

Regulatory Framework for Opening, Operating and Closing a Business

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Market Competition – Competition Law

No.	Regulatory Framework	Link
<i>State Owned Enterprises (SOEs) and Exclusions from the Application of Competition Law</i>		
1.	No legal monopolies or SOEs excluded from application of competition law	➤ Section 3, Cap. 619 Competition Ordinance
2.	Providing for a procedure to exclude a particular firm or sector from the application of antitrust and/or merger control regulations while conducting commercial activities	➤ Section 5, Cap. 619 Competition Ordinance
3.	Allowing firms to seek exemptions from antitrust or merger control regulations under specified conditions for individual agreements	➤ Sections 31 and 32, Cap. 619 Competition Ordinance
4.	Providing procedures to exempt category of agreements	➤ Sections 9 and 15, Cap. 619 Competition Ordinance
5.	Exemption regime requiring a decision be justified on economic, social or sustainability grounds for individual agreement and categories	➤ Sections 1-3 of Schedule 1 and Section 15(5), Cap. 619 Competition Ordinance
6.	Exemptions from the competition regulatory framework granted for a specific time period	➤ Section 15(4), Cap. 619 Competition Ordinance

No.	Regulatory Framework	Link
7.	Renewal of an exemption at the end of its term contingent upon a review of the reasons for which the exemption was granted by the Competition Authority	<ul style="list-style-type: none"> ➤ Section 19, Cap. 619 Competition Ordinance ➤ Sections IV and V, Decision to Vary (Renew) the Competition (Block Exemption for Vessel Sharing Agreements) Order 2017
<i>Antitrust and Enforcement of Competition Regulations</i>		
8.	Forbidding anticompetitive agreements between firms	➤ Section 6, Cap. 619 Competition Ordinance
9.	Providing exemptions for the following anticompetitive agreements: <ul style="list-style-type: none"> • Advancing certain public interests • Promoting efficiency or technical and economic progress 	➤ Sections 1 and 3 of Schedule 1 and Section 31, Cap. 619 Competition Ordinance
10.	Exemptions for anticompetitive agreements granted contingent upon the following conditions of the agreement: <ul style="list-style-type: none"> • Being efficiency enhancing • Not eliminating competition • Allowing a fair share for consumers 	➤ Sections 1(a), 1(b), 1(c) and 2 of Schedule 1, Cap. 619 Competition Ordinance
11.	Specifying which agreements (between competitors) are forbidden in and of themselves, without the necessity to prove actual harm to either competition or consumers	➤ Sections 6 and 7, Cap. 619 Competition Ordinance
12.	Cartels, including agreements that directly or indirectly fix purchase or selling prices, forbidden in and of themselves	➤ Sections 6 and 7, Cap. 619 Competition Ordinance

No.	Regulatory Framework	Link
13.	Prohibiting firms from abusing dominant positions	➤ Section 21, Cap. 619 Competition Ordinance
14.	Defining the following: <ul style="list-style-type: none"> • Market dominance when firms have substantial degree of power in a market • When firms are abusing their market dominance 	➤ Sections 2-4, Guideline on the Second Conduct Rule as authorised under Section 35, Cap. 619 Competition Ordinance
15.	Providing a leniency program and the leniency program providing full immunity to the first firm that self-reports its involvement in anticompetitive behavior	➤ Section 80, Cap. 619 Competition Ordinance ➤ Leniency Policy for Undertakings Engaged in Cartel Conduct and Leniency Policy for Individuals Involved in Cartel Conduct as authorised under Section 35, Cap. 619 Competition Ordinance
16.	Subsequent firms that self-report involvement in anticompetitive behaviour receiving reductions or exemptions from financial sanctions	➤ Cooperation and Settlement Policy for Undertakings Engaged in Cartel Conduct
17.	The leniency program including a defined process with procedural guarantees for evaluating an organization's cooperation and determining the benefits they will receive	➤ Leniency Policy for Undertakings Engaged in Cartel Conduct and Leniency Policy for Individuals Involved in Cartel Conduct under Section 80, Cap. 619 Competition Ordinance
18.	Protecting the confidentiality of organizations that cooperate with the Competition Authority during an investigation	➤ Section 4, Leniency Policy for Undertakings Engaged in Cartel Conduct ➤ Section 4, Leniency Policy for Individuals Involved in Cartel Conduct

