

One country two systems. Competition regime in Mainland China and Hong Kong, which one is more conducive to western-foreign investors?¹

Un país dos sistemas. Régimen de Competencia en China continental y Hong Kong, ¿cuál es más atractivo para inversionistas extranjeros?

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Abstract: Hong Kong's Competition Ordinance provides a framework of competition legislation that is more conducive to foreign investors than Mainland China. This is essential because HK's regulatory framework of competition regulation has more common characteristics with western legislation, but also because of HK's social, economic, legal and political history as a consequence of the United Kingdom influence. In that sense, western-foreign investors will look for a competition framework that provides clear, open and general rules.

Keywords: Competition Ordinance, Anti-Monopoly Law, Rule of Law, Hong Kong, Mainland China

Resumen: *La Ordenanza de Libre Competencia de Hong Kong proporciona un marco de legislación de competencia que es más propicio para los inversores extranjeros que China continental. Esto es esencial porque el marco normativo de regulación de la competencia en Hong Kong tiene características más comunes con la legislación occidental. Lo anterior es complementado si se revisa la historia social, económica, jurídica y política de Hong Kong como consecuencia de la influencia del Reino Unido. En ese sentido, los inversores occidentales en el extranjero van a buscar un marco de regulación de libre competencia que le proporcione reglas claras, abiertas y generales.*

Palabras claves: *Legislación de libre competencia, Ley Anti Monopolio, estado de derecho, Hong Kong, China continental.*

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1. Introduction

Foreign companies from western countries, whether the United States, the United Kingdom, the European Union or even from Latin America, have different drivers when they decide to invest in China. In consequence, it is of most importance consider the different investment vehicles when investing in China. Also plays a fundamental role the jurisdiction through which a Chinese investment is held. In that sense, Hong Kong is the preferred jurisdiction for structuring investments in China.

The choice of jurisdiction can be driven by tax policies, labor regulation, and costs of land, regulatory and legal framework. In that sense, a competition regulation plays a fundamental role because it set up the rules for both local and foreign competitors.

In consequence, the question that this research paper attempts to answer is which of the competition regimes is more conducive to foreign investors, Mainland China or Hong Kong (HK)? The answer this paper presents is that HK's Competition Ordinance and, therefore, HK's competition framework, is able to provide a more conducive regulation for the attraction of foreign investment.

This essay will argue that Mainland China has made enormous efforts to provide a competition framework for both domestic and international investors. However, economic, social, political and legal history had undermined those efforts. In that sense, Mainland China's background has played a strong barrier to the performance of competitors and to the enforcement of the Antimonopoly Law (AML) by government agencies.

HK's Competition Ordinance came into force on December 2015. This created a natural anxiety to analyze the Ordinance provisions and its performance. However, like the case of Mainland China, HK's social, legal, economic and political background also played a fundamental role in the enactment of the competition legislation. Thus HK's background has played an important role as a driver for the law while in Mainland China it hasn't.

The structure of this essay is contained in three chapters. The first presents the background and political differences between Mainland China and HK. In that sense, it will be addressed the topic of the history and tradition of both Mainland China and HK as part of the One Country, Two Systems structure. By this system in China, there is a coexistence of two different models. A socialist market economy in Mainland China and a free-market based economy in HK, a civil law system in Mainland China and a common law jurisdiction in HK.

Then it will be explained the concept of the rule of law. It will be analyzed that the concept has a different extent in Mainland China and in HK. As a consequence of that diverse extent, history has driven the developing paths of Mainland China and HK at different stages.

Mainland China has a thin version of the rule of law. HK has a thick version of it. HK has a western tradition design of the rule of law with a clear separation of the powers of the state, with an independent judicial power, with a legislative framework that is stable, prospective, open, clear and of general application. HK also provides a framework for clear enforcement and review procedure through administrative and judicial organs.

Chapter two provides the main differences between Mainland China and HK as a consequence of having a diverse idea of the rule of law in competition policies. This chapter addresses the analysis of which competition regulation is more conducive for foreign investment. Professors Fuller, Peerenboom, and Gosalbo-Bono analyze the six factors to determine which regulation is more conducive. The first is if the legislation relatively stable, prospective, open and clear. The second is if the legislation effectively recognizes judicial independence. The third is if the enforcement agencies and/or the courts have the power to review in conformity with the law. The fourth is to determine if courts easily accessible for private litigation. The fifth factor is to analyze if there are industrial policies in the design of the legislation. The final factor is to determine the transparency in regulations.

Finally, chapter three presents an update of the latest social movements in HK, from which the reader may question the extent of the rule of law.

The conclusion is that HK's Competition Ordinance provides a competition framework that is more conducive for foreign investors than Mainland China. This is essential because HK's regulation has more common characteristics with western legislation, but also because of HK's social, economic, legal and political history as a consequence of the United Kingdom influence. Foreign investors will look for a framework that provides clear, open and general rules. They will also choose one with a formal recognition of the separation of the powers of the state and the independence of the judicial system. Finally, they will choose the jurisdiction that has a clear enforcement procedure with impartial government authorities and were private litigation through courts is easily accessible.

2. Background of Mainland China and Hong Kong

2.1 One country two systems

For over five decades since the People's Republic of China (PRC) was established in 1949 China has had a unitary socialist legal system. However, inter-regional conflicts of law were the inevitable result of Deng Xiaoping's quest to reunite HK and Macao with China (Huang, Xuefeng, 1995: 290).

The basic premise of the Chinese reunification policy of One Country, Two Systems is to maintain national unity and peaceful coexistence. That premise is accomplished by the existence of a socialist market economy in Mainland China and a capitalist system in HK and Macao (hereinafter only HK) (Leng, 2009: 51). Deng Xiaoping designed the system in 1977 as a strategy for Taiwan. Nevertheless, it is widely acknowledged that it was subsequently used in HK (Ka-Yee, 2014: 135).

Such a principle of peaceful reunification has been designated as a fundamental national strategy, with its implementation ensured by constitutional and legal protection. There is no parallel to this approach elsewhere in the world today (Leng, 2009: 51).

In other words, the system looks for a balanced coexistence between two different structures. On one hand a socialist market economy with strong state intervention in Mainland China, and on the other a free market and liberal economic system. In both cases, the economic design has been expanded to social, political and legal performance. Professor Ka-Yee Yuen has explained that the system implies that HK, even though it belongs to the 'one China', does not need to follow China's socialist system (Ka-Yee, 2014, 135).

This relation allowed HK to maintain their existing socio-political systems while upholding national sovereignty, unity, and territorial integrity. This gave HK a high degree of autonomy and independent state powers (Leng, 2009: 53). That is to have a clear separation of the powers of the state.

One Country Two System policy was officially settled in 1997 when the enactment of the Hong Kong Basic Law (HKBL) came into force. As Justice Bokhary said, HK was a British colony from the early Victorian times until the stroke of midnight on June 30, 1997. Then came the handover whereupon HK became a Special Administrative Region (SAR) by the virtue of a system under which HK has a fundamentally different system from Mainland China (Bokhary, 2013: 287).

