

SOE.....	State owned enterprises
TBA.....	Taiwan Bar Association
TFT.....	Thin film transistor liquid crystal display
TFTA.....	Taiwan Fair Trade Act
TFTC.....	Taiwan Fair Trade Commission

Table of Contents

	Page
About Wolters Kluwer Hong Kong Limited	iii
About the General Editors	v
Foreword.....	vii
Preface	xi
Acknowledgments.....	xix
Abbreviation.....	xxi
Chapter 1 Discretionary Surcharge System Model in the Japanese Cartel	
Law Enforcement.....	1
¶1-010 Introduction.....	2
¶1-020 Introduction and Review – Surcharge System after 2009 Amendment.....	3
¶1-021 Summary of the Anti-monopoly Act Surcharge System.....	3
¶1-022 System.....	3
¶1-023 Summary Table	4
¶1-024 Application	6
¶1-025 Legal Aspects of the Surcharge	8
a) An Administrative Sanction.....	8
b) Rationale behind the 10% Base Rate	9
c) Adjustment of Punitive Fines	9
¶1-026 Changes to the Surcharge System under the 2009 Amendment to the AMA.....	11
¶1-030 Introduction of the Surcharge System on “Exclusionary Private Monopolisation”	11
¶1-031 The Reason for the Introduction of Surcharges.....	11
a) Art 8 Violation.....	12
b) Illegal Conduct – Purchasing	12
¶1-032 “Exclusionary” and “Control” – Differences in Scope.....	12
¶1-033 Rationale: 6% Calculation Rate.....	13
a) Rationale for the Calculation Rate	13
b) The Reason for Not Providing a Lower Rate for SMEs.....	14
¶1-034 A Calculation Rate that Differs from Control Private Monopolisation.....	14
a) Reason.....	14
¶1-035 The Reason the Concept of a “Period of Activity” Was Not Used	15

¶1-040	Surcharge System and Unfair Trade Practices.....	15
¶1-041	Introduction.....	15
	a) Advisory Panel on Basic Issues Regarding the Anti-Monopoly Act.....	16
	b) Surcharges on Four Categories of Unfair Trade Practice.....	16
¶1-042	Legal Designation under AMA Art 2(9).....	16
¶1-043	The 3% Basic Calculation Rate.....	17
¶1-044	The "Repetition" Requirement.....	18
¶1-045	Abuse of Dominant Bargaining Position.....	19
	a) Outline.....	19
	b) Rationale behind the Calculation Rate.....	19
	c) Sales Value (or Purchase Value) Subject to Surcharge Calculation.....	20
	d) Limiting Surcharges to "On-Going" Cases.....	21
	e) Connections with the Subcontract Act.....	21
¶1-050	Enforcements after the 2009 Amendment.....	22
¶1-051	Private Monopolisation.....	22
¶1-052	Abuse of Dominant Bargaining Position.....	27
¶1-060	Proposal Review 42.....	29
¶1-061	Proposal No. 1: Maintaining the Current System.....	29
¶1-062	Proposal No. 2: Revising the Surcharge System Behaviour.....	32
¶1-063	Proposal No. 3: Retaining the Current Framework.....	33
¶1-064	Proposal No. 4: Abolish the Current System and, Following the Example of EU Competition Law, Create a New System of Administrative Fines with a Maximum Amount of 10% of the Annual Sales of the Infringing Operator.....	37
¶1-070	Conclusion.....	39
Chapter 2 Bid Rigging Initiated by Government Officials: The Conjunction of Collusion and Corruption in Japan.....		
¶2-010	Introduction.....	42
¶2-020	Involvement Prevention Act: The Need for Legislation and its Application.....	43
¶2-021	The Antimonopoly Act and Relevant Criminal Law Provisions.....	43
¶2-022	Involvement Prevention Act.....	45
¶2-023	Application of the Involvement Prevention Act.....	48
¶2-030	Procurement Officials' Involvement: How and Why Did it Commence?.....	49

