

Asia-Pacific Competition Update

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IN THIS ISSUE



Entry Point - Editorial Note p. 3



News from Asia-Pacific Competition Authorities p. 4-6



Sector Workshop on Competition Rules in the Energy Sector p. 7-9



Leader's Corner: Toh Han Li, CCCS p. 10-11



Prioritisation of Competition Actions by Competition Agencies in Asia Pacific p. 12-14



Economics in Competition:

How Can Younger Agencies in Asia-Pacific Learn from More Advanced Ones p. 15-18
When Integrating Economists in Their Agencies?



Ministerial Meeting of OECD Southeast Asia Regional Programme in Tokyo p. 19



OECD Competition Committee Meetings p. 20-22

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

I am pleased to welcome you to the first edition of 2018 of this OECD/KPC Asia Pacific Competition Update - a special edition as it is released to coincide with the OECD/KPC/ICN Competition Economics workshop for Chief and Senior Economists. This is the second such event to take place organised by the ICN, and the first time with the OECD/KPC and in Asia. Being in the Region will allow many Asian competition authorities to be present and to help them to continue to develop and integrate further economic reasoning in their actions. With a line-up of leading academics it will undoubtedly be one of the competition events of the year in the Region.

To celebrate this workshop we have prepared a bumper issue for you. In addition to the usual news items from across the region, this edition contains three special items: an interview with Toh Han Li, CEO of the Singapore competition agency the CCCS; an article on the prioritisation of competition actions; and finally, a piece examining the way different competition authorities organise their economists. The latter article serves as back-up and as a teaser for the session that the OECD will moderate in the Competition Economics Workshop on how to organise economics in an agency. That session will share with younger agencies how more experienced agencies have developed and integrated economists in their investigation and decision making processes – hopefully this can serve as inspiration for agencies wishing to develop further their use of economics.

The interview section inaugurates a new feature of this newsletter and will seek to share conversations had with competition authority leaders in the Asia Pacific region. This allows to give the floor to different jurisdictions and for those

outside the jurisdictions to understand the main issues, challenges and plans facing agencies in the region. We could not think of a better fit to start the series that discussing with the current chairman of the ASEAN Experts Group on Competition and of the CCCS, as Toh Han Li.

The prioritisation article results from work we have done in the context of the Asia Pacific High Level Reps meeting held in December 2017 and has been developed by our dedicated to issues in the region.

Finally, we share a news piece that is significant, which is the recent ministerial meeting held in Tokyo and which discussed the South East Asia Regional Programme, SEARP, and that specifically refers to possible future work in the region undertaken by the OECD. Given the high political support for further work to be undertaken in the region, I believe this is important news to highlight!

Until the next newsletter, I hope you will enjoy reading this issue!



Ruben Maximiano



News from Asia-Pacific Competition Authorities*

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

CHINA



In March legislation was passed in China by the National People's Congress to merge the existing three antitrust bodies into one. The three anti-trust agencies were part of the National Development and Reform Commission, the Ministry of Commerce (MOFCOM), and the State Administration for Industry and Commerce (SAIC). The new body will be the State Administration for Market Regulation that was officially established on March 21, 2018 and will be a direct subordinate agency under the State Council.

HONG KONG



Competition Commission Advises on Practices in Employment Marketplace

The Competition Commission (Commission) published in early April an advisory bulletin for human resources (HR) professionals, employers and employees at large to raise their awareness of and advise them of the potential risks under the Competition Ordinance related to the determination of employment terms and conditions as well as the hiring of employees, in particular when it comes to the coordination of employment related practices between businesses.

The bulletin refers that competition among employers to hire employees leads to better employment terms such as higher salaries or better benefits, and increased opportunities for employees. This concept applies regardless of whether the businesses are engaged in the provision of the same products or services. The bulletin also refers that employers that compete to hire employees should refrain from entering into agreements or engaging in concerted practices regarding terms of employment or the hiring of employees. The Commission considers that the following practices between employers are at risk of contravening the First Conduct Rule of the Competition Ordinance: (i) Wage-fixing agreements, (ii) Non-poaching agreements, (iii) Exchange of sensitive information.

JAPAN



JFTC's Files Criminal Accusation for Bid Rigging in Railway Construction Sector

In March 2018, Japan Fair Trade Commission (JFTC) filed a criminal accusation with the Public Prosecutor-General against four construction companies (Taisei, Kajima, Obayashi and Shimizu) and two executives in charge of sales activities for concerned bids in Taisei and Kajima.

JFTC found that the four construction companies had agreed to designate successful bidders and to bid at prices allowing the designated successful bidders to win construction of new terminal stations for maglev railway ordered by Central Japan Railway Company (JR Central). Based on the agreement, they designated successful bidders for each construction of Shinagawa Station (South Area), Shinagawa Station (North Area) and Nagoya Station (Central Area) exchanged information regarding price quotations to the bids.

The Antimonopoly Act (Japanese competition law) provides both administrative and criminal sanctions against cartels and bid riggings. JFTC determines whether administrative measures are not enough and criminal sanctions are appropriate, in accordance with the "JFTC's Policy on Criminal Accusation and Compulsory Investigation of Criminal Cases Regarding Antimonopoly Violations". The stipulated criminal penalties are a fine of not more than five hundred million yen for a company and a fine of not more than five million yen or imprisonment of upto 5 years for an individual.

