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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, 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

It has been another strange year in 2021 so far with Covid-19 continuing to disrupt all of our lives. Another year where we have had to trade in-person events, with all the fundamental networking that accompanies it, with virtual meetings. Nonetheless, it has allowed for some changes that can also add value to our traditional workshops: having a wider range of competition authorities share their experience, with more case handlers presenting, for example. Allowing for a better match between wants and needs with those that have more experience to share.

The OECD did a lot of work on the economic recovery in late 2020 and continuing in 2021: with a paper on the role that competition policy can play in ensuring a robust recovery <https://www.oecd.org/daf/competition/the-role-of-competition-policy-in-promoting-economic-recovery-2020.pdf>. More recently, a paper has been prepared with the Trade community at the OECD, on the role for both trade and competition for the next steps as we exit emergency state support and ensure it does not become structural, with long term impact on how markets work.

This newsletter discusses the first three webinar workshops held by the OECD/KPC in 2021 – on the merger control in bilateral workshop for the Thai OTCC, the Workshop on Digital Markets For ASEAN Competition Authorities co-organised with the PCC and the 11th OECD/KPC

Competition Law Seminar for Asia-Pacific Judges on the legal and economic analysis of vertical agreements. We also launched the Primer for ASEAN Judges. You may read more about their content in the pages that follow.

Stay safe everyone and I look forward to seeing you at one of our upcoming events!



Ruben Maximiano

Trade and Competition: Best Friends Forever?



The links and interactions between trade and competition are at the forefront of the international policy debate as governments seek to recover from the human and economic impacts of the COVID-19 pandemic. OECD's Ruben Maximiano and Lorena Giuberti Coutinho share their views on the implications state intervention can have on competition and trade policy in the run-up to the 2021 Global Forum on Competition.

With the global economy hard hit by a crisis of unprecedented scale, interactions between trade and competition have become central to the international policy debate. Distressed businesses and disrupted supply chains have prompted active government interventions and trade restrictive measures. Industrial policy is also back at the top of the policy agenda. While necessary as a response to the crisis and even beyond, government support granted to companies can also have important implications for competition and trade policy.

In a globalised economy, government interventions can affect competition in both domestic and international markets. State support has an impact on the cost and revenue structure of supported firms and their actual or potential foreign competitors. This means that unsupported foreign competitors may struggle to enter a market or be compelled to leave it because they do not benefit from the same support as their locally-based competitors. This can also enable supported national firms to expand into international markets, not because they are more efficient, but because they may be entering markets where competing firms have not received any - or the same level of - support.

These dynamics can undermine the global competitive playing field and weaken gains from trade by distorting the efficient international allocation of resources. This may also lead to snowballing effects whereby individual countries respond by providing more support in the form of direct subsidies, preferential treatment, or state-backed guarantees for their domestic firms. This potentially erodes support for the multilateral trade rules that have brought so many economic benefits.

To avoid such unintended consequences and to safeguard a healthy competition and trade environment, careful design of state support is critical. Tools and approaches from both the competition and trade policy communities can be useful to designing support that avoids medium- and long-term distortions.

Competitive neutrality is a crucial principle when designing state support measures. The OECD has long engaged in promoting and analysing the application of this principle – leading to the [2021 OECD Council Recommendation on Competitive Neutrality](#). Such a Recommendation sets down the parameters for promoting a level playing field among competitors and avoiding situations where unfair advantages are bestowed upon some firms, whether state or privately owned, based on, for example, their nationality or ownership.

Competitive considerations are reflected, to an extent, in the multilateral trading system. While the international trade rules do not contain explicit rules addressing anti-competitive conducts, a central principle, the national treatment obligation, is key to maintaining a level playing field in international markets. This principle prevents WTO member states from giving imported products less favourable treatment than like domestic products, thus preventing any concealed domestic barriers to trade. The WTO has also developed specific rules for curbing distortive forms of government support that particularly target industrial sectors: the Agreement on Subsidies and Countervailing Measures (ASCM).

Implementing these rules presents a number of difficulties. For example, enforcing policy transparency through notifications, and defining common approaches to estimate subsidies and other forms of government support.

These and other related issues can benefit from expanding the dialogue between the trade and competition policy communities and exploring best practices across countries. Issues that are typically addressed in competition policy fora, such as market concentration, firm market power and potential barriers to entry, also play an important role in promoting fair trade practices under the WTO rules.

This does not call into question the merits of industrial policies that have specific, preferably measurable, development goals for solving market failures, particularly in sectors that can have economic spill-over effects. Even in such instances, however, emergency or industrial programmes should be transparent, rely on competitive bidding and allocation processes and ensure recipient shareholders have “skin in the game”, allowing firm exit when they do not deliver. These programmes should also be time bound with competition criteria so that when an objective is met they are automatically rolled back to allow markets to reopen to competition. They should also be accompanied by a regulatory review to ensure that barriers to entry are then minimised to ensure competitive markets.

