

# Asia-Pacific Competition Update

November 2015, Issue 15



**Competition Programme**  
**OECD KOREA Policy Centre**

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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. Unless otherwise stated the news items, case studies and reports have been provided by the respective Competition Authority.

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## Entry point - Editorial Note

Reaching out towards the last month of another great year at the OECD-Korean Policy Centre Competition Programme, it's also a full year now since I have had the opportunity to be responsible for the Programme from the OECD-side. As a kind of personal balance, I believe it has been a very successful year, where I have learnt a lot from speakers and participants alike. I hope I have also effectively shared some of my experience and the OECD work with nearly 200 participants this year.

The first piece of news I would like to share is that the Programme for 2016 has now been approved and been settled upon. You may read it on page 19 of this Newsletter. For now I would like to highlight our in-country events that will take place in a number of different ASEAN countries: Vietnam, Indonesia and in another ASEAN country yet to be confirmed. It is thus a year with an important focus on the ASEAN nations, although of course not exclusively so. The reason for that being that by the end of 2015 all (or at least the vast majority) of the ASEAN nations will have approved Competition Laws. The advantage of doing such in-country events is that a greater number of officials of the agencies of the economy where the seminar takes place can participate. It is also therefore a great opportunity for those agencies to broaden internally their know-how and knowledge, making the most of top world class experts in a particular field provided by the OECD-KPC. In all our events there are always, of course, many other participants from across the Asian-Pacific Region.

This edition also provides a detailed insight on the two events held since the last newsletter, both of which took place in Korea. One dedicated to the ICT sector that counted with a great mix between telecoms regulators and competition

officials, the other a workshop for judges from the Region on the use of economics in abuse of dominance and merger cases. The latter workshop, will have a continuation in 2016, as next year's workshop for judges will be devoted to the use of economics in horizontal and vertical agreements as well as in damage claims.

More immediately, in December we will hold an event in the beautiful Jeju Island, in a seminar that will be chaired by Sabine Zigelski, my colleague who normally heads the equivalent programme in Budapest. The topic will be on remedies and commitments.

I look forward to seeing you at one of our upcoming events!

**Ruben Maximiano**





## News from Asia-Pacific Competition Authorities\*

\* News items were provided by respective Competition Authorities.

### CHINA

#### DG Competition of the EU and MOFCOM sign best practices for cooperation in mergers

On 15 October 2015, the People's Republic of China MOFCOM and DG Competition of the European Commission signed a practical guidance document creating a dedicated framework to strengthen cooperation and coordination in their review of mergers.

The guidance will facilitate communication and information exchanges throughout the entire merger review procedure on issues of procedure and substance, including the definition of relevant markets, theories of harm, competitive impact assessments and remedies when both authorities review the same transaction.

The current arrangement follows on from the a Terms of References on the EU-China Competition Policy Dialogue with MOFCOM in 2004, and adds a further level of cooperation.

### CHINESE TAIPEI

#### CTFTC hosts seminar in Malaysia with MyCC

The Fair Trade Commission of Chinese Taipei, coordinated with the Malaysia Competition Commission (MyCC), hosted the seminar on "Effective Tools to Combating Cartels and Abuse of Dominance" in Kuala Lumpur, Malaysia on 6-7 October 2015. The seminar was part of the "Regional Capacity Building Program on Competition Policy" held by the CTFTC since 2010 in the Southeast Asia Area to promote competition law and policy in the region.

The Seminar was chaired by Dr. Hung-Hao CHANG, Commissioner of the FTC. Honorable Tan Sri Dato' Seri Siti Norma Yaakob, Chairperson of MyCC, gave her welcome remarks to all participants in the opening ceremony.

