

Comparison of Asian competition law

Merger control

| | Brunei ¹ | China | Hong Kong ² | India | Indonesia | Japan | Kazakhstan | Laos ¹ | Malaysia ³ | Mongolia |
|---|---------------------|-----------------|------------------------|-----------------|-----------------|-----------------|-----------------|-------------------|-----------------------|------------------|
| Is filing mandatory? | X | O | X | O | O | O | O | O | X | O |
| Is filing pre-merger/suspensory? | X | O | X | O | X | O | ▲ ⁵ | ▲ ⁵ | X | O |
| Can fines be imposed for failure to file/'gun-jumping'? | X | O | X | O | ▲ ⁶ | O | O | ▲ | X | O |
| Does the competition authority monitor/catch missed filings? | N/A | O | X | O | O | O | X | N/A | X | O |
| Is the fact of filing published? | X | O | ▲ ⁷ | O | O | O | X | ▲ | O | X |
| Is there a local effects test for 'foreign-to-foreign' mergers if thresholds met? | X | X | X | O | O | X | O | ▲ | O | N/A ⁸ |
| Is there a change of control test | O | O | O | ▲ ⁹ | O | X | O | ▲ | O | O |
| Are non-'full function' joint ventures caught? | X | O | X | O | O | O | O | ▲ | X | ▲ ¹⁰ |
| Does the authority meet decision deadlines in practice? | N/A | O | X ¹¹ | O | ▲ ¹² | O | O | N/A | ▲ | O |
| Is there an accelerated procedure for less problematic transactions? | X | O | X | O ¹³ | O | O | X | X | X | O |
| Are non-competition issues taken into account in review? | O | O | X | ▲ | O | X | X | O | ▲ | O |
| Does the authority accept remedies in practice? | ▲ | O | O | O | O | O | X | N/A | ▲ | X |
| If so, is there a preference for behavioural over structural remedies? | ▲ | X | X | X | O | O | X | N/A | ▲ | X |
| Is it possible to implement elsewhere while review is pending? | O | X | O | X | O | X | O | ▲ | ▲ | O ¹⁴ |
| Is the authority's decision published? | X | ▲ ¹⁵ | ▲ ¹⁶ | O | ▲ ¹⁷ | ▲ ¹⁸ | ▲ ¹⁸ | ▲ | ▲ ¹⁹ | O |
| Can parties request redaction of confidential information from decisions? | N/A | O | O | O | X | O | X | ▲ | ▲ | O |

O Yes | ▲ Qualified yes or position unclear | X No | N/A Not applicable

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Merger control (*continued*)

| | Myanmar ² | Pakistan | Philippines | Singapore | South Korea | Sri Lanka ⁴ | Taiwan | Thailand | Vietnam |
|---|----------------------|----------------|-----------------|-----------|-----------------|------------------------|-----------------|----------------|-----------------|
| Is filing mandatory? | ▲ | ○ | ○ | X | ○ | ▲ | ○ | ○ | ○ |
| Is filing pre-merger/suspensory? | ▲ | ○ ⁵ | ○ | X | ▲ ⁵ | ▲ | ○ | ▲ ⁵ | ○ |
| Can fines be imposed for failure to file/‘gun-jumping’? | ▲ | ○ | ○ | N/A | ○ | ▲ | ○ | ○ | ○ |
| Does the competition authority monitor/catch missed filings? | N/A | ○ | ○ | ○ | ○ | N/A | X | N/A | ○ |
| Is the fact of filing published? | ▲ | X | X | ○ | X | ▲ | ▲ ²⁰ | X | ▲ |
| Is there a local effects test for ‘foreign-to-foreign’ mergers if thresholds met? | ▲ | X | ○ | X | X | ▲ | ○ | X | X |
| Is there a change of control test? | ▲ | ○ | ○ | ○ | X | ▲ | X | X | ○ |
| Are non-‘full function’ joint ventures caught? | ▲ | ○ | ○ | X | ○ | ▲ | ○ | X | ○ |
| Does the authority meet decision deadlines in practice? | N/A | ○ | ○ | ○ | ▲ ²¹ | N/A | ○ | ○ | X |
| Is there an accelerated procedure for less problematic transactions? | ▲ | X | ○ | X | ○ | ▲ | ○ | X | ▲ |
| Are non-competition issues taken into account in review? | ▲ | X | X | X | X | ▲ | ▲ | ○ | ○ |
| Does the authority accept remedies in practice? | N/A | X | ○ ²² | ○ | ○ | N/A | ○ | N/A | ▲ ²³ |
| If so, is there a preference for behavioural over structural remedies? | N/A | X | ▲ ²⁴ | X | ○ | N/A | X | N/A | X |
| Is it possible to implement elsewhere while review is pending? | ▲ | ○ | ▲ | ○ | X | ▲ | X | ○ | X |
| Is the authority’s decision published? | ▲ | ○ | ○ | ○ | ▲ ²⁵ | ▲ | ▲ ²⁶ | ○ | ▲ ²⁷ |
| Can parties request redaction of confidential information from decisions? | ▲ | ○ | ○ | ○ | ○ | ▲ | ○ | X | ▲ |

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

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Footnotes

1. Merger control regime enacted but not yet in force
2. Merger control regime applies to telecommunications sector only
3. Merger control regime applies to aviation, communications and multimedia sectors only
4. Merger control regime not yet enacted (position to be clarified by implementing regulations), but there are merger control laws within specific industries and procedural requirements to effect mergers
5. Filing is post-closing in certain circumstances
6. Fines can be imposed for failure to file only
7. Only filings made under ‘formal decision route’ are published
8. In practice, merger control rules are applied to purely domestic mergers only
9. Thresholds can still be met without change of control
10. The law is silent as to whether JVs need to be notified at all
11. There are no deadlines for decisions
12. The authority’s adherence to the stricter deadline under new regulations is untested
13. The ‘green channel’ route is available for transactions where parties exhibit no horizontal overlaps or vertical or complementary relationships
14. In practice, merger control rules are applied to purely domestic mergers only
15. Only prohibition decisions and remedy decisions are published
16. Only filings made under ‘formal decision route’ are published
17. It is unclear if decisions will be published under the new regulations
18. Publication at the authority’s discretion in significant cases only
19. The Malaysian Aviation Commission can publish cases, but has not done so to date
20. Simplified filings or decisions waiving jurisdiction are not published (no public consultation)
21. Effective deadline may be extended in practice by issuing RFIs
22. Not yet tested
23. Permitted by law but not yet tested
24. Strong preference for structural remedies for horizontal mergers
25. Publication at the authority’s discretion in significant cases only
26. Simplified filings or decisions waiving jurisdiction are not published (no public consultation)
27. Brief announcements about the transaction and the decision of the authority are published but no details are provided about the authority’s assessment or analysis