¶2-031	Where Involvement Activities Took Place.....	49
	A. Industries.....	49
	B. Procuring Ministries and Local Governments.....	49
	C. Type of Bidding.....	50
	D. Character of Bidders.....	50
¶2-032	How Involvement Activities were Conducted.....	51
	A. Nomination of the Winner.....	52
	B. Disclosure of Information.....	53
	C. Designing the Tender Process.....	54
	D. Endorsement of Contract Allocation.....	54
	E. Obstruction of Investigation.....	54
¶2-033	How Involvement Practices Commenced.....	55
¶2-034	Motivations.....	55
	A. Securing Jobs After retirement.....	56
	B. Feeling in Debt to Local Companies.....	56
	C. Quality of Work.....	56
	D. Systematic and On-going Involvement.....	56
¶2-040	Measures Taken by Procuring Ministries and Local Government.....	57
¶2-041	Investigation.....	57
¶2-042	Improvement Measures.....	58
¶2-043	Damages.....	60
	A. Investigation and Request for Compensation.....	60
	B. State of Recovery.....	61
¶2-044	Disciplinary Action.....	61
¶2-050	Positive Changes and Issues Remaining.....	62
¶2-060	Case List.....	63
Chapter 3 Leniency under the Japanese Antimonopoly Law Towards the End of the Cartel Archipelago?.....		
¶3-010	Introduction.....	67
¶3-020	Japan, the Cartel Archipelago.....	69
¶3-021	Proliferation of Cartels during the First Two Decades of the AML.....	69
¶3-022	Legal Reform from the 1970s Onwards.....	72
¶3-030	The Japanese Leniency Programme.....	75
¶3-031	The Context for Adopting the Leniency Programme.....	75
¶3-032	The Characteristics of the Japanese Leniency Programme.....	77
	1. Pre- and Post-investigation Leniency Applications.....	77
	2. Conditions Attached to a Leniency Application.....	78

¶3-040	Data on the Application of the Leniency Programme	81
¶3-041	Enforcement Before and After the Adoption of the Leniency Programme	81
¶3-042	A Successful Start for the Japanese Leniency Programme (2006-2008)	82
¶3-043	Immunity Applications Not Reflected in the Publicised Decisions (2009-2010)	83
¶3-044	Immunity Returns, Decisions Cluster on the Car Parts Industry (2011-2013)	85
¶3-050	The Data in Light of the Operational Environment of the Leniency Programme	86
¶3-051	Simple Application Criteria, Many Applications	86
¶3-052	Possible Impediments for an Effective Leniency Programme in Japan	87
	1. Criminal Sanctions Operate within a Strict Framework	87
	2. Private Damages Actions Too Obscure to Matter	89
	3. The JFTC's Delineation of Cartels	90
	4. The Backlog of Leniency Applications	91
	5. Business Practices an Impediment Rather Than Culture	92
¶3-060	A Mixed Outcome of the Japanese Leniency Programme	94
¶3-061	New Cartel Activity Exposed	94
¶3-062	Expectations Tempered by Several Impediments	95
¶3-070	Conclusion	97
Chapter 4 Is the Korean Innovation of Individual Informant Rewards a Viable Cartel Detection Tool?		
¶4-010	Introduction	109
¶4-011	The Benefits of an Informant Reward Programme	111
¶4-012	The Design of Informant Rewards in South Korea and Beyond	113
	United Kingdom	115
	Hungary	116
	Pakistan	116
	United States	116
¶4-013	Who should Cartel Informant Rewards Be Available To?	117
¶4-014	Willingness to Report a Cartel in Return for a Reward	119
¶4-015	How High Does the Reward Need to Be?	123