KOREA



Special Committee Launched to Reform the Competition Law

The Korea Fair Trade Commission (headed by Chairman Kim Sang-Jo, hereinafter referred to as the "KFTC") has launched a 'special committee on reforming the Monopoly Regulation and Fair Trade Act (MRFTA)'. The Committee has been formed to come up with measures to conduct a complete overhaul of the MRFTA that includes substantive laws and procedural rules with the aim of enhancing market competition rules for implementing a fair and innovative market economic system. The committee held the kick-off meeting on March 16 at Korea Federation of Small and Medium Business.

In the first (kick-off) meeting, the committee discussed how to run the special committee, and selected 17 topics that would be discussed in the future meetings. The special committee is comprised of external experts per each sector; 23 people in total including 2 joint chairmen and 21 commissioners. Topics to discuss include new types of anti-competitive practices such as algorithm cartels and data monopoly that occur with the emergence of 4th Industrial Revolution.

Also, after coming up with the draft of complete overhaul based on the discussion results by the committee, the revised draft will be submitted to the National Assembly within this year.

SINGAPORE



CCS is Renamed Competition and Consumer Commission of Singapore (CCCS)

With effect on 1 April 2018, the Competition and Consumer Commission of Singapore ("CCCS") took over the role as the government agency responsible for administering and enforcing the Consumer Protection (Fair Trading Act), in addition to enforcing the Competition Act. The expanded portfolio and mandate will reinforce its mission of making markets work well for the benefit of both consumers and businesses in Singapore.

CCCS Announces Two New Market Studies

The CCCS announces that will initiate two new market studies: the first is a market study on the online travel booking sector and will focus on understanding the industry landscape relating to both the provision of flight tickets and hotel accommodation in Singapore. This will help CCCS understand how commercial practices and arrangements in the online travel sector impact competition and consumers in Singapore. The second is a joint study with the Personal Data Protection Commission ("PDPC") to examine consumer protection, competition and personal data protection issues, which could arise if a data portability requirement is introduced in Singapore.



Sector Workshop on Competition Rules in the Energy Sector



In March 2018, the OECD/KPC annual sector workshop took place in Jeju, Korea. This year's event was devoted to the application of competition policy and rules to a very important sector in most societies: the energy sector. This is an industry where the role of competition authorities in many jurisdictions has increased in the last few years as liberalization has taken off throughout the world.

The event focused mostly on enforcement actions but also undertook a wider view, examining the intersection between competition policy and the role of regulations, very important in this market to ensure security of supply, for instance. One of the initial sessions focused on the specific characteristics of the market and

its economic functioning, which needs to be clearly understood in order for a competition authority to consider intervening. Specific focus was devoted to the energy sector and its dynamics in Asia, and more specifically to electricity and gas.

For this workshop a wide array of experienced speakers with extensive experience in the sector were made available by the authorities of Korea (KFTC), EU Commission and the CADE (Brazil) as well as from the OECD.

The event started with an examination by Mr. Ruben Maximiano of the OECD of main features of the energy sector and of the main competition issues found across jurisdictions, in particular in the



context of ongoing or recently undertaken liberalization processes. This was followed by a session on market definition, in a session presented by Mr. Ruben Maximiano, that by examining a number of cases in a number of different jurisdictions identified some common threads and principles that underwrite the identification of relevant markets in the electricity and gas sectors. The remaining sessions all dealt with anti-competitive agreements.

First up was Mr. Alexander Gee, Deputy Head of Unit at DG Competition of the European Commission, that shared the experience of the European Union in two sessions dedicated to abuse of dominance in the sector. After offering the context of the liberalization process in Europe, a number of cases undertaken by the Commission were explored, in many instances to prevent that the incumbent companies impeded or made less successful the liberalization process. Cases of exclusionary nature (exclusive dealing, refusals to deal), exploitative nature (such as market manipulation, discrimination, and market partitioning), were examined in detail. Mr. Hung-chu Wang of Chinese Taipei then shared a case on Liquefied Petroleum Gas market in Kinmin region. The day finished with a hypothetical case dealing with market

definition in the natural gas import markets. The plenary was divided into two smaller groups to discuss and deal with the case, make preliminary findings and make proposals for future action and investigation.

The second day was dedicated to merger control and anti-competitive agreements. Mr. Paulo Burnier, Commissioner of CADE, presented first on the Brazilian experience in mergers in the sector sharing experience with three recent complex cases: Alesat/Ipiranga (a prohibition of a transaction in the Distribution of automotive fuel market, on the basis of coordinated effects), Ultragaz/Liquigás (LPG markets with high concentration in some regions, with one of the merging parties being an SOE), Gemini (a JV in natural gas sector). Dongyeon Kim, Deputy Director, International Cartel Division of the KFTC then shared the Korean experience with three cases also: two price fixing cases (one by 6 LPG suppliers and another case involving 3 refiners) and one bid rigging case involving the construction of LNG storage tanks. Brazil's Paulo Burnier then also shared the experience of CADE with cartels and bid rigging, involving nuclear power, hydro power, solar panels and gas retail.





