

Asia-Pacific Competition Update

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

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Entry Point - Editorial Note

For this second editorial note, I would like to guide you through some of the more significant events that have occurred since April as well as some of the exciting events that are coming up.

Starting with our two in-country events held this year in Manila, Philippines and Singapore. Both events requiring close cooperation with the Office for Competition and the Competition Commission of Singapore, respectively. The Manila event was on the fight against bid-rigging and was targeted at both procurement and competition officers from countries with less experience in this type of case. The Singapore event, was dedicated to competition advocacy in what was a new type of event for us at the OECD/KPC Competition Programme as it was a Leader's Seminar. The objective was to get around the room a number of current or former chairmen of competition authorities from the Region as well as from OECD member countries both as speakers and participants, to frankly share their experiences on how best to propel the competition message. To the keynote speakers who took the time and energy to participate in such an engaged manner, a big thank you. Another big thank you goes for all the great work put in by the OFC and CCS leadership and staff for making both of these events great successes.

Looking forward - it is with great pleasure that we get to the last stretch of the year, with 3 very successful and interesting events behind us, and with three more upcoming until the year is out: the sector workshop on telecommunications and the ICT, the workshop for judges on the use of competition economics, as well as with remedies and commitments in competition cases (still being developed).

Confirmed speakers for our event in September are Mr. Michele Piergiovanni (European Commission), and Ms. Suzanne Munck (US FTC), Mr. Yongho Shin (KFTC), Mr. Sam

Paltridge, Ms. Verena Weber, Mr. Sukham Sung (OECD – from the Directorate for Science, Technology and Innovation), Mr. Giovanni Napolitano (WIPO). You will agree all top-notch speakers with wide experience in these areas.

We are also very pleased to be able to confirm our speakers for the annual workshop for judges that will take place between 13 and 15 October that will include Sir Christopher Bellamy, Mr. Miguel de la Mano, Mr. Judge Sang Wook Kang from Korea, Ms. Rhonda Smith, as well as the chairman of the OECD Competition Committee Prof. Frederic Jenny. The workshop will consider some economic theory but focus mainly on experiences of judges in dealing with competition economics, this year mainly focusing in the abuse of dominance and merger cases.

One note before I go: we do request that any write-up of our event that is intended to be made public by participants be sent to us beforehand, to ensure that information that a speaker might not want to be shared more widely be in that way be inadvertently shared.

Finally, we are currently planning next year's events and any specific requests or ideas are of course very welcome and can be sent to me directly at my email: ruben.maximiano@oecd.org.

I look forward to seeing you at one of our upcoming events!

Ruben Maximiano



News from Asia-Pacific Competition Authorities*

Philippines: Competition Act adopted



Four years after the Philippine Department of Justice – Office for Competition (OFC) endorsed an updated and consolidated version for legislative passage —President Benigno S. Aquino III signed Republic Act 10667 or the Philippine Competition Act (PCA) on 21 July 2015. This law will take effect on 17 September 2015 or fifteen (15) days after its publication in the Official Gazette.

The PCA aims to enhance the efficiency of free and fair market competition as a mechanism for the equitable allocation of goods and services. It will penalize anticompetitive agreements, abuse of dominance and anticompetitive mergers that restrict, prevent or limit competition in markets. It is enforceable against any person or entity engaged in trade or business in the Philippines and to international trade that has direct and substantial effects in the country.

The Act also establishes the Philippine Competition Commission (PCC) as an independent quasi-judicial body attached to the Office of the President. The PCC will be composed of a Chairperson and four Commissioners whose term of office is seven years without reappointment.

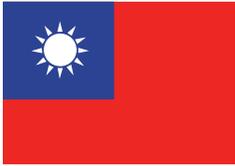
Under the law, the Department of Justice-Office for Competition (OFC) is mandated to conduct investigations and prosecution of all criminal offenses arising under the Act and other competition-related laws.

The functions of the OFC continues to be anchored on the DOJ mandate of being the government's principal law agency committed to advocate for reforms towards the effective, efficient, and equitable administration of justice.

A copy of the said law may be accessed at <http://www.gov.ph/downloads/2015/07jul/20150721-RA-10667-BSA.pdf>.

* News items were provided by respective Competition Authorities.

Chinese Taipei: Sets up anti-trust fund



The Legislative Yuan (Congress) of Chinese Taipei passed an amendment to the Fair Trade Act (FTA) on June 9, 2015 and sets up an anti-trust fund “to strengthen the investigation and sanction over concerted actions and promote the healthy development of market competition”. The amendment entered into effect on 26 June, 2015.

The amendment is to add the Article 47-1 to the FTA and it sets out that the capital sources for the fund will include 30% of the fines imposed under the FTA. The object of the fund will include the reward of the reporting of illegal concerted actions; Promotion of cooperation, investigation and communication matters with international competition law enforcement agencies; Subsidies to the related expenses incurred from litigations associated with the Act and rewards reporting of illegal actions; Deployment and maintenance of databases in relation to the Competition Law; Research and development on the systems in association with the Competition Law; Education and advocacy of the Competition Law, as well as “other necessary expenditures to maintain the market order”.

According to the amendment, the scope of the reporting rewards, qualifications of informer, criteria and procedures of rewarding, revocation, abolishment and recovery of reward, and the maintenance of confidentiality of the informer’s identity shall be determined by the competent authority.

