

LENIENCY IN ASIAN COMPETITION LAW

In response to cartel formation, competition lawyers and policymakers in nine Asian jurisdictions have experimented with leniency programmes. This mechanism allows firms to come forward with information in relation to their illegal cartel participation in return for a reduction of or immunity from a sanction. The experimentation plays out across three different dimensions: the revision of early adopted leniency programmes, the introduction of newly written leniency programmes, and the decision – deliberate or otherwise – not to create a leniency programme. This volume is the first to analyse the empirical evidence across a number of countries to determine how effective these measures have been, and how they have been amended in response to problems encountered. In this volume, local experts from key Asian jurisdictions, together with international experts, offer an introduction to this fast-developing field, and explore the theoretical, international and regulatory contexts of leniency programmes.

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LENIENCY IN ASIAN COMPETITION LAW

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CONTENTS

<i>List of Tables and Boxes</i>	page viii
<i>List of Contributors</i>	ix
<i>Preface and Acknowledgements</i>	xv
<i>List of Abbreviations</i>	xvi

PART I Introduction 1

- 1 Leniency in Asian Competition Law 3
STEVEN VAN UYTSEL, MARK FENWICK AND YOSHITERU UEMURA

PART II Leniency in Historical, International and Theoretical Context 35

- 2 The Development of the Leniency Programmes of the United States Department of Justice and the European Commission 37
BASKARAN BALASINGHAM
- 3 International Guidelines and Best Practices on Leniency Programmes: Decontextualised Summaries of Local Practices 67
STEVEN VAN UYTSEL

- 4 Situating Leniency 104
MARK FENWICK

PART III Leniency Programmes in Selected Asian Jurisdictions 127

- 5 The Original Leniency Programme of Japan: Law Making in the Shadow of Lobbying, Political Pressure and Legal Constraints 129
STEVEN VAN UYTSEL

- | | | |
|----|--|-----|
| 6 | Negotiated Leniency in Japan Embedded in
Ever-Increasing Sanctions: A Deterrence Perspective | 159 |
| | STEVEN VAN UYTSEL AND YOSHITERU UEMURA | |
| 7 | The Law and Policy on Cartels and Leniency in Korea | 191 |
| | YO SOP CHOI | |
| 8 | The Leniency Programme in Taiwan: Enforcement
Experience, Effectiveness Assessment and Future
Challenges | 214 |
| | ANDY C. M. CHEN | |
| 9 | The State Administration for Market Regulation and
Its Leniency Programme: Infusing a Dose of Trust and
Predictability | 233 |
| | YING BI AND STEVEN VAN UYTSEL | |
| 10 | Leniency Policy in Singapore | 261 |
| | SCOTT CLEMENTS AND DAREN SHIAU | |
| 11 | The Leniency Programme in Malaysia's Competition
Regime: A Critical Evaluation | 284 |
| | CASSEY LEE | |
| 12 | Hong Kong's Revised Leniency Policy and Its Potential
to Deter Cartels | 302 |
| | SANDRA MARCO COLINO | |
| 13 | The Leniency Programme under the Indian Competition
Law | 331 |
| | NIKITA KORADIA, KIRAN MANOKARAN
AND JUHI HIRANI | |
| 14 | Cartel Defection in the Philippines through Leniency:
Incentives Jeopardised by Discretionary Decision-Making
Power | 355 |
| | ALIZEDNEY M. DITUCALAN AND STEVEN VAN
UYTSEL | |
| 15 | The Absence of a Leniency Programme in
Thai Competition Law | 371 |
| | PLOYKAEW PORANANOND | |

CONTENTS vii

PART IV	Concluding Remarks	393
16	Leniency Programmes in Asia: Convergence, Divergence and Distinctiveness	395
STEVEN VAN UYTSEL, MARK FENWICK AND YOSHITERU UEMURA		
	<i>Appendix</i>	415
	<i>Bibliography</i>	424
	<i>Index</i>	459

TABLES AND BOXES

Tables

- 5.1 Number of leniency applications based on the original leniency programme *page* 154
- 5.2 Total number of decisions supported by (a) leniency applications and (b) the total number of successful leniency applicants 155
- 7.1 Standard of immunity and mitigation under the MRFTA and the Enforcement Decree 199
- 7.2 The standard of amnesty plus reduction 202
- 10.1 Financial penalties imposed by the CCCS: 1 January 2006–30 June 2021 264
- 11.1 Cases with decisions under Section 4(2) of the Competition Act 2010 290
- 11.2 Enforcement statistics from the Malaysian Anti-Corruption Commission 297
- 11.3 Business perception of the court system 299
- 11.4 Business perception of corruption 300

Boxes

- 11.1 Section 4 of the Competition Act 2010 – prohibited horizontal and vertical agreement 286
- 11.2 Section 41 of the Competition Act 2010 – leniency regime 288

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PREFACE AND ACKNOWLEDGEMENTS

This edited volume aims to bring together scholars and practitioners working in the field of competition law and white-collar crime in Asia. Our aim in developing this collection is to show how Asian jurisdictions are experimenting with leniency programmes to enforce the anti-cartel provisions of their respective competition laws. We can see three categories of experimentation in Asia. First, early adopters of the leniency programme in Asia are confronted with design flaws or shortcomings. These countries have recently extensively revised their respective leniency programme. Second, Asian countries without a leniency programme are convinced that such a programme can make their enforcement policy more effective. These countries have recently adopted a leniency programme. Third, there are some Asian countries that have no leniency programme. Among these countries, there is one, Thailand, that has made a deliberate choice not to implement a leniency programme.

