

COMPETITION POLICY IN ASIA

News from the OECD-Korea Policy Centre Competition Programme

November 2011, Issue 5

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The Competition Programme of the OECD-Korea Policy Centre provides education and training to officials and experts of Asia-Pacific competition authorities in the field of competition law and policy. This newsletter includes information about our work and the work of the OECD, as well as news, case studies and reports from competition authorities in the Asia-Pacific region.



COMPETITION ASSESSMENT AND COMPETITION ADVOCACY

OECD-Korea Policy Centre Workshop, 18-20 July 2011

“...some of the most harmful effects to the economy do not stem from anticompetitive conduct by commercial actors but from unintended consequences of government policies.”

Frank Maier-Rigaud (OECD)

Competition assessment of policies, rules, laws, standards and regulations and advocacy to promote pro-competitive initiatives are of increasing importance. While the traditional domain of competition authorities is the enforcement of competition law such as imposing fines on those participants in cartels, the assessment of government policies and regulations from a competition point of view has increased in importance. In 2009, for example, the OECD Council representing more than 30 governments adopted a Recommendation on Competition Assessment.

The primary reason for this development is that some of the most harmful effects to the economy do not stem from anticompetitive market conduct by commercial actors but from often unintended negative consequences of rules, regulations and other government policies. This has triggered a range of countries adopting formal competition assessment frameworks and engaging in regulatory advocacy.



Participants at the July 2011 Workshop

In light of these encouraging developments, the OECD sent its competition assessment expert, Frank Maier-Rigaud to the centre to host a workshop focused on

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a thorough discussion of the OECD Competition Assessment Toolkit (CAT) and on competition advocacy. Competition assessment concerns both, the assessment of existing and proposed laws and regulations with the aim of removing unnecessary impediments to competition. Competition advocacy, in the narrow sense of the workshop, concerns the advocacy efforts and strategies used by competition authorities to advocate competition within government, government agencies, regulators and ministries, i.e. regulatory advocacy.⁴ This is different from (traditional) advocacy efforts aimed at raising awareness of competition law in the business and community through publicising competition law enforcement outcomes.

As competition authorities or any other body responsible for competition assessment often do not (yet) have formal powers, the competition assessment of existing and proposed rules and regulations is typically coupled with regulatory advocacy, i.e. the effort of the authority to influence the design of future laws and regulations during the legislative process and its efforts to modify harmful existing laws and regulations.

As the regulatory advocacy efforts based on a competition assessment are directed towards other government bodies, agencies, there is a risk that competition authorities may receive hostile reactions from the bodies that originally proposed the measure or instrument. In order to avoid friction from the start, it is important to clarify that competition assessment does not question the underlying regulatory goal and therefore does not contest the competency of the originating authority. Rather the task is to help identify the best instrument or measure to achieve the goal without unduly hindering competition. Competition assessment or regulatory advocacy is at its best when it allows the original regulatory goal to be achieved in a more efficient way. Competition assessment therefore not only implies a thorough assessment of the repercussions and unintended consequences of rules and regulations but also a productive proposal for alternative instruments and measures capable of achieving the regulatory goal but with a reduced anticompetitive impact or, ideally, by finding an approach that both achieves the regulatory goal and enhances competition.

“The body conducting the competition assessment should therefore be seen as an ally of the regulator...”

The body conducting the competition assessment should therefore be seen as an ally of the regulator as its efforts are directed at streamlining the proposed laws and regulations by reducing its anticompetitive impact and often rendering it more effective.

The workshop was structured into essentially four parts. The first part was characterized by a general introduction of

competition assessment and the specific type of advocacy resulting from competition assessment. The second part focused on the OECD Competition Assessment Toolkit and other methodologies that could be used to perform a competition assessment. The third part then focused on the types of regulatory advocacy measures that could be used to influence the decision making process and modify those regulations that were considered problematic. The fourth and final part provided diverse case studies exemplifying the various successes and difficulties of the various competition authorities present. In addition, the workshop hosted a presentation on competitive neutrality, a topic intricately related to competition assessment and a presentation on institutional design. The latter is aimed at bringing the individual case experiences together and providing guidance on possibilities for the institutional implementation of competition assessment and regulatory advocacy.

The two volumes of the OECD Competition Assessment Toolkit can be found online at <http://www.oecd.org/competition/toolkit>. The CAT is available in 12 languages. ■

► UK

Cutting your coat to fit your cloth

The phrase Competition Advocacy can be used to describe a broad range of activities carried out by competition authorities. It can describe advocating the concept and benefits of competition in general; advocating strengthening, enforcing, or compliance of the competition law; or it can describe advocating pro-competitive change in particular sectors or markets. The advocating can be directed at consumers, at firms, or at government.

Outlines the objectives of the nine types of advocacy described above.

	Type of advocacy		
	Benefits of competition	Competition law compliance and improvement	Market / Sector / Issue
To consumers	General support for the system of competition enforcement, and also potential macroeconomic benefits of increased competition.	Improving awareness/complaints	Improved consumer empowerment
To businesses		Improving compliance/complaints	Improved business responsibility
To government		Improving legislation and framework	Improved regulation and oversight



The presentation by the United Kingdom Office of Fair Trading (OFT) at the workshop focussed on the role of competition authorities in advocating to government for changes in how particular markets, sectors, or issues are dealt with. This area can be sensitive for competition authorities because it can involve disagreement between the competition authority and other sections of government.

The OFT is a large agency that is independent from government and has a clear legislative mandate to advocate for pro-competitive government policies. The mission of the OFT is to “make markets work for consumers”, and this is applied to all markets, including those where the UK government, or agencies of the UK government, are the primary purchaser, producer, or regulator.

While the OFT has a clear legislative mandate to advocate change in government policy, as an independent agency the OFT does not have the same level of democratic mandate as elected ministers. For this reason the OFT limits its involvement in political issues, such as the benefits of opening up state monopolies to private competition. As a recent White Paper said, “Whether services are open to [private sector] provision remains a decision for democratically accountable politicians”, however, where it has been decided to open up services to competing providers the OFT may use its mandate for competition advocacy to ensure that a full range of organisations are able to participate, and that no firms are not unfairly precluded from commissioning processes.

Where the OFT does undertake competition advocacy towards government, it tries to engage both early on during high-level policy formulation, and also later in the process during detailed implementation. The OFT provides general advice covering areas such as procurement and consumer choice, detailed issue-specific analysis in areas such as legal and professional services.

To ensure that advocacy work is integrated with the wider market monitoring and investigation work of the office, the OFT moved the advocacy function from a small dedicated team within the Office of the Chief Economist to a larger team integrated within an investigatory department.

Useful OFT resources in this area can be found at www.offt.gov.uk/OFTwork/financial-and-professional/professional-services/. See OFT 1314, OFT 1321 and OFT 1214. An evaluation of the OFT's advocacy work is also available (OFT 866) ■

► JAPAN

Introduction of competition assessment

One of the earliest measures to prevent anticompetitive regulations is ex-ante competition assessment.

With the development of the OECD's "Competition Assessment Toolkit", the Japanese government started introducing competition assessment in April 2010 as a part of its ex-ante evaluation of regulations. Although introduction is still at a trial stage, most of newly-established or amended regulations have already been subjected to competition assessment.



Ex-ante Evaluation of Regulations

In Japan, the ex-ante evaluation of regulations became obligatory in 2007 under the Government Policy Evaluation Act. The number of cases subject to evaluation reached 157 in 2008 and 107 in the 2009 fiscal year.

Under the ex-ante evaluation system, regulators complete reports that include analysis of cost-benefit relationships

as well as comparisons with alternatives.

The ex-ante evaluation reports should be publicized within a designated period.

Competition Assessment (Currently in Trial Phase)

The current competition assessment uses checklists to determine whether an analysis of impacts on competition is likely to be required or not. Sectorial regulators should submit responses to checklists along with the evaluation reports to the Ministry of Internal Affairs. The Ministry then passes the responses to checklists to the JFTC. The checklist, however, are not publicized, unlike evaluation reports, because the competition assessment is only at a trial stage.

