



OECD/KOREA POLICY CENTRE COMPETITION PROGRAMME

2014 ANNUAL REPORT

OECD:

www.oecd.org/competition/seoulrcc

Korea Policy Centre:

www.oecdkorea.org

1. INTRODUCTION TO THE OECD/KOREA POLICY CENTRE'S COMPETITION PROGRAMME

The Centre is a joint venture between the Organisation for Economic Co-operation and Development (the OECD) and the Korean Government. The function of the Centre is to provide education and training to government officials in the Asia-Pacific in the fields of tax, competition, public governance and social policy. The Centre also undertakes research in these subject areas.

The Centre's Competition Programme draws on the experience of:

- the OECD's Competition Committee which oversees an extensive programme of work, involving both member and non-member countries, in developing recommendations and best practices, as well as discussing and publishing papers on topical issues in competition law and policy; and
- the Korea Fair Trade Commission (KFTC) which is a cabinet level agency responsible for both competition law enforcement and competition policy advocacy.

Each of these bodies has an extensive capacity building programme to assist younger competition enforcement agencies in skills development. The OECD/Korea Policy Centre's Competition Programme (the Programme) is an important part of each of the two joint venture parties' capacity building efforts in the Asia-Pacific region.

Mission of the Centre's Competition Programme

To assist Asia-Pacific competition authorities in developing and implementing sound competition law and policy.

The primary activities of the Programme are competition law and policy workshops which are held five or six times a year. Details of the 2014 workshops are provided in section 2 of this Report.

The Programme's workshops and seminars provide:

- an opportunity for younger competition authorities to learn the skills necessary to efficiently enforce new competition laws;
- an opportunity for younger competition authorities to share the details of their early decisions and discuss their challenges and successes with their peer agencies from developing and developed countries;
- an opportunity for all competition agencies, old and new, to learn new approaches and techniques from each other; and
- an opportunity for the staff of all competition agencies, old and new, to meet and form enduring professional contacts with officials from other countries to facilitate effective international cooperation in competition law enforcement.

The events also provide a forum for policy makers from countries who are in the process of drafting, enacting or implementing competition law to:

- gain a more detailed understanding of the practicalities, practices and approaches of different enforcement agencies in various countries when designing competition laws; and
- begin the preparations for the formation of their country's competition authority.

2. DETAILED REVIEW OF THE ACTIVITIES OF THE CENTRE IN 2014

In 2014, the Programme included workshops on the following topics:

- International Cooperation in Cross-Border Competition Cases;
- Evidentiary Issues in Establishing Abuse of Dominance;
- Merger Review Procedures and Joint Ventures;
- Cartel Fundamentals;
- Evidence in Cartel Proceedings; and
- The Retail Sector.

In total there were 147 participants in attendance in 2014, with 34 speakers presenting at these 6 events.

The Programme seeks to evaluate its workshops by asking participants to complete a detailed evaluation form. The target for the workshops is to achieve, on average, a rating of at least 4.0 out of a possible 5.0.

A description of each workshop, and the evaluation by the attendees, is set out below.

2.1) 10th Anniversary Celebration - International Cooperation in Cross-Border Competition Cases: Seoul, Korea, 19-21 March

2014 marks 10 years of collaboration between the OECD and the Korean Government in working to develop and implement effective competition law and policy in the Asia-Pacific region. The collaboration began in 2004 and has been operated under the auspices of the OECD/Korea Policy Centre Competition Programme since 2008.

During this time, the programme has delivered 56 workshops on competition law and policy for government officials and judges from across the region. Over 1,400 individuals have benefited from the Programme which is designed to share the expertise of OECD countries in the field of competition law and policy with economies in the Asia-Pacific region. The Programme both promotes the adoption of competition laws and helps new and existing competition authorities to build their enforcement capabilities.

To celebrate 10 years of collaboration, competition officials from across the Asia-Pacific region met in Seoul on 19 March 2014. Professor Frédéric Jenny, Chairman of the OECD Competition Committee and Mr. Dae Rae Noh, Chairman of the Korea Fair Trade Commission (KFTC), delivered keynote speeches. This was followed by a panel discussion focused on ways to optimise technical assistance programmes to develop competition authorities and enhance international co-operation. This panel discussion was chaired by Professor Jenny and included contributions from Professor Tresna P. Soemardi, Commissioner of Indonesia's KPPU, Mr O. Magnai, Chairman of Mongolia's AFCCP, Mr. S. L. Bunker, Member of the Competition Commission of India and Mr. Hackhyun Kim, Vice Chairman of the Korea Fair Trade Commission.

After the celebration, the participants shifted their focus to a discussion of international co-operation in cross-border competition cases. This is a topic of increasing importance as both the number of competition authorities around the world and the number of cross-border competition cases continue to grow.

This part of the workshop began with an overview presentation from Ms. Simone Warwick, Senior Competition Expert at the OECD. The remainder of the workshop focused on four key themes:

1. mechanisms for international co-operation
2. obstacles and challenges in international co-operation
3. co-operation in practice, and
4. the future of international co-operation.

Discussion on each topic was moderated by Ms Simone Warwick with contributions from the following expert panellists:

- Mr. Toshiyuki Nambu, Deputy Secretary General, Japan Fair Trade Commission
- Mr. Russell W. Damtoft, Associate Director, US Federal Trade Commission
- Dr. Paul Taylor, Special Advisor, Australian Competition and Consumer Commission
- Mr. Sungkyu Lee, Director, Korea Fair Trade Commission
- Mr. Yongsu Lee, Director, Korea Fair Trade Commission
- Mr. Daeyoung Kim, Director, Korea Fair Trade Commission
- Mr. Sungkeun Kim, Director, Korea Fair Trade Commission.

Participants also provided contributions on experiences from their own jurisdictions, with presentations from:

- Ms. Cindy Chang, Competition Commission of Singapore
- Mr. Simon (Hsing-Yuan) Wang, Chinese Taipei Fair Trade Commission
- Mr. Rodel A. Meris, Philippines Office for Competition
- Mr. Xiaoqiang Qian, MOFCOM, China
- Ms. Hongying Cao, SAIC, China
- Mr. Xuan Hien Cao, Vietnam Competition Authority
- Mr. Hilman Pujana, KPPU, Indonesia
- Ms. Rafia Kiani, Competition Commission of Pakistan
- Mr. Tselmeg Garmaa, AFCCP, Mongolia.