No.	Regulatory Framework	Link
19.	Allowing the Competition Authority to disclose the identity of a leniency applicant when there is a legal obligation to do so as part of judicial proceedings	➤ Paragraph 4.4, Leniency Policy for Undertakings Engaged in Cartel Conduct
20.	Explicitly protecting the anonymity of organizations that cooperate with the Competition Authority during an investigation	➤ Section 6, Cooperation and Settlement Policy for Undertakings Engaged in Cartel Conduct
21.	Individual employees that report to the Competition Authority antitrust violations within their own companies given whistleblower protection	➤ Section 173, Cap. 619 Competition Ordinance
22.	Offering incentives for firms in cases of voluntary compliance within the context of an open antitrust investigation	➤ Cooperation and Settlement Policy for Undertakings Engaged in Cartel Conduct ➤ Rule 39, Cap. 619D Competition Tribunal Rules
23.	Requiring the investigation procedures of the Competition Authority to be documented in writing	➤ Sections 11, 14, 26, 29, 41, 42, 47, 60, 61, 73, 74, 81, 82, 121 and 123, Cap. 619 Competition Ordinance
24.	Requiring the investigation phase of the Competition Authority to be completed within a set amount of time	➤ Section 92(2)(b), Cap. 619 Competition Ordinance
25.	Providing parties a reasonable opportunity of the following during the investigation: <ul style="list-style-type: none"> Consulting with the Competition Authority Being heard and providing evidence or testimony in their defense (this includes testimony of experts, cross-examination of testifying 	➤ Sections 41, 43, 44, 45 and 50, Cap. 619 Competition Ordinance

No.	Regulatory Framework	Link
	witnesses, and the opportunity to review or rebut any evidence brought forward)	
26.	Providing parties with an opportunity to settle or to reach a consent agreement with the Competition Authority	➤ Guideline on Investigations as authorised under Section 40, Cap. 619 Competition Ordinance
27.	Granting the Competition Authority the power to conduct unsolicited inspections of firms' premises (such as dawn raids) to investigate illegal anticompetitive practices with a court order or warrant	➤ Division 3 of Part 3, Cap. 619 Competition Ordinance
28.	Specifying penalties for firms that fail to comply with information requests from the Competition Authority only if the company supplies incorrect or misleading information	➤ Section 55, Cap. 619 Competition Ordinance
29.	Establishing an overall cap on fines that can be imposed on a firm	➤ Section 93, Cap. 619 Competition Ordinance
30.	<p>The following criteria used to determine the fine ceiling:</p> <ul style="list-style-type: none"> • As a percentage of the firm's global turnover • Based on the firm's gain from the anticompetitive practice • Fixed amount 	➤ Section 93, Cap. 619 Competition Ordinance
31.	Designated independent body before which firms can challenge the decisions of the Competition Authority	➤ Part 5, Section 83, Cap. 619 Competition Ordinance (Competition Tribunal, Court of Appeal, Judicial review)

No.	Regulatory Framework	Link
32.	Defining procedures, requirements and standards to enable firms or individuals to pursue damages resulting from infringement of the Competition Law	➤ Part 7, Cap. 619 Competition Ordinance
<i>Merger Control Regulations</i>		
33.	Providing both quantitative and qualitative economic criteria specifically designed to identify transactions that fall under merger control regulations	➤ Section 3 of Schedule 7, Cap. 619 Competition Ordinance ➤ Paragraphs 3.13-3.19, Guideline on the Merger Rule
34.	Establishing thresholds for merger notifications	➤ Schedule 4, Section 7(1) of Schedule 7, Sections 97, 99 and 100, Cap. 619 Competition Ordinance ➤ Paragraphs 3.13-3.20, Guideline on the Merger Rule
35.	Specifying a threshold for merger notifications based on both individual turnover (concerning the turnover of the target firm) and aggregate turnover (concerning the turnover of all firms involved in the merger) depending on the transaction	➤ Paragraphs 3.14-3.19, 3.38 and 3.41, Guideline on the Merger Rule
36.	Not mandatory for firms to file a notification of a transaction, such as a merger or an acquisition, with the Competition Authority when the transaction exceeds a set threshold, but firms can voluntarily submit their transaction for review	➤ Schedule 4, Section 7(1) of Schedule 7, Sections 97, 99 and 100, Cap. 619 Competition Ordinance ➤ Paragraphs 3.13-3.20, Guideline on the Merger Rule
37.	No sector excluded from the merger control regulations	➤ Sections 4, 8(1) and 9 of Schedule 7, Sections 2(1) and 5, Cap. 619 Competition Ordinance

