

OECD-Korea Policy Centre

Competition Programme Annual Report 2009

OECD: www.oecd.org/competition

Korea Policy Centre: www.oecdkorea.org/competition/cp_main_eng.asp

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, which is also a member of the OECD. The function of the Centre is to provide education and training to the officials Asian governments in the fields of tax, competition, public governance, and social policy. The Centre also undertakes research in these subject areas.

The joint venture partners' competition law and policy bodies are the following:

- the OECD's Competition Committee which oversees an extensive programme of work involving 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 and in Korea responsible for both competition law enforcement and competition policy advocacy across the government more broadly.

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 Asian region.

Mission of the Centre's Competition Programme

To assist Asian competition authorities in developing and implementing sound competition law and policy.

The primary activities of the Programme are competition law and policy seminars which occur five or six times a year. The details of the 2009 programme are provided in section 3 of this Report.

The Programme's seminars provide:

- an opportunity for young competition authorities to learn the skills necessary to efficiently enforce new competition laws, with a view to raising the economic performance of their own countries, and through international trade, contribute to economic performance globally;
- an opportunity for young competition authorities to share the details of their early case decisions and discuss their challenges and successes with their peer agencies from developing countries and developed countries;

- an opportunity for all competition agencies, old and new, to learn of new trends and approaches 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 cooperation on international cartels and multi-jurisdictional merger reviews.

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 different approaches of enforcement agencies in various countries when designing competition laws; and
- begin the preparations for the formation of their country's competition authority.

In May 2009, the Programme celebrated its fifth full year of operation¹ and, by the conclusion of that year, 31 seminars or workshops had been held since the inception of the Programme, each lasting three days.

In addition, to the main activity of conducting seminars, the Programme conducts some other competition related work in Asia. In 2009, the OECD staff member funded through the Programme made a significant contribution as a speaker at the KTFC's 14th International Workshop on Competition Policy and conducted a training event specifically for China's NDRC on bid rigging.

2. Regional Context for the Centre's Work: Competition Law Developments in Asia

The focus of the Programme is the Asian region and, within that region, competition law and policy is developing rapidly.

When the Programme commenced in 2005, competition law in the Asian Region was largely a feature of developed countries who are also OECD members within this region: Australia, Japan, Korea and New Zealand.²

However, in the last five years there has been a rapid expansion of fully functional general competition law regimes in Asia. For instance:

- In 2009 the Competition Act of India (which had been passed, challenged and amended some years earlier) took effect with the Competition Commission of India now enforcing the cartel and unilateral conduct provisions of that Act.

¹ Although the OECD-Korea Policy Centre is not yet 5 years old, that Centre absorbed a previously existing OECD-Korean competition programme which has lasted 5 years.

² There were also limited other competition law jurisdictions such as a general competition regime in Indonesia and Chinese Taipei and sector specific competition law regimes such as those in the Hong Kong telecommunications sector.

- In 2008 China adopted the Antimonopoly Law of the PRC (AML) and three enforcement agencies have now been investigating and determining competition law matters under the AML for more than a year.
- In 2007 Pakistan passed a new Competition Ordinance and the Competition Commission of Pakistan has been actively investigating complaints and penalising companies when breaches have been found.
- In 2004 Singapore enacted its Competition Act and, since 2005, the Competition Commission of Singapore has made two significant cartel penalty decisions and undertaken a series of merger reviews.
- In 2004 Vietnam enacted a new Law on Competition and in 2009 a significant abuse of dominance decision was made following the first hearing of the Vietnam Competition Council.

As an indication of the significance of these developments, the combined population of those countries listed in the dot points above comprises approximately 38% of the world's total population. These jurisdictions are also amongst the most rapidly growing economies of the world and their economies are generally faring better in the current international economic downturn.

In each of the above countries, the enforcement agencies, have been direct beneficiaries of the capacity building work of the Programme in its first five years.

At the same time, there has been steady work in other Asian jurisdictions in the development and enactment of competition law regimes. For example:

- A Bill for a new competition law has been put before the Philippines Congress.
- The Hong Kong Government is in the advanced stages of developing a Competition Bill which is intended to expand the coverage of competition law from the telecommunications and broadcasting sectors to cover the whole economy. It has been announced that this Bill will be put to the Legislative Council in 2010.
- Public consultation on a draft Bill for a general competition law is underway in Bangladesh.
- Work is well advanced on a Bill for a general competition law for Malaysia.

