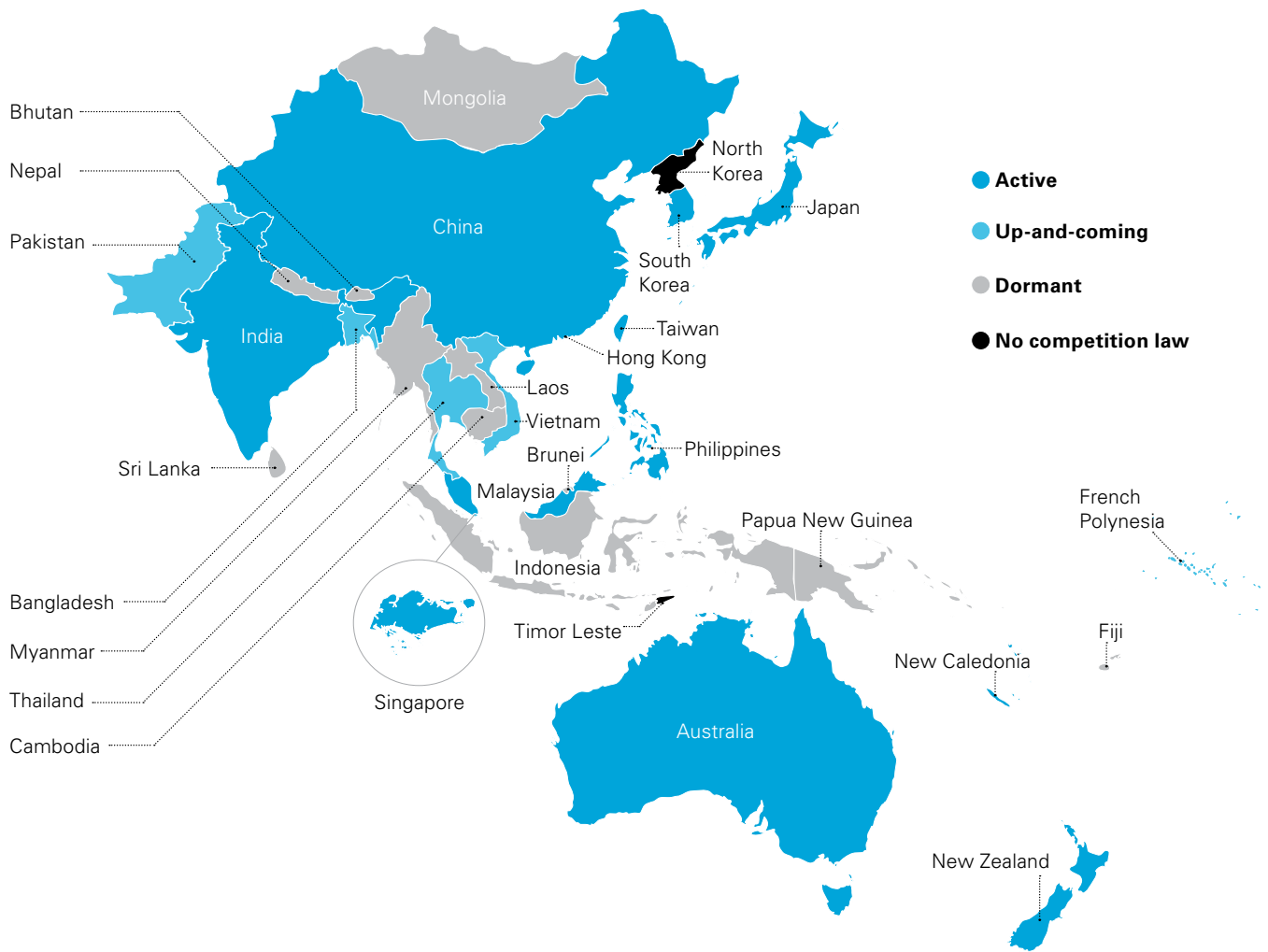


Asia-Pacific: Overview of antitrust regimes



An interactive guide to competition law enforcement in the Southeast Asia and Pacific region

In the past decade, a significant number of Asia-Pacific jurisdictions have begun to adopt and enforce competition law. This interactive map provides a general overview of the quickly evolving competition law regimes in the Southeast Asia and Pacific region. As the map highlights, the diverse political and economic developments characterising the region have resulted in significantly varied enforcement of competition law across the region.

The region is generally moving toward more effective competition law enforcement. In particular, many jurisdictions have introduced or amended their laws to empower the national competition authorities and clarify their competition regimes.

This trend is particularly clear with newly established authorities in the Philippines and in Thailand, which are rapidly stepping up their enforcement activities. Other jurisdictions (e.g. Cambodia and South Korea) have recently updated their laws with a view to strengthen enforcement.

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 additional jurisdictions not included in the map), please contact [Jacquelyn MacLennan](#), [Dr Tilman Kuhn](#) or your usual White & Case contact. This page was created in September 2020 and last updated in December 2021.

