

## MARKETING LAWS

### The Antitrust Paradox

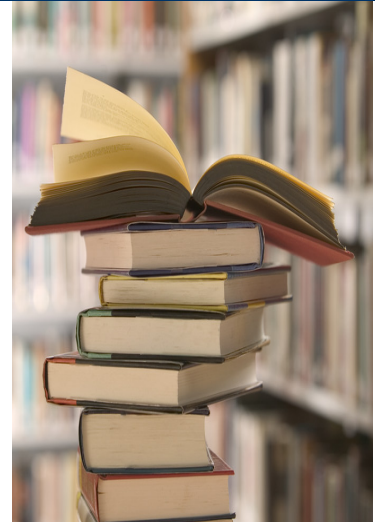
Hong Kong is behind many countries by not having antitrust laws. We are an internationally acknowledged example for free trade but our system is in flaw for not being able to catch up with a piece of legislation to ensure fair trading. Our smaller, but independent, operators are exposed to attacks from business giants.

In November 2000, a consumer complained to the Hong Kong Consumer Council about exclusivity dealings between some record companies and karaoke lounges on the supply of music currently on the popularity poll. Hit songs were only supplied to the lounges having such an exclusive arrangement. The consequence is barring independent karaoke operators from the most current music and then driving away their customers. The exclusive arrangements would not only be monopolistic, threatening the survival of smaller operators but also force up prices paid by consumers for karaoke services of the larger chains.

In 2002, oil companies in Australia were suspected to be engaging in anti-competition practices by controlling prices in the region. Directors of seven oil companies were found having phone conversations discussing an arrangement of increasing gasoline prices simultaneously. This case was brought to court and the companies were charged for violating the relevant antitrust laws. The case made international headlines.

Hong Kong gasoline prices are seemingly 'synchronised' and oil companies do not compete with each other on price. But because Hong Kong does not have yet an anti-competition law, investigations into apparent oligopoly marketing would have no legal meaning

Some years ago, we heard of Microsoft being forced to un-bundle Internet Explorer from Windows, and independent browser developers were given a chance.



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In Hong Kong, we also see cases where the grocery market is dominated by two supermarket giants, or the housing management companies bundling telecom services, newspaper distribution and bus services into a lump sum management fee. Should these activities be regulated so that the smaller, independent grocery stores, telecom operators, news agents, cab drivers and also the consumers could have a fairer chance for business?

### **Sins of Collusion**

#### **1. Price-fixing**

There would be an agreement among marketers to raise, fix, or otherwise maintain the price at which goods are sold or services are provided. Agreeing on a common price especially on essential products would remove price competition between the sellers but can deprive consumers from having a reasonable choice.

#### **2. Bid-rigging**

Marketers among themselves agree to bid for tenders in a certain way so that one of them would win out. They may agree on the bidding prices beforehand so that they may individually win tenders by rotation.

#### **3. Market allocation**

Companies may agree to share out the market in a certain way to ensure there is no direct competition between themselves. For example, Retailer A agrees with Retailer B that A will only sell at a cheaper price on Hong Kong Island and B will do the same in Kowloon.

#### **4. Agreed quotas**

An agreement between competitors to limit production so they could artificially control supply and force prices up. This is often used to deal with structural overcapacity and avoid price wars.

#### **5. Joint boycotts**

This is an agreement between certain competitors not to deal with some specific suppliers, customers or even competitors.

#### **6. Unfair or discriminatory standards**

It may appear that an agreement between companies on setting some common technical or design standards may raise the quality of a product or service. But, if the agreement at the same time imposes restrictions on what or how many each party may produce, customers would not be given free choices.

#### **7. Abuse of dominance**

A market dominated by a few large companies can use their power to limit newer or smaller firms to enter a market. This type of conduct can give rise to economic inefficiency or the obstruction of free trade.

Maximizing market share is not a sin, but collusion to control a market and devising scheme to sharing is unethical and unlawful in some countries.



Source: <http://thebluestate.typepad.com>

'Exclusivity' agreements often operate at the fringe of fair-trading, so there is urgent need for laws to ensure fair play, prevent suppliers (particularly the larger ones) from creating artificial upsets to the supply and demand equilibrium of the market. The Government's recent consultation is long overdue, but hopefully, a piece of law on fair trading could eventually be put in place for Hong Kong to rightfully earn the acclaim for free trade.

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## Stale, Pale and Male

In the UK, the boards of many companies have been criticised as stale, pale and male, much like an exclusive club. The Institute of Chartered Secretaries and Administrators and Penna, an HR consultancy, undertook a joint project during 2005, and again in 2006, to look at how diversified boards can be. They made some interesting findings from a sample of FTSE 250 companies.

