

# Asia-Pacific Competition Update

December 2021, Issue 29

A glass globe with a map of the Asia-Pacific region inside, resting on a newspaper. The word "charges" is visible on the newspaper page.

**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, 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

2021 was another full year of dynamic economic policy adapted and developed to deal with the fall-out of the Covid-19 pandemic. This meant that in 2021 and the OECD and OECD/KPC Competition Programme we continued to focus on many issues that may be helpful for competition authorities to continue to bring the benefits of productivity and economic growth to our pandemic-battered economies. We had workshops, for instance, on public procurement and competition, competitive neutrality and level playing field and competition authorities, the role for competition in the digital economy. All of these very much fundamental for the economic recovery.

It was also in 2021 that we issued on 13th December the OECD/KPC Asia-Pacific Competition Law Enforcement Trends. You may find the Trends report here: <https://www.oecd.org/daf/competition/oecd-asia-pacific-competition-law-enforcement-trends.htm>. It complements our 2018 Guidebook <https://www.oecd.org/competition/competition-law-in-asia-pacific-guide.htm> on the competition laws in Asia-Pacific.

This new report resulted from a lengthy survey to collect data from 16 agencies in the Asia-Pacific region, from both OECD and non-OECD jurisdictions. These were carefully analysed and reviewed by the OECD team led by Wouter Meester and resulted in a detailed description of enforcement trends in the Region. In the region you find a mix of well-established, experienced competition authorities and a large group of younger authorities. The findings include that on average, the age of a competition authority in Asia-Pacific is 16 years younger than that in the Americas and Europe. For many of the younger authorities, enforcement activities are still relatively low, as their focus and priorities lie in advocacy and creating a culture of competition.

Many younger authorities in Asia-Pacific use market studies as a tool to screen industries, build knowledge and ensure effective competition in those markets. During the period 2015 to 2020, Asia-Pacific competition authorities have conducted approximately 5 market studies per year, which is more frequent than the average OECD jurisdiction, except for 2020. You may find some of the other main findings in the pages of this newsletter, in a special article.

The report was formally launched by Mr. Jungwon Song (Director General of the OECD/KPC Competition Programme) and Wouter Meester in the 6<sup>th</sup> OECD High Level Meeting of the Competition Authorities of Asia-Pacific. You will find also within these pages a description of the main discussion points during that important forum of discussion at the most senior level of competition authorities in the region.

This newsletter also discusses the final two webinar workshops held by the OECD/KPC in 2021 – on public procurement and competition, competitive neutrality and level playing field. 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

# Summary OECD Asia-Pacific Competition Law Enforcement Trends

| Authors: Ruben Maximiano, Wouter Meester and Aura Pábon

The past 50 years has witnessed a remarkable growth in competition law enforcement around the world. The proliferation over time of competition laws and competition enforcers around the globe has led to a vast amount of activity in terms of investigations, decisions, advocacy initiatives and Asia-Pacific jurisdictions are no exception in this regard. Several OECD publications discuss these issues (e.g. Competition Law in Asia-Pacific: A Guide to Selected Jurisdictions or OECD Competition Trends, 2022 version forthcoming).

In the OECD/KPC Asia-Pacific Competition Law Enforcement Trends report (the "report") identifies competition enforcement trends based on an analysis of data from 16 OECD and non-OECD jurisdictions in the Asia-Pacific region from 2015 to 2020. The report was prepared by the OECD Competition Division and in close collaboration with the OECD/Korea Policy Centre. It complements and draws from Competition Law in Asia-Pacific: A Guide to Selected Jurisdictions and OECD Competition Trends, an annual flagship publication that presents unique insights into global competition enforcement trends based on data from over 70 jurisdictions. It presents key elements of their institutional approaches to competition enforcement, and a unique analysis on the resources and enforcement activity of the competition authorities in the region. The report is divided into the following chapters: (i) Introduction, (ii) Growing Importance of Competition Law and Policy in Asia-Pacific, (iii) Merger control in Asia-Pacific, (iv) Economics in competition and (v) Impact of COVID-19.

Several new competition laws have been adopted, establishing new regimes or changing existing ones, and new authorities have been established. Moreover, the data shows that jurisdictions in Asia-Pacific have significantly increased their resources in terms of budget and staff.

It can be seen that most of the authorities in the region have focused on competition advocacy as a way to build capacity and promote a culture of competition, mainly in younger regimes. They frequently use market studies as a tool to screen industries, build knowledge and ensure effective competition in those markets (e.g. in the e-commerce sector). In these lines, it was also found the presence of best practices and vast experience of OECD members in the region benefits the younger agencies authorities. The OECD/KPC has played and continues to play a pivotal role in this exchange of knowledge and experience in the region.

