are heard by the Court of Appeal.

92 The Competition Appeal Tribunal is headed by the President, who must be a lawyer qualified in the UK and of at least 10 years standing. The membership consists of two panels: a panel of legally qualified chairmen and a panel of ordinary members. There are currently 20 chairmen and 17 ordinary members. The President, chairmen and ordinary members are all appointed by the government.

93 The sectors consist of telecommunications, electricity, gas, water, railways and air traffic services.

94 The President is tasked to establish a tribunal of three persons, consisting of a chairman, who is either the President or a person drawn from the panel of chairmen, and two ordinary members.

95 Hearings of the appeals are usually held in public and any judgment or ruling made by the Tribunal during or following those events are published on its website.

96 The procedures that the Competition Appeal Tribunal follows are set out in the *Competition Appeal Tribunal Rules* and include matters such as time limits for bringing proceedings and conduct of hearings.

3.3.14 In respect of merger matters, decisions made by the Competition Commission[97], the Office of Fair Trading and the Secretary of State may be subject to the Competition Appeal Tribunal for a review. In addition, the imposition of a financial penalty by the Competition Commission for the failure to comply with a notice to provide evidence may also be appealed to the Tribunal. For all cases, such an appeal must be brought in four weeks.

3.3.15 In reviewing the relevant decision, the Competition Appeal Tribunal may:

(a) dismiss the application, or quash the whole or part of the relevant decision; and

(b) where it quashes the whole or part of that decision, refer the matter back to the original decision maker with a decision to reconsider and make a new decision in accordance with the ruling of the Tribunal.

[97] The decisions related to complicated merger matters are principally made by the Competition Commission.

# Chapter 4 – United States

## 4.1 Overview of the competition law

Legislative development

*Sherman Act*

4.1.1 The first federal antitrust law[98] introduced in the United States (US), the *Sherman Act*[99], was enacted in 1890 to protect consumers from high prices and reduced output caused by monopolies and cartels that were gaining control in America. The *Sherman Act* outlaws all contracts, combinations and conspiracies that unreasonably restrain both interstate and foreign trade, including agreements among competitors to fix prices, rig bids, allocate customers[100] and limit outputs. The *Sherman Act* makes it a crime to monopolize any part of interstate commerce. In the context of the US, an unlawful monopoly exists when only one firm controls the market for a product or service, and it has obtained that market power, not because its product or service is superior to others, but by suppressing competition with anti-competitive conduct.

98 In 1879, the Standard Oil Company of Ohio devised a new type of trust agreements to overcome prohibitions against corporations owning stock in other corporations in Ohio. At the time, a trust was a form of contracts whereby one party entrusted its property to another party. The property was used to benefit the former party. In a corporate trust, the corporation assigned its stock to a board of trustees. The trust then issued trust certificates to the stockholders. The stockholders received the financial benefits, while the board of trustees maintained operational control. By consolidating control of most companies in an industry under one controlling board, the industry would essentially be monopolized. Hence, in the US, "competition law" is more commonly known as "antitrust law".

99 The substance of the federal antitrust laws is relatively concise. In practice, most antitrust policies in the US originate from the court interpretation of the broad language of the statutes.

100 It involves an arrangement for competitors to split up customers, such as by geographic area, to reduce or eliminate competition.

4.1.2 The penalties for violating the *Sherman Act* can be severe. Although most enforcement actions are civil, the *Sherman Act* also contains criminal provisions, with individuals and businesses violating them being possibly prosecuted by the Antitrust Division of the Department of Justice. Criminal prosecutions are typically limited to intentional and clear violations such as when competitors fix prices or rig bids. The *Sherman Act* currently imposes criminal penalties of up to US$100 million[101] (HK$775 million) for a corporation and US$1 million (HK$7.75 million) for an individual, along with up to 10 years in prison.[102] Under the federal law, the maximum fine may be increased to twice the amount the conspirators gained from the illegal acts or twice the money lost by the victims of the crime, if either of those amounts is over US$100 million (HK$775 million).

*Clayton Act*

4.1.3 The *Clayton Act*, passed in 1914 during the Progressive Era[103], is a civil statute carrying no criminal penalties. It addresses specific practices that the *Sherman Act* does not clearly prohibit, such as mergers and acquisitions that are likely to reduce market competition, exclusive dealing arrangements, tying arrangements[104], interlocking directorates[105]and price discrimination between different purchasers, if such discrimination tends to create a monopoly. The aim of the *Clayton Act* is to protect small businesses from unfair trade practices of bigger companies.[106]

---

101 The average exchange rate in 2009 was US$1=HK$7.75.

102 The penalties for violating the *Sherman Act* have changed over time. The last amendment was made in 2004.

103 The Progressive Era was a period of reform which lasted from the 1880s to the 1920s. Against the economic and social background of the late 19th century, Progressives who were mainly comprised of business elites and radical political movements of farmers and labourers advocated a wide range of economic, political, social and moral reforms. In relation to economic policies, they favoured government regulation of business practices to ensure competition and free enterprise.

104 Tying is a practice of making the sale of one good (the tying good) to the de facto customer conditional on the purchase of a second distinctive good (the tied good). The basic criticism is that consumers are harmed by being forced to buy an undesired good (the tied good) in order to purchase a good they actually want (the tying good), while a preferable arrangement should be for the goods to be sold separately. The company doing this bundling may have a larger market share so that it could impose the tie on consumers, despite the forces of market competition. The tie may also harm those companies in the market for the tied good.

105 This refers to the practice of members of the board of directors of a company serving on the boards of competing corporations.

106 A difference between the *Clayton Act* and the *Sherman Act* is that the *Clayton Act* contains certain exemptions for labour unions, agricultural co-operatives and sports leagues such as the National Football League and the Major League Baseball. Meanwhile, the *Clayton Act* does not contain a list of exemptions for industries.

4.1.4 The *Clayton Act* was amended in 1950 at a peak of concentration of business power to prohibit potentially anti-competitive mergers and acquisitions. The *Clayton Act* was amended again in 1976 by the *Hart-Scott-Rodino Antitrust Improvements Act* to require companies planning large mergers or acquisitions to notify the government of their plans in advance. The filing requirement is triggered only if the value of the transaction exceeds certain dollar thresholds, which are adjusted over time. For example, in 2008, all transactions of US$252.3 million (HK$1.95 billion) or more had to make a notification.

4.1.5 Before certain mergers, tender offers or other acquisition transactions can be closed, both parties must file a "Notification and Report Form" with the Federal Trade Commission[107] and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice. The filing describes the proposed transaction and the parties to it. Upon the filing, a 30-day waiting period then ensues during which time the two regulatory agencies may request further information in order to help them assess whether the proposed transaction violates the antitrust laws. It is unlawful to close the transaction during the waiting period. Although the waiting period is generally 30 days, the regulators may request additional time to review the information while the filing parties may request that the waiting period for a particular transaction be terminated early. Early terminations are made public in the *Federal Register* and posted on the Federal Trade Commission website.

4.1.6 Spurred by price discrimination in favour of big businesses, the US adopted the *Robinson-Patman Act* in 1936 to amend the *Clayton Act*, so as to prohibit price discrimination in the sale of goods in interstate commerce if it affects competition.[108] The *Robinson-Patman Act* stipulates that no person may sell the same goods at different prices to different customers where the effect of the discrimination may substantially lessen competition.

4.1.7 Procedurally, the *Clayton Act* authorizes private parties to sue for triple damages when they have been harmed by conduct that violates either the *Sherman Act* or the *Clayton Act*, and to obtain a court order prohibiting the anti-competitive practice in the future. The *Clayton Act* is enforced by both the Federal Trade Commission and the Antitrust Division of the Department of Justice.

---

[107] It was established through the enactment of the *Federal Trade Commission Act* in 1914, replacing the Bureau of Corporations which was created in 1903.

[108] The *Robinson-Patman Act* does not apply to the sale of services.

Federal Trade Commission Act

4.1.8 The *Federal Trade Commission Act*, enacted in 1914, establishes the Federal Trade Commission[109], a bipartisan body of five members appointed by the President for a seven-year term. Under this statute, the Federal Trade Commission is empowered, among other things, to:

(a) prevent unfair methods of competition, and unfair or deceptive acts or practices in or affecting commerce;

(b) issue a cease and desist order[110] to curb unfair trade practices, with the order being subject to review by the federal courts of appeals;

(c) seek monetary redress and other relief for conduct injurious to consumers;

(d) prescribe trade regulation rules defining with specificity acts or practices that are unfair or deceptive, and establish requirements designed to prevent such acts or practices;

(e) conduct investigations relating to the organization, business practices and management of entities engaged in commerce; and

(f) prepare reports and legislative recommendations to Congress.

*State statutes*

4.1.9 In the US, individual states also have their own antitrust laws established in parallel with the federal antitrust laws. These statutes are normally interpreted in a manner consistent with the federal court interpretation of the federal *Acts*. State statutes are enforced primarily against local restraints of trade, that is, practices that have an effect exclusively or primarily within a single state. The state laws typically are enforced through the offices of State Attorneys General, who may bring civil suits under the *Clayton Act* on behalf of injured consumers in their states.[111]

---

[109] According to the Federal Trade Commission, the violations of the *Sherman Act* also violate the *Federal Trade Commission Act*. Therefore, although the Fair Trade Commission does not technically enforce the *Sherman Act*, it can bring cases under the *Federal Trade Commission Act* against the same kinds of activities that violate the *Sherman Act*. See Federal Trade Commission (2008b) p. 1.

[110] A cease and desist order is an order or request to halt an activity, and the parties involved may face legal action if they disobey the order. The recipient of the cease-and-desist order can be an individual or an organization.

[111] Groups of consumers may bring suits on their own.

Review of the competition law

4.1.10 According to Congress, the antitrust laws are periodically assessed to ensure that they are keeping pace with the ever-changing economy. In 2002[112], Congress enacted the *Antitrust Modernization Commission Act* to establish the Antitrust Modernization Commission[113], which is entrusted to:

(a) examine whether the need exists to modernize the antitrust laws and to identify and study related issues;

(b) solicit views of all parties concerned on the operation of the antitrust laws;

(c) evaluate current arrangements and the advisability of proposals with respect to any issues so identified; and

(d) prepare and submit to Congress and the President a report.

4.1.11 In April 2007, the Antitrust Modernization Commission released its final report and recommendations. The Commission, recognizing that the prevailing antitrust laws are operating effectively in the US, recommended that the substantive provisions of the *Sherman Act*, the *Clayton Act* and the *Fair Trade Commission Act* should remain unchanged. Nevertheless, the Commission did observe that some changes in antitrust analysis had occurred over the past decades, and in response the 2007 Report made a number of recommendations[114], which included:

(a) repealing the *Robinson-Patman Act;*

(b) improving the pre-merger review process; and

(c) enhancing co-ordination between state and federal enforcement.

[112] The previous evaluation of the antitrust laws was undertaken in the 1970s.

[113] The Commission consists of 12 members, four of whom were appointed by the President, four by the Senate, and the remaining four by the House of Representatives.

[114] The other recommendations relate to patent protection, private litigation, international antitrust co-operation and exemptions.

*Repealing the Robinson-Patman Act*

4.1.12 The Antitrust Modernization Commission recommends Congress to repeal the *Robinson-Patman Act*, which prohibits sellers from offering different prices to different buyers. This *Act* was intended to protect small retailers who were being forced out of the market by larger operations. It prohibits sellers from offering different prices to different purchasers of commodities of like grade and quality where the difference injures competition.

4.1.13 According to the Commission, the *Act* has had the unintended effect of limiting the extent of discounting and therefore may cause consumers to pay higher prices than they otherwise would. Further, the *Act* appears to be increasingly ineffective in protecting small businesses. Over time, many businesses have found ways to comply with the *Act* by, for example, differentiating products, so that they could sell somewhat different products to different purchasers at different prices. Such methods are likely to increase the seller's costs, and thus increase costs to consumers, without protecting small businesses.

4.1.14 The Commission also states that in practice, the *Robinson-Patman Act* is virtually not enforced. The Department of Justice has not administered the criminal provisions of the *Act* since the 1960s, and the Fair Trade Commission has filed only one civil case in relation to the *Robinson-Patman Act* since 1992. Although there have been some attempts to amend or repeal the *Act*, none has been successful on the ground that the *Act* still serves the purpose of protecting small retailers.

*Improving the pre-merger review process*

4.1.15 The Commission suggests that the Fair Trade Commission and the Antitrust Division of the Department of Justice should continue to reform their internal review processes to reduce unnecessary burdens and delays. It makes a number of specific recommendations designed to reduce the burden of merger reviews and increase the transparency of government enforcement. For example, the Commission recommends that the two agencies update their merger guidelines to explain how they evaluate mergers as well as a proposed merger's potential impact on innovation competition.[115] The Commission also recommends that the agencies issue statements explaining why they have declined to take enforcement actions with respect to transactions raising potentially significant competitive concerns.

[115] Both agencies have recently updated their merger guidelines.

*Enhancing co-ordination between state and federal enforcement*

4.1.16 According to the Antitrust Modernization Commission, state and federal enforcement agencies should co-operate in their enforcement actions to achieve optimal results. Nevertheless, the existence of 50 independent state enforcers on top of the two federal agencies may, at times, result in uncertainties and conflicts. For example, state enforcement agencies may challenge business conduct that the federal agencies decline to challenge, and seek more stringent remedies than those sought by the federal agencies.

4.1.17 The *United States v. Microsoft Corp*[116] is an example to illustrate the disparity between state and federal enforcement. In 1998, the Department of Justice filed a civil complaint[117] accusing Microsoft of engaging in anti-competitive conduct in violation of the *Sherman Act*. At the time, a group of state plaintiffs filed a separate civil complaint on similar violations of federal law, as well as violations of the corresponding provisions of various state laws. After undergoing a four-year juridical proceeding, in 2001, several states joined with the Department of Justice in settlements, while two states opposed that decision. Under such circumstances, the Department of Justice raised the concern that independent action from states might make the public question whether its decision was correct and achieving the best result for the public.

4.1.18 In view of such inconsistency, the Antitrust Modernization Commission suggests state and federal enforcers to co-ordinate their activities to avoid subjecting businesses to multiple, and potentially conflicting, proceedings. The Antitrust Modernization Commission also opines that states should continue to focus their efforts primarily on matters involving localized conduct and competitive effects. In addition, state and federal agencies should co-work to harmonize their substantive enforcement standards, particularly with respect to mergers.

[116] The citation of this case is 253 F.3d 34, 57–58 (D.C. Cir. 2001).

[117] A complaint is the first set of papers filed by a petitioner or plaintiff to begin a lawsuit or initiate a legal claim by alleging facts and legal claims.

*Exemptions of anti-competitive conducts*

Sectoral exemptions

4.1.19 Congress may enact a federal[118] statute supplementing the antitrust laws to exempt certain industries from the scope of antitrust application, which involves a judgement of the costs and benefits associated with the exemption provided for the society. The general understanding is to avoid providing exemptions solely to ensure that the antitrust laws function well. A number of immunities currently exist in the federal law:

(a) the *Agricultural Marketing Agreement Act* which allows those who farm and fish to form co-operatives without being considered agreements on restraint of trade;

(b) the *Sports Broadcasting Act* which exempts certain television agreements by sports leagues such as the National Football League and the Major League Baseball;

(c) the *Shipping Act* which allows shipping companies establishing ocean shipping conferences;

(d) the *Air Transportation Act* which provides antitrust immunity for marketing alliances between domestic and foreign airlines approved by the Department of Transportation;

(e) the *Charitable Donation Antitrust Immunity Act* which exempts charitable gift annuities;

(f) the *Small Business Act* which exempts joint research and development conducted by small businesses approved by the government;

(g) the *McCarran-Ferguson Act* which allows certain antitrust exemptions for insurance companies;

(h) the *Defense Production Act* which exempts agreements that the President finds vital to national defence;

[118] In addition to federal law exemptions, state governments may provide other exemptions which vary among states.

(i) the *Export Trading Company Act* which allows export cartels as part of an effort to promote exports; and

(j) the *Newspaper Preservation Act* which provides exemptions for mergers and agreements between newspapers when one is a failing firm.

Exemptions of government entities

4.1.20 According to the Organisation for Economic Co-operation and Development[119] (OECD), "*US government entities, even those that are involved in commercial operations, are beyond the reach of competition law enforcement or private litigation*." As OECD has not provided any detailed explanation, the Research and Library Services Division (RLSD) has asked some academics and experts specialised in the US antitrust laws for an explanation of such arrangement. Several academics have responded and confirmed that the US government is exempt unless the federal statute explicitly provides otherwise.[120] The rationale is based upon sovereign immunity, with the antitrust statute only applicable to "persons".[121] In any event, federal government departments and agencies seldom engage in the same sorts of commercial activities as private parties. Hence, this issue is not a concern.

Public views on the competition law

4.1.21 On public views of the competition law, RLSD has enquired both the Fair Trade Commission and the Antitrust Division of the Department of Justice[122]. According to the Fair Trade Commission, as the competition law has been enforced in the US for a long period of time, the public has already had some knowledge about the objectives of the competition law. Thus far, it has not encountered any concern on misunderstanding of the competition law.

[119] Organisation for Economic Co-operation and Development (2004) p. 13.

[120] In practice, there has not been any such statute.

[121] See the case *United States v Cooper Corp, 312* US 600, 607-09, 614 (1941). The court held that the US was not a "person" who could be an antitrust damage plaintiff or defendant.

[122] As at the publication of this research report, the Department of Justice has not replied.

4.1.22 To educate the public, the Fair Trade Commission has published a handbook entitled *Guide to the Antitrust Laws* on its website, providing information on the purpose and impact of the competition law. The Antitrust Division of the Department of Justice also provides information on its work through the publication of two basic guide books entitled *Antitrust Laws and You* and *Antitrust Enforcement and the Consumer*, and antitrust case filings on its website.

Issues of concern

*Small and medium enterprises*

4.1.23 The federal agencies do not provide small and medium enterprises (SMEs) with any exemptions from the antitrust laws on the ground that free-market competition is the foundation of the US economy, and the antitrust laws stand as a bulwark to protect free-market competition. Although the US does not have any statutory exemptions for SMEs, the federal agencies generally adopt a 30% market share[123] of the undertakings involved as a threshold indentifying conduct that is of minor economic significance and therefore is unlikely to be anti-competitive. Such threshold does not apply to agreements involving price fixing, bid rigging and output restriction. The approach is aimed at facilitating the compliance with the antitrust laws, whilst providing some relief to SMEs.

