



OECD-KOREA POLICY CENTRE

COMPETITION PROGRAMME

ANNUAL REPORT 2011

OECD:

www.oecd.org/competition

Korea Policy Centre:

www.oecd-korea.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. The function of the Centre is to provide education and training to Asian government officials 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 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 are held five or six times a year. Details of the 2011 seminars 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, contributing to economic performance globally;
- an opportunity for young 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 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 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. REGIONAL CONTEXT FOR THE CENTRE'S WORK: COMPETITION LAW DEVELOPMENTS IN ASIA

The year 2011 was once again a year of rapid development of competition law in the Asian region. Some of the many notable milestones include:

- The Korea Fair Trade Commission celebrating its 30 year anniversary;
- In China, the number of merger notifications received by the Ministry of Commerce was up 43% to 194. Of those 94% were cleared without conditions, 3% were cleared with conditions and a further 3% were withdrawn;
- In India, 1 June 2011 heralded the start of the Competition Commission of India's merger control regime and by the end of 2011 the CCI had decided 12 merger cases – all were approved;
- In Indonesia, the KPPU issued new guidelines on predatory pricing and monopolistic practices and amended its merger guidelines;
- In Malaysia, the new Malaysia Competition Commission was established ready for the Malaysia Competition Act to come into effect on 1 January 2012;
- In Chinese Taipei, amendments were made to the Fair Trade Law increasing antitrust penalties and introducing a leniency programme (which came into effect in January 2012);
- In the Philippines, an Office for Competition was established within the Department of Justice, and for the first time the Department of Justice recommended the filing of charges in respect of a price fixing cartel;
- In 2011 the Competition Commission of Singapore continued its cartel enforcement work issuing total fines of over SGD 500,000 in respect of price fixing amongst modelling agencies and employment agencies;
- In October 2011, the Hong Kong the government introduced six major amendments to the Competition Bill which it had introduced to the Legislative Council in 2010; and

- In Pakistan, the Competition Commission of Pakistan imposed a PKR 50 million fine on a trade association for price fixing in the ghee/cooking oil sector.

With the ongoing development of competition law in the Asian region, the Programme's seminars continue to adapt.

The key new development in 2011 was the Programme's first competition law seminar for judges. Competition law training for the judiciary had been identified as a need in the 2010 Annual Report as a means to ensure strong competition law decision making capacity by courts in the Asian region.

The first seminar was held in Seoul in November 2011 and attracted judges from China, Indonesia, Nepal, the Philippines, Singapore, India, Chinese Taipei, Pakistan, and Vietnam. Further information about the seminar is provided in section 3 below.

3. DETAILED REVIEW OF THE ACTIVITIES OF THE CENTRE IN 2010

In 2011, the Programme included seminars on the following topics:

- Fighting abuse of dominance (for the Competition Commission of India)
- Merger fundamentals
- Competition issues in the telecommunications sector
- Competition assessment and competition advocacy
- Legitimate business practices or cartels in disguise
- Abuse of dominance fundamentals

In addition, as noted above, the Programme included for the first time a competition seminar for judges.

The Programme seeks to evaluate its seminars by asking participants to complete detailed evaluation form. The target for the seminars 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) Indian Event on Fighting Abuse of Dominance, New Delhi: 23-25 March 2011

Applying and enforcing the prohibition against abuse of dominance was the focus of a workshop held jointly between the OECD-Korea Policy Centre and the Competition Commission of India in New Delhi in March.

Each type of competition law enforcement has its own challenges. For example, the biggest challenge of cartel enforcement is usually an evidentiary challenge: the authority must bring to light facts that have been deliberately hidden by the conspirators.

By contrast, the biggest challenge for competition authorities in the abuse of dominance area is usually an analytical challenge: almost any given trading practice by a company of significant substance can be argued to amount to an abuse of dominance or, viewed differently, it could be argued that the trading practices are benign or even efficiency enhancing.

This event enabled the Competition Commission of India's members and staff to hone their abuse of dominance skills by discovering, discussing and debating international analytical practices with specialist competition staff from the OECD and its members.

Theoretical sessions set the scene by covering such topics as 'defining the market', 'identifying which companies are dominant' and 'the concept and selection of a theory of harm'. These sessions were conducted by Mr. Nick Taylor of the OECD, Dr. Mark Niefer of the US Department of Justice and Mr. Dag Johansson of the European Commission.

Mr. Praveen Purwar of the Competition Commission of India made a presentation on the law and current experience in India.

Specific case study presentations then enabled a consideration of what arguments are commonly put forward by complainants and defendants and what analytical tools are available and preferred by competition regulators in different parts of the world. These presentations were given by Mr. Seungkyu Lee of the Korea Fair Trade Commission as well as the speakers listed above.