The workshop concluded with closing remarks from Mr. Kyeoung Man Lee, Director-General of the OECD/Korea Policy Centre, Competition Programme.

EVALUATION

OVERALL AVERAGE SCORE FOR EVENT ACROSS ALL CATEGORIES				4.5				
DETAILED RESPONSES TO QUESTIONS <i>(Numerical score for each category)</i>	Average Score	Number of Responses	% in Highest Category	Number of Responses				
				Very High <i>(5)</i>	High <i>(4)</i>	Moderate <i>(3)</i>	Low <i>(2)</i>	Very Low <i>(1)</i>
I. The overall usefulness for your work of the topics	4.5	22	55%	12	9	1		

addressed.								
II. The overall quality of the presentations.	4.4	22	45%	10	11	1		
III. The overall usefulness of the case studies.	4.4	22	38%	8	13			1
IV. The overall usefulness of the seminar materials.	4.5	22	55%	12	10			
V. The overall usefulness of this event.	4.6	22	59%	13	9			

2.2) Evidentiary Issues in Establishing Abuse of Dominance: Jeju, Korea, 3-5 June

Abuse of dominance cases are among the most difficult for competition enforcers to investigate and prosecute. In part this is because many behaviours that might be deemed anticompetitive in some circumstances, for instance, low pricing or product bundling, are pro-competitive or competitively neutral in many other circumstances. The interests of competitors who complain about such practices may or may not be aligned with those of consumers. For these reasons, evidentiary issues – what evidence is important to gather, where such evidence may come from, and how to evaluate evidence that may on its face indicate pro- or anti-competitive behaviours – are quite complex in abuse of dominance cases.

The OECD/Korea Policy Centre workshop in Jeju, Korea on June 3-5 on “Evidentiary Issues in Establishing Abuse of Dominance” brought these issues into focus. Participants included competition enforcers from countries across Asia, including China, Chinese Taipei, Hong Kong, India, Indonesia, Malaysia, Mongolia, Pakistan, the Philippines, Singapore, Thailand, and Vietnam. Panelists included experts from the Korea Fair Trade Commission, the United States Department of Justice, and the European Commission.

The workshop opened with welcoming remarks from Director General Kyeoung Man Lee and Director Heeun Jeong of the OECD/Korea Policy Centre. From there, the talks focused on giving an overview of evidentiary issues in abuse of dominance cases and case studies from particular jurisdictions’ perspectives. Mr. Eric Emch, a competition expert and consultant for the OECD who led the workshop, discussed issues in defining and detecting a dominant position or “monopoly power,” and possible tests for abuse of such a position. As Mr. Emch discussed, there is no unified test for abuse of dominance – instead, particular tests tend to depend on the exact offense alleged – such as price/cost tests for predatory pricing. That said, there are some common themes throughout all types of abuse of dominance cases, such as establishing harm to consumers and not just competitors, and finding that the abusive behaviour tends to “raise rivals costs” and not just lower their profits. In addition, competition enforcers must be conscious of the need to preserve incentives to compete aggressively even if that harms competitors in the short run.

Mr. Ricardo Cardoso, for DG Competition at the European Commission, discussed the EU approach to abuse of dominance cases. Mr. Cardoso discussed market share screens as a first indicator but also other evidence that may indicate a dominant position – such as asymmetries in shares among market participants, stability of market share over time, evidence of responses to actions taken by competitors, and firm profitability. He also discussed the taxonomy of exclusionary abuse from the EU’s perspective – dividing such abusive behaviour into four types, including direct and indirect foreclosure and input and customer foreclosure. Exploitative abuse investigations in the EU relating to high or discriminatory prices were also referred to. Such investigations are allowed by Article 102 of the EU Treaty but raise difficult issues of how to preserve incentives to compete and invest, and, as a practical matter, how to define whether a price is “unreasonably high.”

During the second half of the first day, Mr. Joong-Kyu Sun of the KFTC, Mr. Scott Fitzgerald of the U.S. Department of Justice, and Ms. Hsiao-Yun Huang of the Chinese Taipei FTC each discussed major abuse of dominance investigations from their jurisdictions. Mr. Sun discussed the KFTC's investigation of Intel, the evidence behind its findings that Intel abused a dominant position, and the corrective measures taken by the KFTC. Mr. Fitzgerald discussed the United Regional case in the United States: the exclusionary contracting behaviour by a local hospital with its health insurers that the US DOJ sued to stop, and the settlement that was ultimately reached with the hospital system. Ms. Huang described the Chinese Taipei FTC's investigation into Taipei Gas and what it found to be exploitative abuse regarding sales of natural gas into homes.

During the second day of the workshop, participants broke into small groups to work through, in turn, two hypothetical cases of abuse of dominance: one involving false teeth (modelled after the Dentsply investigation in the United States) and one involving home water heaters (modelled after a case brought in Canada). In each case, the small groups identified key questions that a competition authority would need to investigate to determine if abuse had occurred, and how the answers to those questions could be woven into a complaint against the offending companies. Each group then shared its perspective with the others. A lively discussion followed – reflecting some variety in standards and burdens of proof across jurisdictions, but general agreement on the contours of a potential case.

The third day of the workshop featured further presentations of actual abuse of dominance cases from participating countries as well as an in-depth discussion of predatory pricing and accompanying price-cost tests.

Ms. Kishwar Khan of the Competition Commission of Pakistan and Mr. Terence Seah of the Competition Commission of Singapore (CCS) each gave overviews of their country's abuse of dominance prosecution framework illustrated with specific recent examples. Ms. Khan discussed exclusionary and exploitative abuse from Pakistan's perspective, as well as examples from the food and airline industries. Mr. Seah gave an overview of the Competition Act of Singapore and the two-step test for finding a violation in the case of abuse of dominance – the existence of a dominant position in the relevant market and behaviour that is abusive. He illustrated these ideas with examples of CCS investigations into potential abuse in the pricing of exhibitions and in the credit card processing market.

