



OECD/KOREA POLICY CENTRE COMPETITION PROGRAMME

2020 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 2020 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 2020

In 2020, the Programme included the following 6 workshops:

- Sector Workshop – Health Sector
- Workshop – Economics of Merger Control with ADB
- Workshop – Economics on Abuse of Dominance with ADB
- Workshop (bilateral with OTCC) – Cartels, Leniency and Fines
- Workshop – Young Competition Agencies
- 10th Competition Law Seminar for Asia-Pacific Judges with Philippines Supreme Court and ASEAN OECDKPC/CLIP Judicial Primers

Due to COVID-19, all workshops were held virtually. In total, there were 330 participants in attendance in 2020.

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

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

2.1) Sector Specific Workshop: Health Sector (Virtual), 16 – 21 July 2020

On 16-21 July 2020, the OECD/KPC organized its annual sector workshop. The workshop was devoted to competition issues in the health sector, also in light of COVID-19. It covered a variety of topics in the health sector, including the pharma sector. The discussion focused on four main aspects: (i) bid-rigging, cartels and cooperation agreements; (ii) merger issues, (iii) abuse of dominance, and (iv) the role for competition advocacy in the sector.

Representatives from 14 Asian-Pacific competition authorities (Australia, Bangladesh, Brunei Darussalam, Cambodia, China, Chinese Taipei, Fiji, Hong Kong, Indonesia, Korea, Malaysia, The Philippines, Singapore, and Thailand) attended the workshop and actively engaged in the discussions. In total, more than 70 participants were present throughout the four days of the webinar.

This was also a good networking opportunity for Asia-Pacific competition authorities that often face similar issues when dealing with cases in the health sector.

The panel of invited speakers included Mr. Renato Ferrandi (Senior Competition Expert, OECD), Mr. Natsuko Hori (International Affairs Division, JFTC), Ms. Isabel López (Deputy Director, CNMC), Mr. Eunki Bang (Deputy Director, KFTC), Mr. Ruben Maximiano (Senior Competition Expert, OECD), Ms. Ana Sofia Rodrigues (Chief Economist, Portuguese Competition Authority), Md. Mofizul Islam (Chairperson, Bangladesh Competition Commission), Mr. Stuart Flynn (Director, ACCC), Mr. Stephen Ryan (Head Legal Advisory, HKCC), Mr. Paulo Burnier da Silveira (Senior Competition Expert, OECD), Mr. Rohan Pai (Senior Attorney, US FTC), Ms. Clementine Messent (Assistant Director, Mergers, CMA),

Mr. Steven Pantling (Assistant Director, Remedies, Business and Financial Analysis, CMA), Mr. Lo Hwei Rong (Senior Assistant Director/Business and Economics, CCCS), Ms. Anya Palileo (Chief PCC Merger and Acquisition Review Division, PCC), Mr. Allan Fels (Former Chairperson of the ACCC), Mr. Ismail Faruqi Abdullah (Assistant Director of Strategic Planning and International Affairs Division), Mr. Pedro Caro Sousa (Competition Expert, OECD), Mr. Andrea Minuto Rizzo (AGCM) and Mr. Lourenço Ventura (CMA).

On the first day, Mr. Ho-tae Kim (Director General, OECD/KPC Competition Programme) gave his opening remarks and welcomed all participants to the workshop. Following his intervention, Mr. Ruben Maximiano (Senior Competition Expert, OECD) provided an overview of the main competition law issues in the health sector. He highlighted the importance of competition in the health sector and outlined the possible impact of COVID-19.

Following this introduction, Mr. Renato Ferrandi (Senior Competition Expert, OECD Competition Division), Mr. Natsuko Hori (International Affairs Division, JFTC), Ms. Isabel López (Deputy Director, CNMC), Mr. Eunki Bang (Deputy Director, KFTC) gave presentations regarding bid-rigging in the health sector, with a focus on practice and challenges.

