COMPETITION POLICY IN ASIA

News from the OECD-Korea Policy Centre Competition Programme

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IN THIS ISSUE

The Competition Programme of the OECD-Korea Policy Centre provides education and training to officials and experts of Asia-Pacific competition authorities in the field of competition law and policy. This newsletter includes information about our work and the work of the OECD, as well as news, case studies and reports from competition authorities in the Asia-Pacific region.

COMPETITION ASSESSMENT AND COMPETITION ADVOCACY

OECD-Korea Policy Centre Workshop, 18-20 July 2011

"…some of the most harmful effects to the economy do not stem from anticompetitive conduct by commercial actors but from unintended consequences of government policies."

Frank Maier-Rigaud (OECD)

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

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

Participants at the July 2011 Workshop

In light of these encouraging developments, the OECD sent its competition assessment expert, Frank Maier-Rigaud to the centre to host a workshop focused on

a thorough discussion of the OECD Competition Assessment Toolkit (CAT) and on competition advocacy. Competition assessment concerns both, the assessment of existing and proposed laws and regulations with the aim of removing unnecessary impediments to competition. Competition advocacy, in the narrow sense of the workshop, concerns the advocacy efforts and strategies used by competition authorities to advocate competition within government, government agencies, regulators and ministries, i.e. regulatory advocacy.[4] This is different from (traditional) advocacy efforts aimed at raising awareness of competition law in the business and community through publicising competition law enforcement outcomes.

As competition authorities or any other body responsible for competition assessment often do not (yet) have formal powers, the competition assessment of existing and proposed rules and regulations is typically coupled with regulatory advocacy, i.e. the effort of the authority to influence the design of future laws and regulations during the legislative process and its efforts to modify harmful existing laws and regulations.

As the regulatory advocacy efforts based on a competition assessment are directed towards other government bodies, agencies, there is a risk that competition authorities may receive hostile reactions from the bodies that originally proposed the measure or instrument. In order to avoid friction from the start, it is important to clarify that competition assessment does not question the underlying regulatory goal and therefore does not contest the competency of the originating authority. Rather the task is to help identify the best instrument or measure to achieve the goal without unduly hindering competition. Competition assessment or regulatory advocacy is at its best when it allows the original regulatory goal to be achieved in a more efficient way. Competition assessment therefore not only implies a thorough assessment of the repercussions and unintended consequences of rules and regulations but also a productive proposal for alternative instruments and measures capable of achieving the regulatory goal but with a reduced anticompetitive impact or, ideally, by finding an approach that both achieves the regulatory goal and enhances competition.

"The body conducting the competition assessment should therefore be seen as an ally of the regulator…"

The body conducting the competition assessment should therefore be seen as an ally of the regulator as its efforts are directed at streamlining the proposed laws and regulations by reducing its anticompetitive impact and often rendering it more effective.

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

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

► UK

Cutting your coat to fit your cloth

The phrase Competition Advocacy can be used to describe a broad range of activities carried out by competition authorities. It can describe advocating the concept and benefits of competition in general; advocating strengthening, enforcing, or compliance of the competition law; or it can describe advocating pro-competitive change in particular sectors or markets. The advocating can be directed at consumers, at firms, or at government.

Outlines the objectives of the nine types of advocacy described above.

	Type of advocacy		
	Benefits of competition	Competition law compliance and improvement	Market / Sector / Issue
To consumers	General support for the system of competition enforcement, and also potential macroeconomic benefits of increased competition.	Improving awareness/ complaints	Improved consumer empowerment
To businesses		Improving compliance/ complaints	Improved business responsibility
To government		Improving legislation and framework	**Improved regulation and oversight**

The presentation by the United Kingdom Office of Fair Trading (OFT) at the workshop focussed on the role of competition authorities in advocating to government for changes in how particular markets, sectors, or issues are dealt with. This area can be sensitive for competition authorities because it can involve disagreement between the competition authority and other sections of government.

The OFT is a large agency that is independent from government and has a clear legislative mandate to advocate for pro-competitive government policies. The mission of the OFT is to "make markets work for consumers", and this is applied to all markets, including those where the UK government, or agencies of the UK government, are the primary purchaser, producer, or regulator.

