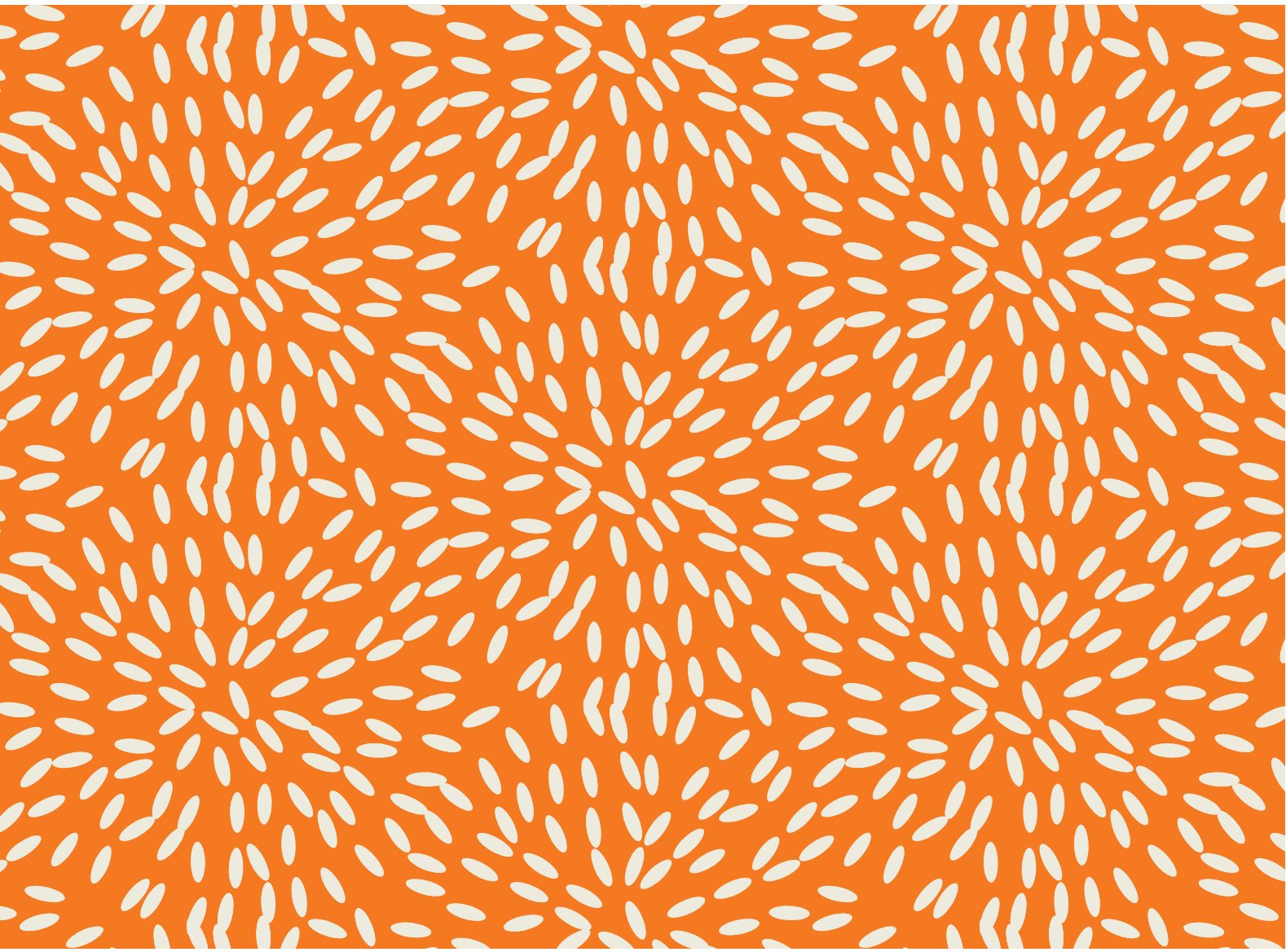
COMPETITION LAW IN ASIA-PACIFIC

A Guide to Selected Jurisdictions



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Competition Programme

About The OECD/Korea Policy Centre

The joint OECD/Korea Policy Centre (OECD/KPC) is an international co-operation organisation established between the OECD and the Korean government. The OECD/KPC's Competition Programme provides capacity building for competition officials and judges from the Asia Pacific region. It also undertakes research on competition law and policy issues of common interest.

The Centre holds seminars and workshops on competition-related topics throughout the year, in addition to an annual workshop for judges. These give participants the opportunity to share their experience in the competition field with their peers, as well as judges, from both the Asia Pacific region and other parts of the world.

Expert practitioners from established agencies in the region, as well as from OECD member countries, are invited to share their experiences and best practices at workshops held regularly for competition officials on topics such as: cartels, abuse of dominance and merger control.

The OECD/KPC therefore plays a pivotal role in ensuring that younger competition jurisdictions learn from the best practices and vast experience of OECD members in the region (Australia, Japan, Korea and New Zealand) and elsewhere.

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Foreword

The last few years have seen the remarkable rise of competition law in the Asia-Pacific region, so that at this moment in time the vast majority of jurisdictions in this geographic area are already equipped with modern competition laws. This means that whilst there are some very experienced agencies in the region, such as Australia, Korea, Japan or New Zealand, that have had a strong record of competition enforcement for many years, there are also many newcomers to the field – in particular in the ASEAN area, but also beyond. This Guide aims to provide an overview of the competition laws in 22 selected jurisdictions in the Asia Pacific region, including not only the legal provisions but also data on the actual enforcement of these rules. Whilst an attempt has been made to include as many jurisdictions from the region as possible, some jurisdictions are not included as they do not yet have competition authorities in place and/or have no legislation translated into English (e.g., Laos PDR).

This Guide identifies and describes some of the main aspects of an anti-trust system for each of the jurisdictions, presents the goals of each competition regime, the main elements of the competition agency responsible for an economy wide enforcement, its investigation powers, the powers to sanction and to accept remedies, and takes stock of the practice via statistics for each enforcement instrument.

The current Guide is the result of this fruitful joint venture between the OECD and the Korea Policy Centre, pooling resources to take stock, through research and close co-operation with all the competition agencies, of the competition laws and practices across the Asia Pacific region.

Acknowledgements

The report has been created thanks to Ruben Maximiano, OECD Senior Competition Expert and the Korea Policy Centre team, in particular Former Director General Jin Wook Chung, Daewon Hong, Soohyun Yoon, Director General Yeong-Soo Bae, Former Director Heeun Jeung, Jueun Shim, Yong-Rae Ryu, Director Dae-Young Kim, Research Officer Daniel Junhyung Oh, Former Research Officer Yena Kang, Sonheong Jang, Hyea Yoon Jung, Ye-Lin Jung, Senior Research Officer Michelle Aejin Ahn, and Former Editor Hyegyu Hailey Park, Hana Lee as well as Semin Park, secondee of the KFTC at the OECD, and Sam Latif, trainee at the Competition Division.

This publication benefitted very significantly from the support, inputs, review and fruitful co-operation of the Competition Authorities and other authorities from all the jurisdictions contained in this Guide.

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Introduction

Over the last decade, a multitude of competition developments have occurred in the Asia Pacific region, and many of the region's jurisdictions now have competition laws in force. Thus, it is timely to review these competition regimes and understand their similarities and differences.

This Guide describes the competition laws of 22 Asian Pacific jurisdictions and includes a summary of legal provisions and how they are enforced. It also provides references to guidelines issued by competition authorities which, together with compiled statistics, offer further insight into how the law is applied in practice.

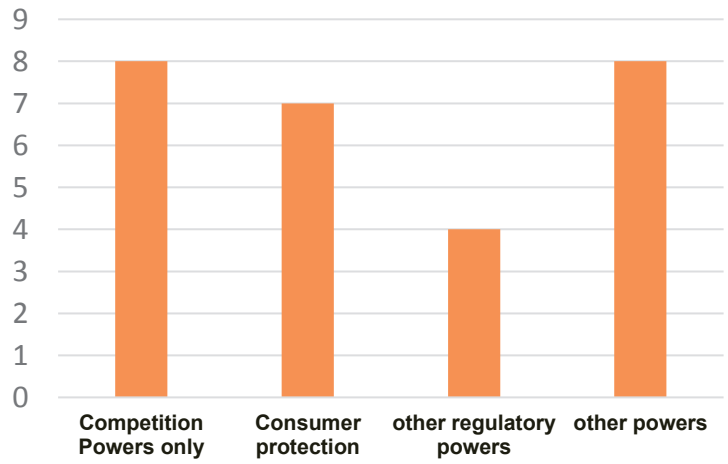
The comprehensive description of these jurisdictions has two main objectives: the first is to help foster mutual understanding of competition regimes across the region, and the second is to detect areas that may require further technical assistance from more experienced agencies. The Guide also aims to help jurisdictions learn and improve their practices by understanding the laws of others as well as how they are applied by their regional peers.

Topics covered in the Guide include: key aspects of an anti-trust system for each jurisdiction; the goals of each competition regime; main elements of a competition agency responsible for economy-wide enforcement, its investigative powers and power to sanction or accept remedies; as well as, where made available, the statistical review of the practice of each enforcement instrument.

Much of the information contained in this Guide was provided by the jurisdictions themselves, and all the content was validated by the corresponding agency (exceptions are duly noted).

Several aspects can be highlighted from this exercise: one is the difference in responsibilities that competition authorities have in the region, with many having competition powers only, others also consumer protection, and/or other regulatory powers, and still many others with other powers unrelated to competition and regulation.

Graph 1. Wide range of Competition authority functions



Another highlight is that the legal architecture for the vast majority of competition law regimes in the region provide for prohibiting anti-competitive agreements and abuse of dominance as well as for unfair competition provisions.[1] For merger control, on the other hand, there are a small number of jurisdictions where it is not regulated in general competition law, such as in Hong Kong, Malaysia or Sri Lanka, or has not yet been widely applied in practice for lack of regulation of the rules on notification, for example.

Regarding more specifically anti-competitive agreements, many jurisdictions do not require the demonstration of effects for at least some types of hard-core cartels (as identified in the OECD Recommendation of the Council concerning Effective Action against Hard Core Cartels (1998)). For example, countries such as Papua New Guinea and Viet Nam, where price fixing and bid rigging, respectively, are prohibited – there is no need to analyse any effects of the cartel agreement in the relevant market. In other countries some hard-core cartels do require the analysis of the effects (the Philippines), or at least require that a certain minimum market share threshold is surpassed (Viet Nam).

Linked to the enforcement against cartels is the role that unannounced inspections can play as this investigative instrument is often an important means of obtaining the evidence needed to sanction a cartel as cartel members go to great lengths to maintain their behaviour secret, in particular as the awareness of the competition rules increases. The Guide shows that many competition agencies have the power to search business premises and, in some more limited cases, non-business or private premises and to copy or seize paper or digital documents as evidence. However, many of these have not yet used such powers, or use them still with parsimony. In most of the jurisdictions where such a possibility exists, a warrant issued by a judge or a court is required, even if in some jurisdictions competition authorities have the power to issue such authorisations themselves.

In this context, it should be noted that many jurisdictions still do not have a leniency programme in operation (see Graph 2) or the possibility of settlements for early termination of investigations. Finally, regarding cartels, some jurisdictions provide for the possibility of both criminal as well as administrative or civil sanctions (e.g., Australia, Indonesia, the Philippines). Such criminal sanctions are normally not applied by the competition authority but by another office, and thus cooperation between these two agencies is particularly important.

[1] Please note that the Guide does not focus on unfair competition provisions.

Graph 2. Many jurisdictions still have/ do not have a leniency programme

One area where there are many jurisdictions with very few cases is in the enforcement of the abuse of dominance provisions, indeed whilst abuse of dominance provisions are widespread, many jurisdictions have so far had no cases at all.

As regards merger control, most jurisdictions have a mandatory notification of transactions, many of which need to be notified and cannot be implemented before clearance, whilst only two require notification post-closing (Indonesia and for certain types of transaction South Korea). There do exist quite a significant number of voluntary systems: Australia, Fiji, Myanmar, New Zealand, Papua New Guinea and Singapore.

Whether a transaction needs to be filed or not, in a mandatory jurisdiction in Asia is in line with what is provided for elsewhere – requiring answers to the question of whether the proposed transaction qualifies as a concentration (with the associated concept of control, such as in China, Singapore or Vietnam), merger or other reportable acquisition of shares or voting rights (such as in Chinese Taipei, South Korea, India and Japan) under the merger control law, and if so whether the local thresholds are met in that particular case.

Review timelines are fundamental when designing mergers and acquisitions given the effects this may have on stock prices and costs of financing, amongst other aspects, and whilst jurisdictions do have differences in terms of timing, as a general rule, most of the regimes where there is mandatory pre-closing notification make a distinction between an initial and an in-depth review phases. A notable exception is India which has no such distinction but has a 210 calendar day statutory maximum – which overall is longer than other main jurisdictions in the region. Indeed, of the more experienced mandatory merger jurisdictions - China, Japan, South Korea - all have 30 calendar days for a Phase I and 90 calendar days for Phase II – although China can extend this further by a further 60 calendar days.

One of the main challenges that face in particular the younger jurisdictions in Asia is integrating economics into their analysis of merger control as well as also of other enforcement instruments (abuse of dominance or anti-competitive agreements other than hard-core cartels). In most jurisdictions in the Region, for instance, only relatively basic economic analysis is provided for in guidelines or in the law, or is used in practice. The role of market shares in many jurisdictions is still central and sometimes definitive for reaching findings (e.g., Viet Nam).

The Guide is divided into two parts. Part I provides a jurisdiction by jurisdiction description of the main aspects of the competition law and its application in that economy. Part II provides a straightforward and visual comparison of some of the main parameters of the competition law of each jurisdiction, for quick reference, with statistics where made available by the respective competition authorities.

Competition Law and Policies in Asia-Pacific

A guide to selected jurisdictions

Australia

I. Competition Rules and Institutional Setting

1. Competition Law

The Australian Competition and Consumer Act 2010 ("CCA") (previously, the Trade Practices Act 1974) governs competition policy in Australia.

The object of this Act is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection. Australia uses a total welfare standard.

The CCA prohibits anti-competitive agreements, cartels, boycotts, exclusive dealing, resale price maintenance, misuse of market power and anti-competitive mergers and acquisitions.

The CCA contains both competition law and consumer protection provisions.

Australia is a common law jurisdiction.

General exclusion: There are no sectors excluded from the application of the CCA.

Extra-territorial application: According to Section 5, the CCA applies to firms located outside Australia whose behaviour directly affects competition and/or consumers in domestic markets.

2. Australian Competition and Consumer Commission

ACCC website:
www.accc.gov.au

The Australian Competition and Consumer Commission ("ACCC") is an independent statutory authority responsible for administering and taking enforcement action under the CCA and was established in 1995.

The ACCC does not have the power to adopt decisions finding that there has been an infringement of the CCA. The ACCC investigates potential infringements of the CCA and, where it considers appropriate, brings them before the Federal Court of Australia for adjudication on whether an infringement occurred and what the appropriate penalty should be. The proceedings before the Federal Court follow an adversarial procedure.

The ACCC has the power to make administrative determinations on authorisations of restrictive trade practices and clearance decisions of mergers as well as accept formal written undertakings or use less formal administrative resolutions to address issues.

The Australian government may not give binding directions to the ACCC on whether to open or close an investigation an alleged antitrust infringement nor on whether or not to impose remedies, and may not overturn a decision regarding clearance or prohibition of a merger, as the ACCC acts independently of government.

The ACCC is subject to external parliamentary scrutiny through the Senate Economics References Committee, which examines the operations and performance of all Treasury portfolio agencies as part of the Senate Estimates process that occurs up to three times each year. The ACCC's annual report is tabled in Parliament every year.

The ACCC is issued with a statement of expectations from the Government. This sets out the Government's expectations about the role and responsibilities of the ACCC, its relationship with the Government, issues of transparency and accountability and operational matters. The ACCC responds with a statement of intent.

In addition to the CCA (competition and consumer protection), the ACCC acts as sectoral regulator for national infrastructures for communication, bulk water, postal and transport industries.

Organisational structure of ACCC: The ACCC is headquartered in Canberra with offices nationwide in State and Territory capital cities (Brisbane, Sydney, Melbourne, Hobart, Adelaide, Perth, Darwin) and in Townsville city. The total number of staff is 763 as of 2017. The ACCC has an annual budget of AUD$173.4 million for 2016/17. In the 2016 calendar year, approximately AUD$67.6 million was spent on competition functions.

Like most government departments and agencies, the ACCC's budget is set by the Australian Government in its annual budget. The budget sets out the ACCC's annual funding for the year ahead. While a small proportion of funding may be carried over to following years, each year is allocated separately.

The vast majority of funding comes through the Australian Government's budget, with external revenue in 2016/17 comprising only 2.5% of the ACCC's overall funding, or in 2016/17, approximately AUD$3.9 million.

The ACCC's management has some autonomy in how it implements the ACCC's annual budget. While the ACCC is, from time to time, given additional funding in relation to a specific purpose (for example, funding for an east coast gas enquiry), the ACCC can implement that funding how it chooses. If the ACCC is unable to fulfil its functions, then ultimately it is responsible to the Government and parliament.

The ACCC is within the Treasury portfolio and reports to a responsible Minister on its operations.

The ACCC is governed by a Chair and other members of the Commission appointed for terms of up to five years. The ACCC is composed of a Chair, two Deputy Chairs and four Commissioners as of January 2017.

Commissioners are appointed by the Governor-General on recommendation of the Commonwealth Government as set out in section 7 of the CCA. An appointment is made after the majority of state and territory jurisdictions support the selection. The Commonwealth Treasurer may also appoint associate members of the Commission, with the support of a majority of state and territory jurisdictions.

In practice, the Chair and Commissioners are appointed on a full-time basis.

The Governor-General may dismiss a member of the Commission for any reason as set out under section 13 of the CCA. These include personal bankruptcy, misconduct, failure to disclose personal interests and/or absence from duty.

Decisions are made by the Chair and Commissioners meeting together (or as a division of the ACCC), save where a power has been delegated to a Commission member. The Chair is also the Chief Executive Officer with public governance, performance and accountability responsibilities under the Public Governance, Performance and Accountability Act 2013.

Other regulators with competition powers: There are no other sector regulators that have competition powers.

Competition advocacy: Although the ACCC does not have a formal advocacy function, it advocates competition in the performance of its regulatory functions.

The ACCC does not have any formal or legislated role in assessing competition issues in new or updated legislation, rules or regulations but can and does provide advice or information about the expected impact on competition where requested, or where it deems appropriate to comment.

The ACCC has scope to conduct market studies, which may be made on its own initiative or under Ministerial direction according to Part VIIA, by direction of the relevant Minister.

The ACCC has performed a number of market/sector studies in the last five years. If a market/sector study identifies an obstacle or a restriction to competition caused by an existing public policy, the study can include an opinion/recommendation to the government to remove or reduce such obstacle or restriction.

In 2016, the ACCC conducted or commenced four major market studies. After receiving additional funding from the government, the ACCC established an agricultural unit, to focus on competition and consumer issues in the agricultural industry. This unit led a market study into the beef and cattle markets.

The ACCC also commenced a market study into the new car retailing industry, and the telecommunications industry.

In November 2016, on direction from the government, the ACCC commenced a market study into the dairy industry.

International co-operation: Australia has concluded free trade agreements including chapters on competition law, for instance, with New Zealand and Singapore.

Australia has concluded bilateral treaties with the United States enabling the competition authorities of these two countries to exchange evidence and assist each other in enforcement of the competition law. Australia also concluded memorandums of understanding (MoUs) relating to international co-operation on competition law and policy with Canada, China, Chinese Taipei, Fiji, India, Japan, Korea, New Zealand, Papua New Guinea, Philippines, United Kingdom, United States and the EU.

3. Investigation

Initiation of investigation: Most of the cases that the ACCC investigates under the CCA are initiated by enquiries and complaints received from the public about traders. In some cases, the ACCC proactively initiates investigations if it identifies an issue of concern.

Powers of investigation: Under Section 155, the ACCC may issue a notice requiring a person to furnish information and appear before the ACCC to give any evidence, orally or in writing, or produce documents.

According to Sections 154D and 154G, entry to premises may be made by an inspector with or without consent of the investigated party; in the latter case a search warrant is necessary. Search warrants are issued by a magistrate of the Federal Court of Australia, where the magistrate has reasonable grounds is suspecting there is, or will be in the next 72 hours, evidential material on the relevant premises. Powers available under a search warrant include the possibility to enter the premises, to search the premises and anything on the premises for the kind of evidential material specified in the warrant, and seize things of that kind found on the premises, to make copies of the kind of evidential material specified in the warrant found on the premises, to operate electronic equipment at the premises to see whether the kind of evidential material specified in the warrant is accessible by doing so, and to take equipment and material onto the premises, and use it, for any of the above purposes.

The ACCC hast carried out unannounced inspections within the past 5 years.

Failure to comply with investigation: If a person refuses or fails to comply with the ACCC's notice under Section 155 or knowingly furnishes false or misleading information in response to a Section 155 notice, the person is guilty of an offence punishable upon conviction by a fine or imprisonment for up to 12 months. In the case of a body corporate, the maximum penalty is a fine not exceeding AUD18,000.

If a person obstructs, hinders, intimidates or resists a commonwealth official in the performance of their functions as an official, under section 149.1 of the *Criminal Code Act 1995* (note: there are no parallel provisions in the CCA), the person is guilty of an offence punishable upon conviction by a fine or imprisonment for up to 2 years.

Procedural fairness: The *Australian Competition and Consumer Commission's accountability framework for investigations* provides guidance on the governance and management structures of the ACCC and how the ACCC exercises its powers. There is a general right to be heard before sanctions or remedies are imposed by the Federal Court.

ACCC's powers of investigation can be reviewed. Such cases involve judicial review, which focuses on whether the decision making process was the correct one, rather than assess the merit of whether it was the correct decision on the facts.

Confidentiality: Where information is provided to the ACCC on a confidential basis, the ACCC endeavours to keep that information confidential where possible. The exceptions to this are often when the agency is compelled by law to disclose the information. The ACCC does have some legal obligations to protect confidential information, as set out in section 155AAA of the CCA as well as other protections in the *Public Service Act 1999*, *Public Service Regulations 1999* and the *Crimes Act 1914*. In most circumstances, the ACCC requires that there is no restriction on the use of information internally.

4. Remedies and sanctions

The CCA provides for civil pecuniary penalties against both corporations and individuals for breaches of the Act. Other forms of relief include injunctions, orders disqualifying an individual from managing corporations and community service orders, or punitive adverse publicity orders. Criminal sanctions may also be applied for cartels (see Section II).

The Federal Court is the body responsible for any decision to impose sanctions or remedies for conducts in contravention with the CCA. The Court may impose certain remedies such as compensation of affected parties or divestitures.

According to Section 76, a business in breach of Part IV of the CCA which prohibits restrictive trade practices (e.g. cartel conducts, misuse of market power, and anti-competitive mergers) may be subject to a pecuniary penalty as follows, whichever is greater:

a) AUD10 million
b) three times the total value of the benefits obtained by one or more persons and that are reasonably attributable to the offence or contravention
c) where benefits cannot be fully determined, 10% of the annual turnover of the company (including related corporate bodies) in the preceding 12 months

5. Appeal

A bifurcated system of competition enforcement is in place. The judicial role in competition law matters is divided between the Australian Competition Tribunal (ACT) and the Federal Courts.

The ACT deals with appeals from ACCC's first-instance determinations in relation to authorisations of restrictive trade practices and mergers. The ACT also reviews applications related to the authorisation of mergers that, while failing to meet the requisite legal standard for their authorisation, are argued to result in public benefits justifying their authorisation. Finally, the ACT is responsible for the review of certain decisions of the ACCC in relation to regulatory determinations. The ACT is entitled to exercise all the powers of the ACCC, and may affirm, set aside or vary the ACCC's determinations as if sees fit.

A decision made by the Federal Court upon a proceeding initiated by the ACCC (decisions at first instance are adopted by a single federal court judge sitting alone) may be appealed to the Full Federal Court (comprising three judges) and then to the High Court of Australia.

6. Private enforcement

Damages claims: Section 82 of the CCA allows for private actions for loss or damage caused by conduct contravening Part IV of the CCA (anti-competitive agreements, abuses of dominance or anti-competitive mergers and acquisitions). Private lawsuits are only available to the person who suffered the loss or damage. Private enforcement is available independently of public enforcement. The party may benefit from related ACCC investigations and proceedings.

Injunction claims: Under Section 80, the Court may issue an injunction at the request of the Commission or any other person.

II. Anti-competitive Agreements

1. Scope

Division 1 of Part IV of the CCA sets out prohibition of cartel conducts. Division 1 prohibits businesses from making or giving effect to a contract, arrangement or understanding that contains "cartel provisions", i.e. provisions relating to price-fixing, restricting outputs in the production and supply chain, market sharing, and bid-rigging, by parties that are or would otherwise be in competition with each other.

Division 2 of Part IV sets out prohibition of other anti-competitive agreements. Division 2 prohibits contracts, arrangements or understandings that are likely to substantially lessen competition in a market, even if that conduct does not meet the stricter definitions of other anti-competitive conduct such as cartels.

Per se illegality applies to the arrangements that are most likely to cause competitive harm, such as agreements that fix prices, restrict output, rig bids or share markets.

The ACCC regards cartel conduct as so detrimental to consumer welfare and the competitive process that cartels will always be a priority (ACCC's *Compliance and Enforcement Policy*).

Vertical agreements that have the purpose, effect or likely effect of substantially lessening competition, for instance third-line forcing, are prohibited under the generic heading "Exclusive Dealing" of Section 47. Resale price maintenance is prohibited under Section 48.

2. Assessment

The authorisation provisions of the CCA allow the ACCC to grant legal protection for potentially anticompetitive conduct when the public benefit outweighs the public detriment, including any lessening of competition.

Horizontal agreements may be permitted on efficiency grounds where the ACCC is satisfied the public benefit stemming from the conduct outweighs the public detriment (Part VII of the CCA). Formal authorisation must be sought before engaging in the conduct. Decision on the public benefits and detriments likely to result from the conduct is made through a public consultation. Final decision by the ACCC is made within six months of receiving a complete application.

As in the case of horizontal agreements, when notified in advance, the ACCC may authorise certain vertical agreements on public benefit grounds under Part VII.

3. Remedies and sanctions

Sanctions on restrictive trade practices prohibited under Part IV of the CCA are administrative in nature (see Section I.4 above on Remedies and Sanctions).

However, in respect of cartel conduct, Australia has since 2009 a parallel regime of civil contraventions and criminal offences. Individuals engaged in a cartel could face pecuniary penalties (civil) or fines (criminal), including:

a) up to 10 years in jail and/or fines of up to AUD360,000 per criminal cartel offence

b) a pecuniary penalty of up to AUD500,000 per civil contravention

In cases where pecuniary penalties are imposed upon individuals, Section 77A foresees that corporations are prohibited from indemnifying, through direct or indirect means, their officers, employees or agents against upon whom said penalties have been imposed.

Businesses engaged in a cartel may face a maximum pecuniary penalty or fine for each civil contravention or criminal cartel offence of whichever will be greater:

a) AUD10 million

b) three times the total value of the benefits obtained by one or more persons and that are reasonably attributable to the offence or contravention

c) where benefits cannot be fully determined, 10% of the annual turnover of the company (including related corporate bodies) in the preceding 12 months.

Compliance programmes are also used as part of the ACCC's enforcement activities. Under Section 87B, the ACCC may accept formal written undertakings in the exercise of its powers under the CCA. As part of these undertakings, the ACCC requires, in many cases, the business to implement a compliance programme designed to prevent breaches of the CCA occurring in the future. If a term of an undertaking under Section 87B is breached, the Federal Court may make enforcement and compensation orders.

Criminal prosecutions may only be undertaken by the Commonwealth (federal) Director of Public Prosecutions (CDPP). The CDPP is an independent prosecution service which prosecutes alleged offences against Australian federal (Commonwealth) law. The ACCC works with the CDPP in relation to the criminal prosecution of cartel conduct.

The ACCC has signed in 2014 a Memorandum of Understanding with the Commonwealth Director of Public Prosecutions regarding Serious Cartel Conduct. The ACCC is more likely to refer a criminal matter to the CDPP for consideration for prosecution where: the conduct was covert; the conduct could or did cause large scale or serious economic harm; the conduct was longstanding or could have a significant impact on the market; the conduct could or did cause significant detriment to the public, or significant loss or damage to customers of the participants; the participants were involved in previous cartel conduct; senior representatives within the relevant corporation(s) were involved in authorising or participating in the conduct; the Government, and thus taxpayers, were victims (even where the value of affected commerce is relatively low); or the conduct involved the obstruction of justice or other collateral crimes.

In the last five years, sanctions and/or remedies have been imposed on both horizontal and vertical anti-competitive agreements.

4. Leniency

Parties to a cartel conduct may seek both civil and criminal immunity. The ACCC and the Commonwealth Director of Public Prosecutions (CDPP) are responsible for granting civil immunity and criminal immunity, respectively.

The *ACCC immunity and co-operation policy for cartel conduct 2014* sets out the ACCC's policy in relation to applications for immunity from ACCC-initiated civil proceedings. In order to be eligible for the civil

immunity, a business must be the first to come forward, admitting that its conduct constitutes a contravention of the CCA and must not have coerced others to participate in the cartel.

The ACCC can deny access to confidential cartel information provided under a leniency application, although access can subsequently be ordered by the Court where, having weighed the competing interests, the balance lies in favour of disclosure.

The ACCC and the CDPP have agreed on procedures to facilitate the granting of civil immunity and criminal immunity at the same time. Where the ACCC decides that the applicant satisfies the conditions for immunity, it may make a recommendation to the CDPP that criminal immunity be granted to the applicant. However, the CDPP exercises an independent discretion in granting immunity from prosecution.

Amnesty Plus: If a party is co-operating with the ACCC in relation to one cartel and discovers a second cartel that is independent and unrelated to the first cartel, and receives conditional immunity for the second cartel, that applicant may seek "amnesty plus" in respect of the first cartel conduct. Amnesty plus is a recommendation by the ACCC to the court for a further reduction in the civil sanctions (including penalty) in relation to the first cartel. If the first cartel is being dealt with as a criminal matter, the CDPP will advise the court of the full extent of the party's co-operation so that it will be taken it into account for sentencing purposes. A party will be eligible for amnesty plus if it: (a) is a co-operating party in the first cartel investigation, and (b) receives conditional immunity for the second cartel. The criteria for immunity and the process for recognising co-operation by that party with the ACCC or CDPP contained in the Policy will apply to a party seeking amnesty plus.

III. Abuse of Dominance

1. Scope

Section 46 of the CCA sets forth that a business that has a substantial degree of power in a market shall not take advantage of that power in that or any other market for the purpose of:

a) eliminating or substantially damaging a competitor of the corporation or of a body corporate that is related to the corporation in that or any other market;

b) preventing the entry of a person into that or any other market; or

c) deterring or preventing a person from engaging in competitive conduct in that or any other market

2. Assessment

In assessing whether there has been a misuse of market power, three factors are considered:

a) the existence of substantial degree of market power: market power is defined as the ability of a business to insulate itself from competition. In determining whether a corporation has substantial market power, various factors are taken into account, such as: the entry barrier, market share and financial strength of the business, and the ability of the business to consistently restrict competition;

b) whether a corporation has taken advantage of the market power: to determine whether a business has taken advantage of its substantial degree of market power, various factors are considered, for instance, whether the conduct was facilitated by or relied on the business's substantial degree of market power or whether the business would have engaged in the conduct without the substantial degree of power in the market; and

c) whether the market power was used for an illegal purpose: the use of the market power for illegal purpose is identified as conducts that eliminate or substantially damage a competitor; prevent the entry of a person into any market; or deter or prevent a person from engaging in competitive conduct in any market.

In the last 5 years, the ACCC has taken on two misuse of market power cases and has been unsuccessful on both counts.

3. Remedies and sanctions

See Section I.4 above for more information.

IV. Mergers

1. Scope

Mergers are regulated under Section 50 of the CCA. Section 50 prohibits a business or a person from directly or indirectly acquiring shares or any assets if the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition.

2. Notification

There is no compulsory notification procedure. However, *the Merger Guidelines 2008* encourages merger parties to notify the ACCC where the products of the merger parties are either substitutes or complements and the merged parties will have a post-merger market share of more than 20% in the relevant market. Where merger parties do not notify, the ACCC may subsequently investigate the merger and take necessary action.

3. Procedural rules

According to the Merger Guidelines 2008, there are three types of reviews available, namely informal merger review, formal merger clearance and merger authorisation.

Informal merger review: This is the most commonly used avenue for merger parties to seek merger clearance in Australia, and in this process the ACCC does not make a binding decision. Instead, at the end of its review, the ACCC provides merger parties with its view as to whether a proposed acquisition would be likely to substantially lessen competition in contravention of Section 50 of the Act.

However, informal clearance does not provide statutory protection from subsequent legal action based on an alleged breach of section 50, in particular by third parties.

There is no fixed timeframes for the ACCC to make a decision and the review period depends on the complexity of a case and sufficiency of information provided by the merger parties.

Where the ACCC views that a merger proposal is likely to be prohibited under Section 50, merger parties have the options of either: not proceeding with the merger, providing a remedy (a court enforceable undertaking) to address the ACCC's competition concerns, or proceed with the merger and defend in court under Section 50. If the merger parties proceed with the merger, the ACCC may apply to the Federal Court

of Australia for an injunction (preventing the merger from proceeding), or for an order of divesture for a completed merger and other order such as a declaration that the acquisition is void and penalties. In this case, the burden is on the ACCC to establish that the acquisition contravened Section 50 of the Act.

Formal merger clearance: Merger parties may seek the ACCC's formal merger clearance before the merger takes place. The ACCC may grant clearance with conditions, such as in the form of a court enforceable undertaking. A formal merger clearance provides merger parties a legal protection from court action on the basis of Section 50.

The decision of the ACCC is made within 40 working days of receiving a complete application. The review period may be extended by 20 working days. Where no decision is made within the timeframe and no extension has been made, the ACCC is taken to have decided not to grant clearance.

Where the formal merger clearance is not granted, the merger parties may apply to the Australian Competition Tribunal for review of the ACCC's decision.

There have been no applications for formal merger clearance lodged with the ACCC since the legislation was introduced in 2007.

Merger authorisation: Parties may apply to the Australian Competition Tribunal for authorisation of the merger proposal. Authorisation is granted where the Tribunal is satisfied that the merger is likely to result in a net public benefit. The decision of the Tribunal is made within 3 months of receiving a complete application. The review period may be extended to 6 months in complex cases. Once the authorisation is granted, no action can be taken by the ACCC or other parties on the basis of Section 50 in respect of the merger.

There have been five applications for merger authorisation made since 2007 and three of these have progressed to a final decision.

4. Assessment

In its assessment of a merger, the test applied by the ACCC is whether an acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any market in Australia.

Section 50(3) provides a non-exhaustive list of factors that are taken into account when assessing whether a merger would have the effect, or be likely to have the effect, of substantially lessening competition: import competition; market entry barrier; concentration in the market; countervailing power in the market; the ability to increase prices or profit margins; availability of substitutes; dynamic characteristics of the market; removal of a vigorous and effective competitor; and the nature and extent of vertical integration in the market

5. Remedies and sanctions

The ACCC does not have the power to block a merger. Where the ACCC forms the view that a proposed merger or acquisition is likely to substantially lessen competition in contravention of section 50 of the CCA, the ACCC will notify the relevant parties and make an announcement. At that time, merger parties may decide to abandon the proposed merger, to restructure the transaction, or offer remedies (in the form of court-enforceable undertakings) to resolve the ACCC's competition concerns. If parties decide to progress the matter, the ACCC may commence action in the Federal Court of Australia seeking to prevent the merger, or if completed, to seek a divestiture and declaration that the merger was void. Alternatively, the parties

may choose to seek a declaration from Federal Court that the proposed merger does not contravene section 50 of the CCA (Informal Merger Review Process Guidelines 2013).

The ACCC does not impose remedies on the merger parties but they may be offered by the merging parties to address the competition concerns identified by the ACCC. Where the ACCC has concerns that support the view that a merger is likely to substantially lessen competition, the ACCC can accept a court enforceable undertaking from the merger parties under section 87B of the CCA to remedy those concerns.

While the provision of remedies is voluntary, the ACCC will provide guidance on the form and substance of a remedy and requires all remedies to contain certain standard machinery clauses. The ACCC has a strong preference for structural remedies, and on occasion accepts behavioural remedies as an adjunct to a structural remedy. The ACCC considers that behavioural remedies on their own are only appropriate in certain limited circumstances.

To determine whether a remedy is acceptable, the ACCC considers a range of factors, in particular: the effectiveness of the remedy to address the ACCC's competition concerns; how difficult the proposal will be to administer; the ability of the merged parties to deliver the required outcomes; monitoring and compliance costs and any risk to competition associated with the implementation of the remedy (or failure to do so). In general, the ACCC conducts market inquiries with interested parties on a proposed remedy to inform its assessment of it. However, the ACCC will only consult on proposed remedies if it considers that the remedies are capable of being enforced and have the potential to adequately address competition concerns arising from the acquisition.

Where the ACCC views that a proposed merger or a completed merger is likely to substantially lessen competition in contravention of Section 50 of the CCA, the ACCC may commence action in the Federal Court of Australia seeking to prevent the merger, or if completed, to seek a divestiture and declaration that the merger was void.

V. Statistics

The total number of cases taken and the type of results relating to anti-competitive agreements and abuse of dominant position by the ACCC from 1 July 2012 to 30 June 2017.

Type of Violation	Total Number of Cases Reviewed	Type of Result
Anti-Competitive Agreements	N/A	N/A
Unilateral Conduct or Abuse of Dominance	N/A	N/A
Mergers	1515 matters[1] (1273 were cleared following an initial assessment)	Opposed: 22 (12 publicly, 10 confidentially) Cleared with remedies: 26 Cleared outright 1437 Withdrawn: 23

1. The ACCC publishes statistics on a financial year basis. Statistics are for the 5-year period 01/07/2012 to 30/06/2017.

VI. List of Cited Relevant Laws and Regulations

- **The Competition and Consumer Act 2010**
  www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/
- **ACCC's Compliance and Enforcement Policy**
- **Memorandum of Understanding with the Commonwealth Director of Public Prosecutions regarding Serious Cartel Conduct**

Brunei Darussalam*

I. Competition Rules and Institutional Setting

1. Competition Law

The Competition Order, 2015 (the "Order") was enacted in January 2016.

The Order regulates anticompetitive agreements (Chapter 2, agreements etc. preventing, restricting or distorting competition), abuse of dominant position (Chapter 3, abuse of dominant position), and anti-competitive mergers (Chapter 4, mergers).

General exclusion: Section 10 (application of Part) (4) of the Order stipulates that nothing in Part 3 (Competition) shall apply to any activity carried on by, any agreement entered into or any conduct on the part of -

a) the Government;

b) any statutory body; or

c) any person acting on behalf of the Government or that statutory body, as the case may be, in relation to that activity, agreement or conduct.

Extra-territorial application: Section 10 (1) sets forth that notwithstanding that any practice or action arising out of such agreement, such dominant position, an anticipated merger or a merger is outside Brunei Darussalam, this Part (part 3) shall apply to such party, agreement, abuse of dominant position, anticipated merger or merger if it infringes or has infringes or will infringe any of the prohibitions under Part 3.

2. Competition Commission of Brunei Darussalam

The Competition Commission of Brunei Darussalam (the "Commission") is in the process of being set up and will be the authority that enforces competition in Brunei Darussalam.

Some of its functions include to: (i) enhance efficient market conduct and promote overall productivity and competitiveness of markets in Brunei; (ii) promote and sustain competition in markets in Brunei, (iii) to promote a strong competitive culture and environment throughout the economy, (iv) to act as advocate for competition matters, (v) to educate and promote public understanding of competition, (vi) to advise the

* This chapter has been sent for review to the Brunei Darussalam authorities but no answer has been received – it is therefore based exclusively on reading of the Competition Act.

government or other public authority on national needs and policies in respect of matters concerning competition in Brunei, (vii) to act internationally as the body representative of Brunei in respect of competition matters.

The Commission has the power to issue guidelines on how it will interpret and give effect to the provisions on the enforcement part of the Act.

In addition to competition law, the Commission will also enforce the Consumer Protection Order[1].

Organisational structure of the Commission: As per Section 3 of the Order, the Commission consists of a Chairman and such other members, not being less than 6 or more than 12, appointed by His Majesty the Sultan and Yang Di-Pertuan, by notification published in the Gazette. Section 6 sets forth that His Majesty the Sultan and Yang Di-Pertuan shall, by notification published in the Gazette, appoint a Director who shall be responsible for the overall administration and management of the functions, activities and day-to-day affairs of the Commission for the purposes of carrying out the provisions of this Order. Section 7 sets forth that the Minister in charge of the general competition matters (the "Minister") may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, appoint authorised officers to carry into effect any specific provisions of this Order or any regulations made thereunder. For purposes of an investigation under this Order, the Minister may appoint any other person to be an authorised officer.

Section 8 (Direction by Minister) prescribes that the Minister may, in writing, give to the Commission directions of a general character, consistent with the provisions of this Order, relating to the performance of the functions and powers of the Commission and the Commission shall give effect to such directions.

Other regulators with competition powers*:* As per Section 10 (2) of the Order, in so far as Part 3 (Competition) applies to an industry or a sector of industry that is subject to the regulation and control of another regulatory authority -

a) the exercise of powers by that other regulatory authority shall not be construed as derogating from the exercise of powers by the Commission; and

b) the exercise of powers by the Commission shall not be construed as derogating from the exercise of powers by that other regulatory authority.

As per Section 10 (3), the Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations for the purpose of co-ordinating the exercise of powers by the Commission under this Part (Part 3) and the exercise of powers by any other regulatory authority referred to in Section 10 (2), and may, in particular, make regulations to provide for the procedure to be followed -

a) in determining in a particular case or category of cases whether the Commission should exercise its powers under this Part or the other regulatory authority should exercise its powers; and

b) where the Commission and the other regulatory authority may exercise their respective powers concurrently or conjunctively.

As per Section 68 (Co-operation between Commission and other regulatory authorities on competition matters), the Commission may enter into any agreement with any regulatory authority for the purposes of:

[1] Source: response.

a) facilitating co-operation between the Commission and the regulatory authority in the performance of their respective functions in so far as they relate to issues of competition between undertakings;

b) avoiding duplication of activities by the Commission and the regulatory authority, being activities involving the determination of the effects on competition of any act done, or proposed to be done; and

c) ensuring, as far as practicable, consistency between decisions made or other steps taken by the Commission and the regulatory authority in so far as any part of those decisions or steps consists of or relates to a determination of any issue of competition between undertakings.

Competition advocacy: As per Section 62 (power to conduct market review), the Commission may, on its own initiative or upon the request of the Minister, conduct a review into any market in order to determine whether any feature or combination of features of the market prevents, restricts or distorts competition in the market. The market review includes a study into the structure of the market concerned; the conduct of undertakings in the market; the conduct of suppliers and consumers to the undertakings in the market; or any other relevant matters. According to Section 63, upon conclusion of the market review, the Commission shall publish a report of its findings and recommendations. The report of the Commission shall be made available to the public.

International co-operation: Brunei Darussalam has signed international co-operation agreements or MoUs regarding competition law matters: ASEAN, ASEAN-Australia-New Zealand FTA, and RCEP (in negotiation).

3. Investigation

Initiation of investigation: As per Section 35 the Commission may conduct an investigation if there are reasonable grounds for suspecting that the section 11 prohibition (anti-competitive agreement) or the section 21 prohibition (abuse of dominant position) has been infringed, or the section 23 prohibition (merger) will be infringed or has been infringed by any merger. For the purpose of the investigation under Section 35, the Commission may appoint an authorised officer to conduct the investigation.

Powers of investigation: As per Section 36 (power when conducting investigation), the Commission or an authorised officer may, by notice in writing to any person, require that person to produce to the Commission or the authorised officer a specified document, or to provide the Commission or the authorised officer with specified information, which the Commission or the authorised officer considers relates to any matter relevant to the investigation.

As per Section 37 (Power to enter premises without warrant), in connection with an investigation any authorised officer and such other person as the Commission has authorised to accompany the authorised officer (authorised person) may enter any premises.

As per Section 37 (2), no authorised officer and no authorised person or person required by the authorised officer respectively, shall enter any premises in the exercise of the powers under this section unless the authorised officer has given the occupier of the premises a written notice which

a) gives at least 2 working days' notice of the intended entry;

b) indicates the subject matter and purpose of the investigation; and

c) indicates the nature of the offences created by Part IV.

As per Section 38 (Power to enter premises under warrant), any authorised officer may apply to a court for a warrant and the court may issue such a warrant if it is satisfied that:

a) a) there are reasonable grounds for suspecting that there are on any premises documents the production of which has been required under section 36 or 37; and which have not been produced as required;

b) b) there are reasonable grounds for suspecting that there are on any premises documents which the Commission or the authorised officer has power under Section 36 to require to be produced; and if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed; or

c) c) an authorised person, an authorised officer or a person required by the authorised officer has attempted to enter the premises in the exercise of his powers under Section 37 but has been unable to do so and that there are reasonable grounds for suspecting that there are on the premises documents the production of which could have been required under that section.

Failure to comply with investigation: From Section 53 to Section 58 of the Order, it is stipulated that the followings would constitute an offense: any failure to provide access to records, or giving false or misleading information, evidence or document, or destruction, concealment, mutilation or alteration of records, or obstruction of authorised officer, or tipping off, or threat and reprisal.

As per Section 64, any person who commits an offence under the Order for which no penalty is expressly provided is liable on conviction to a fine not exceeding $10,000, imprisonment for a term not exceeding 12 months or both.

Procedural fairness: The Commission provides the party/parties under investigation for an antitrust infringement with opportunities to consult with the Commission with regard to significant legal, factual or procedural issues during the course of the investigation. Parties have the right to be heard and present evidence before the imposition of any sanctions or remedies for having committed an antitrust infringement.

4. Remedies and sanctions

Remedies and administrative sanctions: According to Section 42 (1) where the Commission has made a decision that -

a) any agreement has infringed the section 11 prohibition;

b) any conduct has infringed the section 21 prohibition;

c) any anticipated merger, if carried into effect, will infringe the section 23 prohibition; or

d) any merger has infringed the section 23 prohibition,

the Commission may give an order to such person as it considers appropriate to bring the infringement or the circumstances referred to in paragraph (c) to an end. Also, if necessary, it requires that person to take such action as specified in the direction to remedy, mitigate or eliminate any adverse effects of such infringement or circumstances and to prevent the recurrence of such infringement or circumstances.

As per Section 42 (2) (e), where the decision is that any agreement has infringed the section 11 prohibition, any conduct has infringed the section 21 prohibition or any merger has infringed the section 23 prohibition, to pay to the Commission such financial penalty in respect of the infringement as the Commission may determine.

Under Section 42 (3), for the purpose of Section 42 (2) (e), the Commission may impose a financial penalty only if it is satisfied that the infringement has been committed intentionally or negligently. Section 42 (5) sets forth that no financial penalty fixed by the Commission under this section may exceed 10 percent or such other percentage of such turnover of the business of the undertaking in Brunei Darussalam for each year of infringement for such period, up to a maximum of 3 years, as the Minister may, by order published in the Gazette, prescribe.

The Commission may also accept commitments from an undertaking to refrain from doing anything as the Commission considers appropriate, thus bringing the investigation to an end without making any finding of infringement or imposing a penalty.

Where the Commission determines that an undertaking has failed, without reasonable excuse, to comply with a direction, undertaking or commitment accepted by the Commission, the Commission may apply to the High Court for an order requiring the undertaking to make good the default within a specified time.

5. Appeal

As per Section 59 (1), any party to an agreement in respect of which the Commission has made a decision, any person in respect of whose conduct the Commission has made a decision or any party involved in a merger in respect of which the Commission has made a decision, may appeal within the prescribed period to the Competition Appeals Tribunal against, or with respect to, that decision.

As per Section 59 (2), any person, other than a person referred to in (1), to whom the Commission has given a direction (interim measures or remedies or financial penalty), may appeal within the prescribed period to the Tribunal against, or with respect to, that direction.

For the purpose of hearing any appeal referred to in Section 59 (1), there shall be a Competition Appeal Tribunal consisting of not more than thirty members appointed, from time to time, by the Minister on the basis of their ability and experience in industry, commerce or administration or their professional qualifications or their suitability otherwise for appointment. The Minister may remove any member of the Tribunal from office without assigning any reason.

This is a full merits review appeal.

6. Private enforcement

As per Section 67 (rights of private action), for any person who suffers from loss or damage, caused directly by an infringement of the section 11 prohibition, the section 21 prohibition or the section 23 prohibition shall have a right of action for relief in civil proceedings in a court under this section against any undertaking which is or which has, at the material time, been a party to such infringement. This is a standalone claim.

II. Anti-competitive Agreements

1. Scope

As per Section 11 (1), agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Brunei Darussalam are prohibited unless they are exempt in accordance with this Order.

As per Section 11 (2), agreements, decisions or concerted practices may, in particular, have the object or effect of preventing, restricting or distorting competition within Brunei Darussalam if they-

a) directly or indirectly fix purchase or selling prices or any other trading conditions;

b) limit or control production, markets, technical development or investment;

c) share markets or sources of supply;

d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or

f) perform an act of bid rigging.

Excluded agreements: As per Section 12, the section 11 prohibition shall not apply to such matter as may be specified in the Third Schedule of the Order: services of general economic interest; an agreement made to comply with a legal requirement; in order to avoid a conflict between Part 3 of the Order and an international obligation of Brunei Darussalam; public policy; any agreement which relates to any goods or services under another regulatory authority's jurisdiction; any agreement which relates to the supply of waste management services, the supply of scheduled bus services under the Road Traffic Act and the license to supply goods and services specified in the Schedule to the Monopolies Act; any agreement which relates to the clearing and exchanging of articles undertaken by the Clearing House; any vertical agreement; any agreement with net economic benefit; any agreement that is directly related and necessary to the implementation of a merger.

Individual exemption: As per Section 13 (1) an undertaking may apply to the Minister, through the Commission, for an exemption with respect to a particular agreement from the section 11 prohibition. This section shall apply to any agreement which contributes to improving production or distribution or promoting technical or economic progress, but which does not-

- impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or
- afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question.

Block exemption: As per Section 15, if agreements which fall within a particular category of agreements are, in the opinion of the Commission, likely to be agreements that satisfy the criteria for block exemption, the Commission may recommend that the Minister make an order specifying that category for the purposes of this section.

2. Assessment

No Guidelines have yet been issued by the Commission on how it will interpret and apply the legal provisions.

3. Remedies and sanctions

See Section I.4.

4. Leniency

As per Section 44 (1), there shall be a leniency regime, with a reduction of up to a maximum of 100 per cent of any penalties which would otherwise have been imposed, which may be available in the cases of any undertakings which has-

a) admitted its involvement in an infringement of any section 11 prohibition; and

b) provided information or other form of co-operation to the Commission which significantly assisted, or is likely to significantly assist, in the identification or investigation of any finding of an infringement of any prohibition by any other undertakings.

As per Section 44 (2), a leniency regime may permit different percentages of reductions to be available to an undertaking depending on-

a) whether the undertaking was the first person to bring the suspected infringement to the attention of the Commission;

b) the stage in the investigation at which an involvement in the infringement was admitted or any information/other co-operation was provided; or

c) any other circumstances which the Commission considers appropriate to have regard to.

III. Abuse of Dominance

1. Scope

As per Section 21 of the Act, any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in any market in Brunei Darussalam is prohibited.

Section 21 (2) sets forth that for the purposes of Section 21 (1), conduct may, in particular, constitute such an abuse if it consists in-

a) predatory behaviour towards competitors;

b) limiting production, markets or technical development to the prejudice of consumers;

c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or

d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.

Excluded cases: As per Section 22, the section 21 prohibition shall not apply to such matter as may be specified in the Third Schedule of the Order (Please refer to Excluded cases in 1. Section 11 Prohibition, II. Anti-competitive agreements for details).

2. Assessment

No Guidelines have yet been issued by the Commission on how it will interpret and apply the legal provisions.

3. Remedies and sanctions

See Section I.4 above.

IV. Mergers

1. Scope

As per Section 23, mergers that have resulted, or may be expected to result, in a substantial lessening of competition within any market in Brunei Darussalam for goods or services are prohibited. A merger occurs if the (i) two or more undertakings previously independent of one another, merger; (ii) one of more persons acquire direct or indirect control of the whole or part of one or more undertakings; (iii) the acquisition of assets (including goodwill) to lead to the replacement of one undertaking by another in the business.

Excluded mergers: As per Section 24, the section 23 prohibition shall not apply to any merger specified in the Fourth Schedule of the Order. According to the Fourth Schedule, the section 23 prohibition shall not apply to merger-

a) approved by any Minister or regulatory authority (other than the Commission) pursuant to any requirement for such approval imposed by any written law; approved by the Autoriti Monetari Brunei Darussalam established by section 3 of the Autoriti Monetari Brunei Darussalam Order, 2011 pursuant to any requirement for such approval imposed under any written law; or under the jurisdiction of any regulatory authority (other than the Commission) under any written law relating to competition, or code of practice relating to competition issued under any written law.

b) involving any undertaking relating to any specified activity as defined in paragraph 6(2) of the Third Schedule (the supply of waste management services, the supply of scheduled bus services under the Road Traffic Act and the license to supply goods and services specified in the Schedule to the Monopolies Act).

c) if the economic efficiencies arising or that may arise from the merger outweigh the adverse effects due to the substantial lessening of competition in the relevant market in Brunei Darussalam.

2. Notification

Notification of anticipated merger (ex-ante notification): As per Section 26 (1), a party to an anticipated merger shall notify the Commission of the anticipated merger and apply to it for a decision.

As per Section 26 (3) where the Commission proposes to make a decision that the section 23 prohibition will be infringed by an anticipated merger, if carried into effect, the Commission shall give written notice to the party who applied for a decision on the anticipated merger and the party may, within 14 days of the date of the notice, apply to the Minister for the anticipated merger, if carried into effect, to be exempted from the section 23 prohibition on the ground of any public interest consideration.

Notification ex-post of a merger: Section 27 (1) stipulates that a party involved in a merger which applies for the merger to be considered under this section shall (i) notify the Commission of the merger; and (ii) apply to it for a decision.

Section 27 (3) prescribes that where the Commission proposes to make a decision that the section 23 prohibition has been infringed, the Commission shall give written notice to (i) the party who applied for a decision on the merger; or (ii) the party who applied for a decision on the anticipated merger which was carried into effect or where that party no longer exists, the merged entity. The party or merged entity so notified by the Commission may, within 14 days of the date of the notice, apply to the Minister for the merger to be exempted from the section 23 prohibition on the ground of any public interest consideration.

Section 27 (6) sets forth that the Minister may revoke the exemption of a merger granted under Section 27 (3) if he has reasonable grounds for suspecting that the information on which he based his decision was incomplete, false or misleading in a material particular.

3. Assessment

No Guidelines have yet been issued by the Commission on how it will interpret and apply the legal provisions.

4. Commitments, remedies and sanctions

Commitments: As per Section 31, the Commission may, at any time before making a decision, accept from such person as it thinks appropriate, a commitment to take or refrain from taking such action as it considers appropriate for the purpose of remedying, mitigating or preventing the substantial lessening of competition or any adverse effect which (i) may be expected to result from the anticipated merger, if carried into effect; or (ii) has resulted or may be expected to result from the merger.

Remedies and sanctions:

Where the decision of the Commission is that any anticipated merger, if carried into effect, will infringe the section 23 prohibition it may prohibit and require any parties to any agreement that is directly related and necessary to the implementation of the merger (which would result from the anticipated merger being carried into effect) to modify or terminate the agreement, notwithstanding the agreement is excluded under paragraph 10 of the Third Schedule; and requiring any person concerned with any conduct that is directly related and necessary to the implementation of the merger (which would result from the anticipated merger

being carried into effect} to modify or cease that conduct, notwithstanding the conduct is excluded under paragraph 10 of the Third Schedule;

Section 42 (2) (d) also stipulates that where the decision is that any merger has infringed the section 23 prohibition (i) requiring the merger to be dissolved or modified in such manner as the Commission may direct; (ii) requiring any parties to any agreement that is directly related and necessary to the implementation of the merger to modify or terminate the agreement, notwithstanding that the agreement is excluded under paragraph 10 of the Third Schedule; and (iii) requiring any person concerned with any conduct that is directly related and necessary to the implementation of the merger to modify or cease that conduct, notwithstanding that the conduct is excluded under paragraph 10 of the Third Schedule. As mentioned in Chapter 1 on remedies and sanctions, financial penalties may also be applicable.

V. Statistics

There are no cases or measures to report in Brunei.

VI. List of Relevant Laws and Regulations

- **Competition Order, 2015**
  www.asean-competition.org/file/post_image/CO_2015Eng%202.compressed.pdf

China (People's Republic of) *

I. Competition Rules and Institutional Setting

1. Competition Law

The Anti-monopoly Law of the People's Republic of China ("AML"), which entered into force on 1 August 2008, is the main legislation that governs competition policy in China.

According to Article 1 the purpose of the AML is to prevent and restrain monopolistic conducts, protect fair competition in the market, enhance economic efficiency, safeguard the interests of consumers and social public interest, and to promote the healthy development of the socialist market economy.

The AML regulates monopolistic conducts, which include monopoly agreements (Chapter II), abuse of dominant market position (Chapter III), and concentration of undertakings (Chapter IV). It also covers abuse of administrative powers to eliminate or restrict competition by administrative agencies and other "organisations empowered by laws or regulations with responsibilities for public affairs administration (administrative monopoly)".

There are also other laws that include anti-monopoly rules: Price Law of 1998, the Bidding Law of 2000, and the Anti-Unfair Competition Law of 1993. However, this guidebook will only cover and review the AML.

General exclusions: According to Article 56, the AML is not applicable to the association or concerted actions of agricultural producers or rural economic organisations in their business activities of production, processing, sales, transportation and storage of agricultural products.

The AML applies to State-owned enterprises (SOEs).

Extra-territorial application: Article 2 sets out that the AML is applied to monopolistic conducts outside the territory of China which serve to eliminate or restrict competition in domestic markets.

2. Anti-monopoly Commission and Enforcement Authorities

Anti-monopoly Commission: According to Article 9, the Anti-monopoly Commission (AMC) is in charge of organising, co-ordinating, and guiding anti-monopoly work. It is also responsible for developing

* This Chapter has been sent for review of MOFCOM, NDRC and SAIC, however only responses from the latter were received. Therefore this Chapter is based on the AML and responses by SAIC.

competition policies and anti-monopoly guidelines, conducting market studies, and co-ordinating administrative enforcement of the AML.

The Anti-monopoly Commission enforces the AML through 3 authorities: the National Development and Reform Commission (NDRC), the State Administration for Industry and Commerce (SAIC) and the Ministry of Commerce (MOFCOM).

National Development and Reform Commission (NDRC): NDRC is a ministry-level macro-economic regulatory body. The Bureau of Price Supervision and Anti-Monopoly of NDRC is responsible for the enforcement of AML with respect to price-related anti-competitive agreements, such as horizontal price-fixing and resale price maintenance. The NDRC is also responsible for price-related abuses of dominance and administrative monopoly.