No.	Regulatory Framework	Link
38.	Granting the Competition Authority powers to investigate whether firms have concluded a transaction that might raise competition concerns for all transactions	➤ Section 39, Cap. 619 Competition Ordinance
39.	The Competition Authority has the power to take action to sanction firms that fail to comply with the merger control regime, but the authority to impose sanctions lies with another agency or appropriate courts	➤ Division 4 of Part 3, Division 4 of Part 12 and Section 92, Cap. 619 Competition Ordinance
40.	Sanction calculated on the basis of the firm's turnover	➤ Section 93(3), Cap. 619 Competition Ordinance
41.	The Competition Authority has the power to propose remedies, which are subject to approval and enforcement by another agency or courts, to guarantee that the merger preserves, reinstates and does not adversely affect competition in the relevant market	➤ Division 1 of Part 4, Sections 92, 93 and 155A, Cap. 619 Competition Ordinance ➤ Paragraphs 5.9-5.15, Guideline on the Merger Rule
42.	Requiring proposed remedies by the Competition Authority to: <ul style="list-style-type: none"> • Prioritize the least intrusive remedy while ensuring the realization of the merger's efficiencies • Be capable of effective implementation within a short period of time 	➤ Division 1 of Part 4, Sections 60, 62 and Schedule 2, Cap. 619 Competition Ordinance ➤ Paragraphs 5.9-5.15, Guideline on the Merger Rule
43.	Allowing merging parties to propose alternative resolutions to the Competition Authority during the adoption of remedies	➤ Section 62 of and Schedule 2, Cap. 619 Competition Ordinance

No.	Regulatory Framework	Link
44.	The Competition Authority has the power to request a court to enforce a remedy order	➤ Section 63, Cap. 619 Competition Ordinance
45.	The Competition Authority must file a legal challenge against the merger in court to block the merger	➤ Sections 97 and 99, Cap. 619 Competition Ordinance
46.	Establishing multiple but coordinated merger control procedures that include distinct phases or stages based on the potential harm of the transaction	➤ Paragraph 1.3, Guideline on Investigations as authorised under Section 40, Cap. 619 Competition Ordinance
47.	Setting out statutory time limits within which merger control procedures have to be completed for each phase, stage or procedure	➤ Schedule 4, Section 7(1) of Schedule 7, Sections 99 and 100, Cap. 619 Competition Ordinance
48.	Establishing a procedure for conducting a simplified merger review	➤ Paragraphs 3.13-3.20, Guideline on the Merger Rule
49.	Establishing a procedure for pre-merger consultations with the Competition Authority to provide pre-merger advice on whether the transaction should be formally notified	➤ Paragraphs 5.4-5.8, Guideline on the Merger Rule
50.	Clear provisions on what constitutes confidential information to be protected within investigations and merger control procedures (e.g. business secrets)	➤ Section 125, Cap. 619 Competition Ordinance
51.	Requiring a Competition Authority to conduct a substantive economic assessment on competitive effects of a transaction submitted for a merger control review	➤ Section 6 of Schedule 7, Cap. 619 Competition Ordinance

No.	Regulatory Framework	Link
52.	<p>Allowing firms to justify an increase in market power resulting from a merger or acquisition by arguing that:</p> <ul style="list-style-type: none"> • The transaction increases efficiency • The firm would otherwise exit the market • There is an underlying public interest that supersedes competition 	<p>➤ Sections 6, 8(1), 8(2) and 9 of Schedule 7, Cap. 619 Competition Ordinance</p>

Public Services that Facilitate Trade

[Including services provided by government bureaux and departments, and other public organisations]

Disclaimer: There are other digital public services that aim to facilitate business and compliance in Hong Kong. Please refer to the webpages of individual bureaux / departments / public organisations for details.

