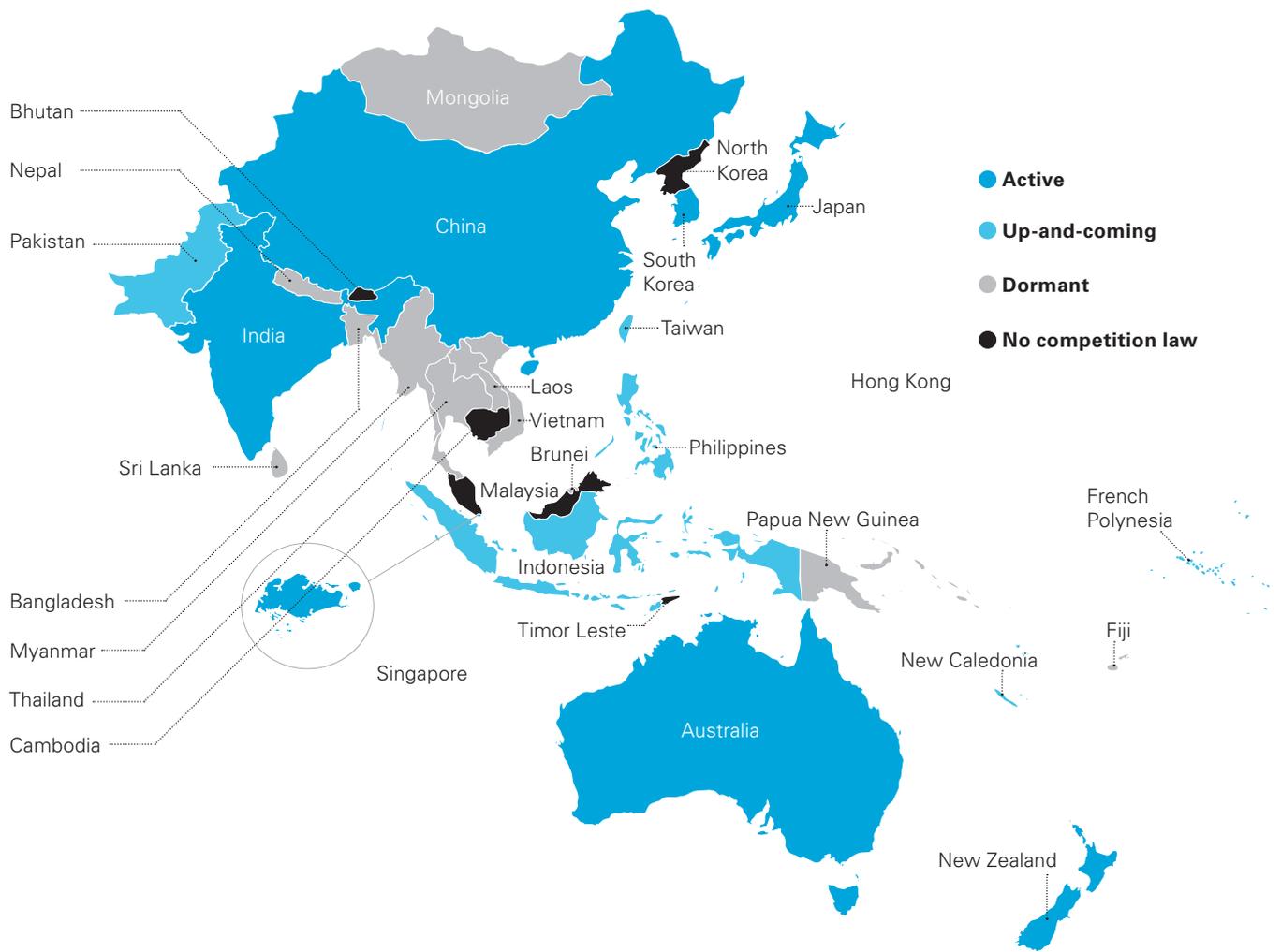


Asia-Pacific: Overview of merger regimes



An interactive guide to merger control activity in the Southeast Asia and Pacific region

Merger control in Asia-Pacific is on the rise, with many new jurisdictions having adopted and started to enforce merger control law in the past decade. This interactive map provides a general overview of merger control activity in the region and highlights the most important recent developments in each jurisdiction.