As is to be expected given the youth of many authorities and of competition law, several jurisdictions in the region have still a limited enforcement record. In cartel enforcement, which is fairly limited in the region, an average of eight cartel decisions were taken in 2020 in Asia-Pacific, however, highly concentrated in the well-established authorities. It was also observed, that the majority of the jurisdictions

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1. The jurisdictions are Australia; Bangladesh; Brunei Darussalam; Chinese Taipei; Hong Kong, China; India; Indonesia; Japan; Korea; Malaysia; New Zealand; People's Republic of China; Philippines; Singapore; Thailand and Viet Nam.

in the region have a leniency programme. However, not all competition authorities are receiving leniency applications. With regard to unilateral conduct, almost half of the jurisdictions in Asia-Pacific (7 out of 16) had not issued an abuse of dominance decision in the years 2015-2020, while the other jurisdictions have made at least one abuse of dominance decision in the period 2015 to 2020, also showing high concentration in a few jurisdictions. Even though the enforcement activity is still developing in the region, important amount of fines was imposed over the last six years.

Asia-Pacific has demonstrated a significant increase in the number of merger control regimes, and besides has seen several regimes implementing significant amendments to their already active merger control. However, the regimes' design vary between mandatory merger filing – either before or after the closing of a transaction – and voluntary filing of mergers, being the former the most common design in the region. In 2020, 2 436 mergers were notified in the region, representing an average of 203 notifications per jurisdiction in that year. It is important to highlight that only a small number of authorities were responsible for the majority of merger decisions. The data shows that only a low percentage of mergers required an in-depth phase-II investigation, and merger interventions (remedies or blocking mergers) or withdrawing notifications occur rarely in Asia-Pacific, as in the rest of the world.

Economic analysis plays an increasingly important role in many aspects of competition enforcement. Several jurisdictions in Asia-Pacific are increasingly using economic analysis in competition enforcement cases, mainly in merger review. In this context, examples of the use of economics in merger review in Asia-Pacific are given (e.g. the Grab/Uber Merger in ASEAN). This has led to a modest increase in economists employed by the competition authorities in the region. On average, over the past 6 years, economists have represented 33% of the staff of competition authorities in the region, a percentage above the average for OECD jurisdictions. Furthermore, the increasing importance of economics in competition enforcement also reflects on the work of the OECD/KPC Programme in the past years, as it has been a focus of the workshops and meetings held.

With regard to COVID-19, the report highlights how Asia-Pacific has been severely affected by the pandemic due to large international interlinkages and the importance for the region of global supply chains. Competition authorities can play a fundamental role in assisting governments recovering from the COVID-19 pandemic, notably by contributing to well-functioning markets that will support a faster and more sustained economic recovery. Many of the competition authorities in the Asia-Pacific region have been actively involved in helping shape the economic recovery by working with other policymakers (e.g. assessment of collaboration agreement, and changes in merger review procedures), however, future government action will be key to shape the growth in the region.

In conclusion, the report shows that while competition enforcement is uneven in the region, and still limited due to different characteristics of the regimes, it has been increasing over time. In addition, economics has become a staple element in the assessment of many competition cases, particularly in merger review, and this can be expected to continue increasing. It also highlights the key role of competition authorities in Asia-Pacific regarding a rapid, sustained economic recovery from the COVID-19 pandemic.

The full text of the report can be found at <https://www.oecd.org/daf/competition/oecd-asia-pacific-competition-law-enforcement-trends-2021.pdf>.



# News from Asia-Pacific Competition Authorities\*

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

## BRUNEI



### Pro-competitive procurement in Brunei

The Competition Commission Brunei Darussalam (CCBD) continued to focus advocacy efforts to reduce the possibility of Bid Rigging organising a number of dialogue sessions, attended by the management and senior officers of the Department of Road at the Public Works Department (JKR) and the Ministry of Development.

Fighting Bid Rigging in public procurement has been a priority of the CCBD work plan given its implications, not only in the wastage of government resources but can also as it may discourage entry by competing businesses, and erode confidence in competitive procurement processes.

## INDIA



### Bid Rigging the State Bank of India

The Competition Commission of India ('CCI') passed a final order against seven entities for anticompetitive agreement for supply of signages for branches/offices/ATMs of State Bank of India (SBI).

This matter was initiated by CCI on the basis of complaint received in 2018 alleging bid-rigging and cartelisation in the tender floated by SBI Infra Management Solutions Pvt. Ltd. The investigation inter alia found e-mails exchanged between the parties which formed the basis for manipulation of the bidding process.