4.1.24 The Fair Trade Commission states that SMEs have not been the focus of enforcement. Instead, it concentrates its efforts on price-fixing activities and large-scale mergers which lessen competition. Further, to help SMEs understand how to comply with the antitrust laws, the Fair Trade Commission and the Antitrust Division of the Department of Justice have been co-working to provide them with readily understandable guidance documents such as *Bureau of Competition User's Guide*, *Guidelines for Collaborations among Competitors* and *Horizontal Merger Guidelines*, which are available on the Fair Trade Commission's website. In addition, the Fair Trade Commission has conducted outreach programmes with chambers of commerce, trade associations and business owners, including a series of one-day workshops on understanding the competition law.

[123] The threshold may vary among industries.

4.1.25 While no information on SMEs unwittingly violating the competition laws could be identified in the public domain, RLSD has enquired the US Chamber of Commerce[124] and the National Small Business Association[125] to comment on this issue.[126]

*Application of competition rules to selected sector*

(A) Ocean shipping

4.1.25.1 Pursuant to section 10 of the *Shipping Act*, ocean shipping companies are permitted to establish shipping conferences which have common tariff rates, thus providing reliable quality services. Meanwhile, under section 8(a)(1) of the *Shipping Act*, a conference is required to keep open for public inspection, in an automated tariff system via the Internet, a tariff showing all its rates for the transportation routes served by it, so as to enhance transparency.

4.1.25.2 Against the background of repealing the *Block Exemption Regulation* for ocean shipping conferences in the EU in October 2008, the Federal Maritime Commission[127] is undertaking a comprehensive review to evaluate whether the US should continue to exempt ocean shipping conferences from antitrust prohibition of price-fixing, which is targeted to be completed by the end of 2010. The Federal Maritime Commission has stated that there is no legislation pending in Congress to make changes to the *Shipping Act* to abolish the ocean shipping conferences, and the US shipping conferences will not be subject to changes in the near future.

[124] The US Chamber of Commerce is the world's largest business federation, representing over three million businesses of all sizes and sectors, as well as state and local chambers and industry associations. More than 96% of the US Chamber members are small businesses with 100 employees or fewer.

[125] The Association is a national non-profit membership organization founded in 1937, representing small business companies and entrepreneurs.

[126] As of the publication of this report, they have not responded to the request.

[127] It is an independent regulatory agency responsible for the regulation of ocean-borne transportation in the foreign commerce of the US.

## 4.2 Institutional framework for enforcing the competition legislation

4.2.1 The Fair Trade Commission and the Antitrust Division of the Department of Justice are the two regulatory bodies for enforcing the federal antitrust laws. The Fair Trade Commission carries out the *Clayton Act* and the *Federal Trade Commission Act* while the Antitrust Division of the Department of Justice enforces the *Sherman Act* and the *Clayton Act*. The Antitrust Division normally chooses to resort to criminal proceedings only in the event of hard-core violations, principally price fixing.

4.2.2 Over the years, the federal agencies have focused on different industries and markets to avoid waste of resources and duplication of efforts. For example, the Fair Trade Commission devotes most of its resources to monitor antitrust activities in selected segments of the economy, including those where consumer spending is high: health care, pharmaceuticals, professional services, food, and certain high-tech industries like computer technology and Internet services. Meanwhile, the Antitrust Division of the Department of Justice puts its efforts mainly on federally regulated industries such as agriculture, communications, banking, securities, transportation, energy and international trade, and state or locally regulated industries such as insurance, housing, public utilities, real estate, and professional and occupational licensing. In practice, before launching an investigation, the agencies will consult with each other to avoid duplicating efforts.

Federal Trade Commission

*Mission*

4.2.3 The mission of the Federal Trade Commission is to prevent business practices that are anti-competitive or deceptive or unfair to consumers; to enhance informed consumer choices and public understanding of the competitive process; and to accomplish these missions without unduly burdening legitimate business activities.

*Functions and duties*

4.2.4 With respect to enhancing competition and preventing antitrust activities, the Federal Trade Commission performs the following functions:

(a) reviewing mergers and acquisitions, and investigating those activities that would likely lead to higher prices, fewer choices, or less innovation;

(b) seeking out and challenging anti-competitive conduct in the marketplace, including monopolization and agreements between competitors;

(c) promoting competition in industries where consumer impact is high; and

(d) providing information, and holding conferences and workshops, for consumers, businesses and policy makers on competition issues and market analysis.

*Organization structure*

4.2.5 The Federal Trade Commission is headed by five Commissioners nominated by the President and confirmed by the Senate, each serving a seven-year term. The President chooses one Commissioner to act as the Chairman. Under the *Federal Trade Commission Act*, no more than three Commissioners may come from the same political party. The Commissioners are empowered to initiate investigation and issue consent order. Each Commissioner has his or her own staff of Attorney Advisors and assistants.

4.2.6 The Federal Trade Commission's daily business is carried out by three Bureaus [128], which are the Bureau of Competition, the Bureau of Consumer Protection and the Bureau of Economics, nine Offices, including the Office of the Congressional Relations, the Office of Policy Planning and the Office of International Affairs, and eight regional offices across the country.

(A) Bureau of Competition

4.2.6.1 The Bureau of Competition is charged with the responsibility of elimination and prevention of anti-competitive business practices. It accomplishes this duty through the enforcement of the antitrust laws, review of proposed mergers, and investigation into non-merger business practices that may lessen competition. Such non-merger practices include horizontal restraints (involving agreements between direct competitors) and vertical restraints (involving agreements among businesses at different levels in the same industry).

[128] The workforce consists of over 1 100 civil service employees, including attorneys, economists and other professionals.

(B) Bureau of Consumer Protection

4.2.6.2 The mandate of the Bureau of Consumer Protection is to protect consumers against unfair or deceptive acts and practices in commerce. Bureau attorneys enforce the federal laws related to consumer affairs as well as rules promulgated by the Federal Trade Commission. Its functions include investigations, enforcement actions, and consumer and business education.

(C) Bureau of Economics

4.2.6.3 The Bureau of Economics provides economic analysis and support to antitrust and consumer protection investigations and rulemakings. The Bureau also analyzes the economic impact of government regulation, and provides Congress, the Executive Branch, and the public with policy recommendations relating to competition and consumer protection.

*Funding arrangement*

4.2.7 As a federal government agency, the Federal Trade Commission receives funds via passing the *Appropriations Bill* by Congress for a particular financial year. For the financial year 2009-2010, the Federal Trade Commission's annual budget is US$256 million (HK$1.98 billion), of which US$108 million (HK$837 million) is for maintaining competition, US$102 million (HK$791 million) for consumer protection and US$46 million (HK$357 million) for administrative expenses.

*Accountability arrangements*

4.2.8 The Federal Trade Commission is accountable to Congress[129] and the Administration through a number of channels:

(a) appointment of the Commissioners by the Senate;

(b) the Chairman and Commissioners testifying before congressional committees on issues related to competition and consumer protection;

[129] It is subject to oversight by the Senate Committee on Commerce, Science and Transportation, and the House of Representatives Committee on Energy and Commerce.

(c) being subject to the purview of the General Accounting Office[130]; and

(d) submission of the *Performance and Accountability Report* covering the Federal Trade Commission's performance report and strategic plan to Congress and the Administration under the *Government Performance and Results Act*.

Antitrust Division of the Department of Justice

*Mission*

4.2.9 The mission of the Antitrust Division of the Department of Justice[131] is to promote economic competition through enforcing and providing guidance on the antitrust laws and principles.

*Functions and duties*

4.2.10 The functions and duties of the Antitrust Division of the Department of Justice include:

(a) enforcing the antitrust laws: the Antitrust Division prosecutes serious and wilful violations of the antitrust laws by filing criminal suits that can lead to large fines and imprisonment sentences. Where criminal prosecution is not appropriate, the Antitrust Division may institute a civil action seeking a court order forbidding future violations of the law and requiring steps to remedy the anti-competitive effects of past violations;

(b) providing guidance on the antitrust laws to the business community, most of the time jointly with the Fair Trade Commission. In order to receive the guidance, a company must request a formal business review; and

[130] The General Accounting Office, headed by the Comptroller General, is the investigative arm of Congress. The General Accounting Office examines the use of public funds, probes for waste, fraud and inefficiency, and evaluates federal programmes and activities. It also provides analyses, recommendations, and other assistance to help Congress make effective oversight, policy, and funding decisions.

[131] The *Sherman Act* was enforced by the Attorney General from the time of its passage in 1890 until the office of the Assistant to the Attorney General was established in 1903. The Assistant to the Attorney General handled antitrust matters from 1903 until May 1933. The Antitrust Division of the Department of Justice, established in June 1933, has taken over the enforcement function since then.

(c) serving as an advocate for competition by participating in the Administration's policy-making task forces, preparing testimony on legislative initiatives and publishing reports on selected industries.

*Organization structure*

4.2.11 The organization structure of the Antitrust Division[132] of the Department of Justice requires the approval of both the Attorney General and Congress. The Antitrust Division is supervised by an Assistant Attorney General, who is nominated by the President and confirmed by the Senate. The Assistant Attorney General is assisted by five Deputy Assistant Attorneys, who head the Economic[133], International Enforcement[134], Criminal Enforcement[135], Regulatory Matters[136] and Civil Enforcement[137] Divisions respectively.

4.2.12 In addition, there are two Directors of Enforcement, the Director of Operations and Civil Enforcement and the Director of Criminal Enforcement. The Directors of Enforcement have direct supervisory authority over the activities of the various sections and field offices, and they work with the five Deputy Assistant Attorneys General to oversee Division activities.

*Funding arrangement*

4.2.13 Being a government department, the Department of Justice receives funds via passing the *Appropriations Bill* by Congress for a particular financial year. The budget for the Antitrust Division for the financial year 2010-2011 is US$163.2 million (HK$1.26 billion).

---

132 In January 2009, the Antitrust Division employed 773 staff, with 564 being attorneys, economists and paralegals.

133 It has three sections: Economic Litigation, Economic Regulatory and Competition Policy.

134 It has one section: Foreign Commerce.

135 It contains eight offices: Washington DC, Atlanta, Chicago, Cleveland, Dallas, New York, Philadelphia and San Francisco.

136 It has three sections: Networks and Technology, Telecommunications and Media, and Transportation, Energy and Agriculture.

137 It has three sections: Litigation I which assesses the economic impact of proposed mergers in certain industries such as food products, cosmetics and film, and acts to clear a proposed merger, negotiate a restructuring of the proposal, or file suit to block the merger; Litigation II investigates and litigates mergers, and handles civil non-merger work in its assigned industries, which include metals, banking, defence and industrial equipment; and Litigation III has broad civil merger and non-merger enforcement responsibilities in an assigned portfolio of industries, including music, publishing, radio, television, newspapers, advertising, sports, and toys and games.

*Accountability arrangements*

4.2.14 As with the case of the Fair Trade Commission, the Antitrust Division of the Department of Justice is accountable to both Congress and the Administration through similar channels:

(a) approval of the organization structure of the Antitrust Division and its annual budget by Congress;

(b) being subject to the confirmation of the appointment of the Assistant Attorney General by the Senate;

(c) the Assistant Attorney General testifying before congressional committees on the activities of the Antitrust Division;

(d) being subject to the purview of the General Accounting Office; and

(e) submission of the *Performance and Accountability Report* covering the Antitrust Division's performance report and strategic plan to Congress and the Administration under the *Government Performance and Results Act*.

## 4.3 Enforcement mechanism and appeal procedure

Enforcement powers and process: Fair Trade Commission

4.3.1 Correspondence from consumers or businesses, Congressional inquiries, or articles on consumer or economic subjects may all trigger an investigation by the Fair Trade Commission. Generally, the investigations are non-public to protect the investigation as well as the individuals and companies involved. In the initial stage, investigations are based solely on public information. Under the *Fair Trade Commission Act*, the Commission is empowered to ask the relevant parties to answer questions and provide documents and information for the investigation.

4.3.2 In some cases, the Fair Trade Commission is required to obtain a warrant from the court to enter and search premises, subpoena documents, and compel individuals or organizations to produce information, typically business records or testimony relating to questionable conduct or practices. At the completion of an investigation, the Commission may drop the inquiry, terminate through settlement, or enter into a consent order with the company, if the company concerned has violated the competition law. A company that signs a consent order does not need to admit that it has violated the law, but it must agree to stop the disputed practices outlined in the order.

4.3.3 If a consent agreement cannot be reached, the Fair Trade Commission may issue an administrative complaint[138] and/or seek injunctive relief[139] in the federal courts. Administrative complaints will initiate the Fair Trade Commission's own administrative proceedings to adjudicate violations of the antitrust laws. Such proceedings are formal proceedings like a federal court trial, except for being conducted before an Administrative Law Judge[140]: evidence is submitted, testimony is heard, and witnesses are examined and cross-examined. If there is a violation of law, a cease and desist order[141] may be issued and the penalty is a fine. An initial decision by the Administrative Law Judge may be appealed to the Fair Trade Commission. In some circumstances, the Commission may go directly to the federal court to obtain an injunction for civil penalties.

4.3.4 The Fair Trade Commission may also issue *Trade Regulation Rules*. If the Commission staff finds evidence of unfair or deceptive practices in an entire industry, it can recommend that the Commission begins a rulemaking proceeding. Throughout the rulemaking proceeding, the public has opportunities to attend hearings and file written comments. The Commission considers these comments along with the entire rulemaking record – the hearing testimony and the staff reports – before making a final decision on the proposed rule. When issued, these rules have the force of law. A Fair Trade Commission rule may be challenged in the Courts of Appeals[142].

Enforcement powers and process: Antitrust Division of the Department of Justice

4.3.5 The investigation procedures exercised by the Antitrust Division of the Department of Justice are similar to those of the Federal Trade Commission. At the completion of an investigation, for serious crime related to the operation of a cartel, the Antitrust Division may file a criminal antitrust action in the federal district courts.

---

138 This is a legal procedure for resolving disagreements between the Fair Trade Commission and the parties concerned. Under such option, the Fair Trade Commission is empowered to pursue an administrative remedy.

139 The federal courts have the powers to issue an injunctive relief to order a party to do or refrain from doing a particular act, which can include repetition of past violations. Such order may be entered either after a contested proceeding or by consent of the parties.

140 He or she is a Commission employee with an independent status.

141 The purpose of a cease and desist order is similar to an injunctive relief, which orders a party to do or refrain from doing a particular act.

142 The US has 94 judicial districts which are organized into 12 regional circuits, each of which has a court of appeals. A court of appeals hears appeals from the district courts located within its circuit, as well as appeals against decisions of federal agencies.

*Criminal enforcement*

4.3.6 The Antitrust Division of the Department of Justice generally files criminal actions only for clear, intentional violations of the law. The majority of these cases are for explicit price fixing or bid rigging. In *United States v. United States Gypsum*[143], the Supreme Court held that the Antitrust Division had to prove criminal intent in order to obtain a criminal conviction, which generally required either that the conduct had an anti-competitive effect and that the defendants knew of these probable effects, or that the conduct was intended to produce anti-competitive effects, whether or not they actually occurred.

4.3.7 In general, the Antitrust Division has taken the position that criminal violations should have the following typical characteristics:

(a) the conduct involves an agreement among actual, potential, or apparent competitors;

(b) that agreement is inherently likely to raise price and restrict output without the promise of any significant integrative efficiency benefit;

(c) the agreement is generally covert or fraudulent; and

(d) the conspirators are generally aware of the probable anti-competitive consequences of their conduct.

4.3.8 In relation to the penal provision for criminal violations of the *Sherman Act*, corporate defendants may be fined up to US$100 million (HK$775 million), or up to US$1 million (HK$7.75 million) for individuals, along with up to 10 years in prison.

*Leniency programme*

4.3.9 Under the Antitrust Division's leniency program, qualifying companies that assist the government to uncover and prosecute price fixing or other antitrust violations may receive full immunity from criminal prosecution, along with their co-operating officers, directors, and employees.

[143] The citation is 438 US 422, 98 S.Ct. 2864 (1978).

*Civil enforcement*

4.3.10 For civil investigations, the Antitrust Division often issues *Civil Investigative Demands*, which are subpoenas issued to any person believed to have information pertaining to the investigation, requiring documents, oral testimony, or answers to interrogatories.[144] Most civil antitrust investigations result in consent decrees, which are binding out-of-court settlements approved by the court. Remedies for civil violations can include injunctions, as well as dissolution or divestiture for illegal mergers or occasionally monopolizations.

Appeal procedure

4.3.11 The decisions issued by the Federal Trade Commission and the Antitrust Division of the Department of Justice are subject to appeal by the Court of Appeals and, ultimately, by the Supreme Court. The federal appellate courts are governed by the *Federal Rules of Appellate Procedure*, which was originally adopted in 1967 and have been regularly amended.

4.3.12 In the Court of Appeals, an appeal is heard by a panel of three judges who are randomly selected from the available judges, including judges assigned to the circuit and senior judges[145]. As the Courts of Appeals are tasked to review decisions of the trial courts, they consider only records from the trial courts and the legal arguments of the parties involved. In some cases, lawyers are permitted to add to their written briefs with oral arguments before the judges of the Court of Appeals. At such hearings, only the concerned parties' lawyers can speak to the court.

[144] Information obtained as a result of a *Civil Investigative Demand* may sometimes be shared with the Fair Trade Commission for its own investigation; otherwise, it must be kept confidential.

[145] The senior status of judges is a form of semi-retirement for federal and state judges.

# Chapter 5 – Singapore

## 5.1 Overview of the competition law

5.1.1 In the aftermath of the terrorist attack in the United States (US) in September 2001 which created political uncertainties and global economic slowdown, the Singaporean government began to worry about its own economic future. The government predicted that the country might not be able to sustain the high economic growth witnessed in the 1990s. Under such circumstances, Singapore had to prepare itself for tackling both external and domestic challenges. The government thus established the Economic Review Committee in December 2001, which was tasked to recommend measures to create a more entrepreneurial economy, upgrade the manufacturing and services sectors and improve the quality of workforce.