SAIC website:
www.saic.gov.cn
Contact: dfa@saic.gov.cn

NDRC website:
http://en.ndrc.gov.cn

MOFCOM website:
http://english.mofcom.gov.cn

State Administration for Industry & Commerce (SAIC): SAIC is a ministry level agency responsible for administration of industry and commerce. The Antimonopoly and Anti-unfair Competition Enforcement Bureau of SAIC, established in 2008, is responsible for the enforcement of AML with respect to non-price-related anti-competitive agreements, such as output restrictions and market allocation. SAIC is also responsible for non-price-related abuses of dominance.

SAIC also enforces regulations related to consumer protection and unfair trade practices.

SAIC is established at the ministerial level directly under the State Council, the chief administrative authority in China. SAIC has about 300 staff members as at September 2015.

Ministry of Commerce, People's Republic of China (MOFCOM): The Anti-Monopoly Bureau of MOFCOM, established in 2008, is responsible for the enforcement of AML with respect to merger control.

Competition advocacy: The Anti-monopoly Commission under the State Council performs market/sector studies in China.

From July 2016, departments of the State Council and provincial governments are required to carry out a fair competition review when drafting new regulations and policies. The implementation of the Fair Competition Review Mechanism has been attributed to NDRC.

International co-operation: SAIC concluded Memorandums of Understanding (MoUs) with Australia, Brazil, Canada, France, Thailand, Kazakhstan, Korea, Mongolia, Portugal, Romania, Russia, United Kingdom, United States, Vietnam and the European Union.

3. Investigation

***Initiation of investigation*:**

SAIC or NDRC may conduct investigations on their own initiative or upon receiving a report on an infringement of the AML. If the a complaint is made with the relevant facts and evidence, under Article 38 the NDRC and SAIC are obliged to open an investigation.

Powers of investigation: The AML empowers the enforcement authorities to investigate suspected infringements to the AML. According to Article 39 such powers include (i) the power to conduct an inspection of the business places or relevant premises of the undertakings under investigation, (ii) interviews, (iii) inspecting and copying relevant documents and materials, (iv) seizing and retaining relevant evidence, (v) enquiring into bank accounts of undertakings under investigation.

Failure to comply with investigation: According to Article 52, where a business operator refuses to provide relevant materials or information, provides false materials or information, conceals or destroys evidence, or obstructs an investigation in any other manner, the enforcement authorities may instruct the unit or individual to rectify, and a fine of no more than CNY20,000 shall be imposed on the individual and no more than CNY200,000 on the undertaking.

Where the circumstances are serious, a fine of no less than CNY20,000 but no more than CNY100,000 shall be imposed on the individual, and no less than CNY200,000 but no more than CNY1 million on the unit; and if a crime is constituted, criminal liability shall be investigated for in accordance with law.

Procedural fairness: According to Article 43, undertakings under investigation and interested parties have the right to make statements. The enforcement authorities verify the facts, justifications and evidence presented by the undertakings or interested parties.

There are procedural guidelines explaining the investigation procedure:

SAIC Measures on the Procedures for Investigating and Handling Cases Concerning Monopoly Agreements and Abuse of Dominant Market Positions

NDRC has issued the Measures on the Administrative Enforcement Procedures of the Prohibition of Price Monopoly.

Confidentiality: According to Article 41, the anti-monopoly authority must keep confidential any trade secrets to which it may have access during the investigation.

4. Remedies and sanctions

China follows an administrative system, with the enforcement agencies investigating and adjudicating on anti-competitive matters. The agencies also have the powers to accept commitments.

The enforcement authorities may instruct the undertakings to discontinue the violation and impose a fine. Please see relevant parts below, under Chapters II, III and IV.

5. Appeal

According to Article 53, where an undertaking is dissatisfied with the decision made by the enforcement authorities the undertaking may apply for administrative reconsideration according to the Administrative Reconsideration Law 1999. Alternatively it may bring an action before a people's court.

In the case of merger control, the parties must first bring the appeal to MOFCOM for administrative reconsideration and only then bring a challenge in a people's court.

6. Private Enforcement

Pursuant to Article 50, where the monopolistic conduct of a business operator has caused losses to other entities or individuals, the business operator shall bear civil liabilities. Thus stand-alone actions are possible in China under the AML.

II. Anti-competitive Agreements

1. Scope

Article 13 of the AML prohibits monopoly agreements, which include agreements, decisions and other concerted conducts aimed at eliminating or restricting competition. The AML provides the following examples of prohibited agreements between competing undertakings: price fixing, output restriction, market sharing, restriction of products or technology developments, and joint boycott.

The AML also prohibits in Article 14 non-competing undertakings from fixing resale price and restricting minimum resale price. Under Article 16 industry associations are prohibited from organising undertakings to engage in monopoly agreements.

2. Assessment

According to Article 15, Articles 13 and 14 do not apply if undertakings can prove that the agreements are concluded for any of the following purposes:

a) improving technologies, or engaging in research and development of new products

b) improving product quality, reducing cost, and enhancing efficiency; unifying specifications and standards of products; or implementing specialised division of production

c) increasing the efficiency and competitiveness of small and medium-sized undertakings

d) serving public interests in energy conservation, environmental protection and disaster relief

e) mitigating sharp decrease in sales volumes or obvious overproduction caused by economic depression

f) safeguarding legitimate interests in foreign trade and in economic co-operation with foreign counterparts

g) other purposes as prescribed by law or the State Council

In addition, the undertakings must prove that the agreement does not severely restrict competition in the relevant market and that consumers shall receive a share of the profits derived from the agreement.

3. Remedies and sanctions

According to Article 46, where an undertaking in violation of the provisions of the AML concludes and implements a monopoly agreement, the enforcement authorities shall instruct it to cease the conduct, confiscate its unlawful gains, and, in addition, impose on it a fine of not less than 1% but not more than

10% of its sales achieved in the previous year. If such monopoly agreement has not been implemented, the undertaking may be fined not more than CNY500,000.

4. Leniency

China operates a leniency programme. Under Article 46 of the AML, if an undertaking reports to the enforcement authorities about the monopoly agreement reached and provides material evidence, the enforcement authorities may, at their own discretion, mitigate, or exempt the undertaking from punishment.

The leniency programmes operated by NDRC and SAIC are as follows:

NDRC: The first undertaking that voluntarily reports the cartel and provides critical evidence is granted a 100% reduction of fines, whereas the second undertaking is granted a reduction in fines of no less than 50%. Subsequent applicants may be granted a reduction in fines of no more than 50%.

SAIC: The first undertaking that voluntarily reports the cartel and provides critical evidence for the SAIC to detect a cartel is granted a 100% reduction of fines. Other applicants may be granted a reduction in fines, but the amount may vary depending on the case. However, the leniency programme does not apply to cartel organisers and the reduction of fines does not apply to unlawful gains.

III. Abuse of Dominance

1. Scope

Article 6 determines that dominant undertakings are prohibited from abusing their dominant positions to eliminate or restrict competition.

According to Article 17 sets out an illustrative list of prohibited conducts, that include conduct, that without justification configure excessive prices, below-cost sales, refusals to deal, exclusive or designated dealing, tying or imposing other unreasonable transactional terms and discriminatory treatment. The agencies have the power to determine and sanction other acts of abuse of dominant market positions, not explicitly mentioned in Article 17.

2. Assessment

Under Article 17(2), a dominant market position is defined as a market position held by undertakings that are capable of controlling the prices or quantities of commodities or other transaction terms in a relevant market, or preventing or exerting an influence on the access of other undertakings to the market.

According to Article 18, z dominant market position is determined on the basis of the following factors:

a) its share on a relevant market and the competitiveness of the market
b) its ability to control the sales market or the purchasing market for raw and semi-finished materials
c) its financial strength and technical conditions
d) the extent to which other business mangers depend on it in transactions

e) the difficulty that other undertakings find in entering a relevant market

f) other factors related to the determination of the dominant market position held by an undertaking.

The Rules of the Administration for Industry and Commerce on the Prohibition of Dominant Market Position elaborate on each of those factors.

According to Article 19, an undertaking is assumed to hold a dominant market position in any one of the following circumstances:

a) the market share of one undertaking accounts for half of the total, in a relevant market

b) the joint market share of two undertakings accounts for two-thirds of the total, in a relevant market

c) the joint market share of three undertakings accounts for three-fourths of the total, in a relevant market

However, under the circumstances specified in (b) and (c) above, if the market share of one of the undertakings is less than one-tenths of the total, the undertakings are not considered to have a dominant market position.

3. Remedies and sanctions

According to Article 47, where an undertaking in violation of the AML abuses its dominant market position, the enforcement authorities shall instruct it to cease its conduct, confiscate its unlawful gains and, in addition, impose on it a fine of not less than 1% but not more than 10% of its sales achieved in the previous year.

IV. Mergers

1. Scope

MOFCOM will review a notified transaction to determine whether it leads or may lead to elimination or restriction of competition and may prohibit it under Article 28.

Article 20 provides that a concentration refers to the merger of business operators acquiring control over other business operators by virtue of acquiring their equities or assets; or acquiring control over other business operators or the possibility to exercise decisive influence on other business operators by virtue of contact or any other means.

2. Notification

According to Article 21, where the intended concentration reaches the threshold level as set by the State Council, the merger must be notified to MOFCOM in advance. A concentration must not be implemented until clearance has been given by MOFCOM.

This threshold is deemed to be met when the combined national turnover of each of at least two business operators to the concentration in the last financial year is over CNY400 million and either the combined aggregate worldwide turnover of all the business operators to the concentration within the last financial

year is greater than CNY10 billion or the combined aggregate turnover within China is greater than CNY2 billion.

3. Procedural rules

Under Article 25, the authority shall make a preliminary review of the merger within 30 days from the date it receives the documents or materials submitted by the undertakings.

Where the authority decides not to conduct further review or fails to make such a decision at the expiration of the specified time limit, the undertakings may implement the merger. There is no possibility of extension of this deadline.

Under Article 26, where the authority decides to conduct further review, it shall, within an additional 90 days, complete such review and decide whether to prohibit the merger, and notify the undertakings of such decision in writing.

The review period may be extended by a maximum of 60 days, if:

a) the undertakings agree to the extension;

b) the documents or materials submitted by the undertakings are inaccurate and therefore need further verification; or

c) major changes have taken place after the undertakings made the declaration.

Where the authority fails to make a decision at the expiration of the time limit, the undertakings may implement the concentration.

Under Article 28, if the merger parties can prove that the advantages of the merger to competition outweigh the disadvantages, or that the merger is pursuant to public interests, the authority may decide not to prohibit their concentration.

Under Article 29, where the authority does not prohibit a merger, it may decide to impose additional, restrictive conditions to lessen the negative impact on competition, exerted by such a merger.

Under Article 30 AML, MOFCOM is required to publish its decision that prohibit or conditionally clear deals.

Procedural fairness: MOFCOM has issued the *Measures on the Review of Concentrations of Undertakings* (“Measures”) which provides rules on hearing, including initiation of hearings, hearing attendees, confidentiality and procedures to be followed. Under Article 10 of the Measures, MOFCOM is required to issue statement of objections and to set a reasonable time limit for parties to submit their written defence.

4. Assessment

According to Article 27, factors taken into consideration in merger review are as follows:

a) the market shares of the undertakings involved in concentration in a relevant market, and their power of control over the market

b) the degree of concentration in the relevant market

c) the impact of their concentration on assess to the market and technological advance

d) the impact of their concentration on consumers and the other relevant undertakings concerned

e) the impact of their concentration on the development of the national economy

f) other factors which the authority for enforcement of the Anti-monopoly Law under the State Council deems to need consideration in terms of its impact on market competition.

5. Remedies and sanctions

Under Article 29, MOFCOM may accept conditions to reduce the negative impact on competition of a merger. Such conditions may include structural or behavioural undertakings.

According to Article 48, MOFCOM may instruct undertakings in violation of the AML to discontinue such concentration, and within a specified time limit to dispose of their shares or assets, transfer the business and adopt other necessary measures to return to the state prior to the concentration. It may also impose on the undertakings a fine of not more than CNY500,000.

MOFCOM may clear mergers with remedies. It has issued guidelines such as Interim Measures on the Divestiture of Assets or Businesses when Implementing Concentrations of Undertakings.

***Failure to notify*:** MOFCOM may impose administrative penalties of up to CNY 500,000 for failure to notify or for completing a transaction prior to clearance decision.

V. Statistics

The cases contained herein were provided by SAIC only up to September 2015.

Statistics (up to September 2015)

Type of Violation	Total Number of Decisions	Type of Violation
Anti-Competitive Agreements	20	N/A
Abuse of Dominance	13	N/A
Mergers	N/A	N/A

VI. Relevant Laws and Regulations

Anti-monopoly Law of the People's Republic of China.

Fiji

I. Competition Rules and Institutional Setting

1. Competition Law

The Commerce Commission Act 2010 (the "CCA2010") was the main legal instrument on competition policy in Fiji. The Act has been changed to Fijian Competition and Consumer Commission Act as of 1 August 2017 (FCCCA2010)1.

The CCA2010 has purposes of promoting the interests of consumers; promoting the effective and efficient development of industry, trade and commerce; securing effective competition in industry, trade and commerce; and ensuring equitable returns for businesses with fair and reasonable prices charged to consumers.

The CCA2010 prohibits conducts for being restrictive of competition In Part 6 (Restrictive Trade Practice) of the CCA2010 – which lists and specifies each type of restrictive trade practices: agreements restricting competition; agreements in relation to prices; covenant restricting competition; covenant in relation to prices; misuse of market power; anti-competitive conducts; exclusive dealing; resale price maintenance.

The Act is modelled on those of Australia and New Zealand.

Fiji follows the common law tradition.

General exclusion:

There is no sector excluded or exempted from the application of the CCA2010. State-owned enterprises are not exempt from the application of the Act.

Extra-territorial application:

The CCA2010 has extraterritorial reach. Section 3 covers acts or omissions within Fiji, but also provides that acts or omissions outside of Fiji are covered by the competition provisions.

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[1] The official name of the Act has been changed to Fijian Competition and Consumer Commission act as of 1st August 2017 (FCCCA 2010). However, since this OECD Guidebook was completed before this Act was approved reference here is to the CCA 2010, unless specifically referenced.

2. Fiji Competition and Consumer Commission

Commission website:
www.commcomm.gov.fj

Contact:
helpdesk@commcomm.gov.fj

The Fiji Commerce Commission was renamed to Fijian Competition and Consumer Commission on 1 August 2017 (the "Commission") has the sole power to regulate competition in Fiji, enforcing the FCCCA 2010. It is an independent statutory body of the Fiji Ministry of Industry, Trade and Tourism.

In essence, the Commission investigates anti-competitive matters and the High Court adjudicates on both substance and sanctions. Thus, there exists a judicial model in Fiji.

The Commission's objectives are those set out in the CCA2010 (see previous section) as well as to promote effective competition in the interests of consumers, facilitate an approximate balance between efficiency and environmental and social considerations as well as to ensure non-discriminatory access to monopoly and near monopoly infrastructure or services.

The Fijian cabinet may request the Commission to carry its investigations in the major sectors of the economy. However any such investigations are conducted independently by the Commission.

The Commission publishes an annual report and is answerable to the Parliament Public Accounts Committee for any clarifications or scrutiny. Annual Plan is submitted to line Ministry.

The Commission is also tasked with other responsibilities such as consumer protection, being a multi-sector regulator, a price regulator for selected goods and services as well as unfair trading practices.

Organisational structure of Commission: The Commission is located in Raiwaqa, and has 55 staff as of 2016. The Commission has 2 regional offices. It had an annual budget in the financial year 2016-2017 as USD 2.4 million.

According to Section 8 of the CCA2010, the Commission consists of not less than 4 or more than 6 members. The members are appointed by the Minister for Industry, Trade and Tourism (the "Minister") for up to 5 years, and be eligible for reappointment for a maximum of 3 years. One member shall be appointed as a Chairperson and another shall be appointed as a Deputy Chairperson. The Minister has the powers to dismiss a member due to incompetency, incapacity, misbehaviour and failure to comply with Section 10 of Act.

The Commission has a Chief Executive Officer and consists of five departments reflecting its core activities: Fair Trading, Price Control and Monitoring, Legal Department, Regulated Industry and Corporate services.

Relationship with other regulators: There are no other sector regulators that have competition powers.

Competition Advocacy: The Commission does all advocacy work on competition. The Commission conducts market/ sector studies in its jurisdiction.

Until the year of 2016, six sector studies have been performed such as on the hardware sector, telecommunications sector, LPG sector, etc. If the study identifies an obstacle or a restriction to competition caused by an existing public policy, the study can include an opinion/recommendation to the government to remove or reduce such obstacle or restriction. However, new public policies that may have implications for competition are not subject to the Commission's competition assessment.

International co-operation: The Commission has an MOU signed with ACCC and is discussing with other countries such as New Zealand regarding co-operation agreement.

3. Investigation

Initiation of investigation: According to Sections 15(h) and 15(i), the Commission may initiate an investigation upon receiving complaints or on its own initiative.

Powers of investigation: Under Section 119 of CCA2010, the Commission can request for information either in writing or orally.

Section 126 gives an officer of the Commission the power to enter any premises the officer knows or reasonably suspects that the premise was used in connection with the contravention of the CCA2010; the power to search for, examine, take possession of or make copies of records relating to the violation of the CCA2010; and the power to make inquiries and examinations he may believe necessary.

However, Section 126 does not allow forcible entry by officers of the Commission unless a warrant is obtained. A Resident Magistrate, upon receiving and satisfied by the information from an Commission officer that there is reasonable cause to search, may issue a search warrant directing the Commission officer to enter the place specified in the search warrant for inspection.

The Commission has carried out a number of unannounced inspections over the past 5 years based on Part 6 Restrictive Trade Practices investigations.

Failure to comply with investigation: Failure to furnish the requested information is an offence under Section 119 (4) of CCA2010. If the offender is a natural person, they may incur a fine of up to FJD 1000 dollars (approx. USD 497) and imprisonment for up to 12 months, and if the offender is a body corporate, a fine of up to FJD 5000dollars (approx. USD 2485).

Under Section 128, any person who obstructs an inspector in the exercise of his powers under the CCA2010 shall be guilty of a criminal offence. Matters are filed for prosecution and the Court imposes the appropriate orders, either fine or compensation or both. Section 129(1A) provides that a person found guilty of an offence under the CCA2010 for which no other penalty is provided (such as Section 128 for obstruction of an inspector), is punishable upon conviction by the Court of a fine not exceeding FJD 5000 (approx. USD 2485) for a first offence and FJD 10000 (approx. USD 4970) for a second or subsequent offence.

Procedural fairness: The Commission provides the party/parties under investigation for an antitrust infringement with opportunities to consult with the Commission with regard to significant legal, factual or procedural issues during the course of the investigation. The parties also have the right to be heard and present evidence before the imposition of any sanctions or remedies for having committed an antitrust infringement.

*Confidentiality***:** If the Commission proposes to disclose confidential information, it must first give the affected party a written notice informing it that they have the right to explain, within 28 days after the notice, why the confidential information should not be disclosed.

4. Remedies and sanctions

As mentioned above in Section I.2, Fiji has an adversarial system. This means that whilst the Commission undertakes the investigation it must bring such cases before the High Court for adjudication and it is for the Court to impose fines, pecuniary penalties or prison sentences (Section 129 of the CCA2010).

Remedies: Section 147 provides that in the case where a person has committed a contravention to the CCA2010, the Court may impose upon the aforementioned party a number of orders so as to reduce or repair the harm caused. This may take the form of an order for payment of the amount of the loss or damage, an order avoiding or refusing to enforce, in whole or part, a contract or instrument, an order for the variation of a contract or instrument, an order directing the refund of money or the return of property or any other order the Court may find appropriate.

Fine: According to Section 129, a person who contravenes, etc. a provision of Part 6 other than Section 67 (anti-competitive conducts) is guilty of an offence punishable on conviction by a fine not exceeding FJD10,000 (approx. USD 4970). When it comes to an offence committed by a body corporate, the maximum penalty is $50,000 (approx. USD 24,853).

Pecuniary penalty: Section 144A stipulates that if the Court is satisfied that a person has contravened a provision of Part 6 (restrictive trade practices), the court may order the person to pay to the State pecuniary penalty. The pecuniary penalty for a physical person shall not exceed FJD 300 000 (approx. USD 149,118), and shall not exceed $FJD1 million (USD approx. 497,060) for a body corporate.

Imprisonment: Section 129 sets forth that where a person is convicted of any offence against the CCA2010 and the court is of opinion that the offence was committed to defraud, that person shall be liable, in addition to or instead of any other penalty, to imprisonment for a term not exceeding 3 years.

Injunction claims: Section 145 sets forth that if the Court is satisfied, on the application of the Commission that a person has engaged or is proposing to engage in conduct that constitutes or would constitute a contravention of a provision of the CCA2010, the Court may grant an injunction in such terms the court determines to be appropriate. Such injunction shall restrain a person from carrying on a business of supplying goods or services for a specified period except on specific terms and conditions.

5. Appeal

Decisions on antitrust infringements and mergers can be subject to judicial review before the High Court.

6. Private enforcement

Private parties can take private legal action against a company for potential breach of the CCA2010, regardless of a decision of the Court on an action brought by the Commission (standalone actions).

Damages claims: Section 146 sets forth that a person who suffers loss or damage by an act or omission of another person that is a contravention of Part 6 (restrictive trade practice) of the CCA2010, may recover the amount of the loss or damage by action against the other person or against any person involved in the contravention. An action for damages may be commenced at any time within 3 years after the date on which the cause of action occurred.

Injunction: Any person may apply for an injunction. If the Magistrate Court and High Court is satisfied, on the application of the injunction, that a person contravened a provision of the CCA2010, the Court may grant an injunction.

II. Anti-competitive Agreements

1. Scope

The CCA2010 regulates anti-competitive agreements under the name of restrictive trade practices. Part 6 (Restrictive Trade Practices) of the CCA2010 prohibits contracts, arrangements, or understandings restricting dealings or affecting competition; contracts, arrangements, or understandings in relation to prices; collective tendering; resale price maintenance; covenants affecting competition; covenant in relation to prices; anti-competitive conduct; contracts, arrangements, or understandings affecting supply or acquisition of goods or services.

Should a provision of a contract be exclusionary in nature or has the purpose, or is likely to have the effect of substantially lessening competition, that provision is considered to be unenforceable and therefore may not confer rights or obligations to any party.

Price fixing, exclusive dealing, price discrimination, predatory pricing is a per se prohibition.

2. Assessment

The Commission has not published guidelines that explain how horizontal and vertical agreements are assessed.

Section 150A gives the Commission the power to grant authorisations for reasons of public benefit that outweigh the detriment to the public constituted by any lessening of competition and for conduct to be exempted from Section 60 (agreement restricting competition), Section 62 (covenant restricting competition), Section 64 (Restriction on conduct that hinders the supply of goods and services to others), Section 65 (Prohibition of agreements effecting supply or acquisition of goods or services), Section 69 (Exclusive dealing), Section 70 (Resale Price Maintenance).

3. Remedies and sanctions

Any party who contravenes Part 6 of the CCA2010 is guilty of an offence punishable upon conviction by fine, pecuniary penalty and/or imprisonment. However, the contravention of Part 6 cannot be criminally prosecuted. See Section I.4 and 144C for more information.

In the last five years, no criminal sanctions have been imposed.

4. Leniency

The Commission does not have an immunity/ leniency programme.

III. Abuse of Dominance

1. Scope

The CCA2010 regulates abuse of dominance under the name of restrictive trade practices, together with anti-competitive agreements. Part 6 of the CCA2010 prohibits misuse of market power under Section 66.

Section 66 stipulates that a person that has a substantial degree of power in a market shall not take advantage of that power for the purpose of the following:

a) Eliminating or substantially damaging a competitor of such person or of a body corporate that is related to such person in that or any other market;

b) Preventing the entry of a person into the market into that or any other market; or

c) Deterring or preventing a person from engaging in competitive conduct in that or any other market.

2. Assessment

In determining the degree of power that a person or body corporate has in a market, Section 66 (3) states that the Court shall consider the extent to which the conduct of the person or of the body corporate is constrained by the conduct of competitors or potential competitors or any person that supplies or acquires goods or services in the market.

3. Remedies and sanctions

Any party who contravenes Section 66 is guilty of an offence punishable on conviction by fine, pecuniary penalty and/or imprisonment. See Section I.4 for more information.

In the last five years, there has been no specific cases related to abuse of dominance in Fiji.

IV. Mergers

1. Scope

Mergers are covered under Section 72 and Section 73 under Part 6 of the CCD2010- Section 72 deals with Mergers in general while Section 73 deals with Merger outside Fiji.

Section 72 stipulates that a person must not acquire, directly or indirectly, any shares in the capital, or any assets, of a body co-operate if–

a) as a result of the acquisition, the person would be, or be likely to be, in a position to dominate a market for goods or services; or

b) in a case where the person is in a position to dominate a market for goods or services, the body corporate is likely to be, a competitor of the person or of a body corporate related to the person and the acquisition would substantially strengthen the power of the person to dominate that market.

If the merger or acquisition leads to dominant position than the merger or acquisition will not be endorsed by the Commission. However, if they wish to challenge then it is challenged in Court.

2. Notification

There is no compulsory notification procedure. However, as mentioned above the acquisition of shares or assets will not come into force unless and until the acquiring person has been granted an authorisation to acquire the shares or assets.

3. Procedural rules

The person shall apply for the grant of authorisation before the expiration of 14 days after the contract was entered into.

According to Section 150C, upon reception of an application for an authorisation, the Commission must make a determination in writing either granting the authorisation or dismissing the application. The Commission shall make its determination based on whether the proposed transaction results or is likely to result in a benefit to the public and that the benefit outweighs or would outweigh the detriment to the public. The Commission has 90 days to take an authorisation decision.

4. Assessment

HHI is usually used to provide safe harbour within which a merger is unlikely to identify competition concerns. The Commission applies the substantial lessening of competition test to block a merger. For any merger or acquisition, the entities are required to seek approval of FCCC in writing. To date, the Commission has not blocked any proposed mergers.

4. Remedies and sanctions

Any party who contravenes Section 72 is guilty of an offence punishable upon conviction by fine, pecuniary penalty and/or imprisonment.

For anti-competitive mergers, remedies such as undertaking and calling for open bid are possible. The Commission has imposed/accepted conditions on a proposed merger.

V. Statistics

The total number of measures taken or types of cases reviewed by the Commission from 2010 to 2015.

Type of Violation	Total Number of Cases Reviewed	Type of Result
Anti-Competitive Agreements	N/A	N/A
Unilateral Conduct or Abuse of Dominance	0	N/A
Mergers	8	N/A
Total	8	N/A

VI. List of Relevant Laws and Regulations

- **Commerce Commission Decree 2010**
- **Case laws**:
  Legislation and case laws are available at the Commission's website:
  www.commcomm.gov.fj

Hong Kong (China)

I. Competition Rules and Institutional Setting

1. Competition Law

The Competition Ordinance (Cap 619) (the "Ordinance") was enacted on 14 June 2012 and is the main legal instrument in competition policy in Hong Kong. The establishment of an enforcement authority and publishing enforcement guidelines were completed in stages and the Ordinance came into full effect on 14 December 2015.

The Ordinance prohibits restrictions on competition in Hong Kong through three competition rules, namely the "First Conduct Rule" (prohibiting anti-competitive agreements, concerted practices and decisions), the "Second Conduct Rule" (prohibiting abuse of market power), and the "Merger Rule" (prohibiting mergers that substantially lessen competition). Under Section 4 of Schedule 7 to the Ordinance, the Merger Rule only applies to mergers involving telecommunications carrier licensees.

Hong Kong is a common law jurisdiction.

General exclusion: The Ordinance applies to undertakings, that is, any entity, regardless of legal status or the way it is financed that is engaged in an economic activity.

The competition rules generally do not apply to statutory bodies (some of the excluded statutory bodies, such as the Airport Authority or the Hospital Authority, may carry out some business or market activities). However, the competition rules apply to six named statutory bodies, such as the Ocean Park Corporation and Federation of Hong Kong Industries.

Seven entities related to Hong Kong Exchanges and Clearing Limited, such as the Stock Exchange of Hong Kong Limited, have been specifically excluded from the application of the Conduct Rules pursuant to subsidiary legislation.

Extra-territorial application: The Ordinance applies also to undertakings located outside Hong Kong whose behaviour directly affects competition in domestic markets.

The Merger Rule applies to a merger even if the merger takes place outside Hong Kong, or any party involved in the merger is outside Hong Kong.

2. The Competition Commission of Hong Kong

CCHK website:
www.compcomm.hk

Contact:
enquiry@compcomm.hk

The Competition Commission of Hong Kong ("CCHK") is an independent statutory body responsible for enforcing the Ordinance. Hong Kong has a civil enforcement regime and, in contrast to administrative enforcement regimes, the CCHK is required to apply to the Competition Tribunal (the "Tribunal") for (among other orders) the imposition of a pecuniary penalty

The CCHK conducts investigations of conduct that may contravene the Ordinance. Among other things, the CCHK may also make decisions as to whether an agreement or certain conduct is exempt or excluded from the Ordinance.

The Tribunal is a specialised court which may review certain decisions of the CCHK, and hear and determine enforcement cases initiated by the CCHK with regard to alleged contraventions.

The Tribunal is responsible for the imposition of pecuniary penalties for anti-competitive conduct and other orders for remedies and sanctions. The Tribunal consists of the judges of the Court of First Instance.

Organisational structure of the CCHK: Located in Wan Chai, the CCHK has a permanent staff of around 50 as of 2016 and a budget of 80 million Hong Kong dollars As of 31 December 2016, the Commission consists of 15 Members (including the Chairperson) appointed by the Chief Executive of the Hong Kong Special Administrative Region. The executive arm comprises the Chief Executive Officer, Senior Executive Director, Executive Director (Operations) and Executive Director (Legal Services). There are four divisions: Corporate Services & Public Affairs Division; Legal Services Division; Operations Division and Economics Division.

Commission members may be removed from office by the Chief Executive under certain circumstances, such as failure to attend 3 consecutive meetings of the Commission without sufficient cause, bankruptcy, mental incapacity or failure to comply with a conflict of interest disclosure obligation.

Other regulators with competition powers*:* Under Section 159 of the Ordinance, the CCHK and the Communications Authority have concurrent jurisdiction to enforce the Ordinance in respect of conducts of certain undertakings operating under the Telecommunications Ordinance and Broadcasting Ordinance. The CCHK and the Communications Authority signed a MoU to co-ordinate the exercise of their functions. Under the MoU, for cases falling within the concurrent jurisdiction, the Communications Authority will ordinarily take the role of the lead authority.

Competition advocacy*:* The CCHK has the power to undertake market studies and also to advise the government on competition matters in and outside Hong Kong. The CCHK has conducted studies into aspects of the market for residential building renovation and maintenance, and the auto-fuel market in Hong Kong and have made recommendations to the government on both.

International co-operation: The CCHK signed a Memorandum of Understanding with the Canadian Competition Bureau in December 2016.

3. Investigation

Initiation of investigation: Under Sections 37 and 39(1) of the Ordinance, the CCHK may conduct an investigation on its own initiative, where it has received a complaint, or where the Court of First Instance, Tribunal, or Government has referred any conduct to it for investigation. To undertake an investigation the

CCHK must have "reasonable cause to suspect that a contravention of a competition rule has taken place, is taking place, or is about to take place" (s. 39(2)).

However, the power to close an investigation lies solely with the CCHK.

Powers of investigation: Under Section 41, the CCHK can compel persons to provide documents and information relating to any matter the CCHK reasonably believed to be relevant to an investigation. This extends to a power to make copies or take extracts from documents or to require an explanation of documents. To use such powers the CCHK must have reasonable cause to suspect that a person may have possession or control of documents or information or may be able to assist in relation to a potential contravention.

Under Section 42, it can require persons to attend before the CCHK to answer questions relating to any matter reasonably believed to be relevant to the investigation.

The CCHK may also enter and search premises after obtaining a warrant from the Court of First Instance in accordance with Section 48. To issue such a warrant the judge needs to be satisfied that there are reasonable grounds to suspect that there are (or are likely to be) documents on the premises that may be relevant to the CCHK's investigation.

Failure to comply with investigation: Under Section 52, a person who fails to attend before the CCHK or produce documents and information without reasonable excuse commits an offence and is liable, on conviction on indictment, to a fine of HK$200,000 and imprisonment for 1 year or on summary conviction, to a fine at level 5 to imprisonment for 6 months.

Under Sections 53 and 55, destruction or falsification of documents and providing false or misleading documents or information are also offences punishable, on conviction on indictment, with a fine of HK$1 million and by imprisonment for 2 years or on summary conviction to a fine at level 6 and to imprisonment for 6 months.

Section 54 provides that the obstruction of a person acting under a Section 48 warrant is an offence punishable, on conviction on indictment, by a fine of HK$1 million and by imprisonment for 2 years or on summary conviction to a fine at level 6 and to imprisonment for 6 months.

The CCHK's information gathering powers overrides any privilege against self-incrimination (Section 45). However, no such statements are then admissible against that person in proceedings where a pecuniary penalty is sought, or in criminal proceedings, subject to some exceptions.

Procedural fairness: The *Guideline on Investigations* sets out the process under which the CCHK undertakes its investigations. According to the Guideline, the CCHK will endeavour to keep parties who are under investigation informed of the progress of the investigation subject to overriding operational or confidentiality considerations. The CCHK may invite parties under investigation to make voluntary submissions with regard to facts or legal and economic arguments.

The Ordinance imposes certain procedural obligations on the CCHK in relation to, for example, the issuance of infringement notices, the acceptance of commitments, and the making of decisions as to whether an agreement / conduct is excluded or exempt from the Ordinance.

For cases that are brought in the Tribunal for the imposition of pecuniary penalties and other orders, the parties have the right to defend the case in accordance with procedures similar to other common law jurisdictions.

Confidentiality: The CCHK and the Communications Authority are obliged to ensure the non-disclosure of any confidential information which may come into their possession. Disclosure of confidential information is permitted only under the circumstances specified in the Ordinance.

4. Remedies and sanctions

In certain circumstances the CCHK may exercise its powers to: (i) issue a warning notice, (ii) issue an infringement notice, (iii) accept a commitment.

For conduct which contravenes the First Conduct Rule (see section below) and which does not involve serious anti-competitive conduct, the CCHK must issue a warning notice prior to bringing proceedings before the Tribunal.

An infringement notice may be issued for both contraventions of the First (for serious anti-competitive conduct) and Second Conduct Rules where the CCHK has not yet initiated proceedings with the Tribunal. By issuing an infringement notice, the CCHK offers not to initiate such proceedings provided the involved parties commit to comply with the requirements of the notice (Section 67). This may include refraining from the conduct, taking specified action, or admitting to a contravention. The CCHK must first notify the person of its proposal to issue a notice and consider representations made in response. Where the person makes a commitment to comply with the requirements of an infringement notice, the CCHK may not bring proceedings before the Tribunal in respect of the relevant contravention.

Under Section 60, the CCHK may also accept voluntary commitments which it considers appropriate to address its concerns about a possible contravention of a competition rule. If the CCHK accepts a commitment under Section 60, it may not commence or continue an investigation nor bring or continue proceedings in the Tribunal in relation to matters addressed by the commitment.

When the CCHK considers appropriate it may apply under section 92 to the Tribunal for a pecuniary penalty. The Tribunal can impose a pecuniary penalty on an undertaking for a contravention of a competition rule of up to 10% of the undertaking's turnover for each year in which a contravention occurred for a maximum of 3 years.

The pecuniary penalties provided in the Ordinance are civil penalties. The only criminal sanctions generally relate to non-compliance with the investigative powers of the CCHK or obstruction (see Section I.3 above).

Under Section 94, the Tribunal may also make a range of orders specified in Schedule 3, including injunctions, disposal of assets, modification or termination of an agreement.

The Tribunal may, in certain circumstances, also disqualify a person from being a director of a company or from being involved in the management of a company for up to 5 years.

5. Appeal

Specific decisions of the CCHK (e.g. decision to issue a block exemption order, decision to terminate a leniency agreement) are defined as "reviewable determinations" (Section 83) and are subject to review by the Tribunal under Section 84. Other decisions of the CCHK are subject to judicial review by the Court of First Instance.

Under Section 154, decisions of the Competition Tribunal may be appealed to the Court of Appeal.

6. Private Enforcement

Under Section 110 a party can bring an action for loss or damage suffered as a result of a contravention of the First or Second Conduct Rule only where a finding has been made by the Tribunal (or another court) that there has been a contravention or where the person has made an admission of contravention in a commitment.

II. Anti-competitive Agreements

1. Scope

Section 6(1) of the Ordinance prohibits undertakings from making or giving effect to agreements or decisions of an association of undertakings, or engaging in concerted practices that have the object or effect of preventing, restricting or distorting competition in Hong Kong. The prohibition in Section 6(1) is referred to as the "First Conduct Rule".

Under Section 2(1) of the Ordinance, price-fixing, market sharing, output restriction and big-rigging are categorised as serious anti-competitive conduct (and can therefore be subject to infringement notices (see above Section I.4), among other implications).

The First Conduct Rule applies to both horizontal and vertical agreements.

2. Assessment

The CCHK's Guideline on the First Conduct Rule sets out how the CCHK intends to interpret and give effect to the First Conduct Rule in the Ordinance.

The CCHK considers the First Conduct Rule to require that the CCHK must demonstrate that an agreement has either an anti-competitive object or an anti-competitive effect. There are therefore two alternative ways of showing that the agreement harms competition. Where an agreement has an anti-competitive object, it is not necessary for the CCHK to also demonstrate that the agreement has an anti-competitive effect.

The object of an agreement refers to the purpose or aim of the agreement viewed in its context and in light of the way it is implemented, and not merely the subjective intentions of the parties. Agreements between competitors to fix prices, to share markets, to restrict output or to rig bids are examples of agreements which the CCHK considers to have the object of harming competition.

Agreements which do not have the object of harming competition contravene the First Conduct Rule only if they have the effect of harming competition. Such agreements must have, or be likely to have, an adverse impact on one or more of the parameters of competition in the market, such as price, output, product quality,

product variety or innovation. Agreements can have such an effect by reducing competition between the parties to the agreement, or by reducing competition between any one of them and third parties.

The Guideline provides that the CCHK will consider, for example, the market power of the undertakings in a relevant market, and what the market conditions would have been in the absence of the conduct (counter-factual market conditions) in assessing whether an agreement has the effect of harming competition. The assessment of market power of the parties to an agreement does not rely solely on any single factor and includes, for example, an assessment of the (combined) market shares of the parties, market concentration, barriers to entry or expansion in the market, the competitive advantages of the parties, and the existence of any countervailing power on the part of buyers/suppliers.

Schedule 1 of the Ordinance sets out a number of general exclusions from the First Conduct Rule: agreements enhancing overall economic efficiency (efficiency exclusion), compliance with legal requirements, services of general economic interest, mergers, and agreements of lesser significance. Agreements of lesser significance are defined as agreements, concerted practices or decisions where the combined turnover of the relevant undertakings does not exceed HK$200 million (provided that they do not involve serious anti-competitive conduct, i.e. price fixing, market allocation, output restriction and bid-rigging).

Block Exemption Orders: Under Section 15, the CCHK may decide to exclude a particular category of agreement from the application of the First Conduct Rule based on its assessment that the agreements fall under the efficiencies exclusion.

3. Remedies and sanctions

Under Section 82, in First Conduct Rule cases not involving serious anti-competitive conduct, the CCHK must issue a warning notice before commencing proceedings in the Competition Tribunal. This gives the undertakings an opportunity to cease or alter the investigated conduct within a specified warning period.

See Section I.4 above.

There have not yet been any decisions sanctioning anti-competitive agreements.

4. Leniency

Under Section 80, the CCHK operates a leniency programme.

The CCHK's leniency regime is set out in its Leniency Policy for Undertakings Engaged in Cartel Conduct.

The policy consists of the following key elements: (a) leniency is available only in respect of cartel conduct contravening the First Conduct Rule, (b) only an undertaking may apply for leniency under the policy, (c) leniency is available only for the first undertaking that reports the cartel conduct to the Commission and meets all the requirements for leniency, (d) if the undertaking meets the conditions for leniency, the CCHK will enter into an agreement with the undertaking not to take proceedings against it for a pecuniary penalty in exchange for co-operation in the investigation of the cartel conduct, (e) the undertaking receiving leniency will agree to and sign a statement of agreed facts admitting to its participation in the cartel.

The leniency agreement submitted to the applicant will require the applicant to confirm that: (a) it has provided and will continue to provide full and truthful disclosure to the CCHK; (b) it has not coerced other parties to engage in the cartel conduct; (c) it has, absent a consent from the CCHK taken prompt and effective action to terminate its involvement in the cartel; (d) it will keep confidential all aspects of the

leniency application and the leniency process unless the CCHK's prior consent has been given or the disclosure of information is required by law; (e) it will provide continuing co-operation, at its own cost, to the CCHK including in proceedings against other undertakings that engaged in the cartel conduct or against other persons involved in the cartel conduct; (f) it is prepared to continue with, or adopt and implement, at its own cost, an effective corporate compliance programme to the satisfaction of the Commission

The CCHK uses a marker system to establish a queue in order of the date and time the CCHK is contacted with respect to the cartel conduct for which leniency is sought.

III. Abuse of Dominance

1. Scope

Section 21 sets forth that an undertaking that has a substantial degree of market power in a market must not abuse that power by engaging in conduct that has as its object or effect the prevention, restriction or distortion of competition in Hong Kong.

The *Guideline on the Second Conduct Rule* provides an illustrative list of conduct that may constitute an abuse of a substantial degree of market power: predatory pricing; tying and bundling; margin squeeze; refusing to deal and exclusive dealing.

Schedule 1 of the Ordinance sets out a number of general exclusions from the Second Conduct Rule: compliance with legal requirements, services of general economic interest, mergers, and conduct of lesser significance. Under the conduct of lesser significance exclusion (Section 6 of Schedule 1), the Second Conduct Rule does not apply to conduct engaged in by an undertaking the turnover of which does not exceed HK$40 million.

2. Assessment

Section 21(3) sets out the following list of factors that may be taken into account to establish whether an undertaking has a substantial degree of market power: the market share of the undertaking; the undertaking's power to make pricing and other decisions; any barriers to entry to competitors into the relevant market; and any other relevant matters.

3. Remedies and sanctions

See Section I.4 above.

There have not yet been any decisions sanctioning abuses of substantial degree of market power.

IV. Mergers

1. Scope

Under Section 3 of Schedule 7, undertakings are prohibited from carrying out a merger that has, or is likely to have, the effect of substantially lessening competition in Hong Kong (the "Merger Rule"). As the Merger

Rule only applies to mergers directly or indirectly involving telecommunications carrier licensees, pursuant to the MoU between the CCHK and the Communications Authority (the "Authorities", the Communications Authority will ordinarily take the role of lead authority in handling merger cases.

Under Section 8(1) of Schedule 7, the Merger Rule does not apply where the economic efficiencies of a merger outweigh the adverse effects of the transaction.

The *Guideline on the Merger Rule* discusses three types of economic efficiencies, namely productive efficiency, allocative efficiency and dynamic efficiency.

According to Section 8(2) of Schedule 7, an undertaking claiming the exclusion from the Merger Rule has the burden of proving the claim.

Under Section 9 of Schedule 7 of the Ordinance, the Chief Executive in Council of Hong Kong may exempt a specified merger from the application of the Merger Rule on grounds of exceptional and compelling reasons of public policy. No such orders have been made to date.

2. Notification

Hong Kong does not require the mandatory notification of mergers.

Under Section 7 of Schedule 7, the Authorities may commence an investigation of a merger within 30 days after the day on which the Authorities first became aware, or ought to have become aware, that the merger has taken place.

A merger may be investigated if, under Section 39, the Authorities have reasonable cause to suspect that a contravention of the Merger Rule has taken place, is taking place or is about to take place. Accordingly, the Authorities encourage parties to voluntarily notify any proposed mergers at an early stage.

3. Assessment

To assess whether a merger has, or is likely to have, the effect of substantially lessen competition, a non-exhaustive list of considerations are specified in Section 6 of Schedule 7:

a) the extent of competition from competitors outside Hong Kong
b) whether the acquired undertaking, or part of the acquired undertaking, has failed or is likely to fail in the near future
c) the extent to which substitutes are available or are likely to be available in the market
d) the existence and height of any barriers to entry into the market
e) whether the merger would result in the removal of an effective and vigorous competitor
f) the degree of countervailing power in the market
g) the nature and extent of change and innovation in the market

Safe harbours: The Guideline identifies two safe harbours below which the Authorities are unlikely to carry out a detailed investigation or intervention (these are indicative in nature):

- If the post-merger concentration ratio of the four largest firms ("CR4") in the relevant market is less than 75%, and the merged firm has a market share of less than 40%;

- Where the CR4 is 75% or more, and the combined market share of the merged entity is less than 15% of the relevant market
- Where the post-merger Herfindahl-Hirschman Index ("HHI") is less than 1,000
- Where the post-merger HHI is between 1,000 and 1,800 and the merger produces an increase in the HHI of less than 100
- Where the post-merger HHI is more than 1,800 and the merger produces an increase in the HHI of less than 50

4. Remedies and sanctions

The Authorities may accept a commitment from a party to take any action or refrain from taking action to address concerns about a possible contravention of the Merger Rule under Section 60 of the Ordinance. Both structural and behavioural commitments may be considered. Section 5.12 of the Guideline indicates that in general structural remedies will be preferred.

The Communications Authorities may bring proceedings before the Tribunal if there is reasonable cause to believe that a merger contravenes the Merger Rule. Where the Competition Tribunal finds a contravention, it may make orders to bring the contravention to an end, such as, for example, prohibiting the acquisition of a business, requiring the sale of assets, or requiring certain prohibitions or restrictions to be observed.

V. Statistics

The total number of cases brought to the Tribunal and the type of results relating to anti-competitive agreements and abuse of dominant position by the CCHK to 31 October 2017:

Type of Violation	Total Number of Cases brought to the Tribunal	Type of Result
Anti-Competitive Agreements	2	N/A(proceedings have not yet been concluded)
Unilateral Conduct or Abuse of Dominance	N/A	N/A
Total	2	N/A

VI. Relevant Laws and Regulations

In July 2015 the CCHK published a number of guidelines, available on the website www.compcomm.hk.

These guidelines provide information on how the CCHK intends to interpret and give effect to various provision of the Ordinance.

Guidelines

- Guideline on the First Conduct Rule
- Guideline on the Second Conduct Rule
- Guideline on the Merger Rule
- Guideline on Complaints
- Guideline on Investigations
- Guideline on Applications for a Decision under Sections 9 and 24 (Exclusions and Exemptions) and Section 15 Block Exemption Orders

Subsidiary legislation

- Competition (Application of Provisions) Regulation (Cap 619A)
- Competition (Disapplication of Provisions) Regulation (Cap 619B)
- Competition (Turnover) Regulation (Cap 619C)
- Competition (Fees) Regulation (Cap 619G)
- The Competition Tribunal Rules (Cap 619D);
- The Competition Tribunal Fees Rules (Cap 619E);
- The Competition Tribunal Suitors' Funds Rules (Cap 619F).

India

I. Competition Rules and Institutional Setting

1. The Competition Law

The Competition Act, 2002 (the "Act") was enacted in January 2003. Most of the provisions came into effect on 20th May, 2009 and the balance relating to mergers on 1st June, 2011.

The Act prevents practices having adverse effects on competition, promotes and sustains competition in markets, protects the interests of consumers and ensures freedom of trade carried on by other participants in markets in India. The Act regulates anti-competitive agreements, abuse of dominance, and anti-competitive business combinations.

The Act is applicable on enterprises engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries.

General exclusion: Any activities relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space are exempt (See Sec. 2(h) of the Act).

State-owned enterprises are not exempt from the application of the Act when conducting commercial activities in competition with private firms.

Section 54 of the Act empowers the Central Government to exempt, by notification, for such period as specified -

a) any class of enterprises if such exemption is necessary in the interest of security of the State or public interest;
b) any practice or agreement arising out of any obligation assumed by India under any treaty, agreement, or convention with any other country or countries;
c) any enterprise which performs a sovereign function on behalf of the Central Government or a State Government.

Extra-territorial application: Under Section 32, the Act applies to any agreement or abuse of dominant position or combination if such agreement or dominant position or combination has, or is likely to have, an appreciable adverse effect on competition ("AAEC") in a relevant market in India.

2. Competition Commission of India

CCI website:
www.cci.gov.in

The Competition Commission of India (the "CCI") is the authority that enforces the Act in India (Section 7).

According to Sections 27 and 28, the CCI investigates and adjudicates on suspected anti-competitive behaviour.

Under Section 18, it is the duty of the CCI is to eliminate practices having adverse effect on competition, to promote and sustain competition, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets in India.

Organisational structure of the CCI: The Head Office of the CCI is located in New Delhi. It has 46 professional officers and 57 support staff as of 31st December 2016. It had a budget of 13.84M USD (Rs. 92.10 cr. INR) in 2016-17.

According to Section 8, the CCI consists of a Chairperson and between two to six members, to be appointed by the Central Government. Decisions are taken by a majority vote in the Commission.

The Central Government chooses from a panel of names recommended by a Selection Committee consisting of the Chief Justice of India or his nominee, the Secretary in the Ministry of Corporate Affairs, the Secretary in the Ministry of Law and Justice, and two experts of repute who have special knowledge of, and professional experience in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters including competition law and policy.

The Central Government may, by order, remove the Chairperson or any member for reasons such as insolvency, being convicted of an offence which the Central Government deems to involve moral turpitude or becomes physically or mentally incapable of acting as a member, amongst others.

Other regulators with competition powers*:* A number of sectoral regulators have been given mandates to promote competition in their respective sectors. However, once anti-competitive behaviour contravening the provisions of the Act are noticed, the CCI has jurisdiction. Some of the regulators which have competition powers are named below:

- Central Electricity Regulation Commission (CERC) – Power (electricity) Sector regulator
- Telecom Regulatory Authority of India (TRAI) - Telecom Sector regulator

Competition advocacy: As per Section 49, the CCI is an active advocate for competition. The CCI has a duty to take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues. It shall give opinion on competition issues on a reference received from an authority established under any law (statutory authority)/ Central Government/ a State Government.

The CCI also conducts market studies in its jurisdiction. When the market study identifies obstacles or restrictions to competition, the study provides suggestions and recommendations to the government to remove/reduce such obstacles or restrictions.

International co-operation: The CCI has Memorandums of Understanding with the following six jurisdictions:

- Federal Antimonopoly Service (Russia)
- Federal Trade Commission and Department of Justice (USA)
- Australian Competition and Consumer Commission
- Directorate General for Competition of the European Commission
- Competition Bureau (Canada)
- BRICS Competition Authorities

3. Investigation

Initiation of investigation: According to Section 19 of the Act, the CCI may inquire into any alleged contravention of the provisions related to anti-competitive agreement or abuse of dominance either on its own motion or on receipt of any information from any person, consumer or their association or trade association; or on the reference made to it by the Central Government or a State Government or any statutory authority.

Powers of investigation: Once the CCI consider that there is a prima facie violation of the act it directs the Director General (DG) to investigate under Article 26(1) and the DG submits an Investigation Report back for consideration by the Commission for consideration.

Under Sections 36(2) and 41(3) the DG (CCI's investigative arm) shall have the following investigative powers:

a) summoning and enforcing the attendance of any person and examining him or her on oath;
b) requiring the discovery and production of documents;
c) receiving evidence on affidavit;
d) requisitioning any public record or document or copy of such record or document from any office
e) Carrying out search and seizure operation after obtaining warrant from Chief Metropolitan Magistrate of Delhi, when the Director General reasonably suspects the possibility of relevant evidence being destroyed or falsified.

Failure to comply with investigation: According to Section 43 of the Act, if any person fails to comply, without reasonable cause, with a direction given by the CCI or by DG, such person shall be punishable with fine which may extend to 100,000 rupees (one lakh rupees) for each day during which such failure continues subject to a maximum of 10,000,000 rupees (one crore rupees), as may be determined by the CCI.

Procedural fairness: CCI is guided by the principles of natural justice (Section 36(1) of the Act) and has the powers of a civil court (see Section 36(2)). CCI has also published procedural guidelines explaining its procedures under the Competition Commission of India (General) Regulations 2009 (Regulations 20 and 21).

Confidentiality: According to Section 57, the CCI shall not disclose any information obtained by or on behalf of the CCI or the Appellate Tribunal for the purposes of the Act, without prior permission in writing of the enterprise, unless in compliance with or for the purposes of the Act or any other law. The procedural provisions regarding confidentiality are given in Regulation 35 of the CCI (General Regulations) 2009.

4. Remedies and sanctions

The CCI undertakes investigations into suspected anti-competitive behaviour and may adjudicate on the matter, imposing fines amongst other sanctions.

Sanctions are mainly civil in nature except in cases of non - compliance of orders of the Commission, where criminal sanctions may apply.

Remedies and administrative sanctions: On finding an enterprise is in contravention of Section 3 (anti-competitive agreement) or Section 4 (abuse of dominant position), the CCI may impose a monetary penalty which shall not be more than ten per cent of the average turnover for the last three preceding financial years, upon each person or enterprise participating in such contravention. In case of a cartel, the CCI may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent of its turnover for each year of the continuance of such agreement, whichever is higher.

Currently, there are no guidelines on how the CCI sets fines.

Under Section 27 of the Act, the Commission can pass orders such as cease and desist orders, order for modification of agreements, impose monetary penalty, and any other orders or directions it deems fit.

Besides the above, Section 28 of the Act provides that CCI may direct division of an enterprise enjoying dominant position to ensure that such enterprise does not abuse its dominant position.

The Act contains provisions of vicarious liability (Section 48(2)) for individuals who are in charge of the conduct of the company or with whose consent or connivance, the contravention by the company takes place.

Criminal sanction: In case of contravention/non-compliance of orders of the CCI, the contravening party shall be punishable with imprisonment up to 3 years or fine up to INR 250,000,000 (250 million) or both, as the Chief Metropolitan Magistrate under section 42(3) of the Act which may deem fit.

5. Appeal

Section 53B of the Act stipulates that the Central Government or the State Government or a local authority or enterprise or any person, aggrieved by any direction, decision or order of the CCI may appeal to the Appellate Tribunal (NCLAT).

As per Section 53B (2), every appeal to the NCLAT shall be filed within a period of sixty days from the date on which a copy of the direction or decision order made by the CCI is received by the Central Government or the State Government or a local authority or enterprise or any person. Appeals from the NCLAT lie with the Supreme Court of India.

6. Private enforcement

As per Section 53N of the Act, the NCLAT can be approached for compensation for any loss or damage suffered by the applicant as a result of any contravention of the provisions of anti-competitive agreements by the enterprise from whom compensation is being claimed. Therefore for damages claims there must be a prior finding of a violation of the substantive provisions of the Act has been determined by the CCI and NCLAT. There are no standalone actions in India

II. Anti-competitive Agreements

1. Scope

Section 3 (1) of the Act sets forth that no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition (AAEC) within India.

Section 3 (3) of the Act prohibits horizontal anti-competitive agreements, which—

a) directly or indirectly determines purchase or sale prices;
b) limits or controls production, supply, markets, technical development, investment or provision of services;
c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;
d) directly or indirectly results in bid rigging or collusive bidding,

shall be presumed to have an AAEC. However, export cartels are excluded from the prohibition.

Regarding vertical agreements, including—

a) tie-in arrangement;
b) exclusive supply agreement;
c) exclusive distribution agreement;
d) refusal to deal;
e) resale price maintenance,

shall be an agreement in contravention of Section 3 (1) if such agreement causes or is likely to cause an AAEC in India.

2. Assessment

Section 19 (3) of the Act stipulates that the CCI shall, while determining whether an agreement has an AAEC under section 3, have due regard to all or any of the following factors, namely:—

a) creation of barriers to new entrants in the market;
b) driving existing competitors out of the market;
c) foreclosure of competition by hindering entry into the market;
d) accrual of benefits to consumers;
e) improvements in production or distribution of goods or provision of services;
f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

3. Remedies and sanctions

See Section I. 4 above.

4. Leniency

An enterprise which is a part of a cartel, may benefit from the leniency programme governed by Section 46 of the and the CCI (Lesser Penalty) Regulations, 2009. After 8 years of antitrust enforcement and based on the experience gained with leniency matters, the CCI made amendments to the leniency provisions in 2017 (CCI Lesser Penalty Amendment Regulations 2017). The Regulation provides the framework in which CCI can levy lower penalty than what is prescribed in the Act for cartel cases.

The CCI also has a marker system.

More than 3 parties to the same infringement can benefit from leniency. The first applicant may see a reduction of its penalty, up to one hundred percent, if it provides a vital disclosure which enables the CCI to form a prima-facie opinion on the existence of a cartel, or establishes the contravention in an investigation. Subsequent applicants may also benefit from leniency if they provide significant added value to the evidence already in possession of the CCI or DG. The second applicant may benefit from a reduction of up to fifty percent of the full penalty, while third or subsequent applicants may be granted reductions of up to thirty percent of the full penalty.

III. Abuse of Dominance

1. Scope

As per Section 4 of the Act, no enterprise or group shall abuse its dominant position. There shall be an abuse of dominant position if an enterprise or a group

a) directly or indirectly, imposes unfair or discriminatory condition in purchase or sale of goods or service or price in purchase or sale (including predatory price) of goods or service;

b) limits or restricts production of goods or provision of services or market there for or technical or scientific development relating to goods or services to the prejudice of consumers; or

c) indulges in practice or practices resulting in denial of market access in any manner; or

d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or

e) uses its dominant position in one relevant market to enter into, or protect other relevant market.

2. Assessment

As per the Section 4 of the Act, dominant position means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to—

- operate independently of competitive forces prevailing in the relevant market; or
- affect its competitors or consumers or the relevant market in its favour.

There are no defined market share thresholds for a presumption of dominance.

The CCI while inquiring whether an enterprise enjoys a dominant position or not under section 4, has due regard to 13 factors which are listed in Section 19 (4) of the Act, namely:—

a) market share of the enterprise;

b) size and resources of the enterprise;

c) size and importance of the competitors;

d) economic power of the enterprise including commercial advantages over competitors;

e) vertical integration of the enterprises or sale or service network of such enterprises;

f) dependence of consumers on the enterprise;

g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;

h) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;

i) countervailing buying power;

j) market structure and size of market;

k) social obligations and social costs;

l) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition;

m) any other factor which the CCI may consider relevant for the inquiry.

3. Remedies and sanctions

See Section I.4 above. Under Section 27, where the CCI identifies an abuse which contravenes Section 4, it may impose upon the enterprise to discontinue the abuse, or a penalty of up to 10% of the average of the turnover for the last three preceding financial years, or the highest between up to three times the profit of the enterprise for each year of the continuance of the agreement or up to 10% of the turnover for each year of the continuance of the agreement.

IV. Mergers

1. Scope

Section 6 (1) of the Act stipulates that no person or enterprise shall enter into a combination which causes or is likely to cause an AAEC within the relevant market in India and such a combination shall be void.

