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Asia-Pacific Competition Update

News from the OECD/Korea Policy Centre Competition Programme

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IN THIS ISSUE

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. 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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News from Asia-Pacific Competition Authorities

KOREA

KFTC and KPPU conclude Cooperation Arrangement

At a ceremony on 8 November, held at the Seoul office of the Korea Fair Trade Commission (KFTC) in Gwacheon, the KFTC and the KPPU of Indonesia signed a Cooperation Arrangement.

The Cooperation Arrangement provides for:

- mutual notification of law enforcement involving businesses of the counterpart country;
- regular bilateral meetings;
- exchange of information; and
- technical assistance.

The KFTC hopes to deepen the understanding of the each other's systems and strengthen the bilateral relationship between the two authorities by hosting a regular high-level conference every two years. The cooperation between the agencies will involve a range of contributions by the KFTC, including passing on knowhow on the operation of the KFTC's knowledge management system, "ThinkFair", and providing technical assistance. Indeed the KFTC sent one director and one deputy director to work with the KPPU for a period of three weeks from 11 November.

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One official at the KFTC said "the cooperation arrangement the KFTC concluded with the sole G20 country in the ASEAN region is significant as it will serve as a bridgehead for Korea to strengthen cooperation with other countries in the region."

❖ SINGAPORE

New Chief Executive of Competition Commission of Singapore

Mr Toh Han Li was appointed as the new Chief Executive of the Competition Commission of Singapore, effective 1 October. He takes over the helm from Ms Yena Lim, who stepped down at the end of her term. From 2009 until September 2013, Mr Toh had been the Assistant Chief Executive (Legal & Enforcement).

❖ MALAYSIA

MyCC issues first proposed fines

The Malaysia Competition Commission (MyCC) has issued two Proposed Decisions in recent months which include the MyCC's first proposed fines. The first came in September with the MyCC's Proposed Decision regarding a collaboration agreement between Malaysian Airlines and AirAsia. The MyCC found that this agreement amounted to market sharing in contravention of section 4 of the Malaysian Competition Act 2010 and proposed fines of RM 10,000,000 on each of Malaysian Airlines and AirAsia. These penalties are less than 10% of their respective worldwide turnovers in the period of the infringement (January-April 2012). The MyCC took into account mitigating factors when determining the proposed fines, include cooperation from the companies in providing data and information.

The second decision came at the start of November with the MyCC issuing a Proposed Decision against Megasteel for abusing its dominant position. This time the proposed fine was RM4,500,000. The MyCC's Proposed Decision centres on Megasteel's practice of charging or imposing a price for its Hot Rolled Coil that the MyCC considered was disproportionate to the selling price of its Cold Rolled Coil and therefore a margin squeeze in infringement of section 10 of the Malaysian Competition Act.

Further information about these cases can be found on the MyCC's website – www.mycc.gov.my.

❖ INDIA

India hosts 3rd BRICS International Competition Conference

The third BRICS International Competition Conference was held in New Delhi on 21-22 November. The conference was the third in the series with the earlier two BRICS International Competition Conferences having been organised in Kazan, Russia and Beijing, China respectively. The theme of the 3rd Conference was "Competition Enforcement in BRICS Countries: Issues and Challenges".

The objective of the conference was to discuss various issues and challenges in competition enforcement in BRICS countries and take the agenda of cooperation among the BRICS competition authorities forward from the earlier two conferences. During the two day conference, discussions focused on issues and challenges in setting up an effective agency, competition enforcement vis-à-vis state owned enterprises, public procurement and creation of competition culture.

In his inaugural address, the Honourable Prime Minister of India, Dr. Manmohan Singh, picked up on a number of key points, including that of state owned enterprises saying:

"State owned or public sector enterprises are another challenge. By virtue of their ownership, they have been shielded from competition and have long enjoyed captive markets. A crucial issue is the exposure of these firms to competition. The government may own a public sector firm and exercise the normal rights of ownership. This does not mean it should shelter it from competition as well."

