

# **COMPETITION ENFORCEMENT AGENCIES**

## HANDBOOK 2019

Published in association with:

Atsumi & Sakai

Bowmans

Cooley

ELIG Gürkaynak Attorneys-at-Law

Lapidot, Melchior, Abramovich & Co

Morrison & Foerster LLP

SRS Advogados

Van Bael & Bellis



# Competition Enforcement Agencies Handbook 2019

---

A Global Competition Review Special Report

Reproduced with permission from Law Business Research Ltd

This article was first published in May 2019

For further information please contact [Natalie.Clarke@lbresearch.com](mailto:Natalie.Clarke@lbresearch.com)



## **Competition Enforcement Agencies Handbook 2019**

**Insight account manager** Bevan Woodhouse  
bevan.woodhouse@lbresearch.com  
Tel: +44 20 3780 4291

**Head of production** Adam Myers  
**Editorial coordinator** Hannah Higgins  
**Deputy head of production** Simon Busby  
**Designer** James Green  
**Production editor** Harry Turner  
**Subeditor** Janina Godowska

**Research editor** Tom Barnes  
**Researcher** Helen Barnes

**Editor, Global Competition Review** Pallavi Guniganti  
**Publisher** Clare Bolton

To subscribe please contact  
Global Competition Review  
87 Lancaster Road  
London, W11 1QQ  
United Kingdom  
Tel: +44 20 7908 9205  
Fax: +44 20 7229 6910  
subscriptions@globalcompetitionreview.com

No photocopying. CLA and other agency licensing systems do not apply.  
For an authorised copy contact [claire.bagnall@globalcompetitionreview.com](mailto:claire.bagnall@globalcompetitionreview.com)

This publication is intended to provide general information on competition law, economics and policy. The information and opinions that it contains are not intended to provide legal advice, and should not be treated as a substitute for specific advice concerning particular situations (where appropriate, from local advisers).

© 2019 Law Business Research Limited  
ISBN: 978-1-83862-222-0

Printed and distributed by Encompass Print Solutions  
Tel: 0844 248 0112

# Competition Enforcement Agencies Handbook 2019

---

Published in association with:

Atsumi & Sakai

Bowmans

Cooley

ELIG Gürkaynak Attorneys-at-Law

Lapidot, Melchior, Abramovich & Co

Morrison & Foerster LLP

SRS Advogados

Van Bael & Bellis

## CONTENTS

Albania.....	1	El Salvador .....	88
Algeria .....	5	Estonia.....	91
Argentina.....	8	European Union .....	94
Armenia .....	11	Andrzej Kmiecik and Andreas Reindl	
Australia .....	17	Van Bael & Bellis	
Austria .....	21	Faroe Islands .....	109
Azerbaijan .....	24	Fiji.....	110
Barbados.....	26	Finland.....	111
Belarus .....	28	France.....	114
Belgium .....	29	Gambia .....	119
Bosnia and Herzegovina .....	32	Germany .....	121
Botswana .....	34	Greece .....	127
Brazil.....	38	Honduras.....	128
Bulgaria .....	42	Hong Kong.....	129
Canada .....	46	Hungary.....	132
Channel Islands.....	47	Iceland.....	138
Chile.....	50	India .....	142
China.....	54	Indonesia.....	146
Colombia .....	57	Ireland.....	149
COMESA .....	63	Israel .....	153
Costa Rica.....	66	D Ziv Abramovich	
Croatia .....	67	Lapidot, Melchior, Abramovich & Co	
Cyprus.....	70	Italy .....	162
Czech Republic.....	73	Jamaica.....	165
Denmark.....	77	Japan.....	167
Ecuador .....	80	Setsuko Yufu, Tatsuo Yamashima, Saori Hanada	
EFTA .....	84	and Masayuki Matsuura	
Egypt.....	87	Atsumi & Sakai	
		Jordan .....	176
		Kazakhstan .....	178
		Kenya.....	179
		Korea .....	182