Section 5 of the Act defines combinations by dividing them into three categories:

a) Any acquisition by one or more persons of control, shares, voting rights or assets of one or more enterprises, which meets specified assets or turnover thresholds.

b) Any acquisition of control by a person over an enterprise where the person acquiring control already has direct or indirect control over another enterprise engaged in the production, distribution or trading of similar or identical or substitutable goods, or in the provision of a similar or identical or substitutable service, which meets specified assets or turnover thresholds.

c) Any merger or amalgamation, in which the enterprise remaining after merger or the enterprise created as a result of the amalgamation.

2. Notification

Transactions that meet the jurisdictional thresholds provided under Section 5 are subject to pre-notification to the CCI, and do not take effect until clearance has been granted - either CCI has passed an order under Section 31 of the Act or if 210 days have passed from the day on which the notice has been given to CCI.

The notification thresholds for the combined assets/turnover of the combining parties are as follows:

Table 1. Thresholds for filing notice

		Assets		Turnover
Enterprise level	India	>INR 20 billion		>INR 60 billion
	Worldwide within India	>USD 1 billion with at least >INR 10 Billion in India	or	>USD 3 billion with at least >INR 30 billion in India
Group level	India	>INR 80 billion	or	>INR 240 billion
	Worldwide within India	>USD 4 billion with at least >INR 10 billion in India		>USD 12 billion with at least >INR 30 billion in India

3. Procedural rules

Section 6 (2) of the Act prescribes that any person or enterprise, who or which proposes to enter into a combination, shall give notice to the CCI within 30 days of the approval of the proposal or the execution day, or acquiring of control.

The CCI shall form its prima facie opinion on the notice, as to whether the combination is likely to cause or has caused an AAEC within the relevant market in India, within thirty working days of receipt of said notice. The number of cases reviewed since inception until 31st March 2017 are 447.

Failure to notify: If any person or enterprise fails to give notice to the CCI, under Section 6 (2) the CCI shall impose on such person or enterprise a penalty which may extend to one percent of the total turnover or the assets, whichever is higher of such a combination.

4. Assessment

To determine whether a merger/ combination exhibit such nature, the CCI considers the factor enlisted in Section 20(4) of the Act, namely:

a) actual and potential level of competition through imports in the market

b) extent of barriers to entry into the market;

c) level of combination in the market;

d) degree of countervailing power in the market;

e) likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;

f) extent of effective competition likely to sustain in a market;

g) extent to which substitutes are available or arc likely to be available in the market;

h) market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;

i) likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;

j) nature and extent of vertical integration in the market;

k) possibility of a failing business;

l) nature and extent of innovation;

m) relative advantage, by way of the contribution to the economic development, by any combination having or likely to have;

n) whether the benefits of the combination outweigh the adverse impact of the combination, if any.

Safe Harbour: Regulation 4 read with Schedule I of CCI (Procedure in regard to the transaction of business relating to combinations) Regulations 2011 contains a list of transactions, the notice in respect of which need not normally be filed, as these categories of transactions are ordinarily not likely to result in AAEC.

Procedural Fairness: Section 29(1) of the Act empowers CCI to issue a show cause notice to the parties to combination calling upon them to respond within thirty days of the receipt of the notice, as to why investigation in respect of such combination should not be conducted.

CCI has not yet issued any separate guidelines on assessment of combination. However, CCI has made best efforts to clarify all significant issues raised by the parties through its decisions.

5. Remedies and sanctions

The CCI imposes structural and behavioural remedies on or makes prohibition decisions on anticompetitive business combinations. Remedies can also be offered by the merging parties and accepted by the CCI. The decision-makers in India's jurisdiction has never blocked a proposed merger.

Failure to comply: In case a transaction is implemented despite a prohibition decision, such a combination will be considered as void.

V. Statistics

The following table provides a snapshot of the contraventions established by CCI since 2009 to 31st March 2017.

Type of Violation	Total Number of Contraventions	Type of Result
Anti-Competitive Agreements	60	N/A
Unilateral Conduct or Abuse of Dominance	38	N/A
Combination Notices	447	
Total (excluding Combinations)	101	N/A

VI. Reference

- **Competition Act, 2002**
  www.cci.gov.in/sites/default/files/cci_pdf/competitionact2012.pdf
- **CCI (Procedure in regard to the transaction of Business relating to Combinations) Regulations, 2011**

  http://cci.gov.in/sites/default/files/regulation_pdf/cjuly2015_0.pdf
- **CCI Lesser Penalty Amendment Regulations 2017**

Indonesia

I. Competition Rules and Institutional Setting

1. Competition Law

The Law No. 5 Year 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (The Competition Law or Law) came to effect on 5 March 2000 and is the main legislation legal instrument in Indonesia on competition policy.

The purposes of the Competition Law are the following: (1) to safeguard the interests of the public and to improve national economic efficiency in order to improve the public welfare; (2) to ensure the certainty of equal business opportunities for large, medium, and small scale businesses; and (3) to prevent monopolistic practices and unfair competition, (4) to achieve effectiveness and efficiency in doing business.

The Law prohibits any agreement or conduct that can cause monopolistic practices or unfair business competition. Alongside the three main prohibitions for: (1) anticompetitive horizontal agreements, (2) abuse of dominance and (3) anticompetitive mergers, Indonesia has included a number of additional prohibitions in its law. The Law contains a number of vertical prohibitions: Article 6 (price discrimination), Article 8 (resale price maintenance) and Article 15 (limited exclusive dealing). In addition, the Law contains specific prohibitions against certain ownership structures, outlawing trusts (Article 12), cross-directorships (Article 26) and majority cross-shareholdings (Article 27).

The legal system of Indonesia is based on civil law, customary law and Roman Dutch law.

General exclusion: The Law applies to all persons or entities that are established in Indonesia or do their business in Indonesia (Article 1(5)).It therefore applies also to state-owned enterprises (SOEs).

Extra-territorial application: The Law does not have extra-territorial application, however, should the foreign enterprise be affiliated (hold a minority shareholding) with an enterprise in Indonesia or having a subsidiary (holding a majority shareholding) in Indonesia, then KPPU can enforce the Competition Law.

2. Business Competition Supervisory Commission (KPPU)

The Komisi Pengawas Persaingan Usaha; ("KPPU") which was established in 2000 is an independent authority and is solely responsible for the enforcement of the Law.

Under the Law No. 20 Year 2008 on the Micro, Small, and Medium-sized Enterprises (MSMEs) and its implementing regulations, the KPPU is entrusted with a new assignment of supervising partnership

agreements between MSMEs and large enterprises. Also, the KPPU is responsible for enforcing the terms of partnership agreements which include subcontracting, franchise and distribution agreements and joint ventures among others.

Organisational structure of the KPPU: The KPPU is headquartered in Jakarta and has 5 representative offices in major islands. The KPPU has 2 deputies, 1 secretary general, 6 directorates, 3 bureaus, 12 divisions, a chief of economists, 2 expert staffs, and 1 internal control unit. The total number of the KPPU staff is 355 as of 2016. The KPPU determines its own organisational structure. The budget of the KPPU in 2016 was IDR 140 billion.

KPPU website:
http://eng.kppu.go.id/

Contact:
international@kppu.go.id,
kppuinternational@gmail.com

Previously, the KPPU obtained its budget only from the state treasury. Since 2016, the KPPU obtains its budget from two channels: from the state treasury, as decided by the House of Representatives every year, but now also a percentage of the total of fines collected by the KPPU every year. The latter is proposed by the KPPU and negotiated with the Ministry of Finance. The KPPU has autonomy as to how it uses its budget. It is audited annually by the Audit Board of Indonesia. The KPPU consists of a Chairperson, Vice Chairperson, and at least seven other members. Members of the KPPU are appointed and dismissed by the President upon the approval of the House of Representatives. The Chairman and Vice Chairman are elected by agreement of the Board members, or at least after a majority vote. The Board member's mandates are renewable.

The Law provides under Article 32 for certain minimum qualifications that must be held to be appointed, and under Article 33, it is stated that members of the KPPU can be dismissed. The dismissal is further regulated in KPPU's Decision Number 22 Year 2009 on the Code of Ethics of KPPU's Members. Any violation to the Code of Ethics must be proven in a Hearing by an *ad hoc* Respective Council. The Respective Council consists of 1 Chair and 4 Members; 3 members of the Respective Council are selected internally from KPPU members, while the 2 others are selected externally from the Secretariat of KPPU. Should the violation be proven, KPPU members can be sanctioned with dismissal by a Presidential Decree.

According to Article 30 (3) of the Law, KPPU is accountable to the President. It shall provide periodical reports to the House of Representatives and the President.

Other regulators with competition powers: There are no sector regulators that have competition powers.

Competition advocacy: The KPPU is involved in competition reviews of proposed and existing legislation at the national and sub-national level. This includes primary legislation and subordinate regulations, orders and licenses**.** The KPPU's role is to identify aspects of proposed legislation that may restrict competition and argue for the removal or modification of such provisions in order to eliminate or, where this is not feasible, to minimise anti-competitive impacts. The KPPU issued policy recommendations during each year of the past decade in response to propose government legislation. Its competition assessment check-list is based on the OECD Competition Assessment check-list.

Also, the KPPU conducts market/sector studies in Indonesia. In general, the KPPU has been conducting four to five studies each year and covered strategic sectors such as banking, transportation, and health. If the market/sector study identifies an obstacle or a restriction to competition caused by an existing public policy, the KPPU can include an opinion/recommendation to the government to remove or reduce such obstacle or restriction in its studies.

International co-operation: The KPPU has signed a Memorandum of Understanding (MoU) with the Korea Fair Trade Commission (KFTC) and with the Authority for Fair Competition and Consumer Protection of Mongolia (AFCCP). The Indonesia-Japan Economic Partnership Agreement (IJEPA) includes a competition-specific chapter. Both the Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA) and Indonesia –European Union Comprehensive Economic Partnership Agreement (IEUCEPA), which are still being negotiated, would include competition chapters.

At multilateral level, competition policy is also a part of the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA), and of the on-going negotiation of Regional Comprehensive Economic Partnership Agreement (RCEP) between ASEAN and its six development partners.

3. Investigation

Initiation of investigation: The KPPU may conduct an investigation on its initiative or upon receipt of a complaint.

After receiving a complaint, the KPPU conducts a preliminary examination within 30 days during which the KPPU determines whether a follow-up examination is required. The time frame for a follow-up examination is 60 days, which may be extended up to a further 30 days. The KPPU has to make a decision on whether an infringement has occurred within 30 days from the completion of the follow-up examination.

Powers of investigation: Under Article 36, the KPPU has the power to conduct investigations relating to agreements and conducts which may cause monopolistic practices and unfair business competition. It may summon business actors suspected of an infringement and bring witnesses, experts, government agencies and any person considered to have knowledge about the infringement.

The KPPU has no powers to conduct search and seizure inspections.

Failure to comply with investigation: Under Article 48, business actors that refuse to be investigated, provide information or submit evidence or otherwise impede the investigation are subject to criminal fines between IDR 1 billion and IDR 5 billion or imprisonment (as replacement of fine) up to 3 months.

Procedural fairness: The KPPU provides the parties under investigation for an antitrust infringement with opportunities to consult with the KPPU with regard to significant legal, factual or procedural issues during the course of the investigation. To improve fairness and rigor in decision making, an important reform was introduced through the KPPU Regulation No. 1/2010 on Case Handling Procedures. Accordingly, parties have the right to be heard and present evidence before the imposition of any sanctions or remedies for having committed an antitrust infringement.

To strengthen procedural fairness, the KPPU provides procedural guidelines, including: Guideline on Case Handling Procedure, Guideline on Procedures for the Supervision of Partnership Implementation, and Guideline on Procedures for Partnership's Case Handling.

Confidentiality: According to Article 39 (3), the KPPU is obligated to refrain from disclosing confidential information obtained from business actors.

4. Remedies and sanctions

The KPPU investigates and adjudicates competition law matters under the Law.

***Remedies and administrative sanctions*:** Under Article 47, the KPPU may impose administrative sanctions on business actors violating the Law, such as the nullification of agreements, issue orders to stop the conduct, issue pecuniary penalties between IDR1 billion and IDR 25 billion and impose compensation for damages to compensate parties for losses caused by the conduct.

***Criminal sanctions*:** Under Articles 48 and 49, criminal sanctions may be imposed as follows: a fine (up to IDR 100 billion) or imprisonment (up to 6 months instead of the fine). Additional criminal sanctions may include the revocation of business permits, prohibition of business actors from holding the position of director or commissioner for a period, and an order to cease certain activities or actions causing damage to other parties.

Criminal sanctions are imposed by the criminal courts in accordance with the criminal procedures; therefore the KPPU needs to hand over the case for investigation and prosecution by the Police and the Public Prosecutor's office.

According to Sections 43 (3) and 44 (1), once the KPPU's decision with has been read in an open trial and notified to violators, the contravening parties must submit an execution report to the KPPU within 30 days. If the parties refuse to carry out the sanctions, the KPPU may hand over the decision to investigators, thereby indicating the possibility of criminal sanctions upon decision of the Court.

5. Appeal

Under Article 44, business actors may appeal to the District Court within 14 days after receiving notification of the KPPU's decision on infringement. According to Article 45, the time frame for the District Court to examine an appeal is 14 days from the receipt of the appeal. The District Court must make a decision within 30 days from the starting date the appeal was examined.

The decision of the District Court may be appealed before the Supreme Court within 14 days after the appeal decision was officially announced. The Supreme Court must render a decision within 30 days from the receipt of the appeal.

6. Private Enforcement

Private action for damages is not available under the Law. Private actions cannot be made through the courts, as this is not allowed by the Supreme Court Regulation No. 3/2005.

However, injured parties may make a claim for damages (and demonstrate those claims) with the KPPU, the KPPU only acting as "judge" and will not use its investigation powers.

II. Anti-competitive Agreements

1. Scope

Chapter III of the Law provides for per se prohibition of agreements (no need to demonstrate effects) to:

- fix prices to be borne by the consumer/clients in the same relevant market (Article 5);
- price discriminate (Article 6);
- boycott other enterprises from engaging in the same type of business or access to sell or buy goods and services (Article 10); and
- exclusive contracts that restrict resale and supply (Article 15)
- Chapter III also prohibits other agreements when they result in monopolistic practices or unfair business competitions (need to demonstrate effects). Included are:
- agreements to jointly control the production or market (oligopoly) (Article 4)
- agreements between competitors to fix price below the market price (predatory pricing) (Article 7)
- agreements for resale price maintenance (Article 8)
- agreements leading to market partitioning or allocation (Article 9)
- agreements between competitors to influence the price by determining production (cartels) (Article 11)
- agreements to establish a joint company or a large company, by keeping and maintaining the continuity of each respective company or its members, with the aim of controlling the production (trust) (Article 12)
- agreements of jointly controlling the purchase or acquisition of supplies to control prices (oligopsony) (Article 13)
- agreements to control the production of goods included in the production chain (vertical integration) (Article 14)
- agreements with foreign parties setting forth conditions which may cause monopolistic practices or unfair business competition (Article 16).

According to Article 5(2), the Law is not applicable to agreements to fix prices in a joint partnership.

According to Article 50, agreements or activities excluded from the provisions of the Law include the following:

a) actions and/or agreements aimed at implementing applicable laws and regulations

b) agreements related to intellectual property rights, such as licenses, patents, trademarks, copyright, industrial product design, integrated electronic circuits, and trade secrets as well as agreements related to franchise

c) agreements for the stipulation of technical standards of goods and or services which do not restrain, and or do not impede competition

d) agency agreements which do not stipulate the resupply of goods and or services at a price level lower than the contracted price

e) co-operation agreements in the field of research for raising or improving the living standard of society at large

f) international agreements ratified by the Government of the Republic of Indonesia

g) export-oriented agreements and or actions not disrupting domestic needs and or supplies

h) business actors of the small-scale group

i) activities of co-operatives with the specific aim of serving their members.

2. Assessment

For those Chapter III agreements prohibited when they result in monopolistic practices or unfair business competitions and where the KPPU needs to demonstrate effects (e.g., market allocation, bid rigging) the KPPU has issued the Guidelines on Cartels (No. 4/2010) that sets out a number of indicators, that include high level of concentration and small number of business actors, homogenous goods, high barriers to entry, amongst others.

3. Remedies and sanctions

***Remedies and administrative sanctions*:** Under Article 47, administrative sanctions may be imposed, such as a fine (see Section I.4), revocation of contracts, order to cease vertical integration and/or compensation for damages.

***Criminal sanctions*:** Under Article 48, violations of Articles 4, 9 through 14, and 16 are subject to a criminal fine between IDR 25 billion and IDR 100 billion, or imprisonment up to 6 months. Violations of Articles 5 through 8 are subject to a criminal fine between IDR 5 billion and IDR 25 billion, or imprisonment up to 5 months.

4. Leniency

There is no leniency programme currently.

III. Abuse of Dominance

1. Scope

The Law prohibits monopoly and monopsony (Chapter IV) and the abuse of dominant position (Chapter V).

Under Article 25(1), an enterprise in a dominant position is prohibited from:

a) imposing trade terms with the intention to prevent and/or hamper the consumers to acquire competitive goods and/or services, both in prices or quality; or

b) restricting the market and technology development, or

c) hampering other entrepreneurs having the potential to become their competitors top enter the relevant market

Other prohibited conducts for an enterprise with a dominant position are price discrimination (Article 19(d)), predatory pricing (Article 20), interlocking management in competing companies (Article 26), and owning or creating a majority shareholding in several companies in the same market (Article 27 on cross-ownership).

Articles 17 and 18 also apply to cases of monopoly or monopsony respectively.

2. Assessment

Under Article 1(4) elements to consider include whether the business enterprise does not have a significant competitor in terms of market share, and has a higher position than of its competitors in terms of financial capacity, access to supply or sales and the ability to adjust supply or demand of goods and services.

According to Article 25(2), an enterprise is considered to have a dominant position where one enterprise or a group of enterprises controls more than 50% of the market share. Two or more enterprises or a group of enterprises that control over 75% of the market share are also considered to be in a dominant position.

3. Remedies and sanctions

***Remedies and administrative sanctions*:** Under Article 47, administrative sanctions may be imposed as follows: (1) a fine (see Section I.4); (2) compensation for damages; (3) an order to stop activities proven to have cause monopolistic practices/unfair business competition and/or damages to the public; (4) an order to end the abuse of dominant position.

***Criminal sanctions*:** Under Article 48, violations of Articles 17 through 19, 25 and 27 are subject to a criminal fine between IDR 25 billion and IDR 100 billion, or imprisonment up to 6 months.

IV. Mergers

1. Scope

Article 28 prohibits a business from conducting mergers, dissolving companies or acquiring shares of other enterprises if the conduct can cause monopolistic practices and/or unfair business competition.

2. Notification

Indonesia has adopted a unique combination of a voluntary pre-merger notification (consultation), and a compulsory post-merger notification. Thus mergers, consolidations and acquisition can be voluntarily notified pre-completion and must be notified post-completion to the KPPU.

The Government Regulation No. 57 of 2010 about Merger and Acquisition sets forth thresholds for notification: the combined value of the assets exceeds IDR 2.5 trillion (or IDR 20 trillion for banks); and/or the combined value of the sales turnover exceeds IDR 5 trillion.

This Regulation also sets out that a notifiable transaction is one which constitutes a change of control, meaning ownership of shares or voting rights above 50% in a business entity, ownership or control of shares or voting rights with the ability to influence or determine management strategies or management of a business entity.

Notification obligation does not apply to mergers between affiliated business actors, which is defined as mergers between companies with direct or indirect control under Article 7 of the Regulation. However, mergers carried out by companies owned by SOEs are not treated as mergers between affiliated business actors.

The formation of a new joint venture is not subject to notification, unless it is structured through an existing company.

3. Procedural rules

Under Article 29 of the Competition Law, merging parties should notify the KPPU within 30 working days after the merger has legally taken effect.

Review of the merger notification is made by the KPPU within 90 working days from the date of receipt of complete form and documents.

4. Assessment

In reviewing a merger and whether it will lead to a risk of monopolistic practices or unfair business competition, the KPPU looks into five aspects, namely changes in the level of concentration, barriers to entry, potential for anti-competitive behaviour, efficiency, and the failing firm defence.

The first step is to determine the level of concentration; the KPPU uses the Herfindahl-Hirschman Index (HHI). Depending on the market concentration, two spectrums are used: HHI under 1800 (Spectrum I) for

less concentrated markets; HHI more than 1800 (Spectrum II) for a highly concentrated market. The KPPU considers that a merger may raise competition concerns when the changes in HHI reach more than 150 in a concentrated market.

Government Regulation No. 57 of 2010 and Commission Regulation No. 2 Year 2013 provide guidance on how the merger assessment is conducted.

The KPPU has not as of yet blocked any proposed mergers.

5. Remedies and sanctions

Where the KPPU determines that a merger may lead to monopolistic practices and or unfair competition, the parties are asked to submit proposals for remedies. The KPPU Merger Guidelines provide a procedure for remedies.

Remedies may include divestiture of certain affiliated businesses or behavioural commitments from the merging parties.

Under Article 47(2), administrative sanctions may be imposed, such as fines (see Section I.4), annulment of a merger, cease and desist orders and compensation for losses caused.

Under Article 48, violations of Article 28 are subject to a criminal fine between IDR 25 billion and IDR 100 billion, or imprisonment up to 6 months.

Failure to notify: The failure to notify or late filing may be subject to fines. This is further regulated by Article 6 of Government Regulation Number 57 Year 2010, which states that the enterprise that did not notify their transaction shall be subject to a sanction in the form of administrative penalty in the amount of IDR 1 billion for each day of delay, provided that the maximum amount of administrative penalty shall be in the amount of IDR 25 billion.

V. Statistics

Statistics (2000-2016)

Type of Violation	Total Number of Cases Reviewed	Type of Result
Anti-Competitive Agreements	168	Hard-core cartel- 22 Non hard-core cartel-151 Vertical agreements-66
Abuse of Dominance	30	Abuse of dominance-31
Mergers	34	Clearance-36 Clearance with remedies-1
Total	232	N/A

Source: Response by the KPPU to OECD/KPC “Guidebook Questionnaires” for period 2000-2016

VI. Relevant Laws and Regulations

Competition Law and Regulations

- Government Regulation of the Republic Of Indonesia Number 57 Year 2010 Concerning Merger or Consolidation of Business Entities and Acquisition of Shares of Companies Which May Cause Monopolistic Practices and Unfair Business Competition
- Regulation of the Supreme Court of the Republic of Indonesia No. 3 of 2005 regarding the Procedures for Filing Objections to the Decisions of KPPU
- KPPU Regulation No. 1 of 2006 regarding the Procedures for Case-Handling in KPPU
- KPPU Regulation No. 2 of 2008 regarding the Authorities of the Commission Secretariat in Case-Handling
- KPPU Regulation No. 1 of 2010 regarding Case Handling Procedures replaces KPPU Regulation No. 1 of 2006 and No. 2 of 2008 for cases introduced as of 5 April 2010
- KPPU Regulation Number 1 Year 2015 Regarding Procedures for the Supervision of Partnership Implementation
- KPPU Regulation Number 3 Year 2015 Regarding Procedures for Partnership's Case Handling
- Guideline on the Exemption of Intellectual Property Rights Agreement (Article 50b)
- Guideline on Relevant Market (Article 1(10))
- Guideline on Administrative Sanction (Article 47)
- Guideline on the Exemption of Regulated Practices (Article 50a)
- Guideline on the Exemption of Franchise Agreement (50b)
- Guideline on Interlocking Directorate (Article 26)
- Guideline on Bid Rigging (Article 22)
- Guideline on State Owned Enterprises (SOE) (Article 51)
- Guideline on (Article 11)
- Guideline on Vertical Integration (Article 14)
- Guideline on the Abuse of Dominant Position (Article 25)
- Guideline on the Exemption of Agency Agreements (Article 50d)
- Guideline on Merger & Acquisition Consultation
- Guideline on Discrimination Practices (Article 19d)
- Guideline on Price Fixing (Article 5)
- Guideline on Exclusive Dealing (Article 15)
- Guideline on Predatory Pricing (Article 20)
- Guideline on Share Ownership (Article 27)
- Guideline on Resale Price Maintenance (Article 8)
- Guideline on the Exemption of Small & Medium Enterprises (Article 50h)
- Guideline on Monopoly Practices (Article 17)
- Guideline on Merger & Acquisition (Revised Edition)
- Guideline on Administrative Sanction of Overdue Post – Merger Notification
- Guideline on Procedures for the Supervision of Partnership Implementation
- Guideline on Procedures for Partnership's Case Handling

Japan

I. Competition Rules and Institutional Setting

1. Competition Law

The Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade (the "Antimonopoly Act" or "AMA"), came into effect in July 1947.

The purpose of the AMA is to promote fair and free competition, stimulate the creative initiative of enterprises, encourage business activity, heighten the level of employment and actual national income, and thereby promote the democratic and wholesome development of the national economy as well as secure the interests of general consumers (Article 1 of the AMA).

The AMA regulates private monopolisation, unreasonable restraint of trade such as cartels and bid-rigging, business combinations as well as other offences such as unfair trade practices (including abuse of superior bargaining position, refusal to trade, discriminatory consideration, unjust low price sales, resale price maintenance, etc.) - It should be noted that these are not covered here.

In this document, the "Anti-competitive Agreements" section focuses only on the regulation of unreasonable restraint of trade and re sale price maintenance which is one of the unfair trade practices. The "Abuse of Dominance" section onl y describes the regulation of private monopolisation. The "Mergers" section introduces the regulation of b usiness combinations. Please refer to the JFTC's booklet and related documents on the JFTC's website t o understand the whole picture of the AMA. http://www.jftc.go.jp/en/about_jftc/role.html

General exclusion: No sectors are excluded or exempted from the application of the AMA. State-owned enterprises are not exempt from the application of the AMA when conducting commercial activities in competition with private firms.

Extra-territorial application: The AMA does not include any particular provision as regards its jurisdictional reach and it has been interpreted to apply to conduct that causes substantial effects on the Japanese market, irrespective of where it takes place.

2. Japan Fair Trade Commission

JFTC website:
www.jftc.go.jp/en/

Contact:
Tel: +81-3-3581-1998
E-mail: intnldiv@jftc.go.jp

The Japan Fair Trade Commission (the "JFTC") is an independent administrative commission and the competition law enforcer of Japan's competition law (Chapter VIII AMA). Article 28 of the AMA stipulates that "the chairman and the commissioners of the Fair Trade Commission shall perform their authority independently."

The JFTC's main function is the enforcement of the AMA and the Act against Delay in Payment of Subcontract Proceeds, Etc. to Subcontractor (the "Subcontract Act").

Organisational structure of the JFTC: The JFTC, whose headquarters is located in Tokyo, has 840 employees as of December, 2016. It had a budget in 2016 of €93.4 million (JPY 11 billion). The JFTC prepares a draft budget. It is finally approved in the Diet, after examination by Ministry of Finance.

It has a secretariat, 2 bureaus (Economic Affairs Bureau which has Trade Practices Department and Investigation Bureau which has Criminal Investigation Department) and 7 regional offices in Hokkaido, Tohoku, Chubu, Kinki, Chugoku, Shikoku, and Kyusyu.

Article 29 of the AMA sets out that the JFTC consists of a chairman and 4 commissioners, who are appointed by the Prime Minister with the consent of both Houses of the Diet from among persons aged thirty five or above who have knowledge and experience in law or economics. The appointment and dismissal of the chairman is certified by the Emperor.

According to the AMA, the chairman or a commissioner may not be dismissed from office against the chairman's will, except in the circumstances specified by Article 31 of the AMA (e.g., has a decision to commence bankruptcy proceedings).

Other regulators with competition powers: There are no sector regulators that have competition powers.

Competition Advocacy: Competition assessment is conducted by government ministries and agencies when a regulation is established, amended or abolished. Government ministries and agencies fill a checklist for competition assessment. It is a part of Regulatory Impact Analysis managed by Ministry of Internal Affairs and Communications. The JFTC designed the checklist and gives advice to ministries and agencies to support the assessment.

The JFTC may undertake market studies, and it may issue recommendations to the relevant government agency when it identifies competition concerns. The recipient government agency, with discretion, determines whether or not to take action based on the recommendations.

International co-operation: The JFTC has concluded many international co-operation agreements or MoUs with foreign competition authorities such as those of Australia, Korea, Canada, China, EU, Mongolia, the Philippines, Singapore, the US, Vietnam, and so on. Full texts of these agreements are available at the JFTC's website.

3. Investigation

Initiation of investigation: An investigation may be initiated either by a complaint or by the JFTC's own initiative.

Powers of investigation: The JFTC officials may conduct either administrative investigations or, compulsory investigations of criminal cases in order to obtain evidence of violations of the AMA.

Administrative investigations

For administrative investigations, Article 47 of the AMA grants the JFTC the power to carry out necessary investigations against suspected violations of the AMA. This authority includes on-site inspections to the premises of entrepreneurs, etc., orders to submit the related materials, retention (seizure) of the submitted materials, appearance orders and interrogation, and report orders (Article 47 of the AMA).

In the case of an administrative investigation, private locations such as residences, automobiles can be inspected by the JFTC, but if the party concerned refuses to accept the investigation, the JFTC is not able to directly or physically exercise its power. The investigation does not require a warrant issued by a judge.

The JFTC has a policy to accuse the cases where administrative measures are not enough to attain their objectives, such as vicious and serious violations or repeated violations.

When necessary to investigate a criminal case, Article 101 of the AMA stipulates that a staff member of the JFTC may request a criminal suspect or witness to appear before the JFTC, question the person, inspect an object possessed or abandoned by the person, and may retain an object voluntarily submitted or abandoned by the person.

Article 102 of the AMA, provides for compulsory investigations granting JFTC staff the powers when necessary to investigate a criminal case to conduct an on-site inspection, search and seize with a warrant issued in advance by a judge of the Tokyo District Court or the Tokyo Summary Court. Private locations such as residences, automobiles can be visited and searched with a warrant issued by a judge by staff members designated by the JFTC.

Article 103 of the AMA sets forth that whenever necessary in the investigation of a criminal case, after receipt of a warrant, an JFTC staff may seize postal items, correspondence or documents related to telegrams that are sent by or to a criminal suspect and stored or possessed by persons handling communications affairs pursuant to the provisions of laws and regulations.

Procedural fairness:

The JFTC provides parties under investigation for an antitrust infringement with opportunities to consult with the JFTC with regards to significant legal, factual or procedural issues during the course of investigation.

Parties have the right to be heard and present evidence before the imposition of any sanctions or remedies for having committed an antitrust infringement under Article 49 of the AMA. Article 50 of the AMA provides that the JFTC shall notify the expected contents of the order to be issued and other matters, including the facts found by the JFTC, the application of laws and regulations, and principal evidence etc. to the would-be addressee by a reasonable period of time prior to the date of hearing and the would-be addressee may express his/her opinion and produce evidence etc. on the date of hearing of opinions.

Article 52 of the AMA provides that the party concerned may request to the JFTC to inspect or copy the evidence proving the facts found by the JFTC with respect to the case for hearing of opinions.

Investigative measures: Article 22 of the Rules on Administrative Investigation provides that (1) Any person, who was subject to the administrative investigations (Article 47(1) of the AMA), may object to the JTFC within one week from the day when such investigation is conducted, and when the JFTC reject the objection, the JFTC shall notify such a result with its reason. On the other hand, when recognising that there are grounds for the objection, the JFTC shall order the investigator to withdraw, cancel, or change the said measure.

Confidentiality: Article 39 of the AMA sets out that the chairman, the commissioners and the staff members of the JFTC, or any person who once held such position, shall not divulge or make surreptitious use of trade secrets of enterprises which came to their knowledge in the course of their duties.

A violation of Article 39 of the AMA is punishable by imprisonment of not more than one year or by a fine of not more than one million yen (Article 93 of the AMA).

According to judicial precedent, trade secrets of enterprises mean “non-public facts which the enterprise wants to keep secret and which have objective and reasonable grounds for keeping secret” (Judgment of Tokyo District Court, July 28, 1978).

Further procedural guidelines and rules explaining the investigative procedures are contained in the *Rules on Administrative Investigations by the Fair Trade Commission*, *Rules on Reporting and Submission of Materials Regarding Immunity from or Reduction of Surcharges*, and *Rules on Compulsory Investigation of Criminal Cases by the Fair Trade Commission*, amongst others.

4. Remedies and Sanctions

The AMA provides for both administrative measures and criminal sanctions.

Remedies and administrative sanctions: For administrative measures, cease and desist orders and surcharge payment orders, amongst others, are issued.

Article 7-2 of the AMA sets out how monetary sanctions for antitrust infringements are set by the JFTC. The surcharges are calculated on the basis of the sales amount or purchase amount of the products or services in question during the period of the violations (3 years maximum) by multiplying such amount by calculation rates, where these rates are diverse depending on the type of the conduct in question as well as the operation scales and business categories of the enterprises.

Criminal sanctions: Criminal sanctions are available for certain types of violations of the AMA. Details of criminal sanctions are set out in Sections II, III below.

5. Appeal

Under Article 85 of the AMA, parties may appeal decisions of the JFTC to the Tokyo District Court, and then if dissatisfied with the rulings of the court, subsequently to the Tokyo High Court and then the Supreme Court (Article 87 of the AMA).

The grounds of appeal to the Tokyo District Court are the illegality of the orders, including mistake of factual findings, mistake of applications of laws and breaches of procedural requirements.

6 Private enforcement

Damages claims: Antitrust damage claims in Japan are available to victims in two ways: claims can be brought either under the Article 25 of the AMA or under the general civil law provisions (pursuant to Article 709 of the Civil Code).

Victims can file claims under both legal bases if the respective requirements are met.

Actions under Article 25 of the AMA require a final and binding decision by the JFTC. Therefore, Article 25 of the AMA claims can only be follow-on actions brought to the Tokyo District Court (which has the exclusive jurisdiction on Article 25 of the AMA claim cases). In Article 25 of the AMA claim cases, the standard of review of case will be "liability without fault". In other words, the plaintiff is not required to prove the defendant's intent or negligence (Article 26 of the AMA). To the knowledge of the JFTC, over 90 claims for damages have been filed to date based on the Article 25 of the AMA.

Stand-alone claims pursuant to the Article 709 of the Civil Code claims will be heard by the district court jurisdictionally competent for the case under the general civil procedural rules. Unlike under Article 25 of the AMA the plaintiff is required to prove that the defendant's intentional misconduct or negligence for a claim under Article 709 of the Civil Code.

Injunction claims: Under Article 24 of the AMA, a person whose interest is infringed upon or likely to be infringed upon, due to violations of Article 19 (unfair trade practices) of the AMA, and who is thereby suffering or likely to suffer extreme damages as a result, is entitled to seek the suspension or prevention of such infringements from the enterprise that infringes or is likely to infringe upon such interests.

II. Anti-competitive Agreements

1. Scope

Article 3 of the AMA regulates anticompetitive agreements, prescribing that "an enterprise must not effect…unreasonable restraint of trade."

"Unreasonable restraint of trade" includes cartel conduct and is defined by Article 2 (6) of the AMA and means "such business activities, by which any enterprise, by contract, agreement or any other means irrespective of its name, in concert with other enterprises, mutually restrict or conduct their business activities in such a manner as to fix, maintain or increase prices, or to limit production, technology, products, facilities or counterparties, thereby causing, contrary to the public interest, a substantial restraint of competition in any particular field of trade".

Vertical restraints may be subject to Article 19 of the AMA regulating unfair trade practices as unilateral conduct. In the JFTC guidelines, some types of conduct are categorised as “Vertical Restraints” such as resale price maintenance, single branding, and exclusive territory. The following sections focus on resale price maintenance.

2. Assessment

Unreasonable restraint of trade

The AMA explicitly requires ‘substantial restraint of competition’ in any particular field of trade as an element to establish the illegality of cartels, and thus technically cartels are not per se illegal in Japan and are subject to the JFTC demonstrating the effects of the alleged agreement.

Unfair trade practices

Detailed explanation about how to assess whether vertical restraints fall into unfair trade practices is provided for in the Guidelines Concerning Distribution Systems and Business Practices.

For example, restrictions by a manufacture of resale price of distributors (RPM) are in principle illegal as unfair trade practices unless there are “justifiable grounds”.

3. Remedies and sanctions

Administrative measures are generally imposed against a violation of the AMA. However, in some cases, criminal sanctions are imposed against a violation of unreasonable restraint of trade. The JFTC does not have a settlement process at its disposal.

Remedies and administrative sanctions:

Unreasonable restraint of trade

Article 7 of the AMA stipulates that an act in violation of Article 3 of the AMA shall face a cease and desist order.

Article 7-2 of the AMA provides that the JFTC shall order surcharge payments for anti-competitive agreements. Surcharge payment orders are of administrative in nature.

As per Article 7-2 (1) of the AMA, the amount of the surcharge is stipulated as an amount equivalent to a certain calculation rate (depends on the type of conduct in question, operation scales and industry) of the sales amount of the relevant goods or services during the period of implementation of the unreasonable restraint of trade (up to a maximum of 3 years). The JFTC does not have the discretion on whether or not to order payment or the amount of the surcharge to be imposed.

The calculation rate for the surcharge will be increased by 50 per cent from the original rate if the relevant company has, in the previous 10 years, already been subject to a previous payment order for surcharge due to an unreasonable restraint of trade. Further, the calculation rate for the surcharge will also be increased by 50 per cent from the original rate if the company played a leading role in the unreasonable restraint of trade. These factors are cumulative, thus should these two circumstances apply to a given company the surcharge will be doubled, compared to the amount calculated by the original rate.

On the other hand, the calculation rate for the surcharge will be reduced by 20 percent if a company ceases its violation one month before the JFTC commences an investigation.

In case a criminal sanction is also imposed in the same case, the amount corresponding to half the amount of fine is deducted from the surcharge amount (Article 7-2(19) of the AMA).

Unfair trade practices (RPM)

An enterprise is subject to a cease and desist order if it commits an unfair trade practice (Article 20(1) of t he AMA). An enterprise is subject to a surcharge payment order, if it repeats a similar violation within 10 years after receiving a cease and desist order (Article 20-5 of the AMA).

Criminal sanctions:

Unreasonable restraint of trade (Article 3 of the AMA) is subject to criminal sanctions.

An individual shall be punished by a fine of not more than five million yen or imprisonment of up to 5 years (Article 89 of the AMA) if he/she has engaged in a cartel or bid rigging.

Any enterprise shall be punished by a fine of not more than five hundred million yen. (Article 95 of the AMA). If a representative of an enterprise failed to take the necessary measures to prevent the violation despite the knowledge of the plan for the violation of the AMA, such as cartels / bid rigging, a fine of not more than 5 million yen may be imposed on such a representative (Article 95-2 of the AMA).

Criminal sanctions shall be imposed only when a criminal accusation is filed by the JFTC (Article 96 of the AMA). The JFTC has a policy to accuse cases where administrative measures are not enough to attain their objectives, such as vicious and serious violations or repeated violations.

The choice and extent of the criminal sanction is determined by the court.

4. Leniency

Japan's leniency programme provides for full immunity or reduction of surcharges to enterprises that voluntarily report cartels and bid rigging (Unreasonable restraint of trade) they have been involved in.

The leniency programme is set out in Article 7-2 of the AMA, whilst the practical procedure for the programme is stipulated in the Rules on Reporting and Submission of Materials Regarding Immunity from or Reduction of Surcharges

The first leniency applicant before the investigation starts may be granted full immunity from surcharges and the second applicant may be granted a 50% reduction in surcharges. Should they submit such an application after the investigation has started then they only be granted 30% reduction in the surcharge. The third to fifth applicants that apply on and after the investigation start date may be granted a 30% reduction. Up to 5 applicants before, during and after the investigation start date may be granted surcharge immunity or reductions in total (up to 3 applicants on and after the investigation start date may be granted surcharge reductions).

The JFTC has no discretion to determine the reduction rate by taking into account the degree of co-operation from the applicants or the added value of the evidence submitted.

As criminal sanctions require the accusation of the JFTC, the successful first leniency applicant will not have an accusation filed against it. The JFTC decides case-by-case basis regarding subsequent applicants as to whether to bring criminal charges.

There are over 1,000 leniency applications from January 2006, when the leniency programme was introduced.

There is no "amnesty plus".

III. Abuse of Dominance

1. Scope

Article 3 of the AMA prohibits private monopolisation. Private monopolisation is a practice by which an enterprise, individually or by combination, substantially restrains competition in any particular field of trade, contrary to public interest, by excluding or controlling the business practices of other enterprises (Article 2(5) of the AMA).

There are two types of private monopolisation: exclusionary private monopolisation and private monopolisation by way of controlling business activities of other enterprises.

Exclusionary private monopolisation: Exclusionary conduct refers to various conducts that would cause difficulty for other entrepreneurs to continue their business activities or for new market entrants to commence their business activities, thereby would be likely to cause a substantial restraint of competition in a particular field of trade. The *Guidelines for Exclusionary Private Monopolisation under the Antimonopoly Act* (2009) describe four typical exclusionary conducts: "below-cost pricing", "exclusive dealing", "tying", and "refusal to supply and discriminatory treatment".

Private monopolisation by control:

Private monopolisation by control means depriving other firms of their freedom to make decisions concerning their business activities and forcing or luring them into obeying the controller.

2. Assessment

In Japan, holding of substantial market power or dominant position itself is not prohibited. Only abusive behaviour by a company with such position is prohibited. The JFTC does not rely on a certain specific criteria to determine anti-competitiveness. It comprehensively considers various factors including market-share on a case-by-case basis to assess whether or not competition is substantially restrained as the requirements for exclusionary private monopolisation. These factors include competitors' conditions, potential competitive pressure, such as the degree of entry barriers and the degree of substitutability between the entrant's and the enterprise's products, efficiency, user's countervailing bargaining power, and extraordinary circumstances to assure consumer interests.

The JFTC has published guidelines detailing sorts of conduct that are deemed exclusionary private monopolisation.

3. Remedies and sanctions

The JFTC has the power to issue cease and desist orders as well as a surcharge payment order (Article 7 and Article 7-2(4) of the AMA). Both are administrative in nature. There are currently no commitment-like type decisions in force in Japan. A commitment procedure was introduced to the AMA in December 2016, which has not yet come into effect.

Note that although the basic methodology for the calculation of surcharges is similar to that for cartels, there are several differences.

Regarding criminal sanctions any person (a director, an officer or an employee of a judicial person) that has undertaken a private monopolisation shall be punished by imprisonment of up to five years or by a fine of up to five million yen (Article 89 of the AMA). Also, the said judicial person shall be punished by a fine of no more than 500 million yen (Article 95 of the AMA). Criminal punishment shall be imposed only when a criminal accusation is filed by the JFTC. Note that in the context of private monopolisation cases, the criminal provisions have not yet been exercised.

IV. Mergers

1. Scope

Chapter IV of the AMA prohibits any business combination that would substantially restrain competition in a particular field of trade (i.e., the relevant market).

Article 10, Article 15, Article 15-2, Article 15-3 and Article 16 of the AMA stipulate that no company shall engage in acquisition of shares, merger, company split, joint share transfer and acquisition of business, respectively, if such activity would substantially restrain competition in any particular field of trade, nor may any company use unfair trade practices to do such activity.

2. Notification

The AMA provides for a prior notification system. Article 15 of the AMA stipulates that every merging company shall notify the JFTC in advance of its merger plan pursuant to the Rules of the Fair Trade Commission if the total domestic sales amount exceeds the thresholds provided by Cabinet Order.

Notification thresholds differ depending on the types of business combination at issue: share acquisitions (Article 10 of the AMA), merger (Article 15 of the AMA), company split (Article 15-2 of the AMA), joint share transfer (Article 15-3 of the AMA) and acquisition of business (Article 16 of the AMA). Information about notification thresholds for each type of transaction is available at the JFTC's website, http://www.jftc.go.jp/en/policy_enforcement/mergers/index.files/Threshold for Notification.pdf.

As an example, in the case of acquisition of shares, a company acquiring shares of another company is obliged to notify the JFTC of its plan in advance when the company belonging to a group of combined companies (a company group consisting of its ultimate parent company and the subsidiaries of the ultimate parent company) with total domestic sales of its group exceeding 20 billion yen plans to acquire voting rights of another company with total domestic sales exceeding 5 billion yen including those of its

subsidiaries, and the ratio of these voting rights exceeds the thresholds of 20% or 50% of total voting rights as a result of the acquisition.

The guidelines for business combinations explicitly state that establishing a joint investment company (joint venture) can be subject to the merger review under the framework for shareholdings regulation. They define a joint investment company as "a company jointly established or acquired by two or more companies through an agreement to pursue operations necessary to achieve mutual benefits".

3. Procedural Rules

The JFTC shall review the merger within 30 days (this may be shortened) as Phase I and shall give notice that a cease and desist order will not be issued when there are no competition concerns under the AMA. If necessary, the JFTC may request the company to submit additional information, leading to a Phase II investigation. In this case the review period shall be extended until 120 days after the receipt of the notification or 90 days after the date of receipt of all reports, etc., whichever is later.

A notifying enterprise is prohibited from implementing mergers until a period of 30 days has elapsed from the day when notification was received by the JFTC. It may be subject to a cease and desist order under Article 17-2 of the AMA.

Procedural fairness: The notifying party may request explanation about possible issues regarding the procedure and the JFTC will explain such issues. Also, pursuant to provisions of Article 7-2 of the Rules on Applications for Approval, Reporting, Notification, etc. Pursuant to the Provisions of Articles 9 to 16 of the AMA, a notifying company may submit to the JFTC written opinions or any other materials it believes necessary for the review by the JFTC.

4. Assessment

The JFTC's merger review considers whether the merger at issue would substantially restrain competition in the market.

Assessment factors are described in *Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination*, such as combined market share and the market shares of the companies and differences from competitors (horizontal mergers) or the company group's incentive to exclude their competitors and possible co-ordinated effects (vertical mergers).

Safe harbours: The JFTC's merger guidelines offer safe harbours, where the case at issue shall be presumed not to have substantial anti-competitive effect. The criteria for exemption are different for horizontal business combinations and vertical/conglomerate combinations.

- Horizontal business combination

a) The Herfindahl-Hirschman Index ("HHI") after the business combination is not more than 1,500

b) HHI after the business combination is more than 2,500 while the increment of HHI is not more than 250.

c) HHI after the business combination is more than 2,500 while the increment of HHI is not more than 150.

- Vertical or conglomerate business combinations

a) The market share of the company group after the combination is not more than 10% in all of the particular fields of trade where the company group is involved.

b) The HHI is not more than 2,500 and the market share of the company group after the business combination is not more than 25% in all of the particular fields of trade where the company group is involved.

5. Remedies and Sanctions

Under Article 17-2 of the AMA the JFTC can issue cease and desist orders (an administrative measure) under the AMA when a business combination would substantially restrain competition in a particular field of trade, however, the JFTC has never issued such an order, for nearly half a century in the past.

For anti-competitive business combinations, the JFTC may clear them by accepting remedies.

According to the Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination the "remedies should, in principle, be structural measures such as the transfer of business and should basically be those that restore competition lost as a result of the combination in order to prevent the company group from controlling the price and other factors to a certain extent".

Exceptionally, the guidelines also provide that "in a market featuring a rapidly changing market structure through technological innovations, there may be cases where it is appropriate to take certain types of behavioural measures."

The remedies are proposed by the parties of the business combination and the JFTC will determine whether together with the remedies the business combination would substantially restrain competition. The JFTC will generally conduct a market test to confirm the effectiveness of those remedies.

According to the Guidelines in principle "the remedies should be completed before the implementation of the combination". Even if the remedies are to be completed after the implementation of the combination, then an appropriate and definite deadline for the remedies is set.

If the remedies are not implemented in the timeframe and manner stipulated in the approved plan the JFTC may issue cease and desist orders under Article 10(10) of the AMA.

Failure to notify: The failure to file a notification is subject to criminal fine of up to 2 million yen (article 91-2 of the AMA) for a corporation.

Implementation before clearance: As per Article 91-2 of the AMA, implementing a transaction before the expiration of the thirty-day waiting period from the date of acceptance of the notification is subject to a fine of up to 2 million yen for a corporation.

V. Statistics

The total number of decisions as well as types of result relating to anti-competitive agreements, unilateral conducts and mergers, reviewed from 2012 to 2016 by the JFTC, are as below.

Performance in Correction (2012-2016)

Types of Cases	Total Number of Decisions	Types of Decisions
Anti-Competitive Agreements	63	Unreasonable restraint of trade-57 Substantial restraint of competition by a trade association-2 Unjustly restricting the functions or activities of the constituent enterprises by trade association-2 Resale Price Maintenance-2
Unilateral Conducts	5	Private Monopolisation-1 Abuse of Superior Bargaining Position-3 Interference with a competitor's transaction-1
Mergers	1,525*	-clearance-1482 -clearance with remedies-9
Total	1,593	N/A

* Number of notifications, including that of notifications withdrawn due to the filing company's circumstances.

Source: "Guidebook Questionnaire of Japan"

VI. List of Cited Relevant Laws and Regulations

Competition Law

The Antimonopoly Act (AMA),
www.jftc.go.jp/en/legislation_gls/amended_ama09/index.html

Guidelines (http://www.jftc.go.jp/en/legislation_gls/imonopoly_guidelines.html)

- Guidelines Concerning Administrative Guidance under the Antimonopoly Act (1994)
- Guidelines for Exclusionary Private Monopolisation under the Antimonopoly Act (2009)
- Guidelines Concerning Distribution Systems and Business Practices (1991, revised 2017)
- Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination (2004, revised 2011)
- Policies Concerning Procedures of Review of Business Combination Notification (2011)
- Guidelines on Administrative Investigation Procedures under the Antimonopoly Act (2016)

(Note) Only Japanese version is authentic.

Korea

I. Competition Rules and Institutional Setting

1. Competition Law

The Monopoly Regulation and Fair Trade Act (the "MRFTA") was enacted in December, 1980 and took effect in April, 1981.

The MRFTA regulates anti-competitive agreements, abuse of dominance, M&As that substantially lessen competition in Korea, and concentration of economic power. According to Article 1 the purpose of the MRFTA is to promote fair and free competition, to encourage creative enterprising activities, to protect consumers and to strive for balanced development of the national economy, by preventing any abuse of dominance by business entities and any excessive concentration of economic power, and by regulating undue collaborative acts and unfair trade practices.

In addition to major antitrust prohibitions, the MRFTA regulates unfair trade practices including "unjustly refusing to deal or treating a trading party in a discriminatory manner," "unjustly excluding competitors," "unjustly inducing or coercing customers of a competitor to deal with oneself."

General exclusion: There is no sector excluded or exempted from the application of the MRFTA. State-owned enterprises are not exempt from the application of the MRFTA when conducting commercial activities in competition with private firms.

Extra-territorial application: The MRFTA is also applicable to firms located outside Korea whose behaviour directly affects competition and consumers in domestic markets. The MRFTA's merger control provisions are also applicable to foreign mergers.

2. Korea Fair Trade Commission

The Korea Fair Trade Commission (the "KFTC") is an authority that enforces competition law and consumer law of Korea. The KFTC is a ministerial-level central administrative organisation under the authority of the Prime Minister and also functions as a quasi-judiciary body.

The KFTC's functions are to promote competition, strengthen consumers' rights, secure competitive environment for small and medium-sized enterprises, and restrain concentration of economic power.

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www.ftc.go.kr/eng/index.jsp

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E-mail:kftc@korea.kr
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Organisational structure of KFTC: Located in Sejong City, the KFTC has 535 staff as of 31 December, 2016 with 5 bureaus and 5 regional offices in Busan, Gwangju, Daejeon, Daegu, and Seoul. The KFTC had an annual budget of €91 million in 2016.

As to its budget, the KFTC consults with the Ministry of Strategy and Finance and sets up a five-year financial management plan each year. Within the five-year plan, yearly plans are fixed at government level according to priorities. The National Assembly then confirms these plans for the following year.

The KFTC organises its resources in accordance with priorities that are annually determined in an annual plan that is made public.

The KFTC is divided into the Commission and the Secretariat. The Commission is in charge of making KFTC decisions assisted by the legal advisors, while in the Secretariat, each division of bureaus under the Secretary General investigates a case and submits its examination reports to the Commission.

Article 37(1) of MRFTA specifies that the Commission shall be comprised of 9 Commissioners, including a chairman and a Vice-Chairman. Among them, 4 Commissioners shall be non-standing Members of the KFTC.

The Chairman and Vice-Chairman shall be appointed by the President upon the recommendation of the Prime Minister. Commissioners are appointed by the President upon the recommendation of the Chairman. The term of office is 3 years for the commissioners and may be renewed only once. No Commissioner will be removed from office against his/her will except in the circumstances specified by Article 40 (e.g., where the Commissioner has been sentenced to imprisonment or becomes incapable of performing duties due to physical or mental weakness).

Other regulators with competition powers: There are no sector regulators that have competition powers.

Competition advocacy: Article 63 of the MRFTA sets forth that the head of the relevant government agency shall seek prior consultation with the KFTC, where he or she plans to propose legislation having anti-competitive effects. In 2015, the KFTC put forth its opinions on 14 of the 1444 requests made by relevant government agencies. Among them, 11 KFTC's opinions were reflected out of 14.

The KFTC prepared plans for competition assessment tailored to meet the Korean situation after the OECD released the Competition Assessment Toolkit in 2007. In late 2008, competition assessment was institutionalised and became an essential part of the legislative process in Korea with the revision of Guidelines on Regulatory Impact Assessment of the Prime Minister's Office.

The KFTC also undertakes market studies to reform existing anti-competitive regulations. Past areas of market study include: air transport, web portal, film, oil, pharmaceuticals, liquor, cosmetics, online education, digital music, multi-channel video service, advertisement, insurance, car rental industry, gas industry, and railway (non-freight). The Market Structure Policy Bureau was established with the KFTC in 2009 to take charge of such regulatory reforms. If an obstacle or a restriction to competition is identified in existing policies, the KFTC provides an opinion to the relevant government agencies to reduce or eliminate such an obstacle or restriction. The relevant government agencies, with discretion, determine whether they take measures according to the opinion.

International co-operation: The KFTC has signed international co-operation agreements or MOUs with 15 competition authorities in total, including the EU, the US DOJ, the US FTC, Japan, China, Russia, Brazil, Australia, Latvia, CIS, Mexico, Turkey, Canada and Indonesia amongst others. Full texts of the MOUs or agreements are available at the KFTC's website.

3. Investigation

Initiation of investigation: The investigation into an alleged violation of law can be initiated either by a report from any person who notices such conduct, or at the KFTC's own initiative. If the investigator concludes that countermeasures are necessary, he/she prepares an examination report and presents it to the Commission. The investigated company can also review the examination report and submit objections or comments on the report.

Powers of investigation: Article 50 (1) of the MRFTA allows investigators to summon the relevant parties, interested parties or witnesses to a hearing; seek their opinions; issue an order to an business entity, or employee to report on business conditions and to submit other necessary materials; and retain submitted materials or items.

Article 50 (2) and (3) of the MRFTA also grants the KFTC the authority to have an investigator access the office or place of business of business entities in order to examine the business and management situation, account books, documents, electronic materials, and voice-recording materials. Any investigator who conducts an examination at the investigated company's place of business, may order business entities to submit materials necessary for examination, or retain the materials or things submitted.

Since the investigation carried out under Article 50 (2) is conducted after receiving the consent of the investigated firms, a warrant or court authorisation is not required for such investigations. However, in actuality, investigated firms are compelled to comply with investigation procedures, as non-compliance is punishable with a criminal sanction under Article 67 of the MRFTA.

Failure to comply with investigation: Article 69-2 of MRFTA stipulates that persons who fail to comply with summons issued under Article 50(1)1, without justifiable grounds, are subject to a fine not exceeding KRW100 million. Persons who fail to file a report or present necessary materials as prescribed under Article 50(1)3 or (3), or persons who file a false report or present false materials, or persons who refuse, interfere with or evade an investigation under Article 50(2) are punished by imprisonment not exceeding 2 years or a criminal fine not exceeding KRW150 million, in accordance with Article 67.

Procedural fairness: The MRFTA provides for procedural rules and the KFTC has published guidelines regarding its investigations, namely the Investigation Procedure Rules and Rules on the FTC's Committee Operation and Case Handling Procedure. These guidelines set out overall investigative procedures of the KFTC. Article 52 (1) and (2) (opportunity to express opinion), and Article 52-2 (request for access to data) of the MRFTA specify the concerned parties' rights to make a statement of opinion to the KFTC before a decision is taken.

Confidentiality: Article 29(12) of rules of KFTC's operation and case handling procedure defines trade secrets, privacy secrets, voluntary report related data, and other classified data specified by provisions of other laws as confidential data.

Article 62 of the MRFTA stipulates that the Commissioner, public officials, or staff of the KFTC shall not divulge or use any confidential information of an business entity or an business entity's organisation, which they learned in the course of carrying out their duties under the MRFTA or while performing mediation of disputes.

Violation of Article 62 is punishable by imprisonment for no more than 2 years, or by a fine not exceeding KRW2 million, in accordance with Article 69 (2).

4. Remedies and sanctions

The KFTC may impose corrective measures and/or surcharges (administrative measures in nature) on those who infringed the MRFTA, and refers serious infringement cases to the Prosecutor's Office requesting for a criminal fine or imprisonment.

Details on the penal provisions can be found under each Section below.

Consent Decree: Under Article 51(2) to Article 51(4), business entities being investigated by the KFTC can apply for a consent decree, alongside remedies. Should the KFTC determine that the remedies are adequate, it may issue a consent decree. A consent decree does not involve business entities admitting that they are guilty of violating the law. A consent order is applied to the conduct that is allegedly in violation of the MRFTA. However, consent decrees are not available for cartels and obvious and serious degree of violation cases.

Once a consent order is decided it is considered an administrative measure of the KFTC, and accordingly, the business entity has an obligation to follow the consent order. In the case where the consent order is not executed without justifiable reasons, the consent order shall be cancelled or an enforcement fine that does not exceed 2 million KRW per day will be levied.

5. Appeal

In accordance with Article 53 and 54, any party dissatisfied with any measures taken by the KFTC usually chooses to: 1) request for a review to the KFTC; or 2) file a lawsuit. In practice, parties can choose both ways at the same time. Usually the decision from the KFTC's review is delivered earlier than the Court's decision.

Moreover, after requesting for a review, any party dissatisfied with the decisions taken after KFTC's review may further appeal to the Court. Such a request for review or lawsuit must be filed within 30 days from the receipt of a notification of the said measures. Article 55 sets out that the Seoul High Court has exclusive jurisdiction over any lawsuits for appeal cases filed pursuant to Article 54.

6. Private enforcement

Damages caused by an antitrust infringement can be compensated under the MRFTA, by filing a lawsuit to a district court. Article 56 of the MRFTA prescribes that the infringer is not liable for compensation of damages if they are able to prove that the violation of the provisions occurred without any deliberation or any negligence.

Even before the KFTC makes any decisions on an alleged violation of the MRFTA, any person harmed by the violation may seek damages under the MRFTA.

Article 57 of the MRFTA stipulates that in situations where it is extremely difficult to determine the amount of damages, the court may recognise reasonable amount of damages based on the intent of entire arguments and the results of the investigation.

II. Anti-competitive Agreements

1. Scope

Article 19 of the MRFTA regulates anticompetitive agreements under the name of "unfair collaborative acts." Article 19 of the MRFTA prescribes that no business entity shall agree with other business entities by contract, agreement, resolution, or any other means, to jointly engage in activities which restrict competition.