Hong Kong : Competition Ordinance to come into full effect



The date of 14 December 2015 has been appointed by the government of the Hong Kong SAR as the date for the Competition Ordinance (Ordinance) including its substantive provisions to come into full effect.

The Competition Commission issued six guidelines under the Ordinance on 27 July 2015, after several rounds of public consultation in 2014 and 2015. These provide guidance on how the Competition Commission and the Communications Authority – which have concurrent jurisdiction in the telecommunications and broadcasting sectors - intend to interpret and apply the provisions of the Ordinance.

The six Guidelines are: Guideline on Complaints, Guideline on Investigations, Guideline on Applications for a Decision under Sections 9 and 24 (Exclusions and Exemptions) and Section 15 Block Exemption Orders, Guideline on the First Conduct Rule, Guideline on the Second Conduct Rule, Guideline on the Merger Rule.

These may be consulted here: <http://www.compcomm.hk/en/guidelines.html#>

Korea: Two major cases in 2015



The following are some of the major cases handled by the Korea Fair Trade Commission (KFTC) in the first half of 2015.

On April 27, the KFTC sent the Examination Report on the proposed merger between Applied Materials Inc. (AMAT) and Tokyo Electron Ltd. (TEL), the first and third largest semiconductor makers in the world in 2012.

The report considered that the merger was expected to limit competition in the manufacturing of semiconductor equipment market and that thus the divestiture of their overlapping businesses would be needed. As a result, the parties to the merger abandoned the proposed merger, bringing the KFTC's investigation to a close.

The KFTC engaged in close cooperation with the U.S. Department of Justice Antitrust Division (DOJ), the Ministry of Commerce of the People's Republic of China (MOFCOM), the Japan Fair Trade Commission, and the Fair Trade Commission of Chinese Taipei.

The findings were that the merger would have significant negative effects on competition not only from the standpoint of the horizontal and conglomerate effects, but also, significantly, from the effects on innovation, which was separately analysed by the KFTC concluding that negative effects would also result on innovation.

The abandonment of the merger between AMAT and TEL is the second global M&A case where the parties to the merger abandoned the merger plan. In 2010, the KFTC had sent the Statement of Objection with regard to the merger between BHP Billiton and Rio Tinto, the second and third largest iron ore producers in the world, and the two companies subsequently scuttled their merger plan.

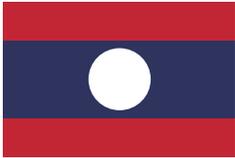
In July, the KFTC detected a cartel in the local compound feed market for pigs, chickens and cows, where eleven companies with a combined market share of 43% agreed on price changes and the timing of such price fixing 16 times from Oct. 2006 to Nov. 2010. The KFTC imposed remedies and fines of 77.334 billion Won in total against the eleven undertakings.

By detecting and remedying the cartel that has continued for a long time in a sophisticated manner, the KFTC has successfully disrupted the collusive practices and collusive structure of the compound feed market. Senior management of the companies attended a number of meetings to exchange specific price information, including level of price changes and the timing for those changes. These then lead to further communications between other representatives of the companies at working-level meetings.

Of importance is the fact that there was little direct evidence and circumstantial materials to prove the cartel agreement, because the agreement was made covertly and verbally. Nonetheless, the the KFTC succeeded in demonstrating the existence of the cartel.



Lao PDR: Draft Business Competition Law discussed in the National Assembly



The Drafting Competition Law Committee proposed the draft Business Competition Law (BCL) for discussion to the National Assembly (NA) Intersession, which took place on 16 June 2015. The main objective of this intersession was to prepare for the 9th Ordinary Session of the 7th National Assembly, which was open from 1 - 21 July 2015.

During the intersession, the Drafting Committee headed by the Vice Minister of Industry and Commerce (MoIC) presented the draft Competition Law to NA members in order to enhance their comprehensive understanding about the significance and contents of the draft BCL. In order to widen the NA members' understanding and knowledge of competition and with support from the German Government through GIZ, two international experts in the field of competition, namely from Malaysia and EU, were invited to present their experiences and lessons learned for NA members.

After the presentations of Vice Minister and experts, the Chairman of NA encouraged all NA members to provide comments and suggestions. Ultimately these were important steps in order to approve the Law by the end of 2015, and thus comply with the ASEAN targets.

Indonesia: KPPU announced their new leadership



The Indonesian Competition Commission, KPPU, announced their new leadership in mid-July 2015. Dr. Muhammad Syarkawi Rauf and Mrs. R. Kurnia Sya'ranie have been appointed as the new Chairman and Vice Chairman, respectively, of the KPPU running from 16 July 2015 to 27 December 2017.

Dr. Rauf is one of the members of the Commission for the 2012-2017 period. As an economist, he has published extensively on economics and on the banking sector following his PhD dissertation at the University of Indonesia. The PhD dissertation was on International Risk Sharing and Financial Integration: An Empirical Study in ASEAN-5 Countries where he analysed the feasibility of currency integration for the region. He graduated from the University of Hasanuddin in Makassar (South Sulawesi) and is an invited lecturer there since then. Prior to his engagement to the KPPU, he has been active as the Chief Economist at the Bank Negara Indonesia (BNI), Makassar, Junior Advisor at UNSFIR – UNDP (United Nation Support Facility for Indonesian Recovery) in the field of Industrial Policy, and at the Senate at University of Hasanuddin.

