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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

2022 was a year of economic recovery in Asia-Pacific, in particular in Southeast Asia, where the ADB Outlook at the end of December upgraded economic growth from 5.1% to 5.5% based on consumption and tourism recovery in Malaysia, the Philippines, Thailand, and Viet Nam.

As an overview of the year, we see that 2022 was to a large extent devoted to the ongoing digital transformation of markets as this continued to be of great interest in the region. Indeed, the OECD KPC Competition Programme devoted quite a number of sessions to the particular challenges that arise from digitalisation. We did so via a dedicated workshop, focusing on the economics of digital platforms, in a mini-course offered by Prof. Martin Peitz of the University of Mannheim, Germany, but also included in the different workshops we held. We had workshops, for instance, on market studies where sessions included one on Market studies in Fintech and another on market studies for digital markets, a session on digital mergers in the Workshop on Merger control.

Another highlight of 2022 was also the event held together with the Supreme Court of Indonesia, where for the first time the OECD KPC Seminar for Asia-Pacific Judges that we hold annually became an official part of the Programme of the Legal and Judicial Research, Development, Education, and Training Agency of Indonesia's Supreme Court. This meant a very high participation from Indonesian judges, with more than 100 judges participating.

I wish to also share that I will move on to another role in the OECD in early 2023.

As I look back over the past eight years of sharing information and international best practices, I can not but feel a profound sense of accomplishment at what we have achieved at the OECD-KPC during that time. 48 workshops, 40 in-person, 8 on-line. So many participants, so many friends from different nations and cultures made along the way. I met so many amazing people, as we together developed the OECDKPC Competition Programme to make it respond more closely to the ever-evolving needs of the competition authorities and judiciary in the region.

Through our work, we have seen how best practices can be adapted to different contexts, and how different approaches can benefit communities in Asia-Pacific. We have also seen how our own efforts can make a real difference in the economic lives in the region.

Working with partners from all over the world has broadened my perspective and made me more aware of the various challenges facing different countries and communities. The most important lesson I have learned is that we must never forget the people behind the projects we are working on.

The success of this project of bringing best international competition practices in the Region has depended greatly on the KPC and its staff, as well as OECD colleagues with whom I have worked over the years. It has also depended greatly on the involvement and commitment of the competition authorities in Asia-Pacific – together this capacity building work has allowed authorities to leapfrog in their understanding and practices, and that will I am sure have a lasting impact.

As I prepare to move on to my next challenge, I feel a deep sense of gratitude for the time I have spent on this project and I want to thank everyone who has been involved in this work for their contributions. I hope that our efforts will continue to make a difference in the lives of those we have helped. I hope to see you many of you in Paris or elsewhere in the world!

With my best wishes,

Ruben



Ruben Maximiano

7th OECD Asia Pacific High Level Representatives Meeting

The 7th meeting of the High Level Representatives of Competition Authorities of Asia-Pacific took place on 30th November, in-person, in Paris, France, having Allan Fels (Former Chairperson of the Australian Competition and Consumer Commission (ACCC)) as meeting chair. As usual the meeting was organised by Mr. Ruben Maximiano (OECD). This year's meeting had 11 jurisdictions present, most represented at top level.

This annual meeting organised by the OECD, is an opportunity to discuss topics that are of common interest to the competition authorities in the region using the policy viewpoints and experience of the OECD to bear on the region. Following recent OECD work on international co-operation and the discussions in the Working Party 3 in June, the main topic of this meeting was international co-operation in competition enforcement. Another important topic was how gender can be a part of competition policy.

■ The main topic of international cooperation is an issue that is close to the heart of the OECD's *raison d'être*. A particularly important goal of the OECD is to contribute to the development of a consistent approach via international cooperation but also to promote direct cooperation on cases between agencies, as we know that increasingly businesses operate across jurisdictions and practices and conducts can have ramifications and impacts in many countries.

■ It is in this context that the discussion focused on the importance of more co-operation in competition cases of a transnational nature as this will not only increase the effectiveness of the enforcement action, but also help to reduce costs and increase legal certainty and predictability to multinational businesses and their advisors. After an in-depth review of global enforcement co-operation activities, their main drivers and the challenges, a comprehensive report was published jointly with the International Competition Network in early 2021, which was thoroughly explained by Ms. Sabine Zigelski, OECD Senior Competition Expert.

■ It shows that competition agencies engage in a lot of meaningful exchange and co-operation, but that there are persistent challenges in particular of a legal nature. It is to continue to move this

important tool for competition enforcement effectiveness that we bring the discussion to the region, to help improve cooperation mechanisms.

■ During the meeting, participants also benefited from the business perspective offered by Ms. Strati Sakellariou-Witt, Partner White & Case. A number of interventions were made from the floor: by Ms. Aoki Reiko, Commissioner, JFTC, Mr. John Small, Chair, NZCC, Mr. Herbert Fung, Senior Director, Business and Economics, CCCS, Mr. Mick Keogh (Vice-Chair) and Marcus Bezzi Executive Director, ACCC.

■ The next and final session tackled the issue of how competition can give due considerations of issues of gender. The OECD has also been undertaking research on the topic and has been developing a toolkit, in a project sponsored by Canada. The main aspects of the toolkit were presented by Ms. Lynn Robertson and Ms. Carolina Abate, Competition Experts at the OECD, setting the scene for the discussion.