In that sense, by article 5 of the HKBL, the socialist system and policies shall not be practiced in the HKSAR and the previous capitalist system and way of life shall remain unchanged for 50 years.² Also by the preamble of the HKBL, the People's Republic of China adopts the principle of One Country, Two Systems to maintain the prosperity and stability of HK by taking account of its history and realities. This means the recognition of both coexisting systems of socialist and capitalist in China.

The history and realities of Mainland China and HK were and still are different. The vacillating economic strategies and policies that prevailed in mainland China between 1952 and 1978 often reflected ideological struggles over the proper objectives and means to implement socialism (Rabushka, 1989: 641).

However, since 1978 social, economic and legal development of Mainland China was promoted (Kuchiki, 2007: 33). Prior to 1978, China was a centrally planned economy with the government controlling every aspect of it. From that date, the government sought to approach a socialist market economy based in a conflux of conservative a radical principles such as decentralization of the economy to the creation of mechanisms like taxation, banking and foreign currency with the presence of private enterprises and the flourishing of foreign investments (Choi, 2010: 165).

HK has shown a different development; it was able to maintain an extraordinary degree of stability in its political and economic institutions. HK has an economy today that shows a highly developed banking, insurance, and shipping systems complement its industrial sector (Rabushka, 1989: 642).

HK's success has to be attributed in part to the United Kingdom. The UK allowed HK to negotiate internationally as an independent voice of its industry. Under the 1984 Sino-British Joint Declaration, HK is guaranteed the same degree of autonomy after the reversion to China in 1997 (the handover) as under the British rule. HK has its own law (the Basic Law), an independent administration, and an independent legal system (Lam, 2000: 398).

Finally, HK's economic success can be explained by the direct investment in China, by HK as an *entrepôt* of the goods between China and the rest of the world, and free immigration from China. These are considered to be three of the more important economic relationships between the two economies (Yun-Wing, 1998: 1).

Herbert Yee summarizes the relationship status when explains that in any event, Mainland China did not have any experience in ruling a capitalist HK (Yee, 2014: 3). HK people did not

² China. 1991. The basic law of the Hong Kong Special Administrative Region of the People's Republic of China. Hong Kong: Joint Pub. (H.K.) Co.

trust in Mainland China and had fled the territory after the start of Sino-British negotiations on HK's handover in the early 1980s.

In consequence, even when Mainland China began its opening policies decades ago, it still maintains a socialist model of economic, legal and political development. In opposition, HK has promoted a free market economy, legal and political system. Therefore, the One Country, Two Systems concept is unprecedented because it allows two socio-political systems of entirely different nature to co-exist within a unified sovereign state over the long term (Leng, 2009: 53).

The importance of these differences will help the reader to understand the coexistence of two versions of the rule of law in one country and furthermore the coexistence of two different competition regulations.

2.2 Rule of law in Western jurisdictions.

The Rule of Law in western countries is deeply entrenched in the legal system and is one of the fundamental assumptions about how relationships are to be conducted (Sheehy, 2006: 226). In that sense, the rule of law is part of the Western social and legal traditions. The rule of law is central to the function of western liberal states (Sheehy, 2006: 245). In essence, the Western notion is that while power and influence certainly operate in all relationships, all of these relationships, in turn, are governed by or based upon the law. In consequence, the law has to be independent of the government power and influence of the members of society.

Any universal definition of the rule of law will have to incorporate all of the following four principles. The first is that power may not be exercised arbitrarily. The second is the supremacy and Independence of the law. The third principle is that the law must apply to all persons equally. Finally, respect for universal human rights as laid down in the instruments and conventions accepted by the international community as a whole (Gosalbo-Bono, 2010: 231).

Professor Lon Fuller has broadened the extent of the concept of the rule of law to eight elements (Fuller, 1969: 9). According to his explanations, any idea of the rule of law should provide that laws must be general, widely promulgated, prospective, clear, non-contradictory, not ask the impossible, nor should laws change frequently and finally there should be congruent (Murphy, 2005: 241).

Professor Randall Peerenboom has explained that theories about the rule of law can be divided in two. A thin version of the rule of law stresses the instrumental aspects of the rule of law. A system under this version of the rule of law features elements that any system of law possesses regardless if it is a democratic or an authoritarian government, capitalist, socialist. On the other

hand, a thick or substantive starts with the basic elements of the thin version but incorporates concepts of political morality like economic arrangements, forms of governments, human rights (Peerenboom, 2002: 3). Following the same idea, he expresses that liberal democratic version of the rule of law also incorporates free market policies, a multiparty system of political government and a liberal interpretation of human rights that prioritizes civil and economic rights over social and cultural.

Benedict Sheehy quoting Michel Troper expresses that in the language of modern politics the expression rule of law together with democracy and probably with the market economy has become the symbol of what is good and just and in the west (Rabushka, 1989: 49). In other words, Western accepts that the rule of law is a control on government actions (Sheehy, 2006: 249).

The western version of the rule of law implies the rejection of the rule by man and the notion that laws should be prospective, accessible, and clear; the acceptance of the principle of the separation of powers of the state, which includes the independence of the judicial power and the idea that the law applies to all, including the sovereign; that the law should be of general application and capable of being obeyed and the universal respect for human rights.

Furthermore, the theory of the separations of the powers of the state is seen as a fundamental pillar of western democracies. It encompasses the idea that governmental power should be divided between different branches and that each branch should engage in some form of scrutiny over the others (Morris, 2004: 7). That delimitates the spheres of attributions of the executive, the legislative and the judicial power.

Dr. Hunter-Schulz explains that legislative power is seen as the supreme dispensing justice through the crafting of laws within the delineated powers (Hunter-Schulz, 2005: 14). The executive power is ministerial and therefore by its very nature subordinate to the legislative, and the judiciary has its role in interpreting the role the other two. Finally, the rule of law implies that government can act only through law and law checks the power of government as it is conceived in countries such as Britain and the United States (Zimmermann, 2007: 11).

The analysis of the extent of the rule of law in competition legislation both in Mainland China and in HK will be addressed in the second part of this paper. First is necessary to review the notion of the rule of law as a basic framework for any legislation.

As a way to summarize the previous paragraphs, the first issue to highlight is that there is not only one idea of the rule of law in China. By the One Country, Two System design the extent of the rule of law in Mainland China will differ from the concept in HK

2.3 Rule of Law in China. Mainland China and Hong Kong

China has experimented with the notion of the rule of law at different times in its history. Currently, the Chinese Communist Party is the basis of power and influence as well as the basis of all law. In essence, therefore, the law has been a tool of the party (and the State) (Gosalbo-Bono, 2010: 282). There is no clear differentiation of the power of the state.