The third day started with the second hypothetical session, building on the case already started and discussed on day one, but this time the same groups focusing on the alleged anti-competitive behavior that would configure a possible abuse of dominance case involving the incumbent operator facing a market being liberalized. The EU then shared the experience with anti-competitive agreements, and interestingly with a case involving the granting of exclusive and special rights, showing that under the EU laws an infringement may be established where the State measures at issue affect the structure of the market by creating unequal conditions of competition between companies, by allowing the public undertaking or the undertaking which was granted special or exclusive rights to maintain (for example by hindering new entrants to the market), strengthen or extend its dominant position over another market, thereby restricting competition, without it being necessary to prove the existence of actual abuse. The final part of the workshop dealt with the relationship between competition authorities and energy regulators and with advocacy efforts. Regarding the first session, it was shared between Ruben Maximiano from the OECD providing an overall view of the main

issues that competition authorities might wish to engage with energy regulators, and then Paulo Burnier provided examples from Brazil in the sector with MOUs with the relevant regulators, and how these relationships have evolved and developed over time.

The workshop's final session made the case for the importance of the role that competition advocacy by the competition authority can play in the design of regulation and was led by Mr. Takehiro Suzuki, deputy director of the Coordination Division of the JFTC. He shared the experience in Japan of developing guidelines in the sector and of issuing policy recommendations in the context of a liberalization process.



This was an event that allowed participants to explore in depth a sector that has many specificities can be a rather complex one for newer agencies in particular, but that draws attention given how fundamental energy is for modern well functioning societies and economies. Drawing upon some very experienced speakers it was possible to show that, where relevant, this is a sector where competition authorities may intervene effectively.

Leader's Corner

Toh Han Li, CEO CCCS and 2018 Chairman of AEGC



Han Li Toh is the Chief Executive and a Commissioner of the Competition Commission of Singapore. He was previously the Assistant Chief Executive (Legal & Enforcement) of the Competition Commission. Before

coming to the Competition Commission, he served as a Law Clerk to the Chief Justice of Singapore, Deputy Public Prosecutor and State Counsel in the Attorney-General's Chambers, Senior Assistant Registrar at the Supreme Court and as Registrar and District Judge of the State Courts.

Toh Han Li has kindly acceded to being interviewed to explain his role and plans for the CCCS' chairmanship of ASEAN Experts Group on Competition as well as the direction of the newly revamped competition agency now with consumer protection powers. This interview is an excerpt of a longer and more detailed interview that will be soon available as a podcast which you will be able to find here: <http://www.oecd.org/korea/oecd-korea-policy-centre-competition-programme.htm>

Q. Please share some insights about how the AEGC works. Who will be helping you throughout your term as the AEGC Chairman? Does the AEGC have its own staff or do you need to mobilize your own staff from the CCCS?

The AEGC holds two formal meetings a year to discuss the various AEGC initiatives and projects. In addition to the two formal AEGC meetings, additional side meetings are also held throughout the year to discuss and implement specific projects. The ASEAN Member State chairing the AEGC is assisted by a full-time ASEAN Secretariat, which helps to monitor the progress of AEGC initiatives as well as coordinate with external agencies. Given the numerous projects going on at any one time, this greatly assists the AEGC in its work. There is also a team at CCCS that regularly participates at the AEGC and contributes actively to the various initiatives and workstreams, regardless whether Singapore is chairing the AEGC.

Q. We are two years into the implementation of the ASEAN Competition Action Plan. Please share with us your candid assessment: Is the ASEAN on track?

In general, ASEAN's progress under the ASEAN Competition Action Plan (ACAP) has been positive, with over 80% of the ACAP projects on track since the start of ACAP's implementation in 2016 till now.

Q. The CCS last took chairmanship of the AEGC ten years ago, in 2008. How much progress has been made in competition policy and enforcement in the ASEAN region since then?

In 2008, only four ASEAN Member States had competition laws in place (Indonesia, Thailand, Singapore, and Vietnam). Today,

nine ASEAN Member States have competition laws in place, with the remaining ASEAN Member State (Cambodia) in the process of drafting its law. This is a positive step, particularly in a region where the enactment of competition laws met many challenges, including a lack of understanding of the benefits of competition, strong resistance and lobbying by entrenched businesses or state-owned enterprises, and a general lack of a competition culture.

Q. Moving onto the CCCS and your role there, what would you say have been the CCCS's greatest challenges and successes since you have been the CEO?

With the rise of the digital economy, more sophisticated business models have emerged and CCCS is seeing an increase in the complexity of the cases handled. This poses new challenges in both our enforcement and advocacy work. In relation to enforcement, CCCS is adopting a more differentiated approach when addressing competition issues and concerns, such as the use of commitments as opposed to infringement decisions and penalties.

Q. What are the CCCS's priorities for 2018? How different are they from its priorities last year? How does CCCS identify or select its priorities?

For 2018, some of the key sectors that CCCS will focus on include transportation, logistics, hospitality and wholesale retail/trade. With the additional role in enforcing the Consumer Protection (Fair Trading) Act, CCCS will also look at raising our understanding of the economics of consumer protection and the interface between consumer protection and competition law.

Q. As you mention, the CCCS took over as the government agency responsible for administering and enforcing the Consumer Protection (Fair Trading Act), and has changed name to the Competition and Consumer Commission of Singapore ("CCCS"). What

implication will this have for the organisation, its internal set-up, and how will this expanded portfolio and mandate affect competition law enforcement in Singapore?

From 1 April 2018, CCCS will have a new division called the Consumer Protection Division.

