



OECD/KOREA POLICY CENTRE COMPETITION PROGRAMME

2018 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 2018 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 2018

In 2018, the Programme included the following 5 workshops:

- Competition rules in the energy sector
- Workshop with ICN On Competition Economics
- In-country Workshop on Market Definition
- Judge Event: Cartels
- Bilateral Seminar on Competition Economics and Mergers

In total there were 215 participants in attendance in 2018, from 34 jurisdictions, with 23 speakers presenting at these 5 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.

Additionally, in 2018 the OECD/KPC researched and published a report on the Competition Laws in Asia-Pacific: a Guide to Selected Jurisdictions. This is an overview of competition laws, policies, and institutional settings of 22 jurisdictions with comparison table of competition laws and agencies.



2.1) Competition rules in the energy sector, Jeju, Korea, 6 – 8 March 2018

The event was an opportunity to discuss the application of competition policy and rules to the energy sector. It focused mostly on enforcement actions but also undertook a wider view, examining the intersection between competition policy and the role of regulations, very important in this market to ensure security of supply, for instance. Speakers for this event were Mr. Ruben Maximiano (OECD), Mr. Alexander Gee (DG Competition, European Commission), Mr. Paulo Burnier da Silveira, Commissioner, CADE, Dongyeon

Kim, Deputy Director, International Cartel Division, Korea Fair Trade Commission and Takehiro Suzuki (Deputy Director, Coordination Division, Economic Affairs Bureau, JFTC).

The initial session focused on the specific characteristics of the market and its economic functioning was offered by Ruben Maximiano. Specific focus was devoted to the energy sector and its dynamics in Asia, and more specifically to electricity and gas.

This was followed by a session on market definition, also delivered by Ruben Maximiano, examining a number of cases in different jurisdictions and identifying some common threads and principles that underwrite the identification of relevant markets in the electricity and gas sectors.

Another session was devoted to abuses of dominance, also in the context of the liberalization process in Europe. Cases of exclusionary (exclusive dealing, refusals to deal) and exploitative (such as market manipulation, discrimination, and market partitioning) nature were examined in detail.

The second day was dedicated to merger control and anticompetitive agreements. Three complex cases dealt with by CADE were discussed by Paulo Burnier da Silveira, namely Alesat/Ipiranga (a prohibition of a transaction in the Distribution of automotive fuel market, on the basis of coordinated effects), Ultragas/Liquigás (LPG markets with high concentration in some regions, with one of the merging parties being an SOE), Gemini (a JV in natural gas sector). Then, KFTC shared its experience with two price fixing cases and one bid rigging case involving the construction of LNG storage tanks.

On the third day the EU shared the experience with anticompetitive agreements, and with a case involving the granting of exclusive and special rights, showing that under the EU laws an infringement may be established where the State measures affect the structure of the market by creating unequal conditions of competition between companies, by allowing the undertaking which was granted special or exclusive rights to maintain, strengthen or extend its dominant position over another market, thereby restricting competition, without it being necessary to prove the existence of actual abuse.

The final part of the workshop deal with the relationship between competition authorities and energy regulators and with advocacy efforts.

EVALUATION

OVERALL AVERAGE SCORE FOR EVENT USEFULNESS	4.8
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2.2) ICN-OECD/KPC Competition Economics Workshop

The OECD/KPC organized with the ICN a Competition Economics workshop for chief and senior economists. More than 80 participants from more than 38 jurisdictions attended the workshop, including many chief economists. In this event there were no private practitioners in order to allow for an open and frank discussions and sharing of experiences amongst the participant authorities facing similar issues and concerns.

Speakers included:

- Sang Seung-Yi (Professor of Economics, Seoul National University)
- Aviv Nevo (Professor of Economics)

- Yannis Katsoulacos (Professor of Economics, Athens University of Economics and Business)
- Juan-Pablo Montero (Professor of Economics, Pontificia Universidad Católica de Chile)
- Zhiqi Chen (Professor of Economics, Carleton University)
- Jacques Crémer (Research Professor, Toulouse School of Economics)
- Tom Ross (UPS Foundation Professor of Regulation and Competition Policy)
- Ginger Jin (Professor of Economics, University of Maryland)
- Paul Johnson (T.D. MacDonald Chair in Industrial Economics, Canada)

Participants were divided in two tracks:

- 1) The first track, targeted at more experienced agencies, focused on more advanced and complex economics and tackled topics such as merger simulation, loyalty programmes, buyer power, big data, platforms and multi-sided markets. Each session was composed of an introductory lecture by a leading academic followed by case studies from one or two participating agencies. The floor was then opened for discussion to all participants.
- 2) The second track, dedicated to younger agencies, explored the steps to increase the use of economic reasoning and economic tools in their case practice. Topics included: the fundamentals of industrial organisation, game theory, market definition and market power, economics of mergers and buyer power.

