

Asia-Pacific Competition Update

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OECD KOREA Policy Centre

IN THIS ISSUE



Entry Point - Editorial Note p. 3



News from Asia-Pacific Competition Authorities p. 4-8



Workshop on Best Practices in Cartel Procedures p. 9-11



Workshop on Market Studies p. 12-13



First OECD Asia-Pacific High Level Reps Meeting Took Place in Paris p. 14



OECD Competition Committee Meetings p. 15-16



OECD Global Forum on Competition p. 17-18

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, and OECD/KPC organises events for judges. 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.

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Entry Point - Editorial Note

As we start the new year of 2018, we are very excited with the new programme for the year. You can find the full programme towards the end of the newsletter, but for the purposes of this editorial I wish to highlight the next two events that will take place in the first half of this year: the sector event on competition issues in the energy sector and the first OECD/KPC/ICN event on economics of competition.

I also wish to highlight the publication of the Competition Law in Asia-Pacific – A Guide to Selected Jurisdictions. An OECD/KPC publication that looks at 22 jurisdictions on the Asia side of the Asia-Pacific. This is the first publication of its sort and will allow competition authorities in the region to know their Asian neighbours better as well as to learn and better share experiences with their neighbours, and for us at the OECD/KPC to better understand the capacity building needs in the region.

Another event to highlight was the Global Forum on Competition that took place in December in Paris. You can find more detail on each session in this newsletter, but I wished to focus on the session on “small agencies and those in developing economies: overcoming adversity and attaining success”, as it included significant input from a number of competition authorities from Asia.

The session focused on specific challenges that small agencies and those in developing economies are facing, and the ways to overcome those. It included three different breakout sessions that discussed different topics, and a wrap up plenary that summarised the discussions in the different breakout sessions. These topics were: Advocacy, Enforcement, and fighting bid rigging in public procurement cases to develop legitimacy.

A number of contributions came from authorities in Asia, namely Ms. Anna WU Hunk-yuk – the Chairperson of the Competition Commission in Hong Kong – was the moderator of the breakout session on Advocacy. Other key speakers from the Region included Mr. Dato' Jagjit Singh A/L Bant Singh, Member

of the Commission in the Malaysia Competition Commission, Mr. Arsenio Balisacan, Chairman of the Philippine Competition Commission, Mr. Paulus Ain, Commissioner and CEO of The Independent Consumer and Competition Commission of Papua New Guinea. All of these were present in the breakout session on advocacy. Written contributions came from the Philippines and Singapore.

In each breakout session, case studies presented the main challenges while others illustrated successful strategies. In the wrap up plenary, that was moderated by Mr. Frederic Jenny, the moderators from the different breakout sessions reported the discussions. There was a wide agreement amongst all the participants in the session that in order to balance competition and other objectives there is a need to “sneak in” competition to these objectives. A competition agency must create good relations with the government and sectoral regulators by using advocacy measures based on solid data, evidence and research. Once these relations are well established, the agency will have more support for its enforcement efforts. When developing enforcement priorities, the agency should calculate the likely economic benefits and develop an effective communication strategy of these benefits to the public and the stakeholders. There was also a wide agreement amongst delegates that agencies must use the media regularly and strategically to communicate its activities and the benefits of competition.

All of the materials can be found in the GFC webpage: <http://www.oecd.org/competition/globalforum/small-competition-agencies-developing-economies.htm>

Have a great 2018!

Ruben Maximiano



News from Asia-Pacific Competition Authorities*

* News items were provided by respective Competition Authorities and their own responsibility

AUSTRALIA



Changes to the Competition and Consumer Act Enacted

Throughout 2017 the Australian Competition and Consumer Commission (ACCC) continued its core work in the context of preparing for and responding to important changes to the Competition and Consumer Act 2010 (the CCA).

These changes were passed by Parliament on 23 August and 18 October 2017, ushering in a new era for competition law in Australia.

These broad ranging amendments included changes to Australia's misuse of market power provision, bringing it more in line with international abuse of dominance provisions. Businesses with substantial market power are now prohibited from engaging in conduct that has the purpose, effect or likely effect of substantially lessening competition.