As it was explained above, Mainland China and HK history and traditions are different. Under the Basic Law, HK kept the western (UK) traditions of a free market economy; the British system of common law and for 50 years will be isolated from Mainland socialist market economy. In consequence, the development has been according to western parameters.

The reality in Mainland China is other. Even when has undertaken unprecedented economic, political, and legal reforms since 1970, only since 1999 the Chinese constitution provides that China "implements [the principle] to rule the country according to law" and establishes a socialist state regulated by law. Owing to a political system controlled by the Chinese Communist Party as the leading party and the absence of separation of powers, the rule of law is an instrument for political ends rather than a principle limiting political power (Gosalbo-Bono, 2010: 282).

2.4 Importance of the topic

First, in 2014, an important event took place in Mainland China. In October 2014, the 4th Plenum of the 18th Central Committee of the Chinese Communist Party published the Decision on promoting the country according to Law. In words of Professor Randall Peerenboom, even when this has been discussed since the 1980s when major economic and legal reforms were displayed in China, this is the first time that the Central Committee addressed the topic of the rule of law. This demonstrates the increasing importance of the rule of law in China's political and legal framework.

Second HK's Competition Ordinance came into effect in December 2015; therefore, there was a natural anxiety among investors regarding the application of the Ordinance by the Competition Commission and the Competition Tribunal.

2.5 Integration between Mainland China and Hong Kong

There are two versions of the rule of law that coexist. In Mainland China, there is a thin one based on the influence of the Chinese Communist Party as the main source of law. HK has a thick version of the rule of law based on the UK influence.

Nevertheless, the application of the principle of One Country, Two Systems China has a hybrid version of the rule of law or a socialist framework of laws with Chinese characteristics. This does not mean that every socialist country has a thin version of the rule of law it only reflects the special Chinese characteristic. This coexistence should be considered as an integration of the two systems and is reflected in both jurisdictions.

3. Competition policy in Mainland China and Hong Kong

3.1 Why have a competition policy?

The Anti-Monopoly Law (AML) of the People's Republic of China was promulgated by the Standing Committee of the National People's Congress on August 30, 2007, and went into effect on August 1, 2008 (Davis, 2010: 305). The enactment came after a long period of discussion and consultation and the resultant law is strongly influenced by other laws, particularly those of the European Union and the United States (Healy, 2010: 22).

However the implementation of the AML was not a voluntary decision of China, it was a requirement from the WTO in order to become a member. Even when this issue can be discussed, Eva Choi wrote that to become a member of the WTO a country must have established antitrust laws and a functioning market economy (Choi, 2010: 166). In that sense, Mainland China addressed the WTO requirements by putting in place a series of laws in compliance with the WTO rules to preserve fair competition and protect domestic industries including the AML. In other words, Mainland China accepted external influence in order to design and implement the AML.

The Competition Ordinance exists independently of the Anti-monopoly Law of the People's Republic of China (PRC), which only applies to practices restricting competition in the PRC, but not HK (Kwok, 2014: 542). This is a reflection of the One Country, Two Systems previously explained.

The case of HK was different because even when there were some competition regulations in the telecommunications and broadcasting sectors, the decision to introduce an integral and

comprehensive competition policy came from the government. According to the Report of the Competition Policy Review Committee, one of the main recommendations was that new legislation should be introduced to guard against anti-competitive conduct that would have an adverse effect on economic efficiency and free trade in HK.

In summary, drivers for the enactment of the competition regulation in Mainland China and HK came from different spheres. In the first case, it came from the conditions of the WTO in order to accept Mainland China as a member of the Organization. Regarding HK, the decision came from the own government who realized that competition legislation was necessary to improve efficiency and free trade in the domestic economy.

3.2 Anti-Monopoly Law and Competition Ordinance. Explanation

As it was explained, according to the One Country, Two Systems structure of China, there are two legal systems and, therefore, two versions of the rule of law that coexists in presumably balance. Furthermore and as a consequence of this structure, there are also two competition regulations, the AML, and the Competition Ordinance. Each one of those legislations has a delimited scope of regulation by which there is no apparent conflict of laws.

In that sense in order to determine which competition regulation is more conducive to attract foreign investment, it is necessary to analyze in detail if the AML and the Competition Ordinance framework were enacted under a similar concept of the rule of law like the one in the home country of the western company.

3.3 Analysis

According to the previous explanations of Professors Fuller, Peerenboom, and Gosalbo-Bono the analysis of which competition framework is more conducive to invest in Mainland China or HK will address the announced six factors. This approach will allow determining which jurisdiction represents the framework that is more similar to western legislations. At the same time, this will provide the foreign investor with the elements to determine which one is more conducive to do business with.

3.3.1 Legislation should be relatively stable, prospective, open and clear. Competition authorities and enforcement

3.3.1.1. Mainland China

Under the design of the AML, there is not only one competition authority. The primary enforcement responsibilities of the AML are divided into three administrative agencies: the Ministry of Commerce (MOFCOM), the National Development and Reform Commission (NDRC), and the State Administration for Industry and Commerce (SAIC) (Zhang, 2015: 680). The MOFCOM has jurisdiction over mergers, the NDRC over price-related offenses, and the SAIC over non-price related offenses. The NDRC's Anti-Monopoly Board, the SAIC's Anti-Unfair Competition and Anti-Monopoly Law Enforcement Bureau (CLEB) is in charge of the investigation work respectively (Xingxiang, 2015: 3).

In addition to these authorities, Article 9 of the AML established the Antimonopoly Commission.³ As Hou has explained both the three competition authorities and the Antimonopoly Commission have competence in adopting enforcing guidelines. In addition to the four authorities, two other bodies also enjoy such a competence, which are the State Council and the Supreme Court. Thus, the Antitrust Committee that is set up by the law lacks substantive enforcement authority (Hou, 2008: 34).

In that sense, by the reason of this multiplicity of regulators and provisions, competition regulation produces little certainties by itself. Therefore, the enforcement relies heavily on the secondary rules like the mentioned guidelines. Up to 2013, the enforcement authorities have published 16 guidelines regarding the enforcement of the AML. MOFCOM has published 6, the SAIC 5, NDRC 2, the Supreme People's Court, the State Council and the Antimonopoly Commission one each other.

Professor Zhang explains that Mainland China has a bureaucratic structure and policy process that leads to a management by exception (Zhang, 2015: 680). The central government consists of the State Council and various ministries and organizations. The local government consists of four levels, including 31 provincial-level units, 332 cities, 2,853 counties and 40,466 townships. The management of such a huge bureaucracy is not an easy task (Zhang, 2015: 683).

One direct consequence of management by exception in competition regulations is that power becomes fragmented when it comes to policymaking and implementation. The existence of massive, parallel, and interdependent bureaucracies and territorial administrations with overlapping jurisdictions further complicates this process (Zhang, 2015: 685).