Competition and consumer protection share a close and complementary relationship. Measures to enhance competition in markets can bring about benefits for consumers, and similarly, measures to empower consumers can also spur greater competition in markets.

Even as CCCS steps up to take on the consumer protection role, CCCS will not compromise our current role as the national competition authority. The enforcement of the Competition Act deals with the anti-competitive conduct of businesses while the enforcement of the CPFTA ensures that businesses engage in sound trading practices. Both bring about benefits for consumers, and in different ways. With a broader overview of both the competition and consumer protection domains, CCCS will work to safeguard fair trading and competition to ensure the proper functioning of Singapore's markets so that consumers can enjoy a wider variety of products and services at competitive prices.

Prioritisation of Competition Actions by Competition Agencies in Asia Pacific

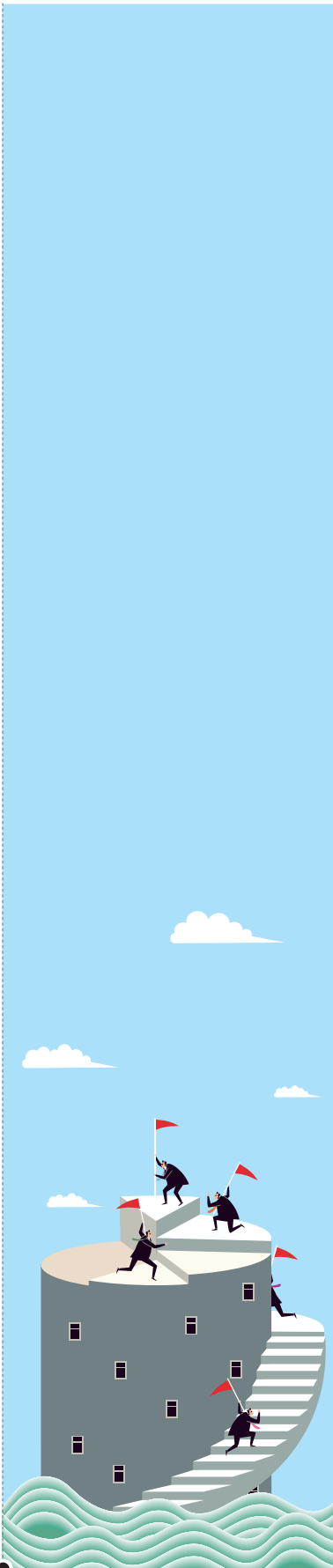
By Leni Papa¹, Wouter Meester and Ruben Maximiano,
OECD Competition Division

On 6 December 2017, the OECD organised the first OECD Meeting of the High Level Representatives of Asia Pacific Competition Authorities in Paris, France. This meeting brought together high-level representatives from the authorities of the Region as a forum to share experiences and discuss topics of common interest. The high-level forum is anticipated to be an annually recurring event, and is expected to serve for jurisdictions² to understand better certain aspects of other jurisdictions' laws, practices and policies and to help identify best practices amongst their regional peers. Further to facilitating the discussions, the OECD Secretariat will use these meetings to share analytical notes before and/or after these meetings to prepare the discussion or summarise it and provide additional guidance.

The main theme for this first meeting was Prioritisation of Competition Actions, an important aspect for any agency that wishes to positively maximise its fingerprint in the economy and society as a whole. During the meeting, Professor William E. Kovacic of the George Washington University Law School introduced the topic and ten jurisdictions shared their experiences and practices in undertaking prioritisation. Further to the discussions during the Meeting, the OECD Secretariat has prepared a note which: (a) reviews the recent literature on prioritisation; (b) summarises the presentations, interventions, and comments received during the Meeting, as well as the communications and comments submitted thereafter; (c) summarises the answers

¹ Ms. Leni Papa was at the OECD Competition Division from February to April 2018.

² Presentations were made by Korea Fair Trade Commission, Japan Fair Trade Commission, New Zealand Commerce Commission, Competition Commission of India, Philippine Competition Commission, Chinese-Taipei Fair Trade Commission, and Australia Competition and Consumer Commission. Interventions were made by Singapore, Malaysia, and Fiji.



to the “Questionnaire on the Prioritisation Practices of Competition Agencies in Asia Pacific” which was sent to competition agencies in the Asia Pacific; and (d) elicit common prioritisation practices of competition agencies in Asia Pacific, as well as of selected competition agencies outside the region. Below you will find a succinct summary of this note, which will be distributed in its entirety in May.

The role of prioritisation

Competition agencies perform a wide range of functions, often with limited or insufficient resources. Prioritisation is a process which enables competition agencies to effectively use their limited resources and increase their operational efficiency, while directing their efforts to interventions that are most needed and/or are likely to have the highest impact. The failure to prioritise may lead the competition agency to misallocate funds and personnel to projects of marginal importance, clog the competition agency's case docket, damage its reputation for effectiveness, and distract the agency from crucial time-bound interventions.