Based on a cumulative assessment of the evidence collected, CCI found that there was an agreement amongst the parties, which resulted in geographical market allocation as well as bid-rigging in the tender of SBI. Accordingly, all the parties were held to be guilty of contravention of the provisions of Section 3 of the Competition Act, 2002 (the Act), which prohibits anti-competitive agreements

including cartels. Further, 9 (nine) individuals of these parties were also held liable for the anti-competitive conduct of their respective entities, in terms of the provisions of Section 48 of the Act.

Considering that one party has filed lesser penalty application besides cooperating during investigation as well as inquiry process and that most of the parties are MSMEs - some of which even acknowledged their conduct during the inquiry, CCI took a lenient view and decided to impose penalty upon the parties of 1% of their respective average turnover. The individuals found guilty under Section 48 of the Act were also imposed penalty 1% of their respective average incomes. Regarding the stage and ongoing co-operation, CCI granted a reduction in penalty by 90% to the complainant and to its individuals.

## INDONESIA



### Competition awards to regulators

Indonesia Competition Commission held its 2021 KPPU Awards for the second year meant to highlight the pro-competitive stance of government bodies and regulators. The award presentation was held on December 14, 2021 with the theme “Business Competition, Partnership, and Economic Recovery”. The Commission granted awards divided into two categories, namely Business Competition and Partnership for 11 (eleven) Ministries and 9 (nine) Provincial Governments to those that had the best performance in implementing the policies on business competition and Micro, Small, and Medium Enterprises Partnership.

During the awards the importance of competition in the economic recovery was underscored. One of the key pillars for a competitive economy is for new inventions or innovations. The intensity of competition has increased from 4.65 in 2020 to 4.81 on a scale of 7, assessed on the basis of the the competition index developed by the Commission.

Speaking at the event, the Vice President of the Republic of Indonesia, Ma'ruf Amin, stated that the role of the state in the transitional period is huge, especially in minimizing the direct impacts of the crisis. The role of competition is needed for a long term, namely in order to prevent state actions against the sectors or business actors from leading to high market concentration post- recovery. The Vice President also underscored that the Commission has a pivotal role in reminding the Government in its policy making. Furthermore, the Vice President called on the Commission to improve supervision in the digital sector and to establish coordination and to give inputs at all times to the government on the various policies taken in the said sector that affect the business competition map.

## JAPAN



### Apple settles with the JFTC on App Store rules

The Japan Fair Trade Commission (JFTC) decided to close its investigation against Apple Inc. (Apple), which it has been investigating since October 2016, on condition that Apple Inc. will take the necessary measure to eliminate alleged AMA violations.

Apple was suspected of violating the provisions of Article 3 (private monopolization) and Article 19 (paragraph 12 [Trading on Restrictive Terms] of the Designation of Unfair Trade Practices, etc.) of the AMA. The conduct related to selling digital content in its Apple App Store (e.g. music, e-books, videos, paid additional functions of apps, and subscription services such as unlimited music streaming service), etc., of developers that distribute apps.

Apple's "App Store Review Guidelines" stipulates that developers are required to use the means of payment which Apple specifies (IAP: In-App Purchasing) for sales of digital contents, etc., and prohibits the developers from including external links or buttons within the apps (in-app link) using means of payment other than the IAP. In addition, Apple charges developers with fees which amount to 15 or 30 percent of sales through the IAP.

Providing sales channels using means of payment other than the IAP may reduce prices and thus benefit consumers. Prohibiting developers from including an in-app link may cause developers' sales channels not to function properly when using means of payment other than the IAP and may even cause developers to abandon the introduction of such channels.

After the JFTC pointed out the concern following an investigation, Apple reported to the JFTC that it would take measures to allow developers to include an in-app link within reader apps of music streaming service, etc. and to revise the "App Store Review Guidelines".

The JFTC has decided that it will close the investigation after confirming that the measure is actually taken.

## NEW ZEALAND



The New Zealand Commerce Commission found that an agreement not to bid on Google Ads keywords breaches the New Zealand Commerce Act

The New Zealand Commerce Commission filed proceedings in July 2021 seeking declarations that entering into and giving effect to agreements not to bid on certain Google Ads keywords breached the cartel provisions of the Commerce Act 1986. The High Court of New Zealand granted declarations that consumer loan provider Moola.co.nz Limited engaged in cartel conduct by agreeing with competitors not to bid on, and to “negatively match”, certain keywords on Google Ads.

The effect of these agreements was that consumers searching for a loan provider on Google may not see ads for other loan providers. Google Ads enables an advertiser to have its paid advertisement displayed alongside ‘organic’ search results. The display ranking of an advertisement and the amount paid depends on the maximum bid placed by the advertiser, and the relevance of the advertisement which is determined by a Google algorithm. Advertisers can also add “negative keywords” which prevents an advertisement from being displayed by a search for the keyword.

