

## Regulatory Framework for Opening, Operating and Closing a Business

Disclaimer: Any information rendered in this document is for general references only and should not be considered as legal advice. Users are strongly advised to seek independent legal advice if they are in doubt of their legal position.

### Market Competition - Competition

No.	Regulatory Framework	Link
<b>Quality of Competition Regulations</b>		
<b><i>Antitrust and Abuse of Dominance Regulations and Enforcement</i></b>		
1.	Forbidding anticompetitive agreements between firms	➤ <a href="#">First Conduct Rule</a> is provided in <a href="#">Section 6, Cap. 619 Competition Ordinance</a>
2.	Providing exemptions for anticompetitive agreements that advance certain public interests	➤ <a href="#">Schedule 1, Cap. 619 Competition Ordinance</a>
3.	Providing exemptions for anticompetitive agreements if they promote efficiency or technical and economic progress	➤ <a href="#">Sections 1 and 3 of Schedule 1, Cap. 619 Competition Ordinance</a>
4.	Exemptions for anticompetitive agreements granted contingent upon the following conditions: <ul style="list-style-type: none"> <li>• The agreement must be efficiency enhancing</li> <li>• The agreement must not eliminate competition</li> <li>• The agreement should allow a fair share for consumers</li> </ul>	➤ <a href="#">Schedule 1, Cap. 619 Competition Ordinance</a>
5.	Cartels can be exempted from the application of Competition Law provisions	➤ <a href="#">Cap. 619 Competition Ordinance</a> does not spell out that cartels must be excluded from the application of exemption

No.	Regulatory Framework	Link
6.	Specifying agreements (between competitors) are forbidden in and of themselves, without the necessity to prove actual harm to either competition or consumers	➤ <a href="#">Sections 6 and 7, Cap. 619 Competition Ordinance</a>
7.	Cartels are included in the agreements that are forbidden in and of themselves	➤ <a href="#">Sections 6 and 7, Cap. 619 Competition Ordinance</a>
8.	Defining what constitutes tacit collusion	➤ <a href="#">Paragraph 2.31, the First Conduct Rule Guideline</a>
9.	Prohibiting firms from abusing dominant positions	➤ <a href="#">Section 21, Cap. 619 Competition Ordinance</a>
10.	<ul style="list-style-type: none"> <li>• Defining market dominance</li> <li>• Defining when firms are abusing their market dominance</li> </ul>	➤ <a href="#">Sections 2 to 4, Guideline on Second Conduct Rule</a> issued by the Competition Commission, as authorised under <a href="#">section 35, Cap. 619 Competition Ordinance</a>
11.	Providing a leniency program	➤ <a href="#">Section 80, Cap. 619 Competition Ordinance</a> ➤ The <a href="#">Leniency Policy for Undertakings Engaged in Cartel Conduct</a> issued by the Competition Commission, as authorised under <a href="#">section 35, Cap. 619 Competition Ordinance</a>
12.	Leniency program providing full immunity to the first firm that self-reports its involvement in anticompetitive behavior	➤ <a href="#">Section 80, Cap. 619 Competition Ordinance</a> ➤ The <a href="#">Leniency Policy for Undertakings Engaged in Cartel Conduct</a> issued by the Competition Commission, as authorised under <a href="#">section 35, Cap. 619 Competition Ordinance</a>
13.	Subsequent firms that self-report involvement in anticompetitive behaviour enjoy partial immunity	➤ <a href="#">Cooperation and Settlement Policy for Undertakings Engaged in Cartel Conduct</a>

No.	Regulatory Framework	Link
14.	Leniency program provides procedural guarantees to organizations that cooperate with the Competition Authority during an investigation	➤ The <a href="#">Leniency Policy for Undertakings Engaged in Cartel Conduct</a> issued by the Competition Commission under <a href="#">section 80, Cap. 619 Competition Ordinance</a>
15.	Confidentiality of organisations that cooperate with the Competition Authority during an investigation is protected	➤ <a href="#">Section 4, Leniency Policy for Undertakings Engaged in Cartel Conduct</a> issued by the Competition Commission
16.	Anonymity of organisations that cooperate with the Competition Authority during an investigation is protected	➤ <a href="#">Section 4, Leniency Policy for Undertakings Engaged in Cartel Conduct</a> issued by the Competition Commission
17.	Firms or individuals that cooperate with the Competition Authority during an investigation are given whistleblower protection	➤ <a href="#">Section 173, Cap. 619 Competition Ordinance</a>
18.	<ul style="list-style-type: none"> <li>• For offering incentives for firms in cases of voluntary compliance within the context of an open antitrust investigation</li>   <li>• For over the past year, the Competition Authority has used any incentives for firms in cases of voluntary compliance</li> </ul>	<ul style="list-style-type: none"> <li>➤ <a href="#">Cooperation and Settlement Policy for Undertakings Engaged in Cartel Conduct</a> issued by the Competition Commission, which is used for undertaking who wish to seek to cooperation with the Commission as provided by <a href="#">Rule 39, Cap. 619D Competition Tribunal Rules</a></li>   <li>➤ <a href="#">Cooperation and Settlement Policy for Undertakings Engaged in Cartel Conduct</a></li> </ul>
19.	Containing provisions that allow firms to justify behavior that is being investigated by the Competition Authority on the basis of efficiency	➤ <a href="#">Section 1 of Schedule 1, Cap. 619 Competition Ordinance</a>