Mr. Cardoso of the EC and Ms. Merba Waga of the Philippines Department of Justice each discussed issues relating to abuse of dominance in a regulated industry. Mr. Cardoso discussed a recent EC case in the French natural gas market, including difficult issues of market definition and defining the theory of harm, including what it means to be an “essential facility” in the context of abuse of dominance. In that case, remedies were particularly difficult because of the complexity of the underlying industry and the overhang of regulation. Ms. Waga discussed the recent experience of reform in the Philippines telecommunications sector and the role of competition enforcers in the wake of sector reform that did not always introduce competition in the way that was intended.

Finally, Mr. Emch discussed the various ways in which “cost” can be measured in a price-cost test for predation, including average variable cost, average “avoidable” cost, and average total cost. Mr. Emch illustrated these different tests with a discussion of the predatory pricing case brought in the United States against American Airlines in 2001. Mr. Fitzgerald discussed the application of price-cost tests in the United Regional case, and how the DOJ used a “discount attribution test” to determine that the offending contracts lacked a pro-competitive business justification.

EVALUATION

OVERALL AVERAGE SCORE FOR EVENT ACROSS ALL CATEGORIES	4.3
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DETAILED RESPONSES TO QUESTIONS <i>(Numerical score for each category)</i>	Average Score	Number of Responses	% in Highest Category	Number of Responses				
				Very High (5)	High (4)	Moderate (3)	Low (2)	Very Low (1)
I. The overall usefulness for your work of the topics addressed.	4.3	21	29%	6	15			
II. The overall quality of the presentations.	4.2	21	19%	4	17			
III. The overall usefulness of the case studies.	4.2	21	24%	5	15	1		
IV. The overall usefulness of the seminar materials.	4.3	21	33%	7	13	1		
V. The overall usefulness of this event.	4.3	21	33%	7	14			

2.3) In-country Event – Workshop on “Merger Review Procedures and Joint Ventures”: Beijing, China, 25 June

In June 2014, the Competition Programme of the OECD/KPC held a one day workshop in Beijing for MOFCOM on Merger control, with sessions dedicated to comparing review procedures across jurisdictions and analysing the assessment of joint ventures.

After an introduction to the workshop conducted by Mr. Zhu Zhongliang (Director of Anti-Monopoly Bureau, MOFCOM) and Mr. Kyeoung Man Lee (Director- General of the OECD/Korea Policy Centre, Competition Programme) there was the first panel discussion on the comparison of procedures for merger review, moderated by Mr. Antonio Capobianco (OECD). Mr. Michael Albers (EU), Mr. Andrew Heimert (US FTC), Mr. Sun Miao (MOFCOM) and Mr. Sangmin Song (KFTC) presented experiences from their jurisdictions.

Mr. Capobianco started by setting out the main principles of merger review with the OECD’s Recommendation on Merger Review and then the panel provided an overview of agencies’ main transparency and fairness obligations towards merging parties. In particular, each one of the members of the panel provided the perspective of their own jurisdiction on a number of issues previously agreed in order to facilitate a fruitful and comprehensive discussion of the topics.

The presentations and discussions of the speakers in the first panel included a number of different issues on procedural rights and practices. In particular, discussions centred on the type of content provided by authorities during the process - ranging from the type of explanations to actual evidence shared. The stage in the procedure when competition concerns are shared with the merging parties, the practices regarding the publishing of merger decisions and finally the role and procedural rights of third parties (competitors and consumers) during the merger review were other topics extensively considered.

The second panel discussion took place during the afternoon and was moderated by Mr. Zhu Zhongliang (MOFCOM) and the speakers integrating the panel discussion were Mr. Michael Albers (EU), Mr. Andrew Heimert (US FTC), Mr. Yang Jianhui (MOFCOM) and Mr. Yongho Shin (KFTC).

The speakers presented the position of their jurisdictions regarding a number of different issues on the treatment of joint ventures. The issues under discussion were whether joint ventures were subject to either merger control or to other antitrust rules, the standard of review used for joint ventures and then both “structural” and “coordination” aspects to such transactions were considered.

This workshop resorted to a different format than those usually undertaken by the OECD/KPC competition programme, as a one day event, discussing in detail particular very specific issues with recourse to the different experiences of several jurisdictions.

EVALUATION

OVERALL AVERAGE SCORE FOR EVENT ACROSS ALL CATEGORIES	4.6
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DETAILED RESPONSES TO QUESTIONS <i>(Numerical score for each category)</i>	Average Score	Number of Responses	% in Highest Category	Number of Responses					
				Very High (5)	High (4)	Moderate (3)	Low (2)	Very Low (1)	No Answer
I. The overall usefulness for your work of the topics addressed.	5.0	6	100%	6					
II. The overall quality of the presentations.	4.5	6	50%	3	3				
III. The overall usefulness of the case studies.	4.5	6	50%	3	3				
IV. The overall usefulness of the seminar materials.	4.3	6	50%	3	2	1			
V. The overall usefulness of this event.	4.8	6	83%	5	1				

2.4) In Country Event - Cartel Fundamentals – Workshop for ASEAN Member States, Bangkok, Thailand: 2-4 September

The OECD/Korea Policy Centre's workshop on "Cartel Fundamentals," in Bangkok, Thailand on September 1-3, 2014, co-hosted by the Thailand Trade Competition Commission, and provided a forum for ASEAN authorities to explore some of these tools of modern cartel enforcement and share their experiences.

Economic theory recognizes that there are high costs of cartels on consumer welfare with little compensating benefits. In countries without a history of competition enforcement, cartels can be prevalent. This means that for young competition authorities in particular, there can be a high payoff to focusing on cartel enforcement as an early priority to change the business culture and to demonstrate to consumers the benefits of competition laws. The question is: how does a young authority most effectively detect, prosecute, and deter cartels? Presentations and discussions in the workshop focused on the economic theory of cartels, common tools to detect and prosecute them, and various jurisdictions' particular experiences with cartels. Participants also worked through as a group a case study relating to a hypothetical asphalt cartel.

