

# ANNUAL REPORT

2023

OECD/Korea Policy Centre's Competition Programme



**Korea Policy Centre**

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# 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.

The primary activities of the Programme are competition law and policy workshops which are held six or seven times a year. Details of the 2023 workshops are provided in the following sections of this Report.

The Programme's workshops and seminars provide:

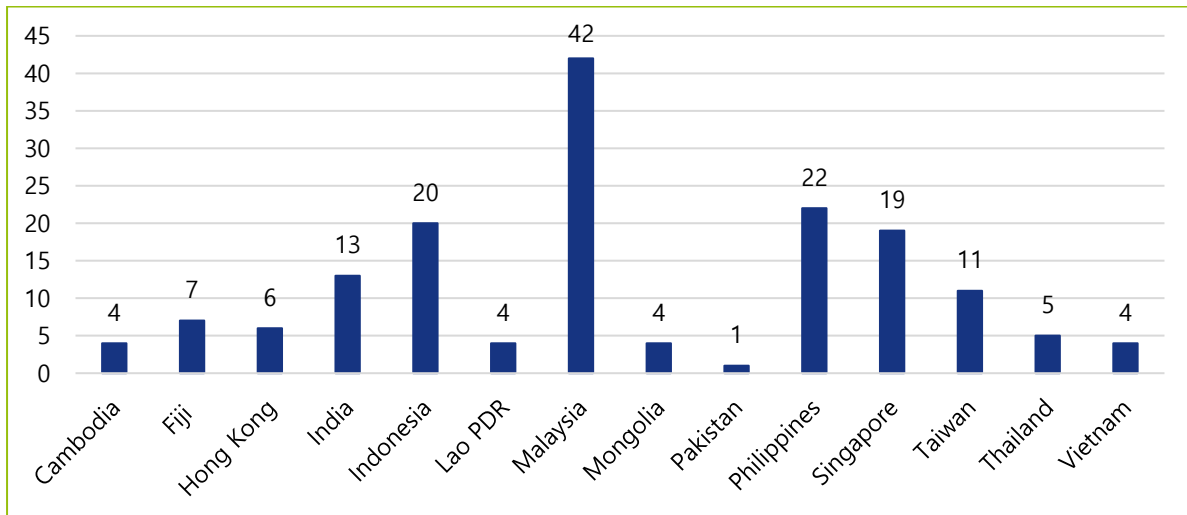
- an opportunity for younger competition authorities to learn the skills necessary to efficiently enforce new competition laws;
- an opportunity for younger competition authorities to share the details of their early decisions and discuss their challenges and successes with their peer agencies from developing 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.

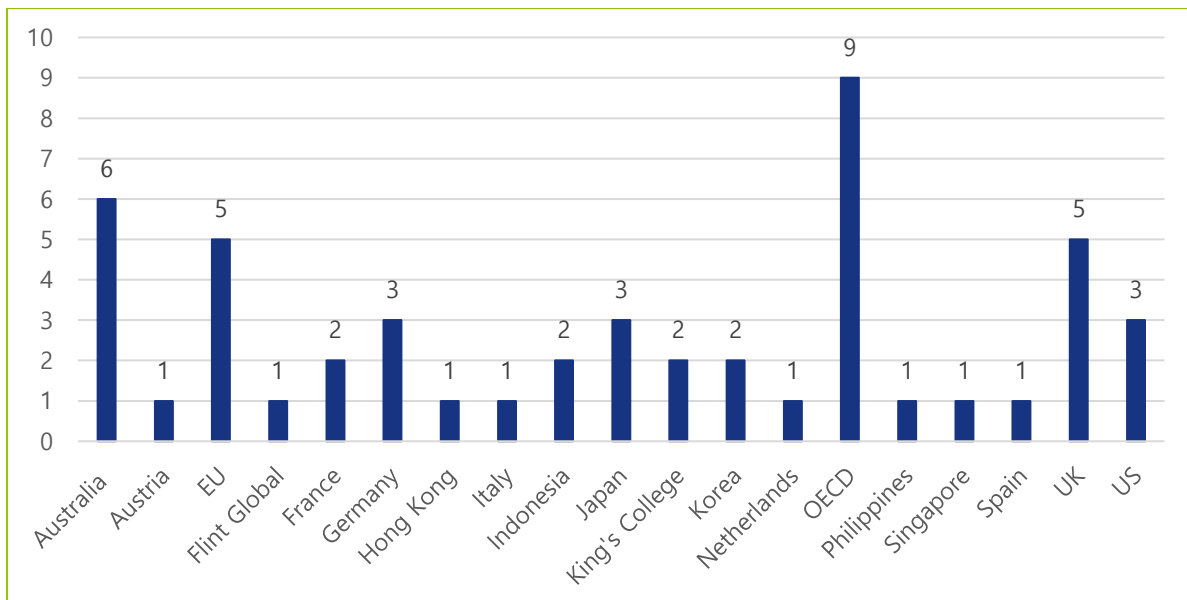
# Workshops in numbers

**Chart 1:** Total number of participants per beneficiary competition authorities in 2023



Note: The graph doesn't include the last meeting as no data on the participants' authority was available.

**Chart 2:** Total number of speakers per country/institution in 2023



Note: Speakers who spoke more than once for the same institution were only counted once.

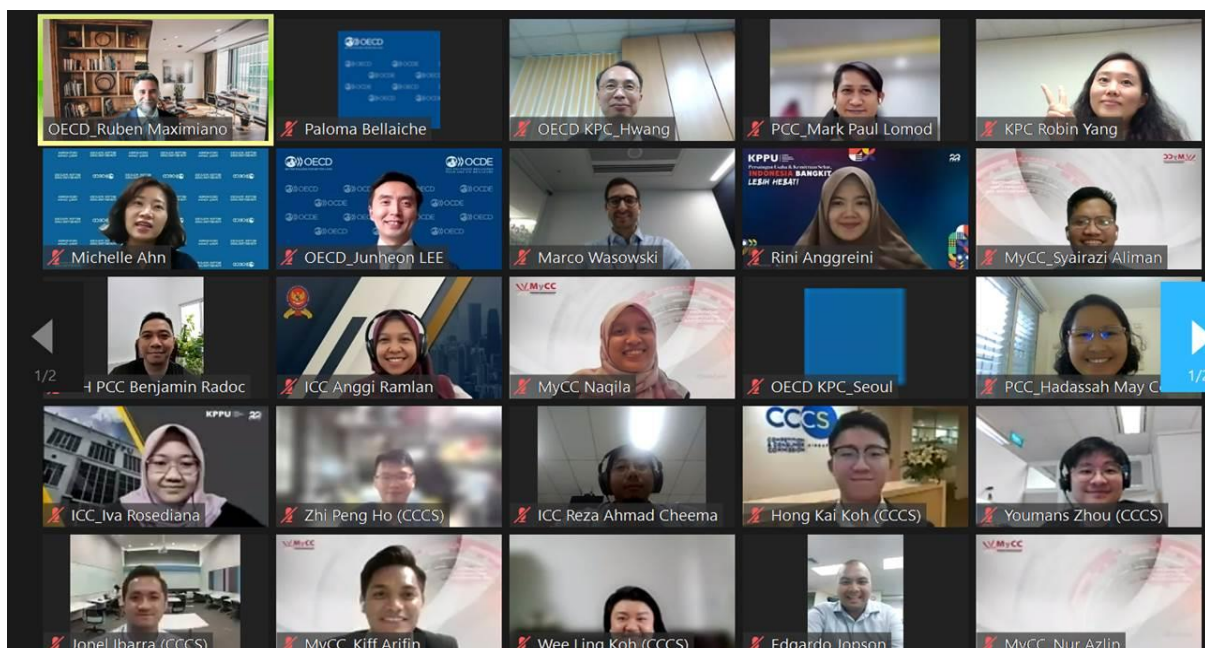
# Overview of the Workshops held in 2023

