

Comparison of Asian competition law

Enforcement procedure

	Brunei	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	○	○
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?	▲	×	×	×	×	▲ ⁹	×	N/A	▲	▲
Do individual sanctions include disqualification from being a director?	×	×	○	▲ ¹⁰	×	×	×	▲	×	×
Is prosecution adjudicated separately (eg by courts)?	×	×	○	×	▲ ¹¹	▲ ¹¹	○	▲ ¹¹	×	▲ ¹¹
If applicable, does the authority have discretion in setting fines?	○	○	×	○	○	○	×	▲	○	○
Can fines be reduced due to co-operation with the authority' investigation?	○	○	○	○	○	○	×	▲	○	×
Can fines be reduced due to the existence of a compliance programme?	○	▲ ¹²	○	○	○	▲	×	▲	○	×
Is settlement possible?	○	○	○	×	○	×	×	○	○	×
Is a decision against a company decisive in follow-on damages claims?	○	×	○	○	○	○	○	○	×	○
Are follow-on damages claims common in practice?	▲	×	×	×	×	▲ ¹⁴	×	N/A	×	×
Are stand-alone damages claims possible?	×	○	×	×	×	○	×	×	○	○
Are class actions available for either follow-on or stand-alone claims?	×	×	×	▲	○	×	×	×	○	○

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

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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?	▲	×	▲	○	×	○ ¹⁵	×	×	×
Is the authority active in identifying/investigating infringements?	N/A	○	○	○	○	○	○	×	○
Is a leniency/immunity system available?	○	○	○	○	○	×	○	×	○ ¹⁶
Is (reduced) leniency also available for subsequent applicants?	▲	○	○	○	○	×	○	×	○
Can the authority resolve without sanctions (eg cease-and-desist orders?)	▲	○	○	○	○	○	○	○	▲ ¹⁷
Are criminal sanctions available against individuals?	○	○	○	▲ ¹⁸	○	○	○	○	○
Are criminal sanctions against individuals imposed in practice?	N/A	×	▲	×	○	○	○	×	×
Do individual sanctions include disqualification from being a director?	×	×	▲ ²⁰	×	▲ ²¹	▲	×	×	○ ²²
Is prosecution adjudicated separately (eg by courts)?	▲ ²³	×	○	×	▲ ²³	○ ²⁴	▲ ²³	×	▲ ²²
If applicable, does the authority have discretion in setting fines?	▲	○	○ ²⁵	○	○	×	○	○	○
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?	▲	○	○	○	▲ ²⁶	○ ²⁷	○	○	▲ ²⁸
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?	×	○	▲	×	○	○	○	○	▲ ³⁰
Are class actions available for either follow-on or stand-alone claims?	○	○	▲ ³¹	○	×	×	×	○	▲ ³²

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

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Footnotes

1. Competition law enacted but not fully implemented
2. The authority is not authorised to do so, but in practice the dawn raid 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 co-operation with the authority
5. Criminal sanctions only for obstruction of investigations
6. Criminal sanctions only for obstruction of investigations. Pecuniary penalties sought by the authority for breach of the Competition Ordinance is also considered by the relevant court to be a criminal charge (the criminal standard of proof applies)
7. The 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. Issue is currently under consideration by the courts
11. The authority has the power to apply administrative sanctions only
12. Subject to the authority's discretion
13. Not available under the current competition regime but settlement and commitment mechanisms have been proposed
14. For bid-rigging cases only
15. Attorney-client privilege applies although not specifically mentioned under competition law or any other legislation
16. Leniency has only been effective since 1 July 2019 and no precedent case has been reported to date
17. Subject to the discretion of the authority on a case-by-case basis
18. Criminal sanctions only for obstruction of investigations
19. A criminal fine was imposed on an individual under the current legislation for a complaint filed under the old legislation. No other criminal sanctions have been imposed under the current legislation
20. Not under competition law but potentially available under other laws
21. Not a sanction under competition law, but corporate law may disqualify for unlawful conduct generally
22. Only in case of violation of competition law giving rise to criminal liability
23. The authority has the power to apply administrative sanctions only
24. The authority may order compensation to an aggrieved party but sanctions can only be imposed by a court
25. Applies only to administrative fines
26. Settlement not possible for cartel matters
27. Settlement is available by way of paying compensation to the aggrieved party
28. 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)
29. Although persuasive, the court has discretion to order and decide on its relevance
30. Subject to the discretion of the court
31. Not under competition law but the rules of procedure recognise class actions
32. Class action system is expected to be adopted in 2021
33. Not specifically provided under competition law but the option is not specifically barred under civil procedure