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**The Future of Telecommunications Regulation in Emerging
Competition Regimes: the Case of Hong Kong**
Sandra Marco Colino, Chinese University of Hong Kong

The present paper looks at how the recent introduction of the Hong Kong Competition Ordinance, in force since December 2015, can help address local issues relating to telecommunications markets. It does so by revisiting the classic discussion as to the appropriate role of competition law in innovation markets, and by drawing from international experience – particularly the EU – in dealing with global and local aspects of these regulatory challenges. In doing so, the paper aims to put forward specific policy proposals at this crucial time, when the competition authorities have the task of moulding the region's first ever cross-sector competition regime into shape.

Two specific problems are examined: obstacles to access, and shortcomings in the protection of consumers. With regard to access, our research reveals the existence of a 'digital divide' which makes it difficult for certain sectors of the population to access digital markets. As far as consumer protection is concerned, despite considerable improvements in the last decade, the current laws still fall short of affording consumers an adequate level of protection. While the most suitable way to address these problems would be the implementation of new legislation, in Hong Kong such an approach encounters the opposition of the predominant laissez-faireism which favours minimal market intervention.

In light of these issues, the new Competition Ordinance presents itself as an attractive opportunity for improvement. The application of antitrust standards enables the analysis of specific practices on a case-by-case basis, and the imposition of remedies that would help remove obstacles to innovation. However, the extent to which competition law can be used to boost competition and at the same time fill in the existing regulatory gap raises classic questions as to the goals antitrust policy should pursue, and the limits of intervention through competition law. Moreover, as antitrust policy-makers are faced with the very difficult task of laying down bright lines for the application of the new law, the peculiarities and dynamism of telecommunications markets complicate the formulation of categorical rules. In the EU, such problems have been tackled with attempts to move towards an effects-based approach, and an intensified focus on core competition objectives. However, practice reveals complications in carrying out such a policy shift, and EU antitrust decisions oftentimes appear to frustrate such intentions and avoid thorough economic analysis.

In order to ensure the effectiveness of the Hong Kong Competition Ordinance, the paper develops three main policy propositions. First and foremost, bright lines ought not to outshine context, even at this inception stage. Decisions affecting telecommunications must necessarily consider the specific circumstances of each case, and the protection of competition should be prioritised over the adoption of stiff general principles. Secondly, although looking towards established regimes can be very useful, the importance of context puts a dent in the value of such experience.

Thirdly, delineating the realms of competition law is paramount, and this can only be done through a careful reflection as to the goals competition law should pursue. The experience in other regimes demonstrates that care should be taken when regulating markets using competition provisions.