Topic	Date and Location	Total number of participants	Participating Institutions
OECD/KPC Workshop on Digital Platform Markets: Market Power in Digital Economy and Competition Policy	8-10 March 2023 Virtual	42 participants 10 speakers	<b>Participants:</b> Hong Kong, Indonesia, India, Malaysia, Philippines, Singapore, Taiwan, Vietnam. <b>Speakers:</b> Australia, EU, OECD and UK.
OECD/KPC Workshop on Economic Analysis in Abuse Cases	9-11 May 2023 Seoul, Korea	26 participants 6 speakers	<b>Participants:</b> Cambodia, Taiwan, Fiji, Hong Kong, India, Lao PDR, Malaysia, Mongolia, Philippines, Singapore, Thailand, Vietnam. <b>Speakers:</b> Italy, Japan, OECD, and USA.
OECD/KPC Workshop on Competition and Energy Markets	27-29 June 2023, Virtual	42 participants 8 speakers	<b>Participants:</b> Fiji, Indonesia, Cambodia, India, Thailand, Philippines, Pakistan, Taiwan, Vietnam. <b>Speakers:</b> Australia, Germany, Spain, Flint Global, Indonesia, OECD, Korea, and EU.
13 <sup>th</sup> OECD/KPC Competition Law Seminar for Asia-Pacific Judges	18 September 2023 Virtual	26 participants 7 speakers	<b>Participants:</b> Indonesia, Philippines, Malaysia, Mongolia, Singapore, Taiwan. <b>Speakers:</b> Australia, EU, OECD, UK and Philippines,
OECD/KPC Workshop on Cartels and Bid Rigging Kuala Lumpur Malaysia	3-5 October 2023 Kuala Lumpur, Malaysia	45 participants 7 speakers	<b>Participants:</b> Cambodia, Hong Kong, Vietnam, Indonesia, Lao PDR, Thailand, Mongolia, Philippines, India, Malaysia, Singapore. <b>Speakers:</b> Australia, Japan, OECD, USA, and Korea
Workshop on Cooperation Agreements among Competitors	23-24 November 2023 Virtual	50 participants 11 speakers	<b>Participants:</b> Cambodia, Hong Kong, China, India, Japan, Brunei Darussalam, Fiji, Indonesia, Malaysia, Bangladesh, Germany, France, Thailand, Australia <b>Speakers:</b> Australia, Austria, Germany, EU, France, Netherlands, Singapore, and Japan.

# Summaries of the Workshops held in 2023

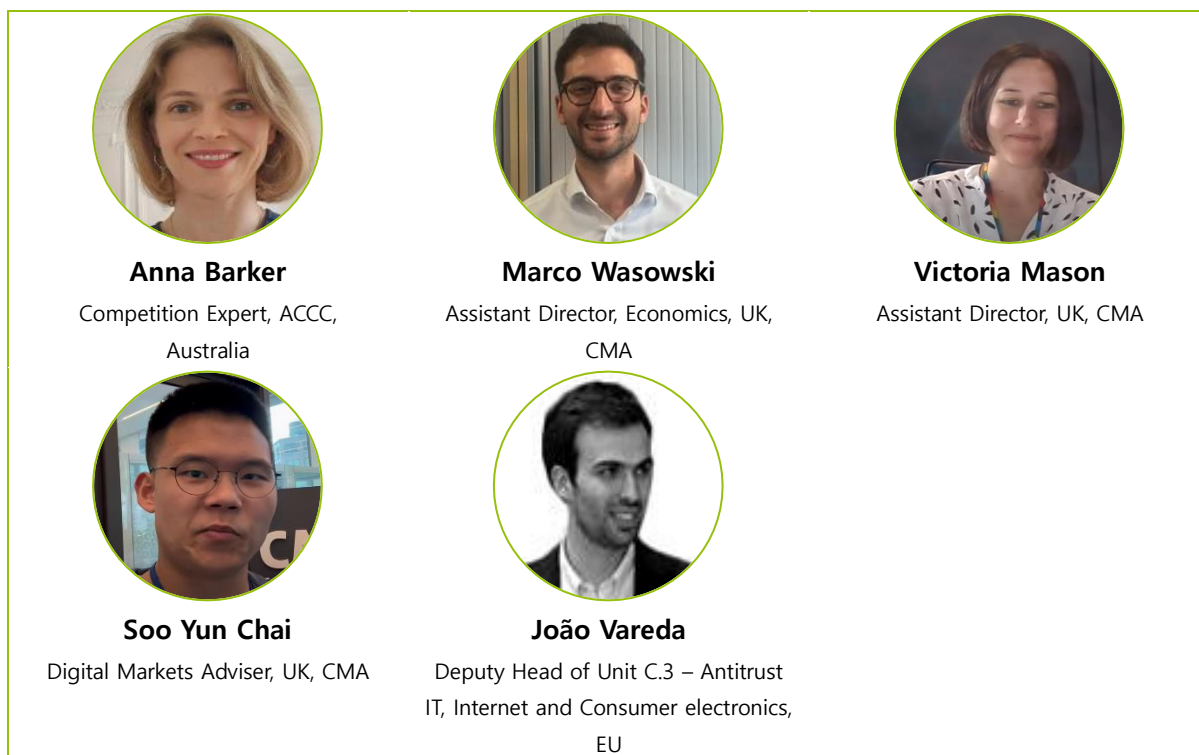
## 1. OECD/KPC Workshop on Digital Platform Markets: Market Power in Digital Economy and Competition Policy

> 8-10 March 2023 Virtual



### Speakers >

 <p><b>Ruben Maximiano</b> Senior Competition Expert, Regional Manager, OECD</p>	 <p><b>Gaetano Lapenta</b> Competition Expert, OECD</p>	 <p><b>Junheon Lee</b> Senior Competition Expert, OECD</p>	 <p><b>Aaron Khan</b> Assistant Director, UK, CMA</p>
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## Overall >

The OECD/KPC workshop on Digital Platform Markets: Market Power in Digital Economy and Competition Policy took place virtually between 8 and 10 March 2023. The OECD welcomed 5 speakers from the OECD, the ACC, the CMA, and the European Commission. 42 participants from 8 jurisdictions took part in the workshop.