While the OFT has a clear legislative mandate to advocate change in government policy, as an independent agency the OFT does not have the same level of democratic mandate as elected ministers. For this reason the OFT limits its involvement in political issues, such as the benefits of opening up state monopolies to private competition. As a recent White Paper said, "Whether services are open to [private sector] provision remains a decision for democratically accountable politicians", however, where it has been decided to open up services to competing providers the OFT may use its mandate for competition advocacy to ensure that a full range of organisations are able to participate, and that no firms are not unfairly precluded from commissioning processes.

Where the OFT does undertake competition advocacy towards government, it tries to engage both early on during high-level policy formulation, and also later in the process during detailed implementation. The OFT provides general advice covering areas such as procurement and consumer choice, detailed issue-specific analysis in areas such as legal and professional services.

To ensure that advocacy work is integrated with the wider market monitoring and investigation work of the office, the OFT moved the advocacy function from a small dedicated team within the Office of the Chief Economist to a larger team integrated within an investigatory department.

Useful OFT resources in this area can be found at www.oft.gov.uk/OFTwork/financial-and-professional/professional-services/. See OFT 1314, OFT 1321 and OFT 1214. An evaluation of the OFTs advocacy work is also available (OFT 866) ■

► JAPAN

Introduction of competition assessment

One of the earliest measures to prevent anticompetitive regulations is ex-ante competition assessment.

With the development of the OECD's "Competition Assessment Toolkit", the Japanese government started introducing competition assessment in April 2010 as a part of its ex-ante evaluation of regulations. Although introduction is still at a trial stage, most of newly-established or amended regulations have already been subjected to competition assessment.

Ex-ante Evaluation of Regulations

In Japan, the ex-ante evaluation of regulations became obligatory in 2007 under the Government Policy Evaluation Act. The number of cases subject to evaluation reached 157 in 2008 and 107 in the 2009 fiscal year.

Under the ex-ante evaluation system, regulators complete reports that include analysis of cost-benefit relationships as well as comparisons with alternatives.

The ex-ante evaluation reports should be publicized within a designated period.

Competition Assessment (Currently in Trial Phase)

The current competition assessment uses checklists to determine whether an analysis of impacts on competition is likely to be required or not. Sectorial regulators should submit responses to checklists along with the evaluation reports to the Ministry of Internal Affairs. The Ministry then passes the responses to checklists to the JFTC. The checklist, however, are not publicized, unlike evaluation reports, because the competition assessment is only at a trial stage.

The purpose of the competition assessment is to identify important negative impacts on competition. As the OECD's Toolkit suggests, the methodology in Japan focuses on identifying various negative effects, such as impacts on number or range of suppliers, impacts on ability of suppliers to compete, and impacts on incentives of suppliers to compete. ■

► INDONESIA

Competition Assessment in Analyzing Government Regulation in Indonesia

The Commission for the Supervision of Business Competition (KPPU) was established in 2000 with the authority mandated by the Act No. 5/1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

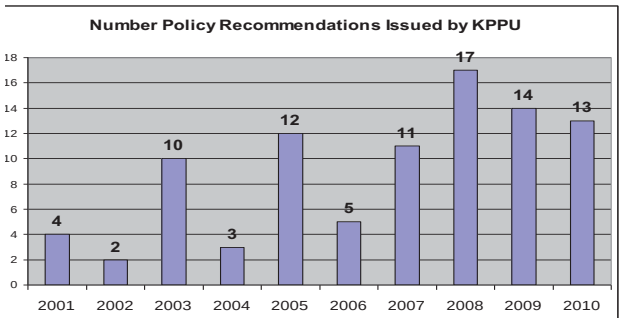
Eleven Commissioners work in collegial manner that is assisted by a Secretariat. A chairperson is elected annually amongst Commissioners.

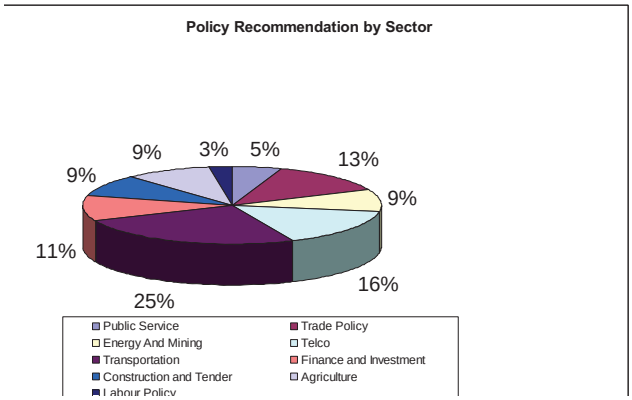
The commission has two major tasks: to supervise and enforce the competition law, and to create sound competition policy through policy recommendations in order to guide public interest and further prosperity.