This is where competition authorities’ specific skill sets and knowledge of markets can play a prominent role. Given their experience in articulating the use of economic evidence in their proceedings, they can advise governments in three main ways:

- When support measures to firms are considered, competition authorities can help governments identify the market failure the support is meant to address, the proportionality of that support and its potential market distortion. They can do so by analysing the market power of recipients and their competitors and compare counterfactual scenarios with and without the state support, for example. They can also help to design remedies to minimise competition distortions, such as structural or behavioural measures.

- By identifying actionable subsidies under the WTO that might be prioritised for analysis from a competition perspective, taking into account the effects on national markets.
- By being involved in advocating for the design of trade agreements that integrate competition provisions, particularly in relation to the notification of subsidies. Transparency could be enhanced by expanding the scope and depth of notifications in subsidies in both bilateral and multilateral agreements. The [2019 EU-Japan Economic Partnership Agreement provides a recent example](#). At a multilateral level they can also advocate for the enhancement of the ASCM notification requirements.

Given the shared concerns and complementarities of the trade and competition policies, there is clear room for mutual learning and co-operation between both communities, in particular in the current context of working for the economic recovery. The 2021 OECD Global Forum on Competition will bring together academics and policy makers in trade and competition to discuss:

- Whether competition policy should consider differences in economic systems or distortions in trade and, if so, how?
- How competition and trade policy can be used to maintain a level playing field for doing business amid increased interest in industrial policy and the promotion of “national champions”
- How trade policy can be used to promote greater harmonisation of competition policy across jurisdictions
- Potential areas of conflict between trade and competition policy

Together, principles and approaches from both trade and competition policy communities can help to promote sound domestic policies and functioning international markets and this will be key to supporting the economic recovery.

The OECD Global Forum on Competition celebrates its 20th anniversary on 6-8 December 2021. Day 1 comprises a virtual session on [Trade, development and competition](#) open to all.



Literature Digest



This issue of the Literature Digest for the October 2021 issue of the OECD KPC Newsletter looks at a recent paper on market studies.

Additionally, I suggest you read the OECD's work on the topic, as well as its 2018 OECD Market Studies Guide for Competition Authorities (you can find these at <https://www.oecd.org/daf/competition/market-studies-and-competition.htm>).

More detailed reviews of the paper discussed below – together with those of other papers – can be found at www.antitrustdigest.net.

Amelia Fletcher “Market Investigations for Digital Platforms: Panacea or Complement?” (2021) *Journal of European Competition Law & Practice*, Vol. 12/1, p. 44

There is growing international consensus that standard competition law, while valuable, is inadequate for addressing the panoply of competition problems arising in digital platform markets. This paper investigates the value of introducing a market investigation tool in this context, based on recent the UK experience. It argues that market studies have the potential to be hugely helpful, both in the digital sphere and more widely. At the same time, market studies have inherent limitations and should not be viewed as a full solution to the issues raised by digital platforms, but rather as a valuable complementary tool alongside new ex ante regulation.

Market investigations have major positives and would be a valuable addition to a competition agency's toolkit. Most competition law provisions are primarily focused on preventing competition from worsening, while market studies can play a more proactive role in promoting increased competition. For example, market studies can introduce market opening measures that are intended to shift the whole nature of competition. Further, market studies can tackle any and all 'features' of markets which are found to adversely affect competition. In addition to firm conduct, such features can also comprise factors such as economies of scale and scope, network effects, regulatory and structural barriers, and consumer behavioural factors. Market studies are especially well suited to carry out holistic analyses of markets where problems are market-wide and there are a variety of interwoven factors—structural and behavioural—creating competition concerns. By contrast, authorities in standard competition cases tend to focus more narrowly on one issue and (in abuse cases) one firm.

However, market studies also have limitations, and should not be viewed as a full solution to digital platform issues. In particular, although market studies have huge flexibility in designing and implementing remedies, the process of monitoring, enforcing, and revisiting these remedies over time has some important limitations. As such, the introduction of ex ante regulation could be justified even where market studies are possible. But even where pro-competitive digital platform regulation is introduced, market studies will still likely have an important role to play – with their value in practice ultimately depending on the powers incorporated within the relevant ex ante regulatory framework.

In short, this thoughtful piece should be a first port of call for anyone interested not only on the possibilities of engaging in market studies in digital markets, but on the virtues and limitations of market studies more widely.



News from Asia-Pacific Competition Authorities*

* News items were provided or sourced from the respective Competition Authorities and are their own responsibility

CHINA



SAMR imposes fine for abuse of dominance

The State Administration for Market Regulation (SAMR) decided on 10 April 2021 to impose a total fine of CNY 18.228 billion against the Alibaba Group for abusing its dominance in China's online retail-platform service market since 2015.

The SAMR opened investigations into the Alibaba Group in December 2020 after receiving complaints that Alibaba is abusing its dominant market position. As a result of the in-depth analysis, the SAMR defined the relevant market in the case as the market for online retail platform services in China. In that market, Alibaba is in a dominant position. According to the SAMR, Alibaba controls more than 50 percent of the market. Furthermore, the relevant market is highly concentrated. In addition, Alibaba, inter alia, has a strong ability to control the market, is financially strong and has advanced technologies. Therefore, the SAMR concluded that Alibaba was in a dominant position in the Chinese domestic market for online retail platform services.

