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*Hong Kong**[1]

– Ron Cameron†

Hong Kong[2] became a Special Administrative Region (SAR) of the People's Republic of China on July 01, 1997. The Sino-British Joint Declaration, signed between China and Britain on December 19, 1984, provides for Hong Kong's lifestyle to remain unchanged, for 50 years after 1997. Hong Kong will enjoy a high degree of autonomy, except in foreign and defence affairs, and China's socialist system and policies will not be practised in the SAR.

Economy

Hong Kong has a free market economy highly dependent on international trade. Natural resources are limited, and food and raw materials must be imported. Imports and exports, including re-exports, each exceed GDP in dollar value.

Even before Hong Kong reverted to Chinese administration, it had extensive trade and investment ties with China. Hong Kong has been further integrating its economy with China, as China's growing openness to the world economy has imposed additional competitive pressure on Hong Kong's service industries.

Furthermore, Hong Kong's re-export business from China is a major driver of growth. GDP growth averaged five percent in 1989-1997, but Hong Kong suffered two recessions in the past six years because of the Asian financial crisis in 1998 and the global downturn of 2001-2002.

The Severe Acute Respiratory Syndrome (SARS) outbreak also battered Hong Kong's economy, but a boom in tourism from the mainland because of China's easing of travel restrictions, a return of consumer confidence, and a solid rise in exports, resulted in the resumption of strong growth in late 2003.

PROFILE	
Population:	6.8 million***
GDP (Current US$):	158.6 billion
Per Capita Income: (Current US$)	25,430 (Atlas method) 27,179 (at PPP.)
Land Area:	1.103 thousand sq. km
Life Expectancy:	80 years
Literacy (%):	93.5 (of ages 15 and above)
HDI Rank:	26

Sources:
- World Development Indicators Database, World Bank, 2004
- Human Development Report Statistics, UNDP, 2004

(**) For the year 2002
(***) For the year 2003

Competition Evolution and Environment

Hong Kong has enjoyed great success in recent decades. It has experienced strong and sustained real GDP growth, and has one of the highest GDP per capita levels in the world. Its strong economic performance has been due, in part, to its strategic geographical location on China's doorstep as well as the easy accessibility to other Southeast Asian countries.

The advent of telecommunication technology and other forms of communication has, however, lessened the importance of Hong Kong's geographical advantage. Hong Kong's competitors continue to transform their economies, and adopt modern laws and policies, encouraging foreign trade and investment. Even so, Hong Kong remains the leader in regard to competitiveness.

Thanks to Hong Kong's strict adherence to law, intellectual property protection, and its anti-corruption efforts, the country attracts many transnational corporations (TNCs).

* Original paper submitted in October 2004. Revised in January 2005 & January 2006

1 Comments received from Pamela Chan, Chief Executive, Hong Kong Consumers Council

2 http://www.cia.gov/cia/publications/factbook/geos/hk.html

The Heritage Foundation has consistently rated Hong Kong as a leading country, in terms of competitiveness.

In the past two decades, Hong Kong has undergone an economic structural change, from a manufacturing-based economy to a service economy. The service sector has rapidly expanded and replaced the manufacturing sector, as the major economic activity in Hong Kong, with the export of services having become an important impetus for economic growth.

Not all markets in service sectors are automatically highly competitive under a laissez-faire regime. Unlike the manufacturing sector, in which most goods are traded in the international market and, therefore, subject to international competition; the service sector includes some services which can only be provided domestically. Such services, for example, legal and accounting services, medical and dental services, public utilities, local radio and television broadcasting, retail banking services and others, such as restaurants and supermarkets, are, therefore, insulated from international competition.

Competition Law and Regulatory Framework

Overview

Hong Kong did not have a competition policy or law until 1998, when the Government issued a formal policy statement, following the publication of a series of industry studies by the Hong Kong Consumer Council. Instead of a competition law, the Government set up a (sector-specific) competition policy framework.

Hong Kong has effective competition rules, only in the telecommunications and broadcasting sectors. Prohibitions on anticompetitive behaviour are enshrined in the Telecommunications and Broadcasting Ordinance, which are enforced by the Offices of the Telecommunications and the Broadcasting Authority, respectively. However, anticompetitive behaviour elsewhere in the economy goes unchecked by legislative means.

There is also a competition policy, but it is loosely worded and not embodied in law. The body that oversees the policy, Competition Policy Advisory Group (COMPAG), has minimal resources and no powers to penalise breaches of the policy.

Despite repeated proposals from various sections of the community over the years for a general competition law and a proper enforcement agency, the Government has resisted reform. In December 2002, the WTO commented that the Hong Kong Government's sector-specific approach could lead to distortions in resource allocation.

The Objective

The objective of the Government's competition policy is to enhance economic efficiency and the free flow of trade, thereby also improving consumer welfare. The Government considers that competition is best nurtured and sustained by allowing the free play of market forces, and keeping intervention to the minimum. This is in line with the 'free trade' policy and open market approach, characteristic of Hong Kong.