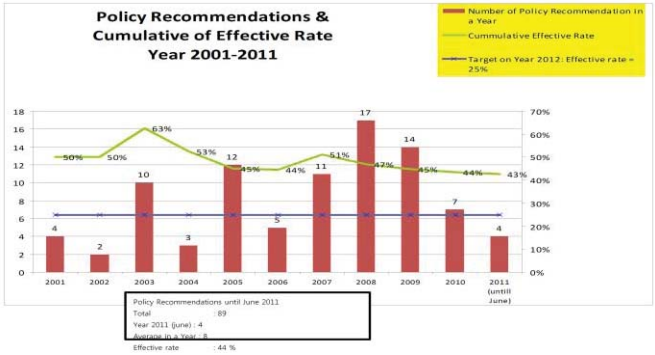
While the enforcement of competition law is binding, policy recommendations on the basis of a competition assessment are advocacy efforts and as such depend on the government's compliance. By May 2011, the commission submitted 89 policy recommendations. One of the duties of the KPPU is to provide advice and formulate an opinion concerning government policies related to monopolistic practices and/or unfair business competition. The advice is given in the form of a policy recommendation. It is one of the advocacy tools aimed at harmonizing government regulation with fair competition principles. There are three different objects of assessment that can lead to a public report: any regulation issued by any government institution, (draft) laws to be considered by Parliament and any type of regulation issued by ministerial and local administration.

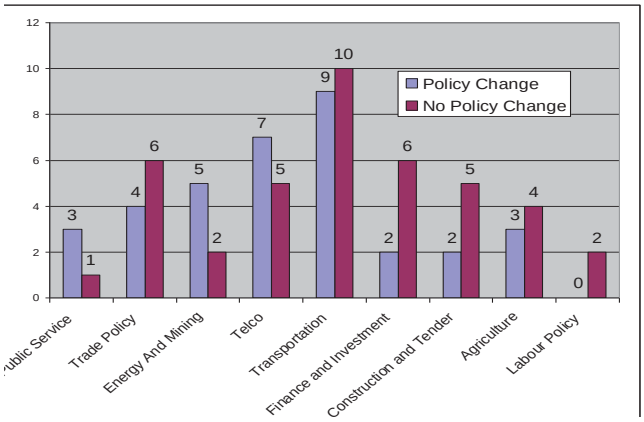
In assessing the competition impact of any policy, the KPPU will look at government policies that (1) give more priveleges to dominant business players by creating an entry barrier for the new entrants where the dominant players can more easily abuse the market, (2) facilitate anticompetitive behaviour by market actors, and (3) allow the government to replace the market mechanism by replacing it with a single entity.

The KPPU hands in its advice coupled with a *Position Paper* containing quantitative and qualitative analysis on the issue. On this basis, three different approaches are possible: a focus group discussion, a (non-public) bilateral meeting and a press conference.









Competition assessment is a process to evaluate government regulations, rules and/or laws to identify those that may unnecessarily impede competition and to assist in their redesign so that competition is not unduly inhibited. There are several examples of cases that had a significant impact on government policies. The first one is the airline industry case. Before 2001, INACA, an association of airlines facilitated price fixing conduct. The conduct was backed up by Ministerial Decree, giving the Association the authority to determine prices. In July 2001, the KPPU issued a policy recommendation to the Ministry of Communication and Transportation. The Policy Recommendation advised Government to abolish the authority of association in setting up the (floor) tariff as stated in Ministerial Decree No. 25 Year 1997. In response to the policy recommendation, the government revised the regulation and deregulated the sector enhancing competition in the airline industry. This policy change had a substantial impact in increasing the number of players in the market. It also led to a higher variety of services offered to passengers, a growing overall number of passengers enjoying air transport services, an increased average load factor, a sign of increased capacity utilization, and a substantial reduction in tariffs of up to 50%.

