OECD

Asia-Pacific Competition Update

News from the OECD/Korea Policy Centre Competition Programme

April 2014, Issue 11

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The Competition Programme of the OECD/Korea Policy Centre provides education and training to officials of Asia-Pacific competition authorities in the field of competition law and policy. This newsletter includes information about our work and the work of the OECD, as well as news, case studies and reports from competition authorities in the Asia-Pacific region.

10th Anniversary Celebration and Workshop on International Co-operation in Cross-Border Competition Cases: Seoul 19-21 March 2014

2014 marks 10 years of collaboration between the OECD and the Korean Government in working to develop and implement effective competition law and policy in the Asia-Pacific region. The collaboration began in 2004 and has been operated under the auspices of the OECD/Korea Policy Centre Competition Programme since 2008.

During this time, the programme has delivered 56 workshops on competition law and policy for government officials and judges from across the region. Over 1,400 individuals have benefited from the Programme which is designed to share the expertise of OECD countries in the field of competition law and policy with economies in the Asia-Pacific region. The Programme both promotes the adoption of competition laws and helps new and existing competition authorities to build their enforcement capabilities.

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10th Anniversary Celebration and Workshop

To celebrate 10 years of collaboration, competition officials from across the Asia-Pacific region met in Seoul from 19 to 21 March 2014. Professor Frédéric Jenny, Chairman of the OECD Competition Committee and Mr Dae Rae Noh, Chairman of the Korea Fair Trade Commission (KFTC), delivered keynote speeches. This was followed by a panel discussion focused on ways to optimise technical assistance programmes to develop competition authorities and enhance international co-operation. This panel discussion was chaired by Professor Jenny and included contributions from Professor Tresna P. Soemardi, Commissioner of Indonesia's KPPU, Mr O. Magnai, Chairman of Mongolia's AFCCP, Mr S. L. Bunker, Member of the Competition Commission of India and Mr Hackhyun Kim, Vice Chairman of the Korea Fair Trade Commission.

Ms Simone Warwick

Senior Competition Expert

OECD

After the celebration, the participants shifted their focus to a discussion of international co-operation in cross-border competition cases. This is a topic of increasing importance as both the number of competition authorities around the world and the number of cross-border competition cases continue to grow.

This part of the workshop began with an overview presentation from Ms Simone Warwick, Senior Competition Expert at the OECD. The remainder of the workshop focused on four key themes:

1. mechanisms for international co-operation
2. obstacles and challenges in international cooperation
3. co-operation in practice, and
4. the future of international co-operation.

Discussion on each topic was moderated by Ms Simone Warwick with contributions from the following expert panellists:

- Mr Toshiyuki Nambu, Deputy Secretary General, Japan Fair Trade Commission
- Mr Russell W. Damtoft, Associate Director, US Federal Trade Commission
- Dr Paul Taylor, Special Advisor, Australian Competition and Consumer Commission,
- Mr Sungkyu Lee, Director, Korea Fair Trade Commission
- Mr Yongsu Lee, Director, Korea Fair Trade Commission
- Mr Daeyoung Kim, Director, Korea Fair Trade Commission
- Mr Sungkeun Kim, Director, Korea Fair Trade

Participants also provided contributions on experiences from their own jurisdictions, with presentations from:

- Ms Cindy Chang, Competition Commission of Singapore
- Mr Simon (Hsing-Yuan) Wang, Chinese Taipei Fair Trade Commission
- Mr Rodel A. Meris, Philippines Office for Competition
- Mr Xiaoqiang Qian, MOFCOM, China
- Ms Hongying Cao, SAIC, China
- Mr Xuan Hien Cao, Vietnam Competition Authority
- Mr Hilman Pujana, KPPU, Indonesia
- Ms Rafia Kiani, Competition Commission of Pakistan
- Mr Tselmeg Garmaa, AFCCP, Mongolia.

The workshop concluded with closing remarks from Mr Kyeoung Man Lee, Director-General of the OECD/Korea Policy Centre, Competition Programme.

