Cambridge University Press & Assessment 978-1-108-44812-3 — Hong Kong Competition Law Thomas K. Cheng, Kelvin Hiu Fai Kwok Index More Information

Index

Abusive conduct abuse by effect, 115, 119, 121, 123, 145, 146, 156, 169, 182-185 abuse by object, 120, 126, 144, 145, 148, 151, 155, 185-188 exclusive dealing, 120, 122, 136, 146, 154, 158, 159, 185-180 predatory conduct, 122, 135, 147-158, 172, 180, 181, 180 refusal to deal, 122, 154, 172-184 tying and bundling, 120, 122, 136, 158-172, 178 Block exemption order generally, 192, 193 liner shipping, 193, 198, 204, 208 procedure, 193, 194 Cartel generally, 25, 26, 29, 34, 67, 70, 76, 80, 81, 83-86 bid-rigging, 28, 29, 31, 34, 51, 52, 56, 80-82, 85-89, 93, 94 cooperation and settlement, 84, 240-242 leniency, 84, 237-239 market sharing, 28, 29, 34, 76, 78, 80, 82, 85, 80-01.102 output limitation, 28, 29, 31, 76, 78, 80, 82, 83, 85, 86, 98, 102, 103 price fixing, 28, 29, 31, 32, 34, 40, 41, 59, 62, 64, 76, 78, 80-85, 89-93, 98, 102, 103, 105-107 Commitment, 229, 230, 233, 237, 252 Competition Commission generally, 3, 4, 7-9, 11-13, 16, 18-23, 269-273 enforcement priority, 25, 34, 42, 80, 101, 233, 253, 273 guideline, 9 Competition Tribunal generally, 3, 8, 11, 13, 22, 269, 271, 272 Tribunal proceeding. See Tribunal proceeding

Tribunal review, 195 Complaint confidentiality, 226, 231, 232 lodging a complaint, 226, 231 Cooperation and settlement confidentiality, 241, 243 cooperation agreement, 240-243 cooperation discount, 242 follow-on action, 241 initiation, 240 leniency plus, 242 termination, 242 Decision on exclusion generally, 191, 192 Code of Banking Practice, 211-214 pharmaceutical sales survey, 198, 204, 207, 208 procedure, 193 Disapplication specified person or activity, 16 statutory body, 4, 15, 271 Efficiency Exclusion first requirement (Efficiency Requirement), 196, 200, 201, 205, 207 fourth requirement (Competition Requirement), 196, 198, 201, 206, 207 second requirement (Fair Share Requirement), 196, 197, 199-201 third requirement (Indispensability Requirement), 196, 197, 200, 201, 203, 205, 206 Exclusion agreement enhancing overall economic efficiency (Efficiency Exclusion). See Efficiency Exclusion agreement of lesser significance (FCR De Minimis Exclusion), 217-219

Cambridge University Press & Assessment 978-1-108-44812-3 — Hong Kong Competition Law Thomas K. Cheng, Kelvin Hiu Fai Kwok Index More Information

284

Index

Exclusion (cont.) block exemption order. See Block exemption order compliance with legal requirement (Legal Compulsion Exclusion), 209, 211, 212, 214 conduct of lesser significance (SCR De Minimis Exclusion), 217, 220 decision on exclusion. See Decision on exclusion merger (Merger Exclusion), 216, 217 service of general economic interest (SGEI Exclusion), 214-216 Exemption decision on exemption, 193 international obligation (International Obligations Exemption), 221 public policy (Public Policy Exemption), 220, 221 First Conduct Rule (FCR) generally, 24–29, 32, 34–36 agreement, 32, 35-53, 56-59, 62, 65 agreement enhancing overall economic efficiency. See Efficiency Exclusion ancillary restriction, 72, 77, 91, 93, 97, 98, 103 cartel. See Cartel concerted practice, 32, 37, 38, 43, 44, 46-48, 50, 58, 62, 65 decision by an association of undertakings, 32, 37, 38, 43, 45-47, 97, 98 extraterritoriality, 16, 19, 20 group boycott. See Trade association information exchange. See Trade association joint venture, 29, 36, 67, 76, 77, 80, 83, 86, 101-104 restriction by effect, 58, 66, 67, 70, 71, 74, 77, 78, 80, 81, 88, 90, 95, 97-99, 101-103, 108-113, 200, 203-205, 208, 211, 219, 220 restriction by object, 35, 66-75, 77-81, 83-93, 96, 98, 99, 101–103, 107–113, 198, 203, 204, 207, 219 serious anti-competitive conduct, 28-21, 85, 218 tacit collusion, 26, 39, 41, 42, 44, 45, 57, 62–65, 84 trade association. *See* Trade association undertaking. See Undertaking vertical agreement. See Vertical agreement History of the Ordinance, 1, 8, 9 Infringement notice, 29, 229-231, 237-239 Investigation confidentiality, 227, 231-233, 236, 239-241, 246, 247 Initial Assessment Phase, 232, 233