The second day focused on cartels and co-operation in times of COVID-19. It includes presentations by Mr. Ruben Maximiano (Senior Competition Expert, OECD Competition Division), Ms. Ana Sofia Rodrigues (Chief Economist, Portuguese Competition Authority), Md. Mofizul Islam (Chairperson, Bangladesh Competition Commission), Mr. Stuart Flynn (Director, ACCC), Mr. Stephen Ryan (Head Legal Advisory, HKCC) and Mr. Paulo Burnier da Silveira (Senior Competition Expert, OECD).

The third day of the workshop was dedicated to health care mergers, in particular on market definition, theories of harm and remedies. Mr. Rohan Pai (Senior Attorney, US FTC), Ms. Clementine Messent (Assistant Director, Mergers, CMA), Mr. Steven Pantling (Assistant Director, Remedies, Business and Financial Analysis, CMA), Ms. Lo Hwei Rong (Senior Assistant Director/Business and Economics, CCCS) and Ms. Anya Palileo (Chief PCC Merger and Acquisition Review Division, PCC) gave presentations.

The last day began with a keynote speech by Mr. Allan Fels (Former Chairperson of the ACCC) regarding advocacy and abuse of dominance. The session was followed by presentations from Mr. Ismail Faruqi Abdullah (Assistant Director of Strategic Planning and International Affairs Division), Mr. Pedro Caro Sousa (Competition Expert, OECD), Mr. Andrea Minuto Rizzo (AGCM) and Mr. Lourenço Ventura (CMA).

Mr. Rizzo presented on the Italian experience in addressing price increases in the health sector. He provided insights on recent case that concerned sharp price increases of life-saving drugs ranging between 300% and 1,500% in 2014. In particular, Mr. Rizzo explained the regulatory framework and the proceedings by the AGCM. He outlined the approach on the market definition, the dominant position and the competitive assessment. The AGCM imposed a fine of over EUR 5 Mio on the undertaking for the infringement of Article 102 TFEU for excessive prices concerning some essential off-patent drugs. As a result, the prices towards the public have been reduced significantly and resulted in considerable public savings. Furthermore, Mr. Minuto Rizzo shared his view on a mix of strategies and tools to address price increases in the context of COVID-19. In that regard, market monitoring, consumer protection and limits of price regulation were discussed.

The last day ended with closing remarks by Mr. Ho-tae Kim (Director General, OECD/KPC Competition Programme) and Mr. Ruben Maximiano (Senior Competition Expert, OECD).

This event allowed participants to explore a sector that is currently in particular in the spotlight, also in light of COVID-19. Regulators around the world are faced with competition issues in the health sector. ASEAN

and Asia-Pacific antitrust watchdogs are all dealing with this type of issues at the moment and this workshop was a good and timely occasion for sharing their experiences and learning from each other.

EVALUATION

OVERALL AVERAGE SCORE FOR EVENT USEFULNESS	4.6
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2.2) Workshop: The Economics of Merger Control (Virtual), 6 – 9 October 2020

On 6-9 October 2020, the OECD/KPC organized together with the Asian Development Bank and The Philippines Competition Commission a Competition Economics mini-course on Mergers. It was held by Prof. Massimo Motta of Universitat Pompeu Fabra, and Barcelona Graduate School of Economics, one of the most renowned professors of competition law worldwide. Furthermore, there was another workshop on Competition Economics regarding Abuse of Dominance (see below).

All over the world there are increasing concerns of growing industrial concentration and market power by firms, and several voices have been calling for antitrust authorities to be stricter when they vet mergers, whereas others defend the current standards. The merger workshop aimed to give participants a thorough understanding of the competition economics of merger control, through the analysis of established and new economic theories on mergers, insights on the relevant empirical methods, and discussions on recent high-profile merger cases.