26 competition officials from Hong Kong, India, Indonesia, Korea, Malaysia, Mongolia, Singapore, Thailand and Vietnam were invited to attend the event. The seminar also benefited from invited panelists, Mr. Ruben Maximiano, senior competition expert of OECD, Ms. Saiko Nakajima, Chief Investigator for Leniency Program of the Japan Fair Trade Commission, and Prof. Dr. R. Ian McEwin, Khazanah Nasional Chair of UMCORS(University of Malaya, Malaysian Centre of Regulatory Studies), Univ. of Malaya, to participate the discussion.

## HONG KONG

## Competition Commission publishes enforcement policy and cartel leniency policy

On 19 November, the Hong Kong Competition Commission (HKCC) published the enforcement policy and its Cartel Leniency Policy for Undertakings Engaging in Cartel Conduct (Cartel Leniency Policy), providing further guidance on how the HKCC intends to carry out its enforcement function under the Competition Ordinance scheduled to take full effect on 14 December 2015. These follow the six guidelines published in July 2015.

Regarding its enforcement policy the HKCC will prioritise three forms of conduct: 1) “hard-core” cartel conduct which includes price-fixing, market sharing, output restriction and bid-rigging, 2) First Conduct related-agreements that cause significant harm to competition in Hong Kong and 3) exclusionary abuses of substantial market power in markets in Hong Kong.

The Cartel Leniency Policy outlines the Commission’s approach to leniency for undertakings engaged in cartel conduct. It is designed to provide a strong and clear incentive for a cartel member to stop the cartel conduct and to report it to the Commission. Leniency will extend to whistleblowers - current officers and employees of the cartel member and specifically named former officers or employees and current and former agents of the cartel member who cooperate with the Commission.

\* News item taken from press release of the Competition Commission.

## KOREA

## KFTC amends guidelines on unfair practices rules

In November, the KFTC prepared an amendment to the Guidelines for Assessment of Unfair Trade Practices and issued a prior administrative notice thereof.

The proposed amended the Guidelines by further specifying criteria for assessing anti-competitive effect of unfair trade practice types, whose illegality is assessed mainly based on whether such unfair practices restrict competition. Such unfair trade practice types include refusal to deal, discrimination, exclusion of competitor, binding and conditional trade. For example, illegality of tie-in sales will be assessed mainly based on their anti-competitive effect.

### **The following are major enforcement cases handled by the Korea Fair Trade Commission during the second half of 2015.**

In August, the KFTC cleared the way for the acquisition plan where Microsoft (hereinafter “MS”) acquires the devices and service business of Nokia (hereinafter the “Acquisition”), accepting the consent decree that prevents the possibility of MS’s abusing the patent rights at its source. The consent decree is expected to address the competition concerns that MS, while engaging in the handset business, might unilaterally raise the royalties or bring patent infringement lawsuits against its competitors to obstruct their businesses.

Also in August, the KFTC decided to impose remedies against Dolby[Dolby Laboratories Licensing Corporation (American corporation) and Dolby International AB (Swedish corporation)], a global company that owns standard audio technologies, for setting out unfair contract terms in its license agreement such as no-challenge clauses. The KFTC Imposed orders to cease the violation of law that puts the transacting partner at a disadvantage by setting out and maintaining unfair contract terms. As for the already-signed license agreements, the KFTC ordered modification or elimination of the clauses concerned. The KFTC decided not to impose fines considering that the unfair terms of agreement at issue had not yet been enforced.

## INDIA

### Penalty on film association & its office bearers for anti-competitive activities

In a recent order, the Competition Commission of India (Commission or CCI) has found a regional film association from the State of Kerala to be indulging in anti-competitive activities by banning the screening of local language films by certain non-member theatre owners. This comes in a context whereby the CCI has passed remedies in various antitrust cases. These have been mainly in the nature of monetary penalties and cease and desist orders.

In addition to the anti-competitive behaviour of the association, the Commission also found two office bearers of the association to be responsible for its anti-competitive conduct.