Kosovo .....	186	Serbia.....	280
Latvia .....	187	Seychelles .....	284
Lithuania .....	192	Singapore .....	287
Luxembourg.....	195	Slovakia .....	290
Macedonia .....	196	Slovenia .....	295
Malaysia .....	199	South Africa .....	298
Malta.....	201	Maryanne Angumuthoo and Shakti Wood Bowmans	
Mauritius .....	203	Spain.....	306
Mexico .....	207	Sri Lanka .....	310
Moldova.....	212	Swaziland .....	312
Mongolia .....	215	Sweden.....	315
Montenegro .....	216	Switzerland .....	320
Morocco .....	219	Taiwan .....	325
Namibia.....	220	Tanzania .....	328
Netherlands .....	221	Thailand.....	329
New Zealand.....	224	Turkey .....	330
Nicaragua.....	228	Gönenç Gürkaynak and K Korhan Yıldırım ELIG Gürkaynak Attorneys-at-Law	
Norway .....	229	Ukraine .....	343
Panama .....	233	United Kingdom .....	348
Papua New Guinea .....	235	Becket McGrath and Christine Graham Cooley	
Peru .....	236	United States.....	359
Philippines .....	241	David Meyer and Mary Kaiser Morrison & Foerster LLP	
Poland .....	242	Uruguay .....	373
Portugal.....	248	Uzbekistan .....	375
Gonçalo Anastácio and Luís Seifert Guincho SRS Advogados		Venezuela.....	376
Romania .....	256	Vietnam .....	377
Russia .....	261	Yemen.....	378
Saudi Arabia .....	279	Zambia.....	379

*Global Competition Review's* 2019 edition of the *Competition Enforcement Agencies Handbook* provides full contact details for competition agencies in over 100 jurisdictions, together with charts showing their structure and a Q&A explaining their funding and powers. The information has been provided by the agencies themselves and by a panel of specialist local contributors.

The *Competition Enforcement Agencies Handbook* is part of the *Global Competition Review* subscription service, which also includes online community and case news, enforcer interviews and rankings, bar surveys, data tools and more.

We would like to thank all those who have worked on the research and production of this publication: the enforcement agencies and our external contributors.

The information listed is correct as of April 2019.

### **Global Competition Review**

London

April 2019

# Overview

Setsuko Yufu, Tatsuo Yamashima, Saori Hanada and Masayuki Matsuura

Atsumi & Sakai

## The Japan Enforcement Agency

The substantive provisions of Japan's competition rules are contained in the Antimonopoly Act of Japan (AMA). The Japan Fair Trade Commission (JFTC), composed of a chairman and four commissioners, is the principal enforcement agency set up as an independent administrative office with broad powers to enforce the AMA. The AMA comprises four major categories of regulations:

- prohibition of unreasonable restraint of trade (for example, cartels and bid-rigging);
- prohibition of private monopolisation;
- prohibition of unfair trade practices; and
- regulation of business combinations (for example, via mergers and acquisitions).

The JFTC is the sole enforcement agency except with respect to criminal investigations, in which case the JFTC will make a submission to the prosecutor general setting out its criminal accusation, whereupon the public prosecutor's office takes charge of criminal prosecution matters.

## Recent developments

### Commitment procedure

The amendment to the AMA to adopt the commitment procedure came into force on 30 December 2018 as a part of the laws related to the Trans-Pacific Partnership Agreement. This amendment introduced a procedure to resolve alleged violations of the AMA by voluntary consent between the JFTC and the party subject to the JFTC's investigation, called the commitment procedure. For the purpose of clarifying the details of the commitment procedure, the JFTC enacted the Rules on Commitment Procedure of the JFTC in January 2017. Further, for the purpose of ensuring transparency of enforcement for the amended act and predictability for businesses, the JFTC published Policies Concerning Commitment Procedures in September 2018.

Private monopolisation and unfair trade practices

No new orders were issued for private monopolisation in 2018.

As to unfair trade practices, the JFTC issued two cease-and-desist orders in 2018. It is interesting to note, however, that in 2018 the JFTC closed three investigations on suspected violations of the AMA by unilateral conducts without issuing formal administrative orders (cease-and-desist orders or surcharge payment orders) when the target companies of the investigations voluntarily promised to take measures to eliminate the suspected violation. The target companies in the investigations include Airbnb Ireland UC (and Airbnb Japan KK) and Apple Inc (and Apple Japan GK).