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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		<p>The Australian Competition and Consumer Commission (the “ACCC”) is an experienced and sophisticated authority, active in both national and international cartel and antitrust matters. Its primary role is to enforce the Competition and Consumer Act 2010 and a range of additional legislation promoting competition and fair trade and regulating national infrastructure.</p> <p>In response to the COVID-19 pandemic, the ACCC adjusted the focus of its enforcement activities to prioritise competition and consumer and fair trading issues arising from the pandemic. It established a COVID-19 Enforcement Taskforce to address immediate harm to consumers and small businesses and released three key COVID-19 guidance publications for consumers and industry. It also authorised collaboration between competitors.</p> <p>Cartel enforcement is an enduring priority for the ACCC, and the ACCC’s 2021 enforcement priorities also include competition issues in the domestic air travel market, funeral services sector, digital platforms market, financial services sector, commercial construction sector and essential services with a focus on energy and telecommunications.</p> <p>The ACCC investigates more than 20 competition cartel and antitrust cases each year. For the 2020 – 2021 period, which ended in June 2021, 15 court cases commenced, 27 court cases were concluded and 15 court cases are continuing. The Courts awarded total penalties of \$133.13 million and ordered fines (\$108.77 million from consumer protection matters and \$24.35 million from competition matters). Whilst the maximum and average penalties for competition law breaches are lower than those imposed in some other OECD jurisdictions, there is a concerted push from the ACCC for higher penalties.</p> <p>In recent years, the ACCC has completed or progressed market studies and inquiries covering water markets, home loans, electricity, gas, supply chains for perishable agricultural goods and digital platform services. A specialist Digital Platforms Branch has been established within the ACCC to build on and develop expertise in digital markets, and progress a broad inquiry into digital platforms through March 2025. It has notably provided the government with a series of interim reports focusing on online private messaging services, app marketplaces, and competition and transparency issues in the digital advertising technology supply chain. Additionally, the ACCC has developed a mandatory code of conduct to address the bargaining power imbalances between Australian news media businesses and digital platforms, which led to the introduction of legislation to Parliament in February 2021, which became law in March 2021.</p> <p>From July 2021, the ACCC has a new structure that is intended to bring about changes to workflow and resource allocation. These changes are expected to better the ACCC’s ability to conduct investigations in a timely manner.</p>

Asia-Pacific: Overview of antitrust regimes (continued)

<p>Bangladesh</p>	<p>The Bangladeshi Competition Act entered into force in 2012 and the Bangladesh Competition Commission (the “BCC”) was effectively formed in 2016 with the appointment of the chairperson and the members. However, the implementation and execution of this law still has been a major challenge. The BCC has the necessary legal powers; however, it needs adequate resources, economic experts and funds to become fully active and functional. The BCC is committed to capacity building, budget allocation, and the recruitment process to reinforce the existing policies and procedures.</p> <p>In March 2020, a memorandum of understanding was supposed to be signed between BCC and the Japan Fair Trade Commission to strengthen BCC’s efficiency during Prime Minister Sheikh Hasina’s visit to Japan, but the visit was postponed.</p> <p>The BCC has received numerous complaints so far, and with its limited capacity, has successfully delivered two orders in which it made findings of violations of anticompetitive agreements, the first being a tie-in arrangement and the other a cartel. It has also issued an interim order, in February 2021, following a complaint against an e-commerce platform. Many cases are still under investigation. The BCC is also conducting market investigations in different sectors such as rice, onion, health safety equipment and finished leather products to find anticompetitive practices. The BCC also undertakes competition advocacy by providing training on competition law and conducting awareness-building activities with stakeholders.</p> <p>During the 2020 annual conference of the ICN concerning the digital economy, the Chairman of the BCC, Md. Mofizul Islam, acknowledged the importance of the digital economy and the challenges it raises. He further went on to propose a separate unit to conduct market surveys that will address anticompetitive behaviour in digital markets. Because of the pandemic, online marketplaces, e-commerce, online education and online entertainment have seen a significant rise in demand, leading to regulatory scrutiny.</p> <p>In July 2021, the Ministry of Commerce issued the Digital Commerce Operation Guidelines 2021 (pursuant to the National Digital Commerce Policy 2018, as amended in 2020) with the aim of ensuring transparency and accountability in the digital commerce sector, and increasing the reliance on digital commerce by bringing about a regulatory framework, and creating a competitive market.</p>
<p>Bhutan</p>	<p>After an evaluation of enforcement capacity within the country, the Royal Government of Bhutan decided to adopt a competition policy instead of a competition law. The Ministry of Economic Affairs adopted the National Competition Policy in 2020. It offers a framework to promote efficiency, competitiveness and consumer welfare; as per provision 7.2 of the National Competition Policy, there shall be a competition impact assessment carried out for new and existing economy policies or laws proposed by government agencies. The Office of Consumer Protection (the “OCP”) is responsible for its implementation and the Consumer Board, already established under the Consumer Protection Act 2012, will function as the Competition Council.</p> <p>In April 2021, the OCP conducted a two-day webinar on ‘Understanding the tools and methodology to carry out Competition Impact Assessment (CIA)’ to enable the taskforce members in drafting the Competition Impact Assessment Guidelines.</p> <p>The Royal Government of Bhutan is showing interest in topics such as intellectual property, consumer protection and trade, with dedicated offices. In 2019, the Department of Trade published guidelines on e-commerce.</p>

Asia-Pacific: Overview of antitrust regimes (continued)

<p>Brunei</p>	<p>The Brunei Competition Order entered into force in 2015 (the “Competition Order”), and has, since 1 January 2020, been implemented in phases. As part of the first stage, on 1 January 2020, two of the three key prohibitions (“Section 11 Prohibition”) in relation to anticompetitive agreements and (“Section 21 Prohibition”) in relation to the abuse of dominant position and their related respective provisions came into force. The enforcement of the last key prohibition relating to anticompetitive mergers (“Section 23 Prohibition”) will be initiated at a later stage.</p> <p>Some subsidiary legislation to the Competition Order came into effect on 1 January 2021 as follows: (i) Competition Regulations, 2020, in relation to the decisions and directions imposed by the Competition Commission of Brunei (the “Competition Commission”) and powers of the Competition Commission; (ii) Competition (Transitional Provisions for Section 11 Prohibition) Regulations, 2020, in relation to the transitional period for the Section 11 Prohibition; (iii) Competition (Appeals) Regulations, 2020, in relation to appeals of appealable decisions by the Competition Commission to the Competition Appeal Tribunal (the “CAT”); and (iv) Competition (Composition of Offences) Regulations, 2020, in relation to the composition of offences under the Competition Order.</p> <p>Whilst Part V of the Competition Order in relation to CAT came into force on 1 January 2020, there has been no formal announcement on the establishment of CAT or the appointment of CAT members.</p> <p>The Competition Commission was established in 2017 and its responsibilities include enforcing the Competition Order 2015, curbing anticompetitive conduct, advising the Brunei government and public authorities in relation to competition matters and advocating on competition matters.</p>
<p>Cambodia</p>	<p>On 5 October 2021, the King of Cambodia signed into force the new Cambodian Competition Law (“Law”). In summary, the Law prohibits anticompetitive agreements, abuses of dominance and anticompetitive business combinations.</p> <p>The Cambodia Competition Commission (the “CCC”), which will be headed by the minister of commerce, will be responsible for issuing decisions, interim measures and fines and advising the government on competition laws and policies. The CCC has not, however, yet been appointed. The Law also sets out that the Directorate General will serve as its implementing body. This will be the Consumer Protection, Competition and Fraud Repression Directorate-General (“CCF”). The CCF’s staff has over the past year received training on competition issues in preparation of the enactment of the Law.</p>