This OECD initiative fits in its numerous initiatives to reduce and eventually eliminate the gender gap, such as The OECD Gender Initiative that examines existing barriers to gender equality in education, employment, and entrepreneurship but also a toolkit for Mainstreaming and Implementing Gender Equality, which guides governments in implementing the OECD Recommendation on Gender Equality in Public Life.

And some of our recent work at the OECD has shown that competition policy can also contribute, as there is some evidence to sustain that competition policy can impact gender equality positively. In particular, explicit or implicit restrictions on female entrepreneurs may lead to anti-competitive effects, and in some countries women may be barred from certain professions or roles (e.g. taxi-driver), again reducing efficiency, reducing competition, and raising prices for professional services. For instance, this was one of items that were systematically checked during our 3 year project in ASEAN on logistics and small package delivery services, that we finalised late last year.

This discussion included further presentations from Ms. Johanna Posch, Ph.D., Manager, Analysis Group, followed by a number of interventions from the floor including from Ms. Anna Barker, Executive Director Digital Platforms Branch, ACCC, Ms. Ellen Creighton, Assistant Deputy Commissioner, Canadian CB (special guest given the role of the CB in the OECD Competition and Gender toolkit), and also Mr. Johannes Bernabe, Chair of the Philippines Competition Commission.

Closing remarks were then offered by the meeting Chair Mr. Allan Fels and Mr. Ori Schwartz, Head of the OECD Competition Division.



News from Asia-Pacific Competition Authorities*

*These news items are summarised or sourced from public press releases of the relevant agencies.



Negotiations for an ASEAN Framework Agreement on Competition Launched

At the 54th ASEAN Economic Ministers (AEM) Meeting, the Economic Ministers Launched the Negotiations for the ASEAN Framework Agreement on Competition (AFAC), which is to serve as a formal cooperation agreement that would facilitate cross-border cooperation and coordination on CPL matters amongst the ASEAN Member States (AMS). The Launch has been identified as one of Cambodia's Priority Economic Deliverables (PED) for this year. It is also consistent with strategic measures of the ASEAN Economic Community Blueprint and the ASEAN Competition Action Plan (ACAP) 2025 which calls for a regional cooperation arrangement on competition policy and law by establishing competition enforcement cooperation agreements, to effectively deal with cross-border commercial transactions.

The AFAC aims to provide a fair and competitive business environment in ASEAN through cross-border cooperation between competition agencies, promote the internalisation of competition policy into regional and domestic economic policies, and provide effective measures to deal with competition issues of mutual interest.

As markets become more integrated in the region, cooperation between competition agencies becomes more vital as it will help save resources and avoid duplication of efforts, provide experience-sharing, and assist to provide consistency of decisions in resolving anti-competitive disputes or at least non-conflicting outcomes.

To kick start the development of the Framework, the Guiding Principles for negotiating the AFAC has been developed by the ASEAN Heads of Competition Agencies' with the support from the ASEAN Experts Group on Competition, and subsequently endorsed by the AEM.

Source: <https://asean-competition.org/read-news-negotiations-for-an-asean-framework-agreement-on-competition-launched>

 **Australia**

Fifth report of Digital Platform enquiry makes recommendations

On 11th November 2022, the Australian Competition and Consumer Commission (ACCC) recommended to government a set of measures designed to address harms from digital platforms to consumers, small businesses, and competition. These recommendations are a result of the fifth report of the ACCC's five-year Digital Platform Services Inquiry.

Amongst the recommendations are proposals that platforms be subject to mandatory dispute resolution processes and stronger requirements for combating scams, harmful apps, and fake reviews, among other measures. The report has also proposed mandatory codes of conduct for certain platforms and services to protect and promote competition.

The ACCC recommends a new regulatory regime to work alongside Australia's existing antitrust laws that would address anticompetitive conduct, unfair treatment of business users, and barriers to entry and expansion by potential rivals.

Service-specific codes of conduct could include targeted obligations to:

- prevent anti-competitive self-preferencing, tying and exclusive pre-installation arrangements
- address data advantages
- ensure fair treatment of business users
- improve switching, interoperability and transparency.

Source: ACCC calls for new competition and consumer laws for digital platforms | ACCC

Hong Kong, China

Competition Commission revises leniency policy for individuals

On 8th September the Hong Kong Competition Commission published a revised leniency policy for individuals involved in cartel conduct, to offer clearer guidance and more incentives for individuals to cease their involvement in cartel conduct and report to the Commission.

The commission's revised policy for individuals, includes the following changes:

1. Creating a distinction between applications for leniency based on whether they are received before or after the Commission has commenced initial assessment of or investigation into the conduct. With this revision, leniency is available for the first individual who either:

Type 1. discloses his/her involvement in cartel conduct of which the commission has not commenced an initial assessment or investigation; or

Type 2. provides substantial assistance to the commission's investigation and subsequent enforcement action of cartel conduct which the commission is already assessing or investigating; and meets all the requirements for receiving leniency.

The commission will not commence proceedings before the Competition Tribunal against a successful leniency applicant (both Type 1 and Type 2) in relation to the conduct covered by the leniency agreement, including not seeking an order declaring that the successful leniency applicant is involved in the contravention of a competition rule under the Ordinance.

2. Allows for the possibility of leniency for the first individual who reports a cartel to the Commission, even if leniency has already been granted to an undertaking in the same case.