The digitalisation of world economies has led to the introduction of new technologies, the creation of new markets, the changing of existing markets, as well as a transformation in how consumers obtain information and make purchases. Digital platforms exhibit some characteristics that affect market structure, including strong cross network effects, economies of scale and scope, big data, amongst other important characteristics. The objectives of the workshop were to provide a good understanding of methods for assessing and measuring the market power of digital platforms, and to share experiences of agencies that have already had cases involving digital markets, providing participants with an opportunity to explore the common competition issues and challenges arising from a very important component of the digitalisation of our economies: the operation of digital platforms, often multi-sided.



## **8, March>**

The first day started with opening remarks by Mr. Ruben Maximiano, Senior Expert and Regional Manager for Asia-Pacific, OECD, and Mr. Jungwon Song, Director General of the OECD/KPC Competition Programme. The substantive part of the workshop started with a presentation by Mr. Ruben Maximiano and Mr. Gaetano Lapenta, Competition Expert, OECD, with a general overview on competition issues in the digital economy. The rest of the first day was devoted to discussing how to measure market power in the digital economy with a presentation by Martina Prosperetti, Assistant Director, Economics, and Marco Wasowski, Assistant Director Economics, of the CMA.

## **9, March>**

On the second day Ms. Anna Barker, Competition Expert, ACCC, explored the competitive dynamics of the digital advertising markets, followed by a presentation by Mr. Ruben Maximiano on the characteristics of abuse cases in the digital markets, and a presentation by Mr. Junheon Lee, Senior Competition Expert, OECD, who shared with the participants some abuse of dominance cases in digital markets in Korea.

## **10, March>**

On the third day of the workshop Mr. João Vareda, Deputy Head of Unit C.3 – Antitrust IT, Internet and Consumer electronics at the European Commission, presented the Google Android case and Victoria Mason, Assistant Director, Aaron Khan, Assistant Director, and Soo Yun Chai, Digital Markets Adviser, shared the experience and challenges of the CMA in creating a digital unit explaining its main functions.



## 2. OECD/KPC Workshop on Economic Analysis in Abuse Cases

> 9-11 May 2023 Seoul, Korea

### Speakers >



**Junheon Lee**

Senior Competition Expert, OECD



**Ori Schwartz**

Head of Competition Division, OECD



**Holly Jamieson**

Senior Competition Expert, OECD



**Joonsuk Lee**

Counsel for International Antitrust,  
U.S. Federal Trade Commission



**Alessandra Tonazzi**

Director, Market Study Division,  
Department of Economic Analysis,  
Italian Competition Authority



**Hideyuki Shimozu**

Director, Planning Office,  
Investigation Bureau,  
Japan Fair Trade Commission

## Overall>

The OECD/KPC Workshop on Economic Analysis in Abuse Cases took place in Seoul, Korea, between 9 and 11 May. The objective of the workshop was to provide the participants with an overview of the economic analysis framework used in abuse of dominance cases. The five experts, Mr. Ori Schwartz, Mr. Junheon Lee and Ms. Holly Jamieson (OECD), Mr. Junsook Lee (US Federal Trade Commission) and Ms. Alessandra Tonazzi (Italian Competition Authority) discussed with 26 participants from 18 jurisdictions fundamental topics related to market definition and the role of economic analysis and evidence in abuse of dominance cases using both presentations and interactive group hypothetical exercises.

## 9, May>

The first day of the workshop was introduced by Mr. Ori Schwarz, Head of Competition Division, OECD, followed by a presentation by Mr. Hotae Kim (Director General, OECD/KPC Competition Programme). Mr. Joonsuk Lee, Ph.D., J.D. (Counsel for International Antitrust, U.S. Federal Trade Commission) gave a presentation on market definition in abuse of dominance cases, explaining how a prerequisite for the assessment of abuse of dominance cases is a correct definition of both product and geographic market definition.

Ms. Alessandra Tonazzi, analysed the elements that need to be taken into account in establishing dominance such as the existence and magnitude of market power, the market shares of the dominant firm and its competitors, the different types of barriers to entry, the ability to exclude and other factors, as well as introducing the concept of joint dominance drawing from examples from the enforcement of the EU law. The workshop focused on the different practices of abuse of dominance and how they are established.

Mr. Joonsuk Lee focused on predatory conduct and other low or discriminatory pricing strategies such as rebates and discounts while Ms. Alessandra Tonazzi focused on other exclusionary conduct such as exclusive dealing, tying and bundling, refusals to supply/deal, margin squeeze, pre-empting scarce facilities or resources. Finally, Mr. Hideyuki Shimozu (Director, Planning Office, Investigation Bureau, Japan Fair Trade Commission) presented some key cases of abuse of dominance/bargaining position in Japan.

## 10, May>

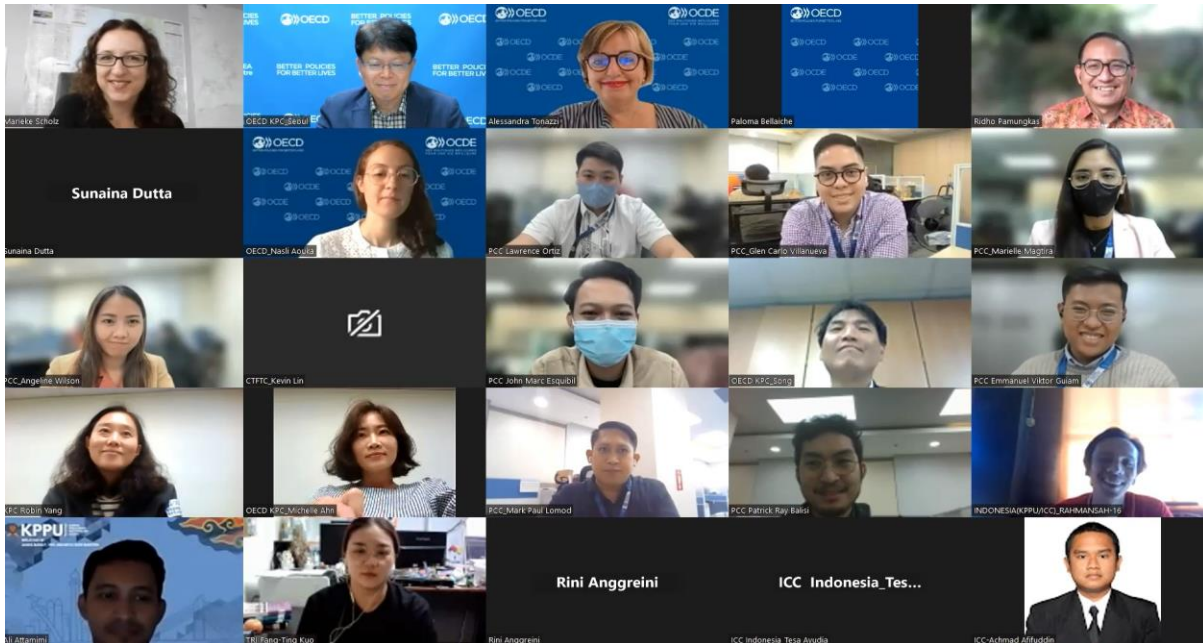
On the second day of the workshop Mr. Ori Schwarz presented on how to establish dominance in excessive prices cases while Mr. Joonsuk Lee explained the role of economists, economic analysis, and evidence in abuse of dominance cases. The workshop continued with a presentation on remedies and sanctions in abuse of dominance cases by Mr. Ori Schwartz. The participants were then divided in four groups to take part in two engaging hypothetical case studies, one concerning a complaint for excessive prices by a pharma company and the other concerning the assessment of a rebate scheme.