Asia-Pacific: Overview of antitrust regimes (continued)

<p style="text-align: center;">China</p>	<p>In March 2018, China established a new authority, the State Administration for Market Regulation (the “SAMR”), merging the three previous antitrust authorities. The authority is active with both domestic and international cases. In November 2021, the administrative ranking of the Anti-Monopoly Bureau of SAMR was lifted from the department/bureau level to the vice-ministerial level, and it was renamed as the State Anti-Monopoly Bureau. It is also reported that the State Anti-Monopoly Bureau will recruit more people to bolster its enforcement force.</p> <p>Since its creation, the SAMR has investigated, on average, more than 15 competition cases per year.</p> <p>The SAMR has shown interest in a variety of industries, with a particular focus on the digital economy, pharmaceuticals, automotive, construction materials, consumer goods, public utilities and other sectors closely related to people’s livelihoods, such as insurance. The SAMR has, since its establishment, imposed significant penalties (e.g. in 2019, a fine exceeding €20 million against carmakers for a cartel in the automotive sector, a fine exceeding €30 million against an international chemical supplier for abuse of dominance, and a fine exceeding €2 billion against a domestic internet giant for abuse of dominance in 2021).</p> <p>The SAMR is part of the recent attempt to modernise the Chinese Anti-Monopoly Law (“AML”). In November 2020, SAMR published its draft <i>Antitrust Guidelines for the Platform Economy Industry</i> (“Platform Guidelines”) for consultation, reflecting its aim to increase antitrust enforcement in the digital sector. After revisions were made to the draft guidelines, on 7 February 2021, the final Platform Guidelines were published. The Platform Guidelines, which expressly refer to the AML, provide guidance on monopolistic behaviours in the digital platform sector and how to achieve compliance with the provisions in the AML.</p> <p>In January 2020, the SAMR released for public comment draft amendments to the AML, which include a broader definition of abuse of dominance, aimed at keeping up with the digitalisation of the economy. The National People’s Congress of the People’s Republic of China (the “NPC”) announced on 20 October 2021 that a revised draft of the AML had been submitted to the NPC’s standing committee. It was announced that the revised draft is aimed at improving anti-monopoly-related systems and increasing penalties for monopolistic behaviours.</p> <p>China has also been making efforts in issuing antitrust guidelines on specific priority realms to enhance legal certainty and transparency, as well as to promote competition advocacy. For instance, the <i>Antitrust Compliance Guidelines of Undertakings</i> and the <i>Oversees Antitrust Compliance Guidelines of Undertakings</i> were released in September 2020 and November 2021 respectively. The Antitrust Guidelines in the Area of Active Pharmaceutical Ingredients was released in November 2021.</p>
<p style="text-align: center;">Fiji</p>	<p>The Fijian Competition and Consumer Commission (the “FCCC”) mainly focuses on domestic consumer protection.</p> <p>The FCCC has a price monitoring function pursuant to the Fijian Competition and Consumer Act 2010 and it has utilised this power during pandemic lockdowns. It published a Guide for Business entitled <i>Business Collaboration in the Covid-19 Pandemic</i> (FCCC 2020b), which sets out the approach the FCCC will take to assessing collaborations. The FCCC has been particularly concerned with opportunistic price-gouging behaviours as one of the two COVID-specific sources of consumer harm (the other being misleading claims about the benefits of COVID products). The FCCC has also worked to ensure that tax and duty reductions introduced in the 2020 government budget have been passed to consumers.</p> <p>However, to the best of our knowledge, no major competition enforcement has been reported in Fiji.</p>

Asia-Pacific: Overview of antitrust regimes (continued)

<p>French Polynesia</p>	<p>The Polynesian Competition Authority (the “PCA”) was established in February 2015 in accordance with the statute of autonomy of French Polynesia within France. The PCA: (1) investigates and sanctions anticompetitive practices; (2) reviews mergers; and, rather uniquely, (3) oversees operations of retail areas.</p> <p>In 2021, the PCA issued five advisory opinions and carried out two merger control reviews (one is still ongoing) and assessed four operations of retail areas.</p> <p>The PCA’s 2020 Annual Report states that, in 2020, few offences have been reported and that, overall, companies have respected competition rules. The PCA issued six advisory opinions, two merger control reviews and one operation of retail area reviews. However, for the PCA, 2020 was marked by an unprecedented internal crisis. A number of serious shortcomings from its President led to the cancellation of the two major antitrust cases (out of the three PCA antitrust decisions) handled by the PCA during its first five years of existence.</p> <p>In August 2019, the PCA imposed its first fine for anticompetitive practices. The approximately €2 million fine was imposed on a dominant company in the local market for beverage supply for setting discriminating conditions between its suppliers and charging them excessive prices. However, this decision was quashed for lack of impartiality and the case was transferred from the PCA to the French Competition Authority. The Paris Court of appeal declared the PCA’s decision void on 21 January 2021.</p> <p>In November 2019, the PCA had to dismiss a claim about an alleged cartel concerning a public contract in the private security sector.</p> <p>From the beginning of August 2020, the PCA resumed its normal operations and functions in harmony. A strategic reorientation has been defined to strengthen the role of the PCA and allow for better and more effective intervention. Ms Johanne Peyre, recently appointed by the Government, took office in July 2021 as the new president of the PCA.</p>
<p>Hong Kong</p>	<p>The Competition Commission of Hong Kong (the “Commission”) is an independent body responsible for enforcing the Competition Ordinance through enforcement proceedings before the Competition Tribunal and other enforcement tools such as the use of commitments, warning notices and infringement notices. The Competition Ordinance (Cap. 619) was enacted in 2012 and came into full effect in late 2015.</p> <p>The Commission is active in investigating and prosecuting price-fixing, cartels, exchanges of information, resale price maintenance, bid-rigging, exclusivity agreements and other anticompetitive behaviour. All its concluded enforcement actions to date relate to anticompetitive agreements, although there is currently an abuse of dominance case being brought before the Competition Tribunal. From December 2015 to March 2021, the Commission has opened more than 250 initial assessments or formal investigations involving a variety of competition issues.</p> <p>The Commission has recently focused on sectors such as manufacturing, IT, transport and logistics, real estate and property management.</p> <p>The Commission is also active in publishing public advisory guidance, guidelines and toolkits, which are available on the Commission’s webpage. The Commission also carries out market studies from time to time.</p>