In the past decade, new laws and important amendments in some jurisdictions (e.g., China and India) have already propelled new regulators onto the world stage. Other authorities, such as Singapore and Taiwan, are increasing their experience in reviewing increasingly complex deals while others still are rapidly introducing and strengthening merger control regimes (e.g., Thailand and Vietnam).

This map is based on knowledge built up through White & Case's long-standing presence in the region, its close relationships with local counsel in the area, and on publicly available sources. Should you require more detailed information on a jurisdiction (or others not included in the map), please contact [Jacquelyn MacLennan](#), [Jan Jeram](#) or your usual White & Case contact. This page was created in September 2020 and will be updated annually.

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Description of categories:

Active: Relatively sophisticated competition regimes with increasingly experienced competition authorities ensuring strong enforcement.

Up-and-coming: Increasing appetite for competition enforcement, thanks to newly introduced or recently amended competition law regimes.

Dormant: Competition law has often been on the books for several years, but its enforcement faces serious challenges such as the lack of implementing rules or of skilled personnel in the authorities.

No competition law: Competition law has not yet been effectively introduced.

Overview of jurisdictions

Jurisdiction	Tier	Summary
Australia	Active	<p>Notification is voluntary, but the Australian Competition Commission ("ACCC") has wide discretion to review any acquisition of shares or assets that may have the likely effect of substantially lessening competition in Australia.</p> <p>In each of the last five years, the ACCC has assessed over 250 merger cases. The ACCC dealt with around 80-90% of those matters by way of its simplified and confidential "pre-assessment" process. In that period, on average, around 30 public reviews (incorporating market inquiries) were initiated each year in which the ACCC was unable to grant a pre-assessed clearance. Of those public reviews, second-phase investigations were launched in a third of cases and remedies were accepted in around 15% of cases. In the same period, the ACCC opposed only six transactions. This tends to understate the effect of in-depth ACCC scrutiny, as in that period more than double that number were abandoned due to ACCC concerns.</p> <p>The ACCC actively monitors transaction announcements and the press and will take action against suspected "gun-jumping" conduct. If the ACCC detects a transaction that it expected to have been notified about, it will send information requests to the transaction parties and has the power to open <i>ex officio</i> merger reviews.</p>
Bangladesh	Dormant	Bangladesh introduced a merger control regime in 2012, but it is not currently enforced. In particular, the rules necessary to fully implement the regime have not yet been framed.
Bhutan	No competition law	No merger control regime is currently in place in Bhutan. The Government of Bhutan is discussing the introduction of national competition policy.
Brunei	Dormant	Brunei has introduced a merger control regime and is currently implementing the necessary subordinate legislation. To the best of our knowledge, Brunei has not yet commenced reviewing transactions.
Cambodia	No competition law	Cambodia is in the process of drafting a competition law. An English version of the draft competition law was published on the authority's website in 2018.