"The solution lies in giving public sector firms greater functional autonomy and freeing them from bureaucratic control, and not in tolerating a slip in their competitiveness and then shielding them from competition. Several possible distortions can arise because of the advantages some public sector businesses have due to their government ownership. Competitive neutrality requires that the government not use its legislative and fiscal powers to give undue advantage to its own businesses over the private sector. Going forward, our governments will have to increasingly adopt competition neutral policies."

❖ INDONESIA

KPPU enters cooperation agreement with Indonesia's Attorney General

In July, Indonesia's competition commission, the KPPU, entered into a formal cooperation with Indonesia's Attorney General to cooperate and coordinate in enforcing competition law.

The signing of the MOU was under the auspices of the "the 53th Bhakti Adhyaksa Day" and is expected to be a ground breaking for the KPPU and Attorney General Office to foster and optimise competition law enforcement in Indonesia.

The scope of cooperation includes requests for information/data and research and development. Both sides also agreed on exchanging resource persons, developing capacity of human resources and joint dissemination activities.

This MOU follows on from the cooperation agreement signed between the KPPU and the National Police in 2011. The addition of the formal cooperation with the Attorney General, completes the link between all parties involved in competition law enforcement in Indonesia – from investigation through to prosecution.

❖ CHINESE TAIPEI

FTC publishes fine statistics

In its recent newsletter, the Chinese Taipei Fair Trade Commission (FTC) published details of its fines from its establishment in 1992 until August this year. Of the 3,960 cases decided in that time, administrative fines were imposed in 2,502 cases (63%). The table below sets out the overall picture together with greater detail about the last few years. A more detailed analysis can be found in the FTC's October newsletter (www.ftc.gov.tw).

Statistics on Cases with Decisions Made and Fines Imposed

Unit: case; business

Month/Year	Decision made		Fine Imposed		
	No. of Cases	No. of Businesses	No. of cases	No. of Businesses	Total Fines (NT$ 10,000)
Total 1992-2013	3 960	5 824	2 502	3 711	975 312
2008	169	239	164	230	30 325
2009	183	338	162	316	20 198
2010	155	216	140	195	6 584
2011	272	356	243	323	23 311
2012	203	355	191	341	36 662
Jan.-Aug., 2013	146	230	143	227	642 434

News from Asia-Pacific Competition Authorities

❖ VIETNAM

VCA conference on pay TV

In September, the Vietnam Competition Authority (VCA), together with the Vietnam Pay Television Association (VNpayTV), organised a seminar entitled "Competition and Consumer Protection in the Pay TV Industry". Pay television has been growing quite fast during the last decade in Vietnam. The number of subscribers has been soaring while technologies and the number of service providers participating in the market have been increasing with new entrants joining the market.

The seminar was chaired by Mr. Nguyen Phuong Nam – Deputy Director General of VCA. The participants included representatives from relevant sectoral regulators, VNpayTV and service providers, especially those with large market shares, as well as the press and media agencies.

The purpose of the seminar was to create a floor for stakeholders to discuss issues related to competition and quality of services in the pay TV industry at present, and to identify potential anticompetitive practices which may be harmful to the market and consumer welfare, and on that basis, to remove the obstacles faced by service providers as well as work out possible orientations and solutions for perfecting their services, so as to satisfactorily meet the demands and legitimate requirements of consumers.

❖ CHINA

NDRC issues further fines for cartel conduct

Following on from the fines reported in the previous issue of this newsletter, the second half of the year has also been a busy one for NDRC in terms of fines. The fines issued include a fine of CNY500,000 on a Shanghai jewellery association (the maximum allowable fine for a trade association) together with fines of CNY10.1 million of five of its members for coordinating prices. The coordination is said to have occurred though the use of a pricing guideline issued by the association for gold and platinum jewellery, with the jewellers in question agreeing to sell within 2-3% of the stipulated price. The fines on the jewellers were the lowest possible, reflecting admissions and cooperation by the companies.

On the vertical side, NDRC issued a record fine of 670 CNY million on baby milk manufacturers for engaging in resale price maintenance. Nine manufacturers were investigated, but three of them avoided fines as they had come forward and admitted the conduct and provided evidence in the investigation. The highest of the fines amounted to 6% of the company's previous annual turnover.