Asia-Pacific: Overview of antitrust regimes (continued)

India	<p>The Competition Commission of India (the “CCI”) is an experienced regulator, active in investigating antitrust cases. Over the past years, the CCI has completed an average of around 30 investigations per year.</p> <p>The CCI has been focusing on a variety of areas, including procurement cartels, resale price maintenance and related conduct, as well as abuse of dominance across industries including automotive, manufacturing, real estate, railways, finance and pharmaceuticals. Recently, the CCI has begun focusing on digital markets and has reviewed several cases involving innovation, e-commerce and technology-driven markets.</p> <p>The CCI has a long track record of investigating cartels and abuse of dominance. To date, the highest penalty imposed by the CCI in a cartel was a fine imposed on 11 cement manufacturers and a trade association (the combined fine exceeded €736 million and the highest individual fine in this case exceeded €100 million). The CCI also frequently relies on leniency applications filed by undertakings in the cases it brings.</p> <p>As to abuse of dominance, the penalties imposed by the CCI are generally lower and less common. The highest fine imposed by the CCI for abuse of dominance was a cumulative fine of around €296 million, imposed on 14 car manufacturers, which was later reduced on appeal. In another matter involving a state-owned entity, the CCI penalised the entity with a fine of almost €70 million for abuse of dominance. In the past, it has not been uncommon for the CCI’s decisions to be reversed on appeal. In recent years, following a 2014 Supreme Court decision, the CCI has been imposing penalties based on the concept of “relevant turnover” to achieve more proportionate results.</p> <p>In April 2021, the CCI announced plans for reviewing and revising the confidentiality regime based on its past experience and published draft amendments to the relevant provisions, inviting public comments to the same.</p> <p>The CCI is also active in market studies. In January 2020, the CCI published a market study on e-commerce in India; in January 2021, the CCI released its findings after having conducted a market study on the telecoms sector; and in November 2021, the CCI published key findings and observations from its market study on the pharmaceutical sector in India.</p>
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Asia-Pacific: Overview of antitrust regimes (continued)

Indonesia	<p>The Indonesian Competition Commission (the “KPPU”) is an established independent authority whose enforcement powers have been historically limited to companies that have business activities directly or indirectly (through subsidiaries) in Indonesia.</p> <p>Over the past years, the KPPU received more than 100 complaints per year, mostly related to tenders (more than 50 per cent of cases over the past few years) and focused on a variety of industries. Since 2014, the KPPU has become more active in non-tender cases, e.g. tyres (2014), automatic scooters (2016), freight containers (2019), and airfare tickets (2020), in addition to numerous investigations in the food industry. However, the KPPU’s activity decreased during 2020 because of the COVID-19 pandemic, having only decided on 15 cases throughout the whole year.</p> <p>In addition, the KPPU has also become more active in abuse of dominance cases. In 2020, it took two abuse of dominance decisions. In one of these, it imposed unprecedented administrative fines on two companies for discriminatory practices in segments for: (i) online transportation apps; and (ii) transportation rental services. One company incurred total fines of €1.8 million, the largest amount ever imposed by the KPPU on a single company, whilst the other company incurred total fines of €1.1 million. Further, in 2021, the KPPU took five abuse of dominant decisions; namely, three decisions related to discriminatory practices, one decision related to tying/bundling, and one decision related to predatory pricing.</p> <p>The KPPU is also active in market studies. In 2020, it conducted five market studies into the health, finance, digital, food and plantation sectors. In relation to the digital economy sector, the KPPU found that business competition in online platforms (especially e-commerce) is supported by two interrelated factors; namely, data control and the existence of information networks.</p> <p>In September 2021, the Government published a new regulation initiating legal reforms of the antitrust sanctioning guidelines. This also increased the discretionary powers of the KPPU Tribunal in relation to, for example, deciding on a case-by-case basis the method of calculating the maximum fine (either ten per cent of total turnover, or 50 per cent of net profit and allowing for the imposition of additional penalties in the event of non-payment of fines).</p> <p>To address the effects of the COVID-19 pandemic, a regulation was introduced on 9 November 2020 which contains rules regarding the “relaxation of law enforcement in order to support the national economic recovery”.</p> <p>One of KPPU’s key priorities for 2021 is the digital economy. The KPPU is therefore planning to boost its capacity to handle the sector’s more complex issues.</p>
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Asia-Pacific: Overview of antitrust regimes (continued)