Accordingly, a financial penalty was imposed on the regional association and the said two office bearers. While imposing the financial penalty, the Commission observed that the objective of penalty is to discipline the erring entities for their anti-competitive conduct as well as to create deterrence to prevent future contraventions. The two office bearers were habitual offenders and were under investigation for similar anti-competitive conduct by the regional association at the relevant time period.

Other instances of anti-competitive conduct by associations in the film industry led the Commission to take a serious view in the matter and in addition to the financial penalties, the CCI barred the two office bearers from associating with the affairs in any manner, including administration, management and governance, of the association for a period of two years. This is the first time that office bearers of an association are disqualified from holding a position in the association. Furthermore, the association has been directed to organize at least five competition awareness programmes in the State of Kerala (India) for sensitising its members about the principles enshrined under the Competition Act, 2002.

## JAPAN

### JFTC cracks down on bid-rigging case for snow-melting equipment

On 9 October 2015, the Japan Fair Trade Commission (JFTC) issued the cease and desist orders and the surcharge payment orders to the 11 companies that had participated in bidding for snow-melting equipment works ordered by the Japan Railway Construction, Transportation and Technology Agency. These orders found that, on 14 September 2011, the 11 companies substantially restrained competition in the field of snow-melting equipment works for Hokuriku Shinkansen (Japanese bullet train) by designating the successful bidders. Total amount of the surcharge to be paid is approximately 1.03 billion yen.

This was the first case in which a new hearing procedure introduced by the Antimonopoly Act (AMA) amendment 2013 had been held. On 7 December 2013, Japan amended the AMA including abolition of the JFTC's hearing procedure for administrative appeals and development of new procedure for hearings related to cease and desist orders and other provisions. It came into force on April 1th, 2015.

#### **Conclusion of MOU between NDRC and JFTC**

On 13 October 2015, the JFTC concluded a Memorandum on Cooperation (MOU) with the National Development and Reform Commission (NDRC) of the People's Republic of China to establish mechanisms to contribute to the effective enforcement of the competition laws of each country. Vice Chairman Mr. Hu Zucui of the NDRC and Chairman Mr. Kazuyuki Sugimoto signed the MOU. The purpose of the MOU is to contribute to the effective enforcement of the competition laws of each country through the development of cooperative relationship between the competition authorities. This is one of the few cooperation agreements between Asian authorities.

# Workshop on Telecommunications and ICT Sectors

## Mr. Ruben Maximiano

Senior Competition Expert  
OECD



This year's sectoral workshop was dedicated to discussing the competition policy issues that are specific to the telecommunications and the electronic communications / information and communication technology sectors. The main difference between this type of workshop and regular workshops is that the participants include officials from regulators of the relevant sector – in this case many participants were from telecommunications regulators, namely those from the Asia Pacific Region that have competition powers.

The workshop analysed some of the main regulatory and enforcement issues in these sectors, in particular of a more structural nature, including merger control and markets structures. Another of the main aspects that was discussed during the workshop were the issues



Group Photo



Lively discussions took place in small groups

relating to intellectual property, in particular those relating to the telecoms and ICT sectors, namely those issues related to standard essential patents and to telecoms equipment.

The OECD has done a very significant amount of work over the years in these sectors - not only via the Competition Division but also other divisions within the OECD, in particular the Science, Technology and Innovation Division. Indeed, the workshop shared some of the main recent outputs (including economic data and analysis) of the OECD in these sectors, namely the studies undertaken on wireless market structures, the competition policy highlights from the 2015 outlook on the digital economy, as well as the proposed OECD broadband toolkit for Southeast Asia. The latter is a very new project that the OECD has been undertaking in the Region, drawing upon the vast experience of the OECD in doing this type of work in Latin America in the last few years. These sessions were all on the first day, with presentations by Mr. Sam Paltridge, Mr. Christian Reimsbach-Kounatze and Mr. Sukham Sung, all of the OECD STI Division.