After welcoming remarks on the first day from Mr. Kyeoung Man Lee of the OECD/Korea Policy Centre and Mr. Santichai Santawanpas, Deputy Director General of the Department of Internal Trade in the host country of Thailand, the first day of the workshop focused on providing an overview of the economics of cartels, cartel detection and investigation methods. Mr. Eric Emch, an economist and competition expert leading the workshop for the OECD, began by discussing recent trends in cartel enforcement worldwide and the increasing importance of international coordination in fighting cartels. Ms. Alexandra Shepard of the United States Department of Justice gave an overview of deterrence and detection of cartels from the United States' perspective, noting that the combination of criminal penalties for cartels with leniency programs in the United States has proven particularly effective in gaining the cooperation of cartel participants to unravel cartels.

Mr. Seong Wook Yu of the Korea Fair Trade Commission (KFTC) and Mr. Wei Lu Lim of the Competition Commission of Singapore (CCS) then discussed methods that their authorities use to detect cartel behaviour, including uses of reward systems and data analysis. Mr. Yu focused on several innovative methods the KFTC uses in detecting cartels, including a reward system for whistle-blowers who report cartel behaviour and a data analysis system used to detect bid rigging. Mr. Lim discussed the two-pronged approach used by the Competition Commission of Singapore to fight cartels: advocacy and enforcement. The two are intertwined, as advocacy can generate complaints or feedback from the government or the public that are the most common source of cartel cases. The CCS also makes use of a whistleblowing program and a leniency program, and has begun using data analysis to identify industries that might be susceptible to cartel.

Day 1 concluded with a discussion of investigative techniques by Mr. Noriaki Abe of the Japan Fair Trade Commission (JFTC) and an overview of the economics of cartels by Mr. Emch. Mr. Abe focused on "dawn raids," and walked step-by-step through the JFTC's approach, including pre-raid planning, briefing of the team, and the conduct of the raid itself. Mr. Emch discussed how economics of defection from a cartel agreement create an inherent instability to cartels, and how leniency programs can take advantage of that instability.

The second day of the workshop began with a discussion of cartel investigations in the Philippines by Mr. Geronimo Sy, Assistant Secretary of the Office of Competition in the Philippines Department of Justice, Mr. Sy described sector studies that are being conducted by the Philippines DOJ to uncover possible

anticompetitive behaviour, and discussed the DOJ's findings as they related to a possible rice and garlic cartel.

The bulk of day 2 of the workshop was taken up by a hypothetical asphalt case led by experts from OECD member countries. Participants broke down into three groups and each "interviewed" cartel whistleblowers, firms in the industry, and customers (all played by competition experts from OECD member countries). Documents from a fictitious dawn raid informed the interviews and helped participants focus on key pieces of information they needed to obtain to reach a decision about whether and how to prosecute the fictional cartel. Each of two sessions concluded with the three groups describing what they learned from documents and interviews, gradually filling in the picture of a long-running agreement to anti-competitively rig bids for public procurement processes. Discussion focused on the specifics of the agreement and participation in the agreement, and the particular evidence that could be used to prosecute the hypothetical cartel.

The final day of the workshop focused on case studies from particular jurisdictions and delved into more detail on leniency programs. Ms. Shepard of the US DOJ discussed the international liquid crystal display (LCD) cartel and how the US and other jurisdictions coordinated their investigations, ultimately leading to fines of over \$1 billion in the US and significant prison time for a number of executives of the cartel firms. Mr. Abe discussed bid rigging in Japan that actually involved a government agency that was disbanded as a result of the JFTC investigation. Ms. Chantida Kalampakorn of the Thai Department of Internal Trade discussed the Thai Competition Act and its application to cartel investigations, while Ms. Wahyu Retno Dwi Sari and Ms. Lina Rahmawati of the Indonesian KPPU similarly described the structure of Indonesian cartel enforcement and how cases are handled. Mr. Emch discussed how cartel sanctions should be set to optimally deter cartels, and how sanctions vary in practice across jurisdictions.

Ms. Heeun Jeong of the OECD/Korea Policy Centre explained the leniency program operated by the KFTC, with the recent expansions of that program and related investigatory powers of the KFTC. The leniency program in Korea has been responsible for detection of long-running cartels in the sugar, flour, and polypropylene industries, among others, and has in some cases had a domino effect as an investigation in one industry has turned up evidence of cartels in related industries.

The workshop concluded with closing remarks by the OECD KPC and the Thai Office of Trade Competition Commission. Close cooperation between these two institutions was central in bringing about the workshop and making it a success both from the perspective of the host country and all the participants.

EVALUATION

OVERALL AVERAGE SCORE FOR EVENT ACROSS ALL CATEGORIES	4.4
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DETAILED RESPONSES TO QUESTIONS <i>(Numerical score for each category)</i>	Average Score	Number of Responses	% in Highest Category	Number of Responses				
				Very High <i>(5)</i>	High <i>(4)</i>	Moderate <i>(3)</i>	Low <i>(2)</i>	Very Low <i>(1)</i>
I. The overall usefulness for your work of the topics	4.5	42	57%	24	16	1	1	

addressed.								
II. The overall quality of the presentations.	4.4	42	38%	16	25	1		
III. The overall usefulness of the case studies.	4.3	42	38%	16	21	5		
IV. The overall usefulness of the seminar materials.	4.5	42	55%	23	18	1		
V. The overall usefulness of this event.	4.5	42	55%	23	17	2		

2.5) Competition Workshop for Judges: Evidence in Cartel Proceedings, Seoul, Korea 15-17 October

In October 2014, the Centre held the fourth workshop for judges, this one dedicated to evidence in cartel proceedings. This is the fourth year that the Centre has held a workshop on competition law for judges. Nineteen judges from across the region participated in the workshop.

The themes of previous workshops primarily addressed the interaction between law and economics either by considering the over-all policy rationale and design of competition laws or how to adjudicate cases where the application of an economic theory has to be proved. The main challenge for judges that these workshops explored was how to bring economic principles to life in applying the law.