Competition Committee Meetings: 17 - 20 June 2013

Roundtable on New Developments in Rail Transportation Services

This roundtable was a follow-up to the discussion held in 2005. At that time competition was considered to be the exception rather than the rule in rail services, and there was some scepticism as to whether competition would develop since the efforts that had been made with vertical separation and competitive tendering had generated little market entry. The discussion showed that in most countries competition in freight services has been increasing and that the market shares of the incumbents have declined everywhere, and in some countries that decline has been substantial. However, competition in the market is much less common in passenger services, though some notable exceptions were examined, such as Italy where there has been entry in the market for high speed rail services. One of the reasons for the more limited degree of direct competition in the passenger market is the limited number of commercially viable routes, as a large share of passenger services are subsidised. However, competition through tenders is developing in many countries and it is helping to reduce subsidies. Sweden was highlighted as an example of a country successfully running tenders for such services.

The roundtable also discussed a number of other issues including issues related to public investment, (which is very extensive in this sector), antitrust issues related to vertical integration and access conditions, and also the issue of limiting competition from other means of transportation.

Roundtable on the Definition of Transaction for Merger Control Review

This topic was a follow-up discussion to the Committee Report to the OECD Council on the experiences of member countries under the 2005 OECD Recommendation on Merger Review. The 2005 Recommendation provides that a merger regime's jurisdictional thresholds should be based on clear and objective criteria, but otherwise does not provide any guidance as to the concept of a "merger transaction". Significant differences exist among jurisdictions in this regard. For example, in the case of share acquisitions, some jurisdictions use percentage thresholds to identify at what level the acquisition of shares in another corporation is a "merger transaction", some focus on the value of the transaction or size of the parties, and others apply an "acquisition of control/material influence" model. Despite these different approaches, most "middle of the road"

transactions will clearly fall under any jurisdiction's definition of a merger transaction. The difficult questions tend to arise in what could be considered "borderline cases", such as the acquisition of a relatively small percentage of shares in another corporation, joint ventures where it is less clear how permanent the changes are that the parties' collaboration will bring about, and acquisitions of a few assets which in themselves are not clearly an "independent business". In these borderline cases, one can expect to see more differences among various approaches to the definition of a "merger transaction", and advantages and disadvantages of various approaches might become more apparent.

The roundtable focused on these difficult and more interesting questions and was an opportunity to revisit some issues that were discussed during the 2008 roundtable on Minority Shareholdings, although in a different context and without getting into questions of substantive analysis and remedies.

Roundtable on the Role and Measurement of Quality in Competition Analysis

The roundtable focused on how courts and competition authorities can take quality effects into account in competition cases. Concerns about quality are frequently raised in competition agency guidelines and court decisions, but there is no widely-agreed framework for analysing it and the treatment is often superficial. The delegates discussed various approaches to defining and measuring quality, and to using decreases in quality as an alternative to increases in price for the purpose of defining markets. Theory is helpful in regulated markets where prices are fixed at a level above marginal cost (quality will increase), but not so helpful in other markets. Performing an empirical analysis of the effects that changes in competition have on quality is therefore useful in most cases.

Delegates generally viewed choice as a component of quality, and concerns about less choice / smaller product ranges showed up in several matters that were discussed. However, while there were many examples of stronger competition leading to higher quality, it was not clear that more competition always leads to higher quality, and some delegates characterised the relationship between quality and competition as "complex".

Roundtable on Competition in Road Fuel

As crude oil and gasoline prices have increased sharply over recent years, both the public and policy makers have become acutely interested in determining its underlying causes and often turn to competition agencies to understand whether

these result from anticompetitive practices. This roundtable discussed the main determinants of gasoline prices, focusing particularly on benchmark prices and on how government intervention and the regulatory framework may influence gasoline prices. Price formation, the existence of price cycles and of asymmetric pricing (also known as the "rockets and feathers" phenomenon) are complex matters and are not yet fully understood.

