

Comparison of Asian competition law enforcement

Scope of the law

	Brunei	Cambodia ¹	China	Hong Kong	India	Indonesia	Japan	Kazakhstan	Laos ¹	Malaysia	Mongolia
Does the law apply to ‘concerted practices’ as well as agreements?	○	○	○	○	○	○	○	○	▲	○	○
Does the law apply to vertical arrangements?	▲ ²	○	○	○	○	○	○	○	▲	○	○
Is there a separate provision for abuse of dominance?	○	○	○	○	○	○	○	○	○	○	○
Also below dominance (eg ‘abuse of superior bargaining position’)?	○	X	X ³	X	○	○	○	X	X	X	○
Do dominance rules apply to purchasers as well as sellers?	○	○	○	○	○	○	○	○	○	○	○
Is there a statutory market share test for presumed dominance?	X	N/A	○	X	X	○	▲	○	○	▲ ⁴	○
Does jurisdiction extend to conduct overseas with effects in the country?	○	○	○	○	○	○	○	○	▲	○	○
Are certain types of conduct considered ‘per se’ infringements?	○	○	○	○	○	○	○	○	▲	X	○
Does the authority conduct economic analysis as to the effects of conduct?	○	N/A	○	○	○	○	○	○	N/A	○	○
Is a market share-based ‘safe harbour’ available for certain types of conduct?	X	N/A	○ ⁵	X ⁶	X	X	○	○	X	○	X
Are there exemptions for certain co-operation (eg joint research)?	○	○	○	○ ⁷	▲ ⁸	○	○	○	○	○	X
Are certain industries exempted from competition law?	○	N/A	▲ ⁹	X	○	○	▲ ¹⁰	X	X	○	X
Is there a potential defence for conduct with countervailing ‘pro-competitive’ effects?	▲ ¹¹	○	○	○	▲	○	○	○	○	○	X
Is there a defence for government- sanctioned/regulated conduct?	○	▲	○	○	▲	○	○	○	▲ ¹²	○	X
Can companies seek ‘comfort’ by consulting with the authority on arrangements?	▲	▲	▲ ¹³	○	X	▲	○	○	▲	X	X

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

Comparison of Asian competition law enforcement

Scope of the law *(Continued)*

	Myanmar ¹	Pakistan	Philippines	Singapore	South Korea	Sri Lanka	Taiwan	Thailand	Vietnam
Does the law apply to ‘concerted practices’ as well as agreements?	▲	○	○	○	×	○	○	○	▲ ¹⁴
Does the law apply to vertical arrangements?	▲	○	○	▲ ¹⁵	○	○	○	○	○
Is there a separate provision for abuse of dominance?	○	○	○	○	○	○	○	○	○
Also below dominance (eg ‘abuse of superior bargaining position’)?	▲	○	×	×	○	○	○	○	×
Do dominance rules apply to purchasers as well as sellers?	○	○	○	○	○	○	○	○	○
Is there a statutory market share test for presumed dominance?	×	○	○	×	○	×	○	○	○
Does jurisdiction extend to conduct overseas with effects in the country?	▲	▲	○	○	○	○	○	▲	○
Are certain types of conduct considered ‘per se’ infringements?	○	○	○	○	○	○	×	×	○
Does the authority conduct economic analysis as to the effects of conduct?	▲	▲	○	○	○	○	○	○	○
Is a market share-based ‘safe harbour’ available for certain types of conduct?	×	×	×	×	○	×	○	○	○
Are there exemptions for certain co-operation (eg joint research)?	○	○	×	○	×	○ ¹⁶	○	○	○
Are certain industries exempted from competition law?	×	▲ ¹⁷	×	○	×	×	×	○	×
Is there a potential defence for conduct with countervailing ‘pro-competitive’ effects?	○	×	○	○	○	○ ¹⁶	○	×	○
Is there a defence for government- sanctioned/regulated conduct?	×	×	×	○	○	○ ¹⁸	×	×	○
Can companies seek ‘comfort’ by consulting with the authority on arrangements?	▲	○	○	○	○	○	○	○	○

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

Comparison of Asian competition law enforcement

Scope of the law (*Continued*)

Footnotes

1. Competition law enacted but not yet fully implemented.
2. Minister has power to designate certain types of vertical agreements as subject to the law.
3. The draft amendments to Anti-unfair Competition Law of People's Republic of China, published for public comment on 22 November 2022, for the first time introduced abuse of superior bargaining power, but the draft has yet been finalized and enforced.
4. Market share test is set out in guidelines but not in statute.
5. Available for certain vertical agreements, certain IPR-related conduct and certain conduct in the auto sector.
6. Exemptions are based on the undertakings' turnover.
7. The HK regime does not have a specific exemption targeting co-operation (e.g. joint research). Any co-operation will have to be demonstrated to have countervailing 'pro-competitive' effects on the same basis as the "Is there a potential defence for conduct with countervailing 'pro-competitive' effects" below
8. Applies to joint ventures only.
9. Certain alliance or concerted practices by farmers or rural economic organisations are exempted.
10. Certain types of conduct within specific industries (such as insurance cartels, air transportation cartels, export cartels etc.) are exempted upon regulatory approvals.
11. Excludes abuse of dominance.
12. Potentially for abuse of dominance only.
13. No generally applicable regime, only a limited number of local authorities at the provincial level acknowledge such practice in the local antitrust compliance guidance.
14. The definition of "agreement" under competition law is broad and a "concerted practice" might therefore be included, although this has not been tested in practice.
15. Abuse of dominance only.
16. Not specifically provided under the law but the authority will take account of pro-competitive effects.
17. Government has power to exempt industries, but has not exercised it.
18. No specific defence but government regulations can stipulate exceptions for government actions.