With regard to the abuse of its dominant market position, the SAMR held that Alibaba prohibited in-platform merchants from opening online stores on other competing platforms, prohibited in-platform merchants from participating in sales promotion activities on other competing platforms, and imposed multiple reward and punishment measures to ensure the implementation of exclusivity requirements. The SAMR concluded that this conduct restricted competition. In particular, Alibaba's conduct hindered the optimization of the allocation of resources, restrained market players' vitality, and restricted the innovative development of the platform economy. Also, Alibaba harmed the interests of consumers by restricted consumers' autonomy to choose and their rights to trade fairly.

To sum up, the SAMR found that Alibaba had abused its dominant position in the Chinese domestic market for online retail platform services since 2015 by prohibiting in-platform merchants from opening stores or participating in sales promotions on other competing platforms. The imposed fine of CNY 18.23 billion against the Alibaba Group is equivalent to 4 percent of its revenue generated within China in 2019.

SAMR imposes fine for resale price maintenance

The State Administration for Market Regulation (SAMR) fined Yangtze River Pharmaceutical of CNY 764 million for resale price maintenance (RPM).

The SAMR opened investigations in November 2019. It found that Yangtze River Pharmaceutical reached and implemented RPM agreements with drug distributors and retail drug stores between 2015 and 2019 that eliminated and restricted competition. This anticompetitive conduct led to price increases.

INDONESIA



ICC imposes fine for bid-rigging

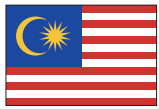
The Indonesia Competition Commission (ICC) imposed a total fine of IDR 3.2 billion on three construction companies for bid-rigging. The undertakings rigged tenders for contracts for the construction of an anchor port in Situbondo regency of East Java province in 2018.

This anticompetitive conduct allegedly involved the procurement department of the East Java provincial government.

MALAYSIA

MyCC imposes for price-fixing

The Malaysia Competition Commission (MyCC) imposed a total fine of MYR 1.04 million on seven warehouse operators for price-fixing.



The MyCC conducted a dawn raid and found that the undertakings concerned colluded on fixing the surcharges for the handling service of long length and heavy lift cargo between themselves between May 2017 and December 2019.

PHILIPPINES



Possible amendment of the merger control regime in the Philippines

The Philippine House of Representatives proposed certain amendments to the Philippine merger control regime. In this regard, the introduction of a hybrid mandatory and voluntary notification system is planned.

According to the proposed amendment, only transactions exceeding PHP 50 billion (around USD 1 billion) would be required to submit mandatory notifications to the Philippine Competition Commission (PCC). In the opposite case of transactions below this value, the notification is in general voluntary. Besides that, the amendments intend to strengthen the PCC's powers with regard to cartel enforcement.

The amendment bill is currently in the law-making process in the Philippines.

SINGAPORE



CAB upholds CCCS's Infringement Decision

The Competition Appeal Board (CAB) dismissed the appeal by Uber against the decision of the Competition and Consumer Commission of Singapore (CCCS) on 29 December 2020. On 24 September 2018, CCCS issued an Infringement Decision against Uber and Grab regarding Uber's sale of its Southeast Asian business to Grab for a 27.5% stake in Grab. The infringement decision found that the Transaction led to competition in the ride-hailing platform market being substantially lessened and therefore infringed.

The CAB upheld the directions issued by CCCS to Uber and Grab at the material time to lessen the impact of the Transaction on drivers and riders and ensure the ride-hailing platform market remained open to new players; and the fine of SGD 6,582,055 imposed on Uber. Uber was also ordered to pay CCCS's costs in relation to the appeal.

CHINESE TAIPEI



The FTC is under New Leadership

The Fair Trade Commission's (FTC) new Chairperson, Ms. LEE, May, and Vice Chairperson, Dr. CHEN, Chih-Min (Andy), along with two reappointed commissioners, Ms. KUO, Shu-Jen, and Dr. HONG, Tsai-Lung took office on 1 February 2021. In her inauguration speech, Chairperson LEE emphasized that the FTC will focus on three major objectives, including making administrative processes more transparent, strengthening communication with the public, and grasping digital development and transformation trends to ensure that the regulations keep pace with the times.

Before Chairperson LEE's appointment, she previously served as Director General, Department of Commerce, Ministry of Economic Affairs.

Special Article | A Landmark Event: Launch of the Fostering Competition in ASEAN reports

| By Ruben Maximiano and Leni Papa

In a landmark event on 9 September 2021, OECD Secretary General Mathias Cormann, ASEAN Secretary General Dato Lim Jock Hoi, the ASEAN Economic Ministers, and UK Minister for Trade Policy, Greg Hands jointly launched two reports (the OECD Competition Assessment Reviews: Logistics Sector in ASEAN and the OECD Competitive Neutrality Reviews: Small-Package Delivery Services in ASEAN) at the 53rd ASEAN Economic Ministers Meeting.

The two reports are the culmination of three years of independent research by OECD on regulatory and legislative obstacles to competition in the logistics industries of all 10 ASEAN Member States (AMS) under the Fostering Competition in ASEAN project. The project, a partnership between the OECD and the ASEAN Secretariat, was supported by the UK Government's ASEAN Economic Reform Programme.



