September 2026

New powers, higher stakes?

Hong Kong competition law reform gathers pace

Significant changes are coming to competition law enforcement in Hong Kong. The Chief Executive's 2026 Policy Address[1] revealed that the Government plans to consult the Legislative Council on giving the Competition Commission (**HKCC**) compulsory information-gathering powers for market studies, with legislative proposals expected in the first half of 2027. Separately, the HKCC has proposed criminalising cartel conduct affecting tenders and making civil enforcement easier. This briefing examines how these reforms could expand the HKCC's reach and what businesses should be thinking about now.

1. Compulsory powers for market studies

Under the current Competition Ordinance, one of the HKCC's functions is to conduct market studies into issues affecting competition in markets in Hong Kong, but it does not have any powers to compel businesses to provide information for that purpose. Its market studies have therefore depended principally on public information and voluntary engagement by market participants. By contrast, when investigating a suspected contravention of the Competition Ordinance, the HKCC may require production of documents and information, compel individuals to answer questions and, with a court warrant, enter and search business and residential premises.

The proposed reform would allow the HKCC to compel information for a market study without first opening an investigation into suspected wrongdoing. The Policy Address envisages that all the HKCC would need is "reasonable cause to suspect that any feature in the market affects competition". With these new powers, the HKCC might be incentivised to conduct more market studies, as it would be able to require a company to provide detailed information on prices, costs, margins, profitability, capacity, customer behaviour and barriers to entry solely because that company operates in the market under review – all without the need for any suspicion of wrongdoing. The HKCC could test businesses' explanations against underlying commercial data and internal documents, and reach firmer conclusions on how the market operates.

The HKCC's 2017 study of the auto-fuel market illustrates the significance of the proposed change. The HKCC identified several unusual features of the market, but was unable to conduct certain analyses because relevant commercially sensitive information was unavailable. It therefore recommended compulsory information-gathering powers to support future market studies.

A market study would examine the operation of a market rather than investigate suspected conduct by a particular business. Whilst a compulsory request would not necessarily imply wrongdoing, it could still have significant practical consequences:

- **Substantial response burden:** A request may extend to detailed commercial data and documents over a lengthy period, requiring significant input from legal, commercial, finance, data and IT teams. The exercise may be particularly demanding where information is held across different systems, business

[1] https://www.policyaddress.gov.hk/2026/en/policy.html

units or reporting periods.

- **Possible follow-on enforcement:** Information provided to explain market structure, pricing or profitability may reveal competitor contacts, exclusionary arrangements or other conduct that prompts a separate antitrust investigation. The legislation should clarify whether information compelled for a market study may be used in a later investigation or disclosed to another authority.
- **Commercial and reputational exposure:** The HKCC's findings in a market study report could cast a sector's pricing, profitability or commercial practices in an unfavourable light, even if firm-specific confidential information is redacted and no specific contravention is alleged. Those findings could attract public attention and lead to recommendations for commercial, regulatory or structural change.

The scope of the new power remains to be settled. The legislation will need to address the threshold for opening a study and issuing compulsory requests, the scope and volume of information that may be required, the protection of commercially sensitive material, the use of compelled information in later investigations, and whether businesses may respond to proposed findings before publication.

Hong Kong is not alone in considering stronger market review powers. Other jurisdictions, such as the UK and the EU, have formal powers to mandate information from companies for market studies and sector inquiries respectively. Malaysia recently legislated for similar powers, which are expected to come into force in late 2026 or early 2027. This reflects a gradual move away from reliance solely on voluntary participation.

2. Criminal sanctions for tender-related conduct

The market study proposal comes as Hong Kong separately considers stronger sanctions for anti-competitive conduct affecting tenders.

The debate follows the fire at Wang Fuk Court in Tai Po in November 2025 and the subsequent work of the Independent Committee in relation to the fire. In its submissions to the Independent Committee, the HKCC described anti-competitive practices in the building maintenance sector as widespread, systematic and longstanding.