KPPU-JFTC Cooperation under IJEPA Case: Donggi Senoro LNG Project

Mr Hilman Pujana

Investigator
KPPU

Ms Ardaiyene Suharyati

Official
KPPU

The Commission for the Supervision of Business Competition (KPPU) shared its experience of cooperation with the Japan Fair Trade Commission (JFTC) under the Indonesia-Japan Economic Partnership Agreement (IJEPA) with respect to a case of conspiracy in LNG (the Donggi Senoro Project).

The IJEPA is a bilateral agreement between the Government of Indonesia and Japan. The agreement was signed in August 2007 and came into force in 2008. There are eleven areas included in the agreement, one of them is Competition Policy.

In the Competition Chapter, there are six forms of cooperation. They are notification, exchange of information, coordination of enforcement activities, technical cooperation, transparency and consultation.

Under this chapter of the IJEPA, as well as its Implementing Agreement, both countries had appointed their respective competition authorities. The Government of Indonesia appointed the KPPU, while the Government of Japan appointed the JFTC. By doing so, any cross border cases may be coordinated based on the chapter through the KPPU and JFTC.

The Donggi Senoro LNG Project is one example that KPPU raised in regards to the implementation of the Competition Chapter of the IJEPA to seek better implementation.

The Donggi Senoro LNG Project is a case of conspiracy on a beauty contest process (Allegation of Article 22 and 23 of Indonesia Law No.5/1999). The project is located at the centre of Sulawesi Island. There were four reported parties,one being a Japanese company. The reported parties were Medco Energy International, Pertamina

Tbk, PT Medco E&P Tomori Sulawesi and Mitsubishi Corporation.

In this case, the KPPU found that all reported parties had been involved in the conspiracy which decided that Mitsubishi Corporation would be the winner of the beauty contest process for the Project. After the investigation, all the reported parties were found guilty and fined between Rp 1 – 15 billion. The District Court refused the appeal and strengthened the KPPU decision, while the Supreme Court overturned the KPPU decision. Because one Japanese company was involved in this case, the KPPU sent a notification letter to the JFTC right after the KPPU released its decision.

The KPPU is aware that the implementation of the notification procedure is not elaborated enough in the Implementing Agreement of the Chapter under the IJEPA. This caused some difficulties in practice because there was no guidance on how to do the notification, who will do it, when to do it, etc. The KPPU also found it is difficult to investigate a cross border case that involves a foreign company.

As a result of this experience, it has been suggested that the technical procedures relating to the scope of cooperation under the Competition Chapter of IJEPA be elaborated, especially on the best time to do the notification, the facilitation needed to strengthen the law enforcement process and the criteria for confidentiality of information.

Mechanisms for International Cooperation in Cross-Border Competition Cases of the Office for Competition

Mr Rodel Meris
Economist
Office for Competition
Department of Justice
Philippines

Executive Order No. 45, series of 2011, designated the Philippine Department of Justice (DOJ) as the Competition Authority and created the Office for Competition (OFC) under the Secretary of Justice. With

its mandate to promote international cooperation and strengthen Philippine trade relations with other countries, economies, and institutions in trade agreements, the OFC has formed partnerships with APEC, ADB, EU, GIZ, JICA, OECD, UNCTAD, and the WB-IFC. The OFC also has formal and informal mechanisms for international cooperation in cross-border competition cases with other competition authorities.

At the bilateral level, the OFC entered into a Memorandum of Understanding (MOU) with the JFTC on 28 August 2013, a first for both institutions. The MOU covers matters concerning notification of each other's enforcement activities, exchange of publicly available information relevant to enforcement activities, transparency and technical cooperation.

As mentioned, the OFC values informal mechanisms for cooperation. It is a recipient of support for capacity building activities from the US FTC and US DOJ through the International Program of USAID. The OFC will also be sending its senior economist to the Competition Commission of Singapore for sharing of expertise in the conduct of market studies.

At the ASEAN level, the OFC, during the Philippine Chairmanship of the ASEAN Experts Group on Competition (AEGC), introduced several initiatives geared towards promoting technical cooperation and regional economic integration, namely:

1. Promoting competition in ASEAN economies through a kick-off workshop on Sector Studies for AEGC;
2. Development of an MOU amongst competition agencies of AMSs on enforcement, information-sharing, and technical assistance;
3. Categorisation of AEGC documents to effectively manage the knowledge assets of competition agencies; and
4. Measuring the effectiveness of AMSs individually and collectively as ASEAN through major indicators.

