Asia-Pacific
Economic Cooperation

Indepth Mapping of Competition Law across the APEC Economies

Supplement to the 2008 APEC Economic Policy Report

APEC Economic Committee
November 2008

AUSTRALIA

<table>
<tr><td rowspan="3">1. Substantial Law
Trade Practices Act (TPA) (1974)</td><td colspan="3">1.1 Applicable rules</td></tr>
<tr><td>Restraints of trade

Horizontal
The TPA prohibits corporations from making contracts, arrangements or understandings with competitors that have the purpose or effect of substantially lessening competition, including price fixing; contracts arrangements or understandings that have the purpose of preventing, restricting or limiting the supply of goods or services; and secondary boycotts that have the purpose of causing substantial loss or damage.

Vertical
The TPA also prohibits anticompetitive exclusive dealing and resale price maintenance.</td><td>Abuse of dominant position/ monopolization

The misuse of substantial market power is prohibited. A corporation that has substantial market power cannot take advantage of that power for the purpose of eliminating or substantially damaging a competitor; preventing entry of a person into a market; or deterring or preventing a person from engaging in competitive conduct in a market. Also, a corporation with substantial market share must not engage in sustained below-cost pricing for the purposes described above.</td><td>Mergers and acquisitions

The TPA prohibits mergers or acquisitions that have the effect or likely to have the effect of substantially lessening competition.</td></tr>
<tr><td colspan="3">1.2 Goals</td></tr>
<tr><td>Efficiency
To enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.</td><td colspan="2">Distributive and other goals
To promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets; and to provide a framework and guiding principles to encourage consistent approach to access regulation in each industry.</td></tr>
<tr><td>2. Coverage of competition law</td><td>Economy-wide exemptions or special treatments
Where the ACCC considers that there is a public benefit arising from an alleged anticompetitive agreement which outweighs any competitive detriment, then the ACCC may provide immunity from court action under the TPA through authorization, exclusive dealing notification, and collective bargaining notification.</td><td colspan="2">Sector specific provisions
Specific competition provisions in relation to telecommunications are contained in Parts XIB and XIC of the TPA. Part XIB of the TPA establishes an anticompetitive conduct regime for telecommunications markets and applies in addition to the general competition provisions under Part IV of the TPA.
Part XIC of the TPA establishes an industry-specific regime for regulated access to bottleneck carriage services and provides the core access arrangements for the telecommunications industry.
Although there is no separate regime for energy under the TPA, codes and access undertakings provided under part IIIA of the TPA.</td></tr>
</table>

		International liner cargo shipping operations are excluded from the competition provisions of the TPA. Part X of the TPA describes the conditions under which international liner operators are permitted to form conferences to provide joint liner cargo shipping services for Australian exporters and importers.
3. Enforcement	**3.1 Institutions**	
	Administrative Australian Competition and Consumer Commission. Australian Competition Tribunal (the Tribunal).	**Judiciary** The Federal Court of Australia (the Federal Court).
	Actions The ACCC promotes competition by enforcing the TPA and regulating third-party access to nationally significant infrastructure. The Tribunal considers appeals on certain ACCC decisions and directly hears applications for authorization of company mergers and acquisitions which would otherwise be prohibited under the TPA.	**Actions** The Federal Court rule whether contraventions have occurred and decided on suitable remedies and deterrents. The cases are brought by the ACCC but can also be brought by individuals.
	3.2 Process The ACCC has responsibility of enforcing the TPA, and brings cases to the Federal Court. There is also the right of private action, which enables persons alleging a contravention of the TPA to approach a court or tribunal directly. In many other cases the ACCC negotiates settlements of matters on the basis of enforceable undertakings to cease alleged offending conduct or to provide some form of redress or compensation for affected parties.	
	Powers to investigate The ACCC has the power to obtain information, documents and evidence relating to a breach or suspected breach of the TPA.	

	Remedies					
	Administrative fines -	**Injunction or cease-and-desist orders** Injunction.	**Civil penalty, criminal fines and imprisonment** Breaches of the competition provisions of the TPA occurring prior to 1st January 2007, is subject to a maximum penalty of A$10 million.	**Leniency programs** Immunity policies confer full amnesty from prosecution and penalty to the first eligible cartel participant that reports its participation in a cartel, fully cooperates with the	**Damages** The ACCC may seek damages on behalf of persons who have suffered loss in most litigation procedures.	**Divestiture** The ACCC may seek divestiture orders in relation to an acquisition that has substantially lessened competition.

			Conduct occurring after 1st January 2007, is subject to a penalty that is the greater of A$10 million, three times the value of the benefit, or 10 per cent of its annual turnover. At present, there are no fines or jail terms for breaches of the competition provisions of the TPA.*	ACCC's investigation, and assists in the prosecution of the other cartel participants. Leniency is also available for other contraventions under a separate cooperation policy.		

* The Australian Government has committed to introducing legislation to criminalize serious cartel conduct by the end of 2008.

CANADA

1.Substantial Law Competition Act (1986) and Competition Tribunal Act (1986)	**1.1 Applicable rules**		
	Restraints of trade **Horizontal** Price fixing, market sharing, output limitation, collective boycotts and activities of trade associations are all covered by the general conspiracy prohibition, which do not create per se offenses. Thus, proof of a violation requires showing something beyond the fact of an agreement (i.e., proof of economic effects to convict the members of the cartels). Exemptions include agreements on defining of product standards or the exchange of credit information; agreements that relate solely to the export of products from Canada, and agreements that relate to professional services. The only per se offense is bid rigging, provided that the agreement is not disclosed to the authority. Accordingly, there is no chance for joint ventures to argue that on balance the agreement led to efficiencies; i.e., that it was ancillary and necessary to effectuate a principal one. **Vertical** Resale price maintenance is virtually per se illegal (and a criminal offense). Other vertical restraints, such as exclusive dealing and tied selling, are subject to a rule of reason analysis; i.e., they are not prohibited where it is engaged in only for a reasonable time to facilitate entry of a new supplier or product into the market; or it is reasonable having regard to the technological relationship among the products involved. Franchise agreements between affiliates are not subject to the exclusive dealing, tied selling and market restriction provision.	**Monopolization/Abuse of dominant position** Vertical squeezing of non-integrated customers' margins, acquisition of a customer's or supplier's potential alternative source or outlet, freight equalization on a competitor's plant, deployment of "fighting brands," pre-emption of scarce facilities or resources, buying up product to sustain prices, setting incompatible product specifications, inducing a supplier to deal only with certain customers, and predatory sales below acquisition cost, among others (this is a non-exhaustive list). They are all subject to rule of reason analysis. The simple exercise of market power by charging a high price or by withholding supply from the market is neither mentioned nor enforced. Canadian jurisprudence does not consider such activity to constitute abusive exploitation of market power.	**Mergers and acquisitions** The Commissioner may consider all mergers, proposed or otherwise, in all sectors of the economy, which come to his attention. Where a transaction prevents or lessens, or is likely to prevent or lessen, competition substantially, the Commissioner may ask the Tribunal to issue a remedial order. The Competition Act provides a list of factors such as barriers to entry and effective remaining competition, which the Tribunal may consider in making its determination. Other merger provisions include: - The Tribunal's finding cannot be based solely on evidence of concentration or market share; - An exception, with some restrictions, is applied for situations where the merger brings about, or is likely to bring about, gains in efficiency. Such gains must be greater than and offset, the effects of any prevention or lessening of competition, and these gains would not likely be attained if the order were made; and - No application can be made by the Commissioner in respect of a merger more than three years after that merger has been substantially completed.