No.	Regulatory Framework	Link
20.	<p>Procedural fairness guarantees that are applicable in the HKSAR:</p> <ul style="list-style-type: none"> <li>• The investigation procedures are written</li> <li>• Parties are provided a reasonable opportunity to consult with the Competition Authority</li> <li>• Parties have a reasonable opportunity to be heard and provide evidence or testimony in their defense (This includes testimony of experts, cross-examination of testifying witnesses and the opportunity to review or rebut any evidence brought forward)</li> <li>• Parties are provided with an opportunity to settle or to reach a consent agreement</li> </ul>	<p>➤ <a href="#">Guideline on Investigations</a> issued by the Competition Commission, as authorised under <a href="#">section 40, Cap. 619 Competition Ordinance</a></p>
21.	<p>Providing the Competition Authority with the necessary power to investigate illegal anticompetitive practices (such as unsolicited inspections on firm's premises, ability to request information, etc.)</p>	<p>➤ <a href="#">Part 3 of Division 2, Cap. 619 Competition Ordinance</a></p>
22.	<p>Providing the Competition Authority with the necessary resources to investigate illegal anticompetitive practices</p>	<p>➤ The HKSAR Government has committed that it would support the Competition Commission to perform its statutory functions under the <a href="#">Cap. 619 Competition Ordinance</a> and provide the Competition Commission with sufficient resources in this regard, including providing a dedicated litigation funding for the Competition Commission since 2017</p> <p>➤ <a href="#">Competition Commission Annual Report 2022-23</a></p>

No.	Regulatory Framework	Link
23.	Establishing an overall cap on fines that can be imposed on a firm	➤ <a href="#">Section 93, Cap. 619 Competition Ordinance</a>
24.	Allowing firms to file an action for damages resulting from infringement of the Competition Law	➤ <a href="#">Part 7, Cap. 619 Competition Ordinance</a>
25.	Providing qualitative economic criteria for identifying which transactions fall under merger control regulations	➤ <a href="#">Section 3(1) of Schedule 7, Cap. 619 Competition Ordinance</a> ➤ <a href="#">Section 4 of Schedule 7, Cap. 619 Competition Ordinance</a> provides that, at present, the Merger Rule only applies where an undertaking that directly or indirectly holds a “carrier licence” within the meaning of the <a href="#">Cap. 106 Telecommunications Ordinance</a> is involved in a merger
26.	Identifying which transactions fall under merger control contain definitions for the following: <ul style="list-style-type: none"> <li>• Share acquisitions</li> <li>• Asset acquisitions</li> <li>• Acquisition of control</li> </ul>	➤ <a href="#">Section 3(2) of Schedule 7, Cap. 619 Competition Ordinance</a>

No.	Regulatory Framework	Link
27.	There are sectors, firms, or transactions that are excluded from merger control	➤ <a href="#">Sections 4, 8(1) and 9 of Schedule 7, Cap. 619 Competition Ordinance</a>
28.	Granting the Competition Authority powers to investigate whether firms have concluded a transaction that might raise competition concerns. The powers are for all transactions	➤ <a href="#">Section 39, Cap. 619 Competition Ordinance</a>
29.	Competition Authority has powers to impose sanctions when firms fail to comply with the merger control regime	➤ <a href="#">Sections 92(1), 97, 99, 101 and 102, Cap. 619 Competition Ordinance</a>
30.	Sanction is calculated on the basis of the firm's turnover	➤ <a href="#">Section 93(3), Cap. 619 Competition Ordinance</a>
31.	Competition Authority has powers to impose a set of remedies to guarantee that the merger maintains, restores and does not distort competition in the relevant market	➤ <a href="#">Section 60, Cap. 619 Competition Ordinance</a>
32.	Allowing merging parties to propose alternative resolutions to the Competition Authority during the adoption of remedies	➤ <a href="#">Section 62 and Schedule 2, Cap. 619 Competition Ordinance</a>
33.	Competition Authority has the jurisdictional power to enforce a remedy order. It has the power to request a court to enforce a remedy order	➤ <a href="#">Section 63, Cap. 619 Competition Ordinance</a>
34.	Competition Authority has powers to block mergers	➤ <a href="#">Sections 97 and 99, Cap. 619 Competition Ordinance</a>
35.	Establishing a multi-phased merger control procedure	➤ <a href="#">Paragraph 1.3, Guideline on Investigations</a> issued under <a href="#">section 40, Cap. 619 Competition Ordinance</a>