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<p>China</p>	<p>The State Administration for Market Regulation ("SAMR") is among the most active global competition authorities when it comes to merger control.</p> <p>Since its establishment, the SAMR has issued over 400 decisions annually, with around five conditional clearance decisions per year, illustrating its approach to remedies, including hold-separate obligations, commitments to supply products and services on fair, reasonable and non-discriminatory terms, and the implementation of antitrust compliance mechanisms.</p> <p>In terms of enforcement, the SAMR is scrutinizing gun-jumping conduct by domestic and foreign companies with more severity than in the past. In 2019, the SAMR issued almost 20 fining decisions. Penalties for gun-jumping are currently limited to around €60,000 (the highest fine imposed so far was around €50,000). The SAMR publishes the gun-jumping decisions on its official website to achieve a deterrent effect.</p> <p>The SAMR is also actively working on legislative initiatives. In January 2020, it released for public consultation suggested draft changes to the maximum fines for certain conduct, including failure to notify transactions, gun-jumping and breaches of imposed remedies. These are expected to be adopted by end 2020.</p>
<p>Fiji</p>	<p>The application of the Fijian merger control rules appears to be minimal, especially with regard to foreign-to-foreign transactions.</p>
<p>French Polynesia</p>	<p>The Polynesian Competition Authority ("PCA") was established in February 2015 in accordance with the statute of autonomy of French Polynesia within France. The PCA investigates and sanctions anticompetitive practices and reviews mergers.</p> <p>To our knowledge, the PCA has reviewed 14 transactions and cleared all of them, including three with commitments.</p> <p>Rather uniquely, the PCA also oversees operations of retail areas when they exceed a certain size. It has the power to authorize, among other transactions, new shop openings, changes to the shops' trade names, and takeovers of such stores. To our knowledge, the PCA has cleared eight transactions under its special powers over the retail business.</p>
<p>Hong Kong</p>	<p>The Competition Commission of Hong Kong ("Commission") is an independent body responsible for enforcing the Competition Ordinance through enforcement proceedings before the Competition Tribunal. The Competition Ordinance (Cap. 619) was enacted in 2012 and came into full effect in late 2015.</p> <p>The current merger control regime is voluntary and limited to transactions in which the undertakings directly or indirectly hold "carrier licenses" issued under the Telecommunications Ordinance (Cap. 106).</p> <p>However, the framework of the Competition Ordinance could be extended to apply more widely to all sectors of the economy. The Commission, in consultation with the government, has started reviewing the scope of the Competition Ordinance with a view of possibly broadening the merger control regime beyond telecommunications. The status of this review is currently unclear.</p>

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<p>India</p>	<p>The Competition Commission of India (“CCI”) is an active authority that reviews both domestic and international transactions.</p> <p>Over the past years, the CCI has typically received around 100 notifications per year, with only one or two notifications moving to an in-depth Phase II review every year. To date, the CCI has not blocked any deal, and has cleared even the most complex cases with appropriate remedies (the CCI is more inclined to accept structural remedies, but recently became more receptive also toward behavioral remedies). Nevertheless, procedures in India can be lengthy for complex cases, and involve many questions.</p> <p>The CCI used to be sensitive to late notifications and has issued fines of up to €0.6 million in the past (fines can theoretically go up to 1% of the parties’ combined global turnover or assets). While the parties still need to notify the transaction before closing, the requirement to notify the transaction within a set deadline no longer exists.</p> <p>Foreign-to-foreign transactions are captured by the Indian merger control regime, with an exemption for transactions involving targets with assets and turnover below the prescribed threshold (de minimis target-based exemption).</p> <p>In June 2020, the CCI initiated a market study covering mergers and acquisitions in the digital markets.</p> <p>The CCI is also actively working on legislative initiatives. In 2018, a Competition Law Review Committee (“CLRC”) was set up to review the legislation in India and to propose necessary changes. The Ministry of Corporate Affairs has recently notified a draft bill with several proposed changes to the legislation in India, reflecting the recommendations made by the CLRC.</p>
<p>Indonesia</p>	<p>Indonesian merger control law provides for a mandatory post-merger notification system. The Indonesian Competition Commission (“KPPU”) has so far not only reviewed domestic transactions but also foreign-to-foreign transactions. Over the past years, the KPPU reviewed on average more than 80 notifications per year and is becoming increasingly sensitive to late notifications. In October 2019, the KPPU issued its highest fine for failure to notify (almost €1 million).</p> <p>Notifications of foreign-to-foreign transactions have increased and now regularly represent around a third of all notifications. This could be partially due to: (i) the recent changes in the regulation, which significantly broadened the circumstances in which filings of global transactions without any effect on the Indonesian market are formally required; and (ii) the requirement that an asset acquisition is subject to the Indonesian merger control review.</p> <p>The Indonesian merger control law also provides for fines for failure to notify of up to around €60,000 per day of delay and up to €1.5 million total.</p>