5.1.2 After conducting a 15-month study, the Economic Review Committee issued a detailed report in February 2003, which stated that while Singapore had rules against anti-competitive activities in specific sectors such as energy and telecommunications, there was no national competition law that covered the whole economy. The Economic Review Committee recommended that, among other recommendations[146], a national competition law be enacted to create a level playing field for small and big businesses to compete on an equal footing, which would enhance a more conducive business environment of Singapore. The government subsequently accepted this recommendation.

5.1.3 The Ministry of Trade and Industry was entrusted in May 2003 to study the competition legislation of major global economies, including the European Union (EU), the United Kingdom (UK) and the United States. Based on the experiences and practices studied, the Ministry of Trade and Industry prepared a proposed *Competition Bill*, taking into account Singapore's context as a small open economy.

5.1.4 The Ministry of Trade and Industry conducted two rounds of public consultation on the *Competition Bill* in 2004. The first round of public consultation was conducted between April and May 2004. After the consultation, the Ministry of Trade and Industry revised the *Competition Bill* based on some of the submissions.

[146] The other recommendations included implementing measures to reform the tax system, enhancing the Central Provident Fund programme, strengthening the land planning and redevelopment policies, and enhancing skills training programmes.

5.1.5 The revised *Competition Bill* was released for a second phase public consultation between July and August 2004 to solicit views on certain specific concerns such as prohibited activities, scope of application, enforcement and appeal process. The Ministry of Trade and Industry again incorporated some suggestions received into the revised *Competition Bill*. The revised *Competition Bill*, which was largely modelled on the UK's *Competition Act 1998*, was subsequently passed without any amendments made by the House or the select committee on bills in October 2004.

5.1.6 According to the Ministry of Trade and Industry, the *Competition Act* has taken the following guiding principles into account:

(a) While the *Competition Act* has incorporated relevant international best practices, it should also take into account Singapore's characteristics, including the fact that Singapore is a small open economy with a fairly competitive domestic market;

(b) Regulatory costs should be kept to a minimum. Businesses should not face undue regulation, which may add to business costs and reduce Singapore's international competitiveness. As such, the competition law adopts the following approaches to minimize regulatory compliance costs:

(i) Instead of attempting to prohibit all forms of anti-competitive agreements and conduct in the markets, focus is placed on anti-competitive agreements and conduct that may have an appreciable adverse effect on markets in Singapore. In deciding if an agreement or conduct is anti-competitive, the government considers the fact that there are differences between industries, including the way they compete and the importance of economies of scale and innovation;

(ii) For sectors that already have sectoral competition regulatory frameworks,[147] there should be alignment between these sectoral frameworks and the competition law, where possible and appropriate. Such requirement is to ensure that businesses do not end up being regulated on the same competition matter by more than one regulator; and

[147] Singapore has sectoral competition regulators in the fields of telecommunications, media and energy.

(iii) In practice, the Competition Commission of Singapore established in January 2005 under the *Competition Act* is responsible for working out with the relevant sectoral regulator on which regulator is best placed to handle a case in accordance with the legal powers given to each regulator, which prevents double jeopardy and minimizes regulatory burden in dealing with the case.

Competition Act

*Structure*

5.1.7 The *Competition Act* is divided into five main parts:

(a) part 1 establishes the Competition Commission of Singapore as a corporate body and specifies its general functions;

(b) part 2 sets out the provisions for prohibiting anti-competitive agreements and conduct, such as cartel agreements, the abuse of a dominant position, and mergers and acquisitions that substantially lessen competition. It also details the procedures and criteria for issuing *Block Exemption Orders*[148], and the powers of the Competition Commission of Singapore to conduct investigations, make decisions and issue directions;

(c) part 3 establishes the Competition Appeal Board[149] and stipulates the provisions for appeal proceedings before Competition Appeal Board and the Courts[150];

(d) part 4 specifies the penalties of infringing the law; and

[148] A block exemption is the exemption of a category of agreements from the section 34 prohibition regarding anti-competitive agreements.

[149] The Competition Appeal Board, an independent specialist tribunal consisting of not more than 30 members (including the Chairman) appointed by the government, hears appeals against the decisions of the Competition Commission of Singapore. The current Chairman of the Competition Appeal Board is a retired Supreme Court Judge, and the other 20 members comprise academics, lawyers, economists, accountants and representatives from the banking and business sectors.

[150] The parties concerned may make further appeals against the decisions of the Competition Appeal Board to the High Court, and thereafter to the Court of Appeal, but only on points of law and the amount of the financial penalty.

(e) part 5 provides the appeal procedures and the rights of private action[151].

*Implementation schedule*

5.1.8 A phased approach was adopted for the implementation of the *Competition Act*. The main phases were:

(a) Phase 1: the provisions establishing the Competition Commission of Singapore in January 2005;

(b) Phase 2: the provisions on anti-competitive agreements and conduct (section 34) and the abuse of a dominant position (section 47) effective in January 2006; and

(c) Phase 3: the provisions on mergers and acquisitions (section 54) and the remaining provisions enforced in July 2007.

5.1.9 The phased approach allowed time for both the Competition Commission of Singapore and businesses to prepare for the implementation of the *Competition Act*. In particular, parties to agreements made on or before 31 July 2005 would automatically be given a six-month transitional period from January to June 2006 to review their agreements and where necessary, renegotiate or amend their agreements, or otherwise comply with the requirements of the section 34 prohibition. Should the Competition Commission of Singapore subsequently determine that the agreement has infringed the section 34 prohibition, the Competition Commission of Singapore would not impose a penalty on the parties concerned in respect of such infringement if the agreement was made during this transitional period.

[151] A party who has suffered any loss or damage directly as a result of an infringement of the section 34 prohibition has a right of action in civil proceedings against the relevant undertaking. This right of private action can only be exercised after the Competition Commission of Singapore has determined that an undertaking has infringed the section 34 prohibition and after the appeal process has been exhausted.

*Main provisions*

(A) Section 34 prohibition: anti-competitive agreements

5.1.9.1 The section 34 prohibition applies to agreements between undertakings which prevent, restrict or distort competition within Singapore, such as agreements to fix prices, limit production, share markets and apply unfair or discriminatory standards[152].

5.1.9.2 Where there is an infringement of the section 34 prohibition, the relevant undertaking is subject to a financial penalty of not exceeding 10% of annual turnover for a maximum of three years.[153]

(B) Section 47 prohibition: abuse of a dominant position

5.1.9.3 Section 47 prohibits firms from abusing market power in ways that are anti-competitive and work against longer-term economic efficiency. The *Competition Act* gives some examples of conduct that may constitute the abuse of a dominant position:

(a) predatory behaviour towards competitors;

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

(c) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which have no connection with the subject of the contracts.

[152] An example is when a party applies dissimilar conditions to equivalent transactions with different trading parties, thereby placing them at a competitive disadvantage.

[153] In January 2008, pursuant to section 34 of the *Competition Act*, the Competition Commission of Singapore issued its first infringement decision against six pest control companies, which colluded to submit tenders for termite treatment projects. In the end, the Competition Commission of Singapore determined that the six companies should pay a financial penalty of S$262,760, or HK$1.4 million.

5.1.9.4 In assessing whether an undertaking is dominant, the Competition Commission of Singapore has adopted the market share threshold as an indicator, which is currently above 60%.[154] The Competition Commission of Singapore points out that the threshold is not the only determinant. Other factors of competition such as entry barriers and the responsiveness of buyers and competitors to price increases also need to be considered. Dominance can be established at a lower market share if other relevant factors provide strong evidence of it.

5.1.9.5 Where it is established that an undertaking is dominant in the market, the Commission will determine whether the undertaking's conduct might be regarded as an abuse of its dominant position, which has impacted competitive conditions in Singapore.

5.1.9.6 In the event that such anti-competitive evidence is found, the Competition Commission of Singapore is empowered to make a decision against the undertaking and impose a fine of up to 10% of its annual turnover for a maximum of three years.

(C) Section 54 prohibition: mergers and acquisitions

5.1.9.7 Section 54 prohibits mergers and acquisitions which substantially lessen competition in Singapore, unless they fall within the exclusions listed in the Fourth Schedule to the *Competition Act*[155].

5.1.9.8 According to the Competition Commission of Singapore, not all mergers give rise to competition issues. Many mergers are either pro-competitive as they positively enhance levels of rivalry, or are competitively neutral. Some mergers may lessen competition but not substantially so, because sufficient post-merger competitive constraints continue to exist to discipline the commercial behaviour of the merged entity.

5.1.9.9 The Commission is generally of the view that competition concerns are unlikely to arise in a merger situation unless:

(a) the merged entity will have a market share of 40% or more; or

[154] See the guideline entitled the *Guidelines on the section 47 prohibition* for details.

[155] The Fourth Schedule to the *Competition Act* stipulates that exclusions are granted to: (a) any merger that is approved by any Minister or regulatory authority under any written law; (b) mergers which come within the jurisdiction of any regulatory authority (for example, bank mergers which come under the jurisdiction of the Monetary Authority of Singapore are excluded from the section 54 prohibition); and (c) any merger relating to the specified activities in the Third Schedule to the *Act*, including postal service, piped potable water and waste management services, bus and rail services, and cargo terminal operations.

(b) the merged entity will have a market share of between 20% and 40%, and the post-merger combined market share of the three largest firms is 70% or more.

5.1.9.10 If the parties involved have any concerns as to whether their merger infringes the section 54 prohibition, they may apply for a decision from the Commission, which adopts a two-phase approach in evaluating the application. In general, upon receipt of an application, the Commission carries out the Phase 1 review[156], which is expected to be completed within 30 working days. If the Commission cannot determine conclusively that the merger situation does not raise competition concerns during the Phase 1 review, it will proceed to carry out a more complex Phase 2 review. The Commission pledges to complete the Phase 2 review within 120 working days.[157] Thus far, the Commission has not blocked any proposed mergers.

*Exemptions and exclusions of anti-competitive conducts*

(A) Exemptions on grounds of economic benefit and public policy

5.1.9.11 Similar to the arrangements adopted in the EU and the UK, Singapore has provided certain exemptions on grounds of economic benefit and public policy.

5.1.9.12 According to the Third Schedule to the *Competition Act*, neither the section 34 prohibition nor the section 47 prohibition shall apply to any undertaking entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly in so far as the prohibition would obstruct the performance, in law or in fact, of the particular tasks assigned to that undertaking.

5.1.9.13 When an agreement meets all of the requirements under the exclusions set out in the Third Schedule to the *Competition Act*, or is specified in a *Block Exemption Order*, it will not be prohibited. The Third Schedule specifies such exempted activities to be those related to:

(a) entrusting with the operation of services of general economic interest;

[156] The Phase 1 review entails a quick review and allows mergers that clearly do not raise any competition concerns under the section 54 prohibition to proceed.

[157] The Competition Commission of Singapore received a total of 13 merger applications between July 2007 and March 2009. All merger applications were cleared as they were found to be unlikely to raise any competition concerns. Only one merger application required the Phase 2 review.

(b) arising from exceptional and compelling reasons of public policies such as national security, defence and other strategic interests; and

(c) having sector-specific competition frameworks.

5.1.9.14 Specifically, the Third Schedule to the *Competition Act* provides a list of exclusions: the supply of ordinary letter and postcard services; piped potable water; wastewater management services; scheduled bus services; rail services; cargo terminal operations; and clearing house activities.[158]

5.1.9.15 As for the issuance of a *Block Exemption Order*, the Competition Commission of Singapore may recommend that the government (i.e. the Minister of Trade and Industry) makes such an *Order* exempting a particular category of agreements from the section 34 prohibition regarding anti-competitive agreements[159]. The government will issue an *Order* to bring the block exemption into effect if the Commission's recommendation meets the following criteria: an agreement must contribute to improving production or distribution, or promoting technical or economic progress, without imposing undue restrictions or substantially eliminating competition.[160]

5.1.9.16 Before making such a recommendation, the Commission has to publish details of its proposed recommendation to bring it to the attention of those likely to be affected and consider any representations made. There is currently a *Block Exemption Order for Liner Shipping Agreements in the Maritime Industry* in force, effective between 2006 and 2010. It is envisaged that the operation of the block exemption will be reviewed before its expiry.

[158] The Commission has issued guidelines such as the *Guidelines on the major provisions* and the *Guidelines on the section 34 prohibition* to explain the details.

[159] There are no block exemptions for the section 47 prohibition.

[160] See section 41 of the *Competition Act* for details.

Public views on the competition law

5.1.10 According to the Competition Commission of Singapore, there have not been any public perception surveys conducted on the *Competition Act* after its enforcement in 2005. Nevertheless, in an effort to increase public awareness and understanding of the competition law and its impact on businesses, the Commission has been conducting outreach programmes, which include:

(a) organizing public seminars and briefings to explain how the competition law is implemented, and what issues businesses need to be aware of to comply with such law; and

(b) providing detailed information on the competition law and its guidelines which provide guidance on how the Commission interprets and enforces the *Competition Act*, and a list of frequently asked questions and answers on its website.

5.1.11 To obtain some ideas on public views of the competition law, the Research and Library Services Division (RLSD) has searched news articles published by the Straits Times and the Lianhe Zaobao (聯合早報). The news reports seem to reflect that both the Singaporean public and business communities have generally welcomed the enactment of the *Competition Act*.

## 5.2 Issues of concern

Sectoral exclusions

5.2.1 As the government has excluded selected strategic sectors from the coverage of the *Competition Act*, some academics and Members of Parliament have expressed concern that such arrangement may create an unfair playing field for businesses. In particular, some companies such as government-linked corporations which occupy a substantial part of the economy have an undue advantage.

5.2.2 Another issue is the exemption of selected sectors that have their own regulatory authorities and laws, which may create uneven standards on implementation of the competition policy. The sectoral regulators may be motivated and governed more by their sectoral interests and controls, and thus not necessarily focused on ensuring competition. In the end, such practices may have hindered the development of a free market and culminate an anti-competitive effect.

5.2.3 The Competition Commission of Singapore has responded that the exclusion of some sectors is based on public interest considerations such as national security, defence and other strategic interests. The other exclusions are for those sectors or activities which have sectoral competition frameworks in place and are in transition from a previously monopolistic situation to a more competitive environment. In this connection, more active market regulation and intervention is needed. In view of the fact that there are also technical matters affecting competition in these areas, the government considers that the sectoral regulators, with their industry knowledge and expertise, are in a better position to handle all the above issues.

5.2.4 In addition, the sectoral exclusions listed in the Third Schedule to the *Competition Act* are not intended to be permanent. The government has committed, after the *Competition Act* has been in force for some time, to review the need for sectoral exclusions, taking into account market developments at the time. Nevertheless, thus far, the government has not conducted such review.

Small and medium enterprises

5.2.5 Singapore is a small open economy with about 150 000 small and medium enterprise (SME)[161] establishments in 2008, generating more than 40% of the Gross Domestic Product and employing more than half of the workforce. Nonetheless, under the current competition law, Singapore does not have any specific exemptions for SMEs.

[161] SMEs in Singapore are classified into two categories: (a) manufacturing SMEs which have fixed asset investment of less than S$15 million (HK$80.1 million) and (b) SMEs in the services sector which have less than 200 employees.

5.2.6 The Competition Commission of Singapore considers that SMEs are characterized by their relatively smaller scale of operations. In most cases, the total market share of SME parties to an agreement is not likely to be significant enough to create an appreciable adverse effect on competition in a market. By the same reasoning, it is unlikely that an SME can have a dominant position in a market. In any event, the Commission reserves the right to investigate alleged anti-competitive conduct on the part of an SME if it is warranted.

5.2.7 In relation to anti-competitive agreements, the Commission has adopted the following market share thresholds of limited economic significance to determine if an agreement is likely to have any adverse impacts on competition:

(a) the agreement is made between competing businesses, and the aggregate market share of the parties to the agreement does not exceed 20%;

(b) the agreement is made between non-competing businesses, and the market share of each of the parties to the agreement does not exceed 25%; and

(c) in the case of an agreement between undertakings where each undertaking is a SME.

5.2.8 The Competition Commission of Singapore has pointed out that these market share thresholds are only indicative. There may be an adverse effect on competition even if the total market share of the businesses involved is below the indicated thresholds. Similarly, agreements between businesses with market shares above these thresholds do not necessarily lead to a case with an appreciable effect on competition. The hinge is not upon the numerical value of the share, but on the ability to distort competition by exercising market power.

5.2.9 This approach does not apply to agreements containing the various hard-core restrictions including: price-fixing, bid-rigging, market sharing and limiting production, which always have an appreciable adverse effect on competition, notwithstanding that the market shares of the parties are below the threshold levels, and even if the parties to such agreements are SMEs.

*Application of competition rules to selected sector*

(A) Ocean shipping

5.2.9.1 Singapore has issued the *Block Exemption Order for Liner Shipping Agreements*[162] *in the Maritime Industry*, effective for five years from 2006 to 2010, for exempting shipping companies from Article 34 of the *Competition Act* prohibitions when certain conditions are met. Among the conditions, the most important condition is the aggregate market share of the parties to the liner shipping agreement which should not be more than 50%, calculated by reference to the volume of goods carried, or the aggregate cargo carrying capacity of the vessels operating in the market. If the aggregate market share of the parties to the liner shipping agreement exceeds 50%, the parties concerned would have to fulfil additional obligations relating to the filing and publication of information for the agreement to be exempted. In practice, the Commission has not rejected any agreement to be exempted. Overall, ocean shipping conferences for regulating tariff rates are permitted.

5.2.9.2 Regarding the *Block Exemption Order*, the Commission has explained its rationale for making such an arrangement. According to the Commission, Singapore has an extensive network of liner shipping connections, which has important flow-through benefits for its economy as well as providing competitive shipping services for shippers located in the country. Therefore, it opines that the *Block Exemption Order* for ocean shipping companies has served the purposes of maintaining the stability of prices, the availability of reliable services and facilitating technical and operational co-operation among liner operators.

5.2.9.3 The Commission is currently undertaking a detailed review evaluating whether the *Block Exemption Order* should be repealed. As part of the review, the Commission is analyzing views and submissions from key stakeholders, and has commissioned a consultant to conduct an empirical study on the impact of the *Block Exemption Order for Liner Shipping Agreements* on Singapore's economy, and to make recommendations to the Commission.

