

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

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

CONTENTS vii

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

Selected Bibliography

359

Index

412