	1.2 Goals					
	Efficiency To promote efficiency and provide consumers with competitive prices and product choices.			**Distributive and other goals** To ensure equitable opportunities for small and medium-sized enterprises.		
2. Coverage of competition law	**Economy-wide exemptions or special treatments** All businesses are subject to the Competition Act, with the exception of selected activities specifically exempted, such as collective bargaining, amateur sport or regulated industries and activities subject to other legislation and which may be covered by the regulated conduct defense.			**Sector specific provisions** Railroad transportation, public utilities.		
3. Enforcement	**3.1 Institutions**					
	Administrative The Competition Bureau is an independent agency from the Industry Federal Department and the Commissioner who is the head of the Competition Bureau.			**Judiciary** Yes.		
	Actions The Commissioner of Competition, supported by the Competition Bureau, is principally responsible for competition law and policy in Canada. The Competition Tribunal, a body comprised of judicial and lay members, is a special court available as a first instance decision-maker for civil matters under the Competition Act. The Competition Tribunal is also integrated for judicial members			**Actions** The Federal Court has the power, when asked by the Attorney General, to make remedial orders if it finds that a company has used the exclusive rights and privileges conferred by a patent, trademark, copyright or registered integrated circuit topography to unduly restrain trade or lessen competition. With respect to criminal offenses, the Commissioner may refer a case to the Attorney General of Canada for consideration as to what action the Attorney General may wish to take. In the case of civil reviewable matters, the Commissioner may apply to the Competition Tribunal, a quasi-judicial body, for remedial orders		
	Process					
	For non-criminal reviewable matters, only the Commissioner may bring an application to the Tribunal. Private parties cannot sue to restrain such behavior or to seek damages except for damages as a result of the violation of an order of the Competition Tribunal.					
	Powers to investigate					
	Remedies					
	Administrative fines A fine of up to US$50,000 is applicable for omissions to notify mergers and acquisitions.	**Injunction or cease-and-desist orders** In criminal cases the court may enter an order to control future conduct for up to 10 years.	**Criminal fines and imprisonment** Penalties for violating the conspiracy provisions are a fine up to C$10 million or imprisonment up to five years or both. Penalties for violating bid-rigging provisions are the same except that the fine is in the discretion of the court.	**Leniency programs** Yes, with the following the conditions: (i) to reveal at least one of the offenses, (ii) the agent must provide all the information available, (iii) the agent must cooperate totally even with its own resources.	**Damages** Yes.	**Divestiture** In abuse of dominant position cases (of assets and shares).

CHILE

<table>
<tr><td rowspan="4">1.Substantial law
Law for the Defense of Free Competition DL No. 211/1973 and its subsequent modifications</td><td colspan="3">1.1 Applicable rules</td></tr>
<tr><td>Restraints of trade

Horizontal
Any deed, act or contract that prevents, restricts or obstructs free competition, or that tends to produce these effects, illustrated with exemplary anticompetitive conducts as distribution of quotas, reduction or suspensions of production and price fixing.

For this reason, all considered practices could be, under certain circumstances, anticompetitive.

There is no per se rule for hardcore cartels. To be considered illegal and punishable by the Competition Law, it is required to accredit the adverse economic effects of cartels on the market (Rule of reason).

Vertical
Allocation of territories, exclusive distribution. Resale Price Maintenance.

Per se rule does not apply; all acts must be analyzed in relation to their effects on markets. Nowadays, it is accepted that vertical restraints are not necessarily harmful—and might be efficient—if the firm imposing them does not have market power.</td><td>Abuse of dominant position/monopolization

Any deed, act or contract that prevents, restricts or obstructs free competition, or that tends to produce these effects, illustrated with exemplary unilateral anticompetitive conducts as excessive pricing, predatory pricing, discrimination, refusals to deal, tie-ins, among others.

Per se rule does not apply; all acts must be analyzed in relation to its effects on markets.</td><td>Mergers and acquisitions

The statute does not consider special rules regarding merger control. However, it is well understood that mergers are part of the acts or contracts that could tend to prevent, restrain or obstruct free competition.

There is no mandatory pre-merger notification program except for transactions involving television and radio entities, in which pre-notification—to the competition institutions—is required.

Post-merger control exists for mergers that affect competition.</td></tr>
<tr><td colspan="3">1.2 Goals</td></tr>
<tr><td>Efficiency
No specific goals are established by law.
The aim of the law is to promote economic efficiency in markets.</td><td colspan="2">Distributive and other goals
There are no declared distributive goals, but there is equal treatment to the parties by the competition law enforcement system.</td></tr>
<tr><td>2. Coverage of competition law</td><td>Economy-wide exemptions or special treatments
There are no express economic-wide exclusions in the competition law.

The law applies to economic parties, state-owned enterprises, and</td><td colspan="2">Sector specific provisions
Competition authority has influence over sector agencies’ decisions. Agencies in the telecom and electricity sectors are not authorized to set tariffs unless the Competition Tribunal has found a market to be insufficiently competitive.</td></tr>
</table>

	to decisions of the government ministries or agencies even when they are acting in their regulatory capacity. Monopolies only can be designated by law (Art. 4 DL N°211).	

3. Enforcement

3.1 Institutions

Administrative	**Judiciary**
National Economic Prosecutor's Office.	Competition Tribunal (independent entity part of the Judiciary).
Actions Investigates and brings enforcement cases, submitting complaints to the Competition Tribunal and the Supreme Court of Justice, if necessary. Decides whether to participate in private complaints.	**Actions** Decide cases brought by either the Prosecutor's Office or private parties, both in contentious procedures or attending non-contentious procedures (or consultations, specially related to mergers and acquisitions, or evaluating the effects on competition of future conducts or contracts). In addition, it can propose to the President of the Republic – or any other agency under the Executive—amendments or abrogation of laws and regulations, and the enactment of regulations, in all competition issues.

3.2 Process

Cases are brought by notice from any natural or legal person, public or private, to the Prosecutor's Office or *ex officio* by the latter. Ordinarily, the Prosecutor must provide notice to the target of an investigation, but the Competition Tribunal may waive this requirement when notice would jeopardize the investigation.
The results of investigations conducted by the Prosecutor's Office are usually set forth in a "report" delivered to the Competition Tribunal. If the Office decides that an official proceeding should begin, the report is accompanied by a complaint seeking a fine or other remedy. The report is a matter of public record.
Parties (FNE and other than the Prosecutor) may appeal the Tribunal's orders before the Supreme Court.

Powers to investigate

The Prosecutor has the power to compel the production of documents and the cooperation of agencies, public entities, private firms and individuals. Individuals' imprisonment can be considered by the FNE as well, only in case of proved obstruction to an investigation procedure.

Remedies

Administrative fines	**Injunction or cease-and-desist orders**	**Criminal fines and imprisonment**	**Leniency programs**	**Damages**	**Divestiture**
Up to US$15 million. Powers to disqualify individuals from holding office in professional and trade associations.	Yes.	Eliminated by Law in 2003.	Settlement procedure exists, but law not considers leniency or immunity programs.	Anyone harmed by the illegal anticompetitive action of another person has the right to sue in civil court for damages only if the Competition Tribunal has found that the defendant has violated the law.	Powers to resolve to cease the conduct; and dissolve and restructure companies.