Other highlights of the first day of the workshop were the two presentations by Mr. Michele Piergiorganni (Head of Merger

Unit responsible for the telecommunications sector at the EU Commission) on the recent merger wave in the European Union, one focusing on the competitive assessment, the other on the remedies that have been accepted by the Commission in this type of case in recent years. The last activity of the day was a hypothetical merger case in the telecommunications case, inspired on the recent EU cases presented by Mr. Piergiorganni.

The second day started with Mr. Ruben Maximiano of the OECD sharing the work done by the OECD on the relationship between competition authorities and regulators, in particular telecommunications and patent and intellectual property regulators. This was followed by three case studies: one by Chinese Taipei's CFTC on a recent telecoms merger and the merger regime in Chinese Taipei, another by KPPU of Indonesia on work it has done on joint telecoms towers (there are articles on these two presentations written by the presenters), and finally Microsoft's acquisition of Nokia Devices and Services Business by the KFTC. This was followed by a cultural tour in Seoul.

The third day was dedicated to intellectual property issues, sessions that were driven by Ms. Suzanne Munck, Chief



Plenary session





Counsel for Intellectual Property and Deputy Director of the US FTC and by Mr. Giovanni Napolitano of WIPO. Ms. Munck's first session focused on introducing the main anti-trust issues related to IP and the ICT sector. The second session was on standard essential patents and the Fair Reasonable and Non-Discriminatory (FRAND) provisions. Indeed, some of the issues discussed during this session related to the wider application of FRAND beyond that of an Intellectual Property setting. Mr. Giovanni Napolitano's sessions were based on the recent work of WIPO in both the smartphone industry as well as on the role of IP

in innovation more broadly. The final session was the analysis of mergers involving IP with presentations by both Ms. Munck and Mr. Piergiovanni. The Workshop ended with group being divided in smaller groups to work through a case of a standard essential patent and FRAND, inspired on the recent jurisprudence of the European courts, with enthusiastic discussions between the several groups ensuing.

A very interesting workshop where regulators and competition officials discussed several competition issues of mutual interest throughout the three days.



Koreans for a day - the group dressed in traditional Korean costume, Hanbok

## Chinese Taipei Telecommunications Merger Case Study

### Ms. Ching-Yi Chen

Inspector  
Chinese Taipei Fair Trade Commission

### Mr. Ten-Yang Huang

Section Chief  
National Communication Commission,  
Chinese Taipei



In the presentation the seminar, Chinese Taipei officials presented a recent merger case in the telecommunications field as well as the overall legal regime applied to such mergers.

With regard to Telecom Merger cases in Chinese Taipei, telecom companies not only need to notify to Chinese Taipei Fair Trade Commission (hereinafter “CTFTC”) in advance but also need to gain prior approval from telecommunication regulator agency National Communications Commission (hereinafter “NCC”).

NCC focuses on compliance with communications act, rules and policies, allocation of resources upstream, market concentration in related services, and other public benefits of Telecom merger cases, while CTFTC applies different standards on horizontal and vertical merger cases.

With regards to horizontal mergers, CTFTC needs to take unilateral effects, coordinated effects, ease of market entry, countervailing power into consideration of competition restriction assessment. As for vertical mergers, the choice of trading counterparts for other competitors after the merger, the level of difficulty for businesses not participating in the merger to enter the relevant market, the possibility of the merging parties to abuse their market power in the relevant market and market foreclosure effect will be taken into consideration.

CTFTC has recently accepted a merger with conditions, attaching eleven conditions to ensure that the overall economic benefits would solve the competition concerns identified. The conditions include both structural remedies, behavioral remedies, including publication of information and supervision.

Because of highly regulated and dynamic technology of the Telecom industry, behavioral remedies are more likely to be effectively implemented, and it is easier for CTFTC to have information to supervise. Besides, technology changes very fast in telecom industry, CTFTC always needs NCC professional opinions of technical and market expertise as important references for its decisional practice.

