



## **OECD/KOREA POLICY CENTRE COMPETITION PROGRAMME**

### **2021 ANNUAL REPORT**

OECD:

[www.oecd.org/competition/seoulrcc](http://www.oecd.org/competition/seoulrcc)

Korea Policy Centre:

[www.oecdkorea.org](http://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 2021 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 2021**

In 2021, the Programme included the following 5 workshops:

- OECD/KPC Workshop on Merger Control
- OECD/KPC in Cooperation with PCC: Workshop on Digital Markets for ASEAN Competition Authorities
- 11th Competition Law Seminar for Asia-Pacific Judges in co-operation with the Federal Court of Malaysia and the Competition Appeal Tribunal of Malaysia
- Workshop on Competitive Neutrality
- OECD/KPC Workshop on Competition and Public Procurement,

Due to COVID-19, all workshops were held virtually. In total, there were 220 participants in attendance in 2021 from 10 jurisdictions.

Additionally, in 2021 the OECD/KPC researched and published a report on Asia-Pacific Competition Law Enforcement Trends report (the "report") which identified competition enforcement trends based on an analysis of data from 16 OECD and non-OECD jurisdictions in the Asia-Pacific region from 2015 to 2020.

The report was prepared by the OECD Competition Division and in close collaboration with the OECD/Korea Policy Centre. It complements and draws from Competition Law in Asia-Pacific: A Guide to Selected Jurisdictions and OECD Competition Trends, an annual flagship publication that presents unique insights into global competition enforcement trends based on data from over 70 jurisdictions. It presents key elements of their institutional approaches to competition enforcement, and a unique analysis on the resources and enforcement activity of the competition authorities in the region.

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) OECD/KPC/OTCC Workshop on Merger Control, 9 – 12 March 2021 (virtual)

Under the Thailand Country programme a four-day OECD/KPC took place from 9-12 March 2021 via Zoom. The Workshop was organised for the OTCC (Office of Trade Competition Commission). It dealt with the topic of Merger Control.

The first day started with opening remarks by Prof. Sakon Waranyuwatana, Ph.D. (Chairman of the OTCC), Jungwon Song (Director General of the OECD/KPC Competition Programme) and Ruben Maximiano (OECD). It was followed by presentations by Ruben Maximiano (OECD), Wouter Meester (OECD), the OTCC and João Varela (EU DG Comp). The topics and discussions included the importance of Merger Control, global merger trends, the Thailand Merger legal framework time and Market Definition, as seen by the EU Commission experience.

The second day included presentations by Peggy Loudermilk (US DOJ), Sungkyu LEE (KFTC) and Ruben Maximiano (OECD). These discussions concerned Horizontal Mergers Unilateral effects Cases and analytical tools, Geographic Market Definition in retail markets Case studies and an Introduction to the different Theories of Harm in Merger Control.

The third day followed with presentations by Riccardo Ferrari (UK CMA), Tash Venaik (ACCC), and Faye Fullalove and Anna Caro (both UK CMA). The speeches and discussions focused on Mergers Cases in Retail and Aviation, and a Case study regarding Digital mergers, theories and analytical tools. With regard to Digital mergers, Faye Fullalove and Anna Caro (both UK CMA) gave insights on the merger cases Sabre/Farelogix (supply software solutions) and Amazon/Deliveroo (food delivery) in the UK. They also provided guidance on investigatory techniques. This included evidence gathering (internal documents, data, interviews, third party evidence), and specialist input and cooperation (e.g. market studies and cooperation with other competition authorities).

On the final day, Carol Harrison, the OECD and Ricardo Bayão Horta (Portuguese Competition Authority) offered sessions on Vertical theories of Harm and cases in retail, Developing Merger Guidelines – discussion of the draft report, and Information requirements to start an investigation. The OECD/KPC/OTCC Workshop on Merger Control was concluded with closing remarks by Prof. Sakon Waranyuwatana, Ph.D. (Chairman of the OTCC), Jungwon Song (Director General of the OECD/KPC Competition Programme) and Ruben Maximiano (OECD).

### EVALUATION

<b>OVERALL AVERAGE SCORE FOR EVENT USEFULNESS</b>	<b>4.7</b>
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## 2.2) OECD/KPC in Cooperation with PCC: Workshop on Digital Markets for ASEAN Competition Authorities, 14 – 17 June 2021 (Virtual)

The workshop started with welcome remarks by Arsenio Balisacan (Chairman of PCC), Ruben Maximiano (OECD) and Jungwon Song (Director General, OECD/KPC Competition Programme). It was followed by presentations from Ruben Maximiano (OECD), James Yoon (Senior Assistant

Director, Policy & Markets Division, CCCS) and Morag Bond (ACCC). The topics and discussions covered an overview on the Competition Issues in Digital Markets, practices from the region (The Philippines and Singapore) and Experience with Digital Markets Units and Task Forces.