<p>Japan</p>	<p>The Japanese Fair Trade Commission (the “JFTC”) is a leading enforcer, active in domestic and international antitrust matters.</p> <p>The main act on antitrust law is the Prohibition of Private Monopolisation and Maintenance of Fair Trade (“AMA”), which was amended in December 2020 to introduce changes to the surcharge system and leniency programme, designed to increase the incentives for companies to self-report their violations of the AMA.</p> <p>The JFTC continues to be a very active enforcer. From 1 April 2020 to 31 March 2021, the JFTC opened investigations into 83 suspected AMA violations and completed 91 cases. During this period, it took 15 legal measures (including cease-and-desist orders and approvals of the commitment plans), one monopolisation case, six price-fixing cartel cases, two bid-rigging cases and six unfair trade practice cases. In relation to the private monopolisation case and the bid-rigging cases, the JFTC also issued surcharge payment orders (i.e. administrative fines) to four companies amounting to approximately JPY 4.3 billion (around €34 million).</p> <p>The newly introduced leniency programme affords the JFTC flexibility in determining the rates of fine reduction based on the applicant’s degree of cooperation with the JFTC. From 1 April 2020 to 31 March 2021, the JFTC received a total of 33 applications under the leniency programme.</p> <p>The JFTC also has the authority to issue warnings and cautions against companies where it suspects unlawful behaviour. From 1 April 2020 to 31 March 2021, it issued 73 cautions on practices likely to lead to violations of the AMA and 136 cautions in the retail sector as part of its efforts to tackle unjust low price sales (predatory pricing).</p> <p>The JFTC has recently focused on cartels and unfair trade practices (e.g. abuse of superior bargaining position) across various industries, with a particular interest in the IT and digital sectors. The JFTC regularly publishes reports on its market research. In February 2021, it published its findings from its market research into the digital advertising market. As part of the JFTC’s efforts to increase its oversight in the digital sector, the JFTC’s Competition Policy Research Centre (“CPRC”) regularly publishes discussion papers on various aspects of competition law, including in relation to various digital issues. In June 2021, it published a report on <i>Competition Policy for the Data Market</i>.</p> <p>The JFTC also has the authority to conduct criminal investigations against companies and individuals for conduct such as cartels and bid rigging.</p>
<p>Laos</p>	<p>Laos’ Business Competition Law entered into force in December 2015. In October 2018, an additional regulation was passed formalising the establishment of the Laos Competition Commission (the “LCC”).</p> <p>A draft competition strategy plan for 2021 – 2025 has been prepared. The strategy plan will outline priority sectors and capacity building activities as well as the LCC’s short- and long-term priority plans.</p> <p>However, to the best of our knowledge, the competition law has not yet been implemented.</p>
<p>Malaysia</p>	<p>The Malaysian Competition Act entered into force in 2012 and has extraterritorial effect, meaning that the act applies if the conduct has anticompetitive effects in Malaysia. The first years following the establishment of the Malaysian Competition Commission (the “MyCC”) were characterised by minimal enforcement.</p> <p>However, in the last few years, its activity has increased with the commencement of several high-profile price-fixing and abuse of dominance cases. In 2017, the MyCC issued a fine against insurance companies amounting to around €45 million.</p> <p>The MyCC is also active in conducting market studies. Over the last years, it has published market studies in various industries including the food, construction materials and pharmaceutical sectors.</p>

Asia-Pacific: Overview of antitrust regimes (continued)

<p>Mongolia</p>	<p>The Mongolian Authority for Fair Competition and Consumer Protection (the “AFCCP”) was established in 2005 and focuses on consumer protection and relatively small domestic antitrust matters.</p> <p>Whilst historically, enforcement activity appears to have been minimal, the international Development Law Organisation (the “IDLO”) has been working with the European Bank for Reconstruction and Development (“EBRD”) to strengthen the capacity of AFCCP in supporting fair competition in Mongolia in 2019 – 2021. This project aims to foster free market competition by providing support in legislative drafting, advocacy and tailored assistance to the AFCCP.</p> <p>As part of this project, an initiative was taken to set up a database for identifying monopolies, which will enable the AFCCP to register entities that monopolise the market and actions that violate consumer rights.</p> <p>Further, in light of the pandemic, steps were taken to protect consumers against price hikes being introduced by companies taking advantage of the COVID-19 crisis. For example, on 12 February 2020, the Mongolian government passed a resolution empowering AFCCP to adopt measures to prevent and combat excessive pricing, artificial scarcity, misleading advertisements, commodity overstock and speculation in an emergency situation.</p>
<p>Myanmar</p>	<p>Myanmar’s competition law entered into force in February 2017. The Government established the Myanmar Competition Commission (the “MmCC”) in October 2018.</p> <p>The MmCC has so far received about ten complaints, reportedly involving the pharmaceutical, education, construction and transportation sectors. To the best of our knowledge, the MmCC has not yet begun full-fledged enforcement operations. It is laying the foundation for enforcing competition laws and increasing awareness for such laws.</p>
<p>Nepal</p>	<p>Market Protection Officers appointed by the Government of Nepal, the Competition Promotion and Market Protection Board or a subcommittee formed by the Board are responsible for investigating alleged infringements of competition law. The Competition Promotion and Market Protection Act was planned in 2004 and came into force in January 2007, but remains, to our knowledge, largely unenforced.</p>

Asia-Pacific: Overview of antitrust regimes (continued)

New Caledonia

The New Caledonian Competition Authority (the “**NCCA**”) is a newly established authority responsible for ensuring compliance with competition laws which entered into force in April 2014 and applies specifically to New Caledonia. The law aims to enforce competition laws more locally in this French territory with significant devolved powers.

The NCCA only started its activities in March 2018, focusing mainly on its preventive mission. It also developed its advisory mission by issuing 12 opinions and recommendations in 2018 (and 29 opinions and recommendations to date) as part of the multiple economic reforms launched by the Government that impact free prices and free competition (e.g. introduction of the general consumption tax accompanied by a price and margin cap system, reform of protectionist measures to promote the disposal of local agricultural and industrial production).

In 2019, the NCCA registered a significant number of complaints relating to anticompetitive practices (17 referrals compared to three in 2018) and further developed its law enforcement. In December 2019, the NCCA notably put an end to competition concerns relating to exclusive import agreements and issued its first substantive decision, imposing around €60,000 in fines on two suppliers and two distributors in the elevator sector, whilst also accepting behavioural commitments.