Parameters determining approach, scope, and methodology at agencies

The approaches, scope, and methodologies adopted by competition agencies in undertaking prioritisation are controlled by the following internal and external parameters:

- the degree and discretion enjoyed by the competition agency
- objectives of the competition law
- maturity of the competition agency and the competition culture of the jurisdiction wherein it operates
- market conditions and structure of the economy
- availability of resources and strategic significance to the competition agency
- availability of alternatives (better placed agencies or better actions)
- input of stakeholders
- impact on the economy and consumers
- likelihood of success

The process and results of prioritisation

The initiation, approval, publication, and post-evaluation of priorities, as well as the schedule and regularity of prioritisation, vary across jurisdictions. The process can either be “bottom-up”, with ideas gathered from the staff or stakeholders followed by a discussion and approval of the competition agency's management, or “top-bottom”, wherein the management of the competition agency generates the priorities, and subjects them to the comments of, and/or disseminates them to, its staff and stakeholders. The entire process generally involves collective consultation or decision-making, with the final priorities being approved by the highest-decision making unit of the competition agency. Meanwhile, whether the prioritisation will be destination-based (strategic) or activity based (reactive), may be affected by the existence of a dedicated policy or planning team. As for the schedule of prioritisation, many competition agencies align the regularity of their prioritisation process with a budget cycles or the schedules of government-wide strategy planning.

While it is widely held that prioritisation benefits competition agencies by giving them the highest returns towards reaching their goals, it is, however, not risk free. Competition agencies must balance the benefits of prioritisation against the risks of arbitrariness, short-sightedness, predictability, and devoting too many resources on the process of prioritisation itself. Moreover, competition agencies should carefully address the issue of the trade off between equality and efficiency, by clarifying the legal basis for its authority to de-prioritise cases, and by ensuring that the criteria for prioritisation are transparent.

To achieve the intended results of prioritisation, competition agencies must carefully practice, evaluate, and re-evaluate its application. Whilst knowing and understanding practices from other authorities from the region and around the world is important, ultimately the competition agency should take into account its own development stage, economic situation, legal framework, and administrative institution to determine what approach suits it best. Moreover, it may be useful for competition agencies to avoid rigid and inflexible prioritisation processes, as it might lead to under-enforcement. To this end, it may be useful for a competition agency to examine trends over time and evaluate whether past prioritisation practices have been effective. Lastly, competition agencies should not completely neglect areas that are not considered as priorities as priorities change over time. A competition agency cannot afford to be out of touch with developments in a deprioritized area as the latter might become crucial in future years.

Next OECD Meeting of the High Level Representatives of Asia Pacific Competition Authorities

The next OECD Meeting of the High Level Representatives of Asia Pacific Competition Authorities is scheduled for November 2018 in Paris. Together with the full note on prioritisation, the OECD will share a questionnaire to take stock of what topic(s) would be of interest as the main theme for this upcoming meeting in December 2018.



Economics in Competition:

How Can Younger Agencies in Asia-Pacific Learn from More Advanced Ones When Integrating Economists in Their Agencies?

By Wouter Meester and Ruben Maximiano, OECD Competition Division



On 2-4 May 2018, the OECD/Korea Policy Centre and the International Competition Network (ICN) will jointly organise a Competition Economics Workshop for Chief and Senior Economists in Seoul to present ongoing issues on competition economics. A special OECD-led session (Organizing Economists in an Agency) will discuss the increasing role of economics in competition in the past decades and will focus on how newer agencies can institutionalise and use economics in the best possible way. More and more, economics can make or break a competition case, whether it involves a merger, cartel, state aid, private litigation or other case. Economists analyse how much and to whom cartelists caused damage, the likelihood and extent that a merger will hurt consumer welfare and whether a company's conduct was a result of its dominance in the market, just to name a few. Agencies around the world have chosen for different models when incorporating economics in their agencies, learning from each other and adapting to the specific situation in that country. We will first look at some data that demonstrates that the use of economics in antitrust is on the rise around the

world, both on the private and public side and then look at how competition authorities organise their economics know-how.

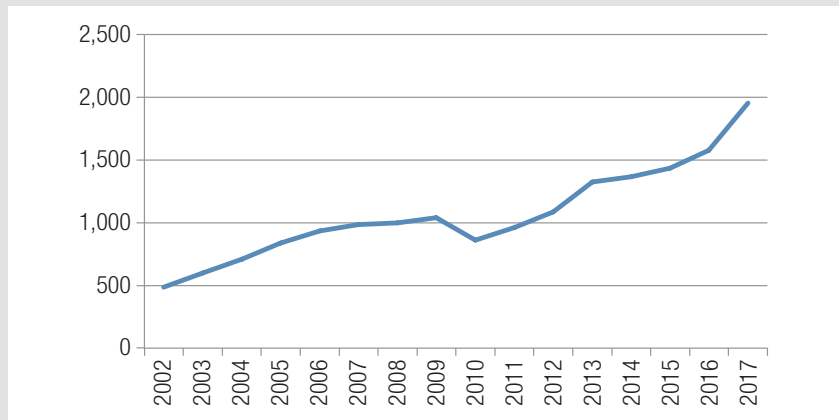
The growing market for competition economics

A proxy for the growing importance of economics in competition is the size of the market for competition economics, and in particular the number of economists in competition consulting. Earlier research already showed that the turnover in Europe of economic antitrust consultancy firms grew at some 25-30 per cent per year in the late nineties and early 2000s (Neven, 2007¹). This growth hasn't really stalled, as the number of competition economists in the top 20 consulting firms globally grew by an average of 10 per cent per year between 2002 and 2017. The top 20 consulting firms now employ almost 2,000 competition economists worldwide (see figure 1)².