## 11, May>









On the third and final day of the workshop, Ms. Holly Jamieson (Senior Competition Expert, OECD) shared with the participants some tips for planning and conducting effective abuse of dominance cases, while Mr. Junheon Lee (Senior Competition Expert, OECD) presented some cases of abuse of dominance in Korea. The presentations were followed by the discussion, in small groups of participants, of a hypothetical case on vertical restraints. Ms. Alessandra Tonazzi made a presentation on abuse of dominance and state-owned enterprises and Mr. Ori Schwartz discussed the specific features of market power and abuse of dominance in the digital economy. An important final part of the workshop involved agencies from the Asia-Pacific region, namely India, Malaysia and Singapore, sharing their experience with abuse of dominance investigations. The workshop concluded with remarks by Mr. Ori Schwartz and Mr. Hotae Kim.

### 3. OECD/KPC Workshop on Competition and Energy Markets

> 27-29 June 2023 Virtual



#### Speakers >

 <p><b>Alessandra Tonazzi</b> Senior Competition Expert, OECD</p>	 <p><b>Mary Starks</b> Partner, Flint Global</p>	 <p><b>Jihong Son</b> Deputy Director, KFTC</p>	 <p><b>Maria Pilar Canedo</b> Member of the board of the Spanish Competition Authority (CNMC)</p>
 <p><b>Mark McLeish</b> General Manager of the Electricity Markets Branch, Infrastructure Division, ACCC, Australia</p>	 <p><b>Marieke Scholz</b> Head of Unit, Antitrust, Energy &amp; Environment, EU-DG Competition</p>	 <p><b>Ridho Pamungkas</b> Head of Representative Office I, Indonesia Competition Commission</p>	 <p><b>Christoph Frisch</b> Rapporteur in the 8<sup>th</sup> Decision Division, Bundeskartellamt</p>

## Overall>

The OECD/KPC workshop on Competition in Energy Markets took place virtually between 27 and 29 June 2023. The OECD welcomed 7 speakers from OECD, Flint Global, the Spanish Competition Authority (CNMC), the German Competition Authority (Bundeskartellamt), the Australian Competition Authority (ACC), the Korean Fair-Trade Commission (KFTC) and the European Commission. 42 participants from 14 jurisdictions took part in the workshop.

The objective of the workshop was to explore how competition agencies can play a role using their tools to safeguard open and competitive energy markets especially in the area of abuse of dominance and merger reviews. Competition law enforcement can be complemented with more general investigations of markets conditions in form of market studies or market inquires. The workshop included a general introduction on energy markets and the factors that affect prices, the relationship between sector regulation and competition, advocacy and market study interventions, and the main areas where competition authorities have intervened to safeguard competitive energy markets.

## 27, June>

The first day of the workshop was opened by Ms. Alessandra Tonazzi, Senior Competition Expert, Regional Manager, OECD, followed by a presentation by Mr. Hotae Kim (Director General, OECD/KPC Competition Programme).

Then Ms. Mary Starks, Partner, Flint Global, provided an overview of the main competition issues in energy markets. She explained that in the past year, conditions in energy markets worldwide have been unprecedented. Driven by COVID-19 and, more recently, Russia's full-scale invasion of Ukraine, shortages in supply and excess demand have led to record energy commodity prices, the impact of which has been felt worldwide. High natural gas and electricity prices have had significant impacts on inflation, economic growth, living standards, and wider policy goals such as decarbonisation. In most countries, traditional, state-run monopolies have been dismantled, and wholesale and retail markets have been liberalised – although energy remains amongst the most heavily regulated sectors of the economy.

When wholesale and retail energy markets were liberalised, countries deployed a combination of structural measures (e.g., separation between monopoly and competitive activities), regulatory measures and competition law to safeguard competition in these markets, ensuring that new players could enter and compete effectively with incumbent firms.

Ms. Alessandra Tonazzi gave a presentation on regulation in energy markets. Energy markets (electricity and gas) were traditionally supplied by state monopolies and generally viewed as “essential services”. In the last three decades major changes affected these sectors: as state monopolies were dismantled and, in some cases, privatised, and wholesale and retail activities were liberalised.

Regulation plays a crucial role in energy markets by ensuring market fairness and consumer protection and addressing market failures. The presentation focused on the main challenges faced in striking a balance between promoting competition and ensuring consumer protection, addressing information asymmetry between regulators and market participants, adapting regulations to evolving market dynamics, and avoiding undue regulatory capture.

Ms. Maria Pilar Canedo, Member of the board of the Spanish Competition Authority (CNMC) has both competition and regulatory powers, presented the case Enel Green Power Espana showing how the authority balanced the two different approaches.

## **28, June>**

Many competition authorities have conducted market studies in the energy sector which were discussed on the second day of the workshop. Mr. Christoph Frisch, Bundeskartellamt, presented a market study in publicly accessible charging infrastructures conducted by the German authority.

Mr. Mark McLeish, ACCC, presented the ACCC's market inquiry activity in fuel, petrol, electricity and gas markets, and the advocacy intervention following this activity. Mr. Jihong Son, KFTC, presented cases in energy markets by the KFTC.