## Competition for Joint Telecommunication Towers



### Ms. Wahyu Retno Dwi Sari

Investigator  
KPPU, Indonesia

Deregulation has changed the dynamics of the telecommunication industry in Indonesia. The process not only invites more competitors, but has also increased demand significantly, in particular for mobile telecommunications services. There were 10<sup>1</sup> telecommunication operators in 2013. The International Telecommunication Union (ITU) estimates that there were 319 million mobile cellular subscriptions in Indonesia in 2014.

The increasing number of subscriptions requires adequate infrastructure to support the network<sup>2</sup>. One of the main factors is the availability of Base Transceiver Stations (BTS). BTS is used to transmit and receive radio signals, therefore it will influence the service quality and determine the coverage area. Finally, these factors help determine the market share of a mobile operator.

The importance of BTS has meant that the operators have built numerous telecommunication towers. The towers are scattered around the neighborhood, and has created “tower jungles”. In 2013, KPPU found that there are around 59,162 telecommunication towers in Indonesia. The towers can be either owned by a mobile operator or by a specific tower provider. This situation not only affects urban planning aesthetics, but also people’s safety.

Government regulates the establishment of telecommunication towers. The Ministry of Communication and Information issued a decree concerning joint telecommunication towers in 2008. The regulation was followed by the issuance of a Joint decree by four ministries (Ministry Communication and Information, Ministry of Public Works, Investment Board, and Ministry of Home Affairs) in 2009. Central government regulations are encouraging network sharing via the use joint telecommunication towers. The sharing scheme is expected to increase the effectiveness and efficiency of telecommunication towers.

<sup>1</sup> KPPU’s Merger Assessment No. 03/KPPU/PDPT/II/2014

<sup>2</sup> Indonesian Ministry of Communication and Information (2015)



Since Indonesia has a decentralised system, local government in provincial, city, and regency levels can also issue regulations for the establishment and use of joint telecommunication towers in their area. Local government regulations directly affect the competition for establishment and use of joint telecommunication towers. Unfortunately, there are some local government regulations that impede competition (in 1 province, 4 cities). KPPU has identified that there are several anti competitive issues i.e.:

1. Entry barrier for potential competitors;
2. Discrimination and privilege for particular companies, e.g. State/regional owned enterprises;
3. Additional fees that cause inefficiency ;
4. Zoning rules that go beyond what is needed;
5. Special treatment for the bid winner, by:
  - a. Eliminating existing towers
  - b. Limiting permits of existing operator
  - c. Suspending new permits.

One of KPPU duties is to provide advice and opinions concerning government policies. Based on the analysis of the potential harm to competition, KPPU issued opinion letters to the local governments. The letters comprise of several main opinions i.e.:

1. Government should encourage competition for the market, by providing the same opportunity to potential competitors to enter the market;
2. In order to create efficiency, government should let existing towers operate;
3. Should there be any abuse of monopoly or oligopoly power, government can make intervention by:
  - a. Controlling tariffs
  - b. Setting minimum standards
  - c. Supervising terms of agreements between tower operators and telecommunication operators.

Policymakers shape markets in many different ways. Regulations can either harm or encourage competition. Therefore, it is necessary for governments to incorporate competition values in their regulations in order to improve market efficiency.



# Workshop for Judges

## The Use of Competition Economics

### Mr. Ruben Maximiano

Senior Competition Expert  
OECD



Once a year, the OECD-KPC organises a workshop exclusively for judges from the Asia Pacific Region. This year the workshop benefited from the active participation of judges from Chinese Taipei, Hong-Kong, Malaysia, Mongolia, Indonesia and the Philippines. This year's event took place in Busan, Korea from 13-15 October 2015.

This was the fifth workshop for judges of the Competition Programme and provided participating judges with an opportunity to explore in greater depth the economic principles underlying competition cases, the methods used by economists, and the application of



Judges group photo



competition economics in cases before the courts. This year's workshop focused on cases of abuse of dominance as well as in mergers.