In the course of its research, the OECD team analysed more than 700 pieces of legislation and cooperated with more than 280 ASEAN public and private stakeholders in the region. The two regional reports, along with the 20 country reports for the AMS, propose hundreds of recommendations to remove obstacles to competition in the logistics business, level the industry playing field to drive growth and employment, and expedite ASEAN's exit from the economic hardship brought upon it by the COVID crisis.

Noting the importance of the logistics services sector to the economies of the AMS and the region, ASEAN SG Dato Lim Jock Hoi said in his opening remarks, "ASEAN's commitment towards a seamlessly integrated ASEAN, remains as strong as ever. The service industries are the main driver of growth, accounting for approximately 50% of ASEAN's GDP in 2019. The logistics sector was the second-biggest contributor to services output, accounting for approximately 24% of all such trade in ASEAN. It is therefore hard, not to overemphasize, the importance of the logistics sector to ASEAN Member States, and to the wider regional economy."

The Fostering Competition in ASEAN team was comprised of Ruben Maximiano, Project Coordinator and Regional Manager for Asia-Pacific, Wouter Meester and Federica Maiorano, Project Co-Leads, Matteo Giangaspero, Gaetano Lapenta, Sophie Flaherty and Leni Papa, Policy Analysts.

Summary regarding Workshops 2021



10TH OECD/KPC COMPETITION LAW SEMINAR FOR ASIA-PACIFIC JUDGES FEBRUARY 2021

The tenth OECD/ Korea Policy Centre Competition Law Seminar for Asia-Pacific Judges took place on 4 February 2021 via Zoom. This tenth edition of the Competition Law Seminar for Asia-Pacific Judges was co-sponsored by CLIP and was held in close cooperation with the Philippines Supreme Court and the ASEAN Secretariat. This was an event that was meant to be held in November 2020 but due to unforeseen weather events in the Philippines had to be postponed.

The topic was Market definition as an essential tool of competition analysis. The event also marked the Launch of the OECD / FCA Primer on Market Definition for ASEAN Judges. The Primers are a series of information sheets designed to offer practical guidance to members of the judiciary when analysing competition cases. The Primers bring together the Federal Court of Australia's technical knowledge and first-hand experience with the OECD's international experience working with judges and in the ASEAN region. Whilst made in the context of the ASEAN Competition Action Plan, Primers may be useful for judges from all jurisdictions.

The Seminar started with welcome remarks by Jungwon Song (Director General of the OECD/KPC Competition Programme) and Ruben Maximiano (OECD). The Seminar included a keynote speech by The Honourable Diosdado M. Peralta (Chief Justice, Supreme Court of The Philippines). The Seminar also included speeches by Frédéric Jenny (Chairman of the OECD Competition Committee) and The Honourable Michael O'Bryan (Justice, Federal Court of Australia) on the Launch of Federal Court of Australia / OECD Primer on Competition for Asian Judges.

The webinar then focused on the Economics of Competition law and the Courts by Frédéric Jenny and then by Ruben Maximiano (OECD) and Matteo Giangaspero (OECD) on the main aspects set out in Primer on Market Definition, in particular the main economic principles. This was followed by a session held by Jorge Padilla (Compass Lexecon Europe) who developed further on the available economic methodologies and tools commonly used and accepted by international best practices when analysing Market Definition. He presented economic insights on demand analyses (in particular demand-side substitution and Cellophane Fallacy), critical loss, and price comparisons and correlations. The presentation also provided illustrative examples.

The tenth OECD/ Korea Policy Centre Competition Law Seminar for Asia-Pacific Judges ended with closing remarks by Jungwon Song (Director General of the OECD/KPC Competition Programme) and Ruben Maximiano (OECD).

OECD/KPC/OTCC WORKSHOP ON MERGER CONTROL MARCH 2021

Under the Thailand Country programme a four-day OECD/KPC took place from 9-12 March 2021 via Zoom. The Workshop was organised for the OTCC (Office of Trade Competition Commission). It dealt with the topic of Merger Control.

The first day started with opening remarks by Prof. Sakon Waranyuwatana, Ph.D. (Chairman of the OTCC), Jungwon Song (Director General of the OECD/KPC Competition Programme) and Ruben Maximiano (OECD). It was followed by presentations by Ruben Maximiano (OECD), Wouter Meester (OECD), the OTCC and João Varela (EU DG Comp). The topics and discussions included the importance of Merger Control, global merger trends, the Thailand Merger legal framework time and Market Definition, as seen by the EU Commission experience.

The second day included presentations by Peggy Loudermilk (US DOJ), Sungkyu LEE (KFTC) and Ruben Maximiano (OECD). These discussions concerned Horizontal Mergers Unilateral effects Cases and analytical tools, Geographic Market Definition in retail markets Case studies and an Introduction to the different Theories of Harm in Merger Control.