The revised policy emphasises that individual applicants should provide practical assistance to the commission in order to receive leniency, either by uncovering a case which is unknown to the commission or by providing substantial assistance in a case already under the commission's assessment or investigation. The revision also enhances the incentives for an individual involved in a cartel to come forward, as he/she will be eligible for leniency even if an undertaking has been granted leniency in the same case.

The revised Leniency Policy for Individuals continues to make leniency unavailable to individuals who are the ringleaders of the cartel conduct or who have coerced other parties to engage in the cartel conduct.

Source: Leniency Policy PR EN (compcomm.hk)



Korea

KFTC sets up new Divisions

On 27 December 2022, the Korea Fair Trade Commission (KFTC) has set up the International Business Combination Division, which will focus on global M&A screening, in order to effectively respond to the increasing number of global M&A and strengthen international cooperation with other jurisdictions.

Earlier in December the KFTC had set up a new online platform regulation division as part of the KFTC's Market Surveillance Bureau to handle related work in order to respond more systematically to policy issues related to online platforms.



India

CCI issues provisional fines Google for abuse of dominance

In October 2022, the Competition Commission of India (CCI) imposed a provisional penalty of INR 13.4 bn on Google for abusing its dominant position in multiple markets in the Android mobile device ecosystem, apart from issuing cease and desist order. The CCI also directed Google to modify its conduct within a defined timeline.

The CCI defined following five relevant markets:

- Market for licensable operating system (OS) for smart mobile devices in India;
- Market for app store for Android smart mobile OS in India;
- Market for general web search services in India;
- Market for non-OS specific mobile web browsers in India;
- Market for online video hosting platform (OVHP) in India.

Based on its assessment, the Commission found Google to be dominant in all the above mentioned relevant markets.

Apart from issuing a cease and desist order, the CCI required Google not to restrain OEMs from choosing from among its proprietary apps to be pre-installed or force them to pre-install a bouquet of applications, and deciding the placement of pre-installed apps, on their smart devices.

Source: Competition Commission of India, Government of India (cci.gov.in)

Indonesia

Fine for abuse of dominance in logistics market

The Indonesia Competition Commission (ICC) fined freight forwarder Aero Citra Kargo (ACK) IDR 7.7 bn for abusing its dominant position and limiting other firms ability to enter the lobster seed export market. The penalty constituted 10% of the total excessive profits made for the period of June to November 2020, ICC commissioner Chandra Setiawan told the hearing.

However, the ICC considered that the company has no ability to pay the penalty, citing a recent ruling by the Central Jakarta District Court decision to seize the two bank accounts' of ACK.

Source: <https://asean-competition.org/read-cases-icc-decides-pt-aero-citra-kargo-is-in-violation-of-law-599>

Japan

JFTC issues report on start-ups and competition

At the end of 2022, the Japan Fair Trade Commission (JFTC) published a Report on the Fact-finding Survey on Startup Trade Practices on its fact-finding survey conducted into the business and contractual practices related to growing industry start-up sectors, such as industries using Artificial Intelligence, Internet of Things, and 'Big Data'.

For the report, the JFTC defined start-ups as businesses that are engaged in innovative business activities in business for several years to about 10 years and are unlisted companies. The JFTC sent out written

questionnaires to survey to 5,655 startups and 11,480 business partners and investors, targeting transactions and contracts with startups and investors and transactions and contracts between startups and investors. The JFTC also conducted interviews with 37 startups and on-site investigations of 13 partner companies and investors regarding cases suspected of abuse of a dominant position.

Based on the investigations, the JFTC sent concerns to 8 businesses and investors who were found to have matters that could lead to problems under the Antimonopoly. The report also provided findings on the types of conduct that may raise issues from a competition perspective, including requiring the sharing of trade secrets without signing non-disclosure agreements, requiring the intellectual property rights resulting from joint work for free.

Source: https://www.jftc.go.jp/houdou/pressrelease/2022/dec/221223_startupchousa.html

New Appointments

Bangladesh

Pradip Ranjan Chakraborty was appointed the competition authority's new chairperson in November 2022.

Indonesia

Dr. M. Afif Hasbullah, S.H., M.Hum has been appointed as the new Chairman of Indonesia Competition Commission (ICC), from September 2022.

Korea

President Yoon Suk-yeol appointed Han Ki-jeong as the new chair of the KFTC.

New Zealand

Dr John Small was appointed Chair of the New Zealand Commerce Commission in December 2022. He had been a Commissioner since June 2020.

Summary of Workshops 2022

12th OECD/KPC Competition Law Seminar for Asia-Pacific Judges

The annual Seminar for Asia-Pacific judges took place on 21 September 2022 virtually and was dedicated to the key substantive issues for judges when reviewing merger decisions taken by competition authorities. This year's Seminar was held in close cooperation with the Supreme Court of Indonesia, and was an official part of the Programme of the Legal and Judicial Research, Development, Education, and Training Agency of Indonesia's Supreme Court. The OECD welcomed more than 200 judges from 7 different jurisdictions in ASEAN and 5 eminent speakers.

The objective of the workshop was to provide judges with a sharing of views from jurisdictions with consolidated experience on reviewing mergers, with a focus on the standard of proof used and differences on the margin of discretion allowed to agencies in their assessments, as well as an introduction to the main theories of harm and types of economic evidence that can be expected to be used in merger cases.