As a way forward, the OFC will spearhead the preparatory process towards the development of a Regional Cooperation Framework for the enforcement of competition policy and law by competition authorities in the ASEAN Member States (AMS) as well as nurture its bilateral arrangements with other competition authorities and development partners.

OECD Global Forum on Competition: 27-28 February 2014

Fighting Corruption and Promoting Competition

This session built on discussions first held at the Global Forum 2011 on Collusion and Corruption in Public Procurement, debating how corruption and competition intersect in the space where the public sphere meets the private sphere. The discussion explored this relationship and looked at ways in which public officials and competition authorities can work together to fight corruption and promote competition.

Link: http://www.oecd.org/daf/competition/fighting-corruption-and-promoting-competition.htm

Peer Review of Competition Law and Policy in Romania

The findings of the Peer Review of Competition Law and Policy in Romania were reported. This was followed by comments from the Romanian delegation and questions from the examiners.

Link: http://www.oecd.org/daf/competition/competition-law-and-policy-in-romania.htm

Competition issues in the distribution of pharmaceuticals

This session looked at the market for the distribution of pharmaceuticals, a market which differs from other consumer markets. These differing features imply that market competition cannot fully be relied upon to reach an efficient allocation of resources. In addition, many governments consider that drugs should be affordable and accessible to all citizens. Market competition cannot ensure that these equity and fairness concerns are met. Hence, this market is heavily regulated. Even so, competition can and should play a role in ensuring that this market works well for consumers, so that these can benefit from higher quality, greater choice and variety, more innovation and lower prices.

Link: http://www.oecd.org/daf/competition/competition-distribution-pharmaceuticals.htm

OECD Competition Committee Meetings: 24-26 February 2014

Hearing on Evaluation of Competitive Impacts of Government Interventions

This hearing continued the stream of work focused on evaluation that has been a theme of competition work over the last year. While the previous work has primarily focused on evaluation of competition law interventions, there are many other types of government intervention, such as regulations, that can have a profound impact on competitive conditions. This hearing focused on the ex post review of this kind of intervention.

Link: http://www.oecd.org/daf/competition evaluationcompetitive-impacts.htm

Roundtable on Investigations of Consummated and Non-Notifiable Mergers

This roundtable discussion offered competition delegates the opportunity to share experiences on how agencies address alleged anti-competitive effects of consummated mergers that have not been subject to merger notification, either because they fell below statutory notification thresholds, because there was no obligation to report the transaction (e.g., the notification system has other exceptions or is voluntary), or because the parties failed to meet their filing obligations. This is an area where agencies have different powers. Some agencies have the authority to review consummated and non-notifiable mergers under their merger review systems; other agencies may need to resort to general antitrust provisions on horizontal agreements and unilateral conduct or abuse of dominance.

The discussion focused in particular on three situations:

1. The review of mergers falling below the national notification thresholds.
2. The review of mergers that should have been notified but were not.
3. Subsequent review of previously cleared and consummated mergers

Link: http://www.oecd.org/daf/competition/investigations-consummated-non-notifiable-mergers.htm

Competition role in Financial Consumer protection

This discussion focused on two key points. First, the role of switching rates in competition analysis. This looked at the way in which competition in the banking sector is assessed in different jurisdictions and whether or not the analysis has concluded that competition for new customers is more intense. This incorporated a discussion on the work done on searching and switching behaviour of individuals in the banking sector.

The second key focus was on the implications of banking separation for competition. This included a discussion of what benefits banking separation would deliver in terms of competition.

Link: http://www.oecd.org/daf/competition/competition-in-financial-consumer-protection.htm

Workshop on Complex Mergers: Busan, 11-13 December 2013

Ms Sabine Zigelski
Senior Competition Expert
OECD

The December workshop of the OECD/Korea Policy Centre (OECD/KPC) was held in Busan. The subject of the workshop was complex mergers. The workshop addressed a number of topics that often have to be dealt with during the analysis of more complex mergers. Questions of procedure were discussed as well as international co-operation, market definition, economic analysis and remedies. More general presentations were complemented by case studies, where theory was put into practice. Twenty three competition authority officials from across the region took part in the workshop.

