



## **OECD-Korea Policy Centre, Competition Programme**

### **Workshop**

**on**

### **Evidentiary Issues in Establishing Abuse of Dominance**

**Jeju, Korea, 3 June - 5 June 2014**

#### **Seminar Overview**

Abuse of dominance cases are among the most difficult for competition enforcers to investigate and bring. In part this is because many behaviors that might be deemed anticompetitive in some circumstances, e.g., low pricing or product bundling, are pro-competitive or neutral in most circumstances. In addition, key evidence in such cases may come from complaining competitors of the firm who are affected by the alleged abuse, but these competitors would have the same incentives to complain whether the dominant firm's actions were pro- or anti-competitive. Their interests are not necessarily aligned with those of consumers, and in fact are often not.

It is for these reasons that evidentiary issues -- what evidence is important to gather, where such evidence may come from, and how to evaluate evidence that on its face may indicate pro- or anti-competitive behaviors -- are quite complex in abuse of dominance cases. The purpose of this workshop is to look at the nature of a dominant firm and the evidentiary basis for establishing that a firm is dominant, and more importantly, the evidentiary basis for establishing that a particular form of abuse of dominance has occurred. Experts will share their own experiences in gathering and using evidence in abuse of dominance investigations, and the way in which national courts or other adjudicating agencies have evaluated such evidence. Case examples from across the region will also be examined and participants will take part in hypothetical exercises.

The workshop aims to cover the following:

- Discussion of common types of abuse of dominance and the economic theories behind them
- How to connect economic and other types of evidence to a theory of harm
- Types of evidence commonly used (e.g. economic data, testimony of affected firms)
- Collection and evaluation of evidence

Participants will also discuss and debate two hypothetical cases that highlight some of the complexities that may arise in evaluating abuse of dominance cases.

## Seminar Agenda

Tuesday, 3 June

9:00-10:00 **Welcome and Opening Remarks from OECD-Korea Policy Centre, Competition Programme**  
Mr Kyeoung-Man Lee, Director General of the Competition Programme (OECD-Korea Policy Centre)

**Introduction to the OECD-Korea Policy Centre**  
Ms Heeeun Jeong, Director of the Competition Programme (OECD-Korea Policy Centre)

**Participants briefly introduce themselves and their agency to the group**

*Short break and photo session*

10:15-11:15 **Overview: Abuse of Dominance and Evidentiary Issues**  
Mr. Eric EMCH (OECD)

11:15-12:00 **Evidence used to Prove Abuse of Dominance in the EU**  
Mr. Ricardo CARDOSO (EC)

12:00-13:30 *Lunch Break*

13:30-14:15 **Case Study on Abuse of Dominance in Chinese Taipei**  
Ms. Hsiao-Yin HUANG (CTFTC)

14:15-15:00 **Establishing Monopoly Power in Abuse of Dominance Cases**  
Mr. Eric EMCH (OECD)

*Coffee Break*

15:15-16:15 **The Abuse of Market Dominance by Intel**  
Mr. Joong-Kyu SUN (KFTC)

16:15-17:00 **The United Regional Case: Theory and Evidentiary Hurdles**  
Mr. Scott FITZGERALD (US DOJ)

18:00 *Dinner Provided at a Jeju Restaurant*

Wednesday, 4 June

9:00-10:30      **Hypothetical Case #1 and Discussion**  
Mr Eric EMCH (OECD)

*Coffee Break*

10:45-12:15      **Hypothetical Case #2 and Discussion**  
Mr Eric EMCH (OECD)

12:15-1:30              *Lunch Break*

13:30-17:00            *Sightseeing*

18:00                      *Dinner Provided at a Jeju Restaurant*

Thursday, 5 June

- 9:30-10:15      **Abuse of Dominance in French Natural Gas Market: The GDF Case**  
Mr. Ricardo CARDOSO (EC)
- 10:15-11:00     **Case Study, Philippines**  
Ms. Merba WAGA (Philippines Dept. Of Justice)
- Coffee Break*
- 11:15-12:00     **Singapore's Experience in Price- and Non-Price Abuse of Dominance Cases**  
Mr. Terence SEAH (Competition Commission of Singapore)
- 12:00-13:30     *Lunch Break*
- 13:30-14:15     **Pakistan's Experience in Establishing Abuse of Dominance Violations**  
Ms. Kishwar KHAN (Competition Commission of Pakistan)
- Coffee Break*
- 15:00-15:45     **Predation and the Difficulty of Proof**  
Mr. Eric EMCH (OECD)
- 15:45-16:30     **The Role of Price-Cost Tests in Evaluating Conditional Pricing Practices**  
Mr. Scott FITZGERALD (US DOJ)
- 16:30-17:00     **Overview of Workshop and Lessons Learned**  
Mr. Eric EMCH (OECD)
- Concluding Remarks by OECD-KPC**