³ Anti-Monopoly Law (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 30, 2007, effective Aug. 1, 2008).

In other words, the existence of five authorities in Mainland China that have jurisdiction to enforce the AML reflects that the legislation isn't open, clear, and prospective. On the contrary, the enforcement has become inefficient, bureaucratic and fragmented; therefore the AML departs from the western conception of the rule law.

3.3.1.2 Hong Kong

The HK Competition Ordinance was enacted in June 2012; however, it came into force on December 14, 2015. The Ordinance establishes two new competition authorities namely a Competition Commission, with investigation powers and a Competition Tribunal with adjudicative powers.

On one hand, the Commission is responsible for handling complaints, conducting investigations, and the preliminary stages of enforcement. On the other, the Tribunal makes decisions concerning legality, fines, and orders (Kwok, 2014, 547). Decisions of the Tribunal can be appealed to the Court of Appeal and, further, to the Court of Final Appeal (Kwok, 2014, 548). However, the power of the Tribunal to review the Commission's decisions will be further developed

The Commission is tasked with the functions to investigate into competition-related complaints and to bring public enforcement action before the Tribunal in respect of anti-competitive conduct either on receipt of complaints, on its own initiative, or on referral from the Government or a court (Kwok, 2014, 547). The Commission has no powers to impose sanctions so, in case of an alleged infringement that cannot be resolved by way of a warning notice or a commitments procedure, the Commission may choose to seek a decision from the Competition Tribunal.

3.3.1.3 Conclusion on factor I

In HK there is one administrative authority with jurisdiction to enforce the Competition Ordinance, the Commission, and one authority with judicial jurisdiction, the Tribunal. In consequence, there is a clear division between the investigation and adjudication jurisdiction.

Like in Mainland China and many jurisdictions, the Competition Commission has the power to enact guidelines. As of 2017, the Commission had enacted six guidelines. The first three relate to the Ordinance's substantive rules: guideline on the First Conduct Rule, a guideline on the Second Conduct Rule, a guideline on the Merger Rule. And the remaining three address the procedural rules: guideline on Complaints, a guideline on Investigations and the guideline on Applications for Decisions, Exclusions, Exemptions and Block Exemption Orders. Nevertheless, because the Commission will have exclusionary jurisdiction to enact guidelines HK would never have the problem of multiplicity of sources of guidelines or multiplicity of interpretation.

Finally, HK provides a framework with a clear division of investigation and adjudication. In terms of enforcement and the enactment of guidelines, there is only one agency with that attribution; in consequence, their application should be open, clear, prospective and general.

3.3.2 Legislation should recognize the judicial independence

The second factor is whether legislation recognizes judicial independence. To do so it is necessary to look at the AML or the Competition Ordinance framework. In doing so, it is clear that HK's framework recognizes the independence of the judiciary power. This section explores that concept further.

The concept of independence can vary across jurisdiction and across different areas of the law. Nevertheless, the basic premise of judicial independence involves the ability and willingness of courts to decide cases in light of the law without undue regard to the views of other government actors (Ginsburg, 2010: 3). Basically, this means that courts are able to exercise their jurisdiction without the interference of the powers of the state. Having made that distinction, now we will focus on the detailed analysis of both jurisdictions.

3.3.2.1 Mainland China and the Chinese Communist Party

In order to make a correct and detailed review of the judicial independence, it is fundamental to analyze the relationship between the courts and the Chinese Communist Party as the extension of the executive power of the state.

Professor Hikota Koguchi has examined adjudication in Mainland China, especially in the post-1978 period. Both the 1954 and 1982 Constitutions provided for judicial independence. However, he said, it is incorrect to interpret this independence as meaning the elimination of the Party's intervention in the judicial decision-making process. Rather courts are required to seek instructions from the Party in handling important or difficult cases. Formally the court is the sole judicial decision-maker, however substantially decisive in judicial decision-making the role of the Party may be (Koguchi, 1987: 206). In consequence, even when there is a theoretical independence of the judicial power, in practical terms it is much questioned.

In terms of what Jiang has explained, what constitutes China as a nation-state is the leadership of the Chinese Communist Party (Jiang, 2010: 12). He further expresses that there are both written and unwritten Constitutions and what effectively rules China is the Chinese Communist Party Constitution as an unwritten one (Jiang, 2010: 24).

In consequence, the intervention of the executive is reflected in two interconnected aspects, first by the enactment of the Supreme People's Court "guiding cases", and second by the appointment of the members of the Supreme People's Court.

First, in wide terms, the guiding cases serve as decision-making models that must be taken into account by lower courts when deciding similar cases (Ahl, 2014: 121). The guiding cases system provides the Supreme People's Court with an instrument to steer adjudication in lower courts discreetly, thereby allowing it to exercise significant influence over legal developments (Ahl, 2014: 125). The purpose is to provide a standard of a unified legal application and offer guidance to lower courts in the course of adjudication. Thus, Ahl explains, the objective of the guidelines is to put the Supreme People's Court in a position where it can receive full information of the cases and its effects on society (Ahl, 2014: 136).

In other words, by the guidelines, the judicial power is able to control social unrest by establishing legal parameters that the lower courts should comply.

Second, in the relationship of Chinese state power, the organs of Communist Party of China enjoy a kind of special status. People's Courts set up local entities of the Chinese Communist Party and since the Courts are led by the Committees of the Party of the corresponding districts People's Courts are led by the committee of CPC. The 1999 Supreme People's Court's Five-year Blueprint of Judicial Reform reaffirms this idea. In accordance with the requirements of the Blueprint, the trend of judicial reform can be embodied by achieving judicial independence through altering the elements that would distort it, for example, the finance and the system of party leadership of people's courts.

In other words, the intention and will of the Chinese Communist Party are reflected in the Guiding Cases as a tool to influence the lower court's decisions to achieve, prevent and deal with social unrest. The judicial power cannot be considered as isolated of the pressure and influence of the executive power as it was explained. In sum, the independence of the judicial power in Mainland China should be questioned and, therefore, the intervention of the executive (Chinese Communist Party) in competition dispute resolution should be balanced when deciding whether invest in Mainland China.

3.3.2.2 Hong Kong

The 1984 Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong was enacted under the principle of One Country, Two Systems.⁴ According to the Joint Declaration the law previously in force in HK, that is, the common law, rules of equity,

⁴ China. 1984. *Sino-British Joint Declaration on the Question of Hong Kong*. [Hong Kong].

ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene this Law, and subject to any amendment by the legislature of the HKSAR (Mason, 2001: 1).

The Joint Declaration provided for the enactment of the HKBL.⁵ The Basic Law sets up a legislature (the Legislative Council), a very powerful executive (which is not subject to the control of the Legislative Council) and the judiciary power. In other words, the Basic Law establishes the separation of the powers of the State in the Special Administrative Region.

