

ASIA-PACIFIC COMPETITION UPDATE

Issue 30
November 2022



Competition Programme
OECD/Korea Policy Centre

IN THIS ISSUE



Entry Point - Editorial Note p. 3



KFTC's Top Cases in Digital Area p. 4-5



News from Asia-Pacific p. 6-10



Summary Regarding OECD Competition Week June 2022 p. 11-17



Summary of Workshops 2022 p. 18-22

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.

A publication of the Competition Programme, OECD/Korea Policy Centre, The Asia-Pacific Competition Update may be reproduced with appropriate source attribution. This Newsletter is provided for information purposes only. The views expressed do not necessarily represent the views of the OECD or the Korea Policy Centre. To subscribe, or cease subscribing to Asia-Pacific Competition Update, please send an email with your contact details to ajahn@oecd-korea.org. Further information about the Competition Programme at the OECD/Korea Policy Centre can be found at www.oecd-korea.org and www.oecd.org/competition/seoulcc.

Entry point - Editorial Note

The first half of 2022 saw the beginning of some semblance of normality in many parts of the world as we all emerged from a pandemic world. Economic recovery continued to take hold, even if in the context of supply chain and inflationary pressures. Furthermore, new heavy challenges have emerged, in particular the war in Ukraine has brought negative impacts around the world regarding energy and foodstuffs. Many of these challenges are of course beyond the remit of what competition authorities can do. The fact however that such impacts are felt in our economies makes that nonetheless a reality that also impacts the analysis and work of competition authorities everywhere. Priorities may be shifted. Economic analysis may be different depending on market circumstances.

Competition authorities are there to help ensure that markets function in a way that delivers positive economic outcomes for our societies. That means not only enforcement actions against cartels, bid-rigging, abuse of dominance and ensuring anti-competitive mergers are not allowed to alter negatively market structures, but also supporting governments with advice on laws and regulations that are smart, targeted and proportionate. That the level playing field that competitive neutrality principles set out is being fostered by government. That trade and investment are fostered, leading to open markets that foster societal well-being.

In the first half of 2022 the OECD and OECD/KPC Competition Programme continued to hone in on the issues that could help competition authorities foster productivity and economic growth to our economies. We had workshops, on market studies and another on applying competition rules and digital platforms. Both these topics are crucial for the economic recovery of the region and the world. Market studies allows competition authorities to understand market dynamics in a particular industry or sector to then make concrete advocacy proposals and participate in the design and development of policies and regulations. Digital platforms are of course so central to today's economies, and many agencies are grappling with how best to act to ensure competition works for markets.

This newsletter also discusses these two webinar workshops held by the OECD/KPC in 2022. You may read more about their content in the pages that follow.

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



Ruben Maximiano

KFTC's Top Cases in Digital Area

Junheon LEE (OECD, seconded from KFTC)¹⁾

Since 2020, when COVID-19 hit the world, the KFTC has steadily tried to ensure competition in markets through the enforcement of competition laws. In a crisis, the competition law enforcement is very important because those in weaker positions, such as the counterparties to firms with that are market dominant or consumer-side of the transaction, may be more vulnerable. During this time, the KFTC handled very significant cases not only in abuse of market dominance but also in M&A cases in the digital field.

In the Google case (2021), the KFTC decided to impose a fine of 207 billion KRW along with a correction order for Google's actions that prevented competitors from entering the market and hindering innovation by preventing device manufacturers from producing Android-based OS (forks). Google forced manufacturers to sign the Anti-Fragment Agreement (AFA) to block the entry into the market of fork OS and required manufacturers to sign an essential Play Store licence agreement and an Android pre-accession licence agreement. Manufacturers had no choice but to sign AFA to install PlayStore on smartphones for operating mobile business.

With AFA, manufacturers cannot install fork OS for all devices that they release and cannot develop fork OS themselves. Manufacturers that release Android smartphones will be deprived of PlayStore if they release even one fork device in another device, even if not a mobile phone. As the number of manufacturers signing AFA increases, the path to release devices equipped with fork OS was further blocked. Google also blocked the emergence of innovative competitive platforms by disrupting competitors' business and controlling counterparties from the development stage before the launch of products in other smart devices.