Additionally, there was a panel discussion involving Mr. Bunker of the Competition Commission of India, Mr. Niefer, Mr. Johansson and Mr. Lee which compared the powers, duties and approaches of different competition authorities when receiving complaints (or "information" as they are known in India) and conducting investigations.

EVALUATION								
OVERALL AVERAGE SCORE FOR EVENT ACROSS ALL CATEGORIES						4.2		
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	20	20	4	16			
II. The overall quality of the presentations.	4.3	20	40	7	12	1		
III. The overall usefulness of the case studies.	4.1	20	30	6	10	4		
IV. The overall usefulness of the seminar materials.	4.1	20	30	6	10	4		
V. The overall usefulness of this event.	4.2	20	20	4	16	-		

3.2) Merger Fundamentals, Seoul: 27-29 April 2011

Countries throughout Asia shared their experiences and expertise in merger control enforcement techniques at the seminar in April 2011. The different practices and investigatory techniques of the

following jurisdictions were contrasted in the course the seminar: Cambodia, China, Hong Kong, India, Indonesia, Korea, Malaysia, Mongolia, Pakistan, Singapore, Chinese Taipei, Thailand and Vietnam.

During the seminar, the presentations by both the expert speakers and the participant countries covered all relevant issues related to merger control enforcement, including such essential steps as defining the relevant market, analysing the market structure and assessing any harm to competition. Some of the presentations also dealt specifically with the added difficulties of incorporating economic techniques of merger investigation in the traditional structural analysis of mergers.

Mr. João Pearce Azevedo from the OECD gave an introductory presentation about the principles of merger analysis. Later on, he also presented a session about the advantages and pitfalls of the use of economics and quantitative techniques in merger analysis.

Ms. Tania Pringle, of the New Zealand Commerce Commission spoke about the CC's merger guidelines and a merger case in the poultry industry, while Mr. Jaeho Moon from the Korea Fair Trade Commission presented the KFTC's approach to merger regulation through a case study in the online commerce industry.

Mr. Timothy Hughes from the US Federal Trade Commission explained in his presentation how his agency assesses a typical merger from notification through to appeal. He also talked about the interface between qualitative and quantitative evidence in the Whole Foods supermarket merger case.

During the seminar, a hypothetical merger analysis session in the banking sector was organised where the participants were split into two groups. The groups were selected on the basis of their jurisdiction's substantive merger control test: those with a version of the "dominance" test were assigned to one group while those with a "substantial lessening of competition" test or something similar were assigned to another group. Each group was then asked to analyse the case and to present their conclusions in a joint session. The group applying the "dominance" test tended to focus their analysis on unilateral effects while the other group tended to focus on coordinated effects. Interestingly, however, their main conclusions of the competitive assessment of the merger were relatively similar.

Case studies were presented by the participants from Indonesia, Chinese Taipei, Singapore and Pakistan.

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 addressed.	4.6	22	50	11	11	1		
II. The overall quality of the presentations.	4.4	22	40	10	11	1		
III. The overall usefulness of the case studies.	4.3	22	36	8	13	1		
IV. The overall usefulness of the seminar materials.	4.5	22	50	12	9	1		
V. The overall usefulness of this event.	4.5	22	50	11	11			

3.3) Telecommunications Event, Jeju Island: 31 May - 2 June 2011

The telecommunications industry is very important for any modern economy. Telecommunications is always a very substantial industry in itself as well as an industry that provides services widely needed by businesses and consumers alike. Further, the provision of state of the art telecommunications services is both a common goal of economic development and a means to enable further economic development. Efficient telecommunications services are also a means to enhance interregional competition in other markets, for example, through enabling internet sales where the buyer and seller are not located in the same place.

For all these reasons competition in this industry was chosen as the topic for a workshop at the OECD-Korea Policy Centre.

Some Asian jurisdictions do not yet have (or comparatively recently obtained) general competition laws and general competition regulators. However, these countries have usually already put in place telecommunications regulators with the power to enforce competition provisions within telecommunications legislation. Consequently, this event was attended by representatives of the telecommunications regulators from the Philippines, Malaysia and Singapore as well as general competition authorities from other jurisdictions who are already familiar with the Centre's events. Many of these participant authorities contributed case study presentations.

The event started with a focus on better regulation in telecommunications through presentations by Mr. Hong Dae Won of the Korean Fair Trade Commission and Mr. John Gandy of the New Zealand Commerce Commission and a sector overview from Mr. Nguyen Manh Linh of the Vietnamese Competition Authority about the transition occurring in that country.

The second topic concerned issues that are most familiar to general competition authorities – the enforcement of the abuse of dominance and horizontal conduct prohibitions in competition laws. Mr. Gandy of the NZCC focused on abuse of dominance cases and discriminatory dealing cases; Mr. Ajay Kumar Chauhan of the Indian Competition Commission concerning a case of concerted vertical tying; and Ms. Riris Munadiya of the Indonesian competition authority presented a suite of cases in the Indonesian industry ranging over vertical foreclosure by a dominant firm, cartel price fixing, a merger and a prohibited cross-ownership.