The third day followed with presentations by Riccardo Ferrari (UK CMA), Tash Venaik (ACCC), and Faye Fullalove and Anna Caro (both UK CMA). The speeches and discussions focused on Mergers Cases in Retail and Aviation, and a Case study regarding Digital mergers, theories and analytical tools. With regard to Digital mergers, Faye Fullalove and Anna Caro (both UK CMA) gave insights on the merger cases Sabre/Farelogix (supply software solutions) and Amazon/Deliveroo (food delivery) in the UK. They also provided guidance on investigatory techniques. This included evidence gathering (internal documents, data, interviews, third party evidence), and specialist input and cooperation (e.g. market studies and cooperation with other competition authorities).

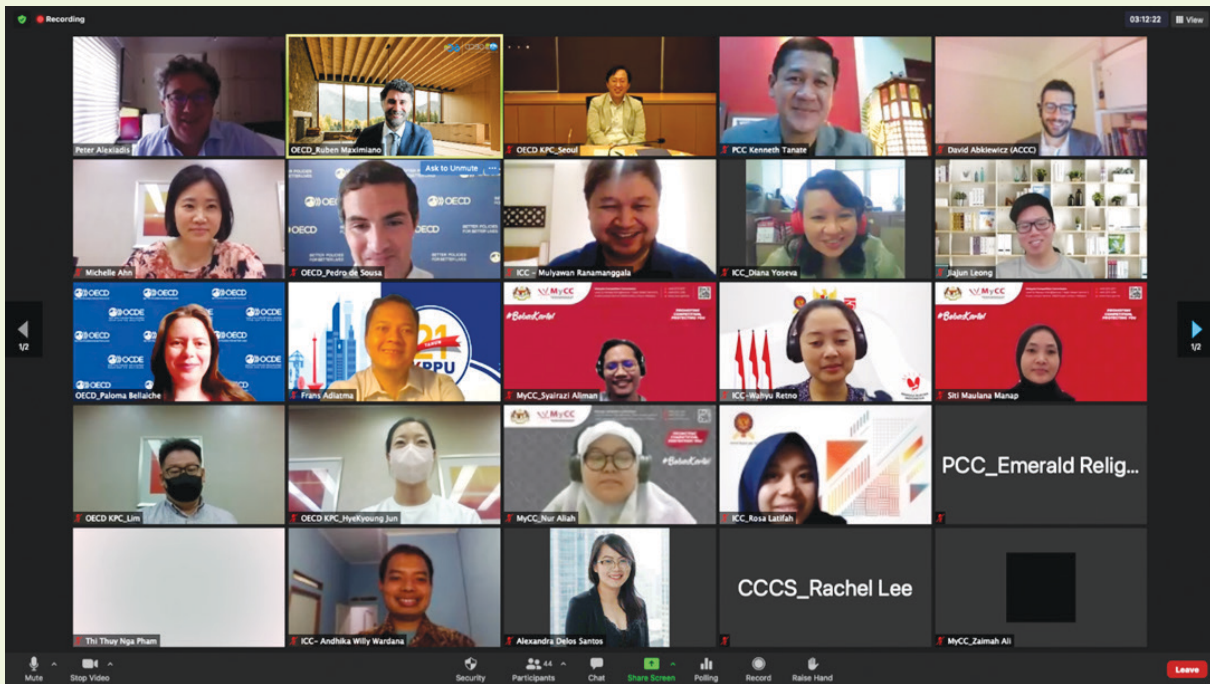
On the final day, Carol Harrison, the OECD and Ricardo Bayão Horta (Portuguese Competition Authority) offered sessions on Vertical theories of Harm and cases in retail, Developing Merger Guidelines – discussion of the draft report, and Information requirements to start an investigation. The OECD/KPC/OTCC Workshop on Merger Control was concluded with closing remarks by Prof. Sakon Waranyuwatana, Ph.D. (Chairman of the OTCC), Jungwon Song (Director General of the OECD/KPC Competition Programme) and Ruben Maximiano (OECD).

OECD/KPC IN CO-OPERATION WITH PCC WORKSHOP ON DIGITAL MARKETS FOR ASEAN COMPETITION AUTHORITIES JUNE 2021

The OECD/KPC workshop on Digital Markets for ASEAN Competition Authorities was held from 14-17 June 2021 via Zoom in co-operation with PCC (Philippines Competition Commission).

The workshop started with welcome remarks by Arsenio Balisacan (Chairman of PCC), Ruben Maximiano (OECD) and Jungwon Song (Director General, OECD/KPC Competition Programme). It was followed by presentations from Ruben Maximiano (OECD), James Yoon (Senior Assistant Director, Policy & Markets Division, CCCS) and Morag Bond (ACCC). The topics and discussions covered an overview on the Competition Issues in Digital Markets, practices from the region (The Philippines and Singapore) and Experience with Digital Markets Units and Task Forces.

With regard to an overview on the Competition Issues in Digital Markets, Ruben Maximiano (OECD) stressed the importance of digital markets in ASEAN. He also underlined the main characteristics of digital markets from a competition perspective. These are, inter alia, network effects, the importance of data, intellectual property rights and in some cases the absence of prices. Competition authorities could face challenges in digital markets with anti-competitive behaviour (collusion, abuse of dominance, vertical restraints and anti-competitive mergers). Thus, cooperation is of great importance.