In another case, Naver, the 1st operator in comparative shopping service market in Korea, artificially adjusted and changed its search calculation method for its search service in the shopping field, putting its service, Naver Open Market at the top of the search results, and lowering competitors' products. Due to Naver's conduct, the exposure share of Naver's open market increased in Naver shopping search results. As a result, Naver's market share in the open market has risen sharply from 4.97% in 2015 to 21.08% in 2018. The KFTC decided to impose a surcharge of 26.5 billion KRW along with a correction order in 2020. It is the first case in which a platform operator with dual roles was sanctioned for so-called self-preferencing by adjusting and changing the search algorithm in its own favour.

1. Any and all opinions expressed are personal.

In a third recent case, the merger between Delivery Hero (DH) /Baemin (BM) (2020) was a deal in which DH, which operates the second and third-largest businesses in the delivery app market, acquires BM, the No. 1 operator. The KFTC approved the deal but ordered the sale of the No. 2 business. The KFTC decided that there is a high concern about limiting competition in the multi-sided delivery app brokerage services such as restaurants, consumers, and delivery. In addition to structural measures to sell the business, the KFTC also imposed behavioural measures, such as no change of fees, to resolve the identified competition concerns, while achieving the synergies of this deal.

The above-mentioned cases are of great significance in that they clearly show that the competition law enforcement should continue even during the pandemic. In addition, there is another implication, in that competition authorities are introducing various evaluation techniques for antitrust conduct or M&A in the digital markets.

In the Google case, the KFTC used various indicators other than market share to determine whether Google had dominance. The KFTC determined that Google has a dominant market power in the licensable smart mobile OS, based on market share of licensed smart mobile OS, barriers of entry, network effects and OS switching costs for equipment manufacturers. In addition, the KFTC determined that Google also has a dominant market power on App market based market share, number of applications available, number of application developers and barriers of entry, and network effects. In the Naver case, the KFTC judged that Naver has dominant market power on online comparative shopping service market based on Naver's turnover (fees, advertising revenue), amount of transactions between the store and the consumer through the platform and traffic by platform visitors. Finally, in DH/BM case, the KFTC market concentration analysis was found on app market based on not only transaction between consumer and restaurant sales but also number of visitors in the app and turnover of the platform.

The OECD handbook(2022) refers that the digital economy has characteristics such as multi-sided market, network effects, economies of scale, and switching costs. This means that in a market where various stakeholders are intertwined, competition agencies should take a more careful approach. Since competition law enforcement should not hinder innovation in the digital market, KFTC, also, will continue to study ways to analyse competition in the market as in the above cases.



News from Asia-Pacific Competition Authorities*

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

ASEAN

ASEAN issues a statement on the role for competition in the economic recovery

The ASEAN Heads of Competition Agencies issued a joint statement on the importance of competition policy to the ASEAN Comprehensive Recovery Framework (ACRF) and the post-pandemic economic recovery.

The statement emphasized, amongst other issues, that enforcement efforts can focus on strategic sectors and markets that are important for economic recovery, as well as the importance of strengthening competition advocacy actions to ensure that competition is considered from the start of the design and development phases of new policies and regulations.

Australia

ACCC issues report on online marketplaces

The ACCC's fourth report in its Digital Platform Services Inquiry analysed and found an array of concerns on how they operate as well as the significant benefits they can bring, namely as they provide low-cost access to consumers for sellers and provide consumers a greater choice of goods.

This report follows an Australian government direction to the ACCC in 2020 to conduct a five-year inquiry into markets for the supply of digital platform services in Australia, and their impact on competition and consumers.

Concerns included in this fourth installment were, for example, the use of algorithms to decide how products are ranked and displayed (including some marketplaces giving preference to their own products), and inadequate dispute resolution processes. The report also sets out that the large amounts of consumer data collected and used by online marketplaces may not align with the privacy preferences or expectations of many consumers.

Considering the conditions in Australia, the ACCC makes a number of suggestions including: encouraging online marketplaces to join the 'Product Safety Pledge' to further strengthen online marketplace safety, setting up an ombudsman to resolve complaints, a prohibition on certain unfair trading practices, introducing a general safety provision, and making unfair contract terms illegal.

The fifth report, focussing on competition and consumer issues raised in the course of the Digital Platform Services Inquiry, the Digital Advertising Services Inquiry and the Digital Platforms Inquiry (2017-2019), and whether specific ex-ante rules is expected be reported on in the next OECD/KPC newsletter.