The amendments also introduced 'concerted practices' provisions, prohibiting parties from engaging in concerted practices which are for a purpose, have the effect or likely effect of substantially lessening competition.

The amendments also streamlined the merger authorisation process (making the ACCC the first instance decision maker on applications for authorisation), modified the joint venture defence applying to cartel conduct, introduced a class exemption procedure, and made it easier for businesses to lawfully engage in resale price maintenance.

First Criminal Conviction for Cartel and New Cases

The ACCC was successful in obtaining the first criminal conviction under Australia's criminal cartel provisions when the Federal Court convicted Nippon Yusen Kabushiki Kaisha (NYK) of criminal cartel conduct. The Federal Court imposed fines of AUD 25 million, representing the second highest fine in ACCC history. The cartel involved an arrangement or understanding between competitors transporting motor vehicles to Australia between 2009 and 2012.

Throughout 2017 the ACCC also commenced new inquiries and in-depth market studies in the areas of residential mortgage products, Northern Australian insurance, the supply of retail electricity and the competitiveness of retail electricity prices, the supply of and demand for wholesale gas in Australia, and digital platforms.

INDONESIA



AQUA Found Guilty of Exclusive Agreement and Market Control

Indonesia's leading packaged drinking water producer (AMDK) brand AQUA, PT Tirta Investama (TIV) and PT Balina Agung Perkasa (BAP) as the distributor, were found by the KPPU to conduct unfair competition through exclusive agreements and market control. For the violation, TIV was fined IDR 13.84 billion while BAP was fined IDR 6.29 billion.

This case was started from the complaint of the retailer and retail merchants to the KPPU Head Office in September 2016. The retailer claimed to be blocked by PT Tirta Investama to sell Le Minerale products produced by PT Tirta Fresindo Jaya (Mayora Group). One of the clauses of the retail agreement that if the merchant sells Le Minerale product, then the status will be derived from Star Outlet (SO) to the wholesaler (retail). For this action, PT Tirta Fresindo Jaya issued an open publication against PT Tirta Investama in the newspaper on October 1, 2017. The action by TIV seemed to deter other business actors in the market of AMDK.

In the process, KPPU found strong evidence to support the violation. One of the evidence which the investigator team found was the evidence of e-mail communications. The investigator found a two-way communication between the TIV and BAP, which were sent to each other by e-mail address of the office. E-mail subject to "Star Outlet Degradation (SO) Being a Wholesaler." contained sanctions applied by BAP to SO retailer. In fact, BAP was said to have executed the sanction to one of the Star Outlets.

Based on the information, AQUA products controlled the market share of up to 46.7 percent in the AMDK market, and followed by Club 4 percent (Indofood), 2 Tang (PT Tang Mas) 2.8 percent, Oasis (PT Santa Rosa Indonesia) 1.8 percent, Super O2 (Garuda Food) 1.7 percent, and Prima (Sosro) 1.4 percent.

JAPAN



JFTC Closed Investigation on Amazon Japan G.K.'s MFN Clauses

The Japan Fair Trade Commission (JFTC) closed its investigation on Amazon Japan G.K. on suspicion of Japanese competition law violation in June 2017.

Amazon Japan G.K. had been suspected to impose restrictions on sellers on its e-commerce website Amazon Marketplace by requiring them to sign contracts including price parity clauses and selection parity clauses, so called most favoured nation (MFN) clauses.

JFTC has concerns that MFN clauses imposed by an online shopping mall operator on sellers would negatively affect competition; they would restrict sellers' business activities by limiting reduction of prices and expansion of product lineups on other sales channels. Also, they would allow an online shopping mall operator to achieve the lowest price and the richest lineup in its online shopping mall without making any competitive effort and thus distort competition amongst online shopping mall operators. Moreover, they would reduce online shopping mall operators' incentive for innovation and hinder new entrants.

During the JFTC's investigation, Amazon Japan G.K. proposed to promptly take voluntary measures such as deleting MFN clauses from concluded valid seller contracts or waiving its rights in relation to MFN clauses in those seller contracts and pledging not to include such clauses in the future.