These developments are also clearly significant. The combined populations of these Asian countries which, today, do not have competition law but who are likely to very shortly, is approximately 270 million.

In the upcoming years, the Programme's work will need to adapt to reflect:

- First, the fact that some developing Asian countries will have progressed beyond the adoption of their competition laws and the first successful investigations. Their needs will become more sophisticated such as a need to understand issues that arise in

particular industries or improve detection methods where illegitimate business conduct is sought to be concealed; and

- Second, there will continue to be a steady stream of countries newly passing competition laws or new formed agencies seeking to make their first decisions.

The OECD's competition programme conducted jointly with the Hungarian competition authority targeting Eastern European countries has experience in adapting its programme to reflect different levels of experience and it will be possible for the Korean programme to take a similar approach.

3. Detailed Review of the Activities of the Centre in 2009

In 2009, the Centre conducted seminars on the following:

- Quantitative methods in competition analysis;
- Abuse of dominance and vertical restraints;
- Horizontal mergers and joint ventures;
- Cartels and bid rigging; and
- A practical hypothetical in the area of abuse of dominance.

Each seminar was held in Seoul except for the abuse and vertical restraints session that was held at Korea's beautiful Jeju Island.

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

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

3.1) Quantitative methods in competition analysis

This seminar introduced front-line competition agency staff to data collection and analysis.

The methods used to analyse data – quantitative methods – are a valuable tool for the modern competition agency. Data can, for example, help define a market, measure the possible harm from a merger, analyse the competitiveness of a market, and provide evidence of cartel behaviour.

These tools can improve decisions within the competition authority, enable analysis of data presented by outside parties to the authority, and allow better use of consultants or experts. However, the seminar also emphasized the limitations of such quantitative methods, especially in the absence of advanced training.

The seminar combined theory with actual case examples and each topic included case studies or exercises conducted on computers at the seminar venue to illustrate the concepts. Presentations by the Japanese, UK, US, KFTC and OECD delegates also explained the key terms, the algebra and theory commonly used when conducting and reporting on quantitative analysis. However, the primary focus was on the practicalities of data collection and analysis.

An Indonesian delegate presented on the topic of state created monopolies and the role of competition agencies as advocates within Government.

Attendees at this seminar included delegates from the following jurisdictions: China, Hong Kong, Indonesia, Japan, Korea, Mongolia, OECD, Pakistan, Singapore, Chinese Taipei, United Kingdom and United States.

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 (5)	High (4)	Moderate (3)	Low (2)	Very Low (1)
I. The overall usefulness for your work of the topics addressed.	4.3	15	40	6	8	1		
II. The overall quality of the presentations.	4.4	15	40	6	9			
III. The overall usefulness of the case studies.	4.3	15	40	6	7	2		
IV. The overall usefulness of the seminar materials.	4.5	15	50	7	8			
V. The overall usefulness of this event.	4.4	15	40	6	9			

3.2) Abuse of dominance and vertical restraints

This seminar explored:

- the assessment of whether and when a firm has market power or market dominance; and
- the conduct that may amount to an abuse of that dominant position.

The seminar discussed the economic theory underlying abuse of dominance cases, and presented case studies and hypothetical exercises that raised practical considerations for competition enforcers. The seminar also considered state-created monopolies, the use of

advocacy and remedies. As with all the Programme’s seminars, participants were encouraged to share ideas and experiences, and to ask questions throughout the programme.

Some forms of the abusive practices take the form of vertical restraints (ie restraints in supply arrangements). While vertical restraints can be pro-competitive or be competitively benign, some forms of vertical restraint can be anti-competitive. In some jurisdictions, certain forms of vertical restraint may amount to a breach of the competition law even if there is no market power or dominance found. In this respect, the seminar provided participants with tools of use beyond just the context of abuse of dominance.

Attendees at this seminar included delegates from the following jurisdictions: China, Indonesia, Japan, Korea, Mongolia, OECD, Philippines, Singapore, Chinese Taipei and Vietnam.