EVALUATION

OVERALL AVERAGE SCORE FOR EVENT USEFULNESS	4.5
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2.3) Workshop on Market Definition, Kuala Lumpur, Malaysia, 5-7 September 2018

In September 2018, the OECD/KPC devoted a workshop to an important part of any competition case: market definition. This was an event co-hosted with the hosted with MAVCOM and MyCC and was represented at top level by Dr. Nungsari Ahmad Radhi (Executive Chairman, MAVCOM and Iskandar of the MyCC).

This workshop looked at the analytical and basic economics of market definition as well as the investigatory steps that can be taken to define relevant markets. Practical case examples from OECD members were presented in order to illustrate the theoretical concepts. This looked at all fields of competition law enforcement, from agreements to mergers and abuse of dominance cases, looking mostly at cases in the aviation sector from the CMA, UK, European Commission and KFTC, Korea. Speakers were Mr. Ruben Maximiano (OECD), Mr. Daniel Boeshertz (Head of Unit, EU Commission), Ms. Jurate Markeviciute (Economic Adviser, CMA, UK), Mr. Sei-Beom Won (Deputy Director, Economic Analysis Div. KFTC).

It included two hypothetical practical exercises where participants were divided into smaller groups and solved a competition case that required market definition investigation and decision making. There was finally a wrap-up panel and Q&A with all the speakers which proved enriching for the participants.

EVALUATION

OVERALL AVERAGE SCORE FOR EVENT USEFULNESS	4.6
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2.4) 8th OECD/KPC Competition Seminar for Judges: Circumstantial Evidence and Cartel Cases, Jakarta, Indonesia, 10-12 October 2018

In October 2018, the OECD/Korea Policy Centre held in Jakarta (Indonesia) a Seminar for judges dedicated to understanding the role of indirect evidence in cartel cases and was co-organised with the Supreme Court of Indonesia.

This event was organised in close contact with the ASEAN secretariat and as a contribution to one of the goals of the ASEAN Competition Action Plan 2016-2025, and was co-sponsored with CLIP. Most of ASEAN Member States were represented as well as judges from China, India and Chinese Taipei. The fact that the event took place in Indonesia allowed for a wide participation of the Indonesian judiciary, of which many were judges from the District Courts as well as from the Supreme Court.

The goals of the Seminar were to engage in a discussion amongst judges in the Asia Pacific region and beyond as well as between judges and the experienced economists to allow judges to become more familiar with economic concepts and theories as well as to be more confident when presented with economic based arguments in the context of competition cases.

The Seminar was also the opportunity to launch the Primers for ASEAN Judges that can be found here: <http://www.oecd.org/daf/competition/asean-capacity-building-for-judges.htm>. The Primers are short information sheets on foundational aspects of competition law, in particular the economic aspects that Judges need to consider when approaching competition cases. It brings together the Federal Court of Australia's very rich technical knowledge and first-hand experience with the OECD's international experience working with judges and knowledge of the ASEAN region and laws. This helps implement of the ambitious ASEAN Competition Action Plan (ACAP) 2016-2025.

The panel of speakers in this event included Mr. Frédéric Jenny, Justice Alan Robertson, of the Federal Court of Australia, Justice of the Supreme Court of Indonesia Syamsul Maarif, Mr. Jeong Seo, Former Judge of the Seoul District Court of Korea and Mr. John Davies, former Competition Head at the OECD Senior and now at Compass Lexecon.

The Seminar was opened by Mr. Youngsoo Bae, Director General of the OECD/KPC Competition Programme, Mr. Jenny for the OECD and Justice of the Supreme Court Prof. Dr. Takdir Rahmadi. Following, Justice Maarif of Indonesia presented the rich experience in Indonesia with many cases reviewed and explained.

Mr. Jenny then offered his Keynote address on the key challenge faced by judges when dealing with evidence in cartel cases. Obtaining direct evidence of a cartel agreement - evidence that identifies a meeting or communication between the subjects and describes the substance of their agreement - requires special investigative tools and techniques, which the authority, in particular in new jurisdictions, may lack. Thus, the competition law enforcer may be faced with the task of proving the existence of a cartel agreement without the benefit of direct evidence. In short, the competition agency could have relatively greater difficulty in generating direct evidence in its cartel cases, which would imply that it will have to rely more heavily on circumstantial evidence. At the same time, there are limits to the use of circumstantial evidence. Such evidence, especially economic evidence, can be ambiguous. Importantly, circumstantial evidence can be, and often is, used together with direct evidence. Mr. Jenny then looked at a number of cases from around the world where the use of circumstantial evidence played a relevant role.