The goals of the Workshop were to engage discussion amongst judges and between judges and experienced economists as well as make judges more familiar with economic concepts and theories as well as to be more confident when presented with economic based arguments, and to communicate effectively with economic court experts and economic expert witnesses, in the context of competition cases.

The panel of speakers in this event included 3 judges or former judges from OECD member countries and two experienced economists. The panel was composed of Sir Christopher Bellamy, former Chairman of the Competition Appeals Tribunal in the UK and now at Linklaters, Prof. Frédéric Jenny, Chairman of the OECD Competition Committee and member of the Cour de Cassation (Supreme court) in France, as well as Mr. Sang Wook Kang, judge at the Seoul High Court of Korea. The two economists were Mr. Miguel de la Mano, former Deputy Chief

Economist at the European Commission and now at Compass Lexicon, and Ms. Rhonda Smith, former Lay member of the High Court of New Zealand. Both of these eminent economists have ample familiarity with presenting and/or dealing with economic evidence in the courtroom.

The workshop was structured so that the main economic concepts and principles were shared on the first day of the event. Before that, however, Prof. Jenny, eloquently spelt out, drawing upon both his experience as a judge as well as drawing upon the OECD work undertaken in the last few years, on the key challenges for judges when considering economics in competition cases. The fundamental economic concepts of market definition and market power were then set out by Ms. Rhonda Smith, whilst the session on the economics of abuse of dominance and practical application of such principles were lead by Mr. Miguel de la Mano. The first day ended with the application and discussion of all of these concepts with a hypothetical case scenario of predatory pricing, in a case developed by Ms. Rhonda Smith. Participants were divided into small groups with each group having to develop arguments for and against the practice, a session that developed into a lively discussion of some of the concepts discussed during the morning and early afternoon sessions.

The second day started with Prof. Jenny presenting the lessons resulting from the OECD Competition Committee on the use of economic evidence in competition cases before the courts, drawing upon the wide ranging experience of judges from OECD member countries. This session was complemented by Mr. Miguel de la Mano, that offered an economist's perspective on the preparation, delivery and use of expert economic evidence. In this session Mr. de la Mano shared his ample practical



The Workshop included simulation of a courtroom



Visiting Haedong Yonggong temple in Busan

experience of presenting such evidence in the EU courts. Sir Bellamy then presented his experience of evidence and testimony in the courts on abuse of dominance cases, mainly drawing upon cases judged by the CAT in which he participated as judge.

The third day saw Mr. Miguel de la Mano discuss in detail some of the theories of harm used in merger control, explaining the economics underlying these theories as well as some of the economic tools that may be used in that framework. Sir Bellamy then candidly shared some practical aspects of analysing economics in the context of a case, from the judge's perspective, offering some practical viewpoints both in the context of merger cases as well as abuse of dominance cases. Judge Kang then presented the interesting experience he has gathered in some of the cases before his court and where he took into account

and analysed economic evidence. He also offered the wider perspective of the Korean courtroom experience more broadly in the context of cases involving competition law. The day ended with two very interesting sessions: one was a merger hypothetical case where the courtroom (plenary of participants), after analysing a decision of a competition authority and its appeal, called upon an economic expert (Mr. de la Mano) to offer advice to the court on a number of issues and questions selected by the collective of judges; the final session was a free discussion lead by Sir Bellamy on all of the aspects that had been discussed during the three days.

Overall, this was a very successful event with judges showing great interest in the application of economic concepts and with the very active participation of all judges in the several discussions and sessions.

# OECD Competition Committee Meetings

## 26 – 28 October 2015

### Hearing on Disruptive Innovation in the Financial Sector

In this Hearing, Working Party No. 2 discussed at length innovation in the financial sector, a sector that has been the object of many innovations in recent years. The hearing assessed the impact of selected major innovations on consumers, discussed how existing regulation should be changed in order to allow the introduction of new business models and technologies, and examined how different jurisdictions have addressed these topics in recent years.