The third topic of the workshop concerned interconnection disputes and on this topic presentations were provided by Mr. Nick Taylor of the OECD at a theoretical level and by Ms. Hsin Yi Chang of the Chinese Taipei Fair Trade Commission on a case study involving an internet peering interconnection dispute. In addition, Mr. Tng Litong of the Infocomm Development Authority of Singapore gave a presentation on the Singapore – Malaysia mobile telephone roaming rate reductions (with comments from the Malaysian perspective of the same case provided by Ms. Hui Ching Long of the Malaysian Communications and Multimedia Commission).

The fourth topic concerned mergers in the telecommunications industry and presentations were provided by Mr. Jongbae Park of the Korean Fair Trade Commission and Mr. Syed Umair Javed of the Competition Commission of Pakistan.

The final topic concerned the recent trend by governments to promote the roll-out of broadband internet infrastructure where the private sector is unwilling to alone undertake the level of investment sought by the government. The challenge is for the government intervention to occur without undermining (or indeed if possible promoting) competition. Mr. Gandy of the NZCC presented on New Zealand's two policies in this regard: the Ultrafast Broadband Initiative and the Rural Broadband Initiatives.

EVALUATION								
OVERALL AVERAGE SCORE FOR EVENT ACROSS ALL CATEGORIES						4.2		
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.	4.1	18	36	5	11	2		
II. The overall quality of the presentations.	4.0	18	45	4	11	3		
III. The overall usefulness of the case studies.	4.3	18	30	6	11	1		
IV. The overall usefulness of the seminar materials.	4.2	18	36	5	11	2		
V. The overall usefulness of this event.	4.2	18	36	5	12	1		

3.4) Competition Assessment and Competition Advocacy, Seoul: 18-20 July 2011

Competition assessment of policies, rules, laws, standards and regulations and advocacy to promote pro-competitive initiatives are of increasing importance. While the traditional domain of competition authorities is the enforcement of competition law such as imposing fines on participants in cartels, the assessment of government policies and regulations from a competition point of view has increased in importance. In 2009, for example, the OECD Council representing more than 30 governments adopted a Recommendation on Competition Assessment.

The primary reason for this development is that some of the most harmful effects to the economy do not stem from anticompetitive market conduct by commercial actors but from often unintended negative consequences of rules, regulations and other government policies. This has triggered a range of countries adopting formal competition assessment frameworks and engaging in regulatory advocacy.

In light of these encouraging developments, the purpose of this workshop was to focus on the OECD Competition Assessment Toolkit (CAT) and on competition advocacy. Competition assessment concerns the assessment of both existing and proposed laws and regulations with the aim of removing unnecessary impediments to competition. Competition advocacy, in the narrow sense of the workshop, concerns the advocacy efforts and strategies used by competition authorities to advocate competition within government, government agencies, regulators and ministries, i.e. regulatory advocacy. This is different from (traditional) advocacy efforts aimed at raising awareness of competition law in the business and community through publicising competition law enforcement outcomes.

The workshop had four parts. The first part was characterised by a general introduction of competition assessment and the specific type of advocacy resulting from competition assessment. The second part focused on the OECD Competition Assessment Toolkit and other methodologies that can be used to perform a competition assessment. The third part then focused on the types of regulatory advocacy measures that can be used to influence the decision making process and modify those regulations that were considered problematic. The fourth and final part provided diverse case studies exemplifying the various successes and difficulties of the various competition authorities present. In addition, the workshop hosted a presentation on competitive neutrality, a topic intricately related to competition assessment and a presentation on institutional design. The latter is aimed at bringing the individual case experiences

together and providing guidance on possibilities for the institutional implementation of competition assessment and regulatory advocacy. Presentations were given by Dr. Frank Maier-Rigaud of the OECD, Ms. Karen Dunn of the Australian Department of Treasury, Mr David Stallibrass of the UK Office of Fair Trading, Mr. Kenta Suzuki and Mr. Youngjae Lim of the Korea Development Institute as well as a number of the participating countries.

The two volumes of the OECD Competition Assessment Toolkit can be found online at <http://www.oecd.org/competition/toolkit>. It is available in 12 languages.

EVALUATION								
OVERALL AVERAGE SCORE FOR EVENT ACROSS ALL CATEGORIES						4.4		
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	16	43	7	8	1		
II. The overall quality of the presentations.	4.3	16	25	4	12			
III. The overall usefulness of the case studies.	4.5	16	50	8	8			
IV. The overall usefulness of the seminar materials.	4.3	16	38	6	8	2		
V. The overall usefulness of this event.	4.4	16	43	7	9			

3.5) Legitimate Business Practices or Cartels in Disguise, Hanoi: 5-7 October 2011

The OECD Competition Committee has identified fighting hard core cartels as a top priority in international competition enforcement. Developing countries, with young competition authorities, can especially benefit from a focus on cartels. Such economies, lacking a history of anti-cartel enforcement, can be subject to long-standing cartel-like behaviour intertwined with “normal” business practices. Collusive behaviour occurring in the context of otherwise legitimate business practices such as trade associations or joint ventures may be especially pernicious and difficult to detect.

