

COVID-19: GOVERNANCE: COMPETITION AUTHORITIES' RESPONSE (ASIA)

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Legal Briefings - By **Adelaide Luke, Frances Xu, Sakurayuki and Joel Rheuben**

Across Asia, the Covid-19 outbreak has had a significant impact on the activities of the region's competition authorities.

Where policy changes have been made, authorities have had to balance issues carefully, demonstrating flexibility towards potentially anti-competitive conduct that may be justified under the outbreak circumstances, while also discouraging businesses from taking advantage of the situation. This may increase uncertainty about how business activities will be treated by the authorities.

In these circumstances, it is more important than ever for businesses to manage competition law risk and seek guidance in order to successfully navigate the current enforcement environment in Asia.

HONG KONG

No formal changes have been made to the territory's competition law as a result of the pandemic. The Hong Kong Competition Commission (**HKCC**) has, however, acknowledged that there could be a need for cooperation between businesses on a temporary basis. It has flagged joint buying, joint production and sales-related joint ventures, and exchange of information as conduct that, under appropriate circumstances, could amount to a justifiable response to the Covid-19 outbreak.

The HKCC has established a mechanism where businesses can approach the HKCC on an informal basis to consider any proposed measures that firms believe are both (i) genuinely necessitated by the outbreak; and (ii) in the interests of Hong Kong consumers and society.

At the same time, the HKCC has reminded businesses that competition rules continue to apply. It has stated that it will remain vigilant for anti-competitive conduct by businesses seeking to take advantage of the outbreak or using the outbreak to justify improper collusion.

INDONESIA

The competition regulator in Indonesia, commonly abbreviated to the **KPPU**, has stepped up enforcement in certain sectors following the outbreak, particularly in healthcare services, medical equipment, and essential commodities.

The KPPU has, for example, announced that it had been conducting an investigation in an effort to address alleged anti-competitive conduct arising from Covid-19 rapid test services being offered by several hospitals. The KPPU's initial findings indicate that these services were expensive because the rapid test was being tied to other health services.

The KPPU has also been examining the prices being charged for medical equipment (especially masks) and basic commodities. It has reminded businesses not to engage in cartel practices or enter into agreements that could directly cause excessive prices and/or the stockpiling of personal protective equipment.

In addition, the KPPU has also been looking at 6 digital platforms (including Bukalapak, Tokopedia and Ruang Guru) involved in the implementation of the Prakerja Card Program (a government online training program for the unemployed, including those individuals who have lost their job due to Covid-19). The KPPU is examining whether the involvement of these digital platforms in the program is fair and in compliance with the prevailing competition laws (for example, to what extent the approval of their involvement in the program is non-discriminatory and to what extent the program gives rise to barriers to entry).

JAPAN

The Japan Fair Trade Commission (**JFTC**), Japan's competition authority, has stated that certain temporary cooperation between competitors during the outbreak to ensure the efficient distribution of essential goods and services will not be considered a contravention of the country's competition laws.

The JFTC has advised businesses to refer to its previous compilation of acceptable measures that can be taken during earthquakes and other emergencies (issued after the 2011 earthquake and tsunami) for guidance on acceptable coordination between competitors in response to the outbreak. This guidance allows, for example, certain collaboration between companies to coordinate logistics or restrict the number of sales per customer of certain products when supply is limited. The JFTC has also issued a statement confirming that retail price ceilings for certain PPE equipment (including masks) imposed by manufacturers would not violate Japan's Antimonopoly Act.

However, the JFTC has reminded businesses that tying practices involving the sale of masks and other hygiene products currently subject to supply shortages, may contravene competition law.

KOREA

To date, the Korea Fair Trade Commission (**KFTC**) has not made any announcement about the impact of the outbreak on its operations. However, it has reportedly adopted a more flexible and pragmatic approach towards its investigations and enforcement actions.

It has also formed a taskforce with other government departments to monitor hoarding and bundling in the markets for masks, hand sanitizers and other household essentials. Effective 5 February 2020, any individual found hoarding such products faces a maximum penalty of two years' imprisonment or a fine of KRW50 million (approximately US\$41,000).

In merger control, on 23 April 2020 the KFTC cleared the acquisition of 51.15% of shares in Eastar Jet, Korea's fifth largest low-cost carrier, by Jeju Air, Korea's largest low-cost carrier. This is the first case in which the KFTC has taken the outbreak into account. In unconditionally clearing the transaction, the KFTC concluded that Eastar Jet qualified as a failing firm, essentially because the struggling airline is heavily indebted and had already suspended all flights due to the outbreak, rendering it impossible to resume operations and repay its financial obligations. The KFTC cleared the deal within 10 days of its filing in view of the difficult circumstances of the airline. The KFTC has emphasised that it will expedite the merger review process for industries hit hard by Covid-19.

MAINLAND CHINA

In Mainland China, the State Administration for Market Regulation (**SAMR**) has recognised that certain forms of cooperation may be required to address supply gaps, including joint R&D agreements for drugs and medical devices.

SAMR, however, considers that fair competition is essential to maintain stable prices and an adequate supply of essential products for consumers' everyday lives. In this context, SAMR has been investigating and imposing stricter and quicker sanctions for anti-competitive conduct which hinders the prevention and control of the pandemic, the resumption of work, industrial production, and consumer interests.

In particular, it has recently launched a number of investigations into price increases for medical supplies. This focus on pandemic related conduct and its impact on consumers is also reflected in the approach to merger control. Since April, SAMR has accelerated its merger review process for certain transactions closely related to the pandemic response and consumers' daily lives, including in the pharmaceutical and medical equipment, food and retail sectors.

MALAYSIA

The Malaysia Competition Commission (**MyCC**) has not issued a specific statement regarding its approach to enforcement during the Covid-19 outbreak, but it has stated that it has adopted alternative work arrangements since 16 March 2020, which at the time of writing is still in force. MyCC will maintain a skeletal workforce for the delivery of its basic services.

PHILIPPINES

The Philippine Competition Commission (**PCC**) has not issued a statement regarding its enforcement focus during the Covid-19 outbreak. It has suspended all proceedings until the community quarantine imposed in the country has been lifted, and issued guidelines on the interruption of the regulatory periods for the commencement of actions, filing of pleadings, motions and submission, rendition of judgements, resolutions, orders, payment of fines or penalties, and the cancellation of proceedings.

For mergers, the PCC has suspended acceptance of new filings and has stopped the 30-day window within which companies have to submit merger filings once they have signed definitive agreements. Parties will now have more time to file. Pre-notification consultation will continue through email or conference calls until normal operations resume.

SINGAPORE

The Competition and Consumer Commission of Singapore, has not commented on how the outbreak has affected its enforcement priorities but it has stated that it remains operational with the vast majority of its staff telecommuting, although it is expected that investigations and market studies may be disrupted.

TAIWAN

The Taiwan Fair Trade Commission (**TFTC**) has moved to combat price fixing and price gouging in essential groceries, including flour, biscuits, noodles and canned food. In January and March 2020, the TFTC conducted dawn raids at major supermarkets as part of investigations into such practices.

If you would like to talk to us about how the Covid-19 outbreak might affect your business in Asia, please contact a member of our team.

[More on COVID-19](#)

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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