Delegates discussed the structural conditions which may favour parallel behaviour and coordination in these markets and the role of exogenous factors on pricing behaviour. Some delegates shared their experience on the analysis of price cycling patterns and the role of information exchange and information sharing. The "rockets and feathers" phenomenon was also discussed and some techniques to identify evidence of asymmetric pricing were presented, along with possible explanations and policy measures which may be implemented to tackle this pricing pattern. Several competition agencies monitor the road fuel sector closely and delegates have discussed the importance of monitoring to have readily available information to inform authorities and the public, as well as to detect possible anomalous prices in comparison with historical data. Regulation and deregulation was also discussed, including the introduction of rules to enhance price transparency or rules to reduce price volatility. Delegates shared experiences regarding enforcement activities by competition agencies, the difficulties faced to distinguish lawful from unlawful conduct, and the evidence used to prove anticompetitive behaviour. Finally, the roundtable was also an opportunity to discuss the main results of the market studies conducted by some competition agencies in the road fuel sector, as well as their key recommendations and advocacy efforts, aimed at improving the competitive conditions in this sector.

Papers from the meetings will be available at: http://www.oecd.org/daf/competition/roundtables.htm.

Workshop on Fighting Bid Rigging: Kuala Lumpur, 25-27 June 2013

Ms Simone Warwick
Senior Competition Expert
OECD

The June workshop of the OECD/Korea Policy Centre (OECD/KPC) was held in Kuala Lumpur with the very generous support of the Malaysia Competition Commission (MyCC). The focus of the workshop was on bid rigging, one of the MyCC's priorities for 2013. The workshop was divided into two parts. Days one and two were dedicated to looking at bid rigging from the perspective of competition authorities. Twenty competition authority officials from across the region joined the MyCC staff for this part of the workshop. The third day was focussed on fighting bid rigging in public procurement and public procurement officials from the Malaysian government joined the other participants for this final day.

The first day of the workshop began with welcome remarks by Mr Kyeoung Man Lee, Director General of the OECD/KPC Competition Programme and the Honourable Tan Sri Dato' Seri Siti Norma Yaakob, Chairman of the MyCC. This was followed by an introduction to the OECD/KPC and Korea Fair Trade Commission (KFTC) by Ms Hyelim Jang, Director of the OECD/KPC.

To begin the substantive part of the workshop, Ms Simone Warwick of the OECD/KPC gave an introductory presentation on bid rigging and on why it is an important focus for competition agencies around the world. This was followed by a presentation by Mr Ian-Nielsen-Jones, OECD Consultant, looking at international experience in the area of preventing and prosecuting bid rigging cases. His presentation included case examples from Canada, the United States, Ireland and Mexico.

The afternoon session included a presentation by Mr Jangyee Chang of the KFTC on the KFTC's BRIAS

system, which is a system designed to screen data from public tenders in order to detect potential instances of bid rigging. The afternoon also included case studies from three participating countries: Ms Cindy Chang from the Competition Commission of Singapore, Ms Julia Chou of the Chinese Taipei Fair Trade Commission and Mr Sunil Kumar and Mr Saroj Gupta of the Competition Commission of India. Each detailed experiences with bid rigging cases in their own jurisdiction.

The second day of the workshop included two expert presentations. One was from Mr Ian Nielsen-Jones on the ways in which competition authorities and procurement officials can cooperate to tackle bid rigging. This drew on experiences in Ireland, the United States, Canada and Mexico. Mr Choong-sik Yang of the KFTC presented on the KFTC's experience in bid rigging cases with a particular focus on cases in the construction industry. The session included two further presentations by participating countries on their own experiences, first from Mr Verry Iskandar of the KPPU (Indonesia) and second from Ms Enkhmanlai Ganbold of the AFCCP (Mongolia).

On day three, Mr Kyeoung Man Lee and the Honourable Tan Sri Dato' Seri Siti Norma Yaakob welcomed the Malaysian public procurement officials who joined the workshop. Ms Simone Warwick started the day with a presentation explaining what bid rigging is and why it is illegal. This presentation noted the very significant potential wastage of government resources that can result from bid rigging in public tenders. Mr Mohd. Aidil Tupari of the MyCC then gave a presentation explaining the MyCC's current focus on bid rigging and the initiatives it has taken so far to combat bid rigging.