The JFTC has shown strong interest in, among other issues, the IT and digital sector, such as with the digital platform operators and the mobile phone market. The JFTC's flexible disposal of the above mentioned cases in 2018, as well as similar closure of investigations against Amazon Japan GK and Amazon Services International, Inc in 2017, seem to reflect their awareness of the rapidly advancing digitalisation of the economy and the need to quickly restore the environment for fair competition. As to digital platforms, the JFTC published an interim report on 12 December 2018 on the results of a joint study carried out together with the Ministry of Economy, Trade and Industry and the Ministry of Internal Affairs and Communications (MIC). In this report, they raised possible issues on digital platform businesses in the national economy and the necessity of international harmonisation of public policies regarding digital platforms. Based on this report, the three authorities jointly published 'Fundamental Principles for Rule Making to Address the Rise of Platform Businesses' on 18 December 2018. As to the mobile phone market, the JFTC has continued its study together with the MIC and published a 'Report on Competition Policy Challenges in the Mobile Phone Market' on 28 June 2018, discussing the conditions that could restrict fair competition among network operators as well as new entries into the market. In November 2018, MIC solicited public opinions on their 'Urgent Proposal for Optimizing Mobile Services' and the result therefrom was published on 17 January 2019.

On 15 February 2018, the JFTC issued the 'Report on Study Group on Human Resource and Competition Policy' where the JFTC reconsidered its continued



policy since the Second World War and discussed the possibility of applying the AMA in the labour market. In particular, the JFTC analysed competition in obtaining human resources at freelance jobs, entertainment businesses and in the sports industry. The JFTC gathered public opinion on this report.

#### Cartels

The JFTC issued 16 cease-and-desist orders and 14 surcharge payment orders for cartel or bid-rigging cases in 2018. All 16 cases pertain only to the Japanese domestic market. The total amount of surcharges imposed in 2018 was ¥2.15 billion, significantly lower than ¥7.5 billion in 2017. The amount of surcharges levied in cartel cases is calculated as a certain percentage of total sales of the relevant products or services during the period of infringement, extending retrospectively up to three years from the date when the conduct ceased. The percentage rate is usually levied at a base rate of 10 per cent, but will depend on the circumstances and may be increased to 15 per cent if repeated within 10 years under certain conditions.

As to leniency, 103 filings were made in the 2017 fiscal year (ending March 2018).

As to criminal accusations, the JFTC's policy is to proactively file criminal accusations in cases that are serious, malicious and likely to broadly affect people's lives, or cases involving companies that have repeatedly breached the AMA or failed to comply with a cease-and-desist order if administrative orders alone are not sufficient to achieve the purpose of the AMA. In March 2018, the JFTC filed a criminal accusation with the prosecutor general against the four biggest construction companies in Japan on the account of bid-rigging in relation to construction of terminal stations for the maglev railway that was put out for tender by Central Japan Railway Company.

#### Mergers

A total of 306 merger notifications were made in the 2017 fiscal year. The JFTC cleared 299 cases without a Phase II review and, of those, the 30-day waiting period, during which the notified transaction cannot be closed, was shortened in 193. Of the 306 cases, only one transitioned to a Phase II review (joint share transfer by the Daishi Bank, Ltd and The Hokuetsu Bank, Ltd).

Mergers, business transfers, corporate splits (or demergers), joint share transfers and share acquisitions (including joint ventures) require prior notification under the AMA where they will exceed certain thresholds, even in some cases of foreign-to-foreign mergers between undertakings that have no Japanese subsidiary or branch office in Japan.

#### Review of surcharge system

The JFTC established a 'Study Group on the Antimonopoly Act' in February 2016 to review the current surcharge system, under which surcharge amounts are uniformly calculated by multiplying total sales of the relevant products or services by a certain percentage, and to consider the possibility of introducing a more flexible surcharge system. The study group issued a report proposing revisions to the current surcharge system in April 2017 and the JFTC has been working to amend the AMA based on the report. In response to comments on the report from various parties concerned, the JFTC is considering measures to implement attorney-client privilege in relation to investigations concerning unreasonable restraint of trade as well.



**Setsuko Yufu**  
Atsumi & Sakai

Setsuko Yufu is a senior partner at Atsumi & Sakai, with more than 30 years' experience in cross-border transactions and corporate practice, including antitrust and competition law. She was awarded the honour of Woman Lawyer of the Year at the ALB Japan Law Awards 2017. She was ranked in relation to antitrust and competition law as a leading individual in *The Legal 500 Asia Pacific 2019* and as a notable practitioner in *Chambers Asia-Pacific 2019*. She was also ranked as highly recommended in *GCR 100 2018* and listed in *Who's Who Legal Competition 2019*. She serves as a board member of the EU Studies Association – Japan and is noted for her comprehensive knowledge of EU competition law. In 2015, she was elected as a board member of the Japan Competition Law Forum. Since 2016, she has been a member of the JFTC Antimonopoly Policy Council.