[162] A liner shipping agreement refers to an agreement between two or more vessel-operating carriers which provide liner shipping services pursuant to which the parties agree to co-operate in the provision of liner shipping services in respect of technical, operational or commercial arrangements, or price terms.

## 5.3 Institutional framework for enforcing the competition legislation

5.3.1 The Competition Commission of Singapore is a statutory body established in January 2005 under the *Competition Act* to administer and enforce the *Act*.

Mission

5.3.2 The mission of the Competition Commission of Singapore is to champion competition for growth and choice.

Functions and duties

5.3.3 Under section 6 of the *Competition Act*, the functions and duties of the Commission are to:

(a) maintain and enhance efficient market conduct and promote overall productivity, innovation and competitiveness of markets;

(b) eliminate or control practices having adverse effect on competition;

(c) promote and sustain competition in markets;

(d) enhance a strong competitive culture and environment throughout the economy;

(e) act internationally as the national body representative of Singapore in respect of competition matters; and

(f) advise the government and other public authority on national needs and policies in respect of competition matters generally.

Organization structure

5.3.4 There is a management board overseeing the work of the Commission and approving all major decisions. It currently has eight members[163], comprising the Chairman coming from the government, the Chief Executive and six non-executive members who are from a range of backgrounds, including academia, legal, economics and accountancy in both the public and private sectors. They are appointed by the government for a three-year term.

5.3.5 Under the leadership of the Chief Executive, there are four Divisions[164] to carry out the daily businesses:

(a) Legal and Enforcement Division which enforces the *Competition Act*, renders legal advice and drafts all legal documentation needed in the course of work, represents the Commission in appeal and legal cases, educates the public and business community on the competition law regime, and liaises with other sectoral regulators and international competition authorities on co-operation arrangements;

(b) Policy and Economic Analysis Division which establishes the policy framework and publishes guidelines on implementing the *Act*, conducts economic and market studies, and undertakes analysis in the evaluation of competition cases;

(c) Strategic Planning Division which formulates strategy development policy, and handles international affairs and corporate communications; and

(d) Corporate Affair Division which provides the administrative and operational support services such as administrative services, human resources management and financial planning.

Funding arrangement

5.3.6 The Commission receives grants from the government to meet the operating expenditure. For the financial year 2008-2009, the expenditure amounted to about S$10.5 million (HK$56.1 million).

[163] Under the *Competition Act*, in addition to a Chairman, the management board should not have fewer than four other members.

[164] The Commission had 52 staff as at January 2009.

Accountability arrangements

5.3.7 The Commission is accountable to the government and the Parliament via a number of channels:

(a) publishing an annual report containing information on its activities, performance and future policy, and laying it before the Parliament;

(b) seeking the approval of the government regarding the annual financial estimates of income and expenditure for the coming financial year;

(c) attending parliamentary meetings and answering questions; and

(d) being subject to the scrutiny of the Auditor-General's Office, which conducts audits and investigations of the programmes and operations of the Commission.

## 5.4 Enforcement mechanism and appeal procedure

Enforcement powers and process

5.4.1 The Competition Commission of Singapore is empowered to conduct investigations when there are reasonable grounds for suspecting that the section 34 prohibition has been infringed by any agreement, or the section 47 prohibition has been infringed by any conduct, or the section 54 prohibition will be infringed by any anticipated merger if carried into effect or has been infringed by any merger. The investigation may originate from a complaint, parliamentary inquiry, or self-initiation. When enforcing the competition law, the Commission is empowered to:

(a) Require the production of documents and information: When there are reasonable grounds for suspecting that the section 34, 47 or 54 prohibitions under the *Competition Act* have been infringed or that the section 54 prohibition will be infringed if an anticipated merger is carried into effect, the Commission can, by written notice, require any person to produce documents or information that it considers relate to any matter relevant to the investigation. The Commission can take copies of, or extract from, or seek an explanation of, any document produced, or if a document is not produced, to ask where it is believed to be;

(b) Enter premises without a warrant: An authorized officer of the Commission can enter any premises without a warrant after giving advance notice in writing. Prior written notice need not be given if the premises are suspected to be or have been occupied by an undertaking under investigation. The Commission officer should produce proof of identity and documents indicating the subject matter and purpose of the investigation upon entry; and

(c) Enter and search premises with a warrant: An application can be made to a District Court for a warrant for a named officer of the Commission and other authorized officers to enter premises without notice, using force as necessary, and search the premises, take possession/copies of documents, and ask the parties concerned to answer questions.

5.4.2 Under the *Competition Act*, if a person does not co-operate with the investigation, he or she may be liable to a fine not exceeding S$10,000 (HK$53,400) or imprisonment for a term not exceeding 12 months or both.

5.4.3 Where the Commission proposes to make a decision that the section 34 and/or 47 prohibitions under the *Competition Act* have been infringed, known as an infringement decision, or that the section 54 prohibition has been infringed by a merger or will be infringed if an anticipated merger is carried into effect, called an unfavourable decision, it will send the parties involved a written statement.[165] The Commission will allow the party receiving the notice an opportunity to make written representations and a reasonable opportunity to inspect the documents in the Commission's file relating to the proposed decision. The party receiving the written notice may request in his or her written representations a meeting with the Commission to make oral representations to elaborate on the written representations already made in this regard.

[165] The Commission is empowered to impose interim measures directions before it has completed its investigation.

5.4.4 When an infringement or unfavourable decision is made, the Commission will notify the relevant parties and publish the decision on a public register on its website. The Commission may give a direction to the parties concerned, or to such persons as it considers appropriate, to bring the infringement or, in the case of an anticipated merger, the impending infringement, to an end. The Commission may register the direction as a court order to enforce the direction if a person fails to comply with it without reasonable excuse. Breach of such an order would be punishable as a contempt of court.

5.4.5 The *Competition Act* provides that the Commission may impose a financial penalty for an infringement of any prohibition under the *Act*. The amount of penalty imposed is up to 10% of average annual turnover of the business of the undertaking in Singapore, up to a maximum of three years.

*Leniency programme*

5.4.6 In line with the arrangements in the other selected jurisdictions studied, Singapore has implemented a leniency programme. The programme targets organizations and persons who have participated in cartel activities and therefore liable for infringing the section 34 prohibition of the *Competition Act.* An undertaking which is the first party to provide the Commission with evidence of cartel activity before the commencement of an investigation will be granted total immunity from financial penalties if it fulfils certain conditions. Such conditions include rendering full and complete co-operation to the Commission until the conclusion of any action arising as a result of the investigation and not being an initiator of the cartel. Subsequent leniency applicants may be granted a reduction of up to 50% in the amount of the financial penalty.

Appeal procedure

5.4.7 An appeal[166] against the decision of the Competition Commission of Singapore, including a direction or imposition of a financial penalty, can be made to the Competition Appeal Board. Except in the case of an appeal against the imposition, or the amount, of a financial penalty, the appeal does not suspend the effect of the decision to which the appeal relates.

[166] There is a fee amounting to S$500, or HK$2,670, for filing an appeal.

5.4.8 The Board has powers to rule on appeals and may:

(a) confirm or set aside all or part of the decision;

(b) remit the matter to the Commission;

(c) impose or revoke, or vary (either increase or decrease) the amount of a penalty;

(d) give such directions, or take other steps as the Commission itself could have given or taken; or

(e) make any other decision which the Commission itself could have made.

5.4.9 A further appeal from a decision can be made to the High Court and the Court of Appeal either on a point of law arising from a decision of the Board or from any decision of the Board as to the amount of a financial penalty.

# Chapter 6 – Analysis

## 6.1 Introduction

6.1.1 This analysis looks into the competition policies in the selected jurisdictions, the European Union (EU), the United Kingdom (UK), the United States (US) and Singapore, as well as Hong Kong[167] in respect of the following aspects:

(a) overview of the competition legislation:

(i) scope;

(ii) prohibition on anti-competitive agreements;

(iii) prohibition on the abuse of a dominant position;

(iv) merger control;

(v) exemptions and exclusions;

(vi) penalties for anti-competitive conduct;

(vii) enforcement mechanism; and

(viii) appeal procedure.

(b) public views on the competition law;

(c) matters relating to small and medium enterprises (SMEs);

(d) application of competition rules to selected sectors;

(e) issues of concern;

[167] Hong Kong does not have a cross-sector competition law. The Government conducted two rounds of public consultation on the proposed introduction of competition law in 2006 and 2008, which revealed a broad support for such introduction. The Government planned to introduce the *Competition Bill* to the Legislative Council (Council) in the 2009-2010 legislative session. Based on the current schedule, the Government has expected to introduce the *Bill* in the 2009-2010 legislative session. Against the above background, the information on Hong Kong is based on the Government's current proposals, which are subject to changes.

(f) institutional framework for enforcing the competition legislation:

(i) organization structure;

(ii) powers and functions;

(iii) funding arrangement; and

(iv) accountability arrangements.

## 6.2 Overview of the competition legislation

Scope

*Overseas jurisdictions*

6.2.1 The jurisdictions studied all have enacted cross-sector competition laws. Among them, the US is the pioneer in this area, with the 1890 enactment of the *Sherman Act* to outlaw all agreements that unreasonably restrain both interstate and foreign trade. Another two important pieces of the US competition legislation, which are the *Clayton Act* addressing specific anti-competitive mergers and acquisitions and exclusive dealing arrangements, and the *Federal Trade Commission Act* establishing the regulatory authority known as the Federal Trade Commission, were implemented in 1914.

6.2.2 The current competition legislation of the EU originates from the *Treaty of the European Community* (*EC Treaty*) which was enacted in 1957. In particular, Article 81 of the *EC Treaty* prohibits anti-competitive agreements which appreciably restrict or distort competition and affect trade in the EU. Article 82 prohibits the abuse of a dominant position by overcharging customers, charging excessively low prices designed to squeeze out competitors from or bar new entrants to a market, or granting discriminatory advantages to some customers. The *Merger Regulation 139/2004* governs merger control which empowers the European Commission to investigate mergers with a Community dimension. Article 87 of the *EC Treaty* contains the substantive rules governing state aid among the member states of the EU.

6.2.3 The competition regulatory framework of the UK is built on the *Competition Act 1998* with the aim of identifying and dealing with restrictive business practices and abuse of a dominant market position. The *Act* establishes the Competition Commission to investigate competition issues such as mergers and restrictive trade practices. The *Enterprise Act* enacted in 2002 replaced the office of the Director General of Fair Trading with the Office of Fair Trading, conferred on the Competition Commission decision-making powers and introduced the Competition Appeal Tribunal for hearing appeals against decisions of the Office of Fair Trading and the Competition Commission.

6.2.4 Singapore enacted the *Competition Act* as recently as 2004 and its implementation was in three phases to allow time for the Singaporean government and businesses to prepare for the enforcement of the law. Sections 34, 47 and 54 of the *Competition Act* prohibit anti-competitive agreements, the abuse of a dominant position and mergers which substantially lessen competition respectively.

*Hong Kong*

6.2.5 According to the Government, the proposed competition law prohibits anti-competitive conduct in two broad areas: participation in agreements and concerted practices such as the abuse of substantial market power that have the effect of substantially lessening competition. The focus of the proposal is in line with the four jurisdictions covered in this research. However, merger control, which is a common feature of the overseas competition laws studied, is not part of the proposal.

Prohibition on anti-competitive agreements

*Overseas jurisdictions*

6.2.6 Anti-competitive agreements are prohibited in all four jurisdictions studied. In the UK and Singapore, the prohibition on price-fixing, bid-rigging, market allocation, sales and production quotas, predatory pricing and discriminatory standards is explicitly specified in their legislation. In addition, the regulatory authorities of the selected jurisdictions often issue guidelines to explain how the competition law should be interpreted, with a number of detailed examples and cases of anti-competitive agreements for illustration purpose.

*Hong Kong*

6.2.7 Under the proposed competition law in 2008, the Government considered the introduction of a general prohibition on anti-competitive agreements that had the effect of substantially lessening competition. Nonetheless, the proposed competition law would not provide examples of such anti-competitive agreements. The rationale of the Government was to avoid a situation whereby significant resources might be spent on arguing whether or not a specific agreement fell within a particular category of prohibited agreements. Instead, the Government opted to issue guidelines with examples of anti-competitive agreements to assist the public in understanding the law.

6.2.8 Nevertheless, a concern was raised in the 2008 consultation that the proposed general prohibition on anti-competitive agreements could create uncertainty unless it clearly stated the types of conduct which might constitute an infringement. In view of such concern, the Government has modified its proposal to provide a general prohibition on anti-competitive agreements, supplemented with a non-exhaustive list of examples of such conduct, to ensure that both the business sector and the public understand the law. Regulatory guidelines explaining detailed specifics of the law with elaborate examples of anti-competitive agreements will also be issued. The Government has planned to table the draft guidelines for reference upon the introduction of the *Bill* to the Council.

Prohibition on the abuse of a dominant position

*Overseas jurisdictions*

6.2.9 The competition legislation of the four jurisdictions prohibits the abuse of a dominant position with the effect of substantially lessening competition. The UK and Singapore again specify examples of such conduct in their legislation, and the regulatory authorities of all the selected jurisdictions have guidelines for interpreting the provisions with detailed examples and cases. On the issue of determining market dominance which may lead to public concern, the EU, the UK and Singapore adopt market share thresholds as an indicator, which are 40%, 40% and 60% respectively. On the other hand, the US has not explicitly defined such thresholds.

*Hong Kong*

6.2.10 A general prohibition on the abuse of a dominant position and a non-exhaustive list of examples are part of the proposed competition law. As for the issue of market dominance, the Government has stated that given the fact that Hong Kong is a geographically concentrated economy, a small number of firms may dominate certain markets. In such cases, the conduct of a firm with a significant market share, albeit short of the 50% presumption for dominance may have a major effect on competition. Hence, the threshold will be set at a market share of about 40%. Guidelines on this prohibition explaining how the Government interprets and enforces the law will be issued.

Merger control

*Overseas jurisdictions*

6.2.11 Merger regulation is a common feature of the jurisdictions studied in this research. The regulatory authorities are empowered to investigate and disapprove proposed mergers to ensure healthy competition. Among the selected jurisdictions, the EU and the US adopt dollar thresholds to determine whether a merger requires any approval from the authorities, while the UK and Singapore employ market share thresholds.

6.2.12 The thresholds adopted in the EU are: the combined annual worldwide turnover of the merging companies being over €5 billion (HK$54 billion) and the combined annual European Community-wide turnover being over €250 million (HK$2.7 billion). In the US, the threshold applicable in 2008 was that all transactions of US$252.3 million (HK$1.95 billion) or more had to seek approval either from the Fair Trade Commission or the Antitrust Division of the Department of Justice, depending on the types of industry.

6.2.13 The UK sets the threshold to be a market share of more than 25%. In Singapore, the criteria for seeking approval is: if the merged entity will have a market share of 40% or more; or the merged entity will have a market share of between 20% and 40%, and the post-merger combined market share of the three largest firms is 70% or more.

*Hong Kong*

6.2.14 The Government has expressed that public views are divided on the issue of whether or not the competition law should include merger provisions. Those who support merger regulation argue that such provisions should be a vital component of the competition law, without them certain anti-competitive conduct could easily occur. Those who oppose merger regulation opine that merger regulation may have a negative impact on the business environment.

6.2.15 Given the lack of a clear majority support for the inclusion of merger provisions, the Government has considered that focus should be put on anti-competitive conduct initially. It will reconsider whether there is a need to add merger provisions after a review of the effect of the new law.

Exemptions and exclusions

*Exemption on grounds of economic benefit*

(A) Overseas jurisdictions

6.2.15.1 The competition laws of the EU, the UK and Singapore provide exemptions for agreements from the prohibition on anti-competitive conducts if they yield economic benefits that outweigh the potential anti-competitive harm. These jurisdictions have adopted similar criteria for providing such exemptions, which primarily requires that the agreements should contribute to improving production or distribution, or promoting technical or economic progress, but not eliminating competition substantially.

6.2.15.2 On the other hand, the US may enact a federal statute on the exemptions of certain industries subsequent to the antitrust laws, based on the grounds of economic benefit. An example is the *Export Trading Company Act* which allows export cartels as part of an effort to promote exports.

(B) Hong Kong

6.2.15.3 The proposal put forward by the Government follows the European and Singaporean approach, and considers that an agreement may be exempted from the prohibition on anti-competitive agreements if it yields economic benefits that outweigh the potential anti-competitive harm. A party to an anti-competitive agreement may apply to the proposed enforcement agency of the competition law for an exemption. The Government, in its proposal, is considering to set out the exemption criteria in the competition law so that an undertaking is able to make its own assessment of whether the exemption may apply to its agreements.

*Block exemptions*

(A) Overseas jurisdictions

6.2.15.4 In the EU, the UK and Singapore, the government is empowered to issue block exemption in respect of a category of agreements that is likely to yield economic benefit that outweighs any anti-competitive effect. In effect, the regulatory authority of the jurisdiction concerned will advise its government on such matter. When an agreement fulfils the conditions set out in a block exemption, individual notification of that agreement to the respective regulatory authority is not required. The regulatory authority of the jurisdiction concerned will periodically review whether a block exemption should be continuously provided, taking into account the costs and benefits associated with such exemption. The *Block Exemption Regulations* issued by the EU also apply to the UK which is a member state of the EU.

6.2.15.5 As for the US, it does not adopt the approach of exempting certain sectors by means of block exemption regulation. Instead, Congress may enact a federal statute supplementing the antitrust laws to exempt certain industries from the scope of antitrust application.

(B) Hong Kong

6.2.15.6 The Government has also proposed to empower the enforcement agency to issue a block exemption in respect of a category of agreements under the new competition law. In line with overseas practices exercised in Europe and Singapore, the proposed block exemption will be reviewed periodically.

*Exclusion on grounds of public interest*

(A) Overseas jurisdictions

6.2.15.7 Similar to the arrangements of providing exemptions on grounds of economic benefit, the EU, the UK and Singapore have permitted exclusions on grounds of public interest, if an undertaking concerned has been entrusted with the operation of public services or functioned as fiscal monopolies which raise revenues for their respective government. In the EU, when implementing this competition rule, its member states are primarily responsible for defining what they regard as public services on the basis of the specific features of the activities concerned. Their definitions are subject to the control of the European Commission to ensure that the interpretation of the EU rule is consistent among member states.