China

China amends the Anti-Monopoly Law

China has recently agreed to the amendment of its Anti-monopoly Law (AML), such changes having entered into force on 1 August 2022. The recently adopted changes to the AML include numerous amendments to many different parts of the AML, such as changes to the Fair Competition Review System, merger control (including "stop the clock" provisions), clearly prohibiting market players from using data and algorithms, technology, and platform rules to engage in monopolistic behaviour, and increased sanctions.

Hong Kong, China

First consent order based on cooperation policy in tourist sector

The Hong Kong's Competition Tribunal has issued orders concerning price-fixing related to the sale of tickets to tourist attractions and transportation services at hotels. The orders were granted based on the joint applications filed with the Tribunal by the Hong Kong Competition Commission and two settling respondents, as well as a company director.

The penalties amounted to approximately USD 700,000 and the applicants received a 20-25% discount from their respective levels of recommended pecuniary penalty for admission of the infringing conduct as well as for their cooperation during the investigation process.

The HK Tribunal ordered the two settling respondent companies to pay pecuniary penalties together with the commission's investigation and litigation costs. The Tribunal also ordered the director to be disqualified from acting as a director in any company for a period of three years.

Korea

KFTC fines rail car manufacturers for bid-rigging

The KFTC imposed KRW 56.4bn (approx. USD 43m) in total sanctions on three rail car manufacturers for rigging tenders that had been organised by Seoul Metro and Korail. According to the KFTC, Hyundai Rotem, Woojin Industrial Systems, and Dawon Sys had agreed who would win the bids in 6 tenders between 2013 and 2016, and 5 tenders between February 2019 and December 2019.

The companies used a strategy whereby Woojin Industrial Systems participated as a ghost bidder, whilst Hyundai Rotem outsourced part of the works under a subcontractor agreement as compensation.

Indonesia

KPPU/ICC fines palm oil producer for several gun-jumping cases

The KPPU/Indonesian Competition Commission has fined palm oil producer Bumitama Gunajaya Agro (BGA) IDR 3bn for late notification of its acquisitions of Ladang Sawit Mas (LSM), Agriplus, and Hungarindo Persada (HP). The target companies are crude palm oil processing factories in the three provinces and the acquisitions took place between 2012 and 2021.

According to the KPPU/ICC the company violated Article 29 of Law Number 5/1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition and Government Regulation Number 57/2010 concerning the Merger and Consolidation of Business.

ICC issues regulation on competition compliance programmes

The ICC issued a regulation that sets out a number of activities that businesses can do to have a compliance programme up and running – it will have to be registered with the ICC and be subject to its evaluation and decision.

Should businesses have a compliance programme in place that has been subject to an ICC issuance of Compliance Program Stipulation, they may eventually benefit from reduction in any applied sanctions in case of competition law infringements.

Japan

JFTC publishes findings on shipping-logistics markets

JFTC publishes findings on shipping-logistics markets

The JFTC published a report with the findings of its major inquiry on the business conduct taken place between logistics companies and shippers. It had started this inquiry with the objective of improving the business environment. In the context of its findings, the JFTC sent notices to 641 shippers, cautioning them for practices that could be potential violations of the Antimonopoly Act (AMA).

Based on the results of the inquiry, the JFTC will conduct workshops on the AMA for both shipping companies and logistics firms, in cooperation with relevant ministries and regulators.

JFTC accepts commitments from Expedia

The JFTC approved commitments set forward by Expedia to discontinue imposing price parity clauses on accommodation providers listing on its platform. Expedia had required accommodation providers to ensure room rates and availability provided on its platform were equivalent to or more favorable than those offered in other rival sales channels. These types of clauses could potentially infringe Article 19 of the Antimonopoly Act (AMA), although no such determination was made by the JFTC.

The commitments also included organizing regular AMA compliance sessions for employees as well as regular audits by external specialists, as well as annual reporting to the JFTC for a period of three years, amongst other commitments.

Malayisa

MyCC imposes sanctions for bid-rigging

The Malaysia Competition Commission (MyCC) has imposed sanctions of MYR 1,548,192.35 (USD 3,50,309) on eight firms for bid rigging in the four different information technology (IT) related projects worth MYR 1,925,365.90 that were procured by the National Academy of Arts, Culture and Heritage of Malaysia (ASWARA).

In Malaysia, individuals or enterprises that are found to have engaged in bid rigging conduct in public procurement may be subject to suspension of registration for a maximum period of up to five years, blacklisted and prohibited from participating in or accepting any procurement offer issued by a government agency while the suspension period is in effect.