This workshop, centred on the theme of “Legitimate Business Practices or Cartels in Disguise?”, addressed on the question of when otherwise legitimate collaborations may cross the line into collusive behaviour that harms consumers. Such behaviour may not always rise to the level of a “hard core cartel,” but may nonetheless harm consumers, and in addition be more difficult to identify and prosecute than hard core cartel behaviour. Presentations and discussion centred around the economic and legal theories that allow one to distinguish efficient competitor collaborations from anticompetitive ones, as well as the economics of cartel behaviour in general, and a number of case studies from jurisdictions across Asia.

The first day of the workshop provided an overview of the relevant issues and focused on a few case studies of competitor collaborations leading to anticompetitive outcomes. Dr. Eric Emch, consultant to the OECD, discussed a general methodology for assessing whether a particular collaboration is anticompetitive, and gave general descriptions of situations in which competitor collaborations are common but in some contexts can lead to anticompetitive outcomes: for instance, in joint production arrangements, joint selling or marketing arrangements, joint R&D, information sharing agreements, or in

standard setting bodies. Mr. Joseph Wilson, Commissioner of the Competition Commission of Pakistan, followed with an overview of how Pakistan law addresses collusion, as well as a discussion of particular examples in which collusive behaviour in Pakistan took place under the aegis of, in one case a trade association (cement), and in another case, a professional association (accounting).

Mr. Richard Fleming of the Australian Competition and Consumer Commission discussed indicators that would allow one to distinguish between a legitimate business collaboration and a “cartel in disguise,” and also presented a case study related to Industrial Garnet producers in Australia. To close the day, Ms. Pwee Inn Loy and Ms. Serene Seet of the Competition Commission of Singapore provided a thorough analysis of a price fixing arrangement in Singapore that occurred under the cover of a trade association of bus operators.

The second day of the workshop focused on the economics of cartel behaviour – applicable either to hardcore cartels or to “cartels in disguise.” Ms. Mi Gan Choi of the Korea Fair Trade Commission discussed in detail statistical methods for calculating cartel overcharges, which form the basis for calculating damages from cartels in legal settings. She compared methods that calculate an overcharge based on cross-sectional variation in prices, with those that compare prices over time, to “differences-in-differences” methods that use both cross-sectional and over-time variation in prices to calculate overcharges. Mr. Eric Emch, consultant for the OECD, discussed general economic factors underlying cartel formation and stability, highlighting empirical patterns that showed the length and breadth of typical cartels. Ms. Chiachi Huang of the Chinese Taipei Fair Trade Commission followed with an in-depth discussion of collusion in the paper industry in Chinese Taipei under the cover of a trade association.

Day three of the workshop began with a presentation by Mr. Kevin Hendriks of the Netherlands Competition Authority on the EU legal framework for dealing with cartels and competitor collaborations generally. Along with presenting examples of anticompetitive collaboration from Europe, Mr. Hendriks gave a detailed presentation on how the Netherlands Competition Authority investigates cartels, from the generation of leads, to prioritising possible cases, to gathering evidence through dawn raids, requests for information, and international cooperation. Dr. Sanjay Pandey of the Competition Commission of India then gave a thorough overview of the Indian Competition Act of 2002 and the structure of Indian competition law enforcement, along with a discussion of group boycott arrangements that ran afoul of the law in the case of two trade associations in different industries (airlines and film producers). Mr. Duc Minh Nguyen of the Vietnam Competition Authority then discussed Vietnam’s cartel regulation in general, and how it applied to the particular example of joint pricing by car insurance providers.

In the afternoon of the final day, Mr. Osamu Igarashi, a Japan fair Trade Commission (JFTC) advisor to the Vietnam Competition Authority, and Mr. Shinichiro Obata of the International Affairs Division of the JFTC, discussed the JFTC approach to information sharing, as detailed in the Japanese Trade Association guidelines (derived from the Japanese Anti-Monopoly Act). Mr. Igarashi and Mr. Obata also presented two case studies relating to information sharing within Japanese trade associations that were deemed illegal by the JFTC.

At the close of the workshop, participants broke down into four smaller groups to discuss a hypothetical case regarding joint marketing in a sports league. Spirited discussion occurred both within the small groups, and among all participants when the groups joined back together to present their findings to the larger group. Informed by the discussion of the last three days, the groups came to a general consensus on the bounds of efficient versus anticompetitive collaboration, with lively debate over particular points of the hypothetical.