CHINA

<table>
<tr><td rowspan="4">1. Substantial Law
Antimonopoly Law (in force on 1st August 2008).</td><td colspan="3">1.1 Applicable rules</td></tr>
<tr><td>Restraints of trade

Horizontal
The law prohibits monopoly agreements among undertakings that have or are likely to have the effects of eliminating or restricting competition.
Vertical
The law prohibits monopoly agreements among undertakings that have or are likely to have the effects of eliminating or restricting competition.</td><td>Abuse of dominant position/monopolization

The law prohibits abuse of dominant market positions by undertakings that have or are likely to have the effects of eliminating or restricting competition.</td><td>Mergers and acquisitions

The law prohibits concentration by undertakings that have or are likely to have the effects of eliminating or restricting competition.</td></tr>
<tr><td colspan="3">1.2 Goals</td></tr>
<tr><td>Efficiency
N.a.</td><td colspan="2">Distributive and other goals
N.a.</td></tr>
<tr><td>2. Coverage of competition law</td><td colspan="3">Economy-wide exemptions or special treatments
Sector specific provisions</td></tr>
<tr><td rowspan="5">3. Enforcement</td><td colspan="3">3.1 Institutions</td></tr>
<tr><td colspan="2">Administrative
An antimonopoly commission will be established under the State Council.</td><td>Judiciary</td></tr>
<tr><td colspan="2">Actions
To organize, coordinate and supervise antimonopoly activities. Antimonopoly authorities will be in charge of the enforcement of the antimonopoly law. In addition, if necessary, antimonopoly authorities may empower corresponding government agencies at the provincial level to conduct antimonopoly enforcement activities in accordance with this law.</td><td>Actions</td></tr>
<tr><td colspan="3">3.2 Process</td></tr>
<tr><td colspan="3">Powers to investigate
Remedies
Administrative Fines
Injunction or cease-and-desist orders
Criminal Fines and Imprisonment
Leniency Programs
Damages
Divestiture</td></tr>
</table>

JAPAN

<table>
<tr><td rowspan="4">1. Substantial Law
The Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (1947)</td><td colspan="4">1.1 Applicable rules</td></tr>
<tr><td colspan="2">Restraints of trade

Horizontal
The Antimonopoly Act (AMA) prohibits “unreasonable restraint of trade” such as cartels and bid-riggings.

Vertical
Vertical restraints such as refusal to deal, discriminatory pricing and treatment, tie-in sales, resale price restriction, dealing on exclusive terms are regulated in the AMA as “Unfair Trade Practices” if such conducts tend to impede fair competition, and as “Private Monopolization” if such conducts cause a substantial restraint of competition.</td><td>Abuse of dominant position/monopolization

The AMA prohibits “Private Monopolization” if any entrepreneur excludes or controls the business activities of other entrepreneurs, thereby causing a substantial restraint of competition.

The AMA also prohibits “Abuse of Dominant Bargaining Position” as “Unfair Trade Practices”.</td><td>Mergers and acquisitions

The AMA prohibits business combinations such as merger, acquisition or holding of stocks, where the effect of such a business combination may substantially restrain competition.

Mergers, divisions and acquisition of businesses which meet certain criteria such as the scale of the company are subject to pre-notification, while acquisition or holding of stocks which meets certain criteria is subject to post-notification.</td></tr>
<tr><td colspan="4">1.2 Goals</td></tr>
<tr><td>Efficiency
To promote fair and free competition, to stimulate the creative initiative of entrepreneurs, to encourage business activities, to heighten the level of employment and actual national income, to promote the democratic and wholesome development of the national economy, to assure the interests of general consumers.</td><td colspan="3">Distributive and other goals

See left column.</td></tr>
<tr><td>2. Coverage of competition law</td><td colspan="2">Economy-wide exemptions or special treatments</td><td colspan="2">Sector specific provisions
The AMA applies to all sectors and a large number of specific sector formal exemptions were eliminated (21 exemption systems in 15 laws remain as of March 2008).</td></tr>
</table>

3. Enforcement	**3.1 Institutions**	
	Administrative Japan Fair Trade Commission.	**Judiciary** Public prosecutors handle criminal cases, solved by the general Courts.
	Actions Administrative investigation. Compulsory investigation for criminal cases.	**Actions** Any crime under private monopolization, unreasonable restraint of trade etc., shall be considered only after an accusation is filed by JFTC.
	3.2 Process	
	A clue for starting investigations When JFTC detects suspected acts through its *ex officio* investigation, information offered by the public and applications for Leniency Program, it launches an investigation. **Administrative investigation** On-the-spot inspection is made to the entrepreneurs suspected of illegal acts in order to collect and investigate accounting books and related documents, and the concerned parties are ordered to appear for hearing details, if necessary. **Advance notification** When illegal acts are recognized as a result of investigations, JFTC decides on the contents of cease-and-desist orders and surcharge payment orders, which are deemed reasonable, and gives the entrepreneurs in question an advance notification on the contents of such orders. **Opportunity to present views and to submit evidence** Entrepreneurs can present their views on the contents of orders notified in advance. In order to ensure the decision of fair administrative measure, they can not only present their views, but submit evidence. **Cease-and-desist orders** Cease-and-desist orders are the administrative measure aimed at a prompt elimination of illegal acts. In the case of price cartels, the entrepreneurs involved are ordered to withdraw price raises, and so on. **Surcharge payment orders** Surcharge payment orders are the administrative measure given to such cases as cartels, bid riggings, and private monopolization of the control type, in addition to elimination of illegal acts. Surcharge payment is calculated in accordance with a certain formula and made to the national treasury. **Hearing procedures and decision** When a request for hearing procedures is made, establishment of facts of violation and review of applicable measure are carried out. After hearing procedures, decision is made depending on facts of violation. **Lawsuit** Entrepreneurs dissatisfied with the decision can appeal to Tokyo High Court asking for revocation. In the absence of substantial evidence for decision or in the case of breach of the Constitution, the court repeals such decision.	
	Powers to investigate **Administrative investigation** JFTC may, in order to conduct necessary investigations with regard to a case, make the following measures: i) Ordering persons concerned with a case or witnesses to appear to be interrogated, or collecting their opinions or reports; ii) Ordering expert witnesses to appear to give expert opinions;	

	iii) Ordering persons holding books and documents and other materials to submit such materials, or keeping such submitted materials at JFTC; and iv) Entering any business office of the persons concerned with a case or other necessary sites, and inspecting conditions of business operation and property, books and documents, and other materials. **Compulsory investigation for criminal cases** In accordance with the warrants issued by the judge, visit and search to the entrepreneurs concerned are carried out for seizure of necessary objects.					
	Remedies					
	Administrative Fines Surcharges are applied to those entrepreneurs carrying out certain types of cartels, bid riggings and private monopolizations. The sum of surcharges is calculated on the basis of sales amounts of products or services in question during the period of violation (three years at a maximum) by multiplying such sales amounts by calculation rates as determined according to business categories, etc.	**Injunction or cease-and-desist orders** Cease and desist orders are the administrative measure aimed at a prompt elimination of illegal acts. In the case of cartels and private monopolizations, for example, the JFTC may order the relevant entrepreneurs to cease and desist from the said acts, to transfer a part of his business, or to take any other measures necessary to eliminate such acts in violation of said provisions.	**Criminal fines and imprisonment** In some cases, criminal penalties such as imprisonment with work or fine are imposed against violation of the Antimonopoly Act. If entrepreneurs are engaged in cartels, an individual who has decided to carry out such cartels is subject to criminal penalties, and a fine is also imposed on the entrepreneurs and trade associations involved.	**Leniency programs** A leniency program applies to a total of three (3) entrepreneurs at most. Before on-the-spot inspection, the first applicant immunity from total surcharges; the second applicant reduction of 50% of surcharges: the third applicant reduction of 30% of surcharges. After on-the-spot inspection, the applicants reduction of 30% of surcharges.	**Damages** Consumers or entrepreneurs that have incurred damage due to the violation of acts prohibited by the Antimonopoly Act, can demand damages from the violators. If damages are demanded in accordance with the Antimonopoly Act, in particular, entrepreneurs or trade associations so demanded cannot be exempted from their liabilities regardless of the existence of their intentions or negligence.	**Divestiture** In case there exists cartels or private monopolies, JFTC may order the relevant entrepreneur to take measures necessary to eliminate such acts in violation of the said provisions, including transferring a part of its business. Where there exists M&A that violate the Antimonopoly Act, JFTC may order the relevant entrepreneur to take measures necessary to eliminate such acts in violation of the said provisions, including transferring a part of its business.