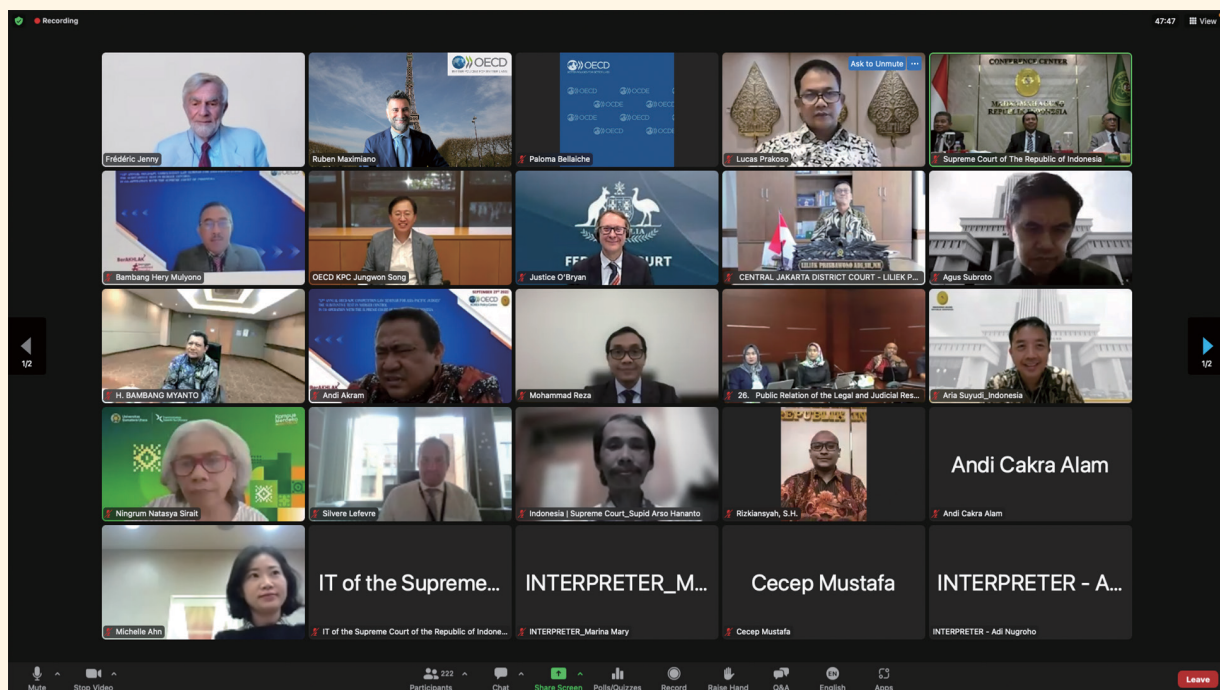
This one day Seminar started with opening remarks by Mr. Jungwon Song (Director General of the OECD/KPC Competition Programme) and Mr. Ruben Maximiano (Senior Expert and Regional Manager for Asia-Pacific, OECD).

After the formal opening of the Seminar, the Keynote was delivered by Chief Justice of Supreme Court of the Republic of Indonesia Prof. Dr. Muhammad Syarifuddin, S.H., M.H. that provided an overview of competition law in Indonesia and its evolution, with judicial cases and precedent – with a particular focus on mergers. This was followed by Special Remarks by Prof. Frédéric Jenny (Competition Committee Chair and former Judge of the Cour de Cassation in France) as well as by Hon Michael

O'Bryan (Justice, Federal Court of Australia).

Prof. Frédéric Jenny provided a comprehensive introduction to the economics of competition and merger control, analysing the different types of concerns that may arise from mergers, as well as the important role played by economics given that merger control is a predictive discipline that needs to look at ability, incentives of market players and the likelihood of effects of those on markets. He then delved into the legal tests and standard of proof applied for merger control, which needs to consider the forward-looking exercise that is needed to be undertaken, as well as the standard of review of merger control decisions. Finally, he provided the international experience on how jurisdictions may approach the economic understanding of courts.

Hon Michael O'Bryan a Justice at the Federal Court of Australia dug deeper still and looking in detail at the current law and analysis undertaken in Australia. In particular his Special Remarks focused on the fact that judges consider in mergers the issue of likely effect given that it is a forward-looking assessment – in particular at the state of competition in the future with and without the merger. This also affects the standard of proof as this is means reasonable possibility (in Australia the civil standard of proof applies (balance of probabilities)), namely answering the question on what could reasonably be expected to be the effect of the merger. Further, Justice O'Bryan provided views on the meaning of the “substantial lessening of competition” test, used in most jurisdictions around the world and also in Asia-Pacific. In his presentation he explained that substantial means “real or of substance” - more than nominal, whilst lessening includes preventing or hindering competition.



Dr. Silvère Lefèvre of the General Court of the European Union, in the chambers of judge Iko Nömm, then presented the views and experience of the European Union, how merger control has evolved over time the more than 8000 merger decisions taken in the EU, including 30 prohibitions. Dr Lefèvre described how the Court of Justice's has held an approach in relation to Merger Decisions with a "margin of discretion" being accorded to the European Commission (that under the EU system takes the administrative decisions on mergers), and how more recent judgements of the General Court have been re-analysing the margin of discretion accorded, and how this is currently under appeal to the Court of Justice.

The final session was provided by a very experienced economist, who has often provided economic testimony before different courts, Miguel de la Mano, partner at RBB Economics. Mr. de la Mano provided economic analysis of market definition, as well as how to evaluate the competitive effects of mergers of differentiated products and the important concept of closeness of substitution can be measured. One of the main points made was that economics can serve to provide the underlying intuitions, and that often economic evidence can be used to complement and help construct a solid body of evidence, and that quantitative evidence is not needed in most cases.