This year's workshop was the first to address the topic of cartels. The main challenge for judges in relation to cartels is to weigh up often conflicting, incomplete and deliberately concealed evidence to determine whether in fact there was coordinated conduct. Where such coordination between competitors is found to exist, a full economic analysis is not required.

The workshop comprised both presentations and a hypothetical case presented to the attendees for their adjudication. The introductory presentations commenced with private practice consultant to the OECD/Korea Policy Centre, Mr. Nicolas Taylor, presenting an overview of how the cartel prohibition fits into a modern competition law. President Carl Baudenbacher of the European Free Trade Association Court gave a presentation on the legal frameworks and models for cartel enforcement. Judge Douglas Ginsburg of the US Court of Appeals' Washington DC Circuit catalogued the different kinds of cartels and the evidentiary challenges that arise.

Three presentations concerned the evaluation of specific types of evidence: Mr. Ruben Maximiano of the OECD/Korea Policy Centre gave a presentation on obtaining direct evidence from dawn raids, leniency and forms of direct evidence. Mr. Taylor gave a presentation on indirect evidence based on the OECD's 2006 roundtable discussion that distinguishes between "communications" evidence and "economic" evidence. Dr Rhonda Smith, Lay Member of the High Court of New Zealand and former Member of the Australian Copyright Tribunal, gave a presentation specifically on how to use economic evidence in cartel proceedings.

Judge Jae Hun Jeong of Seoul High Court discussed a recent important Korean case which used a range of direct and indirect evidence, including economic and communications evidence.

At this point in the workshop there had been extensive conceptual discussion about the use of different kinds of evidence and the participant judges heard and determined a hypothetical case loosely based on an Australian petroleum products cartel. Extensive documentary evidence was produced in the “court file” and oral presentations were given by Mr. Maximiano (representing the competition authority), Ms. Heejeong Jeong (representing an alleged cartel member appealing on the basis that all the evidence against the company was illegally obtained) and Mr. Taylor (representing several companies who claimed to be “peripheral” to the cartel and denied being party to any agreement or coordinated action).

The final phase of the workshop moved to a discussion of the considerations that arise after it has been concluded that a party was involved in illegal cartel conduct. Judge Ginsburg and his colleague at the School of Law, George Mason University, Professor Bruce Kobayashi, gave a detailed presentation on remedies and sentencing ranging from the theoretical considerations when establishing the optimal level of fines and the practical challenges that courts face. President Baudenbacher gave a presentation on granting (or refusing to grant) access to the competition authority’s files to third party damages litigants.

This workshop marks the beginning of an important trend for future judges workshops held at the Centre. Although the over-all character of the workshops enables OECD member countries to share their many years of experience with competition law cases with Asian courts who are still in the process of establishing a body of core precedents, all the participants demonstrate a rapidly gaining level of experience in competition law. This will increasingly enable the newer jurisdictions to participate as presenters at the workshops and also provide a richer opportunity for a two-way educational exchange between member and non-member OECD countries.

The first steps in the direction of greater participation by non-member country judges and towards a two-way exchange taken at this workshop were to invite a broader number of OECD member country participants to participate and the inclusion of a hypothetical that involved all participants as active participants presenting their findings to each other.

EVALUATION

OVERALL AVERAGE SCORE FOR EVENT ACROSS ALL CATEGORIES	4.6
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DETAILED RESPONSES TO QUESTIONS <i>(Numerical score for each category)</i>	Average Score	Number of Responses	% in Highest Category	Number of Responses				
				Very High <i>(5)</i>	High <i>(4)</i>	Moderate <i>(3)</i>	Low <i>(2)</i>	Very Low <i>(1)</i>
I. The overall usefulness for your work of the topics addressed.	4.6	20	55%	11	9			
II. The overall quality of the presentations.	4.6	20	60%	12	8			

III. The overall usefulness of the seminar materials.	4.5	20	50%	10	10			
IV. The overall usefulness of this event.	4.6	20	60%	12	8			

2.6) Sector Focused Event: The Retail Sector, Busan, Korea, 3-5 December

In December 2014, the OECD/Korea Policy Centre held a workshop dedicated to the competition issues that arise in retail sector – a very important sector of the economy for most countries in the Asia Pacific Region.

Every year the Centre holds an event dedicated to a sector. This year's workshop addressed in detail some of the issues that arise in the context of the retail sector, in particular in the vertical relationships between manufacturers and retailers both in the bricks and mortar and online worlds.

The workshop comprised of both presentations by expert speakers, case studies presented by a number of countries as well as two hypothetical cases worked on in smaller groups by the attendees to put into practice the issues discussed during the expert sessions.

Before the workshop proper was started Mr. Marcus Pollard, manager of competition affairs at the Hong Kong Competition Commission, took the floor to offer an overview of the institution and the state of play in the introduction of the competition law in Hong Kong.

Mr. Ruben Maximiano of the OECD/Korea Policy Centre, then offered a comprehensive roadmap for the workshop as well as an outline and interconnection of the main issues that would be discussed during the three days as well as their critical importance in the context of competition policy implementation in the retail sector. The first technical presentation was made by Mr. Viktor Porubsky of the European Commission that discussed the techniques to use when defining markets in the retail industry, exemplifying with a number of recent cases of the European Commission dealing with consumer goods (chocolates, deodorants and consumer electronics).

The remaining part of the first day of the workshop was dedicated to vertical agreements and restraints.

Firstly, an overview of vertical restraints in distribution agreements was provided by Mr. Ruben Maximiano. This included setting out the basic economic underlying concepts of the competition analysis of such agreements, including inter and intra brand competition and the differences and similarities in approach to such agreements from jurisdictions of OECD member countries such as Australia, European Union, Japan, Korea and the United States.

Secondly, Mr. Richard Bilodeau, of the Canadian Competition Bureau, provided an exploration of the more common types of vertical agreements - ranging from exclusive dealing to tied selling - and contextualizing these within the Canadian experience.