The second day continued with speeches by Caroline Laise (US DOJ) on Merger control experiences – the Sabre-Farelogix merger in the US, by Faye Fullalove and Ricardo Zimbron (both UK CMA) on Merger control experiences – cases in the UK and by Cat Batchelor (UK CMA) on Experience with Digital Markets Units and Task Forces CMA.

Caroline Laise (US DOJ) gave an overview on the Sabre-Farelogix merger in the US and explained the respective proceedings. This included the investigations, the cooperation with the UK CMA and the litigation process.

Faye Fullalove and Ricardo Zimbron (both UK CMA) presented the experience with recent merger control filings in the UK and case studies. They also provided insights in terms of investigatory techniques and gave an outlook on the UK merger control regime. In addition, Cat Batchelor (UK CMA) presented an overview of the Digital Markets Unit and shared experiences.

On the third and last day, speeches were delivered by Pedro Caro de Sousa (OECD), Peter Alexiadis (EETT and Kings College London) and David Abkiewicz (ACCC). The presentation and discussions included remedies, Data Portability and Interoperability, Regulation, Competition and Digital Issues, and Platforms and Media.

The presentation by David Abkiewicz (ACCC) on Interoperability, Regulation, Competition and Digital Issues, and Platforms and Media focused on the ACCC's Digital Platforms Inquiry. In particular, Digital platforms and media businesses, news, and journalism were analysed. The presentation also discussed the News Media and Digital Platforms Mandatory Bargaining Code that came into effect in Australia in March 2021.

Closing words by Arsenio Balisacan (Chairman of the Philippines Competition Commission (PCC)), Ruben Maximiano (OECD) and Jungwon Song (Director General, OECD/KPC Competition Programme) marked the end of the OECD/KPC workshop on Digital Markets for ASEAN Competition Authorities.

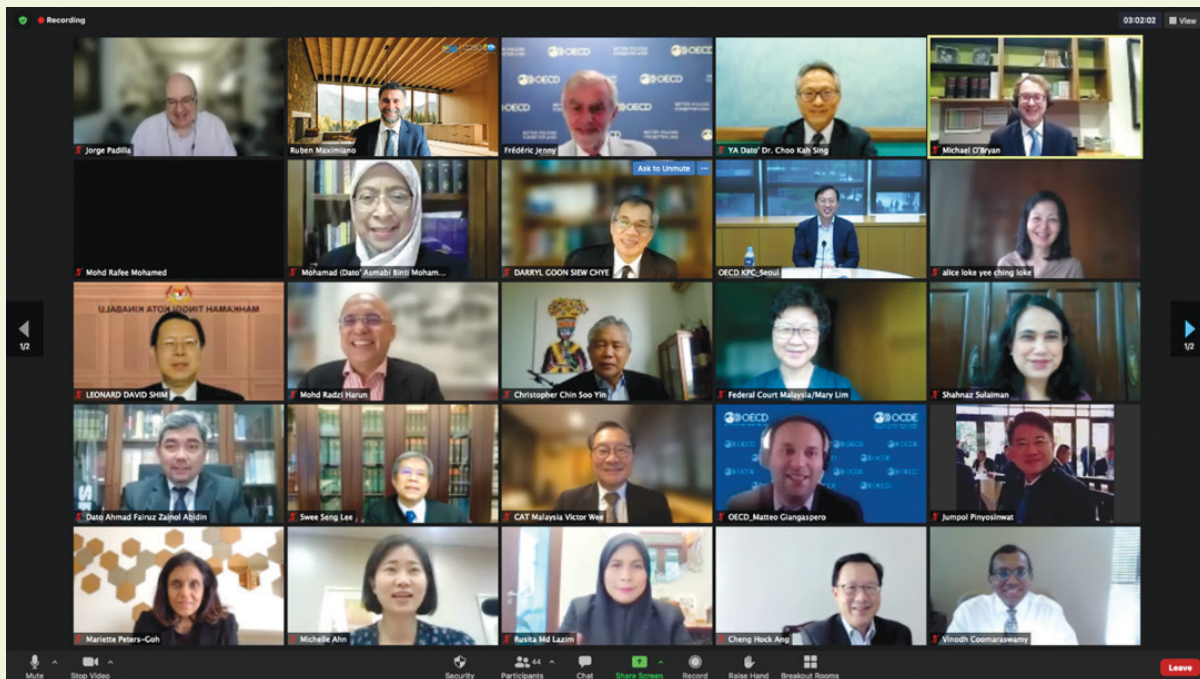
11TH OECD/KPC COMPETITION LAW SEMINAR FOR ASIA-PACIFIC JUDGES JULY 2021

The eleventh OECD/ Korea Policy Centre Competition Law Seminar for Asia-Pacific Judges took place on 1 July 2021 via Zoom. This eleventh edition of the Competition Law Seminar for Asia-Pacific Judges was co-sponsored by CLIP and in co-operation with the Federal Court of Malaysia and the Competition Appeal Tribunal of Malaysia.