JFTC recognised those measures would eliminate the suspected violation mentioned above and decided to close the investigation on this case.

KOREA



KFTC Imposes Remedies and Sanctions on Shipping Companies

The Korea Fair Trade Commission decided to impose remedies on 10 automobile shipping companies for price rigging and collusion to divide the market, levy a total fine of KRW 43 billion on nine enterprises, and refer eight of them to prosecutors.

The shipping companies have engaged in the following conducts in violation of the Monopoly Regulation and Fair Trade Act (MRFTA). First, they divided up shipping routes among nine maritime shipping companies. The nine shipping companies included Japan's Nippon Yusen Kabushiki Kaisha (NYK) colluded between August 26, 2002 and September 5, 2012 in global biddings offered by car manufacturers including GM that they should "respect" each other and let each other win the existing contracts. "Respect" is a jargon used by automobile shipping companies not to compete with each other so that each company can continue winning contracts and operating its routes.

The shipping companies "respected" each other and helped one another preserve the existing contracts by not participating in the bidding or submitting bids at high prices. The execution of the conspiracy has taken place when the global tenders were placed by car manufacturers per shipping route, and similar agreements have been carried out simultaneously globally across multiple routes in the form of "respecting" other companies' existing contracts and requesting such "respect" for their own contracts.

Secondly, two enterprises were engaged in price fixing. The two maritime shipping companies including NYK colluded to fix prices for shipping Hyundai Motor Company's vehicles from Korea to Israel between March 3, 2008 and October 31, 2011. There has been long-standing restrictions in place against any shipments entering the Arab nations that originate in any form or part from Israel are refused entry, which is called "the Arab League Boycott of Israel". Accordingly, NYK and ZIM were the only players operating the Korea-Israel route, which made it relatively easy for them to collude.

Due to the Arab League Boycott, the vessels that have ever made an entrance to Israeli routes cannot switch the routes to other Middle Eastern or Mediterranean routes. Thus, the Israel route has been handled separately. Until the early 1990s, ZIM, which is Israel's cargo shipping company, was the only one providing ocean shipping service in the Korea-Israel route. Around 1993, NYK started its operation in the Israel route and ever since then, NYK and ZIM have been operating Korea-Israel route.

Agreement was carried out when EUKOR, which had been commissioned by Hyundai Motor Company to be in charge of delivering vehicles in the Korea-Israel route, signed contracts with NYK and ZIM. In 2008, NYK and ZIM agreed to raise the shipping price by USD 100 per vehicle and carried out the conspiracy. They also agreed on the fare for Hyundai Motor Company's YF Sonata following its 2009 launch, as well as for the Grandeur HG launched in 2011.

MALAYSIA



MyCC Published Two Market Reviews in Relation to Competition Act 2010

MyCC has completed two market reviews on the pharmaceutical sector and building materials in the Malaysian construction industry under the Competition Act 2010 (CA 2010).

The MyCC was encouraged to conduct a market review on pharmaceutical sector as the demand for essential medicine is inelastic whereby consumers would purchase it despite of the hike in prices. In addition, anti-competitive practices are prevalent in the pharmaceutical sector across many countries. Unlike with other consumer goods, patients have little consumer choice in the frequency and type of medicines to take. This problem is compounded by asymmetry information between patients and doctors, where those who prescribe have more power to decide than the consumers. The market review on pharmaceutical sector focuses on controlled (prescription) medicines within two level of supply chain which are the manufacturers of generic medicines and importers of originator and generic medicine (first level) and the wholesalers and distributors (second level).

On the other hand, the market review on building materials in the construction industry was conducted due to the concerns raised by relevant government agencies in relation to the rising cost of living and less affordable housing in Malaysia. Therefore, this market review focuses on four building materials namely steel, cement, ready-mixed concrete and sand which accounted close to 60% of the estimated value of top 8 building materials used in construction projects in 2016. The findings from this market review show that the four building materials are not the main factor that influence the rising cost of housing. There are no obvious or major anti-competitive concerns were found during this market review. However, there are several areas that may possibly restrict competition in the future or competitiveness of local industry players.