Mrs. R. Kurnia Sya'ranie is also one of the members of the Commission for the 2012-2017 period. She began her career at the Ministry of Industry, Legal and Organization Bureau in 1984-1986. She gave many contributions to the establishment of the Indonesian competition laws in the 1980s, as she was part of the Preparatory Team for the establishment of Law No. 5/1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition (Indonesian competition law). She then joined the KPPU and lead the Secretariat since its establishment in 2000-2001. She lead the Investigation and Law Enforcement Directorate from 2001 to 2007, before being appointed to lead the Secretariat again in 2007.

Following this new leadership, the KPPU is continuously committed to greater cooperation amongst competition agencies in the world, and convinced that competition policy will consolidate its place in the culture of the Indonesian people for better endeavor toward economic development and sustainable growth.

Workshop on Fighting Bid Rigging

20-22 April, Manila, Philippines

Mr. Ruben Maximiano

Senior Competition Expert
OECD



One of the in-country workshops was devoted to combatting a special kind of cartels – bid rigging cartel. The objective of the workshop was to equip competition authorities with less experience in the Asia Pacific Region to fighting this type of cartel with the necessary know-how, tools for prevention, detection and enforcement.

This workshop took place in Manila, the Philippines, in collaboration with the OFC. Approximately, 50 participants were in attendance, from 14 countries from the Asia Pacific Region, as well as a number of state officials from the Philippines involved in public procurement.

The OECD has done a very significant amount of work over the years on how best to fight bid rigging, and has developed a number of effective tools, such as OECD Guidelines, that can help the fight of bid rigging. The event drew upon the experience of the OECD, as well





as from the experience of the OECD member countries Sweden, Korea, Japan. In these countries fighting cartels and bid rigging is a top priority and they have vast and differing experiences to share. The experience in this field was also shared in presentations made by Indonesia, Pakistan and the Philippines.

Indeed, one of the most important lessons to retain from the workshop is that bid rigging can occur in any country and in any market, and that bid rigging significantly increases prices of goods and services (up to 20% or more). Given that public procurement accounts for approximately 15-20% of GDP in OECD countries (approximately 4.3 trillion EUR spending per year in OECD as whole), the importance of using tools to ensure a competitive procurement system is extremely important for taxpayers as it leads to vast savings and drives innovation as firms learn from one another and continuously improve products. Finally, competitive public procurement system will accrue benefits to the whole economy as public procurement often involves key infrastructure (highways, railways, electricity, etc.) used by other industries.

The workshop was introduced by Mr. Jin Wook Chung, the DG of the OECD/KPC Competition Programme, and was followed the new video presenting the work of the OECD/KPC. One of introductory sessions was led by Mr. Antonio Capobianco (OECD) that shared the broad picture that derives from the extensive work undertaken by the OECD in this field, underlining the importance of the fight against bid rigging, as well as explaining the different ways in which companies can rig bids in a public procurement context (cover bidding, bid suppression, bid rotation and market allocation). The scene was set for the remaining sessions, Mr. Capobianco explaining that from the work done at the OECD it has resulted that there needs to be effective cartel laws and regulations, leniency programmes, enforcement procedures and institutions, sanctions but also tender designs that consider at the outset how to create the conditions to minimise the possibilities of collusion in a bidding context.

The more technical aspects of bid rigging were then tackled, first with a session lead by Mr. Ruben Maximiano of the OECD-Korea Policy Centre on the economics that explains cartel and bid





rigging behaviours as well as the type of market structures that are more conducive to bid rigging as well as the type of evidence that may be used to detect and prosecute such conducts.

After the social lunch, Mr. Capobianco presented a session on how authorities can detect bid rigging using leniency and structural and behavioural screens. From this session it became clear that whilst leniency is effective, it is not as much as one would expect in the case of bid rigging conspiracies and that therefore relying only on such a reactive detection tool exclusively is not a sound cartel/bid rigging detection policy. Among the pro-active detection tools, the use of economic analysis to detect markets structures, behavioural patterns and outcomes that can be consistent with collusion can prove promising. However, competition authorities should be aware that screens are subject to a number of limitations. Hence the need for a checklist of what Mr. Capobianco called “red flags”, which was to be the subject of one of the next presentations.

In the meantime Ms. Minji Kim of the KFTC presented in detail the functioning of the Bid Rigging Indicator Analysis System (BRIAS), a bespoke screening tool developed by the KFTC a number of years ago and operational since December 2005. This is a tool which has proved highly successful in detecting bid rigging activities in Korea. This system is connected to a significant number of government agencies and automatically receives electronic bid information and analyses it to find out if there is any sign of bid rigging. It uses a system of scoring and weighting to detect those procurement processes that are more likely to have been subject to a bid rigging action.

Mr. Antonio Capobianco then presented and explained the OECD Detection Checklist, a checklist that helps not only competition authorities but mainly procurement officers to detect tender processes that may have been subject to bid rigging. Just because a procurement officer identifies suspicious conduct or statements by competitors, this does not necessarily mean





that they have engaged in bid rigging. That is where getting the competition authority involved relatively early on may help.

In the last activity of the day, the participants were divided into smaller groups and worked through a simulated tender process, identifying together, using the OECD checklists and Guide, any bidding patterns, changes in bidding patterns, and indications that the bidders may have communicated with each other. The value of obtaining information on the purchasing patterns and prices from several government agencies in different geographic areas was also clearly emphasized.

The second day of the workshop was dedicated to the investigation techniques and processes that can be used to pursue cases that have been identified as containing some indicia that bid rigging may have occurred.