Thirdly, in the following session Mr. Richard Bilodeau dedicated particular attention to the very topical issue of Retail Price Maintenance and the recent change from a per se to a rule of reason approach recently adopted in Canada - explaining in detail the underlying reasons and consequences of the change. The

Canadian experience was then juxtaposed to the European Union practice in the field by Mr. Ruben Maximiano.

To finish the first day of the workshop, the participants were divided into smaller groups of 5 persons, and worked in analysing the issues and solving the problems set out in a hypothetical case put to them for their appreciation and determination and dealing with retail price maintenance type practices.

The second day was dedicated to furthering the analysis of vertical agreements, this time with attention being devoted to the online environment, in a detailed discussion on price relationship agreements conducted by Professor João Gata, Chief Economist of the Portuguese Competition Authority and with interventions by Mr. Richard Bilodeau, sharing the Canadian experience. These sessions were followed by Chinese Taipei FTC's Ms. Jin-Hui Tsai setting out the CTFTC's practice with vertical restraints with a case involving exclusive dealing and the foreclosure of new department stores in a given city in Chinese Taipei. A second hypothetical case was discussed in smaller groups and explored how to identify and analyse the effects of a Most Favoured Nation clause.

The final day of the workshop focused on merger analysis in retail markets, firstly with a presentation by Mr. Porubsky of the specific competition assessment issues to be considered in the consumer and retail markets and then by an in depth examination of a case in Korea by Mr. Sangmin Song. The case was the merger of two food retail chains in Korea and raised matters of geographic market definition as well as the use of economic data to analyse the competitive impacts of the merger. Ms. Loy Pwee Inn of the Competition Commission of Singapore presented a merger case involving aspects of buyer power and barriers to entry in food markets (in a merger between two ice cream producers). Some specificities of accepting appropriate and effective merger remedies in retail markets were then discussed by Mr. Porubsky. The final country case study was brought by Ms. Dian Retno Mayang Sari of the Indonesian KPPU on a case of abuse of dominance in the food retail markets.

The final session was conducted by Professor Gata and was dedicated to the role of sector enquiries in the food distribution sector, offering an overview of the recent work done in this area by the EU Commission and a number of European countries. In this context, Professor Gata also explored the possible limits of Competition Law in dealing with issues that could arise in this sector.

Overall, this was a workshop with a lively participation in all of the sessions, with questions and a variety of comments made from participants from different jurisdictions.

EVALUATION

OVERALL AVERAGE SCORE FOR EVENT ACROSS ALL CATEGORIES	4.4
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DETAILED RESPONSES TO QUESTIONS <i>(Numerical score for each category)</i>	Average Score	Number of Responses	% in Highest Category	Number of Responses				
				Very High <i>(5)</i>	High <i>(4)</i>	Moderate <i>(3)</i>	Low <i>(2)</i>	Very Low <i>(1)</i>
I. The overall usefulness for your work of the topics addressed.	4.4	20	40%	8	11	1		
II. The overall quality of the presentations.	4.3	20	30%	6	13	1		
III. The overall	4.2	20	30%	6	11	3		

usefulness of the case studies.								
IV. The overall usefulness of the seminar materials.	4.5	20	50%	10	10			
V. The overall usefulness of this event.	4.7	20	70%	14	5	1		

3. PROGRAMME NEWSLETTER

The Programme continued to publish regular newsletter, known as the “Asia-Pacific Competition Update” in 2014. All the editions of the newsletter are available online at the following address <http://www.oecd.org/daf/competition/koreacentrenewsletter.htm>.

There are two primary reasons for publishing the newsletters. The first is to ensure that the benefit of the Programme’s workshops can extend beyond only those officials who are able to attend the workshop in person. The newsletter enables a wider audience to have access to information exchanged during the events.

The second reason for publishing the newsletter is to enable Asia-Pacific competition authorities to establish and maintain links between each other. The newsletter provides a means by which countries can report the details of their key cases to each other and, hopefully, assist agencies to contact each other in the event that there is a joint investigation or an investigation that would benefit from the insights gained by a similar investigation in another Asia-Pacific country.

4. CENTRE STAFFING

During 2014, the Programme’s staff comprised:

Title	Name	Location
Director General	<i>Mr. Kyeoung Man Lee (until 21 December 2014)</i> <i>Mr. Jin Wook Chung (from 22 December 2014)</i>	Seoul, Korea
Senior Competition Expert	<i>Ms. Simone Warwick (OECD’s dedicated staff member) (until June 2014)</i> <i>Mr. Ruben Maximiano (from 15</i>	Paris, France

	September 2014)	
Director	<i>Ms. Hyelim Jang (until 16 March 2014)</i> <i>Ms. Heeun Jeong (from 17 March 2014)</i>	Seoul, Korea
Communications officer	<i>Ms. Young Park (until 6 May 2014)</i> <i>Ms. Michelle Ahn (from 7 May 2014)</i>	Seoul, Korea
Programme coordinator	<i>Ms. Seul-ki Kim (until 6 May 2014)</i> <i>Ms. Hekung Jun (from 7 May 2014)</i>	Seoul, Korea
Research officer	<i>Mr. Daniel Oh</i>	Seoul, Korea

5. CONTRIBUTIONS

The following OECD Member States and organisations generously provided expert speakers for the Programme's workshops in 2014:

Country	Authority/Organisation
Australia	Australian Competition and Consumer Commission
Canada	Canadian Competition Bureau
European Commission	DG Competition
Japan	Japan Fair Trade Commission
Korea	Korea Fair Trade Commission Seoul High Court, Korea
New Zealand	High Court of New Zealand
Portugal	Portuguese Competition Authority
United States	Department of Justice Federal Trade Commission US Court of Appeals, Washington DC Circuit
Other	European Free Trade Association (EFTA) Court School of Law, George Mason University

In addition, officials from the following participating authorities made presentations during the 2014 workshops:

Country	Authority
China	State Administration for Industry and Commerce,

	Ministry of Commerce
Chinese Taipei	Fair Trade Commission
India	Competition Commission of India
Indonesia	Business Competition Supervisory Commission (KPPU)
Mongolia	Authority for Competition and Consumer Protection
Pakistan	Competition Commission of Pakistan
Philippines	Office for Competition, Department of Justice
Singapore	Competition Commission of Singapore
Thailand	Office of Trade Competition Commission
Vietnam	Vietnam Competition Authority

A special thank you goes to all the speakers listed in Appendix A for their presentations.