KOREA

1. Substantial Law Monopoly Regulation and Fair Trade Act (1981)	**1.1 Applicable rules**		
	Restraints of trade **Horizontal** Price and terms fixing, restricting production or trade agreements, restricting territories agreements, boycotts, bid rigging, forming joint ventures and hindering other enterprises. *Per se* rule for price and output agreements There is no "minimal effects" or *de minimis* defense. **Vertical** Vertical agreements are subject to rule of reason as general rule. Discrimination and refusal to deal might be considered abuse of dominance. If the party is engaged in the practice, it is considered to have dominant position. Resale price maintenance is judged applying the per se rule. Case-by-case exemptions can be granted in advance, especially where interbrand competition is achieved.	**Abuse of dominant/monopolization** It refers to unreasonable pricing, unreasonable control of sales or services, interference with other enterprises, hindering entry of new competition, and otherwise threatening substantially to restrain competition or harm consumer interests.	**Mergers and acquisitions** The MRFTA covers horizontal, vertical, and conglomerate combinations. The last category is particularly significant in the context of *chaebol* regulation. Notification requirements are based on the size of the firms. Mandatory pre-notification will be required for stock acquisitions by firms with over W2 trillion in assets. Notification is already required for mergers and asset acquisitions. Notification is not required, though, for smaller acquisitions (of firms with assets or turnover under W3 billion) or for interlocking.
	1.2 Goals		
	Efficiency Innovation and dynamic efficiency, consumer protection.	**Distributive and other goals** Balanced economic development. The law sanctions unreasonable pricing but KFTC has taken no formal corrective actions to control pricing since the early 1990s.	
2. Coverage of competition law	**Economy-wide exemptions or special treatments** The KFTC can authorize agreements that are aimed at rationalizing an industry, overcoming economic depression, improving industrial structure, enhancing the competitiveness of SMEs, or rationalizing terms of trade. The KFTC may also authorize agreements for research and technology development ventures.	**Sector specific provisions** In principle, the MRFTA now applies to all industries, with no sector exceptions. However, some sectors are protected or controlled to some extent (i.e., liner shipping, resale price maintenance for literary works is allowed, cooperatives in agriculture and forestry, and through contracts between ginseng farmers and processors, in order to strengthen the negotiating position of atomized producers).	

	The exemptions are applied only through a process of prior application to the KFTC. Private conduct pursuant to a government official's discretionary instructions is not exempted	Other government agencies apply sectoral regulations that affect competition issues.
3. Enforcement	**3.1 Institutions**	
	Administrative The Korea Fair Trade Commission.	**Judiciary** General courts.
	Actions The KFTC has powers to investigate; however, it cannot search premises and take possession of evidence.	**Actions** The public prosecutor handles criminal cases, solved by the general courts. Criminal cases depend on a referral from the KFTC. The judiciary also solves damages claims and appeals to KFTC decisions.
	3.2 Process	
	The KFTC may initiate an investigation if it believes that there has been a violation of the law, or in response to a complaint. Targets of investigation have the right to present their case to the KFTC. The KFTC may decide there is no violation, or it may send a matter back for further investigation. If the KFTC finds a violation, it imposes one of the remedies established in the MRFTA. Parties may file objections to the decision at the KFTC within 30 days. If such an objection is filed, the General Counsel is responsible for conducting a re-investigation, and the KFTC is to re-deliberate the case within 90 days. The defendant need not object at the KFTC, but may instead appeal directly by filing an administrative suit at the Seoul High Court. A further, and final, appeal can be taken to the Supreme Court.	
	Powers to investigate The KFTC may summon parties for testimony and engage expert witnesses, and it may conduct on-site investigations. The KFTC may also require information from private parties and other agencies.	
	Remedies	

	Administrative fines Surcharges of up to 5% of sales revenue during the period of violation.	**Injunction or cease-and-desist orders** Orders to cease the offending act and take corrective measures.	**Criminal fines and imprisonment** Criminal fines up to W200 million can be imposed, and the law also provides, in theory, for imprisonment for up to three (3) years.	**Leniency programs** KFTC has a leniency program. KFTC might also agree not to refer their violations for criminal prosecution.	**Damages** Victims of acts that violate the competition law may claim compensation for damages, either under the MRFTA or under the Civil Code.	**Divestiture** KFTC does not have the power to impose structural remedies such as dissolution or divestiture.

		Horizontal anticompetitive contracts are null and void.	Individuals who are managing directors or executives can be held criminally responsible for violations by their firms.	An informant can be paid a proportion of the surcharges that are eventually assessed.	A victim can only claim compensation pursuant to the MRFTA after a KFTC order becomes final. In that case, the defendant cannot avoid liability on the grounds of lack of negligence or intent to harm. When filing a claim under the Civil Code, parties do not need to wait until the KFTC has issued an order; however, the plaintiff does need to prove negligence or intent to harm.	

MEXICO

1. Substantial Law Federal Law of Economic Competition (LFCE) (1993)	**1.1 Applicable rules**		
	Restraints of trade **Horizontal** Hardcore horizontal agreements among competitors are subject to a *per se* rule: price fixing, output restriction, market division, and bid rigging. Others are judged under a rule of reason. **Vertical** Vertical market division, resale price maintenance, tied sales, exclusive dealing, and deal refusals are all subject to a rule of reason.	**Abuse of dominant position/monopolization** The reformed law includes additional prohibited conducts: predatory pricing, exclusive dealing in exchange for special discounts, cross-subsidization, and discrimination in price or conditions of sale, and raising rivals' costs. The LFCE does not address abusive (high) pricing.	**Mergers and acquisitions** The LFCE prohibits mergers whose objective or effect is to reduce, distort or hinder competition. It establishes pre-merger notification requirements.
	1.2 Goals		
	Efficiency To protect the competitive process and free market access by preventing monopolies, monopolistic practices, and other restraints of the efficient functioning markets for goods and services.	**Distributive and other goals** No explicit goal.	
2. Coverage of competition law	**Economy-wide exemptions or special treatments** Exclusive State functions in strategic areas that are contemplated in Article 28 of the Constitution (paragraphs 4 and 7), as well as the labor and export trade associations that are constituted legally do not constitute monopolies. The LFCE provides no exception or protection for anti-competitive conduct by a private party on the grounds that the conduct is authorized by a government agency or official.	**Sector specific provisions** Cast resolutions on effective competition conditions.	
3. Enforcement	**3.1 Institutions**		
	Administrative Federal Competition Commission (CFC).	**Judiciary**	
	Actions The CFC may refer certain violations of the LFCE to the Public Prosecutor for consideration of criminal charges	**Actions** The Court solves appeals for legal protection ("amparo") against CFC's decisions.	

against the responsible individuals.

3.2 Process

Proceedings are driven before the CFC after a complaint or ex officio. Complaints about per se practices may be filed by any person, while complaints about rule of reason practices and completed mergers are accepted only from an affected party.

At the conclusion of the investigation, the Commission makes a determination whether sufficient elements exist to bear out the existence of monopoly practices or prohibited concentrations. If not, the Commission closes the proceeding and so notifies the complainant. If so, the target is served with a writ of alleged responsibility. The respondent then has 30 days to file an answer and make an evidentiary proffer.

The respondent may, at any time during the proceeding but before the Commission renders its resolution, present a written offer to settle the case by terminating the unlawful practices at issue and undertaking any appropriate preventive measures. The Commission may accept the offer and close the case, but the regulation specifies that any settlement will not prejudice the Commission's authority to impose a fine or impair the complainant's ability to seek damages.

The CFC's resolution can be appealed through an internal mechanism known as resource of reconsideration. Furthermore, the participants involved in Commission cases may seek judicial relief if they are dissatisfied with the resolution of the recourse of reconsideration. There is a potentially available proceeding called "amparo" process, which takes place in a federal district court.