The purpose of the competition assessment is to identify important negative impacts on competition. As the OECD's Toolkit suggests, the methodology in Japan focuses on identifying various negative effects, such as impacts on number or range of suppliers, impacts on ability of suppliers to compete, and impacts on incentives of suppliers to compete. ■

► INDONESIA

Competition Assessment in Analyzing Government Regulation in Indonesia



The Commission for the Supervision of Business Competition (KPPU) was established in 2000 with the authority mandated by the Act No. 5/1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

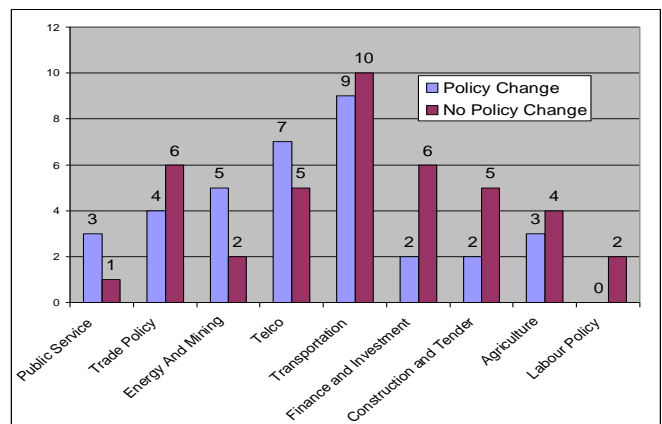
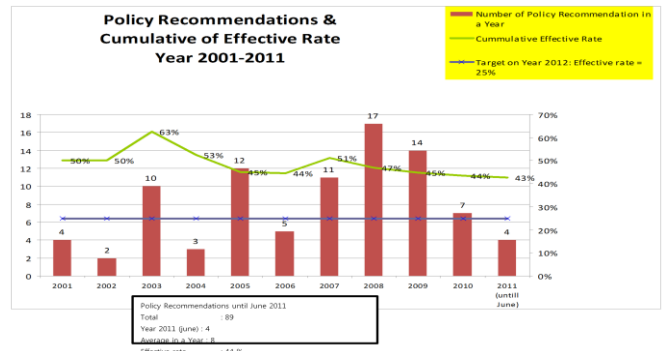
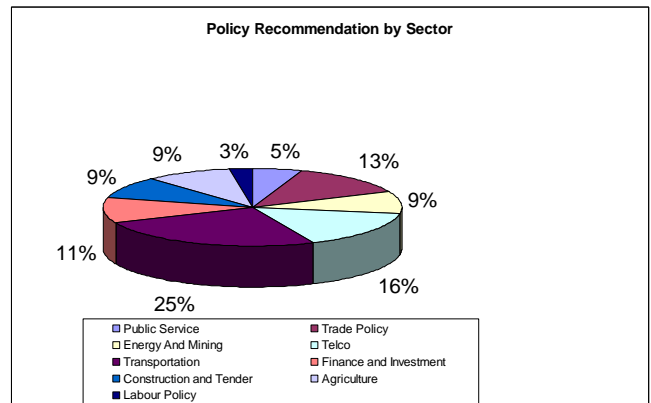
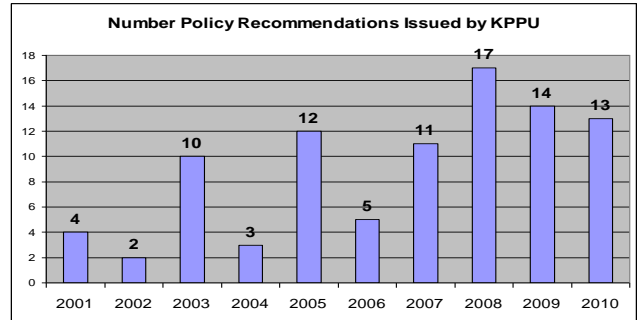
Eleven Commissioners work in collegial manner that is assisted by a Secretariat. A chairperson is elected annually amongst Commissioners.

The commission has two major tasks: to supervise and enforce the competition law, and to create sound competition policy through policy recommendations in order to guide public interest and further prosperity.

While the enforcement of competition law is binding, policy recommendations on the basis of a competition assessment are advocacy efforts and as such depend on the government's compliance. By May 2011, the commission submitted 89 policy recommendations. One of the duties of the KPPU is to provide advice and formulate an opinion concerning government policies related to monopolistic practices and/or unfair business competition. The advice is given in the form of a policy recommendation. It is one of the advocacy tools aimed at harmonizing government regulation with fair competition principles. There are three different objects of assessment that can lead to a public report: any regulation issued by any government institution, (draft) laws to be considered by Parliament and any type of regulation issued by ministerial and local administration.

In assessing the competition impact of any policy, the KPPU will look at government policies that (1) give more privileges to dominant business players by creating an entry barrier for the new entrants where the dominant players can more easily abuse the market, (2) facilitate anticompetitive behaviour by market actors, and (3) allow the government to replace the market mechanism by replacing it with a single entity.

The KPPU hands in its advice coupled with a *Position Paper* containing quantitative and qualitative analysis on the issue. On this basis, three different approaches are possible: a focus group discussion, a (non-public) bilateral meeting and a press conference.



Competition assessment is a process to evaluate government regulations, rules and/or laws to identify those that may unnecessarily impede competition and to assist in their redesign so that competition is not unduly inhibited. There are several examples of cases that had a significant impact on government policies. The first one is the airline industry case. Before 2001, INACA, an association of airlines facilitated price fixing conduct. The conduct was backed up by Ministerial Decree, giving the Association the authority to determine prices. In July 2001, the KPPU issued a policy recommendation to the Ministry of Communication and Transportation. The Policy Recommendation advised Government to abolish the authority of association in setting up the (floor) tariff as stated in Ministerial Decree No. 25 Year 1997. In response to the policy recommendation, the government revised the regulation and deregulated the sector enhancing competition in the airline industry. This policy change had a substantial impact in increasing the number of players in the market. It also led to a higher variety of services offered to passengers, a growing overall number of passengers enjoying air transport services, an increased average load factor, a sign of increased capacity utilization, and a substantial reduction in tariffs of up to 50%.

Threshold questions (a “Competition Checklist”) showing when proposed regulations may have a significant potential to harm competition are a practical method for regulators to identify important competitive restrictions that. A competition assessment should be conducted if the proposal has any of the following 3 effects: to limit the number or range of suppliers, to limit the ability of suppliers to compete, and to reduce the incentives of suppliers to compete vigorously.

The second case is the poultry house policy. The Jakarta local government issued a Province Regulation (No.4/2007) that determining a poultry house where poultry traders from outside of Jakarta should place their product to be examined prior to distribution in the Jakarta area. This limited the number or range of suppliers and the ability of suppliers to compete. It led to higher transportation cost and reduced the competitiveness of many traders coming from many areas outside Jakarta that used to place their product in the nearest poultry house in Jakarta. In March 2010, the KPPU submitted a policy recommendation to restore the previous approach. In its response, in December 2010, the government formally accepted the recommendation and reintroduced the old system as long as it fulfilled the technical and sanitary standard. Nowadays, the poultry traders may place and examine their product in several poultry houses under Jakarta Government supervision.

The third case is the regulation of East Java Livestock Services, more specifically the standardization of duck feather trading in East Java. This regulation required importers of duck feathers as input to the shuttlecock industry to: (1) have a shuttlecock factory thereby limiting the number or range of suppliers; (2) obtain a recommendation letter from the Head of the East Java Livestock Services, limiting the number or range of suppliers by creating a geographical barrier to the ability of companies to supply goods or services, invest capital or supply labour; and (3)

fund travel expenses of The East Java Livestock Services staff to control, inspect and approve production in the origin country thereby limiting the ability of suppliers to compete by significantly increasing the cost for some suppliers relative to others. Based on its statute, the KPPU submitted a recommendation to the Provincial Government suggesting to revoke the regulation of standardization of duck feather trading in East Java. The KPPU co-ordinated with sector regulators engaging in intensive discussions to achieve a common understanding of each regulator's responsibilities in this case. In response, the East Java Livestock Service changed point 1 of its regulation “Importer must have a shuttlecock factory” becoming “Each person or company or industry or factory could import duck feather as input in the shuttlecock industry.” Point 2 and point 3 of the regulation was, however, not modified.

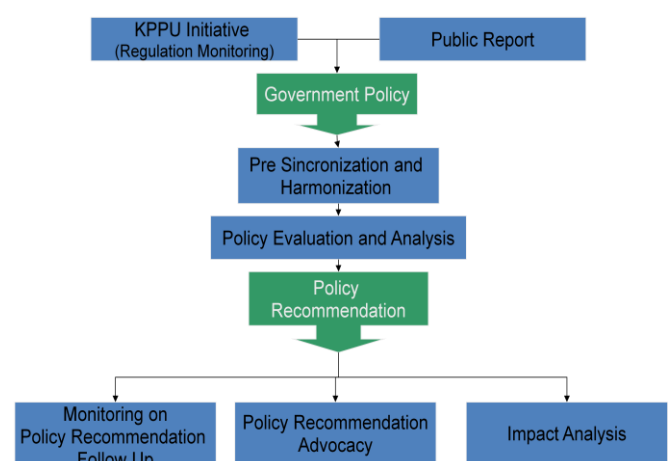
Advice on draft laws

KPPU recommended a tender method on the draft State procurement law and several draft local regulations concerning telecommunication tower establishment. Furthermore, the Commission has been involved with the formulation of several draft laws including minerals and coal and free trade zone.