Article 19 of the MRFTA provides a list of unfair collaborative acts including: price fixing, agreements on terms and conditions for transactions, restriction on production or delivery, market allocation, bid rigging, restriction on types and standards of goods or services, and joint management of major parts of business or the establishment of a company to that end.

2. Assessment

The Guidelines for Concerted Practice Review sets forth that for price fixing, agreements to fix output, market allocation, and bid rigging are presumed anti-competitive with no need to examine other factors.

The Guidelines for Concerted Practice Review also note that when the total market share of participating businesses is less than 20%, the effect of the unfair collaborative act is considered negligible regardless of the existence of anti-competitive effects.

Resale price maintenance is analysed under the rule of reason, taking into account the efficiency-enhancing effect.

For unfair collaborative acts not provided for in the guidelines, the KFTC takes into account whether the act concerned has an efficiency-enhancing effect. When the anti-competitive effect of the act concerned outweighs the efficiency generated, the act is deemed anti-competitive.

3. Remedies and sanctions

Article 21 of the MRFTA sets forth that when any collaborative act is performed in violation of Article 19 (1) (Prohibition of Unfair Collaborative Acts), the KFTC may order the business entity concerned to discontinue such act, to publish the fact that the relevant business entity is ordered to correct such collaborative act, or to take necessary corrective measures.

Article 22 sets forth that when any act is performed in violation of Article 19(1), the KFTC may impose a surcharge on the relevant business entity within the limits not exceeding the amount equivalent to 10 percent of the turnover determined by Presidential decree.

Article 66 (Penalty Provisions) (1) sets forth that any person who violates Article 19 (1) shall be punished by imprisonment for up to three years or by a fine not exceeding KRW 200 million.

From its establishment in 1981 to 31 December 2016, the KFTC imposed a total of 1,059 measures such as surcharge, corrective orders, amongst others, against anti-competitive agreements.

4. Leniency

Under Article 22-2 of the MRFTA, either total immunity from or reduction of remedies and penalty surcharges, and exemption of criminal prosecution can be obtained for entities that self-report on unfair collaborative acts and/or hand co-operate in the investigation by means of providing evidence. Under Article 35-1 of the MRFTA Enforcement Decree, prior to the initiation of investigations, the first leniency applicant that voluntarily reports on unfair collaborative acts is exempt from surcharges and corrective measures, while the second leniency applicant can receive a 50% reduction in surcharge and a mitigation of corrective measures.

Provided that the KFTC does not have sufficient evidence to prove unfair collaborative acts after the initiation of investigations, business entities that co-operate during the investigation can still receive immunity from surcharges or a mitigation of corrective measures. In all instances, to be eligible for leniency the applicant must sincerely co-operate until the end of the investigation by disclosing relevant facts and submitting relevant documents and promptly terminated its part in the activity.

Upon receiving leniency applications, the KFTC issues an "Acknowledgement of Receipt" to the applicants, specifying the date, time and order of the application. The full committee of the KFTC decides whether to confirm or deny the application. When conditions are met, the applicant either receives benefits or faces a cancellation of applicant status.

Procedurally, first, the committee decides the amount of penalty surcharges against the applicant of the original case. Then, through the deliberation and resolution procedure on the separate leniency case, penalty surcharges of the relevant business entity shall be cancelled partially or entirely should all conditions set out in Article 35 of the MRFTA Enforcement decree be complied with.

Amnesty plus: If a company is under the KFTC's investigation into cartel A and discloses cartel B as a first-in leniency applicant, the company may receive amnesty in cartel B as the first-in applicant, and also get a reduction or exemption of surcharges for cartel A. The reduction rate that will be applied to cartel A depends on the size of cartel B.

III. Abuse of Dominance

1. Scope

Abusive conduct by a dominant business entity is prohibited under Article 3-2(1) of the MRFTA. The MRFTA does not provide for a general definition for abusive conduct. Instead, the MRFTA lists five different types of conduct which includes exclusionary and exploitative conduct. Prohibited conduct includes the following:

a) Unreasonably determining, maintaining, or changing the price of goods or services

b) Unreasonably controlling the sales of goods or the supply of services

c) Unreasonably hindering the business activity of other business entity

d) Unreasonably impeding new competitors' market entry

e) Unfairly excluding competitors or doing considerable harm to the interests of consumers.

Paragraphs (a) and (b), and the latter part of paragraph (e) constitute exploitative practices. The categories or standards for abuse are specified by the presidential decree and Guidelines for the abuse of market dominant position.

Paragraph (c) and (d), and the former part of paragraph (e) constitute exclusionary practices. The categories or standards for abuse are specified by the presidential decree and Guidelines for the abuse of market dominant position.

2. Assessment

Article 2 of the MRFTA defines market-dominant business entity as one in a position to determine, maintain, or change, alone or jointly with other business entities, the price, quantity or quality of goods or services, or other trading conditions in a certain line of trade.

Under Article 4 (Presumption of Market Dominant Business entity) of the MRFTA, a business entity that has one of the following market shares in a certain line of trade is presumed a market-dominant business entity (except an business entity whose annual sales turnover or annual purchases amount in a certain line of trade is less than KRW 4 billion):

(a) The market share of one business entity is 50/100 or more; or

(b) The combined market share of not less than three business entities is 75/100 or more. (Those whose market share is less than 10/100 shall be excluded.)

In determining dominance, non-market-share factors are also considered: the existence of barriers to market entry; the degree of market barrier; relative scale of competing businesses; possibility of competitors working jointly; the existence of similar products and adjacent markets; and market-freezing ability and resources.

The *Guidelines for the Abuse of Market Dominant Position* sets out the standards for examining whether a conduct of a market dominant business entity constitutes an abuse of market dominant position.

As an example, in the assessment of whether an exclusive dealing constitutes an abuse of market dominance should take various factors into consideration: the intent or purpose and conduct of the dealing, market share of the dominant firm, how much competitors' entry into the market or market expansion opportunity was foreclosed, whether the act has raised costs, duration of the transaction, whether the act has changed the price and output in the relevant market, whether there exist similar products and adjacent market, whether innovation and diversity are undermined, amongst others. However, as far as proving the intent or purpose to limit competition is concerned, the Supreme Court of Korea has ruled that exclusive dealing is an act that conditions the transaction on not trading with competitors, so the act has in its nature the intent to limit competition. Therefore the Supreme Court relieves the level of proving the anti-competitive intent or purpose when applying these provisions to exclusive dealing.

3. Remedies and sanctions

The KFTC has the power to issue corrective measures and surcharges which are administrative in nature. Article 5 of the MRFTA sets forth that where there exists any violation of the provisions of Article 3-2, the KFTC may order the market dominating business entity to reduce the price, to cease the act of violation, to publish the fact that the business entity is ordered to make corrections thereof, and to take other measures necessary for correction.

Article 6 stipulates that in cases of abusive acts by a market-dominating business entity, the KFTC may impose upon such an business entity a surcharge not exceeding the amount equivalent to 3/100 of the turnover determined by the presidential decree. However, where it is difficult to compute the turnover, up to KRW1 billion may be imposed as surcharges.

Regarding criminal sanctions, article 66 (Penalty Provisions) (1) sets forth that any person who violates Article 3-2 shall be punished by imprisonment for up to three years or by a fine not exceeding KRW 200 million.

Since its establishment in 1981 to 31 December 2016, the KFTC imposed a total of 93 measures such as surcharges, and corrective orders against abuse of dominance cases.

IV. Merger Control

1. Scope

Article 7 (1) of the MRFTA prohibits anyone from substantially lessening competition in a particular business area – directly or through a person having special interest - by conducting a business combination including, but not limited to:

1. Acquisition or ownership of stocks of other companies,

2. Concurrent holding of an executive position in another company,

3. Merger with other companies;

4. Acquisition by transfer, lease or acceptance by mandate of the whole or main part of a business of another company.

5. Participation in the establishment of a new company. (Joint Ventures can be considered as one form of such participation in the establishment of a new company.)

2. Notification

As per Article 12 (1) of the MRFTA, business combination must be notified to the KFTC if the combination meets the following requirements: when total assets, or world-wide turnover, of at least one of the parties involved is KRW 200 billion or more.

In addition to the aforementioned threshold, cross-border M&As, and business combinations between foreign-based companies, however, need to be notified to the KFTC, when the local turnover in Korea of each of the foreign companies involved is KRW 20 billion or more.

Article 12(6) of the MRFTA stipulates that notification of business combinations shall be made within 30 days after the date of such combination. However, business combinations involving a large company with total assets or world-wide turnover of KRW 2 trillion are subject to ex-ante notification. In other words, they need to notify the combination between the date of the contract and the date of the consummation of the concerned combination.

Failure to notify: Article 69-2 of the MRFTA stipulates that if a party has failed to notify or has falsely notified an M&A, the party shall be charged with an administrative fine not exceeding KRW 100 million.

Voluntary pre-merger notification: Under Article 12-(9), any person intending to pursue a notifiable business combination, and who is concerned about the application about Article 7, may request the KFTC to assess whether a combination has the potential to fall into the category of practices substantially restraining competition, even before the notification period.

3. Procedural Rules

The KFTC shall review the submitted business combinations and inform the parties on the outcome within 30 days from the date of notification. If necessary, the KFTC can extend the review period up to 90 days from the expiration date of a 30 day period.

Procedural fairness: In accordance with Article 52 (opportunity to express opinion) of the MRFTA, the merging parties have the right to express their opinion to the KFTC. The parties can submit their opinion at any time before the decision is made on a merger.

3. Assessment

The KFTC conducts the “Substantive Lessening of Competition Test” to determine whether or not a combination at issue substantially restricts competition, taking into account the possibility of collusion and, existence of similar goods, amongst others. More details about the assessment are provided for in “Chapter VI Criteria for Competition Restriction Effect” of the *Guidelines for the Combination of Enterprises Review*.

Safe harbour: According to the above mentioned guidelines the following cases are not to be viewed as substantially anti-competitive:

- Horizontal M&A (not applied by Article 7(4))

(a) Less than 1,200 Herfindahl-Hirschman Index (hereinafter referred to as “HHI”)

(b) From 1,200 to 2,500 HHI, and an HHI increase of less than 250

(c) More than 2,500 HHI, and an HHI increase of less than 150

- Vertical M&A or conglomerate M&A

(a) HHI is less than 2,500, and the market share is less than 25%, in the particular business area that the company takes part in.

(b) The company ranks number 4 or lower in each area of trade.

Article 7 (4). 1 stipulates that any business combination is to be presumed anti-competitive if the aggregated market share of the parties satisfies all the elements below:

(1) the aggregated market share of the combined company meets the MRFTA market share thresholds for presumption of market dominance (i.e., if an enterprise has a market share of 50 per cent or more, or if the top three enterprises' total market share is 75 per cent or more with no individual enterprise having less than a 10 per cent share);

(2) the aggregated market share of the combined company is the largest in the relevant market; and

(3) the aggregated market share of the combined company exceeds that of the company holding the second-largest market share by not less than 25 per cent of the aggregated market share of the parties.

4. Remedies and sanctions

The KFTC may impose prohibition orders, structural remedies or behavioural remedies against anti-competitive business combinations.

The KFTC has adopted and implemented guidelines on merger remedies (enacted by the Established Rule. No. 2011-3, 22 June 2011,"Guidelines ") in order to improve the predictability in the design and choice of remedies. Structural remedies include also divestiture of assets, and Intellectual property (IP) remedies. (Guideline IV. 2.)

Behavioural remedies involve enabling measures and controlling outcomes. (Guideline IV. 3.) Enabling measures aim to improve a position of the parties' competitors or aims to stimulate competition in the market. Other types of behavioural remedies are employed to control or restrict the outcomes of the parties' business activities. These types include price caps, supply commitments and service or quality controls.

Article 66 (Penalty Provisions) (1) sets forth that any person who violates Article 7 (1) shall be punished by imprisonment of up to three years or by a fine not exceeding KRW 200 million.

V. Statistics

The table below is the statistics relating to countermeasures taken against anti-competitive agreements, unilateral conducts, and mergers, from 2012 to 2016 by the KFTC, such as surcharges, corrective orders, referral to the Prosecutor's Office, warnings, etc.

Type of Violation	Total Number of countermeasures taken	Type of Result
Anti-Competitive Agreements	528*	1) Surcharge-214 2)Corrective order-161 3) Accusation to Prosecutor's office-81 4)Corrective Recommendation-0 5)Warning etc.-67 6)Voluntary correction-5
Abuse of Dominance	6*	1) Surcharge-1 2)Corrective order-4 3) Accusation to Prosecutor's office-1 4)Corrective Recommendation-4 5)Warning etc.-2 6)Voluntary correction-0
Mergers	141*	1) Surcharge-0 2)Corrective order-19 3) Accusation to Prosecutor's office-0 4)Corrective Recommendation-0 5)Warning etc.-122 6)Voluntary correction-0
Total	675*	1) Surcharge-215 2)Corrective order-184 3) Accusation to Prosecutor's office-4 4)Corrective Recommendation-4 5)Warning etc.-191 6)Voluntary correction-5

'12- 16' Data from "Statistical Yearbook 2016" of KFTC

* Surcharge is not included in total number, as it is punished with other measures

VI. Reference

- **Monopoly Regulation and Fair Trade Act,** www.ftc.go.kr/eng/solution/skin/doc.html?fn=ba6f86fd088b81a52460c059a0b9ee9b8c981ca5887a75a0e6740aa02a0a1835&rs=/eng/files/data/result/files/bbs/2016/
- **Enforcement Decree of the Monopoly Regulation**, www.ftc.go.kr/eng/solution/skin/doc.html?fn=6e816e61944a96a4592cbe46997f626e9e01ed09e35df6bd1fad7444e89abfc3&rs=/eng/files/data/result/files/bbs/2016/
- **Review Guidelines on Unfair Exercise of Intellectual Property Rights**
- **Rules on operation of, procedure for, etc. system for resolution by agreement**
- **Guidelines for Review of Unfair Trade Practices**
- **Guidelines for Review of Resale Price Maintenance**
- **Guidelines for Notification on Combination of Enterprises**
- **Guidelines for Concerted Practice Review**
- **Guidelines for Combination of Enterprises Remedies**
- **Guidelines for the Combination of Enterprises Review**
- **Guidelines on the Submission of Economic Analysis Evidence**
- **Rules on the FTCs Committee Operation and Case Handling Procedure, Etc.**
- **Notification on Implementation of Leniency Program Including Corrective Measures against Voluntary Confessors**
- **Standard for Imposing Surcharge to Compel Compliance with Remedies on Business Combination**
- **Guidelines for Reporting Business Combinations**
- **Procedures for Concluding Agreements for Fair Trade and Shared Growth between Large Enterprises and Small-medium Enterprises, and Criteria for Support (Distribution Sector)**
- **Procedures for Concluding Agreements for Fair Trade and Shared Growth between Large Enterprises and Small-medium Enterprises, and Criteria for Support (Subcontract Area)**
- **Guidelines for Conclusion of desirable contracts for Collaborative Cooperation**
- **Guidelines for the Abuse of Market Dominant Position**

More laws, rules and guidelines can be found at KFTC website, www.ftc.go.kr

Malaysia

I. Competition Rules and Institutional Setting

1. Competition Law

The Competition Act 2010 (the "Act") and Competition Commission Act 2010, both of which took effect in 1 January 2012, are the main legal instruments on competition policy in Malaysia.

The object of the Act is to promote economic development by promoting and protecting the process of competition, thereby protecting the interests of consumers.

The Act regulates anti-competitive agreements and abuse of dominant position under the name of anti-competitive practices. Merger control is not within the purview of the Act and will thus not be subject to the following text.

General exclusion: There are exclusions from the application of the Act in respect of other sector regulation. Section 3(3) provides exclusions to any commercial activity regulated by legislation specified in the First Schedule; these are currently listed as the Communications and Multimedia Act 1998, Energy Commission Act 2001, the Petroleum Development Act 1974, the Petroleum Regulations 1974, and the Aviation Commission Act 2015. All of which are thus are excluded from the application of the Act.

Under Section 2 of the Act, the Act applies to any entity carrying on commercial activities.

State-controlled firms are thus not exempt from the application of competition law when conducting commercial activities in competition with private firms.

Extra-territorial application: The Act is applicable to commercial activity transacted outside Malaysia which has an effect on competition in any market in Malaysia pursuant to Section 3 of the Act.

2. Malaysia Competition Commission

The Malaysia Competition Commission ("MyCC") is the authority that enforces the Act in Malaysia. The Competition Commission Act 2010 (the "Commission Act") provides for the establishment of the Competition Commission, and sets out the powers and functions of the Commission.

The MyCC investigates and adjudicates on suspected anti-competitive behaviour.

According to the Commission Act, the main functions of the MyCC are to implement and enforce the provisions of the Act, issue guidelines on implementation and enforcement of competition laws, perform as competition advocate, carry out general studies on competition issues in the Malaysian Economy, and inform and educate the public regarding how competition benefits consumers in Malaysia.

Organisational structure of MyCC:

The MyCC is located in Kuala Lumpur and the total number of staff is 58 as at 2017. The MyCC has an annual budget of estimated amount of MYR12 million for 2017.

MyCC currently has five units: Strategic Planning and International Affairs Division, the Enforcement Division, the Management and Services Division, the Legal Unit, and the Corporate Communication Unit.

MyCC website:

www.mycc.gov.my

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Under Section 5 of the Commission Act, MyCC consists of a Chairman, four members representing the Government, and not less than three but not more than five other members who have experience and knowledge in matters relating to business, industry, commerce, law, economics or any other suitable qualification as the Minister charged with the responsibility for domestic trade and consumer affairs (the "Minister") may determine.

They shall be appointed by the Prime Minister upon the recommendation of the Minister

Other regulators with competition powers: The Malaysia Communication and Multimedia Agency is responsible for the enforcement of competition related provisions under the Act 588 of Malaysia, while the Energy Commission is responsible for the enforcement of competition related provision under Malaysia's Act 610. The Malaysian Aviation Commission is responsible for the application of competition rules under the Malaysian Aviation Commission Act 2015, particularly Part VII (Competition).

The Special Committee on Competition was formed in 2011 to share common issues on competition law and policy and to ensure consistency in the application of the law with sector regulators in Malaysia. A meeting is held twice a year. Members of the Special Committee Meeting include the: Malaysia Competition Commission; Malaysian Aviation Commission; Malaysian Communications and Multimedia Commission; Energy Commission; Securities Commission; National Water Services Commission; Central Bank of Malaysia; Land Public Transport Commission; and Intellectual Property Corporation of Malaysia.

The MyCC has also entered into a Memorandum of Understanding with the Central Bank of Malaysia on 5 June 2014 to clarify areas of consultation and cooperation in competition issues affecting the financial sector.

Competition advocacy: As an active advocate for competition, the MyCC can perform competition assessment on all new public policies that may have implications for competition.

The MyCC also conducts market studies under Section 11(1) on its own initiative or upon the request of the Minister, in order to determine whether any feature of the market at issue prevents, restricts or distorts competition in the market. Upon conclusion of the market review, the MyCC publishes a report of its findings and recommendations, which is available to the public.

As of 2016, two market review reports were published on the MyCC's website related to "Domestic Broiler Market" and "Fixing of Prices/Fees by Professional Bodies in Malaysia under the Competition Act 2010". Other market reviews relate to pharmaceutical and building materials sectors.

International co-operation: MyCC has signed no MOUs regarding competition law matters.

3. Investigation

Initiation of investigation: An investigation may start in three ways. Under Section 14 of the Act, the MyCC may conduct investigations, if it suspects that there is an infringement. The MyCC shall also investigate any suspected infringements, on the direction of the Minister.

Finally, under Section 15 of the Act, the MyCC may conduct an investigation on any enterprise upon a complaint filed with the MyCC.

Powers of investigation: The powers of investigation of MyCC officers are set out under Section 17. stipulates that the MyCC officer investigating any alleged offence shall have any and all powers of a police officer in relation to police investigation as provided for under the Criminal Procedure Code.

Under Section 18, 19, and 20 of the Act, the MyCC has the power to require provision of information, retain any document, and access to records for investigation.

Section 25 sets forth that a Magistrate, upon written information on oath from the MyCC officer and after such inquiry as the Magistrate considers necessary, may issue a warrant authorising the Commission officer to enter the premises, if need be by force, and conduct the search and seizure of any record, book, account, document, computerised data or other evidence.

Under Section 26, the MyCC officer may also conduct the search and seizure without a warrant as full and ample a manner as if the officer has the warrant, if he or she has a reasonable cause to believe that obtaining a warrant may delay investigation, adversely affect investigation, or make the evidence tampered, removed, damaged or destroyed, etc.

Under Section 27 the MyCC officer conducting a search shall be granted access to computerised data.

MyCC has not performed any unannounced inspections in the premises of firms investigated for a possible antitrust infringement.

Failure to comply with an investigation: Section 23 and 24 of the Act prescribes that any conducts, giving false or misleading information, evidence or document, or destruction, concealment, mutilation or alteration of records, etc. are deemed to constitute an offence.

Section 32 also sets forth that any person who refuses any MyCC officer access to his or her premises, or assaults, obstructs, hinders or delays any officer is deemed to have committed an offence.

According to Section 40 of the Commission Act, no prosecution shall be instituted without the consent in writing of the Public Prosecutor.

Procedural fairness: The MyCC provides the party/parties under investigation for an antitrust infringement with opportunities to consult with the MyCC with regard to significant legal, factual or procedural issues during the course of the investigation. The parties also have the right to be heard and

present evidence before the imposition of any sanctions or remedies for having committed an antitrust infringement.

In addition to the Act, six guidelines specify and explain the investigative procedures of the MyCC. All such guidelines are available at: http://mycc.my/handbook.

Confidentiality protection:

Confidentiality including the identity of the applicant will be maintained subject to Section 21 of the Act.

4. Remedies and sanctions

The MyCC imposes administrative sanctions for an infringement of a prohibition under Part 2 of the Act (anti-competitive agreements and abuse of dominant position) as specified in Section 40.

Should the MyCC determine that there is an infringement, it may require the infringement be ceased or remedied immediately or may give any other direction as it deems appropriate.

The MyCC may also impose financial penalties. Any financial penalty imposed by the MyCC shall not exceed 10% of the worldwide turnover of an enterprise over the period during which an infringement occurred.

Under Section 35, and where an investigation is not yet concluded, the MyCC can give directions to suspend any agreement or conduct which is suspected of infringing the prohibitions. As to date, MyCC has exercised its power under Section 35 twice in the case of Undertaking by the Central Committee Members of the Pan Malaysia Lorry Owners' Association (PMLOA) and Finding of Non-Infringement under section 39 in the case of Ice Manufacturer.

Where a party has failed to comply with a direction under Section 35 or to an infringement decision, the MyCC can refer the matter to the High Court, which may make an order requiring the party to comply with the direction or decision. Any breach of such a court order constitutes contempt of court.

5. Appeal

A person who is aggrieved or whose interest is affected by the MyCC's decisions, namely finding of non-infringement or finding of an infringement, as prescribed in Section 35, 39, or 40 of the Act, may appeal to the Competition Appeal Tribunal under Section 51 of the Act within thirty (30) days from the date of the decision of MyCC.

Section 44 of the Act establishes the Competition Appeal Tribunal which shall have exclusive jurisdiction to review any decision made by the MyCC. According to Section 58(3), the decision of the Competition Appeal Tribunal is final and binding on the parties to the appeal. The parties to the appeal may apply to the High Court for the judicial review of the Competition Appeal Tribunal's decision.

Section 45 sets forth that the Competition Appeal Tribunal shall consist of a President- a judge of the High Court- and seven to twenty other members, who have the relevant expertise in industry, commerce, economics, law, accountancy or consumer affairs, appointed by the Prime Minister on the recommendation of the Minister.

6. Private enforcement

Section 64(1) of the Act sets forth that any person who suffers loss or damage directly as a result of an infringement under Part 2 of the Act shall have a right of action for relief in civil proceedings in a court against any enterprise which is or which has been a party to such infringement. As to date, no private enforcement actions have been pleaded in the courts.

Section 64(2) of the Act also stipulates that the action may be brought by any person referred to in Section 64 (1) regardless of whether such person dealt directly or indirectly with the enterprise.

II. Anti-competitive Agreements

1. Scope

Section 4 of the Act (anti-competitive agreements) prohibits horizontal or vertical agreements between enterprises insofar as the agreement has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services.

2. Assessment

The following types of agreements which are deemed to be anti-competitive and so for which the MyCC will not need to examine any anti-competitive effects include:

a) Fixing, directly or indirectly, a purchase or selling price or any other trading conditions;
b) Sharing market or sources of supply;
c) Limiting or controlling production, market outlets market access, technical or technological development or investment; or
d) Performing an act of bid rigging.

According to the *Guidelines on Anti-competitive Agreements,* all other types of agreements are prohibited only if they significantly prevent, restrict or distort competition in any market for goods or services in Malaysia. Anti-competitive agreements will not be considered "significant" if:

(a) the parties to the agreement are competitors who are in the same market and their combined market share of the relevant market does not exceed 20%;

(b) the parties to the agreement are not competitors and all of the parties individually have less than 25% in any relevant market.

However, a party to a prohibited agreement that fulfils one of the following justifications, may be relieved of its liability under Section 5:

(a)There are significant identifiable technological, efficiency, or social benefits directly arising from the agreement;

(b) The benefits could not reasonably have been provided by the parties to the agreement without the agreement having the effect of preventing, restricting or distorting competition;

(c) The detrimental effect of the agreement on competition is proportionate to the benefits provided; and

(d)The agreement does not allow the enterprise concerned to eliminate competition completely in respect.

The burden of proving the identified technological, efficiency or social benefits lies on the parties to the agreement. The parties claiming for this relief are required to prove that the benefits gained are passed on to the consumers.

If the MyCC deems that an infringing horizontal and vertical agreements is the one to which Section 5 (relief of liability) applies, the MyCC may grant an exemption to the individual agreement, imposing conditions and obligations it deems appropriate and with a limited duration.

The relief under Section 5 may also be granted under a block exemption to a particular category of agreements. An agreement which falls within a category specified in this block exemption is exempt from the prohibition under Section 4 (anti-competitive agreement). Certain agreements may also be considered exempted from the prohibitions: sub-section 13(1) states that "prohibitions under Part II shall not apply to the matters specified in the Second Schedule". Currently, the Schedule excludes an agreement or conduct to which an enterprise is engaged in to comply with a legislative requirement, collective bargaining activities, as well as services of general economic interest.

So far there has only been one application for an individual exemption, which was subsequently withdrawn. In 2014, a conditional block exemption order for three years (to be reviewed after two years) has been granted to the shipping liner industry for a vessel sharing agreement (VSA) and voluntary discussion agreement (VDA) to the Malaysian Ship-owners Association, Shipping Association of Malaysia and the Federation of Malaysian Port Operators Council. The MyCC has granted an extension of the order on 7 July 2017 for a period of two years or until the same is cancelled by the MyCC.

3. Remedies and sanctions

See Section I.4 above.

4. Leniency

Section 41 of the Act stipulates that if any enterprise admits its infringement and provides the MyCC with information or co-operation that significantly assists the investigation, a reduction of up to 100% of any penalties may be available to the enterprise.

The percentage levels of reduction in penalty will depend on whether the enterprise was the first person to bring the suspected infringement to the attention of the MyCC; the stage in the investigation, or any information or co-operation provided, any other circumstance the MyCC considers appropriate to consider. Section 41 gives the MyCC a broad discretion on the amount of penalty reduction and number of successful leniency applicants.

The detailed standards are specified in the *Guidelines on Leniency Regime* as follows:

a) First applicant: 100 % reduction in the financial penalty; and

b) Second, third, or subsequent applicants: differs depending on the stage of investigation, the values of the information and co-operation the person furnished.

The leniency programme of the MyCC has generated two successful applications in the last five years.

III. Abuse of Dominance

1. Scope

Section 10 of the Act (abuse of dominant position) prohibits abuse of dominant position including, as examples, the following conducts:

a) Direct or indirect imposition of unfair prices or trading conditions on any supplier or customer

b) Limiting or controlling production, market outlets or market access, technical or technological development, or investment.

c) Refusing to supply to a particular enterprise

d) Applying different conditions to equivalent transactions with other trading partners,

e) any predatory behaviour towards competitors.

The Guidelines on Abuse of Dominant Position sets out that Section 10 essentially deals with two kinds of abuse: exploitative abuse, e.g. mainly setting high prices; and exclusionary abuse, e.g. predatory conduct that stops competitors from competing which leads, indirectly, to higher prices, lower quality products, less innovation, etc.

The Guidelines also provide further information as to how the analysis will be undertaken for each of these types of abuses.

2. Assessment

Section 2 of the Act defines a dominant position as one where one or more enterprises possess such significant power in a market to adjust prices or outputs or trading terms without effective constraints from competition or potential competitors.

Section 10 (4) stipulates that the fact that the market share of an enterprise is above or below any particular level shall not in itself be regarded as conclusive as to whether that enterprise occupies, or does not occupy, a dominant position in that market.

The Guidelines on Abuse of Dominant Position specifies which factors are considered to assess the dominance:

(a) A market share above 60% to be indicative that an enterprise is dominant;

(b) Constraints imposed by existing competitors: market shares;

(c) Other competitive factors: Degree of product differentiation, likely response by buyers to price increases, the degree to which innovation drives competition;

(d) Constraints imposed by potential competitors: are there barriers to new entry?; economies of scale or size; economies of scope; regulated entry; limited access to necessary inputs or distribution outlets; network effects; high sunk costs; conduct by incumbents; or

(e) Other constraints.

3. Remedies and sanctions

See Section I.4 above.

From 2012 to November 2017, there have been 14 cases which led to remedies and sanctions under Section 40 and 43 of the Act.

IV. Mergers

The Act does not regulate mergers.

V. Statistics

The total number of measures taken and the type of results relating to anti-competitive agreements and abuse of dominant position by the MyCC from 2012 to 2015 are as below.

Type of Violation	Measures taken	Type of Result
Anti-Competitive Agreements	26	Final Decision 15 (inclusive of Section 39 and Section40) Undertakings - 6 Directives – 5
Unilateral Conduct or Abuse of Dominance	24	N/A
Mergers	N/A	N/A
Total	50	N/A

VI. List of Relevant Laws and Regulations

- **Competition Act 2010** (Act 712)
- **Competition Commission Act 2010** (Act 713)
- **Guidelines on Complaints Procedures** (Date Published: 2 May 2012)
- **Guidelines on Market Definition** (Date Published: 2 May 2012)
- **Guidelines on Anti-competitive Agreements** (Date Published: 2 May 2012)
- **Guidelines on Abuse of Dominant Position** (Date Published: 26 July 2012)
- **Guidelines on Financial Penalties** (Date Published: 14 October 2014)
- **Guidelines on Leniency Regime** (Date Published: 14 October 2014)

Legislation and guidelines can be found at MyCC website http://www.mycc.gov.my

Mongolia

I. Competition Rules and Institutional Setting

1. Competition Law

The Law of Mongolia on Prohibiting Unfair Competition was first adopted in 1993 and been amended a number of times, the last of which in 2015. Currently, it is being implemented under the name: the Law of Mongolia on Competition ("Competition Law").

The purpose of this law is to regulate matters related to the creation of conditions for fair competition in the market for entities conducting business activities, identification and implementation of legal and organisational basis for prohibition, restriction and prevention of any activities impeding competition.

According to Article 2, legislation on competition consists of the Constitution, Civil Code of Mongolia, the 2010 Competition Law, and other legislation adopted in conformity with the Competition Law.

Mongolia follows the Romano-Germanic legal tradition.

General exclusion: There is no sector excluded from the application of the Competition Law other than those set out in the section Other Regulators, below.

The Competition Law is applicable to legal entities and government and local administrative organisations, unless these are activities related to government assistance in case of natural disasters and other emergencies.

Extra-territorial application: According to Article 3, the Competition Law is applicable to enterprisers that conduct illegal activities outside of Mongolia if it has an effect in a market in Mongolia.

2. The Authority for Fair Competition and Consumer Protection

The Authority for Fair Competition and Consumer Protection" ("AFCCP") was established in 2004 by Decree 222 of the Government of Mongolia (2004) to implement and enforce Competition Law.

The AFCCP is responsible for the supervision of the implementation of legislation on competition and the comprehensive implementation of policy on competition, and seeks to protect the interests of businesses and consumers.

The AFCCP is the sole body to investigate and adjudicate with regards to suspected anti-competitive behaviours.

The AFCCP is also responsible for the regulation of prices of natural monopolies in Mongolia, under Article 6 of the Competition Law.

The AFCCP is also responsible for enforcement of the Law on Consumer Protection, Advertisement Law (unfair competition), Law on combating drugs and alcoholism, the Law on Amendments to the Law on State and Local Property, and the Law on Procurement of Goods, Works and Services with State and Local Funds.

AFCCP website:
www.afccp.gov.mn/mn

Contact:
info1@afccp.gov.mn

Organisational structure of the AFCCP: Located in Ulaanbaatar, the AFCCP has 36 staff members.

The AFCCP is established under the direction of First Deputy Prime Minister. The board of the AFCCP consists of a Chairman and eight members (two full time and six part-time members). The Chair, two standing members and three non-standing members are nominated by the Prime Minister. Other members are nominated by the National Chamber of Commerce and Industry, Mongolian Labour Union and by non-governmental organisations which operate activities related to consumer protection.

In accordance with Article 18 of the Competition Law, the Chairman and members of the AFCCP serve a 4-year term in office and can be re-elected once.

The AFCCP has the following departments: Administration Department; Competition Policy and Regulation Department; Consumer Protection, International Cooperation; and Market Studies Department.

Under Article 14.5, the Chairman of the AFCCP plays the role of General State Inspector, and the AFCCP has state inspectors.

Other regulators with competition powers: The Communications Regulatory Commission, Financial Regulatory Commission, Energy Regulatory Commission, and the Ministry of Construction Urban Development have exclusive competition powers in their regulatory sectors.

Competition advocacy: According to Article 15.1.7 of the Competition Law, the AFCCP has the power to submit proposals to a superior government body or administrative court to set aside decisions of public administration, local self-government and local administrative organisations in violation of the Competition Law.

Moreover, the AFCCP performs market studies, which may include an opinion or recommendation to the government to remove or reduce any obstacles to competition. AFCCP has carried out two major market studies in the fuel supply and meat trade sectors.

International co-operation: Mongolia has concluded Memorandums of Understanding with Inner Mongolia, China, Japan's JFTC, Indonesia's KPPU, Federal Antimonopoly Service of the Russian Federation, and Turkish Competition Authority.

3. Investigation

Initiation of investigation: According to Article 22, an investigation may be conducted upon receipt of a complaint, information reported by media or on its own initiative and other basis provided by law.

Powers of investigation: Under Article 20, it is for the State Inspectors of the AFCCP to investigate each violation of the Competition Law. The inspectors may freely obtain information and documents, from the concerned organisation, officer and enterprise, necessary for research and inspection.

The inspector may also examine persons, offices, factories, storehouses, computers, item of persons, and confiscate necessary document materials and items temporarily.

The AFCCP has carried out unannounced inspections within the past 5 years.

Failure to comply with investigation: Individuals and enterprisers refusing or disturbing an inspection, or destroying or producing false documents may be subject to a fine equal to 2 to 5 times of minimum salary.

4. Remedies and sanctions

The AFCCP investigates and adjudicates. Article 20 provides that a state inspector may take decisions regarding the imposition of administrative sanctions, without prior approval by the Board.

Remedies and administrative sanctions

Remedies include cease and desist orders. Fines can be applied but depend on the violation (see respective sections below).

According to Article 27, administrative penalties are imposed by a state inspector if a breach of the Competition Law is found.

Criminal sanctions

Article 27 mentions the existence of criminal sanctions, however it does not indicate what may constitute a criminal offence nor what sanctions may be imposed.

5. Appeal

Under Article 26, a person may file a complaint against a decision of the state inspector to the AFCCP within 30 days after receiving the decision. With respect to the review, the AFCCP could request a recommendation or report by an independent arbitral audit body. The decision of the AFCCP may be appealed to the Administrative Court within 30 days after receiving the decision.

6. Private Enforcement

The Competition Law does not provide explicitly for the possibility of private damage action even though, formally, Mongolian physical and legal persons can apply to the Civil Court for anti-trust damages.

II. Anti-competitive Agreements

1. Scope

Under Article 11.1, hard core cartels are prohibited.

Article 11.1 provides for a prohibition of horizontal agreements by which parties: mutually agree to fix prices; divide markets by location, production, services, sales, and type of goods and purchasers; restrict service, supply, sale, shipping, transportation, market entry, investment and technical reform; and rig bids in public procurement. These are per se prohibitions.

Article 11.2 prohibits other types of horizontal or vertical agreements entered into between enterprises, where they are incompatible with the public interest or compose conditions for restricting competition. Such agreements are as follows: refusing to establish business relations without economic and technical grounds; restricting sales to or purchase by third parties of good; refusing jointly from significant accords and agreements; hindering competitor when competitor joining in any organisation for the purpose of conducting enterprise profitably.

2. Assessment

Hard core cartels are per se offences.

Regarding other agreements, the law does not provide criteria to determine whether an agreement should be prohibited nor are there any guidelines issued by the AFCCP on how it conducts its assessment of horizontal or vertical agreements.

3. Remedies and sanctions

If a cartel is detected, the AFCCP may impose fines on the companies involved.

In accordance with Article 27, enterprises that participate in anti-competitive agreements are subject to a fine of up to 6% of sales revenue of the previous year and confiscation of all income and property illegally earned.

A cease and desist order is imposed against cartels.

4. Leniency

There is no formal leniency programme. However, under Article 28 of the Competition Law there is an exemption of administrative charges if enterprises voluntarily admit to the breach of Article 11. If an enterprise admits its breach before the investigation starts, an exemption of 100% is granted; if an enterprise comes forth within 10 days after the inspection has started, an exemption of up to 50% may be applied.

III. Abuse of Dominance

1. Scope

Article 7 of the Competition Law prohibits the use of a dominant position to:

- restrict production or sales of goods;
- fix excessive prices unreasonably;
- price discriminate against enterprises selling similar kinds of product;
- undertake predatory pricing;
- sell its products on condition of excluding its competitors;
- include conditions that are not relevant to the subject of the contract or that are disadvantageous to the contracting party;
- attach goods that are not included in selling goods and products.

The dominant position may be single or collective.

2. Assessment

Article 5.1 defines natural monopoly as when a single entity alone accounts for the total supply of particular goods to the market at the lowest minimum social cost.

According to Article 5.2, market dominant position is defined as a single entity or a group of businesses having over one third of the market share.

Under Article 5.3, enterprises that have lower market share than the above threshold, but capable of hindering market entry of other enterprises or driving them out of the market may also be deemed to have market dominant position.

The market dominance for these enterprises is established within the scope of product, geographical limit of market, market concentration and market power.

There are no further guidelines or guidance from the AFCCP to assess dominant position or how to assess the prohibited conducts.

3. Remedies and sanctions

Under Article 27, enterprises engaged in prohibited activities of monopolistic or dominant position, are subject to a fine of up to 4% of the sales revenue of the previous year and confiscation of all income and property illegally earned.

A cease and desist order may be imposed against an abuse of dominance.

The AFCCP may also make a proposal to the relevant government offices to annul the entity's permission to operate.

IV. Mergers

1. Scope

Single dominant entities are prohibited from undertaking business combinations that lead to a restriction of competition.

There are 3 categories of business combinations: (i) interlocking directorates, (ii) acquisition of shares, (iii) mergers. Unlike, the first two categories, the latter category applies both to businesses that already have a dominant position or that will acquire it via the transaction.

Article 8 of the Competition Law requires a dominant business entity to submit an application for authorisation to the AFCCP in the case of:

a) restructuring through consolidation and merger;

b) purchasing more than 20% of common stock or more than 15% of preferred stock from a competitor;

c) merging with related party (i.e. party considered as the same entity for taxation purposes).

The refusal of the AFCCP is grounds for non-registration of the business entity following the merger (Article 8.4).

2. Notification

The Competition Law does not provide for a notification procedure or system.

3. Procedural Rules

Upon receipt of an application, the AFCCP must make a decision within a period of 30 days, extendable up to another 30 days.

4. Assessment

For the concept of dominant position see Section III.2 above.

Article 8.5 provides for an exception to the prohibition of 8.3, where the application shall not be rejected if the benefit to the national economy exceeds any restrictions to competition.

5. Remedies and sanctions

According to Article 27, dominant enterprises that undertake business combinations that fulfil the conditions of Article 8.1 without notifying the AFCCP, are subject to a fine of up to MNT20 million.

The imposition of a fine normally follows a cease and desist order by the inspector, who seeks to stop the unlawful practice within a specified period of time, which is 10 days on average.

The Competition Law leaves space for behavioural remedies after the merger is implemented, but does not provide for structural remedies.

V. Statistics

Statistics (up to September 2015)

Type of Violation	Total Number of Decisions	Type of Violation
Anti-Competitive Agreements	46	Horizontal agreements- 30 Vertical agreements-15 Hard-core cartels-1
Unilateral Conduct or Abuse of Dominance	15	N/A
Mergers	N/A	N/A

Source: Response by AFCCP to OECD/KPC "Guidebook Questionnaires" for period up to September 2015

VI. Relevant Laws and Regulations

The Law of Mongolia on Prohibiting Unfair Competition

Myanmar

I. Competition Rules and Institutional Setting

1. Competition Law

The Pyidaungsu Hluttaw Law No. 9, 2015 (the “Competition Law”) was enacted in 24 February, 2015 and came into effect in February, 2017.

The objectives of the Competition Law are: (a) to prevent acts that injure of public interests through monopolisation or manipulation of prices by any individual or group with intent to endanger fair competition in economic activities, for the purpose of development of the national economy, (b) to control unfair market competition on the internal or external trade and economic development, (c) to prevent from abuse of dominant market power, and (d) to control the restrictive agreements and arrangements among businesses.

The Competition Law also prohibits "unfair competition" conduct, which includes practices such as misleading consumers, disclosing trade secrets, intimidating other business persons and defaming the reputation of another business.

Myanmar follows the common law tradition.

General exclusion: There is no sector excluded or exempted from the application of the Competition Law. State-owned enterprises are not exempt from the application of the Competition Law when conducting commercial activities in competition with private firms. However, under Section 8 (b), businesses essential for the benefit of the State and Small and Medium Enterprises (SMEs) can be exempted from the compliance of the Competition Law.

Extra-territorial application: The Competition Law is also applicable to firms located outside Myanmar whose behaviour directly affects competition and consumers in domestic markets. The Competition Law’s merger control provisions are also applicable to foreign mergers.

2. Myanmar Competition Commission

The Myanmar Competition Commission (the “MmCC”) is being prepared to establish and it is under the Ministry of Commerce. The MmCC’s main function is implementing competition policy.

As per Section 8, the MmCC’s powers and duties include (extract): (a) exempting from the compliance of this Law to businesses for the benefit of the State and SMEs, (b) specifying necessary forms, procedures and terms and conditions of application in order to obtain permission to co-operate businesses or to restrain

competition, (c) specifying market share, supply, amount of capital, number of share and magnitude of owned property relating to business causing detriment to competition, (d) determining market share, supply, amount of capital, number of share and magnitude of owned property relating to business assumed as monopolisation by the Commission, (e) directing a business to reduce the specified magnitude of market share that can cause detriment to competition in the market, (f) prohibiting by issuing notification of restriction on market share and sale promotion of any businessman who might monopolise, (g) assigning duty to investigate if the Commission suspects that there is a violation of the Competition Law, (h) advising the Government regarding competition, (i) performing the duties relating to competition assigned by the Government.

MmCC website:

www.commerce.gov.mm

Contact:

moc022@moc.gov.mm

Regarding the decision making process, the MmCC will take all decisions as regards the investigation and then send the cases to the Court to adjudicate on infringements of the Competition Law.

As per Section 9, the Commission shall report on accomplishment of its performance and development to the Government on a quarterly basis.

Organisational structure of MmCC: Currently, MmCC is in the process of being established and it is planned to be in operation in 2018 - thus competition matters are currently dealt by the Policy Division under the Ministry of Commerce. Competition Policy Division currently staffs 21 persons.

Regarding the budget, the ministry shall take responsibility for the office work of the MmCC, Committees and the Working Groups. Also, the ministry shall bear the expenses of the Commission, Committees and working groups.

Section 5 sets forth that the Government shall form MmCC comprising of a Cabinet with a Chairman, Vice-Chairman, Secretary and professionals and suitable persons from the relevant Ministries, government departments, government organisations and non-governmental organisations as members. Some of the members of the Commission will be full-time and some will be part-time commissioners.

The Government may dismiss the Chairman or members of the Commission in the circumstances specified in law, namely including: being penalised, or imprisoned by any court due to a criminal offence, being identified as mentally ill as specified by the relevant law, being declared as insolvent by any court, integrity issue, and failure to properly perform duties specified by the law.

Other regulators with competition powers: Current discussions in Parliament include the setting up of the Myanmar Communication Regulatory Commission as the sector regulator dealing with the issue of the Competition Law in the telecommunications sector. According to the draft law, MmCC and Regulatory Commission will work together for telecom sector.

Competition Advocacy: The MmCC can conduct market/sector studies. If the study identifies an obstacle or a restriction to competition caused by an existing public policy, the study may include an opinion/recommendation to the government to remove/reduce such obstacle or restriction. The MmCC is required to submit advice to the Government through the Ministry. However, the Government has no obligation to follow the opinion/recommendation.

International co-operation: The MmCC has signed no international co-operation agreement or MoU regarding competition law.

3. Investigation

Initiation of investigation: An investigation may be initiated if the Commission suspects that there is a violation of any prohibitions contained in the Competition Law or if a concrete complaint is received under Section 8 (j).

Powers of investigation: The MmCC may conduct investigations by forming an Investigation Committee (the "Committee") comprising minimum of five members to maximum of nine members and by assigning a Chairman among them under Section 11 (a).

Section 12 stipulates that the functions and duties of Investigation Committee are:

(a) calling and examining for necessary evidence, document, financial evidence and concrete statement of reasons and calling and inquiring necessary witnesses for investigation matters;

(b) entering, inspecting and searching, in accordance with Competition Law, the building, land and workplace of any person being investigated or any other person who seems to be involved in connection with them. A court warrant is required to undertake such inspections without agreement of the company/person and forcibly entering premises;

(c) submitting report on findings of investigation and for enabling to take necessary action to the Commission;

Failure to comply with an investigation: Section 43 sets forth that any person who fails without any concrete reason to comply with the request of the Investigation Committee to submit any evidence, document of financial evidence or to appear for the examination as witness for investigation under this Law shall be punished, on conviction, with imprisonment for a term not exceeding three months or with fine not exceeding Kyat one hundred thousand.

Procedural fairness: The MmCC is currently preparing procedural guidelines explaining its investigative procedures. However, the MmCC will provide investigated parties with opportunities to consult with the MmCC on their rights, and to be heard and present evidence before the imposition of any sanctions or remedies for having committed an antitrust infringement.

4. Remedies and Sanctions

Competition Law provides for both administrative measures and criminal sanctions.

Remedies and administrative sanctions: Under Section 34, the Committee may take the following actions for those who violate the orders, directives and procedures issued under the Competition Law: (i) warning, (ii) imposing specified fine, (iii) co-ordinating with relevant Ministries to close the operation of business temporarily or permanently.

Criminal sanctions: When contravening Section 13 (Act of Restraint on Competition), Section 15 (Monopolisation on Market in Competition), and Section 31/Section 32 (Collaboration among Business), criminal sanctions including imprisonment or fines or both are available. The Commission will have to pursue criminal sanctions in the court.

5. Appeal

As per Section 35 and Section 36, any person who is dissatisfied with the decision of the Committee may appeal to the MmCC within 60 days from the receiving date of such decision. The MmCC may confirm, amend or cancel the appealed Committee's decision, and the decision of the MmCC shall be final and conclusive. This can be appealed to a higher court.

6 Private enforcement

Damages claims: Private lawsuits to compensate for damages from breach of the Competition Law are available. Under Section 51, an aggrieved person may also sue any person being convicted in civil action for his loss under the Competition Law. Also, an aggrieved person can go directly to court to establish an infringement and a damage claim. Yet, if he/she gets the decision of the MmCC, it could have an effect on the damage claim

II. Anti-competitive Agreements

1. Scope

Section 2(g) includes agreements that restrain competition within the scope of Act of Restraint on Competition which reduces or hinders the competition among businesses in the market. Section 13 of the Competition Law prescribes that no person shall carry out any of the following acts which cause act of restraint on competition:

(a) fixing the price directly or indirectly in purchase price or selling price or other commercial situation;

(b) making agreement on restraint on competition in the market;

(c) abusing by taking chance on the situation of dominance in the relevant market;

(d) conducting restraint on market by individual or organisation;

(e) restraining and preventing to share market or resources provision;

(f) restraining or controlling on production, market acquisition, technology and development of technology and investment;

(g) collusion in tendering or auctioning.

The general prohibition against anticompetitive acts does not distinguish between vertical and horizontal agreements.

Exemption: Section 14 stipulates that the Commission may for a certain period, exempt an agreement that restrains competition but: (a) improves overall business performance; (b) promotes technological advancement or improves the quality of goods and services; (c) ensures the uniformity in the matters of carrying out business, distribution of goods and payments not linked to price;(d) raises competitiveness of SMEs;(e) raises competitiveness of Myanmar businesses in international markets.

2. Assessment

The MmCC has not yet published guidelines that explain how horizontal agreements and vertical agreements will be assessed.

3. Remedies and sanctions

Remedies and administrative sanctions: See Section I.4 on Remedies and administrative sanctions.

Criminal sanctions: Section 39 sets forth that any person who violates the prohibition contained in Section 13 shall, on conviction, be punished with imprisonment for a term not exceeding three years or with a fine not exceeding one hundred and fifty lakhs Kyat or with both.

4. Leniency

The possibility of leniency is referred to in the Competition Law. Section 52 prescribes that the MmCC may co-ordinate with the Courts to grant a pardon to a person as a leniency who discloses that he/she participated in a violation of Section 13.

Under Section 53, when granting leniency by the respective Court, sanction mitigation may be granted considering the co-operation time and type of co-operation offered.

There is as yet no further guidance on how such leniency may be applied in practice by the MmCC and the Courts.

III. Abuse of Dominance

1. Scope

Section 2 (g) and Section 13 of the Act includes as a Restraint on Competition the abuse of a dominant market position and monopolisation.

Under Section 15, the prohibition includes acts which cause monopolisation on the market by:

(a) controlling purchase prices or selling prices of goods or fees of services;

(b) restraining services or production or restricting of opportunities in purchase and sale of goods or specifying compulsory terms and conditions directly or indirectly for other businessmen, for the purpose of controlling prices;

(c) suspending, reducing or restraining services, production, purchasing, distribution, transfer or import without any appropriate reasons or destroying or causing damage to goods in order to reduce the quality and lessen the demand;

(d) controlling and restraining the area where goods or services are traded in order not to allow entry of other businesses into the market and to control market share;

(e) interfering unfairly in the business of other persons.

Section 16 prescribes that the businessman may, with the permission of the Commission:

(a) co-operate with a producer, distributor and provider of any other business;

(b) purchase in full or in part properties or shares of any other business.

2. Assessment

The MmCC has not yet published guidelines that explain how abuse of dominance or monopolisation conducts will be assessed.

3. Remedies and sanctions

Remedies and administrative sanctions: See Section I.4 on Remedies and administrative sanctions.

Criminal sanctions: As per Section 41, any person who violates the prohibitions contained in Section 15 shall, on conviction, be punished with imprisonment for a term not exceeding two years or with fine not exceeding Kyat one hundred lakhs or with both.

IV. Mergers

1.Scope

Under Section 30, the following acts are included under the merger control provisions: (a) merger of businesses, (b) consolidation of businesses, (c) purchasing or acquisition of other business by a business, (d) joint-venture of businesses, (e) performing other means of collaboration among businesses specified by the Commission.

As per Section 31, mergers will be prohibited where it would result (i) in a market share that would exceed a level determined by the MmCC; (ii) intended to result in excessive market dominance; (iii) intend to reduce competition in the market to only a few competitors.

Section 32 of the Competition Law stipulates that no collaboration of business shall be carried out if the combined market share of business collaboration is exceeded to the market share as will be specified by the MmCC.

Exemption: Under Section 33, any prohibited collaboration of business or prohibition under section 31 may be exempted in the following circumstances;

(a) where the business, after collaboration as per Section 30, is still in the size of SMEs specified under any existing law;

(b) where one or more of businesses involved in business collaboration is or are at the risk of collapsing or of becoming bankrupt;

(c) where collaboration among businesses promotes exports or supports the development of technique and technology or establishes an entrepreneurial business.

2. Notification

The Commission is empowered under the Competition Law to determine the form, the procedures and the conditions for merger control. For the time being, mergers do not need to be notified and such rules have not been issued yet.

3. Assessment

The MmCC has not issued any guidelines on whether it will apply a substantial lessening-of competition test and which criteria it will use to determine whether a merger should be prohibited.

3. Remedies and Sanctions

Remedies and administrative sanctions: See SectionI.4 on Remedies and administrative sanctions.

Criminal sanctions: Any person who violates the prohibitions contained in Section 31 or Section 32 shall, on conviction, be punished with imprisonment for a term not exceeding two years or with fine not exceeding Kyat one hundred lakhs or with both.

V. Statistics

There are no cases yet reported by 31 December 2017 as the competition law came into effect in 2017 and there is as yet no MmCC in place.

VI. List of Cited Relevant Laws and Regulations

- **The Pyidaungsu Hluttaw Law No. 9, 2015**
  www.commerce.gov.mm/sites/default/files/documents/2015/11/E-Version%20For%20Competition%20Law.pdf

Nepal *

I. Competition Rules and Institutional Setting

1. Competition Law

The Competition Promotion and Market Protection Act, 2063 (the "Act") came into force on January 14, 2007 and is the main legal instrument governing competition policy in Nepal.

The purpose of the Act is to make the national economy more open, liberal, market-oriented and competitive by maintaining fair competition between or among the persons or enterprises producing or distributing goods or services, to enhance national productivity by developing the business capacity of producers or distributors by way of competition, to protect markets against undesirable interference, to encourage to make the produced goods and services available to the consumers at a competitive price by enhancing the quality of goods or services by way of controlling monopoly and restrictive trade practices, and to maintain the economic interests and decency of the general public by doing away with possible unfair competition in trade practices.

The Act prohibits anti-competitive agreements (Section 3), abuse of dominant position (Section 4) and merger and amalgamation with intent to control competition (Section 5) under Chapter 2 (anti-competitive practices).

Section 7 prohibits exclusive dealing, Section 8 covers market restriction (entering into any transaction as to restrict the market of the production or distribution of such goods or services) and Section 9 prohibits tied selling, which all can cover the abuse of superior bargaining position by a non-dominant firm.

General exclusion: Section 11 of the Act sets forth that the Act shall not apply to the following business or trade activities: business relating to cottage and small industries as referred to in the Industrial Enterprise Act, 2049; agricultural products produced by such small farmers as prescribed, and agricultural co-operative business; procurement of raw materials; export business; activity to be done for the labour's right to collective bargaining; research and development related activity; management collaboration; and collaboration made for organisational and procedural improvements intended to enhance trade capacity.

In addition, as per Section 30 (Special power of Government of Nepal), where there arises any crisis in the production or distribution of any goods or services in Nepal, the Government of Nepal may, by notification

* This chapter has been sent for review to the Nepalese authorities but no answer has been received – it is therefore based exclusively on reading of the Competition Promotion and Market Protection Act.

in the Nepal Gazette, issue necessary orders waiving the application of any provisions contained in Chapter 2.

Extra-territorial application: Section 1 of the Act prescribes that the Act shall apply to any person who commits an act contrary to the Act in any place outside Nepal.

2. Competition Promotion and Market Protection Board and Department of Commerce

The Competition Promotion and Market Protection Board ("the Board") is responsible for the investigation of cases and for prosecuting alleged infringement in the courts (articles 22 and 24), that take decisions. Nepal therefore has a bifurcated adversarial model.

It is the commercial bench of such a court as designated by the Government of Nepal, in consultation with the Supreme Court that has the power to try and settle cases under this Act.

In addition to competition policy, the Board is responsible for enforcing Consumer rights Acts and Rules, Public Procurement Act and Rules, etc.

Organisational structure of the Board:

Located in Kathmandu, the Department of Commerce at the Ministry of Commerce acts as the secretariat of the Board. In addition, 75 district administration offices are responsible for enforcing the Act, where a market protection officer designated by the government has the power to investigate competition cases.

The secretary of the Ministry of Commerce (the former Ministry of Industry, Commerce and Supplies) is the Chairperson of the Board and the appointment may be renewable. The Board shall also include 9 Members. The representatives of Ministry of Law, Justice and Parliamentary Affairs, the Ministry of Finance, and Ministry of Commerce shall serve as members, as well as six persons nominated by the government of Nepal relating to industry, commerce or consumer rights shall form other Members of the Board. The director general of the Department of Commerce, at the Ministry of Commerce shall serve as Member Secretary.

Members of the Board are assigned for two years, but they can be removed at any time by the Government of Nepal.

Other regulators with competition powers: There are other sector regulators that have competition powers. Office of Prime Minister, Home Ministry, Ministry of Commerce, Ministry of Finance, Ministry of Industry, Public Procurement Monitoring Office (PPMO), etc. are responsible.

Competition advocacy: The Board is also responsible for competition advocacy, undertake market studies, formulate competition policies which are submitted to the government, reviewing competition-related laws, and giving necessary suggestions to the government.

International co-operation: The Board has not concluded any international co-operation agreements nor MoUs with foreign competition authorities.

3. Investigation

Department of Commerce website:
www.doc.gov.np

Contact:
info@doc.gov.np, monitoring@doc.gov.np

Initiation of investigation: Section 23 of the Act says that where any person or enterprise contravenes the Act, any person who has the information of such contravention may make a complaint to the Board or the market protection officer. When the market protection officer receives such a complaint, the officer shall make investigation of and inquiry into that case. If the Board receives such a complaint, the Board shall send such complaint to any market protection officer for necessary action or make investigation or inquiry on its own by forming a sub-committee. Section 24 sets out that the investigation may also be started *ex-officio*.

Powers of investigation: Section 22 of the Act stipulates that the Government of Nepal may, by notification in the Nepal Gazette, designate any officer employee as the market protection officer in any required district of the State of Nepal for investigating and inquiring cases relating to any offences punishable under this Act and filing cases in the Court.

Section 25 prescribes that where there is a reasonable ground to believe that any person contravening this Act or the Rules framed under this Act or a complaint is received in relation thereto, the market protection officer or sub-committee formed by the Board may inspect, inquire or search the concerned place.

Section 27 prescribes that where it is necessary to seek assistance of an expert in the course of investigation of and inquiry into any offence, the investigating sub-committee or the market protection officer may seek the service of the concerned expert.

However, the market protection officer or sub-committee formed by the Board cannot compel firms investigated for a possible antitrust infringement to provide information nor force third parties to provide information to help an investigation on an antitrust infringement. It cannot make unannounced inspections in the premises of firms investigated for a possible antitrust infringement aimed at gathering evidence.

As per Section 24, the market protection officer shall file the case in the Court no later than 35 days after the date of completion of the investigation. In case of sub-committee, the sub-committee shall order any market protection officer to file a case in the court upon the completion of its investigation.

In filing the case pursuant to Section 24, the market protection officer shall consult the government attorney. Any case filed in the Court shall be pleaded and defended by the government attorney.