The workshop opened with welcome remarks from Mr Kyeoung Man Lee, Director General of the OECD/KPC Competition Programme. This was followed by an introduction to the OECD/KPC and Korea Fair Trade Commission (KFTC) by Ms Hyelim Jang, Director of the OECD/KPC.

Ms Sabine Zigelski of the OECD began the substantive part of the workshop with an introductory presentation on planning and conducting complex merger investigations. A practical case presentation was then given by Ms Katika Komlos of the European Commission, reporting on the Commission's experience in a recent telecommunications

case, including the application of economic methodology in that case.

In the afternoon Mr John Davies, Head of the OECD Competition Division, gave a review of the reasons for, and methods used in, market definition and explained why it might be useful to supplement traditional market definition techniques with a more sophisticated analysis. Ms Sabine Zigelski then presented again and detailed options and instruments for international investigations and co-operation between competition authorities. The afternoon also included a presentation from Mr Jao Shekhar about India's experience with merger cases, highlighting the problems that young agencies often face in their proceedings.

On the second day of the workshop two expert presentations were given. One was from Mr John Davies on the use of diversion ratios, UPP and GUPPI analysis to better understand and define the competitive constraints that products subject to a merger investigation face and to estimate the potential anticompetitive effects of a merger. Mr Sangmin Song of the KFTC presented on the KFTC's experience in a retail merger case where an in-depth analysis including economic analysis had been conducted. The session included two more presentations by participating countries. Mr Chandra Setiawan of Indonesia's KPPU presented on the KPPU's merger experience, including a case study, and Mr Hao-Yu Chien of the Chinese Taipei Fair Trade Commission presented on the use of economic analysis techniques in a merger case, introducing a merger case about instant noodles.

On the third day, Ms Loy Pwee Inn of the Competition Commission of Singapore gave a presentation on the merger regime in Singapore with reference to a number of interesting cases. The remainder of the day was dedicated to merger remedies. Mr Rami Greiss of the Australian Competition and Consumer Commission (ACCC) gave an overview presentation on the Australian perspective on merger remedies, reflecting the experience that many of the older competition authorities around the world have had in dealing with mergers. This was followed by another presentation by Ms Katika Komlos, where she presented the remedy process and the remedies applied in the EU telecommunications case she had introduced on day one. Mr Rami Greiss then also added a remedy case example illustrating the ACCC's experience. The day ended with a hypothetical exercise in which the participants were asked to think about a merger remedy in a case that had been presented to them, where many of the insights of the day could be applied in practice.

The workshop concluded with closing remarks from Mr Kyeoung Man Lee.

Indonesian Challenges in Merger Review

Mr Chandra Setiawan

Commissioner
KPPU

Mr Taufik Ahmad

Head of Merger Bureau
KPPU

It is only in recent years that Indonesia has implemented a regulation to require the notification of mergers under its competition law. The relevant regulation implementing this requirement is Government Regulation Number 57 year 2010. Although the regulation has only recently been implemented, the development of merger review in Indonesia is promising. In 2010 there were only 4 merger notifications but by 2013 the number of notifications had increased to 71.

Indonesia has a "post-merger notification" regime. As a result, it is almost impossible for the Competition Authority (KPPU) to refuse to accept the notification of a merger because it will have already been completed. Because of this regime, businesses tend to neglect the need for good cooperation with the KPPU, especially when it comes to providing the KPPU with sufficient data. Businesses tend to notify their mergers only in order to fulfill the requirements of the regulation, but without any concern that the notification has to include sufficient information for the KPPU to evaluate it. For example, when asked for data on competitors, businesses often just say that "they do not know".

The availability of data is the most crucial problem for the KPPU when reviewing merger cases in Indonesia. Only aggregated data is provided by sources such as the Statistics Institution, and data from other government agencies is often incomplete and its accuracy is questionable.