Representatives from 10 Asian-Pacific competition authorities (Brunei Darussalam, Cambodia, Indonesia, Korea, Lao People's Democratic Republic, Malaysia, Myanmar, The Philippines, Singapore and Thailand) attended the workshop and actively engaged in the discussions. In total, more than 121 participants were present throughout the three days of the webinar.

The first day started with initial remarks from Mr. Ho-tae Kim (Director General, OECD/KPC Competition Programme), Mr. Ruben Maximiano (Senior Competition Expert, OECD), Mr. Ramesh Subramaniam (Director General, SEA Department of ADB) and Mr. Arsenio Balisacan (Chairperson, Philippine Competition Commission).

It was followed by the presentation from Prof. Motta. It was divided into horizontal mergers (unilateral effects, coordinated effects, cases as well as acquisition of potential competitors), non-horizontal mergers (vertical foreclosure and remedies) and challenges for merger control.

In the context of horizontal mergers and the acquisition of potential competitors, Prof. Motta stressed that hundreds of acquisitions of potential competitors by Big Tech companies happened in the last few years. Against the background that the respective turnover thresholds are typically not met, only a handful were investigated by competition authorities. Examples by Prof. Motta included merger cases like *Facebook/Instagram*, *Facebook/WhatsApp* and *Google/Waze*. However, such mergers, sometimes referred to as ‘killer acquisitions’, are not exclusively limited to digital markets. Other examples can be found e.g. in the beer and cement industry.

The acquisition of WhatsApp by Facebook in the area of communication apps and the competitive assessment by the European Commission was discussed in more detail. Prof. Motta explained the European Commission’s approach regarding possible harm in consumer communications services (in particular the importance of network effects), social networking services and online advertising services (with a focus on

the role of data). Another illustrative example provided was the acquisition of Waze by Google in the area of map application for mobile devices and the assessment of the Israeli competition authority. The discussion focused on theories of harm, barriers to entry, possible efficiency gains and the consideration of the counterfactual.

According to Prof. Motta, challenges arising from the assessment of such mergers are e.g. little or no overlaps at the moment of the acquisition (often target firms active in complementary markets), but a risk of systematic elimination of possible future rivals. Also, significant anticompetitive effects are sometimes difficult to prove. Nevertheless, Prof Motta mentioned that such acquisitions could also generate trade-offs.

From an economic point of view, there are different approaches regarding this phenomenon. Prof. Motta explained the Arrow replacement effect, the model of Gilbert and Newbery, and the theory of Fumagalli, Motta and Tarantino.

In terms of policy implications, Prof. Motta argued in essence that competition authorities should review such acquisitions, and consider realistic counterfactuals.

The workshop on the Economics of Merger Control ended with closing remarks by Mr. Ruben Maximiano (Senior Competition Expert, OECD).

Overall, the workshop was a well balanced mix of theory and practical case studies and exercises. There was also room for discussions. All the participants benefited to a large extent from Prof. Motta's tremendous experience.

EVALUATION

OVERALL AVERAGE SCORE FOR EVENT USEFULNESS	4.6
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2.3) Workshop: The Economics of Abuse of Dominance (Virtual), 19 – 23 October 2020

Following the workshop on the economics of Merger Control, the OECD/KPC organized on 19-23 October 2020 together with the Asian Development Bank and The Philippines Competition Commission a Competition Economics mini-course on Abuse of Dominance. It was held by Prof. Chiara Fumagalli of Bocconi University, also a world-class professor of competition economics.

Abuse of dominance is one of the most debated area in competition policy. Often the difference between a behaviour that is efficient or anti-competitive can be difficult to discern and that is where the economic analysis can play a role. The abuse of dominance workshop aimed to provide the participants with a thorough understanding of the most recent economic theories of abuse of dominance, help them apply these concepts in practice, and review actual cases in the light of an economic approach.

Representatives from 10 Asian-Pacific competition authorities (Brunei Darussalam, Cambodia, Indonesia, Korea, Lao People's Democratic Republic, Malaysia, Myanmar, The Philippines, Singapore and Thailand) attended the workshop and actively engaged in the discussions. In total, 112 participants were present throughout the four days of the webinar.