Powers to investigate

The Commission may require the production of documents, issue written interrogatories, and take oral declarations from all parties who have any relation with the facts under inquiry.

Remedies

Administrative fines	**Injunction or cease-and-desist orders**	**Criminal fines and imprisonment**	**Leniency programs**	**Damages**	**Divestiture**
For per se violations, the maximum fine factor is 1,500,000 minimum wages. For rule of reason practices, the maximum fine factor for most violations is 900,000 minimum wages. And for prohibited mergers, the maximum fine factor is 900,000 minimum wages. CFC is able to impose, in egregious cases, an alternate fine equal to or greater of 10 per cent of the violator's annual sales or 10 per cent of the violator's assets.	Cease orders.	No criminal fines.	There is a leniency program since the LFCE amendment in 2006.	Civil Courts can grant damages to private parties.	The LFCE empowers the Commission to sanction an unlawful merger by ordering partial or full divestiture, as well as other conduct relief.

NEW ZEALAND

<table>
<tr><td rowspan="4">1. Substantial Law

The Commerce Act (1986)</td><td colspan="3">1.1 Applicable rules</td></tr>
<tr><td>Restraints of trade

Horizontal
The Commerce Act of 1986 contains generic prohibitions. It is complemented by two specific per se prohibitions related to horizontal arrangements:
- A prohibition against contracts, arrangements or understandings between competitors that have the effect of price fixing, and
- A prohibition against contracts, arrangements or understandings between competitors that have exclusionary provisions, unless the defendant can show the arrangement does not substantially lessen competition.

Vertical
The generic prohibition against contracts, arrangements, and understandings that have the purpose, effect or likely effect of substantially lessening competition also applies to vertical arrangements.

This generic prohibition is complemented by a specific per se prohibition related to resale price maintenance.</td><td>Abuse of dominant position/monopolization

It prohibits a person with a substantial degree of market power from taking advantage of that power for the purpose of restricting entry to any market, preventing or deterring competition, or eliminating anyone from a market.</td><td>Mergers and acquisitions
The Commerce Act prohibits acquisitions of assets or shares that have the effect or likely effect of substantially lessening competition.

The parties may apply to the Commerce Commission for an authorization. The Commission will grant an authorization if the applicant can demonstrate that the benefit to the public from the acquisition will outweigh harms to competition. In granting a clearance or authorization, the Commission may accept the disposal of assets or shares.</td></tr>
<tr><td colspan="3">1.2 Goals</td></tr>
<tr><td>Efficiency</td><td colspan="2">Distributive and other goals</td></tr>
<tr><td>2. Coverage of competition law</td><td>Economy-wide exemptions or special treatments</td><td colspan="2">Sector specific provisions
Specific regulations relating to electricity, telecommunications and dairy sectors are contained in the Electricity Industry Reform Act 1998 and Part 4A of the Commerce Act, the Telecommunications Act 2001 and the Dairy Industry Restructuring Act 2001. These sectors continue, however, to be regulated within the generic framework provided by the Commerce Act, with specific regulations providing additional provisions for the achievement of competition objectives within these industries.</td></tr>
<tr><td rowspan="2">3. Enforcement</td><td colspan="3">3.1 Institutions</td></tr>
<tr><td>Administrative
The Commerce Commission.</td><td colspan="2">Judiciary
The Commerce Commission’s decisions are subject to judicial review</td></tr>
</table>

	Actions The Commerce Commission is an independent statutory body with predominantly adjudication and public enforcement functions. It has a set of enforcement criteria to assist its decision making in prioritizing its enforcement activities. Appeals against the Commerce Commission's decisions are made before the High Court. It has a mixed administrative-judicial system.	**Actions**

	3.2 Process					
	Powers to investigate The Commerce Act provides for both private and public enforcement actions. The Courts may impose penalties, damages and orders					
	Remedies					
	Administrative fines Up to NZ$500 for a single person and NZ$10 million for a business. In case of profits obtained through anticompetitive practices, the fine will be three times such profits or 10% of the business assets.	**Injunction or cease-and-desist orders**	**Criminal fines and imprisonment**	**Leniency programs** Complete immunity to the first person (natural or juridical) that cooperates. There are also incentives, though not immunity, for subsequent collaborator.	**Damages**	**Divestiture** It is only available as a remedy for breaches of the prohibition against anticompetitive mergers or acquisitions.

PERU

1. Substantial Law Legislative Decree 1034 on Repression of Anticompetitive Behaviors (2008) Law No. 26876, Antimonopoly and Antioligopoly Act for the Electricity Sector	**1.1 Applicable rules**		
	Restraints of trade **Horizontal** Hardcore horizontal agreements among competitors are subject to a *per se* rule: price fixing, output restriction, market division and bid rigging. Others are judged under a rule of reason. **Vertical** They are all subject to a rule of reason analysis. It is a requirement that one of the parties to the agreement has a dominant position.	**Abuse of dominant position/monopolization** Rule of reason analysis. Some of the explicitly mentioned practices are: refusals to deal, discrimination, tie-ins, predatory pricing and abuse of administrative procedures. It is a requirement that the practice has an exclusionary effect on competitors. Exploitative conducts are not forbidden.	**Mergers and acquisitions** There is a pre-merger notification program limited to electrical sector. There is no merger control in other economic sectors.
	1.2 Goals		
	Efficiency To protect economic efficiency for the consumer welfare.	**Distributive and other goals** No explicit goal.	
2. Coverage of competition law	**Economy-wide exemptions or special treatments** There are no economy-wide exemptions to the competition law. However, INDECOPI's case law has stated that labor associations and regulated imposed or permitted behaviors are not supervised by the competition authority.	**Sector specific provisions** There are no sector specific provisions that establish competition law exemptions.	
3. Enforcement	**3.1 Institutions**		
	Administrative **Prosecutor** Technical Secretariat of the Free Competition Commission of INDECOPI. **Decision-taking** Free Competition Commission of INDECOPI (1st instance). INDECOPI's Tribunal (2nd instance).	**Judiciary** Lima's Superior Court solves appellation process to INDECOPI's Tribunal decisions. Civil Courts attend, in principle, to damage claims brought by private parties. Criminal Courts attend to criminal offenses to competition established in the Criminal Code.	
	3.2 Process		
	Law enforcement proceedings before the Commission begin either in response to a complaint or "*ex officio*" at the Technical Secretariat of the		

	Commission's initiative. After a preliminary investigation, the Technical Secretariat adopts the decision to open a formal administrative procedure. All parties are allowed to present allegations to the Technical Secretariat. Afterwards, there is an opportunity to have a public hearing before the Commission. At the conclusion of the investigation, the Commission determines whether an illegal anticompetitive practice has occurred. Defendants can appeal the Commission's decision to INDECOPI's Tribunal. This decision can be appealed to the Superior Court of Lima and finally to the nation's Supreme Court.					
	Powers to investigate The Technical Secretariat may require the production of documents, issue written interrogatories, and take oral declarations from all persons who have any relation to the facts under inquiry. The Technical Secretariat is also entitled to visit and inspect enterprises' establishments and offices.					
	Remedies					
	Administrative fines Up to 1,000 Tax Units to enterprises and 100 Tax Units to individuals.	**Injunction or cease-and-desist orders** Cease orders and behavior remedies.	**Criminal fines and imprisonment** Not applicable.	**Leniency programs** There is a leniency program. Negotiations are held between cartel's participants and the Technical Secretariat.	**Damages** Civil Courts can grant damages to private parties.	**Divestiture** The Competition Law has no granted powers to adopt divestitures or structural remedies. They are only possible in not approved mergers in electrical sector.