Three years ago, the Higgs report in the UK suggested that a diversified board would lead to better company performance. Diversity is not only about gender or age but also the personal background of the directors and how they would be recruited. A diversified board would be invigorating as they could contain a wide spectrum of skills, experience and exposure could provide freshening approaches to business.

The tenure of service of directors is also important. Directors (or their ideas) become stale if they stay on the board for too long. It is gratifying to note some improvements in this area, in that non-executive directors of the UK companies with less than 3 years of service were increased from 56% in 2005 and 58% in 2006.

It is also interesting to note from information websites, companies with the high scores for good governance were more likely to have at least one female board director and a large number of non-executive directors.

The scene in Hong Kong is not dissimilar to the UK. The Hong Kong Institute of

FTSE Companies	2005	2006
<b>The Stale Factor</b>		
■ Average age of all directors	55	55
■ Average age of CEOs	50	49
■ Average age of Chairmen	59	61
<b>The Male Factor</b>		
■ Male Directors	93	94
■ Male CEOs	97	100
■ Male Chairmen	97	100

Chartered Secretaries had done a similar survey in 2004/5 on independent non-executive directors (INED) from a sample of Hang Seng Index companies. They found 88% of the INEDs were aged over 40, 75% of them had more than 9 years of service, and 87% of the companies had only appointed male INEDs.

Taken overall, the surveys set the benchmark for a hopeful start to a more diverse future for governance.

*(Adapted from CSJ,  
Hong Kong Institute of Chartered Secretaries  
January 2007)*

ENGLISH

## 2006 Word of the Year

When astronomers demoted ('dwarfed') planet Pluto last year, they had not realised that they were creating a new word. "Plutoed" was chosen 2006 Word of the Year by the American Dialect Society (ADS).

To "pluto" is "to demote or devalue someone or something" much like what happened to the former planet last year.

"Our members believe the great emotional reaction of the public to the demotion of Pluto shows the importance of Pluto as a name," said society president of ADS, Cleveland Evans.

Other words in the running were: climate canary (an organism whose declining population could lead to a large environmental catastrophe), murse (man's purse), flog (a fake blog that promotes products) and macaca (an American citizen treated as an alien: George Allen, a former Republican senator, calling the son of Indian immigrants as macaca, was regarded racist and lost the election).

*Adapted from an article by  
ASSOCIATED PRESS, January 9, 2007*

### Word Forms

Some words can be used in different forms, as nouns, verbs or adjectives. A word if used in the less traditional manner, they may add live to your sentences and cut down on the number of words used. Your passages may then become more lively and readable.

Noun	Example/Meaning of Alternative (as Verb)
Benchmark	To set s standard. <i>(The system used has been benchmarked against IBM standards.)</i>
Clock	To record (time). <i>(He has to clock the hours of work in the office).</i>
Courier / Truck	To take to. <i>(Please courier this letter to our office in Central)</i>
Distance	To stay away. <i>(The two friends had an argument yesterday and they now seem to have distanced themselves from each other)</i>
Dog	To follow. <i>(This man has been dogging me for 10 minutes already)</i>

Engineer	To plan (a plot) <i>(He was so clever that he engineered the competitors to think the opposite of his plan)</i>
Index	To mark or indicate <i>(Please index all tables at the end of the book)</i>
Juice	To make juice from. <i>(Please juice this orange for me.)</i>
Oil / Wax	To add oil or wax. <i>(To oil an engine, to wax the sofa)</i>
Police	To guard or to keep watch on. <i>(To police a dangerous district; to police the proper use of information).</i>
Power	To give energy or power. <i>(This car is powered by battery.)</i>
Scale	To increase or reduce in proportion. <i>(I like this model to be scaled down to 10% of the actual.)</i>
Shell / Skin / Bone	To remove the shell/skin/bone. <i>(Waiter, I like my chicken boned.)</i>

Adjective	Example/Meaning of Alternative (as Verb)
Brown	To turn something to brown colour. <i>(My face has been browned by sitting in the sun for too long).</i>
Clear	To approve. <i>(The officer has cleared the plane for take-off)</i>
Damp	(Damp down) To reduce. <i>(Soft materials damp down vibrations).</i>
Dim	To make dim. <i>(The stage lights have been dimmed for the show to start.)</i>
Fancy	To believe or imagine. <i>(I fancy it's going to rain soon.)</i>
Lame	To make (a person or an animal) cripple. <i>(He was lamed in a car accident.)</i>

Verbs can often be used as adjectives in the continuous tense or past participle form.

Verb	Example/Meaning of Alternative (as Adjective)
Destroy	<i>The destroyed ship....</i>
Fall	<i>The fallen tree.... ; The falling tree ....</i>
Glow	<i>The glowing light ....</i>

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