The first day started with initial remarks from Mr. Ho-tae Kim (Director General, OECD/KPC Competition Programme) and Mr. Ruben Maximiano (Senior Competition Expert, OECD).

It was followed by the presentation from Prof. Fumagalli. It was divided into basic concepts, predation, discounts and conditional rebates, exclusive dealing, tying and bundling, and vertical foreclosure.

In the context of discounts and conditional rebates, Prof. Fumagalli highlighted that rebates can represent a form of price discrimination. Abstracting from exclusionary motives, price discrimination is, however, not necessarily welfare detrimental. She also explained several economic models regarding welfare effects of price discrimination. Basically, there are two categories of price discrimination: unconditional (selective discounts) and conditional rebates (granted if a specific condition is satisfied).

Prof. Fumagalli underlined that in particular discounts conditional on exclusivity raise more severe anti-competitive concerns. This assumption is based on several economic reasons. For instance, they may allow the incumbent to secure the crucial buyers while limiting the distortions on sales to those buyers. Exclusivity rebates may be directly profitable because of a demand-boosting effect. Exclusionary effects can be even stronger when 'all-or-nothing' clauses is implemented i.e. the dominant firm threatens buyers not to supply them at all if they reject a rebate offer. However, one should bear in mind that the economic theory does not suggest that individualized rebates and exclusivity rebates should be *per se* prohibited. Efficiency could also apply to exclusivity rebates and ultimately intensify competition.

Prof. Fumagalli presented the *Intel* case (microchip manufacturer) in the European Union as an illustrative example for retroactive loyalty rebates. The European Commission found that such rebates implied effective prices for the contestable volumes that could exclude an as-efficient competitor and fined Intel for EUR 1.06 billion in May 2009. First, the decision was fully upheld by the General Court of the European Union. However, the European Court of Justice asked for a more detailed economic analysis. The as-efficient competitor test played an important role in the assessment of whether the rebate scheme at issue was capable of having foreclosure effects on as efficient competitors. Therefore, the General Court of the European Union was required to examine all of Intel's arguments concerning that test. According to the European Court of Justice, not every exclusionary effect is necessarily detrimental to competition.

Furthermore, the US-case *ZF Meritor vs. Eaton* in the heavy-duty truck transmission market was discussed. Prof. Fumagalli explained that the Court did not regard the price-cost test as dispositive. The Court considered economic arguments, and assessed height of entry barriers, extent of Eaton's market power, duration of the agreements, their coverage, evolution of Meritor's market shares, and potential pro-competitive justifications. She also elaborated the differences compared to the *Intel* case.

Prof. Fumagalli also presented economic insights regarding implicit and explicit price discrimination, uniform pricing, and effective pricing. In this context, she also provided illustrative examples.

The workshop on the Economics of Abuse of Dominance ended with closing remarks by Mr. Ho-tae Kim (Director General, OECD/KPC Competition Programme) and Mr. Ruben Maximiano (Senior Competition Expert, OECD).

Overall, the workshop was a well balanced mix of theory and practical case studies and exercises. There was also room for discussions. All the participants benefited to a large extent from Prof. Fumagalli's tremendous experience.

EVALUATION

OVERALL AVERAGE SCORE FOR EVENT USEFULNESS	4.7
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2.4) Workshop (bilateral with OTCC, Virtual) – Cartels, Leniency and Fines, 9 – 12 November 2020

Under the Thailand Country programme a workshop on cartel and leniency was born out of cooperation between the OECD, KPC, and OTCC, with various other organisations and experts contributing to the eventful and informative discussion. The workshop took place for three days, from 9-12 November 2020.