The New Mandate

A latest development is as part of policy maker's acceptance to competition policy, law and institution the Commission has now even been mandated with new authority under Law No. 20/2008 concerning Partnership to supervise partnership agreements between micro, small and medium enterprises (MSME) and large enterprises. This indeed will take several adjustments within the Commission to fully optimize this obligation.

Working Flow in Fair Competition Advocacy Toward Government Policy and Regulation



► SINGAPORE

A Case Study Involving an Application to the Ministry for Public Policy Exemption

This case study involves a price recommendation by an association in the medical services sector. The Singapore Medical Association (“SMA”) submitted a request to the Trade & Industry Minister for their Guidelines on Fees (“GOF”)² to be excluded from the Competition Act on grounds of “exceptional and compelling reasons of public policy”. Concurrently, SMA applied to the Competition Commission for decision on whether, if reinstated,

the GOF would infringe the prohibition against decisions by associations with the object or effect of preventing, restricting or distorting competition.

The prohibition does not apply to agreements that are necessary for exceptional and compelling reasons of public policy and that are the subject of an order by the Minister. One of the functions and duties of the Competition Commission includes advising the Government on national needs and policies in respect of competition matters generally.

There is also an exception for otherwise illegal anticompetitive agreements if they provide net economic benefits.

SMA’s submission

SMA submitted that the purpose of the GOF is motivated by public policy considerations to protect the interests of the patients. It is neither intended as an instrument to protect medical practitioners’ incomes nor an effort by SMA to facilitate medical practitioners engaging in any form of price fixing to restrict competition. According to SMA, the GOF provides greater transparency to patients and diminishes information asymmetry between patients and medical practitioners. As a result, it helps prevent overcharging by medical practitioners.

Healthcare sector in Singapore

Primary care is the provision of primary medical treatment, preventive healthcare and health education. Primary care is provided through an island-wide network of outpatient polyclinics and private medical practitioners’ clinics. Today, the private sector accounts for 80% of primary care and the remaining 20% is provided by polyclinics.

Hospital care in Singapore is classified as including multi-disciplinary acute inpatient and specialist outpatient services and 24-hour emergency services provided by the general hospitals and includes the six national specialty centres. The

public sector provides 80% of hospital care services through restructured hospitals and specialty centres. The 16 private sector hospitals provide the remaining 20%.

Competition assessment**1. The GOF, like most price recommendations, is anti-competitive**

The GOF discourages price competition by providing doctors with a recommended range of fees to charge. This results in less incentive for doctors to be more cost effective and charge below the suggested range of fees. In addition, the GOF is made up of highly technical terminologies, which patients may find difficult to understand. Some doctors may also use the GOF to justify their prices when questioned by patients.

2. GOF does not serve any purpose for primary care medical services in Singapore

Primary care services are generally homogeneous, recurrent and less complex in nature. There exists easily accessible price information which enables patients to compare prices and exercise choices. Patients are able to make decisions and problems such as overcharging are therefore not significant.

3. No need for GOF in the provision of hospital care medical services in Singapore

Recall that the government provides 80% of hospital care in Singapore. Therefore, patients who are concerned with pricing can seek treatment in these restructured hospitals. Charges in the restructured hospitals can also serve as a benchmark for patients who need to compare prices in the private sector.

4. Government measures to improve price transparency

Even without the GOF, the government has also put in place a number of measures to improve price transparency and prevent overcharging in the healthcare sector including:

- Requiring medical clinics to display their charges
- Requiring hospitals/ doctors to provide financial counselling
- Requiring medical bills to be itemised
- Providing details on the size of hospital bills according to conditions / procedures and ward class on MOH’s website
- Gross overcharging cases are currently looked into by the Singapore Medical Council, a government body.

Conclusion

It is the Commission’s view that the GOF is not of net public benefit and, consistent with advice from the Commission, the Minister is also of the view that there are no “exceptional and compelling reasons of public policy” to exclude the GOF from the application of the Competition Act. ■

► INDIA

Commission's Competition Advocacy



The Competition Act lays responsibility on the Competition Commission to take appropriate measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues. In pursuance of these objectives the Commission organizes interactive meetings, workshops and seminars with different regulatory

bodies, policy makers, trade organizations, consumer associations and the public at large. The Commission also develops research capability in the area of competition economics, law and policy among the various stake holders, ministries/departments, the research community, regulators, and lawyers.

In pursuance of the objectives of competition advocacy the Commission has held a series of lectures, seminars and conferences with numerous stakeholders dedicated to the various issues. A brief overview of the advocacy events conducted during last three years is given in the following table:

Year	Consumers	Industries	Students	Legal Practitioners	TOTAL
2008-09	4	4	3		11
2009-10		1	1	8	10
2010-11	1	13	3	9	26
TOTAL	5	18	7	17	47

In addition to the above mentioned advocacy programmes the Commission has published advocacy literature on:

- (i) An Overview of the Competition Act
- (ii) Cartels
- (iii) Bid Rigging
- (iv) Abuse of Dominance
- (v) Mergers
- (vi) Competition Compliance
- (vii) How to File Information
- (viii) Leniency Provisions

Additionally, the Commission has conducted a number of market studies and provided training to students in the context of internship programmes:

Year	Market Studies	Interns Trained
2008-09	6	9
2009-10	9	20
2010-11	9	25
TOTAL	24	54

With an objective to create awareness among the students, the Commission conducted a National Level Essay Competition on competition issues during March 2011. An overwhelming response was received from the student community in which 400 entries were received from students with diverse backgrounds such as law, economics, commerce, engineering and management, representing various universities and Institutes. Participation spanned the whole country.

An action plan has been prepared to implement the short term advocacy plan during the current year. It has been decided to focus its advocacy efforts on Students, Consumers and Industry. In this regard the Commission proposes to conduct approximately 29 Conferences/ Seminars and workshops in the year 2011-12. Some of the events are proposed for spreading awareness among Central Public Sector Enterprises (CPEs).

As a long term future plan the Commission intends to undertake governmental advocacy wherein all concerned departments of Central as well as State Governments will be educated about the benefits of competition and how governmental activities can unnecessarily restrain competition if no specific regard to the potential competition impact of laws and regulations is given. ■

► THAILAND

Competition Advocacy



The Office of Thai Trade Competition Commission (OTCC) has realized the importance of competition advocacy and kept working continuously on it for the purpose of raising awareness of competition law as well as improving the effectiveness of the law.

Currently the advocacy work of the OTCC has concentrated on 5 areas: 1) Nationwide seminars, aimed at publicizing the benefits of competition laws for business operators, and aimed at creating a competition network among academic institutes and universities. 2) The organization of focus groups, a kind of in-house training for companies where the OTCC disseminates knowledge on competition law to managers and staff. This improves the understanding of competition and reminds them not to

infringe the competition laws. 3) Extensive use of mass medias & publications where the OTCC promotes the Trade Competition Act for example via brochures, booklets, books, newsletters and live radio programs 4) Opening of a Competition Knowledge Service Centre that provides national and international information on competition law & policy based on documents, books, presentation materials and electronic files. The centre is open to the public and free of charge. 5) Usage of MOUs on “Competition Networking” to build ties between the OTCC and universities.

A particular focus is placed on the MOU’s as close ties with universities allows the OTCC to spread the knowledge and the understanding of competition law & policy throughout all stakeholders. The MOU’s objectives are public awareness, exchange of competition policy and legal knowledge, and to build up a new generation of students trained in competition law and economics. There are 4 areas of co-operation specified in the MOU’s: 1) Training of students in the OTCC 2) Shared lectures between OTCC and academic staff 3) provision of relevant competition law and policy material in a dedicated Competition Knowledge Corner in university libraries 4) Co-hosted academic/applied seminars. Since 2010, the OTCC signed MOUs with 5 universities, and plans to extend this number to 20 nationwide within 5 years. ■

► CHINESE TAIPEI

Competition Advocacy in the Regulation of Professional Services

Since the Chinese Taipei Fair Trade Act (CTFTA) was enforced in 1992, the Chinese Taipei Fair Trade Commission has implemented a number of competition advocacy projects for deregulation. The common purpose of these projects, in which the OECD’s competition assessment toolkit has been applied, is to review all regulations inconsistent with the CTFTA, to remove unnecessary or undue regulatory restrictions and finally to raise awareness and build a competition culture. One of these projects concerns the laws regulating professional services stipulating detailed fee structures for practicing as identified in the charters of the relevant trade associations. Since these laws regulating the trade associations make it clear that a professional cannot practice without membership in the relevant trade association, the fee standards stipulated in the trade association’ charters in fact heavily decrease or even eliminate the possibility of price competition in these markets. The professions mentioned above include lawyers, accountants, architects and engineers, and are all subject to a high level of regulation, in the form of either government regulation or self-regulation by professional bodies (trade association).