interview, 227, 234, 235, 239, 241, 248

Investigation Phase, 232, 233, 236 legal professional privilege, 246 privilege against self-incrimination, 227, 248, 240 production of document or information, 226, 228, 234, 235, 248 public interest immunity, 239, 244-247 sanction for failure to comply, 228 search warrant, 227, 228, 235, 246, 247 statutory declaration, 227 without prejudice privilege, 244-246 Leniency confidentiality, 240 follow-on action, 238, 239 individual leniency, 237 leniency agreement, 237-240 marker, 238, 239 termination, 239 Market definition aftermarket, 127 bidding market, 129 captive production, 128-130 geographic dimension, 126, 127 potential competition, 128, 130 price discrimination, 127 product dimension, 124, 127, 128 supply-side substitution, 130 temporal dimension, 124, 127 two-sided market, 129 Market power assessment barrier to entry or expansion, 133-136, 138, 140-143 buyer power, 138, 142 market concentration, 138-140 market share, 130-140, 142, 143 two-sided market, 142, 143 Market study generally, 233 auto-fuel, 61, 65 Merger Rule, 6, 11-14, 216, 271, 272 Objective of the Ordinance, 9-11, 38-40, 69-70, 202, 266 Pecuniary penalty aggravating factor, 266 Base Amount, 266-268

Base Amount, 266–268 cooperation, 267 deterrence, 250, 260, 266–268 financial hardship, 267, 268 mitigating factor, 266

statutory cap, 250, 260, 266-268

Cambridge University Press & Assessment 978-1-108-44812-3 — Hong Kong Competition Law Thomas K. Cheng, Kelvin Hiu Fai Kwok Index More Information

> Private action follow-on action, 251, 252, 264, 265 stand-alone action, 3, 6–8, 226, 261–263, 265, 271, 273, 274

Reform of the Ordinance, 271-273

Scope of the Ordinance, 12 Second Conduct Rule (SCR) generally, 115, 118–122 abuse. See Abusive conduct extraterritoriality, 16 substantial market power. See Substantial market power undertaking. See Undertaking Structure of the Ordinance, 11 Substantial market power market definition. See Market definition market power assessment. See Market power assessment

Trade association generally, 92, 94–97 certification, 96, 97, 99 group boycott, 95 information exchange, 99 membership, 94, 99 standard term, 98 standardisation agreement, 99 Tribunal proceeding competition law defence, 253, 263–265 consent order, 252 disclosure, 243–248

Index

285

disqualification order, 251 expert testimony, 243, 257, 264 individual liability, 33, 34, 231, 249 pecuniary penalty. See Pecuniary penalty private action. See Private action secondary liability, 33, 34, 36, 45, 48, 55, 249–252 standard of proof, 40, 63, 224, 253-260, 264, 273 transfer of proceeding, 64, 65, 262, 264, 265 Tribunal order, 251 Undertaking generally, 3, 7, 8, 12-15, 21 agency, 36, 59-61 attribution, 34, 35, 49, 52-56, 58-61 employee, 34, 35, 49, 53-55, 58-61 single economic unit, 35, 36, 60, 61 Vertical agreement generally, 29, 67, 76, 77, 80, 86, 104-106, 109, 112, 113, 136, 137 exclusive customer allocation, 111 exclusive dealing, 112, 185-188 exclusive distribution, 105, 108, 109, 111, 112, 185, 188, 189 exclusive purchasing, 106, 109, 120, 154, 185-189 exclusive supply, 109, 112, 113, 185, 188, 189 resale price maintenance, 29, 34, 105-111, 126-128 tying and bundling, 120, 122, 136, 158-172, 178, 186

Warning notice, 7, 8, 22, 28–31, 223, 229, 237, 252, 271, 272