Summary Regarding OECD Competition Week June 2022

WORKING PARTY NO. 2 ON COMPETITION AND REGULATION

Working Party 2 Roundtable on Competition and Regulation in the Provision of Local Transportation

Working Party No. 2 held a roundtable that discussed issues and best practices in the provision of urban transport services. The session considered governance and institutional issues, including legal models for the provision of local transport services and instruments for co-operation between public and private entities in the design and provision of public transport services. The discussion also explored the challenges arising from competitive tendering, in particular experiences gained after the 2013 Roundtable on contract allocation. Delegates discussed the factors that affect the intensity of competition at the tender stage and the mechanisms that jurisdictions have developed to reduce barriers to entry and ensure bidders' wide participation, as well as the effectiveness of bidding processes to improve the quality of services and minimise the cost of service provision. There was a Secretariat Background Note, written contributions by jurisdictions, and a panel of experts will support the roundtable discussion. The confirmed expert panellists for this session are Orla McCarthy (International Transport Forum), Graham Currie (Monash University) and Sauro Mocetti (Bank of Italy).

<https://www.oecd.org/daf/competition/competition-and-regulation-in-the-provision-of-local-transportation-services.htm>

Working Party 2 discussed Environmental Regulations and Policies Supporting Electric Vehicles

Governments have put in place a variety of measures to promote the development and uptake of electric vehicles, including purchase subsidies and tax rebates. Environmental regulations setting emissions standards and bans on internal combustion engine vehicles are also becoming more common. These new policy and regulatory measures raise the question about whether government intervention is restricting competition in any way, for instance by favouring one technology over another in the attempt to achieve emissions targets. One of the main areas to attract the attention of competition authorities is electric vehicle charging, including the price and location of charging stations in public spaces. With demand for electric vehicles increasing, the limited availability of charging infrastructure and potential interoperability issues could become a bottleneck slowing down the adoption of electric vehicles and endangering the achievement of emissions targets. In addition, competition authorities have flagged competition concerns related to the access to public areas and the allocation of funds to deploy networks on a non-discriminatory basis.

Delegations share their enforcement and advocacy experience in this area and discussed the impact of regulations and support measures on competition.

Working Party 2 discussed the Competitive Neutrality Toolkit

Following the discussion of a scoping note on 29 November 2021 and the delegates' support to develop a Competitive Neutrality Toolkit, the Working Party discussed a detailed outline of the Toolkit prepared by the Secretariat.

The session will also include a Secretariat presentation on the methodology followed in the OECD Competition Neutrality Reviews: Small-Parcel Delivery Services in ASEAN project.

Working Party 2 discussed the Gender Toolkit

The Canadian Government provided a voluntary contribution to support work that seeks to foster research and a policy debate on the relationship between gender and competition policy. Seven research proposals were sponsored covering market definition, collusion, prioritisation, and public interest tools. An important objective of this project was to produce a Toolkit for the Canadian Competition Bureau to guide the integration of gender considerations in competition enforcement. Delegates were invited to comment on the Toolkit to ensure that it can be applied across jurisdictions.

WORKING PARTY NO. 3 ON ENFORCEMENT AND CO-OPERATION

Working Party 3 Roundtable on Interim Measures in Antitrust Investigations

Interim measures are protective and corrective tools that may be adopted by agencies or courts while investigating possible antitrust infringements. The debate concerning the effectiveness of antitrust enforcement in fast-moving digital markets turned the spotlight on interim measures also in jurisdictions where their use has been rather limited in the past.

This Roundtable explored legal standards and procedural requirements for imposing interim measures as well as the role of courts, and their impact on the use of these tools. It will consider cases in which interim measures can be most effective and market characteristics that may contribute to meet the required legal standard. It will examine key considerations when assessing whether to adopt interim measures and how competition authorities can make the most of this tool by reinforcing the effectiveness of antitrust

enforcement. It will consider the impact of interim measures on both costs and efficiencies for competition authorities, and it will explore the interplay between interim measures, commitments, remedies and ex ante regulation.

A Secretariat background paper, written contributions by jurisdictions, and a panel of experts were part of the roundtable. The confirmed expert panellists for this session were Ian Stewart Forrester, QC (Former Judge, General Court of the European Union), Dr. Juliette Caminade (Vice President, Analysis Group), Lars Kjølbye (Partner, Latham & Watkins) and Marcela Mattiuzzo (Partner, VMCA).