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<p>Japan</p>	<p>The Japanese Fair Trade Commission (“JFTC”) is a mature and leading enforcer, active in assessing both domestic and foreign-to-foreign transactions.</p> <p>Over the past years, the JFTC reviewed more than 300 filings per year, the vast majority of which were resolved in Phase 1. On average, around 30 cases per year involve foreign-to-foreign transactions.</p> <p>Failure to notify is subject to criminal fines up to around €16,500.</p> <p>The JFTC also has the authority to investigate transactions for which it suspects there are potential substantive issues, regardless of whether the notification thresholds are met. In December 2019, the JFTC amended the Guidelines to Application of the Anti-Monopoly Act concerning Review of Business Combination (“Guidelines”) and the Policies concerning Procedures of Review of Business Combination (“Policies”) in accordance with developments in the digital market. The JFTC clarified that it would review non-reportable transactions in specific circumstances, such as the types of transactions known as “killer acquisitions”. The JFTC will also review non-reportable transactions when specific turnover thresholds are met and the JFTC expects an impact on domestic Japanese consumers.</p>
<p>Laos</p>	<p>The Competition Authority has not implemented its merger control legislation yet.</p>
<p>Malaysia</p>	<p>The Malaysian Competition Commission (“MyCC”) is not yet enforcing a general merger control regime. However, sector-specific laws and guidelines regulate transactions in the communications and multimedia sector (Malaysian Communications and Multimedia Commission) and in the aviation segment (Malaysian Aviation Commission).</p> <p>MyCC has been signalling a heightened interest in enforcing merger control and has started a process of legislative amendments to introduce a generalized merger control regime. It remains to be seen if, and to what extent, the proposed amendments will enter into force.</p>
<p>Mongolia</p>	<p>Mongolian competition law provides for a merger control regime, but we are not aware of any enforcement cases.</p>
<p>Myanmar</p>	<p>The Myanmar Competition Commission does not appear to have started enforcing the country’s merger control regime. Based on the available sources, at the end of 2019, the Myanmar Government was in the process of drafting the rules to implement the merger control regime. For the moment, the status of such drafting is unclear.</p>
<p>Nepal</p>	<p>Nepalese competition law includes a general prohibition on the creation of monopolies. It is unclear whether the Competition Promotion and Market Protection Board and the Department of Commerce have applied these provisions to date.</p>
<p>New Caledonia</p>	<p>The New Caledonian Competition Authority (“NCCA”) is a newly established independent authority that has already been active in reviewing mergers. To our knowledge, the NCCA has already examined close to 40 transactions and cleared four with commitments. The NCCA also has specific powers regarding operations in the retail market sector.</p>
<p>New Zealand</p>	<p>New Zealand has a sophisticated merger control regime with the Commerce Commission of New Zealand processing around ten notifications per year.</p> <p>The notification system is voluntary, with established market-shares-based “concentration indicators” determining whether a filing is recommended.</p>
<p>North Korea</p>	<p>To the best of our knowledge, no merger control regime is currently in place in North Korea.</p>

