

HONG KONG*

*Based on public sources

COMPETITION FRAMEWORK

Competition Law	Legislative Council Brief, Competition Bill; File Ref.: CITB CR 05/62/43. Originally established in 1998.
-----------------	---

Competition Authority	Competition Policy Advisory Group.
-----------------------	------------------------------------

STATUS OF THE COMPETITION AUTHORITY

Accountability

The Competition Authority has obligations before the Executive Paragraph 130, 131	Yes	X	Obligations to report to the executive on on-going investigations upon request
		X	The decisions of the Competition Authority be vetoed by the Ministry or the Executive branch
		✓	The Competition Authority has to report on an annual basis to the Executive
The Competition Authority has obligations before the Legislature Paragraph 130, 131	Yes	✓	Obligation to publish an annual report on its activities.
		X	Obligation to stand before Parliament and respond to congressmen on an annual basis.
		X	An independent auditor or oversight committees monitor its activities.
The Competition Authority has obligations before the Judiciary	Yes	✓	Decisions of the Competition Authority are subject to review by the judiciary.

Independence

The criteria for appointment and removal of the Head/Board Members is clear and transparent	N/A	
The executive has powers to decide on specific cases based on public interest	N/A	
The executive retains decision making powers over the Competition Authority	N/A	
The Competition Authority is obliged to publish its reasoned decisions to ensure	Yes	Division 1, Subdivision 2 (10)

transparency		
There is a provision of the national budget allocated by law to the Competition Authority to ensure its proper functioning	No	Competition Commission Part 5 (19), hands to Chief Executive financial estimates for the next year.
The Competition authority can be financed by its own means (notification fees, fines, etc.)	No	Part (21)
GOVERNANCE OF THE COMPETITION AUTHORITY		
The Competition Authority is governed by a single chairman or a collegiate body	Collegiate Body	Competition Commission Part 2
The heads are appointed by a minister	Yes	By Chief Executive 2(1)
The heads are appointed by representatives of more than one government branch	No	By Chief Executive 2(1)
There is a fixed period during which removal is prohibited	No	There is no mention of this in the bill
The tenure of the heads is renewable	No	2(3)
The heads are required to have certain minimum qualifications (degree in law or economics, age, experience)		2(2)
ARCHITECTURE		
The Competition Authority is a stand-alone agency with an independent physical location or it is part of a bigger entity such as a Minister	Stand-alone agency	Note it will be part of the Competition Policy group
POLICY MAKING AGENTS-DIVERSIFICATION		
There is only one agency or more than one agency responsible for competition enforcement	One Agency	

Sector regulators have competition policy enforcement mandate	Yes; Telecommunications, section 6
The Competition Authority and other agencies have signed protocols or memoranda of understanding.	Yes; Telecommunications Regulator, section 6. Along with broadcasting now; but with the new commission it will be under the competition commission.

POLICY DUTIES

The Competition Authority has exclusive mandate on competition or multiple mandates	Exclusive Mandate	X	Concurrent Consumer Protection mandate
		X	Concurrent IP mandate
	Other Concurrent Jurisdiction: Yes; Telecommunications and Broadcasting		

PORTFOLIO INSTRUMENTS

LAW ENFORCEMENT

The Competition Authority has powers to investigate cartels	Yes	Division, Subdivision 1, 6
The Competition Authority has powers to dawn raid premises	Yes	Paragraph 10, in bill 33, 48
The Competition Authority investigates ex officio cases	Yes	Paragraph 10, in bill 33
The Competition Authority has powers to accept leniency applications	Yes	Paragraph 11, in bill 78-80
The Competition Authority has powers to seek criminal punishment	No	

ADVOCACY

The Competition Authority can issue opinions on draft legislation	Yes	Paragraph 129
The executive and/or the legislature is obliged to request the opinion of the	Yes	Paragraph 129

Competition Authority when drafting legislation that may impact competition		
RULEMAKING		
The Competition Authority can issue guidelines or other type of secondary legislation	Yes	X
		✓
		X
RESEARCH & REPORTING		
The Competition Authority can carry out market studies	Yes	Paragraph 129
The Competition Authority can report to the legislature on the results of market studies	Yes	(c)(7)
DECISION MAKING FUNCTIONS		
The body that carries out investigations and decides the cases are the same	No	(c)(7)
The body that carries out investigations and imposes fines are the same	No	(c)(7)
The investigatory body has standing before the decisional body that makes the decisions		There is no mention in the statute