6.2.15.8 As for the exclusion provided for fiscal monopoly, both the EU and the UK have pointed out that there are very few cases exist because monopolies are seldom established with the principal objective of raising revenue for the state. In Singapore, the government has not released any information on fiscal monopolies in the country.

6.2.15.9 In the US, Congress may enact a federal statute subsequent to the antitrust laws for the exemptions, based on the consideration of public policy. For example, the *Defense Production Act* exempts agreements that the President finds vital to national defence.

*Non-application to the government and statutory bodies*

(A) Overseas jurisdictions

6.2.15.10 In the EU and the UK, if an undertaking concerned has been entrusted with the operation of public services, it is exempted from the competition law. The Office of Fair Trading of the UK has further elaborated that in considering whether state functions are economic or administrative, the main factor taken into account is the purpose of the entity. An example is an entity buying goods or services to provide a purely social activity is not considered engaging in economic activity, but serving administrative purpose.

6.2.15.11 In the US, according to the Organisation for Economic Co-operation and Development, government entities, even those that are involved in commercial operations, are beyond the reach of the competition law enforcement or private litigation. Several professors specialised in the US antitrust laws have further elaborated that the rationale of exempting US government from the antitrust laws is based upon sovereign immunity, with the antitrust statute only applicable to "persons". Nonetheless, federal government departments and agencies seldom engage in the same sorts of commercial activities as private parties. Hence, this issue is not a concern.

6.2.15.12 In Singapore, it provides exemptions to the government and statutory bodies from the competition law. Some academics and Members of Parliament have expressed concern that such arrangement may create an unfair playing field for businesses. In particular, the government-linked corporations which take up a substantial part of the economy will have an undue advantage. The Competition Commission of Singapore, the enforcement agency of the competition law, has responded that the exclusion of some sectors is based on public interest considerations such as national security, defence and other strategic interests. The exclusions are not intended to be permanent. The government has committed, after the competition law has been in force for some time, to review the need for exclusions, taking into account market development. Nevertheless, thus far, the government has not conducted such review.

(B) Hong Kong

6.2.15.13 The proposal published in 2008 was that the conduct rules should not apply to the Government or statutory bodies. The Government would conduct a review of the issue in the light of actual experience in implementing the competition law. Nonetheless, there are views from the public consultation that the proposed non-application of the competition law to the Government and statutory bodies would be contrary to the principle of establishing a level playing-field, given that there are areas where the Government and statutory bodies compete with the private sector.

6.2.15.14 After reviewing its proposal, the Government has maintained that the competition law should not apply to government activities as they are mostly either non-economic in nature or essential public services. As to statutory bodies, the Government has intended to stipulate that the law does not apply to them except where otherwise specified. This allows the Government to list in a Schedule to the law the statutory bodies that will be excluded from the overall exemption. The list of the "non-exempted" statutory bodies will be subject to vetting by the Legislative Council.

6.2.15.15 The Government has been reviewing the activities of each statutory body to work out the Schedule of non-exempted statutory bodies[168], and has requested for more time to prepare the list on statutory bodies for inclusion in the new law due to the scale of the review and the substantial number of statutory bodies involved.

Penalties for anti-competitive conduct

*Overseas jurisdictions*

6.2.16 In the UK and the US, both civil penalty of fines and criminal penalty of fines and imprisonment are available, whereas civil penalty of fines is the only option in the EU and Singapore. Among the four jurisdictions, the levels of fine cover a wide range, and are often subject to a cap of 10% of the offending party's annual turnover for three years. In relation to imprisonment, the UK imposes a punishment up to five years for serious cartel offence, while the US has a tougher penalty of up to 10 years in prison.

*Hong Kong*

6.2.17 According to the Government, the introduction of a cross-sector competition law will be a new step for Hong Kong. Hence, when infringing anti-competitive conduct, the Government has proposed to limit sanctions to civil penalties. The Government has also assumed that fines set at an appropriate level will remove economic incentives to engage in anti-competitive conduct. Accordingly, a maximum fine of HK$10 million or 10% of the turnover during the period, whichever is higher, when the infringement has occurred.

[168] According to the Government, there is a list of factors under consideration in granting exemptions, such as whether and to what extent (a) the statutory body is engaging in economic activities; and if so, whether for the purpose of regulation these activities are inseparable from or incidental to the provision of essential services; (b) they are in direct competition with private sector entities; (c) their conduct may affect the economic efficiency of a specific market; and (d) they enjoy autonomy in decision-making and day-to-day operation.

Enforcement mechanism

*Overseas jurisdictions*

6.2.18 The regulatory authorities of the jurisdictions studied have similar powers to enforce their competition laws. For example, they are authorized to require documents for investigation and ask the relevant parties to answer questions. They may also obtain a warrant from the courts to search the premises for relevant documents and compel persons to answer questions. If a person does not co-operate with the investigation, he or she is liable to a penalty. Such violations are criminal offence which is punishable by an imprisonment or a fine or both in the UK and Singapore, whereas a fine will be imposed in the EU and the US.

6.2.19 The regulatory authorities are also empowered to issue directions, including ordering the businesses to change or terminate the offending agreement or stop the offending conduct. If a business fails to comply with the directions, they will seek a court order to enforce them.

6.2.20 The Antitrust Division of the Department of Justice of the US files criminal suits for serious violations of the antitrust laws. Where criminal prosecution is not appropriate, the Antitrust Division institutes a civil action seeking a court order forbidding future violations of the law and requiring steps to remedy the anti-competitive effects of past violations, such as imposing a financial penalty on the business concerned.

*Leniency programme*

(A) Overseas jurisdictions

6.2.20.1 The overseas jurisdictions studied have leniency programmes in place whereby companies that provide information about a cartel in which they have participated might receive full or partial immunity from fines. The extent of the relief given depends on factors such as whether the informant is the first party to come forward, and whether the information provided is useful for the investigation.

(B) Hong Kong

6.2.20.2 The Government has proposed that the enforcement agency has the authority to implement a leniency programme. In line with the overseas practices, the party to a prohibited agreement that comes forward with information that is helpful to an investigation may have any subsequent penalty waived or reduced. Guidelines setting out the details of the leniency programme will also be issued.

Appeal procedure

*Overseas jurisdictions*

6.2.21 The regulatory framework of the selected jurisdictions all includes a full set of checks and balances as the decisions of the enforcement bodies may be appealed to independent and impartial tribunals or courts. The UK and Singapore have implemented the same appeal mechanism, with the appeals being handled first by tribunals, which are specialist judicial bodies with cross-disciplinary expertise, and then by the courts; whereas appeals in the EU and the US are handled by the courts.

6.2.22 The appeal tribunal established in the UK and Singapore are authorized to make a decision against the ruling of the enforcement bodies, and impose, revoke or vary the amount of a penalty.

*Hong Kong*

6.2.23 In the Government's current proposal, appeals are to be handled by courts.

## 6.3 Public views on the competition law

6.3.1 For the EU, the UK and the US, the information on public views on the competition law and concerns on misunderstanding of the competition law is scant, partly due to the fact that these jurisdictions have implemented the competition law for an extended period of time. Accordingly, both businesses and the public have had some knowledge of the competition law. In the case of Singapore which introduced its competition law in 2005, press reports have shown that the public and business communities have generally welcomed the enactment of the law.

6.3.2 It is noted that the jurisdictions studied have all provided detailed information on its competition policies, guidelines and frequently asked questions and answers on the websites of the respective regulatory bodies. In addition, the UK and Singapore have organized public seminars and briefings to educate the public and businesses about the competition law.

## 6.4 Matters relating to small and medium enterprises

Overseas jurisdictions

6.4.1 In the jurisdictions studied, the regulatory authorities have not provided specific exemptions for SMEs in their respective competition laws. Nonetheless, issues relating to SMEs have not been a major concern. The regulatory authorities prioritize their work and tend to take action against infringements involving major companies. In any event, they have undertaken educational programmes to help small businesses avoid anti-competitive practices.

6.4.2 It is a common practice in the four jurisdictions studied to identify and exempt conduct that is of minor economic significance and thus unlikely to be anti-competitive. This practice is intended to help small businesses reduce the costs of complying with the competition law. The threshold for such conduct may be set using turnover or market share of the undertakings involved. For example, in the UK, conduct is considered to be of minor significance if the annual turnover of the undertaking concerned does not exceed £50 million (HK$610 million). In the US and Singapore, the competition authorities may not pursue an agreement if the aggregate market share of the parties to the agreement does not exceed 30% and 20% respectively. However, this approach does not apply to agreements involving hard-core conduct, such as price-fixing, bid-rigging, output restriction and market allocation.

Hong Kong

6.4.3 In Hong Kong, in line with the overseas practices, the Government has not planned to exempt SMEs from the competition law. Nonetheless, during the public consultation on competition policy, organizations representing SMEs have raised the concern that competition law may make the operating environment for SMEs more complex and increase their costs. Another concern is that SMEs may unwittingly fall foul of the competition law and larger companies may threaten to sue SMEs in order to force them to comply with unreasonable business conditions.

6.4.4 Noting these concerns, the Government has suggested that more detailed guidelines on how the enforcement body may apply the conduct rules and investigate complaints will be issued. Mechanisms will also be put in place to guard against possible misuse of the law by large companies to harass SMEs, as well as helping SMEs protect themselves from anti-competitive conduct. In particular, the Government has considered the adoption of the minor economic significance approach so that the proposed enforcement body will not pursue an agreement where the aggregate market share of the parties to the agreement does not exceed a certain level, say 20%, except where hard-core conduct is involved.

6.4.5 In addition, the Government has opted to have at least one member of the management board of the proposed enforcement body to have experience in SME matters.[169] The enforcement body should also educate the public, including SMEs, about the types of business practice that may constitute anti-competitive conduct under the law.

## 6.5 Application of competition rules to selected sectors

Ocean shipping

*Overseas jurisdictions*

6.5.1 In the EU, prior to 18 October 2008, there was a block exemption for ocean shipping conferences operating on trades to and from the region, which also applied to the UK. At the time, the justifications offered for the exemption assumed that such conferences brought stability, ensuring reliable services of exporters which could not be achieved by other means. However, a thorough review of the shipping industry carried out by the European Commission demonstrated that there was no evidence indicating that the conference system led to more stable freight rates or more reliable shipping services than would be the case in a fully competitive market. The European Commission hence repealed the block exemption for ocean shipping conference on 18 October 2008. Henceforth, following the lead of the EU, the UK government has prohibited the tariff-regulating ocean shipping conferences effective from the same date.

[169] The Government has considered establishing a management board overseeing the daily operation of the enforcement body.

6.5.2 In both the US and Singapore, ocean shipping conferences are permitted. In the meantime, they are evaluating whether ocean shipping conferences should be continuously provided for exempting antitrust prohibition of price-fixing, partly due to the repeal of block exemption for ocean shipping conferences in the EU. Their findings should be available by the end of 2010.

Electricity/utilities markets

*Overseas jurisdictions*

6.5.3 In the EU, the European Commission decided to open up the national electricity markets to competition in the 1990s, by gradually creating an internal market for the generation, transmission and distribution of electricity. Nevertheless, competition was slow to take off, with markets remaining largely national and highly concentrated, with relatively little cross-border trade. As such, the European Commission launched a sector inquiry in 2005 and eventually introduced the arrangement of independent system operators to further liberalize the electricity sector in 2007. Under such arrangement, companies involved in energy production and supply could retain their network assets, but lose control over how they are managed with commercial and investment decisions left to an independent company to be designated by national governments. However, in some member states such as France and Germany, the liberalization programme has not been successfully implemented because of political opposition.

6.5.4 The UK started privatization and liberalization of the utilities sector which consists of telecommunications, gas, electricity and water in the 1980s. As a result, these markets have been opened up for competition and the number of exclusive rights over aspects of services is reduced. Utilities companies in the country are usually operated subject to licences that impose obligations upon them, attempting to prevent any anti-competitive, discriminatory or exploitative conducts. In controlling the prices charged by the utilities companies, the government has set price caps which are subject to adjustment usually every five years. The price control function is exercised through the 'inflation rate less a particular percentage as fixed by the relevant regulator'. Over a period of time, this formula should lead to a reduction in prices in real terms, thereby benefiting the consumer and forcing the privatized companies to increase efficiency in order to remain profitable.

## 6.6 Issues of concern

6.6.1 In this study, the EU, the UK and Singapore have had somewhat different issues of concern regarding the competition law.[170] As regards the EU, an issue of concern related to enforcement problems emerged in the mid-2000s. At the time, eight Central and Eastern European countries joined the EU and anti-competitive activities and market practices became more complex in nature, the EU found itself unable to deal with the increased workload, and thus delegated its duties of implementing Articles 81 and 82 of the *EC Treaty* to national competition authorities and national courts of member states in 2004.

6.6.2 Another concern in the EU is about merger control, which has been criticized as based on protectionist reasons, rather than sound economic reasons. A controversial case is when the EU rejected a proposed merger of two US companies, General Electric and Honeywell, in 2001, which had been approved by the US authorities, because the European Commission considered that the merger between those two companies would have severely reduced competition in the aerospace industry and resulted ultimately in higher prices for customers, particularly airlines.

6.6.3 In the UK, the main concern relates to the upholding of the principle of free competition. There were views that in the financial crisis of 2007-2008, the government had too many interventions in the banking market, which might violate the principle of free competition. The government reconfirms its role in upholding free competition in markets, and is committed to engaging in necessary market interventions to achieve any desired policy objective.

6.6.4 In Singapore, as the government has excluded selected strategic sectors from the coverage of the *Competition Act*, some academics and Members of Parliament have expressed concern that such arrangement may create an unfair playing field for businesses, favouring some government-linked corporations. A related issue in Singapore is that some exempted sectors have their own regulatory authorities and laws, which may create uneven standards on the implementation of the competition policy. The sectoral regulators may be motivated and governed more by their sectoral interests and controls, and thus not necessarily focus on ensuring competition. In the end, such practices may have hindered the development of a free market, culminating an anti-competitive effect.

[170] There is limited information on the issue of concern in the US.

## 6.7 Institutional framework for enforcing the competition legislation

Organization structure

*Overseas jurisdictions*

6.7.1 Regarding the institutional framework for enforcing the competition legislation in the selected jurisdictions, there are two types of organization structures, which are a statutory public body governed by a management board and a government department. The Office of Fair Trading and the Competition Commission in the UK, the Fair Trade Commission in the US and the Competition Commission of Singapore belong to the former. They have their own management board to oversee the daily operation, with board members being appointed by the government. With the exception of the Fair Trade Commission in the US, there are non-executive members in the respective management board of the enforcement bodies, who are selected based on their experiences and expertise in various fields.

6.7.2 On the other hand, the Directorate General for Competition in the EU and the Antitrust Division of the Department of Justice in the US belong to the latter type, which is a government department.

*Hong Kong*

6.7.3 The Government has proposed to establish an independent authority, known as the Competition Commission, to enforce the new competition law. The Commission will have appointed board members overseeing its daily operation. The proposal is in line with the arrangements adopted in most of the overseas regulatory authorities studied.

Powers and functions

*Overseas jurisdictions*

6.7.4 With the exception of the Competition Commission in the UK which is empowered to make decisions on merger proposals only, the other regulatory authorities of the selected jurisdictions have the powers to investigate, determine and apply remedies in respect of infringements of the conduct rules and approve merger proposals. In general, these enforcement agencies all perform the functions of educating the public and businesses about the competition law and promoting compliance programmes.

*Hong Kong*

6.7.5 The initial design of the institutional framework as proposed in the public consultation document released in 2008 was to adopt a civil administration model comprising a Competition Commission and a Competition Tribunal. The Competition Commission was to investigate and make determinations of breach of the proposed competition law, and to impose sanctions. The Competition Tribunal was to hear applications for review of the Competition Commission's decision and to impose a full range of remedies and to hear private actions.

6.7.6 When the Government consulted the public in 2008 on details of the proposed *Competition Bill*, some respondents considered that the proposal to give the Competition Commission powers to adjudicate on infringements and impose remedies in addition to its investigative role amounted to a concentration of too much power in one place. Hence, the Government has changed the original civil administration mode to a judicial model. Under the new model, the Competition Commission will be empowered to investigate and the Competition Tribunal is to be vested with the powers to adjudicate on infringements and impose legal remedies. The Government has stated that as the Competition Tribunal will be part of the Judiciary, it needs more time to discuss with the Judiciary on its establishment. As at the publication of this report, details of the new model have not been available.[171]

Funding arrangement

*Overseas jurisdictions*

6.7.7 The regulatory authorities in this study all receive government funding. In the EU, the Directorate General for Competition receives funds via the approval of the budget by the European Council and the European Parliament. The Office of Fair Trading and the Competition Commission in the UK receive government funding via the Parliament and grants from the government respectively. In the US, the Fair Trade Commission and the Antitrust Division of the Department of Justice receive funds via passing the *Appropriations Bill* by Congress. The Competition Commission of Singapore receives funds from the government.

[171] Under such circumstances, details on the proposed enforcement authority regarding the aspects of powers and functions, funding arrangement and accountability arrangements are not known.

Accountability arrangements

*Overseas jurisdictions*

6.7.8 The accountability arrangements of the enforcement agencies studied are similar, as they can be categorized into the following five channels:

(a) publishing an annual plan setting out their main objectives and priorities for the year ahead and an annual report of past performance;

(b) seeking the approval of the government/legislature regarding the annual budget;

(c) attending parliamentary meetings and answering questions;

(d) laying the annual report and financial accounts before the legislature; and

(e) being subject to the scrutiny of the national audit service.

6.7.9 Compared to the other jurisdictions studied, the US Congress plays an additional role in:

(a) appointing the Commissioners of the Fair Trade Commission and confirming the appointment of the Assistant Attorney General; and

(b) approving the organization structure of the Antitrust Division of the Department of Justice.