With regard to an overview on the Competition Issues in Digital Markets, Ruben Maximiano (OECD) stressed the importance of digital markets in ASEAN. He also underlined the main characteristics of digital markets from a competition perspective. These are, *inter alia*, network effects, the importance of data, intellectual property rights and in some cases the absence of prices. Competition authorities could face challenges in digital markets with anti-competitive behaviour (collusion, abuse of dominance, vertical restraints and anti-competitive mergers). Thus, cooperation is of great importance.

The second day continued with speeches by Caroline Laise (US DOJ) on Merger control experiences – the Sabre-Farelogix merger in the US, by Faye Fullalove and Ricardo Zimbron (both UK CMA) on Merger control experiences – cases in the UK and by Cat Batchelor (UK CMA) on Experience with Digital Markets Units and Task Forces CMA.

Caroline Laise (US DOJ) gave an overview on the Sabre-Farelogix merger in the US and explained the respective proceedings. This included the investigations, the cooperation with the UK CMA and the litigation process.

Faye Fullalove and Ricardo Zimbron (both UK CMA) presented the experience with recent merger control filings in the UK and case studies. They also provided insights in terms of investigatory techniques and gave an outlook on the UK merger control regime. In addition, Cat Batchelor (UK CMA) presented an overview of the Digital Markets Unit and shared experiences.

On the third and last day, speeches were delivered by Pedro Caro de Sousa (OECD), Peter Alexiadis (EETT and Kings College London) and David Abkiewicz (ACCC). The presentation and discussions included remedies, Data Portability and Interoperability, Regulation, Competition and Digital Issues, and Platforms and Media.

The presentation by David Abkiewicz (ACCC) on Interoperability, Regulation, Competition and Digital Issues, and Platforms and Media focused on the ACCC's Digital Platforms Inquiry. In particular, Digital platforms and media businesses, news, and journalism were analysed. The presentation also discussed the News Media and Digital Platforms Mandatory Bargaining Code that came into effect in Australia in March 2021.

Closing words by Arsenio Balisacan (Chairman of the Philippines Competition Commission (PCC)), Ruben Maximiano (OECD) and Jungwon Song (Director General, OECD/KPC Competition Programme) marked the end of the OECD/KPC workshop on Digital Markets for ASEAN Competition Authorities.

## EVALUATION

<b>OVERALL AVERAGE SCORE FOR EVENT USEFULNESS</b>	<b>4.9</b>
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### **2.3) 11<sup>th</sup> OECD/KPC Competition Law Seminar for Asia-Pacific Judges, 1 July 2021 (Virtual)**

The eleventh OECD/ Korea Policy Centre Competition Law Seminar for Asia-Pacific Judges took place on 1 July 2021 via Zoom. This eleventh edition of the Competition Law Seminar for Asia-Pacific Judges was co-sponsored by CLIP and in co-operation with the Federal Court of Malaysia and the Competition Appeal Tribunal of Malaysia.

It dealt with the legal and economic analysis of vertical agreements. The event also marked the Launch of Primer on Vertical Restraints for ASEAN Judges. 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 Ruben Maximiano (OECD). The Seminar included a keynote speech by Her Ladyship Dato' Sri Hasnah binti Dato' Mohammed Hashim (Federal Court Judge, Malaysia).

In the first half of the day, the Seminar also included speeches by 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 Vertical Restraints for Asian Judges'

The second half of the day started with opening remarks by His Lordship YA Dato' Dr. Choo Kah Sing (President of the Competition Appeal Tribunal of Malaysia and High Court Judge). It was followed by speeches from Frédéric Jenny (Chairman, Competition Committee, OECD) on The Economics of Competition Law and the Courts, Ruben Maximiano and Matteo Giangaspero (both OECD) on Vertical Restraints Primer: a Brief Legal Analysis, and Jorge Padilla (Compass Lexecon) on Vertical Contracts in Digital Markets – An Economic Perspective.

Frédéric Jenny (OECD) pointed out some differences between the judicial and the economic perspectives and elaborated the elements of economics useful for judges.

Ruben Maximiano and Matteo Giangaspero (both OECD) presented vertical restraints from a law perspective. They highlighted the potential key competition concerns like anticompetitive foreclosure, softening of competition and the possibility of tacit (or explicit) collusion. Also, they pointed out different legal approaches in this regard and shed light to vertical restraints in the digital world.

Jorge Padilla (Compass Lexecon) explained the economic logic of vertical contracts and the particularities in this context regarding digital markets. One focus was on platform markets.