Failure to comply with investigation: Section 19 of the Act stipulates that regarding an obstruction in any act or action pertaining to investigation of and inquiry into any offence under the Act, the Court may, based on a report of the market protection officer, punish such person with a fine not exceeding 25,000 rupees.

Procedural fairness: The Act contains no provision on procedural rules. However, there are certain rules to ensure procedural fairness, according to the answer provided Nepal to the OECD/KPC survey.

The Board publishes procedural guidelines or public documents explaining its investigative procedures. There are published administrative guidelines that explain how monetary sanctions for antitrust infringements are set by the Board.

Confidentiality: The Board or market protection officer must keep confidential any business transactions and information which it receives through an informer in the course of an inspection, monitoring, investigation or inquiry pursuant to the Act.

4. Remedies and sanctions

Nepal has an adversarial system. The Board investigates while the Court adjudicates. As mentioned in Section I.2, the Board cannot impose fines for antitrust infringement as it is for the Court to try and settle cases under this Act.

Fines: Section 17 stipulates that any person or enterprise that does or causes an anti-competitive agreement, abuse of dominant position, anti-competitive merger etc., shall be subject to a fine not exceeding NPR 500,000, and such activity shall be void.

Injunction: As per Section 31, where the Court is informed by the market protection officer or the Board that an immediate serious adverse condition may arise in the supply or distribution of any goods or services in the market unless any activity about to be done by person in contravention of this Act is stopped immediately and where the Court is satisfied with that matter, the Court may issue an order to stop such activity immediately.

5. Appeal

Decisions on antitrust infringements and mergers are not subject to judicial review.

6. Private enforcement

Section 29 prescribes that where any person suffers any kind of loss or damage as a result of any offence under the Act, that person may make a petition to the Court for the award of compensation for such loss or damage.

II. Anti-competitive Agreements

1. Scope

Section 3 (1) of the Act sets out that no person or enterprise shall, with an intention to limit or control competition, enter into, or cause to be entered into individually or collectively, any agreement with any other person or enterprise that produces the identical or similar goods or services, to fix prices, limits production, controls the overall production of any goods or services, restrains the sale and distribution of any goods or services, or allocate the market, etc. The Act says that any agreement entered into in contravention of Sub-section 3 (1) shall be void.

In addition to Section 3, the Act also prohibits bid rigging separately in Section 6.

2. Assessment

The Act sets out no further criteria for assessment nor are there are no guidelines issued.

3. Remedies and sanctions

Anti-competitive agreements shall be void, and such person or enterprise shall be subject to a fine not exceeding 500,000 rupees. Court may issue an order to stop such activity immediately.

4. Leniency

There is no leniency programme as such. However section 21 sets forth that in the course of investigation and inquiry, if any person or enterprise related with such offence provides assistance, the market protection officer may, while filing a case, make a demand to the Court for full or partial exemption from punishment on such person or enterprise. Where the demand for exemption from punishment appears to be reasonable, the Court may make full or partial exemption on the infringer.

III. Abuse of Dominance

1. Scope

Section 4 of the Act stipulates that no enterprise holding dominant position shall abuse, or cause the abuse of such position with intent to control competition in the production and distribution of any goods.

According to this Section of the Act, the Board shall prepare a list of enterprises which produce or distribute various goods or services and hold dominant position and publish the list publicly from time to time.

The Section also lists conducts that may constitute abuse of dominance.

2. Assessment

In Section 4 of the Act, dominant position is explained as follows:

“For the purposes of this Section, the expression “dominant position” means a position of strength [omitted] whereby such person or enterprise holds [omitted], at least 40 percent or more of the annual production or distribution of such goods or services within the State of Nepal or a position of strength which enables such person or enterprise, either individually or jointly with another person or enterprise that produces or distributes the identical or similar goods or services, to affect the relevant market or to implement its decision independently.”

There is no abuse of dominance if the conduct is done in order to enhance the quality of the goods or services, or to improve production, distribution or to improve technical standards thereof and the results achieved from such activity are applied in the interests of consumers of such goods or services.

(b) doing any act for the protection or enforcement of any kind of intellectual property owned by any person under the laws in force.

3. Remedies and sanctions

Abuse of dominant position shall be void, and such person or enterprise shall be subject to a fine not exceeding 500,000 rupees. The Court may issue an order to stop such activity immediately.

IV. Mergers

1. Scope

Section 5 of the Act stipulates that no enterprise that produces or distributes any goods or services shall, with intent to maintain monopoly or restrictive trade practices in the market, merge or amalgamate with another enterprise that produces or distributes the similar or identical goods or services or purchase, either singly or jointly with its subsidiary enterprise, fifty percent or more of the shares of such enterprise or take over the business of such enterprise.

2. Assessment

Intent to control competition: Section 4 explains that where a merger, etc. results in more than 40% of the production or distribution of the total production or distribution of such goods or services within the State of Nepal, such merger, shall be deemed to have been made with intent to control competition.

3. Procedural rules

There are no procedural rules in place, nor an obligation to notify any transaction.

4. Remedies and sanctions

Anti-competitive merger or amalgamation shall be void, and such person or enterprise shall be subject to a fine not exceeding 500,000 rupees. The Court may issue an order to stop such activity immediately.

V. Statistics

There are no enforcement cases so far in Nepal.

VI. List of Relevant Laws and Regulations

- **Competition Promotion and Market Protection Act, 2063 (2007)**

Other policies, acts, regulations and procedures are not available in English

New Zealand

I. Competition Rules and Institutional Setting

1. Competition Law

The Commerce Act (the Act) took effect on 28 April 1986.

The purpose of this Act is to promote competition in markets for the long-term benefit of consumers within New Zealand.

Part 2 of the Act prohibits restrictive trade practices, including anti-competitive agreements and taking advantage of substantial market power for an anti-competitive purpose. Part 3 of the Act prohibits the acquisition of assets of a business or shares if the acquisition would have, or would be likely to have, the effect of a substantially lessening competition in a market.

The Act also includes regulatory provisions in Part 4 relating to airport services, gas pipelines and electricity lines services. It also provides for the regulation of other goods or services following an inquiry and recommendation from the Commission that the goods or services are supplied in a market where there is both little or no competition and little or no likelihood of a substantial increase in competition, there is scope for the exercise of substantial market power and the benefits of regulation materially exceed the costs.

New Zealand follows the common law tradition.

General exclusion: The Act applies to state-owned enterprises when conducting commercial activities in competition with private firms. Civil aviation and international shipping are exempted sectors from the application of the Act. The international shipping exemption will be repealed after a two year transition period, after which time a new targeted exception for liner shipping in relation to vessel sharing and vessel pooling will be introduced.

Extra-territorial application: According to Section 4, the Act applies to conduct outside New Zealand by any person residing or carrying on business in New Zealand to the extent that such conduct affects a market in New Zealand. Conduct that occurs partly in NZ is regarded to have occurred in NZ, and there is no requirement to apply section 4.

The Commerce (Cartels and Other Matters) Amendment Act 2017 provides new powers for the High Court, on an application by the Commerce Commission, to make orders against overseas persons, including an order to cease trading or divest shares or assets. These orders can be made where an overseas person has acquired a controlling interest in the New Zealand entity and that acquisition is likely to substantially lessen competition in a market in New Zealand.

2. The Commerce Commission

The Commerce Commission ("the Commission") is an independent crown entity. It is New Zealand's primary competition enforcement and regulatory authority and is responsible for the enforcement of the Commerce Act 1986.

Commerce Commission website:
www.comcom.govt.nz

Whilst it is primarily accountable to the Ministry of Business, Innovation and Employment for its performance and outputs (see below, following sub-section), it is not subject to direction from the government in carrying out its enforcement, adjudication and regulatory control activities. The Commission is, however, required to have regard to statements of government economic policy communicated by Ministers under the Commerce Act or the Telecommunications Act. The Commission's independence requires it to be an impartial promoter and enforcer of the law.

The Commission functions as an enforcement agency with sanctions requiring decisions by New Zealand's High Court. It is also a quasi-judicial body, with power to give clearances and authorisations for business acquisitions or collaborative activities, and authorisations for certain restrictive trade practices which would ultimately benefit New Zealand.

Other than its competition powers, the Commission acts also as the regulator for the telecommunications, electricity, airports, gas and dairy markets, as well as being responsible for consumer protection.

Organisational structure of the Commerce Commission: The Commission, whose headquarters are located in Wellington, has 94 FTE (Full Time Equivalent) employees in the Competition and Consumer Branch only, as of 31 December 2016. There are three branches, namely the Competition and Consumer Branch, Regulation Branch, and Organisation Performance Branch.

The Commerce Commission has an annual budget of NZD27.7 million (approximately USD 19.68 million) for its competition and consumer protection activity. This amount includes major litigation expenditure.

The Commission's government funding is appropriated through Vote Business, Science and Innovation.

Section 9 stipulates that the Commission must have no less than 4, and no more than 6, members appointed in accordance with this section, and may also have associate members appointed under section 11(1).

The Commission comprises a Chair, Deputy Chair, Telecommunications Commissioner, Commissioners, Associate Commissioners and Cease and Desist Commissioners (whose function is to hear cease and desist applications in accordance with Sections 74A to 74C). The Commission members are appointed by the Governor-General, upon the recommendation of the Ministry of Business, Innovation and Employment and for the Telecommunications Commissioner the Minister for Communications and Information Technology. Commissioners can be removed by the Governor General under s 39 of the Crown Entities Act 2004, with just cause on the advice of the responsible Minister, by written notice and providing reasons for the removal. Associate Commissioners can be removed by the responsible Minister on the same grounds and in the same manner.

The Commission produces a statement of intent (SOI) at least every 3 years setting out its work programme for the following four financial years. The Commission also produces a statement of performance expectations (SPE) annually outlining priorities, forecast financial statements, and performance measures for the next financial year. The Commission then reports against the SOI and SPE triennially to the

government via Ministry of Business, Innovation and Employment, and annually to the government and taxpayers of New Zealand via the Annual Report. The Commission also has a five year vision and strategy document.

Competition advocacy: The Ministry of Business, Innovation and Employment conducts competition assessments for new public policies that may have implications for competition. The Commission may provide advice on, or information relevant to, policy developments or legislative change when it has relevant expertise or it considers the situation warrants public comment. The Commission does not have powers to undertake market studies but the Government has approved the provision of a market studies power for the Commerce Commission. Legislation enabling the Commission to carry out market studies is expected to come into force in mid-2019

International co-operation: New Zealand has international co-operation agreements regarding competition policy with Australia, Canada and Chinese Taipei. More info available at: http://www.comcom.govt.nz/the-commission/about-us/international-relations/

Sections 99C to 99P provide for the provision of compulsorily acquired information and investigative assistance to recognised overseas regulators subject to an appropriate agreement between the Commerce Commission and an overseas regulator or the New Zealand Government and another government.

3. Investigation

Initiation of investigation The Commission can investigate conduct that it considers may risk breaching a relevant provision of the Commerce Act 1986. An investigation can be initiated on the basis of information we receive from a complaint, a leniency application or on the basis of information we hold from undertaking other functions at the Commission, as well as information from general market intelligence and surveillance, e.g. the media.

Powers of investigation: Under Section 98, the Commission can compel any person or company to supply information by serving on them a formal notice, signed by a Commission member. The Commission also has the power to require a person to attend a compulsory interview (Section 98(1)(c).

The Commission does not have unlimited power to request information. The information must be necessary or desirable for the purpose of carrying out the Commission's functions and exercising its powers under the Act.

Under Section 98A The Commission may authorise an employee of the Commission to search under a warrant any place (business or non-business premises) named in the warrant for the purpose of ascertaining whether a person has engaged in or is engaging in conduct that constitutes or may constitute a contravention of this Act.

This warrant is granted by a District Court Judge, or Justice, or a Court Registrar (not being a constable) who is satisfied on application made on oath by a person who is authorised by the Commission that there are reasonable grounds to believe that it is necessary for the purpose of ascertaining whether or not a person has engaged in or is engaging in conduct that constitutes or may constitute a contravention of this Act. This warrant may be subject to an appeal process separately or in the context of the final decision.

The Commission has the power to take digital copies/forensic images of the evidence found at the premises investigated. The Commission does not have the power to seal premises.

The Commission published Competition and Consumer Investigation Guidelines in 2015. The guidelines cover a wide range of topics, such as: how the Commission goes about getting evidence and information; what compulsory powers it has and how it decides to use them; and whether and when the Commission will do media statements or provide public information about an investigation.

Failure to comply with an investigation: It is a criminal offence to refuse or fail to comply with a statutory notice, or to otherwise not comply with an investigation without a reasonable excuse, or to knowingly submit false or misleading information or documents.

Under Section 103, a person that refuses or fails to comply with a request of the Commission commits an offence and may be subject to a fine not exceeding NZD 100,000 (approx. USD 71,090) in the case of an individual, or NZD 300,000 (approx. USD 213,270) in the case of a body corporate. These are imposed by the courts.

Procedural fairness: The Commission provides investigated parties with a chance to comment on or provide evidence about the complaints or concerns that the Commission is investigating (Investigation Guidelines 79). During the investigation, the Commission provides an investigated party with regular progress updates. At the end of an investigation, the Commission will notify investigated parties of the fact and of any outcome such as the enforcement response that has been selected (Investigation Guidelines 93).

4. Remedies and sanctions

Where the Commission considers that there has been an infringement of the Act, it may bring claims for injunctions (see section I.6 below), civil pecuniary penalties (for companies and/or individuals), criminal penalties (for failure to comply with a request for information during an investigation) and other remedies before the High Court.

Sections 74A to 74D of the Act provide specific powers for the Commission to obtain orders against anti-competitive behaviour. Cease and Desist Commissioners are able to make orders to restrain anti-competitive conduct or to require a person to do something to restore competition or the potential for competition in a market.

A cease and desist order may be made where a Cease and Desist Commissioner is satisfied that at first sight, on the face of the evidence, there is (i) anti-competitive conduct that contravenes the Commerce Act; and (ii) it is necessary to act urgently, to prevent a particular person or consumers suffering serious loss or damage; and (iii) in the interests of the public.

Under Section 80, the Court may order a person who has contravened Part II (Restrictive Trade Practices – which includes anti-competitive agreements and unilateral conduct) of the Act to pay a pecuniary penalty as follows: for corporations: NZD 10 Million (approx. USD 7.11M) or (10% of turnover or three times the gain for body corporate, whichever is greater). For Individuals the fine is NZD 0.5 Million (approx. USD 355,450).

The Court may grant orders excluding a person from management of a body corporate.

The Commission has issued Enforcement Response Guidelines, which explain the enforcement responses available to the Commission and what factors are taken into account when deciding which response to use. Where the Commission considers that a person or business may have breached the law, the

Commission will take into account the extent of the harm, the seriousness of the conduct and the public interest when determining the most efficient use of taxpayer resources.

5. Appeal

A decision of the High Court may be appealed before the Court of Appeal and the Supreme Court.

6. Private enforcement

Private parties may initiate enforcement proceedings, regardless of a Commission decision, with such proceedings being heard by the High Court.

Damage claims: Sections 82 and 84A allow an action for damages resulting from loss caused by an infringement of the restrictive trade practices or prohibited business acquisitions provisions.

Injunction claims: According to sections 81 and 84, the Court may, on the application of the Commission or any other person, grant an injunction in order to prevent a person from undertaking the conduct which constitutes or would constitute a contravention to the restrictive trade practices or prohibited business acquisitions.

II. Anti-competitive Agreements

1. Scope

Part 2 of the Act covers restrictive trade practices. Section 27 prohibits anti-competitive agreements, meaning contracts, arrangements or understandings that have the purpose, or have or are likely to have the effect, of substantially lessening competition in a market.

The NZ Parliament has recently passed the Commerce (Cartels and Other Matters) Amendment Act which redefines NZ's cartel prohibition. The cartel prohibition in section 30 of the Act relates to price fixing, limiting output and allocating markets. Cartels are prohibited per se. In addition, the Commerce (Cartels and Other Matters) Amendment Act revokes the joint venture exemption and replaces it with a collaborative activity exception. The Act also includes an exception for vertical supply contracts, and an exception for joint buying and promotion agreements.

Resale price maintenance ("RPM") is prohibited under sections 37 and 38. It is a breach of the resale price maintenance provisions if a supplier of goods: specifies a price; and takes certain actions to enforce that specified price.

2. Assessment

To assess whether an anti-competitive agreement has or is likely to result in substantial lessening of competition, the Commission takes into consideration factors such as existing and remaining competition, potential competition and countervailing buyer power.

Cartels and RPM are illegal per se.

Under the new cartel provisions, a party can obtain clearance for a collaborative activity when they can show the collaborative activity is not for the dominant purpose of lessening competition between two or more of the parties and the cartel provision is reasonably necessary for the purpose of the collaborative activity.

In addition, under Part 5 of the Act, the Commission can also authorise an anti-competitive agreement where it is satisfied that the benefits to the public outweigh the harm of the agreement. A collaborative activity clearance or authorisation offers immunity from legal action under the Act.

The Commission has used its power to authorise a number of restrictive trade practices in the last five years.

3. Remedies and sanctions

Both remedies and sanctions may only be imposed by the Court. The Act only provides for civil sanctions (other than for failure to comply with a Commission request).

See Section I.4 above for more detail.

Settlements are possible for anti-competitive agreements.

From 1986 to 2015, there were approximately 45 decisions made by the Courts of New Zealand sanctioning illegal anti-competitive agreements.

4. Leniency

The Commission has a Cartel Leniency Policy that is available for cartels only (illegal agreements between competitors not to compete with each other, such as price fixing, restriction of output, the allocation of customers, suppliers or territories, and bid rigging). It does not cover other types of anti-competitive conduct such as resale price maintenance. The leniency programme is set out in the Cartel Leniency Policy and Process Guidelines.

The Cartel Leniency Policy offers individuals or businesses involved in a cartel the opportunity to be granted conditional immunity from Commission prosecution. Immunity is conditional as it depends on continuing co-operation throughout the investigation.

The Commission will grant immunity to the first member of a cartel to approach the Commission, provided they meet the immunity requirements: a cartel member must provide enough information to show that the law may have been broken, identify who is involved, and explain how the cartel operated and affected New Zealand consumers.

If the Commission is already aware of, or is investigating, the cartel, immunity may be granted to the first cartel member to apply who can meet the immunity requirements. This won't apply if the Commission already has sufficient evidence against the cartel member to take enforcement action.

Immunity protects a cartel member from legal action by the Commission, however, it does not prevent third parties from making claims for damages.

Where the applicant does not yet have sufficient evidence to qualify for the leniency programme, it may request a 'marker' to secure its position as the first applicant.

Even if full immunity is not available, the Commission may exercise its discretion by taking a lower level of enforcement action, or, in exceptional cases for individuals, no action at all, in exchange for information and full, continuing and complete co-operation throughout a cartel investigation and any subsequent court proceedings.

Amnesty Plus: If a party to a cartel under investigation by the Commission who has not been granted conditional immunity informs the Commission of its participation in a separate cartel of which the Commission has no knowledge or where it does not yet have enough evidence to prosecute, may be eligible for Amnesty Plus. Amnesty Plus provides a conditional immunity in the separate cartel and a recommended additional reduction in penalty in respect of the cartel under investigation.

III. Abuse of Dominance

1. Scope

Under Section 36 of the Act a business will breach the Commerce Act if it: (i) has a substantial degree of market power, (ii) takes advantage of that power, and (iii) has an anti-competitive purpose. Section 36A extends the scope of these provisions to conduct in Trans-Tasman markets[1].

Anti-competitive purposes are one of:

a) restricting the entry of a person into that or any other market; or

b) preventing or deterring a person from engaging in competitive conduct in that or any other market; or

c) eliminating a person from that or any other market.

2. Assessment

The Commission has issued a Factsheet in 2012 on Taking Advantage of Market Power that sets out how the Commission undertakes its analysis in abuse of dominance cases.

[1] This is relevant with the Trans-Tasman Mutual Recognition Arrangement (TTMRA). It is a non-treaty arrangement between New Zealand and Australia's commonwealth, state and territory governments. It is a cornerstone of a single economic market, and a powerful driver of regulatory co-ordination and integration. It's central to developing an integrated trans-Tasman economy and a seamless market place, as envisioned by the Australia and New Zealand Closer Economic Relations Trade Agreement.

A business is considered to have substantial market power where it can profitably hold prices above competitive level for a period of time. Factors considered in assessing whether a business has substantial market power include market share, existing competition, potential competition and countervailing buyer power.

To determine whether a business has taken advantage of the market, the Commission uses a test adopted by the courts, which asks whether the business would have behaved in the same way if it did not have substantial market power.

3. Remedies and sanctions

See Section I. 4 above.

From 1986 to 2015, there were 3 decisions made by the Courts of New Zealand sanctioning conducts in contravention of Section 36.

IV. Mergers

1. Scope

Section 47 prohibits a person from acquiring assets of a business or shares if the acquisition has or is likely to have the effect of substantially lessening competition in a market.

2. Clearance or authorisation

New Zealand's merger clearance regime is voluntary. It means that parties to a merger are not required to notify the Commission of the merger.

Under Part 5 of the Commerce Act the Commission can review potentially anti-competitive mergers or arrangements:

- where organisations wish to enter into an acquisition or merger, the Commission can grant a clearance. This will only be granted where it is satisfied that the proposed acquisition will not have or would not be likely to have the effect of substantially lessening competition in a market; and
- where organisations wish to enter into an agreement or merger that leads to anti-competitive outcomes, the Commission can grant an authorisation. Authorisations will not be granted unless the Commission is satisfied that the benefit to the public would outweigh the lessening in competition that would result, or be likely to result.
- Where merger parties have not sought clearance or authorisation and the Commission has concerns that the merger may substantially lessen competition, the Commission may initiate an investigation under section 47.

3. Procedural Rules

There is no Phase I/Phase II distinction in New Zealand. When considering merger clearance applications, the process has the following stages: pre-clearance, the clearance application, the Commission's investigation and determination, and post-determination (Mergers and Acquisitions Guidelines 2013).

The Act sets out a 40 day statutory timeframe in which the merger must be either cleared or prohibited, unless an alternative timeframe is agreed with the applicant.

Procedural fairness: Throughout the investigation the Commission keeps in regular contact with the applicant about progress (Mergers and Acquisitions Guidelines).

As part of the Commission's processes, the Commission often issues a Letter of Issues which sets out the Commission's initial competition concerns and invites submissions from and meetings with the applicant. Where these concerns remain, the Commission sends a Letter of Unresolved Issues, invites submissions and holds a meeting.

4. Assessment

The Commission assesses mergers using the substantial lessening of competition test. This test seeks to determine whether a merger is likely to substantially lessen competition by comparing the likely state of competition if the merger proceeds with the likely state of competition if the merger does not proceed. A lessening of competition is generally the same as an increase in market power – the ability to raise price above the price that would exist in a competitive market (the 'competitive price'),or reduce non-price factors such as quality or service below competitive levels. Only a lessening of competition that is substantial is prohibited under the Commerce Act. The Commission considers a substantial lessening of competition to be a lessening of competition that will adversely affect consumers in the market in a material way.

The Mergers and Acquisitions Guidelines provide "concentration indicators" and indicate that a merger is unlikely to require a clearance where: the post-merger combined market share of the three largest firms in the market is less than 70% and the combined market share of the merging parties is less than 40%; and/or the post-merger combined market share of the three largest firms in the market is 70% or more and the combined market share of the merging parties is less than 20%.

However, the Guidelines provide that market share is one of the factors considered and not sufficient in itself to establish whether a merger is likely to result in substantially lessening competition.

As to the price increase, the High Court has noted that a price increase of 4-5% provides a general indication regarding a 'substantial' lessening of competition.

5. Remedies and sanctions

Under Sections 83, 84 and 85, the Commission may ask the Court to apply an injunction restraining further implementation of a transaction, divestiture of assets or shares and/or a penalty. The High Court decides whether a merger is likely to substantially lessen competition.

According to Section 83, the Court may order a person who has contravened Section 47 to pay a pecuniary penalty as follows:

a) individual: up to NZD 500,000 (approx. USD 355,450)

b) body corporate: up to NZD 5 million (approx. USD 3.55M)

V. Statistics

The total number of decisions from 2011 to 2016 by the Commerce Commission, is as below.

Type of Violation	Total Number of Decisions	Type of Result
Anti-Competitive Agreements	49	This figure includes the number of cases involving hard-core cartels, horizontal agreements that are not hard-core cartels, and anti-competitive vertical agreements the Commission has opened during this time.
Unilateral Conduct or Abuse of Dominance	11	This figure includes the number of cases involving unilateral conduct the Commission has opened during this time.
Mergers	67	This figure covers the period July 2011-June 2016, and includes completed merger enforcement cases (9), as well as merger clearance and authorisation decisions (56 and 2 respectively).
Total	127	N/A

VI. Relevant Laws and Regulations

- **Commerce Act 1986**
- **Cease and Desist Guidelines**
- **Mergers and Acquisitions Guidelines July 2013**
- **Competition and Consumer Investigation Guidelines December 2015**
- **Guidelines for Trade Associations 20 September 2010**
- **Guidelines for Procurers – How to recognize and deter bid rigging September 2010**
- **Authorisation Guidelines July 2013**
- **Enforcement response Guidelines 2013**
- **Cartel Leniency Policy and Process Guidelines 2011**
- **Working Party No. 2 on Competition and Regulation, Competition Issues In Liner Shipping,** New Zealand 2015

Pakistan

I. Competition Rules and Institutional Setting

1. Competition Law

The Competition Act which was enacted on 13 October 2010 is the main legal instrument in Pakistan on competition policy. The 2010 Competition Act replaced the 2007 Competition Ordinance.

The objective of the Act is to engender free competition in all spheres of commercial and economic activity, enhance economic efficiency, and to protect consumers from anticompetitive behaviour.

Chapter II of the Act prohibits abuse of dominant position, anti-competitive agreements, and deceptive marketing practices and provides a merger regime.

General exclusions: There are no sectors excluded from the application of the Competition Act. The Competition Act applies to State-owned enterprises (SOEs).

Extra-territorial application: The Competition Act is applied to undertakings outside Pakistan which affects competition in domestic markets.

2. Competition Commission of Pakistan

The Competition Commission of Pakistan ("CCP"), established in 2007, is responsible for the enforcement of the Competition Act.

Competition Commission website:
http://cc.gov.pk/

Since January 2015, the Commission comprises two Members, including the Chairperson. The Members are appointed by the Federal Government. In terms of the termination of appointment of members, unless a disqualification referred to in Section 19(1) arises from the judgment or order of a court or tribunal of competent jurisdiction under any relevant provision of applicable law, a Member or the Chairman shall not be removed or his appointment revoked without an enquiry by an impartial person or body of persons constituted in accordance with such procedure as may be prescribed by rules made by the General Government. Such rules shall provide for a reasonable opportunity for the Member or the Chairman to be heard in defence.

***Organisational structure of* the CCP**: The CCP, headquartered in Islamabad, had approximately 175 staff members at end 2017. The annual budget of CCP has been fixed at PKR 210 million (approximately USD 1.96 million). In addition, fees earned from merger filings augment the amount of this budget every year.

It has the following departments: Advocacy, Cartels & Trade Abuses, Competition Policy & Research, Exemptions, Information Systems & Technology, Legal, Mergers & Acquisitions, Office of Fair Trade, Office of International Affairs, and Support Services.

Other regulators with competition powers: The telecom sector regulator (Pakistan Telecommunications Authority) has some competition powers but not as encompassing as the Competition Commission. Other than the Pakistan Telecommunications Authority, there are no sector regulators that have competition powers in Pakistan.

Competition advocacy: Under Section 29, the CCP has the powers to promote competition through advocacy. Its functions include reviewing policy framework for fostering competition and making suitable recommendations to the Federal Government and Provincial Governments for amendment to the Competition Act and any other laws that affect competition in Pakistan. The Commission has powers to undertake market studies. Some market studies were done in 2009-2010 and one on the meat sector in 2016. With the assistance of the World Bank, nine market studies have been planned for 2018-2019.

International co-operation: Pakistan has not concluded any international co-operation agreements or Memorandums of Understanding regarding competition law.

3. Investigation

Initiation of investigation: According to Section 37(1), the CCP may, on its own or upon a reference made to it by the Federal Government, initiate enquiries into any matter relevant for the purpose of the Act.

According to Section 37(2), the CCP may also conduct an enquiry upon receipt of a complaint on alleged contravention of Chapter II.

Powers of investigation: According to Section 33, for the purpose of a proceeding or enquiry, the CCP, with the same powers as are vested in a civil court under the Code of Civil Procedure, may require any undertaking to produce before or furnish to the CCP any information, books, accounts, or other documents.

Under Section 34, the CCP has the powers to enter and search premises, for reasonable grounds to be recorded in writing. The CCP has full and free access to any premises, place, accounts, documents or computer.

Under Section 35, the investigating officer of the CCP may by written order, signed by any two Members, enter any place or building by force, in the event that an undertaking refuses without reasonable cause to allow the CCP to exercise the powers under Section 34.

To exercise these powers, no court warrants are required for the Commission's search and other inspection powers in Section 34. The Commission can conduct a forcible "dawn raid" under 35 of the Act.

In the last 10 years, 20 unannounced inspections have been undertaken by the CCP.

Failure to comply with investigation: According to the Guidelines on Imposition of Financial Penalties, the CCP may impose a penalty at an amount not exceeding PKR1 million for undertakings knowingly abusing, interfering, impeding and obstructing the process of the CCP in any manner.

4. Remedies and sanctions

Under Section 31, where the CCP finds a contravention of Chapter II, it may make orders as it may deem appropriate.

Under Section 38, the CCP may also impose administrative penalties for a contravention of any provision of Chapter II, at an amount not exceeding PKR75 million or 10% of the annual turnover of the undertaking.

For non-compliance of any order, notice or requisition of the CCP, it may impose a penalty at an amount not exceeding PKR1 million.

5. Appeal

According to Section 41, an appeal may be made before the Appellate Bench of the Commission in respect of an order made by any Member or authorised officer of the CCP. The appeal may be made within 30 days of the passing of the order. The CCP shall constitute Appellate Benches comprising not less than two Members to hear appeals under sub-section (1).

According to Section 42, an order of the CCP or of the Appellate Bench of the Commission may be made before the Competition Appellate Tribunal within 60 days of the communication of the order.

The Competition Appellate Tribunal consists of a Chairperson (who either has been a judge of the Supreme Court or is a retired Chief Justice of a High Court) and two technical members.

The orders of the Competition Appellate Tribunal may be appealed before the Supreme Court of Pakistan. Any person aggrieved by an order of the Competition Appellate Tribunal many prefer an appeal to Supreme Court within sixty days.

6. Private Enforcement

Private enforcement is not available in Pakistan.

II. Anti-competitive Agreements

1. Scope

Section 4 of the Act prohibits undertakings from entering into any agreement in respect of the production, supply, distribution, acquisition or control of goods or the provision of services, which have the object or effect of preventing, restricting or reducing competition within the relevant market. Such agreements include but are not limited to: price fixing; market allocation; output restrictions; limiting technical development or investment; collusive tendering/bid-rigging; and applying dissimilar conditions to equivalent transactions with other parties.

2. Assessment

According to the *Draft Guidelines 2016 on Section 4 Prohibited Agreements*, in delineating the market, the CCP resorts to two dimensions: the relevant product market and the relevant geographic market.

The CCP considers both direct and indirect evidence that is relevant to the case being investigated.

Exemptions: According to Section 5, the CCP may grant an exemption from Section 4 with respect to a particular agreement, upon request by the parties to the agreement.

According to Section 9, the CCP may grant exemption if the agreement substantially contributes to improving production or distribution and promoting technical or economic progress, or if the benefits deriving from the agreement clearly outweigh the adverse effect of restriction on competition.

For instance, hard-core cartels are per se prohibited. People must apply for an exemption agreement before it goes into effect.

Under Section 7, the CCP may also grant a block exemption to a particular category of agreements if it considers that they meet the exemption criteria above. A block exemption order imposes conditions or obligations subject to which a block exemption is to have effect, and specifies a period that the order is to cease to have effect.

3. Remedies and sanctions

Under Section 31, the CCP may annul prohibited agreements specified in Section 4, or require the undertaking concerned to amend the agreement and not to repeat the prohibitions. The CCP may also impose administrative penalties (see Section I.4 of this text on *Remedies and sanctions*). To date, there is no Block Exemption granted by the Commission.

4. Leniency

Under Section 39, and the Leniency Regulation of 2013, the CCP may grant a full or partial exemption of penalty only to an undertaking that is the first to come forth and make full and true disclosure of the alleged infringement. There has been one leniency application

III. Abuse of Dominance

1. Scope

Section 3 of the Act prohibits the abuse of dominant position through any practice that prevents, restricts, reduces, or distorts competition in the relevant market. Abuse of dominant position includes, but are not limited to, the following practices:

a) limiting production, sales, and unreasonable price increases;

b) price discrimination without objective justifications;

c) making the sale of goods or services conditional on the purchase of other goods or services;

d) predatory pricing, boycotting or excluding any other undertaking;

e) or refusing to deal.

2. Assessment

Under Section 2, a dominant position is deemed to exist if an undertaking or several undertakings have the ability to behave to an appreciable extent, independently from competitors, customers, consumers and suppliers. The position of an undertaking is presumed to be dominant if its share of the relevant market exceeds 40%.

The CCP uses a 40% market share as a rule of thumb for dominance but this does not rule out dominance at lower levels of market share. There has been an example of this in the LPG sector, which was a case of collective dominance albeit below 40% market share.

According to the *Guidelines Section 3: Abuse of Dominant Position*, the CCP may take into account, when determining Section 3 violation, whether the dominant undertaking has an objective justification and proportionality of the conduct. To clarify this, for instance, a firm may have an "objective justification" based on economic efficiency. Hence, "proportionality" can indicate lines of "behaviour that is commensurate with the objective justification."

3. Remedies and sanctions

Under Section 31, the CCP may require the undertaking concerned to take actions to restore competition and not to repeat the prohibition or engage in any practice with a similar effect. The CCP may also impose administrative penalties (see Section I.4 of this text on *Remedies and sanctions*).

IV. Mergers

1. Scope

Section 11 prohibits mergers that would substantially lessen competition by creating or strengthening a dominant position in the relevant market.

2. Notification

Section 11 requires merger parties to apply for clearance to the CCP of a proposed merger that meets the notification threshold provided in Section 4 of the *Competition (Merger Control) Regulations 2016*.

For merger parties, other than asset management companies, the notification thresholds are as follows:

a) the value of gross assets of the undertaking, excluding value of goodwill, is not less than PKR300 million or the combined value of the undertaking and the undertaking(s) the shares of which are proposed to be acquired or the undertakings being merged, is not less than PKR1 billion; or

b) annual turnover of the undertaking in the preceding year is not less than PKR500 million or the combined turnover of the undertaking and the undertaking(s) the shares of which are proposed to be acquired or the undertakings being merged is not less than PKR1 billion; and

c) the transaction relates to acquisition of shares or assets of the value of PKR100 million or more; or

d) in case of acquisition of shares by an undertaking, if an acquirer acquires voting shares, which taken together with voting shares, if any, held by the acquirer shall entitle the acquirer to more than 10% voting shares.

For merger parties, being asset management companies, the notification thresholds are as follows:

a) the collective exposure for itself and in all of its collective investment schemes in a single entity is more than 25% of total voting rights; or

b) the value of total assets under management of an asset management company is PKR1 billion or more; and

c) the transaction relates to acquisition of shares or assets of the value of PKR100 million or more; or

d) in case of acquisition of shares by an undertaking, if an acquirer acquires voting shares, which taken together with voting shares, if any, held by the acquirer shall entitle the acquirer to more than 10% voting shares.

Pre-merger applications shall be deemed to have been made only when accompanied by a processing fee at rates prescribed in the table in Section 6 of the *Competition (Merger Control) Regulations 2016*.

The CCP provides opportunities for consultation, if needed or requested by the parties before filing, to encourage filings, reduce delays in the filing process, and ensure that the 30 working days period for the Phase 1 reviews is not exceeded.

3. Procedural Rules

The CCP decides within 30 working days of receipt of the application on whether the proposed merger meets the thresholds and the presumption of dominance as determined in Section 3 of the Act. Where the CCP considers that the proposed merger may not be consistent with merger rules, the CCP opens a second phase review and may require the merger parties to provide further information necessary for the determination. The CCP assesses within 90 working days of receipt of the request information whether the proposed merger will substantially lessen competition by creating or strengthening a dominant position in the relevant market.

After the second phase review, the CCP may nonetheless approve the intended merger that is considered to lessen competition, if it is shown that:

a) the merger contributes substantially to the efficiency of the production or distribution of goods or to the provision of services;

b) such efficiency could not reasonably have been achieved by a less restrictive means of competition;

c) the benefits of such efficiency clearly outweigh the adverse effect of restriction on competition; or

d) it is the least anti-competitive option for the failing undertaking's assets, when one of the undertaking is faced with actual or imminent financial failure.

Procedural fairness: The CCP provides opportunities for consultation, if needed or requested by the parties.

4. Assessment

The *Competition (Merger Control) Regulations 2016* explains how merger assessment is conducted.

In regard to main criteria of assessment, CCP analyses mergers from a "significant lessening of competition" perspective. The analysis includes looking at market shares – if a party has a 40% share or more a second-phase review may be triggered. The competitive dynamics of the sector are also considered: imports, other competitors, substitutability, government policies in terms of duties or strategic importance etc., are also considered.

5. Remedies and sanctions

Under Section 31, the CCP may undo or prohibit the merger. The CCP may also impose administrative penalties (see Chapter I of this text on *Remedies and sanctions*).

Where the undertakings conducted a merger without clearance from the CCP, the CCP may, after giving the undertakings notice of its intentions or the opportunity of being heard, make appropriate orders set forth in Section 31.

V. Statistics

The decisions taken refer to those made between January 2015 and September 2017.

Type of Violation	Total Number of Decisions	Type of Violation
Anti-Competitive Agreements	2	N/A
Unilateral Conduct or Abuse of Dominance	14	N/A
Mergers	195	N/A

Source: Response by the CCP to OECD/KPC "Guidebook Questionnaires" for period from January 2015 to September 2017

VI. Relevant Laws and Regulations

- **The Competition Act, 2010**
- **Case laws -** Legislation and case laws are available at CCP website, www.cc.gov.pk/
- **The Competition Act, 2010**
- **Implementing Rules and Regulations**
- **Competition Commission of Pakistan (2016), Guidelines on imposition of financial penalties (fining guidelines)**

Papua New Guinea

I. Competition Rules and Institutional Setting

1. Competition Law

The Independent Consumer and Competition Commission Act, 2002 ("the ICCC Act") was passed by the Parliament in 2002 and came into effect in April 2003.

The ICCC Act has three primary objectives under Section 5(1), which are: (a) to enhance the welfare of the people of Papua New Guinea (PNG) through the promotion of competition, fair trading and the protection of consumers' interests; (b) to promote economic efficiency in industry structure, investment and conduct; and (c) to protect the long term interests of the people of PNG with regard to the price, quality and reliability of significant goods and services.

The ICCC Act prohibits certain conduct or practices that substantially lessen competition, price fixing, taking advantage of market power, resale price maintenance, and business acquisition. In addition, the ICCC Act covers consumer protection, fair trading and regulation of goods and services.

The competition functions of the ICCC are provided under Part VI of the ICCC Act. The ICCC Act contains similarities to the Australian Competition and Consumer Act 2010 Cth (formerly Australian Trade Practices Act 1974) and the New Zealand Commerce Act 1986, with main differences relating to price control provisions and the regulatory contracts for State Owned utility monopolies.

PNG follows the common law tradition.

General exclusion: There is no sector excluded or exempted from the application of Part VI of the ICCC Act. Section 48 of the ICCC Act provides that Part VI of the ICCC Act also applies to State-owned enterprises who engage in commercial activities in competition with private firms.

Extra-territorial application: Part VI of the ICCC Act is also applicable to conduct engaged outside PNG which directly affects competition and consumers in PNG's domestic markets. The ICCC Act's merger control provisions are also applicable to foreign mergers.

2. Independent Consumer and Competition Commission

The Independent Consumer and Competition Commission ("ICCC") is the only competition authority in PNG that is responsible for enforcing the ICCC Act. It is an independent statutory body in terms of its decision making and enforcement actions (Section 23).

Subject to Section 25 (public finances management) and Part VIII (inquiries), the ICCC is not subject to direction or control by the Minister or any other person in the performance of its functions.

The ICCC does not impose fines and sanctions for infringement of the ICCC Act. The ICCC only investigates competition cases and institutes proceedings in the National Court ("the Court"). The Court decides both on liability and on sanctions. Thus, there exists a pure judicial competition law regime in PNG.

ICCC website:
www.iccc.gov.pg

Contact:
info@iccc.gov.pg

The ICCC performs a number of functions, inter alia to be responsible for functions relating to price regulation, licensing, industry regulation and other matters conferred by the ICCC Act or any other Acts.

Organisational structure of ICCC: The ICCC, whose headquarters is located in the nation's capital of Port Moresby, has 79 employees including non-technical officers as of 2016. There are four (4) regional offices of which three (3) are based outside of Port Moresby. They are Momase Region in Lae, New Guinea Islands Region in Kokopo and Highlands Region in Goroka.

There are four (4) main divisions responsible for carrying out the four (4) core functions of the ICCC which are: enforcement of competition rules, protection of consumers' interests, price regulation, administering regulatory contracts and pricing orders for regulated entities.

For 2016, the total annual budget of the ICCC was PGK 12,121,415M (approx. USD 3,139,446). Out of this, the Government's appropriation was PGK 9,587,225M (approx. USD 2,483,091) and its internal revenue was PGK 2,534,190M (approx. USD 656, 355.The ICCC makes annual budget submissions to the Government through the Department of Treasury.

Sections 8 and 9 of the ICCC Act provide that the board of the ICCC consists of one full-time Commissioner/Chairman (who is also the Chief Executive Officer) and two Associate Commissioners, who are on part-time engagement. One Associate Commissioner has to be a non-resident with international expertise in economic regulatory regime. The Commissioners are appointed by the head of State in accordance with the advice of the ICCC Appointments Committee consisting of the Prime Minister, the Leader of the Opposition, the Treasury Minister, and the Governor of the Central Bank. Appointments are for five (5) year term and appointees are eligible for re-appointments. The Commissioner or an Associate Commissioner may be removed from office only by the Court on application of the Minister for Treasury (and after seeking advice of the National Executive Council), if one of a set number of circumstances as provided under Sections 15 or 16 of the ICCC Act are met (e.g. misconduct).

The ICCC reports to the Government on an annual basis (through the Minister for Treasury) on the projects undertaken and cases investigated. It also submits its annual plans and proposed budgets to seek funding from the Government through the Department of Treasury.

Other regulators with competition powers: The National Information and Communication Authority (NICTA) has responsibility over ex ante regulation. However, the ICCC still has power to investigate anti-competitive conduct and or arrangements of the ICT firms. Besides NICTA, no other regulator has such competition powers.

Competition Advocacy: The ICCC has conducted at least one market or sector research in PNG in at least every five years and making recommendations for structural or policy reforms.

The Government through the Department of Treasury or other relevant Departments can request the ICCC to undertake market studies into various industries and markets to assist Government with evidence-based policy options (Section 123). One such example is the review of the housing and real estate industry. The ICCC and the Government are now looking at regulating this industry.

When a market study identifies obstacles or restrictions to competition caused by an existing public policy, the study includes opinions and recommendations to the government to remove or reduce such obstacles or restrictions. However, the Government is not required to act on the ICCC's recommendations.

International co-operation: The ICCC is yet to sign any international co-operation agreement or MoU with other competition authorities for assistance on competition and consumer issues.

3. Investigation

Initiation of investigation: The ICCC may initiate investigation after receiving complaints and it also has powers to initiate its own investigations or enquiries where it believes a certain player's conduct raises suspicions about anti-competitive practices.

Powers of investigation: The ICCC can compel firms under investigation for possible antitrust infringements to provide information. Sections 127, 128 and 129 of the ICCC Act respectively provide for summoning witnesses, obtaining information generally, and entry and search.

Section 127 (1) states that the ICCC or an officer authorised in writing by the ICCC may-

- summon witnesses; and
- take evidence on oath; and
- require the production of documents, books and papers;

Section 128 (1) stipulates that the ICCC or an officer authorised in writing for the purposes by the ICCC may require a person-

- to furnish such information as the ICCC or authorised officer, as the case may be, requires; or
- to answer any question put to him, where the ICCC reasonably believes the information or answer will assist in connection with the performance of the ICCC's functions.

Section 129 (1) provides that an officer of the ICCC authorised in writing for the purpose by the ICCC may, under warrant, enter/search, inspect any documents, books and papers, and inspect and take samples of any stocks of any goods.

Failure to comply with investigation: Under Sections 127 (3), 128 (4), and 129 (7), a person who fails, without lawful excuse, to appear in obedience to the summons, to furnish the information, to answer the question, or prevents or attempts to prevent any entry and search on any premises, is guilty of an offence. Such offences are considered as summary offences of which the maximum penalty is PGK50, 000.00 (USD 1, 295) or imprisonment for a term not exceeding six (6) months.

Procedural fairness: The ICCC provides the party/parties under investigation for antitrust infringements with opportunities to consult with the ICCC with regard to significant legal, factual or procedural issues

during the course of the investigation. The parties also have the right to be heard and present evidence in defence in court before the imposition of any sanctions or remedies for having committed an antitrust infringement. This right is not provided in the ICCC Act. However, we have an adversarial court system that allows for parties to defend themselves on liability and penalty.

Confidentiality: The ICCC has a duty not to disclose confidential information without the consent of the person who provided the information. Where information submitted has been designated as confidential, the ICCC may disclose it if it considers that the disclosure is in the public interest.

4. Remedies and Sanctions

As mentioned above in Section 1, PNG has an adversarial system. This means that, whilst the ICCC undertakes the investigation, it must bring the cases (that raise serious competition concerns) before the National Court for adjudication.

The maximum level of fines that may be imposed by the Court are set out under Section 87(2): PGK10M (approximately USD 2.793M) for corporation; and PGK500, 000 (approximately USD 139,650) for individual. Under Section 88, the infringing company should not indemnify a director, employee or agent regarding the liability to pay the pecuniary penalty or costs in defending or settling any proceedings relating to that liability.

The Court may, under Section 90, order directors to be excluded from management of a company for a period of up to 5 years for restrictive trade practices, among other penalties. The ICCC is yet to institute proceedings for restrictive trade practices in its 14 years of operation.

The Court may also order divestiture of assets or shares for business acquisitions, among other penalties.

Finally, the ICCC may obtain an injunction restraining a person from engaging in conduct that constitutes or would constitute a breach of the Act. The ICCC has also not applied for an injunction as yet in its 14 years of operation.

Since the establishment of the ICCC and the operation of the ICCC Act, the ICCC has only instituted one competition law case so far and that was in 2012. The case is still pending in the National Court for five (5) years now for a decision on an interlocutory application by the defendant. The substantive matter is yet to be heard.

5. Appeal

A decision made by the National Court upon a proceeding initiated by the ICCC may be appealed to the Supreme Court of PNG, in accordance with the Courts procedure.

6 Private enforcement

Private parties can take private legal action against a company for potential or breach of the competition law.

Damages claims: Section 94 stipulates that a person is liable in damages for any loss or damage caused by that person engaging in conduct that constitutes a contravention of Section 50 (Contracts, Arrangements or Understandings Substantially Lessening Competition Prohibited), 51 (Covenants Substantially Lessening Competition Prohibited), 58 (Taking Advantage of Market Power) or any other market conduct rules. Section 97 prescribes that a person is liable in damages for any loss caused by him engaging in conduct that constitutes a contravention of Section 69 (Certain Acquisitions Prohibited).

Injunction claims: Under Section 93, the Court may grant an injunction restraining a person from engaging in conduct that constitutes a contravention of Section 50 and 51 (anti-competitive agreements), 58 (abuse of dominance) or any other market conduct rules. Section 96 stipulates that the Court may, by order, grant an injunction restraining any person from engaging in conduct that constitutes a contravention of Section 69 (merger control).

II. Anti-competitive Agreements

1. Scope

Part VI (Competitive Market Conduct) of the ICCC Act prohibits certain anti-competitive conduct, namely entering or giving effect to any contract, arrangement or understanding or any covenant that has the purpose or has the effect or is likely to have the effect of substantially lessening competition in a market as provided under Sections 50 and Section 51.

Section 52 prevents entering or giving effect to any contract, arrangement or understanding that contains an exclusionary provision. This is a provision in a contract, arrangement or understanding between competitors that has the purpose of preventing, restricting or limiting the supply of goods or services to or the acquisition of goods or services from particular persons or classes of persons who are in competition with one or more of the parties. However, such conduct would not be caught by the ICCC Act if the persons engaging in the conduct could prove that it does not substantially lessen competition.

Price Fixing conduct is per se prohibited and includes cartel arrangements relating to price and collusive tendering. Price fixing agreements are defined broadly as arrangements between persons that have the purpose, effect or likely effect of fixing, controlling or maintaining: (i) the price for any goods or services; or (ii) any discount, allowance, rebate or credit for any goods or services. These are deemed by Section 53 to substantially lessen competition and are a breach of Section 50.

Section 59 of the Act explicitly prohibits resale price maintenance. This is also a per se prohibition.

2. Assessment

The ICCC is yet to publish guidelines that explain how horizontal and vertical agreements are assessed.

Authorisations are available for anti-competitive agreements, agreements containing exclusionary provisions and resale price maintenance. These essentially allow for a conduct which may be in breach of the law, to proceed on the grounds that public benefit arising from the conduct outweighs the anti-competitive effects. However, authorisation is not available for price fixing.

An authorisation may be revoked or varied only after giving an applicant the opportunity to be heard by the ICCC on the issue prior to further action.

3. Remedies and sanctions

See Section I.4 above on Remedies and Sanctions.

4. Leniency

The ICCC has approved a leniency programme and should implement it shortly.

III. Abuse of Dominance

1. Scope

In PNG, being a monopoly, holding of substantial market power or dominant position is not prohibited. However, abuse of such position is prohibited.

Section 58 prohibits a person that has a substantial degree of market power from taking advantage of that market power for the purpose of: (i) restricting entry into that or any other market, or (ii) preventing or deterring person from engaging in competitive conduct in that or any other market, or (iii) eliminating a person from that or any other market.

Whilst there were several cases of abuse of market power being investigated, so far the ICCC has not brought any such cases to the Court.

Exemption: Under Section 67, conduct in connection with a license of a statutory intellectual property right is exempt from the application of Section 58.

2. Assessment

The ICCC does not depend on a certain specific criteria to determine substantial market power or dominant position. It is yet to issue any guidelines on how substantial market power may be determined.

Currently, it is the practice of the ICCC to generally take into account factors like market share, barriers to entry, and whether other competitors can constrain the conduct of the firm.

3. Remedies and sanctions

See Section I.IV above on Remedies and Sanctions.

IV. Mergers

1. Scope

As per Section 69, a merger or acquisition of assets or shares of a business are prohibited if it would have, or be likely to have, the effect of substantially lessening competition in a market in PNG. The ICCC has so far blocked six (6) mergers by declining either Clearance or Authorisation. The first merger court action is pending Court decision on an interlocutory application by the defendant. The substantive matter is yet to be heard.

2. Notification

PNG operates a voluntary notification system. Where potentially anti-competitive mergers are concluded without seeking either a Clearance or an Authorisation, the ICCC can investigate them. Section 96 provides that the ICCC can apply for an injunction against a person who engages or intends to engage in conduct that would contravene Section 69. As mentioned, the first merger case is still pending hearing.

An application for Clearance or Authorisation can be made to the ICCC for any proposed business acquisitions likely to inhibit competition.

Under Section 81 (3) (a), if the ICCC is satisfied that the acquisition will not have the effect of substantially lessening competition in a market, it will issue a clearance for the acquisition.

Under Section 82 (3) (b), if the ICCC is satisfied that, although the acquisition is likely to substantially lessen competition but there is net public benefit, then it will permit the acquisition to proceed.

3. Procedural rules

The ICCC has 20 days in relation to a clearance application and 72 days for an authorisation application, to give its decision. In both cases, the time limit can be extended in certain circumstances. If the ICCC does not make a decision within the required timeframe, the clearance or authorisation is deemed to be granted.

Procedural fairness: If a merger was not reported and an investigation was initiated to assess the implications on competition, the ICCC would give the parties opportunity to respond to some queries like the areas of business activities of the parties and their respective market share before the acquisition/merger.

During the course of such an investigation, the parties will not have access to how the investigation is conducted and concluded until the decision of the ICCC is relayed to them, whether or not to take legal action against them. The parties have the right to be heard and present evidence before a decision on a merger is reached.

4. Assessment

The legal test is whether the transaction leads to a substantial lessening of competition and if so, whether there is no overriding public benefit deriving from the transaction.

In deciding if an acquisition would have the effect of substantially lessening competition in a market, Section 69(5) provides that the following matters are taken into account: (a) actual and potential level of import competition in the market; (b) nature and effect of barriers to entry in the market; (c) the number of buyers and sellers in the market; (d) the degree of countervailing power in the market; (e) the likelihood that the acquisition would result in the acquirer being able to significantly and sustainably increase prices or profit margins; (f) the extent to which substitutes are available, or are likely to be available in the market; (g) the dynamic characteristics of the market including growth, innovation and product differentiation; (h) the likelihood that the acquisition would result in the removal from the market of a sustainable, vigorous and effective competitor; (i) the nature and extent of vertical integration in the market.

5. Remedies and Sanctions

Under Section 85, in giving a clearance or granting an authorisation under Section 81 or Section 82, the ICCC may accept a written undertaking for disposal of assets or shares. An undertaking given to the ICCC is deemed to form part of the clearance given or the authorisation granted.

On application of the ICCC, the Court may, under Section 98 order the divestiture of assets or shares for a contravention of the business acquisition provisions under Section 69.

Section 95 (Pecuniary Penalties) stipulates that any person who contravenes Section 69 shall be ordered to pay a pecuniary penalty not exceeding PGK500,000.00 (approx. USD139,650) for individual, and PGK10M (approx. USD 2.793M) for a body corporate.

Section 96 (Injunctions) sets forth that any person who intends to engage, or is engaging, or has engaged, in conduct that constitutes or would constitute a contravention of Section 69, the Court may grant an injunction restraining that person from engaging in conduct, or impose on any person obligations to be observed in the carrying on of any business or the safeguarding of any business or any assets of any business.

Section 97 (Actions for Damages) provides for damages in relation to a contravention of Section 69 (business acquisitions).

V. Statistics

The total number of cases as well as types of result relating to anti-competitive agreements, unilateral conducts and mergers, reviewed from 2003 to 2016 by the ICCC, are shown as below.

Types of Cases	Total Number of Cases	Type of Decisions
Anti-Competitive Agreements	15	Authorisation Granted: 8 Authorisation Granted Subject to Conditions: 4 Application Being Processed: 1 Application Withdrawn: 1 Terminated Agreement: 1
Abuse of Dominance	0	N/A
Mergers	35	Authorisation Granted: 11 Authorisation Granted Subject to Conditions: 5 Clearance Granted: 15 Authorisation Declined: 4
Total	50	N/A

Source: Response to Questionnaire by Papua New Guinea

VI. Relevant Laws and Regulations

- **The Independent Consumer and Competition Commission Act 2002**
  http://iccc.gov.pg/images/ICCC%20Act.pdf
- **Summary of Papua new Guinea's Competition, Consumer Protection and Pricing Laws 2014**
  http://iccc.gov.pg/images/SUMMARY_OF_ICCC_ACT.pdf

Philippines

I. Competition Rules and Institutional Setting

1. Philippine Competition Act

The Philippine Competition Act (the "Competition Act" or "PCA) came into effect on 8 August 2015. It is the Philippine's first comprehensive legal framework on competition policy.

The goal of the Competition Act is to enhance economic efficiency and promote free and fair competition in trade, industry and all commercial economic activities, with the objective of protecting consumer welfare and advancing domestic and international trade and economic development.

The PCA defines, prohibits, and penalises three types of anti-competitive conduct: anti-competitive agreements, abuse of dominant position, and anti-competitive mergers and acquisitions. It also introduces a compulsory notification regime for certain mergers and acquisitions.

The legal system in the Philippines is mixed, meaning that it carries aspects of both common law and civil law.

General exclusion: There are no sectors excluded or exempted from the application of the PCA. State-controlled firms are not exempt from the application of the PCA when conducting commercial activities in competition with private firms.

Extra-territorial application: The PCA has extraterritorial effect, being enforceable against acts committed outside of the Philippines which affect trade, industry or commerce in the Philippines.

2. Philippine Competition Commission and the Office For Competition

The Philippine Competition Commission (the "Commission" or "PCC") was established on 1 February 2016. It is an independent quasi-judicial body, mandated to implement the Philippines' competition policy. The Office for Competition under the Department of Justice (the "DOJ-OFC") was created in 2011 prior to the entry into force of the PCA and retains authority to conduct preliminary investigations and to prosecute criminal offences arising under the Competition Law and other competition related laws.

The PCC's role is to protect markets from anti-competitive behaviour, protect consumers, promote competitive businesses, protect SMEs, and maintain a stable fair playing field, by instituting a regulatory environment for competition in the marketplace. This is pursuant to its original and primary jurisdiction in the enforcement and regulation of all competition-related issues.

Organisational structure of PCC: Located in Pasig City, the PCC has 6 core offices: Administrative and Legal; Communication and Knowledge Management; Competition Enforcement; Economics; Financial, Planning and Management; Mergers and Acquisitions. The number of staff is 159 as of end 2017. For 2016, the PCC was allocated a budget of PhP245,073,000.00. This increased to PhP420,871,000.00 in 2017.

Official website of PCC:
http://phcc.gov.ph/

Contact:
E-mail: queries@phcc.gov.ph

Tel: +632 631 2129
(Office of the Chairman)

Section 6 of the PCA stipulates that the PCC shall be composed of a Chairperson and 4 Commissioners, who are each appointed by the President. The Chairperson and Commissioners have the rank equivalent of cabinet secretary and undersecretary, respectively. All enjoy security of tenure and shall not be suspended or removed from office except for just cause as provided by law.

The PCC is mandated to submit an annual report and special reports to Congress.

DOJ-OFC: Total number of staff as of end-2016: Seven out of 18 positions with a budget of: 11.687 million (2016), 17.324 million (2017).

Other regulators with competition powers Under Section 32, the PCC has original and primary jurisdiction in the enforcement and regulation of all competition-related issues.

If the issue involves both competition and non-competition issues, the PCC will still have jurisdiction. However, the concerned sector regulators have to be consulted with and be given reasonable opportunity to submit opinion and recommendation on the matter, before the PCC makes a decision.

The PCC may also work with sector regulators to issue rules and regulations to promote competition, protect consumers, and prevent abuse of market power by dominant players within their respective sectors, where appropriate.

Competition advocacy:

The PCC has wide explicit advocacy functions. Preparatory work on the conduct of market studies and issue papers began in the last quarter of 2016. In addition, the PCC has the power under Section 12(r), to advocate pro-competitive policies of the government by:

(1) Reviewing economic and administrative regulations as to whether they negatively affect relevant market competition, and advising the concerned agencies against such regulations; and

(2) Advising on the competitive implications of government actions, policies and programmes.