In 2020, 44 decisions, opinions and recommendations were adopted, representing a considerable increase in activity. This number reflects the completion of the investigation procedures launched in 2018 and 2019. As regards merger control, the NCCA created an office dedicated to the *a priori* control of market structures, in order to deal with the increase of cases notified despite the doubling of the notification thresholds in January 2020. As regards anticompetitive practices, the NCCA investigated the market for international telecommunications by submarine cable, the import and marketing of sheep-meat and the film sector, in particular, and also sanctioned exclusive import agreements in the ice cream sector.

Whilst the sector inquiry into the airline market launched in December 2019 was suspended due to the COVID-19 pandemic, the NCCA kept a close watch on the market by advising the New Caledonian Congress and the Government regarding the anticompetitive and economic risks induced by the non-reimbursement of airline tickets. An amended national bill was finally adopted on 26 November 2020, providing in particular for the obligation to immediately reimburse the most vulnerable customers. The NCCA also advised the Government, after the first call for tenders for the production and import chain for masks, to lay down the conditions under which a “crisis agreement” was admissible.

Following up on its opinion on the price structure of consumer goods in New Caledonia, which was issued on 28 December 2020, the NCCA will continue focusing on exclusive import rights and other forms of refusal to sell, through *ex officio* referrals.

On the procedural level, the NCCA will try to maintain a balance between its various advisory, preventive and repressive missions by increasing, as far as possible, the number of decisions.

Asia-Pacific: Overview of antitrust regimes (continued)

<p>New Zealand</p>	<p>The New Zealand Commerce Commission (the “NZCC”) is an experienced enforcer with experience in both domestic and international matters. The NZCC enforces the Commerce Act 1986 (the “Commerce Act”), which governs competition law in New Zealand and prohibits a range of anticompetitive conduct and mergers and acquisitions that substantially lessen competition.</p> <p>Since April 2021, intentional cartel conduct has become a criminal offence under the Commerce Act for which individuals can be imprisoned for up to seven years or face a criminal fine of up to \$500,000, and for businesses, a criminal fine up to the greater of: \$10 million; three times the commercial gain from the offending; or ten per cent of the company's turnover. These criminal sanctions apply in parallel to the existing civil sanctions for cartel conduct. In 2020, to prepare for the criminal regime, the NZCC engaged with international enforcement agencies to share knowledge about investigatory processes and ways to manage trials. The NZCC also carried out an extensive awareness campaign to educate businesses and stakeholders on the new regime, including media campaigns and targeted outreach about cartel conduct.</p> <p>In April 2021, the NZCC updated its cartel leniency policy, outlining that whilst the NZCC can grant civil leniency to the first party that reports involvement in a cartel, only the Solicitor General can grant criminal immunity.</p> <p>The NZCC's enforcement focus has been on cartel conduct and anticompetitive agreements. Based on the NZCC's public register, the NZCC is currently investigating six cases of anticompetitive conduct, four of which are in relation to potential cartel conduct, one in relation to misuse of market power and the other in relation to anticompetitive agreements. In 2020, the NZCC successfully brought proceedings against four companies for cartel conduct, with total fines amounting to just under NZD 4.4 million. In 2021, the NZCC brought proceedings against two companies for cartel conduct, with total fines amounting to NZD 236,500. One of the recent, most notable cases was the Supreme Court's ruling in the real estate agencies case where the Court upheld the NZCC's allegation that real estate agents and their directors had fixed prices when agreeing to pass on an online property advertiser's pricing change for real estate listings to vendors.</p> <p>In August 2021, the NZCC issued an anti-collusion reminder to businesses supplying essential services in the midst of the nationwide COVID-19 lockdown of their obligations under the Commerce Act.</p> <p>In December 2019, the NZCC published its final report on the retail fuel market study, where it recommended the introduction of a new regulatory regime over the industry. Following the report, the Fuel Industry Act 2020 has come into effect, providing the NZCC powers to enforce and monitor the market through requiring suppliers to publish a terminal gate price and follow wholesale contract rules, amongst other requirements. In November 2020, the NZCC launched a new study into the retail grocery market. An interim report was published in July 2021 and the final report is expected in March 2022. In November 2021, the NZCC commenced a market study into the residential building supplies industry, with the final report expected in December 2022.</p> <p>Parliament is currently considering a proposed reform of New Zealand's existing misuse of market power prohibition. The changes proposed would make New Zealand's prohibition similar to the Australian misuse of market power prohibition and would prohibit a firm with a substantial degree of market power from engaging in any conduct that has the purpose, effect or likely effect of substantially lessening competition in a market. The proposed reform is awaiting its third and final reading in Parliament.</p>
<p>North Korea</p>	<p>To the best of our knowledge, no competition law is currently in place in North Korea.</p>

Asia-Pacific: Overview of antitrust regimes (continued)

Pakistan		<p>The Competition Commission of Pakistan (the “CCP”) enforces Pakistan’s Competition Act of 2010 (“PCA”) and mainly focuses on domestic matters.</p> <p>Over the last years, the CCP has shown increased sophistication and dealt with a variety of topics and industries, including pharmaceuticals, public procurement, and overlaps between IP and antitrust.</p> <p>In September 2021, the CCP raided two tractor manufacturers for suspected involvement in anticompetitive practices.</p> <p>The CCP also conducts inquiries as well as “assessment studies” into various sectors and industries, including the road construction industry, the LPG sector and, most recently, in the agricultural sector, which involved an assessment of the supply chain from “farm gate to retail”, published in July 2021.</p>
Papua New Guinea		<p>The primary goal of the Independent Consumer and Competition Commission of Papua New Guinea (the “ICCC”), which was established more than a decade ago, is to administer and implement the ICCC Act and other related legislation to enhance consumer welfare, promote industry conduct and standards, and protect consumers’ interests with regard to price, quality and reliability of goods and services. To the best of our knowledge, its antitrust enforcement-related activity is minimal (if any).</p>

Asia-Pacific: Overview of antitrust regimes (continued)