In November 1996, the Consumer Council recommended enacting a comprehensive competition law, in addition to establishing a competition authority and an appellate body to enforce the Law. The Council's rationale was as follows:

- Competition leads to lower prices, higher quality, and greater variety for consumers;
- Lower prices of intermediate inputs contribute to the international competitiveness of downstream industries, which use these inputs in production processes;
- A comprehensive competition policy provides consistency and fairness, for all domestic and foreign producers;
- A competition policy reduces the need for the government regulation of industry; and
- Hong Kong's trading partners will expect a competition policy to counter the unfair trading practices of firms, which bar their own firms' entry into Hong Kong's markets.

In November 1997, the Hong Kong Government accepted the need for a competition policy to promote international competitiveness and economic efficiency. In spite of this, the Government rejected the idea of a comprehensive competition law, and independent agencies to administer such a law. Instead, the Government adopted a comprehensive competition policy framework with the following aspects.

- Established a COMPAG, (in December 1997) chaired by the Financial Secretary and with a membership comprising senior bureau chiefs to review existing government policies and their anticompetitive effect and other competition matters;
- Issued a policy statement (in May 1998) on the objectives of promoting competition and discouraging restrictive practices;
- Required all government bureaux to state the implications for competition on all major policy submissions to the Executive and Legislative Councils, and to review existing regulations and policies, to minimise barriers to market contestability and to refrain from restrictive practices;
- Requested the Trade Practices Division of the Consumer Council to continue to monitor, and review, potentially unfair trade practices; and
- Urged the Consumer Council to help businesses prepare pro-competitive codes of practice.

To encourage various sectors to proactively implement Hong Kong's competition policy, and facilitate the drawing up of their own codes of conduct, COMPAG has developed a set of guidelines. These are to provide the business sector with objective pointers, benchmarks and principles to assess Hong Kong's overall competitive environment, as well as define and tackle anticompetitive practices. The guidelines include:

(1) A need to assess major elements, such as the rule of law; a transparent investment and tax regime; and free flow of trade, foreign exchange and information etc.; to gauge whether the overall business environment in Hong Kong is conducive to competition and free trade;
(2) A three-step test to gauge whether certain business practices limit market accessibility/contestability, and impair economic efficiency/free trade, to the detriment of the overall interest of Hong Kong; and
(3) Specific indicators to help detect anticompetitive practices and abuse of dominant market position activities, which may directly or indirectly restrict competition.

The draft guidelines also provided a list of examples of anticompetitive practices or market-distorting activities including:

- price fixing to increase the cost of supply;
- preventing or restricting the supply of goods or services to competitors;
- market-sharing agreements, based on geographic or customer demarcations, including unfair or discriminatory standards, made between members of a trade or professional body to deny newcomers market access or reduce their competitiveness in the market; and
- joint boycott, bid-rigging, market allocation, sales and production quotas, intended to increase the cost and reduce the choice and availability of supply.

Competition in the Telecommunications Sector

As far as the telecommunications sector is concerned, the Hong Kong regulatory environment is very progressive, with a strong emphasis on network and service-based competition. The Telecommunications Ordinance has now covered all the key anticompetitive practices governed by competition laws in other jurisdictions for the telecommunications industry.

Consumers have derived substantial benefits, as operators compete to acquire and retain a solid user base. In particular, take-up and usage of services has increased as prices have declined. For example, international direct dialling (IDD) charges dropped significantly, and consumers saved an estimated HK$9.4bn, in 1999 and 2000.

In the broadband access sector, charges, as a percentage of disposable income, are amongst the lowest when compared with other markets. Hong Kong's international position has been substantially enhanced through a competitive and dynamic telecommunication sector.

The Telecommunication and the Broadcasting Ordinances specify the competition principles to be followed, for promoting competition, in the telecommunications and the broadcasting industry, respectively. In addition, detailed competition provisions were incorporated in the contracts between the Government and each individual licence holder. The Telecommunications and the Broadcasting Authority are the respective enforcers of the competition provision in these two sectors.

Sectoral Liberalisation

During the 1990s, the Hong Kong Government began liberalising certain sectors, in particular, telecommunications and, more recently, banking. In telecommunications, the former Hong Kong Telecom (now PCCW)'s monopoly of local and overseas telephony was abolished.

In the banking sector, progress was more gradual but, by 2002, deposit interest rates were being set by individual banks on a competitive basis (rather than collectively as was previously the case). The Hong Kong Monetary Authority (HKMA) had declared itself ready to issue new bank licences on an equal basis, for foreign and overseas-owned banks. It is, perhaps, noteworthy, that in both sectors the dominant suppliers were foreign-owned.

Another sector liberalised is that of bus services. From 1997, all bus routes have operated on a non-exclusive basis and all franchisees are not subjected to a profit control scheme any longer.