No.	Regulatory Framework	Link
36.	In practice, firms can file notification of a transaction subject to merger control regulations electronically to the Competition Authority	<p>➤ There is no requirement to notify the Competition Authority of a merger or a proposed merger under <a href="#">Cap. 619 Competition Ordinance</a></p> <p>Cap. 619 Competition Ordinance does not prescribe that a firm must file notification of a transaction in hard copies</p>
37.	Providing clear provisions on what constitutes confidential information to be protected within investigations and merger control procedures (e.g. business secrets)	<p>➤ <a href="#">Section 125, Cap. 619 Competition Ordinance</a></p>
38.	Requiring a Competition Authority to conduct a substantive economic assessment on competitive effects of a transaction submitted for a merger control review	<p>➤ <a href="#">Section 6 of Schedule 7, Cap. 619 Competition Ordinance</a></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

No.	Public Services	Link
<b><i>Institutional Framework</i></b>		
1.	Competition Authority is operationally independent in practice	➤ <a href="#">Section 132, Cap. 619 Competition Ordinance</a>
2.	Having an official office term in years for board members of the Competition Authority	➤ <a href="#">Sections 2 and 8 of Schedule 5, Cap. 619 Competition Ordinance</a>
3.	Establishing a due process for the appointment of the Competition Authority's board members	➤ <a href="#">Section 2 of Schedule 5, Cap. 619 Competition Ordinance</a>
4.	Having a due process to dismiss Competition Authority board members	➤ <a href="#">Section 5 of Schedule 5, Cap. 619 Competition Ordinance</a>
5.	Case handlers of the Competition Authority apply conflict of interest rules in practice	➤ <a href="#">Code of Conduct for Commission/Committee members</a>



No.	Public Services	Link
6.	<p>Competition Authority issues general guidance documents on the following competition areas</p> <ul style="list-style-type: none"> <li>• Horizontal agreements</li> <li>• Vertical agreements</li> <li>• Cooperation agreements</li> <li>• Abuse of dominance</li> <li>• Market definition (including analysis of product and geographical scope)</li> <li>• Merger control</li> <li>• Lenience</li> </ul>	<ul style="list-style-type: none"> <li>➤ <a href="#">The First Conduct Rule Guideline</a></li> <li>➤ <a href="#">The Second Conduct Rule Guideline</a></li> <li>➤ <a href="#">The Merger Rule Guideline</a></li> <li>➤ <a href="#">Cooperation and Settlement Policy for Undertakings Engaged in Cartel Conduct</a></li> <li>➤ <a href="#">Leniency Policy for Undertakings Engaged in Cartel Conduct</a></li> <li>➤ <a href="#">Leniency Policy for Individuals Involved in Cartel Conduct</a></li> </ul>
7.	<p>Competition Authority issues analytical reports on markets, behaviors or practices from the perspective of competition policy</p>	<ul style="list-style-type: none"> <li>➤ <a href="#">Report on Study into Hong Kong's Auto-fuel Market</a></li> <li>➤ <a href="#">Report on study into aspects of the market for residential building renovation and maintenance</a></li> <li>➤ <a href="#">Research &amp; Advisory</a></li> </ul>
8.	<p>Competition Authority organizes workshops or webinars to disseminate competition policy to firms</p>	<ul style="list-style-type: none"> <li>➤ <a href="#">Campaigns &amp; Events</a></li> </ul>

No.	Public Services	Link
9.	Competition Authority publishes all antitrust and merger control decisions online	<ul style="list-style-type: none"> <li data-bbox="1214 293 1727 320">➤ <a href="#">Cases in the Competition Tribunal</a></li> <li data-bbox="1214 357 1525 384">➤ <a href="#">Decisions Register</a></li> <li data-bbox="1214 421 1447 448">➤ <a href="#">Publications</a></li> </ul>
10.	Having established cooperation mechanisms between the domestic and foreign Competition Authorities	<ul style="list-style-type: none"> <li data-bbox="1214 493 1621 520">➤ <a href="#">Inter-agency Cooperation</a></li> </ul>