In 1999, the Commission consulted with the Ministry of the Interior, the Public Construction Commission, the Ministry of Finance and the Ministry of Justice to discuss whether the pricing behaviour stipulated in the trade association charters for architects, technicians accountants, and lawyers violated the Commission. The Commission finally reached the conclusion

that such trade associations had clearly engaged in cartel. Considering that these charters were authorized by relevant laws and had existed for quite a long time, the Commission forwarded its formal opinion to relevant government agencies and trade associations to signal its position in applying the Commission. In this formal opinion, the Commission advised the relevant government agencies to amend the laws and required the trade associations to delete the provisions for setting fee standards within a year.

In 2001, the Commission found that none of the responsible government agencies had proposed a draft to revise relevant laws. Upon the expiration of the one-year deadline, also the associations had failed to correct their practices. In 2003, the Commission found that the associations had violated the parts of the CTFTA prohibiting cartels and were ordered



to cancel or revoke the resolutions in question. The Appeal Commission of Executive Yuan, however, rescinded the Commission order because the architect associations set the disputed fee standard in accordance with other applicable law.

As a result and on the grounds of administrative unity and mutual respect among government agencies, the Commission waited for an amendment of the regulation of professional services to properly elaborate the Commission’s standpoints, suggesting a revision of the related regulation to ultimately solve the conflicts with competition policy.

The Result of Consistent Advocacy

Profession	Trade association with the fee standards	Competent authorities’ perspective
Architects	Service Fee Standard	Ministry of the Interior: <i>Having drafted a bill to repeal the relevant provision</i>
Engineers	Minimum Prices Maximum Prices	Public Construction Commission: <i>Having drafted a bill to repeal the relevant provision</i>
Accountancy	Service Fee Standard	Financial Supervisory Commission (Ministry of Finance before) : <i>Certified Public Accountant Law has been revised to repeal the relevant provision</i>
Lawyers	Service Fee Standard	Ministry of Justice: <i>Promised to draft a bill to repeal the relevant provision</i>

In order to render the competition advocacy public and to keep a pro-competitive environment, Commission has been continuously using not only formal ways of inter-agency advocacy, but also many informal ways, including lectures and seminars series. Based on the Commission's experiences in the administration and reform of professional services regulation, it is clear that in order to attain the policy goal of promoting market competition, competition advocacy and close collaboration with the respective government authority is the key to success. ■

► VIETNAM

Experience In Competition Advocacy

Vietnam Competition Authority (VCA) is one of the youngest competition authorities in the region with its mission of enforcing the Vietnam Competition Law since 1st July 2005. After 5 years of implementation, VCA has put the utmost importance on raising the awareness of competition throughout the country.

VCA has conducted numerous advocacy activities of various types, e.g. seminars/conferences; fora, publications, press releases. The VCA also maintains a website. We concluded that the most effective way to introduce the competition law in Vietnam is organizing seminars and forums for targeted groups. VCA officials have travelled to more than 35 big cities and provinces (out of 64 provinces and cities in Vietnam) to educate and inform about the Law. The companies operating in Vietnam and subject to the law have actively participated in these advocacy seminars. In addition, VCA holds forums on regular basis inviting representatives from relevant parts of government and sector regulators in order to share views and discuss specific topics of relevance to competition law.

Thanks to these efforts, the number of complaints received and hits registered at the VCA website has increased significantly since 2005. The table below indicates the positive outcomes of an official survey conducted in 2009 by the VCA, which can be seen as the success in the start-up phase of implementing Law of VCA.

Survey completed in 2009

Criteria	Rate
Know about competition law	69.8%
Understand competition law	56.1%
Know about the roles of competition law enforcing bureaus	38.5%
Understand rights and responsibilities of enterprises in a competition case	82.2%
Have the ability to apply competition law as a tool to protect rights and legitimate benefits in competition environment	74.5%
Be knowledgeable about orders and procedures to solve a competition case in line with regulations of the Vietnam law on competition	52.1%

Moreover, VCA has signed MOUs with several sector regulators, such as the Inspectorate of the Ministry of Science and Technology on implementing competition law, consumer protection and intellectual property; the Inspectorate of the Ministry of Health on implementing competition law in the health sector etc.

While there is much left to do for the VCA to further enhance the effective enforcement of the law, these effectively and play a vital role in amending and completing the competition law in Vietnam in coordination with other relevant agencies. In order to fulfil this goal, VCA must not stop improving the quality and effectiveness of current activities, at the same time learning from other developed counterpart agencies by making better use of international cooperation.

► CHINA

Practice and Experience with Competition Advocacy

Historic Background for China's Anti-Monopoly Law.

China's Anti-Monopoly Law was enacted on in 2007 and came into effect in mid-2008. It took 13 years for this law to be approved by National People's Congress, China's national legislature. An attempt was made for the first time, as early as in 1994, to promulgate a comprehensive fair trade law including an anti-monopoly element, but failed due to strong resistance from businesses and the perception that China's then economic conditions were not ripe for such legislation. One of the most powerful arguments is that China's transition from previous central planning to a market based economy had not been completed and in addition, that Chinese businesses were not economically strong enough to survive fierce competition from multinational companies.

The fact that the law has been adopted reflects Chinese leaders' recognition of the significant role of the anti-monopoly law in the national economic development of the country now following a market based strategy as a basic rule. Nevertheless, the awareness of competition from the perspective of government officials at the practical level is still subject to further improvement. This is not an issue that could be resolved overnight. It should and must be a long-term mission for China's Anti-Monopoly enforcement agencies.



MOFCOM's Practices and Experiences.

(1) Active enforcement of the merger control law.

There are 3 Chinese Anti-Monopoly Enforcement Agencies (AMEA) jointly responsible for implementing the Anti-Monopoly Law. The Ministry of Commerce (MOFCOM)'s function is anti-monopoly review on mergers and acquisitions. The National Development and Reform Commission (NDRC) and the State Administration of Industry and Commerce (SAIC), as the other 2 AMEAs, are responsible for implementing the other parts of the Anti-Monopoly Law, such as cartel, abuse of dominance and abuse of administrative powers by government agencies.

In the last 3 years, MOFCOM has been actively enforcing the merger control law by reviewing the transactions as notified by the relevant companies and took actions to intervene when necessary. Until now MOFCOM intervened to block or impose conditions in 8 leading cases. The most famous was Coca-Cola's proposed acquisition of Chinese fruit juice producer Huiyuan which is the only proposed merger that has been blocked so far. The remaining 7 cases which included many famous brand names were cleared with remedies. For all of these big cases, MOFCOM published its decision and disclosed information relating to the review process, definition of relevant market, competitive concerns and remedies. This turns out to be the best and most effective way to help the public understand what the Anti-Monopoly really means and educate businesses to voluntarily make efforts to fulfil their obligations.

(2) Continuing Efforts to Educate Government Officials at different levels.

The decision to promulgate an anti-monopoly law was made by China's leadership at the high level, but the decision to apply the law in practice is made by government officials in multiple sector regulatory and local government bodies. To educate government officials therefore became the top priority for the training mission of the AEMES right from the start. In the first year when the law came into effect, MOFCOM participated in a training program organized by the State Council (the Central Government) for Ministerial-level officials and Director-General officials from the relevant stakeholder agencies. To help the management of Large State-Owned Enterprises to better understand the Anti-Monopoly Law, MOFCOM explained the functions of the merger review so as to clarify the misunderstandings on their mind. For the officials from the counterpart agencies in provincial governments, MOFCOM organized training workshops on regular, 4 times a year basis. Until now, more than 500 local officials have been trained. This is quite important to improve their capacity to support MOFCOM in implementing the anti-monopoly law more effectively, given the large scale of China's geography and population.

International Cooperation has special merits in advocacy.

From perspective of both legislation and enforcement, competition law is not a new topic in foreign jurisdictions. The US, EU and many other OECD members have accumulated a

lot of experiences in improving the competition awareness and developed effective techniques to put the law into practice. MOFCOM is keen on establishing cooperative mechanisms with foreign enforcement agencies such as the EU's DG Competition, the US FTC and DOJ, the German Bundeskartellamt, the Japanese JFTC and the Korean KFTC and communicating with multinational organizations such as the OECD, APEC, UNCTAD and ADB. Through Competition Policy Weeks, Training Workshops, Study Tours and Annual Meetings, MOFCOM has been working together with its foreign partners to help its own staff and government officials from the stakeholder agencies meet the competition law experts and understand the newest antitrust theories and best practices. This is very important to accelerate their understanding and dissipate the valuable experiences accumulated by our foreign colleagues. For instance, the toolkit for Competition Assessment developed by OECD Competition Committee is quite enlightening and will help AEMES prevent anti-competitive elements from being included in future laws, regulations and policies. ■

LEGITIMATE BUSINESS PRACTICES OR CARTELS IN DISGUISE

OECD-Korea Policy Centre Workshop 5-7 October 2011

The OECD Competition Committee has identified fighting hard core cartels as a top priority in international competition enforcement. Developing countries, with young competition authorities, can especially benefit from a focus on cartels. Such economies, lacking a history of anti-cartel enforcement, can be subject to long-standing cartel-like behaviour intertwined with "normal" business practices. Collusive behaviour occurring in the context of otherwise legitimate business practices such as trade associations or joint ventures may be especially pernicious and difficult to detect.