Mr. Graeme Jarvie from the Swedish Competition Authority shared some of the main building blocks needed to indeed

ensure that a good, solid, evidence-based case is made. His presentation included many references to real cases in Sweden and many practical tips for investigating such types of cases from gathering, assessing and then to the handling of evidence. He also offered many insights into the cooperation between competition officials and public procurement officers. The Swedish Competition Authority is in a unique position as it also has the responsibility of being the public procurement regulator.

More in-depth investigation techniques, in particular those used by the JFTC were presented by Ms. Akiko Kasahara, making detailed reference to some of the types of evidence used in some of the more emblematic bid rigging cases, which allowed participants to further their understanding of how to effectively investigate such cases.

The final session of the day was brought by Mr. Graeme Jarvie and was devoted to sanctions, in particular focusing on fines –



what is the optimal fine, and how should fines be calculated to ensure they have a deterrent effect. Other types of sanctions and the international practices across some of the more advanced jurisdictions in this field were also discussed by Mr. Jarvie.

Before the second hypothetical session of the event, Mrs. Dinni Melanie Faisal of the KPPU shared the experience of Indonesia with bid rigging cases, providing examples of several different types of cases it has brought. The hypothetical session that followed was divided into two distinct parts, where the small groups were first invited to act as potential cartellists and then in a second part with the knowledge and insights they had gained from thinking like cartellists they were then put in the seat of a procurement agency that is designing that tender with the view to reduce the potential for bid rigging.

The third and last day of the event, built upon and consolidated the techniques that can be used to design tenders that reduce the possibilities of bid rigging. First, by ensuring effective and ongoing collaboration between public procurement agencies and competition authorities in a session lead by Mr. Antonio Capobianco and then by understanding the OECD checklist for designing tenders. This latter session was provided by Mr. Ruben Maximiano. Finishing the content based part of the workshop, Mr. Ahmed Qadir offered a presentation on the work done in Pakistan on bid rigging as well as shared some of the future plans for making this even more of a priority in Pakistan.

Overall, this was a workshop with the lively involvement of the participants throughout the sessions and the hypothetical cases which made it a great workshop for all involved!

Pakistan's Experience with Bid Rigging in Public Procurement

Mr. Ahmed Qadir

Director, Office of International Affairs
Competition Commission of Pakistan



Pakistan has not remained immune to the harmful effects of bid rigging in public procurement, said the delegation of the Competition Commission of Pakistan who attended the OECD-Korea Policy Centre's workshop on bid rigging in public procurement in April 2015.

It is estimated that bid rigging causes a loss of anywhere between US\$ 38 billion to US\$ 65 billion of loss to the country's exchequer every year. This translates to 15% to 25% of the country's GDP, but regardless of the figure, such a quantum of procurement necessitates strict measures against anti-competitive practices. It is important that public money is used in an efficient, effective and economically advantageous manner.

The manner in which bids are rigged in Pakistan are no different from the ways bid rigging generally happens. Either a winner is pre-determined beforehand and the other competitors give bids that are deficient in some aspect or another or all bidders give bids that are so similar to each other that any technical evaluation becomes irrelevant.

Pakistan established a Public Procurement Regulatory Authority (PPRA) in 2004, which developed a code of ethics for procurement activities in Pakistan based on international best practices. The Public Procurement Rules, 2004, aim at encouraging transparency in the procurement process.

The Competition Commission of Pakistan has tackled a number of cases involving collusive bidding practices. In February 2015, it held an open hearing on procurement issues in the power sector and gave its recommendations to the Government of Pakistan. Details of all these are available on the Commission's website – cc.gov.pk.

The Competition Commission of Pakistan will be signing a Memorandum of Understanding with the Public Procurement Authority. The partnership between the procurement regulator and the competition agency at the pre- and post-bidding stages would help minimise risks of corruption and collusion in bidding. While the PPRA has access to relevant data, the Competition Commission has the ability to tackle collusive activities under the Competition Act, 2010. Both agencies plan advocacy activities to improve the efficiency of public procurement. These include educating people on the possible harm and cost of fraud and collusion, and educating public procurement officials about what they should look for to detect bid rigging, types of fraud associated with government procurement, and what they can do to protect themselves.

Bid-rigging and Procurement: The Philippine experience



Ms. Florina C. Agtarap

State Council, Office for Competition
Department of Justice, Philippines

Public procurement in the Philippines is governed by Republic Act No. 9184, otherwise known as the “Government Procurement Reform Act,” a law that aims to infuse transparency, accountability and efficiency in the process of procuring infrastructure projects, goods and consulting services.

With the ultimate goal of promoting competition by providing a level playing field for bidders, the law seeks to modernize, standardize and regulate the government’s procurement activities. The central body that implements the law is the Government Procurement Policy Board.

Bid rigging is considered a hard-core cartel activity in the Philippines. Essentially, there are four (4) prohibited acts: (1) when two or more bidders agree and submit different bids as if they were bonafide; (2) when a bidder maliciously submits different bids to create the appearance of competition; (3) when two or more bidders enter into an agreement intended to secure an undue advantage; and (4) when a bidder employs schemes to restrain the natural rivalry of the parties or operates to stifle or suppress competition.

Private individuals who commit any of these acts, including any public officer who conspires with them, suffers the penalty of imprisonment. Bid rigging is also considered a combination in restraint of trade which is punishable under Philippine penal laws.