The discussion focused on Peer-to-peer lending; Crowd-funding equity; Digital currencies; Payment mechanisms (e.g. mobile phone, wallets) including payment from one individual to another (thus including peer-to-peer currency exchange).

**Link:** <http://www.oecd.org/daf/competition/competition-and-disruptive-innovation-financial-markets.htm>

### Roundtable on Cartels Involving Intermediate Goods

The Roundtable in Working Party No. 3 discussed “Cartels Involving Intermediate Goods”, that is involving goods used as inputs in the production of manufactured goods for final consumers. These can be found in all countries and across a broad range of sectors. The Roundtable explored certain differences between cartels involving intermediate goods and

cartels involving final consumer goods.

The delegates discussed approaches to prevention, detection, legal and jurisdictional requirements for enforcement, and sanctions. The discussion focused in particular on the legal and jurisdictional requirements for possible enforcement action in each of these countries, the factors you would consider in deciding whether to bring an enforcement action, and how any subsequent sanctions would be determined, including whether you would consider sanctions imposed by other jurisdictions in determining the appropriate sanction.

**Link:** <http://www.oecd.org/daf/competition/cartels-involving-intermediate-goods.htm>

### Hearing on Across Platform Parity Agreements

The Competition Committee held a Hearing on Across Platform Parity Agreements (APPAs). These are agreements entered into by suppliers and retailers that specify a relative relationship between prices of competing products, or between prices charged by competing retailers. These agreements are a special type of price relationship agreements. Price relationship agreements include a wide variety of contractual clauses whereby a seller’s price is related/tied to another price – including the price set by other sellers for the same or similar competing product(s); or the prices offered by a seller to different buyers in respect of the same product. APPAs are characterised by two elements: (i) a vertical element, because they involve



firms at different levels in the value chain, and (ii) a horizontal element, because they link prices of competing goods and/or of competing retailers.

The Hearing discussed a number of issues, including how to i) identify the key competition concerns that these agreements can raise, as well as the benefits these agreements may bring to consumers; (ii) understand to what extent these concerns actually materialise, and these benefits effectively accrue to consumers; as well as to (iii) ascertain how these anti- and pro-competitive effects can vary depending on the specificities of the agreements. The Hearing also discussed how these agreements

are being dealt with by competition authorities; and how to determine under which conditions these agreements should be considered anti-competitive and be prohibited under competition law.

**Link:** <http://www.oecd.org/daf/competition/competition-cross-will-be-used-to-enrich-the-OECD-Reference-Guide-on-the-Ex-Post-Evaluation-of-Competition-Authorities-Enforcement-Decisions> (forthcoming).

**Link:** <http://www.oecd.org/daf/competition/workshop-expost-evaluation-competition-enforcement-decisions.htm>

## OECD Global Forum on Competition

### 29 – 30 October 2015

#### Does Competition Kill or Create Jobs? A Discussion on the Links and Drivers between Competition and Employment

In this Session of the Global Forum on Competition there was a Roundtable in which the pro-competitive policies that may support the creation of jobs were discussed, as well as whether competition may destroy jobs.

In many economies, emerging as well as developed, it is often the case that opening economic sectors hitherto protected from competition is perceived as threatening existing jobs. In times of economic downturn, a typical policy response may be retrenchment and the erection of regulatory or political barriers to competition in an effort to preserve jobs. This may be the case

in merger reviews, where employment-preservation remedies may be imposed by the competition regulator. However, in the long term such barriers may prevent the creation of new jobs. This Roundtable explored the nature of this relationship.

**Link:** <http://www.oecd.org/competition/globalforum/links-drivers-competition-employment.htm>

#### Peer Review of Kazakhstan's Competition Law and Policy

The GFC organised a peer review of the status of competition law and policy in Kazakhstan and discussed recommendations on how to improve the competition enforcement practice as well as the structure and effectiveness of its competition institutions in the country.