Public Consultation Session for both market reviews held in Kuala Lumpur.

Moot Court Competition on Competition Law 2017

Following the success of the inaugural Moot Court Competition on Competition Law in 2016, MyCC organised the 2nd Moot Court Competition on Competition Law at the International Islamic University Malaysia (IIUM), Kuala Lumpur on 28 to 29 October 2017. This is the MyCC's initiative in providing exposure and awareness of the Competition Act 2010 (CA 2010) to students in the Institutes of Higher Learning (IHL) in Malaysia. The event attracted seven teams from universities all over Malaysia, and was won by the team from University of Malaya. This competition aims to promote CA 2010 among university students, in line with the aim of creating a pool of future competition experts in Malaysia. Such event will also attract other students and academics to contribute in the areas of education, research and sharing on Competition Law.



Final Round of the Moot Court Competition



Winner of the 2nd Moot Court Competition in Competition Law 2017

MyCC Accepts Undertaking of Sand Operators

On 25 September 2017, the Malaysia Competition Commission (MyCC) has accepted an undertaking from a group of sand operators in Kelantan concerning the alleged fixing of sand prices for the territories of Kota Bharu, Pasir Mas, Tanah Merah and Machang in Kelantan, Malaysia.

Prior to this, the MyCC had conducted an investigation against the 13 enterprises on suspicion of an infringement of Section 4(2)(a) under the Competition Act 2010. These sand enterprises had agreed to impose a new sand price based on the price list of sand issued by their parties for their respective territories.

These enterprises had pledged to abolish the list of sand prices that were issued on 10 January 2017 for their respective territories, cease any other anti-competitive behaviour in relation to the issuance of the price list as well as issuing a press release of their alleged infringement to the major newspapers. MyCC will continue to monitor the activities of the target enterprises and no further action will be taken against them as long as they are compliant with the Undertakings that they have provided.

Workshop on Best Practices in Cartel Procedures

New Delhi, India, 24-26 October 2017



From the 24th to 26th of October 2017, the Centre held a workshop in New Delhi, India dedicated to sharing best practices in cartel procedures. This was an event co-hosted with the Competition Commission of India (CCI).

Cartels have been considered by the OECD as “a principal focus of competition policy and enforcement” and the OECD Competition Committee has devoted significant number of policy discussions on identifying best practices for hard-core cartel enforcement.

This workshop was on fighting cartels and in particular on fighting “Hard core” cartels - meaning anticompetitive agreements by competitors to fix prices, restricts output, submit collusive tenders,

or divide or share markets. The objective of the workshop was to equip participating competition authorities with the necessary know-how for detection and practical enforcement in fighting cartels, with an emphasis on evidence gathering and best practices on investigative steps that may be taken and building cases from scratch.

This workshop had more than 40 participants from competition officials from a multiplicity of jurisdictions in the Asia Pacific Region (China, Hong Kong, India, Indonesia, Mongolia, Malaysia the Philippines, Singapore, Chinese Taipei, Viet Nam), including many participants from the CCI. On the other hand, panel members



included experts from the Korea Fair Trade Commission (KFTC), US DOJ, the Italian AGCM, and the Japanese Fair Trade Commission (JFTC).

The event opened with introductory speeches by Director General Yoon of the Korea Policy Centre, Mr. Devender Sikri (Chairman of the CCI) and by Mr. Ruben Maximiano of the OECD. The first session was offered by Mr. Maximiano, sharing the importance of fighting cartels, with many examples of cartels from a number of jurisdictions as well as an explanation of how cartels function and the types of evidence that can be collected and the main methods for getting that evidence. Mr. Maximiano also provided a road map of the three day workshop introducing the topic at a general level and putting it into the context of the toolbox at the disposal of competition agencies.