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.	4.2	13	30	4	8	1		
II. The overall quality of the presentations.	4.2	13	20	3	9	1		
III. The overall usefulness of the case studies.	4.2	13	20	3	9	1		
IV. The overall usefulness of the seminar materials.	4.3	13	30	4	9	-		
V. The overall usefulness of this event.	4.5	13	50	6	7	-		

3.3) Horizontal mergers and joint ventures

The seminar covered issues concerning the application of competition law in horizontal mergers and joint ventures including:

- issues in defining the relevant market including both conceptual issues (eg substitution and how to measure it) and practical issues (eg what to do where there is no data on substitution);
- unilateral effects. Unilateral effects arise when the merged company itself will be able to bring about a lessening of competition following the merger. This may arise when one firm becomes dominant or when particularly close competitors merge; and

- coordinated effects. Coordinated effects arise when the merger significantly increases the likelihood of actual collusion or tacit collusion. Tacit collusion is where there may be no actual communication, agreement or other meeting of the minds but nevertheless the oligopolistic nature of the market that results from the merger causes firms to cease effectively to compete with each other even though no one company becomes dominant.

These issues were examined through lectures, case studies and a hypothetical. In particular, one hypothetical involved role playing to illustrate how tacit collusion can arise as a result of the merger even when there is no communication or agreement between market participants.

The Australian, US and Japanese delegates all shared detailed expositions of cases that they had each personally worked illustrating particular issues set out above.

Attendees at this seminar included delegates from the following jurisdictions: Australia, China, Indonesia, Japan, Korea, Mongolia, OECD, Philippines, Singapore, Chinese Taipei, Thailand, United States and Vietnam.

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.	4.5	18	50	9	9			
II. The overall quality of the presentations.	4.2	18	30	5	12	1		
III. The overall usefulness of the case studies.	4.4	18	40	8	9	1		
IV. The overall usefulness of the seminar materials.	4.4	18	40	8	9	1		
V. The overall usefulness of this event.	4.4	18	40	8	10			

3.4) Cartels and bid rigging

This seminar explored how to detect and prevent bid rigging in public procurement using the OECD Guidelines for Fighting Bid Rigging.

The OECD's guidelines contain two principle parts:

- Tools for the detection of cartels; and

- Preventative guidance on tender design.

A case study presented by a Chinese Taipei delegate illustrated many of the above principles using case examples connected with tenders for the construction and expansion of metro lines in various cities. The Korean delegate presented on a range of matters including explaining the Bid Rigging Detection System (BRIAS) computer based detection tool used by the KFTC in relation to all major Korean public procurement exercises.

Presentations by the OECD and Australian delegates focused on how outreach by competition officials to procurement officials can assist in fighting bid rigging.

A case study presented by an Indonesian delegate raised a topic of the interaction between fighting bid rigging and fighting corruption which was of broad interest to all the participants. This discussion enabled the cross-fertilization of ideas on whether and how competition officials can best engage with procurement officials in countries or circumstances in which corruption amongst public procurement officials is suspected.

The Japanese delegate presented on a range of topics including, importantly, on industry associations. Such associations can be pro-competitive (or benign to competition) but it is also the case that such associations have often facilitated anticompetitive conduct. Indeed in extreme cases associations have been sham entities created solely to conceal illegal contact between competitors.

A mini-hypothetical exercise illustrated how to commence a bid rigging investigation based on examining the prices companies include in tenders. The exercise illustrated how an investigation could be undertaken even if an agency only has access to limited price information available to it (as is often the case in international cartels). The second part of the exercise considered how exchanging information with other agencies (either a competition agency from another country or several procurement agencies within a country) could significantly improve the possibility of detecting a cartel.

The Pakistani and Singaporean delegates provided presentations on the detection and investigation techniques used in each country's first prosecuted cartel case with a particularly practical focus for jurisdictions approaching their first such cases.

Attendees at this seminar included delegates from the following jurisdictions: Australia, China, India, Indonesia, Japan, Korea, Mongolia, OECD, Pakistan, Philippines, Singapore, Chinese Taipei, Thailand and Vietnam.

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)
I. The overall usefulness for your work of the topics addressed.	4.8	20	80	16	4			
II. The overall quality of the presentations.	4.5	20	50	9	11			
III. The overall usefulness of the case studies.	4.4	20	40	7	13			
IV. The overall usefulness of the seminar materials.	4.6	20	60	12	8			
V. The overall usefulness of this event.	4.6	20	60	12	8			

3.5) A practical hypothetical in the area of abuse of dominance

Participants received advanced training on abuse of dominance through lectures and through participation in a hypothetical exercise.

The primary teaching engine for this seminar was a detailed hypothetical that the Programme used once previously with ASEAN countries in Hanoi, Vietnam in 2007. The hypothetical was originally commissioned by the US Department of Justice and the US Federal Trade Commission. The Programme acknowledges and thanks those agencies for access to the original teaching materials upon which this seminar was based.