Appendix A Speakers at Competition Programme Events in 2014

Speaker	Presentation	Workshop
Mr. Dae-lae Noh (KFTC, Korea)	Keynote Speech	10th Anniversary Celebration
Mr. Frédéric Jenny (OECD)	Keynote Speech Panel Discussion on Optimising Technical Assistance Programmes to Develop Competition Authorities and Enhance International Co-operation	10th Anniversary Celebration
Mr. Hackhyun Kim (KFTC, Korea)	Panel Discussion on Optimising Technical Assistance Programmes to Develop Competition Authorities and Enhance International Co-operation	10th Anniversary Celebration
Mr. Tresna P. Soemardi (KPPU, Indonesia)	Panel Discussion on Optimising Technical Assistance Programmes to Develop Competition Authorities and Enhance International Co-operation	10th Anniversary Celebration
Mr. O. Magnai (AFCCP Mongolia)	Panel Discussion on Optimising Technical Assistance Programmes to Develop Competition Authorities and Enhance International Co-operation	10th Anniversary Celebration
Mr. S. L. Bunker (CCI, India)	Panel Discussion on Optimising Technical Assistance Programmes to Develop Competition Authorities and Enhance International Co-operation	10th Anniversary Celebration

Speaker	Presentation	Workshop
Mr. Toshiyuki Nambu (JFTC, Japan)	<p>Panel Discussion on Mechanisms for Co-operation</p> <p>Panel Discussion on Key Obstacles and Challenges in International Co-operation</p> <p>Panel Discussion on Cooperation in Practice</p> <p>Panel Discussion on Future of International Co-operation</p>	International Co-operation in Cross-Border Competition Cases
Mr. Russell W. Damtoft (FTC, USA)	<p>Panel Discussion on Mechanisms for Co-operation</p> <p>Panel Discussion on Key Obstacles and Challenges in International Co-operation</p> <p>Panel Discussion on Cooperation in Practice</p> <p>Panel Discussion on Future of International Cooperation</p>	International Co-operation in Cross-Border Competition Cases
Dr. Paul Taylor (ACCC, Australia)	<p>Panel Discussion on Mechanisms for Co-operation</p> <p>Panel Discussion on Key Obstacles and Challenges in International Co-operation</p> <p>Panel Discussion on Co-operation in Practice</p> <p>Panel Discussion on Future of International Co-operation</p>	International Co-operation in Cross-Border Competition Cases
Mr. Sungkyu Lee (KFTC, Korea)	<p>Panel Discussion on Mechanisms for Co-operation</p> <p>Panel Discussion on Key Obstacles and Challenges in International Co-operation</p>	International Co-operation in Cross-Border Competition Cases

Speaker	Presentation	Workshop
Mr. Daeyoung Kim (KFTC, Korea)	Panel Discussion on Cooperation in Practice	International Co-operation in Cross-Border Competition Cases
Mr. Sungkeun Kim (KFTC, Korea)	Panel Discussion on Future of International Cooperation	International Co-operation in Cross-Border Competition Cases
Ms. Cindy Chang (CCS, Singapore)	Singapore's Experience on International Co-operation	International Co-operation in Cross-Border Competition Cases
Mr. Simon Wang (CTFTC, Chinese Taipei)	Chinese Taipei's Experience on International Co-operation	International Co-operation in Cross-Border Competition Cases
Mr. Rodel A. Meris (OFC, Philippines)	Mechanisms for International Co-operation in Cross-Border Competition cases of the Office for Competition	International Co-operation in Cross-Border Competition Cases
Mr. Xiaoqiang Qian (MOFCOM, China)	MOFCOM's Mechanisms for International Co-operation	International Co-operation in Cross-Border Competition Cases
Ms. Hongying Cao (SAIC, China)	International Co-operation Among Competition Agencies	International Co-operation in Cross-Border Competition Cases
Mr. Xuan Hien Cao (VCA, Vietnam)	Sharing of Experience from Vietnam	International Co-operation in Cross-Border Competition Cases
Mr. Hilman Pujana (KPPU, Indonesia)	KPPU-JFTC Co-operation under Indonesia Japan Economic Partnership Agreement	International Co-operation in Cross-Border Competition Cases
Ms. Rafia Kiani (CCP, Pakistan)	Practical Aspects of International Co-operation in Merger Cases: Substantive Assessment & Remedies	International Co-operation in Cross-Border Competition Cases
Mr. Tselmeg Garmaa (AFCCP, Mongolia)	Plan for Future Co-operation	International Co-operation in Cross-Border Competition Cases
Mr. Ricardo Cardoso (DG Comp. EC)	Evidence used to Prove Abuse of Dominance in the EU Abuse of Dominance in French Natural Gas Market	Evidentiary Issues in Establishing Abuse of Dominance

Speaker	Presentation	Workshop
Ms. Hsiao-Yin Huang (CTFTC, Chinese Taipei)	Case Study on Abuse of Dominance in Chinese Taipei	Evidentiary Issues in Establishing Abuse of Dominance
Mr. Eric Emch (OECD)	Overview of Abuse of Dominance and Evidentiary Issues	Evidentiary Issues in Establishing Abuse of Dominance
	Establishing Monopoly Power in Abuse of Dominance Cases	
	Predation and the Difficulty of Proof	
Mr. Eric Emch (OECD)	Overview of Workshop and Lessons Learned	Cartel Fundamentals
	Anti-cartel Enforcement	
	The Economics of Cartel Formation and Stability	
Mr. Eric Emch (OECD)	Effective Cartel Sanctions	Cartel Fundamentals
Mr. Joong-Kyu Sun (KFTC, Korea)	Korean Experiences on Abuse of Dominance	Evidentiary Issues in Establishing Abuse of Dominance
Mr. Scott Fitzgerald (DOJ, USA)	Theory and Evidentiary Hurdles	Evidentiary Issues in Establishing Abuse of Dominance
	The Role of Price-Cost Tests in Evaluating Conditional Pricing Practices	
Ms. Kishwar Khan (CCP, Pakistan)	Exclusionary and Exploitative Abuse from Pakistan's Perspective	Evidentiary Issues in Establishing Abuse of Dominance
Mr. Terence Seah (CCS, Singapore)	Singapore's Experience in Price- and Non-Price Abuse of Dominance Cases	Evidentiary Issues in Establishing Abuse of Dominance
Ms. Merba Waga (DOJ, Philippines)	Issues Relating to Abuse of Dominance in a Regulated Industry	Evidentiary Issues in Establishing Abuse of Dominance