Threshold questions (a "Competition Checklist") showing when proposed regulations may have a significant potential to harm competition are a practical method for regulators to identify important competitive restrictions that. A competition assessment should be conducted if the proposal has any of the following 3 effects: to limit the number or range of suppliers, to limit the ability of suppliers to compete, and to reduce the incentives of suppliers to compete vigorously.

The second case is the poultry house policy. The Jakarta local government issued a Province Regulation (No.4/2007) that determining a poultry house where poultry traders from outside of Jakarta should place their product to be examined prior to distribution in the Jakarta area. This limited the number or range of suppliers and the ability of suppliers to compete. It lead to higher transportation cost and reduced the competitiveness of many traders coming from many areas outside Jakarta that used to place their product in the nearest poultry house in Jakarta. In March 2010, the KPPU submitted a policy recommendation to restore the previous approach. In its response, in December 2010, the government formally accepted the recommendation and reintroduced the old system as long as it fulfilled the technical and sanitary standard. Nowadays, the poultry traders may place and examine their product in several poultry houses under Jakarta Government supervision.

The third case is the regulation of East Java Livestock Services, more specifically the standardization of duck feather trading in East Java. This regulation required importers of duck feathers as input to the shuttlecock industry to: (1) have a shuttlecock factory thereby limiting the number or range of suppliers; (2) obtain a recommendation letter from the Head of the East Java Livestock Services, limiting the number or range of suppliers by creating a geographical barrier to the ability of companies to supply goods or services, invest capital or supply labour; and (3) fund travel expenses of The East Java Livestock Services staff to control, inspect and approve production in the origin country thereby limiting the ability of suppliers to compete by significantly increasing the cost for some suppliers relative to others. Based on its statute, the KPPU submitted a recommendation to the Provincial Government suggesting to revoke the regulation of standardization of duck feather trading in East Java. The KPPU co-ordinated with sector regulators engaging in intensive discussions to achieve a common understanding of each regulator's responsibilities in this case. In response, the East Java Livestock Service changed point 1 of its regulation "Importer must have a shuttlecock factory" becoming "Each person or company or industry or factory could import duck feather as input in the shuttlecock industry." Point 2 and point 3 of the regulation was, however, not modified.

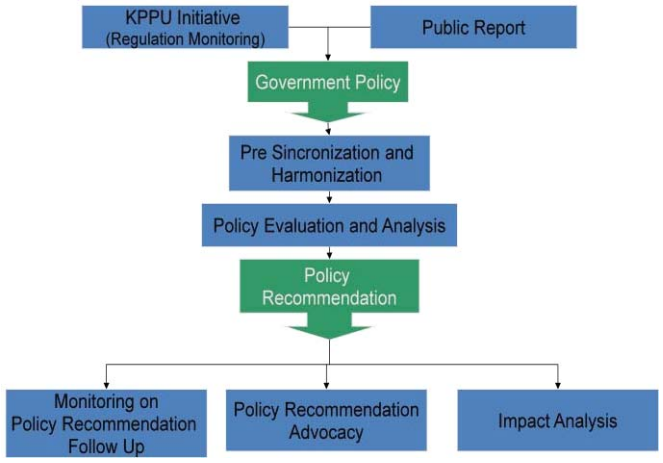
Advice on draft laws

KPPU recommended a tender method on the draft State procurement law and several draft local regulations concerning telecommunication tower establishment. Furthermore, the Commission has been involved with the formulation of several draft laws including minerals and coal and free trade zone.

The New Mandate

A latest development is as part of policy maker's acceptance to competition policy, law and institution the Commission has now even been mandated with new authority under Law No. 20/2008 concerning Partnership to supervise partnership agreements between micro, small and medium enterprises (MSME) and large enterprises. This indeed will take several adjustments within the Commission to fully optimize this obligation.

Working Flow in Fair Competition Advocacy Toward Government Policy and Regulation



► SINGAPORE

A Case Study Involving an Application to the Ministry for Public Policy Exemption

This case study involves a price recommendation by an association in the medical services sector. The Singapore Medical Association ("SMA") submitted a request to the Trade & Industry Minister for their Guidelines on Fees ("GOF")[2] to be excluded from the Competition Act on grounds of "exceptional and compelling reasons of public policy". Concurrently, SMA applied to the Competition Commission for decision on whether, if reinstated, the GOF would infringe the prohibition against decisions by associations with the object or effect of preventing, restricting or distorting competition.