To overcome this problem the KPPU has changed the regulation in order to oblige businesses to provide the sufficient and complete data before the KPPU will start its evaluation.

Meanwhile, in order to help address the weaknesses of a post-merger regime, and based on best practices, the KPPU encourages the use of the remedy program to find effective solutions for anticompetitive mergers.

Further, the KPPU has already been successful in approaching the parliament of Indonesia to take the initiative to amend the Competition Law No. 5 Year 1999. This amendment is still in progress and it is hoped it will be decided and approved by the government this year. One of the substantive changes would be to move from the current post-merger notification regime to a pre-merger notification regime for mergers.

Economic Analysis on Instant Noodles Merger Case Studies

Mr Hao-Yu Chien

Officer

Chinese Taipei
Fair Trade Commission

The CTFTC presented two prohibited merger cases about instant noodle mergers at this workshop.

The CTFTC adopted a "pre-merger notification" system in 2002. Since that time, only 7 cases have been blocked and more than 300 have been allowed to proceed. The instant noodle merger cases are 2 of the 7 cases blocked

by the CTFTC. Owing to the very short waiting period (no more than 2 months), the CTFTC seldom does further economic analysis on merger cases. The instant noodle merger cases were the first time the CTFTC employed detailed economic analysis.

The acquiring firm was Uni-President, which is the largest instant noodle company in Chinese Taipei (approx.50% market share). Furthermore, it was largest food company and owned the largest supermarkets and chain stores in Chinese Taipei. The target firm was Weilih Food which was the second large instant noodle company (approx. 20% market share). The main arguments were market definition, estimation of the overall benefit and the restriction of competition. The merging parties filed the first notification in 2008, when they asserted that the market should be a "ready-to-eat market" (including cookies, home meal replacements, canned food, noodles, and frozen food), therefore their combined market share was reduced to 9%. But after the CTFTC held a public hearing, it defined the market as an "instant noodle market". In the first case, the CTFTC only used HHI and qualitative analysis to block the merger.

In 2010, the merging parties filed the second notification. They provided many materials such as reports, papers, and opinions of experts to persuade the CTFTC that the merger would not lessen competition. The CTFTC obtained retail scanner data to do further economic analysis. It found that the price elasticity of demand of the instant noodle market was -0.83. The instant noodle market was inelastic meaning that producers were inclined to increase their prices to enlarge their total revenues. Home meal replacement and frozen food were also found to be partial substitutes. But when the CTFTC used the Nelson & Sun Index, it found that the post-merger price could increase by 43%.

Because the merger was likely to harm competition, the CTFTC blocked the merger again. The merging parties then filed a lawsuit against the CTFTC. After 3 years of litigation, the Supreme Administrative Court supported the CTFTC's decision in its final judgment on August 15, 2013.

OECD Competition Committee Meetings: 28-31 October 2013

Hearing on Links between Competition and Productivity

The Secretariat presented a draft factsheet that outlined recent evidence on links between competition and productivity. The note provided a two page narrative of statements about the effects of competition and competition policy on important macro-variables, such as productivity, employment, and inequality. It also presented evidence for each of the statements, based on existing economic literature on the topic. The aim of the note is to provide competition agencies with an additional tool to use in advocating their role. A draft version was discussed during the meeting. In light of the suggestions and comments received, a final version will be produced and will be available in 2014 as part of the Best Practice Roundtables on Competition Policy series.

Roundtable on Waste Management Services

The roundtable discussed competition issues in the handling of waste, in particular waste from households. It explored the developments that have taken place in this sector since the roundtable in the year 2000.