EVALUATION								
OVERALL AVERAGE SCORE FOR EVENT ACROSS ALL CATEGORIES						4.2		
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.	4.4	19	53	10	7	2		
II. The overall quality of the presentations.	4.3	19	47	9	7	3		
III. The overall usefulness of the case studies.	4.0	19	42	8	6	4		
IV. The overall usefulness of the seminar materials.	4.1	19	26	5	12	2		
V. The overall usefulness of this event.	4.3	19	47	9	8	2		

3.6) Competition Workshop for Judges in the Asian Region, Seoul: 2-4 November 2011

Good decision making by specialist tribunals and general courts is vital to a well functioning competition law system. Although the Centre has conducted more than 25 workshops for competition authorities, it has never before held an event specifically for competition tribunal members and judges. In November 2011, the Centre held its first workshop for competition law appellate decision makers.

The judges and specialist tribunal members at the event came from China, Indonesia, Nepal, the Philippines, Singapore, India, Chinese Taipei, Pakistan, Australia and Vietnam.

Each of these participating jurisdictions has a different substantive law, a different appeals structure and a different litigation procedure. Nevertheless, the event showed that in each field there is a significant degree of similarity too.

Each discussion topic was introduced by a presentation from a panel of speakers – Justice Mansfield of the Federal Court of Australia and President of the Australian Competition Tribunal, Dr. Adrian Majumdar a London based Principal of economic consultancy RBB Economics, Research Judge Lee of the Supreme Court of Korea, Dr. Lee of Hanyang University's Law School and Mr. Nick Taylor of the OECD.

After the participants introduced the competition law appellate structure in their countries, the substantive discussions started with a presentation by Mr. Taylor which reviewed the very diverse reasons why governments pass competition laws and what are the specific statutory objects of competition law. In particular, four common themes are sought to be advanced by the competition laws of the region: maximising the productive performance of the economy, enhancing economic development, facilitating the participation of all parts of society in the economy and, ultimately, the long term interests of consumers.

Dr. Majumdar then gave a presentation that focused specifically on the economic and long term consumer interests underpinning competition law.

Next the various legal frameworks or mechanisms that are employed by competition laws were discussed including the role of competition investigation agencies, which make decisions and the appeal structures

that ensure fairness, accountability and good decision making. This session was lead by a presentation from Justice Mansfield.

Moving into the substantive provisions of competition law, Mr. Nick Taylor gave a presentation which identified the three universal pillars found in almost all competition laws (prohibitions against anticompetitive agreements between competitors, abuse of dominance and anticompetitive mergers) as well as and other provisions that can be found in competition laws.

Dr. Majumdar led a discussion on key economic concepts that form the elements of competition prohibitions including “competition”, “market” and “dominance” and Research Judge Lee discussed a range of Korean cases that illustrate the application of these terms.

The final day of the workshop was largely dedicated to a discussion of the types of evidence used in competition cases (introduced by Mr. Taylor) and focused on two particularly difficult types of competition law evidence that pose challenges for courts. The latter comprised detailed presentations by Justice Mansfield on expert economic evidence and defendants’ purpose evidence respectively. Dr. Majumdar also provided a presentation of his perspectives as a expert witness and in particular how expert witnesses go about assessing damages.

In addition, Dr. Lee gave a presentation on the imposition of penalties and other sanctions in competition law cases.

Throughout the formal parts of the workshop there was a vigorous exchange of ideas between the participants covering the competition law issues formally listed on the agenda and also other issues of interest to judges in these jurisdictions. Spending three days together also provided the judges with the opportunity to exchange experiences much more generally about the operation of courts in the Asia-Pacific.

The Centre will now evaluate this first event to decide whether workshops with judges should become a permanent part of the programme in the future and what format this should take.

EVALUATION								
OVERALL AVERAGE SCORE FOR EVENT ACROSS ALL CATEGORIES						4.4		
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	17	53	9	7	1		
II. The overall quality of the presentations.	4.5	17	53	9	8			
III. The overall usefulness of the case studies.	4.0	16	25	4	9	3		
IV. The overall usefulness of the seminar materials.	4.5	16	56	9	6	1		
V. The overall usefulness of this event.	4.4	16	50	8	7	1		

3.7) Abuse of Dominance Fundamentals, Busan: 7-9 December 2011

Controlling the abuse of a dominant market position represents one of three main planks of antitrust enforcement worldwide, alongside cartel enforcement and merger regulation. Particularly for developing countries moving from a state-oriented economy to one that is more free-market oriented, preventing entrenched monopolists from foreclosing a normal competitive market process can be a key part of developing and maintaining a healthy economy. Yet separating anticompetitive foreclosure from what is simply aggressive competition that benefits consumers can be challenging for any competition authority.