**Appendix**

## Key features of competition policies in the selected jurisdictions

| | European Union | United Kingdom | United States | Singapore |
|---|---|---|---|---|
| **Overview of the competition legislation** | | | | |
| Relevant legislation | Articles 81 and 82 of *Treaty of the European Community* (*EC Treaty*) enacted in 1957, *Merger Regulation 139/2004* and Article 87 of *EC Treaty*. | *Competition Act 1998* and *Enterprise Act 2002*. | *Sherman Act 1890, Clayton Act 1914* and *Federal Trade Commission Act 1914*. | *Competition Act 2004*, implemented by phases. |
| Scope of coverage | Anti-competitive agreements (Article 81), abuse of a dominant position (Article 82), merger control (*Merger Regulation 139/2004)* and state aid control *(Article 87).* | Anti-competitive agreements (Chapter I of *Competition Act* and *Enterprise Act),* abuse of a dominant position (Chapter II of *Competition Act* and *Enterprise Act)* and merger control (*Enterprise Act).* | Anti-competitive agreements (*Sherman Act, Clayton Act* and *Federal Trade Commission Act*), abuse of a dominant position (*Sherman Act, Clayton Act* and *Federal Trade Commission Act)* and merger control (*Clayton Act*). | Anti-competitive agreements (section 34), abuse of a dominant position (section 47) and merger control (section 54). |
| Prohibition on anti-competitive agreements | Applied to all.<br>Major examples of anti-competitive agreements include price-fixing, bid-rigging, market allocation, sales and production quotas and discriminatory standards. | | | |
| Prohibition on abuse of a dominant position | Applied to all.<br>Major examples of market dominance include price-fixing, bid-rigging, market allocation, sales and production quotas and discriminatory standards. | | | |
| Definition of dominance | 40% of market share. | 40% of market share. | Not specified. | 60% of market share. |

**Appendix (cont'd)**

**Key features of competition policies in the selected jurisdictions**

| | European Union | United Kingdom | United States | Singapore |
|---|---|---|---|---|
| **Overview of the competition legislation (cont'd)** | | | | |
| Merger control | Applied to all. | | | |
| Thresholds for requiring merger approval | Dollar threshold: combined annual worldwide turnover of merging companies being over €5 billion (HK$54 billion) and their combined annual European Community-wide turnover being over €250 million (HK$2.7 billion). | Market share threshold: 25% of market share. | Dollar threshold: in 2008, all transactions of US$252.3 million (HK$1.95 billion) or more. | Market share threshold: merged entity having a market share of 40% or more; or merged entity having a market share of between 20% and 40%, and post-merger combined market share of the three largest firms being 70% or more. |
| State aid control | Application of state aid rules across all member states to ensure that the common market will not be distorted. | Not applicable. | | |

**Appendix (cont'd)**

## Key features of competition policies in the selected jurisdictions

| | European Union | United Kingdom | United States | Singapore |
|---|---|---|---|---|
| **Overview of the competition legislation (cont'd)** | | | | |
| Exemptions and exclusions | Applied to all. | | | |
| Exemption on grounds of economic benefit | Applied, adopting the criteria that the agreements should contribute to improving production or distribution, or promoting technical or economic progress, but not eliminating competition substantially. | Applied, adopting similar criteria as in the European Union (EU). | Applied, via enactment of a federal statute subsequent to the antitrust laws for the exemptions. | Applied, adopting similar criteria as in the EU and the United Kingdom (UK). |
| Block exemptions | Applied, the European Commission empowered to issue block exemptions, with the recommendation of the regulatory authority, and subject to periodic review to determine continuity. | Applied, with the same arrangement as in the EU. | Not applicable. | Applied, with the same arrangement as in the EU and the UK. |
| Exemption on grounds of public interest | Applied, adopting the criteria that an undertaking is entrusted with the operation of public services or functioned as fiscal monopolies which raise revenues for the government. Nonetheless, very few cases of fiscal monopolies exist. | Applied, adopting similar criteria as in the EU. Very few cases of fiscal monopolies exist. | Applied, via enactment of a federal statute subsequent to the antitrust laws for the exemptions. | Applied, adopting similar criteria as in the EU and the UK. No information on fiscal monopolies. |

**Appendix (cont'd)**

## Key features of competition policies in the selected jurisdictions

| | European Union | United Kingdom | United States | Singapore |
|---|---|---|---|---|
| **Overview of the competition legislation (cont'd)** | | | | |
| Non-application to government and statutory bodies | An undertaking entrusted with the operation of public services is exempted from the competition law. | Adopting similar criteria as in the EU. | Government entities are exempted from the competition law, based upon sovereign immunity, with the antitrust statute only applicable to "persons". In any event, federal government departments and agencies seldom engage in commercial activities. | Government departments and statutory bodies are exempted from the competition law. However, there are concerns that such arrangement may create an unfair playing field for businesses. Examples are government-linked corporations. |
| Investigative powers | The regulatory authorities have similar powers to enforce the competition laws: requiring documents for investigation and asking the relevant parties to answer questions. After obtaining a warrant from the courts, they may search the premises for relevant documents and compel persons to answer questions. | | | |
| Penalties for failing to co-operate with investigation | A fine of up to 1% of average annual turnover. | A criminal offence of an imprisonment of up to two years or a fine. | A fine. | A criminal offence of an imprisonment of up to one year or a fine or both. |
| Powers of Issuing directions | The regulatory authorities have similar powers to issue directions. If a business fails to comply with the directions, the regulatory authorities will seek a court order to enforce them. | | | |
| Penalties for infringing anti-competitive conduct | Civil penalty: fines of up to 10% annual global turnover. | Civil penalty: fines.<br>Criminal penalties: fines of up to 10% of annual turnover for three years and an imprisonment up to five years. | Civil penalty: fines.<br>Criminal penalties: fines of up to US$100 million (HK$775 million) and an imprisonment up to 10 years. | Civil penalty: fines of up to 10% annual turnover for three years. |
| Leniency programme | The regulatory authorities have leniency programme in place whereby companies that provide information about a cartel in which they have participated might receive full or partial immunity from fines. | | | |
| Appeal channel | General Court and thereafter to European Court of Justice. | Competition Appeal Tribunal and thereafter to Court of Appeal. | Appeal courts. | Competition Appeal Board and thereafter to Court of Appeal. |

**Appendix (cont'd)**

**Key features of competition policies in the selected jurisdictions**

| | European Union | United Kingdom | United States | Singapore |
|---|---|---|---|---|
| **Public views on competition law and misunderstanding of competition law revealed** | Scant information is available. | | | The public and business communities have generally welcomed enactment of competition law. |
| **Small and medium enterprises** | Small and medium enterprises (SMEs) are not exempted from competition laws. Nonetheless, issues relating to SMEs have not been a major concern. They have adopted the minor significance approach for exempting small businesses, but hard core conduct such as price fixing, bid rigging and output restriction is not included. | | | |
| Thresholds for exempting anti-competitive conduct | (a) Thresholds of combined market shares of 10% for agreements between competitors and 15% for agreements between non-competitors; and<br>(b) no thresholds for agreements between SMEs. | Annual turnover of the undertaking not exceeding £50 million (HK$610 million). | Generally 30% of market share, but may vary among sectors | (a) For agreements between competing businesses, aggregate market share of parties to the agreement not exceeding 20%;<br>(b) for agreements between non-competing businesses, market share of each party to agreement not exceeding 25%; and<br>(c) in the case of an agreement between undertakings where each undertaking being a SME. |

**Appendix (cont'd)**

**Key features of competition policies in the selected jurisdictions**

| | European Union | United Kingdom | United States | Singapore |
|---|---|---|---|---|
| **Application of competition rules to selected sectors** | | | | |
| Ocean shipping sector | Block exemption for ocean shipping conferences was repealed in October 2008; no regulation of tariff rates is permitted. | The EU rule applies to the UK; no regulation of tariff rates is permitted. | Ocean shipping conferences are permitted; the exemption is under review. | Block exemption for ocean shipping conferences is permitted; the exemption is under review. |
| Electricity/ utilities sector | Liberalization of the national electricity markets in the EU started in the 1990s. However, the progress was slow among major member states, such as France and Germany. | Liberalization of the utilities sector began in the 1980s. Utilities companies are usually operated subject to licences that impose obligations upon them. They are controlled by the price cap approach in regulating the charges. | Information pending. | Information pending. |

**Appendix (cont'd)**

## Key features of competition policies in the selected jurisdictions

| | European Union | United Kingdom | United States | Singapore |
|---|---|---|---|---|
| **Issues of concern** | (a) Enforcement problem: in the mid-2000s, eight Central and Eastern European countries joined the EU, and anti-competitive activities and market practices became more complex in nature, the EU found itself unable to deal with the increased workload. Hence, the EU delegated its duties of implementing Articles 81 and 82 of *EC Treaty* to national competition authorities and national courts of member states in 2004.<br>(b) Merger control has been criticized as based on protectionist reasons. A case is when the EU rejected a proposed merger of two US companies, General Electric and Honeywell, in 2001. | Upholding the principle of free competition: in the financial crisis of 2007-2008, the government had too many interventions in the banking market, which might violate the principle of free competition. | Information not available. | Sectoral exclusions: the government has excluded selected strategic sectors from the coverage of *Competition Act*, which has been criticized for creating an unfair playing field for businesses. In addition, the exemption of selected sectors that has their own regulatory authorities and laws, which may create uneven standards on implementation of competition policy. |
| **Institutional framework for enforcing the competition legislation** | | | | |
| Enforcement agency | Directorate General for Competition of European Commission, which is a government department. | Office of Fair Trading and Competition Commission, both of which are public agencies. | Federal Trade Commission which is a public agency and Antitrust Division of Department of Justice which is a government department. | Competition Commission of Singapore which is a public agency. |

**Appendix (cont'd)**

**Key features of competition policies in the selected jurisdictions**

| | European Union | United Kingdom | United States | Singapore |
|---|---|---|---|---|
| **Institutional framework for enforcing the competition legislation (cont'd)** | | | | |
| Organization structure | Director General for Commission heads the Directorate. | Office of Fair Trading and Competition Commission<br>Both of them have a management board with government-appointed members. Non-executive board members come from a range of fields such as legal services, academia and accountancy. | Fair Trade Commission<br>Five Commissioners nominated by President and confirmed by Senate. President chooses one Commissioner to be Chairman. No more than three Commissioners may come from the same political party.<br>Antitrust Division of Department of Justice<br>Headed by an Assistant Attorney General, nominated by President and confirmed by Senate. | A management board with members appointed by government |
| Powers and functions | Empowered to investigate, determine and apply remedies in respect of infringements of the conduct rules, and make decisions on proposed mergers[172], and educate the business community and the public on competition issues. | | | |
| Funding arrangement | Receiving funds via the approval of the budget by European Council and European Parliament. | Office of Fair Trading<br>Receiving government funding via Parliament.<br>Competition Commission<br>Receiving grants from government. | Fair Trade Commission and Antitrust Division of Department of Justice<br>Receiving funds via passing *Appropriations Bill* by Congress. | Receiving funds from government. |

[172] The Competition Commission in the UK is empowered to investigate and make decisions on proposed mergers only.

**Appendix (cont'd)**

## Key features of competition policies in the selected jurisdictions

| | European Union | United Kingdom | United States | Singapore |
|---|---|---|---|---|
| **Institutional framework for enforcing the competition legislation (cont'd)** | | | | |
| Total budget/total expenditure | The budget amounted to €78.2 million (HK$844.6 million) in 2008-2009. | Office of Fair Trading<br>Total expenditure amounted to £57.9 million (HK$706.4 million) in 2008-2009.<br>Competition Commission<br>Total budget for 2009-2010 is around £20.5 million (HK$250.1 million). | Fair Trade Commission<br>For 2009-2010, the annual budget is US$256 million (HK$1.98 billion), of which US$108 million (HK$837 million) is for maintaining competition.<br>Antitrust Division of Department of Justice<br>The budget for 2010-2011 is US$163.2 million (HK$1.26 billion). | The expenditure amounted to about S$10.5 million (HK$56.1 million) in 2008-2009. |
| Major accountability arrangements | Accountable to government and legislature via a number of channels:<br>(a) publishing an annual plan setting out its main objectives and priorities for the year ahead and an annual report;<br>(b) seeking the approval of government/legislature regarding the annual budget;<br>(c) attending parliamentary meetings and answering questions;<br>(d) laying the annual report and financial accounts before legislature; and<br>(e) being subject to the scrutiny of the national audit service. | | | |
| Other accountability arrangements | Nil. | Nil. | (a) Appointing Commissioners of Fair Trade Commission and confirming the appointment of Assistant Attorney General by Senate; and<br>(b) approving the organization structure of Antitrust Division by Congress. | Nil. |

## References

European Union

1. Bannerman, E. (2002) *The future of EU competition policy.* (Pre-publication copy). Available from: http://www.cer.org.uk/pdf/cerwp_13fcp.pdf [Accessed June 2010].

2. BBC.co.uk. (2001) *GE-Honeywell deal 'back on'.* Available from: http://news.bbc.co.uk/2/hi/business/1411366.stm [Accessed June 2010].

3. CIVITAS. (2009) *Competition Policy.* Available from: http://www.civitas.org.uk/eufacts/FSECON/EC11.htm [Accessed June 2010].

4. *Commission Notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the Treaty establishing the European Community (de minimis).* Available from: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2001:368:0013:0015:EN:PDF [Accessed June 2010].

5. *Concurrences.com*. (2010) Available from: http://www.concurrences.com/rubrique.php3?id_rubrique=551&lang=en [Accessed June 2010].

6. *Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.* Available from: http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32003R0001&model=guichett [Accessed June 2010].

7. *Council Regulation (EC) No 1419/2006 of 25 September 2006 repealing Regulation (EEC) No 4056/86 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport, and amending Regulation (EC) No 1/2003 as regards the extension of its scope to include cabotage and international tramp services.* Available from: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006R1419:EN:NOT [Accessed June 2010].

8. Department of Justice. (2001) *International antitrust in the Bush administration*. Available from: http://www.justice.gov/atr/public/speeches/9100.htm [Accessed June 2010].

9. *Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity.* (1997) Available from: http://www.ems.rs/eng/stranice/regulativa/direktive/dir96-92.pdf [Accessed June 2010].

10. Economic integration. (2000) *Competition Policy and State Aids.* Available from: http://www.xanthi.ilsp.gr/kemeseu/ch4/pol_competition.htm [Accessed June 2010].

11. Energy Community. (2003) Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC. In: *Official Journal of the European Union.* Available from: http://www.energy-community.org/pls/portal/docs/36275.PDF [Accessed June 2010].

12. EUbusiness.com (2009) *Cartels in the EU*. Available from: http://www.eubusiness.com/topics/competition/cartels [Accessed June 2010].

13. EUbusiness.com (2010) *Competition Policy in the EU*. Available from: http://www.eubusiness.com/topics/competition [Accessed June 2010].

14. EurActiv.com. (2009) *Liberalising the EU energy sector*. Available from: http://www.euractiv.com/en/energy/liberalising-eu-energy-sector/article-145320 [Accessed June 2010].

15. EUROPA. (2001) *The Commission prohibits GE's acquisition of Honeywell.* Available from: http://europa.eu/rapid/pressReleasesAction.do?reference=IP/01/939 [Accessed June 2010].

16. EUROPA. (2002) *Competition policy: new Notice on agreements of minor importance (de minimis Notice).* Available from: http://europa.eu/rapid/pressReleasesAction.do?reference=IP/02/13&format=HTML&aged=0&language=EN&guiLanguage=en [Accessed June 2010].

17. EUROPA. (2006) *Press Release on State aid: Revised 'de minimis' Regulation – frequently asked questions.* Available from: http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/06/482&format=HTML&aged=1&language=EN&guiLanguage=en [Accessed June 2010].

18. EUROPA. (2008) *State aid: Commission adopts Regulation automatically approving aid for jobs and growth.* Available from: http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1110&format=HTML&aged=0&language=EN&guiLanguage=en [Accessed June 2010].

19. EUROPA. (2009a) *Antitrust: Commission adopts new Block Exemption Regulation for liner shipping consortia - frequently asked question.* Available from: http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/420&format=HTML&aged=0&language=EN&guiLanguage=en [Accessed June 2010].

20. EUROPA. (2009b) *Press Release on Competition: Commission publishes 2008 Annual Report on Competition Policy*. Available from: http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1241&format=HTML&aged=0&language=EN&guiLanguage=en [Accessed June 2010].

21. *EUROPA*. (2010) Available from: http://europa.eu/pol/comp/index_en.htm [Accessed June 2010].

22. EUROPA. (2010) *Rules applicable to firms.* Available from: http://europa.eu/legislation_summaries/competition/firms/index_en.htm [Accessed June 2010].

23. European Commission. (2002) *Glossary of terms used in EU competition policy: Antitrust and control of concentrations.* Available from: http://ec.europa.eu/competition/publications/glossary_en.pdf [Accessed June 2010].

24. European Commission. (2004) *EU competition policy and the consumer.* Available from: http://ec.europa.eu/competition/publications/consumer_en.pdf [Accessed June 2010].

25. European Commission. (2005) *DG Competition discussion paper on the application of Article 82 of the Treaty to exclusionary abuses.* Available from: http://ec.europa.eu/competition/antitrust/art82/discpaper2005.pdf [Accessed June 2010].

26. European Commission. (2007) *The European Union budget at a glance.* Available from: http://www.eulib.com/documents/eu-budget-at-a-glance.pdf [Accessed June 2010].

27. *European Commission*. (2010) Available from: http://ec.europa.eu/competition/sectors/energy/overview_en.html [Accessed June 2010].

28. European Commission. (2010a) *Competition.* Available from: http://ec.europa.eu/competition/index_en.html [Accessed June 2010].

29. European Commission. (2010b) *Financial Programming and Budget.* Available from: http://ec.europa.eu/budget/index_en.htm [Accessed June 2010].

30. European Commission. (undated) *Comments in reply to Hong Kong's public consultation on its project for the introduction of a comprehensive competition law.* Available from: http://www.delhkg.ec.europa.eu/en/docs/DG%20Comp%20comments%20on%20HK%20public%20consultation-competition%20law.pdf [Accessed June 2010].

31. European Economic & Marketing Consultants. (2008) *Article 81 (3) EC-Treaty.* Available from: http://www.ee-mc.info/mailingE/IV-2005.pdf [Accessed June 2010].