Three main areas were covered:

- Collection of waste - households generate a variety of waste that is collected to be reused, recycled, incinerated as fuel or buried in landfills. Waste collection is often considered to be a natural monopoly because of the large economies of density that characterise it. The roundtable discussed to what extent this is true and if competition can play a role in making these services more efficient (e.g. services could be tendered to the most efficient provider).
- Waste treatment, through landfills and incinerators - competition in the markets for incineration services, landfills and waste transfer stations operates within very tight boundaries because of the presence of extensive regulation. Landfills often can only accept waste that originates within their boundaries. Legislation can specify the shares of various types of waste that must be recycled, or it may prohibit the creation of new landfill or incinerator capacity. International trade rules can restrict the export or import of various kinds of waste. The roundtable examined the interaction between competition and regulation in this area.
- Producer responsibility schemes – these schemes are developed by producers of goods that generate specific types of waste (e.g. packaging, batteries, tyres) to comply with obligations to ensure that this waste is appropriately collected and recycled (the so-called extended producer responsibility obligations). These schemes have to organise or outsource the collection of this waste, its sorting and recovery into secondary raw materials, and its subsequent sale. The roundtable discussion explored the different forms these schemes can take and the competition problems they may give rise to.

Link to the Secretariat paper:
http://www.oecd.org/daf/competition/competition-issues-in-waste-management.htm

Roundtable on Remedies in Cross-Border Merger Cases

The roundtable on cross-border remedies sought to build on discussions on the same topic in previous

years and to provide an update. It focused in particular on the monitoring and implementation of cross-border remedies, and on issues arising when such remedies may need to be revised. Some of the key issues included:

- Examples of important recent mergers that involved cross-border remedies.
- Experience of agencies in coordinating or cooperating with any other agencies in connection with these remedies.
- Challenges which have arisen in the design or implementation of cross-border remedies, and how agencies overcame them.
- Revision of cross-border remedies for unforeseen circumstances or subsequent developments and agency cooperation in such cases.

The proceedings of this roundtable discussion will be published in 2014 as part of the Best Practice Roundtables on Competition Policy series.

Roundtable on Ex Officio Cartel Investigations

Fighting cartels remains a top priority for competition authorities. Since cartels are secretive in nature and cartelists take good care in concealing their illegal activities, cartel enforcement can be extremely challenging for competition authorities who most of the time need to rely on reactive tools such as complaints by competitors and customers or applications by participants to a cartel for leniency.

Less frequently, competition authorities take proactive steps to identify firms which are potentially involved in a cartel conspiracy, or markets which may be affected by cartelisation. These proactive cartel detection tools involve the analysis of observable economic data and firm behaviour, systematic monitoring of media, tracking of firms and individuals etc. to detect behaviour which is inconsistent with a healthy competitive process. Discussing the balance between proactive and reactive detection and particular detection methods may benefit competition authorities evaluating their anti-cartel detection and enforcement policies. The roundtable discussion focused on

- proactive and reactive cartel detection methods, and the proper balance between them to achieve an optimal level of cartel deterrence and detection; and
- the use of screens by competition authorities to detect likely cartels and initiate antitrust investigations.

The roundtable discussion offered an opportunity to discuss the various screening methods used by agencies and to present successful experiences with the implementation of such screens.

Link to the Secretariat paper:
http://www.oecd.org/daf/competition/exofficio-cartel-investigations.htm

Roundtable on Food Chain Industry

Recent events on world commodity markets, coupled with high levels of food-price inflation, have raised concerns, including competition concerns, about the functioning of the food chain across many countries from upstream segments through to consumers. The aim of this roundtable was to address competition issues in the food chain, including:

- market concentration at food processing and retailing stages associated with the consolidation resulting from mergers and acquisitions;
- the importance of market power and related buyer power;
- the effects of vertical restraints on efficiency and welfare at different parts of the food chain; and
- the increased penetration of private labels.

Link to the Secretariat paper:
http://www.oecd.org/daf/competition/competition-issues-in-food-chain.htm

Papers from the meetings will be available at
http://www.oecd.org/daf/competition/roundtables.htm.

Competition Law Workshop for Judges: Gyeongju, 22-24 October 2013

Ms Simone Warwick

Senior Competition Expert

OECD

For the third year running, the OECD/Korea Policy Centre (OECD/KPC) held a competition law workshop for judges from across the Asia-Pacific region. This year's workshop was held in the picturesque Korean city of Gyeongju from 22-24 October. Fifteen judges from across the region participated in the workshop which provided an overview of the three core areas of competition law: anticompetitive agreements, unilateral conduct and merger control.