Competitive keyword advertising involves companies bidding on competitors’ brand names. It is important for businesses, particularly lesser-known market participants and new entrants to a market. It allows businesses to advertise their products and services at a time when consumers are likely to be actively searching for the relevant products and services. Consumers benefit from obtaining information on competing products and services.

The Commission considers that Moola’s conduct harmed consumers by limiting access to information about alternative competing services, which likely inhibited consumers’ ability to compare prices and quality. This may have resulted in consumers paying higher prices and/or purchasing less suitable services, and competition for these services was likely reduced.

Moola accepted that it entered into these agreements in breach of section 30 of the cartel prohibition in the Commerce Act, and agreed to the declarations sought by the Commission. The Commission did not seek a penalty.

## PAKISTAN



### Sugar Cartel fined record fee

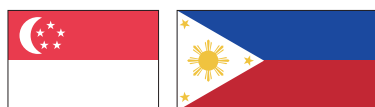
The Competition Commission of Pakistan's ("CCP") has issued an Order under Section 4 of the Competition Act, 2010 (the "Act") (prohibited agreements/concerted practices), finding that Pakistan Sugar Mills Association (PSMA) and its member mills discussed the supplies and stocks of sugar and collectively decided the quantum of exports during the period 2012 to 2020. By doing so they affected/controlled the supply of sugar in the domestic market.

45 sugar mills were also found to have shared sensitive commercial stock information with PSMA and amongst themselves. 22 mills participating in a 2010 Utility Stores Corporation Tender were also found to have concerted with PSMA to fix the tender quantity amongst themselves.

The penalty imposed is the highest till date (approx. PKR 40 Billion).

Pakistan Sugar Mills Association (PSMA) and its member mills have filed appeals before the Competition Appellate Tribunal (CAT) (around 70 sugar mills) and/or sought remedy in writ jurisdiction of the High Courts of Pakistan.

## SINGAPORE and the PHILIPPINES



### CCCS, PCC sign pact for cross-border cooperation

The Competition and Consumer Commission of Singapore (CCCS) and the Philippine Competition Commission (PCC) have signed a memorandum of understanding (MoU) to facilitate cooperation on competition enforcement.

The MoU signifies the strengthening of the long-standing relationship between both competition authorities. It will enhance the effective enforcement of competition laws in Singapore and the Philippines through the establishment of a cooperation framework between both competition authorities.

The MoU also provides a mechanism, as allowed by both countries' respective laws, for PCC and CCCS to notify each other of anti-competitive cases of mutual interest, exchange information, and coordinate in the conduct of enforcement activities affecting both agencies.

CCCS Chief Executive Sia Aik Kor said, "CCCS and PCC have enjoyed an excellent relationship over the years, with both agencies meeting and engaging each other regularly under the auspices of the ASEAN Experts Group on Competition. The relationship between the two agencies has also grown through staff attachments and mutual visits".

PCC Chairperson Arsenio Balisacan said, "Prior to the MoU, PCC and CCCS have worked together on several advocacy and enforcement fronts. Through this partnership, we aim to deepen the gains of our previous engagements and institutionalize our avenues for cooperation on matters of shared interest".

# Summary regarding Workshops 2021

## OECD/KPC WORKSHOP ON COMPETITIVE NEUTRALITY October 2021

The OECD/KPC workshop on Competitive Neutrality was held from 4 to 7 October 2021 in a virtual setting.

The first day started with opening remarks by Mr. Jungwon Song (Director General of the OECD/KPC Competition Programme) and Mr. Ruben Maximiano (Regional Manager for Asia-Pacific, OECD).

The substantive part of the workshop started with twin presentations by Ruben Maximiano (OECD) and Associate Professor Thomas Cheng of Hong Kong University. This session looked at competition and the role of the state, with a focus on industrial policy and its interplay and reconciliation with competition policy and law enforcement.

The first part of the presentation examined the OECD Recommendation on Competitive Neutrality of 2021 and explained the mechanisms underlying its importance. Namely that the most efficient domestic firms may not enter or expand, and if they do, they won't sell as much as they might and efficient foreign firms won't enter and invest in the domestic economy, if some firms are protected over others, regardless of who owns them (state or private, domestic or foreign). This may also mean that inefficient zombie firms may survive, and continue to accumulate rent/profit and crowd out efficient firms - with workers earning less as protected employers enjoy monopsony power. Ultimately, this may mean that consumers will pay higher prices, for poorer quality, less innovative products with impacts economy-wide. The second part of the discussion focused also on developing economies and national champions. Some of the conclusions of Prof. Cheng were that government-orchestrated mergers that permit firms to exploit scale economies may allow for a more permissive attitude toward efficiency claims.