**29, June>**

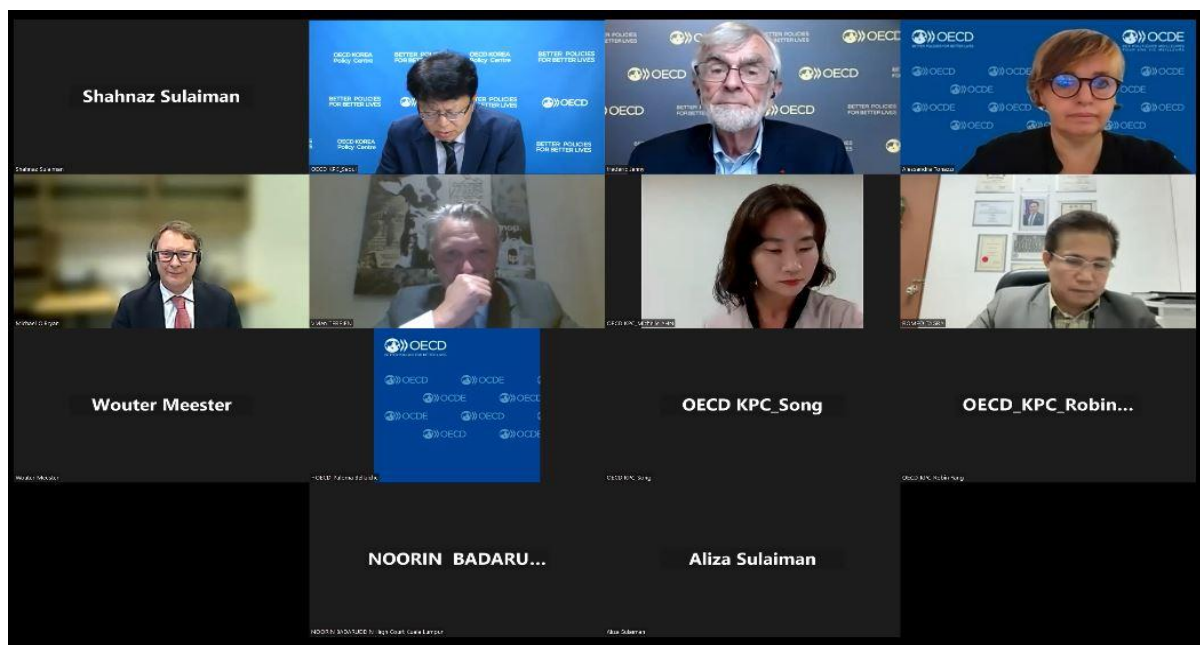
On the third and last day of the workshop, Ms. Marieke Scholz presented several cases undertaken by the EU DG Comp in energy markets and, in particular, abuse of dominance practices hampering the free flow of energy within the EU, denying access to infrastructure and transmission capacity or supply, noting that the EU DG Comp had addressed eight such cases since 2013. Mr. Ridho Pamungkas, from Indonesia Competition Commission, presented a case of excessive prices in the natural gas market.

The OECD/KPC Workshop was concluded with Closing remarks by Ms. Alessandra Tonazzi, and Mr. Hotae Kim.

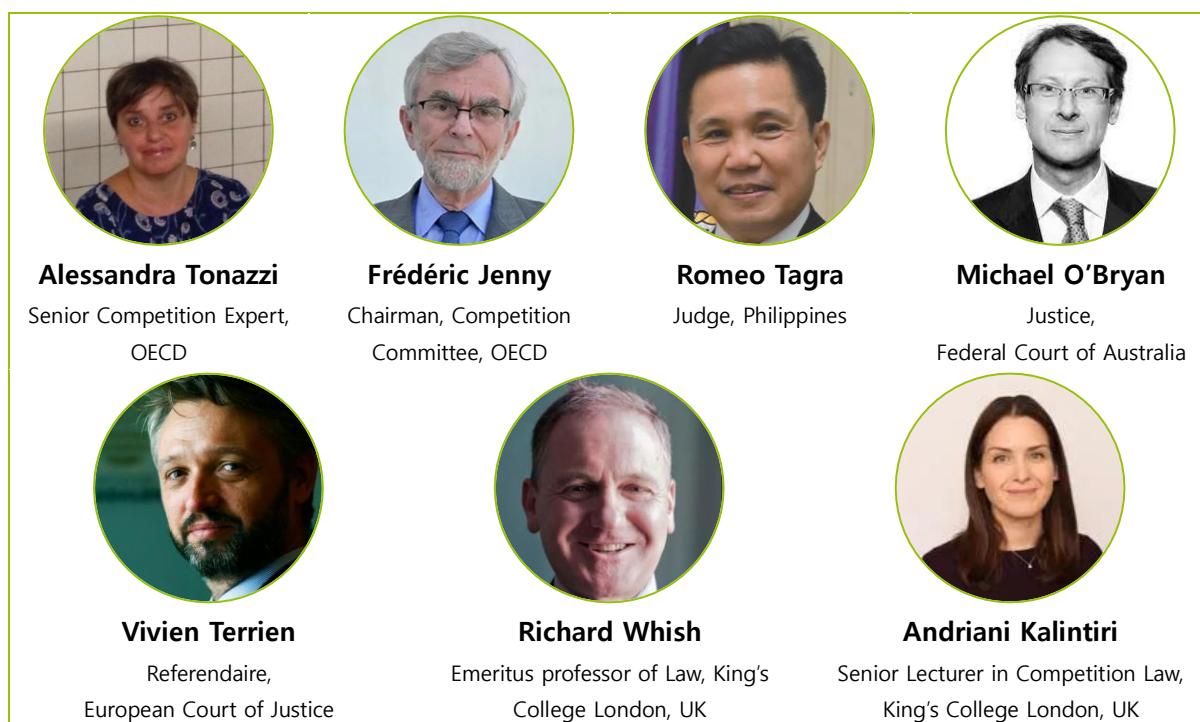


## 4. 13<sup>th</sup> OECD/KPC Competition Law Seminar for Asia-Pacific Judges

> 18 September 2023 Virtual



### Speakers >



## Overall >

Following 12 successful events since 2011, the 13<sup>th</sup> OECD/KPC Competition Law Seminar for Asia-Pacific Judges took place virtually on 18 September 2023. This year the topic was “Standards of Proof and Intensity of Review by Courts”. 26 judges from 6 jurisdictions attended the workshop.

The seminar dealt with key legal principles concerning the standards of proof and standards of review followed by courts in competition cases, discussing the different standards that are applicable to findings of law versus findings of fact. An effective review by courts is a necessary complement to the internal checks and balances that competition authorities put in place to ensure due process. Understanding the standard of review for competition enforcement that courts follow is important, first, for decision-makers; their investigations, collection of evidence and decisions all need to be able to withstand judicial scrutiny. The applicable standard of review is also important for affected parties, who will consider that standard in deciding whether to challenge a decision based on available grounds of appeal and their chances of success at trial.

Some jurisdictions allow full merits review of competition decisions without limitation of the legal grounds that can be invoked, or the aspects of the decision that can be appealed. A merits review can involve a reconsideration of the appropriateness of the decision and allow the judge to identify and, depending on the applicable rules and the facts of the case, correct errors. Other jurisdictions provide for a legality review of competition decisions, based on limited grounds of review, which typically cover the legality, reasonableness, and procedural compliance of the contested act.