Section 12 (k) also sets out that the PCC also issues advisory opinions and guidelines on competition matters for the effective enforcement of the Competition Law and submit annual and special reports to Congress, including proposed legislation for the regulation of commerce, trade or industry.

The PCC can also assist the National Economic and Development Authority, in consultation with relevant agencies and sectors, in preparation and formulation of a national competition policy.

International co-operation: The DOJ-OFC has co-operation agreements with Japan and Australia.

3. Investigation

Initiation of investigation: The PCA, in Section 31 specifies that the PCC, *motu proprio*, or upon the filing of a verified complaint by an interested party or upon referral by a regulatory agency, has the sole and exclusive authority to initiate and conduct a fact-finding or preliminary inquiry ("Preliminary Inquiry") for the enforcement of the PCA based on reasonable grounds. upon the filing of a verified complaint by an interested party or upon referral by a regulatory agency.

The Preliminary Inquiry is completed within 90 days from its commencement. Under Section 31 of the PCA and Section 2.6 of the 2017 Rules of Procedure ("Rules"), The PCC terminates a Preliminary Inquiry by:

1. Issuing a resolution ordering its closure if no violation or infringement of the PCA, its implementing rules, or other competition laws is found, subject to any other action that the PCC may consider proper or necessary under the circumstances;

2. Issuing a resolution to close the Preliminary Inquiry without prejudice, if the facts or information available at the end of the ninety (90)-day period are insufficient to proceed, on the basis of reasonable grounds, to the conduct of a full administrative investigation ("Full Administrative Investigation"); or

3. Issuing a resolution to proceed, on the basis of reasonable grounds, to the conduct of a Full Administrative Investigation.

A Full Administrative Investigation is conducted to ascertain whether there is sufficient basis to charge an entity for violation of the PCA, its implementing rules, or other competition laws.

Powers of investigation: Under Section 12 of the PCA and Section 2.14 of the Rules, the PCC has the following powers, among others:

1. Administer oaths, summon and examine witnesses, and receive evidence;

2. Request anyone who may have access to, possession, custody, or control or may have knowledge of any information, which relate to any matter relevant to the Investigation or proceeding;

3. Issue subpoena;

4. Apply for an inspection order with the court to undertake inspections of business premises and other offices, land, and vehicles, as used by the entity to be inspected, where the PCC reasonably suspects that relevant books, tax records, or other documents, including Electronically Stored Information that relate to any matter relevant to the Investigation are kept, and when it is necessary for the conduct of a full and thorough investigation, to prevent the removal, concealment, tampering with, or destruction of the books, records, or other documents;

5. Consult with resource persons;

6. Deputise any enforcement agency of the government, or enlist the aid and support of any private institution, corporation, entity, or association; and

7. Initiate proceedings for contempt and similar violations committed during investigation.

Under Sections 13 and 31 of the PCA, the PCC may file before the Department of Justice criminal complaints for violations of the PCA for preliminary investigation by the Office for Competition and prosecution thereof before the proper court.

Obstruction of investigation, contempt: Under Section 6.15 of the Rules, the PCC may impose a fine of PHP50 thousand to PHP2 million on anyone who commits acts constituting obstruction of investigation. Obstructive acts include destroying or concealing information which relate to any matter relevant to the investigation, disobedience or resistance to any officer of the PCC who is engaged in the performance of official duties, inviting reliance on any information that is false, and engaging in any act that interferes with or tends to interfere with the speedy or orderly administration of the PCA.

Under Section 6.14 of the Rules, misconduct committed against or before the PCC that seriously interrupts any hearing, session, or proceeding constitutes contempt that is punishable by imprisonment not exceeding 30 days or by a fine not exceeding PHP100 thousand, or both. -.

Procedural fairness: Under Section 2.10 of the Rules, before the conclusion of the Full Administrative Investigation, the PCC may conduct a conference with the entity under Full Administrative Investigation for purposes of clarifying or ascertaining facts, issues, and other matters necessary and relevant to the investigation.

Confidentiality: Under Sections 11.1 and 11.8 of the Rules, confidential information shall not be disclosed to any person not authorised to have access thereto. This notwithstanding, the PCC may disclose confidential information when consent is obtained from the entity claiming confidentiality, when disclosure is required by law, a valid order of a court of competent jurisdiction or pursuant to a lawful writ or process of a government agency, when disclosure is based on an agreement with a government agency, or when necessary for enforcing the PCA, its implementing rules, or other competition laws.

Under Section 4(e) of the PCA and Section 11.2 of the Rules, confidential business information refers to information, which concerns or relates to the operations, production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, expenditures, which are not generally known to the public or to other persons who can obtain economic value from its disclosure or use, or is liable to cause serious harm to the person who provided it, or from whom it originates, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

According to Section 11.3 of the Rules, the PCC may extend confidential treatment to information other than confidential business information, if such information is not generally known to the public, is subject of reasonable efforts under the circumstances to maintain its secrecy, and the disclosure of such information is prejudicial to, or may compromise or adversely affect any investigation.

Section 11.4 of the Rules states that the PCC shall keep confidential the identity of persons providing information under condition of anonymity, unless such confidentiality is expressly waived by the latter. The PCC may, even without request of anonymity, treat as confidential the identity of any persons providing information when necessary for the enforcement of the PCA, its implementing rules, or other competition laws.

4. Remedies and Sanctions

Under Section 12 of the PCA, the PCC is vested with the power to investigate hear and decide cases involving violations of the PCA and other competition laws.

Under Section 12(d) of the PCA and Rule VI of the Rules, the PCC may impose any of the following remedies to address anti-competitive conduct or agreements, and other competition concerns to the extent reasonably necessary to maintain, enhance, or restore competition in the relevant market/s, or to promote public welfare: structural remedies, behavioural remedies, injunction, disgorgement, and divestiture.

Under Section 29 of the PCA and Section 6.1 of the Rules, the PCC may impose the following schedule of fines on any entity found to have violated Sections 14 (Anti-competitive agreements) or 15 (Abuse of Dominant Position) of the PCA: (a) First offense - Up to PHP 100 million; (b) Second offense - Not less than PHP 100 million up to PHP 250 million; (c) Third offense and succeeding offenses - Not less than PHP 150 million but not more than PHP 250 million. Fines shall be tripled if the violation involves the trade or movement of basic necessities and prime commodities, as defined in The Price Act.

Criminal sanctions are only applied to certain types of anti-competitive agreements. According to Section 30 of the PCA, an entity that enters into any anti-competitive agreement covered by Sections 14(a) and 14(b) shall be subject to a fine of not less than PHP50 million but not more than PHP250 million and imprisonment.

5. Appeal

According to Section 39 of the PCA, decisions of the PCC are appealable to the Court of Appeals, for a review on the merits and thus decides on questions of law or fact, or both. In case of reversal or modification by the Court of Appeals, the Court of Appeals decision is followed by the parties. The PCC decision may be elevated to the Supreme Court via an Appeal by Certiorari (Rule 45 in our Rules of Court), which involves questions of law only. Ground for filing is when PCC acts in excess of its jurisdiction or with grave abuse of discretion. A successful Petition will result to nullification of the PCC decision.

6. Private enforcement

Under Section 45, any person who suffers direct injury by reason of any violation of the PCA can institute a separate and independent civil action with the regular courts after the PCC has completed the Preliminary Inquiry

II. Anti-competitive Agreements

1. Scope

Section 14 of the PCA makes a distinction between three types of anti-competitive agreements.

Type (a) agreements are *per se* prohibited agreements, between or among competitors, that:

(1) Restrict competition as to price, or components thereof, or other terms of trade; or

(2) Fix prices at an auction or in any form of bidding including cover bidding, bid suppression, bid rotation, and market allocation, and other analogous practices of bid manipulation.

Type (b) agreements are agreements, between or among competitors, which have the object or effect of substantially preventing, restricting or lessening competition, that:

(1) Set, limit, or control production, markets, technical development or investment; or

(2) Divide or share the market, whether by volume of sales or purchases, territory, type of goods or services, buyers or sellers, or any other means.

Type (c) agreements are those other than Types (a) and (b), which have the object or effect of substantially preventing, restricting or lessening competition.

2. Assessment

Agreements not falling under Types (a) and (b) that contribute to improving the production or distribution of goods and services, or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, may not necessarily be deemed as a violation of the PCA.

No guidelines on how the PCC will assess these have so far been issued.

3. Remedies and Sanctions

Under Sections 12(d) and 29 of the PCA, any entity found to have violated Section 14 is subject to remedies and administrative fines. (See Section I.4 of this text on *Remedies and Sanctions*.)

Under Section 30, an entity that enters into the Type (a) or Type (b) agreements is subject to criminal sanctions of imprisonment from 2 to 7 years, and a fine of between PHP50 million to PHP250 million. Under Section 30 of the PCA and Section 6.21 of the Rules, imprisonment shall be imposed upon the entity's responsible officers, directors, or partners. Where the entity involved is a juridical person, imprisonment shall be imposed on its officers, directors, partners, or employees holding managerial positions who are knowingly and wilfully responsible for such violation.

4. Leniency

Section 35 stipulates that the PCC shall develop a leniency programme that would grant an entity immunity from suit or a reduction of any fines that would otherwise be imposed thereon for participating in any Type (a) or Type (b) agreements, in exchange for the voluntary disclosure of information regarding such an agreement prior to, or during, the Preliminary Inquiry of the case. Such a programme would be expected in 2018.

Subject to certain conditions, an entity may be granted leniency whether it reports the anti-competitive activity prior to or during Preliminary Inquiry and whether the PCC has received prior information about the illegal activity.

III. Abuse of Dominance

1. Scope

Section 15 of the PCA prohibits one or more entities from abusing their dominant position by engaging in conduct that would substantially prevent, restrict, or lessen competition.

Conduct that is considered abusive, include:

a) Selling goods or services below cost with the object of driving competition out of the relevant market;

b) Imposing barriers to entry or preventing competitors from growing within the market in an anti-competitive manner;

c) Making a transaction subject to acceptance by the other parties of other obligations which, by their nature or according to commercial usage, have no connection with the transaction ;

d) Setting prices or other terms or conditions that unreasonably discriminate between customers or sellers of the same goods or services, where such customers or sellers are contemporaneously trading on similar terms and conditions, where the effect may be to lessen competition substantially;

e) Imposing restrictions on the lease or contract for sale or trade of goods or services concerning where, to whom, or in what forms goods or services may be sold or traded, or imposing conditions not to deal with competing entities, where the object or effect of the restrictions is to prevent, restrict or lessen competition substantially;

f) Making the supply of particular goods or services dependent upon the purchase of other goods or services from the supplier, which have no direct connection with the main goods or services to be supplied;

g) Directly or indirectly imposing unfairly low purchase prices upon goods or services provided by marginalised service providers and producers;

h) Directly or indirectly imposing an unfair purchase or selling price on competitors, customers, suppliers or consumers;

i) Limiting production, markets or technical development to the prejudice of consumers.

2. Assessment

Section 4 of the PCA defines a “dominant position” as a position of economic strength that an entity or entities hold, which makes it capable of controlling the relevant market independently from any, or a combination of the following: competitors, customers, suppliers or consumers.

The PCC determines whether or not an entity has a dominant position in a relevant market by taking into account a number of factors specified under Section 27 of the PCA, including market share.

According to Section 27, there is a rebuttable presumption of dominance if the market share of an entity in the relevant market is 50% or more.

3. Remedies and sanctions

Under Section 29 of the PCA, any entity found to have violated Section 15, of Chapter III, is subject to remedies and administrative fines. (See Section I.4 of this text on *Remedies and Sanctions*.)

IV. Mergers

1. Scope

Section 20 of the PCA prohibits merger and acquisition agreements that substantially prevent, restrict, or lessen competition in the relevant market or in the market for goods and services. Under Section 12(b), the PCC has the power to review proposed mergers and acquisitions and to prohibit those which are covered by Section 20.

Exemptions: According to Section 21, a merger or acquisition agreement may be exempt from prohibition when the parties establish either of the following:

(a) The merger or acquisition is likely to bring about gains in efficiency that are greater than the effects of any anti-competitive effects that are likely to result from the merger or acquisition; or

(b) A party to the merger or acquisition is faced with actual or imminent financial failure, and the agreement represents the least anti-competitive arrangement among the alternative uses for the failing entity's assets.

The burden of proof is incumbent upon the parties seeking this exemption.

The acquisition of stocks or shares solely for investment and not used for voting or exercising control and not to otherwise bring about, or attempt to bring about the prevention, restriction, or lessening of competition in the relevant market are not prohibited.

2. Notification

Section 17 of the PCA establishes a pre-completion mandatory notification regime for merger or acquisition agreements, where the value of transaction exceeds PHP1 billion. Rule 4, Sections 2 and 3 of the Rules and Regulations to Implement the Provisions of the Act ("IRR") further sets out the notification obligations. The Commission has the power to publish, from time to time, regulations adopting, modifying, rescinding or otherwise changing the notification thresholds.

Under the IRR, parties to a merger or acquisition are required to provide notification when:

> a) The aggregate annual gross revenues in, into or from the Philippines, or value of the assets in the Philippines of the ultimate parent entity of at least one of the acquiring or acquired entities, including that of all entities that the ultimate parent entity controls, directly or indirectly, exceeds One Billion Pesos (PhP1,000,000,000.00).

and

b) The value of the transaction exceeds One Billion Pesos (PhP1,000,000,000.00), as determined in subsections (1), (2), (3) or (4), as the case may be.

(1) With respect to a proposed merger or acquisition of assets in the Philippines if either:

i. the aggregate value of the assets in the Philippines being acquired in the proposed transaction exceeds One Billion Pesos (PhP1,000,000,000.00); or

ii. the gross revenues generated in the Philippines by assets acquired in the Philippines exceed One Billion Pesos (PhP1,000,000,000.00).

(2) With respect to a proposed merger or acquisition of assets outside the Philippines, if:

i. the aggregate value of the assets in the Philippines of the acquiring entity exceeds One Billion Pesos (PhP1,000,000,000.00); and

ii. the gross revenues generated in or into the Philippines by those assets acquired outside the Philippines exceed One Billion Pesos (PhP1,000,000,000.00).

(3) With respect to a proposed merger or acquisition of assets inside and outside the Philippines, if:

i. the aggregate value of the assets in the Philippines of the acquiring entity exceeds One Billion Pesos (PhP1,000,000,000.00); and

ii. the aggregate gross revenues generated in or into the Philippines by assets acquired in the Philippines and any assets acquired outside the Philippines collectively exceed One Billion Pesos (PhP1,000,000,000.00).

(4) With respect to a proposed acquisition of (i) voting shares of a corporation or of (ii) an interest in a non-corporate entity:

i. If the aggregate value of the assets in the Philippines that are owned by the corporation or non-corporate entity or by entities it controls, other than assets that are shares of any of those corporations, exceed One Billion Pesos (PhP1,000,000,000.00); or

ii. The gross revenues from sales in, into, or from the Philippines of the corporation or non-corporate entity or by entities it controls, other than assets that are shares of any of those corporations, exceed One Billion Pesos (PhP1,000,000,000.00);

and

iii. If

A. as a result of the proposed acquisition of the voting shares of a corporation, the entity or entities acquiring the shares, together with their affiliates, would own voting shares of the corporation that, in the aggregate, carry more than the following percentages of the votes attached to all the corporation's outstanding voting shares:

I. Thirty-five percent (35%), or

II. Fifty percent (50%), if the entity or entities already own more than the percentage set out in subsection I above, as the case may be, before the proposed acquisition;

or

B. as a result of the proposed acquisition of an interest in a non-corporate entity, the entity or entities acquiring the interest, together with their affiliates, would hold an aggregate interest in the non-corporate entity that entitles the entity or entities to receive more than the following percentages of the profits of the non-corporate entity or assets of that non-corporate entity on its dissolution:

I. Thirty-five percent (35%), or

II. Fifty percent (50%), if the entity or entities acquiring the interest are already entitled to receive more than the percentage set out in subsection I immediately above before the proposed acquisition.

c) Where an entity has already exceeded the 35% threshold for an acquisition of voting shares, or the 35% threshold for an acquisition of an interest in a non-corporate entity, another notification will be required if the same entity will exceed 50% threshold after making a further acquisition of either voting shares or an interest in a non-corporate entity.

d) In a notifiable joint venture transaction, an acquiring entity shall be subject to the notification requirements if either (i) the aggregate value of the assets that will be combined in the Philippines or contributed into the proposed joint venture exceeds One Billion Pesos (PhP1,000,000,000.00) or

ii) the gross revenues generated in the Philippines by assets to be combined in the Philippines or contributed into the proposed joint venture exceed One Billion Pesos (PhP1,000,000,000.00).

3. Procedural rules

Pursuant to Section 17, parties cannot consummate their agreement until 30 days after providing notification to the PCC. The PCC can extend the review period for an additional 60 days should it require further information to assess the merger or acquisition.

When the above periods have expired and no decision has been made for whatever reason, the merger or acquisition is deemed approved and the parties may proceed to implement or consummate it.

4. Assessment

In evaluating the competitive effects of a merger or acquisition, the Commission shall endeavour to compare the competitive conditions that would likely result from the merger or acquisition with the conditions that would likely have prevailed without the merger or acquisition.

In its evaluation, the Commission may consider, on a case-to-case basis, the broad range of possible factual contexts and the specific competitive effects that may arise in different transactions, such as:

1) the structure of the relevant markets concerned;

2) the market position of the entities concerned;

3) the actual or potential competition from entities within or outside of the relevant market;

4) the alternatives available to suppliers and users, and their access to supplies or markets;

5) any legal or other barriers to entry.

5. Remedies and Sanctions

Under section 17, a merger or acquisition agreement that violates the notification requirement is considered void and the parties to the agreement are subject to an administrative fine of 1 percent to 5 percent of the value of the transaction.

An anti-competitive merger or acquisition is also subject to fines specified under Section I.4 above.

V. Statistics

The table below is the statistics relating to countermeasures taken against anti-competitive agreements, abuse of dominance, and mergers up to November 2017

Type of Violation	Total Number of Cases	Type of Result
Anti-Competitive Agreements	N/A	N/A
Abuse of Dominance	N/A	N/A
Mergers	As of date hereof, 125 merger notifications have been filed with the PCC]	Of the merger notifications filed with the PCC, 103 have been approved and 11 are pending.

VI. Relevant Laws and Regulations

- 2017 Rules of Merger Procedure of the Philippine Competition Commission
- 2017 Rules of Procedure of the Philippine Competition Commission
- Merger Review Guidelines
- Memorandum Circular No. 16-003: Filing Fees for Merger and Notification Review
- Memorandum Circular No. 17-001: Determination of Fines for Failure to Comply with Merger Notification Requirements and Waiting Periods
- Memorandum Circular No. 17-002: Revised Rules on the Payment of Fees for Notification and Review of Mergers and Acquisitions
- PCC Memorandum Circular No. 18-001: Amendment of Rule 4, Section 3 of the Implementing Rules and Regulations and Republic Act. No. 10667 (Threshold Adjustment)
- Policy Note No. 1: Anti-Competitive Effects of Regulatory Restrictions – The Case of the Construction Sector
- PCC Policy Statement 17-001: On the Php 1 Billion Threshold for Compulsory Notification

Singapore

I. Competition Rules and Institutional Setting

1. Competition Law

The Competition Act (Chapter 50B) (the "Competition Act") enacted in 2004 is the main legal instrument on competition policy in Singapore.

The Competition Act and the Singapore Competition Commission's aim is to maintain and enhance efficient market conduct and promote overall productivity, innovation and competitiveness of markets in Singapore; to eliminate or control practices having adverse effect on competition in Singapore; to promote and sustain competition in markets in Singapore; to promote a strong competitive culture and environment throughout the economy in Singapore;

The Competition Act prohibits 3 types of activities, namely anti-competitive agreements (the Section 34 prohibition), abuse of dominant position (the Section 47 prohibition), and mergers and acquisitions that substantially lessen competition in Singapore (the Section 54 prohibition).

General exclusion:

The Competition Act regulates the conduct of undertakings which include any natural or legal person or any other entity, including foreign entities, capable of conducting commercial or economic activities. It thus applies to state-owned enterprises (SOEs) when conducting commercial activities in competition with private firms.

However, the Competition Act does not apply to the Government or any statutory body.

Neither the anti-competitive agreements prohibition nor the abuse of dominance prohibition apply to any undertaking entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly in so far as the prohibition would obstruct the performance, in law or in fact, of the particular tasks assigned to that undertaking.

The Competition Act also provides for certain exclusions/exemptions for specified activities covering: supply of ordinary letter and postcard services; supply of piped potable water; supply of wastewater management services; supply of scheduled bus services; supply of rail services; and cargo terminal operations.

Extra-territorial application: The Competition Act is also applicable to firms located outside Singapore whose behaviours directly affect competition and consumers in domestic markets. The merger control provisions are also applicable to foreign mergers.

2. The Competition Commission of Singapore

CCS website:
www.ccs.gov.sg

The Competition Commission of Singapore (CCS) was established in 2005 under the Ministry of Trade and Industry. The main functions of the CCS are to eliminate and control practices having adverse effect on competition and promote a strong competitive culture and environment throughout the economy in Singapore.

Organisational structure of CCS*:* The CCS had 60 staff and a budget of SGD 16.3 million in 2016.

The CCS has 6 divisions, namely Business and Economics Division, Corporate Affairs Division, Legal Division, Enforcement Division, Policy and Markets Division, and International and Strategic Planning Division.

The members of the Commission, including a Chairman and other commission members whose number is no less than 2 or more than 16, are appointed by the Minister. Currently there are 9 members.

Other regulators with competition powers: There are sector regulators that have exclusive authority in the enforcement of competition regulations in their specific sectors: Infocomm Development Authority (telecoms), Media Development Authority (media), Energy Market Authority (energy), and Civil Aviation Authority of Singapore (airport service).

In cross-sectoral competition cases, co-ordination between the CCS and other regulators are made in accordance with the legal powers given to each regulator. Where there are cross-sectoral competition issues, they will be dealt with by CCS in consultation with the relevant sectoral regulators.

Competition advocacy:

The CCS has as one of its functions that of advocating for competition. Although new public policies that may have implications for competition are not subject to a competition assessment in Singapore, government agencies are encouraged to take into account the potential impact on competition in their policy-formulation process.

A set of Guidelines on Competition Impact Assessment has been developed to assist government agencies in identifying and assessing the likely competitive impact of their proposed policies.

CCS works closely with various government agencies to ensure that any new policies with implications for competition are assessed in terms of their potential impact on competition. This includes engaging government agencies on a systematic basis through a Community of Practice for Competition and Economic Regulations (COPCOMER), which serves as an inter-agency platform for the CCS and other government agencies and sector regulators to share experiences and exchange ideas on competition and regulatory issues.

International co-operation: Singapore has competition chapters in a number of free trade agreements, such as the Peru-Singapore FTA, Australia-New Zealand FTA, EU-Singapore FTA (still under ratification), US-Singapore FTA and the Korea-Singapore FTA. The CCS also has an informal co-operation framework

specific to competition policy with the Australian Competition and Consumer Commission and the New Zealand Commerce Commission.

3. Investigation

Initiation of investigation: Under Section 62 of the Competition Act, the CCS has the power to investigate if there are reasonable grounds for the existence infringements of the prohibitions under the Competition Act. The investigation may be commenced based on a complaint or by the Commission's own initiative.

Powers of investigation: Under Section 63, the CCS has the powers to require the production of a specified document or information which it considers relevant to the investigation. Under Section 64, the CCS has the power to enter premises without a warrant in connection with its investigation under Section 62. According to Section 64(2), the CCS must give a written notice of at least 2 working days. However, the CCS may enter the premises without giving a notice, if the CCS has reasonable grounds for suspecting that the premises are occupied by an undertaking which is being investigated in relation to Sections 34, 47 and 54, or has taken all reasonable steps to give notice but has not been able to do so.

Under Section 65, the CCS also has the powers to enter premises with a warrant issued by a court. In such as case, the CCS is granted the powers to use reasonable force to enter the premises, search any person on the premises, search the premises and take copies of or extract from, any relevant document, take possession of any relevant document. It may do so where inter alia "*there are reasonable grounds for suspecting that — (i) there are on any premises documents which the Commission or the inspector has power under section 63 to require to be produced; and (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed*".

Premises' are defined in section 2(1) of the Act as not including domestic premises unless they are used in connection with an undertaking's affairs or an undertaking's documents are kept there, but includes any vehicle.

Failure to comply with investigation: Where a person fails to comply with the request of the CCS during investigation (e.g. to provide documents or information, failing to comply with any condition imposed by an officer executing the search warrant for allowing any equipment or article to be retained on the premises instead of being removed), criminal sanctions may be imposed: a fine up to SDG 10,000 or to imprisonment up to 12 months or by both. The relevant offences are set out in sections 65 and 75 to 78 of the Act.

Procedural fairness: Where the CCS proposes to make an infringement decision based on Sections 34, 47 or 54 and upon completion of the investigation, the Commission gives prior written notice to a person affected and giving such person an opportunity to make representations before it.

Such persons will also be given a reasonable opportunity to inspect the CCS' file save for internal documents and confidential information.

The CCS provides guidelines on investigative procedures, namely the *CCS Guidelines on the Powers of Investigation* and *CCS Guidelines on Enforcement*.

Confidentiality: The CCS is obliged to preserve the secrecy of information relating to the business, commercial or official affairs of any person, any matter identified as confidential by a person furnishing information and the identity of persons furnishing information to the CCS (Section 89).

4. Remedies and sanctions

With respect to any infringement of Sections 34, 47 and 54, the CCS may issue directions under Section 69, as it considers appropriate, to parties to such agreement or conduct to bring the infringement to an end, take action to remedy, mitigate or eliminate any adverse effects of the infringement and to prevent the recurrence of such an infringement or circumstances.

Under Section 69, the CCS may impose financial penalty where the infringements under Sections 34, 47 and 54 have been committed intentionally or negligently. Sanctions are administrative in nature.

5. Appeal

Under Section 71, a decision of the CCS, including a direction or imposition of a financial penalty, may be appealed to the Competition Appeal Board (CAB).

The CAB is a separate body from the CCS and comprised of members (not more than 30) appointed by the Minister. The Minster appoints the Chairman of the CAB from persons qualified to be a Judge of the Supreme Court.

The CAB may confirm or set aside a decision of the CCS, remit the matter to the CCS or make any other decision (full review), including imposing or revoking or varying the amount of a financial penalty. A further appeal against the decision of the CAB may be made to the High Court and Court of Appeal. These appeals may only be respect points of law or the amount of financial penalty.

6. Private enforcement

Under Section 86, a person who suffers loss or damage as a result of an infringement under Sections 34, 47 or 54 may seek relief in civil proceedings in a court. This right of action may only be exercised after the CCS has made a decision of infringement and the appeal process has been exhausted

II. Anti-competitive Agreements

1. Scope

Section 34 of the Competition Act prohibits agreements, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Singapore.

Agreements prohibited under Section 34 include direct or indirect price-fixing, production control, market sharing, applying dissimilar conditions to equivalent transactions with other trading parties (thereby placing them at a competitive disadvantage), and subjecting the conclusion of a contract to the acceptance of supplementary obligations not related to the contract.

The *CCS Guidelines on the Section 34 Prohibition* clarify that the list of anti-competitive agreements in Section 34(2) is not exhaustive and other agreements may also fall within the Section 34 prohibition.

2. Assessment

The Guidelines provide for an indicative market share thresholds that the CCS uses to assess the adverse effect on competition. In general, the CCS considers that there is no appreciable adverse effect on competition where the parties to an agreement are competitors and the aggregate market share of those parties is less than 20%. Where the parties to an agreement are non-competitors, the CCS finds in general that there is no appreciable adverse effect on competition where the market share of each of the parties does not exceed 25% of the relevant markets.

Agreements between SMEs, which are defined in Singapore as having a fixed asset investment of less than SDG 15 million (for manufacturing) or less than 200 workers (in services), are also considered in general not to have an appreciable effect on competition.

An agreement between parties exceeding the threshold level does not necessarily constitute a prohibited agreement under Section 34.

However, direct or indirect price-fixing, bid-rigging, market sharing and limiting or controlling production or investment are considered to have an appreciable adverse effect on competition regardless of the market shares of the parties.

Section 34 prohibition does not apply to vertical agreements and agreements other than those that the Minister may by order specify.

Agreements that are directly related and necessary to the implementation of a merger ("ancillary restrictions") are also excluded from the Section 34 prohibition.

Block exemptions: Following a recommendation of the CCS, the Minister may make an order to exempt certain categories of agreements that has a net economic benefit from the Section 34 prohibition ("block exemptions").

The criteria used to determine block exemptions are: contribution to improving production or distribution, or promoting technical or economic progress. The agreement should not, however, impose restrictions to the parties concerned which are unnecessary for the attainment of those objectives and afford the parties the possibility of eliminating competition in a substantial part of the market.

Block exemption order may lay out conditions or obligations subject to which that block exemption will have effect.

Notification for guidance or decision

The Competition Act allows parties to an agreement to seek for a guidance (Section 43) or decision (Section 44) of the CCS on whether the agreement violates Section 34. However, notification for guidance or decision is not possible for prospective agreements. Where the CCS views that there is no breach, no further action is taken by the CCS and the CCS will not reopen a case. Where the CCS decides that the agreement has infringed the Section 34, it may give the parties directions as it considers appropriate to remedy, mitigate or eliminate any adverse effects of the infringement.

Where parties have notified an agreement for guidance or decision, no financial penalty shall be imposed in respect of any infringement which occurs from the date of notification and the date specified by the CCS in a notice.

Where the CCS has given guidance that an agreement is unlikely to infringe the Section 34 Prohibition or is likely to be exempt under a block exemption, immunity is conferred in that no further action may be taken with respect to the notified agreement in relation to the Section 34 Prohibition, unless certain conditions are met as set out under Section 45 (e.g., CCS has reasonable grounds to suspect that the information on which it based its guidance was incomplete, false or misleading in a material aspect)

3. Remedies and sanctions

Under Section 69, where the CCS has made a decision that parties have infringed Section 34, it may require the parties to an agreement to modify or terminate the agreement. Financial penalty may be imposed up to 10% of the turnover of the business of the undertaking in Singapore for each year of infringement (maximum three years).

4. Leniency

The CCS operates a leniency programme for businesses that are part of a cartel agreement or concerted practice or trade associations that participate in or facilitate cartels. Current guidance is set out in the *CCS's Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity 2016*.

Total immunity is granted for the first to come forward with evidence before the outset of an investigation. A reduction of up to 100% of the financial penalties is made where the leniency applicant is the first to come forward but does so only after an investigation has commenced. For subsequent leniency applicants, a reduction of up to 50% of financial penalties may be granted.

To qualify for leniency, the undertaking must (a) provide the CCS with all the information, documents and evidence available to it regarding the cartel activity; (b) maintain continuous and complete co-operation throughout the investigation and until the conclusion of any action by the CCS arising as a result of the investigation; (c) refrain from further participation in the cartel activity from the time of disclosure of the cartel activity to the CCS except as directed by the CCS; (d) not have been the one to initiate the cartel; and (e) not have taken any steps to coerce another undertaking to take part in the cartel activity. Also, the undertaking must grant CCS a waiver of confidentiality in respect of leniency applications in other jurisdiction/with other authorities.

Marker system: The CCS allows a business to secure its place in the leniency "queue" for a certain period of time while the business gathers information and evidence necessary on the cartel activity.

Leniency Plus system: It grants an additional reduction in the financial penalties where a business under a cartel investigation in one market (the first market) co-operates with the CCS by disclosing its participation in a completely separate cartel in another market (the second market). A business may benefit a total immunity or reduction of up to 100% of financial penalties in the second market and an additional reduction in the financial penalties in the first market.

Whistleblowing:

Whistleblowing is usually done by an informant, who can be eligible for a reward by CCS of up to $120,000.

III. Abuse of Dominance

1. Scope

The Competition Act prohibits conducts that amount to abuse of dominant position in any market in Singapore. Section 47 provides an illustrative list of abuse of dominant position: predatory behaviour towards competitors; limiting production, markets or technical development to the prejudice of consumers; applying dissimilar conditions to equivalent transactions with other trading parties (thereby placing them at a competitive disadvantage); or subjecting the conclusion of contracts to acceptance of supplementary obligations not related to the contract. It must be noted that the Section 47 Prohibition applies to vertical agreements

2. Assessment

A business is deemed dominant where it has substantial market power. In assessing whether a business is dominant, the extent to which the business has the ability to profitably sustain prices above competitive levels or to restrict output or quality below competitive levels is considered.

Determining market dominance: Although there are no presumptive rules, the CCS considers a market share above 60% as a threshold that is likely to indicate the existence of market dominance in the relevant market.

In assessing whether a business is dominant, the extent to which the business has the ability to profitably sustain prices above competitive levels or to restrict output or quality below competitive levels is considered. In determining dominance, non-market-share-factors including presence of existing competitors, potential competitors, existence of powerful buyers and economic regulation are considered.

Abuse of dominance: To establish whether a conduct by a business in market dominant position amounts to an abuse, the CCS considers whether the conduct, for instance, removes an efficient competitor, limits competition from existing competitors or excludes new competitors from entering the market. The CCS also takes into consideration whether the dominant business is able to provide an objective justification for its conducts and whether the conduct is proportionate to the benefits claimed.

Notification for guidance or decision is also possible for conducts regulated under Section 47 (abuse of dominant position). However, notification for guidance or decision is not possible for prospective conduct. No provisional immunity from financial penalty is conferred for notification of conduct in relation to the Section 47 Prohibition. Where the CCS has given guidance that an agreement is unlikely to infringe the Section 34 Prohibition or is likely to be exempt under a block exemption, immunity is conferred in that no further action may be taken with respect to the notified agreement in relation to the Section 47 Prohibition, unless certain conditions are met as set out under Section 52 (2) (e.g., CCS has reasonable grounds to suspect that the information on which it based its guidance was incomplete, false or misleading in a material aspect)

3. Remedies and sanctions

Under Section 69, where the CCS has made a decision that parties have infringed Section 47, it may require the parties to modify or cease the conduct infringing Section 47. Financial penalty may be imposed up to 10% of the turnover of the business of the undertaking in Singapore (maximum three years).

IV. Mergers

1. Section 54 prohibition

Section 54 of the Competition Act prohibits mergers which have resulted or are expected to result in a substantial lessening of competition (SLC) within any market in Singapore. This prohibition does not apply to mergers that give rise to economic efficiencies, outweighing the adverse effects of restricting competition.

Under Section 54, a merger occurs in situations as follows:

a) merger between two or more independent undertakings

b) acquisition of direct or indirect control of the whole or part of one or more undertakings by one or more persons or other undertakings

c) an acquisition by one undertaking (the first undertaking) of the assets (including goodwill) or a substantial part of the assets of another undertaking (the second undertaking) which result in placing the first undertaking in a position to replace or substantially replace the second undertaking in the business or a part of the business in which that undertaking was engaged immediately before the acquisition

d) the creation of a joint venture to perform, on a lasting basis, all the functions of an autonomous economic entity

Section 54(7) sets out categories of transactions that do not constitute a merger under the Act:

a) the person acquiring control is acting as a receiver, liquidator or underwriter

b) all of the undertakings involved in the merger are, directly or indirectly, under the control of the same undertaking;

c) acquisition of control solely as a result of a testamentary disposition, intestacy or the right of survivorship under a joint tenancy

d) acquisition of control by an undertaking which carries out transactions and dealings in securities under circumstances as specified in Section 54(9)

Mergers approved by any Minister, regulatory authority or the Monetary Authority of Singapore and mergers under the jurisdiction of any regulatory authority are also excluded from Section 54 prohibition. The merger may also exempted by the Minister on the ground of public interest considerations. Under Section 68(3), parties to a merger or anticipated merger may apply to the Minister for exemption on grounds of public interest within 14 days from CCS's notice proposing to make an infringement decision.

2. Notification

Notification of a merger is not mandatory under the Competition Act. It is possible, however, for parties to notify a merger to the CCS and apply for a decision on the conformity of the merger with Section 54. Although the merger provisions of the Act apply to completed mergers, parties to an anticipated merger may also apply for notification for decision if the anticipated merger is known to the public. The *CCS Guidelines on Merger Procedures 2012* provide an indication as to when it would be appropriate for parties to notify the CCS.

The CCS may investigate on its own initiative mergers that have not been notified to it.

Procedure for review*:* The review by the CCS on a merger is divided into two phases. Although there is no legal deadline for the review, the CCS endeavours to complete the review before indicative timeframes. In Phase 1, the CCS carries out a quick assessment within an indicative timeframe of 30 working days and give a favourable decision with regard to mergers that clearly do not raise any competition concerns under the Competition Act. Where the CCS is unable during the Phase 1 to make a favourable decision, it provides the merger parties with a summary of its key concerns.

In Phase 2 review, the CCS proceeds to a more detailed assessment within an indicative timeframe of 120 working days. At the end of Phase 2, where the CCS takes a preliminary view that the merger is likely to result in SLC, it issues a Statement of Decision (provisional) which sets out the reasoning behind its conclusion and any commitments or directions that the CCS considers appropriate.

Procedural fairness: The CCS gives the merger parties an opportunity to make written representations and/or oral representations to the CCS. The merger parties may be permitted to inspect the documents in CCS' file. Internal CCS documents and information, and confidential information provided by third parties will not be available for inspection as part of access to the file. The merger parties' written response to the Statement of Decision (provisional) is also an opportunity for the parties to propose commitments. Once the CCS has issued a notice setting out its preliminary views, the merger parties can apply in writing to the Minister for Trade and Industry for the merger situation to be exempted on public interest considerations. "Public interest consideration" means national or public security, defence and such other considerations as the Minister may by order published in the Gazette, prescribe (Section 2(1) of the Act).

For merger or anticipated merger cases, the CCS may also impose an interim measure where it considers necessary to prevent any prejudice to its investigation and its powers to give directions on such cases (Section 69).

3. Assessment

The Guidelines explain that the CCS considers that an SLC is unlikely to occur unless the merged entity will have a market share of 40% or more; or the merged entity will have a market share of between 20% and 40% and the post-merger combined market share of the three largest firms is 70% or more. However, the thresholds are indicative: the CCS may investigate mergers that fall below these indicative thresholds; conversely, merger situations that exceed the thresholds are not necessarily prohibited.

The CCS is unlikely to investigate a merger involving only small companies whose turnover in Singapore in the financial year preceding the transaction of each of the parties is below SGD5 million and the combined worldwide turnover in Singapore in the financial year preceding the transaction of all the parties is below SGD50 million.

The Act excludes mergers that are found to significant lessen competition if the merger generates efficiencies which outweigh the adverse effects due to any substantial lessening of competition which may result from the merger (Fourth Schedule of the Act).

4. Remedies and sanctions

Under Section 69, where the CCS has made a decision that parties have infringed Section 54, it may prohibit anticipated mergers from being implemented or require mergers to be dissolved or modified. Directions may also include request to parties to modify or terminate any agreement directly related and necessary to the implementation of the merger.

The CCS may also accept, under Section 60A commitments to remedy, mitigate or prevent adverse effects of a merger before taking a decision.

Financial penalties may be imposed up to 10% of the turnover of the business of the undertaking in Singapore for each year of the infringement (maximum three years) where the infringement was committed intentionally or negligently.

V. Statistics

Type of Violation	Total Number of Decisions	By Type of Violation
Anti-Competitive Agreements	10	Hard-core cartels- 9 Other horizontal agreements – 1
Unilateral Conduct or Abuse of Dominance	1	Unilateral conduct- 1
Mergers	56	Completed mergers (Phase 1)-49 Completed mergers (Phase 2)-7 (1 cleared with remedies)
Total	67	N/A

Source: Response by the CCS to OECD/KPC “Guidebook Questionnaires” for period 2006-September 2016

VI. Relevant Laws and Regulations

Laws and regulations

- Competition Act (Chapter 50B)
- Competition Regulations
- Competition (Notification) Regulations
- Competition (Transitional Provisions for Section 34 Prohibition) Regulations
- Competition (Fees) Regulations
- Competition (Composition of Offences) Regulations
- Competition (Appeals) Regulations
- Competition (Block Exemption for Liner Shipping Agreements) Order 2006 [Competition (Block Exemption for Liner Shipping Agreements) (Amendment) Order 2015]
- Competition (Financial Penalties) Order [Competition (Financial Penalties) (Amendment) Order 2010]

Guidelines

- CCS Guidelines on the Major Provisions 2016
- CCS Guidelines on the Section 34 Prohibition 2016
- CCS Guidelines on the Section 47 Prohibition 2016
- CCS Guidelines on the Substantive Assessment of Mergers 2016
- CCS Guidelines on Merger Procedures 2012
- CCS Guidelines on Market Definition
- CCS Guidelines on the Powers of Investigation 2016
- CCS Guidelines on Enforcement 2016
- CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity 2016
- CCS Guidelines on Filing Notifications for Guidance or Decision with respect to the Section 34 Prohibition and Section 47 Prohibition 2016
- CCS Guidelines on the Appropriate Amount of Penalty 2016
- CCS Guidelines on the Treatment of Intellectual Property Rights

Practice Statements

- CCS Practice Statement on the Fast Tract Procedure for Section 34 and Section 47 Cases

Sri Lanka

I. Competition Rules and Institutional Setting

1. Competition Law

The Consumer Affairs Authority Act, No. 9 of 2003 ("the Act") came into effect in April 2003.

The objectives of the Act are: (i) to provide for the better protection of consumers through the regulation of trade and the prices of goods and services, (ii) to protect traders and manufacturers against unfair trade practices and restrictive trade practices, and (iii) to promote competitive pricing wherever possible and ensure healthy competition among traders and manufacturers of goods and services.

The Act provides general provisions covering a number of restrictions under Section 8, such as restrictive trade agreements among enterprises, arrangements amongst enterprises with regard to prices, abuse of dominant position with regard to domestic trade or economic development within the market or in a substantial part of the market but also any restraint of competition adversely affecting domestic or international trade or economic development.

The scope of the Act does not only cover acts affecting competition but also price controls as well as unfair trade practices.

Sri Lanka has features of both the common law system as well as the civil law system.

General exclusion: There is no sector excluded or exempted from the application of the Act. State-owned enterprises are not exempt from the application of the Act when conducting commercial activities in competition with private firms.

Extra-territorial application: The Act does not have extra-territorial reach. The Act does not apply to firms located outside Sri Lanka's jurisdiction even if the acts directly affect competition and/or consumers in Sri Lanka. Also, the merger control rules do not apply to foreign mergers.

2. Consumer Affairs Authority and the Consumer Affairs Council

The Act establishes two administrative bodies, the Consumer Affairs Authority (CAA), and the Consumer Affairs Council (the Council). According to Section 2 (2) of the Act, only the former constitutes a body corporate. The Council administratively functions under the CAA. There is an internal structural separation which confers an investigative role to the CAA and a decision making (adjudicative) role to the Council.

CAA has investigative powers to investigate anti-competitive practices either on own motion or as a result of a complaint. After the investigation, the matter can be referred to the Council for determination since it has adjudicative powers. The main consideration when determining a matter would be whether the ACP

operates against public interest. CAA may decide not to refer matters to Council and in such a situation, the matter could be referred to Council at the request of the complainant who made the complaint.

CAA website:
http://www.caa.gov.lk/web/

Contact: chairmancaa@sltnet.lk

The Consumer Affairs Authority (CAA): The CAA is the enforcer of the Act, and is the government organisation under the Ministry of Industry and Commerce mandated to protect consumers' interests and to ensure fair market competition in Sri Lanka.

Under Section 7 of the Act, the CAA's main objectives are: (i) to protect consumers against the marketing of goods or the provision of services, (ii) to protect consumers against unfair trade practices and guarantee that consumers interest shall be given due consideration, (iii) to ensure that wherever possible consumers have adequate access to goods and services at competitive prices, and (iv) to seek redress against unfair trade practices, restrictive trade practices or any other forms of exploitation of consumers by traders.

Organisational structure of CAA: The CAA, whose headquarters is located in Colombo, has approximately 328 staff members as of 31 December, 2016. It had a budget of LKR 304 million. The CAA comprises four main operational divisions: Consumer Affairs and Information, Competition Promotion, Pricing and Management, and Compliance & Enforcement. Of those main divisions, Competition Promotion Division is in charge of the anti-competitive practices.

Section 3 sets forth that the Authority shall consist of a Chairman and not less than ten other members, three of whom are to be appointed as full-time members, who shall be appointed by the Minister from among persons who possess recognised qualifications. As per Section 5, the Director-General of the Authority shall act as the Secretary to the Authority.

The Consumer Affairs Council (the Council): As per Section 39, the Council shall consist of a person with experience in commercial law, a person with experience in the management of business enterprises, and an economist with experience in trade practices and consumer affairs.

Organisational structure of the Council: The Council consists of three members, one of whom shall be nominated as Chairman by the Minister. The members hold office for a period of three years and their appointment as well as the fixing of their remuneration is determined by the Minister in consultation with the Minister of Finance.

Other regulators with competition powers: Public Utilities Commission (Water, Electricity, and Petroleum) (has powers for anti-competitive practices, monopolies, acquisitions, abuse of dominance and mergers), Securities & Exchange Commission (Securities, looks only at mergers from a shareholder's interest perspective), and Telecommunications Regulatory Commission (Telecommunications) are the sector regulators that have competition powers. Each commission regulates anti-competitive practices, abuse of dominance, and mergers in the respective field in accordance with its own legislation.

Competition Advocacy: The CAA plays an active role in competition advocacy. It has performed at least one market/sector study in the last five years. If a market/sector study identifies an obstacle or a restriction to competition caused by an existing public policy, the study can include an opinion/recommendation to the government to remove/reduce such obstacle or restriction.

International co-operation: The CAA has signed no international co-operation agreement or MoU regarding competition law

3. Investigation

Initiation of investigation: Section 34 (1) sets forth that the Authority may either of its own motion or on a complaint or request made to it by any person, any organisation of consumers or an association of traders, carry out an investigation with respect to the prevalence of any anti-competitive practices. It shall be the duty of the Authority to complete an investigation, within one hundred days of its initiation under Section 34 (2).

Powers of investigation: After receiving complaints, the CAA officials may conduct investigations, and the CAA can perform unannounced inspections/searches in the premises of firms investigated for a possible antitrust infringement aimed at gathering evidence without a warrant.

According to Section 36 (2), for the purpose of conducting an investigation under Section 33, the CAA shall have all the powers of a District Court to issue notices and require the attendance of any witness, to require the production of documents or records and to administer any oath or affirmation to any witness.

Under Section 37, the Authority may make an application to the Council upon the conclusion of an investigation. Section 38 stipulates that if the Authority decides not to make an application to the Council, the person at whose request such investigation was carried out may request the Council to call upon the Authority to submit to the Council its report on the investigation.

Where the Council is of the opinion that there is sufficient material in the report to warrant it to take up the application, the asking party may request that the Council hear and decide on the matter.

With regards to evidence, Section 44 provides that the Council shall have the power to procure and receive all such evidence, written or oral, and to examine any persons as witnesses. The Council may also require said evidence to be given on oath or affirmation.

Failure to comply with investigation: Under Section 36 (3), where any person interferes with the lawful process of the CAA, or in the course of an investigation fails without cause, (i) to appear before the Authority at the time and place specified in any notice issued by the Authority to such person (ii) to answer any questions put to him relating to the matter being investigated by the Authority or (iii) to produce and show to the Authority any document or record which is in his possession or control, and which in the opinion of the Authority is relevant to the matter being investigated by the Authority, such person shall be guilty of an offence of contempt against or in disrespect of the Authority and shall be punishable for such offence by the Court of Appeal.

Concerning the Council, any person upon whom a notice is issued under Section 43 fails without cause which the Council deems reasonable, to appear before the Council at the time and place mentioned in the notice, refuses to be sworn-in or affirmed, or having been sworn-in or affirmed refuses or fails without cause to answer any questions to the matters being inquired or investigated, or refuses or fails without cause deemed reasonable by the Council to produce any document or other thing which is in his possession or power and which the Council deems necessary for the investigation, shall be guilty of the offence of contempt against or in disrespect of the Council.

Procedural fairness: As per Section 36 (1), the Authority may give to all persons including representatives of associations or organisations of consumers interested in a matter which forms the subject of an investigation with respect to the prevalence of any anti-competitive practice, an opportunity of being heard and of producing such evidence, oral or documentary, as in the opinion of the Authority is relevant to such matter.

The CAA publishes procedural guidelines explaining its investigative procedures only for internal use. Also, the parties have the right to be heard and present evidence before the imposition of any sanctions or remedies for having committed an antitrust infringement.

4. Remedies and Sanctions

Remedies and administrative sanctions: As per Section 41 (1), where an application is made to the Council, as the case may be, the Council shall, on being satisfied that (a) an anti-competitive practice exists but such anti-competitive practice does not operate or is not likely to operate against public interest, by order authorise such anti-competitive practice; or (b) an anti-competitive practice exists and that it operates against public interest, by order provide for the termination of such anti-competitive practice in such manner as may be specified in the order, and such other actions as the Council may consider necessary for the purpose of remedying or preventing the adverse effects of any anti-competitive practice.

Criminal sanctions: Under Section 60 (2) (a), any person who fails or refuses to comply with an order made under Section 41 (1) (b), or acts in contravention of such order, shall be guilty of an offence under this Act, and shall on conviction after trial before a Magistrate be liable (i) where such person is not a body corporate, to a fine ranged from 5,000 to 50,000 rupees or to imprisonment for less than one year or to both such fine and imprisonment in the case of a first offence, and to a fine ranged from 10,000 to 100,000 rupees or to an imprisonment for less than two years or to both such fine and imprisonment in the case of a subsequent offence or (ii) where such person is a body corporate, to a fine ranged from 50,000 to 1,000,000 rupees in the case of a first offence, and to a fine ranged from 100,000 to 2,000,000 rupees in the case of subsequent offence.

5. Appeal

In accordance with Article 138 of the Sri Lankan Constitution, any errors of fact or of law which have been committed by the High court, or any Court of First Instance, tribunal or other institution (such as the CAA or the Council) may be brought before the Court of Appeals for correction.

6. Private enforcement

Private parties do not have the possibility to seek compensation for damages resulting from a breach of the Act. Moreover, private lawsuits to prohibit anti-competitive behaviour by an interested party or a third party are not available

II. Anti-competitive Agreements

1. Scope

As per Section 35, an anti-competitive practice shall be deemed to exist, where a person in the course of business, pursues a course of conduct which of itself or when taken together with a course of conduct pursued by persons associated with him, has or is intended to have or is likely to have the effect of restricting, distorting or preventing competition in connection with the production, supply or acquisition of goods in Sri Lanka or the supply or securing of services in Sri Lanka.

There is no classification of the types of behaviour that could constitute an anti-competitive agreement.

2. Assessment

As per Section 41 (2), in determining for the purposes of this section, whether any anti-competitive practice operates, or is likely to operate, against public interest, the Council shall take into account all matters which appear to the Council to be relevant to the matter under investigation and shall have special regard to the desirability of-

(a) maintaining and promoting effective competition between persons supplying goods and providing services;

(b) promoting the interests of consumers, purchasers and other users of goods and services in respect of the price and quality of such goods and services and the variety of goods supplied and services provided in Sri Lanka; and

(c) promoting through competition the reduction of costs, the development and use of new techniques and products and facilitating the entry of new competitors into existing markets.

There are no published guidelines as to how these may be applied.

3. Remedies and Sanctions

See Chapter I on Remedies and Sanctions.

4. Leniency

The CAA does not operate any immunity/leniency programme.

III. Abuse of Dominance

1. Scope

Abuse of dominance, alongside anti-competitive agreements, is prohibited under Section 35. See Part 1 of the Chapter II on Prohibition of Anti-Competitive Practice for more details.

There is no classification of the types of behaviour that could constitute an abuse of dominance.

2. Assessment

The decision-makers take non-market-share factors into account when determining dominance. Substantial market power or dominant position is not defined in the Consumer Affairs Authority Act, No. 9 of 2003.

Assessment for anti-competitive agreements in Chapter 2 also applies to the assessment for abuse of dominance.

There no guidelines published.

3. Remedies and sanctions

The decision-maker may impose remedies for conduct found unlawful.

IV. Mergers

The existing legislation does not regulate mergers.

V. Statistics

There are no decisions on the competition provisions (anti-competitive agreements, abuse of dominance, or mergers).

VI. Relevant Laws and Regulations

- **The Consumer Affairs Authority Act No. 9 of 2003**
  http://www.caa.gov.lk/web/images/pdf/act.pdf

Chinese Taipei

I. Competition Rules and Institutional Setting

1. Competition Law

The Fair Trade Act (the "Act" or "FTA") which came into effect on 4 February 1992 is the main legal instrument on competition policy in Chinese Taipei. The latest review of the FTA was made on the 14th of June 2017.

The purpose of the FTA is to maintain order in transactions, to protect the interest of consumers, to ensure free and fair competition, and to promote the stability and prosperity of the national economy.

The Fair Trade Act regulates practices in restraints of competition (Chapter II) and unfair competition practices (Chapter III). Chapter II regulates concerted action (anti-competitive agreements), abuse of dominance and mergers. Chapter III regulates unfair competition practices such as false or misleading representations or symbols.

Chinese Taipei follows the civil law tradition.

General exclusion: There is no sector excluded from the application of the FTA. According to Article 46, the FTA has precedence over other laws with regards to the governance of any enterprise's conduct in respect of competition.

Extra-territorial application: The FTA is applicable to firms located outside Chinese Taipei whose behaviours directly affect competition and consumers in domestic markets. The merger control provisions are also applicable to foreign mergers.

2. The Fair Trade Commission

FTC website:

www.ftc.gov.tw/internet/english/

The Fair Trade Commission (the "FTC") is responsible for the enforcement of the Act.

The duties of the FTC, as provided for under the Organic Act of the Fair Trade Commission, include the following (1) Formulation of fair trade policies and regulations; (2) Review of the Fair Trade Act; (3) Investigation of business activities and economic developments; (4) Investigation and disposition of cases in violation of the Fair Trade Act; (5) Formulation of policies and regulations, investigation, and disposition of related cases on multi-level marketing; (6) Indoctrination of fair trading policies and regulations; and (7) Other matters in relation to fair trade.

The FTC also administrates and enforces the “Multi-Level Marketing Supervision Act”.

Organisational structure of FTC:

The FTC has 211 staff as of June 2017.

The FTC has 5 departments, 5 offices: Department of Planning; Department of Service Industry Competition; Department of Manufacturing Industry Competition; Department of Fair Competition; Department of Legal Affairs; Information and Economic Analysis Office; Personnel Office; Civil Service Ethics Office; Budget, Accounting and Statistics Office; and Secretariat office.

According to Article 4 of the Organic Act of the Fair Trade Commission, the FTC shall consist of seven full-time commissioners to be appointed by nomination by the premier and approval of the Legislative Yuan for a four-year term. The commissioners may be reappointed when their terms expire. When making the appointment, the premier shall designate one of the commissioners as the chairperson and another as the vice chairperson. The number of commissioners affiliated with the same political party may not exceed one half of the total number of commissioners. Commissioners may be dismissed by the Premier in certain circumstances designated by law (Article 7 of the Organic Act), such as illness, committing illegal acts or indicted for criminal offences.

The commissioner appointees must have the knowledge and experience with regard to law, economics, finance and taxation, accounting, or management.

All commissioners shall be politically impartial and disallowed to participate in political party activities during terms of service as well as perform their duties independently according to related laws.

Other regulators with competition powers*:* National Communications Commission (NCC) is responsib le for regulations on telecommunications and broadcasting services. The Act has precedence over other l aws with regards to competition. However, this stipulation shall not be applied to where other laws provid e relevant provisions that do not conflict with the legislative purposes of this Act according to the rule that the special law shall prevail over the general law.

Competition advocacy: The FTC can advise on the impact of other policies on competition and the FTC co-operates with other government bodies in this regard (Article 6).

The FTC has organised more than 2,700 advocacy activities over the past 25 years.

International co-operation: The FTC concluded bilateral international co-operation agreements with Australia, Hungary, Panama, and with New arrangement with Australia and New Zealand. The FTC also signed Memorandums of Understanding regarding the application on competition laws with Canada, France, Japan, and Mongolia.

3. Investigation

Initiation of investigation: Under Article 26, the FTC may conduct an investigation ex officio or upon complaints regarding any violation of the provisions of the FTA that harms the public interest.

Powers of investigation: According to Article 27, the FTC has the powers to request the parties and any related third party to appear to make statements, to submit books and records, documents, and any other necessary materials or exhibits.

The FTC may conduct an unannounced onsite administrative inspection of the office, place of business or other locations of the investigated firms and any related third party. The FTC may seize articles obtained from the investigation that may serve as evidence. The scope and duration of holding the seized articles are limited to the extent necessary for investigation, inspection, verification, or preserving evidence.

Failure to comply with investigation*:* Under Article 44, shall any person subject to any investigation, conducted by the competent authority pursuant to the provisions of Article 27, violate the provisions of Article 27 Paragraph 3, the competent authority may impose an administrative penalty of not less than fifty thousand and not more than five hundred thousand TWD. Shall such person continue to evade, interfere or refuse to co-operate without justification upon another notice, the competent authority may continue to issue notices of investigations, and may impose consecutively thereupon an administrative penalty of not less than one hundred thousand and not more than NTD one million each time until such member accepts the investigation, appears to respond, or renders relevant materials like books and records, documents, or exhibits.

Procedural fairness: The FTC's case handlers shall abide by the "Administrative Procedure Act" when c onducting investigative procedure. The FTC provides the parties under investigation with opportunities to consult with the FTC with regard to significant legal, factual or procedural issues during the course of the investigation. Parties have the right to be heard and present evidence before the imposition of any sancti ons or remedies for having committed a violation of the FTA.

To protect business secrets gathered during the case investigation, the FTC investigators shall also comply with relative regulations, such as "Trade Secret Law" and "Personal Information Protection Act."

4. Remedies and Sanctions

The FTC has the power to investigate as well as the power to adjudicate on competition law matters.

Remedies and administrative sanctions: Under Article 40, the FTC may order any party in violation of Articles 9 (relating to monopolistic enterprise), 15 (relating to concerted action), 19 (relating to resale price maintenance) and 20 (relating to other acts in restraint of competition) to cease, rectify its conduct or take necessary corrective action within a time prescribed.

In addition, enterprises concerned may be subject to an administrative penalty from NTD 100,000 to NTD 50 million. For serious violations of Articles 9 and 15, the FTC may impose, without being subject to the limit of administrative penalty set forth, an administrative penalty up to 10% of the total sales income of an enterprise in the previous year. According to Article 2 of *the Regulations for Calculation of Administrative Fines for Serious Violations of Articles 9 and 15 of the Fair Trade Act*, conducts leading to one of the following circumstances may be deemed serious violations:

a) the total product or service sales achieved during the violation period by a monopolistic enterprise exceeds NTD 100 million; or

b) the total profits obtained from the unlawful conduct exceed the upper limit for administrative fines specified in Article 40(1) of the Act.

Criminal sanctions: Under Article 34, criminal sanctions may be imposed where an enterprise fails to comply with the order issued by the FTC under Article 40(1) within a prescribed time or engages in similar violation to prior violations. Parties concerned may be subject to imprisonment for up to three years or a criminal fine up to NTD 100 million or by both.

5. Appeal

Under Article 48, the decisions of the FTC may be appealed in accordance with the procedures for administrative litigation. They can be appealed to the Taipei High Administrative Court and the Supreme Administrative Court for judicial review.