The second part of the day focused on the economics of state support, and how competition authorities through their advocacy powers can help governments design measures that achieve government objectives whilst minimising harm to competition and to well-functioning markets. Mr. Lluís Saurí Romero, Head of Unit of the Chief Economist Team of the European Commission, provided the first part, whilst Ms. Adina Claiçi Visiting Professor at College of Europe complemented that session with some more advanced but relatively non-complex economic techniques that authorities can use.

The second day included presentations by Mr. Dimitrios Magos and Mr. Fabrizio Spargoli, both of the European

Commission, that went through a case study of how to apply some of the economic analysis and techniques developed on the first day. They also discussed possible remedies that can eliminate or minimise competition distortions. The second session of the day was offered by Mr. Matteo Giangaspero that discussed in detail the recent OECD Competitive Neutrality reports on the Small Package Delivery Services that the OECD undertook from 2018 to end 2021 in each one of the 10 ASEAN countries. The third session of the day discussed in detail the rather difficult issue confronted by competition authorities when they analyse the behaviour of SOEs in the marketplace, namely how to analyse and separate their costs. It was offered by Ms. Karin Larsson and Mr. Johan Selin of the Swedish Competition Authority. The last session was provided by Mr. Mukul Sharma, Joint Director at the CCI and discussed how that Competition Commission of India advocates for competitive neutral policies (a)Alerting policy makers on competition distorting policies, (b)Conducting competition assessment of such policies and then (c)Advocating appropriate regulatory reforms. Mr. Sharma provided two case examples to illustrate how this is done in practice in India.

The third day followed with presentations by Ms. Karina Lubell, Assistant Chief of the Competition Policy and Advocacy Section of the US DOJ. In this session, the US DOJ explained the recent US Executive Order on Competition signed on July 9, 2021 with 72 directives, involving more than 14 regulatory agencies. Its objective is to stream competition into a whole-of-government approach. This often involves looking at rules and regulations and ensuring a level playing field for all players. This last point was then discussed in depth in a session led by Mr. Gaetano Lapenta of the OECD, explaining how a competition assessment of rules and regulations can be done in practice, offering examples from the recent OECD project in the logistics services sector in ASEAN. The last session was provided by Mr. Ruben Maximiano on Competition, Competitive Neutrality and their importance for the economic recovery.

The OECD/KPC Workshop was concluded with closing remarks by Jungwon Song (Director General of the OECD/KPC Competition Programme) and Ruben Maximiano (OECD).

## **OECD/KPC WORKSHOP ON COMPETITION AND PUBLIC PROCUREMENT November 2021**

The OECD/KPC workshop on Competition and Public procurement was held from 17-19 November 2021 virtually.

The workshop started with welcome remarks by Mr. Ruben Maximiano (Regional Manager Asia-Pacific, OECD) and Mr. Jungwon Song (Director General, OECD/KPC Competition Programme). It was followed by a Keynote from Prof. William Kovacic of George Washington University who presented the importance for competitive procurement in the drive for the economic recovery in a presentation entitled Competition Policy, Government Procurement, and Economic Recovery. He made important points on cooperation with procurement teams, and the need for competition authorities to know the

Procurement System well and then make research-based policy proposals for the tenderers.

Next, the webinar had a presentation offered by Mr. Wouter Meester (OECD) that provided detailed data on public procurement worldwide, discussing how important it is to have competitive public procurement to minimise bid rigging and all the associated losses to the public. Wouter then went on to explain the different types of bid-rigging that have been discovered around the world and the market characteristics that should be taken into account when considering the possibility of a high risk of bid rigging. Ms. Despina Pachnou of the OECD then went into detail on the OECD Bid Rigging Recommendation and Guidelines, offering examples from the numerous projects led by the OECD around the globe. The first day finished with a presentation from Mr. Jihong SON, Deputy Director of the KFTC offering a number of examples of cases in Korea, including cases on subway construction, sewage works, and LNG Storage Tank Construction Projects. In these cases he explained the types of evidence collected and the investigative methods used.

On Day 2 of the seminar numerous country experiences were shared, from OECD countries to countries in the region. Israel was first up with Mr. Gadi Perl running through a number of case investigation techniques, using many examples from prior cases of bid-rigging. Ms. Zara Mok from Singapore's CCCS shared their experience with a focus on investigative techniques in cases, with a deep dive into a bid-rigging case in tenders for Maintenance Services of Swimming Pools. Mr. Mohd Hasbullah bin Mohamad Faudzi of MyCC shared the Malaysian experience, describing the engagement with a number of other regulators such as the Anti-Corruption Commission (MACC). To finalise the day, the audience benefitted from the experience of Indonesia's Ms. Devi Siadari who detailed the experience in a Procurement case for School Facilities and Infrastructure Rehabilitation and Renovation Packages.