On the first day of the workshop, Prof. Dr. Sakon Waranyuwatana (Chairman, OTCC), Mr. Ruben Maximiano (Senior Competition Expert, OECD), and Mr. Ho-tae Kim (Director General, OECD/KPC Competition Programme) started the workshop through their welcoming remarks. Particularly, Mr. Ruben Maximiano (Senior Competition Expert, OECD) introduced the concept of cartels. He introduced the history of how cartels were formed before emphasising the importance of cartel enforcement. Mr. Ruben Maximiano (Senior Competition Expert, OECD) also indicated that the challenge to cartel enforcement secrecy. This challenge can be countered by having a leniency program in place. Moreover, special investigative tools and methods can help competition agencies obtain direct evidence on cartels.

Thereafter, Mr. Wouter Meester (Competition Expert, OECD) gave a presentation introducing why cartels must be fought, followed by a presentation on global cartel trends. In his presentation, he analysed the direction of the number of cartel decisions and the number of cases in which dawn raids were used in different regions and jurisdictions between 2015 and 2018. A particular note is on how the number of cartel decisions and the number of cases in which dawn rates were used in Asia-Pacific arose significantly in 2018. With regard to leniency, the number of jurisdictions with leniency programs had been increasing every year since 1990, while the average number of leniency applications was extremely high in the Asia-Pacific region. However, the number of applications had been decreasing since 2015. Mr. Wouter Meester (Competition Expert, OECD) also explained that the average fine per decision in OECD jurisdictions was significantly higher than non-OECD jurisdictions, while cartel cases in which prison sentences were imposed arose significantly in 2018. He also showed that manufacturing cartels amounted to the majority of international cartel cases. The average duration of international cartels was 6.6 years across the industry, with oil cartels having the longest duration of 11 years.

The OTCC then summarised the Thailand legal framework on cartels. Following that, Ms. Hannah Nichols (Director of Cartels, ACCC) presented different types of cartels. Australia's cartel law imposed both civil and criminal liability for cartels. She summarised four types of the classification of cartels: price-fixing, output restriction, market sharing, and bid-rigging. Finally, indicators for collusion were provided.

The first day concluded with a presentation of the judicial view of cartels in Thailand given by Mr. Sorawit Limparangsri (Chief Judge of the Office of the Supreme Court, Thailand). The Competition Act in Thailand can differentiate between criminal offence and administrative fine for cartels and between price-fixing and non-price restriction as types of cartel conduct. Mr. Sorawit Limparangsri then discussed certain challenges and the issue of evidence. It was followed by a discussion on criminal sanctions and civil actions, in particular class action, in Thailand.

The second day started off with Ms. Sophie Flaherty (Junior Competition Expert, OECD) introducing cartel detection. She emphasized that there are two types of cartel detection methods: proactive and reactive. Market screening is a part of the proactive method, and market screening can be separated into structural and behavioural types. These two types differ in focus, difficulty, and outcome. It was concluded that competition authorities should use proactive tools of screening, both behavioural and structural, to detect cartels while also not ignoring such tools' limitations and also pursue a vigorous enforcement policy to achieve the best results.

Then, Mr. Jihong Son (KFTC) introduced Korea's Bid Rigging Indicator Analysis System (BRIAS). BRIAS was created to resolve cartel problems in the E-bidding system for public procurements in Korea. The current version is BRIAS 3.0, which can recognise more types of bid-rigging and is easier to manage and more user-friendly than previous versions. If certain criteria are met, bid-rigging is suspected. Then, the alleged bid-rigging case will further be recognised, investigated and will go through case handling.

After that, Ms. Taís Issa De Fendi (Portugal) then gave information on cartel enforcement. This presentation was then followed by the presentation on Digital Evidence Gathering in Cartel Investigations from Mr. Dirk Van Erps (European Commission). The presentation showed various methods to investigate cartels, with each method having its advantages and disadvantages. The required investments in collecting good evidence were also shown with IT tools, dedicated IT staff, a good internal system and a legal system, which promotes evidence gathering being shown as examples. The challenges, practical difficulties in collecting evidence and ways to overcome them were also discussed. Examples of challenges are servers being located outside the competition authority's competence, the use of personal devices, legal professional privilege, and the lack of keywords. The presentation concluded with the rights of defence on the company's side, such as review of documents and shadowing by company representatives.