¶4-016	Potential Dangers of a Cartel Informant Reward System	127
¶4-017	Conclusion	130
Chapter 5 Competition Laws and Policies against International Cartels in Northeast Asia: International Cooperation for Effective Enforcement		
¶5-010	Overview: The Issue of International Cartels in Asia	133
¶5-020	Competition Laws Relating to Cartels in Northeast Asia: A Comparative Perspective	137
¶5-021	The Establishment of a Competition Law Culture in Korea	138
¶5-022	The Oldest Competition Regime in Asia: Towards Vigorous Enforcement in Japan	141
¶5-023	Competition Law in the Socialist Market Economy: A Look at China	142
¶5-030	The Development of International Cartel Enforcement in Northeast Asia	144
¶5-031	Adoption of the Extraterritorial Principle and Leniency Programme	144
	(a) Korea	144
	(b) Japan and China	146
¶5-032	The Issues and Practical Problems in International Cartel Enforcement	147
¶5-040	Cooperation in Enforcement through Bilateral Agreements in Northeast Asia	149
¶5-041	The Foundation for Designing Effective Cooperation	149
¶5-042	The Establishment of Bilateral Cooperation Agreements	151
¶5-050	Conclusion	154
Chapter 6 Cartels under the Taiwan Fair Trade Act: An Evolutionary Perspective		
¶6-010	Overview	158
¶6-020	Introduction	158
¶6-030	Background Information of the Taiwan Fair Trade Act	159
¶6-031	The Substantive Requirements for Establishing Cartel Violations	161
¶6-032	Exemptions	162
¶6-033	Procedural Rules Relating to Cartel Investigations	163
¶6-034	The Calculation of Administrative Fines	164

¶6-040	A Narrative of Cartel Cases under the TFTA	165
¶6-041	The Early Years of the TFTA.....	165
¶6-042	The Years of Transforming to More Effect-based Enforcement and New Challenges.....	168
	(a) New Transaction Models and Cartels: The <i>CD-R Patent Licensing Case</i>	168
	(b) Circumstantial Evidence and the "Agreement" Requirement: The <i>Cement and Petroleum Cartel Cases</i>	169
	(c) Cartels among Professional Associations.....	171
¶6-043	A Globalised Era for the TFTA	172
¶6-050	The Legal and Policy Issues Emerging from the Enforcement Experiences of the TFTA	175
¶6-051	The "Agreement" Requirement	175
¶6-052	The "Affecting Market Function" Requirement.....	177
¶6-053	The "Horizontal Competitor" Requirement	178
¶6-054	The rule of "Administrative Action Takes Precedence over Criminal Liability"	179
¶6-055	Harmonising Competition and Non-competition Policies under the TFTA.....	179
¶6-060	A Suggested Path for Legal and Policy Reforms.....	180
¶6-070	Conclusion	183
Chapter 7 Catching Cartels and Other Anti-competitive Agreements in Singapore		
¶7-010	Introduction	185
¶7-020	Agreements with an Anti-competitive Object: Applying the s34 Prohibition	187
¶7-021	Qualifying the s34 Prohibition with an Additional "Appreciability" Criterion	189
¶7-022	The Net Economic Benefit Exemption.....	192
¶7-030	Singapore's Experience Tackling Cartels and Other Anti-competitive Agreements	193
¶7-031	The "Price-fixing" Cases	195
¶7-032	The "Bid-rigging" Cases.....	198
¶7-033	The "Pricing-information" Cases	200
¶7-040	Demarcating the Ambit of the "Object" Limb of the s34 Prohibition	204
Chapter 8 A Review of Ten Years of Enforcement: Challenges and Prospects of the Vietnamese Cartel Regime.....		
¶8-010	Introduction	211
¶8-020	Regulatory Framework	213