Presentations at the workshop were given by three invited experts from OECD countries – the Honourable Paul Crampton, Chief Justice of the Federal Court of Canada and member of the Canadian Competition Tribunal, Chief Judge Seung Yub Baek of the Busan District Court and Mr Derek Ridyard, Partner and Co-founder of the economic consultancy RBB Economics. Presentations were also given by Ms Simone Warwick, Senior Competition Expert of the OECD/KPC.

The workshop opened with welcome remarks from Mr Kyeoung Man Lee, Director General of the OECD/KPC Competition Programme. This was followed by an introduction to the work of the OECD/KPC by Ms Hyelim Jang, Director of the OECD/KPC.

The first day of the workshop focussed on the challenges involved in competition law cases. Ms Simone Warwick began with a presentation introducing competition law and policy, setting the scene for the remainder of the workshop. This was followed by a presentation from Mr

Derek Ridyard looking at the economic meaning of the different terms used in competition law.

After lunch, Chief Justice Crampton shared his experience in dealing with competition cases as a judge, focussing on the different challenges that arise from a judicial perspective. Mr Derek Ridyard then returned to talk about the use of economic evidence in competition cases.

The remainder of the workshop was divided into three separate sessions – one on unilateral conduct, one on anticompetitive agreements and one on merger control. Each of the sessions followed a similar pattern.

The first session, on unilateral conduct/abuse of dominance, started with an introduction to the key legal and economic concepts by Ms Simone Warwick and Mr Derek Ridyard. This was followed by a presentation from Chief Judge Seung Yub Baek about an abuse of dominance case considered by the Korean courts relating to the conduct of online open market operator, Gmarket.

In the second session, the topic of anticompetitive agreements – both vertical and horizontal – was considered. After an introduction to the key legal and economic concepts by Ms Simone Warwick and Mr Derek Ridyard, Chief Justice Crampton provided a case example. The case example considered was the Maxzone Auto Parts cartel case, considered by the Federal Court of Canada.

In this session the hypothetical case discussed by the judges considered the value of indirect evidence in a cartel case in the mining sector.

The final session dealt with merger control. Once again, Ms Simone Warwick and Mr Derek Ridyard provided an introduction to the key legal and economic concepts. Chief Justice Crampton then provided a case example, this time a decision of the Canadian Competition Tribunal regarding a waste disposal merger between two companies, CCS and Complete.

The final hypothetical case discussed by the participating judges looked at a merger in the healthcare sector which raised both horizontal and vertical competition concerns.

The workshop concluded with closing remarks from Mr Kyeoung Man Lee.

News from Asia-Pacific Competition Authorities

❖ CHINA

MOFCOM publishes new rules for simple merger cases

On 12 February 2014, China's Ministry of Commerce (MOFOM) issued a new regulation relating to merger control, the "Interim Regulation on the Application of Simple Case Criteria to Concentrations of Undertakings". The new regulation came into force immediately.

This new regulation was issued after public consultation. It provides for simplified review of cases with little or no impact on competition.

In order to qualify for simplified treatment, cases must meet at one of six criteria listed in the regulation. These criteria include horizontal mergers where the combined market share of the merging parties is less than 15% and vertical mergers where the market shares of the merging parties in both the upstream and downstream markets is less than 25%. Some limited exclusions apply.

SAIC issues fine for abuse of dominance

In December 2013, the Guangdong branch of China's State Administration for Industry and Commerce (SAIC) fined Yiyuan Fresh Water Company , a state-owned enterprise, 3.2 million renminbi for abuse of dominance.

It found that Yiyuan Fresh Water Company's bundling of its water supply services with the construction of water related infrastructure (meters and pipes) was illegal. The state-owned Yiyuan owns the water infrastructure around the city of Huizhou and also controls the fresh water supply in the area. The case arose after complaints from property developers in the area who had their access to fresh water restricted they refused to use one of Yiyuan's sister companies to supply the water infrastructure at their sites.

Yiyuan argued that it was engaging in the conduct to ensure the safety of the water supply. This argument was rejected and the fine was imposed.