The prohibition does not apply to agreements that are necessary for exceptional and compelling reasons of public policy and that are the subject of an order by the Minister. One of the functions and duties of the Competition Commission includes advising the Government on national needs and policies in respect of competition matters generally.

There is also an exception for otherwise illegal anticompetitive agreements if they provide net economic benefits.

SMA's submission

SMA submitted that the purpose of the GOF is motivated by public policy considerations to protect the interests of the patients. It is neither intended as an instrument to protect medical practitioners' incomes nor an effort by SMA to facilitate medical practitioners engaging in any form of price fixing to restrict competition. According to SMA, the GOF provides greater transparency to patients and diminishes information asymmetry between patients and medical practitioners. As a result, it helps prevent overcharging by medical practitioners.

Healthcare sector in Singapore

Primary care is the provision of primary medical treatment, preventive healthcare and health education. Primary care is provided through an island-wide network of outpatient polyclinics and private medical practitioners' clinics. Today, the private sector accounts for 80% of primary care and the remaining 20% is provided by polyclinics.

Hospital care in Singapore is classified as including multi-disciplinary acute inpatient and specialist outpatient services and 24-hour emergency services provided by the general hospitals and includes the six national specialty centres. The public sector provides 80% of hospital care services through restructured hospitals and specialty centres. The 16 private sector hospitals provide the remaining 20%.

Competition assessment

1. The GOF, like most price recommendations, is anti-competitive

The GOF discourages price competition by providing doctors with a recommended range of fees to charge. This results in less incentive for doctors to be more cost effective and charge below the suggested range of fees. In addition, the GOF is made up of highly technical terminologies, which patients may find difficult to understand. Some doctors may also use the GOF to justify their prices when questioned by patients.

2. GOF does not serve any purpose for primary care medical services in Singapore

Primary care services are generally homogeneous, recurrent and less complex in nature. There exists easily accessible price information which enables patients to compare prices and exercise choices. Patients are able to make decisions and problems such as overcharging are therefore not significant.

3. No need for GOF in the provision of hospital care medical services in Singapore

Recall that the government provides 80% of hospital care in Singapore. Therefore, patients who are concerned with pricing can seek treatment in these restructured hospitals. Charges in the restructured hospitals can also serve as a benchmark for patients who need to compare prices in the private sector.

4. Government measures to improve price transparency

Even without the GOF, the government has also put in place a number of measures to improve price transparency and prevent overcharging in the healthcare sector including:

- Requiring medical clinics to display their charges
- Requiring hospitals/ doctors to provide financial counselling
- Requiring medical bills to be itemised
- Providing details on the size of hospital bills according to conditions / procedures and ward class on MOH's website
- Gross overcharging cases are currently looked into by the Singapore Medical Council, a government body.

Conclusion

It is the Commission's view that the GOF is not of net public benefit and, consistent with advice from the Commission, the Minister is also of the view that there are no "exceptional and compelling reasons of public policy" to exclude the GOF from the application of the Competition Act. ■

► INDIA

Commission's Competition Advocacy

The Competition Act lays responsibility on the Competition Commission to take appropriate measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues. In pursuance of these objectives the Commission organizes interactive meetings, workshops and seminars with different regulatory bodies, policy makers, trade organizations, consumer associations and the public at large. The Commission also develops research capability in the area of competition economics, law and policy among the various stake holders, ministries/departments, the research community, regulators, and lawyers.

In pursuance of the objectives of competition advocacy the Commission has held a series of lectures, seminars and conferences with numerous stakeholders dedicated to the various issues. A brief overview of the advocacy events conducted during last three years is given in the following table:

Year	Consumers	Industries	Students	Legal Practitioners	TOTAL
2008-09	4	4	3		**11**
2009-10		1	1	8	**10**
2010-11	1	13	3	9	**26**
TOTAL	**5**	**18**	**7**	**17**	**47**

In addition to the above mentioned advocacy programmes the Commission has published advocacy literature on:

(i) An Overview of the Competition Act

(ii) Cartels

(iii) Bid Rigging

(iv) Abuse of Dominance

(v) Mergers

(vi) Competition Compliance

(vii) How to File Information

(viii) Leniency Provisions

Additionally, the Commission has conducted a number of market studies and provided training to students in the context of internship programmes:

Year	Market Studies	Interns Trained
2008-09	6	9
2009-10	9	20
2010-11	9	25
TOTAL	**24**	**54**

With an objective to create awareness among the students, the Commission conducted a National Level Essay Competition on competition issues during March 2011. An overwhelming response was received from the student community in which 400 entries were received from students with diverse backgrounds such as law, economics, commerce, engineering and management, representing various universities and Institutes. Participation spanned the whole country.