As to market definition Mr. de la Mano explained the SSNIP test, the most common test to define markets, with its focus on the customer side (demand). He also explained the common mistakes and misconceptions in his experience. He then also shared the main types of sources of evidence that can inform market definition, including estimates of how many customers stop purchasing a product when its price increases (demand elasticity), pricing dynamics, survey responses, industry commentaries and product characteristics. He concluded this part by underlying to participants that the appraisal of evidence is very often qualitative and that it is unlikely that any one source provide decisive insight to market definition.

Mr. Miguel then focused on the competitive assessment, making the point that competition authorities around the world have moved from the more structural approach based nearly exclusively on market shares and have moved more towards an approach based more often on the closeness of competition. This means a focus on how closely firms compete with each other – especially where products are differentiated. This is because mergers of close competitors (i.e. whose products are close substitutes) are more likely to lead to higher price rises than mergers of distant competitors. He thereby delved into the theory of harm that is most common in horizontal mergers between competitors – the unilateral effects theory and how these can be constructed and when possible and data available measured.

A session of Q&A then followed, allowing for a number of questions and comments to be made by participants. The OECD/KPC Workshop was concluded with closing remarks by Ruben Maximiano (OECD) and Jungwon Song (Director General of the OECD/KPC Competition Programme).

Workshop – On Advocacy Strategies for Competition Authorities in Asia-Pacific

After two years without in-person events, the OECD/KPC workshop on Advocacy Strategies for Competition Authorities in Asia-Pacific took place in-cooperation with the TCCT in Bangkok, Thailand between 25-27 October 2022. The OECD welcomed nearly 60 participants and speakers from OECD, ACCC from Australia, the Competition and Markets Authority (“CMA”, UK) and TCCT.

Following an introduction to the workshop by Mr. Jungwon Song (Director General of the OECD/KPC Competition Programme) and Mr. Ruben Maximiano (Senior Expert and Regional Manager for Asia-Pacific, OECD), the audience was presented with the Keynote address on how to make Competition into part of the Policy mainstay by Mr. Abhisit Vejjajiva, former Prime Minister of Thailand.

Mr. Vejjajiva provided a macro viewpoint of the importance of competition policy, not only as regards enforcement in particular cases but also as to the participation into the wider policy environment to ensure policies are market friendly, allowing competition between companies to flourish, and not protecting only a few big companies. It also alerted and encouraged the competition community to continue to evolve to accompany new economic findings and developments and to not limit itself to a narrow approach, in order to remain relevant and fulfil the purpose that they can certainly can have for the public interest, economic development and social welfare.

Mr. Nattapol Pourprasert (Director of Information and Public Advocacy Division, TCCT) provided an overview of the importance of creating a competition culture in Thailand, describing the evolution of the competition law and institutional setting in Thailand since 1999, through to the updated and renewed competition law of 2017. This was followed by Mr. Francesco Naismith (Director ACCC, Market Studies and Inquiries Practice Management) that presented the experience with advocating for competition in Australia, with a number of examples of how evidence based advocacy works best, basing much of the activity on information obtained either through cases or through market studies.

After the lunch break, Mr. Wouter Meester of the OECD, presented how competition authorities can advocate for a level playing field through competitive neutrality tools with a focus on the OECD Recommendation on Competitive Neutrality. Mr. Meester explained that without a level playing field, the most efficient domestic firms may not enter or expand, and if they do, they won't sell as much as they might. Further, efficient foreign firms won't enter and invest in the domestic economy and workers may earn less where protected employers enjoy monopsony

market power. All of these together may lead inefficient (domestic & foreign) zombie firms to survive and continue to accumulate rent/profit and crowd out efficient firms, leading to poorer outcomes for society and consumers may pay higher prices, for poorer quality, less innovative products. At the same time, competitive neutrality is not the only game in town and needs to work together and act to complement other public policy objectives, rather than obstruct the resolution of market failures. As subsidies and other policies may be needed to make markets deliver the best outcomes. Mr. Meester did propose that such public policy objectives should be transparent to all, proportionate and periodically reviewed with the view to open and competitive markets as soon as possible so as minimise competition distortions whenever possible. He ended with several actions that competition authorities may do to help governments minimise competition distortions when designing policies, and then using the example of a recent project of the OECD in ASEAN on competitive neutrality in the small package delivery and e-commerce sector.

This was followed by Mr. Paul Barnes (Principal Adviser, Advocacy, Nations & External Relations, Competition & Markets Authority CMA), who described in detail the advocacy processes employed by the UK's CMA. First up he described the prioritisation process that is used when deciding which advocacy actions to pursue, asking questions such as : what is size of market? What is the scale of risk or opportunity? Does it fit with strategic priorities and the portfolio of the CMA? It then undertakes an analysis of how likely is the CMA to be able to influence the desired outcomes: Does it have something useful/distinct to say? Are the relevant decision-makers likely to listen? Is there a live or imminent (1-2 years) policy reform? It then decides which advocacy tools it will use, ranging from the more informal (e.g meetings or secondments) to the more formal processes (e.g Competition assessments, market studies, open letters and reports). It will use informal tools to start early engagement in order to maximise its ability to influence, by building relationships and trust. This allows to improve the understanding and encourages adoption of competition and consumer-friendly policies. Mr. Barnes then went through a number of practical tips and advice that result from the years of practice of the CMA on how to increase impact of their advocacy actions.