The next presentation, by Mr Ian Nielsen-Jones, looked at the ways in which procurement tenders can be designed in order to minimise the risk of bid rigging. His presentation drew heavily on the OECD's Guidelines for Fighting Bid Rigging in Public Procurement (OECD Guidelines) which were adopted by the OECD in 2009 and are currently available in 25 languages.

Ms Simone Warwick then turned to look the other side of the equation – how to detect that there has been bid rigging in a tender. Her presentation also drew heavily on the principles set out in the OECD Guidelines. The final part of the workshop was a hypothetical exercise in which the participants sought to determine, on the basis of data provided to them, whether or not tenders had been rigged in a hypothetical chlorine market.

The workshop concluded with final remarks from Mr Kyeoung Man Lee and the Honourable Tan Sri Dato' Seri Siti Norma Yaakob.

The OECD/KPC would like to thank the MyCC for its generous contribution to this workshop and its wonderful hospitality.

The OECD's Guidelines for Fighting Bid Rigging in Public Procurement are available at http://www.oecd.org/daf/competition/guidelinesforfightingbidrigginginpublicprocurement.htm

Bid rigging case studies from Chinese Taipei

Ms Huang Chun Chou
Officer
Chinese Taipei Fair Trade Commission

The Chinese Taipei Fair Trade Commission (FTC) presented two cases at this workshop.

The first one was about several garlic wholesalers located in central Chinese Taipei who together decided the amount and quantity of their bids before participating in the Garlic Exportation Operation Fee Tender. The conduct was able to affect the supply-demand function of the garlic market and was in violation of the concerted action regulation in Article 14 (1) of the Fair Trade Act. The FTC imposed administrative fines of NT$2,000,000 in total. In addition, one of the wholesalers made extra bids in the tender under the names of three other businesses in order to obtain more garlic export quotas. This act was obviously unfair conduct able to affect

trading order and was in violation of Article 24 of the Fair Trade Act. For this conduct, the FTC imposed another fine of NT$300,000 on the wholesaler in question as well as NT$50,000 on each of the three businesses that allowed it to use their names.

The second case related to the Taiwan Taichung County Lunchbox Guild. Around half of schools in Taichung were requiring suppliers to be members of the association and most lunchbox suppliers were members. Members of the association testified that when they went to renew their membership, they were being asked to agree that the bidding price for lunchboxes be above $NT43 per person. The conduct caused members to refrain from competing on price by threat or other unfair approach, which restricted competition or may have impeded fair competition; in violation of Article 19(iv) of the Fair Trade Act. The unlawful activities were suspended and an administrative fine of NT $600,000 was imposed pursuant to Article 41 of the Act.

Conspiracy in tenders and its challenges for competition authorities : Indonesian experiences

Mr Verry Iskandar
Head of Investigation Division
KPPU

Background

Collusive bidding, which is prohibited under Law Number 5 of 1999, is taken very seriously in Indonesia, especially when it takes place in a high-profile sector. The policy objectives of Law No. 5 (to create effectiveness and efficiency in business activities, to ensure equal business opportunities, and to safeguard the interests of the public and improve the welfare of Indonesia's citizens) , are the same principles found in competition laws around the world.

"*For every citizen to participate in the process of production and marketing of goods and or services, in a fair, effective and efficient business environment so as to be able to promote the growth of economy and the functioning of a reasonable market economy*" is the preamble of Law Number 5 Year 1999 which sets out the principles of competition in Indonesia based on democracy and equal opportunity.

To achieve this goal, Law Number 5 of 1999 recognizes that "anyone engaging in business in Indonesia must exist in an atmosphere of fair and natural competition; hence there shall be no concentration of economic power in the hands of certain business actors."