32. Frühling, P. et al. (2010) The Application of European Competition Law in the Transport Sector. In: *Journal of European Competition Law & Practice Advance*. Vol. 1 No. 2.

33. *Guidelines on the application of Article 81 of the EC Treaty to maritime transport services.* Available from: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:245:0002:0014:EN:PDF [Accessed June 2010].

34. Korah, V. (2007) *An Introductory Guide to EC Competition Law and Practice*. 9th ed. United Kingdom. Hart Publishing.

35. Müller, F. (undated) *The New Council Regulation (EC) No. 1/2003 on the Implementation of the Rules on Competition*. Available from: http://www.germanlawjournal.com/pdfs/Vol05No06/PDF_Vol_05_No_06_721-740_EU_Mueller.pdf [Accessed June 2010].

36. New York Times. (2001) *In Europe, G.E. and Honeywell ran afoul of 19th-century thinking.* Available from: http://people.ischool.berkeley.edu/~hal/people/hal/NYTimes/2001-06-28.html [Accessed June 2010].

37. *Notice pursuant to Article 4 of Council Regulation (EEC) No 479/92 on the application of Article 81(3) of the EC Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies ('consortia').* Available from: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:266:0001:0006:EN:PDF [Accessed June 2010].

38. Office for the Protection of Competition. (2010) *Notice of the Office for the Protection of Competition on agreements of minor importance which do not appreciably restrict competition (de minimis).* Available from: http://www.compet.cz/fileadmin/user_upload/Sekce_HS/Guidelines/de_minimis_notice_UOHS_eng.doc [Accessed June 2010].

39. Organisation for Economic Co-operation and Development. (2005) *Country Studies: European Commission – Peer Review of Competition Law and Policy.* Available from: http://www.oecd.org/dataoecd/7/41/35908641.pdf [Accessed June 2010].

40. *Reckon LLP*. (2010) Available from: http://www.reckon.co.uk/open/ [Accessed June 2010].

41. United Nations. (2002) *Application of Competition Law: Exemptions and Exceptions.* Available from: http://www.unctad.org/en/docs/ditcclpmisc25_en.pdf [Accessed June 2010].

42. Whish, R. (2009) *Competition Law*. 6th ed. United Kingdom. Oxford University Press.

43. White & Case LLP. (2008) *Recent Trends in EU Competition Law.* Available from: http://www.whitecase.com/files/Publication/a9c7c62b-aaa6-44a3-b34d-9abfa5e4f15c/Presentation/PublicationAttachment/2b2c5c29-f46a-4c17-91b2-9cce1c80c3bc/Recent_Trends_in_EU_Competition_Law.pdf [Accessed June 2010].

44. Wikipedia. (2010) *European Community competition law.* Available from: http://en.wikipedia.org/wiki/European_Community_competition_law [Accessed June 2010].

United Kingdom

45. *Competition Act 1998 – Chapter 41*. Available from: http://www.opsi.gov.uk/acts/acts1998/ukpga_19980041_en_1 [Accessed June 2010].

46. *Competition Appeal Tribunal*. (2010) Available from: http://www.catribunal.org.uk/242/About-the-Tribunal.html [Accessed June 2010].

47. Competition Commission. (2006) *General Advice and Information*. Available from: http://www.competition-commission.org.uk/rep_pub/rules_and_guide/pdf/cc4.pdf [Accessed June 2010].

48. Competition Commission. (2009a) *Annual Report and Accounts 2008/09*. Available from: http://www.competition-commission.org.uk/rep_pub/annual_rev_archive/pdf/annual_report_2009.pdf [Accessed June 2010].

49. Competition Commission. (2009b) *The Corporate Plan 2009/10*. Available from: http://www.competition-commission.org.uk/our_role/corporate_plan/corporate_plan_09_10.pdf [Accessed June 2010].

50. *Competition Commission*. (2010) Available from: http://www.competition-commission.org.uk/about_us/index.htm [Accessed June 2010].

51. Competition Commission. (undated) *Enforcement powers and procedures*. Available from: http://www.competition-commission.org.uk/our_role/how_investigate/enforcement.htm [Accessed June 2010].

52. Confederation of British Industry. (2001) *"The Competition Act – The Inside Story": speech by John Vickers, Director General of Fair Trading to the Linklaters/DTI twelfth annual seminar on Competition Law, 2 November 2001*. Available from: http://www.cbi.org.uk/ndbs/PositionDoc.nsf/88676202a2a63e1e802573d300540d6f/d51be0a6e8d3553d80256b4c004e09b2/$FILE/Competition%20Law%20-%20Official%20Response%20to%20speech%20by%20DG%20of%20Fair%20Trading%20t.pdf [Accessed June 2010].

53. *Confederation of British Industry*. (2009) Available from: http://www.cbi.org.uk/ndbs/staticpages.nsf/StaticPages/AboutCBI/index.html/?OpenDocument [Accessed June 2010].

54. *Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation).* Available from: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:024:0001:0022:EN:PDF [Accessed June 2010].

55. Department for Business, Innovation and Skills. (2009) *Enterprise Act Fact Sheet.* Available from: http://www.bis.gov.uk/policies/business-law/enterprise-act [Accessed June 2010].

56. *Department for Business, Innovation and Skills.* (2010) Available from: http://webarchive.nationalarchives.gov.uk/+/http://www.berr.gov.uk/whatwedo/consumers/fact-sheets/page38117.html [Accessed June 2010].

57. *Enterprise Act 2002 – Chapter 40.* Available from: http://www.opsi.gov.uk/acts/acts2002/pdf/ukpga_20020040_en.pdf [Accessed June 2010].

58. European Commission (2006) *Competition: repeal of block exemption for liner shipping conferences – frequently asked questions.* Available from: http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/06/344&format=PDF&aged=1&language=EN&guiLanguage=en [Accessed June 2010].

59. European Commission (2009) *Communication from the Commission to the Council: Report on the functioning of Regulation No 139/2004.* Available from: http://ec.europa.eu/competition/mergers/studies_reports/report_139_2004_en.pdf [Accessed June 2010].

60. *Explanatory Notes to Enterprise Act 2002.* Available from: http://www.opsi.gov.uk/acts/acts2002/en/ukpgaen_20020040_en_1 [Accessed June 2010].

61. *Federation of Small Businesses.* (2010) Available from: http://www.fsb.org.uk/about [Accessed June 2010].

62. Furse, M. (2003) *Competition and The Enterprise Act 2002*. Jordan Publishing Ltd.

63. National Audit Office. (2005) *The Office of Fair Trading: Enforcing competition in markets.* Available from: http://www.official-documents.gov.uk/document/hc0506/hc05/0593/0593.pdf [Accessed June 2010].

64. Office of Fair Trading. (2003a) *How will the Enterprise Act 2002 change the Competition Act 1998 regime?* Available from: http://www.oft.gov.uk/shared_oft/business_leaflets/enterprise_act/oft441.pdf [Accessed June 2010].

65. Office of Fair Trading. (2003b) *Overview of the Enterprise Act*. Available from: http://www.oft.gov.uk/shared_oft/business_leaflets/enterprise_act/oft518.pdf [Accessed June 2010].

66. Office of Fair Trading. (2003c) *The OFT and the bus industry*. Available from: http://www.oft.gov.uk/shared_oft/business_leaflets/general/oft397.pdf [Accessed June 2010].

67. Office of Fair Trading. (2004a) *Abuse of a dominant position*. Available from: http://www.oft.gov.uk/shared_oft/business_leaflets/ca98_guidelines/oft402.pdf [Accessed June 2010].

68. Office of Fair Trading. (2004b) *Agreements and concerted practices*. Available from: http://www.oft.gov.uk/shared_oft/business_leaflets/ca98_guidelines/oft401.pdf [Accessed June 2010].

69. Office of Fair Trading. (2004c) *Assessment of market power: Understanding competition law.* Available from: http://www.oft.gov.uk/shared_oft/business_leaflets/ca98_guidelines/oft415.pdf [Accessed June 2010].

70. Office of Fair Trading. (2004d) *Concurrent application to regulated industries*. Available from: http://www.oft.gov.uk/shared_oft/business_leaflets/ca98_guidelines/oft405.pdf [Accessed June 2010].

71. Office of Fair Trading. (2004e) *Enforcement*. Available from: http://www.oft.gov.uk/shared_oft/business_leaflets/ca98_guidelines/oft407.pdf [Accessed June 2010].

72. Office of Fair Trading. (2004f) *Modernisation*. Available from: http://www.oft.gov.uk/shared_oft/business_leaflets/competition_law/oft442.pdf [Accessed June 2010].

73. Office of Fair Trading. (2004g) *Policy note 1/2004: The Competition Act 1998 and public bodies.* Available from: http://www.oft.gov.uk/shared_oft/business_leaflets/ca98_mini_guides/oft443.pdf [Accessed June 2010].

74. Office of Fair Trading. (2004h) *Powers for investigating criminal cartels*. Available from: http://www.concurrences.com/IMG/pdf/powers_for_investigating_criminal_cartels.pdf [Accessed June 2010].

75. Office of Fair Trading. (2004i) *Powers of investigation*. Available from: http://www.oft.gov.uk/shared_oft/business_leaflets/ca98_guidelines/oft404.pdf [Accessed June 2010].

76. Office of Fair Trading. (2004j) *Services of general economic interest exclusion*. Available from: http://www.oft.gov.uk/shared_oft/business_leaflets/ca98_guidelines/oft421.pdf [Accessed June 2010].

77. Office of Fair Trading. (2005a) *Application in the energy sector*. Available from: http://www.oft.gov.uk/shared_oft/business_leaflets/ca98_guidelines/oft428.pdf [Accessed June 2010].

78. Office of Fair Trading. (2005b) *Competing fairly.* Available from: http://www.oft.gov.uk/shared_oft/business_leaflets/ca98_mini_guides/oft447.pdf [Accessed June 2010].

79. Office of Fair Trading. (2005c) *Press Release on SMEs missing out on benefits of competition*. Available from: http://www.oft.gov.uk/news-and-updates/press/2005/92-05 [Accessed June 2010].

80. Office of Fair Trading. (2005d) *Under investigation?* Available from: http://www.oft.gov.uk/shared_oft/business_leaflets/ca98_mini_guides/oft426.pdf [Accessed June 2010].

81. Office of Fair Trading. (2006) *Public transport ticketing schemes block exemption*. Available from: http://www.oft.gov.uk/shared_oft/business_leaflets/ca98_guidelines/oft439.pdf [Accessed June 2010].

82. Office of Fair Trading. (2009a) *Flexibility for changing markets*: *Annual Plan 2009-10.* Available from: http://www.oft.gov.uk/shared_oft/about_oft/ap10/oft1036.pdf [Accessed June 2010].

83. Office of Fair Trading. (2009b) *Government in markets*. Available from: http://www.oft.gov.uk/shared_oft/business_leaflets/general/OFT1113.pdf [Accessed June 2010].

84. *Office of Fair Trading.* (2010) Available from: http://www.oft.gov.uk/about/ [Accessed June 2010].

85. Office of Fair Trading. (undated) *Competition Act 1998: The application in the telecommunications sector*. Available from: http://www.oft.gov.uk/shared_oft/business_leaflets/ca98_guidelines/oft417.pdf [Accessed June 2010].

86. Organisation for Economic Co-operation and Development. (2005) *Country Studies: United Kingdom – Updated Report*. Available from: http://www.oecd.org/dataoecd/11/54/34427429.pdf [Accessed June 2010].

87. Parker, D. (2000) *Reforming Competition Law in the UK: The Competition Act 1998*. Available from: http://www.bath.ac.uk/management/cri/pubpdf/Occasional_Papers/14_Parker.pdf [Accessed June 2010].

88. Ramada, P. (2009) *The Handbook of Competition Economics 2009*. United Kingdom, London Economics European.

89. Rodger, B.J. & MacCulloch, A. (2000) *The UK Competition Act: A New Era for UK Competition Law*. Belgium, Hart Publishing.

90. *The Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) Order 2001*. Available from: http://www.opsi.gov.uk/si/si2001/20010319.htm [Accessed June 2010].

91. *The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004*. Available from: http://195.99.1.70/si/si2004/20041261.htm [Accessed June 2010].

92. Wikipedia. (2009) *Competition Act 1998*. Available from: http://en.wikipedia.org/wiki/Competition_Act_1998 [Accessed June 2010].

93. Wikipedia. (2010a) *Competition Commission*. Available from: http://en.wikipedia.org/wiki/Competition_Commission [Accessed June 2010].

94. Wikipedia. (2010b) *Enterprise Act 2002*. Available from: http://en.wikipedia.org/wiki/Enterprise_Act_2002 [Accessed June 2010].

95. Wikipedia. (2010c) *Office of Fair Trading*. Available from: http://en.wikipedia.org/wiki/Office_of_Fair_Trading [Accessed June 2010].

96. Wikipedia. (2010d) *United Kingdom competition law*. Available from: http://en.wikipedia.org/wiki/United_Kingdom_competition_law [Accessed June 2010].

United States

97. *Antitrust Division, Department of Justice*. (2010) Available from: http://www.justice.gov/atr/ [Accessed June 2010].

98. Antitrust Division, Department of Justice. (undated) *Sections and Offices*. Available from: http://www.justice.gov/atr/sections.htm [Accessed June 2010].

99. *Antitrust Modernization Commission.* (2007) Available from: http://govinfo.library.unt.edu/amc/index.html [Accessed June 2010].

100. Areeda, P. et al. (2004) *Antitrust Analysis: Problems, Text and Cases.* 6th ed. U.S.A. Aspen Publishers.

101. Asia-Pacific Economic Cooperation. (undated) *Individual action plan: Competition Policy – United States of America.* Available from: http://www.apeccp.org.tw/doc/USA/Policy/uspol1.htm [Accessed June 2010].

102. Asia-Pacific Economic Cooperation. (undated) *United States: Developments in Competition Policy.* Available from: http://www.apec.org/apec/member_economies/economy_reports.MedialibDownload.v1.html?url=/etc/medialib/apec_media_library/downloads/committees/ec/pubs/2008.Par.0020.File.v1.1[Accessed June 2010].

103. Broder, D.F. (2005) *A Guide To US Antitrust Law.* London, Sweet & Maxwell Limited.

104. Department of Justice. (1995) *Antitrust Enforcement Guidelines for International Operations.* Available from: http://www.justice.gov/atr/public/guidelines/internat.htm [Accessed June 2010].

105. Department of Justice. (1998) *Memorandum Opinion.* Available from: http://www.planetpdf.com/planetpdf/pdfs/PubIntDeterm11-1.pdf [Accessed June 2010].

106. Department of Justice. (2007) *Competition Law and Policy Modernization: Lessons from the U.S. Common-Law Experience*. Available from: http://www.justice.gov/atr/public/speeches/227755.htm [Accessed June 2010].

107. Department of Justice. (2009a) *Antitrust Division Manual: Chapter I – Organization and Functions of the Antitrust Division.* Available from: http://www.justice.gov/atr/public/divisionmanual/chapter1.pdf [Accessed June 2010].

108. Department of Justice. (2009b) *Performance and Accountability Report.* Available from: http://www.justice.gov/ag/annualreports/pr2009/2009par.pdf [Accessed June 2010].

109. Department of Justice. (undated) *Price Fixing, Bid Rigging, and Market Allocation Schemes: What They Are and What to Look For.* Available from: http://www.justice.gov/atr/public/guidelines/211578.htm [Accessed June 2010].

110. Department of Justice. (undated) *Timeline of Antitrust Enforcement Highlights at the Department of Justice.* Available from: http://www.justice.gov/atr/timeline.pdf [Accessed June 2010].

111. Elhauge, E. & Geradin, D. (2007) *Global Competition Law and Economics.* North America, Hart Publishing.

112. Federal Maritime Commission. (2001) *Remarks of the Honorable Harold J. Creel, Jr. Chairman: Federal Maritime Commission – before Containerisation International's 4th Annual Conference.* Available from: http://www.fmc.gov/speeches/newsrelease.asp?SPEECH_ID=55 [Accessed June 2010].

113. *Federal Maritime Commission*. (2010) Available from: http://www.fmc.gov/home/faq/index.asp?F_CATEGORY_ID=9 [Accessed June 2010].

114. Federal Maritime Commission. (2010) *Comments of Federal Maritime Commissioner Rebecca Dye NCBFAA Annual Conference.* Available from: http://www.fmc.gov/speeches/newsrelease.asp?SPEECH_ID=312 [Accessed June 2010].

115. Federal Trade Commission. (2002) *Looking Forward: The Federal Trade Commission and the Future Development of U.S. Competition Policy*. Available from: http://www.ftc.gov/speeches/muris/handler.shtm [Accessed June 2010].

116. Federal Trade Commission. (2007) *Federal Trade Commission: A History*. Available from: http://www.ftc.gov/ftc/history/ftchistory.shtm [Accessed June 2010].

117. Federal Trade Commission. (2008a) *A Brief Overview of the Federal Trade Commission's Investigative and Law Enforcement Authority.* Available from: http://www.ftc.gov/ogc/brfovrvw.shtm [Accessed June 2010].

118. Federal Trade Commission. (2008b) *An Federal Trade Commission Guide to the Antitrust Laws: The Three Core Federal Antitrust Laws.* Available from: http://www.ftc.gov/bc/antitrust/factsheets/FactSheet_AntiTrust.pdf [Accessed June 2010].

119. Federal Trade Commission. (2008c) *Budget, Performance, and Financial Snapshot: Fiscal Year 2008*. Available from: http://www.ftc.gov/opp/gpra/2008snapshot.pdf [Accessed June 2010].

120. Federal Trade Commission. (2008d) *Competition Counts: How Consumers Win When Businesses Compete*. Available from: http://www.ftc.gov/bc/edu/pubs/consumer/general/zgen01.pdf [Accessed June 2010].

121. Federal Trade Commission. (2008e) *FTC Guide to the Antitrust Laws: The Enforcers.* Available from: http://www.ftc.gov/bc/antitrust/enforcers.shtm [Accessed June 2010].

122. Federal Trade Commission. (2008f) *The FTC in 2008: A Force for Consumers and Competition*. Available from: http://www.ftc.gov/os/2008/03/ChairmansReport2008.pdf [Accessed June 2010].