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<p>Pakistan</p>	<p>Pakistan amended its merger control regime in late 2016. The changes provided clarifications on the cases in which transactions, including foreign-to-foreign transactions, are notifiable.</p> <p>Over the last years, the Commission has reviewed more than 50 transactions per year.</p>
<p>Papua New Guinea</p>	<p>In June 2019, Papua New Guinea introduced a new pre-closing notification regime. The merger control activities of the Independent Consumer and Competition Commission ("ICCC") appear to be limited for now. As of early 2020, the Government of Papua New Guinea has been drafting new guidelines aimed at making the merger control regime fully effective.</p>
<p>Philippines</p>	<p>The Philippine Competition Commission ("PCC") is an independent authority that has shown increased ability to review domestic and foreign-to-foreign transactions. The PCC is a relatively new authority that is still trying to find the most consistent and efficient ways of reviewing merger notifications and conducting investigations without unnecessarily burdening the parties.</p> <p>Over the last years, the PCC has typically received around 50 notifications per year. In 2018, the PCC issued its first failure-to-notify decision, voiding the transaction and fining the companies involved 1% of the value of the transaction, and in 2019, the PCC issued its first prohibition case involving a merger to monopoly.</p> <p>The PCC has gained experience in a variety of industries, with a recent focus on real estate, mining, gas and electricity, manufacturing, financial and insurance activities.</p> <p>To make merger review smoother, a simplified merger review process for qualified transactions (i.e., no overlaps, global transactions either with Philippine entities as mere assemblers or export manufacturers or with limited presence in the Philippines, or joint ventures ("JVs") for real estate projects) entered into force in July 2019. The simplified notification process takes 15 days instead of the regular 30-day review period.</p> <p>The PCC has also issued guidelines for exemptions from compulsory merger notification for certain Public-Private Partnership ("PPP") projects and certain JV projects between government agencies and private entities.</p>
<p>Singapore</p>	<p>Singapore's voluntary merger control regime came into force in 2007. Since its establishment, the Competition and Consumer Commission of Singapore ("CCCS") has received only around 50 notifications, started around 10 in-depth investigations and blocked only a few transactions, although several transactions were abandoned before a final decision. A majority of notifications were cleared in a phase one review, but the CCCS also has experience in more in-depth investigations in many industries, including food and beverage, transportation, finance, healthcare and manufacturing.</p> <p>While the merger notification regime is voluntary in Singapore, the CCCS has been actively investigating non-notified transactions through its horizon-scanning mechanism or third-party complaints. The CCCS has expressly stated that where thresholds are crossed, it must be presumed that there is a substantial lessening of competition and hence a notification is required. Recently, the CCCS has fined companies for failure to notify a transaction, stressing that both negligent and intentional failures to notify will be considered as violations.</p>

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<p>South Korea</p>		<p>The Korea Fair Trade Commission (“KFTC”) is a mature and sophisticated authority that receives more than 700 notifications per year, a significant number of which are foreign-to-foreign transactions.</p> <p>In February 2019, the KFTC introduced new merger review guidelines on analyzing the innovation market and “data asset mergers”, indicating that it is likely to focus on these industries in the future.</p> <p>Failure to notify can be fined up to a maximum of €0.7 million.</p> <p>The legislative proposal to overhaul the Korean Monopoly Regulation and Fair Trade Act (“MRFTA”) would introduce a new “size of transaction” threshold aiming at allowing the review of transactions that may otherwise not meet the existing turnover threshold.</p>
<p>Sri Lanka</p>		<p>No merger control regime is currently in place in Sri Lanka.</p>
<p>Taiwan</p>		<p>The Taiwanese Fair Trade Commission (“TFTC”) is an active merger control enforcer. From the enactment of the original Fair Trade Act of 1992 until 2019, the TFTC has reviewed thousands of notifications, issuing around a dozen prohibitions. Over the past years, the TFTC has received around 60 notifications per year. The TFTC may impose fines for failure to notify of up to NT\$ 50 million (approx. €1.5million).</p>
<p>Thailand</p>		<p>Thailand’s reform package, which entered into force at the end of 2017, includes new merger control provisions, and brought into force a merger regime that remained dormant to date. The new reform provides that merger notifications to the Office of the Trade Competition Commission (“OTCC”) should be made either pre- or post-closing, depending on the parties’ size and market share.</p> <p>As of early 2020, the OTCC is reported to have received around 20 notifications, the vast majority of which were post-closing. Investigations for failure to notify transactions have not yet been observed, but may be expected in the future.</p> <p>The new reform package also covers foreign-to-foreign transactions, but the extent to which the OTCC treats foreign-to-foreign transactions as notifiable is unclear at this stage.</p>
<p>Timor Leste</p>		<p>No merger control regime is currently in place in Timor Leste.</p>
<p>Vietnam</p>		<p>The Vietnamese law on competition provides for a merger control regime and the relevant authorities have been receiving, on average, three to four notifications per year. There are no reports of transactions being blocked.</p> <p>An amended merger control regime establishing a new authority and setting new thresholds was implemented on 15 May 2020 (the underlying law entered into force in July 2019). The implementing decree also adapted the definition of control and applicability of the control test, and introduced a two-phased procedure and a new substantive test to assess the impact on competition.</p> <p>A new National Competition Committee still has to be appointed. Until then, the government has issued guidelines under which it will review notifications.</p>

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