1 Competition economics and antitrust in Europe, Damien J. Neven, http://ec.europa.eu/dgs/competition/economist/economic_policy.pdf

2 See Global Competition Review, GCR 100 (<https://globalcompetitionreview.com/series/gcr-100>)

Figure 1:
Number of competition economists
in top 20 consulting firms

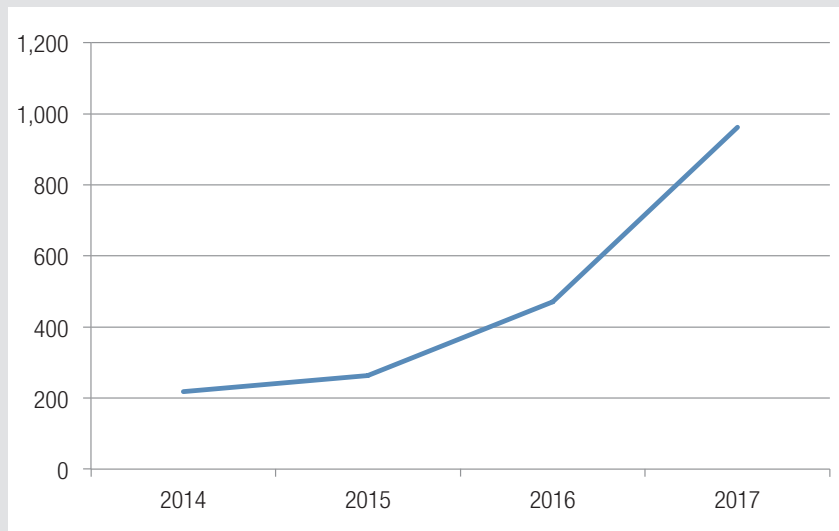


Source OECD, based on Global Competition Review, GCR 100.

* The decline in 2010 is a result of the bankruptcy of LECG Corporation, which until then was a significant player in the market

Moreover, this growth is not expected to slow down in the near future. Reasons for this include, but are not limited to, the ever-increasing availability of data which make it possible – and tempting – for competition agencies to conduct or request quantitative analyses, as well as the emergence of areas that increasingly require economic analysis such as state aid and antitrust litigation. In 2014 the European Union adopted rules allowing companies to receive full compensation for actual losses and lost profits (plus interest) that they suffer as a result of an anti-competitive conduct. This will likely lead to an increased number of litigation cases in the EU and thus the importance of economists to prepare and support such cases (see figure 2).

Figure 2:
Number of antitrust litigation
cases dealt with by the global top
20 economic consulting firms



Source: OECD, based on Global Competition Review, GCR 100

Implications for set-up of competition enforcement agencies

This development of increasing “economicalisation” in antitrust has had large implications for the way competition enforcement agencies were, and are, being set-up. Where the European Commission was one of the first in Europe to create the post of a Chief Economist and the Chief Economist Team in 2003, by 2017 more than 75% of the top 38 competition enforcement agencies in the world have a stand-alone bureau of economics within their agency and almost 80% have a Chief Economist.³ Of the same 38 leading competition enforcement agencies, on average approximately 30% of the non-administrative staff holds a degree in economics and 34 out of those 38 employ at least one PhD in economics. The 38 competition agencies employ approximately 2,000 economists in 2018. In Asia-Pacific, eight out of ten agencies have a stand-alone bureau of economics within their agency, five have a Chief Economist and five employ at least one PhD.⁴

Interestingly, more recently established competition agencies, including for instance the Philippines, are building on the experience of the more experienced ones and create a separate economics unit (and/or a Chief Economist) right from the creation of the agency or just thereafter. Others are looking into how to incorporate economics into their agency and what set-up would be best suited to the specific demands in that country.

This raises the question of how agencies organise their economics function and how this has changed over the years. When incorporating economic analysis in a competition agency, roughly three different models can be distinguished:

- A centralised model – in this model the economists are all pooled in a single organizational department or unit which is led by an economist, often the Chief Economist. Economists from this unit can be temporarily assigned to other directorates, offices, or case teams to assist in merger review, investigations, policy, and/or advocacy work.
- A devolved model – in this model all economists are permanently assigned to / spread out among the different directorates, offices, or case teams. They are supervised by more senior members of their respective directorates, offices, or case teams, who may or may not be an economist.
- A hybrid model – in this model there is both a centralised unit with specialised economists as well as other economists that are spread throughout the agency among the different directorates, offices, or case teams.

An analysis by the OECD based on GCR data⁵ indicates that out of approximately 75 competition enforcement agencies around the world roughly 45% have chosen for a devolved model, another 45% for a hybrid model and approximately 10% for a centralised model. In Asia-Pacific, this trend is somewhat similar with respectively 40%, 30% and 30% in ten competition enforcement agencies.

3 OECD analysis based on Global Competition Review Rating Enforcement 2017.

4 The Handbook of Competition Economics 2018 (GCR, 2017) covers 10 competition agencies from Asia-Pacific: Australia, India, Indonesia, Japan, Korea, Malaysia, New Zealand, Philippines, Singapore and Vietnam.

5 “The Handbook of Competition Economics 2018”, GCR, 2017. The analysis includes the countries covered in the report and which provided data.