During the presentation made, the Office for Competition (OFC) of the Department of Justice (DOJ) shared its experiences in cartel investigation:

In one case, rice traders and importers were charged criminally for manipulating the bidding process for the award of rice import allocation by using farmers’ organizations that lacked the financial capability to qualify as bidders. Through these dummy entities, the traders and importers were able to secure unwarranted or undue advantage and, thus, stifled competition.

The same modus operandi was employed in the garlic and onion cartel activities in relation to the issuance of import permit allocation.

Fighting bid rigging is one of the OFC’s enforcement priorities. Advocacy activities including workshops and seminars to raise awareness and train sector regulators are underway. Moreover, the OFC is now exploring opportunities for enhanced partnerships with the Government Procurement Policy Board, which could involve specialised trainings based on OECD materials and best practices.

Further, the OFC continues to pursue strategic actions in four (4) sectors which are considered a priority, taking into account their importance and impact on consumers and the economy, namely: transportation, telecommunications, energy and commodities.

Leader's Seminar on Competition Advocacy

24-26 June 2015, Singapore

Mr. Ruben Maximiano

Senior Competition Expert
OECD



From June 24 to 26 the first OECD/KPC Competition Programme Leader's seminar was held in Singapore in a joint venture effort with the Competition Commission of Singapore.

The objective of this Leaders Seminar was to equip competition authorities in the Asia Pacific Region with the valuable experience, know-how and tools for advancing the acceptance and understanding of what competition agencies do as well as the promotion more generally of competition policy within their respective economic culture.





As keynote speakers the Seminar was privileged to count on the presence of a number of current and former heads of agencies. These leaders had in common having been particularly active in pursuing advocacy programmes in their jurisdictions during their respective tenures. In attendance as participants were also other heads and senior level personnel from a number of competition agencies from countries in the Region.

From the Asia Pacific Region, the following leaders acted as speakers: Mr. Stanley Wong - Chief Executive Officer of the Hong Kong Competition Commission, Mr. Youngson Shin - Secretary General, Korea Fair Trade Commission, Mr. Geronimo Sy - Assistant Secretary, Department of Justice of the Philippines / Head of the Office for Competition (OFC), and our co-host Mr. Toh Han Li - Chief Executive, Competition Commission of Singapore. OECD member countries' leaders (outside Asia-Pacific Region) that acted as speakers were Mr. Declan Purcell - former Chairman, Irish Competition Authority, Mr. Antonio Gomes - President, Portuguese Competition Authority. Mr. Sean Ennis - former Chairman of Mauritius Competition Authority and now at OECD was also one of the speakers.



After the introductory remarks by Mr. Jin Wook Chung, Director General of the OECD/KPC Competition Programme and Mr. Toh Han Li, Mr. Ruben Maximiano of the OECD set the scene with the main messages that competition agencies may bring to the public sphere on the benefits of competition. The presentation also focused on setting out the framework in which agencies can move when advocating for competition policy and principles as well as explaining the role that the OECD can play and does play to engage all areas of government with competition principles. This was followed by a presentation of Mr. Stanley Wong with some thoughts and his experience on creating a competition culture in an Asian economy, which were then complemented by comments made by Mr. Toh Han Li and Mr. Geronimo Sy.

The following four sessions that took place on the first day went deeper into the different types of actions and examples of how to engage with specific segments of society.

The first such session was how best to engage with government, ministries as well as regional structures, and also with politicians more generally. This session was led by Mr. Declan Purcell who offered many tips, stories and examples of how best to approach the different political actors. These were further complemented by remarks made by Mr. Stanley Wong and Mr. Geronimo Sy, drawing upon their experiences in their respective jurisdictions. The second session was driven by Mr. Geronimo Sy, on how in the Philippines the OFC has been engaging with stakeholders such as businesses, chambers of commerce, consumer groups, academics, and the 63 regulators that make up the Philippines regulatory environment, in particular in the run-up to the approval of the new Competition Law. Mr. Antonio Gomes, provided some remarks, complementing with the Portuguese experience on how it has in the past, in the present and in the



future intends to engage with this diverse set of players that can also act as the first defenders and communicators of the benefits of competition.

The following session was dedicated to how best to achieve effective communication with judges and the judiciary, and was eloquently presented by Mr. Stanley Wong, drawing in particular upon his vast international experience. The last session was a panel conversation, in which Mr. Antonio Gomes, Mr. Declan Purcell, Mr. Geronimo Sy, Stanley Wong, Mr. Toh Han discussed the most successful advocacy action they had undertaken. One of the highlights was the description by Mr. Antonio Gomes of a recent campaign undertaken in Portugal targeting SMEs via a roadshow throughout the country with information meetings with case-handlers, and undertaken in close cooperation with

a number of business associations. A general comment offered by all those on the panel was the importance of case selection as this helps the notoriety and credibility of the authority, in particular with consumers.

Day 2 was initially dedicated to digging down to the case examples of Singapore and Korea, two jurisdictions that have been very heavily active in advocacy efforts in the last few years. The CCS' work in this field was shared by Ms. Ng Ea Kia, offering examples from both interactions with the public sector and work on competition assessment of regulations (such as the very recent example of the taxi regulations) to engagement with the private sector, in particular with SMEs. The Secretary General of the KFTC Mr. Youngson Shin detailed the experience of the KFTC, offering many examples of the excellent work done



by the Market Structure Policy Bureau since it was established to take charge of regulatory reform, in particular reforming anti-competitive regulations such as entry regulations across the Korean economy.