The ideas developed in this volume have been explored in the symposium Leniency Policies in Asian Competition Laws, held in Kyushu University, Fukuoka, Japan on 5–6 October 2018. The conference and this volume have benefitted from a grant from Kyushu University's Progress 100 – Research Hub for the Humanities, Social Sciences, and Interdisciplinary Knowledge.

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ABBREVIATIONS

IMDB	1Malaysia Development Berhad
AAEC	Appreciable adverse effect on competition
ACPERA	Antitrust Criminal Penalty Enforcement and Reform Act
AEC	ASEAN Economic Community
AMA	Antimonopoly Act
AMC	Anti-Monopoly Commission
AMEA	Anti-Monopoly Enforcement Authority
AML	Antimonopoly Law
ANA	American Bar Association
ASEAN	Association of South-East Asian Nations
Bafia	Banking and Financial Institutions Act
BN	Barisan National
BRICS	Brazil, Russia, India, China and South Africa
CA	Competition Act
CCA	Competition Commission Act
CCCS	Competition and Consumer Commission of Singapore
CCI	Competition Commission of India
CCP	Code of Criminal Procedure
CCS	Competition Commission of Singapore
CEO	Chief Executive Officer
CLRC	Competition Law Review Committee
CPC	Communist Party of China
CPTPP	Comprehensive and Progressive Trans-Pacific Partnership Agreement
DG	Director General
DOJ	Department of Justice
EAEUSFTA	Eurasian Economic Union-Singapore Free Trade Agreement
EU	European Union
FAQ	Frequently Asked Question
FBI	Federal Bureau of Investigation
FCA	Financial Conduct Authority
FCR	First Conduct Rule
FTA	Free Trade Agreement
FTP	Fast-track procedure

LIST OF ABBREVIATIONS

xvii

GAO	Government Accountability Office
GCI	Global Competition Initiative
HKCC	Hong Kong Competition Commission
HKCO	Hong Kong Competition Ordinance
HKCT	Hong Kong Competition Tribunal
HKHA	Hong Kong Housing Authority
HLDSK	Hitachi-LG Data Storage Korea Inc.
ICN	International Competition Network
ICPAC	International Competition Policy Advisory Committee
IMF	International Monetary Fund
IPP	Independent power producer
IT	Information technology
JFTC	Japan Fair Trade Commission
KFTC	Korean Fair Trade Commission
LDP	Liberal Democratic Party
LPR	Competition Commission of India (Lesser Penalty) Regulation
MACC	Malaysian Anti-Corruption Commission
MENA	Middle East and North Africa
MITI	Ministry of International Trade and Industry
MOC	Memorandum of Cooperation
MOFCOM	Ministry of Commerce
MOU	Memorandum of Understanding
MR	Merger Rule
MRFTA	Monopoly Regulation and Fair Trade Act
MRTPA	Monopolies and Restrictive Trade Practices Act
MyCC	Malaysia Competition Commission
NCA	National competition authority
NCLAT	National Company Law Appellate Tribunal
NDRC	National Development and Reform Commission
NFC	National Feedlot Corporation
NGO	Non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
OFC	Office for Competition
PAMR	Provincial Administration for Market Regulation
PARC	Policy Affairs Research Council
PCA	Philippine Competition Act
PCC	Philippine Competition Commission
PID	Proposed Infringement Decision
PLDS	Philips & Lite-On Digital Solutions Corporation
RCA	Regional Cooperation Agreement
RCEP	Regional Comprehensive Economic Partnership
RM	Malaysian ringgit

xviii	LIST OF ABBREVIATIONS
SAIC	State Administration for Industry and Commerce
SAMR	State Administration for Market Regulation
SAV	Significant added value
SCAP	Supreme Command of Allied Powers
SCR	Second Conduct Rule
SII	Structural Impediments Initiative
SME	Small and medium-sized enterprise
SO	Statements of Objections
SPC	State Planning Commission
TA	Telecommunication Authority
TFEU	Treaty on the Functioning of the European Union
TFTA	Taiwan Fair Trade Act
TFTC	Taiwan Fair Trade Commission
TGRN	Transgovernmental regulatory network
TSSTK	Toshiba-Samsung Storage Technology Korea Corporation
UK	United Kingdom
UMNO	United Malay National Organisation
UNCTAD	United Nations Conference on Trade and Development
US	United States
WPA	Whistleblower Protection Act