Philippines	<p>The Philippines enacted the Philippine Competition Act (the “PCA”) in 2015, which took full effect in August 2017, after a two-year transition phase. During this transition phase, parties to anticompetitive agreements were not exposed to the penalties provided under the PCA, as long as they ultimately corrected such agreement to be compliant with the PCA.</p> <p>The Philippine Competition Commission (the “PCC”) is an independent, quasi-judicial body mandated to implement the national policy in the Philippines. The PCC has been actively opening investigations into alleged anticompetitive conduct, including vertical restraints. To date, only one decision has been promulgated, involving the country’s first abuse of dominance case. In this case (which was resolved in 2019), the PCC imposed a fine of PHP 27.11 million (approximately USD 550,000) against a mass housing developer which imposed an exclusive Internet service tie-up on its tenants, preventing the tenants from availing the services of other Internet service providers.</p> <p>The PCC considers certain sectors to be “priority enforcement sectors”, meaning that potential anticompetitive practices in these sectors shall be given priority in terms of possible enforcement action. Key sectors include rice, pharmaceuticals, e-commerce, retail and logistics supply chains.</p> <p>In 2019, the Philippine Supreme Court promulgated the Rule on Administrative Search and Inspection under the Philippine Competition Act to help in the investigation and prosecution of competition law offences. There have been no reported dawn raids as of October 2021.</p> <p>In June 2020, the Philippine Department of Justice (the “DOJ”) released a circular setting out the implementing rules for the criminal provisions of the PCA. The circular addresses the need to institutionalise the rules and procedures for preliminary investigation and prosecution of criminal offences under the PCA, as well as the implementation of a leniency program by the DOJ.</p> <p>The PCC intensified its enforcement activity in 2020 by setting up a dedicated online channel for receiving COVID-19-related complaints, in particular in establishing an “Enforcement Resource Portal” on its website, containing the COVID-19 complaint portal, through which 167 queries and complaints were received. This led to nine preliminary investigations and five full administrative investigations covering water utilities, Internet services, retail associations and poultry industries.</p> <p>The PCC also conducts market studies and frequently publishes “issues papers”. In 2021, these were published on industries including: the refined petroleum industry, cargo services sector, milk products industry, the fertiliser industry and the corn industry.</p> <p>On 8 November 2021, the PCC opened its first investigation station (i-station) at the University of the Philippines Baguio in North Luzon. It then intends to open other i-stations in Legazpi City (South Luzon), Cebu City (Visayas) and Davao City (Mindanao). These i-stations will serve as temporary PCC workstations to facilitate the conduct of investigative work, field missions, surveillance, interviews, and market monitoring until the PCC is able to open permanent regional offices in the future. This shows the PCC’s commitment to ramping up its enforcement activity throughout the country.</p>
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Asia-Pacific: Overview of antitrust regimes (continued)

Singapore	<p>The Competition and Consumer Commission of Singapore (the “CCCS”) is an enforcement authority with a growing record of enforcement in both antitrust and consumer protection matters. The Competition Act (Chapter 50B) (“SCA”) governs competition law in Singapore and prohibits a range of anticompetitive conduct, including anticompetitive agreements and practices, abuses of dominance and mergers and acquisitions that substantially lessen competition. The SCA has extraterritorial effect.</p> <p>Over the last years, the CCCS decided an average of nine cases per year. Investigations by the CCCS are generally confidential unless and until such time the CCCS proposes to issue an infringement decision. In recent years, the CCCS also carried out dawn raids, issued a cartel decision and opened several abuse of dominance investigations. Bid rigging is another hot topic. In 2020, the CCCS issued two infringement decisions involving bid rigging. One of the decisions also involved levying discounted financial penalties due to the companies’ leniency applications and cooperation under relevant procedure. In 2018, the CCCS issued its largest fine to date (around €30 million) to 13 distributors of fresh chicken for fixing prices and agreeing not to compete during a seven-year period.</p> <p>Over the years, the various industries the CCCS has investigated include cosmetics, food and beverage, e-commerce, the property valuation industry, online food delivery and virtual kitchen sectors and construction.</p> <p>The CCCS also conducts market studies, and has reviewed industries involving infant formula, retail gasoline and car repairs, with a particular focus on warranties. In September 2020, the CCCS published its findings and recommendations after conducting a market study on e-commerce platforms. The CCCS uses its market studies as a way to additionally regulate the markets.</p> <p>In relation to policy development, apart from proposing changes to its guidelines on the SCA, the CCCS has proposed a Business Collaboration Guidance Note, and conducted a public consultation on this Guidance Note between 30 July 2021 and 27 August 2021. The Guidance Note aims to clarify the CCCS’s positions on common types of business collaborations (<i>i.e.</i> information sharing, joint production, joint commercialisation, joint purchasing, joint research & development and standardisation) and to provide guidance on how the CCCS will generally assess whether such collaborations comply with Section 34 of the SCA.</p> <p>Looking ahead, sustainability is likely to play a bigger role in competition law policy in Singapore. For example, the CCCS recently launched a research grant and invited research proposals on the topic of “Sustainability, Competition and Consumer Protection in Singapore” on 17 September 2021. Further, the CCCS has also announced a five-year strategic framework for FY2021 to FY2025 in its Annual Report 2020/2021. As part of this framework, the CCCS recognises that dynamic trends and issues in the rising digital economy will give rise to more complex market structures and conduct. In connection with the above, the CCCS has announced plans to use technology and big data to better identify markets that have competition or consumer protection issues. Examples include a bid-rigging detection tool developed in-house by the CCCS to identify susceptible tenders and a collaboration with the Government Technology Agency of Singapore to develop a text analytics tool to identify suspicious tender documents.</p>
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Asia-Pacific: Overview of antitrust regimes (continued)