The eleventh OECD/ Korea Policy Centre Competition Law Seminar for Asia-Pacific Judges ended with closing remarks by Jungwon Song (Director General of the OECD/KPC Competition Programme).

## EVALUATION

<b>OVERALL AVERAGE SCORE FOR EVENT USEFULNESS</b>	<b>4.7</b>
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### 2.4) OECD/KPC Workshop on Competitive Neutrality, 4-7 October 2021 (Virtual)

The first day started with opening remarks by Mr. Jungwon Song (Director General of the OECD/KPC Competition Programme) and Mr. Ruben Maximiano (Regional Manager for Asia-Pacific, OECD).

The substantive part of the workshop started with twin presentations by Ruben Maximiano (OECD) and Associate Professor Thomas Cheng of Hong Kong University. This session looked at competition and the role of the state, with a focus on industrial policy and its interplay and reconciliation with competition policy and law enforcement.

The first part of the presentation examined the OECD Recommendation on Competitive Neutrality of 2021 and explained the mechanisms underlying its importance. Namely that the most efficient domestic firms may not enter or expand, and if they do, they won't sell as much as they might and efficient foreign firms won't enter and invest in the domestic economy, if some firms are protected over others, regardless of who owns them (state or private, domestic or foreign). This may also mean that inefficient zombie firms may survive, and continue to accumulate rent/profit and crowd out efficient firms - with workers earning less as protected employers enjoy monopsony power. Ultimately, this may mean that consumers will pay higher prices, for poorer quality, less innovative products with impacts economy-wide. The second part of the discussion focused also on developing economies and national champions. Some of the conclusions of Prof. Cheng were that government-orchestrated mergers that permit firms to exploit scale economies may allow for a more permissive attitude toward efficiency claims.

The second part of the day focused on the economics of state support, and how competition authorities through their advocacy powers can help governments design measures that achieve government objectives whilst minimising harm to competition and to well-functioning markets. Mr. Lluís Saurí Romero, Head of Unit of the Chief Economist Team of the European Commission, provided the first part, whilst Ms. Adina Claiçi Visiting Professor at College of Europe complemented that session with some more advanced but relatively non-complex economic techniques that authorities can use.

The second day included presentations by Mr. Dimitrios Magos and Mr. Fabrizio Spargoli, both of the European Commission, that went through a case study of how to apply some of the economic analysis and techniques developed on the first day. They also discussed possible remedies that can eliminate or minimise competition distortions. The second session of the day was offered by Mr. Matteo Giangaspero that discussed in detail the recent OECD Competitive Neutrality reports on the Small Package Delivery Services that the OECD undertook from 2018 to end 2021 in each one of the 10 ASEAN countries. The third session of the day discussed in detail the rather difficult issue confronted by competition authorities when they analyse the behaviour of SOEs in the marketplace, namely how to analyse and separate their costs. It was offered by Ms. Karin Larsson and Mr. Johan

Selin of the Swedish Competition Authority. The last session was provided by Mr. Mukul Sharma, Joint Director at the CCI and discussed how that Competition Commission of India advocates for competitive neutral policies (a)Alerting policy makers on competition distorting policies, (b)Conducting competition assessment of such policies and then (c)Advocating appropriate regulatory reforms. Mr. Sharma provided two case examples to illustrate how this is done in practice in India.

The third day followed with presentations by Ms. Karina Lubell, Assistant Chief of the Competition Policy and Advocacy Section of the US DOJ. In this session, the US DOJ explained the recent US Executive Order on Competition signed on July 9, 2021 with 72 directives, involving more than 14 regulatory agencies. Its objective is to stream competition into a whole-of-government approach. This often involves looking at rules and regulations and ensuring a level playing field for all players. This last point was then discussed in depth in a session led by Mr. Gaetano Lapenta of the OECD, explaining how a competition assessment of rules and regulations can be done in practice, offering examples from the recent OECD project in the logistics services sector in ASEAN. The last session was provided by Mr. Ruben Maximiano on Competition, Competitive Neutrality and their importance for the economic recovery.

The OECD/KPC Workshop was concluded with closing remarks by Jungwon Song (Director General of the OECD/KPC Competition Programme) and Ruben Maximiano (OECD).

## EVALUATION

<b>OVERALL AVERAGE SCORE FOR EVENT USEFULNESS</b>	<b>4.7</b>
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### **2.5) OECD/KPC Workshop on Competition and Public Procurement, 17-19 November 2021 (Virtual)**

The workshop started with welcome remarks by Mr. Ruben Maximiano (Regional Manager Asia-Pacific, OECD) and Mr. Jungwon Song (Director General, OECD/KPC Competition Programme). It was followed by a Keynote from Prof. William Kovacic of George Washington University who presented the importance for competitive procurement in the drive for the economic recovery in a presentation entitled Competition Policy, Government Procurement, and Economic Recovery. He made important points on cooperation with procurement teams, and the need for competition authorities to know the Procurement System well and then make research-based policy proposals for the tenderers.