This workshop, on “Abuse of Dominance Fundamentals,” focused on the fundamental questions of what constitutes anticompetitive behaviour on the part of monopolist or would-be monopolist, how such behaviour can be distinguished from healthy competition, and the economic and legal analysis that underlies the distinction. Presentations and discussion touched on economic theories of abuse of dominance, legal categorisations and analysis of different types of abuse, and case studies from participating countries. On the final day of the workshop, participants drew from the discussion of the first two days to analyse and discuss two hypothetical abuse of dominance cases based on real-world court decisions.

The first day of the workshop provided an overview of abuse of dominance and its regulation in several jurisdictions, with introductions to two distinct categories of abuse of dominance. Dr. Eric Emch, consultant to the OECD, began the discussion of assessing monopoly power in abuse of dominance cases, an important step of any abuse of dominance analysis. Mr. Hideyuki Shimozu of the Japanese Fair Trade Commission then presented an overview of the JFTC approach to abuse of dominance, illuminating the discussion with reference to the JFTC’s approach to the MDS Nordion case in 1998 and the Intel case in 2005. Dr. Shabistan Aquil and Mr. Vipul Puri of the Competition Commission of India gave an overview of how abuse of dominance is treated by the 2002 Competition Act of India. Ms. Serena Ho of the Competition Commission of Singapore presented a detailed analysis of the CCS’s first abuse of dominance decision – its case against the ticketing services firm SISTIC, currently under appeal.

Near the end of the first day, Mr. Andrew Heimert of the US FTC gave an overview of the economics and law of exclusive dealing, emphasising the challenge in distinguishing between the often pro-competitive effects of exclusive dealing with possible anticompetitive harms. Mr. Heimert illustrated the economic and legal analysis of exclusive dealing with a discussion of the FTC’s 2010 decision in *Transitions Optical*. At the close of the day, Mr. Jung Won Song of the OECD introduced the topic of excessive pricing, a controversial subject that some jurisdictions refrain altogether from categorising as an abuse. A lively discussion among participants followed, which was interrupted only by the need for dinner.

The second day of the workshop picked up where the first one left off, with a discussion of whether excessive pricing could be categorised as an abuse. The formal presentations began with a lecture by Dr. Eric Emch on the economic theory of bundling and tying, focusing on identifying particular avenues under which that behaviour might be anticompetitive, and distinguishing those from the much more common instances of pro-competitive or competitively neutral tying and bundling. Ms. Hsiu-Feng Hsu of the Chinese Taipei Fair Trade Commission then discussed the CTFTC approach to vertical restraints, with a focus on particular charges the CTFTC has brought against particular department stores and “hypermarkets.” Mr. Heimert of the US FTC followed with an introduction to the topic of remedies, noting that the crafting of workable remedies can prove one of the more challenging aspects of an abuse of dominance case. Mr. Heimert discussed the various types of remedial tools available, including injunctions, divestiture, and monetary relief. Finally, Ms. Xiao Di of the Chinese Ministry of Commerce gave an introduction to China’s approach to competition enforcement in general and abuse of dominance in particular.

Day three of the workshop began with a discussion of predatory pricing. Dr. Emch gave an introduction to the economics of predation, while Mr. Song of the OECD presented a series of case studies from the EC

and Korea, illustrating the economic commonalities but some of the legal distinctions in approach across jurisdictions.

In the middle of the day, participants broke down into four smaller groups to discuss hypothetical cases involving an artificial teeth monopolist engaging in exclusive dealing and a water heater monopolist engaging in predatory behaviour. Discussion ranged from the appropriate role of competition regulator versus a sector regulator in addressing abuse of dominance concerns, to market factors that might indicate (or contraindicate) a monopoly position, to what types of evidence a competition authority can feasibly obtain to inform its decision. At the end of the session, groups shared their analyses with one another and compared their approaches.

After a break, the workshop resumed with a discussion of abuse of IP rights, led by Mr. Byung-Hee Ko of the KFTC, who detailed the factors one must consider in determining when legitimate protection and use of valid intellectual property rights can cross the line into abusive behaviour. The workshop concluded with further case studies presented by participating countries. Mr. Richardo Frans Adiatma of the KPPU gave an overview of Indonesia’s law regulating abuse of dominance along with a case study relating to the KPPU’s finding of abuse by Carrefour Indonesia. Finally, Mr. Puri and Dr. Aquil of the Competition Commission of India gave a thorough treatment of two abuse cases considered by the CCI in the real estate and stock exchange markets, respectively. The presentation included a detailed analysis of how the CCI assessed firm dominance and whether conduct at issue might be abusive.