On the third day, Ms. Leni Papa (Junior Competition Expert, OECD) gave the workshop an introduction to leniency. Thereafter, Prof. Peerapat Chokesuwattanaskul (Thailand) provided an overview of leniency programmes in Thailand. After that, Ms. Ethel Lin (Senior Assistant Director Legal & Enforcement, CCCS) presented leniency programs in Singapore. Closing the day was a presentation by Ms. Trudie Erks (Acting Director Cartels, ACCC) on leniency and markers in Australia. The ACCC separates leniency programs in Australia into two parts: immunity and cooperation. The ACCC's immunity policy grants civil and criminal immunity to the party, which is a first-reporter of cartel conduct. Moreover, derivative immunity could be applied on behalf of companies and related representatives and managers. Conditional immunity, both civil and criminal, would be granted if applicants meet the criteria for immunity. If every condition and obligations have been satisfied, conditional immunity becomes final, while civil immunity is finalised at the end of civil proceedings.

On the last day of the workshop, Mr. Gatano Lapenta (Junior Competition Expert, OECD) introduced the concept of cartel fines. The introduction started with the four main objectives of a fining policy: deterrence, punishment, recovery of illegal gains, and compensation. Then the amount of fine across years and jurisdictions are compared and the issue of the optimal amount of a fine was discussed. The optimal amount could be calculated by having the gains from infringement divided by the probability of detection to find the amount of fine which imposes costs towards cartel behaviour that outweigh the benefits. Factors such as turnover, relevant market, years of infringement, market share size, inability to pay, deterrence coefficient and nature of infringements are also taken into account. Some conducts such as the refusal to cooperate and recidivism might aggravate the amount of fine. In contrast, others, such as only playing a minor role in the cartel and having an effective compliance policy, may mitigate the amount of fine. Finally, the challenges to imposing fines were discussed.

Next, Ms. Cindy Chang (Principal Legal Counsel, Legal & Enforcement, CCCS) gave a presentation on CCCS's Financial Penalty Framework for cartel cases. Then, the method of setting cartel fines was presented by Mr. Gerald Miersch (European Commission). The fundamental and only objective of cartel fines imposed by the Directorate-General for Competition is deterrence. Moreover, the European Commission have their

guidelines for setting fines. Under this guideline, a firm can be fined up to 30 per cent of the value of cartel sales over the infringement period calculated from the reported total actual sales or the sales of the last full business year. In reality, fines for cartels usually start at 15 per cent, and additional fines are imposed due to aggravating factors or decreased due to leniency and reductions through settlement. The fine would be capped to be not more than 10 per cent of the parent company's worldwide turnover. Moreover, fines for non-cooperation with the authorities can also be imposed up to 1 per cent of the global turnover for the company.

Finally, the OECD conducted a hypothetical exercise. The workshop ended with closing remarks by Prof. Dr. Sakon Waranyuwatana (Chairman, OTCC), Mr. Ruben Maximiano (Senior Competition Expert, OECD), and Mr. Ho-tae Kim (Director General, OECD/KPC Competition Programme).

The workshop had been a valuable experience for practitioners and competition agencies across various regions. Insights and perspectives from different legal regimes were shared, and different comparative approaches discussed within the workshop could be adopted by competition agencies to further their goals of ensuring free and fair competition by having a better cartel enforcement mechanism.

Overall, a bilateral event that was very complete in providing an overview at both the management level – fundamental to run a successful competition authority, as well as more technical level, allowing case handlers to have contact and understand how more experienced agencies deal with issues in the context of their cases in mergers, cartels and abuse of dominance.