The second session was led by Mr. Yusuke Sakurai, Chief Investigator at the JFTC that shared the experience of the JFTC in detecting cartels, in particular how the complaint system and the leniency programme function in practice. The first case study session of the workshop was provided by Mr. Santy Tobing, Head

of Prevention Division of Makassar of the KPPU with a tyre cartel. In the afternoon, Mr. Yoon representing the KFTC provided a presentation on dealing with indirect evidence in cartels in Korea.

The first day of the workshop finished with an in-depth session lead by Mr. Howard Parker of the US DOJ on building a cartel case, from the case strategy to the day to day management of the case team. This was followed by a case study offered by Mr. Jhe-Hao Yang of Chinese Taipei.

The second day started with the work done by the CCI in its fight against cartels, by offering a very comprehensive picture of the legal framework as well as of the enforcement against cartels more specifically, providing a number of examples. Mr. Singh, Advisor to the Board of the CCI, who lead this session also discussed the leniency programme in India. This was followed by Mr. Parker's very practical presentation on how to ask the right questions in interviews, from preparation to execution. This was followed by the first hypothetical case where the assembly was divided into smaller groups of between 8 and 10 persons to discuss and try and solve a cartel case. With many adaptations the





hypothetical case involves a cartel in the asphalt industry inspired by a case from Sweden where the Swedish Competition Authority investigated the asphalt industry which was suspected of rigging bids for many road construction projects. This hypothetical case was discussed in three different sessions, allowing simulating interviews, dawn raids as well as a final discussion of evidence collected and next steps.

The third day was dedicated to more practical aspects of fighting cartel cases, in particular looking at how to undertake dawn

raids, or unannounced inspections with many practical tips in all stages of the operation of dawn raids and then how to deal with the evidence collected – both sessions led by Ms. Vittoria Tesei, from the Italian AGCM. The third case study was offered by Ms. Erika Yu and Mr. Frederick Good of the Hong Kong Competition Commission.

Overall, this was a very successful event with many and enthusiastic participants showing great interest in the practical details of how to conduct a cartel investigation.



Workshop on Market Studies

Seoul, Korea, 14-16 November 2107



The OECD/KPC held a workshop on market studies. The workshop introduced the main uses for market studies - support of competition enforcement and competition advocacy. Based on OECD work products, criteria for market study selection and prioritisation were introduced, followed by practical examples of market study work and the introduction of best practices for market study investigations. Possible results and enforcement and advocacy related strategies were discussed.

The OECD-Korea Policy Centre workshop in Seoul, Korea on November 14 - 16 on "Market Studies" reached participants from jurisdictions across Asia, including China, Chinese Taipei, India, Indonesia, Malaysia, Mongolia, Pakistan, the Philippines, Singapore, Vietnam, Bangladesh and Kyrgyzstan. Panellists included experts

from the Korea Fair Trade Commission, the Lithuanian Competition Council, the European Commission, the Australian Competition and Consumer Commission and the OECD.

The workshop opened with welcoming remarks from Director General Soohyun Yoon of the OECD-Korea Policy Centre. The substantive presentations of the first day started with an introductory presentation by Sabine Zigelski for the OECD. Mr. Sarunas Keserauskas for the Lithuanian Competition Council continued the introductory part of the day by presenting on criteria for market study selection and prioritisation and the Lithuanian practice. Mr. Yonghee Shin for the Korea Fair Trade Commission continued by giving an overview into the Korean framework and history of market studies as well as summarizing a number of recent studies.



The second part of the day started with a hypothetical case exercise, discussed in small groups. Participants were asked to stage a hearing and to present arguments in favour of different markets to be investigated. This exercise helped to sharpen the understanding of good selection and prioritisation criteria. The day ended with a presentation by Mr. James Mancini representing the OECD. He gave a comprehensive overview of common market study methodologies.

The second day opened with a presentation by Ms. Simone Warwick of the Australian Consumer and Competition Commission. She presented the set-up and first steps in an ongoing electricity sector market inquiry. Following this presentation Mr. Satyam Pranav for the Competition Commission of India gave insights into India's legal background and illustrated the market study practice with recent case examples. In a panel discussion all the experts engaged in brief presentations and discussions relating to practical problems such as communication with stakeholders, questionnaires, data processing and difficulties that might be encountered.