The hypothetical included:

- Receiving a complaint letter, evaluating the complaint and planning and investigation;
- Requesting and receiving documentary evidence;
- Conducting interviews with friendly and hostile witnesses; and
- Evaluating whether or not there has been an abuse of dominance and defending that decision in a public arena such as an appeals court or the business media.

Lectures were provided practical tips to prepare participants to undertake the tasks in the hypothetical exercise. Other lectures covered core theoretical concepts such as defining the relevant market, barriers to entry, determining whether market power exists, efficiency considerations as well as remedies and sanctions. The lectures were provided by the Japanese,

US and OECD delegates as well as a guest lecture by Mr Shin Sang Hoon of Korea's private bar (Bae Kim & Lee).

A Vietnamese delegate presented on the first abuse of dominance case taken by Vietnam Competition Authority (VCA). The case was against Vietnam Airlines in respect of conduct by its wholly owned monopoly supplier of airline fuel. This was also the first case for the Vietnam Competition Council which determined to accept the VCA's competition concerns but crafted a different package of remedies from those recommended by the VCA.

At this event, the Singapore delegates also took the opportunity to share with others their cleverly targeted initiatives on outreach to the Singaporean business community including:

- An innovative and entertaining movie trailer;
- The publication of "Fixed" which is a cartoon aimed at students; and
- Easily accessible multilingual printed materials aimed at the business community.

Attendees at this seminar included delegates from the following jurisdictions: China, Chinese Taipei, Indonesia, Japan, Korea, Laos, Mongolia, OECD, Singapore, Sri Lanka, Thailand, Vietnam and the United States.

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)
I. The overall usefulness for your work of the topics addressed.	4.8	18	80	14	4			
II. The overall quality of the presentations.	4.3	18	40	7	10	1		
III. The overall usefulness of the case studies.	4.6	18	60	11	7			
IV. The overall usefulness of the seminar materials.	4.5	18	50	9	9			
V. The overall usefulness of this event.	4.6	18	70	13	3	2		

4. Centre Staffing

During 2009, the Programme's staff comprised:

- The General Director (Seoul based);
- The OECD's dedicated staff member (Paris based);
- The Director (Seoul based);
- A dedicated translator (Seoul based); and
- A support staff member (Seoul based).

During the 2009 Mr Shun Jhong Kim served as General Director of the Centre until the appointment of Mr Jae Jung Kim and Mr Eric Emch served as the OECD's dedicated staff member for the Programme until the appointment of Mr Nicolas ("Nick") Taylor.

The Programme thanks Mr Kim and Mr Emch for their very extensive contributions to the planning of the whole 2009 programme and the delivery of a significant part of it and the Centre wishes each of them well in their current positions with the KFTC and US Federal Trade Commission respectively.

5. Contributions

The following agencies have generously provided the time of their officers and financial resources to be presenters at the Programme's seminars:

Australia	Australian Competition and Consumer Commission (ACCC)
Chinese Taipei	Fair Trading Commission (CTFTC)
Indonesia	Business Competition Supervisory Commission (KPPU)
Japan	Japan Fair Trade Commission (JFTC)
Korea	Korea Fair Trade Commission (KFTC)
Pakistan	Competition Commission of Pakistan (CCP)
Singapore	Competition Commission of Singapore (CCS)
United Kingdom	Competition Commission (UK CC)
United States of America	Federal Trade Commission (US FTC) Department of Justice (US DoJ)
Vietnam	Vietnam Competition Authority (VCA) Vietnam Competition Council (VCC)

Particular thanks goes to all those speakers listed in Appendix A for their presentations, which were invaluable for the Centre's competition seminars.