EVALUATION

OVERALL AVERAGE SCORE FOR EVENT USEFULNESS	4.5
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2.5) Workshop – Young Competition Agencies (Virtual), 17 December 2020

On 17 December 2020, the OECD/Korea Policy Centre organised in cooperation with the Brunei Competition Commission a workshop for Younger Agencies on prioritization and stakeholder engagement.

The workshop targeted at the younger agencies in the Region. The goal of the Seminar was to discuss possible strategies to help kick-start and develop younger agencies so as to maximize the effectiveness of their actions.

The day started with initial remarks from Mr. Ho-tae Kim (Director General, OECD/KPC Competition Programme) and Mr. Ruben Maximiano (Senior Competition Expert, OECD).

The keynote speech was provided by Ms. Yang Berhormat Dayang Nik Hafimi binti Abdul Haadi (Chairperson, Brunei Competition Commission) on Competition Law and Policy in Brunei. Then, Prof. William Kovacic (George Washington University; Visiting Professor of King's College London) gave a presentation regarding first steps of a Competition Agency. He summarized five early major implementation tasks: (i) institution building, (ii) priority setting and project selection, (iii) project delivery, (iv) external engagement, and (v) assessment and refinement.

With regard to institution building, Prof. Kovacic underlined, *inter alia*, the importance of human resources, building know-how and communication.

For priority setting and project selection, he recommended to identify the most serious obstacles to competition and prioritize it (e.g. based on commands in the Agency mandate or economic or doctrinal significance). According to Prof. Kovacic, transparency the process of project selection is also crucial. These criteria may apply to goods and services with strong connection to consumers (e.g. food or public procurement). Project delivery should ensure publicity and education. In terms of external engagement, Prof. Kovacic described the benefits of external co-producers (e.g. courts, universities, civil society bodies, etc.) and the international connection. (e.g. cooperation). In the context of assessment and refinement, he explained the virtuous cycle of experimentation, assessment and refinement. The impact of projects, quality of internal organization/process and areas for needed legislative upgrades should also be considered.

Prof. Kovacic concluded that the first phase of agency development can take 20-25 years, but even small improvements in economic performance can yield major social benefits.

Following Prof. William Kovacic presentation, Mr. Arsenio Balisacan (Chairman, PCC, The Philippines) discussed the example of The Philippines.

The workshop ended with closing remarks by Mr. Ho-tae Kim (Director General, OECD/KPC Competition Programme) and Mr. Ruben Maximiano (Senior Competition Expert, OECD).

The workshop highlighted how agencies may decide to organise themselves, contribute to a competition culture via advocacy actions, and prioritise cases, the basic legal and economic theories, as well as primers on how to investigate Cartels, mergers and/or abuse of dominance.

EVALUATION

OVERALL AVERAGE SCORE FOR EVENT USEFULNESS	4.6
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2.6) 10th Competition Law Seminar for Asia-Pacific Judges with Philippines Supreme Court and ASEAN OECDKPC/CLIP Judicial Primers (Virtual), 4 February 2021

The tenth OECD/ Korea Policy Centre Competition Law Seminar for Asia-Pacific Judges took place on 4 February 2021. This tenth edition of the Competition Law Seminar for Asia-Pacific Judges was co-sponsored by CLIP and was held in close cooperation with the Philippines Supreme Court and the ASEAN Secretariat. This was an event that was meant to be held in November 2020 but due to unforeseen weather events in the Philippines had to be postponed.

The topic was Market definition as an essential tool of competition analysis. The event also marked the Launch of the OECD / FCA Primer on Market Definition for ASEAN Judges. The Primers are a series of information sheets designed to offer practical guidance to members of the judiciary when analysing competition cases. The Primers bring together the Federal Court of Australia's technical knowledge and first-hand experience with the OECD's international experience working with judges and in the ASEAN region. Whilst made in the context of the ASEAN Competition Action Plan, Primers may be useful for judges from all jurisdictions.

