

CONTENTS

Preface ix
List of Abbreviations xiii

1 Introduction 1

1.1 The Concept of Culture 2
1.2 Confucian Culture and *Confucianisms* in East Asia 3
1.3 Confucian Culture and Competition Law 6
1.3.1 Confucian Business Culture 11
1.3.2 Confucian Corporate Culture and Its Relationship to Compliance 11
1.3.3 Confucian Political-Bureaucratic Culture 12
1.3.4 Confucian ‘Litigation Culture’ and Its Relationship to Private Antitrust Enforcement 13
1.3.5 Confucian Legal Culture and Its Relationship to the Criminalization of Cartels 14
1.4 Structure of the Book 15

2 Confucian Culture and Its Influence in East Asia 18

2.1 Brief Summary of (Prototypical) Confucian Philosophy 18
2.2 The Impact of Confucian Culture in East Asia 22
2.2.1 Mainland China 23
2.2.2 Hong Kong and Taiwan Regions 26
2.2.3 Japan 28
2.2.4 Korea 31
2.3 Conclusion 33

3 Confucian Business Culture and Its Implications for Competition Law 35

3.1 Confucian Business Culture 35
3.2 Confucian Business Culture in Selected Countries and Regions 37
3.2.1 Mainland China 37
3.2.2 Hong Kong and Taiwan Regions 39
3.2.3 Japan 42
3.2.4 Korea 53

vi	CONTENTS
3.3	Implications for Competition Law in East Asia 58
3.3.1	The Goals of Competition Law in East Asian Countries and Regions 60
3.3.2	The Relationship between Business Entities and the State 75
3.3.3	Family Ownership 79
3.3.4	Cosiness among Business Groups: Concerns about Market Concentration 81
3.3.5	Business Culture and Competition Law Compliance Programmes 83
3.3.6	Developing a Competition Culture through Education 84
3.4	Conclusion 86
4	Confucian Corporate Culture and Competition Compliance 88
4.1	Competition Compliance 88
4.2	Confucian Corporate Culture 98
4.2.1	Confucian Values 101
4.2.2	Paternalistic Leadership 104
4.2.3	Family Ownership 109
4.2.4	Business Communities 112
4.3	Corporate and Organizational Culture in China, Japan, Korea: Empirical Evidence 114
4.3.1	China 115
4.3.2	Japan 117
4.3.3	Korea 119
4.4	Confucian Corporate Culture and Competition Compliance 120
4.4.1	Corporate Culture as an Internal Control Force 120
4.4.2	Compliance as an Internal Force for Law Enforcement 123
4.4.3	Compliance Should Be Culturally Driven 125
4.5	Incorporating Considerations of Corporate Culture in Competition Compliance Strategies in East Asia 125
4.5.1	Competition Compliance Programmes 127
4.5.2	Paternalistic Leadership at CEO and Senior Manager Level 132
4.5.3	The Compliance Officer 135
4.5.4	Effective Communication and Education 138
4.5.5	Cultural Changes to Shape Business Incentives 141
4.6	Conclusion 143
5	Confucian Political-Bureaucratic Culture and Its Links with the Administrative Enforcement of Competition Law 145
5.1	Introduction 145
5.2	Confucian Public Bureaucracy 146
5.2.1	Confucian Thought on Governance by Virtue 147

5.2.2	Confucian Thought on Authoritarian Governance	150
5.2.3	Implementation of Confucian Thought, Including Rule of Virtue, by the Scholar-Officials	152
5.3	The Influence of Confucian Bureaucracy in East Asian Countries	156
5.3.1	China	158
5.3.2	Japan	165
5.3.3	Korea	170
5.4	Implications for the Administrative Enforcement of Competition Law	174
5.4.1	Confucian Bureaucracy and Administrative Enforcement	175
5.4.2	Confucian Bureaucracy and the Competition Agency	184
5.4.3	The Debate on Industrial Policy versus Competition Policy	191
5.5	Implications for More Effective Competition Enforcement in East Asia	194
5.6	Conclusion	196
6	Confucian ‘Litigation Culture’ and the Under-development of Private Antitrust Enforcement	199
6.1	Introduction	199
6.2	Traditional and Evolving ‘Litigation Culture’ in East Asian Countries	208
6.2.1	Harmony and Non-litigious Culture	209
6.2.2	The Role of Courts and Judges	227
6.2.3	The Role of Lawyers	239
6.3	The (Under-) Development of Private Enforcement of Competition Law in East Asia	246
6.3.1	China	246
6.3.2	Japan	254
6.3.3	Korea	263
6.4	General Discussion	270
6.4.1	Limited Relief for Individual Victims	273
6.4.2	Class Actions	274
6.5	Conclusion	288
7	Confucian Legal Culture and the Regional Response to the Criminalization of Cartel Conduct	290
7.1	Introduction	290
7.2	Legalism and the Concept of Law in Ancient China	294
7.2.1	The Concept of Law and Penal Law in Ancient China	296
7.2.2	<i>Fa Jia</i> and Legalism	297

viii	CONTENTS
	7.2.3 Penalties 300
	7.2.4 The Instrumental Use of Law 302
7.3	Moral and Penal Law 304
	7.3.1 The Confucianization of the Law 307
	7.3.2 Defining Moral Wrongfulness 309
	7.3.3 A Different Context for Moral Actions 310
7.4	The Impact of Confucianism and Legalism on Legal Culture in East Asia 311
	7.4.1 China 312
	7.4.2 Japan 315
	7.4.3 Korea 318
7.5	Implications for the Criminalization of Cartels in East Asia 320
	7.5.1 The Criminalization of Cartels in East Asia 321
	7.5.2 Defining the Moral Wrongfulness of Cartels 328
	7.5.3 Moral Wrongfulness and Penal Law 331
	7.5.4 Prospects for Criminal Enforcement in East Asia 332
7.6	Conclusion 333
8	Conclusion 336
	8.1 Recap and Chapter Structure 336
	8.2 Culture as an Aid to Interpretation, not as a Cause 337
	8.3 Confucian Culture and Business Activities in East Asia 339
	8.4 A Bureaucratic Style of Enforcement 339
	8.5 Private Antitrust Enforcement in East Asia 340
	8.6 Criminalization of Cartels (I): The Limits of Utilitarianism 343
	8.7 Criminalization of Cartels (II): The Role of Morality 352
	8.8 Final Remarks 355
	<i>Selected Bibliography</i> 359
	<i>Index</i> 412