6. Private Enforcement

Damage claims: Under Articles 30 and 31, private parties can apply for civil compensation, including treble damages, for competition law violations. In such cases the FTC may provide the court with the requirements of competition law, although it does not act as final decision-maker in such cases.

Private actions for damages may take the form of follow-on or stand-alone actions pursuant to Article 29 a nd Article 30 of the Act, an approach which makes the private

litigation itself quicker and easier to conclude successfully.

II. Anti-Competitive Agreements

1. Scope

Article 15 of the Fair Trade Act prohibits concerted action. The term "concerted action" as used in this Act means that competing enterprises at the same production and/or marketing stage, by means of contract, agreement or any other form of mutual understanding, jointly determine the price, quantity, technology, products, facilities, trading counterparts, or trading territory with respect to goods or services, or any other behaviour that restricts each other's business activities, resulting in an impact on the market function with respect to production, trade in goods or supply and demand of services.

Article 19 prohibits restrictions on resale prices of the goods and services supplied to its trading counterpart for resale to a third party or to such third party for making further resale. However, those with justifiable reasons are not subject to this limitation.

Aside from the stipulations of RPM, no enterprise shall engage in any of the following acts that is likely to restrain competition pursuant to Article 20:

a) causing another enterprise to discontinue supply, purchase or other business transactions with a particular enterprise for the purpose of injuring such particular enterprise;

b) treating another enterprise discriminatively without justification;

c) preventing competitors from participating or engaging in competition by inducement with low price, or other improper means;

d) causing another enterprise to refrain from competing on price, or to take part in a merger, concerted action, or vertical restriction by coercion, inducement with interest, or other improper means;

e) imposing improper restrictions on its trading counterparts' business activity as part of the requirements for trade engagement.

2. Assessment

Under Article 15, enterprises engaged in concerted action may apply for an approval to the FTC. After receiving an application for approval of concerted action, the FTC has to make a decision within three months whether to grant the approval. The approval may set out conditions to be met by the applicants.

Under Article 16, the approval may be granted for up to 5 years. Within three to six months prior to the expiration of such period enterprises involved may apply for an extension up to 5 years.

A concerted action may be approved if it is beneficial to the economy as a whole and in the public interest. In order to benefit from the exclusion, the concerted action should meet one of the following conditions (Article 15):

a) unify the specifications or models of products or services to reduce costs, improve quality or increase efficiency;

b) joint R&D on products, services, or market to upgrade technology, improve quality, reduce costs, or increase efficiency;

c) rationalisation of operations;

d) agreements to secure or promote exports in foreign markets;

e) joint acts in regards to the importation for the purpose of strengthening trade;

f) joint acts limiting the output or prices to meet the demand orderly where the enterprises in the same industry have difficulty in maintaining their business or face overproduction because of economic downturn;

g) joint acts to improve operational efficiency or strengthen the competitiveness of SMEs; or

h) joint acts required to improve industrial development, technological innovation, or operational efficiency.

3. Remedies and sanctions

See Section I.4 above on Remedies and Sanctions.

The FTC has made a total of 280 decisions relating to anti-competitive agreements between 1992 and 201 6. Out of 280 cases, 208 cases were related to concerted action and 72 cases to resale price maintenance.

4. Leniency

Under Article 35, the FTC may grant exemption from or reduction of administrative fines to enterprises that reveal and submit evidence of their involvement in prohibited concerted action.

According to Article 7 of the *Regulations on Immunity and Reduction of Fines in Illegal Concerted Action Cases*, full immunity on fine is granted to the first enterprise to come forward with evidence of prohibited concerted action before the investigation or prior to the knowledge by the FTC of the infringement. If no enterprise has come forward before the investigation, full immunity may be granted to the first enterprise to come forward during the investigation.

Reduction in fine may be granted to subsequent applicants as follows: a) 30% to 50% for first applicant; b) 20% to 30% for second applicant; c) 10% to 20% for third applicant; d) up to 10% of the fine for fourth applicant

So far there have been 3 successful cases of leniency applications

III. Abuse of Dominance

1. Scope

Article 9 prohibits monopolistic enterprises from engaging in price-fixing, directly or indirectly preventing other enterprises from competing by unfair means, extracting an unjustified preferential treatment from a trading counterpart, or other abusive conduct.

2. Assessment

Under Article 7(1), “monopolistic enterprise” is defined as any enterprise that faces no competition or has a dominant position to enable it to exclude competition in the relevant market. Two or more enterprises shall be deemed monopolistic if they are not in fact engaged in price competition with each other and as a whole have the same status as a monopolistic enterprise defined in Article 7(1).

Article 8 further specifies the market share thresholds for a finding of a dominant position: 1) the market share of the enterprise in the relevant market reaches one half of the market; 2) the combined market share of two enterprises in the relevant market reaches two thirds of the market; and 3) the combined market share of three enterprises in the relevant market reaches three fourths of the market.

An enterprise shall not be deemed as monopolistic if the market share of any individual enterprise does not reach one tenth of the relevant market as described above, or its total sales in the preceding fiscal year are less than the threshold amount announced by the FTC The publicly announced threshold amount is NTD 2 billion.

3. Remedies and sanctions

See Section I.4 on Remedies and Sanctions.

The FTC has made a total of 15 decisions relating to abuse of dominance between 1992 and 2016.

IV. Mergers

1. Scope

Article 13 provides that the FTC may not prohibit any merger filed if the overall economic benefit outweighs the adverse effect on competition.

Paragraph 1 of Article 10 of the FTA, defines a merger as one of the following: (i) where an enterprise and another enterprise are merged into one; (ii) where an enterprise holds or acquires the shares or capital contributions of another enterprise to an extent of more than one third of the total number of voting shares or total capital of such other enterprise; (iii) where an enterprise is assigned by or leases from another enterprise the whole or the major part of the business or assets of such other enterprise; (iv) where an enterprise operates jointly with another enterprise on a regular basis or is entrusted by another enterprise to operate the latter's business; or (v) where an enterprise directly or indirectly controls the business operation or the appointment or discharge of personnel of another enterprise.

2. Notification

Chinese Taipei operates a pre-merger mandatory notification regime.

Under Article 11, parties to a merger should notify the FTC where:

a) the post-merger market share exceeds one third of the market;

b) one of the enterprises in the merger has more than one fourth of the market share; or

c) sales for the preceding fiscal year of one of the enterprises in the merger exceeds the threshold amount publicly announced by the FTC. The thresholds of the amount of sales referred to in the Article 11 are set as follows:

(i) for non-financial sector: an enterprise whose domestic sales in preceding fiscal year exceeds NTD15 billion is to merge with an enterprise whose domestic sales in preceding fiscal year exceeds NTD2 billion;

(ii) for financial sector: an enterprise whose domestic sales in preceding fiscal year exceeds NTD30 billion is to merge with an enterprise whose domestic sales in preceding fiscal year exceeds NTD2 billion;

(iii) The combined worldwide sales in the preceding fiscal year of the enterprises in the merger exceed NT$40 billion and the domestic total sales of each of at least two of the enterprises in the merger in the preceding fiscal year also surpass NT$2 billion.

3. Procedural rules

The waiting period for merger review is 30 working days starting from the date the FTC accepts the complete filing materials. The FTC may shorten or extend the period as it deems necessary and notify the party of such change. The extension period shall not exceed 60 working days.

The review procedures by the FTC are divided into simplified procedure and regular procedure.

The merger cases applying to the simplified procedure are reviewed by the designated commissioner, vice chairperson and chairperson, and then they are reported to the commission on the following month. Simplified procedure: Point 7 of the *Guidelines on Handling Merger Filings* specifies mergers to which a simplified procedure is applied:

a) Horizontal mergers: the aggregate market share of the parties is less than 20% of the total market; or the aggregate market share of the parties is less than 25% of the total market and the market share of one of the parties to the merger is less than 5% of the total market

b) Vertical mergers: the aggregate market share of the parties in each relevant market is less than 25% of the total market

c) Merger between businesses that neither compete horizontally nor have an upstream-downstream relationship ("conglomerate merger"): where the FTC concludes that potential competition between the parties to a conglomerate merger is insignificant.

d) One of the merging parties directly holds more than one third but less than half of the voting shares or capital contributions of another business and merges with the said business.

Exceptions where the simplified procedure does not apply:

Under Point 8 of the Guideline, a regular procedure shall be applied to mergers as follows: where the CR 2 and CR3 (market share of the top two/three businesses) account for two thirds or three fourths of the re levant market; mergers involving a significant public interest; where one of the merging parties is a financ ial holding company; where the market entry level or market concentration is high or there are conditions likely to lead to disadvantages as a result of the significant competition restrictions thereof incurred; wher e it is difficult to determine the relevant market or calculate the market shares of the merging parties.

Procedural fairness: Upon request by the merging parties, the FTC provides the parties with opportunities to consult with regard to significant legal, factual or procedural issues during the course of the investigation. The FTC may also hold public hearings for the merger case or provide opportunity for merging parties to present evidence, if necessary.

4. Assessment

The Guidelines provides factors that the FTC considers when assessing the competition restricting effects of horizontal mergers: the post-merger capacity for merging parties to increase their prices (unilateral effect), the possibility post-merger of the merging parties and their competitors establishing agreements to restricting each other's business activities or taking concerted actions to eliminate competition (co-ordinated effects), market entry, countervailing power, etc.

For vertical mergers, factors considered to determine the effects on competition are as follows: the possibility for other competitors to choose trading counterparts after the merger; market entry level; the possibility for the merging parties to abuse their market power in the relevant market; the possibility of raising rivals' cost; the possibility of concerted actions occurring as a result of the merger; and other factors likely to lead to market foreclosure.

According to Point 12 of the Guidelines, factors considered for conglomerate mergers include: change of regulations and its impact on cross-industry operations of the merging parties; technological improvement enabling the merging parties to engage in cross-industry operations, and whether any of the merging

parties originally has the intention to develop cross-industry operations; and other factors likely to affect market competition.

5. Remedies and sanctions

Under Point 14 of the Guidelines, the FTC may attach conditions or undertakings to its decisions to not pr ohibit a merger. The conditions and undertakings may include behavioural or structural measures, such as disposal of shares or assets.

Failure to notify: Under Article 39, where enterprises that do not notify a merger, proceed with a prohibited merger or fail to perform the required conditions and undertakings, the FTC may order prohibition of the merger, division of enterprises, disposal of all or a part of the shares, transfer of a part of the operations, removal certain persons from their positions, or any other necessary dispositions.

The enterprises may also be subject to an administrative penalty from NTD200,000 to NTD50 million.

Where any enterprise violates the disposition made by the FTC for administrative penalty or remedies under Article 39, the FTC may order for dissolution, suspension or termination of business operation.

The FTC has reviewed a total of 6,851 merger cases between 1992 and 2016.

V. Statistics

The total number of decisions on anti-competitive agreements, and abuse of dominant position, made by the FTC since the implementation of the FTA in 1992, is as below.

Statistics (1992-2016)

Type of Violation	Total Number of Cases Reviewed	Type of Result
Anti-Competitive Agreements	280	Concerted action – 208 cases Resale price maintenance – 72 cases
Unilateral Conduct or Abuse of Dominance	161	Abuse of dominant position and other restrictive practices
Mergers	6,851*	Cleared for merger – 6,340 cases Prohibited – 10 cases Terminated to review – 470 cases Consolidated to other cases – 31 cases
Total	7,292	N/A

*The number of decisions of mergers showcased on the above table is the number of mergers reviewed by the FTC.

VI. Relevant Laws and Regulations

- **Enforcement Rules of Fair Trade Act**
- **Multi-Level Marketing Supervision Act**
- **Enforcement Rules of Multi-Level Marketing Supervision Act**
- **Regulations for the Establishment and Administration of the Multi-level Marketing Enterprises and Participants Protection Institute**
- **Criterion for Multi-level Marketing Enterprises Filing Reports for Record or Amendment**
- **Threshold for the Multi-Level Marketing enterprises' financial statements required to be audited by CPAs**
- **Regulations on Immunity and Reduction of Fines in Illegal Concerted Action Cases**
- **Regulations for Calculation of Administrative Fines for Serious Violations of Articles 9 and 15 of the Fair Trade Act**

Thailand

I. Competition Rules and Institutional Setting

1. Competition Law

The Trade Competition Act, B. E. 2560 (2017) ("the Act"), which took effect in October, 2017, is the main legal instrument on competition policy in Thailand. It repealed the Trade Competition Act B.E. 2542 (1999).

The purpose of the Act is to improve measures in regulating competition to become more efficient under an authority that is flexible and independent, consistent with the development of patterns and behaviours in business operations.

The Act regulates abuse of dominance, anti-competitive agreements, anti-competitive mergers, and unfair trade practices.

In addition to major antitrust prohibitions, the Act has a special provision, namely Section 57, which prohibits, for instance, the unfair use of superior bargaining power by a non-market dominant firm under the name of "unfair trade practice."

Thailand follows the civil law tradition.

General exclusion: Central, regional and local administrations are exempt from the application of the Act. State-owned enterprises, public organisations, or other government agencies, provided that their conducts are undertaken according to the laws or the Cabinet's resolutions which are necessary to maintain national security, public interest, general interest or the provision of public utilities are also exempt. In addition, farmer groups, co-operatives or co-operative groups prescribed by law and whose business objectives are for the benefit of the farming industry are exempted. Businesses prescribed by the Ministerial Regulations may also be fully or partially exempt from the application of the Act.

Extra-territorial application: The Act is not applicable to firms located outside Thailand whose behaviour directly affect competition and consumers in domestic markets. The Act's merger control provisions are not applicable to foreign mergers. Extra-territorial provisions in the Criminal Procedure code apply to abuse of dominance and hard-core cartels, which are subject to criminal penalties.

2. Trade Competition Commission

Since 1st October 2017, the Office of Trade Competition Commission (the "OTCC" or "Commission") is the authority that enforces competition law in Thailand. The Trade Competition Commission ("TCC") acts as an executive board making decisions and it is supported by secretariat staff of the OTCC. Previously, the OTCC that was integrated in the Ministry of Internal Trade.

Organisational structure of the Commission: The Commission is a separate entity independent of the government, with its own budget (Sections 27, 44, 45, and 47).

OTTC website: http://otcc.dit.go.th

Contact: OTCC@Dit.go.th

It is expected that the OTCC will have around 65-70 employees including officials and supporting staff and then 100-150 in future.

Section 7 of the Act sets out that the Commission consists of a Chairperson, Deputy-Chairperson and five other Commissioners, appointed by the Prime Minister from persons chosen in a section process and approved by the Cabinet. Sections 8 and 10 set out a number of qualifications that the Commissioners must hold, and these include provisions that Commissioners must demonstrate experience and expertise of not less than 10 years in law, economics, finance, accounting other relevant fields, and not hold any position in business entities or as a civil servant with a title or a regular salary. The law requires that we have new commissioners by July 2018 and around end of 2018.

According to Section 13 of the Act the Commissioners shall hold office for four-year terms, with a maximum of two terms. Commissioners are full-time.

Any of the Commissioners may only be dismissed from office under the conditions set out in Section 14, which includes a Cabinet resolution to remove a Commissioner due to failure to fulfil their duty, atrocious behaviour, or without capacity in performing duties.

Decisions are taken by majority vote, with a casting vote of the Chairperson in case of equal number of votes. There is a quorum of half the total number of Commissioners.

The TCC is supported by the OTCC staff. It is the Commission which issues rules and regulations on the operation and organisation of the OTCC. The OTCC has a Secretary-General who shall be responsible for the operation of the OTCC reporting directly to the Chairperson and shall be a supervisor of all officials and employees of the OTCC. The Secretary-General is appointed and removed by the Chairperson of the TCC and shall hold an office term of four years. To be appointed Secretary-General a person must demonstrate under Section 32 of the Act certain qualifications, including knowledge and expertise in certain fields, including law and economics.

The Commission may appoint a sub-committee to consider and make recommendations on any matter or perform any act as entrusted and prepare a report on such act to the Commission pursuant to Sections 20 and 21 of the Act.

Other regulators with competition powers: There are other sector regulators that have competition powers. The National Broadcasting and Telecommunications Commission (NBTC) regulates competition issues relating to broadcasting and telecommunications sectors. The Energy Regulatory Commission regulates competition issues relating to energy and gas industry operation. These two regulators have their

own competition section under their laws. The laws of the NBTC and the energy regulator contain provisions governing competition matters. However, both of them do not cover all the anti-competitive conducts. Those that are not covered by the NBTC's or the energy regulator's law will be subject to the Trade Competition Act (Section 4).

Competition Advocacy: According to Section 17 of the Act, the TCC proposes opinions and recommendations to the Minister and the Cabinet with regard to government policies on competition, as well as gives recommendations to government agencies regarding rules, regulations, or orders which are obstacles to competition.

International co-operation: There is an international co-operation agreement between ASEAN.

3. Investigation

Initiation of Investigation: An investigation will be initiated by the Commission either due to a complaint filing or by the Commission's own initiative.

Powers of investigation: Section 63 (1) of the Act allows officers of the OTCC (appointed as officers for specific cases by the TCC) to issue a written summons requiring any person to give statements, facts or written explanations or provide accounts, registrations, documents or any evidence for examination or consideration.

Section 63 (2) of the Act also grants officers of the OTCC the power to enter a place of business, etc. of the business operator or any person or other places reasonably suspected to accommodate the imminent commission of an offence under the Act without a warrant, for the purpose of examining and ensuring the compliance with the Act or searching for and attaching evidence or property capable of forfeiture under the Act. However, under Thai law any offense prescribed as being subject to criminal penalties, must be subject to all procedures under the Criminal Procedure Code. Therefore, for abuse of dominance (Section 50) and hard-core cartel (Section 54), a search will need to be conducted according to the Criminal Procedure Code.

Failure to comply with an investigation: Sections 73, 74, 75 stipulate that a person who fails to comply with the written summons, obstructs the performance of duties of officials, or other orders shall be liable to imprisonment or a fine, or to both.

- Section 73, failure to comply with the written summons: imprisonment not exceeding three months or a fine not exceeding five thousand Baht or both
- Section 74, obstruction of the performance of duties of an officer: imprisonment not exceeding one year or a fine not exceeding twenty thousand Baht or both
- Section 75, failure to render assistance to the Commission: imprisonment not exceeding one month or a fine not exceeding two thousand Baht or both.

Procedural fairness: The OTCC provides the party/parties under investigation for an antitrust infringement with opportunities to consult with the OTCC with regard to significant legal, factual or procedural issues during the course of the investigation. The parties also have the right to be heard and present evidence before the imposition of any sanctions or remedies for having committed an antitrust infringement. All of these rights are available under the Criminal Procedure Code and Administrative Law to which the Trade Competition Act is subject.

Procedural guidelines and rules: No guidelines have yet been published by the OTCC. The OTCC plans to publish procedural guidelines or public documents explaining its investigative procedures. Administrative guidelines that explain how monetary sanctions for antitrust infringements are set by the OTCC or recommended to the court are also planned.

4. Remedies and sanctions

Section 60 gives the Commission the power to issue a written order instructing the business operator to suspend, cease, correct or change such conduct in cases where the Commission considers that a business operator committed an antitrust infringement, namely the violation of Section 50 (abuse of dominance), Section 51 (merger), or Section 54 (anti-competitive agreements). The person receiving the order under section 60 must comply with such order unless the administrative court gives a decision or issues an order suspending the execution thereof or revoking the order of the Commission.

According to Section 83, any person violating Section 60 shall be subject to an administrative fine of not more than 6 million Baht, and a further fine of 300,000 Baht per day.

Criminal sanctions: Under Section 72, any person who violates Section 50 (abuse of dominance) or Section 54 (anti-competitive agreements) shall be liable to imprisonment not exceeding two years or a fine of not more than ten percent of turnover in the year of the offence or both. In the case of an offence committed during the first year of business operation, the person shall be subject to up to two years of imprisonment and a fine not exceeding 1 million Baht or both.

5. Appeal

According to Section 60 and Section 52 the person who disagrees with the order of the OTCC has the right to appeal to an administrative court.

6. Private enforcement

The Act provides under Article 69 for stand-alone damage actions by any person who has suffered damages from a violation of Section 50 (abuse of dominance), Section 51 (merger), and Section 54 (anti-competitive agreements).

The Consumer Protection Commission has the power to initiate the damages claims on behalf of consumers.

Under Article 70, the claim for damages must be brought within one year from the date the damaged person knows or should have known the cause of such damages, otherwise the right to claim for damages in the civil court will lapse

II. Anti-competitive Agreements

1. Scope

There is a distinction between cartels amongst competitors in the same market leading to price-fixing, market allocation, output control or bid rigging under Section 54 and other non-hard-core cartels under Sections 55, 56 and 58.

2. Assessment

The law does not set out any assessment criteria. There are currently no issued guidelines, although these are planned.

Any violation of Section 54 is per se illegal, and the Commission does not consider any efficiency that an allegedly exclusionary conduct may generate.

Section 56 provides that Section 55 agreements of the following type : R&D agreements and licensing-type arrangements, in so long as they do not go beyond what is necessary to achieve the benefits are excluded from the prohibition. Further, agreement types prescribed in a ministerial regulation are also excluded.

3. Remedies and sanctions

Hard-core cartels under Section 54 are subject to criminal penalties, whilst other anti-competitive agreements under Sections 55 and 58 are subject to administrative fines.

Under Section 72, any violation of Section 54 (anti-competitive agreements) shall be punishable by imprisonment not exceeding two years or a fine of not more than ten percent of turnover in the year of the offence or both. In the case of an offence committed during the first year of business operation, the person shall be subject to up to two years of imprisonment and a fine not exceeding 1 million Baht or both.

Under Section 82 any person violating Sections 55 or 58 shall be subject to an administrative fine of not more than 10 percent of turnover in the year of the offence. In the case of an offence committed during the first year of business operation, the person shall be subject to a fine of not more than 1 million Baht.

Section 60 provides for the Commission to issue cease and desist type orders where it has sufficient evidence to believe that a business operator has violated or will violate these sections. Any person violating Section 60 shall be subject to an administrative fine of not more than 6 million Baht and a further fine of not more than 300,000 Baht per day during the time of the violation.

The OTCC, under the previous legal regime, handled 25 cases on anti-competitive agreements, but remedies or sanctions have not been imposed on a violation of Section 54 over the last five years.

4. Leniency

There is no leniency programme. However, the cases can be settled with the Commission under the Law.

III. Abuse of Dominance

1. Scope

Section 50 of the Act prohibits a business operator with a dominant market position from abusing its dominance. The Act prescribes that the market dominant undertaking shall not act in any of the following manners:

- Unfairly fix or maintain purchasing or selling prices of goods or fees for services;
- Impose an unfair condition requiring other business operators who are his or her trading to restrict services, production, purchase or distribution of goods, or restrict opportunities in purchasing or selling goods, receiving or providing services or obtaining credits from other business operators;
- Suspend, reduce or restrict services, production, sale, delivery or importation without justifiable reasons, or destroying or causing damage to goods to ensure a lower quantity of goods available on the market than what market demand requires; and
- Intervene in the operation of business of other persons without justifiable reasons.

2. Assessment

When determining dominance, the Commission takes into account market share factors as well as non-market-share factors, such as number of competitors, amount of capital, access to key production factors, distribution channels, business networks, etc... The Commission will issue guidance on thresholds for market share and sales revenue thresholds to determine market dominance. These shall be reviewed every three years.

3. Remedies and sanctions

Under Section 72, infringements of Section 50 are subject to criminal penalties, with violations punishable by imprisonment not exceeding two years or a fine of not more than ten percent of turnover in the year of the offence or both. In the case of an offence committed during the first year of business operation, the person shall be subject to up to two years of imprisonment and a fine not exceeding 1 million Baht or both.

However, the OTCC did not impose any sanctions or remedies.

IV. Mergers

1. Scope

Section 51 paragraph 2 requires that any business merger which may result in a monopoly or business operator with dominant position in a market must be granted a permission from the Commission before proceeding.

Section 51 paragraphs 1 and 3 also provide that certain mergers which may substantially reduce competition, the rules of which shall be prescribed later, are required to make a notification to the Commission within seven days of such merger.

The mergers of businesses under Section the above mentioned paragraph shall include the following:

a) A merger […] which has the effect of maintaining the status of one business and terminating the status of another business or creating a new business.

b) Acquisition of the whole or part of assets of another business with a view of controlling business administration policies, direction or management.

c) Acquisition of the whole or part of shares of another business with a view of controlling business administration policies, direction or management.

2. Notification

Section 51 provides for a dual system, with a post-notification and a pre-merger permission system.

Under para 2 of Section 51, approval by the Commission is required for a merger of businesses which may result in monopoly or in a dominant position.

A post-merger notification system is in place for a business operator who engages in a merger that may cause significant decrease of competition in a particular market (para 1 of Section 51), pursuant to criteria of notification to be set out by the Commission. The parties must notify within 7 days of merging date.

The Commission will issue rules with further criteria and thresholds for notification.

3. Procedural Rules

Regarding those transactions that require a prior approval of the Commission (that may cause a monopoly or that create a dominant position), the Commission shall complete its procedure within 90 calendar days from the request receipt date. An extension of 15 calendar days shall be given with reasons why it was necessary. Clearance would be considered granted if no decision is taken within the legal deadlines. The Commission may however be subject to punishment under Administrative Law if it does not issue a decision within the legal deadlines.

Procedural fairness: Under Section 61, the Commission shall indicate reasons for granting or not granting a permission to merge covering both factual and legal aspects.

4. Assessment

See Section III.2 above for criteria for assessment of a dominant position.

When granting a permission under para 2 of Section the Commission shall consider granting a permission with recognition of proper needs for businesses, benefits to support a business operator, and that no severe damage to the economy or impact on substantial benefits to consumers as a whole occurs.

5. Remedies and sanctions

Under Section 60, the Commission shall have the power to make an order in writing to instruct that the parties to the transaction to suspend, stop, or correct or change such conduct. This shall be in accordance with criteria, methods, conditions, and the time period prescribed by the Commission.

In case there is a permission order, the Commission may set a time period or any condition for the business operator granted a permission to follow.

The business operator shall have a right of appeal in an administrative court within 60 days from the order notification date.

The failure to file a notification under paragraph 1 Section 51 shall be subject to an administrative fine of not more than 200,000 Baht and a further fine of not more than 10,000 Baht per day during the time of violation.

Any person violating Section 51 paragraph 2, i.e. not filing for a permission for a clearance, shall be subject to an administrative fine of not more than 0.5 percent of transaction value of the merger.

V. Statistics

The table below is the statistics relating to cases of and measures taken by the OTCC from 1999 to 4 October 2017.

Statistics (1999-Oct 2017)

Type of Violation	Total Number of Cases	Decision, measures taken
Anti-Competitive Agreements	28	No decision has made to sanction illegal anti-competitive agreements
Unilateral Conduct or Abuse of Dominance	18	Dismissed-14 Currently under consideration of inquiry by sub-committees-4
Mergers	-	-
Total	56	No remedies or sanctions

VI. List of Relevant Laws and Regulations

- **Trade Competition Act B.E. 2560 (2017)**
- **Commission's Notification on Business Operators with Dominant Position of Market Power;**
- **Regulation of the OTCC on Unfair Trade Oractices in the Wholesale/Retail Businesses.**

Viet Nam

I. Competition Rules and Institutional Setting

1. Competition Law

The Viet Nam Competition Law (No. 27/2004/QH11) (the "VCL" or "Competition Law") which took effect on 1 July 2005 is the main legal instrument on competition policy in Vietnam. Together with the 2005 Enterprise Law and the 2005 Investment Law, the Competition Law represents the transition of Vietnam to a market economy.

The VCL regulates two types of conducts, i.e. competition-restricting acts and unfair competition acts. Competition-restricting acts include agreements in restraint of competition, abuse of dominant/monopoly position and economic concentration (mergers) which restrain competition in the market. Unfair competition acts include misleading instructions, infringement of business secrets, and coercion in business, defamation of another enterprise and advertisement aimed at unfair competition.

General exclusion*:* There is no sector excluded from the application of the VCL. It applies to all economic sectors and enterprises, including enterprises providing public-utility products or services and state-owned enterprises (SOEs).

Extra-territorial application: According to Article 2, the VCL applies also to foreign firms operating in Viet Nam. To specify this, Article 2 could be interpreted in two ways:

1. Foreign firms with representation in Vietnam, or 2. Foreign firms, products and services circulated in Vietnam. This Article hasn't been enforced yet due to following reasons: (i) no clear legal ground; (ii) limited enforcement capacity; (iii) lack of other conditions to exercise co-operation with other competition agencies; (iv) lack of regulations on the procedure of applying that article.

2. The Vietnam Competition and Consumer Authority and the Vietnam Competition Council

There are two enforcement authorities of VCL, namely the Vietnam Competition and Consumer Authority ("VCCA") and the Vietnam Competition Council ("VCC").

In September 2017, the VCA was split into two agencies – the Viet Nam Competition and Consumer Authority (VCCA) which inherited the competition and consumer protection functions of the VCA and the Viet Nam Trade Remedies Authority (VTRA) which inherited the VCA's trade remedies function. Given this

occurred only at the final stage of the drafting of this Guide, most of the institutional data and historic information in this report concerns the VCA as an entity rather than the VCCA. Unless, VCCA is expressly mentioned information regards VCA.

The VCCA conducts investigations concerning both the prohibitions on the restraint of competition and the prohibitions against unfair competition but can only itself determine liability and penalties with respect to unfair competition cases.

In relation to restraint of competition investigations (such as cartels and abuse of dominance) if the VCA conducts and investigation and forms the view there has been a breach of the law, it refers the dossier to the VCC who determines whether the accused is liable and what sanctions should apply.

VCCA: The VCCA was established in September 2017 and took over from the Vietnam Competition Authority that had been in place since 2004. The VCA had as tasks, according to Decision No 848/QD-BCT of 5th January, 2013 of the Ministry of Industry and Trade of Viet Nam ("MoIT"), to conduct investigations on (a) competition-restricting acts, which submits to the VCC for decision (see below), (b) other practices in breach of the VCL. For instance, failure to co-operate with competition investigations and (c) unfair competition acts, evaluate requests for exemption eligibility to submit to the MoIT for decision and supervise the process of economic concentration. The VCA also has adjudicating power in cases relating to unfair competition cases, whereas the VCC adjudicates cases relating to competition-restricting acts.

The VCA also carried out the functions of protecting consumers' rights and administering anti-dumping, anti-subsidy, application of safeguards measures on imported goods into Vietnam. As mentioned previously, the VCCA has consumer protection and competition powers, only.

Organisational structure of VCA: The VCA is established under the MoIT. The head of the VCA is appointed by the Prime Minister on the proposal of the Minister of Industry and Trade. The VCA had 90 staff members as of 2016. The VCCA has 43 staff, including an Acting Director General; 25 staff dedicated to competition work of which: 18 are 'front line' staff responsible for competition functions (7 in the Unfair Conduct Division, 5 in the Anticompetitive Division and 6 in the Economic Concentration Division); 7 support staff; and 14 staff are dedicated to consumer protection (front line and support); and 3 staff in the HCMC regional office supporting both competition and consumer protection functions.

VCC: The VCC is a separate body from the VCCA.

According to Decree No.07/2015/ND-CP of 16th January, 2015, the VCC has the following powers and responsibilities: (a) Imposing fines and dealing with breaches of the competition-restricting acts provisions of the VCL; (b) requiring organisations and individuals involved to supply information and data necessary for the Council to carry out its assigned duties; (c) resolving complaints regarding decisions made by the Competition Council (d) Participating in administrative proceedings in accordance with the law on competition and the law on administrative proceedings.

Organisational structure of VCC: The VCC consists of 11 to 15 members (including a Chair) appointed by the Prime Minister on the proposal of the Minister of Industry and Trade. The VCC has 20 staff in total including 11 Commissioners as of 2017.

Relationship with other regulators: Most sectoral regulations provide for a specific provision on competition. The VCCA and sector regulators operate based on a mechanism of co-operation.

Competition advocacy: New public policies that may have implications for competition are subject to competition assessment in Vietnam. The Agency of Examination of Legal Normative Documents, Ministry of Justice is in charge of examining and recommending sanctions against violation related to normative documents. In practice, the VCA often co-operates with this Agency in reviewing legal documents having implications for competition upon request of the host agency. The VCA conducts market or sector studies. Where the VCA identifies an obstacle or a restriction to competition caused by an existing public policy, the study can include an opinion/recommendation to the government to remove or reduce such obstacle or restriction.

International co-operation: The VCA maintains international co-operation with other competition agencies from Australia, Japan, Korea, New Zealand, Russia, and the United States etc. VCA signed memorandums of understanding (MoUs) on competition with JFTC (Japan) and FAS (Russia) respectively. In addition, Vietnam also signed various agreements, which include competition chapters, such as Japan-Vietnam Economic partnership Agreement, ASEAN-Australia and New Zealand Free Trade Agreement, ASEAN-Japan Comprehensive Economic Partnership, Vietnam-Eurasian Economic Union Free Trade Agreement, and Vietnam-Republic of Korea Free Trade Agreement. Also, Vietnam-European Union Free Trade Agreement and Trans Pacific Partnership (TPP), these have been signed but are not yet in effect

VCA website: www.vca.gov.vn
Contact: ccid@moit.gov.vn

VCC website: www.hoidongcanhtranh.gov.vn
Contact: hoidongcanhtranh@moit.gov.vn

3. Investigation

Initiation of investigation: Under Article 87, a preliminary investigation of a competition case may be conducted based on a complaint or initiative by the VCA upon detection of signs of breach of the VCL.

Within 30 days from the date of a decision by the head of VCA to conduct a preliminary investigation, the investigator assigned must complete the preliminary investigation and make a recommendation to the head of the VCA on whether to conduct an official investigation or to end the investigation. Based on the result of the preliminary investigation and recommendation, the head of the VCA decides either to end the investigation or conduct an official investigation if the preliminary investigation indicates the existence of an offence.

Under Article 90 VCL, once the decision to conduct an official investigation has been made, the time-limit for investigating competition-restricting acts is 180 days. Investigations concerning competition-restricting acts may be extended twice, each extension not exceeding 60 days. An investigator must notify any extension of the time-limit for an investigation to all parties concerned at least seven working days prior to expiry of the time-limit.

Upon completion of an investigation, the head of the VCA must send a report on the investigation together with the whole of the file on the competition case to the VCC. Should there be signs of a criminal infringement, Article 94 provides that the investigators must propose to the head of the VCA to consider the transfer of the files to the State body with authority to institute a criminal prosecution.

Powers of investigation: Under Article 77, investigators have the power to require organisations and individuals concerned to provide all necessary information and documents relating to a competition case and recommend to the head of the VCA to apply administrative preventive measures. Such measures may

be taken under Article 88 of Decree No. 116/2005/ND-CP dated September 15th, 2005 on detailing the implementation of a number of articles of the competition law and include measures such as temporary detention of persons and material evidence, as well as searches. The latter may also be applied at the request of the complainant. Articles 91 and 94 of the Decree provides VCA with the power to search places used to hide material evidence. This power is approved by either the head of the VCA, the chairman of the VCC or persons described in Article 45 of the Ordinance on Dealing with Administrative Offences. There is no need for court authorisation except for the case of search and seizure at residential premises. In the case of the latter, the VCA needs a written document issued by the Chairman of the District People's Committee. Yet, in practice, VCA hasn't exercised this power. Furthermore, there is no provision detailing the procedure of conducing search and seizure in the current competition legislation.

***Failure to comply with investigation*:** In case of failure to provide sufficient and accurate information, obstruction of provision or destruction of information related to the competition cases, parties may be subject to fines from VND 2 million to VND 10 million (specified in Decree No.71/2014/ND-CP).

Procedural fairness: Article 66 VCL provides a number of rights which are at the disposal of the investigated party in order to assure procedural fairness. The parties under investigation for an antitrust infringement have opportunities to consult with the VCA with regard to significant legal, factual or procedural issues during the course of its investigation. The concerned party may produce documents, be informed of any elements produced by the complainants or the VCC and VCA and may participate in hearings before the imposition of any sanctions or remedies for having committed an antitrust infringement. The article allows the investigated party to request a change of investigators if the latter fall into a case foreseen by article 83, such as being relatives of one of the parties, having a personal interest in the case or any other circumstance which may affect the impartiality of the investigator. The investigated party may also request witnesses or propose that the competition-managing agency seek expertise.

Confidentiality: Article 78 (2) VCL imposes upon investigators an obligation to maintain confidentiality regarding any business secrets of enterprises which may come to their knowledge.

Article 120 VCL indicates that a violation of Article 78 may lead to disciplinary action or penal liability depending on the seriousness of the violation. If any damage is caused, the offender must pay compensation to the affected party.

According to Article 3, trade secret refers to information which is not common knowledge, is capable of conferring an advantage to its holder over non-holders of such information and which the owner has taken necessary measures to protect from disclosure.

4. Remedies and Sanctions

Remedies and administrative sanctions

Article 117 provides both remedies and sanctions in the case of a breach of the VCL. According to Article 119, the VCA and the VCC have the power to apply these measures.

Remedies include restructuring enterprises which have abused their dominant position or forcing consolidated enterprises to undo a merger.

Penalties imposed for breaches of the VCL consist of either a warning or a fine. A fine may be imposed totalling up to 10% of the total turnover of the organisation or individual in breach in the financial year preceding the year in which the prohibited practice took place.

Depending on the nature and seriousness of the breach, additional penalties are applied: withdrawal of business registration certificate; revocation of the right to use a license or practicing certificate; and confiscation of exhibits and facilities used to commit the breach of the laws on competition. With respect to breaches of the VCL in relation to practices in restraint of competition, Decree No. 71/2014 / ND -CP establishes that penalties will be determined as a percentage of the relevant enterprise's turnover from the sale, or purchased input of goods or services relevant to the violation itself during the period when the conduct occurred.

There is a two year limitation period that starts on the date on which indications of the breach are discovered.

***Criminal sanctions**:* Recently the Vietnam Assembly has approved the amendment of Criminal Law (Law No. 100/2015/QH13) that provides Articles 217 (for competition restrictive agreement) and 222 (for bid-rigging) on the breach of VCL. By this regulation, the competition legislation offender could be subject to imprisonment for up to 5 years. Potential penalties for engaging in such criminal conduct include fines from VND 200 million to 1 billion (approximately USD 8,900 to 44,600), non-custodial reform for up to 2 years or imprisonment from 3 months to 2 years. The range of fines is increased to between VND 1 billion to 3 billion (approximately USD 44,600 to 133,800) and imprisonment is increased to a period of 1 to 5 years where aggravating circumstances set under the law are found.

Sanctioned individuals may also be prohibited from holding certain positions or practicing certain occupations for 1 to 5 years. Penalised companies, in addition to potential fines, may be forced to suspend operations from 6 months to 2 years where there has been a breach involving certain aggravating circumstances and raising capital can be prohibited from 1 to 3 years.

Bid-rigging is addressed in art. 222 of the Penal Code which, based on the circumstances, can lead to prison terms of up to 20 years, being prohibited from certain occupations for up to 5 years and confiscation of property.

5. Appeal

In the case of decisions dealing with practices in restraint of competition, according to Article 106 and Section 7 of the VCL, complaints must be lodged within 30 days with the panel of the VCC and resolved by the VCC. Complaints must be resolved within 30 days of receipt, extendable in complex cases but for not more than another 30 days. Any concerned party disagreeing with a part or the whole of a decision resolving a complaint has the right to institute administrative proceedings at the provincial-level people's court.

6. Private enforcement

Under Article 117 VCL, parties may have recourse to civil procedural law for compensation for loss incurred by prohibited acts under the VCL.

II. Anti-competitive Agreements

1. Scope and Assessment

The Competition Law identifies eight specific types of anti-competitive agreements that are prohibited. Articles 8 and 9 of the VCL provide *per se* prohibition for the following types of agreements: agreements which prevent, impede or do not allow other enterprises to participate in the market or to develop business; agreements which exclude from the market other enterprises which are not parties to the agreement; collusion in order for one or more parties to win a tender for supply of goods and services.

However, other anticompetitive agreements as follows are not prohibited per se: price fixing; market allocation; restricting or controlling the quantity or volume of production and supply, restricting technical or technological developments or investment, imposing to other enterprises terms of contract or obligations not relevant to the subject matter of the contract. These agreements are prohibited when the parties have a combined market share of 30% or more of the relevant market.

The list of types of agreements covered by the Article 8 is exhaustive. There is no formal distinction between horizontal and vertical agreements under the VCL. Vertical agreements may be addressed under the abuse of dominance provisions, e.g., minimum resale price maintenance causing damage to customers (Article 13(2) of the VCA - see section below on Abuse of Dominance for more detail on its application).

Exemptions: According to article 10 of the VCL, exemption may be granted for a limited period of time by the Minister of Industry and Trade. The agreement must satisfy one of the conditions as follows: rationalises an organisational structure or a business scale or increases business efficiency; promotes technical or technological progress or improves the quality of goods and services; promotes uniform applicability of quality standards and technical tings of product types; unifies conditions on trading, delivery of goods and payment (but does not relate to price or any pricing factors); increases the competitiveness of medium and small sized enterprises; increases the competitiveness of Vietnamese enterprises in the international market.

In practice, VCA hasn't received any exemption applications regarding anticompetitive agreements over the last 5 years.

2. Remedies and sanctions

Under Article 117, administrative sanctions such as a warning or a fine may be imposed. Measures for remedying consequences may also be applied, including removal of illegal terms and conditions from a contract or business transaction.

According to Section 1 of Chapter II of the Decree No. 71/2014 / ND -CP agreements in restraint of competition are penalised with a fine of up to 10 per cent of total revenues and the potential confiscation of the profits of the impugned conduct.

3. Leniency

Currently, Vietnam does not have a leniency programme. According to the Decree No. 116-2005-ND-CP, however, a voluntary declaration of a breach prior to the detection by the VCA constitutes an extenuating circumstance when dealing with a breach of the VCL.

III. Abuse of Dominance

1. Scope

Articles 13 and 14 prohibit abuses of dominance or monopoly position. Prohibited conducts are:

(i) practices of predatory pricing with the aim of excluding competitors,

(ii) fixing unreasonable prices or minimum re-selling prices causing damage to customers,

(iii) restricting production or distribution, impeding technical or technological development causing damage to customers,

(iv) imposing discriminatory commercial conditions to the same transactions with the aim of creating inequality in competition,

(v) imposing to other enterprises terms of contract or obligations not relevant to the subject matter of the contract, and

(vi) preventing market entry for new competitors.

Additionally, monopolistic enterprises are prohibited from imposing disadvantageous conditions on consumers and abusing its position to change or unilaterally cancel contract terms without legitimate reasons.

2. Assessment

Under Article 11 of the VCL, an enterprise that has a market share of 30% or more in the relevant market or is capable of substantially restraining competition and is considered to be in a dominant market position. In determining whether an enterprise is capable of substantially restraining competition, various factors are considered, such as: financial capacity of the enterprise or parent company, technological capability, ownership of or right to use intellectual property objects, as well as the scale of the distribution network.

Article 11 also provides thresholds for determining collective dominance in which a group of enterprises act together to restrain competition. The thresholds are: 50% (two enterprises), 65% (three enterprises), 75% (four enterprises).

3. Remedies and sanctions

Article 117 (3) of the VLC sets out that measures for remedying consequences of abuse of dominant market position may also be applied as follows: removal of illegal terms and conditions from a contract or business transaction; restructure of an enterprise which abuses its dominant market position

Under Article 117 of the VCL, administrative sanctions such as a warning or a fine may be imposed.

According to Article 22 of the Decree No. 71/2014 / ND -CP Abuses of Dominant or Monopoly Positions will be penalised with a fine of up to 10 per cent of total revenues;

IV. Mergers

1. Scope

Section 3 of the VCL regulates economic concentration which includes mergers, consolidation, acquisitions and joint ventures between enterprises.

2. Notification

Under Article 20 of the VCL, enterprises participating in economic concentration activities where a combined market share in the relevant market will be from 30% to 50% should notify the VCA before implementing the transaction.

When the resulting combined share in the relevant market of enterprises participating in the economic concentration is less than 30%, or it results in an SME, the parties are not required to notify an economic concentration activity.

Economic concentration activity may be implemented only after having received a written reply from the VCA confirming that such economic concentration does not fall within the prohibited category.

Participating in a prohibited economic concentration prior to an exemption being granted is subject to a fine of VND100-200 million.

3. Assessment

Under Article 18, any economic concentration where the combined market share in the relevant market exceeds 50% is prohibited unless the economic concentration results in a small and medium-sized enterprise (SME) or an exemption is granted.

Exclusions and exemptions: An economic concentration that results in an SME is excluded from the prohibition. The definition of SMEs is specified in Decree 56/2009/ND-CP and varies depending on the sector.

Where the combined market share of enterprises participating in economic concentration exceeds the 50% threshold, enterprises can file for a request of exemption under Article 19 of the VCL. Exemption may be

granted where parties are at risk of dissolution or bankruptcy or the economic concentration has the effect of extending export or contributing to socio-economic development or technological progress.

As per Article 30 VCL, the VCA reviews the exemption request and forwards its opinion to the Minister of Industry and Trade (MoIT) or the Prime Minister for decision.

According to Article 34, in cases of dissolution or bankruptcy, the decision for exemption is made by the MoIT within 60 days from the date of receipt of the exemption application. In complex cases, the time-limit may be extended twice, each extension not exceeding 30 days.

Where the exemption request is submitted on grounds of socio-economic or technological contribution, the decision is made by the Prime Minister. The decision is made within 90 days (MoIT) from the date of receipt of the exemption application and 180 days in complex cases.

4. Procedural rules

Once the VCA receives a notification of an economic concentration, it provides a written reply to the enterprise within a time limit of 45 days (Article 23 VCL) on whether the economic concentration falls within the prohibited category. The examination may be extended twice at most, each extension not exceeding 30 days.

Procedural fairness: The VCA provides information and consultation for domestic and foreign enterprises on whether an economic concentration falls under the regulation scope of prohibited acts under the VCL.

5. Remedies and sanctions

Under Article 22 of the Decree No. 71/2014 / ND -CP in addition to sanctions (see below) the merged entity may be subject to compulsory demerger or split of the merged enterprise.

Under Article 117, administrative sanctions such as a warning or a fine may be imposed.

According to Section 3 of Chapter II of the Decree No. 71/2014 / ND -CP Prohibited Economic Concentrations will be penalised with a fine of up to 10 per cent of total revenues.

Failure to notify

Under Article 118 of the VCL, where enterprises fail to notify an economic concentration activity, the VCC may impose a fine up to 10% of the total revenue in the financial year prior to the year in which a breach was committed of each enterprise participating in the transaction. There haven't been any cases of either failure to notify or implementation before clearance so far.

V. Statistics

Statistics of anticompetitive cases

	2006	2007	2008	2009	2010	Total ('06-'10)
Pre-litigation investigation	5	3	7	7	10	22
Investigation	0	1	1	1	1	4
Decision	0	0	0	1	2	3

	2011	2012	2013	2014	2015	Total ('11-'15)
Pre-litigation investigation	10	14	12	10	5	51
Investigation	2	1	0	1	0	4
Decision	0	0	1	1	0	2

*Pre-litigation investigation: This is initiated by investigators and it is conducted by the division level without official decision issued by the head of the agency*Investigation: This is initiated when the head of the agency issues the official decision for an investigation. This process ends with a report on results of investigation and all investigation documents will be transferred d to the VCC.

*Decision: case decision issued by the VCC

VI. Relevant Laws and Regulations

A set of implementing guidelines are provided to give effect to the Competition Law:

- **Decree No. 07/2015/ND-CP** dated January 16, 2015 on the functions, duties and power of the Competition Council replacing the Decree No. 05/2006/ND-CP
- **Decree No. 06/2006/ND-CP** on establishing and determining functions, tasks, powers, and organization structure of the Competition Administration Department, dated Jan 9th, 2006
- **Decree No. 116/2005/ND-CP,** setting forth detailed provisions for implementing a number of Articles of the Competition Law, dated November15th, 2005
- **Decree No. 120/2005/ND-CP** on administrative offences in the field of competition, dated September 30th, 2005
- **Decree No. 110/2005/ND-CP** on management of multi-level sale of goods, dated August 24th, 2005
- **Circular No. 19/2005/TT-BTM** on guiding the implementation of a number of provisions prescribed in Decree No. 110/2005/ND-CP, dated November, 8th 2005

In 2014, Vietnam's effort to improve the legal framework in competition policy also led to several legislative documents as follows:

- **Decree No. 42/2014/ND-CP** on management of multi-level sales activities;
- **Circular No. 24/2014/TT-BCT** on management of multi-level sales activities
- **Decree No. 71/2014/ND-CP** on imposition of penalties for violations against the law on competition

Comparison charts

Competition Rules and Institutional Setting

Jurisdiction	Competition Law		Competition Authority (CA)						
	Name	Excluded Sector(s)	Name	Organizational Aspects				Independence in Decision-Making	
				Is the CA established under a ministry?	If No, what is the status of the CA? If Yes, how does it sit under the ministry ? (e.g. bureau, department, or an Office/ Agency with separate status)	Staff numbers	What is the annual budget of your CA in 2016?	Does the CA make a decision through a collegial system (Commission/Board)? How many members are there in your Commission/Board (incl. part time and non-part time members)?	Is any member of the Commission/ Board from other governmental bodies?
Australia	The Austrailan Competition and Comsumer Act 2010	No	Australian Comptition and Comsumer Commission	No	The head of the CA is at minister level.	763	AUD 67.6 million	Yes. Total members: 7	Yes
Brunei	The Competition Order 2015	Yes	Competition Commission of Brunei Darussalam	Yes	Department of Economic Planning and Development, Prime Minister's Office	N/A	N/A	Yes. Total members: not less than 6 or more than 12. (Please state the current number of members)	N/A
China	The Anti-monopoly Law of the People's Republic of China	Yes	Anti-monopoly Commission	Yes	Ministry of Commerce	37 in SAIC	N/A	Yes. Total members: 19	Yes
Fiji	Fijian Competition and Consumer Commission Act 2010 (change made on 1 August 2017.	No	Fijian Competition and Consumer Commission (change made on 1 August 2017)	No	It is a independent statutory body where ithas a Board which reports or advices the Minister	55 (2016)	FY2016-2017 FJD 2.4m	Yes. Total members: 5 including Chairperson. Board deliberates minimum of 4times in a year.	Yes: 1 from Solicitor General's Office.
Hong Kong	Competition Ordinance (Cap 619)	Yes	Competition Commission of Hong Kong	No	The head of the CA is at minister level.	50 staff (2016)	HKD 80 million (2016)	Yes. Total members: 15	No
India	The Competition Act, 2002	Yes	Competition Commission of India	No	The head of the CA is at Chief Justice of India level.	103 staff (Dec 2016)	2016-17: INR 92.10 Crore	Yes. Total members: 2 to 6	Yes
Indonesia	The Law No. 5 Year 1999	Yes	Business Competition Supervisory Commission	No	The head of the CA is at minister level.	355 staff (2016)	Total (2016): IDR 140 billion	Yes. Total members: 9	No
Japan	The Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (AMA)	No	Japan Fair Trade Commission (JFTC)	No	The JFTC independently makes decisions without any interference from other administrative bodies.	840 staff (2016)	JPY 11.0 billion (2016)	Yes. Total members: 5	No
Korea	The Monopoly Regulation and Fair Trade Act	No	Korea Fair Trade Commission	No	The head of the CA is at minister level.	535 staff (2016)	Total (2016): KRW 110 billion (KCA:KRW 40 billion; KoFair: KRW 5.2 billion)	Yes. Total members: 9 (Standing: 5; Non-standing: 4)	No
Malaysia	The Competition Act 2010	Yes	Malaysia Competition Commission	No	The head of the CA s at minister level.	58 (2017)	MYR 12 million (2017)	Yes. Total members: 9	Yes
Mongolia	The Law of Mongolia on Prohibiting Unfair Competition	No	Authority for Fair Competition and Consumer Protection	Yes	First Deputy of Prime Minister	36 staff (2016)	Total (2016): MNT 770 million	Yes. Total members: 9	Yes
Myanmar	The Pyidaungsu Hluttaw Law No. 9, 2015	No	Myanmar Competition Commission	Yes	Department of Trade, Ministry of Commerce	Currently, Competition Policy Division has 21 staff	N/A	Yes. (But Commission is not established yet)	Yes

	Powers of Investigation			Private Enforcement	Competition Advocacy	
Can other governmental bodies submit a binding direction on competition cases?	Can the CA compel firms investigated for a possible antitrust infringement to provide documents?	Can the CA perform inspections in the premises of firms investigated to gather evidence? If yes, is warrant required?	Does the CA have the power to undertake unannounced inspections, suprise searches or raids?	Is a follow on action for damages possble? Is a stand-alone action possible?	Competition assessment	Market studies
Yes	Yes	Yes Yes	Yes, but only after obtaining a search warrant from a magistrate	Yes Yes	Yes. All new regulations with anti-competitive provisions are subject to competition assessment.	Yes
N/A	Yes	Yes Yes	No	Yes Yes	No. However, competition assessment is in the future work plan.	Yes
Yes	Yes	Yes No	No	Yes TBC	No	Yes
No.	Yes: Section 119 of Act.	Yes Yes	No	Yes Yes	No	Yes
No	Yes	Yes Yes	No	Yes TBC	No-	Yes
Yes	Yes	Yes Yes	No	Yes TBC	Yes. CCI has statutory duty to review regulation implemented by Governmental and Legislative Entities (GLEs), by issuing advisories, but its advice is not binding for GLEs.	Yes
No	Yes	No N/A	No	No No	No	Yes
No	Yes	Yes Administrative Insepction: No Criminal Inspection: Yes	Yes	Yes Yes	Yes. Competition assessment is conducted by government ministries and agencies when a regulation is established, amended or abolished. Government ministries and agencies fill a checklist for competition assessment. It is a part of Regulatory Impact Analysis managed by Ministry of Internal Affairs and Communications. The JFTC designed the checklist and gives advice to ministries and agencies to support the assessment.	Yes
No	Yes	Yes No	Yes	Yes No	Yes. All new regulations with anti-competitive provisions are subject to competition assessment; The Chairman of KFTC participates in the Regulatory Reform Committee as an ex officio commissioner.	Yes
Yes	Yes	Yes No	No	Yes TBC	Yes. The MyCC performs competition assessment on all new public policies that may have implications for competition.	Yes
Yes	Yes	Yes No	No	No No	No	Yes
Yes	Yes	Yes Yes	No	Yes TBC	No	Yes

Competition Rules and Institutional Setting (cont.)