An action plan has been prepared to implement the short term advocacy plan during the current year. It has been decided to focus its advocacy efforts on Students, Consumers and Industry. In this regard the Commission proposes to conduct approximately 29 Conferences/ Seminars and workshops in the year 2011-12. Some of the events are proposed for spreading awareness among Central Public Sector Enterprises (CPEs).

As a long term future plan the Commission intends to undertake governmental advocacy wherein all concerned departments of Central as well as State Governments will be educated about the benefits of competition and how governmental activities can unnecessarily restrain competition if no specific regard to the potential competition impact of laws and regulations is given. ■

► THAILAND

Competition Advocacy

The Office of Thai Trade Competition Commission (OTCC) has realized the importance of competition advocacy and kept working continuously on it for the purpose of raising awareness of competition law as well as improving the effectiveness of the law.

Currently the advocacy work of the OTCC has concentrated on 5 areas: 1) Nationwide seminars, aimed at publicizing the benefits of competition laws for business operators, and aimed at creating a competition network among academic institutes and universities. 2) The organization of focus groups, a kind of in-house training for companies where the OTCC disseminates knowledge on competition law to managers and staff. This improves the understanding of competition and reminds them not to

infringe the competition laws. 3) Extensive use of mass medias & publications where the OTCC promotes the Trade Competition Act for example via brochures, booklets, books, newsletters and live radio programs 4) Opening of a Competition Knowledge Service Centre that provides national and international information on competition law & policy based on documents, books, presentation materials and electronic files. The centre is open to the public and free of charge. 5) Usage of MOUs on "Competition Networking" to build ties between the OTCC and universities.

A particular focus is placed on the MOU's as close ties with universities allows the OTCC to spread the knowledge and the understanding of competition law & policy throughout all stakeholders. The MOU's objectives are public awareness, exchange of competition policy and legal knowledge, and to build up a new generation of students trained in competition law and economics. There are 4 areas of co-operation specified in the MOU's: 1) Training of students in the OTCC 2) Shared lectures between OTCC and academic staff 3) provision of relevant competition law and policy material in a dedicated Competition Knowledge Corner in university libraries 4) Co-hosted academic/applied seminars. Since 2010, the OTCC signed MOUs with 5 universities, and plans to extend this number to 20 nationwide within 5 years. ■

► CHINESE TAIPEI

Competition Advocacy in the Regulation of Professional Services

Since the Chinese Taipei Fair Trade Act (CTFTA) was enforced in 1992, the Chinese Taipei Fair Trade Commission has implemented a number of competition advocacy projects for deregulation. The common purpose of these projects, in which the OECD's competition assessment toolkit has been applied, is to review all regulations inconsistent with the CTFTA, to remove unnecessary or undue regulatory restrictions and finally to raise awareness and build a competition culture. One of these projects concerns the laws regulating professional services stipulating detailed fee structures for practicing as identified in the charters of the relevant trade associations. Since these laws regulating the trade associations make it clear that a professional cannot practice without membership in the relevant trade association, the fee standards stipulated in the trade association' charters in fact heavily decrease or even eliminate the possibility of price competition in these markets. The professions mentioned above include lawyers, accountants, architects and engineers, and are all subject to a high level of regulation, in the form of either government regulation or self-regulation by professional bodies (trade association).

In 1999, the Commission consulted with the Ministry of the Interior, the Public Construction Commission, the Ministry of Finance and the Ministry of Justice to discuss whether the pricing behaviour stipulated in the trade association charters for architects, technicians accountants, and lawyers violated the Commission. The Commission finally reached the conclusion that such trade associations had clearly engaged in cartel. Considering that these charters were authorized by relevant laws and had existed for quite a long time, the Commission forwarded its formal opinion to relevant government agencies and trade associations to signal its position in applying the Commission. In this formal opinion, the Commission advised the relevant government agencies to amend the laws and required the trade associations to delete the provisions for setting fee standards within a year.