<https://www.oecd.org/daf/competition/interim-measures-in-antitrust-investigations.htm>

Hearing on Thinking out of the Competition Box: Enforcement Co-operation in Other Policy Areas

In December 2021, WP3 agreed to continue work on international co-operation to address the remaining and persistent challenges identified in the draft Report on the Implementation of the Recommendation concerning International Co-operation on Competition Investigations and Proceedings [DAF/COMP/WP3(2021)3]. To do so this session explored how legal instruments and models that are used in other areas of law enforcement allow for international enforcement co-operation, in particular those that address some of the identified competition enforcement co-operation challenges, such as the exchange of confidential information, investigative assistance or enhanced co-operation models.

Presentations by experts familiar with international enforcement co-operation in areas such as taxes, financial markets, criminal enforcement or patent law explained the mechanisms of international enforcement co-operation as they apply to their enforcement areas, and delegates can ask questions and discuss how these experiences could be applied to competition enforcement co-operation.

COMPETITION COMMITTEE

Roundtable on Purchasing Power and Buyers Cartels

Competition law and enforcement often focus on sellers and the conditions upon which they sell their products or services to buyers. However, competition also impacts how buyers interact with markets when purchasing goods and services. These matters can range from co-ordinated conduct by buyers, such as cartels that conspire to lower purchase prices, to unilateral conduct by buyers that hold substantial market power, i.e. monopsony or oligopsony power, rather than the more common assessment of monopoly or oligopoly. Buyer side competition issues were last discussed in detail at the OECD Competition Committee in 2008 in a session on Monopsony and Buyer Power, although many sessions have touched on related issues in the meantime, not least in 2019 with the discussion of Competition Issues in Labour Markets.

This roundtable examined a range of issues relating to purchasing power, splitting the discussion between co-ordinated and unilateral issues. On co-ordinated conduct, the roundtable will have a particular focus on buyer's cartels. As well as touching on recent trends and enforcement strategies, it will discuss the validity of recent suggestions that buyers' cartels have historically been viewed too leniently resulting in too low levels of enforcement. The discussion will also cover buying groups and how authorities can, and indeed when they should, distinguish these from cartels, including different approaches to managing information flow and the ability to organise joint boycotts. Regarding unilateral issues, the roundtable will explore how different jurisdictions approach these issues and the trade-offs between different types of enforcement, most notably around the extent to which authorities must establish the effect of conduct.

A Secretariat background paper, written contributions by jurisdictions, and a panel of experts will back the roundtable. The confirmed expert panellists for this session are Nancy L. Rose (Professor, Massachusetts Institute of Technology), Peter Carstensen (Professor, University of Wisconsin-Madison) and Kazuhiko Fuchikawa (Associate Professor, Osaka Metropolitan University).

<https://www.oecd.org/daf/competition/purchasing-power-and-buyers-cartels.htm>

Roundtable on The Evolving Concept of Market Power in the Digital Economy

The concept of market power is central to competition law and policy. In digital markets, a range of questions have arisen about how this concept is applied and assessed. This roundtable explored these questions, and the new analytical approaches and concepts related to market power that have been applied, or proposed, in response to digitalisation.

First, the discussion explored the factors and evidence that agencies have used to assess market power in digital sector enforcement cases, market studies and policy reports in recent years. The underlying economic concepts, evidence, and analysis applied were also discussed. Proposals to adapt the assessment of market power in digital markets to incorporate concepts such as dynamic competition, multi-homing, non-price competition and conglomerate effects more extensively were also reviewed.

Second, discussion considered more fundamental adaptations to the concept of market power, made in the context of recent regulatory initiatives and competition law reforms. One area of particular focus has been the role of digital platforms as intermediaries, gatekeepers, or unavoidable trading partners, among other terms used. Beyond reviewing these concepts, the session allowed delegates to reflect on the impact that these new regulatory definitions may have on antitrust cases in the future, and the relationship between enforcement and regulatory market power concepts.

A Secretariat background paper, written contributions by jurisdictions, and a panel of experts supported the roundtable. The expert panellists for this session were: Alexandre de Stree, Academic Director, Centre on Regulation in Europe and Professor, University of Namur; Orla Lynskey, Associate Professor, London School of Economics; and Masako Wakui, Professor, Kyoto University.