Participants at the October 2011 Workshop

This workshop, centred on the theme of “Legitimate Business Practices or Cartels in Disguise?” addressed on the question of when otherwise legitimate collaborations may cross the line into collusive behaviour that harms consumers. Such behaviour may not always rise to the level of a “hard core cartel,” but may nonetheless harm consumers, and in addition be more difficult to identify and prosecute than hard core cartel behaviour. Presentations and discussion centred around the economic and legal theories that allow one to distinguish efficient competitor collaborations from anticompetitive ones, as well as the economics of cartel behaviour in general, and a number of case studies from jurisdictions across Asia.

The first day of the workshop provided an overview of the relevant issues and focused on a few case studies of competitor collaborations leading to anticompetitive outcomes. Dr. Eric Emch, consultant to the OECD, discussed a general methodology for assessing whether a particular collaboration is anticompetitive, and gave general descriptions of situations in which competitor collaborations are common but in some contexts can lead to anticompetitive outcomes: for instance, in joint production arrangements, joint selling or marketing arrangements, joint R&D, information sharing agreements, or in standard setting bodies. Joseph Wilson, Commissioner of the Competition Commission of Pakistan, followed with an overview of how Pakistan law addresses collusion, as well as a discussion of particular examples in which collusive behavior in Pakistan took place under the aegis of, in one case a trade association (cement), and in another case, a professional association (accounting).

Mr. Richard Fleming of the Australian Competition and Consumer Commission (ACCC) discussed indicators that would allow one to distinguish between a legitimate business collaboration and a “cartel in disguise,” and also presented a case study related to Industrial Garnet producers in Australia. To close the day, Ms. Pwee Inn Loy and Ms. Serene Seet of the Competition Commission of Singapore provided a thorough analysis of a price fixing arrangement in Singapore that occurred under the cover of a trade association of bus operators.

The second day of the workshop focused on the economics of cartel behavior – applicable either to hardcore cartels or to “cartels in disguise.” Ms. Mi Gan Choi of the Korea Fair Trade Commission (KFTC) discussed in detail statistical methods for calculating cartel overcharges, which form the basis for calculating damages from cartels in legal settings. She compared methods that calculate an overcharge based on cross-sectional variation in prices, with those that compare prices over time, to “differences-in-differences” methods that use both cross-sectional and over-time variation in prices to calculate overcharges. Eric Emch, consultant for the OECD, discussed general economic factors underlying cartel formation and stability, highlighting empirical patterns that showed the length and breadth of typical cartels. Ms. Chiachi Huang of the Chinese Taipei Fair Trade Commission followed with an in-depth discussion of collusion in the paper industry in Chinese Taipei under the cover of a trade association.

Day three of the workshop began with a presentation by Mr. Kevin Hendriks of the Netherlands Competition Authority on the EU legal framework for dealing with cartels and competitor collaborations generally. Along with presenting examples of anticompetitive collaboration from Europe, Mr. Hendriks gave a detailed presentation on how the Netherlands Competition Authority investigates cartels, from the generation of leads, to prioritizing possible cases, to gathering evidence through dawn raids, requests for information, and international cooperation. Dr. Sanjay Pandey of the Competition Commission of India then gave a thorough overview of the Indian Competition Act of 2002 and the structure of Indian competition law enforcement, along with a discussion of group boycott arrangements that ran afoul of the law in the case of two trade associations in different industries (airlines and film producers). Mr. Duc Minh Nguyen of the Vietnam Competition Authority then discussed Vietnam’s cartel regulation in general, and how it applied to the particular example of joint pricing by car insurance providers.

In the afternoon of the final day, Mr. Osamu Igarashi, a JFTC advisor to the Vietnam Competition Authority, and Mr. Shinichiro Obata of the International Affairs Division of the JFTC, discussed the JFTC approach to information sharing, as detailed in the Japanese Trade Association guidelines (derived from the Japanese Anti-Monopoly Act). Mr. Igarashi and Mr. Obata also presented two case studies relating to information sharing within Japanese trade associations that were deemed illegal by the JFTC.

At the close of the workshop, participants broke down into four smaller groups to discuss a hypothetical case regarding joint marketing in a sports league. Spirited discussion occurred both within the small groups, and among all participants when the groups joined back together to present their findings to the larger group. Informed by the discussion of the last three days, the groups came to general consensus on the bounds of efficient versus anticompetitive collaboration, with lively debate over particular points of the hypothetical. ■

► SINGAPORE

Price fixing by coach operators and their association



Ms. Serene Seet and Ms. Pwee Inn Loy presented a case study from the recent enforcement experience of the Competition Commission of Singapore (“CCS”). The case study involved a significant case of price fixing investigated by the CCS involving coach operators on long-distance bus routes. Not only were the 16 coach operators found to have entered into an anti-competitive agreement to fix prices on long-distance routes, but its trade association, the Express Bus Agencies Association (“EBAA”), was also found to have facilitated the cartel behaviour. The presentation touched on the novel ways EBAA facilitated price fixing by its members in a way that gave a veil of legitimacy to the infringing behaviour, effectively making EBAA a cartel in disguise. The case also culminated in CCS’ first appeal before the Competition Appeal Board, where CCS’ findings on liability were affirmed and financial penalties varied. ■

► INDIA

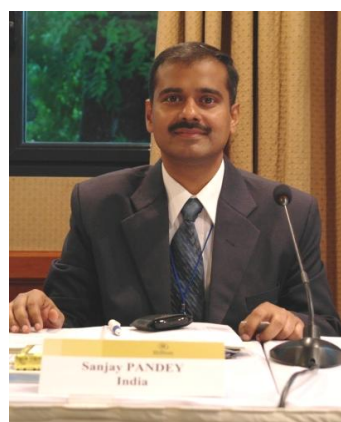
Business Practices: Legitimate or Anticompetitive?

Out of more than 200 cases brought before the Commission, almost one third are closed at prima facie stage. Even after investigation, it has been found that there are a limited number of cases, wherein breach of the Competition Act has been found. The table below shows a glimpse of cases before the Commission:

Cases before the Commission (as on September 5, 2011)

Total No of Cases Filed including <i>suo moto</i>	Number of cases closed at <i>prima facie</i> stage	Cases under Inquiry by CCI	Cases under investigation with DG	Final orders under section 3 and 4
201	65	77	22	37

The theme of the present workshop is that disguised cartels may rest in joint ventures, information exchanges between competitors, standards setting, and supply agreements between competitors.



Generally perceived under the aegis of trade associations, disguised cartels flourish and always keep on stating about their work being in the interest of members. When such associations boycott and limit indirectly or directly supply of goods or services but justify their acts in the interest of tradesmen or their members, such acts and activities are necessarily a quick example of cartel in

disguise and competition law is required to catch them young before they adopt hidden means and become highly pernicious. In the Indian context, since the competition law and economy both are growing together, often it is said that such situations are real time to catch cartels but catching cartels is more than

cracking hard nut given stringent requirements of law to be complied with to establish cartels. We may now look into a few cases in order to test how difficult is to bust a disguised cartel.

One of the cases decided by the Commission involved trade associations who boycotted a particular airline seeking restoration of a compensatory system (Uniglobe Mod travels Pvt. Ltd Case No. 3/2009). The DG found the three associations involved in the boycott which attracted provisions of section 3(3) of the Competition Act, 2002.

However, the majority opinion of the Commission considered and found all the six association party in commissioning breach of section 3 (3) of the Competition Act, 2002. This case is a clear example of an illegitimate business practice being carried by the involved associations/persons. Similarly in Paper Merchant Case (Case No. 7/2010) the Commission has found the Paper Merchant Association in breach of section 3(3)(b) of the Competition Act, 2002. One of the most important cases from the perspective of investigation of finding of illegitimate business practices is Case No. 4/2009, this case involved certain agreements between two airline companies i.e Jet and Kingfisher. Although the investigation report found the agreement between the two as illegitimate act hit by section 3 of the Act, the Commission disagreed stating that such agreement are entered into due course of airline operation and are part of legitimate information sharing and cannot be said to be a cartel.