Two further sessions were held in the morning, before the afternoon visit to the main sights of Singapore: the first, was how to deal with the media (press, television and radio) and ensure that they understand and are sensitive to the competition message, presented by Mr. Declan Purcell and Mr. Ruben Maximiano; the second, regarded the Hong Kong experience as regards educating the wider public on the benefits of competition via TV mini-series, publications and a number of other groundbreaking actions.

The third and last day, went further into the practical aspects of conducting effective advocacy, in particular as regards advocating for regulations that do not stifle, or even promote, competition. The OECD Competition Assessment Toolkit was analysed in great detail by Mr. Sean Ennis, offering insights on how the Toolkit can be applied in practice and how indeed it is being applied to certain sectors in jurisdictions such as Greece and Romania to great effect. The role of market studies was the subject of the following session conducted by Mr. Declan Purcell, that discussed some of the best practices for undertaking such studies that he learnt from having conducted a number of these whilst chairman of the Irish Competition Authority. Mr. Ruben Maximiano concluded the sessions with some systematisation of how to go about conducting such studies, drawing upon





some very recent work done by the OECD, in particular in Latin America. Mr. Antonio Gomes' session on the Portuguese example, complemented the prior two sessions as the Portuguese authority has recently, under Mr. Gomes' leadership, set up a department to deal with the competition assessment of regulations and offered some practical tips and examples arising from that work.

A session that was subject to a vibrant interest was the session on quantification of advocacy efforts, more particularly how to measure the impacts of the competition assessment work on regulations, which was led by Mr. Sean Ennis.

The day drew to a close with three very interesting presentations from GIZ and its intense advocacy work in the ASEAN region, Chinese Taipei and Pakistan. These three case study examples offered some very interesting advocacy campaigns with some very original and impactful work being done that is furthering the competition "word."



The concluding session was a final panel conversation between Mr. Antonio Gomes, Mr. Declan Purcell, Mr. Sean Ennis, Mr. Toh Han Li, each drawing upon the experience of the fruitful three days to set out the main principles that should drive competition advocacy efforts as well as offer practical advice on how to increase impact and likelihood of success.

Overall a very interesting set of sessions and discussions on a topic that is very wide in scope, but is fundamental if the competition agencies, in particular new agencies, are to ensure the reputation and the status that is required in order to carry out their missions effectively and fulfil their potential. This success would not have been possible without the engagement of a number of highly reputed speakers in decision making positions that took the time and effort to come and support the OECD/KPC workshop and offer their invaluable experience.

Competition Advocacy—Experience of Chinese Taipei



Ms. Pei-Yi Tai

Section Chief, Department of Planning
Chines Taipei Fair Trade Commission

In her presentation, Ms. Pei-Yi Tai of the Chinese Taipei Fair Trade Commission (CTFTC) shared with the participants CTFTC's experience regarding regulatory reform and how effectively to convey fair trade concepts to the public at large.

The CTFTC has carried out a number of competition advocacy projects since the implementation of the Fair Trade Act (FTA) in 1992.

In 1994, The CTFTC set up the "461 Project Task Force" to review all regulations which could have been inconsistent with the FTA. In 1996, the CTFTC formed the "Deregulation Task Force", to come up with reform plans for execution by the Cabinet. The Task Force identified five markets for reform and opening to imports in manufacturing, and eight markets for reform to remove entry barriers in services. During 1997, the Cabinet launched another regulatory reform program to remove barriers and create a stronger regional role based on Chinese Taipei's comparative advantages. The CTFTC took advantage of this with its concurrent "462 Special Project", to review government regulations that displaced market. In 2001, the CTFTC implemented the "Green Silicon Island Project" to participate in larger policy initiative systematically and led to reforms to insurance, attorney's fees and movie theatres' markets.

To allow the public to correctly understand the content of the FTA, the CTFTC insists on the "Promotion prevails over punishment" principle for law enforcement, which adopts diversified promotion channels. Major activities include convening workshops and seminars, providing up-to-date enforcement information through press releases and CTFTC's website, conducting training programs for managerial-level employees of firms, issuing various publications and e-papers, and establishing e-learning website. Moreover, the CTFTC set up a service center to provide enterprises and the general public with consulting services, answering questions concerning the FTA and administrative programs.

Ms. Tai concluded with the key factors of successful competition advocacy in Chinese Taipei. The CTFTC's advocacy projects were pragmatic, supported by top-level political persons, and the CTFTC maintained good horizontal coordination with regulatory agencies. In addition, the CTFTC adopted diversified promotion channels to convey fair trade concepts, and measured the effectiveness of advocacy work periodically.

Competition Advocacy – Pakistan’s Experience

Mr. Syed Umair Javed

Registrar
Competition Commission of Pakistan



Competitive markets and the protection of consumers from anti-competitive activities remain at the heart of CCPs enforcement and advocacy efforts. Since 2007, CCP's competition advocacy efforts have been centred on two constructs; consistent and transparent enforcement of competition rules, and knowledge-based awareness. As a new competition agency back then, CCP's focus was to educate policy makers, regulators, and businesses about the contemporary competition law in the country. To do so, CCP employed all the usual and necessary tools for advocacy (press releases, conferences, seminars etc), policy change (opinions & policy notes), and business compliance (voluntary competition compliance code).