The afternoon started again with a hypothetical case exercise. The participants worked on different tasks that need planning and structuring during a market study such as prioritisation, planning of the project, planning of the investigation and hypotheses of relevant outcomes. The day concluded with a presentation by Ms. Szuzsa Cserhalim of the European Commission on the process and outcomes of the EC's e-commerce sector inquiry.

On the last day of the seminar Mr. James Mancini presented on possible outcomes for market studies and market study remedies, based on the related OECD work product. Mr. Jhih-Hong Jhang of the Chinese Taipei Fair Trade Commission introduced another country experience and added an economic perspective to the seminar by reporting on rice market investigation.

The seminar finished with another panel discussion round. Mr. Sarunas Keserauskas gave an introductory presentation on the Lithuanian experience in "selling" market study results and difficulties that can be encountered and overcome. The other panellists then added their experience and this included how to act in politically charged environments, deal with numerous stakeholders etc.

Throughout the seminar it showed that jurisdictions with experience had very similar learnings and that these can help younger jurisdictions avoid the mistakes their experienced peers have made. Participants were encouraged to conduct market studies and reminded that there was no need to start big, but that a small but relevant and contained market study could produce valuable results and provide much needed practical insights for future market studies.

First OECD Asia-Pacific High Level Reps Meeting Took Place in Paris



The first OECD meeting of the High Level Representatives of Asia-Pacific Competition Authorities took place in the afternoon of 6th December and was chaired by Mr. Antonio Gomes, the Head of the OECD Competition Division. There were 15 jurisdictions in attendance – most of which were represented by either Chairpersons or Commissioners of their respective authorities. Please note that Asia Pacific includes only the Asian side of the equation, so Asia plus Australia, New Zealand, Fiji and PNG.

This meeting was meant to test the waters to try and understand whether there is scope for more OECD engagement with Asia-Pacific, not just with technical assistance and capacity building in the context of the OECD/KPC, but also with an annual meeting with leaders of the Competition Authorities in the Region. As such, the format of the meeting was to have the official launch of an OECD/KPC publication, the “Guide on Competition Laws of 22 selected jurisdictions” to be published early in 2018, with a presentation from DG Soohyun Yoon of the Korea Policy Centre as well by Mr. Ruben Maximiano, Senior Competition Expert at the OECD, providing an overview of the activity of the agencies in the region as well as the current situation regarding leniency programmes, inspection powers and sanctions.

The main part of the meeting was dedicated to Priority setting by Competition Authorities and was introduced by Mr. Antonio Gomes with Mr. Bill Kovacic as keynote speaker. This is a

strategic theme for decision makers, and Mr. Bill Kovacic's presentation showed that it is of critical value for an agency whether it is newly formed or is already a mature agency. This comprehensive and fascinating introduction was followed by the contributions and experience sharing by 10 of the jurisdictions present. There were presentations and interventions by the Dr Dongkweon Shin, Secretary-General of the KFTC, Mr. Hiroshi Yamada, Deputy Secretary-General for International Affairs, JFTC, Dr Jill Walker, Commissioner, NZCC, Chairman Devender Kumar Sikri, CCI, Chairman Arsenio Balisacan, PCC, Commissioner Hung-Hao , CTFTC, Marcus Bezzi, Acting Chief Operating Officer, ACCC. Following the format that had been set out by the Secretariat each explained how they fix priorities and what those priorities are, allowing for a good overview of how priority setting is done across the region and what those priorities were. Further interventions were made by Chief Executive Toh Han Li (CCS), Commissioner Dato' Jagjit Singh Bant Singh of MyCC and Mr. Joel Abraham, CEO of the Fiji Competition Commission.

The high number of jurisdictions represented, the comments received during the meeting as well as subsequent communications and comments made to the Secretariat acknowledged the success of the meeting and the desire of many of the delegations for the OECD to continue to hold such meetings. A emerged that there should be a next meeting and that at least at first this should again take place in Paris taking advantage of the presence of the delegations at the Global Forum on Competition. Some comments also suggested that such a meeting would benefit from more engagement of the OECD in preparations (e.g., a short research paper). Over the coming months the Secretariat will work with the Asia Pacific Authorities to define the agenda for next year and will issue a list of topics from which to choose from.