RUSSIA

1. Substantial Law Law on Competition Protection (2006). The Russian Law on Competition and the Limitation of Monopolistic Activity in Product Markets (2002)	**1.1 Applicable rules**					
	Restraints of trade **Horizontal** Law prohibits horizontal agreements concerning prices or any element of pricing behavior (mark-ups, discounts), market division, restriction of market access, elimination of participants from the market, or boycott. **Vertical** Vertical agreements are prohibited "between economic subjects not competing on the corresponding market, receiving and supplying goods" if such agreements prevent, restrict or eliminate competition.		**Abuse of dominant position/monopolization** A 35% percent market share is not considered market power, while a market share above 50% leads to the presumption of market power.		**Mergers and acquisitions** Pre-merger notification and approval is required for mergers and other similar combinations of firms in which the combined value of the assets of the firms exceeds 200,000 times the minimum wage (20 million rubles or about US$668,000).	
	1.2 Goals					
	Efficiency		**Distributive and other goals**			
2. Coverage of competition law	**Economy-wide exemptions or special treatments** N.a.		**Sector specific provisions**			
3. Enforcement	**3.1. Institutions**					
	Administrative The Russian Federal Antimonopoly Service.		**Judiciary**			
	Actions		**Actions**			
	3.2 Process					
	Powers to investigate N.a.					
	Remedies					
	Administrative Fines 15-100% of sales within the affected market. To return incomes caused by anticompetitive arrangements.	**Injunction or cease-and-desist orders** Yes.	**Criminal fines and imprisonment** Individuals: 200,000 rubles, or the equivalent to 18 months' wages, arrest for a period of four to six months, and two years' prison. Groups: 30,000 rubles, or the equivalent to two years' wages, and a maximum five year-period prison term.	**Leniency programs** Yes.	**Damages** Natural persons: between 40 and 50 times the minimum wage. Juridical persons: Between 2,000 and 5,000 times the minimum wage.	**Divestiture**

SINGAPORE

1. Substantial Law Competition Act	**1.1 Applicable rules**		
	Anticompetitive Agreements, etc., which prevent, restrict or distort competition (section 34 of the Competition Act) ("the Act") **Horizontal** As Singapore is a small and open economy, an agreement will generally have no appreciable adverse effect on competition if (i) the aggregate market share of the parties (who are actual or potential competitors) does not exceed 20% in any of the relevant markets affected by the agreement; (ii) the market share of each party (who are neither actual nor potential competitors) does not exceed 25% in any of the relevant markets affected by the agreement; or (iii) in the case of an agreement between small and medium enterprises ("SMEs") with fixed assets investment of less than S$15 million (manufacturing SMEs) or less than 200 workers (services SMEs). Agreements between SMEs are rarely capable of distorting competition appreciably within the section 34 prohibition. An agreement involving price-fixing, bid-rigging, market sharing or output limitations is deemed to have an appreciable adverse effect on competition, notwithstanding that the market shares of the parties are below the threshold level, and even if the parties to such agreements are small and medium companies. **Vertical** Vertical agreements are excluded from the section 34 prohibition of the Competition Act due to their pro-competitive effects. However, there is a safeguard claw-back provision for vertical agreements which the Minister may by order specify.	**Abuse of Dominant Position (section 47 of the Act)** For example predatory behavior, discrimination, tie-ins, and the limitation of production, markets or technical development to the prejudice of consumers.	**Mergers and acquisitions (section 54 of the Act)** There are provisions in the Act to deal with mergers which have resulted, or may be expected to result, in a substantial lessening of competition. There is a voluntary system for the notification of merger transactions.
	1.2 Goals		
	Efficiency The Act aims to maintain and enhance	**Distributive and other goals** Nil.	

	efficient market conduct and promote overall productivity, innovation and competitiveness of markets in Singapore.	
2. Coverage of competition law	**Economy-wide exemptions or special treatments** The Act does not apply to activities carried on by, agreements entered into or any conduct on the part of the government, any statutory body or any person acting on their behalf in relation to the said activity, agreement or conduct. An exemption may however be removed by the Minister by the making of an order. Upon recommendation by the CCS that a particular category of agreements contributes to: (a) improving production or distribution; or (b) promoting technical or economic progress, but which does not: (i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or (ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question, the Minister may make a block exemption order to exempt agreements falling within that category from the prohibitions in section 34 of the Act. The section 34 prohibition also does not apply to individual agreements, which satisfy the above criteria. A merger is exempted if the resultant economic efficiencies are expected to outweigh any adverse effects due to a substantial lessening of competition.	**Sector specific provisions** There are sector specific provisions for the telecommunications, energy, media and armed security services industries. There is also sector regulation for activities such as certain mail, piped potable water, wastewater management, scheduled bus services, rail services, cargo terminal operations, clearing house operations and certain transactions relating to financial institutions.
3. Enforcement	**3.1 Institutions**	
	Administrative The Competition Commission of Singapore (CCS).	**Judiciary** Competition Appeal Board District Court High Court Court of Appeal

	Actions The CCS may investigate, determine if there is an infringement, impose financial penalties and give directions to the infringing parties.	**Actions** The Competition Appeal Board hears appeals relating to decisions made by the CCS. The District Court has jurisdiction to try offenses related to the enforcement of the Competition Act, the power to issue search warrants, and to enforce directions and commitments given to the CCS. The High Court and Court of Appeal will hear appeals on points of law arising from a decision of the CCS; or from any decision of the CCS as to the amount of a financial penalty.

	3.2 Process The CCS may commence an investigation if it has reasonable grounds for suspecting that any anticompetitive provisions of the Competition Act has been infringed. Investigations may commence after the CCS receives a complaint or it may also act on its own volition.
	Powers to investigate The CCS has powers to compel any person to produce documents and to provide information. It has powers to enter premises without warrant to inspect documents. It may also apply for a search warrant from the Courts in order to enter premises to search and take possession of documents. Persons who refuse to provide information, destroy or falsify documents, provide false or misleading information or obstruct an officer of the CCS may be prosecuted and be liable for fines and/or imprisonment.
	Remedies

	Administrative fines Financial penalties are determined by the CCS and may amount to a maximum of 10% of such turnover of the business of the undertaking in Singapore for each year of infringement for such period, up to a maximum of three years.	**Injunction or cease-and-desist orders** If the CCS (a) has reasonable grounds for suspecting that the section 34 or the section 47 or the section 54 prohibitions has been infringed but has not completed its investigations into the matter; and (b) considers that it is necessary for it to act	**Criminal fines and imprisonment** If there is a finding of infringement, CCS may impose an administrative fine/civil financial penalty and issue directions. Fines and imprisonment are not applicable for anticompetitive infringements of the Act. Persons who refuse to provide information, destroy or falsify documents, provide false	**Leniency programs** If a party is the first to provide the CCS with evidence of the cartel activity, and does so **before** an investigation into the cartel has commenced, it may get the benefit of full immunity from financial penalties. If the party comes forward only **after** an investigation has commenced, but is nevertheless the first to come forward, it will not	**Damages** Persons who suffer loss or damage directly as a result of an infringement of the section 34 prohibition, the section 47 prohibition or the section 54 prohibitions can bring an action for civil damages in the courts after an infringing decision has been made.	**Structural and behavioral remedies** A party, which infringes the section 34, 47 or 54 prohibitions may be subject to structural or behavioral remedies imposed by the CCS

		as a matter of urgency for the purpose: (i) of preventing serious, irreparable damage to a particular person or category of persons; or (ii) of protecting the public interest, the CCS may give such directions as it considers appropriate for that purpose. This will be done in accordance with procedures set out in the Act.	or misleading information or obstruct an officer of the CCS may be prosecuted in court. They may then be subject to a fine not exceeding S$10,000 or to imprisonment for a term not exceeding 12 months, or both.	qualify for immunity but may qualify for a reduction of up to 100% of the financial penalty. Subsequent parties thereafter may qualify for a reduction of up to 50% of the financial penalty.		