Bid-rigging is currently addressed through civil enforcement proceedings before the Competition Tribunal (**Tribunal**). The Tribunal may impose pecuniary penalties and director disqualification orders against businesses and individuals, but participation in a competition contravention does not itself expose an individual to imprisonment.

The HKCC has proposed a criminal offence targeting individuals who engage in serious anti-competitive conduct[2] capable of affecting the outcome of a tender in Hong Kong. The proposed offence would not be confined to building maintenance or to bid-rigging in its current narrow statutory sense. It could also apply to other cartel conduct connected with public or private tenders.

The HKCC proposes to retain the existing civil regime while introducing a parallel criminal route for applicable cases. The HKCC has referred publicly to possible maximum prison sentences of seven to ten years and substantial fines, although no draft offence or sentencing framework has been published. If introduced, the offence could expose directors, senior managers and employees involved in tender processes to personal criminal liability and the risk of imprisonment.

Several points will need to be resolved before the implications can be assessed fully. These include the conduct and intention required for criminal liability, how cases will be allocated between the civil and criminal routes, and how leniency and co-operation will operate where individuals face possible imprisonment. The position

[2] "Serious anti-competitive conduct" is defined in section 2 of the Competition Ordinance and comprises: (a) price-fixing; (b) allocation of sales, territories, customers or markets; (c) output restriction or control; and (d) bid-rigging.

under existing leniency and co-operation policies will be particularly important if individuals may face criminal prosecution for the same conduct.

3. Wider enforcement reforms

The HKCC has also proposed changes that could make civil enforcement easier, including:

- expressly confirming that the ordinary civil standard of proof, on the balance of probabilities, applies in civil proceedings (which is not currently the case)
- introducing statutory presumptions to assist in proving contraventions
- shifting the burden of proof where a respondent argues that an apparent bid-rigging arrangement was disclosed to the person calling for bids
- increasing pecuniary penalties and director disqualification periods.

The proposed standard of proof and statutory presumptions could have significance beyond tender cases. Depending on their final form, these changes may reduce the HKCC's evidential burden across the civil enforcement regime.

The Independent Committee expects to submit its final report to the Chief Executive by the end of October 2026. The HKCC plans to finalise and submit its proposed legislative amendments after that report.

4. Practical steps for businesses

These proposals would not change the substantive competition rules. They are intended instead to expand the HKCC's information-gathering powers, make civil enforcement easier and increase the sanctions for tender-related cartel conduct. Businesses therefore need not redesign their competition compliance programmes now, but should use this period to test whether existing controls would allow them to respond effectively to the proposed powers and risks in three areas:

- **Information governance:** Businesses should understand where sensitive information on pricing, customer terms, capacity and supply is held, whether it can be retrieved accurately and whether data can be reconciled across systems and reporting periods.
- **Tender controls:** Businesses involved in public or private tenders should take this opportunity to review how directors, employees, consultants, contractors and intermediaries interact with competitors and handle tender information. Exchanges with competitors concerning intended bidders, prices, project allocation, cover bids or withdrawal from a tender already carry significant risk under the Competition Ordinance and could expose individuals to criminal liability if the proposed offence is introduced.
- **Internal investigations and escalation:** Businesses should maintain clear procedures for identifying and escalating potential competition concerns, particularly where the interests of the company and the individuals concerned may diverge. Targeted training should focus on directors, senior managers and employees involved in tender processes.

5. What lies ahead

The next milestones are the Independent Committee's final report, expected by the end of October 2026, and the HKCC's proposed legislative amendments after that report. Legislative proposals on compulsory market study powers are expected in the first half of 2027, while the form and timing of the criminal and civil enforcement reforms remain open.

The proposals point towards a more interventionist regime. Compulsory market study powers would extend the HKCC's reach before any wrongdoing is suspected, while criminalisation and the related procedural reforms would increase the consequences of serious anti-competitive conduct in relation to tenders.

Businesses should monitor these developments and, in the meantime, test their information governance, tender controls and escalation procedures.

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