

BOOK REVIEW

***Hong Kong Competition Law: Comparative and Theoretical Perspectives*, Thomas K. Cheng & Kelvin Hiu Fai Kwok. Cambridge University Press. 2021. 285 pp. ISBN 9781108427753.**

Thomas Cheng and Kelvin Kwok's monograph, *Hong Kong Competition Law: Comparative and Theoretical Perspectives* (Cambridge: Cambridge University Press) 1st ed. £95, is the first book to be published on Hong Kong's competition law regime, introduced by the Competition Ordinance in 2015. The unique characteristics of Hong Kong's economy, in addition to the comparatively late adoption of its competition law, mean the book is essential reading for academics, practitioners and policy makers with an interest in effective competition law design.

The book provides a fascinating insight into how the Competition Ordinance was shaped by a combination of international influences and the unique economic and political context of Hong Kong. It also looks at the developing decisional practice and priorities of Hong Kong's Competition Commission, the case law of the Competition Tribunal, and considers important normative questions about how competition law should apply. The focus of Cheng and Kwok's work is to reflect critically on the relevant legal and policy developments leading up to the adoption of competition law in Hong Kong, to understand why the Ordinance emerged as it did and reflect on possible future directions. It has a particularly strong comparative aspect, drawing on some of the recent policy developments in the EU, US, UK, Australia and Singapore, to critically analyse the economic and normative underpinnings of the Ordinance itself, the guidelines of the Competition Commission and the emerging case law.

The book's introduction explains the long and challenging road to competition law in Hong Kong. The Consumer Council had championed its adoption since the early 1990s, but the Hong Kong government resisted these calls for many years, on the basis that the economy was already highly competitive owing to its openness to external trade. This gradually shifted to a sectoral regulatory approach that eventually paved the way for the Competition Ordinance, which unusually does not include a comprehensive competition-based system of merger clearance. The book's introduction goes on to discuss the objectives of the Ordinance (which are not set out in the law itself) and its structure.

The book is then divided into five chapters: Chapter 2 examines the rules which relate to restrictive agreements, concerted practices and decisions by associations of undertakings; Chapter 3 looks at 'abuse of a substantial degree of market power', as it is known under the Ordinance; Chapter 4 is concerned with exclusions and exemptions; Chapter 5 is focused on issues of procedure pertaining to the enforcement of the Ordinance; and Chapter 6 concludes the book.

Although the book is structured around the key provisions of the Ordinance, there are very strong theoretical, analytical and comparative strands throughout the work. Questions such as the extent to which the law can deal with concerted practices and informal methods of collusion, are discussed in a way that is accessible and of great value to all scholars of competition law – even those with no particular interest in Hong Kong as a jurisdiction. Cheng and Kwok succeed in giving a very strong voice to academic research throughout the work, highlighting the common themes that exist across jurisdictions and identifying particular anomalies in the Hong Kong regime to date. Yet the book will also appeal to practitioners, in providing a clear sense of purpose and direction in terms of the law, providing a strong critique of the early case law and speculating as to how Hong Kong's competition law is likely to develop in the future. Chapter 5 provides a particularly useful and comprehensive discussion of enforcement and procedure, including the guidelines of the Commission on leniency, cooperation and settlement, the procedures of the Competition Tribunal, and the calculation of penalties.

Cheng and Kwok's overall assessment of Hong Kong's competition law so far is 'satisfactory'. They have particular praise for the advocacy work of the Commission in raising public awareness of the Ordinance and challenging the ambivalent attitudes towards competition that were common among some Hong Kong businesses. They express some disappointment at the early case law and in particular on the Commission's emphasis on cartels among small and medium sized enterprises. At the time of writing, Hong Kong had yet to see a challenge of the sort of concentrations of unilateral power that rallied much of the public support for the Ordinance in the first place. As with many young competition jurisdictions, there is a need to build capacity in terms of experience, case law, staffing and resources and this will take time.

The book concludes by drawing on the analysis from the main body, to identify a number of flaws that Cheng and Kwok feel need to be addressed if Hong Kong's competition regime is to ultimately be successful. These include: (1) a re-evaluation of the very significant exclusions relating to public bodies that were introduced at a late legislative stage; (2) the fact there is no comprehensive merger clearance regime (other than that relating to the telecoms sector); (3) the requirement of a warning notice in relation to non-serious anticompetitive conduct; (4) the fact fines are capped at 10% of *local* turnover; (5) the way in which leniency in

cartel cases is limited to the first applicant only; and (6) the fact stand-alone private actions are not possible.

Cheng and Kwok's monograph is exceptionally well written and demonstrates outstanding levels of research. It is a valuable addition to any scholar or practitioner's bookshelf and essential reading for anyone with a particular interest in the law and policy of Hong Kong.

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