According to article 85 of the Basic Law, the courts shall exercise judicial power independently, free from any interference. Furthermore, Articles 2 and 19 of the Basic Law stipulate that HK “shall be vested with independent judicial power, including that of final adjudication. As Sir Anthony Mason has explained, the HKBL also contains provisions that protect judicial Independence and maintain the basic procedures regulating due process (including trial by jury) previously applied in HK.

3.3.2.2.1 Conclusion of factor II

Courts have the power to exercise their jurisdiction without the interference of the other powers of the state. This issue constitutes an important difference with the framework in Mainland China. As it was explained, in HK the Competition Tribunal shall adjudicate cases related with the Competition Ordinance and according to the analysis of the independence of HK’s courts, the independence of the Tribunal adjudicating cases shall be granted.

The importance of the previous analysis is fundamental when a foreign company decides to invest in Mainland China or in HK. Courts exercise the review of administrative decisions of the competition enforcement authorities. Therefore both in HK and Mainland China the independence (or lack of) of the judicial power from the other powers of the state will demonstrate the strength of the regulatory framework.

The competition framework of HK is similar to what western jurisdictions have developed a strong recognition of the separation of the powers of the state. Thus, the level of independence of the Competition Tribunal is yet to be seen. However, if the history of the performance of HK is considered, the expected result should reaffirm the independence of the judicial power.

On the contrary, if the history of the performance of the courts in Mainland China is considered, the analysis of foreign companies should be that judicial independence is in theory recognized but in practice not granted.

⁵ China. 1991. The basic law of the Hong Kong Special Administrative Region of the People's Republic of China. Hong Kong: Joint Pub. (H.K.) Co.

3.3.3 Review in conformity with the law

The previous analysis has no ground if there is no study of the court's ability to review administrative decisions of the enforcement agencies. As it was analyzed in Mainland China there are various enforcement agencies. On the contrary, the proposed structure of the Competition Ordinance in HK provides a Competition Commission with the power to investigate infractions to the Ordinance and a Competition Tribunal with adjudicative jurisdiction.

In consequence, now the issue to analyze is if the enforcement agencies and/or the courts have the power to review administrative decisions and if so, in what conditions. In this sense, a western company would probably decide to invest in HK because of the certainty of the review procedures. The Competition Tribunal can review decisions of the Competition Commission. Furthermore, the decision of the Tribunal can be challenged through an appeal procedure and finally, the decision will be resolved by the judicial power.

3.3.3.1 Mainland China

Professor Mark Williams has explained that the enforcement regime adopted by the AML is an administrative one with the possibility of a judicial appeal to the Higher People's Court (Williams 2013, 115). Furthermore, Zhang explains that unlike the United States, Chinese antitrust enforcement relies primarily on administrative enforcement rather than private litigation (Zhang, 2015: 677).

In that sense article, 53 of the AML prescribes that parties can object the decision of the authority by first applying for an administrative reconsideration and in the second term if it objects to the reconsideration decision, it may lodge an administrative lawsuit. This means that the competition framework in Mainland China establishes an administrative review and a judicial revision. The reference of article 53 of the AML to the "administrative lawsuit" is to the Administrative Procedure Law of the People's Republic of China.

Mainland China recognizes a detailed procedure to review administrative decisions. The procedure is regulated in China's Administrative Litigation Law of 1989, which allows citizens to bring lawsuits against government agencies. However, the review procedure proved to be a false hope for the establishment of the rule of law in China (Zhang, 2015: 677).

Furthermore Professor Haibo He concluded that the institution of administrative litigation fails to achieve constitutional governance in China and only impacts social change on a severely limited level. Also, his conclusion concurs with the prevailing scholarly opinions on the practice of administrative litigation and emphasizes that the lack of judicial independence is the main cause of the difficulties in administrative litigation (Haibo, 2001: 259).

Even when Mainland China recognizes an administrative procedure to review the decisions of the enforcement agencies, the reality differs from the theory. In that sense, the utility of appealing administrative decisions is further undermined by the fact that the likelihood of winning such a case is minuscule, given the predicament of Chinese administrative litigation (Zhang, 2015, 678).

But, if there is no effective administrative review one should conclude that there is a strong judicial appealing procedure to protect the rights of the aggravated party. However, the practice has shown another path. Regarding judicial revision of the administrative decisions, up to 2014, no defendant has appealed an administrative decision made by the enforcement agencies (Zhang, 2015, 677). In sum, Zhang has concluded that suing the government is risky. Businesses could face a serious backlash when they deal with the enforcement agencies in the future. Finally, as it was previously explained, the utility of appealing administrative decisions is further undermined by the fact that the likelihood of winning such a case is minuscule, given the predicament of Chinese administrative litigation.

3.3.3.2 Hong Kong

Again the principle of One Country, Two Systems is reflected in China's competition policy. If Mainland China adopted an administrative enforcement with the possibility of judicial review, enforcement of competition law in HK is based on a judicial enforcement model, with the work divided between the Commission and the Tribunal. (Kwok, 2014: 547) The judicial enforcement model in HK resembles most closely the system in Australia and to a lesser extent to the US Federal Trade Commission (Kwok, 2014: 564).

In the exercise of its jurisdiction, the Tribunal has the same jurisdiction to grant remedies and reliefs, equitable or legal, as the Court of First Instance. In addition the Tribunal may decide its own procedures and may, in so far as it thinks fit, follow the practice and procedure of the Court of First Instance in the exercise of its civil jurisdiction, and for this purpose, has the same jurisdiction, powers and duties of the Court in respect of such practice and procedure, including the jurisdiction, powers and duties of the Court in respect of costs. Finally under article 154 of the Competition Ordinance Decisions of the Tribunal may be appealed to the Court of Appeal.

Even when the Ordinance came into force in December 2015 the design of the Competition Ordinance establishes a clear procedure for administrative and judicial review by the Competition Tribunal as a Court of First Instance and by the Court of Appeal. This marks another important difference between Mainland China's framework of competition review of administrative decisions.

3.3.3.4 Conclusion of factor III

While Mainland China has promoted and developed policy changes in all aspects of the legal system including competition policies, still is not able to provide a clear competition framework for the protection of the rights of parties. There is an administrative review and a judicial revision recognized in the AML and the Administrative Procedure Law, thus in practice, there is no actual review. On the opposite stage, HK's Competition Ordinance has a defined structure of administrative and judicial review.

Furthermore, the design of the competition review is diverse, while Mainland China adopted an administrative enforcement with the possibility of judicial review HK established a judicial enforcement model, with the work divided between the Commission and the Tribunal.

3.3.4 Courts should be easily accessible. Private litigation

3.3.4.1 Mainland China

Since the AML came into force in 2008 until the end of 2012, the courts accepted 116 civil cases at first instance and completed the procedure for 102 of them. In 2012 alone, 55 antitrust cases were filed. These numbers show that (since 2012) private litigation has become an important way to enforce the AML (Wang, 2013: 263).