Eight years later, CCP is going beyond knowledge-based awareness. This means that while routine advocacy initiatives will continue, CCP will start focusing on creating partnerships and strategic outreach with relevant domestic and international partners. Within Pakistan the two-fold aim of this change will be to: (i) explain the potential advantages of competition to those whose principal focus is on other policy objectives, and (ii) achieving cross-sector regulatory compliance with minimal duplication or burden on businesses. Some partners identified are sector regulators, academic institutions, and business and trade communities.

To offer some examples, CCP is already working closely with the Securities and Exchange Commission of Pakistan to streamline the process of reviewing mergers & acquisition, and will partner with the Privatization Commission to ensure that public monopolies do not turn into private ones as has happened in the past. An agreement with the country's procurement regulator is also in the offing to jointly tackle bid rigging in public procurement. It will also work with colleges and universities to develop courses on competition law, economics, and policy. Internationally, CCP is directing its efforts to create a competition and consumer protection policy programme in South Asia with the help of international organisations and regional competition agencies.

GIZ's Experiences in Promoting Fair Competition in ASEAN



Ms. Sita Zimpel

Advisor, Competition Policy and Law in ASEAN
GIZ

The International Competition Network (ICN) defines competition advocacy as *activities conducted by the competition authority related to the promotion of a competitive environment for economic activities by means of non-enforcement mechanisms, mainly through its relationships with other government entities and by increasing public awareness of the benefits of competition*¹.

While this reflects the perspective of competition agencies, it does not mean that they have the exclusive mandate for advocacy. Quite the contrary, academics, civil society organizations, business associations and even development partners can play an equally significant role in promoting a broad-based “competition culture”. This is not only true for garnering the buy-in for the implementation of a competition law. Advocacy and stakeholder engagement are critical at the drafting stage as well.

Moreover, it is important to differentiate between advocacy towards a specific political action or commitment, which very often leverages on an existing momentum, as opposed to more continuous awareness-raising aimed at (indirectly) stimulating impulses for change, particularly when the scope of action is otherwise limited, for example owing to certain political decisions.

The ASEAN-German cooperation project “Competition Policy and Law in ASEAN” (CPL)² has been working with the ASEAN Experts Group on Competition (AEGC) and the ASEAN Secretariat since 2011. This includes technical assistance in the following areas: fostering regional cooperation and dialogue; developing legal as well as institutional frameworks; strengthening enforcement capacities; as well as advocacy and awareness-raising.

The CPL Project applies a holistic approach to help foster a competition culture across all sections of society, while accounting for the varying degrees of economic and CPL development in the region. Experience has shown that advocacy approaches and activities need to adequately account for the respective country contexts and clearly explain concrete benefits for the domestic economy.

Examples from the work of GIZ with ASEAN Member States also illustrate the different dynamics when it comes to the competition agenda. There is often a need for adjustment, not least as certain stakeholders (such as legislators) may only be necessary or active at one stage of the process. It is therefore useful to have an advocacy strategy that systematically maps relevant actors, processes, collaborative arrangements, and lessons – but at the same is flexible enough to change direction, if necessary. Linking up with actors outside of the competition agencies and building a common understanding early on can lead to a sustainable network of “champions” for competition that persists even in the face of changes within the political landscape.

1 www.internationalcompetitionnetwork.org

2 <https://www.giz.de/en/worldwide/14574.html>

OECD Competition Committee Meetings

15 - 19 June 2015

Roundtable on Competition Issues in Liner Shipping

A competitive liner shipping sector is vital for global transport. This industry has had a very atypical history in terms of the application of competition law. Since the industry's inception in the 19th century late, liner shipping conferences, whereby liner shipping companies fix prices and other conditions on a given route, have been a common practice and for a long time these agreements were exempted from antitrust laws. However, in the past few decades, the sector has experienced important structural changes and several jurisdictions have undergone regulatory reforms. These have led to a re-organisation of the sector towards greater reliance on consortia and other alliances between carriers, i.e., forms of cooperation at the operational level which do not involve fixing freight rates. Delegates discussed these important developments in the application of competition law to liner shipping. A background note from the Secretariat along with contributions from the participants supported the discussion.

Link: <http://www.oecd.org/daf/competition/competition-issues-in-liner-shipping.htm>

Hearing on Auctions and Tenders

In December 2014, it was discussed how to design auctions and tenders to achieve efficient outcomes and provide winners with the appropriate incentives to deliver quality and invest. This time the discussion explored in depth some other challenges posed by auctions and tenders, especially how to deal with the so-called

“abnormally low offers”, and how and when to partition contracts into lots. Governments have become increasingly concerned that contracts and concessions are awarded to abnormally low bids with an ensuing increase in the risks of ex-post renegotiation, cost-overruns and contract defaults. This Hearing addressed these concerns and the different approaches that have been used to address them (e.g. average bid methods), as well as their impact on the efficiency of the outcomes. The discussion also addressed the division of contracts into lots, which can play an important role in promoting competition and ensuring participation by smaller bidders, and will examine the trade-offs involved in terms of efficiency and competition.

Link: <http://www.oecd.org/daf/competition/tenders-and-auctions.htm>

Roundtable on Public and Private Antitrust Enforcement in Competition

There is broad agreement that private enforcement can substantially improve the functioning of a competition regime and that individuals and firms who suffer injury from anti-competitive conduct, should be entitled to reasonable compensation. At the same time, it is important to strike the right balance between public and private enforcement. Antitrust policy and antitrust law enforcement, including private enforcement, should be viewed as an integrated policy system in which numerous factors contribute to the complementary goals of deterrence and compensation. Obtaining the right balance between these tools and goals is key to ensuring that private enforcement does not adversely affect the effectiveness of public enforcement, and encourages greater

compliance with antitrust rules, while avoiding litigation that is wasteful and could discourage socially beneficial conduct. The discussion focused on the current state of private enforcement in OECD members and other selected jurisdictions, reviewed initiatives to promote more private enforcement and the tools available for this purpose and discussed the practical relationship between public and private antitrust enforcement. A background note from the Secretariat along with contributions from the participants supported the discussion.