<https://www.oecd.org/daf/competition/market-power-in-the-digital-economy-and-competition-policy.htm>

Roundtable on Disentangling Consummated Mergers – Experiences and Challenges

Not every merger control regimes around the world allow the competition authority to review and remedy the anticompetitive effects of consummated mergers. In cases where consummated mergers can be reviewed, important questions arise in relation to designing effective remedies for consummated mergers with an anti-competitive effect. The Roundtable focused on the remedial actions available to competition authorities when they have the power to review mergers which they have already reviewed and approved ex ante, but later resulted in anti-competitive effects, and mergers which fell below notification thresholds (i.e. they were not notified) and that also resulted in anti-competitive effects once consummated.

The session focused on the challenges that competition authorities face with the design and the enforcement of appropriate remedies following the review of anti-competitive consummated mergers. The question of the appropriate remedies in the context of consummated mergers raises an interesting parallel with the types of remedies on which competition authorities usually rely for non-consummated mergers. This session will allow to compare the constraints that agencies face when imposing remedies after the completion of the merger as opposed to prior to its closing. Delegates will also discuss the effectiveness and workability of structural remedies in ex post merger reviews of consummated mergers as opposed to conduct/behavioural remedies.

The Roundtable benefited from a Secretariat Background paper and an expert panel. The keynote presentation was by Jonathan Kanter, Assistant Attorney General for Antitrust at the US Department of Justice. The confirmed experts were John Kwoka (Professor of Economics, Northeastern University), Aviv Nevo (Professor, George A. Weiss and Lydia Bravo Weiss, University of Pennsylvania) and Fiona Carlin (Partner, Baker McKenzie).

<https://www.oecd.org/daf/competition/disentangling-consummated-mergers-experiences-and-challenges.htm>

Summary of Workshops 2022

OECD/KPC WORKSHOP ON MARKET STUDIES

The OECD/KPC workshop on Market Studies was held on 8, 10 and 11 March 2022 virtually. The OECD welcomed more than 90 participants with 9 speakers from OECD, Australian Competition and Consumer Commission (“ACCC”), the Competition and Markets Authority (“CMA”, UK), and the Portuguese Competition Authority (“PCA”). Special senior guests were the CEO of MyCC, Mr. Iskandar Ismael, Ms. Payal Malik (Adviser (Economics) & Head Economics Division, Competition Commission of India (“CCI”)), Ms. Ana Sofia Rodrigues Chief (Economist of the PCA).

The objective of the workshop was to have a thorough grasp of why market studies are important as well as to share best practices and offer many examples from different sectors and jurisdictions. The sectoral examples that were covered by the sessions in the workshop were: energy, fintech, electric charging stations for cars, pharma, digital, air transport.

The first day 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 workshop started with a presentation by Ruben Maximiano (OECD) with an overview on Market Studies and how they can be used for advocacy and enforcement. This session looked at how market studies can have many objectives and outcomes, from allowing for a deep legal/economic analysis of competitive dynamics of a market/sector, to understanding the market characteristics as well as the firms’ conduct and consumers’ behaviour. This means that market studies are a versatile instrument that can support advocacy actions and/or improved competition enforcement.

How to conduct market studies from a practical perspective was then discussed by Mr. Tommaso Majer (OECD). Drawing upon the work and experience of the OECD on the topic Mr. Majer provided a systematic approach to developing market studies. This session covered methodologies for information gathering, including background research sources, as well as stakeholder selection and data requests design. Tommaso then discussed the analytical methodologies developed by the OECD for the market structure mapping, including the identification of market failures and barriers to entry. Finally, Mr. Majer delved deeper into the analysis covering how to undertake price analysis, as well as both supply-side and demand-side analysis, and of course the important regulatory assessment.

The first of the sectoral market studies were then analysed, focusing exclusively on the electricity sector and provided by Mr. Karoly Nagy (OECD). Karoly provided an in-depth overview of the very specific characteristics of the sector, including the supply chain and the particularities of the price formation. He then delved into the electricity market inquiry of the European Commission, with the different steps, types of investigation, the cooperation with regulators, and then the follow-up cases that resulted: from capacity hoarding (for gas pipeline) to capacity withholding cases.