EVALUATION								
OVERALL AVERAGE SCORE FOR EVENT ACROSS ALL CATEGORIES						4.4		
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.	4.4	18	44	8	10			
II. The overall quality of the presentations.	4.2	18	28	5	12	1		
III. The overall usefulness of the case studies.	4.5	17	53	9	7	1		
IV. The overall usefulness of the seminar materials.	4.4	17	41	7	10			
V. The overall usefulness of this event.	4.4	17	35	6	11			

4. PROGRAMME NEWSLETTER

In mid-2010, the Programme launched a periodical newsletter. Three issues were published in 2011. 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 information exchanged during the events.

The second reason for publishing the newsletter is to enable Asian competition authorities to establish and maintain links between each other. While there are many mechanisms in Europe and North America for authorities to keep abreast of each others' work, there are fewer opportunities to do so in Asia. 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 Asian country.

5. CENTRE STAFFING

During 2011, 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).

6. 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) The Australian Treasury (AT) Federal Court of Australia (FCA)
China	Ministry of Commerce (MOFCOM)
Chinese Taipei	Fair Trading Commission (CTFTC)
European Union	European Commission's Directorate General for Competition (DG Comp)
India	Competition Commission of India (CCI)
Indonesia	Business Competition Supervisory Commission (KPPU)
Japan	Japan Fair Trade Commission (JFTC)
Korea	Korea Fair Trade Commission (KFTC) Supreme Court of Korea (SCK) Korea Development Institute (KDI) Hanyang University (HU)
Malaysia	Malaysian Communications and Multimedia Commission (MCMC)
Netherlands	Netherlands Competition Authority (NMA)
New Zealand	New Zealand Commerce Commission (NZCC)
Pakistan	Competition Commission of Pakistan (CCP)
Singapore	Competition Commission of Singapore (CCS) Infocomm Development Authority of Singapore (IDA)
Thailand	Office of Thai Trade Commission (OTTC)
United Kingdom	Office of Fair Trading (OFT)
United States of America	Federal Trade Commission (US FTC) Department of Justice (US DoJ)
Vietnam	Vietnam Competition Authority (VCA)

Particular thanks goes to all the 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 2011

Presenter	Presentation
Mr. Richardo Frans Adiatma (KPPU)	“Abuse of Dominance Position: Theory and Cases in Indonesia”
Dr. Shabistan Aquil (CCI)	“Abuse of dominance: The Competition Act, 2002” “Abuse of dominance: case studies”
Mr. João Pearce Azevedo (OECD)	“Essentials of merger control” “The use of economics and quantitative techniques in merger analysis”
Mr. Mueen Batlay (CCP)	“Proposed acquisition of Agritech by Fauji Fertilizer: How far can you stretch conditional approval?”
Ms. Hsin Yi Chang (CTFTC)	“Internet Interconnection Issue in the Telecommunications Sector in Chinese Taipei”
Mr. Ajay Kumar Chauhan (CCI)	“Competition Act, 2002 & Anti-Trust Laws”
Ms. Mi Gang Choi (KFTC)	“Economic Analysis of Cartel Damages”
Ms. Punthip Chunsiripong (OTTC)	“Competition Advocacy in Thailand”
Ms. Xiao Di (MOFCOM)	“Competition Enforcement in China”
Mrs. Karen Dunn (AT)	“Competition Reform and Advocacy in Australia” “Competitive Neutrality in Australia”
Mr. Eric Emch (OECD)	“Overview of seminar: Legitimate Business Practices or Cartels in Disguise?” “The Economics of Cartel Formation and Stability” “Assessing Monopoly Power in Abuse of Dominance Cases” “An Introduction to Bundling and Tying” “An Introduction to Predation”
Mr. Richard Fleming (ACCC)	“Joint venture or cartel? The ACCC’s industrial garnet case” “Investigating business practices to determine whether they are cartels – an enforcement perspective”
Mr. John Gandy (NZCC)	“Looking back over the past 25 years in New Zealand Telecommunications” “Abuse of Dominance and (Un)bundling Cases in Telecommunications” “UFB and RBI: New Zealand’s initiative for nationwide broadband deployment”
Mr. Andrew Heimert (USFTC)	“Exclusive Dealing” “Remedies for Abuse of Dominance”
Mr. Kevin Hendriks (NMA)	“Hard-core Cartels Disguised as Legitimate Business Practices and the Handling of Cartel Cases”