The Seminar started with welcome remarks by Mr. Jungwon Song (Director General of the OECD/KPC Competition Programme) and Mr. Ruben Maximiano (Senior Competition Expert, OECD). The Seminar included a keynote speech by The Honourable Diosdado M. Peralta (Chief Justice, Supreme Court of The Philippines). The Seminar also included speeches by Mr. Frédéric Jenny (Chairman of the OECD Competition Committee) and The Honourable Michael O'Bryan (Justice, Federal Court of Australia) on the Launch of Federal Court of Australia / OECD Primer on Competition for Asian Judges.

The webinar then focused on the Economics of Competition law and the Courts by Mr. Frédéric Jenny (Chairman of the OECD Competition Committee) and then by Mr Ruben Maximiano (Senior Competition Expert, OECD) and Mr. Matteo Giangaspero (Competition Expert, OECD) on the main aspects set out in Primer on Market Definition, in particular the main economic principles.

This was followed by a session held by Mr. Jorge Padilla (Compass Lexecon Europe) who developed further on the available economic methodologies and tools commonly used and accepted by international best practices when analysing Market Definition. He underlined that the goal of market definition is to identify the group of products which provide significant and timely competitive constraints on the product in question. With regard to demand side substitution, it is crucial how responsive consumers' choices are to (relative) price. It also depends on consumers' preferences, the availability of alternatives, and potential barriers to switch. In economic terms, price elasticity of demand measures price sensitivity of consumers. Mr. Jorge Padilla also explained the cellophane fallacy and its flaw of the SSNIP test in abuse of dominance cases. As a result, the elasticity of demand will be overestimated and thus could lead to excessively broad market definition.

Furthermore, Mr. Jorge Padilla discussed critical loss. Basically, critical loss analysis tells us how much volume one can afford to lose before a price increase becomes unprofitable. He also presented the respective economic formula. The presentation by Mr. Jorge Padilla also explained price comparisons and price correlations, and its economic background. It should, however, be noted that price comparisons and correlations cannot help implement the SSNIP test directly, they just provide some information on possible substitutes.

The tenth OECD/ Korea Policy Centre Competition Law Seminar for Asia-Pacific Judges ended with closing remarks by Mr. Jungwon Song (Director General of the OECD/KPC Competition Programme) and Mr. Ruben Maximiano (Senior Competition Expert, OECD).

EVALUATION

OVERALL AVERAGE SCORE FOR EVENT USEFULNESS	4.7
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3. PROGRAMME NEWSLETTER

The Programme continued to publish regular newsletter, known as the “Asia-Pacific Competition Update” in 2020. 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 2020, the Programme's staff comprised:

Title	Name	Location
Director General	<i>Mr. Ho-tae Kim</i>	Seoul, Korea
OECD Senior Competition Expert	<i>Mr. Ruben Maximiano</i>	Paris, France
Director	<i>Ms. Daeyoung Kim</i>	Seoul, Korea
Research officer	<i>Mr. Dong Hyun LIM</i>	Seoul, Korea
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5. CONTRIBUTIONS

The following OECD Member States and organisations generously provided expert speakers for the Programme's workshops in 2020:

Country	Authority/Organisation
Australia	Australian Competition and Consumer Commission Federal Court of Australia
Bangladesh	Bangladesh Competition Commission
Brunei Darussalam	Brunei Competition Commission
European Union	European Commission, Directorate-General for Competition
Italy	Italian Competition Authority (Bocconi University)
Japan	Japan Fair Trade Commission
Hong Kong	Hong Kong Competition Commission
Korea	Korea Fair Trade Commission
Malaysia	Malaysia Competition Commission
The Philippines	Philippines Competition Commission Supreme Court of The Philippines

Portugal	Portuguese Competition Authority
Singapore	Competition and Consumer Commission of Singapore
Spain	Spanish Competition Authority Universitat Pompeu Fabra Barcelona Graduate School of Economics
Thailand	Office of the Trade Competition Commission Supreme Court of Thailand
United Kingdom	Competition and Markets Authority
United States	Federal Trade Commission