CHINESE TAIPEI

<table>
<tr><td rowspan="4">1. Substantial Law
Fair Trade Law (FTL) (1992)</td><td colspan="3">1.1. Applicable rules</td></tr>
<tr><td>Restraints of trade

Horizontal
Agreements to jointly determine the price of goods or services or to limit the terms of quantity, technology, products, facilities, trading counterparts or trading and thereby restrict each other’s business activities.
Horizontal coordination is prohibited unless the FTC grants a specific exemption.
There is no per se rule.
There is a de minimis rule in fact.

Vertical
Rules about vertical restraints are part of the unfair competition section of the FTL.
Resale price maintenance, whether of maximum or minimum levels, is prohibited per se (only for goods, not for services).
Other vertical restraints such as: tying, exclusive dealing, territory and customer restraints, discrimination and refusal to deal receive rule of reason treatment.

The FTC considers market power of the parties and interbrand competition.</td><td>Abuse of dominant position/monopolization

Monopolistic enterprises may not prevent others from competing by unfair means, set, maintain or change prices improperly, demand preferential treatment without justification and otherwise abuse of their market power.

Most of dominant or monopolistic abuses are treated as unfair practices.</td><td>Mergers and acquisitions

There is a pre-merger notification regime based on market share.

If the FTC takes no action within 30 days after notification, the parties can proceed. The FTC can extend that period for 30 days, by written notice.</td></tr>
<tr><td colspan="3">1.2 Goals</td></tr>
<tr><td>Efficiency
To maintain trading order, protect consumers’ interests, ensure fair competition.</td><td colspan="2">Distributive and other goals

To promote economic stability and prosperity.</td></tr>
<tr><td>2. Coverage of competition law</td><td>Economy-wide exemptions or special treatments
The FTL lists exceptions that can be permitted, by the FTC after prior application, if they are found in the particular case to be beneficial to the economy as a whole and are in the interests of the general public.</td><td colspan="2">Sector specific provisions</td></tr>
</table>

	These exceptions are classified in seven categories: uniform specifications (to reduce costs, improve quality or increase efficiency), joint research and development, specialization and rationalization of operations, export cartels, import agreements, crisis cartels and agreements among SMEs to improve efficiency and strengthen competitiveness.	
3. Enforcement	**3.1 Institutions**	
	Administrative The Fair Trade Commission (FTC).	**Judiciary**
	Actions The FTC is responsible for policy, legislation and enforcement.	**Actions** The FTC's and the Appeal and Petition Committee's decisions can be appealed to the Superior Administrative Court. (FTC's decision must be directly appealed to the court when there is a public hearing.)
	3.2 Process	
	The FTC can initiate investigations in response to complaints from companies, customers or consumers about alleged violations of the FTL. It can also open an investigation *ex officio* for a matter that involves the "public interest". The FTC may enter into an administrative settlement, rather than impose sanctions, in the event that the administrative authority is unable to ascertain complete factual or legal information during an investigation, and in order to achieve its administrative objectives and resolve a dispute. The FTC also decides the applications for exemptions regarding restrictive agreements. FTC decisions can be appealed to the Appeal and Petition Committee. Private litigants can sue in court to obtain a cease-and-desist order or preventive injunction against the threat of a violation and to recover damages.	
	Powers to investigate The FTC is entitled to require the submission of documents and information by the parties, third parties and other individuals and agencies. The FTC also has powers to perform on-site inspections of respondent companies and to obtain statements from respondents and related third parties. Although the FTC has the authority to look into competitive conditions in an industry, it cannot use compulsory process to get information in such investigations. A complaint must be accompanied by a detailed explanation and supporting evidence.	
	Remedies	

	Administrative fines	**Injunction or cease-and-desist orders**	**Criminal fines and imprisonment**	**Leniency programs** It does not exist yet.	**Damages** Private litigants can	**Divestiture** If parties merge without notifying or fail to

	Fines under the FTL are subject to a statutory limit of NT$25 million, which can be doubled for repeat offenses.	The FTC can impose conditions and time limits when it approves an exemption, and it can revoke or amend its approval if conditions change or the parties violate the conditions of the approval.	Criminal prosecution is possible, but only for failure to comply with FTC cease-and-desist orders. Potential sanctions are imprisonment for up to three years and a fine of up to NT$100 million for violating orders regarding monopolization or concerted action and up to two years and NT$50 million for violating orders regarding unfair practices.		claim damages to the courts.	comply with conditions, the FTC can impose a number of sanctions, from removing individuals to divestiture or dissolution.

THAILAND

<table>
<tr><td rowspan="3">1. Substantial Law
Trade Competition Act (1999)</td><td colspan="3">1.1 Applicable rules</td></tr>
<tr><td>Restraints of trade
Horizontal
The Trade Competition Act prohibits a variety of anticompetitive agreements in terms of horizontal restraints, as follows:

1. Fixing selling or buying prices of goods or services as a single price or as agreed, or restricting the sale or purchase volume of goods or services;
2. Entering into an agreement with a view to having market domination or market control;
3. Bid rigging;
4. Allocating areas where each business operator may distribute or reduce the distribution of goods or services;
5. Allocating areas where each business operator may purchase goods or services or specifying customers from whom a business operator may purchase goods or services;
6. Fixing the volume of goods or services;
7. Lowering the quality of goods or services compared with the previous manufacture;
8. Appointing or assigning any person as a sole distributor or provider of the same type or category of goods or services; and
9. Fixing conditions or methods of practice in the purchase or distribution of goods or services by the same pattern or as agreed.

The business operators may request permission to engage in the activities prohibited in items 4 through 9.

Vertical
The measures to deal with vertical restraints are the same provisions as the measures to deal with horizontal restraints as related.</td><td>Abuse of dominant position/monopolization

A business operator having market power shall not engage in any of the following acts:

1. Setting unfair purchasing or selling prices of goods or services;
2. Setting unfair trade condition that may result in unfair or restricted competition;
3. Restricting supply of goods or services in order to reduce supply to less than market demand; and
4. Intervening in the operation of other business operators without justifiable reasons.</td><td>Mergers and acquisitions

A business operator shall not carry out a business merger that may result in a monopoly or unfair competition unless they obtain permission from the Trade Competition Commission (TCC).</td></tr>
<tr><td colspan="3">1.2 Goals</td></tr>
<tr><td>Efficiency</td><td colspan="2">Distributive and other goals</td></tr>
</table>

2. Coverage of competition law	**Economy-wide exemptions or special treatments** The Trade Competition Act applies to all business operators and business activities in Thailand with the exception of government agencies, state enterprises, farmers' groups or cooperatives, and certain business operators prescribed by the Ministerial Regulation since the activities of these organizations serve mainly public welfare on a nonprofit basis.		**Sector specific provisions**			
3. Enforcement	**3.1 Institutions**					
	Administrative The TCC is an agency consisting of the Minister of Commerce as Chairman, the Permanent-Secretary of Commerce as Vice-Chairman.		**Judiciary**			
	Actions In a case where the TCC considers that a business operator violates the Trade Competition Act, the TCC shall have the power to issue a written order requiring the business operator to suspend, cease or correct unfair business practices. For this purpose, the TCC may prescribe rules, procedure, conditions and time limit for compliance therewith.		**Actions**			
	3.2 Process					
	Powers to investigate The TCC shall have the powers and duties to consider complaints, to prescribe rules for dominant position, to consider an application for permission to merge business, or to give orders for suspension, cessation, correction, or variation of activities by business operations.					
	Remedies					
	Administrative fines The maximum amount of an administrative fine is B6 million.	**Injunction or cease-and-desist orders** The TCC shall have the powers and duties to consider complaints, to prescribe rules for dominant positions, to consider an application	**Criminal fines and imprisonment**	**Leniency programs**	**Damages**	**Divestiture**

		for permission to merge business, or to give orders for suspension, cessation, correction, or variation of activities by business operations.				