Presenter	Presentation
Ms. Serena Ho (CCS)	“A Case Study Involving an Application to the Ministry for Public Policy Exemption” “Singapore’s First Abuse of Dominance Decision - The SISTIC Case”
Ms. Hsiu-Feng Hsu (CTFTC)	“Vertical Restraints Regulation on Distributors”
Ms. Chiachi Huang (CTFTC)	“Case Study: Industrial Paper Market Cartel”
Mr. Timothy Hughes (US FTC)	“Anatomy of the Merger Review Process at US FTC” “Interface of Qualitative and Quantitative Evidence: <i>FTC v. Whole Foods</i> ”
Mr. Osamu Igarashi (JFTC)	“Information Sharing - Guidelines and Case Studies of Japan”
Mr. Syed Umair Javed (CCP)	“Acquisition of Wind Telecom S.P.A. by VimpelCom Ltd”
Mr. Dag Johansson (DG Comp)	“What is market dominance and when is a firm dominant?” “Refusal to supply”
Mr. Byung-Hee Ko (KFTC)	“Abuse of Intellectual Property: Focusing on the Pharmaceutical Area”
Mr. Rajinder Kumar (CCI)	“Competition Advocacy in India”
Ms. Mei-Hua Lai (CTFTC)	“Mergers at the Fair Trade Commission”
Dr. Hoyoung Lee (HU)	“Sanctions and Corrective Measures: Korean Perspective”
Mr. Seungkyu Lee (KFTC)	“Whether a firm is dominant?”
Judge Wanhee Lee (SCK)	“POSCO Abuse of Dominance Case”
Ms. Wen-Hsui Lee (CTFTC)	“Competition Advocacy in the Regulation of Professional Services”
Dr. Youngjae Lim (KDI)	“Competition Impact Evaluation System”
Mr. Nguyen Manh Linh (VCA)	“Competition in Vietnam’s Telecommunication Sector”
Mr. Tng Litong (IDA)	“Singapore-Malaysia Roaming Rate Reductions”
Ms. Pwee Inn Loy (CCS)	“Case Study: Price Fixing by Coach Operators and their Association”
Dr. Frank Maier-Rigaud (OECD)	“General Remarks on Competition Assessment and Advocacy” “Competition Assessment Methodology”
Dr. Adrian Majumdar (RBB)	“Government’s rationale for enacting competition laws” “Economic meanings of key terms used in competition law” “Preparation, delivery and use of expert economic evidence”
Justice John Mansfield (FCA)	“Legal Mechanisms to Assign Rights and Liabilities to Business in Relation to Competition Issues” “Economic Expert Evidence in Competition Law Cases” “Purpose Evidence”
Mr. Jaeho Moon (KFTC)	“Merger Regulation in KFTC – a case of merger in online commerce industry”
Ms. Riris Munadiya (KPPU)	“Telecommunications Sector and Competition Enforcement in Indonesia”

Presenter	Presentation
Mr. Duc Minh Nguyen (VCA)	“Vietnam experience: Handling of a car insurance cartel”
Dr. Mark Niefer (US DoJ)	“Abuse of Dominance case study: Exclusive Dealing in US v Dentsply” “Relevant Markets Case Study: Air Passenger Service”
Ms. Ardyarini Marcellina Nuring (KPPU)	“Competition Assessment in Analysing Government Regulation in Indonesia”
Ms. Novi Nurviani (KPPU)	“Acquisition of Unilever Indonesia to Sara Lee Indonesia”
Mr. Shinichiro Obata (JFTC)	“Information Sharing-Guidelines and Case Studies of Japan”
Dr. Sanjay Pandey (CCI)	“Business Practice: Legitimate to Anti-competitive – Indian Experience”
Mr. Jong Bae Park (KFTC)	“Merger Assessment in Telecommunications Industry”
Mr. Lip Hang Poh (CCS)	“Singapore Merger Regime”
Ms. Tania Pringle (NZCC)	“New Zealand Commerce Commission: Clearance Process, Procedure and Guidelines” “A Poultry Matter: Case Study of the Tegel/Brinks Merger Application”
Mr. Vipul Puri (CCI)	“Abuse of dominance: case studies”
Mr. Praveen Purwar (CCI)	“Abuse of Dominance in India”
Ms. Serene Seet (CCS)	“Case Study: Price Fixing by Coach Operators and their Association”
Mr. Hideyuki Shimozu (JFTC)	“Regulation of Abuse of Dominance in Japan”
Mr. Jungwon Song (OECD)	“Excessive Pricing” “Predation Case Studies”
Mr. David Stallibrass (OFT)	“Cutting your coat to fit your cloth – Competition advocacy in an institutional setting”
Mr. Kenta Suzuki (JFTC)	“Competition Advocacy in the Government and Competition Assessments in Japan”
Mr. Nick Taylor (OECD)	“Law, economics and investigative challenges” “Defining Relevant Market (a hypothetical)” “The concept and selection of a theory of harm” “Introduction to competition in telecommunications” “Introduction to interconnection disputes” “What competition law seeks to achieve” “Contrasting different models for competition law enforcement (European system)” “Universal and less common prohibitions” “Overview of sources of evidence”
Mr. Joseph Wilson (CCP)	“Legitimate Business Practices or Cartels in Disguise”
Mr. Dae Won Hong (KFTC)	“Mobile Telecommunications Service Industry and Competition Policy”
Mr. Zhongliang Zhu (MOFCOM)	“Chinese Practices and Experiences on Competition Advocacy”