OECD Competition Committee Meetings, 4–6 December 2017

Roundtable - 10 years on from the Financial Crisis: Co-operation between Competition Agencies and Regulators in the Financial Sector

The Roundtable on Co-operation between Competition Agencies and Regulators in the Financial Sector discussed whether, 10 years after the global financial crisis began to unfold, financial regulators and competition agencies have successfully co-operated to implement a regulatory and competitive framework that delivered a stable system in which innovative and efficient firms can thrive. Have changes to prudential regulation complemented competition and for example helped to incentivise traditional banks not to take on excessive risk; have these changes restricted competition in the hope that banks, insurance firms or other financial institutions would use market power to build their resilience? The Roundtable analysed if the regulatory framework has dealt with the potential of Fintech, including mobile payments and shadow banks, to introduce innovative business models. It also explored the way in which macro-prudential measures have affected competition. In addition, it was considered whether, where greater transparency on rates and other conditions has been introduced, this has helped consumers to choose and switch between providers of financial services, or whether it has backfired and provided banks with detailed knowledge about each other's policies, thereby leading to higher prices

Link: <http://www.oecd.org/daf/competition/cooperation-between-competition-agencies-and-regulators-in-the-financial-sector.htm>

Roundtable on the Extraterritorial Reach of Remedies

While there is broad consensus that foreign conduct sufficiently affecting domestic markets merits extending a country's jurisdiction to cover it, countries remain aware of the need to balance this extended jurisdiction with the principles of international comity, evaluate another state's interests and at times defer to them, and avoid imposing inconsistent demands on private parties who may need to comply with several and occasionally conflicting competition regimes. Recent cases and commentary debate the right territorial scope and level of nexus between a competition remedy and the alleged violation, essentially whether a remedy overreaches, and the extent to which it is enforceable. Delegates discussed the appropriate scope of remedies with potential extraterritorial reach, and their relevance, effectiveness and proportionality in redressing domestic harm.

Link: <http://www.oecd.org/daf/competition/extraterritorial-reach-of-competition-remedies.htm>

Roundtable on Safe Harbours and Legal Presumptions in Competition Law

Safe harbours are rules that preclude a finding of a competition infringement and/or make it unnecessary to assess market circumstances in order to find a conduct lawful. Presumptions of illegality usually refer to per se rules or object prohibitions and with safe harbours they delineate the borders of conduct that must be subject to detailed market analysis. They can be absolute or rebuttable, depending on whether evidence against it can be brought by either the parties or the enforcing agency. Safe harbour and presumptions, in the form of market shares, HHI indices, or other market structure variables, are widely used. Commonly, they are applied in the area of horizontal mergers, unilateral conduct, market dominance, and/or monopolisation, vertical relations including vertical mergers and vertical restraints. The roundtable offered an opportunity to discuss the rationale for adopting bright-line rules or flexible standards in competition enforcement; the reasons behind the adoption of safe harbours and/or presumptions of illegality for certain conducts and not others; whether rule-design is influenced by institutional considerations regarding the enforcement bodies' capacity to conduct in-depth analyses.

Link: <http://www.oecd.org/daf/competition/safe-harbours-and-legal-presumptions-in-competition-law.htm>

Hearing on Common Ownership by Institutional Investors and Its Impact on Competition

This Hearing discussed the recent literature on common ownership and their impact on competition, especially in concentrated markets, and their effects on firms' incentives to compete fiercely. Recent empirical studies conclude that horizontal shareholdings are widespread in our economies especially in sectors (such as airline or banking) where institutional investors are active and that they can lead to strong concentration in such sectors. The discussion addressed questions such as: How does competition law deal with cross or partial ownership? When considering the competition effects of a merger, even if the ownership is less than a controlling interest in the target, how does this affect competition? Similarly, what are the impacts of this common ownership on cartel conduct?