123. Federal Trade Commission. (2009a) *Facts for Consumers: A Guide to the Federal Trade Commission.* Available from: http://www.ftc.gov/bcp/edu/pubs/consumer/general/gen03.shtm [Accessed June 2010].

124. Federal Trade Commission. (2009b) *Fiscal Year 2010 Congressional Budget Justification Summary*. Available from: http://www.ftc.gov/ftc/oed/fmo/budgetsummary10.pdf [Accessed June 2010].

125. Federal Trade Commission. (2009c) *Performance and Accountability Report Fiscal Year 2009.* Available from: http://www.ftc.gov/opp/gpra/2009parreport.pdf [Accessed June 2010].

126. Federal Trade Commission. (2009d) *Strategic Plan for Fiscal years 2009 to 2014*. Available from: http://www.ftc.gov/opp/gpra/spfy09fy14.pdf [Accessed June 2010].

127. *Federal Trade Commission*. (2010) Available from: http://www.ftc.gov/bc/index.shtml [Accessed June 2010].

128. Federal Trade Commission. (2010) *Bureau of Competition: User's Guide.* Available from: http://www.ftc.gov/bc/BCUsersGuide.pdf [Accessed June 2010].

129. Federal Trade Commission. (undated) *Antitrust Enforcement and the Consumer.* Available from: http://www.justice.gov/atr/public/div_stats/211491.htm [Accessed June 2010].

130. Fox, E.M. & Pitofsky, R. (1997) Global Competition Policy: United States. In: *Institute for International Economics*. Available from: http://www.piie.com/publications/chapters_preview/56/7iie1664.pdf [Accessed June 2010].

131. Garza, D.A. et al. (2007) *Antitrust Modernization Commission: Report and Recommendations.* Available from: http://govinfo.library.unt.edu/amc/report_recommendation/amc_final_report.pdf [Accessed June 2010].

132. Hovenkamp, H. (2005) *Federal Antitrust Policy: The Law of Competition and its Practice*. 3rd ed. U.S.A. Thomson West.

133. Mondaq Ltd. (2010) *United States: Status Of U.S. Shipping Conference Exemption.* Available from: http://www.mondaq.com/unitedstates/article.asp?articleid=95594 [Accessed June 2010].

134. Motta, M. (2004) *Competition Policy: Theory and Practice*. U.S.A. Cambridge University Press.

135. *National Small Business Association*. (2010) Available from: http://www.nsba.biz/about.html [Accessed June 2010].

136. Office of Advocacy, Small Business Administration. (undated) *Links for Information Outside of the Office of Advocacy.* Available from: http://www.sba.gov/advo/links.html [Accessed June 2010].

137. Organisation for Economic Co-operation and Development. (2004) *United States – Updated Report.* Available from: http://www.oecd.org/dataoecd/11/53/34427452.pdf [Accessed June 2010].

138. Organisation for Economic Co-operation and Development. (2008) *Antitrust issues involving minority shareholding and interlocking directorates.* Available from: http://www.ftc.gov/bc/international/docs/uswp3minor.pdf [Accessed June 2010].

139. Sullivan, L.A. & Grimes, W.S. (2006) *The Law of Antitrust: An Integrated Handbook.* 2nd ed. U.S.A. Thomson West.

140. *U.S. Chamber of Commerce*. (2010) Available from: http://www.uschambersmallbusinessnation.com/about-us [Accessed June 2010].

141. Wikipedia. (2010a) *Clayton Antitrust Act.* Available from: http://en.wikipedia.org/wiki/Clayton_Antitrust_Act [Accessed June 2010].

142. Wikipedia. (2010b) *Federal Trade Commission Act.* Available from: http://en.wikipedia.org/wiki/Federal_Trade_Commission_Act [Accessed June 2010].

143. Wikipedia. (2010c) *Federal Trade Commission*. Available from: http://en.wikipedia.org/wiki/Federal_Trade_Commission [Accessed June 2010].

144. Wikipedia. (2010d) *Hart–Scott–Rodino Antitrust Improvements Act*. Available from: http://en.wikipedia.org/wiki/Hart-Scott-Rodino_Antitrust_Improvements_Act [Accessed June 2010].

145. Wikipedia. (2010e) *Sherman Antitrust Act*. Available from: http://en.wikipedia.org/wiki/Sherman_Antitrust_Act [Accessed June 2010].

146. Wikipedia. (2010f) *United States antitrust law.* Available from: http://en.wikipedia.org/wiki/United_States_antitrust_law [Accessed June 2010].

Singapore

147. Alban Tay Mahtani & de Silva. (2005) *Quick Guide to the New Singapore Competition Act 2004.* Available from: http://www.atmdlaw.com/mediacentre/pdfs/0205_guidecompete.pdf [Accessed June 2010].

148. Alban Tay Mahtani & de Silva. (2007a) *Competition Act – merger regulation under section 54 – CCS' response to public submissions.* Available from: http://www.atmdlaw.com/mediacentre/pdfs/0407_competitionact.pdf [Accessed June 2010].

149. Alban Tay Mahtani & de Silva. (2007b) *Competition Act – proposed merger regulation under section 54.* Available from: http://www.atmdlaw.com/mediacentre/pdfs/1206_competition.pdf [Accessed June 2010].

150. Asia-Pacific Economic Cooperation. (2010) *Singapore: Developments in Competition Policy.* Available from: http://www.apec.org/apec/member_economies/economy_reports.MedialibDownload.v1.html?url=/etc/medialib/apec_media_library/downloads/committees/ec/pubs/2008.Par.0018.File.v1.1 [Accessed June 2010].

151. Auditor-General's Office. (2009) *The Role of Auditor-General.* Available from: http://www.ago.gov.sg/ourrole.html [Accessed June 2010].

152. *Competition Act (Chapter. 50B).* Available from: http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_retrieve.pl?actno=REVED-50B&doctitle=COMPETITION%20ACT%0a&date=latest&method=part&sl=1 [Accessed June 2010].

153. Competition Commission of Singapore. (2004a) *Competition Bill Consultation Paper.* Available from: http://app.ccs.gov.sg/cms/user_documents/main/pdf/frm_LEG_Competition_Consultation_Paper.pdf [Accessed June 2010].

154. Competition Commission of Singapore. (2004b) *Draft competition Bill: The Competition Act 2004.* Available from: http://app.ccs.gov.sg/cms/user_documents/main/pdf/frm_LEG_Competition_Bill.pdf [Accessed June 2010].

155. Competition Commission of Singapore. (2004c) *Second Round Public Consultation on the Draft Competition Bill: Second Round Public Consultation materials.* Available from: http://app.ccs.gov.sg/PC_Archived_2ndRoundl.aspx [Accessed June 2010].

156. Competition Commission of Singapore. (2004d) *The First Round of Pubic Consultation of the Draft Competition Bill: Consultation materials.* Available from: http://app.ccs.gov.sg/PC_Archived_1stRoundl.aspx [Accessed June 2010].

157. Competition Commission of Singapore. (2005a) *Brochure: Competition Law Conference 2005.* Available from: http://app.ccs.gov.sg/cms/user_documents/main/pdf/CompetitionLawConferenceBrochure.pdf [Accessed June 2010].

158. Competition Commission of Singapore. (2005b) *Competition Commission of Singapore: Guideline on Transitional Arrangements 2005.*

159. Competition Commission of Singapore. (2006) *Annual Report 2005/06.* Available from: http://app.ccs.gov.sg/cms/user_documents/main/pdf/CCSAR_05_06L.pdf [Accessed June 2010].

160. Competition Commission of Singapore. (2007a) *A Practical Guide to the Competition Act.* Available from: http://app.casebank.ccs.gov.sg/cms/user_documents/casebank/pdf/read_up/engCCSPF6210607.pdf [Accessed June 2010].

161. Competition Commission of Singapore. (2007b) *CCS Guidelines on Merger Procedures.* Available from: http://app.ccs.gov.sg/cms/user_documents/main/pdf/mergerprocedures_Jul07FINAL.pdf [Accessed June 2010].

162. Competition Commission of Singapore. (2007c) *CCS Guidelines on the Major Provisions.* Available from: http://app.ccs.gov.sg/cms/user_documents/main/pdf/majorprovisions_Jul07FINAL.pdf [Accessed June 2010].

163. Competition Commission of Singapore. (2007d) *CCS Guidelines on the Section 47 Prohibition.* Available from: http://app.ccs.gov.sg/cms/user_documents/main/pdf/s47_Jul07FINAL.pdf [Accessed June 2010].

164. Competition Commission of Singapore. (2007e) *Second Reading Speech for Competition (Amendment) Bill for parliament sitting on 21 May 2007.* Available from: http://app.ccs.gov.sg/21May072ndreadingspeechHansard.aspx [Accessed June 2010].

165. Competition Commission of Singapore. (2009a) *Cartels and the Competition Act: A guide for consumers and businesses.* Available from: http://app.ccs.gov.sg/cms/user_documents/main/pdf/CCSCartelBrochureJan08.pdf [Accessed June 2010].

166. Competition Commission of Singapore. (2009b) *Championing Competition for Growth and Choice.* Available from: http://app.ccs.gov.sg/cms/user_documents/main/pdf/CCSCorporateBrochure.pdf [Accessed June 2010].

167. Competition Commission of Singapore. (2009c) *Competition Bill.* Available from: http://app.ccs.gov.sg/cms/user_documents/main/pdf/19Oct042ndreadingspeechFINAL.pdf [Accessed June 2010].

168. Competition Commission of Singapore. (2009d) *Legal Education: Recent Developments in Competition Law in Asia.* Available from: http://app.ccs.gov.sg/cms/user_documents/main/pdf/Registrationform090423SAL.pdf [Accessed June 2010].

169. Competition Commission of Singapore. (2009e) *Promoting Healthy Competitive Markets: A Guide to the Competition Act 2004.* Available from: http://app.casebank.ccs.gov.sg/cms/user_documents/casebank/pdf/read_up/CCSBrochureOct05.pdf [Accessed June 2010].

170. *Competition Commission of Singapore*. (2010) Available from: http://app.ccs.gov.sg/aboutus.aspx [Accessed June 2010].

171. Competition Commission of Singapore. (2010a) *Abuse of Dominance.* Available from: http://app.ccs.gov.sg/AbuseOfDominance.aspx [Accessed June 2010].

172. Competition Commission of Singapore. (2010b) *Anti-Competitive Agreements.* Available from: http://app.ccs.gov.sg/LodgeComplaints_AntiCompAgreement.aspx [Accessed June 2010].

173. Competition Commission of Singapore. (2010c) *Competition Act.* Available from: http://app.ccs.gov.sg/CompetitionAct.aspx [Accessed June 2010].

174. Competition Commission of Singapore. (2010d) *Competition Commission of Singapore Annual Report 2008/2009: it's a matter of choice.* Available from: http://app.ccs.gov.sg/cms/user_documents/main/pdf/CCS_AR_070809%20FINAL.pdf [Accessed June 2010].

175. Competition Commission of Singapore. (2010e) *Compliance Programme.* Available from: http://app.ccs.gov.sg/Compliance_Programme.aspx [Accessed June 2010].

176. Competition Commission of Singapore. (2010f) *Frequently Asked Questions.* Available from: http://www.ifaq.gov.sg/ccs/apps/fcd_faqmain.aspx# [Accessed June 2010].

177. Competition Commission of Singapore. (2010g) *Information on Cartels.* Available from: http://app.ccs.gov.sg/Info_on_Cartels.aspx [Accessed June 2010].

178. Competition Commission of Singapore. (2010h) *List of Liner Shipping Agreements Filed with the Competition Commission of Singapore under Competition (Block Exemption for Liner Shipping Agreements) Order 2006.* Available from: http://app.ccs.gov.sg/cms/user_documents/main/doc/Listoflinershippingagreementsfiled_CCSwebsite_28Jan2010.xls [Accessed June 2010].

179. Competition Policy Advisory Group. (2004) *Singapore's Competition Act.* Available from: http://www.gov.hk/en/theme/bf/pdf/EECPaperIN804.pdf [Accessed June 2010].

180. DBS Bank Ltd. (2008) *Financing SMEs – The Singapore Experience*. Available from: http://www.apecovop.org/objstore/forum/25/FinancingSMEsTheSingaporeExperience.pdf [Accessed June 2010].

181. Drew & Napier LLC. (2008) *Your Practical Guide to Competition Law Compliance in Singapore.* Available from: http://www.drewnapier.com/publications/Drew&Napier%20Guide%20to%20Competition_Law_Compliance_in_Singapore.pdf [Accessed June 2010].

182. Foo, D. (2004) Singapore's New Competition Act. *International Legal News.* Available from: http://www.imakenews.com/iln/e_article000339352.cfm?x=b11,0,w [Accessed June 2010].

183. Law Business Research. (2009) *The Handbook of Competition Enforcement Agencies 2009*. Singapore.

184. Ministry of Trade & Industry. (2004) *Second public consultation on the draft competition bill.* Available from: http://app.mti.gov.sg/data/pages/90/doc/frm_LEG_Competition_2ndconsultation_Paper.pdf [Accessed June 2010].

185. Ministry of Trade & Industry. (2009a) *Economic Review Committee.* Available from: http://app.mti.gov.sg/default.asp?id=505 [Accessed June 2010].

186. Ministry of Trade & Industry. (2009b) *FAQs: Competition Act.* Available from: http://app.mti.gov.sg/default.asp?id=570 [Accessed June 2010].

187. Ministry of Trade & Industry. (2010) *Legislation: Competition Appeal Board's Website.* Available from: http://app.mti.gov.sg/default.asp?id=3786 [Accessed June 2010].

188. Organisation for Economic Co-operation and Development. (2005) *Singapore's Competition Act 2004*. Available from: http://www.oecd.org/dataoecd/50/36/34286487.pdf [Accessed June 2010].

189. Singapore Academy of Law. (2010) *Chapter 27: Competition Law*. Available from: http://www.singaporelaw.sg/content/CompetitionLaw.html [Accessed June 2010].

190. Teo, E.C. (2009) Competition in the market place lies at the core of a vibrant economy. But laws must also be in place to protect the competition process from manipulation. *BT Weekend (From the Desk of), 28 Mar 09, Pg 11*. Available from: http://app.ccs.gov.sg/Press2009_Creating_Playing_Field.aspx [Accessed June 2010].

Hong Kong

191. Commerce and Economic Development Bureau. (2008a) *Detailed Proposals for a Competition Law – A Public Consultation Paper*. Available from: http://www.cedb.gov.hk/citb/ehtml/Consultation_Paper_Eng.pdf [Accessed June 2010].

192. Commerce and Economic Development Bureau. (2008b) *Public Consultation on Detailed Proposals for a Competition Law.* Paper submitted to the Panel on Economic Development of the Legislative Council for information on 16 December 2008. LC Paper No. CB(1)372/08-09(03).

193. Competition Policy Review Committee. (2006) *Report on the Review of Hong Kong's Competition Policy.* Available from: http://www.cedb.gov.hk/citb/ehtml/pdf/speech3/CPRC.pdf [Accessed June 2010].

194. Economic Development and Labour Bureau. (2006a) *A public discussion on the way forward competition policy in Hong Kong: Promoting Competition Maintaining our Economic Drive*. Available from: http://www.compag.gov.hk/reference/Booklet_Eng.pdf [Accessed June 2010].

195. Economic Development and Labour Bureau. (2006b) *Finding of a Consultancy Study on the Local Auto-fuel Retail Market.* Paper submitted to the Panel on Economic Services of the Legislative Council for discussion on 24 April 2006. LC Paper No. CB(1)1303/05-06(03).

196. Economic Development and Labour Bureau. (2006c) *Public Consultation on Competition Policy.* Paper submitted to the Panel on Economic Services of the Legislative Council for discussion on 21 December 2006. LC Paper No. CB(1)519/06-07(01).

197. Economic Development and Labour Bureau. (2006d) *Report on the Competition Policy Review Committee.* Paper submitted to the Panel on Economic Services of the Legislative Council for discussion on 19 July 2006. LC Paper No. CB(1)1923/05-06(01).

198. Economic Development and Labour Bureau. (2007) *Way Forward for Competition Policy.* Paper submitted to the Panel on Economic Services of the Legislative Council for discussion on 26 March 2007. LC Paper No. CB(1)1178/06-07(01).

199. Legislative Council Secretariat. (2006) *Competition Policy in Hong Kong*. Background Brief submitted to the Panel on Economic Services of the Legislative Council on 21 December 2006. LC Paper No. CB(1)530/06-07(05).

200. Legislative Council Secretariat. (2008) *Competition Policy in Hong Kong*. Updated Background Brief submitted to the Panel on Economic Development of the Legislative Council on 6 May 2008. LC Paper No. CB(1)1440/07-08(01).

201. Legislative Council Secretariat. (2009) *The Introduction of a Competition Law in Hong Kong*. Updated Background Brief submitted to the Panel on Economic Development of the Legislative Council on 30 March 2009. LC Paper No. CB(1)1111/08-09(07).

202. *Minutes of Meeting of the Panel on Economic Services of the Legislative Council*. (2006a) 21 December. LC Paper No. CB(1)992/06-07.

203. *Minutes of Meeting of the Panel on Economic Services of the Legislative Council*. (2006b) 19 July. LC Paper No. CB(1)2220/05-06.

204. *Minutes of Meeting of the Panel on Economic Development of the Legislative Council*. (2007) 22 October. LC Paper No. CB(1)458/07-08.

205. *Minutes of Meeting of the Panel on Economic Development of the Legislative Council*. (2008) 6 May. LC Paper No. CB(1)2291/07-08.

206. *Minutes of Meeting of the Panel on Economic Development of the Legislative Council*. (2009) 30 March. LC Paper No. CB(1)1345/08-09.

207. *Official Records of Proceedings of the Legislative Council.* (2005) 16 November.

208. *Official Records of Proceedings of the Legislative Council.* (2008a) 21 May.

209. *Official Records of Proceedings of the Legislative Council.* (2008b) 11 June.

210. 立法會湯家驊議員辦事處:《有關競爭政策及制訂公平競爭法的研究第二號工作報告》，2006 年 5 月。

Others

211. Berwin Leighton Paisner LLP. (2009) *The Handbook of Competition Enforcement Agencies 2009*. Available from: http://www.globalcompetitionreview.com/handbooks/18/the-handbook-competition-economics-2009/ [Accessed June 2010].