The first day of the event finalised with a Hypothetical case example whereby the participants were divided into small groups of 8 and discussed and worked to solve a practical case.

The second day of the Workshop started with a session on what is one of the most important advocacy functions, considering its potential impact on markets on the wider economy, which is the Competition Assessment of laws and regulations. This session was led by both Mr. Ruben Maximiano and Mr. Wouter Meester and provided an overview of what is competition assessment, and how to undertake it. It provided detailed examples of the types of analysis undertaken with

a focus on the work undertaken by the OECD on the logistics sector in the ASEAN countries from 2018-2021.

The second part of the day was dedicated to market studies, with presentations by Australia's ACCC, Singapore's CCCS and the UK's CMA. The OECD's Market Studies Guide for Competition Authorities notes that market studies are a versatile tool for competition authorities to understand whether there are competition problems in a sector, and goes on to state that Competition advocacy is one of the primary objectives for carrying out a market study. The OECD's market study guide then sets out ways market studies can be utilised as a vehicle for competition advocacy, including to identify reforms where a sector's policy or regulatory framework may restrict competition.

The first presentation offered the Australian experience on how market studies are used to build evidence for many of its advocacy actions. Mr. Naismith explained how market studies are a vehicle for advocacy and that conducting a market study is itself a form of competition advocacy, as it raises awareness and that the ACCC has observed pro-competition changes in markets purely linked to the announcement that those sectors and markets would be the focus of a market study. An example given was the decline in retail fuel prices in a region in Australia during and after market studies. Mr. Naismith then went into three market studies recently undertaken feeding into competition advocacy: new car retailing Industry market study; the retail Electricity Price Inquiry and the Agriculture market studies. This was followed by the presentation by the CCCS by Mr Eugene Tiang who shared the CCCS' experience on the Business Collaboration Guidance Note. This was work undertaken to be able to guide government agencies when providing government advisories, in order to provide greater clarity to government agencies regarding competition considerations that they should look out for when facilitating and/or developing industry initiatives and collaborations.

The final session of the 2nd Day before the Cultural Tour of Bangkok was the UK experience offered by Mr. Paul Barnes – the CMA is one of the most active agencies when it comes to undertaking market studies - and provided learnings from the CMA experience in order to make better recommendations and engage with the full recommendation lifecycle. Mr. Barnes then provided a case study on the Electric Vehicle Charging with the main findings and recommendations in what is an upcoming and important market with many specificities, and where government policy and regulations will shape this new market and the important role that competition viewpoints can offer.

The third and last day started with a small-group session of a Hypothetical to design a market study in the comparison websites and booking platforms markets. This was followed by a session offered by the Competition Commission of India (CCI) by Mr. Arpit Gupta that provided the rich

experience of the CCI on advocacy. The second substantive session of the day was provided by Mr. Junheon Lee (Senior Competition Expert, OECD seconded from KFTC) that provided the specific experience of the KFTC in the context of advocating in a crisis. The final session of the day was provided by Mr Benjamin Radoc of the Philippines Competition Commission. Mr. Radoc provided a detailed overview of the three types of market studies that may be undertaken in the Philippines with examples: a General Market Study, that acts as a scoping study on the market structure, supply chain, observed/perceived anticompetitive conduct, regulatory frameworks and can take from 8-12 months; a rapid market study that is narrower scope in terms of product and geographic markets and that takes from 6-8 months; then the sector inquiry that is more focused and aims to determine the exact nature or the source of the competition issue/s as a precursor for a possible enforcement case and that takes from 10-18 months.

Finally, there was an open roundtable with a number of questions and issues being raised by the participants and that all the speakers during the event discussed openly, sharing their experiences and thoughts.

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

Online Workshop – On Merger control from 22-24 November

This virtual workshop on merger control, focused on horizontal theories of harm and analysed the fundamental competition economics underlying those theories. To do so it included sessions on investigative tools and economic methodologies for a substantive analysis of competitive effects. The webinar benefited from a panel of speakers that included experts from European Commission, US and OECD.

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

The substantive part of the webinar was provided by Mr. Maximiano that provided an overview of the main theories of harm in horizontal cases (unilateral and coordinated effects) and how the main types of evidence that can be used to inform such theories. This was followed

by sessions dedicated to the Key Economic principles and fundamentals of Horizontal mergers, with a number of case examples, as well as how to gather the evidence needed to demonstrate to the requisite standard horizontal theories of harm.

After a first day that set the scene in economic terms for horizontal mergers, the second day had many cases provided by different jurisdictions: Mr. Ethan Stevenson (Trial attorney in the US DOJ Antitrust Division's Financial Services, Fintech, and Banking Section); Mr. Apostolos Baltzopoulos (Chief economist Team, European Commission) and Mr. Junheon Lee (Senior Competition Expert, OECD).

Mr. Ethan Stevenson explained the recent Penguin Random House / Schuster merger that the DOJ has successfully sued to prohibit. This involved the largest and third-largest publishers in the United States that were competing to acquire publishing rights from authors (typically represented by literary agents). Mr. Stevenson provided a detailed explanation of the economic evidence and economic tools used to analyse this monopsony case and how the usual tools used for downstream harm were adapted to be used in this upstream harm scenario.