Similarly in Film Case (Case No. 1/2009) the Commission found 27 entities guilty of cartel behaviour and punished them all under the Competition Act, 2002. In this case Informant and Opposite Parties (OPs) did not agree on revenue sharing model, which led to boycott of informants by the OPs. This boycott resulted in no release of films in Multiplexes during April – June 2009. However, this boycott was later called off after signing of revenue sharing agreement in June 2009. What may be seen from this case that a business practice in one way appears to be in the interest of those who are carrying it, however its effect is anticompetitive inter alia making such business practice as illegitimate, however disguised it might be. ■

COMPETITION WORKSHOP FOR JUDGES

**OECD-Korea Policy Centre Workshop
2-4 November 2011**

Good decision making by specialist tribunals and general courts are vital to a well functioning competition law system. Although the Centre has conducted more than 25 workshops for competition authorities, it has never before held an event specifically for competition tribunal members and judges. In November 2011, the Centre held its first workshop for competition law appellate decision makers.

The judges and specialist tribunal members at the event came from China, Indonesia, Nepal, the Philippines, Singapore, India, Chinese Taipei, Pakistan, Australia, Vietnam.

Each of these participating jurisdictions has a different substantive law, a different appeals structure and a different litigation procedure. Nevertheless, the event showed that in each field there is a significant degree of similarity too.

Each discussion topic was introduced by a presentation from a panel of speakers – Justice Mansfield of the Federal Court of Australia and President of the Australian Competition Tribunal; Dr Adrian Majumdar a London based Principal of economic consultancy RBB Economics; Research Judge Lee of the Supreme Court of Korea; Dr Lee of Hanyang University's Law School and Mr Nick Taylor of the OECD.



Participants at the November 2011 Workshop

After the participants introduced the competition law appellate structure in their countries, the substantive discussions started with a presentation by Mr Taylor which reviewed the very diverse reasons why governments pass competition laws and what are the specific statutory objects of competition law. In particular, the four common themes are sought to be advanced by the competition laws of the region: maximising the productive performance of the economy, enhancing economic development, facilitating the participation of all parts of society in the economy and, ultimately, the long term interests of consumers.

Dr Majumdar then gave a presentation that focused specifically on the economic and long term consumer interests underpinning competition law.

Next the various legal frameworks or mechanisms that are employed by competition laws were discussed including the role of competition investigation agencies, who makes decisions and the appeal structures that ensure fairness, accountability and good decision making. This session was lead by a presentation by Justice Mansfield.

Moving into the substantive provisions of competition law, Nick Taylor gave a presentation which identified the three universal pillars found in almost all competition laws (prohibitions against anticompetitive agreements between competitors, abuse of dominance and anticompetitive mergers) and other provisions that can be found in competition laws.

Dr Majumdar led a discussion on key economic concepts that form the elements of competition prohibitions including “competition”, “market” and “dominance” and Research Judge Lee discussed a range of Korean cases that illustrate the application of these terms.

The final day of the workshop was largely dedicated to a discussion of the types of evidence used in competition cases (introduced by Mr Taylor) and focused in particular on two particularly difficult types of competition law evidence that pose challenges for courts. The latter comprised detailed presentations by Justice Mansfield on expert economic evidence and defendants’ purpose evidence respectively. Dr Majumdar also provided a presentation of his perspectives as a expert witness and in particular how expert witnesses go about assessing damages.

Additionally, Dr Lee gave a presentation on the imposition of penalties and other sanctions in competition law cases.

Throughout the formal parts of the workshop there was a vigorous exchange of ideas between the participants covering the competition law issues formally listed on the agenda and also other issues of interest to judges in these jurisdictions. Spending three days together also provided the judges with the opportunity to exchange experiences much more generally about the operation of courts in the Asia-Pacific.

The Centre will now evaluate this first event to decide whether workshops with judges should become a permanent part of the programme in the future and what format this should best take. ■

A SIX COURSE BANQUET OF COMPETITION DELEGACIES

OECD competition committee meetings

June 2011

Competition authorities from throughout the OECD met in June to discuss a range of seven topical competition issues.

Ports and Port Services

The debate on ports and port services focused on the relevant market definition, regulatory developments and antitrust enforcement.

Like airports, ports are increasingly operated as hub and spoke systems where competition takes place between logistic chains including hinterland connections based on specialized ports. In addition, port services are increasing in importance and may be a source of competition problems. The market definition for transshipping services can be very wide, often crossing national boundaries. As a result market definition depends on the specific circumstances and no longer typically encompasses only one port or only immediately neighbouring ports.

Regulatory reforms in ports and ports services in recent years have had an important impact on competition in this sector in many countries. Vertical separation between ports and port service providers has resulted in fewer and fewer ports being also active in downstream services. Port authorities have largely become landlords and port regulators, which has helped increase competition. There have also been instances of horizontal separation in the last 20 years, reducing concentration of the port sector and rendering individual ports independent, in turn creating more port competition.

Technological developments and also regulatory reforms have therefore led to a decrease in port cases, particularly cases involving 'refusals to deal'. Even so, participants expressed concerns about antitrust infringements, particularly relating to pricing including excessive pricing and price discrimination.

Network Neutrality

At present, the normal way the internet is operated gives all communications traffic equal priority. However, what if a particular user or a business who provides services over the internet wants to pay to obtain priority for its traffic compared with other users? Does this concept (or outlawing it) cause competition problems?

The presentations started with the attempt to define network neutrality by distinguishing between the problem of peak demand in wired and wireless networks (similar to classic congestion problems in the transport sector) and the problem of blocking access to content and services. With annual demand for bandwidth increasing by 40% annually on wired and 100% annually on wireless networks, some form of price or quality discrimination might be needed. The debate focussed on ways to distinguish between legitimate traffic management practices and potentially problematic conduct. It was suggested that concerns may arise when network operators have significant market power and own rivaling content as they then

have the ability and incentive to exclude rivals. In such cases network operators might discriminate, not to manage peak loads, but rather to exploit market power in anticompetitive ways ultimately detrimental to consumers.

Merger remedies & conditional merger approvals

There was a broad consensus amongst delegations discussing merger remedies on the objectives and types of remedies available to agencies in merger cases. In particular, there is a preference for 'structural remedies', that is a remedy where the merging firm sells assets to solve a competition problem rather than 'behavioural remedies' such as promises or conditions not to raise prices or to deal fairly.

Although most agencies still expressed preference for structural remedies, in practice many agencies do accept behavioural conduct remedies, particularly in combination with structural remedies.

Agencies from small economies stressed the difficulty they have in applying structural remedies as part of a conditional merger approval decision. In small economies it is often difficult to find a suitable purchaser for the assets to be divested. Many emphasized that international cooperation is key both when relevant markets are global and also when remedies agreed in one jurisdiction affect assets serving other markets.

"De Minimis" Rules in Competition Cases

De Minimis rules in competition cases refer to exceptions or a more lenient approach to enforcement for what would otherwise be small or insignificant breaches of competition law. For example, what if two very small businesses which together have a very small market share agree to fix prices?

Germany, the EU and Chinese Taipei made interesting presentations on how these jurisdictions deal with restrictions of competition which do not have an appreciable effect on the market. The discussion emphasized that de minimis rules help reduce the compliance costs for companies, especially smaller companies. At the same time, these rules allow agencies to concentrate their resources on more problematic cases from a competition perspective.

Some participants pointed out that there may be instances where de minimis cases should be nevertheless investigated, i.e. when they help setting a precedent on legal or economic issues which may then be applicable to other cases. Fairness and deterrence are also elements that agencies should consider when deciding whether to pursue case which have a limited impact on markets. Some jurisdictions, such as the European Union have issued formal guidance in this area; other jurisdictions deal with this question under the prosecutorial discretion enjoyed by the enforcement agency.

Promoting Compliance with Competition Law

The Competition Committee held a roundtable focused on how current approaches to encouraging compliance with competition law are performing and how they might be improved.

A troubling trend over the past 20 years or so is that courts and competition authorities have imposed fines and, in some jurisdictions, imprisonment with sharply increasing severity, yet there does not seem to be solid evidence that anti-competitive conduct – particularly cartel conduct – is declining in response. Then again, it is impossible to observe the number of undetected cartels, so it is possible that deterrence has increased.

The meeting participants identified numerous factors that influence compliance, such as competition advocacy, financial penalties, imprisonment, leniency programmes and the establishment of a culture of competition. They also heard from the Chair of OECD Working Group on Bribery and from the OECD's Corporate Affairs Division about how compliance is promoted in other fields of business law. Corporate compliance officers from private companies (Shell and GDF Suez) shared their experience with the participants from competition authorities.

There was general agreement that authentic corporate competition compliance programmes can be helpful, but substantial differences on whether and how such programmes should be rewarded.