The objectives of the seminar were to make judges more familiar with the standard of review of competition enforcement that courts follow in different jurisdictions and to provide judges with the opportunity to explore the standard of proof required by the first-instance decision-maker to conclude that the applicable substantive legal test has been satisfied and there is a breach of competition law. The seminar provided an enriching opportunity to hear different perspectives on the challenges faced by judges regarding the complex analysis of competition cases.

## 18, September >

Mr. Hotae Kim, Director General, OECD/KPC Competition Program, opened the seminar with some welcoming remarks. Judge Romy Tagra, Presiding Judge, Regional Trial Court and Member, Philippine Judicial Academy, gave a keynote presentation on standards of proof and intensity of review by courts in the Philippines.

Professor Frédéric Jenny, Chairman of the OECD Competition Committee, then gave opening remarks on the intensity of review by Courts. Mr. Jenny discussed the relationships between goals of competition law, legal tests, standards of proof, and the use of presumptions and standards of review. He then illustrated how these concepts are applied in EU competition law. As far as procedural aspects are concerned, the EU courts have emphasized the importance of the Commission respecting the “rights of defense” in its enforcement of competition law. The EU courts have developed in their case law a variety of legal standards (or tests) that should be relied upon to determine the compatibility with EU competition law of a wide range of commercial practices susceptible of creating anti-competitive effects.

By adopting or refining such tests, the EU courts issue decisions of considerable economic importance for suppliers, their customers and end users. Because of their impact on welfare, such questions also involve economic policy choices. This shows that in competition law, legal and economic questions cannot be seriously divorced as the content of the standards adopted by the EU courts translate economic reasoning and need to be implemented through economic tools.

The Hon Michael O’Byrne, Justice, Federal Court of Australia, gave special remarks on the intensity of review by courts in Australia, explaining how different standards apply in the Australian legal system with respect to three different categories of decisions: administrative authorisation and exemption decisions, civil proceedings for contraventions of competition law (including cartel conduct, mergers, monopolization) and criminal prosecutions for cartel conduct.

Prof. Richard Whish, Emeritus professor of Law, King's College London, UK, gave a presentation on the differences in review by courts in the UK and the EU, highlighting in particular how in the UK system, markets and mergers decisions are subject to judicial review by the Competition Appeal Tribunal that cannot substitute its decision for the CMA, does not hear evidence from witnesses, and focuses on procedural errors, errors of law, and whether the decision is 'irrational'. The standard of review is the balance of probabilities.

In the last session of the seminar Mr. Vivien Terrien, Referendaire, European Court of Justice, and Dr. Andriani Kalinkiri, Lecturer in Competition Law, King's College London, UK, gave a detailed examination of EU courts decisions illustrating with examples the principles underlying the standard of proofs adopted by the courts.



## 5. OECD/KPC Workshop on Cartels and Bid Rigging

> 3-5 October 2023 Kuala Lumpur, Malaysia

### Speakers >



**Alessandra Tonazzi**  
Senior Competition Expert,  
OECD



**Antonio Capobianco**  
Deputy Head of Division,  
OECD



**James Webb**  
Special Agent, Federal  
Bureau of Investigation,  
USA



**Donghoon Yang**  
Director, KFTC



**Yukiko Sakuma**  
Deputy Director,  
International Affairs Division,  
JFTC



**Andrew Huang**  
Trial Attorney,  
US Department of Justice  
(San Francisco Office)



**Blake Donald**  
Acting General Manager of the  
Competition Enforcement and  
Cartels Branch, ACCC

## Overall >

The OECD/KPC Workshop on Cartels and Bid Rigging took place in Kuala Lumpur, Malaysia, between 3 and 5 October 2023. The OECD welcomed, in person and online, seven speakers from the OECD, the Australian Competition and Consumer Commission (ACCC), the US Department of Justice (DOJ), the Japan Fair Trade Commission (JFTC), and the Korean Fair Trade Commission (KFTC). 45 participants from 9 jurisdictions attended the workshop.

## 3, October >

Dato' Seri Mohd Hishamuddin Yunus, Chairman of the Malaysian Competition Commission, opened the workshop welcoming the participants from jurisdictions. Ms. Alessandra Tonazzi (Senior Competition Expert, OECD) and Mr. Hotae Kim (Director General, OECD KPC Competition Programme) gave some opening remarks.

Ms. Alessandra Tonazzi, then made an introductory presentation on fighting cartels and bid rigging: proactive and reactive detection tools underlying the importance for both young and mature competition agencies to find a mix of different tools in detecting cartels. While leniency programs still play a major role in the detection of cartels, agencies should complement them with other proactive tools, including market monitoring and cooperation with other reliable sources of information.

Mr. Marcus Bezzi, Chief Advisor, Competition Taskforce, Australian Treasury and former Executive General Manager at the ACCC, intervened online to explain how to build an effective leniency program based on his experience at the ACCC and on best international practices identified by the ICN and OECD. His presentation was followed by a practical exercise where the participants, divided in small groups, discussed a case of a leniency application for a cartel, examining all the steps from receiving and assessing the application, the granting of a marker, and the corroboration of the received information with dawn raids.

#### 4, October >

The second day of the workshop opened with a presentation by Mr. Antonio Capobianco, Deputy Head of Competition Division, OECD, on fighting bid rigging. Mr. Capobianco presented the work undertaken by the OECD on fighting bid rigging and in particular the OECD Recommendation and Guidelines. He opened his presentation outlining how a competitive procurement system will drive prices to marginal costs, minimise costs for firms and the government and drive innovation, as firms learn from one another to continuously improve products. A competitive public procurement system will accrue benefits to the whole economy as public procurement often involves key infrastructure (highways, railways, electricity, etc.) for other industries.

He then explained how the Guidelines for Fighting Bid Rigging in Public Procurement help to identify markets in which bid rigging is more likely to occur and methods that maximise the number of bids, best practices for tender specifications, and selection and award criteria that inhibit communication among bidders and suspicious pricing patterns. Mr. Andrew Huang, Trial Attorney, US Department of Justice made an online presentation on the US DOJ experience in detecting and assessing bid rigging cases.

The second day of the workshop continued with a session on the use of screens to detect bid rigging where Mr. Antonio Capobianco gave a presentation on the experiences of many competition authorities with the use of data screening to detect bid rigging cases. He highlighted some lessons from the interchange of international experience. Simple screening methods are a good starting point for authorities to improve detection rates.

As offenders learn how to outsmart screening tests, authorities can develop more sophisticated and resilient methods. Public procurement is a relevant area of focus, due to greater data availability and higher incidence of cartels. As screening tests prove successful in detecting bid rigging, authorities may consider extending these methods to other markets. A screening unit should include staff with expertise in IT, in addition to competition economics. In the future, screening methods could also largely benefit from the automated collection of data from price comparison websites and other sources, combined with the use of machine learning.