Next, the webinar had a presentation offered by Mr. Wouter Meester (OECD) that provided detailed data on public procurement worldwide, discussing how important it is to have competitive public procurement to minimise bid rigging and all the associated losses to the public. Wouter then went on to explain the different types of bid-rigging that have been discovered around the world and the market characteristics that should be taken into account when considering the possibility of a high risk of bid rigging. Ms. Despina Pachnou of the OECD then went into detail on the OECD Bid Rigging Recommendation and Guidelines, offering examples from the numerous projects led by the OECD around the globe. The first day finished with a presentation from Mr. Jihong SON, Deputy Director of the KFTC offering a number of examples of cases in Korea, including cases on



subway construction, sewage works, and LNG Storage Tank Construction Projects. In these cases he explained the types of evidence collected and the investigative methods used.

On Day 2 of the seminar numerous country experiences were shared, from OECD countries to countries in the region. Israel was first up with Mr. Gadi Perl running through a number of case investigation techniques, using many examples from prior cases of bid-rigging. Ms. Zara Mok from Singapore's CCCS shared their experience with a focus on investigative techniques in cases, with a deep dive into a bid-rigging case in tenders for Maintenance Services of Swimming Pools. Mr. Mohd Hasbullah bin Mohamad Faudzi of MyCC shared the Malaysian experience, describing the engagement with a number of other regulators such as the Anti-Corruption Commission (MACC). To finalise the day, the audience benefitted from the experience of Indonesia's Ms. Devi Siadari who detailed the experience in a Procurement case for School Facilities and Infrastructure Rehabilitation and Renovation Packages.

The final day of the workshop featured a presentation from Mr. Jordi Calvet-Bademunt of the OECD on fostering bid rigging prevention and detection with examples from different jurisdictions. Portugal's Ms. Taís de Fendi from the Portuguese Competition Authority presented the Portuguese experience. Ms. de Fendi started with the advocacy campaign to make competition in public procurement a common goal in Portugal and the efforts of close communication channels with public procurement related entities. Most of the session was then dedicated to how the agency has developed its data screening capacities. In particular, the MOU signed with IMPIC (National Authority for Procurement Markets) in November 2017 has granted full and direct access to the e-procurement database. This e-procurement database comprises the large majority of public procurement procedures over a long period of time in Portugal which ensures statistical relevance (false positives/negatives) of the analysis. The last presentation of the day was offered by Ms. Graciela Miralles of the World Bank, focusing on the challenges of implementation of connection between competition and public procurement policies in developing economies.

Closing words were proffered for the OECD by Ruben Maximiano (OECD) and then by Jungwon Song (Director General, OECD/KPC Competition Programme) that marked the end of the OECD/KPC workshop.

## EVALUATION

<b>OVERALL AVERAGE SCORE FOR EVENT USEFULNESS</b>	<b>4.7</b>
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### 3. PROGRAMME NEWSLETTER

The Programme continued to publish the regular newsletter, known as the "Asia-Pacific Competition Update" in 2021. 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 2021, the Programme's staff comprised:

<b>Title</b>	<b>Name</b>	<b>Location</b>
Director General	<i>Mr. Jungwon Song</i>	Seoul, Korea
OECD Senior Competition Expert	<i>Mr. Ruben Maximiano</i>	Paris, France
Director	<i>Ms. Hyun-Jung BAE</i>	Seoul, Korea
Research officer	<i>Mr. Dong Hyun LIM</i>	Seoul, Korea
Communications officer	<i>Michelle Ahn</i>	Seoul, Korea
Programme coordinator	<i>Ms. Hyekyoung Jun</i>	Seoul, Korea

## 5. CONTRIBUTIONS

The following OECD Member States and other jurisdictions and organisations generously provided expert speakers for the Programme's workshops in 2021:

<b>Country</b>	<b>Authority/Organisation</b>
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
Japan	Japan Fair Trade Commission
Korea	Korea Fair Trade Commission
Malaysia	Federal Court of Malaysia Competition Appeal Tribunal of Malaysia Malaysia Competition Commission
The Philippines	Philippines Competition Commission
Portugal	Portuguese Competition Authority
Singapore	Competition and Consumer Commission of Singapore
Spain	Spanish Competition Authority
Thailand	Office of the Trade Competition Commission
United Kingdom	Competition and Markets Authority
United States	Department of Justice