Collusive bid rigging aims to achieve exactly what the law prohibits. By colluding on a tender, bidders effectively fix prices, allocate customers and markets, and limit or set output. In Law Number 5, collusive bid rigging is regulated in Article 22: "*Business actors shall be prohibited from conspiring with other parties in order to determine the awardees of tenders which may result in unfair business competition*"

The definition of tender based on Law Number 5 includes the bid price for:

a. To contract certain works;

b. To procure goods and/or services;

c. To buy goods and/or services;

d. To sell goods and or services.

The most common forms of bid rigging are as follows: sub-contract bid rigging, complementary bidding, bid rotation, bid suppression, market division and common bidding.

One of the collusive bid rigging cases that had been handled by KPPU involved rid rigging in the procurement of Electronic Citizen Single Identification Numbers. In this case, nearly 75% of the content of the business actors' bids were identical – including the products offered, solutions to problems/troubleshooting, and methods of work.

Ignorance by the procurement committee about many of the guidelines set by the government's Goods and Services Procurement Agency (LKPP) served as an initial move to reduce the level of competition among bidders and the irregularities were also found in the specifications set by the procurement committee, particularly on the demand for ISO-certified products, leading to a suspicion that the specifications were rigged to benefit the winners.

Challenges in Enforcement

The KPPU is facing some challenges in fighting collusive bid rigging, such as:

1. Cultural Barriers: Cooperation among competitors instead of competition
2. Structural Barriers: Cooperation between Government Agencies.
3. Nation Wide: Central Government, Local Government and Corporations.
4. Lack of Powers: No Authority to conduct dawn raids, seizure, searches, detain etc. All documents obtained voluntarily.
5. Trade Associations have a potential threat to discriminate against non-member companies.

In order to overcome some of these difficulties the KPPU has employed several strategies, including:

6. Cooperation with National Police to present non-cooperative parties.
7. For information gathering, KPPU works closely with the Audit Board of Republic of Indonesia (BPK) and Indonesian Financial Transaction Reports and Analisys Centre (PPATK/INTRAC).
8. For criminal proceedings, KPPU works closely with the National Police, Attorney General and Corruption Eradication Commission (KPK).

Workshop on Use of Indirect Evidence in Cartel Investigations: Seoul, 4-6 September 2013

At the start of September, participants from across the region gathered in Seoul for a workshop on the *Use of Indirect Evidence in Cartel Investigations*. There is no doubt that competition authorities prefer to have direct evidence in cartel investigations, but direct evidence is not always available or easy to obtain. For newer authorities it is often very difficult to obtain direct evidence due to limited investigative powers and/or the absence of an effective leniency programme. It is for this reason that indirect evidence becomes particularly important in some countries. This workshop was designed to evaluate the ways in which indirect evidence can be used in cartel cases and to consider the precautions that must be taken if relying solely on indirect evidence.

The workshop began with a welcome by Mr Kyeoung Man Lee, Director General of the OECD/Korea Policy Centre Competition Programme (OECD/KPC) and an introduction to the OECD/KPC and Korea Fair Trade Commission (KFTC) by Ms Hyelim Jang, Director of the OECD/KPC.

The substantive part of the workshop began with two presentations by Ms Simone Warwick of the OECD/KPC. Her first presentation was an introduction and overview of the topic. It looked at why indirect evidence is important in cartel cases, the main types of indirect evidence used in cartel cases and the key risks involved in relying on indirect evidence. Her second presentation was on the use of economic evidence in cartel investigations. This presentation covered the relevant

types of economic evidence used, the relevant economic theory, the challenges which arise as a result of the ambiguity of economic evidence together with some international case examples.

In the afternoon session, Mr Eric Meiring of the Antitrust Division of the United States Department of Justice presented on the US approach to indirect evidence. Mr Meiring covered the elements of a cartel in the US, the burden of proof, the ways in which an agreement can be proved and the ways in which indirect evidence can assist.

The final presentation on day one was by Ms Deborah Mayall of the Australian Competition and Consumer Commission (ACCC). Ms Myall gave an overview of Australia's cartel laws before talking about the challenges the ACCC has faced in relying on indirect evidence, with reference to a number of case examples.