Mr. William Lee, Legal Team Senior Member, Hong Kong Competition Commission (HKCC), presented a case study on HKCC's experience investigating and litigating a bid-rigging case arising from the use of data screening. The participants then engaged in a hypothetical exercise where they examined some bids in a procurement process and tried to detect patterns of collusion.

## **5, October >**

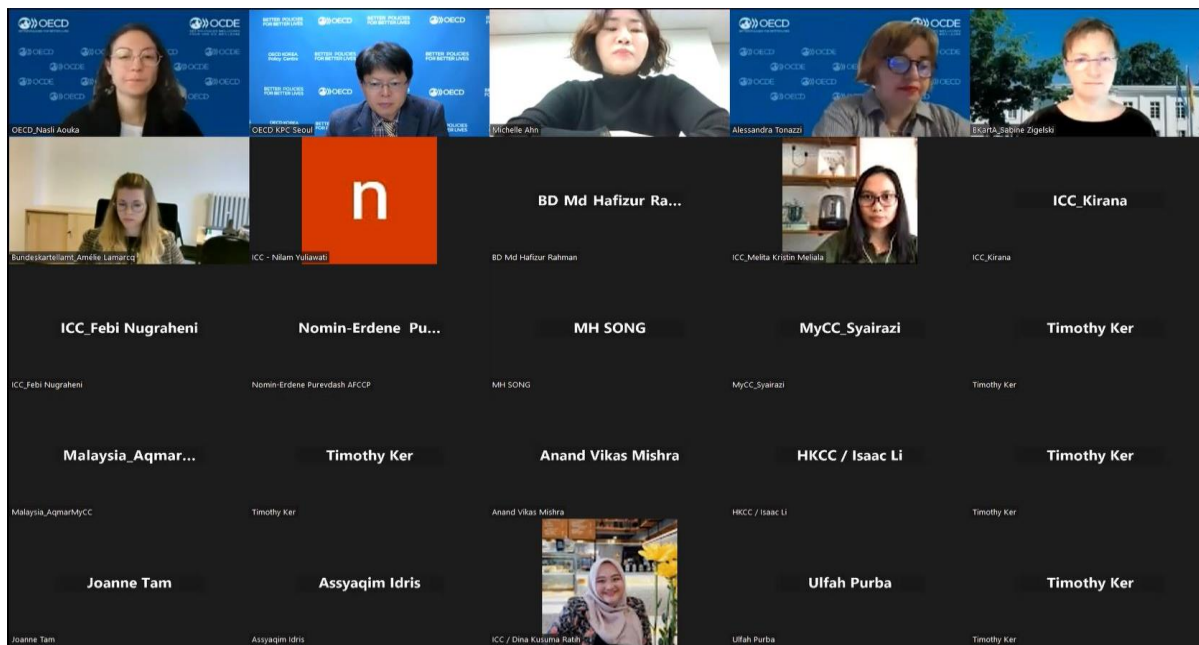
The third and final day of the workshop started with a session on planning and conducting dawn raids with online presentations by Mr. James Webb, Special Agent, Federal Bureau of Investigation, US, and Mr. Blake Donald, Acting General Manager of the Competition Enforcement and Cartels Branch, ACCC. The presentations highlighted the need to prepare carefully for dawn raids, planning every step well in advance. They highlighted that although the legal framework for conducting the dawn raids can change in each jurisdiction, the need for staff training, establishing clear internal procedures and preparing carefully are very relevant in all systems and the exchange of experiences can be very useful for competition agencies. They also briefly touched on the increasing need to gain expertise in collecting digital evidence. The presentations were followed by a hypothetical case on dawn raids.

In the final part of the workshop, Ms. Yukiko Sakuma, Deputy Director, International Affairs Division, JFTC, presented a successful bid rigging case brought by the JFTC on PCs and related equipment for public schools procured by Hiroshima Prefecture and Hiroshima City and Mr. Yunan Andika Putra, Head of Law Enforcement at the ICC's Representative Office in Balikpapan, presented some examples of how the Indonesian Competition Commission (KPPU) has been detecting and investigating bid rigging cases.