Zhang express that plaintiffs rarely succeed in private enforcement (Zhang, 2015: 680). In consequence, except for a few cases, most plaintiffs in private antitrust cases have been unsuccessful so far. The causes of the low number of cases of private litigation are various, for example, difficulties in collecting evidence, and the burden of proof placed on the plaintiff is too high or deficient preparation of case by the plaintiffs (Wang, 2013: 264).

In that sense, Hou raises a question whether private enforcement has turned into an effective compliment as the public expected. A straightforward answer is negative. Likewise, the most noticeable fact is that up to 2012 within all the 57 judgments delivered by the courts, not even one plaintiff has ever won their case. Such a zero percent win rate is far from evidence that private enforcement was the savior of the enforcement of the AML (Hou, 2008: 18).

But in May 2012, the Supreme People's Court issued the Provisions on Several Issues Concerning the Application of Law in the Trial of Civil Dispute Cases Arising from Monopolistic Conduct (the Judicial Interpretation), addressing some of these issues by lowering the burden of proof for plaintiffs under certain circumstances (Emch, Liang 2013, 11). With the Judicial Interpretation, the effectiveness of private litigation was reborn.

The Judicial Interpretation establishes the burden of proof for the courts and the parties, including certain stipulations that basically work as presumptions. As such, under Article 9 a court may determine that a public utility or another entity with a statutory monopoly has a dominant market position, absent evidence to the contrary. Also, the information released by a defendant may be used as evidence that the defendant has a dominant market position unless proven otherwise. Finally, the Judicial Interpretation has balanced the plaintiffs' position towards the enforcement authorities, placing them in the same field level.

Statistics provided by Freshfields, Bruckhaus, and Deringer (2015) suggest that the Chinese courts accepted a total of approximately 60 cases between 2008 and 2011 while in 2013 the number of cases spiked to more than 70 in that year alone and to more than 80 in 2014. This trend reflects a change in the attitude towards private enforcement because of the Judicial Interpretation.

Finally, it is necessary to be aware of the performance of Mainland China's courts to make a responsible statement if private litigation has effectively become an efficient mechanism. Thus, the current path leads to believe that it will be.

3.3.4.2 Hong Kong

The Competition Ordinance allows injured parties to commence private actions against competition law infringers, but only on a follow-on basis (Kwok, 2014: 548). This means that only when a breach of competition law has already been established in an infringement decision taken by the Competition Commission, a plaintiff may bring a follow-on action. This means that the claimant relies on the decision of the Commission to present its action to the Competition Tribunal.

According to section 110 of the Competition Ordinance, a private action may only be made in proceedings brought in the Tribunal, whether or not the cause of action is solely the defendant's contravention, or involvement in a contravention, of a conduct rule. The Ordinance establishes five cases when an action is taken to have been determined to be a contravention of a conduct rule the most obvious if the Tribunal has made a decision that the act is a contravention of a conduct rule. It is important to highlight that the Ordinance design requires that the contravention of the conduct rule be determined in order to initiate the private action.

3.3.4.3 Conclusion of factor IV

The difference between both jurisdictions is remarkable. On one hand, Mainland China through the Supreme People's Court Judicial Interpretation has reduced the barriers to private enforcement. The source of the amendment came from the judicial power and not from the

legislative. On the other hand, the Competition Ordinance establishes a clear, detailed procedure to present private actions as a way to enforce the Ordinance. Likewise, the Ordinance requires the previous determination of the contravention of the conduct rule in order to sue.

This reflects a fundamental driver to bear in mind when a western company decides to invest in Mainland China or in HK. The company should carefully analyze this factor when making an investment decision. The proposal is to choose HK jurisdiction because the procedure comes from the legislative power through the law-making process and, therefore, gives the foreign investor legal certainty about the competition rules. On the contrary, the Judicial Interpretation was enacted by the Supreme People's Court under the directions of the Chinese Communist Party. In consequence, the content and extent of the interpretations can be easily modified. However, it is important to say that judicial interpretation in China might work at least until it changes.

3.3.5 Industrial policies or non-competitive factors

An additional factor to address is whether there are industrial policies and non-competitive factors under the design of the regulations.

For the purpose of this research, non-competitive factors will be regarded as an industrial or non-economic policy factor in the design of a competition policy. Industrial policy can be described as the strategic plan for improving growth and development in the manufacturing sector by the design and implementation of a series of policies in order to increase productivity, competitiveness, and capacity of domestic firms.

3.3.5.1 Mainland China

One practical objection to promoting competition policies is that it may be considered to be inimical to the general thrust of industrial policy (Wish, Bailey 2012, 14). That is to say, a practical prevention of enacting antitrust regulations is that they should not be confused with industrial policies.

The case of Mainland China is no different from other jurisdictions. The objects of the AML are similar in some respects to the objects of other competition laws: preventing monopolistic conduct, promoting market competition and economic efficiency. However, the AML has also objects of protecting the public interest and promoting the healthy development of the socialist market economy (Healy 2010, 23). In addition to the concept of "public interests", the reference to the protection of "the consumer's interest" in Article 1, as one of the objectives of

the Law, sends a confusing message (Hou, 2008, 45). This reflects the enactment of industrial policies.

Mainland China's industrial policies are closely connected to the fundamental issues arising from China's historic transformation from a centrally planned economy to a market economy (Owen, Sun and Zheng 2008, 2423). In particular is reflected in the role of State Owned Enterprises (SOE), in the perceived excessive competition, in mergers and acquisitions of Chinese companies by foreign investors, in administrative monopolies, and in the enforcement of the AML. These examples were provided for the sake of the argument and to demonstrate how the AML incorporates industrial policies, in consequence, they would not be further developed because it will exceed the purpose of this essay.

3.3.5.2 Hong Kong

HK's industrial policies are closely connected to both public accountability and lawful defense. Many aspects of HK's Competition Ordinance represent deviations from global trends of competition law and appear to be concessions made by the HK Government in light of opposition from business sectors and Legislative Council members representing business interests (Kwok, 2014: 548).

Like in Mainland China and many other jurisdictions, HK also employed industrial policies in the design of the Ordinance. Some of them reflected in the lack of cross-sector merger control, in the requirement of substantial degree of market power instead a provision of dominant position, in the object or effect test under the second conduct rule, in the blanket exclusion of statutory bodies, in the non-application of the competition rules by the chief executive in council, in the turnover de *minimis* thresholds and the execution of warning notices (Kwok, 2014: 549).

3.3.5.3 Conclusion of factor V

Regarding the enactment of competition policies, both Mainland China and HK have considered not only economic or competition designs but also industrial or non-competition elements. This reflects a breaking but a convergent point in the analysis because one can find similarities in both jurisdictions. Even when the specific industrial policies are not the same, the use of them can be understood as a common standard.