The final day of the workshop featured a presentation from Mr. Jordi Calvet-Bademunt of the OECD on fostering bid rigging prevention and detection with examples from different jurisdictions. Portugal's Ms. Taís de Fendi from the Portuguese Competition Authority presented the Portuguese experience. Ms. de Fendi started with the advocacy campaign to make competition in public procurement a common goal in Portugal and the efforts of close communication channels with public procurement related entities. Most of the session was then dedicated to how the agency has developed its data screening capacities. In particular, the MOU signed with IMPIC (National Authority for Procurement Markets) in November 2017 has granted full and direct access to the e-procurement database. This e-procurement database comprises the large majority of public procurement procedures over a long period of time in Portugal which ensures statistical relevance (false positives/negatives) of the analysis. The last presentation of the day was offered by Ms. Graciela Miralles of the World Bank, focusing on the challenges of implementation of connection between competition and public procurement policies in developing economies.

Closing words were proffered for the OECD by Ruben Maximiano (OECD) and then by Jungwon Song (Director General, OECD/KPC Competition Programme) that marked the end of the OECD/KPC workshop.

# Summary of the Special Meeting of AP Heads

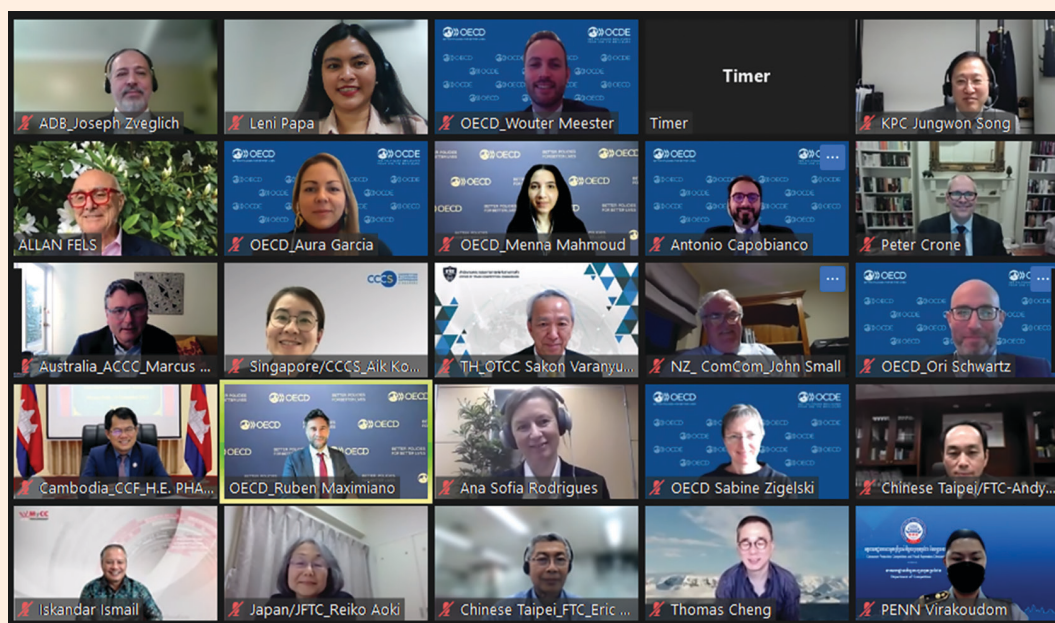


## Summary of 6<sup>th</sup> Meeting of High Level Representatives of Asia-Pacific Competition Authorities (16<sup>th</sup> December 2021, via Zoom)

On 13 December 2021, the Organisation for Economic Co-operation and Development hosted the 6th Meeting of High-Level Representatives of Asia-Pacific Competition Authorities, and organised and convened by Mr. Ruben Maximiano and Ms. Leni Papa of the OECD.

Senior representatives of competition authorities in 16 jurisdictions attended the meeting: Australia, Brunei Darussalam, Cambodia, People's Republic of China, Chinese Taipei, Hong Kong, India, Indonesia, Japan, Korea, Malaysia, Mongolia, New Zealand, the Philippines, Singapore, and Thailand. Several invited experts and OECD secretariat staff also joined the meeting, which was divided into two sessions.

The first session, served to launch of the Competition Trends in Asia Pacific Report, and focused on two elements of that Report: the use of economics and merger control. The second session discussed to what extent industrial policy and competition are



compatible, and what competition authorities can do to help minimise any potential competition distortions to markets of such policies.

Mr. António Gomes, Deputy Director of OECD's Directorate for Financial and Enterprise Affairs, gave the welcome remarks, noting the enormous and continuing challenges posed by the COVID-19 pandemic to economic development, and how it has brought renewed focus on the quality and direction of growth of societies.