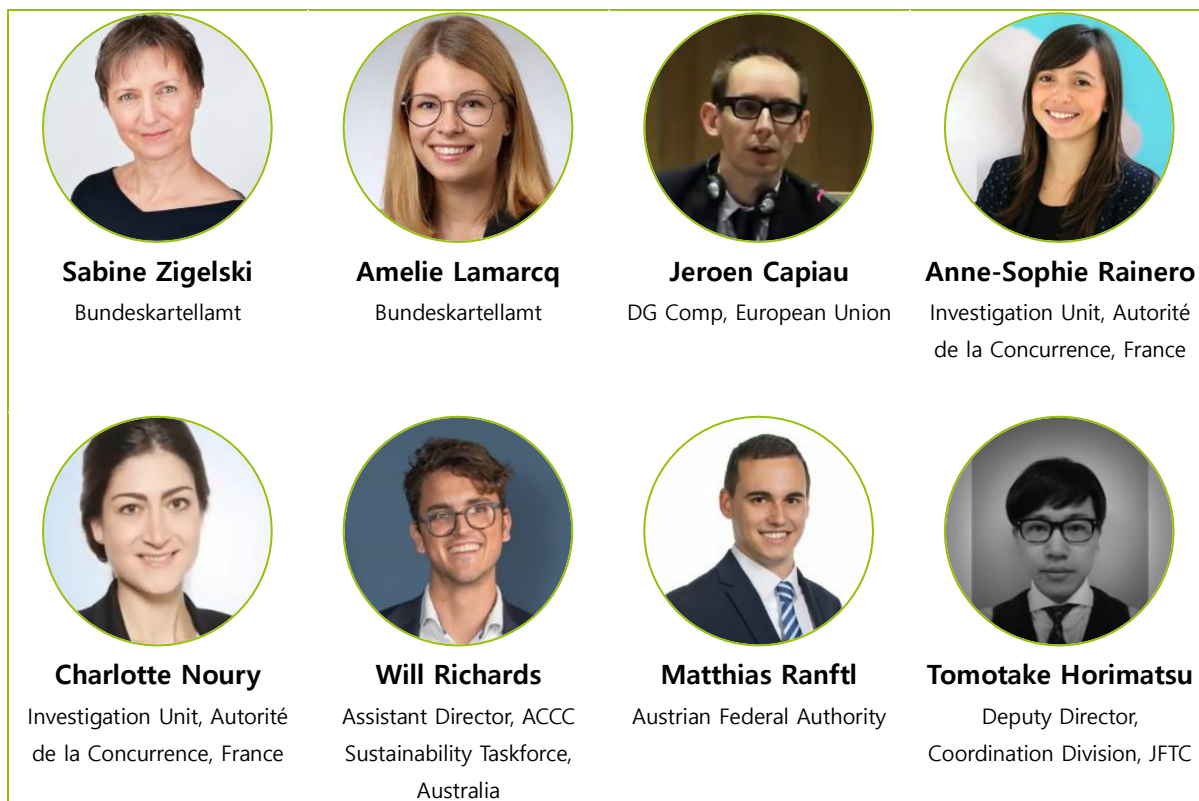


## 6. Workshop on Cooperation Agreements among Competitors

> 23-24 November 2023 Virtual



### Speakers >





**Annemarie Ter-Heedge**  
Deputy Head of Unit, Antitrust  
Electronic Communications,  
DG Comp, European Union



**Celine Van der Weide**  
Authority for Competition  
and Markets (Netherlands)



**Alessandra Tonazzi**  
**Senior Competition Expert,**  
**OECD**

## Overall >

The OECD/KPC workshop on Cooperation Agreements among Competitors took place virtually between 23 and 24 November 2023. The OECD welcomed 12 speakers from OECD, the German Competition Authority (Bundeskartellamt), the European Commission, the French Competition Authority, the Austrian Competition Authority, the Netherlands Competition Authority, the Australian Competition Authority (ACCC), the Singapore Competition Commission and the Japan Fair Trade Commission. 50 participants from 10 jurisdictions attended the workshop.

This objective of the workshop was to provide participants with an opportunity to explore key issues for the analysis of cooperation agreements among competitors and the criteria used by competition authorities to decide whether they infringe competition laws.

## 23, November >

The first day of the workshop focused on the general framework used by competition authorities to establish whether cooperation agreements between competitors are compatible with competition law. After the welcoming remarks by Ms. Alessandra Tonazzi, Senior Competition Expert, Regional Manager, OECD and Mr. Hotae Kim, Director General, OECD/KPC Competition Program, Ms. Sabine Zigelski, Bundeskartellamt and Ms. Amelie Lamarcq, Bundeskartellamt, gave a general overview on the competition assessment of cooperation agreements among competitors.

In their presentation they underscored that while legitimate competitor collaboration can produce significant benefits there might be sometimes a temptation to go beyond. Agencies are called to balance, in their analysis, the reduction of competition with the efficiencies of cooperation agreements. They focused on examples in areas that can prove particularly risky such as information exchanges, discussions that take place in trade associations and joint bidding in public procurement. They also highlighted the need for a clear guidance – and determined enforcement – by competition agencies to provide legal certainty.

Ms. Annemarie Ter-Heedge, Deputy Head of Unit, Antitrust Electronic Communications, DG Comp, European Union, and Mr. Jeroen Capiou, DG Comp, European Union, presented the DG COMP Horizontal Cooperation Guidelines that were completely revised in 2023. In their detailed presentation they presented the main novelties of the nine chapters of the Guidelines. New chapters or sections on sustainability agreements, mobile network sharing agreements, and bidding consortia were added to the Guidelines while the chapter on information exchange was extensively updated.

Ms. Anne-Sophie Rainero and Ms. Charlotte Noury, Investigation Unit, Autorité de la Concurrence, France, made a presentation on the horizontal agreements in the food retail industry assessed by the French competition authority in the cases Auchan/ Casino/ Metro/ Schiever and Carrefour/ Tesco. The joint purchasing agreements were communicated to the authority that accepted commitments after a public consultation with food suppliers and producers. The agreements were modified after the intervention of the authority with the exclusion of private label products and with a reduction of the scope of joint purchases.

## **24, November >**

The second day the workshop focused, in particular, on agreements that companies might enter into in order to achieve environmental goals exploring how competition authorities are including in their analysis sustainability issues.

Ms. Alessandra Tonazzi, Senior Competition Expert, OECD, made an introductory presentation on the topic, highlighting that some competition authorities have recently been taking initiatives to discuss and clarify the compatibility of different sustainability objectives with competition policy and enforcement. While regulatory interventions tend to be the preferable instrument to reach sustainability objectives, competition policy and enforcement may contribute to advancing sustainability objectives in specific ways. Sustainability outcomes are normally best achieved if firms compete. Many forms of private co-operation between competitors aimed at sustainability objectives will not negatively affect competition and will thus be outside of the scope of competition law.

However, if market failures exist, co-operative initiatives might, under specific circumstances, be useful or even necessary to overcome them. Competition authorities may consider whether certain agreements between competitors may be allowed, whilst remaining vigilant to prevent sustainability initiatives from spilling over into anticompetitive infringements. Many authorities around the world are considering how to offer guidance to business to self-assess the compatibility of cooperation agreements with a sustainability objective with competition law. Ms. Celine Van der Weide, Authority for Competition and Markets (Netherlands) and Mr. Matthias Ranftl, Austrian Federal Authority, gave presentations on the guidelines on sustainability agreements adopted by their competition authorities. They explained how the authorities assess the proportionality of the competitive restrictions with respect to the sustainability goals and they highlighted the importance of availability of informal guidance to companies for their initiatives.

Mr. Will Richards, Assistant Director, ACCC Sustainability Taskforce, Australia, presented the ACCC work on sustainability agreements. The Australian competition law provides for a process called 'authorisation' which allows the ACCC to consider specific sustainability agreements that may raise competition concerns. Applicants can apply for authorisation in relation to both conduct and mergers. ACCC may grant authorisation where proposed conduct or merger is likely to result in a net public benefit - that is, where the likely public benefit resulting from the conduct outweighs the likely public detriment. The ACCC is required to have regard to a wide range of possible public benefits that would result from the relevant conduct or merger, including environmental benefits.

Ms. Lo Hwei Rong, Senior Assistant Director, Business and Economics, Singapore Competition and Consumers Commission (CCCS), made a presentation where she outlined the engagement of the Singapore Government on sustainable objectives and the actions undertaken by CCCS. The Commission found scope for more guidance and clarity on environmental sustainability initiatives, and how these objectives can be best pursued whilst ensuring that markets function effectively and competitively to spur innovation, lower prices, and improve quality and choices. To this end CCCS drafted a Guidance Note on Business Collaborations Pursuing Environmental Sustainability Objectives (“Environmental Sustainability Collaboration GN”) and conducted a public consultation.

Finally, Mr. Tomotake Horimatsu, Deputy Director, Coordination Division, JFTC, presented the JFTC “Guidelines Concerning the Activities of Enterprises, Toward the Realization of a Green Society Under the Antimonopoly Act”. He explained the background for drafting the Guidelines, based both on past guidance on business collaboration and past cases, and informed by the work of a study group whose results were subject to a public consultation. On this basis, the JFTC formulated the Guidelines with the objective of preventing anti-competitive conduct that stifles innovation, such as the creation of new technologies, and of encouraging the activities of enterprises toward the realisation of a green society by further improving transparency in the application and enforcement of the Antimonopoly Act.

# Contact Information

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