

# THE HONG KONG COMPETITION ORDINANCE AT SIX MONTHS: TRADE ASSOCIATIONS: AN AREA OF ONGOING COMPETITION LAW FOCUS

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Legal Briefings - By **Mark Jephcott**, **Adelaide Luke** and **Alexandra Long**

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The Hong Kong Competition Ordinance (“**HKCO**”) has now been in force for six months and already the Hong Kong Competition Commission (“**HKCC**”) is making its mark with a series of investigations and announcements, most notably regarding trade associations.

This merely represents the latest development in an area of ongoing focus for the authority. In fact, the HKCC has been looking into the conduct of various trade associations in the city since before the HKCO came into force in December 2015.

Back in mid-2015, the HKCC started to review the websites of over 350 trade associations to identify anti-competitive content. During this period, the HKCC also held discussions with nearly 500 Hong Kong trade associations, and advised them to cease all collusive conduct, including price-fixing/price recommendations and market sharing among members. In March this year, 12 Hong Kong-based trade associations stated publicly that they had either altered their conduct, or were in the process of doing so to seek to ensure compliance with the HKCO.

The latest developments indicate that trade associations, in particular, their internal guidance and recommendations, remain firmly in the cross-hairs of not only the HKCC, but also litigants in Hong Kong.

Towards the end of June, it became apparent that the HKCC had entered into a dialogue with the Hong Kong Association of Banks (“**HKAB**”) regarding the HKAB’s revised Code of Banking Practice. In a separate development, the HKCO has been invoked in court proceedings for the first time, in a case involving a travel industry trade association.

The discussions between the HKCC and the HKAB relate to provisions about student loans and a cap on the liability of Hong Kong credit card holders. The code in question imposes standard terms of lending, including that credit limits on credit cards issued to higher education students on or after 1 October 2011 should not be granted in excess of HKD 10,000, unless the student meets certain set creditworthiness criteria. The code further stipulates that the maximum liability a card issuer can impose on cardholders in the event a card is lost or stolen should not exceed HKD 500. The code has been endorsed by the Hong Kong Monetary Authority, which will monitor compliance of the code. Discussions between the regulator and the association regarding the code are ongoing.

Separately, the *South China Morning Post* has reported that a Hong Kong tour agency, Loyal Profit International Development, has launched a civil claim against the Hong Kong Travel Industry Council (“**HKTI**”). The claim makes a variety of allegations against the HKTI, including that a new clause in its guidelines is contrary to the HKCO.

The relevant clause requires registered agencies and retail stores to refund mainland tourists’ purchases within six months if requested to do so. Agencies and stores which do not meet this requirement are denied registration with the Travel Industry Council, and according to Loyal Profit, will lose business as a result. Loyal Profit has asked the court to injunct the HKTI from imposing the guidelines in question.

These new developments come shortly after discussions between the HKCC and the Hong Kong Newspaper Association (“**HKNHA**”) regarding a price increase recommendation issued by the association to its members. The HKNHA withdrew the price increase recommendation following the discussions (see our e-bulletin dated 7 June 2016 for further details).

Trade associations in Hong Kong are now subject to unprecedented scrutiny, and if appropriate care is not taken, enforcement risks could be transferred to individual members. Going forward, parties who are or who wish to participate in trade association activities should bear in mind the following:

1. Make sure the trade association you are participating in has a well-defined and sensible remit;
2. Before attending any trade association meeting, consider the agenda carefully;
3. Make sure meeting minutes are kept;
4. Do not disclose any competitively sensitive information, including your business’ likely future conduct, to competitors;
5. If a competitor, or its representative, starts to disclose competitively sensitive information, stop the meeting and voice your concerns; if the conversation continues,

leave the meeting and make sure your departure is noted. Inform your legal team or company secretary of your concerns.

A very topical example of a subject which could give rise to unintended collusion between competitors, either within or outside the context of a trade association meeting, is the fallout from the recent “Brexit” vote in the UK. Brexit has given rise to a significant degree of uncertainty within the business community at large, and this may encourage discussions within trade associations that could be problematic from a competition law perspective.

The focus of the HKCC during the first six months of its full tenure, and indeed in its run up, as outlined above illustrate not only an ongoing focus on trade associations, but also the sheer range and variety of contexts in which trade association activity may give rise to Hong Kong competition law issues. This is clearly an area that should be monitored carefully.

## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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