Impact evaluation of merger decisions

How often does the competition authority in your country look again at merger decisions it took years ago to see if a good decision was made? This was the topic for this part of the meeting.

A number of questions arise: Did the competition authority correctly decide the case in light of available evidence? Were the competition authority's predictions of the consumer welfare effects of a merger accurate? Can competition authorities calculate the overall benefits of an effective merger review system for society?

Three experts - Professors Andrew Gavil (Howard Univ.) and Oliver Budzinski (Univ. of Southern Denmark), as well as Cristiana Vitale (LEAR) – shared their views and practical experiences with delegates.

There was agreement that a good competition authority should go back to check whether its past decisions were correct, in particular in the case of difficult, "close call" decisions. To do so, competition authorities can use more quantitative methods that attempt to calculate the effects of a merger, or more qualitative tools relying primarily on surveys. There is no single "perfect" method, and all have their own problems and involve some trade-off between costs, accuracy, and feasibility. What matters most is that a competition authority chooses a reasonable method in light of existing merger decisions as well as its expertise and resources, and that the study is well done.

Papers summarising these meetings will be available on the OECD's website in late 2011. ■

MEETINGS FOR COMPETITION AGENCIES TO SHARE VIEWS ON THREE KEY AREAS

OECD competition committee meetings

October 2011

Competition agencies shared their experience in three key areas at the OECD's Competition Committee meetings in October that would be of great interest to Asian competition authorities.

Whether, when and how to take competition law enforcement action against **excessive pricing** is a hotly debated topic.

Interestingly, all countries do recognise that the most important natural monopoly industries (such as water reticulation, energy distribution and the operation of other monopoly infrastructure) should have some form of price regulation to prevent excessive pricing and that the main way to do this should be through sector specific regulation.

However, it is not always the case that all countries are confident that sector specific regulation is a complete solution to the issue of excessive pricing both within and outside natural monopoly industries.

About two thirds of the world's competition law systems treat excessive pricing as an abuse of dominance. In these countries, competition authorities are very careful indeed about how and when to take enforcement action against excessive pricing to ensure that their intervention does not harm market outcomes.

Competition authorities in the other countries in which excessive pricing is not considered to be an abuse of dominance give reasons for not outlawing excessive pricing as an abuse of dominance that are very similar to the reasons why other competition agencies are so careful about how and when to take enforcement action in this area.

Procedural Fairness continued to be a key topic for discussion in the October meetings and on this occasion the particular focus of the discussion moved beyond the procedures and approaches of competition authorities to provide a fair and transparent process and moved onto the topic of the role of the courts system and the relationship between competition agencies and the courts.

In particular, each country explained how the courts are involved in competition law decision making and what efforts are made by competition authorities to ensure an appropriate over-all decision making structure. This included a broad range of issues from initiatives to build competition expertise amongst the judiciary through workshops and discussions to the initiatives that competition authorities have taken to demonstrate to the courts that their decision making processes are fair and deliver correct outcomes.

This discussion was timely because the topic, and the papers submitted for the meeting, were of direct relevance to the judges workshop held at the Centre in November.

Finally there was a detailed discussion of **competition policy**

and the digital economy, with an expert panel from Google, Microsoft and academia participating in the discussion with the competition authorities. The hearing format worked well, particularly as many delegates could not speak about their work in this area because of pending cases. Speakers emphasised the role of innovation and product design as competitive strategies in the IT sector, suggesting that competition agencies should protect this activity (and avoid harming it through badly-designed interventions). The Committee will return to this topic at its next meeting.

In all three areas, helpful papers summarising the proceedings will be available on the OECD's website in late 2011 – early 2012. ■

NEWS FROM ASIA-PACIFIC COMPETITION AUTHORITIES

► KOREA

Continuing effort to improve anti-competitive entry barrier regulations

The Korea Fair Trade Commission (KFTC) set up the improvement plan for the anti-competitive entry regulations in 19 service industries in August. The industrial sectors specified in this plan include health and medical care, tourism, transportation, etc most of which are closely related to citizens' daily lives. Some remarkable achievements are as followed:

- the abolition of mandatory designation by dental doctors to open dental laboratories
- the introduction of choice system of copyright holders regarding the scope of copyrights to be trusted to the trustees or trust agents
- the permission of using franchising system to the rent-a-car businesses
- the easement of construction performance requirements for the new candidate bidders to the public construction markets ■

KFTC and Apple agreed to modify iPhone return policy

KFTC and Apple Korea agreed to modify Apple's return policy conformed to the Korean consumer dispute settlement standards. So far Apple has kept its own return policy, which gives Apple the right to choose among refund, exchange for a new phone, exchange for a refurbished phone, or free repair. The Korean standard converts the right to choose from seller to buyer. Therefore, if the product is bought within one month, the buyer can ask to exchange for a new one. In Korea the most frequent dissatisfaction from the buyers of defective iPhone was that Apple only exchanged for refurbished regardless the length of the period of purchase. ■

Cartel crackdowns

Interest rate fixing of life insurance companies

The KFTC discovered that insurance companies had fixed:

- Estimated interest rates and official benchmark rates applied to individual insurances such as whole life insurance, annuity insurance, educational endowment insurance, etc. in October. Total surcharges amounted to 365.3 billion KRW (app. 326.1 million USD) with cease and desist order of cartel and information sharing.
- Interest rates applied to the saved money for a payout of future insurance to its customers, estimated interest rates mean fixed interest rates and officially announced interest rates mean flexible interest rates.

Conspiracy to avoid competition by not releasing cheaper generic drugs

The KFTC imposed 5.173 billion KRW of surcharges (app. 4.5million USD) and issued cease and desist order on GSK, the patent pharmaceutical maker, and Dong-A Pharmaceutical, the generic drug manufacturer, for agreeing not to compete in certain drug markets in which each company's products are in rivalry. GSK provided economic advantages to Dong-A by offering sales rights for new pharmaceuticals in exchange of pulling out released cheaper generics from the market and no more manufacturing and selling of competitive drugs.

TFT-LCD international cartel

The KFTC crack-downed the international cartel of TFT-LCD manufacturers by imposing 194 billion KRW (app. 173 million USD) of surcharge with the cease and desist order of cartel and information sharing in October. Ten TFT-LCD manufacturers of Korea and Chinese Taipei colluded to fix the LCD panel price and to limit the supply of TFT-LCD since November 2001 through December 2006. ■

► JAPAN

Legislation and Guidelines

The Japan Fair Trade Commission (JFTC) partially amended the Merger regulations (investigation procedures and criteria) and conducted the following to be put in force on July 1, 2011:

1. Partial amendment of the "Rules on Applications for Approval, Reporting Notification, etc. Pursuant to the Provisions of Articles 9 to 16 of the Antimonopoly Act (AMA).
2. Creation of "Policies Concerning Procedures of Review of Business Combination".
3. Partial amendment of the "Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination".

(<http://www.jftc.go.jp/en/pressreleases/archives/individual-000432.html>)

Enforcement

The JFTC has investigated DeNA Co., Ltd. and found it to be in violation of the AMA (Interference with a Competitor's Transactions). Accordingly, the JFTC issued a cease and desist order.

(<http://www.jftc.go.jp/en/pressreleases/archives/individual-000427.html>)

Also, the JFTC has investigated companies of manufacturing and distributing air separate gases, and found that they had engaged in activities that violate of the AMA (Unreasonable Restraint of Trade). Accordingly, the JFTC issued a cease and desist order and surcharge order (JPY 14 billion in total).

(<http://www.jftc.go.jp/en/pressreleases/archives/individual-000426.html>)

Technical Assistance

The JFTC held the 17th Training Course for Developing Countries on the Competition Law and Policy from September 29 to October 26 in Tokyo and Osaka, in cooperation with the Japan International Cooperation Agency (JICA). Seven officials from competition related authorities in four countries took part in this Training Course.

(<http://www.jftc.go.jp/en/pressreleases/archives/individual-000441.html>) ■

► CHINESE TAIPEI

FTC price-fixing probe finds three paper makers guilty

The Chinese Taipei Fair Trade Commission (CTFTC) yesterday announced the results of an investigation into recent price increases of paper and related products, saying it would fine three paper makers a total of NT\$10 million (US\$313,000) for price-fixing.

The CTFTC said its investigation showed that three paper makers — Cheng Loong Corp, Long Chen Paper Co and Yuen Foong Yu Group — were involved in pricefixing.

"Investigators found that from November last year through last month, the three companies repeatedly raised their prices at the same time and by the same amount, despite the fact that the companies did not incur the same cost increases for recycled paper, nor did paper-making constitute the same proportion of the companies' businesses," said Shih Hui-fen, vice chairperson of the commission. "The timing of the price increases was also inconsistent with increases in international paper prices."

The companies raised their prices by about 40 percent.

"The three companies together control about 90 percent of the paper market, which means that their price-fixing activities have seriously affected the market," Shih said.