❖ INDIA

CCI fines Etihad for gun-jumping

In December 2013, the Competition Commission of India (CCI) fined Etihad 10 million rupees for implementing some parts of its deal with Jet Airways without first obtaining approval.

The deal comprised a number of different parts, including the acquisition by Etihad of a 24 per cent shareholding in Jet Airways, a commercial co-operation agreement and the acquisition by Etihad of three of Jet Airways' slots at London Heathrow. The deal was notified to the CCI on 1 May 2013 and approved 12 November 2013.

The CCI found that prior to the deal being approved the parties had pursued certain action in accordance with their obligations under the commercial cooperation agreement (without seeking the CCI's approval to do so) and also completed the sale and purchase of the London Heathrow slots.

The CCI did not accept the argument made by the parties that they thought the acquisition of the slots was a separate transaction which did not require approval, but when determining the level of the fine the CCI did take into account the fact that the parties did not deliberately conceal these transactions.

❖ INDONESIA

KPPU imposes sanctions for bid-rigging by construction companies

On 21 January 2014, Indonesia's Commission for the Supervision of Business Competition (KPPU) fined two construction companies (Ifani Dewi and Antar Mitra Sejati) a total of Rp 5.85 billion for engaging in bid-rigging. In addition to the fines, the KPPU banned the two companies from participating in any tender held by Indonesia's Ministry of Public Works for a period of two years. The KPPU's investigation concluded that the companies colluded with the tender committee of a highway project organised by the Ministry of Public Works in 2011.

❖ CHINESE TAIPEI

Chinese Taipei FTC fines Apple

In December 2013, the Chinese Taipei Fair Trade Commission (FTC) fined Apple Asia LLC NT$20 million for a violation of Article 18 of the Fair Trade Act. Article 18 of the Fair Trade Act prohibits resale price maintenance. Apple had been putting restrictions on the prices at which mobile telecommunication providers in Chinese Taipei could cell Apple telephone handsets as part of mobile phone plans. The FTC investigation found that under the distribution agreement between Apple and the telecommunications companies, all iPhone pricing (including special offers) required Apple's consent.

❖ KOREA

Prison sentences for bid rigging in Korea

Early February 2014 saw decisions from two Korean Courts, the Busan District Court and the Seoul District Court, imposing prison sentences on a number of individuals for their involvement in bid rigging cartels. For the first time in Korea, these sentences were not suspended and several individuals began serving their sentences immediately.

The case in the Busan District Court involved the rigging of tenders for the supply of power cables used in nuclear power plants. In this case, three executives were sentenced to serve six months in prison. Other individuals received suspended sentences or community service. The companies in question received criminal fines of between KRW 16 million and KRW 40 million.

The case in the Seoul District Court involved bid-rigging conduct associated with the Korean rivers restoration project. The Court imposed criminal fines of six of the 11 companies involved. Significantly, it sentenced one executive to two years' imprisonment effective immediately, while another 18 executives received suspended sentences and three received criminal fines.

The criminal sanctions against the executives came after they were charged under the Korean Criminal Code which makes interfering with public bids a criminal offence.

❖ MALAYSIA

MyCC proposes to fine ice manufacturers for price fixing

On 20 February 2014, the Malaysia Competition Commission ('MyCC') issued a Proposed Decision to twenty-six ice manufacturers. The ice manufacturers were found to have infringed Section 4(2)(a) of the Malaysian Competition Act 2010 ('Act') by entering into an agreement that has as its object to fix, directly or indirectly, the selling price of edible tube ice and the price of block ice in Kuala Lumpur, Selangor and Putrajaya.

The proposed financial penalties on all the parties involved is RM283,600. In determining the level of financial penalty, the MyCC took into account (amongst

others) the seriousness of the infringement, the duration of the infringement, aggravating factors such as not being cooperative during investigation, and mitigating factors such as being cooperative during investigation. The financial penalties range from RM1,200 to RM106,000.

The MyCC first issued Interim Measures to the ice manufacturers on 20 January 2014, following their announcement on 24 December 2013, in a few local newspapers, stating their plan to increase the price of edible tube ice by RM0.50 per bag and the price of block ice by RM2.50 per big block from 1 January 2014.

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