This was followed by Mr. Baltzopoulos that provided a deep dive into the recent M.9820 Danfoss / Eaton Hydraulics that would lead to the creation of worldwide number 1 in hydraulic components and number 2 in Europe (but number 1 in mobile hydraulics – where the Parties

horizontal competition concerns

Product markets with competition concerns
≈ 10% of transaction value

Customers examples:

JOHN DEERE CATERPILLAR VOLVO CLAAS

European Commission

overlap) that was cleared following a divestiture remedy. Particularly interesting was the analysis of the European Commission of market shares in the context of differentiated markets as well as bidding markets. As regards the latter, Mr. Baltzopoulos set out that whilst historically high combined market shares may not be a good indicator of future market outcomes (and power) they can still be informative. Using Customer Relationship Management (CRM) data from the parties, the EC was able to summarise information on past, ongoing and potential projects (usually both won and lost), which together with transaction data provided a very full picture of the company's activities, discovering that the parties were found to be each other's closest competitor in most instances.

The third session of the day was provided by Mr. Lee who is seconded to the OECD from the KFTC and who covered a recent merger case: Delivery Hero's acquisition of Woowa Brothers Corp., which operates Korea's No.1 food delivery app Baedal Minjo. The KFTC approved the deal itself and ordered the sale of the No. 2 business, as there was a concern that the transaction would limit competition in all directions to various stakeholders in the multi-sided delivery app brokerage service such as restaurants, consumers, and delivery. For example, one of the concerns raised was that coupon discounts for consumers could decrease if a powerful competitor that took part in head-to-head discount competition is removed, in particular as the results of an analysis on the correlation between market share and coupon discounts showed that one of the Parties provided less discount coupons in areas where the share of the other Party was higher. The transaction was cleared with both structural as well as behavioral measures.

The third day started with a hypothetical merger case in the telecoms sector, allowing for participants to walkthrough the analysis of a horizontal merger and to discuss in small groups. This was followed by a session led by Mr. Vipul Puri, Joint Director (FA), Competition Commission of India and Atty. Michael Herrera, the Division Chief for the Merger Review Division.

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

Competition Bureau of the OECD

Following the election process of the 2023 Bureau which took place on Wednesday 30 November the following delegates will sit in the Bureau of the OECD Competition Committee in 2023.

- Ms Reiko Aoki (Japan)
- Mr Matthew Boswell (Canada)
- Mr Benoit Coeuré (France)
- Mr Alexandre Cordeiro (Brazil)
- Mr Olivier Guersent (European Union)
- Ms Cani Fernández (Spain)
- Ms Brenda Hernández (Mexico)
- Mr Frédéric Jenny (France)
- Mr Rikard Jermsten (Sweden)
- Mr Ioannis Lianos (Greece)
- Ms Margarida Matos Rosa (Portugal)
- Mr Andreas Mundt (Germany)
- Ms Irma Urmonaitė (Lithuania)

Summary Regarding OECD Competition Week December 2022

COMPETITION COMMITTEE

Item 1. Roundtable on Director Disqualification and Bidder Exclusion

Director disqualification and bidder exclusion, in the context of competition law and enforcement, are different types of debarment sanctions that may be imposed by contracting authorities, judicial bodies, or competition agencies against competition law infringers. These sanctions may be imposed on companies found guilty of bid rigging, for instance, or on the involved individuals, who may be banned from the exercise of their corporate functions. They are aimed at preserving the integrity of the tender and ensuring that the violating company or involved directors do not carry out such practices in the future. As such, they may also function as a powerful deterrence mechanism, adding to the financial and social cost of monetary fines the opportunity cost of the exclusion from future tenders, and affecting the individual reputation of the firm or the individual.

This roundtable focused on the role of director disqualification and bidder exclusion in competition enforcement and on providing practical insights on their effectiveness and interaction with other existing competition enforcement mechanisms.

Delegates discussed a number of questions including: 1) the objectives, criteria, and scope of application of director disqualification and bidder exclusion in different jurisdictions; 2) the factors determining their effectiveness, also in relation to other types of competition sanctions; 3) the ways in which they can be best coordinated with other existing detection, evidence-gathering and enforcement tools to ensure their fairness and effectiveness.

The roundtable discussion benefited from a Background Note by Ms. Cristina Volpin of the OECD, country contributions and interventions by expert panellists, including Amanda Athayde (Professor, University of Brasilia) and Peter Whelan (Professor, University of Leeds).

Item 2. Presentation of the Gender Inclusive Competition Policy Toolkit

Looking at competition enforcement and policy through a gender lens is part of a long-standing effort by the OECD and its Competition Committee to explore the links between competition and the many aspects of inclusiveness, such as poverty and sustainability. The research on gender began in 2018, when the OECD first considered if a gender lens might help deliver a more effective competition policy. Since then, several events and discussions boosted interest in the topic. This led to further research and the developments funded by a voluntary contributions by the Government of Canada. As part of this project the Secretariat was asked to prepare for Canada a Gender Inclusive Competition Policy Toolkit. The Toolkit is designed to help the Competition Bureau of Canada to apply gender-inclusive considerations to their work.

The Secretariat presented the Toolkit to the Committee to seek views and comments on its scope and content, with the aim of having the final version of the Toolkit endorsed by the Competition Committee, hoping that it will become another OECD reference document for authorities around the world.