Mr Taro Ishizawa of the Japan Fair Trade Commission (JFTC) started proceedings on day two with a presentation about two cartel cases in which the JFTC relied heavily on indirect evidence – one was ultimately successful in the courts and the was not. Ms Deborah Mayall then gave her second presentation. This time she provided an in-depth review of the development of the evidence in an ACCC case that was very heavily reliant on indirect evidence.

The session also included a participant presentation by Ms Yungfen Lin of the Chinese Taipei Fair Trade Commission (CTFTC). This presentation looked at three different cartel cases decided by the CTFTC based on indirect evidence and led to a very interesting discussion about the cases in question.

On day three, Mr Dae Young Kim of the KFTC gave the first presentation. His presentation looked at the presumption of a cartel agreement under Korean law in

situations where there is evidence of parallel conduct. Mr Kim spoke about the challenges the KFTC faced when it took cases using this presumption and noted that since the development of its leniency programme, there is now less need to rely on the presumption.

Up next was Mr Eric Meiring with his second presentation, this time about the collection and use of indirect evidence in cartel cases. The focus of this presentation was on the different types of indirect evidence that are most useful and on the best ways of obtaining such evidence.

Day three also included three participating country presentations. The first was by Mrs Indar Sri Bulan of the KPPU (Indonesia) and looked at the KPPU's decision in a branded cooking oil cartel in which there was strong evidence of price parallelism as well as evidence of communications between the companies in question. Mr Mueen Batlay of the Competition Commission of Pakistan (CCP) spoke about some of the challenges the CCP is facing when it takes competition cases. Finally, Mr Rakesh Bahnot of the Competition Commission of India (CCI) spoke about the CCI's cartel cases to date and the way in which the CCI has used indirect evidence.

The final part of the workshop was a hypothetical exercise. The participants divided into three groups. Based on a set of facts and evidence provided, one group was tasked with arguing that the available evidence supported the finding of a cartel, the second group was tasked with arguing that the evidence did not support a cartel and the third group was tasked with listening to these arguments, reviewing the evidence available and deciding which was the winning argument.

The workshop concluded with closing remarks from the Director-General, Mr Kyeoung Man Lee.

CTFTC Practices on the Use of Circumstantial Evidence in Cartel Cases

Ms Yungfen Lin
Officer
Chinese Taipei
Fair Trade Commission

Article 14 of Fair Trade Act prohibits concerted action, which is defined in Article 7 as the conduct of any enterprise, by means of contract, agreement or any other form of mutual understanding, with any other competing enterprise, to jointly restrict each other's business activities. Circumstantial evidence is helpful and often used by the Chinese Taipei Fair Trade Commission (CTFTC) to prove aforementioned "mutual understanding" among cartel members when direct evidence cannot be obtained.

In the petrol and diesel fuel cartel investigated by CTFTC in 2003, the market was a duopoly in which Chinese Petroleum Corp. had a market share up to 70% and Formosa Petrochemical Corp. 30%. In its decision declaring the two petrol companies had violated Article 14, the CTFTC indicated that price signaling, as a kind of facilitating practice, served as evidence of the mutual understanding between CPC and Formosa.

In the cement cartel, domestic cement manufacturers jointly decided to increase cement prices by controlling the domestic supply from March 2001 to late 2004. Although no direct evidence was obtained, many pieces

of circumstantial evidence were adduced to support the concerted action, including a market structure providing motivation to engage in cartel, formation of an information-exchanging platform and obstruction of the use of substitutes etc. A total fine of TWD 210 million was imposed.

In the industrial paper cartel, three industrial paper manufacturers simultaneously increased prices in the period from November 2009 to March 2010. Although the three firms all claimed the price increases were caused by the rising price of raw material, the CTFTC considered the simultaneous increases could not be economically justified. Supported by the communication evidence showing the three firms' unusual frequent interaction, the CTFTC's decision declared there was an implicit agreement among the three firms to maintain the price increase of industrial paper and to avoid price competition, which constituted a violation of Article 14.

OECD/Korea Policy Centre Competition Programme

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