Box 10.1: Telecom Company Penalised For Anticompetitive Practices

Hong Kong Telecom (HKT) (the previous telecommunications incumbent, now called PCCW) was penalised by office of the Telecommunication Authority (OFTA), for entering into a number of deals with customers that the regulator has determined to be anti-competitive and illegal.

Announcing the ruling, OFTA imposed the maximum penalty of HK$20,000, requiring HKT to comply strictly with the direction of the Telecommunication Authority (TA) issued on April 01, 1998.

The TA has received complaints that Hong Kong telecom has continued to offer discounts in breach of the terms of the April 1998 direction.

The TA considered that maintaining a fair competition environment is in the long-term interest of telecommunications users in Hong Kong. The TA, therefore, directed HKT to comply strictly with the terms of the direction of April 01, 1998 and treat all contracts entered into after April 01, 1998 in breach of the direction as void.

Box 10.2: Collusive Price Changes of Mobile Telephone Operators

On January 03, 2000, the TA noticed, from the Press, that all mobile telephone service operators had simultaneously adjusted their prices. The TA immediately launched an investigation into whether the simultaneous price adjustments were in compliance with the competition conditions of the licences held by the mobile operators.

The TA formed the opinion that, on the evidence available, at the very least, some kind of 'arrangement' must have existed, which led to the simultaneous price adjustments that took place in January 2000. The licensees were all sent letters, explaining that a directive would be issued. Upon receiving correspondence from the TA, all the operators agreed to rescind the price adjustments made.

In view of the prompt decision of all the licensees to cancel price adjustments, the TA decided that there would be no need for them to proceed in issuing a directive. Nevertheless, all the licensees were sent letters again, warning them that, in the future, they should ensure that they comply with their licence obligations and that they should have adequate compliance systems to ensure that their actions are within what is permitted by their licence.

Competition policy is an important subject on the agenda at international forums, such as the WTO and APEC, in which Hong Kong is an active member. Past IMF consultations, and an EU Report on Hong Kong, have made reference to the absence of general competition laws in Hong Kong. The latter made the observation that Hong Kong market entrants enjoy the benefit of a competition law regime in Europe, but there is no similar safeguard for new entrants to Hong Kong.

As time progresses, the Hong Kong public, as well as the business community, will have an increased awareness of anti-competitive conduct, with continued application of competition laws in the telecommunications sector and possibly in the broadcasting sector. It seems reasonable to assume that questions will arise as to why other sectors do not face the same discipline. In 2004, some business sectors openly agreed that sector-specific competition rules could be extended to some other sectors, such as the markets for auto-fuel and shipping container logistics, with reference to terminal handling fees.

Importantly, China has recognised the importance of general competition law as a means of ensuring that the market system is kept free of practices that harm economic efficiency. Accordingly, it has introduced a number of competition provisions based on principles found in competition laws that exist in other market-based economies.

Consumer Protection

The Hong Kong Consumer Council was created in 1974, and operates under the Consumer Council Ordinance, under which it has a number of statutory functions. Primarily, these are to collect, receive and disseminate information, to consumers and Government, on matters affecting consumers in the marketplace; and receive and examine complaints from consumers.

The Council is not an investigative body. It operates largely through its ability to inform and its powers to persuade. As such, comparisons between the council and consumers associations, in other jurisdictions, are more appropriate, rather than consumer protection enforcement agencies.

Concluding Observations and Future Scenario

The authorities in Hong Kong believe that competition is best nurtured and sustained by allowing the free play of market forces, and keeping intervention to a minimum. The Government has thus envisioned a competition policy with vast scope. The authorities in the country are persuaded that Hong Kong's high degree of openness to trade and FDI, as well as its strong reliance on market forces – together with sector-specific regulatory, administrative, and in the case of telecommunications, legislative measures – are all sufficient to ensure highly competitive markets for both goods and services.

However, the Consumer Council has identified sectors in which competition could be increased. These include residential property; retailing; wholesaling and distribution; banking; telecommunications; and energy. The Council notes in one of its recent report that the Government has recently established a body to handle complaints about anticompetitive private practices. In addition, certain sectors, particularly telecommunications and legal services, have been subjected to increased competition. The authorities are also studying the possibility of increasing competition in the energy sector.

† ***Ron Cameron*** *has been working in the field of Competition and Consumer Law for the past twenty years, primarily with the Australian Competition and Consumer Commission, and its predecessor, the Trade Practices Commission. In 1991/92, he lived in Canada, working with the Canadian Competition Bureau, and also spent some time in Fiji during 1997 as a consultant on competition and consumer protection legislation for the Fiji Ministry of Commerce.*

Cameron joined the Hong Kong Consumer Council in late 1998 as the Head of its Trade Practices Division, until 2003, where he had the responsibility of examining competition complaints and undertaking major research on issues affecting consumers in Hong Kong. He is currently working as a consultant to the Consumer Council, in addition to undertaking project work with other organisations.