Item 3. Roundtable on Competition and Inflation

The relationship between prices and competition is uncontroversial, with low levels of competition contributing to higher price levels. However, the link between competition and price increases (inflation) appears less clear cut. The current inflationary trends have seen these debates resurface, including the extent to which inflation has its roots in competition problems and whether competition authorities should respond to these pressures. Traditionally, inflation has been the near exclusive concern of central banks and not competition authorities. However, in periods of high inflation, it is natural to consider the extent to which competition is to blame. Such questions are the subject of much debate, including whether any such a link would be short-term or purely long-term in nature. There is an increasing literature suggesting that levels of concentration and firm margins have increased over time, at least in some countries, yet how much this can

explain of current inflationary pressures is debateable.

The discussion focused on the links between competition and inflation, both in the short-term and long-term. The discussion also touched upon the risks to competition that authorities should be aware of in the current inflationary environment. Finally, and perhaps most importantly, the roundtable will explore how competition authorities should react, if at all, to the current challenges, including how to navigate pressures faced from the public and governments.

The OECD Competition Committee addressed a number policy questions, including: 1) How strong are the links between competition and inflation? Does this differ over the short-term and long-term? 2) To what extent should competition policy be considered an anti-inflationary tool? 3) What does a high-inflationary period mean for competition authorities? Should competition authorities focus on sectors featuring high inflation? and 4) Do high-inflationary periods present particular risks to competition that authorities should be aware of?

The roundtable discussion benefited from a Background Note by Mr. Richard May of the OECD, country contributions and interventions by expert panellists, including Hal Singer (Professor, Georgetown University and Managing Director, Econ One Research) and Professor Jan De Loecker (Professor, KU Leuven).

Item 4. Hearing on the Relationship between Foreign Investment Screening Reviews and Merger Control Reviews

This session was organised in the form of a Hearing together with the OECD Investment Committee and it will offer an opportunity to exchange views with the investment delegates on the relationships between merger control reviews and Foreign Direct Investment (FDI) screening mechanisms to which the same transaction may be subject for national security purposes. The purpose of the Hearing is to explore similarities and differences between these two procedures, identify potential trade-offs and discuss whether and how co-ordination shall be ensured.

The Hearing offered an opportunity to delegates from different policy communities to review (i) how competition law affects inward FDI and vice versa: (ii) how competition and investment policies contribute

to the same long-term goals (i.e. economic growth, efficiency, providing incentives for firms to be more productive) but can also be in conflict. Delegates discussed the goals and scope of each review, what transactions are subject to both reviews, who conducts the review and how transactions are brought before the relevant authorities. The Hearing also considered overlaps and common concerns in merger reviews and national security reviews. It considered institutional aspects as well as explore how transactions are assessed, what circumstances raise concerns across the two reviews, judicial review, principles that are applicable across the two mechanisms as well as issues related to the design and implementation of remedies and their impact on businesses.

The roundtable discussion benefited from a Background Note by Gaetano Lapenta of the OECD and interventions by expert panellists, including Felipe Irrarázabal (Adolfo Ibáñez University), Ashley Lenihan (Georgetown University), Ignacio Mezquita Pérez-Andújar (MINCOTUR Secretary of State for Commerce), Edouard Sarrazin (DLA Piper) and Ethan Thornton (NSI Review & Analysis, UK's Department for Business, Energy & Industrial Strategy).

WORKING PARTY NO. 2 ON COMPETITION AND REGULATION

Roundtable on Competition issues in Energy Markets

The meeting discussed the factors that have contributed to high energy prices recently, with a focus on competition and regulatory issues, as well as the policy responses to the high prices and the competition authorities' possible actions. High energy prices affect all aspects of the economy. They increase directly and indirectly the cost of goods and services and are currently a significant driver of inflation in many OECD countries. Large energy price increases are often followed by calls for increased scrutiny, including by competition authorities, of the energy markets and measures to support consumers. While the main reasons for the large increases are often beyond competition authorities' scope of influence, the session provided an

opportunity to consider competition problems emerging in energy markets, such as supply problems and the risk of anticompetitive behaviour by companies in a situation of increasing prices.

Delegates discussed their views and shared experiences on the role of competition authorities in relation to planned policy measures to limit price increases (or their impact), such as price caps or direct support to households, and to deal with possible scarcity of energy sources, such as increased investment in renewables. Given the relevance of the broader regulatory framework for the sector, the discussion also explored the involvement of competition authorities in shaping energy market regulation through their advocacy activities and co-operation with energy regulators. This roundtable benefited from a Background Note, written contributions by jurisdictions, and a panel of expert speakers comprising Mary Starks (Partner, Flint Global), Frank Wolak (Professor, Stanford University) and Georg Zachmann (Senior Fellow, Bruegel).

WORKING PARTY NO. 3 ON ENFORCEMENT AND CO-OPERATION

Roundtable on Data Screening Tools in Competition Investigations

Data screening tools are empirical methods that competition authorities can use to detect illegal activity. Such methods are often applied before opening an investigation, to check for suspicious behaviour that is 'flagged' if certain criteria are met, or following a complaint or whistle-blower report, to confirm or validate allegations. Most commonly, screening aims to uncover anticompetitive horizontal agreements, particularly in procurement markets. These are usually behavioural screens that measure variation in bids or prices and have recently been combined with machine learning techniques.

The Roundtable explored developments in digital screening tools in academic literature and competition authority practice. It considered data quality, access and collection issues, and resources that competition authorities may need. The roundtable was supported by a Background paper by Mr. Daniel Westrik and written contributions by delegations.

ASIA-PACIFIC COMPETITION UPDATE

CONTACT INFORMATION

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

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