Some suggestions for younger agencies on best using economics in competition cases

While for many the increasing role of economists seems uncontroversial, some challenges for economists need to be well understood in order to ensure the effectiveness of economic analysis and as such the quality of decisions*:

- Ensure effective enforcement: Econom(etr)ic evidence can be misused in a number of ways (assumptions and specification are key). Moreover, economic analysis can be too academic and ignore the realities of the market, resulting in an abstract, theoretical outcome. This can affect effective enforcement when economics is not used in a proper and/or professional way.
- Ensure effective communication: Economists may have trouble explaining the conclusions of their analysis in ways that they are understandable to their clients, lawyers, judges, government and other stakeholders. This undermines the contribution of any economic analysis, regardless of how comprehensive and sophisticated it is in substance.
- Ensure legal certainty: Economic analysis should not come at the expense of legal certainty, transparency and predictability, which are key aspects in competition law. One element is the time needed for economic analysis. Economists should avoid being too focused on conducting the perfect analysis, rather than finding sufficient answers or results in a more time efficient manner.

* See also Economic Analysis and Competition Policy Enforcement in Europe, Lars-Hendrik Röller, 2005.

Scope of the OECD-led session on Organizing Economists in an Agency

During the special OECD-led session, the discussion will focus on most of the abovementioned issues, including (i) the driving forces behind the introduction or increase of economics in different countries (courts, change in legislation, etc.), (ii) how economists are organised in the agencies and how this has changed over time, (iii) the specific role(s) of economists in different agencies, (vi) challenges of agencies with integrating economics into decision making, and (v) what special training or steps are taken to help economists with their communication to stakeholders (e.g. judges). We will report back in the next newsletter with the main findings or elements of discussion.

More information on the workshop can be found here.

Link: www.oecd.org/daf/competition/competition-economics-workshop-for-senior-chief-economists.htm

Ministerial Meeting of OECD Southeast Asia Regional Programme in Tokyo

Competition on the menu

On 8-9 March 2018, the OECD organised the First Ministerial Meeting of the OECD Southeast Asia Regional Programme (SEARP) in Tokyo. Southeast Asian countries were represented at Ministerial or Vice-Ministerial level and OECD countries by many Ambassadors, all expressing strong support and appreciation for the OECD SEARP.

After almost four years of working in the region, Ministers and Vice-Ministers all underlined that SEARP is now an established platform supporting economic policy reforms on a broad range of issues and bringing countries from the region closer to the OECD. At the same time, all speakers reiterated the need for making an additional effort to focus more on inclusiveness considerations going forward in 'SEARP 2.0' – building on OECD inclusive growth work. Around 250 participants discussed 'Inclusive ASEAN', i.e. connectivity (e.g. promotion of trade and investment and high quality infrastructure development) and inclusive participation (e.g. human resource development in a globalized and digitalized society, gender, SMEs) in ASEAN.

During the meeting, the OECD received a strong political mandate from Ministers and Vice-Ministers present for the next phase of SEARP – which according to many speakers should still build on the 'the three Ls' which were mentioned when the Programme was launched in 2014: Linking, Listening, and Learning. In particular, a Joint Communiqué provided OECD with new mandates to work with ASEAN countries on digitalisation and competition and it was agreed to mainstream gender aspects through all parts of the programme.

The handover of the co-chairmanship of SEARP by Japan to Korea and by Indonesia to Thailand marked the end of the highly successful Ministerial Conference.



About the Southeast Asia Regional Programme (SEARP)

Since 2007, the OECD has strengthened its engagement with Southeast Asia as a strategic priority. Since its launch in May 2014, SEARP has served as a platform to bring the relationship between the OECD and the region to a new, more strategic level, through providing a whole-of-government view, and to foster the exchange of good practices and mutual learning on global and regional challenges in a multilateral setting. The purpose of the Programme is to support domestic reform priorities, foster regional integration efforts and enhance Southeast Asia's engagement with OECD. Phase 1 covered nine policy areas for cooperation: tax, investment, education and skills, SMEs, regulatory reform, sustainable infrastructure, trade, innovation, and gender. SEARP has already delivered a number of concrete outputs and supported ASEAN in implementing the ASEAN Economic Community (AEC) Blueprint 2025 on a broad range of policy areas. Activities include the substantial contributions to the ASEAN chairs as well as tailor-made support for individual countries, in close co-operation with both partners from Southeast Asia and OECD Members.

Link: <http://www.oecd.org/southeast-asia/regional-programme/>

OECD Competition Committee Meetings, 4 – 8 June 2018

Working Party No. 2 on Competition and Regulation

Roundtable on Taxi and Ride-Hailing Markets

This roundtable will discuss regulatory and competitive challenges raised by new companies and business models in the taxi, ride-sourcing and ride-sharing services. The debate and the market is now moving onto the antitrust treatment of these new firms, the reform of the regulatory requirements applying to traditional taxis (to enable them to compete with the new entrants), and the future business models that may come through to challenge the new incumbents (e.g. decentralised platforms). The discussion will focus on alternative regulatory scenarios – such as diminishing the regulatory burden on the traditional taxi services – which have been implemented or suggested to allow traditional service providers to compete with new entrants. The roundtable will also explore the impact different business models may have on competition and regulation, with a particular attention on the difference between centralised and decentralised platforms.

Link: <http://www.oecd.org/daf/competition/taxis-and-ride-sharing-services.htm>

Working Party No. 3 on Co-operation and Enforcement

Roundtable on Challenges and Co-ordination of Leniency Programmes

Enforcement agencies and commentators highlight that optimising the design and administration of leniency programmes, especially in multi-jurisdictional cases involving parallel applications in several jurisdictions, is crucial for the continued effectiveness of such programmes.