<p>South Korea</p>	<p>The Korea Fair Trade Commission (“the KFTC”) is an experienced enforcer, active in domestic and international antitrust matters, and is capable of reviewing complex cases.</p> <p>Over the past years, the KFTC has reviewed more than 3,000 cases per year and enforcement trends reveal an increased focus on cartels and bid-rigging and on digital marketplaces and big data.</p> <p>The KFTC has investigated abuses of market dominance and unfair trade practices in various industries. Recently, the KFTC has focused on sectors such as the ICT (online platform, telecommunications, intellectual property rights, semiconductors) and bio-healthcare industries.</p> <p>A bill submitted by the KFTC aimed at substantially amending the country’s primary competition law, the Korean Monopoly Regulation and Fair Trade Act (“MRFTA”) was passed by the National Assembly on 9 December 2020. The amended MRFTA is set to come into effect on 30 December 2021. It will have significant ramifications on antitrust investigations and enforcement, particularly in terms of: (1) strengthening enforcement measures and sanctions (e.g. doubling the maximum amount of administrative fines, whilst repealing criminal liability for certain types of anticompetitive conduct, and introducing the right to seek injunctive relief from courts); and (2) bolstering due process (e.g. guaranteeing the right to counsel in KFTC investigations).</p> <p>Recently, in September 2021, the KFTC imposed a hefty \$177 million fine on a tech company for abuse of its market dominance.</p>
<p>Sri Lanka</p>	<p>Competition law was introduced in Sri Lanka with the Fair Trading Commission Act No. 1 of 1987, giving the Consumer Affairs Authority (the “CAA”) wide investigative powers. The CAA comprises four main operational divisions: Consumer Affairs and Information; Competition Promotion; Pricing and Management; and Compliance & Enforcement. Of those main divisions, the Competition Promotion Division is in charge of the anticompetitive practices. Whilst the CAA has been largely dormant since its inception, it has recently shown some investigative activity in the consumer protection sphere.</p>
<p>Taiwan</p>	<p>The Taiwanese Fair Trade Commission (the “TFTC”) is in charge of the Fair Trade Act and the Multi-level Marketing Supervision Act in Taiwan. Over the past years, the TFTC has typically reviewed more than 1,500 cases per year.</p> <p>Competition enforcement is increasing in Taiwan, especially after the amendment of the competition laws in 2015. Following the reform, the TFTC became more independent and is better equipped to take effective enforcement actions, which are expected to increase over the next years.</p> <p>The TFTC has shown particular interest in telecommunications, semiconductors, e-commerce, and digital economy-related issues.</p> <p>The highest antitrust fine issued to date against a foreign entity dates back to 2017, when the TFTC imposed a fine of NT\$23.4 billion (approximately €653 million) on a US-based tech company for abusive licensing practices and rebates.</p>

Asia-Pacific: Overview of antitrust regimes (continued)

<p>Thailand</p>	<p>A new Trade Competition Act B.E. 2560 (2017) ("TCA") came into force in October 2017, replacing the previous law that was in place since 1999. The TCA also created a new enforcement agency, the Trade Competition Commission (the "TCC"), supported by the Office of the Trade Competition Commission, to run the day-to-day operations ("OTCC").</p> <p>Thailand recently embarked on major reforms to strengthen its competition legislation and empower its competition authority. The TCC has been active in issuing sub-legislation for various businesses to implement provisions of the TCA and continues to monitor conducts of business operators.</p> <p>In May 2020, the TCC opened up an investigation into online food delivery operators, which led to the publication of sub-legislation on the conduct of platform operators to restaurant operators which could constitute unfair trade practices.</p> <p>During the 2020 fiscal year, the Economic Systems and Market Structures Research line (a division within the OTCC) conducted in-depth studies on six businesses that "tend to create monopolies", ranging from consumer product businesses to services, namely: chemical fertilizers; motorcycles; MSG; instant noodles; private hospitals; and logistics platforms. Studies into growing businesses such as food delivery platforms and ride-hailing has been and is expected to remain active as findings can be used in consideration of the conduct of such operators.</p> <p>In 2020, the TCC reported to have adjudicated 41 cases and issued or amended three pieces of sub-legislation to address issues facing business operators in various business sectors, such as the purchase of agricultural products, online food delivery services, and franchise.</p> <p>The OTCC identifies in its Annual Report of 2020, that the COVID-19 pandemic expedited changes in the market structure, leading to fewer competitors (risk of oligopoly), resulting in greater challenges to the OTCC in regulating abuse of dominance. Additionally, there is an increased tendency to collude to maintain mutual business interests and, likely, more mergers and acquisitions to increase market power, post-pandemic.</p> <p>The TCC issued new sub-legislation on credit terms in agreements between small- or medium-sized enterprises ("SMEs") in 2021, which will be effective from 16 December 2021. The new sub-legislation, aimed at protecting SMEs with less bargaining power, provides considerations for what constitutes "fair" and "unfair" trade practices relating to credit terms with SMEs under the TCA.</p>
<p>Timor Leste</p>	<p>No competition law regime is currently in place in Timor Leste. However, it has been announced on the Ministry of Finance's website that "a competition law is being established to ensure an even playing field for businesses" as part of the country's economic and commercial reforms.</p>

Asia-Pacific: Overview of antitrust regimes (continued)

Vietnam	<p>The 2018 Law entered into force in July 2019, replacing the 2004 law. However, the necessary decree implementing the merger regime only entered into force in May 2020.</p> <p>The 2018 Law merged the existing Vietnam Competition and Consumer Authority (the “VCCA”) and the Vietnam Competition Council into the NCC. Until the NCC has been appointed, the VCCA is acting as de facto regulator.</p> <p>The 2018 Law covers anticompetitive agreements, abuse of market dominance, economic concentration, and unfair practices.</p> <p>The VCCA’s Economic Concentration Report of 2021 highlights that 125 notification dossiers were received between July 2019 and June 2020. The VCCA’s Annual Report of 2020 sets out a number of objectives for the future, including: (i) developing a database on the market structure in important sectors such as real estate, logistics and energy; and (ii) finalising guidelines on anticompetitive agreements, abuse of dominance, leniency policies and the exemption to prohibited cartels.</p>
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