3.3.6 Transparency

A Certain degree of transparency is key for antitrust law enforcement. Only when law enforcement is sufficiently transparent, can the public supervise the government's enforcement

activities and the parties can exercise their rights in a timely and meaningful manner. In other words, transparency encourages accountability and provides a lawful defense; therefore, it should be promoted. Publication of administrative and judicial decisions will play a fundamental role for accountability.

3.3.6.1 Mainland China

Once again, the situation in Mainland China differs from Western-tradition countries. In earlier drafts of the AML, the Anti-Monopoly Enforcement Agency was required to publish their decisions thus, in the final version the provision changed. This change seems to reflect a reluctance of the authorities to commit to full disclosure of the antitrust decisions. This departure from transparency and consistency may reflect the likelihood that the Anti-Monopoly Enforcement Agency may take into account non-competition factors, such as the public interest and the health of the national economy, in deciding competition cases (Owen, Sun and Zheng 2008, 263).

Furthermore, researchers on China's AML enforcement activity have always found the data to be a big challenge to the research (Xingxiang 2015, 2). As Zhang has written that according to Premier Li Keqiang, China investigated and punished 335 enterprises by Sept. 11th, 2014, however, there is no updated figure that has ever been announced by the Chinese government (Xingxiang 2015, 2).

As one can see, the requirement of transparency is closely connected with the design of industrial policies in competition regulations in Mainland China. The lack of transparency may reflect industrial policies that the government doesn't want to be known by other competitors different from those involved with the decision.

3.3.6.2 Hong Kong

HK kept the common law system established by the UK. Regarding the publication of court's decisions even when there is no specific provision, according to the information available in the website of the Judiciary power of HK, judgments of the Court of Final Appeal and the Court of Appeal of the High Court are available on the mentioned website. Finally, the Judiciary has started in 2008 to upload onto the website Chinese judgments of jurisprudential value along with their English translation handed down since 1995.

The information provided by the Judiciary website reflects the clear intention of HK's court to make their decisions public and available for everyone, whether is a party in an administrative or judicial proceeding or a third party. This will improve and promote more accountability of the court's decisions.

3.3.6.3 Conclusion of part VI

Transparency reflects the attitude of a legal system towards the accountability of their performance. It also reflects the purpose of the whole competition legislation. A legislation like HK with a western rule of law, with a clear division of the powers of the state, with a framework with the established jurisdiction of the enforcement agencies, with clear and prospective provisions of the Competition Ordinance, will tend to be more transparent than Mainland China.

4. Latest events, social unrest, and the Umbrella movement

HK's Competition Ordinance provides a framework of competition legislation that is more conducive to foreign investors than Mainland China. This is essential because HK's regulatory framework of competition regulation has more common characteristics with western legislation, but also because of HK's social, economic, legal and political history as a consequence of the United Kingdom's influence. This doesn't mean that it is a perfect framework in terms of competition policies or the rule of law. On the contrary, like any legal system it has defects, thus once again when it is compared to Mainland China it is able to provide a clear set of competition rules.

Following the previous idea, a number of social events affected social order and the extent of HK's rule of law in late 2015. The main of them were represented by the Umbrella movement. Labour Party politician Lee Cheuk-yan said that his movement has been an awakening process for Hong Kong because people who weren't interested in politics before are now and aren't afraid to get arrested, especially the young people. The key demands of the protesters were for the Chinese government to revise its plan for future elections in Hong Kong and for the city's chief executive, Leung Chun-ying, to step down. In other words, they were asking for more democracy, transparency and local power to elect their representatives without Mainland China's control over it.

The results are well known and documented by various sources. Thus it is important to remark the arrest of the three main leaders of the movement, Joshua Wong, Nathan Law and Alex Chow. Their imprisonment marked a turnaround in 2014 when they helped bring out hundreds of thousands of people to the streets to call for a more direct form of democracy in the former British colony

What it is important to highlight is that this event turned the eyes of international organizations into HK and, for the first time, the political, social and economic framework was publicly contested. The Hong Kong authorities called the protests unlawful and hundreds of protesters were arrested during the 11-week confrontation, including more than a hundred.

The relevance of these events reflects that even when in HK the rule of law has a higher degree of development than in Mainland China, the system still has imperfections that were reflected by social unrest led by the Umbrella movement. Once again this represents the idea that in comparison to Mainland China and besides these events, HK competition framework is able to provide a better environment for foreign investments.

In late October, 2017, Chris Patten, the last British colonial governor of Hong Kong, criticized HK's Justice Secretary Rimsky Yuen for pursuing jail terms for Wong and others after their case appeared settled. He didn't have to ask for a review of the original (community service) sentences, Patten said, adding that doing so risked undermining Hong Kong's reputation as an international hub for the rule of law, according to CNN news sources.

5. Conclusions

As it was explained the main purpose of the research was to provide a detailed analysis of competition framework in Mainland China and HK to determine which of competition jurisdiction is more conducive for western companies when deciding to invest in China. In that sense, HK presents the competition framework that is more similar to western tradition countries, therefore, more conducive to attract western-foreign investment.

This paper presented a comparative analysis of the jurisdictions both in Mainland China and HK as part of the One Country, Two Systems structure designed in early 1980 in China. By this design, there are two different jurisdictions under one country. There are also two versions of the rule of law in general terms and in competition policies in specific terms. While in Mainland China one can find a thin version of the rule of law, HK is characterized for having a thick or western-style version. The consequence of having different concepts of the rule of law in competition policies was the main driver for the analysis developed in this essay.

In this sense, it was argued that HK's Competition Ordinance was enacted in a legal framework that was effectively open clear stable and prospective with a Competition Commission and a Competition Tribunal with specific attributions and jurisdiction.

Furthermore, HK's framework is able to provide a strong recognition of the principle of the separation of the powers of the state. This means the independence of the judicial power.

Following that line of thought, HK established a judicial enforcement model, with the work divided between the Commission and the Tribunal. This issue is of extreme importance because foreign investors would have the right to review the administrative decisions of the Competition Commission to the Tribunal. Likewise, HK's Competition Ordinance establishes a clear and detailed procedure for private actions as a way to enforce the provisions of the Ordinance. Furthermore, HK's Ordinance requires the previous determination of the contravention of the conduct rule in order to sue. Finally, transparency will reflect the attitude of a jurisdiction towards the accountability of their performance. Transparency also shows the design of the whole competition legislation. HK's regulation, as part of a framework enacted under the influence of the UK, with a thick version of the rule of law, with clear division of the powers of the state, with independent courts, with an enforcement agency with clear and determined scope of jurisdiction will tend to be more transparent than Mainland China.

Regarding international standards, Mainland China is ranked 63 of 142 countries with a final score of 3.9/7 in terms of judicial independence. In terms of rule of law, it has a score of -0,34 (between -2.5 and +2.5) equivalent to the 45% percentile. On the other hand, HK is ranked 15/142 with a final score of 6.1/7 in terms of judicial independence. In relation to the rule of law, it is in the 91% percentile with a final score of 1.5 (between -2.5 - +2.5). These numbers reflect the opposed development of both jurisdictions.

