

**Court of Appeal's Judgment on Appeal from Case No. 31  
in the Telecommunications (Competition Provisions) Appeal Board**

The Court of Appeal issued a judgment on 7 August 2015 (the "Judgment") holding that the Telecommunications (Competition Provisions) Appeal Board (the "Appeal Board") did not have the jurisdiction under the Telecommunications Ordinance (Cap 106) ("TO") to order the Communications Authority ("CA") to reach a decision as regards a complaint of alleged anti-competitive conduct by a specified deadline. The Judgment is available at: [http://legalref.judiciary.gov.hk/lrs/common/ju/ju\\_frame.jsp?DIS=99790&currpage=T](http://legalref.judiciary.gov.hk/lrs/common/ju/ju_frame.jsp?DIS=99790&currpage=T).

The case before the Court of Appeal involved two appeals by way of case stated (respectively CACV 144/2014 and CACV 147/2014) from the Decision and Ruling of the Appeal Board in Appeal No. 31 dated 16 April 2014 (the "Appeal Board's Decision"). In the Appeal Board's Decision, the Appeal Board made orders, among others, that directed the CA to arrive at a decision by 1 July 2014 in relation to the CA's initial enquiry into Hong Kong Telecommunications (HKT) Limited ("HKT")'s complaint made under section 7K of the TO alleging anti-competitive conduct on the part of Apple Asia Limited and three mobile network operators ("HKT's Complaint"). The Appeal Board's Decision is available at: [http://www.cedb.gov.hk/ctb/eng/telecom/doc/case\\_31f.pdf](http://www.cedb.gov.hk/ctb/eng/telecom/doc/case_31f.pdf).

Whilst the CA completed an initial enquiry into HKT's Complaint and issued a decision on 30 June 2014 closing the case (the CA's decision is available at: [http://www.coms-auth.hk/filemanager/listref/en/upload/38/iPhone\\_Decision\\_20140630\\_e.pdf](http://www.coms-auth.hk/filemanager/listref/en/upload/38/iPhone_Decision_20140630_e.pdf)), the CA lodged an appeal by way of case stated seeking the Court of Appeal to rule, inter alia, on whether the Appeal Board had the jurisdiction under the TO to order the CA to reach a decision by a specified deadline. The Court of Appeal handed down the Judgment on 7 August 2015 ruling in favour of the CA on this issue.

Further, the Court of Appeal confirmed in the Judgment that, in an earlier set of proceedings (CACV 190/2013), the differently constituted Court of Appeal had already determined that section 7K of TO was engaged, which was a threshold issue that determined whether the Appeal Board could entertain Appeal No. 31. As a result, the Appeal Board's order in the Appeal Board's Decision to allow the appeal to the extent that the appeal subject matter truly engaged section 7K of the TO should be read in conjunction with this statement made by the Court of Appeal.

**Office of the Communications Authority**  
10 August 2015