The second sectoral study presented was on the Fintech sector, and was provided by Ms. Ana Sofia Rodrigues (PCA). The PCA started by gathering input in 2018 from several financial sector stakeholders and assessing market entry conditions for FinTechs, focusing on retail payment services and crowdfunding. This allowed the PCA to identify risks to competition within the financial sector and put forward recommendations to mitigate barriers to entry and expansion, leading then in 2020 to the launch of a sector inquiry to FinTech operators to collect their views on recent market developments and the persistence of barriers to entry and expansion. This led to a number of recommendations, including the introduction of a Regulatory Sandbox, implementation of secondary regulation accounting for aspects that may favour foreclosure strategies and hamper competition by newcomers and promote technological neutrality in public procurement.

The second day included presentations by Mr. Francesco Naismith and Mr. Michael Eady of the ACCC, as well as from Ms. Emily Chissell from the CMA and Mr. Junheon Lee from the OECD. The day provided a mix of experience sharing on how to undertake market studies to then covering specific examples of market studies. First up, Mr. Naismith built on the session of Mr. Majer to set out in detail how the ACCC undertakes its decision making process about whether, on which sector and how to proceed with a market study. After developing a hypotheses of potential market-wide competition problems by considering whether it is a market-wide or a firm level issue, a determination of the objectives of the market study are made. Whether it relates to advocacy with government for regulatory change or to improve the ACCC's knowledge of a sector that is important for the economy, or for upcoming potential activity, for example. The ACCC then provided two market study examples by Mr. Eady: one in the electricity sector, following a significant increase in price, and for home loans following a Central bank interest rate cuts in 2019 that were not fully passed through to consumers.

Ms Emily Chissell of the CMA then provided an in-depth session on a recent market study undertaken by

the UK on electric vehicle charging, that is very topical given the rising importance of electric vehicles and as countries study different ways and models to deploy electric vehicle charging. Finally, Mr. Lee provided the experience of market studies in the air transport industry in Korea, which lead to both advocacy in the context of deregulation and to enforcement actions.

The third day followed with presentations from the region, from the CCCS of Singapore, CCI of India and MyCC of Malaysia. The first session was delivered by Ms. Leow Rui Ping. In this session, the CCCS explained the recent e-commerce Platform Study, which is a part of CCCS's on going effort to monitor and understand key developments in the digital economy. In particular given the growing trend of e-commerce platforms that compete in multiple market segments offering distinct products and/or services, as well as the emergence of "super apps" in Southeast Asia, including Singapore. Based on the information gathered from industry stakeholders, no significant competition concerns involving e-commerce platforms in Singapore were identified and that the CCCS's existing competition framework is sufficiently robust to address the competition issues. Nonetheless it considered that further clarity and guidance by CCCS could be beneficial to assist businesses in the application of the Competition Act 2004 in the digital space on topics like market definition, assessment of market power and mergers and acquisitions involving digital platforms. The CCCS then conducted a public consultation in late 2020 on the proposed amendments to its guidelines, and issued revised guidelines on 31 December 2021. Next up was Ms. Payal Malik, that explained the work of the CCI in the context of its recent Pharma Market study, where it studied generic competition, and the extent of brand proliferation (nearly 50 thousand generics in India, 17 on average per formulation) and its effect on pricing and competition, with a focus on six therapeutic segments.

Finally, the last presentation was delivered by the CEO of MyCC, Mr. Iskandar Ismael, who explained in detail the market studies in the food sector (including beef, mackerel and the wholesale sector), as well as for the service sector, and then the transport sector, with main findings and recommendations.

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

OECD/KPC WORKSHOP ON DIGITAL PLATFORMS

The OECD/KPC workshop on Competition rule for Digital Platforms took place virtually between 19-21 April 2022. The OECD welcomed more than 80 participants and 5 speakers from OECD, the Competition and Markets Authority (“CMA”, UK) and European Commission. Special guest speaker was Prof. Dr. Martin Peitz from Mannheim University.

The workshop had two main objectives: one, was to have a good understanding of the economics of digital platforms, their characteristics and how this affects competitive dynamics that competition authorities need to be aware of when deciding whether to intervene or not; the second objective was to share experiences of agencies that have already had cases in digital markets and what they have learnt.

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

The substantive part of the workshop started with a presentation by Ruben Maximiano (OECD) with an overview on the main competition issues that have already been identified in digital markets across the world, as well as an explanation of the main characteristics of digital platforms – from network effects to data.

The rest of the first day was fully devoted to a 3h mini-course on the economics of Digital Platforms by a well-known academic that has written and taught extensively about the topic: Dr. Martin Peitz. The mini-course covered 1. Within-group and cross-group network effects, 2. Platform definition and typology, 3. Pricing and Governance, 4 Market definition and market power.