Mr. Alan Fels, former Chairman of the Australian Competition and Consumer Commission, chaired the meeting. Before proceeding with the meeting, Mr. Fels invited everyone to observe a minute of silence in honour of the late Chairman of the Indonesia Competition Commission and a valued colleague in the region, Mr. Kodrat Wibowo, S.E., PhD. Mr. Fels thanked him for his service to the competition community in Indonesia and the wider Asia Pacific region.

Mr. Joseph Zveglich, Acting Chief Economist of the Asian Development Bank (ADB), set the scene for the meeting by delivering the keynote address on Asia's economic outlook amidst the COVID-19 pandemic and the role of well-functioning markets in the path forward. Mr. Zveglich reported that COVID-19 cases in developing Asia have declined and vaccinations have progressed. He noted, however, that while supply disruptions are less of an issue in developing Asia allowing, a resurgence in the COVID-19 pandemic—due to a new virus variant—remains the main risk in the region. Mr. Zveglich's address was rich with upto date ADB economic data. He ended the message by stressing the importance of digitalisation of markets, and the role of competition in recovery.

### **First Session - OECD/KPC Launch of Asia Pacific Competition Enforcement Trends**

Mr. Jungwon Song (Director General, OECD/KPC Competition Programme) and Mr. Wouter Meester (Competition Expert, OECD) formally launched the 2021 Asia-Pacific Competition Law Enforcement Trends. Mr. Song set out that the report aims to contribute to better enforcement and policy-making activities in the region and noted that physical copies of the new report will be distributed to the Asia Pacific competition authorities. Mr. Song also shared that the OECD/KPC Competition Programme plans to hold five capacity building events in 2022, including workshops on market studies in February, competition in digital platforms in March, substantive aspects of merger control for Asia Pacific Judges in June, advocacy strategies for competition authorities in October, and merger control for competition authorities in November.

Mr. Meester explained that Competition Trends 2021, which includes data derived from 16 jurisdictions in Asia Pacific, focuses on the growing importance of competition law and policy in Asia Pacific, merger control, the use of economics in competition, the impact of COVID-19 in the region, and the role of competition law and policy in the road to recovery. Mr Meester shared that the number of competition regimes in Asia Pacific has increased significantly, with several new jurisdictions adopting competition laws and others overhauling their existing laws, since 2015. Mr Meester also noted an increase in the resources allotted to competition authorities in the region, a trend that is also seen across the globe. Competition enforcement remains uneven in the region, due to disparities in the size and economic development of the country and maturity of the competition regimes, with younger regimes focusing on advocacy and capacity building. Merger control activity has continued to increase in the region, with close to 98.5% of mergers cleared without remedies.

Finally, Mr. Meester described how many competition authorities assisted governments in economic recovery from COVID-19, with efforts ranging from providing advice on the potential risks of government measures distorting competition, prioritising key sectors to ensure well-functioning markets, and temporarily allowing cooperation and collaboration agreements.

Australia, Singapore, Malaysia, and India shared experiences on undertaking market studies and the heightened focus on online platforms and e-commerce, which presented novel challenges and prompted much discussion of approaches to regulating the rapidly-evolving digital economy.

## Second Session – Industrial Policy or Competition in Times of COVID-19?

Participants heard from panellists Mr. Ha-Joon Chang (Professor, Cambridge University), Ms. Ana Sofia Rodrigues (Chief Economist, Portuguese Competition Authority), and Mr. Thomas Cheng (Associate Professor, University of Hong Kong) who shared their perspectives on whether, how and to what extent industrial policy and competition are compatible, and what competition authorities can do to help minimise any potential competition distortions to markets of such policies.

Mr. Chang explained that the right competition policy and the right amount of competition depends on the industry (e.g., scale economy, 'infant' status), the country (e.g., what are its priority goals, how developed it is), the state of the world and the need for re-allocation of resources (e.g., climate change, oil shock, pandemic, financial crisis), and the time frame (e.g., short, medium, long, or very long terms). He noted that the real challenge for competition policy makers is to figure out when, where, and for how long to promote competition through which means, rather than reducing market power and promoting price competition as the only default option. He shared a preliminary version of a paper he prepared for this Meeting.

Ms. Rodrigues discussed the role of national champions, and what the Portuguese competition authority is doing to advocate for competition principles in the design of government policies during the pandemic. She noted that the calls for relaxed merger control, protectionism, and national champions as the pandemic exerted economic pressure on economies worldwide are cyclical. She highlighted robust recent empirical work proving that insulating firms from competition do not make them stronger. Ms. Rodrigues stressed that true champions arise from a stable macroeconomic environment with competitive and stable fiscal policies, where firms have access to high quality infrastructure and utilities, an educated labor workforce and where they can operate under neutral regulation with an effective judicial system. Hence, policies for recovery should be better focused on these variables rather than choosing to relax merger control and competition policy and law enforcement.

