

Comparison of Asian competition law enforcement

Procedure

	Brunei	Cambodia	China	Hong Kong	India	Indonesia	Japan	Kazakhstan	Laos ¹	Malaysia	Mongolia
Does the competition authority have the power to carry out 'dawn raids'?	○	○	○	○	○	▲ ²	○	○	○	○	○
Can the authority compel employees to submit to questioning?	○	○	○	○	○	×	○	○	○	○	○
Are in-house legal communications protected by client/lawyer privilege?	○	▲	×	○	×	×	▲ ³	×	×	×	○
Is the authority active in identifying/investigating infringements?	▲	N/A	○	○	○	○	○	×	N/A	○	○
Is a leniency/immunity system available?	○	○	○	○	○	×	○	○	▲	○	×
Is (reduced) leniency also available for subsequent applicants?	○	▲	○	○ ⁴	○	×	○	×	▲	○	×
Can the authority resolve without sanctions (eg cease-and-desist orders?)	○	○	○	○	○	○	○	○	×	○	×
Are criminal sanctions available against individuals?	○	○	▲ ⁵	○ ⁶	▲ ⁷	○	○	○	○	▲ ⁸	○
Are criminal sanctions against individuals imposed in practice?	▲	N/A	▲	×	×	×	▲ ⁹	×	N/A	▲	▲
Do individual sanctions include disqualification from being a director?	×	×	×	○	▲	×	×	×	▲	×	×
Is prosecution adjudicated separately (eg by courts)?	×	▲	×	○	×	▲ ¹⁰	▲ ¹⁰	○	▲ ¹⁰	×	○
If applicable, does the authority have discretion in setting fines?	○	▲	○	×	○	○	○	×	▲	○	○
Can fines be reduced due to co-operation with the authority's investigation?	○	▲	○	○	○	○	○	×	▲	○	○
Can fines be reduced due to the existence of a compliance programme?	○	▲	▲ ¹³	○	○	○	▲	×	▲	○	×
Is settlement possible?	○	○	○	○	×	▲	×	×	○	○	×
Is a decision against a company decisive in follow-on damages claims?	○	N/A	×	○	○	○	○	○	○	×	○
Are follow-on damages claims common in practice?	▲	N/A	×	×	×	×	▲ ¹⁵	×	N/A	×	×
Are stand-alone damages claims possible?	×	N/A	○	×	×	×	○	×	×	○	○
Are class actions available for either follow-on or stand-alone claims?	×	×	×	×	▲	▲	×	×	×	○	○

○ Yes | ▲ Qualified yes or position unclear | × No | N/A Not applicable

Comparison of Asian competition law enforcement

Procedure (Continued)

	Myanmar ¹	Pakistan	Philippines	Singapore	South Korea	Sri Lanka	Taiwan	Thailand	Vietnam
Does the competition authority have the power to carry out 'dawn raids'?	○	○	○	○	○	○	×	○	○
Can the authority compel employees to submit to questioning?	○	○	○	○	○	○	○	○	○
Are in-house legal communications protected by client/lawyer privilege?	▲	×	▲	○	×	○ ¹⁶	×	×	×
Is the authority active in identifying/investigating infringements?	N/A	○	○	○	○	○	○	▲	○
Is a leniency/immunity system available?	○	○	○	○	○	×	○	×	○ ¹⁷
Is (reduced) leniency also available for subsequent applicants?	▲	○	○	○	○	×	○	×	○
Can the authority resolve without sanctions (eg cease-and-desist orders)?	▲	○	○	○	○	○	○	○	▲ ¹⁸
Are criminal sanctions available against individuals?	○	○	○	▲ ⁸	○	○	○	○	○
Are criminal sanctions against individuals imposed in practice?	N/A	×	▲	×	○	○	○	○	×
Do individual sanctions include disqualification from being a director?	×	×	▲ ¹⁹	×	▲ ²⁰	▲	×	×	○ ²¹
Is prosecution adjudicated separately (eg by courts)?	▲ ¹⁰	×	○	×	▲ ²²	○ ²³	▲ ¹⁰	×	▲ ²¹
If applicable, does the authority have discretion in setting fines?	▲	○	○ ²⁴	○	○	×	○	○	○
Can fines be reduced due to co-operation with the authority's investigation?	○	○	○	○	○	×	○	○	○
Can fines be reduced due to the existence of a compliance programme?	▲	○	×	○	○	×	▲	○	×
Is settlement possible?	▲	○	○	○	▲ ²⁵	○ ²⁶	○	○	▲ ²⁷
Is a decision against a company decisive in follow-on damages claims?	▲	×	○	○	○	×	○	▲	▲
Are follow-on damages claims common in practice?	N/A	×	×	×	○	×	×	▲	×
Are stand-alone damages claims possible?	×	○	▲	×	○	○	○	○	▲ ²⁹
Are class actions available for either follow-on or stand-alone claims?	○	○	▲ ³⁰	○	×	×	×	○	▲ ²⁹

○ Yes | ▲ Qualified yes or position unclear | × No | N/A Not applicable

Comparison of Asian competition law enforcement

Procedure (*Continued*)

Footnotes

1. Competition law enacted but not fully implemented.
2. The authority is not authorised to do so, but in practice the dawn raids is carried out together with the police force.
3. For leniency cases only.
4. While leniency may only be available under exceptional circumstances for subsequent leniency applicants, reduced fines are available in the form of discounts for cooperation with the authority.
5. Criminal sanctions only for obstruction of investigations if this constitutes a crime under the Criminal Law of the People's Republic of China, but rarely imposed.
6. Competition law infringement is not a criminal offence.
7. Court can impose criminal sanctions for non-compliance with the antitrust regulator's orders.
8. Criminal sanctions only for obstruction of investigations.
9. All criminal sentences have so far been suspended.
10. The authority has the power to apply administrative sanctions only.
11. Competition law infringement is not a criminal offence.
12. Although the authority does not have the discretion in setting fines, the authority may make submissions on appropriate penalties applicable to an enforcement action.
13. Subject to the authority's discretion.
14. Not available under the current competition regime but settlement and commitment mechanisms have been proposed to be incorporated in the legislation by way of an amendment, which is yet to be passed.
15. For bid-rigging cases only.
16. Attorney-client privilege applies although not specifically mentioned under competition law or any other legislation.
17. Leniency has only been effective since 1 July 2019 and no precedent case has been reported to date.
18. Subject to the discretion of the authority on a case-by-case basis.
19. Not under competition law but potentially available under other laws.
20. Not a sanction under competition law, but corporate law may disqualify for unlawful conduct generally.
21. Only in case of violation of competition law giving rise to criminal liability.
22. While the authority does not have any prosecutorial power, it has the power to (i) apply administrative sanctions and (ii) to make a criminal referral to the prosecutors' office.
23. The authority may order compensation to an aggrieved party but sanctions can only be imposed by a court.
24. Applies only to administrative fines.
25. Settlement not possible for cartel matters.
26. Settlement is available by way of paying compensation to the aggrieved party.
27. Nothing under the law prohibits the parties from trying to discuss with the authorities remedies required to reduce the proposed sanctions or settle the case (if possible).
28. Although persuasive, the court has discretion to order and decide on its relevance.
29. Subject to the discretion of the court.
30. Not under competition law but the rules of procedure recognise class actions.
31. Not specifically provided under competition law but the option is not specifically barred under civil procedure.