Speaker	Presentation	Workshop
Mr. Michael Albers (EU Commission)	Panel Discussion on Comparison of Procedures for Merger Review Panel Discussion on the Assessment of Joint Ventures	Merger Review Procedures and Joint Ventures
Mr Antonio Capobianco (OECD)	Panel Discussion on Comparison of Procedures for Merger Review	Merger Review Procedures and Joint Ventures
Mr. Andrew Heimert (FTC, USA)	Panel Discussion on the Assessment of Joint Ventures	Merger Review Procedures and Joint Ventures
Mr. Sun Miao (MOFCOM, China)	Panel Discussion on Comparison of Procedures for Merger Review	Merger Review Procedures and Joint Ventures
Mr. Zhu Zhongliang (MOFCOM, China)	Panel Discussion on the Assessment of Joint Ventures	Merger Review Procedures and Joint Ventures
Mr. Yang Jianhui (MOFCOM, China)	Panel Discussion on the Assessment of Joint Ventures	Merger Review Procedures and Joint Ventures
Mr. Sangmin Song (KFTC, Korea)	Panel Discussion on Comparison of Procedures for Merger Review	Merger Review Procedures and Joint Ventures
	A Retail Merger Case - E-Mart's Acquisition of Wal-Mart Korea	Retail Sector
Mr. Yongho Shin (KFTC, Korea)	Panel Discussion on the Assessment of Joint Ventures	Merger Review Procedures and Joint Ventures
Ms. Alexandra Shepard (DOJ, USA)	Introduction to Cartels and Cartel Enforcement	Cartel Fundamentals
	Case Study: LCDs and Cement	
Mr. Seong Wook Yu (KFTC, Korea)	Investigative Techniques and Evidence Gathering	Cartel Fundamentals
Mr. Wei Lu Lim (CCS, Singapore)	Uncovering Cartel Conspiracy	Cartel Fundamentals
Ms. Heeun Jeong (OECD KPC, also KFTC, Korea)	Leniency Programme in Korea	Cartel Fundamentals
Mr. Geronimo Sy (DOJ, Philippines)	Cartel Investigation	Cartel Fundamentals

Speaker	Presentation	Workshop
Mr. Noriaki Abe (JFTC, Japan)	Bid-rigging Case in Japan Investigation Techniques in Cartel Cases	Cartel Fundamentals
Ms. Wahyu Rento Dwi Sari (KPPU, Indonesia)	Perspective of Indonesian Competition Law	Cartel Fundamentals
Ms. Lina Rahmawati (KPPU, Indonesia)	Perspective of Indonesian Competition Law	Cartel Fundamentals
Mr. Buttithap Timthong (OTCC, Thailand)	Ice Cube Price Fixing Conspiracy	Cartel Fundamentals
Ms. Chantida Kalampakorn (OTCC, Thailand)	Ice Cube Price Fixing Conspiracy	Cartel Fundamentals
President Carl Baudenbacher (European Free Trade Association Court)	Legal Frameworks / Models for Cartel Enforcement Access to the Agency's File by Follow-on Private Litigants	Competition Law Workshop for Judges
Judge Douglas Ginsburg (Court of Appeals, USA)	Different Kinds of Cartels and the Evidentiary Challenges that Arise Sanctions and Remedies in Cartel Cases	Competition Law Workshop for Judges
Mr. Nicolas Taylor (OECD)	Overview of Cartel Prohibition in a Modern Competition Law Making Cartel Decisions on the Basis of Indirect Evidence	Competition Law Workshop for Judges
Professor Bruce H. Kobayashi (George Mason University, USA)	Sanctions and Remedies in cartel cases	Competition Law Workshop for Judges
Judge Jae Hun Jeong (Seoul High Court, Korea)	Discussion of Key Korean Cartel Cases and Classifying the Evidence	Competition Law Workshop for Judges

Speaker	Presentation	Workshop
Dr. Rhonda Smith (University of Melbourne, Australia, also High Court, New Zealand)	Expert Economic Evidence in Cartel Cases	Competition Law Workshop for Judges
Mr. Ruben Maximiano (OECD)	Obtaining Direct Evidence of Cartel Conduct (dawn raids, leniency and the like)	Competition Law Workshop for Judges
	Overview of the Programme of the Workshop An Overview of Vertical Restraints in Distribution Agreements: Where is the Problem? Essentials of Merger Control	Retail Sector
Mr. Viktor Porubsky (DG Comp, EC)	Market Definition in Consumer and Retail Markets	Retail Sector
	Merger Control in Consumer and Retail Markets	
	Merger Remedies in Consumer and Retail Markets	
Mr. Richard Bilodeau (Competition Bureau, Canada)	An Introduction to Vertical Restraints	Retail Sector
	Resale Price Maintenance	
Prof. João Gata (PCA, Portugal)	E-commerce Issues	Retail Sector
	Sectoral Enquiries, Distribution and the Limits of Competition Law	
Ms. Jin-Hui Tsai (CTFTC, Chinese Taipei)	Case Study: Restrictive Practices in Chinese Taipei	Retail Sector
Ms. Pwee Inn Loy (CCS, Singapore)	Case study: F&N Foods/King's Creameries, Singapore	Retail Sector
Ms. Dian Retno Mayang Sari (KPPU, Indonesia)	Retail Sector and Competition Issues in Indonesia	Retail Sector