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DEBATE: DOES HONG KONG NEED COMPETITION LEGISLATION?

'Law will adversely affect business'

A general competition law is not the best way to regulate business, says **Antony Leung**, the financial secretary of the territory

Is Hong Kong a competitive economy? I believe it is, at home and in the wider global context.

The territory has a level playing field. Local and foreign companies compete on an equal footing. There are no barriers to foreign companies entering the Hong Kong market, buying property, registering a business, hiring staff or repatriating profits.

There are no direct subsidies for businesses, no tariffs or non-tariff barriers on imports, no exchange controls and no restrictions on the flow of information. There is a light but prudential regulatory framework, a very simple and favourable tax regime and an ongoing review of rules and regulations to minimise red tape.

Importantly, business operates within the parameters of a trusted and internationally-understood legal system, underpinned by an independent judiciary.

Hong Kong is also a highly accessible market. It has consistently been ranked the world's most free economy by the Heritage Foundation, as well as the Cato and Fraser Institutes.

Fortune Magazine rates Hong Kong as the best city for doing business in the Asian Pacific region. And the Swiss-based International Institute for Management Development recently ranked Hong Kong sixth in a global competitiveness survey - up from 12th in 2000.

In spite of such endorsements on the performance and competitiveness of Hong Kong's economy, there is a

perception that 'cartels' of big players monopolise business in some sectors.

Competitiveness, however, should not be judged solely by the number of companies vying for business in any particular sector. A market can be concentrated in terms of 'players', but remain accessible, contestable and competitive.

For example, in property development it is true that a handful of large, local companies stand out in the market. But they each have vigorous competition strategies to promote the sale of new flats. These range from additional mortgages and preferential interest rates, to non-price competition in areas such as finishing, fittings and facilities as well as higher standards of estate management.

Developers face direct price competition from other developers in the primary market, as well as from private landlords in the secondary market.

Most importantly, there are no barriers to entry into the property development sector. The government's land sales and property project vetting systems do not favour any developer. And, to enhance competition, a range of sites are provided in the annual land sales programme suitable for large and small developers.

The supermarket trade is a sector often cited by advocates of competition laws.

Two chains have established a dominant position over a number of years. Like supermarket chains elsewhere in the world, their principal advantage is that they are home-grown businesses that know the local



Direct taxation is low in Hong Kong, and there are few regulatory barriers

Reuters

market well.

But they face competition from other supermarket chains, including those within department stores, and numerous retailers selling foodstuffs and household products.

There is also strong competition between the two major chains in terms of pricing, product differentiation, customer service and home delivery.

Some argue that these two examples are evidence enough that competition laws are needed in Hong Kong. In deciding whether they are needed we must ask two questions. First, is legislation the only way to ensure a competitive market? In my view, the answer is 'no'. Second, will a competition law adversely affect the business sector as a whole? In this case, I believe the answer is 'yes'.

The government is not against introducing new laws when necessary. But with regard to a general competition law, it is not felt that Hong Kong's economy suffers from horizontal and vertical restraints, or abuse of market dominance, to an extent that merits general

outlawing.

A general competition law may not be able to address the specific needs or problems of individual sectors. Such laws also run the risk of overkill, could stimulate expensive litigation, create uncertainty amongst the business community and enlarge the public sector.

So, I am not convinced that having a general competition law is the best way forward for Hong Kong.

Where I can see some merit is the adoption of a broadly-based competition policy complemented, where necessary, with appropriate sector-specific measures. These may include licensing conditions, contractual provisions, codes of practice, administrative means, public censure and, where warranted, legislation.

Generally, though, the government believes that a free and open market is the best guarantee of a competitive economy. At the same time, the government will not hesitate to take action to eliminate business practices that limit market access or impair economic efficiency or free trade.

The broadcasting, telecom-

munications and transport sectors are good examples. Safeguards have been incorporated into the Telecommunications Ordinance and the Broadcasting Ordinance to prohibit licensees from engaging in anti-competitive conduct, or abusing a dominant position. Hong Kong's telecoms sector is now recognised as one of the most open and liberal in the world.

In the transport sector, all bus routes have operated on a non-exclusive basis since 1997 and all franchisees are no longer subject to a profit control scheme. To enhance competition in the banking sector, interest rates have been deregulated and the market has been further opened up to foreign banks.

The sector-specific approach is grounded on the economic philosophy of free trade and minimum government interference.

This approach provides the flexibility to adopt effective measures appropriate to the circumstances in the respective sectors. It promotes competition, reduces the risk of red tape and avoids excessive legal and administrative costs.

'Lack of regulation