THE UNITED STATES

1. Substantial Law	**1.1 Applicable rules**		
The Sherman Act of 1890 (restraints of trade and monopolization); The Clayton Act of 1914 (mergers and acquisitions)	**Restraints of trade** **Horizontal** Price fixing or agreement on terms or conditions of sale, bid rigging and allocation of customers or territories are illegal *per se:* United States enforcers do not require a showing of economic power or market impact. Whereas, joint ventures, strategic alliances and other competitor collaboration are analyzed under a rule of reason. **Vertical** Both non-price vertical restraints and price-vertical restraints are analyzed under a rule of reason.	**Abuse of dominant position/monopolization** Exclusionary conduct is subject to a rule of reason analysis. It does not prohibit a dominant firm from charging high prices or reducing output. The offense of unlawful monopolization has two elements: possession of monopoly power in the relevant market, and the willful acquisition or maintenance of that power, as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.	**Mergers and acquisitions** The legal test is whether the transaction substantially lessens competition or tends to create a monopoly. It may be applied both before and after a transaction is closed. In analyzing a merger, the agencies consider the likelihood and likely competitive effects of entry. The agencies will not challenge a transaction "if cognizable efficiencies are of a character and magnitude such that the merger is not likely to be anticompetitive in any relevant market." DOJ/FTC Merger Guidelines §4. A merger in which one of the merging firms meets the stringent definition of a "failing firm" will not be challenged. DOJ/FTC Merger Guidelines §5. Notification to the Federal Trade Commission and the Department of Justice is required before the consummation of an acquisition of stock or assets exceeding specified size of firm and size of transaction thresholds. Pre-merger notification requirements have been refined over the years, including the threshold levels at which notification is required. The threshold levels are now indexed to increases in the GNP. Generally, pre-merger notification is required if all of the following conditions are met: – either the acquiring person or the acquired person is engaged in interstate commerce; – one of the parties has annual net sales or total assets of US$126.2 million or more, and the other has annual net sales or total assets of US$12.6 million or more. (If the transaction is valued in excess of US$252.3 million, the size of firm test is inapplicable); and, – as a result of the acquisition, the acquiring party will hold voting securities or assets of the acquired firm valued at more than US$63.1 million. For the majority of transactions, the waiting period subsequent to filing the required notification is 30 days. When a second request for additional information has been issued by the antitrust authorities within that period, the merger cannot be consummated for 30 days after compliance with the request. In practice, the time it takes to respond to a second request can vary widely

			depending on the scope of the request and the merging parties' decision as to how quickly to respond, among other factors. Cash tender offers and acquisitions of certain bankrupt firms have a shorter waiting period – 15 days (plus 10 days after compliance with a request for additional information).
	1.2 Goals		
	Efficiency To promote economic efficiency The maximization of consumer welfare.	**Distributive and other goals**	
2. Coverage of competition law	**Economy-wide exemptions or special treatments** The extent to which the antitrust laws apply in the context of a regulated industry varies according to the statutorily-mandated regulatory scheme. In some such statutes, Congress explicitly sets forth the extent to which regulation is intended to replace competition. In the absence of express statutory direction, courts may find an implied exemption to preserve the integrity of the regulatory scheme. In certain circumstances, courts may delay application of the antitrust laws under the doctrine of primary jurisdiction, to allow the responsible administrative agency to make the initial adjudication of the controversy at issue. With regard to regulations imposed by one or more of the 50 states, under the "state action doctrine" activity undertaken pursuant to a state regulatory regime or other state law is immune from challenge under the federal antitrust laws where the restraint on competition is one clearly articulated and affirmatively expressed as state policy and the policy is actively supervised by the state itself. Another privileged value, the Constitutional protection of the right to petition the government, has led to another kind of general antitrust exemption labeled the *Noerr-Pennington* doctrine. Joint or individual efforts to persuade a government body or official to take an action, even an action that excludes a competitor or authorizes the elimination of competition, are immune from attack under the antitrust laws.	**Sector specific provisions** *Partial exemption from the antitrust laws for certain activities exists in some sectors. Those sectors include*: telecommunications, rail transportation, ocean shipping and terminal operators, trucking, passenger motor carriers, energy, banks and financial institutions, insurance, agriculture, newspaper combinations, soft drinks, health care, copyright royalties, charities and non-profit institutions, labor, export trade, import trade and national defense.	
3. Enforcement	**3.1 Institutions**		
	The Federal Trade Commission (FTC) It is an independent agency within the Executive Branch.	**The Antitrust Division of the Department of Justice (DOJ)** It is part of the Executive Branch of the government. The federal courts have a major role in the enforcement and interpretation of the US antitrust laws, although the vast majority of enforcement actions brought by the DOJ and the FTC are settled prior to contested proceedings in the courts.	
	Actions	**Actions**	

	The FTC enforces federal antitrust laws (Clayton Act and FTC Act) principally through administrative proceedings. The FTC conducts its own internal administrative proceedings to adjudicate violations of the antitrust laws; but the FTC must go before the federal courts if it wishes to obtain preliminary injunctive relief or to prosecute violations of its remedial orders. Final FTC decisions can be appealed to the federal courts.	DOJ is a law enforcement agency; it also engages in competition policy analysis. It enforces federal antitrust laws (Sherman and Clayton Acts) through criminal prosecutions and civil law suits in the federal courts. The DOJ has sole authority to prosecute federal criminal antitrust violations. The federal antitrust laws are enforced principally through proceedings brought in the federal courts, either by the DOJ, by private parties, or by attorneys general of the various states.

Process

A clearance procedure between the two agencies ensures that investigations are allocated to one or the other agency based on respective expertise.

The competition agencies are not the only entities with the power to invoke national competition law. Private litigation is unusually important in the United States. About 800 antitrust cases are filed under federal statutes each year (805 in 2003, 830 in 2002, and 723 in 2001), of which only about 10 per cent are United States government enforcement actions.[1] Private actions also frequently take the form of class actions filed as follow-on suits to government prosecutions, often but not exclusively in cartel cases. The FTC has become active in filing amicus briefs to oppose abusive settlement terms in such class action cases.
The vast majority of enforcement actions brought by the DOJ and FTC are settled prior to contested court or administrative adjudicative proceedings.

Powers to investigate
Both agencies have broad powers to initiate investigations and demand documents and testimony. The enforcement processes differ slightly, although both contemplate adversarial evidentiary hearings. The Antitrust Division appears in federal court as a party plaintiff or prosecutor. The process may lead to a trial before a judge or a jury, depending on the type of matter, followed by a jury verdict or an opinion by the independent federal judge.
The FTC may proceed directly to court to obtain injunctive relief and may also issue an administrative complaint as part of its own statutory process. Commission decisions are subject to review in the federal courts of appeal.

Remedies

Administrative fines	**Injunction or cease-and-desist orders**	**Criminal fines and imprisonment**	**Leniency programs**	**Damages**	**Divestiture**
Only for violations of final FTC agency orders (after bringing an action before a federal court).	It is the most common sanction in most government non-criminal matters.	Sherman Act Corporate fine: US$100 million; individuals: US$1 million Maximum jail term: 10 years. Criminal fines and imprisonment are now standard practice against hard-core cartels. Under general federal sentencing guidelines, these fines may be	Under the Antitrust Division's leniency program, qualifying companies that assist the government to uncover and prosecute conspiracies can avoid criminal convictions and fines, and their cooperating officers, directors, and employees can avoid prison terms and fines. Corporate amnesty applicants may have their civil	Settlements of private civil cases may include pecuniary elements, and the government can sue to recover its own damages in cases where it has been a victim.	Yes.

[1] OECD (2005). Directorate for Financial and Enterprise Affairs Competition Committee. Updated Report on Competition Law and Institutions. United States.

			increased to twice the gain from the illegal conduct or twice the loss to the victims.	damages reduced from treble to single damages if a court determines that they have cooperated with civil plaintiffs.		