In 2001, the Commission found that none of the responsible government agencies had proposed a draft to revise relevant laws. Upon the expiration of the one-year deadline, also the associations had failed to correct their practices. In 2003, the Commission found that the associations had violated the parts of the CTFTA prohibiting cartels and were ordered to cancel or revoke the resolutions in question. The Appeal Commission of Executive Yuan, however, rescinded the Commission order because the architect associations set the disputed fee standard in accordance with other applicable law.

As a result and on the grounds of administrative unity and mutual respect among government agencies, the Commission waited for an amendment of the regulation of professional services to properly elaborate the Commission's standpoints, suggesting a revision of the related regulation to ultimately solve the conflicts with competition policy.

The Result of Consistent Advocacy

Profession	Trade association with the fee standards	Competent authorities' perspective
Architects	Service Fee Standard	**Ministry of the Interior:** *Having drafted a bill to repeal the relevant provision*
Engineers	Minimum Prices Maximum Prices	**Public Construction Commission**: *Having drafted a bill to repeal the relevant provision*
Accountancy	Service Fee Standard	**Financial Supervisory Commission** (Ministry of Finance before) : *Certified Public Accountant Law has been revised to repeal the relevant provision*
Lawyers	Service Fee Standard	**Ministry of Justice**: *Promised to draft a bill to repeal the relevant provision*

In order to render the competition advocacy public and to keep a pro-competitive environment, Commission has been continuously using not only formal ways of inter-agency advocacy, but also many informal ways, including lectures and seminars series. Based on the Commission's experiences in the administration and reform of professional services regulation, it is clear that in order to attain the policy goal of promoting market competition, competition advocacy and close collaboration with the respective government authority is the key to success. ■

► VIETNAM

Experience In Competition Advocacy

Vietnam Competition Authority (VCA) is one of the youngest competition authorities in the region with its mission of enforcing the Vietnam Competition Law since 1st July 2005. After 5 years of implementation, VCA has put the utmost importance on raising the awareness of competition throughout the country.

VCA has conducted numerous advocacy activities of various types, e.g. seminars/conferences; fora, publications, press releases. The VCA also maintains a website. We concluded that the most effective way to introduce the competition law in Vietnam is organizing seminars and forums for targeted groups. VCA officials have travelled to more than 35 big cities and provinces (out of 64 provinces and cities in Vietnam) to educate and inform about the Law. The companies operating in Vietnam and subject to the law have actively participated in these advocacy seminars. In addition, VCA holds forums on regular basis inviting representatives from relevant parts of government and sector regulators in order to share views and discuss specific topics of relevance to competition law.

Thanks to these efforts, the number of complaints received and hits registered at the VCA website has increased significantly since 2005. The table below indicates the positive outcomes of an official survey conducted in 2009 by the VCA, which can be seen as the success in the start-up phase of implementing Law of VCA.

Survey completed in 2009

Criteria	Rate
Know about competition law	69.8%
Understand competition law	56.1%
Know about the roles of competition law enforcing bureaus	38.5%
Understand rights and responsibilities of enterprises in a competition case	82.2%
Have the ability to apply competition law as a tool to protect rights and legitimate benefits in competition environment	74.5%
Be knowledgeable about orders and procedures to solve a competition case in line with regulations of the Vietnam law on competition	52.1%

Moreover, VCA has signed MOUs with several sector regulators, such as the Inspectorate of the Ministry of Science and Technology on implementing competition law, consumer protection and intellectual property; the Inspectorate of the Ministry of Health on implementing competition law in the health sector etc.

While there is much left to do for the VCA to further enhance the effective enforcement of the law, these effectively and play a vital role in amending and completing the competition law in Vietnam in coordination with other relevant agencies. In order to fulfil this goal, VCA must not stop improving the quality and effectiveness of current activities, at the same time learning from other developed counterpart agencies by making better use of international cooperation.

► CHINA

Practice and Experience with Competition Advocacy

Historic Background for China's Anti-Monopoly Law.