## Roundtable Discussion on Disruptive Innovations and Competition Law Enforcement

The term 'disruptive innovation' is taken from the business literature referring to situations in which a new competitor creates radical change within an existing industry by launching a new product or service, often with some distinctly novel features or an entirely different business model.

This session considered questions that disruptive innovations raise for competition law enforcement, for instance when considering mergers between disruptive innovators and incumbents, or exclusionary conduct by incumbents against innovators. This session focused mainly on issues that competition law enforcers face when engaged in merger control and also explored issues related to exclusionary conduct.

**Link:** <http://www.oecd.org/competition/globalforum/disruptive-innovations-competition-law-enforcement.htm>

## Serial Offenders: Why Some Industries Seem Prone to Endemic Collusion

This was a full-day roundtable session that examined some sectors where endemic collusion is found and at the extent to which recidivism varies across sectors. The sectors discussed by participants included: chemicals; construction services, including public tenders; cement and concrete; and food products.

Economic theory has developed well-established guidelines on the factors that are considered conducive to collusion and could therefore help explain endemic collusion. These factors include market concentration, high entry barriers, a high ratio of fixed costs to variable costs, market transparency and frequent interaction among competitors that facilitate information sharing.

Repeated collusion by the same companies could also have other explanations, such as the interplay between firm-specific factors and sector-specific factors. For instance there could be effects that build upon each other: once cartels do form (perhaps because of sectoral characteristics), collusion becomes more accepted in the sector, so that cartels become more likely to form again, even after antitrust action.

**Link:** <http://www.oecd.org/competition/globalforum/competition-industries-endemic-collusion.htm>





# Calendar of Events 2016

## Vietnam

March 30-April 1

### Workshop on Building Cartel Enforcement

- Overview of cartel enforcement, cartel harm and facilitating factors
- Running of a case and types of evidence up to and including court proceedings
- Effective sanctions

## Indonesia

May 2-4

### Abuse of Dominance and Unilateral Conducts: Fundamentals

- Law and economics of abuse of dominance
- Exclusionary practices
- Recent developments

## Busan, Korea

June 22-24

### Sector Event: Competition Rules and the Financial Sector

- Merger control, Abuse of dominance, Cartels
- Regulation

## Seoul, Korea

September 5-7

### Workshop on Merger Control

- Work through a case from beginning to end, focusing on:
  - Economic issues
  - Investigative techniques
  - Procedural aspects

## Jeju, Korea

October 5-7

### Judge Event: Use of Competition Economics in Courtroom

- The second in our series on the Use of Competition Economics, in 2015 it focused on abuse of dominance and merger control. This year's workshop will have as its focus:
  - Horizontal agreements
  - Vertical agreements
  - Damage actions

## in-country event TBD

November 2-4

### ASEAN - Seminar For New Agencies - Basic Concepts and Procedures in Competition Law – Co-hosted with GIZ

- We will highlight:
  - Prioritization of cases
  - Basic legal and economic theories, and investigation of: Cartels, mergers and abuse of dominance

## Seoul, Korea

December 6-8

### Experienced Agencies Seminar – Information Exchange: Efficiency Enhancing or Cartel in Disguise?

- Different forms of information exchange: Formal and informal exchanges, direct and indirect exchanges and the unilateral disclosure of information and signaling.
- Information exchanges can be observed in horizontal and vertical relationships and in different organisational settings. We will investigate which forms of information exchange warrant closer scrutiny by competition authorities.



# Asia-Pacific Competition Update

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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 [ajahn@oecd-korea.org](mailto:ajahn@oecd-korea.org).

## FACEBOOK AND TWITTER

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

- Facebook: OECD-DAF/Competition Division (closed group, contact [ajahn@oecd-korea.org](mailto:ajahn@oecd-korea.org))
- Twitter: OECD/KPC COMP

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