The rest of the day was dedicated to the economics of cartels and to how it consists of a group of suppliers trying collectively to act as a monopolist. Mr. John Davies presented two sessions, looking first at how economic theory can describe how feasible collusion is, which factors facilitate collusion and how to distinguish collusion from competition. Mr. Davies provided an economic back-drop, with reference to a number of real past cases.

The second day started with Mr. Jenny sharing lessons from the OECD Competition Committee regarding how to introduce economics into the court room, in particular at the methodological tools to improve the economic understanding of civil courts. Mr. Jenny analysed the Daubert criteria in the USA that relate to evidence and reliability to allow the judge to assess the quality of the expertise being provided. Mr. Jenny then shared the practice of several jurisdictions in how economic evidence is presented in courts. This session was followed by a hypothetical exercise led by Mr. Ruben Maximiano of the OECD, where participants were divided into small groups hearing an appeal on a bid rigging decision by a competition authority that did not rely on any direct evidence of the agreement being reached. The last session of the morning was led by Mr. Davies which was dedicated to handling expert economic evidence on cartel damages.

The afternoon of the second day had two presentations, one from Justice Alan Robertson on the use of circumstantial evidence in Australia, which was followed by the session by Former Judge Mr. Jeong Son on Korean cases that used indirect evidence, in particular the Copy Paper, Air Cargo and LPG cases.

The last day opened was dedicated to a hypothetical cartel decision by a Competition Authority. For this session, the plenary was broken up into 4 smaller groups where judges discussed amongst themselves the decision of the Competition Authority as well as written economic evidence that was brought before them.

Overall, a highly rated event where judges were very engaged in interesting discussions amongst themselves and with the panel members.

EVALUATION

OVERALL AVERAGE SCORE FOR EVENT USEFULNESS	4.2
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2.5) Bilateral Seminar on Competition Economics and Mergers, Hanoi - 14-16 November 2018

In November 2018, the OECD/KPC annual bilateral seminar took place in Ha Noi, Viet Nam for the Vietnamese Competition and Consumer Authority (VCCA).

After the OECD Peer Review of Viet Nam was released in March 2018, the new Competition Law was approved in Viet Nam, and will enter into force in July 2019. Following some of the main recommendations made in the Peer Review Report, Viet Nam has introduced an effects-based approach to its competition enforcement. To help the new Vietnamese competition authority to ramp up its knowledge of competition economics, the OECD/KPC Competition Programme ran a workshop for the authorities and local lawyers.

The first day was dedicated to key economic concepts and abuse of dominance, whilst day 2 was fully dedicated to mergers and to the various theories of harm and economic tools. For this workshop the OECD KPC counted on a wide array of experienced speakers with extensive experience applying economic concepts to cases. Speakers were Mr. Ruben Maximiano (Senior Competition Expert at the OECD), Dr. Derek Ritzmann (former Chief Economist of the Hong Kong Competition Commission), Prof. Joao Gata (former Chief Economist of the Portuguese Competition Authority), and Mr. Jongbae Park (Head of the Busan office of the KFTC).

The opening session was undertaken by Mr. Youngsoo Bae (DG, KPC), Mr. Trinh Anh Tuan (Deputy General Director, VCCA) and Mr. Ruben Maximiano.

The first introductory presentation was offered by Mr. Ruben Maximiano and set clear empirical evidence for the rise of economics in the context of competition law across jurisdictions. Indeed, recent decades have seen a significant shift in the role and prominence given to the assessment of economic evidence, information and data in competition law investigations in many jurisdictions in the OECD, but more broadly across jurisdictions, including in the Asia Pacific Region. An important aspect of this general shift has been a movement away from what has been described as a formalistic, per se type approach to competition enforcement based on a so-called ‘more economic’ approach, centred around ‘effects-based’ analysis. A context now joined also by Viet Nam. Now, few areas of laws draw more heavily, or more directly, on economics learning than competition or antitrust law.

The VCCA then presented a history of its law and enforcement as well as a look at some key elements of its new law, as regards the effects-based approach. Mrs. Tran Phuong Lan (Head of Merger Control Division, VCCA) presented.

Dr. Derek Ritzmann explained the key economic principles, concepts and definitions that are fundamental in competition law analysis and practice. Starting with the basic functioning of market supply and demand curves, Dr. Ritzmann then went through how such simple models can help predict price changes

and then to differences in market outcomes depending on market structures (from competitive markets, to oligopolistic markets and monopoly).