It dealt with the legal and economic analysis of vertical agreements. The event also marked the Launch of Primer on Vertical Restraints for ASEAN Judges. Primers are a series of information sheets designed to offer practical guidance to members of the judiciary when analysing competition cases. The Primers bring together the Federal Court of Australia's technical knowledge and first-hand experience with the OECD's international experience working with judges and in the ASEAN region. Whilst made in the context of the ASEAN Competition Action Plan, Primers may be useful for judges from all jurisdictions.

The Seminar started with welcome remarks by Ruben Maximiano (OECD). The Seminar included a keynote speech by Her Ladyship Dato' Sri Hasnah binti Dato' Mohammed Hashim (Federal Court Judge, Malaysia).

In the first half of the day, the Seminar also included speeches by Frédéric Jenny (Chairman of the OECD Competition Committee) and The Honourable Michael O'Bryan (Justice, Federal Court of Australia) on the Launch of Federal Court of Australia / OECD Primer on Vertical Restraints for Asian Judges'



The second half of the day started with opening remarks by His Lordship YA Dato' Dr. Choo Kah Sing (President of the Competition Appeal Tribunal of Malaysia and High Court Judge). It was followed by speeches from Frédéric Jenny (Chairman, Competition Committee, OECD) on The Economics of Competition Law and the Courts, Ruben Maximiano and Matteo Giangaspero (both OECD) on Vertical Restraints Primer: a Brief Legal Analysis, and Jorge Padilla (Compass Lexecon) on Vertical Contracts in Digital Markets – An Economic Perspective.

Frédéric Jenny (OECD) pointed out some differences between the judicial and the economic perspectives and elaborated the elements of economics useful for judges.

Ruben Maximiano and Matteo Giangaspero (both OECD) presented vertical restraints from a law perspective. They highlighted the potential key competition concerns like anticompetitive foreclosure, softening of competition and the possibility of tacit (or explicit) collusion. Also, they pointed out different legal approaches in this regard and shed light to vertical restraints in the digital world.

Jorge Padilla (Compass Lexecon) explained the economic logic of vertical contracts and the particularities in this context regarding digital markets. One focus was on platform markets.

The eleventh OECD/ Korea Policy Centre Competition Law Seminar for Asia-Pacific Judges ended with closing remarks by Jungwon Song (Director General of the OECD/KPC Competition Programme).

OECD Competition Week

June 2021

Working Party No. 2 on Competition and Regulation

Working Party 2 discussed the challenges of Competition Enforcement and Regulatory Alternatives on 7 June 2021.

In this session Working Party 2 focused on whether regulatory infringements can give rise to competition infringements, questions of parallel enforcement of regulation and antitrust, and objectives of economic regulation and how they relate to competition enforcement. It was concluded that there is substantial international convergence regarding the interaction of competition law and regulation. The characteristics of this relationship arise clearly from the challenges of applying both sets of rules to similar (or even identical) factual scenarios, of ensuring smooth institutional alignment and cooperation between enforcing authorities, and even of choosing between them to achieve the same public policy goals. However, ultimately, there seem to be no obstacles to the joint deployment of competition law and regulation.

The discussion benefited from a background paper and the participation of 3 expert speakers: Niamh Dunne, Associate Professor of Law, London School of Economics; Giorgio Monti, Professor of Competition Law, Tilburg Law School; and Howard Shelanski, Partner, Davis Polk & Wardwell, and Professor of Law at Georgetown University.

Link: [Competition enforcement and regulatory alternatives - OECD](#)

Working Party No. 3 on Enforcement and Co-Operation

Working Party 3 held a roundtable on Competition Compliance Programmes on 8 June 2021.

The roundtable looked at actions by competition agencies that target the implementation or improvement of corporate compliance programmes, the effectiveness of such actions, essential elements that can be identified from the point of view of competition agencies, and the influence of technological developments on future policies. It also looked at lessons from neighbouring policy areas such as anti-corruption and procurement. It can be summarised that Competition Agencies are supportive of corporate compliance programmes, but they differ in approaches. Also, procurement related developments such as release from debarment and early self-cleaning, and increased use of AI for internal and external monitoring will likely have an impact on future compliance policies and expectations by competition agencies. Furthermore, corporate compliance programmes have become an active part

of competition agencies' efforts to promote prevention and compliance, and agencies use many different ways and instruments to provide incentives to businesses.

The discussion benefited from the expert speakers Florence Thépot, Lecturer in Competition and EU Law, University of Glasgow's School of Law; Susan Ning, Senior Partner, King & Wood Mallesons, Beijing; and Daniel Sokol, Professor of Law, University of Florida.

Link: Competition compliance programmes - OECD

Competition Committee

Hearing on Data Portability, Interoperability and Competition

The Competition Committee held a hearing on Data Portability, Interoperability and Competition on 9 June 2021. The procompetitive potential of measures that enhance data portability (the ability of consumers to receive a copy of their data) and interoperability (the ability of different systems to communicate with one another) has been a topic of growing interest for competition authorities.