¶8-030	Sanction and Remedies	217
¶8-040	Institutional Design	221
¶8-050	Case Studies.....	222
¶8-060	Conclusion	227
Chapter 9 Combating Cartels in India: The Enforcement Experience So Far		
¶9-010	Introduction	229
¶9-020	History and Evolution of Law Relating to Cartels in India	231
¶9-030	The Law of Cartels in the Competition Act, 2002.....	233
¶9-031	The Indian Approach to Cartels — <i>Per se</i> Illegal or Subject to the Rule of Reason?.....	233
¶9-032	Investigative Powers — The DG Office.....	236
¶9-033	An Analysis of Two Seminal Cases: The Cement and Tyre Cartels.....	237
¶9-034	Justification of the Different Outcome in the <i>Cement and Tyre Cases</i>	239
¶9-040	Leniency Regime in India	241
¶9-041	Effectiveness of the Indian Leniency Regime: Internal Factors.....	242
	(a) First Element: Stiff Potential Penalties	243
	(b) Second Element: Fear of Detection	246
	(c) Third Element: The Certainty of the Enforcement Regime.....	247
	(c)(i) Certainty of the Indian Penalty Regime	248
	(c)(ii) Certainty of the Leniency Regime.....	251
¶9-042	External Factors Affecting Leniency Applications in India.....	252
¶9-050	Conclusion	253
Chapter 10 Monopoly Agreements, Trade Associations and Competition Culture in China		
¶10-010	Introduction	255
¶10-020	A Brief History of the Regulation of Monopoly Agreements in China	256
¶10-021	Overview	256
	(1) Phase I — Initial understanding of monopoly agreements (1978-1994): Specific statutory frameworks and the general Criminal Law statute.....	258
	(2) Phase II — Further legislation on price collusions (1994-2007): the Pricing Law, the Law on Bid Invitation and Bidding	260

(3) Phase III – Comprehensive regulation of monopoly agreements (2008 – present): the Anti-monopoly Law, NDRC and SAIC Regulations.....	262
¶10-030 Trade Associations and Competition Law in China.....	266
¶10-031 Chinese Trade Associations as “Second Governments”	266
¶10-032 Pre-2008: Before the Anti-monopoly Law Came into Effect	269
¶10-033 Post-2008: After the Anti-monopoly Law Came into Effect	270
¶10-034 The Future of Trade Associations.....	274
¶10-040 Other Market Participants’ Views of Market Competition in China	276
¶10-041 Undertakings and Market Competition.....	276
¶10-042 Consumers and Market Competition	280
¶10-050 Problems and Challenges	282
¶10-051 Regulating Government-endorsed Export Cartels.....	282
¶10-052 Exceptions to Prohibited Monopoly Agreements under the Anti-monopoly Law.....	285
¶10-053 Civil Damages for Monopolistic Conduct: Compensatory or Punitive?	289
¶10-060 Conclusion: The Way Forward	291
 Chapter 11 Trade Associations and Cartel Conduct under the New Hong Kong Competition Law Regime – An Enforcement Priority for the Competition Commission?	295
¶11-010 Introduction	295
¶11-020 The Long Road to the <i>Competition Ordinance</i>	296
¶11-030 The New <i>Competition Ordinance</i>	306
¶11-040 Anti-Competitive Conduct of Trade Associations.....	308
¶11-050 Enforcement Priority Under the New Ordinance: Trade Associations or Abuse of Substantial Market Power?	312
¶11-060 Conclusion	314
 Chapter 12 Punishing Cartel Behaviour: Means to Encourage Compliance with the Hong Kong Competition Ordinance.....	315
¶12-010 Introduction	315
¶12-020 Goals of Punishment in Competition Law.....	316
¶12-021 Reparation	317
¶12-022 Retribution and Proportionality	319
¶12-023 Deterrence	321

¶12-030 The Most Efficient Weapons in the Fight against Cartels	322
¶12-031 Remedies	323
¶12-032 Imprisonment.....	324
¶12-033 Fines	324
¶12-040 How Cartel Activity is Punished in Hong Kong	325
¶12-041 Collusion before the CO: An Analysis of Sectoral Competition Rules in Telecommunications and Broadcasting	325
¶12-042 The “Punishing Potential” of the Sanctions Envisaged in the CO.....	327
¶12-050 Conclusion	332
 Table of Cases	333
Table of Legislation	341