In the afternoon, Mr. Ruben Maximiano looked at one of the most important issues in anti-trust – market definition. Even with all the economic developments and the economic tools that have been developed by industrial economics, market definition is still a valuable tool used far and wide by all competition law regimes. At the same time whether it is defined too narrowly or broadly in a particular case has an impact on the analysis of the competitive effects of a given conduct or merger. The ultimate objective however should be to identify all the competitive constraints a firm faces as accurately as possible. The final session of the day was dedicated to market power, Dr. Ritzman looked at sources of market power, barriers to entry and to the concept of dominance, lying at the intersection of economics and law. The economic tests to evaluate some of the main exclusionary abuses were then described and explained.

The second day was dedicated mainly to merger control. Mr. Ruben Maximiano, presented first on the main theories of harm, focusing on horizontal theories of harm, unilateral and coordinated effects. There was a particular focus on the role of market shares in an effects based assessment which is not always clear for newer jurisdictions tackling effects based analysis. For example in unilateral effects, high market shares mean the company may have incentives to compete less aggressively, and mean that a larger fraction of customers in the market will be directly affected. However, the effects of a merger depends to a significant extent on how much competitive pressure is lost, which is the greater if the parties are close competitors, where they exert a particularly strong constraint on the other. Dr. Ritzmann complemented this presentation by looking at the main economic tools used, from the Hypothetical Monopolist Test to Price Correlation Analysis, Shock Analysis and Natural Experiments, Critical Loss Analysis and UPP. This was done with reference to case examples, mainly from the EU. Mr. Jongbae Park of the KFTC then presented a number of merger cases where economics was used in the KFTC practice. The final presentation was offered by Prof. Joao Gata on the economics of collusion, looking at game theory and a number of cases of the Portuguese Competition Authority where economic analysis was used, in particular for fine setting purposes.

This was an event that allowed participants from the VCCA, VCC, academics and lawyers to understand more the effects based analysis. Drawing upon some very experienced speakers it was possible to show that it is possible to use institutions and some relatively simple economic tools to have a grasp of the effects arising from business conduct and from mergers.

EVALUATION

OVERALL AVERAGE SCORE FOR EVENT USEFULNESS	4.4
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3. PROGRAMME NEWSLETTER

The Programme continued to publish regular newsletter, known as the “Asia-Pacific Competition Update” in 2018. 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 2018, the Programme's staff comprised:

Title	Name	Location
Director General	<i>Mr. Youngsoo Bae</i>	Seoul, Korea
OECD Senior Competition Expert	<i>Mr. Ruben Maximiano</i>	Paris, France
Director	<i>Mr. Daeyoung Kim</i>	Seoul, Korea
Research officer	<i>Mr. Daniel Oh</i>	Seoul, Korea
Communications officer	<i>Ms. Michelle Ahn</i>	Seoul, Korea
Programme coordinator	<i>Ms. Hyekyoung Jun</i>	Seoul, Korea

5. CONTRIBUTIONS

The following OECD Member States and organisations generously provided expert speakers for the Programme's workshops in 2018:

Country	Authority/Organisation
Australia	Australian Competition and Consumer Commission Federal Court of Australia
Brazil	CADE
Canada	T.D. MacDonald Chair in Industrial Economics, Canada UPS Foundation Professor of Regulation and Competition Policy
Chile	Pontificia Universidad Católica de Chile
France	Compass Lexicon Toulouse School of Economics
European Union	European Commission - DG Competition
Greece	Athens University of Economics and Business
Indonesia	Supreme Court of Indonesia
Japan	Japan Fair Trade Commission
Korea	Korea Fair Trade Commission Seoul National University Seoul District Court, Korea
Lithuania	Lithuanian Competition Council
Portugal	Portuguese Competition Authority
United Kindgom	CMA
United States	Carleton University University of Maryland Wharton Business School

In addition, officials from the following participating authorities made presentations during the 2018 workshops:

Country	Authority
ASEAN	ASEAN Secretariat
China	State Administration for Industry and Commerce (SAIC), NDRC
Hong Kong	Hong Kong Competition Commission (HKCC)
India	Competition Commission of India (CCI)
Indonesia	Business Competition Supervisory Commission (KPPU)
Malaysia	MyCC MAVCOM
Mongolia	Authority for Fair Competition and Consumer Protection (AFCCP)
Pakistan	Competition Commission of Pakistan (CCP)
Philippines	Philippines Competition Commission (PCC)
Singapore	Competition Commission of Singapore (CCS)
Chinese Taipei	Chinese Taipei Fair Trade Commission (CTFTC)
Vietnam	Vietnam CCA