China's Anti-Monopoly Law was enacted on in 2007 and came into effect in mid-2008. It took 13 years for this law to be approved by National People's Congress, China's national legislature. An attempt was made for the first time, as early as in 1994, to promulgate a comprehensive fair trade law including an anti-monopoly element, but failed due to strong resistance from businesses and the perception that China's then economic conditions were not ripe for such legislation. One of the most powerful arguments is that China's transition from previous central planning to a market based economy had not been completed and in addition, that Chinese businesses were not economically strong enough to survive fierce competition from multinational companies.

The fact that the law has been adopted reflects Chinese leaders' recognition of the significant role of the anti-monopoly law in the national economic development of the country now following a market based strategy as a basic rule. Nevertheless, the awareness of competition from the perspective of government officials at the practical level is still subject to further improvement. This is not an issue that could be resolved overnight. It should and must be a long-term mission for China's Anti-Monopoly enforcement agencies.

MOFCOM's Practices and Experiences.

(1) Active enforcement of the merger control law.

There are 3 Chinese Anti-Monopoly Enforcement Agencies (AMEA) jointly responsible for implementing the Anti-Monopoly Law. The Ministry of Commerce (MOFCOM)'s function is anti-monopoly review on mergers and acquisitions. The National Development and Reform Commission (NDRC) and the State Administration of Industry and Commerce (SAIC), as the other 2 AMEAs, are responsible for implementing the other parts of the Anti-Monopoly Law, such as cartel, abuse of dominance and abuse of administrative powers by government agencies.

In the last 3 years, MOFCOM has been actively enforcing the merger control law by reviewing the transactions as notified by the relevant companies and took actions to intervene when necessary. Until now MOFCOM intervened to block or impose conditions in 8 leading cases. The most famous was Coca-Cola's proposed acquisition of Chinese fruit juice producer Huiyuan which is the only proposed merger that has been blocked so far. The remaining 7 cases which included many famous brand names were cleared with remedies. For all of these big cases, MOFCOM published its decision and disclosed information relating to the review process, definition of relevant market, competitive concerns and remedies. This turns out to be the best and most effective way to help the public understand what the Anti-Monopoly really means and educate businesses to voluntarily make efforts to fulfil their obligations.

(2) Continuing Efforts to Educate Government Officials at different levels.

The decision to promulgate an anti-monopoly law was made by China's leadership at the high level, but the decision to apply the law in practice is made by government officials in multiple sector regulatory and local government bodies. To educate government officials therefore became the top priority for the training mission of the AEMES right from the start. In the first year when the law came into effect, MOFCOM participated in a training program organized by the State Council (the Central Government) for Ministerial-level officials and Director-General officials from the relevant stakeholder agencies. To help the management of Large State-Owned Enterprises to better understand the Anti-Monopoly Law, MOFCOM explained the functions of the merger review so as to clarify the misunderstandings on their mind. For the officials from the counterpart agencies in provincial governments, MOFCOM organized training workshops on regular, 4 times a year basis. Until now, more than 500 local officials have been trained. This is quite important to improve their capacity to support MOFCOM in implementing the anti-monopoly law more effectively, given the large scale of China's geography and population.

International Cooperation has special merits in advocacy.

From perspective of both legislation and enforcement, competition law is not a new topic in foreign jurisdictions. The US, EU and many other OECD members have accumulated a lot of experiences in improving the competition awareness and developed effective techniques to put the law into practice. MOFCOM is keen on establishing cooperative mechanisms with foreign enforcement agencies such as the EU's DG Competition, the US FTC and DOJ, the German Bundeskartellamt, the Japanese JFTC and the Korean KFTC and communicating with multinational organizations such as the OECD, APEC, UNCTAD and ADB. Through Competition Policy Weeks, Training Workshops, Study Tours and Annual Meetings, MOFCOM has been working together with its foreign partners to help its own staff and government officials from the stakeholder agencies meet the competition law experts and understand the newest antitrust theories and best practices. This is very important to accelerate their understanding and dissipate the valuable experiences accumulated by our foreign colleagues. For instance, the toolkit for Competition Assessment developed by OECD Competition Committee is quite enlightening and will help AEMES prevent anti-competitive elements from being included in future laws, regulations and policies. ■

LEGITIMATE BUSINESS PRACTICES OR CARTELS IN DISGUISE

OECD-Korea Policy Centre Workshop 5-7 October 2011

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

Participants at the October 2011 Workshop