



International competition landscape across the globe: Governments throughout the world have made significant changes to antitrust laws

Governments throughout the world have made significant changes to antitrust laws

By Deirdre A. McEvoy,
Jennifer A. Dixon

In recent years, governments throughout the world have made significant changes to antitrust laws, with the goal of efficiently and effectively investigating and remedying mergers and markets that pose a threat to competition. The United Kingdom, Hong Kong, and Russia have all reformed their competition regimes, creating new agencies to enforce competition.

United Kingdom

The United Kingdom's new competition regime has been in place for slightly over one year. Since April 2014, the Competition and Markets Authority (CMA) has been the United Kingdom's primary authority for competition law. The CMA combines the functions of the Office of Fair Trading (OFT) and the Competition Commission (CC), both of which have been disbanded.

Some of the powers and responsibilities of the CMA are different from those of its predecessors, the OFT and CC. For example, the CMA has an enhanced ability to gather information during an investigation. Under the new regime, there are adjusted timetables for certain aspects of market studies and investigations, giving parties greater certainty

about the deadlines for review. The agency can now impose financial penalties on individuals or entities who fail to comply with its investigatory powers.

The CMA is also empowered to impose interim measures, for example by setting forth measures that merging parties must take to prevent or unwind their combination during an investigation. There is a lower threshold for imposition of interim measures — previously, the OFT would need to show interim measures were necessary to prevent “serious, irreparable damage.” Now, interim measures are available if necessary to prevent “significant damage” to consumers or competitors.

In the CMA'S first year of existence, it has reviewed over 80 mergers and found significant competition issues in at least 10 of them. The CMA has also conducted market investigations into private health-care, private motor insurance, and payday lending. It has stepped up investigations of anticompetitive cartel conduct in both local and national markets; for example, in March 2015 it investigated and settled with a real estate trade association, several of its members, and a newspaper publisher, which the CMA had found entered into an anticompetitive advertising agreement. According to the CMA 2015/2016 Annual Plan, the CMA has “high expectations” for future enforcement activity.

Russia

On March 8, 2015, President Vladimir Putin signed an amendment to its criminal code “introducing changes to Article 178 of the Criminal Code of the Russian Federation.” The law became effective on March 20, 2015. Article 178 defines criminal liability for cartel activities that prevent, restrict, or eliminate competition.

The amendment abolishes criminal liability for repeatedly abusing market dominance. In addition, under the amendment, there is no longer criminal liability for a firm's unreasonable refusal to terminate an agreement with a competitor, or for refusal to remove a barrier to entry to a market. In its new incarnation, the law prohibits formation of an agreement between competing businesses that restricts competition, provided that the conduct at issue involves high profits or causes major damage to individuals, companies, or the state. The thresholds for the level of income and damage that will trigger criminal liability are now 10 times higher, to carve out small businesses from criminal prosecution.

In addition, a business entity or individual that participated in a cartel will be relieved from criminal liability if it was the first cartel participant to voluntarily report the activity, actively facilitate exposure of the cartel, pay restitution for losses caused by the cartel, or otherwise take action to recoup losses

caused by the cartel. Previously, Article 178 only provided for relief from administrative liability.

The amendment to Article 178 is designed to relieve small- and medium-sized businesses from criminal liability for cartel activity and to improve the rate of detection and cartel reporting to the Russian Federal Antimonopoly Service. The changes should have a considerable impact on the frequency with which companies report anticompetitive conduct.

Hong Kong

In June 2012, Hong Kong's Legislative Council passed a sweeping new Competition Ordinance (Ordinance) to prohibit anticompetitive conduct and business combinations. The Ordinance also called for the establishment of a Competition Commission (Commission) and Competition Tribunal.

The Ordinance contains three main substantive prohibitions. First, it precludes concerted activity that has an anticompetitive purpose or effect. Second, it bars those with substantial market power from abusing that power by engaging in conduct with an anticompetitive purpose or effect. Finally, it prohibits mergers that substantially lessen competition, but limits such regulation to

mergers of telecommunications entities. The Commission appears to be focused on investigating and prosecuting conduct, such as price fixing or bid rigging, that impacts consumer choice or causes consumers to pay supracompetitive prices.

On March 30, 2015, after incorporating feedback from stakeholders, the Commission released revised draft guidelines for the Ordinance: substantive guidelines on the Ordinance's two conduct rules (one concerning anticompetitive agreements and the other concerning abuse of market power) and its merger rule; and procedural guidelines on complaints, investigations, and other actions. The revised guidelines attempt to clarify the Commission's approach to enforcement. For example, the guidelines attempt to clarify the difference between legitimate commercial communications between competitors and anticompetitive communications that will expose participants to actions by the Commission; the exchange of information regarding a company's future plans on pricing or sales will likely be considered anticompetitive, absent a legitimate business rationale.

The Commission is currently aiming to complete all preparatory work by mid-2015, and full implementation of the

Ordinance will take effect sometime in 2015. This is a dramatic shift for Hong Kong, which has historically lacked a legal framework for deterring conduct that is harmful to competition. As the Commission has recommended, it would be wise for entities with business interests in Hong Kong to closely review the Guidelines and promptly introduce compliance programs.

About the Authors



Deirdre A. McEvoy

Deirdre A. McEvoy is Counsel in Patterson Belknap Webb & Tyler LLP's Litigation Department and a member of the firm's Antitrust and White Collar Defense and Investigations Teams. Ms. McEvoy recently served as Chief of the New York Field Office of the U.S. Department of Justice's Antitrust Division, prior to which she was Deputy Chief of the Criminal Division in the U.S. Attorney's Office for the Southern District of New York.



Jennifer A. Dixon

Jennifer A. Dixon is an associate in Patterson Belknap Webb & Tyler LLP's Litigation Department. Prior to joining the firm, Ms. Dixon served as a law clerk to Hon. Frederic Block in the United States District Court for the Eastern District of New York.