Link: <http://www.oecd.org/daf/competition/common-ownership-and-its-impact-on-competition.htm>



OECD Global Forum on Competition, 7–8 December 2017

Competition and Democracy

Competition has traditionally been considered as supportive of democracy by dispersing economic power through efforts that guard against concentrations and cartelisation. Economic power would then be shared across a wide range of economic actors rather than in the hands of a select few who would have the potential to exert influence over government and political leaders. This session considered to what extent competition is a sufficient or a necessary condition for democracy to thrive, particularly when considering countries transitioning to democratic systems. As competition enforcement evolves, does this change the nature to which it can or does support democracy? Are there linkages between democracy, the degree to which a country is democratic, and the prevalence of competition across an economy?

Link: <http://www.oecd.org/daf/competition/democracy-and-competition.htm>

Judicial Perspectives in Competition Law

Competition cases are often characterised by complex litigation and differing sets of economic evidence. Compounding these difficulties, judges may also face the prospect of overturning decisions from a competition agency with vast resources and expertise that may exceed their own. This Roundtable addressed various dimensions of the judicial adjudication of competition law. While recognising the differences that exist across jurisdictions, the session tried to elicit the main common challenges that judges face when applying competition law, and to find ways to address those challenges. Since the audience comprised both competition authorities and judges from around the world, the Roundtable provided a venue for an exchange of views regarding the interaction between competition agencies and courts.

Link: <http://www.oecd.org/daf/competition/judicial-perspectives-competition-law.htm>



Focus on Small and Developing Country Agencies: Overcoming Adversity and Attaining Success

Every competition agency has to overcome obstacles to enforce its competition law. But for small and developing jurisdictions these obstacles are often more acute, numerous and reinforced by challenges specific to these jurisdictions. A lack of a competition culture, or even a hostile environment, created by government, business and society at large can hinder the work of an agency with few resources. Relations with regulators as well as other parts of government can take on a particular complexity when competition authorities are young, lack resources and influence. This lack of resources, along with other institutional design issues, or inadequate legislation can further distance these authorities from success. The discussion took place in three breakout sessions:

Breakout Session 1: Advocacy

Advocacy efforts within the government and creating a competition culture in the public “within the budget”.

Breakout Session 2: Enforcement

Co-operating with public prosecutors and work relations between the competition authority and the sectoral regulators.

Breakout Session 3: How can competition authorities overcome hostility or indifference?

Different techniques to develop authorities’ credibility and legitimacy in particular through fighting bid-rigging in public procurement.

Link: <http://www.oecd.org/daf/competition/small-competition-agencies-developing-economies.htm>



OECD/KPC Competition Programme 2018

6-8 March

Jeju, Korea

Sector Specific Workshop Energy Sector

- Merger control
- Abuse of dominance
- The interplay with regulation

2-4 May

Seoul, Korea

Workshop with ICN On Competition Economics

- For both chief economists and staff-level economists
- For both young and experienced agencies, with some parallel sessions
- How to get an economic division up and running

5-7 September

Malaysia

In-country Workshop Market Definition

- Fundamental concepts
- Questionnaires and other investigative tools
- Basic economic tools

17-19 October

Indonesia
or Malaysia

Judge Event: Cartels

- Evidence gathering powers
- Direct and indirect evidence
- Sanctions

14-15 November

Vietnam

Bilateral Seminar for Vietnamese Authorities

TBD

Possibilities: merger control (assessment and remedies) or abuse of dominance

Notes: Dates are subject to change after discussion with hosting jurisdictions



Asia-Pacific Competition Update

SEND US YOUR NEWS

We publish news, case studies and articles received from competition authorities located throughout the Asia-Pacific region in our newsletter. If you have material that you wish to be considered for publication in this newsletter, please contact jhoh@oecdkorea.org.

SNS

We use SNS to share the relevant articles and photos before and after a workshop. Please join us.

- OECD Network Environment: www.oecd.org/one
- Facebook: OECD-DAF/Competition Division (closed group, contact jhoh@oecdkorea.org)
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