Mr. Cheng discussed the treatment of recession and rationalization cartels under competition law and the relationship between industrial policy on the one hand and competition policy on the other hand. He explained that whether the competition-distorting effects can be justified will depend in the likelihood of success and quality of implementation of the policy, and whether they can be minimized by resorting to less competition-distorting means that can attain the same benefits.

Thailand, Hong Kong, Chinese Taipei, Singapore, and the Philippines shared experiences on the interplay between competition policy with industrial policy in their respective jurisdictions.

Meeting Chair Allan Fels recognised that the specificity of industrial policy presented a challenge to the broader, more

universalsing priorities of competition policy, saying that there is scope for the OECD to keep talking more about the intersection of industry policy and competition policy to enable the region to develop a framework of questions at least about the competition implications, in detail, of industry policy.

Mr. Ori Schwartz (Head, OECD Competition Division) delivered the closing remarks, noting the competition authorities' unique skill sets that can help policy makers make full and well-informed policy choices, accounting for competition distortions from industrial policies. He explained that, in this way, competition and competition authorities have a very relevant role to play to ensure robust economic bounce back and recovery in the long term.

## **About the Meeting of High-Level Representatives of Asia-Pacific Competition Authorities**

The Meeting of High-Level Representatives of Asia-Pacific Competition Authorities is a unique annual gathering of the heads and senior representatives of competition agencies throughout Asia-Pacific that aims to further the exchange of knowledge, experience and expertise at the highest levels of antitrust regulation and enforcement.

Now in its 5th year, the summit offers the leaders of competition agencies the opportunity to share and develop their practice and application of competition law and policy, and to generate fresh ways of thinking about existing and novel challenges that face the competition community in the Asia-Pacific region, with the support of the OECD.

The Meeting of High-Level Representatives of Asia-Pacific Competition Authorities has been held in a virtual format since 2020, but is expected to transition into a face-to-face event in the coming years as the most important regional summit dedicated to competition issues, drawing the most senior and influential competition enforcement officials in Asia-Pacific.

The previous meetings were as follows:

- [1st Meeting, 2017] Prioritising competition activities and the criteria for interventions, to strengthen inter-agency and international competition coordination in the region and beyond. Background Note was shared.
- [2nd Meeting, 2018] The application of competition policy to state-owned enterprises in the Asia-Pacific marketplace, building on OECD work on competitive neutrality.
- [3rd Meeting, 2019] Digitalisation and the issues it raises from a competition policy and enforcement perspectives. Background Note on Asia-Pacific was prepared and shared.
- [4th and 5th Meetings, 2020] A special meeting in July where we discussed the strategies put in place by competition authorities in Asia Pacific to face the extraordinarily challenges posed by the COVID-19 emergency, and a second meeting in December on the competition authorities' role in building back the economies, as countries shifted towards policies that move from the survival of the economy to its recovery in a speedy and sustainable manner.

# OECD/KPC Competition Programme 2022

March	<p><b>Virtual Workshop On Market Studies</b></p> <p>Market studies assess whether competition in a market is working efficiently and identify measures to address any issues that are identified. Market studies help provide a comprehensive understanding of the market in question, which can be valuable both provide advice to policymakers on regulatory frameworks as well as for enforcement actions. There will be a focus on energy markets.</p>
April	<p><b>Virtual Workshop On Competition for Digital Platforms</b></p> <p>A workshop for competition authorities to share experience on competition issues regarding digital platforms. This will include common competition concerns including in merger control, abuse of dominance, as well as regulatory frameworks.</p>
June	<p><b>12<sup>th</sup> Competition Law Seminar for Asia-Pacific Judges (virtual) On Substantive aspects of Merger control</b></p> <p>(in Co-Operation with a top court in ASEAN TBD) A Seminar for judges that will focus exclusively on merger control. This event will examine the legal test of significant lessening of competition (or similar) used in jurisdictions in Asia, with a focus on horizontal theories of harm. It will look at fundamental economics as well as types of evidence and other evidentiary issues.</p>
October	<p><b>In-person Workshop On Advocacy Strategies for Competition Authorities in Asia-Pacific</b></p> <p>A workshop to analyse and share experiences in the advocacy of competition principles to governments and policymakers. It will include strategies tailored to the covid-19 recovery, such as competitive neutrality, the competition assessment of rules and regulations and procurement.</p>
November	<p><b>In-person Workshop On Merger control</b></p> <p>A virtual workshop on merger control, with a focus on horizontal theories of harm and fundamental economics. This will include sessions on investigative tools and economic methodologies for a substantive analysis of competitive effects. The workshop will include analysis of non-price effects theories of harm.</p>

**Notes:** Dates are subject to change. Format may change according to the conditions.



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

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