The focus on Day 2 was mainly on abuse of dominance cases. The first session was led by Mr. Ruben Maximiano who discussed his presentation on e-commerce cases, and in particular on a number of potential abuses such as tying and bundling, predatory pricing, forced free-riding and discriminatory leveraging. A case study of the EU’s Google Shopping case was then discussed. Mr. Junheon Lee (OECD) then provided a session on Abuse of Dominance in Digital Markets in Korea, with an in-depth analysis and discussion of the recent 2021 decision by the KFTC to sanction Google for having prevented competitors from entering the market and hindering innovation by preventing device manufacturers from producing Android-based OS. The last two presentations were case studies from the region: one session led by Mr. Sachin Goyal, Joint Director (Competition Commission of India) and the other by Ms. Krystal T. Uy, Director for Mergers and Acquisitions of the Philippines Competition Commission. Mr. Goyal’s presentation on the CCI’s practice focused on abuse of dominance cases, offering a comprehensive snapshot of several recent cases brought in the digital domain: cases such as the Google Smart Device OS case, app stores cases, as well as e-commerce cases on price parity clauses and other vertical restraints. The day finalised with Ms. Uy’s presentation and session on merger cases in the Philippines. In particular Ms. Uy focused on two recent fintech and e-payment cases and then on the Grab/Uber case.

The final day of the workshop featured a presentation from Mr. Wouter Meester of the OECD on killer acquisitions, sharing the work recently undertaken by the OECD on the topic. Mr. Meester focused on the theory of harm whereby an incumbent “kills” a product that poses a potential competitive threat, or “kills its own internal efforts to develop a competing product for the newly acquired product”. Mr. Meester also discussed the several policy options on the table across the world, from changes to thresholds, safe harbours and presumptions, to regulation. The discussion on merger cases in digital platforms continued with a session offered by Ms. Imogen Ditchfield (Assistant Director Mergers, CMA). Ms. Imogen provided detailed analysis of the revised Merger Guidelines of the CMA, with the reasons and background for the changes (focusing on the digital aspects) and then a case study of the Facebook acquisition of Kustomer, a customer relationship management software and the several potential theories of harm explored by the CMA. In the same direction, the CCCS’ Ms. Leow Rui Ping, offered a session on the key amendments to the CCCS Guidelines, following the CCCS e-commerce platforms market study (finalised on September 2020). This led to changes to CCCS Guidelines on Market Definition, CCCS Guidelines on the Section 47 Prohibition (i.e. Abuse of a dominant position), and CCCS Guidelines on the Substantive Assessment of Mergers. On the Market Definition Guidelines, the update provides clarity on how market definition exercise may be adapted to consider specific features of multi-sided platforms. On the Abuse of Dominance guidelines, the update provides guidance on how CCCS may assess market power and clarifies conduct that may amount to an abuse of a dominant position, in cases involving digital platforms. Finally, on the Guidelines on the Substantive Assessment of Merger the update clarifies how CCCS may apply the existing merger assessment framework to mergers involving digital platforms.

The last presentation of the day was offered by Mr. Antoine Babinet of the European Commission, focusing on the Digital Markets Act (DMA) which had just reached Political agreement on 24 March 2022 and was expected to go into force still within 2022. Mr. Babinet set out and explained the objectives of the DMA, which are to Address market failures to ensure contestable and competitive digital markets for increased innovation and consumer choice, address gatekeepers’ unfair conduct and enhance coherence and legal certainty to preserve the internal market. Mr. Babinet then described in detail the architecture of the DMA, with the criteria of application, the gatekeeper designation process, the obligations of gatekeepers, as well as how enforcement is expected to take place.

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

ASIA-PACIFIC COMPETITION UPDATE

CONTACT INFORMATION

SEND US YOUR NEWS

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

Competition Programme

OECD/Korea Policy Centre

9F Anguk Bldg, 33 Yulgongno, Jongno-gu, Seoul 03061, Korea

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

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

Yongrae Ryu, Director
paxyru@oecd-korea.org

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

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

Soo-Kyung Robin Yang, Program Coordinator
skyang@oecd-korea.org

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

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

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

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

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

Paloma Bellaiche, Assistant
paloma.bellaiche@oecd.org

ASIA-PACIFIC
COMPETITION
UPDATE