The discussion focused on exploring the numerous challenges involved in the implementation of both data portability and interoperability measures. The main conclusions were that Data portability and interoperability cannot address all competition problems in digital markets, although the potential benefits in specific situations can be significant. In addition, the implementation of data portability and interoperability measures may be challenging. Therefore, competition authorities must actively co-operate with other regulators contemplating these measures, including data protection authorities. With regard to the demand-side, interoperability and portability measures will only be effective if they benefit from consumer trust and if consumers take up the options offered to them.

The Hearing featured the participation of 5 invited experts: Michal Gal, Professor and Director of the Forum on Law and Markets, Haifa University; Inge Graef, Associate Professor of Competition Law, Tilburg University; Emily Hart, Chief Operating Officer, MotionMobs; Jan Krämer, Professor of Information Systems and Chair of Internet and Telecommunications Business, University of Passau, and Academic Co-Director at the Centre on Regulation in Europe; and Peter Swire, Professor of Law and Ethics, Georgia Tech Scheller College of Business and Associate Director for Policy of the Georgia Tech Institute for Information Security and Privacy. In addition, the hearing featured presentations from 7 delegates (including 3 heads of agencies) plus BIAAC and TUAC.

Link: Data portability, interoperability and competition - OECD

Concept of Potential Competition

The second session of the Competition Committee on 10 June 2021 was on the Concept of Potential Competition. In the context of antitrust enforcement in digital markets, potential competition has been gaining renewed interests. The aim of the roundtable was to

draw out the main challenges of investigating and assessing potential competition as well as discussing the policy issues that arise from those challenges.

The discussion focused on the loss of potential competition in horizontal merger cases, potential competition in dynamic innovative markets, a possible revision of the current evidential standards imposed on competition agencies in cases involving possible loss of potential competition, the assessment of potential competition as a factor that dispel any competitive concerns in merger cases, and the issue of agreements that would eliminate potential competition.

In summary, it was stated that there has been some degree of under-enforcement against the cases eliminating potential competition. This lead to the discussion on the need to lower or reverse the evidentiary standards imposed on competition agencies. There is general recognition by the competition agencies that enforcement practices on potential competition should be further sophisticated.

Three experts actively participated in the discussion: Steven Salop, Professor of Economics and Law at Georgetown University; Koren Wong-Ervin, Partner at Axinn, Veltrop & Harkrider LLP; and Niamh Dunne, Associate Professor of Law at London School of Economics. The roundtable received 17 contributions from Belgium, BIAC, Brazil, Canada, Chile, Colombia, Costa Rica, Egypt, the European Union, Israel, Mexico, South Africa, Spain, Russia, Turkey, the United Kingdom and the United States.

Link: [The concept of potential competition - OECD](#)

Methodologies to Measure Market Competition

The third day of the Competition Committee on 11 June 2021 was a hearing on Methodologies to Measure Market Competition. The ability to reliably measure, track and compare the competitive intensity of a market is extremely valuable to competition authorities and other policymakers to inform decision-making.

The discussion began with a presentation of the issues paper for the session, which emphasised the different issues competition authorities need to consider when measuring market competition. It was followed by the discussion on the benefits and challenges of measuring competition at industry and economy level versus measuring competition at anti-trust market level. The panel then discussed the usefulness of competition measures for competition authorities' advocacy and enforcement work.

In this regard, it was highlighted that one single measure cannot assess the intensity of competition in a market. A set of indicators is needed to complement each other by measuring different aspects of the comeptitive process. In addition, the relevant set of indicators may differ across industries. It was concluded that Competition Authorities benefit from sharing with each other their practices when measuring market competition and their strategies for overcoming the challeneges they face. Co-operation with academics and other government agencies is also important.

An expert panel discussion featured insights from competition authorities chief economists and academics: Make Walker, Chief Economist at the Competition and Market Authority in the UK; John Small, Commissioner at the New Zealand Commerce Commission; Camila Cabral, professor of Economics at University of Rio de Janeiro, Brazil; and Tomaso Duso, professor of economics at DIW, Berlin.

Link: [Methodologies to measure market competition - OECD](#)



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CONTACT INFORMATION

Competition Programme

OECD/Korea Policy Centre
9F Anguk Bldg, 33 Yulgongno, Jongno-gu, Seoul
03061, Korea

Jungwon Song, Director General
sjwc01@oecd-korea.org

Ruben Maximiano, Senior Competition Expert
ruben.maximiano@oecd.org

Hyunjung Bae, Director
hyunjung-bae@oecd-korea.org

Michelle Ahn, Senior Research Officer
ajahn@oecd-korea.org

Dong Hyun Lim, Senior Research Officer
dhlhm@oecd-korea.org

Hye Kyoung Jun, Senior Program Coordinator
hkjun@oecd-korea.org

Wouter Meester, Competition Expert
wouter.meester@oecd.org

Matteo Giangaspero, Competition Expert
matteo.giangaspero@oecd.org

Gaetano Lapenta, Competition Expert
gaetano.lapenta@oecd.org

Sophie Flaherty, Competition Expert
sophie.flaherty@oecd.org

Leni Papa, Competition Expert
Leni.PAPA@oecd.org

Paloma Bellaiche, Assistant
paloma.bellaiche@oecd.org