Currently, many jurisdictions are in the process of assessing the effectiveness of their system, and are considering means to improve it, increase its attractiveness and strengthen co-operation with other agencies in cross-border cartel cases. Such initiatives include looking at ways to increase the predictability and transparency of the programme, enhance the incentives for co-operation between undertakings and the competition agency, introduce immunity for individuals, and clarify the confidentiality protection for documents submitted as part of the leniency process.

The purpose of this Roundtable is to discuss, based on country experiences, challenges to which amnesty/leniency programmes are exposed, enforcement inefficiencies, and proposals for improvements.

Link: <http://www.oecd.org/daf/competition/challenges-and-coordination-of-leniency-programmes.htm>

Roundtable on Designing and Testing Effective Consumer-facing Remedies

The purpose of this Roundtable is to discuss how competition authorities can design remedies to demand-side competition problems in mass consumer-facing markets, such as energy or retail banking. These remedies may be required to address poor market outcomes, including high prices or low service quality, that are not necessarily associated with structural concerns, such as barriers to entry. Demand-side factors, such as search and switching costs and behavioural biases, and other characteristics of consumer decision-making processes, may play a significant role.

Agencies have implemented a variety of remedies aimed at tackling these market failures. These include remedies aimed at: informing customers about the options available; developing tools, such as price comparison websites, to help customers make a more informed choice; removing impediments to switching; or actively prompting customers to seek a better deal. In many such cases, consumer protection authorities or sector regulators have been involved in the remedy design process.

Link: <http://www.oecd.org/daf/competition/consumer-facing-remedies.htm>

Competition Committee

Roundtable on the Non-Price Effects of Mergers

Mergers can have effects on numerous dimensions of competition other than price, including quality, variety, and innovation. The roundtable will discuss the main types of non-price effects, the interaction of price and non-price effects, and the stages of a merger assessment in which non-price effects may be relevant (from market definition, to the competition assessment, the consideration of efficiencies, and the formulation of remedies).

With the increasing interest in digital markets, and since competition in some digital markets does not primarily occur on the basis of price, competition authorities may find themselves required to conduct assessments of non-price effects more frequently, without an easily available set of methodologies for doing so.

In particular, the discussion will explore the treatment of innovation effects, which have been a focus in several recent merger cases. The concept of privacy as a dimension of competition will also be discussed. More traditional non-price effects, including quality and variety, will also be covered since the practical difficulties they present may be similar to those presented by innovation and privacy

Link: <http://www.oecd.org/daf/competition/non-price-effects-of-mergers.htm>

Roundtable on E-commerce and Competition

The growth of e-commerce across the OECD has changed not merely how consumers shop, but also the range of providers from which consumers can or are prepared to source products.

Not only is it increasingly easy for consumers to search outside their immediate geographic area, but indeed it has become more straightforward to shop across national boundaries. Fears regarding potential market segmentation are therefore a notable concern within a number of agencies which have examined the issue of competition within the e-commerce sector.

Recent advocacy and enforcement work by some competition agencies has explored a number of competition related questions arising from the spreading of electronic commerce. This roundtable will cover issues ranging from changes in consumers' purchasing patterns and the implication this may have on the relationships between manufacturers and distributors, to competition effects of vertical contractual restrictions imposed in online sales and how they should be assessed by competition agencies, to the relationship between online platforms and the content they distribute.

Link: <http://www.oecd.org/daf/competition/e-commerce-implications-for-competition-policy.htm>

Hearing on Market Concentration

The Hearing will discuss whether and how market concentration is changing in different countries; it will explore the consequences of these changes; and it will consider what might be driving these changes and how agencies might respond. Some of the questions recently articulated in the public square include: Is market concentration actually increasing? And if it is, by how much? And what can we conclude from that? Does increased concentration indicate increasing market power? What do other indicators of market power say, are we seeing lower output, higher mark-ups, and larger profits? And are these enduring or is there churn? Moreover, what is driving any increase in market power

that we do see? And how should competition agencies look to respond? The Hearing will provide a timely opportunity to discuss and hear from a range of experts on these important questions.

Link: <http://www.oecd.org/daf/competition/market-concentration.htm>

Hearing on Blockchain and Competition

Blockchain technologies are receiving increasing attention and raising significant interest from businesses across a broad range of industries. As a consequence a number of OECD communities are looking at how this technology development can affect the legal and policy environment in which they operate. As part of the long-term theme of the Committee on Competition, Digitalisation and Innovation this session will welcome external experts who will introduce the Committee to the blockchain technology and will start identifying possible competition and regulatory law issues that blockchain may raise.

OECD/KPC Competition Programme 2018

6-8 March

Jeju, Korea

Competition Rules in the Energy Sector

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

2-4 May

Seoul, Korea

ICN-OECD/KPC Competition Economics Workshop

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

5-7 September

Malaysia

In-country Workshop Market Definition

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

17-19 October

Indonesia

Judge Event: Cartels

- Evidence gathering powers
- Direct and indirect evidence
- Sanctions

14-15 November

Vietnam

Bilateral Seminar for Vietnamese Authorities

TBD

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

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



Asia-Pacific Competition Update

SEND US YOUR NEWS

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

SNS

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

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