Market Competition – Competition Law

No.	Public Services	Link
Competition Authority		
1.	Other authorities (e.g. sectoral regulators) that are responsible for protecting and fostering competition in a targeted sector having well-defined mandates in the areas of antitrust and merger control, to avoid overlapping interventions with the Competition Authority	➤ Sections 159-161, Cap. 619 Competition Ordinance
State Owned Enterprises (SOEs) and Exclusions from the Application of Competition Law		
2.	Exemption decisions published online in practice	➤ Block Exemption Orders Register
Merger Control Regulations		
3.	Firms can file notification of a transaction subject to merger control regulations electronically to the Competition Authority in practice	➤ No requirement of filing notification in hard copies in Cap. 619 Competition Ordinance
Institutional Framework		
4.	The Competition Authority operationally independent in practice	➤ Sections 132 and 133, Cap. 619 Competition Ordinance
5.	Official office term in years and maximum number of serving terms for board members of the Competition Authority	➤ Sections 2 and 8 of Schedule 5, Cap. 619 Competition Ordinance

No.	Public Services	Link
6.	Establishing a due process to appoint and dismiss Competition Authority's board members	➤ Sections 5 and 34 of Schedule 5, Cap. 619 Competition Ordinance
7.	Measures to prevent board members and staff of the Competition Authority from taking any jobs that could lead to a conflict of interest	➤ Sections 5 and 34 of Schedule 5, Cap. 619 Competition Ordinance
8.	Case handlers of the Competition Authority adhering to conflict of interest rules in practice	➤ Code of Conduct for Commission/Committee Members (2016 Edition)
9.	The Competition Authority has a mandate to issue opinions on government policies to ensure they do not hinder competition	➤ Section 130(d), Cap. 619 Competition Ordinance
10.	Opinions of the Competition Authority on government policies published online	➤ Press Releases & Announcements
11.	<p>The Competition Authority publishing the following general guidance documents online:</p> <ul style="list-style-type: none"> • Horizontal agreements • Vertical agreements • Cooperation agreements • Abuse of dominance • Leniency programs 	<ul style="list-style-type: none"> ➤ Guideline The First Conduct Rule ➤ Guideline The Second Conduct Rule ➤ Guideline The Merger Rule ➤ Cooperation and Settlement Policy for Undertakings Engaged in Cartel Conduct ➤ Leniency Policy for Undertakings Engaged in Cartel Conduct ➤ Leniency Policies ➤ Advisory Bulletin on Conduct of Employers ➤ Advisory Bulletin on Joint Negotiations ➤ Competition Commission advises on practices in employment marketplace

No.	Public Services	Link
	<ul style="list-style-type: none"> • Market definition (including analysis of product and geographical scope) • Merger control • Antitrust enforcement or competition policy related to labor markets 	<p>➤ Advisory Bulletin on Competition concerns regarding certain practices in the employment marketplace in relation to hiring and terms and conditions of employment</p>
12.	The Competition Authority issuing analytical reports on markets from the perspective of competition policy	<p>➤ Hong Kong's Auto-fuel Market Study Report</p> <p>➤ Report on Market Study for Residential Building Renovation and Maintenance</p> <p>➤ Research & Advisory</p>
13.	The Competition Authority organizing workshops/webinars to disseminate information about competition policy to firms	<p>➤ Campaigns & Events</p>
14.	The Competition Authority publishing all antitrust and merger control decisions online	<p>➤ Cases in the Competition Tribunal</p>
15.	Established cooperation mechanisms between the domestic and foreign Competition Authorities	<p>➤ Inter-agency Cooperation</p>