Link: <http://www.oecd.org/daf/competition/antitrust-enforcement-in-competition.htm>

Hearing on Disruptive Innovation

New technologies or business models can profoundly affect the functioning of existing industries. The most visible examples are internet-based “sharing services” that are disrupting conventional taxi and hotel markets, but there are many others in diverse areas such as finance, retail electricity and automobiles. These disruptive innovations can deliver important benefits to competition and consumers, in terms of new and better services, and can stimulate innovation and price competition from established providers. However, they can also give rise to legitimate public policy concerns (e.g. safety, privacy) and create demands for regulation. Established providers will often lobby for existing regulations to be applied to new providers to lessen their competitive advantage, sometimes claiming rightly or wrongly that this advantage arises from an ‘unfair’ exclusion from regulatory rules.

But how far should regulation go, what role should competition policy play in these debates, and how might competition authorities participate? Experts and participants discussed current challenges arising from disruptive innovations and possible areas for future work by looking at the economic characteristics of industries where such innovations have

appeared, the various responses of incumbents and regulators, and the possible ways in which competition authorities could intervene, with a focus on competition advocacy. The discussion was supported by an issues paper by the Secretariat and notes by participating experts and delegations.

Link: <http://www.oecd.org/daf/competition/disruptive-innovations-and-competition.htm>

Hearing on Oligopoly Markets

Oligopoly markets are markets dominated by a small number of suppliers. They can be found in all countries and across a broad range of sectors. Some oligopoly markets are competitive, while others are significantly less so, or can at least appear that way. Competition authorities are often called upon to investigate concerns of co-ordinated actions or lack of vigorous competition.

However, detecting the root cause of sub-competitive performance in oligopolies can be challenging, and the manner in which it occurs (e.g. whether through an explicit agreement among the firms to restrain competition, or something less) may greatly affect the analysis and available tools/remedies under competition law. This can potentially lead to enforcement gaps whereby welfare-reducing conduct is not addressed. But how significant of a problem is this in practice, and is there anything we can do about it? OECD experts and delegates discussed the approaches that competition authorities can take to address issues in oligopoly markets and the relative strengths and weaknesses of various enforcement and non-enforcement tools, including those related to: cartels, abuse of (collective/joint) dominance, merger control, market investigations and competition advocacy. An issues paper by the Secretariat and notes by participating experts set up the background of this debate.

Link: <http://www.oecd.org/daf/competition/oligopoly-markets.htm>

Other Events

Workshop on ex-post evaluation of enforcement decisions by competition authorities

The OECD held a workshop in Paris in April 2015 to provide capacity building to competition officials that have already been or will be involved in the ex-post evaluation of enforcement decisions. During the workshop, the ex-post evaluations of three enforcement decisions were presented in details by their authors and then discussed with the support of two invitees: Prof. Tomaso Duso (DIW Berlin and DICE) and Dr. Peter Ormosi (UEA, Norwich). The workshop provided participants the opportunity to:

- learn how an ex-post evaluation is carried out in practice
- discuss the difficulties that can be encountered when such an exercise is undertaken
- examine the strengths and weaknesses of the various possible methodological approaches

- have an opportunity to ask questions and propose ideas
- understand what lessons can be learnt from these experiences

Ideas and comments that have emerged from the discussion will be used to enrich the OECD Reference Guide on the Ex-Post Evaluation of Competition Authorities' Enforcement Decisions (forthcoming).

Link: <http://www.oecd.org/daf/competition/workshop-expost-evaluation-competition-enforcement-decisions.htm>

Calendar of Events 2015

Jeju, Korea
24 to 26
March

Practical Aspects of Effective Merger Control

- Case shaping
- Development of theories of harm (unilateral and coordinated effects)
- Investigations and collecting evidence
- Basic economic tools and instruments

Manila, Philippines
20 to 22
April

In-country Event – Philippines

Fighting Bid Rigging

- Introduction to bid rigging
- Detecting and investigating bid rigging
- Cooperation with procurement officials
- Leniency and sanctions in bid rigging cases

Singapore
24 to 26
June

In-country Event –Singapore

Leader’s Seminar on Advocacy

- OECD competition assessment toolkit
- The role of market studies
- Identifying barriers to competition and regulation
- Measuring impacts

Seoul, Korea
15 to 17
September

Sectorial Workshop – Telecommunications and Electronic Communications

- The role of competition in the sector
- Competition and regulation
- Market definition
- Dominance issues, such as margin squeeze, bundling, etc..
- Mergers

Busan, Korea
13 to 15
October

Competition Law Workshop for Judges - Use of Competition Economics

- Introductory competition economics for judges
- Focus on dominance and merger cases
- Considering economic evidence and expert witnesses

Jeju, Korea
1 to 3
December

Remedies and Commitments in Competition Cases

- Merger remedies
- Commitments in abuse of dominance cases
- model texts for commitments’,
- use of trustees, at monitoring and at ex-post evaluation of commitments and remedies



Photo Gallery



Asia-Pacific Competition Update

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