The CTFTC issued fines of NT\$5 million to Cheng Loong, NT\$3 million to Long Chen and NT\$2 million to Yuen Foong Yu, promising to issue heavier fines or instigate criminal proceedings should the companies repeat the violation.

All three companies declined to comment until they had received the official documentation. ■

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 ypark@oecd-korea.org.

CONTACT INFORMATION

Competition Programme

OECD-Korea Policy Centre
87 Hoegiro, Dongdaemun-Gu, Seoul
130-868 Republic of Korea

Jay Young Kang, Director General
binink@oecd-korea.org

Nick Taylor, Senior Competition Expert
nicolas.taylor@oecd.org

Sung-kyu Lee, Director
simyi@oecd-korea.org

Young Park, Communication Officer
ypark@oecd-korea.org

Soo-Ah Shin, Program Coordinator
sooah@oecd-korea.org

No. 1(2010-1) 28 July 2010

Newsletter COMPETITION PROGRAMME
OECD/KOREA POLICY CENTRE
www.oecd-korea.org

OECD-KOREA Policy Centre, Competition Programme, 207-43 Cheongryangri 2-Dong, Dongdaemun-Gu, Seoul 130-868 Republic of Korea
TEL. +82-2-3299-1069 . FAX. +82-2-3299-1083. E-mail. ajahn@oecd-korea.org

Introductory Remarks

<By Shin, Dong Kweon, Director General, OECD-KPC>

I would like to give greetings to all readers through this 1st newsletter of the Competition Programme at the OECD-Korea Policy Centre.

Since the foundation of the Competition Programme, OECD-KPC in Feb. 24, 2004, we held 34 seminars with competition authorities in the Asia Pacific region. I have no doubt that competition authorities in Asia have strengthened professional capacity in the competition law and policy fields through learning and exchanging advanced theories and sharing experiences between participating countries. So far, 715 competition experts have participated from 36 countries.

At this juncture, it is an appropriate time to think about strengthening close ties between participating countries and forming a policy community in the Asia Pacific region. This will be a way to deal with internationalized competition standards which will be more complicated in the future. As a part of this work, we, at the OECD-KPC have come up with an idea to issue a newsletter. The newsletter will allow participants in the previous seminars to have more opportunities to learn about participating countries and share information as experts who completed an OECD-KPC training course.

The newsletter will be composed of events at the OECD-KPC, major news

and events at the OECD Headquarters, country papers about case studies by participating countries, major news in some of the participating countries and major news at the KFTC.

We will seek various ways to make the newsletter rich with contents. If you have some advice or information to share, please send them to us. ajahn@oecd-korea.org. This will help us to come up with more advanced and sophisticated newsletters. If you, readers contribute information to our newsletters, then it will serve as a real information tool allowing various countries to share information naturally and form an Asian policy community. This will lead to the enhancement of mutual understanding and the development of competition law execution in our region.

The OECD-KPC will be at the center of this process to support and play its role. I would like to celebrate the publication of a Competition Programme's first newsletter and wish further development.

<By Nick Taylor, Specialist of the OECD-KPC>

Dear Readers,


Welcome to the first newsletter of the OECD-Korea Policy Centre!

Many of you have participated in our workshops held in Seoul and other



-Mr. Shin, Dong Kweon-

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-Mr. Nick Taylor-

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No. 2(2010-2) 19 November 2010

Newsletter COMPETITION PROGRAMME
OECD/KOREA POLICY CENTRE
www.oecd-korea.org

OECD-KOREA Policy Centre, Competition Programme, 207-43 Cheongryangri 2-Dong, Dongdaemun-Gu, Seoul 130-868 Republic of Korea
TEL. +82-2-3299-1069 . FAX. +82-2-3299-1083. E-mail. ajahn@oecd-korea.org

This is the Center's second issue of its Newsletter.

Reflecting the feedback from readers about the first issue, we continue to choose articles that we hope are particularly interesting to Asian competition authorities.

This issue covers:

- brief reports of OECD-Korea Policy Centre events which this year approximately 100 competition officials have attended;
- a report of the OECD's Competition Committee meetings in Paris assisted by leading academic experts concerning topical issues in competition law;
- case studies of participating countries such as Singapore, Chinese Taipei and Pakistan;
- country updates of Korea and other participating countries such as Indonesia, Vietnam and Singapore; and
- a plan of December seminar as OECD-KPC's future event.

Events at the OECD-KOREA Policy Centre

OECD-Korea Policy Centre Workshop on Abuse of Dominance on September 15th - 17th in Seoul, Korea

<By Nick Taylor>

The most common complaints that competition authorities typically receive concern prices. Consumers may complain that a large company over-charges. The competitors of a large company may complain that the large company's low prices are driving them out of business or, a range of trading partners may complain that a large company discriminates by charging different customers different prices.


In September, the Centre conducted a workshop on price related abuse

of dominance to explore all these pricing issues. Attendees at the workshop also attended the Korean Fair Trade Commission's 6th Seoul International Competition Forum (see separate article in this issue).

The first topic addressed at the Centre's workshop on price related abuse of dominance was low or predatory pricing. Presentations on this topic were provided by Mr Nick Taylor of the US Federal Trade Commission, Mr Geronimo Svi of the Philippines Department of Justice and Mr Tsung-Yung Tsaï of the Chinese Taipei Fair Trade Commission.

Generally speaking the purpose of competition law is to promote efficient

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OECD-Korea Policy Centre Workshop on Abuse of Dominance on September 15th - 17th in Seoul, Korea

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COMPETITION POLICY IN ASIA

News from the OECD-Korea Policy Centre Competition Programme

March 2011, Issue 3

2011 ASIA COMPETITION PROGRAMME

The jurisdictions for whom the competition programme of the OECD-Korea Policy Centre is designed include: China, countries on the Indian sub-continent, ASEAN countries, other neighbouring jurisdictions in Asia and Pacific countries.

In the Centre's first five years of operation, many jurisdictions were in the process of adopting competition law or had had it for only a short period. Therefore, the Centre's workshops were predominantly of an introductory nature.

Increasingly, there are competition agencies who now have a degree of experience in competition law. The issues that they are confronting are more sophisticated and their capacity building needs are changing.

At the same time, there continue to be a number of jurisdictions within the region who are only now adopting competition law for the first time and their capacity building needs continue to be at a more introductory nature. However, a common feature of jurisdictions that are still adopting general competition laws is that they often have a specific competition regime for the telecommunications sector that is well developed.

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Greetings from the Director General of the Competition Programme

I am very happy to have been appointed in early 2011 to work with the OECD Korea Policy Centre as Director General for the Competition Programme.

I've wanted to have an opportunity to contribute to the Centre for a long time before while working in the Korea Fair Trade Commission.

It is my understanding that sharing the experiences of competition law enforcement of the OECD countries with the non-OECD economies is of great worth and importance in the era of economic globalization.

Continued on page 2



-Mr. Jay Young Kang, Competition Programme, Director General, OECD-Korea Policy Centre-

The Competition Programme of the OECD-Korea Policy Centre provides education and training to officials and experts of Asian competition authorities in the field of competition law and policy. This newsletter includes information about our work and the work of the OECD, as well as news, case studies and reports from competition authorities in the Asia-Pacific region.



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COMPETITION POLICY IN ASIA

News from the OECD-Korea Policy Centre Competition Programme

June 2011, Issue 4

ABUSE OF MARKET DOMINANCE

OECD-Korea Policy Centre Workshop, March 2011

A Focus on Fighting Abuse of Dominance in India

Fighting abuse of dominance is one of the three core pillars of an effective competition law enforcement regime, along with fighting cartels and preventing anti-competitive mergers. Since the Competition Act came into effect in India, there have been many allegations and preliminary investigations into the area of abuse of dominance but none have yet resulted in a conclusion that the law has been contravened.

Applying and enforcing the prohibition against abuse of dominance was the focus of a workshop held jointly between the OECD-Korea Policy Centre and the Competition Commission of India in Delhi in March.

Each type of competition law enforcement has its own challenges. For example, the biggest challenge of cartel enforcement is usually an evidentiary challenge: the authority must bring to light facts that have been deliberately hidden by the conspirators.



Participants at the March 2011 Workshop

The Competition Programme of the OECD-Korea Policy Centre provides education and training to officials and experts of Asia-Pacific competition authorities in the field of competition law and policy. This newsletter includes information about our work and the work of the OECD, as well as news, case studies and reports from competition authorities in the Asia-Pacific region.

By contrast, the biggest challenge for competition authorities in the abuse of dominance area is usually an analytical challenge: almost any given trading practice by a company of significant substance can often be argued to amount to an abuse of dominance or, viewed differently, it could be argued that the trading practices to be benign or even efficiency enhancing.



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