Appendix A

Speakers at Competition Programme Events in 2010

Presenter	Presentation
Mr A Celnicker (Consultant, OECD)	<p>“Overview of Using Quantitative Methods in Competition Analysis”</p> <p>“Introduction to Market Definition Analysis”</p> <p>“Economic Evidence in Cartel Cases”</p> <p>“Market Definition – Case Studies” (Jointly)</p> <p>“Market Definition and Market Shares”</p> <p>“Evidence of Dominance”</p> <p>“Market Definition, Quantitative Tools”</p> <p>“Predatory Pricing, Excessive Pricing and Price Discrimination”</p> <p>“Tying and Bundling”</p> <p>“Abuse of Dominance Hypothetical Case Study”</p> <p>“Remedies – Case study”</p>
Ms HY Chang (CTFTC)	“Market Definition, Case Study”
Mr HK Chen (CTFTC)	“Case Study in Merger Evaluation”
Ms CY Chuang (CTFTC)	“Case Study Presentation (Cases from Tenders connected with Metro Construction and Extension Tenders)”
Ms G Ford (ACCC)	<p>“Unilateral Effect Theories in Merger Analysis”</p> <p>“Entry and Other Competitive Factors in Merger Analysis”</p>
Mr N Franczyk (US FTC)	<p>“What is an abuse of dominance vs a legitimate justification for conduct by a dominant firm?”</p> <p>“Investigating abuse of dominance cases”</p> <p>Mr Franczyk also jointly conducted the 2 day detailed dominance hypothetical</p>
Mr K Hahm (US FTC)	<p>“Market Definition and Shares: Merger Case Study Presentation”</p> <p>“Case Study on Coordinated Effects in Merger Analysis”</p> <p>“Joint Ventures”</p>
Mr. SS Hoon (Bae, Kim & Lee)	“Remedies in Abuse of Dominance Cases”
Mr H Iwanari (JFTC)	<p>“Case Study Presentation on Bid Rigging in Public Procurement”</p> <p>“Trade Associations”</p>
Mr Jang (KFTC)	“Case Study – Intel Case”
Mr Jeong (KFTC)	“Q&A on Korea’s Bid Rigging Detection System (BRIAS)”
Mr DM Kim (KFTC)	“Unilateral Effects in Merger Analysis: Case study presentation”

Presenter	Presentation
Mr DY Kim (KFTC)	"Sanctions in Cartel Cases and Description of Korea's Bid Rigging Detection System (BRIAS)"
Mr D Korenaga (JFTC)	"What is dominance?"
Mr I Lawrence (ACCC)	"Effective Leniency Programs" "Obtaining Evidence through Discovery and Witnesses" "Case Study Presentation – Bid "
Mr. Riris Munadiya (KPPU)	"State-created Monopolies and the Use of Advocacy"
Mr ND Minh (VCA)	"Vietnam's First Abuse of Dominance Case – Vietnam Airlines"
Mr W Mir (CCP)	"Case Study – Pakistan's First Cartel Case"
Mr SS Noh (KFTC)	"Market Studies and Surveys – Case Studies" (Jointly with Ms Ross, UK CC) "Market Definition – Case Studies" (Jointly)
Ms R Otake (JFTC)	"Case Study on Unilateral and Coordinated Effects in Merger Analysis – Case I" "Case Study on Unilateral and Coordinated Effects in Merger Analysis – Case II"
Mr JB Park (KFTC)	"Introduction to Remedies" "Remedies – Case study" "Case study presentation on Merger Assessment"
Mr M Ranamenggala (KPPU)	"Case Study – KPPU Investigation of a Bid Rigging in Public Procurement Case"
Ms S Ross (UK CC)	"Briefing on Excel" in the Context of Quantitative Methods in Competition Analysis "Supply, Demand and Profit Maximization, including Excel exercises" "Market Studies and Surveys – Case Studies" (Jointly with Mr Noh, KFTC) "Market Definition – Case Studies" (Jointly)
Mr M Sunada (JFTC)	"Elasticities, including Excel exercises" "Basic Statistical Concepts (Correlation, Causation and Variance etc) & Excel exercises" "Market Definition – Case Studies" (Jointly)
Mr L Tay (CCS)	"Case Study – Investigating Singapore's First Two Cartel Matters"
Mr N Taylor (OECD)	"Market Definition and Market Shares"

Presenter	Presentation
	<p>“Coordinated Effects Theories in Merger Analysis” “What is Bid Rigging and Why is it Illegal?” “Detecting Bid Rigging in Public Procurement – use of OECD Guidelines” “Preventing Bid Rigging in Public Procurement – use of OECD Guidelines” “Evaluating Indirect Evidence in Cartel Cases” “Abuse of Dominance Theory” “Interviewing witnesses” Mr Taylor also jointly conducted the 2 day detailed dominance hypothetical</p>
<p>Mr Matthew Weinberg, (US FTC)</p>	<p>“Critical Loss, Margins and Diversion Ratios” “Market Definition – Case Studies” (Jointly) “Obtaining and Organizing Data” “Introduction to Basic Linear Regression Theory & Case Studies”</p>
<p>Mr K Yamamoto (JFTC)</p>	<p>“Exclusive Dealing including Case Study” “Abuse of Dominance Hypothetical Case Study”</p>