Jurisdiction	Competition Law		Competition Authority (CA)						
	Name	Excluded Sector(s)	Name	Organizational Aspects				Independence in Decision-Making	
				Is the CA established under a ministry?	If No, what is the status of the CA? If Yes, how does it sit under the ministry ? (e.g. bureau, department, or an Office/ Agency with separate status)	Staff numbers	What is the annual budget of your CA in 2016?	Does the CA make a decision through a collegial system (Commission/Board)? How many members are there in your Commission/Board (incl. part time and non-part time members)?	Is any member of the Commission/ Board from other governmental bodies?
Nepal	The Competition Promotion and Market Protection Act, 2063 (2007)	N/A	Competition Promotion and Market Protection Board	Yes	Ministry of Commerce	N/A	N/A	Yes. Total members: 9	Yes
New Zealand	Commerce Act 1986	Yes	Commerce Commission	No	Independent Crown Entity	189 staff (2016/17)	Total for organisation, including Competition and Regulation functions (2016/2017): NZD 45,847,000	Yes. Total members: 10 (this includes 2 Cease and Desist Commissioners)	No
Pakistan	The 2010 Competition Act	No	Competition Commission of Pakistan	No	The head of the CA s at minister level.	175 staff (2017)	PKR 210 (fixed)	Yes. Total members: 2	No
Papua New Guinea	The Independent Consumer and Competition Commission Act, 2002	No	Independent Consumer and Competition Commission	No	The head of the CA is the Commissioner/CEO . The CA is established under the ICCC Act. However, it comes under the Minister for Treasury for reporting and budgeting purposes.	79 staff (2016)	PGK 12.1 million (2016)	Yes. Total members: 3 (1 full-time, 2 part-time)	No
Philippines	The Philippine Competition Act	Collective bargaining agreements	Philippine Competition Commission	No	The head of the CA is at minister level.	159 (2017)	PHP 420.9 million (2017)	Yes. Total members: 5	No
Singapore	The Competition Act (Chapter 50B)	Yes	Competition and Consumer Commission of Singapore	Yes	Ministry of Trade and Industry	60 staff (2016)	SGD 16.3 million (2016)	Yes. Total members: 9	Yes
Sri Lanka	Consumer Afairs Authority Act, No. 9 of 2003	No	Consumer Affairs Authority	Yes	Ministry of Industry and Commerce	328 staff (2016)	LKR 304 million (2016)	Yes. 13 members including Chairman	No
Chinese Taipei	The Fair Trade Act	No	Fair Trade Commission	No	The head of the CA is at minister level.	211 staff (2017)	Total (2016): NTD 337million	Yes. Total members: 7	No
Thailand	Trade Competition Act, B.E.2560 (2017)	No	Trade Competition Commission	No	CA has a legal entity status with its own operation, not reported to any ministry.	Expected to have 60-80 staff in the first year of operation (2018)	N/A	Yes. 7 members - working full-time.	No
Vietnam	The Competition Law No. 27/2004/ QH11	No	Vietnam Competition and Consumer Authority / Vietnam Competition Council	Yes	An agency under the Ministry of Industry and Trade	34 (2017)	Total (2016): VND 16 billion	Yes. Total number of Commissioners: 11 (2016)	Yes

	Powers of Investigation			Private Enforcement	Competition Advocacy	
Can other governmental bodies submit a binding direction on competition cases?	Can the CA compel firms investigated for a possible antitrust infringement to provide documents?	Can the CA perform inspections in the premises of firms investigated to gather evidence? If yes, is warrant required?	Does the CA have the power to undertake unannounced inspections, suprise searches or raids?	Is a follow on action for damages possble? Is a stand-alone action possible?	Competition assessment	Market studies
Yes	Yes	No No	No	Yes TBC	Yes	Yes or No (Please specify)
No	Yes	Yes Yes	Yes	Yes Yes	Yes. By the Ministry of Business, Innovation and Employment	No but the Government has approved the provision of a market studies power for the Commerce Commission. Legislation enabling the Commission to carry out market studies is expected to come into force in mid 2019
NO	Yes	Yes No	No	No No	No	Yes
No	Yes	Yes Yes	No	Yes Yes, by private parties.	Yes. ICCC makes submissions on any new bills or even after enactment, ICCC can still make submissions if there are anti-competitive provisions.	Yes
No	Yes	Yes Yes	No	Yes No	Yes. The PCC is mandated to review economic and administrative regulations as to whether or not they adversely affect competition.	Yes
Yes	Yes	Yes For inspections (without search powers) under s64-No For inspections (with search powers) under s65-Yes	Yes	Yes No	Yes. CCS advises government agencies on national needs and policies with respect to competition matters.	Yes
No	Yes	Yes No	No	No No	No	Yes
No	Yes	Yes No	The FTC may take unannounced inspections but has no power to conduct searches or raids.	Yes Yes	Yes. The draft of the regulations regarding to anti-competitive provisions will seek FTC's opinions.	Yes
No	Yes	Yes Yes in a criminal proceeding and no in an administrative proceeding.	Yes	Yes Yes	Yes, Commission has the power to provide recommendations and advice to ministers and the Cabinet on the national policy as well as to any government agencies regarding any rules or regulations that may have impact on competition.	Yes
No	Yes	Yes No	Yes	Yes Yes	Yes. New public policies that may have implications for competition are subject to competiion assessment in Vietnam.	Yes

Prohibition against Anti-Competitive Agreement

Jurisdiction	Prohibition against Anti-Competitive Agreements									
	Horizontal Agreements							Vertical Agreements		
	Prohibited conducts									
	Price fixing	Output restriction	Market allocation	Bid-rigging	Other prohibited conducts	Efficiencies are considered	Other exclusionary or mitigating factors considered	Does the regulation include a provision prohibiting resale price maintenance (RPM)?	1) If Yes, is RPM per se illegal? 2) If it's not per se illegal, what are the factors considered?	Are there other vertical agreements besides RPM that may be prohibited?
Australia	Yes	Yes	Yes	Yes	- Businesses from making or giving effect to a contract, arrangement or understanding that contains cartel provisions. - contracts, arrangements or understandings that are likely to substantially lessen competitionin a market, even if that conduct does not meet the stricter definitions of other anti-competitive conduct such as cartels.	Yes	•	Yes	Yes - per se illegal	Yes
Brunei	Yes	Yes	Yes	Yes	Agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Brunei Darussalam.	Yes	•	No	•	Yes
China	Yes	Yes	Yes	Yes	- Prohibiting undertakings in competition from concluding agreements on fixing or changing commodity prices, restricting the amount of commodities manufactured or marketed, splitting the sales market or the purchasing marekt for rwaw and semi-finished materials, restricting the purchase of new tcnologies or equipment, or the development of new technologies or products, joint boycotting of transactions, and other monopoligy agreements. - Prohibiting agreements on fixing the prices of commodities resold to a third party, restricting the lowest prices for commodities resold to a third party, and other monopoly agreements.	Yes	•	No	•	Yes
Fiji	Yes	Yes	Yes	Yes	Contracts, arrangements, or understandings restricting dealings or affecting competition; contracts, arrangements, or understandings in relation to prices; collective tendering; covenants affecting competition; contracts, arrangements, or understandings effecting supply or acquisition of goods or services.	Yes	Yes, on case by case basis	Yes	Yes	These are yet to be identified by CA.
Hong Kong	Yes	Yes	Yes	Yes	Agreements, concerted practice or decision of an association of undertakings that have the object or effect of preventing, restricting or distorting competition in Hong Kong.	Yes	•	No	•	Yes

Administrative Sanctions and Remedies			Criminal Sanctions		Leniency Programme	Settlement	Statistics	
Pecuniary penalty	Desist order	Others (e.g. order to redress damages, etc.)	Imprisonment	Fine (legal and natural person)	Do you have a leniency programme? If Yes, how many parties to the same infringement can benefit from the programme? (e.g. only the 1st applicant, up to 2 applicants, etc.)	Can the Authority formally dispose of a cartel investigation through a settlement or plea agreement?	Number of measures taken (not cases reviewed) against anti-competitive agreements from 2012 to 2016. Out of the total measures taken, how many are pecuniary penalties? If possible, how many out of the total are criminal sanctions?	In how many cases has the leniency program been used from 2012 to 2016?
Yes. For individual, up to AUD 500,000 per civil contravention and for businesses (one of the greatest) 1) up to AUD 10 million; 2) three times the total value of the benefits obtained by one or more persons and that are reasonably attributable to the offence or contravention; 3) 10% of the annual turnover of the company.	Yes	Injunctions, declarations, adverse publicity orders and orders disqualifying a person from managing corporations and community service orders.	Imprisonment of up to 10 years in jail	Fines up to AUD 360,000 per criminal cartel offence	Yes. More than 3	Yes	Total (2012-2016): 21 (pecuniary penalties:19; criminal sanctions: 2) Judgments ordering penalties: 17 (1 criminal)	N/A
Yes. Up to 10% or such other percentage of such turnover of the business of the undertaking in Brunei Darussalam for each year of infringement for such peroid.	Yes	•	Imprisonment of up to 12 months	Fines up to $10,000.	Yes. 1st only	TBC	TBC	N/A
No	No	•	N/A	The enforcement authorities shall impose a fine of not less than 1% but not more than 10% of tis sales achieved in the previous year. If such monopoly agreement has not been implemented, the undertaking may be fined not more than CNY 500,000.	Yes. NDRC - 1st: 100%, 2nd: 50%, subsequent applicants no more than 50% SAIC - 1st: 100%, other applicants: maybe granted a reduction but the amount may vary depending on the case.	N/A	Total (2012-2016): 22 *Out of the total measures taken, 21 are pecuniary penalties. Due to Chinese Anti-monopoly Law does not define Criminal responsibility, there is no Criminal penalty.	N/A
Yes	N/A - the Act is silent on issuing any Desist Order.		No. Secton 144C bars FCCC from criminally prosecuting.	No.	No	Yes, if the breach has been rectified and plenty paid.	0	0
Yes. 10% of the turnover of the undertaking concerned for each year in which the contravention occurred; or if the contravention occurred in more than 3 years, 10% of the turnover of the undertaking concerned for the 3 years in which the contravention occurred that saw the highest, second highest and third highest turnover.	Yes	Warning notice	N/A	N/A	Yes. 1st only	TBC	TBC	TBC

Prohibition against Anti-Competitive Agreement (cont.)

Jurisdiction	Prohibition against Anti-Competitive Agreements									
	Horizontal Agreements							Vertical Agreements		
	Prohibited conducts									
	Price fixing	Output restriction	Market allocation	Bid-rigging	Other prohibited conducts	Efficiencies are considered	Other exclusionary or mitigating factors considered	Does the regulation include a provision prohibiting resale price maintenance (RPM)?	1) If Yes, is RPM per se illegal? 2) If it's not per se illegal, what are the factors considered?	Are there other vertical agreements besides RPM that may be prohibited?
India	Yes	Yes	Yes	Yes	- No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services. - Prohibiting horizontal anti-competitive agreement. - Any agreement amongst enterprises or persons at different stages o levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services.	Yes	•	Yes	1) No; 2) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.	Yes
Indonesia	Yes	Yes	Yes	Yes	- Agreements to fix prices to be borne by the consumer/clients in the same relevant market and price discrimination, Agreements to boycott other enterprises from engaging in the same type of business or access to sell or buy goods and services, and exclusive contracts that restrict resale and supply. - Prohibiting other Agreements when they result in monopolistic practices or unfair business competitions	Yes, but efficiency is not considered in the hard-core cartel cases.	•	Yes	1) No; 2) economic efficiency and consumer welfare	Yes
Japan	Yes	Yes	Yes	Yes	Restricting business activities in such a manner as to fix, maintain or increase prices, or to limit production, technology, products, facilities or counterparties, thereby causing, contrary to the public interest, a substantial restraint of competition in any particular field of trade	Yes	•	Yes	1) No; 2) repeats a similar violation within 10 years after receiving a cease and desist order	Yes
Korea	Yes	Yes	Yes	Yes	- Determining terms and conditions for the transaction of goods or services, or for payment of prices thereof; - Preventing or restricting the installation of facilities or equipment necessary for the production; - Restricting kinds and standards of products when they are produced or traded; etc.	Yes	•	Yes	1) No; 2) efficiency enhancing effect and consumer welfare	Yes
Malaysia	Yes	Yes	Yes	Yes	Prohibiting horizontal or vertical agreements between enterprises insofar as the agreemet has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services.	Yes	Yes	No. However, Section 4(1) generally states on prohibition on vertical anti-competitive agreement.	1) No 2) Effect on competition and intentions of the parties (meeting of the minds)	Yes
Mongolia	Yes	Yes	Yes	Yes	- Agreements that mutually agree to fix prices; divide markets by location, production, serices, sales name and type of goods and purchasers; restrict services, supply, sale shipping, transportation, market entry, investment and technical reform, and rid-bids in public procurement. - agreements entered into between enterprises, where they are incompatible with the public interest or compose conditions for restricting competition.	No	N/A	No	N/A	No

Administrative Sanctions and Remedies			Criminal Sanctions		Leniency Programme	Settlement	Statistics	
Pecuniary penalty	Desist order	Others (e.g. order to redress damages, etc.)	Imprisonment	Fine (legal and natural person)	Do you have a leniency programme? If Yes, how many parties to the same infringement can benefit from the programme? (e.g. only the 1st applicant, up to 2 applicants, etc.)	Can the Authority formally dispose of a cartel investigation through a settlement or plea agreement?	Number of measures taken (not cases reviewed) against anti-competitive agreements from 2012 to 2016. Out of the total measures taken, how many are pecuniary penalties? If possible, how many out of the total are criminal sanctions?	In how many cases has the leniency program been used from 2012 to 2016?
Yes. up to 10% of the average turnover for the last three preceding financial years, upon each person or enterprises which are parties to such agreement or abuse. In case of cartel, penalty may be imposed up to three times of its profit for each year of the continuance of such agreement or 10 percent of its turnove for each year of the continuance, whichever is higher.	Yes	Modification in agreement; division of enterprise enjoying dominant position; other relevant order as it deems fit.	N/A	N/A	Yes. More than 3 parties to the same infringement	No	TBC	TBC
Yes. A Fine between IDR 1 billion and IDR25 billion	Yes	Imposition of compensation for damages	KPPU can refer serious infringements to the Prosecutor's Office (Article 4, 9-14, 16: imprisonment for less than 6 months, Article 5-8: less than 5 months)	KPPU can refer serious infringement to the Prosecutor's Office (Article 4, 9-14, 16: a fine between IDR 25 billion and IDR 100 billion, Article 5-8: a fine between IDR 5 billion and IDR 25 billion.	No	No	Total (2000-2016): 179 (hard-core cartels 22; non hard-core cartels 151; vertical agreements 6)	N/A
Yes. The JFTC does not have discretion on whether or not to order payment or over the amount of the surcharge. It depends on the type of conduct in question, operation scales and industry.	Yes	•	JFTC can refer serious infringements to the Prosecutor's Office (imprisonment for less than 5 years)	JFTC can refer serious infringement to the Prosecutor's Office (Individual/ enterprise: up to five million yen)	Yes. Up to 5 applicants	No	Total (2011-2015): 50 (hard-core cartels:49; anticompetitive vertical agreement:1)	TBC
Yes. Up to 10% of relevant turnover; If it is difficult to calculate turnover, a penalty surcharge up to KRW2 billion is imposed.	Yes	Order to publicly announce the infringement	KFTC can refer serious infringements to the Prosecutor's Office (imprisonment for less than 3 years)	KFTC can refer serious infringements to the Prosecutor's Office (natural/ legal person: up to KRW200 million)	Yes. 1st and 2nd applicants.	No	Total (2012-2016): 314 (pecuniary penalties:215; criminal sanctions:81; *pecuniary penalties are levied in parallel with other measures)	155 cases (2012-2016)
Yes. Up to 10% of the worldwide turnover of an enterprise over the infringement period.	Yes	(i) Undertakings (ii) Any other directions that CA considers appropriate and proportionate for that purpose i.e. public statements	N/A	N/A	Yes. 1st: 100%, second, third, or subsequent applicants: differs	No	Final decision : 15 (Section 39 : 9, Section 40:: 6) Undertaking : 6	2
Yes. Up to 6% of sales revenue of previous year of product and confiscation of all income and property illegally earned.	Yes	N/A	N/A	N/A	Yes. 1st and 2nd only	N/A	Total (2012-2016): 46 criminal sanctions: 0	0

Prohibition against Anti-Competitive Agreement (cont.)

Jurisdiction	Prohibition against Anti-Competitive Agreements									
	Horizontal Agreements							Vertical Agreements		
	Prohibited conducts									
	Price fixing	Output restriction	Market allocation	Bid-rigging	Other prohibited conducts	Efficiencies are considered	Other exclusionary or mitigating factors considered	Does the regulation include a provision prohibiting resale price maintenance (RPM)?	1) If Yes, is RPM per se illegal? 2) If it's not per se illegal, what are the factors considered?	Are there other vertical agreements besides RPM that may be prohibited?
Myanmar	Yes	Yes	Yes	Yes	Fixing the price directly or indirectly in purchase price or selling price or other commercial situation; making agreement on restraint on competition in the market; abusing by taking chance on the situation of dominance in the relevant market; conducting restraint on market by individual or organization; restricting and preventing to share market or resouces provision; restraining or controlling on production, market acquisition, technology and development of technology and investment; colusion in tendering or auctioning.	Yes	•	No	•	No
Nepal	Yes	Yes	Yes	Yes	Any agreement with any other person or enterprise that produces that identical or similar goods or services, to fix prices, limits production, controls the overall production of any goods or services, restrains the sale and distribution of any goods or services, or allocate the market, etc.	No	•	No	•	No
New Zealand	Yes	Yes	Yes	Yes (but not defined in the prohibtion caught by the other prohibitions	- No person shall enter into or give effect to an agreement that has the purpose of, or has or is likely to have the effect of, substantially lessening competition in a market. - No person shall enter into or give effect to an agreement that contains a cartel provision (price fixing, restricting output, market allocating).	Yes, in the process of determining the likelihood of public benefit in authorisation cases	Some exceptions; e.g. collaborative activity, vertical supply contracts, joint buying and promotion agreements (only exceptions to the per se prohibitions under Act. Can see collaborative activity clearnace that if granted by us covers both liability under the per se illegal (s30) and (s27) prohibtions	Yes	Yes	Yes
Pakistan	Yes	Yes	Yes	Yes	Undertakings from entering into any agreement in respect of the production, supply, distribution, acquisition or control of goods or the provision of services, which have the object or effect of preventing, restricting or reducing competition within the relevant market.	Yes	•	Yes (under §4 of the Act)	Price fixing is a per se violation	Yes
Papua New Guinea	Yes	Yes	Yes	Yes	- any contract, arrangement or understanding or any covenant that has the purpose or has the effect or is likely to have the effect of substantially lessening competition in a market. - contract, arrangement or understanding between competitors that has the purpose of preventing, restricting or limiting the supply of goods or services from particular persons or classes of persons who are in competition with one or more of the parties.	Yes	•	Yes	1) Yes	Yes

Administrative Sanctions and Remedies			Criminal Sanctions		Leniency Programme	Settlement	Statistics	
Pecuniary penalty	Desist order	Others (e.g. order to redress damages, etc.)	Imprisonment	Fine (legal and natural person)	Do you have a leniency programme? If Yes, how many parties to the same infringement can benefit from the programme? (e.g. only the 1st applicant, up to 2 applicants, etc.)	Can the Authority formally dispose of a cartel investigation through a settlement or plea agreement?	Number of measures taken (not cases reviewed) against anti-competitive agreements from 2012 to 2016. Out of the total measures taken, how many are pecuniary penalties? If possible, how many out of the total are criminal sanctions?	In how many cases has the leniency program been used from 2012 to 2016?
Yes.	Yes	•	Imprisonment up to 3 years	Fine up to 150 lakhs Kyat	TBC	No	0	0
Yes. Up to NPR 25,000	TBC		N/A	N/A	No	TBC	TBC	TBC
Yes. For an individual, up to NZD 500,000. For a body corporate: the greater of 1) NZD 10 million or 2) either 3 times the value of any commercial gain resulting from the contravention; or if the commercial gain cannot be readily ascertained, 10% of the turnover of the body corporate and all of its interconnected bodies corporate in each accounting period in which the contravention occurred.	Yes	Court can exclude certain persons from managing a body corporate; can order a person to pay exemplary damages	N/A	N/A	Yes. 1st only for immunity.Others can get cooperation benefits/discounts	Yes	Total (2012-2016): The Commission took 11 cases of enforcement action for breaches of the price-fixing provisions, resulting in NZD 44.875 million in pecuniary penalities.	22 applications, with 12 markers perfected (2012-2016)
Yes. Up to PKR 75 million or 10% of the annual turnover of the undertaking.	Yes (please see §31 and §32 of the Act)	Annual or amend the agreement	Only in case of failure to comply with an Order (§38(5))	Only in case of failure to comply with an Order (§38(5))	Yes. 1st only.	For Pakistan, competition violations are administrative offences, not criminal. Hence settlements do not happen in Pakistan	TBC	1
N/A	Yes	Yes. This is available at the end of the investigation where the concerned party /ICCC maybe required to issue a media release, correcting the breach.	Imprisonment up to 6 months if prosecuted summarily and up to two years if prosecuted on indictment	Fine up to K50,000.00 if prosecuted summarily and K100,000.00 if prosecuted on indictment	No	We do not have specific cartel provisions. However, we have dealt with exclusive dealings and administratively settled them.	Nil. We have only taken administrative measures. Pecuniary penalties and criminal sanctions are only imposed by the courts.	We will launch our Leniency Program soon

Prohibition against Anti-Competitive Agreement (cont.)

Jurisdiction	Prohibition against Anti-Competitive Agreements									
	Horizontal Agreements							Vertical Agreements		
	Prohibited conducts									
	Price fixing	Output restriction	Market allocation	Bid-rigging	Other prohibited conducts	Efficiencies are considered	Other exclusionary or mitigating factors considered	Does the regulation include a provision prohibiting resale price maintenance (RPM)?	1) If Yes, is RPM per se illegal? 2) If it's not per se illegal, what are the factors considered?	Are there other vertical agreements besides RPM that may be prohibited?
Philippines	Yes	Yes	Yes	Yes	Prohibiting per se prohibited agreements, agreements substantially lessening competition, and agreements having the object or effect of substantially preventing, restricting or lessening competition. However, agreements that contribute to improving the production or distribution of goods and services, or to promoting technical or economic prorress, while allowing consumers a fair share of th resulting benefits, are not necessarily deemed as a violation of the PCA.	Yes. Except for price fixingand bid-rigging which are prohibited per se under the PCA.	•	No	•	Yes
Singapore	Yes	Yes	Yes	Yes	Agreements, decisions or concerted practices may have the object or effect of preventing, restricting or distorting competition within Singapore	Yes	•	No, vertical agreements are excluded under the Section 34 Prohibition on Anti-Competitive Agreements		
Sri Lanka	Yes	Yes	Yes	Yes	A person in the course of business, pursues a course of conduct which of itself or when taken together with a course of conduct pursued by persons associated with him, has or is intended to have or is likely to have the ffect of restricting, distorting or preventing competition in connection with the production, supply or acquisition of goods in silence or the supply or securing of services in Sri Lanka.	No	•	No		No
Chinese Taipei	Yes	Yes	Yes	Yes	- contract, agreement or any other form of mutual understanding by competing enterprises at the same production/marketing stage to jointly determine the price, technology, products, facilities, trading counterprarts, or trading territory. - business activities of parties to the concerted action which affect the market function with respect to production, supply and demand of goods and services.	Yes	•	Yes	1) No; 2) Factors considered include encouragement of downstream enterprises to enhance efficiency or quality of pre-sale service; prevention of free-riding effects; promotion of entries of new businesses or brands; stimulation of competition between brands; other reasonable economic grounds concerning competition.	Yes
Thailand	Yes	Yes	Yes	Yes	Prohibiting any business operator from cooperating with another business operator to engage in any action amountnig to monopoly, reduction of competition or restriction of competition in the market.	Yes	•	The provisions can be interpreted to prohibit RPM.	1) No. 2) Factor to be considered is whether RPM reduces or restricts competition in the market.	Yes

Administrative Sanctions and Remedies			Criminal Sanctions		Leniency Programme	Settlement	Statistics	
Pecuniary penalty	Desist order	Others (e.g. order to redress damages, etc.)	Imprisonment	Fine (legal and natural person)	Do you have a leniency programme? If Yes, how many parties to the same infringement can benefit from the programme? (e.g. only the 1st applicant, up to 2 applicants, etc.)	Can the Authority formally dispose of a cartel investigation through a settlement or plea agreement?	Number of measures taken (not cases reviewed) against anti-competitive agreements from 2012 to 2016. Out of the total measures taken, how many are pecuniary penalties? If possible, how many out of the total are criminal sanctions?	In how many cases has the leniency program been used from 2012 to 2016?
Yes. Up to PHP 100 million for first offenses, and a fine between PHP 100 million and PHP 250 million for second offenses. It can be tripled if the violation involves the trade or movement of basic necessities and prime commodities, defined in The Price Act.	Yes	•	Imprisonment from 2 to 7 years	Fine between PHP 50 million to PHP 250 million	Yes. A leniency program separately under the PCC and the DOJ-OFC is provided for by law, but these agencies have yet to promulgate their respective leniency rules.	Leniency rules have yet to be drafted.	None taken under the PCA, given the transitory provision effective until August 8, 2017.	Leniency rules have yet to be drafted.
Yes. Up to 10% of the turnover of the undertaking in Singapore for each year of infringement	Yes	Infringement decisions by CCCS are publicly announced	N/A	N/A	Yes	Yes	Total (2012-2016): 6 (hard-core cartels:5; other horizontal agreements:1)	2
N/A	Yes	If it is not against public interest, authorize the anti-competitive agreements but if not, terminate.	Yes	For individual, fine from LKR 5,000 to 50,000 for first offence and from LKR 10,000 to 100,000 for subsequent offence. For body corporate, from LKR 50,000 to 1,000,000 for first offence and from LKR 100,000 to 2,000,000 for subsequent offence.	No	N/A	N/A	N/A
Yes. From NTD 100,000 to NTD 50 million. For serious violations, incldluding abuse of dommiance and concerted action, up to 10% of the total sales income of an enterprise in the previous year.	Yes	The FTC may order illegal enterprises to take necessary corrective actions.	(1) concerted action: If any enterprise violating the provisions of Article 15 is ordered by the FTC pursuant to paragraph 1 of Article 40 to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and after the lapse of such period, shall such enterprise fail to cease therefrom, rectify such conduct, or take any necessary corrective action, or after its ceasing therefrom, shall such enterprise have the same violation again, the actor shall be punished by imprisonment for not more than three years or detention, or by a fine of not more than NTD 100 million, or by both.	(2) RPM and other restriction competition: If any enterprise violating the provisions of Article 19 or Article 20 is ordered by the FTC pursuant to paragraph 1 of Article 40 to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and after the lapse of such period, shall such enterprise fail to cease therefrom, rectify such conduct, or take necessary corrective action, or after its ceasing therefrom, shall such enterprise have the same violation again, the actor shall be punished by imprisonment for not more than two years or detention, or by a fine of not more than NYD 50 million, or by both.	Yes. One applicant for immunity fine and up to 4 reduction fine applicants.	No.	Not available	3 cases (2012-2016)
Yes. Up to 10% of turnover in the year offence committed.)	Yes	No	TCC will refer infringements on hardcore cartel to the Prosecutor's Office (imprisonment not exceeding 2 years)	TCC will refer infringements on hardcore cartel to the Prosecutor's Office (a fine not exceeding 10% of turnover in the year offence committed)	No. But settlement of cases by TCC is possible under certain conditions.	Yes. Settlement of cases by TCC is possible under certain conditions.	No measures have been taken under the law of 1999.	No leniency program has been in place under the law of 1999.

Prohibition against Anti-Competitive Agreement (cont.)

Jurisdiction	Prohibition against Anti-Competitive Agreements									
	Horizontal Agreements							Vertical Agreements		
	Prohibited conducts									
	Price fixing	Output restriction	Market allocation	Bid-rigging	Other prohibited conducts	Efficiencies are considered	Other exclusionary or mitigating factors considered	Does the regulation include a provision prohibiting resale price maintenance (RPM)?	1) If Yes, is RPM per se illegal? 2) If it's not per se illegal, what are the factors considered?	Are there other vertical agreements besides RPM that may be prohibited?
Vietnam	Yes (when the combined marketshare is over 30%)	Yes	Yes	Yes	Prohibiting agreements which prevent, impede or do not allow other enterprises to participate in the market or to development business; agreements which exclude from the market other enterprises which are not parties to the agreement; collusion in order for one or more parties to win a tender for supply for goods and services.	Yes	•	No	•	Yes

Administrative Sanctions and Remedies			Criminal Sanctions		Leniency Programme	Settlement	Statistics	
Pecuniary penalty	Desist order	Others (e.g. order to redress damages, etc.)	Imprisonment	Fine (legal and natural person)	Do you have a leniency programme? If Yes, how many parties to the same infringement can benefit from the programme? (e.g. only the 1st applicant, up to 2 applicants, etc.)	Can the Authority formally dispose of a cartel investigation through a settlement or plea agreement?	Number of measures taken (not cases reviewed) against anti-competitive agreements from 2012 to 2016. Out of the total measures taken, how many are pecuniary penalties? If possible, how many out of the total are criminal sanctions?	In how many cases has the leniency program been used from 2012 to 2016?
Yes. Up to 10% of the total turnover of the organization or individual in breach in the financial year preceding the year in which the prohhibited practice took place	No (just apply remedy measures such as removing the violating terms from the contract/ transaction)	•	The comptition legislation offender could be subject an imprisonment sentence up to 5 years.	Fine: maximum VND 3 billion for individual and VND 5 billion for the legal entity	No. However, a voluntary declaration of a breach prior to the detection by the VCA constitutes an extenuating circumstances when dealing with a breach of the VCL.	No	1 case (pupil insurance case: involving parties terminated their violations)	No

Prohibition against Abuse of Dominance

Jurisdiction	Prohibition against Abuse of Dominance			
	Market Dominance			Prohibited Conducts
	Is there any presumptive rule for determining market dominance?	1) Market Share threshold 2) Other threshold	Are there other factors considered to determine market dominance?	Please state types of conducts prohibited
Australia	No	N/A	Yes	1) Eliminating or substantially damaging a competitor of the corporation or of a body corporate that is related to the corporation in that or any other market, 2) preventing the entry of a person into that or any other market, 3) deterring or preventing a person from engaging in competitive conduct in that or any other market.
Brunei	N/A	N/A	Yes	1) Predatory behavior towards competitors, 2) limiting production, 3) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage, 4) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which have no connection with the subject of the contracts.
China	Yes	1) 1 corporation: 1/2; 2 corporations: 2/3; 3 corporations: 3/4	Yes	1) selling commodities at unfairly hgh prices or buying commodities at unfairly low prices, 2) selling commodities at prices below cost, 3) refusing to enter into transactions with their trading counterparts, 4) allowing their trading counterparts to make transactions exclusively with themselves or with the undertakings designated by them, 5) conducting tiein sale of commodities or adding other unreasonable trading conditions to transactions, 6) applying differential prices and other transaction terms among their trading counterparts who are on an equal footing, 7) other acts of abuse of dominant market positions, confirmed as such by the enforcement authorities.
Fiji	Yes	In Fiji, the CA is working on the formulation of guidline.	Yes: competitiors in the market, any entry barrier, existense of adjacent markets, similar products in the market, market share, similar businesses, etc	(a) eliminating or substantially damaging a competitor of such person or of a body corporate that is related to such person in that or any other market; (b) preventing the entry of a person into that or any other market; or (c) deterring or preventing a person from engaging in competitive conduct in that or any other market.
Hong Kong	No	N/A	Yes. The competition ordiance: market share, the undertaking's power to make pricing and other decisions and any barriers to entry as factors to be taen into account. Competition guidelines: market concentration, potential entry or expansion, regulatory or legal barriers, structural barriers, strategic barriers, countervailing market power in addition to market share.	1) Undertaking that has a substantial degree of market power in a market must not abuse that power by engaging in conduct that has as its object or effect of preventing, restricting or distorting competition in Hong Kong.
India	No	N/A	Yes	1) Directly or indirectly imposing unfair or discriminatory condition in purchase or sale of goods or service or price in purchase or sale of goods or service, 2) lilmiting or restricting production of goods or provision of services or market share for or technical or scientific development relating to goods or services to the prejudice of consumers, 3) indulging in pratice resulting in denial of market access, 4) making conclusion of contracts subject to acceptance by other parties of supplementary obligations, 5) using its dominant position in one relevant market to enter into, or protect other relevant maket.
Indonesia	Yes	1) 1 corporation: more than 50%; 2 or 3 corporations: more than 75%;	No	1) Monopoly and monopsony: an enterprise in a monopoly and monopsonty position is prohibited. 2) Dominant position: an enterprise in a dominant position, businesses owing majority shares in several companies, businesses engaging, either individually or jointly with other businesses, and businesses supplying products at a price below coast or setting extremely low prices.
Japan *Note that these answers describe the regulation of private monopolization.	No	The JFTC, when deciding whether to investigate a case as exclusionary private monopolisation, will prioritise the case where the market share exceeds approximately 50% after the commencement of such conduct and where the conduct is deemed to have a serious impact on the lives of the citizenry, comprehensively considering the relevant factors.	Yes: •Conditions of competitors •Potential competitive pressure, such as the degree of entry barriers and the degree of substitutability between the entrant's and the enterprise's products. •Users' countervailing bargaining power •Efficiency •Extraordinary circumstances to assure consumer interests	1) Practice by which an enterprise substantially restrains competition in any particular field of trade, contrary to public interest, by excluding or controlling the business practices of other enterprises.

Administrative Sanctions and Remedies				Criminal Sanctions		Statistics
Can the CA accept remedies or issue commitment decisions?	Pecuniary penalty	Desist order	Other (e.g. damage compensation order, order to publicly announce the infringement)	Imprisonment	Fine (legal and natural person)	Number of measures taken against abuse of dominance from 2012 to 2016. Out of the total measures taken, how many are pecuniary penalties? If possible, how many out of the total are criminal sanctions?
Yes	a penalty, whichever is greater: 1) AUD 10 million, 2) three times the total valu of the benefits obtained by one or more persons, 3) where benefits are not fully determined, 10% of the annual turnover of the company in the preceding 12 months.	Yes	•	N/A	N/A	Total (2012-2016): 2 Number of judgments ordering penalties: 0
Yes	a pecuniary penalty in respect of the infringement as the Commission may determine.	Yes	•	Imprisonment not exceeding 12 months	Fine not exceeding $10,000	N/A
Yes	More than 1% but less than 10% of its sales achieved in the previous year.	Yes	N/A	N/A	N/A	22 measures taken from 2012-2016. Out of the total measures taken, 18 are pecuniary penalties. *Due to Chinese Anti-monopoly Law does not define Criminal responsibility, there is no Criminal penalty.
Yes	Body corporate not exceed FJD 1m. Other than body corporate FJD 300,000.00	No	Damage compensation order	No	No.	0
Yes	a pecuniary penalty with maximum 10% of the undertaking's turnover for each year in which a contravention occurred for a maximum of 3 years	Yes	Disqualifying the person from being a director of a company or involved in the manageent of a company for up to 5 years	N/A	N/A	TBC
Yes	•	Yes	N/A	N/A	N/A	CCI had decided in 40 cases of Abuse of Dominace under Section 27 of the Act. Most fthe cases had pecunary penalty imposed.
Yes	No	Yes	•	Imprisonment up to 6 months	Fine between IDR 25 billion and IDR 100 billiion	Total (2000-2016): 31
Yes	Yes. The JFTC does not have discretion on whether or not to order payment or over the amount of the surcharge. It depends on the type of conduct in question, operation scales and industry.	Yes	•	Imprisonment for up to 5 years	Natural person: up to JPY 5 million Judicial person: less than JPY 500 million	Total (2012-2016): 5; (Private Monopolization: 1)

Prohibition against Abuse of Dominance (cont.)

Jurisdiction	Prohibition against Abuse of Dominance			
	Market Dominance			Prohibited Conducts
	Is there any presumptive rule for determining market dominance?	1) Market Share threshold 2) Other threshold	Are there other factors considered to determine market dominance?	Please state types of conducts prohibited
Korea	Yes	1) 1 corporation: more than 50%; 2 or 3 corporations: more than 75%;	Yes: Whether there is an entry barrier; relative scale of competing business, similar products, existence of adjacent market, etc.	1) Unjustly determining, maintaining, or changing the price of goods or services; 2) Unjustly controlling the sales of goods or the supply of services; 3) Unjustly hindering the business activity of other enterpriser; 4) Unjustly impeding new competitors' market entry; 5) Transacting with the purpose of unjustly excluding competitors or unjustly and substantially impairing consumers' interest
Malaysia	Yes	1) Market share above 60%	Yes. (i) entry barrier - sunk costs (ii) regulatory costs - to comply with law i.e. licence requirement (iii) economies of scale (iv) ability to innovate	1) direct of indirect impostion of unfair prices or trading conditions on any supplier or customer, 2) limiting or controlling production, market outlets or market access, technical or technological development, or investment, 3) refusing to suppy to a particular enterprise, 4) applying different conditions to equivalent transactions with other trading partners, etc.
Mongolia	Yes	1 company or united company: more than 33.3% of market threshold	No	1) Restricting production or sales of good; fixing excessive prices unreasonably; price discrimination against enterprises selling similar kinds of product; predatory pricing; sale of its products on condition of excluding its competitors, 2) changing the amount and size of goods and products supplied to the market; and changing sales price to consumers of particular goods and products.
Myanmar	Yes	Not define yet.	Yes	1) controlling on purchase price or selling price of goods or fees of services, 2) restraining servics or production or restricting of opportunities in purchase and sale of goods or specifying compulsory terms and conditions directly or indirectly for other businessmen, for the purpose of price controlling, 3) suspending or reducing or restraining services, production, purchasng, distribution, transfer or import without any appropriate reasons or destroying or causing damage the goods to reduce the quality in order to lessen under the demand, 4) controlling nd restraining and area where goods or services are traded in order not to enter other businessmen into the market and to control market share, and 5) interfering in carrying out business of other person without fairness.
Nepal	No	N/A	TBC	1) abuse, or cause to be abuse, such position with intent to control competition in the production and distribution of any goods, 2) exclusive dealing and market restriction
New Zealand	No	N/A	Look at whether the person has "a substantial degree of power in a market"	Taking advatage of substantial market power for the purpose of: 1) restricting the entry of a person into that or any other market; or 2) preventing or deterring a person from engaging in competitive conduct in that or any other market; or 3) eliminating a person from that or any other market.
Pakistan	Yes	40% - Unilateral Merger (Please clarify)	Yes. The ability to affect the market in terms of pricing could happen at lower levels of market share	1) limiting production or sales, unreasonable price increases, price discrimination without objective justifications, making the sale of goods or services conditional on the purchase of other goods or services, predatory pricing, boycotting or excuding any other undertakig, or refusing to deal
Papua New Guinea	No	N/A	Yes. Degree of barriers to entry and expansion, countervailing powers, ability to increase prices substantially without constraint	1) restricting entry into that or any other market, 2) preventig or deterring person from engaging in competitive conduct in that or any other market, 3) eliminating a person from that or any other market

Administrative Sanctions and Remedies				Criminal Sanctions		Statistics
Can the CA accept remedies or issue commitment decisions?	Pecuniary penalty	Desist order	Other (e.g. damage compensation order, order to publicly announce the infringement)	Imprisonment	Fine (legal and natural person)	Number of measures taken against abuse of dominance from 2012 to 2016. Out of the total measures taken, how many are pecuniary penalties? If possible, how many out of the total are criminal sanctions?
Yes	a penalty surcharge not exceeding 3% of the relevant turnover; If it is difficult to calculate turnover, a penalty surcharge up to KRW1 billion is imposed.	Yes	Order to publicly announce the infringement	KFTC can refer serious infringements to the Prosecutor's Office (imprisonment for less than 3 years)	KFTC can refer serious infringements to the Prosecutor's Office (natural/ legal person: up to KRW200 million)	Total (2012-2016): 6 (pecuniary penalty:1; criminal sanctions:1; *pecuniary penalties are levied in parallel with other measures)
Yes	a penalty not exceeding 10% of the worldwide turnover of an enterpriseover the infringement period.	Yes	N/A	N/A	N/A	Total (2012-2017): Section 10 : 24 cases
Yes	activities of monopolistic or dominant position: Up to 4%, enterprises that do not notify numbers and amounts of products or changing of price: Up to 3% of sales revenue of previous year of product and confiscation of all income and property illegally earned.	No	N/A	N/A	N/A	Total (2012-2015): 15 Total pecuniary penalties were equal to MNT 16,2 billion.
Yes	Yes	Yes	Warning, specified fine, and coordinating with relevant ministries to close the operationof business temporarily or permanently.	Imprisonment not exceeding two years	Fine not exceeding Kyat one hundred lakhs	0
Yes	a pecuniary penalty not exceeding 500,000 rupees	Yes		N/A	N/A	TBC
No	Yes. For an individual, up to NZD 500,000. For a body corporate: the greater of 1) NZD 10 million or 2) either 3 times the value of any commercial gain resulting from the contravention; or if the commercial gain cannot be readily ascertained, 10% of the turnover of the body corporat and all of its interconnected bodies corporate.	Yes	Court can exclude certain persons from managing a body corporate; can order a person to pay exemplary damages	No	No	Total (2012-2016): There was one Court judgement on taking advantage of market power, resulting in $12 million in pecuniary penalities. The Commission commenced no other proceedings for abuse of dominance cases during this time period.
Yes	a pecuniary penalty not exceeding PKR 75 million or 10% of the annual turnover of the undertaking	Yes	Actions to restore competition and not to repeat the prohibition or engage in any practice with a similar effect.	Only in case of failure to comply with an Order (§38(5))	Only in case of failure to comply with an Order (§38(5)), with a fine up to PKR 25 million	Total (2010-2015): 14
No	Remedies are not available administratively but ICCC can bring a court action and penalties can be imposed for antitrust infringement	Yes	Yes, the court decision will be a public decision	Under General Penalty, imprisonment for a term not exceeding 6 months (summary prosecution) or 2 years (on indictment)	Under General Penalty, PGK 50,000 (summary conviction) or PGK 100,000 (on indictment)	0

Prohibition against Abuse of Dominance (cont.)

Jurisdiction	Prohibition against Abuse of Dominance			
	Market Dominance			Prohibited Conducts
	Is there any presumptive rule for determining market dominance?	1) Market Share threshold 2) Other threshold	Are there other factors considered to determine market dominance?	Please state types of conducts prohibited
Philippines	Yes	1) Market share above 50%	Yes	1) selling goods or services below cost with the object of driving competition out of the relevant market, 2) imposing barriers to entry or preventing competitors from growing within the market in an anti-competitive manner, 3) making the other parties accept a transaction which has no connection to them, 4) setting prices or other terms or conditions that unreasonably discriminate between customers or sellers of the same goods or services, 5) making the supply of particular goods or services dependent upon the purchase of other goods or services from the supplier, which have no direct connection with the main goods or services to be supplied, 6) directly or indirectly imposing unfairly low purchase prices upon goods or services provided by marginalized service providers and producers, 7) directly or indirectly imposing an unfair purchase or selling price on competitors, customers, suppliers, or consumers, 8) limiting production, markets or technical development.
Singapore	No	1) Market share above 60%	Yes: 1) to profitably sustain prices above competitive levels, 2) to restrict output or quality below competitive levels	1) Predatory behavior towards competitors, 2) limiting production, 3) markets or technical development to the prejudice of consumers, 4) applying dissimilar conditions to equivalent transactions with other trading parties, 5) subjecting the conclusion of contracts to acceptance of supplementary obligations not related to the contract
Sri Lanka	No	N/A	Yes	1) prohibition of Anti-Competitive Practice include abuse of dominance as well as anti-competitive agreements
Chinese Taipei	Yes	(1) market share threshold: the market share of the enterprise in the relevant market reaches one half of the market; the combined market share of two enterprises in the relevant market reaches two thirds of the market; and the combined market share of three enterprises in the relevant market reaches three fourths of the market (2)Under any of the circumstances of previous market share thresholds, where the market share of any individual enterprise reaches one tenth of the relevant market or where its total sales in the preceding fiscal year are less than the threshold amount as publicly announced by the FTC, such enterprise shall not be deemed as a monopolistic enterprise. Furthermore, the threshold amount announced by the FTC is NTD 2 billion.	An enterprise may still be deemed a monopolistic enterprise by the FTC if the establishment of such enterprise or any of the goods or services supplied by such enterprise to the relevant market is subject to legal or technological restraints, or there exists any other circumstance under which the supply and demand of the market are affected and the ability of others to compete is impeded.	Monopolistic enterpises are prohibited from engaging in price-fixing, directly or indirectly preventing other enterprises from competing by unfair means, extracting an unjustified preferential treatment from a trading counterpart, or other abusive conduct.
Thailand	Yes	1) market share threshold and 2) sales revenue threshold. Both to be prescribed in an implementing regulation issued by the Commission.	No	1) unfairly fixing or maintaining purchasing or selling prices of a good or service; 2) imposing unfair compulsory trading conditions; 3) suspending, reducing or restricting supply of service, production, sale, purchase, delivery or importation into the Kingdom without reasonable cause; 4) interfering in the business operation of others without reasonable cause.)

Administrative Sanctions and Remedies				Criminal Sanctions		Statistics
Can the CA accept remedies or issue commitment decisions?	Pecuniary penalty	Desist order	Other (e.g. damage compensation order, order to publicly announce the infringement)	Imprisonment	Fine (legal and natural person)	Number of measures taken against abuse of dominance from 2012 to 2016. Out of the total measures taken, how many are pecuniary penalties? If possible, how many out of the total are criminal sanctions?
Yes	Yes. Up to PHP 100 million for first offenses, and a fine between PHP 100 million and PHP 250 million for second offenses. It can be tripled if the violation involves the trade or movement of basic necessities and prime commodities, defined in The Price Act.	Yes	N/A	N/A	N/A	TBC
Yes (voluntary undertakings accepted)	Yes. Up to 10% of the turnover of the undertaking in Singapore for each year of infringement	Yes	Infringement decisions by CCCS are publicly announced	N/A	N/A	Total (2012-2016): 0 (unilateral conduct)
Yes	N/A	Yes	Authorize/terminate such anti-competitive practice	1) Individual - First offence: less than one year, subsequent offence: less than two years	1) Individual - first offence: 5,000-50,000 rupees, subsequent offence: 10,000-100,000 rupees, 2) body corproate - first offence: 50,000-1,000,000 rupees, subsequent offence: 100,000-2,000,000 rupees.	TBC
Yes	a penalty from NTD 100,000 to NTD 50 million	Yes	•	If any enterprise violating the provisions of Article 9 is ordered by the FTC pursuant to paragraph 1 of Article 40 to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and after the lapse of such period, shall such enterprise fail to cease therefrom, rectify such conduct, or take any necessary corrective action, or after its ceasing therefrom, shall such enterprise have the same violation again, the actor shall be punished by imprisonment for not more than three years or detention, or by a fine of not more than NTD 100 million, or by both.		1) Not available 2) pecuniary penalties are NTD86 million (pecuniary penalties are levied in parallel with other meausres) 3) no criminal sanctions
N/A because abuse of dominance is subject to criminal proceedings with possibility of settlement by TCC under certain conditions.	N/A because abuse of dominance is subject to criminal proceedings with possibility of settlement by TCC under certain conditions.	Yes	N/A	TCC will refer infringements on abuse of dominance to the Prosecutor's Office (imprisonment not exceeding 2 years)	TCC will refer infringements on abuse of dominance to the Prosecutor's Office (a fine not exceeding 10% of turnover in the year offence committed	No measures have been taken under the law of 1999.

Prohibition against Abuse of Dominance (cont.)

Jurisdiction	Prohibition against Abuse of Dominance			
	Market Dominance			Prohibited Conducts
	Is there any presumptive rule for determining market dominance?	1) Market Share threshold 2) Other threshold	Are there other factors considered to determine market dominance?	Please state types of conducts prohibited
Vietnam	Yes	1) 1 corporation: 30%; 2 corporations: 50%, 3 corporations: 65%, 4 corporations: 75%	Yes: 1) financial capability of the enterprise, 3) financial capability of the economic organization/ individual that has established the enterprise, 3) financial capability of the organization/individual that has the right to control or dominate the operation of the enterprise, 4) financial capability of the parent company, 5) technological capability, 6) the right to own or use industrial property objects, 7) the scope of the distribution network	1) practices of predatory pricing, fixing unreasonable price or minimum re-selling prices, restricting the production or distribution, impeding technical or technological development, imposing discriminatory commerical conditions to the same transactions, imposing to other enterprises terms of contract or obligations not relevant to the subject matter of the contract, and preventing market participation by new competitors, 2) monopolistic enterprises imposing disadvantageous conditions on consumers and abusing its position to change or cancel unilaterally contract terms without legitimate reasons.

Administrative Sanctions and Remedies				Criminal Sanctions		Statistics
Can the CA accept remedies or issue commitment decisions?	Pecuniary penalty	Desist order	Other (e.g. damage compensation order, order to publicly announce the infringement)	Imprisonment	Fine (legal and natural person)	Number of measures taken against abuse of dominance from 2012 to 2016. Out of the total measures taken, how many are pecuniary penalties? If possible, how many out of the total are criminal sanctions?
Yes	Up to 10% of the total revenue in the financial year prior to the year which the breach was committed by the enterprise in a monopoly position.	Yes	Removal of illegal terms and conditions from a contract or business transaction; restructure of an enterprise which abuses its dominant marekt position	No	No	Total (2011-2016): 2

Merger Control

Jurisdiction	Merger Control			
	Notification Regime			Legal deadline to review
	Is the notification mandatory? If Yes, please answer the following questions as well.		Is the notification pre or post merger?	Regardless of the notification regime, what is the legal deadline for the CA to review a merger?
	When does the notification obligation arise?	What is the deadline for notification?		
Australia	Not mandatory		N/A	Informal merger review: no fixed timeframe Formal merger clearance: within 40 working days of receiving a complete application but may be extended by 20 working days. Merger authorisation: within 3 months of receiving a complete application but may be extended to 6 months in complex cases.
Brunei	Mandatory	N/A	Pre-merger	Within 14 days of the date of the notice
China	Mandatory where the intended concentration reaches the threshold level as set by the State Council (Please specify the threshold).	N/A	Pre-merger	The authority has to make a preliminary review of the merger within 30 days. If the authority decides to conduct further review, it has to be done within 90 days but maybe extended by a maximum of 60 days in certain circumstances.
Fiji	Not mandatory		Pre-merger	Within 14 days of the date of notice
Hong Kong	Not mandatory		Pre- and Post- merger	Please specify.
India	Mandatory (for individual, the threshold is INR 20 billion assets and INR 60 billion turnover, and for group it is INR 80 billion asseets and INR 240 billion turnover).	Notification should be made anytime before consummation	Pre-merger	CCI shall review the merger within 30 working days of receipt of the said notice. For phase 2 investigation, CCI should review within 210 days the receipt of notice.
Indonesia	Mandatory if the combined value of the assets exceeds IDR 2.5 trillion; and/or the combined value of the sales turnover exceeds IDR 5 trillion.	Notification should be made within 30 working days after merger has legally taken effect.	Pre- and Post-merger	KPPU shall review the merger within 90 working days from the date of receipt of complete form and documents.
Japan	Mandatory if the total domestic sales amount thresholds provided by the Antimonpoly Act are exceeded.	Notification should be made in advance of its merger plan pursuant to the Rules of the Fair Trade Commission.	Pre-merger	Initial review / Phase I : 30 days Extended review / Phase II : 90 days after the JFTC receives all reports requested, etc.
Korea	Mandatory where a company whose total amount of assets or sales amounts to KRW 200 billion or more plans to pursue an M&A with another company whose total amount of assets or sales amounts to KRW 20 billion or more.	Notification should be made within 30 days after the date of the transaction.	Pre-merger	KFTC has to review the merger within 30 days from the notification, but the period can be extended to 120 days in case of necessity.
Malaysia	Competition Act 2010 (Act 712) and Competition Commission Act 2010 (Act 713) do not regulate mergers.			
Mongolia	Mandatory for a dominant business entity	If the comapy is a dominant business entity, it should get permision from CA before merger.	Pre-merger	Within the period of 30 days, but extendable up to another 30 days

Substantive Assessment	Remedies	Statistics
Legal test. Are there any 'safe harbours' within which a merger is unlikely to raise competition concerns? Please specify.	Administrative remedies	1) Number of cases reviewed from 2012 to 2016
		2) Number of clearance with remedies 3) Number of abandonment
Substantial Lessening of Competition test	ACCC does not impose remedies on the merger parties.	1) 242
		2) 26 3) No decision was reached in 23 matters because the application was withdrawn or the merger parties decided not to proceed with transaction
Substantial Lessening of Competition test	To provide directions to bring the inringement to an end, and to require that person to take such action to remedy, mitigate oreliminate any adverse effects of such infringement, and to prevent the recurrence of such infringement. Financial penalty in respect of the infringement as the Commission may determine.	TBC
		TBC
Elimination or restriction of competition. The authority considers the market shares of the undertakings involved in concentration in a relevant market, and their power of control over the market, the degree of concentration in the relevant market, the impact of their concentration on assess to the market and technological advance, the impact of their concentration on consumers and the other relevant undertakings concerned, the impact of their concentration on the development of the national economy, and other factors which the authority for enfocement of the Anti-monopoly Law under the State Council deems to need consideration in terms of its impact on market competition.	Discontinue the concentration, dispose the shares or assets, transfer the business and adopt othernecessary measures to return to the state prior to the concentration. A fine of less than CNY 500,000 can be imposed.	TBC
		TBC
Substantial Lessening of Competition test - HHI is usually used to provide safe harbor within which a merger is unlikely to identify competition concerns. -Horizontal M&A: (a) Less than 1,000 HHI. - Vertical M&A or conglomerate M&A: (a) In the particular business area that the company takes part in, the HHI is less than 1,500, and the market share is less than 25%.	Undertakings, calling for open bids etc. (Please list if there is more)	8
		0
Substantial Lessening of Competition test -There are indicative safe harbours below which it is unlikely to carry out a detailed investigation: If the post-merger concentration ration of four largest firms ("CR4") in the relevant market is less than 75%, and the merged firm has a market share of less than 40%; where the CR4 is 75% or more, the CCHK, the combned market share of the merged entity is less than 15% of the relevant market. - Where the post-merger HHI is less than1,000	Structural and behavioral commitments may be considered but in general structural remedies are preferred.	TBC
		TBC
Appreciable Adverse Effect on Competition (AAEC). Certain types of transactions set out in Sechedule I of Regulation in regard to the transaction of business relating to combinations.	Structural and behavioral remedies or prohibition decisions on anticompetitive business combinations.	Number of cases reviewd since inception till 31st March 2017 are 447.
		Remedies imposed in Phase 2 (in depth rview) cases are 5.
Merger causes monopolistic practices and/or unfair business competition.	Divestiture of certain affiliated business, obligation for certain commitment from the merging parties, fine and annulment of mergers	1) 36
		2) 1
Substantial restraint of competition - Horizontal M&A: (a) Less than 1,500 HHI; (b) More than 1,500 but not more than 2,500 HHI, increase of less than 250, (c) More than 2,500 HHI, increase of less than 150 - Vertical or conglomerate M&A: (a) the market share after the combination not more than 10%, (b) Not more than 2,500 and the market share after the combination less than 25%.	Behavior or structural remedies	1) 1,525
		2) 9 3) 0
Substantive Lessening of Competition - Horizontal M&A: (a) Less than 1,200 HHI; (b) 1,200 to 2,500 HHI, HHI increase of less than 250; (c) More than 2,500 HHI, and HHI increase of less than 150 - Vertical M&A or conglomerate M&A: (a) In the particular business area that the company takes part in, the HHI is less than 2,500, and the market share is less than 25%; (b) The ranking of the company in each area of trade is below number 4.	Prohibition order, behavior or structural remedies, criminal sanctions (imprisonment or fine)	1) 3,122
		2) 19
Single dominant undertakings are prohibited from undertaking business combinations that lead to a restriction of competition.	Fine of up to MNT 20 million	1) 89
		2) 1

Merger Control (cont.)

Jurisdiction	Merger Control			
	Notification Regime			Legal deadline to review
	Is the notification mandatory? If Yes, please answer the following questions as well.		Is the notification pre or post merger?	Regardless of the notification regime, what is the legal deadline for the CA to review a merger?
	When does the notification obligation arise?	What is the deadline for notification?		
Myanmar	Not mandatory		Pre-merger	There is no criteria/threshold to determine whether and when a transaction must be notified under the merger rules.
Nepal	N/A	N/A	N/A	N/A
New Zealand	Not mandatory		N/A	Within 40 days but it may be extended by agreement with the parties.
Pakistan	Mandatory to apply for clearance to te CCP of a proposed merger that meets the notfication threshold provided in the Competition Regulations 2016.	TBC	Pre-merger	Within 30 working days of receipt of the application on whether the proposed merger meets the thresholds and the presumption of dominance. Within 90 working days of receipt of the request information whethe the proposed merger will substantionally lessen competition by creating or strengthening a dominant position in the relevant market.
Papua New Guinea	Not mandatory		Pre-merger	Clearance-20 days; Authorization 72 days
Philippines	Mandatory if the value of transaction exceeds PHP 1 billion.	Before consummation	Pre-merger	PCC shall review within 30 days after providing notification. PCC can extend the review period for an additional 60 days if there is further information to assess the merger or acquisition.
Singapore	Not mandatory		Both (anticipated & completed mergers can be notified)	CCCS aims to complete the review of a merger based on the following timelines: Phase I: 30 working days Phase II: 120 working days
Sri Lanka	The existing legislation does not regulate mergers.			

Substantive Assessment	Remedies	Statistics
Legal test. Are there any 'safe harbours' within which a merger is unlikely to raise competition concerns? Please specify.	Administrative remedies	1) Number of cases reviewed from 2012 to 2016 2) Number of clearance with remedies 3) Number of abandonment
N/A	Warning, imposin specified fine, coordinatinig with relevant Ministries to close the operation of business temporarily or permanently	1) 0 2) 0 3) 0
Intent to control competition, maintain monopoly or restrictive trade practices.	A fine not exceeding 5NPR 00,000	TBC
Substantial Lessening of Competition The factors considered include: the ability to raise price above the competitive price or reduce non-price factors such as quality, range, level of innovation or service; combined market share; conditions of market entry; buyer power; and an increased potential for coordinated behavior.	Stop a merger proceeding, divesture assets or shares and/or a penalty (individual: up to NZD 500,000, and body corporate: up to NZD 5 million)	Completed 55 clearances and 2 merger authroisations 2) 6 cleared subject to divestment 3) 2 withdrawn
Substantially lessining of competition by creating or strenghtening a dominant position. Transactions with do not exceed a 40% market share post-merger rarely raise competition concerns.	Undo or prohibit the merger, and impose administrative penalties with an amount not exceeding PKR75 million or 10% of the annual turnover of the undertaking.	Mergers as of 30 November 2017 619 first phase. 8 cleared in a second phase review
Substantial Lessening of Competition.	Pecuniary penalty not exceeding K500,000.00 for individual, and K10,000,000.00 for a body corporate (upon a decision of the court)	1) 13 (from 2012 to 2016) 2) Clearance with remedies: 5 3) Number of abandonment: 2
Substantially prevent, restrict or lessen competition.	Administrative fine up to PHP 100 million for first offenses, and a fine between PHP 100 million and PHP 250 million for second offenses. It can be tripled if the violation involves the trade or movement of basic necessities and prime commodities, defined in The Price Act.	1) 25 2) Clearance with remedies: 0
Substantial Lessening of Competition. CCCS is unlikely to investigate a merger situation that only involves small companies, namely where the turnover in Singapore in the financial year preceding the transaction of each of the parties is below S$5 million and the combined worldwide turnover in the financial year preceding the transaction of all of the parties is below S$50 million. CCCS considers that a substantial lessening of competition is unlikely to result, and CCCS is unlikely to investigate a merger situation unless: (a) the merged entity will have a market share of 40% or more; or (b) the merged entity will have a market share of between 20% to 40% and the post-merger combined market share of the three largest firms (CR3) is 70% or more. The thresholds are indicative only, and CCCS may investigate merger situations that fall below these indicative thresholds in appropriate circumstances. Conversely, merger situations that meet or exceed the thresholds stated in the notification guidelines are not necessarily prohibited.	Prohibition order, behavior or structural remedies, pecuniary penalties	1) 32 2) Clearance with remedies: 1

Merger Control (cont.)

Jurisdiction	Merger Control			
	Notification Regime			Legal deadline to review
	Is the notification mandatory? If Yes, please answer the following questions as well.		Is the notification pre or post merger?	Regardless of the notification regime, what is the legal deadline for the CA to review a merger?
	When does the notification obligation arise?	What is the deadline for notification?		
Chinese Taipei	Mandatory if 1) the post-merger market share exceeds one third of the market, 2) one of the enterprises in the merger has more than one fourth of the market share, 3) sales for the preceding fiscal year of one of the enterprises in the merger exceeds the threshold amount publicly announced by the competent authority. As per the threshold amounts publicly announced are as follows: (1) The combined worldwide sales in the preceding fiscal year of the enterprises in the merger exceed NTD40 billion and the domestic total sales of each of at least two of the enterprises in the merger in the preceding fiscal year also surpass NTD2 billion. (2) The enterprises in the merger are not financial institutions and the domestic total sales of one of the merging parties in the preceding fiscal year exceed NTD15 billion while the domestic total sales of one of the other merging parties in the preceding fiscal year also surpass NTD2 billion. (3) The enterprises in the merger are financial institutions and the domestic total sales of one of the merging parties in the preceding fiscal year exceed NTD30 billion while the domestic total sales of one of the other merging parties in the preceding fiscal year also surpass NTD2 billion.	The pre-merger notification must be filed at least 30 working days prior to consummation of the merger.	Pre-merger Notification	Within 30 working days from the date the FTC accepts the complete filing materials but the FTC may shorten or extend up to 60 working days.
Thailand	Mandatory. Two tracks are in place: 1) post-merger notification without clearance requirement for mergers with the minimum amount of market share, sales revenue, capital amount, number of stocks, or assets, to be prescribed in an implementing regulation; 2) pre-merger clearance required for mergers that may cause a monopoly or a dominant position in a market.	1) Post-merger notification - within 7 days from the merging date; 2) Pre-merger submission for clearance - to be submitted before merging.	Two tracks as explained.	No OTCC's action required for Track 1. For Track 2, OTCC shall review the merger within 90 days, but may extend for up to 15 days.
Vietnam	Mandatory if enterprises participating in economic concentration activities where a combined market share in the relevant market are from 30% to 50%.	Notification must be made before the transaction.	Pre-merger	VCCA shall provide a written reply to the enterprise within 45 days. The dealine can be extended twice and each extension should not exceed 30 days.

Substantive Assessment	Remedies	Statistics
Legal test. Are there any 'safe harbours' within which a merger is unlikely to raise competition concerns? Please specify.	**Administrative remedies**	**1) Number of cases reviewed from 2012 to 2016**
		2) Number of clearance with remedies 3) Number of abandonment
Standard for merger review depends on whether the overall economic benefit of the merger outweighs the disadvantages resulting from its restraint on competition.	Prohibition order, behavior or structural remedies	1) 302
		2) Not available 3) 0
Substantial reduction of competition.	Prohibition order, imposition of conditions for Track 2. Administrative fines if not filing under Track 1 or Track 2.	No case has been reviewed by OTCC under the law of 1999
		No case has been reviewed by OTCC under the law of 1999
An economic concentration where the combined market share in the relevant market exceeds 50% is prohibited unless it results in an SME or an exemption is granted. Where combined market shares of enterprises are lower than 30% on the relevant market or where enterprises, after implementing economic concentration, are still of small or medium size as prescribed by law, shall be considered as unlikely to raise competition concerns and need not be notified.	Warning or fine; To divide or split the merged or consolidated enterprises; to force the resale of the acquired enterprise parts	1) 23
		2) 0 3) 0

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