**Tatsuo Yamashima**  
Atsumi & Sakai

Tatsuo Yamashima is a partner at Atsumi & Sakai, working primarily in the field of antitrust and competition law, government regulations, employment and human resources and other corporate legal affairs. He has assisted and represented many Japanese and foreign companies with antitrust cases and merger cases involving the JFTC, as well as authorities in many foreign jurisdictions. In particular, he has significant experience with leniency applications for the JFTC. He is ranked as a notable practitioner in relation to antitrust and competition law in *Chambers Asia-Pacific 2019* and is listed in *Who's Who Legal Competition 2019*. He was also ranked as highly recommended in *GCR 100 2018*. He is a graduate of the University of Tokyo (BA, 2002; LLM, 2004) and is admitted to the Bar in Japan. He worked in Brussels at the competition law group of a leading global firm in 2011 as a visiting foreign attorney.



Fukoku Seimei Building  
2-2 Uchisaiwaicho 2-chome  
Chiyoda-ku  
Tokyo 100-0011  
Japan  
Tel: +81 3 5501 2111  
Fax: +81 3 5501 2211

**Setsuko Yufu**  
setsuko.yufu@aplaw.jp

**Tatsuo Yamashima**  
tatsuo.yamashima@aplaw.jp

**Saori Hanada**  
saori.hanada@aplaw.jp

**Masayuki Matsuura**  
masayuki.matsuura@aplaw.jp

[www.aplaw.jp](http://www.aplaw.jp)

The antitrust team in Atsumi & Sakai has acted as local counsel and as lead counsel on numerous multinational antitrust cases (some involving dozens of jurisdictions) and has significant experiences in dealing with the Japan Fair Trade Commission (JFTC), the US Department of Justice, The European Commission and other foreign regulators. The team, through full discussions with JFTC and other foreign regulators and relevant local lawyers, coordinates the many conflicting and complex legal issues of each local law and practice to guide the clients to the most effective global solution.

The team handles many international cartel investigations and private enforcements and extradition issues as well as international and domestic merger controls.

Recently we have seen a sharp increase in consultation and advice for vertical restraints, including restraints on distribution, resale price maintenance and discounting, and also abuse of dominant bargaining positions including request of rebates or disclosure of customer information in platform businesses. Some of this relates to preparation of responses to obligatory or voluntary sector searches made by the JFTC to the investigated parties or any third parties.

In addition, Atsumi & Sakai provides advice on domestic or international compliance system including system for group subsidiaries and relevant internal training.



**Saori Hanada**  
Atsumi & Sakai

Saori Hanada is a partner at Atsumi & Sakai, working in the fields of antitrust and competition law, employment law and other corporate legal affairs. She has advised major Japanese and multinational companies on various unfair trade practice issues, and represented Japanese and multinational companies in international cartel and merger cases. She is ranked as an up-and-coming practitioner in relation to antitrust and competition law in *Chambers Asia-Pacific 2019* and is listed in *Who's Who Legal Competition 2019*. She was admitted to the Japan Federation of Bar Associations in 2000 and the New York State Bar in 2012. She graduated from Waseda University (MA in political science) and obtained an LLM from Columbia Law School.



**Masayuki Matsuura**  
Atsumi & Sakai

Masayuki Matsuura is a partner at Atsumi & Sakai, working primarily in the fields of antitrust and competition law, M&A and other corporate legal affairs. He has advised and represented Japanese and foreign companies in numerous international cartel cases and M&A transactions. He was listed in the categories of M&A and Governance in *Who's Who Legal: Japan 2016* and ranked as a next generation lawyer in relation to antitrust and competition law in *The Legal 500 Asia Pacific 2019*. He worked for the antitrust group of a leading law firm in Washington, DC from 2013 to 2014. He is a graduate of Keio University (BA; 2001) and the University of Southern California Gould School of Law (LLM; Certificate in Business Law; 2013), and is admitted in Japan and New York.

LAW BUSINESS RESEARCH

Visit [globalcompetitionreview.com](http://globalcompetitionreview.com)  
Follow @GCR\_Alerts on Twitter  
Find us on LinkedIn

ISBN 978-1-83862-222-0