Finally and according to the arguments developed in this essay, the final conclusion is that regarding the design of competition policies HK had established a structure that is more similar to competition regulations of western countries. Therefore, HK Competition Ordinance framework is more conducive for western-foreign investors.

Bibliography

AHL, Bjorn. 2014. "Retaining Judicial Professionalism: The New Guiding Cases Mechanism of the Supreme People's Court", *The China Quarterly*.

BOKHARY, Kemal. 2013. "The Rule of Law in Hong Kong Fifteen Years After the Handover", *Columbia Journal of Transnational Law*.

CHOI, Eva. 2010. "Seeking Stones in the Red Rover: The Inevitable Evolution of China's Antimonopoly Law", *Journal of Law, Economics and Policy* 7.

DAVIS, Britton. 2010. "China's Anti-Monopoly Law: Protectionism or a Great Leap Forward?", *Boston College International and Comparative Law Review*.

EMCH, Adrian, and Jonathan Liang. 2013. "The Burden of Proof and its Challenges", *CPI Antitrust Chronicle*.

FRESHFIELDS, Bruckhaus and Deringer. 2015. "China's Anti-monopoly Law. The story so far - and what's next?", *China's Anti-monopoly Law*.

FULLER, Lon. 1969. *Morality of Law*, New Haven: Yale University Press.

GINSBURG, Tom. 2010. "Judicial Independence in East Asia: Implications for China", *Judicial Independence in East Asia: Implications for China*.

GOSALBO-BONO, Ricardo. 2010. "The Significance of the Rule of Law and its Implications for the European Union and the United States", *University of Pittsburgh Law Review*.

HAIBO, He. 2011. "Litigation without a Ruling: The Predicament of Administrative Law in China", *Tsinghua China Law Review*.

HEALY, Deborah. 2010. "Anti-Monopoly Law and Mergers in China: An Early Report Card On Procedural and Substantive Issues", *Tsinghua China Law Review*.

HOU, Liyang. 2008. "An Evaluation of the Enforcement of China's Anti-Monopoly Law in 2008-2013." Accessed July 10, 2018.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2292296&.

HUANG, Jing, Xuefeng, Andrew. 1995. "One Country, Two Systems, Three Law Families, and Four Legal regions: the Emerging Inter-Regional Conflicts of Law in China", *Duke Journal of Comparative and International Law*.

HUNTER-SCHULZ, Tina. 2005. "Rule of law, separation of powers and judicial decision making in Australia: part 1", *The National Eagle*.

HUO, Zhengxin. 2008. "A Tiger without Teeth: The Antitrust Law of The People's Republic of China", *Asian Pacific Law and Policy Journal*.

HUYUE Zhang, Angela. 2014. "Bureaucratic Politics and China's Anti-Monopoly Law", *Cornell International Law Journal*.

INSTITUTE OF LAW, Chinese Academy of Social Science, Beijing. 2001. *China's Judicial System and its Reform*, Institute of Developing Economies- IDE - Asian Law Series.

- JIANG, Shigong. 2010. “Written and Unwritten Constitutions: A New Approach to the Study of Constitutional Government in China”, *Modern China* 36.
- KA-YEE YUEN, Jeanette. 2014. “The Myth of Greater China? Hong Kong as a prototype of Taiwan for Unification”, *Taiwan in Comparative Perspective*.
- KOGUCHI, Hikota. 1987. “Some Observations About ‘Judicial Independence’ in Post-Mao China”, *Boston College Third World Law Journal*.
- KUCHIKI, Akifumi. 2007. “Industrial Policy in Asia”, *Discussion paper 128*. Institute of Developing Economies.
- KWOK, Kevin. 2014. “The New Hong Kong Competition Law: Anomalies and Challenges”, *World Competition: Law and Economics Review*.
- LAM, Newman. 2000. “Government Intervention in the Economy: A Comparative Analysis of Singapore and Hong Kong”, *Public Administration and Development, Department of Politics and Public Administration, University of Hong Kong*.
- LEGISLATIVE COUNCIL PANEL on Economic Services Report of The Competition Policy Review Committee. 2006. *Lc Paper No. Cb(1)1923/05-06(01)*.
- LENG, Tiejun. 2009. “On the Fundamental Characteristics of the One Country, Two Systems Policy”, *Academic Journal of One Country, Two Systems*.
- MASON, Anthony. 2001. “The Hong Kong Court of Final Appeal”, *Melbourne Journal of International Law*.
- MORRIS, Caroline, and Ryan Malone. 2004. “Regulations review in the New Zealand parliament”, *Macquarie Law Journal*.
- MURPHY, Collen. 2005. “Lon Fuller and the Moral Value of the Rule of Law”, *Law and Philosophy*.
- OWEN, Bruce, Su Sun, and Zheng Wentong. 2008. “China’s Competition Policy Reforms: The Anti- Monopoly Law and Beyond”, *Antitrust Law Journal*.
- PEERENBOOM, Randall. 2002. *China’s Long March toward Rule of Law*. Cambridge: Cambridge University Press.
- PEERENBOOM, Randall. 2014. “Fly High the Banner of Socialist Rule of Law with Chinese Characteristics! What Does the 4th Plenum Decision Mean for Legal Reforms in China?”. Accessed July 10, 2018. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2519917.

RABUSHKA, Alvin. 1989. “A Free-market Constitution for Hong Kong: A Blueprint for China”, *Cato Journal*.

SHEEHEY, Benedict. 2006. “Fundamentally Conflicting Views of the Rule of Law in China and the West & (and) Implications for Commercial Disputes”, *Northwestern Journal of International Law & Business*.

WANG, Xiaoye, and Adrian Emch. 2013. “Five years of implementation of China’s Anti-Monopoly Law—achievements and challenge”, *Journal of Antitrust Enforcement*.

WILLIAMS, Mark. 2013. *The Political Economy of Competition Law in Asia*. 1st ed. London, Edward Elgar Publishing.

WISH, Richard, and David Bailey. 2012. *Competition Law*. 7th ed. Oxford University Press.

XINGXIANG, Zhang. 2015. “China’s Anti-Monopoly Law Enforcement: a Quest for Transparency, Consistency, and Fairness”, *Research Centre for Chinese Politics and Business*.

YEE, Herbert. 2014. “The Theory and Practice of One Country-Two Systems in Macao”, *China’s Macao Transformed: Challenge and Development in the 21st Century*. City University of Hong Kong.

YUN-WING, Sung, and Wong Kar-Yiu. 1998. “Growth of Hong Kong Before and After Its Reversion to China: The China Factor”.

ZIMMERNMANN, Augusto. 2007. “The Rule of law as a Culture of Legality: Legal and Extra-Legal Elements for the Realisation of the Rule of Law in Society”, *eLaw*.