

REPORT
on
OECD-GFC ANNUAL INTERNATIONAL CONFERENCE.
29-30 November 2018
Paris, France.

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Introduction:

The 17th International Annual Conference on Competition organized by the Organization for Economic Cooperation and Development-Global Forum for Competition (OECD-GFC) took place in OECD Headquarters in Paris, France in 29-30 November 2018. Over 100 competition authorities, international organizations and invited experts worldwide participated in this conference like every year. Participation is by invitation only and restricted to officials from competition authorities, government agencies and international/regional organizations.

Upon invitation from the OECD-GFC, Government of Bangladesh became encouraged and kind enough to approve the visit from 29 to 30 November 2018 and issued a government order (vide dated 06 November 2018 No. 26.00.0000.090.25.057.16-381). The main conference of OECD-GFC was on 29-30 November 2018 but there was another agenda of OECD-GFC “Excessive Pricing in Pharmaceuticals” and upon their request and pre-registration the Bangladesh Competition Commission team attended the conference from 28 to 30 November 2018, which was also permitted in the G.O. A three member team consisting of Mr. Md. Abul Hossain Mian, Member, Bangladesh Competition Commission and Team Leader, Mr. Md. Monowar Hossain, Director, Bangladesh Competition Commission and Ms. Dilara Begum, Commercial Councillor, Bangladesh Embassy, Paris attended the Conference.

2. Short History of the OECD:

The Organization for European Economic Cooperation (OEEC) was established in 1948 to run the US-financed Marshall Plan for reconstruction of a continent ravaged by war. By making individual governments recognize the interdependence of their economies, it paved the way for a new era of cooperation that was to change the face of Europe. Encouraged by its success and prospect, Canada and the USA joined in signing the new OECD Convention on 14 December 1960. The OECD was officially born on 30 September 1961, when the Convention entered into force. The OECD brings around its table 39 countries that account for 80% of world trade and investment, giving it a pivotal role in addressing the challenges facing the world economy.

Other countries joined in, starting with Japan in 1964. Today, the number of OECD member countries is 36. The member-countries worldwide sit together regularly to identify problems, discuss and analyze, and promote policies to solve them. The track record is striking. The US has seen its national wealth almost triple in the five decades since the OECD was created. Other OECD countries have seen similar, and in some cases even more spectacular progress.

3. About the OECD-GFC Committee:

The OECD Global Forum on Competition Committee (OECD-GFC) was established in 2001. Since then it brings together each year high level officials from more than 100 competition authorities and international organizations worldwide from both OECD and non-OECD economies. Representatives of international organizations and invited experts join together and participate in debates and discuss key topics on the global competition agenda. With a broad

focus on development, the forum promotes a wider dialogue that encompasses the linkages between competition policy and other cornerstones of economic development.

The programme includes OECD-style roundtable discussions, presentations from notable experts and peer reviews. Discussion topics benefit from the input of the Competition Committee whose work is the forefront of debate on competition policy and enforcement. The Committee promotes the regular exchange of views, analysis and best practices on key competition policy issues.

The 17th OECD Conference was held on 29-30 November 2018 in Paris. Six issues on competition were discussed in different sessions in the conference following an opening speech Antonio Gomes, Head of Competition Division, OECD:

4. Opening Speech by Antonio Gomes, Head of the OECD Competition Division:

Mr. Gomes in his opening speech talks about the committee itself, how it functions, as well as, recent/ongoing works of OECD. He mentions that OECD Competition Committee exists since 1961. It brings together leaders of the world's major competition authorities of 35 member countries and the European Union and the 17 non-member countries participating in the Committee and the other Ad-hoc Invitees. The Committee is a chief international forum for dialogue on main competition issues, while, Competition Division provides policy research to support the discussions.

The Committee also issues best practices and standards for better competition policies. It contributes to building capacity in competition policy and enforcement around the world. We have been successful in building capacity in central and Eastern Europe and the Asia Pacific region with two regional centers the OECD KPC in Korea and the OECD GVH in Hungary.

The Committee also promotes market oriented reforms and policy around the globe. It also promotes horizontal work within the OECD, since competition is a horizontal subject. It is committed to reach out the non-members and to establish real partnership and recently ready to meet the challenges of the future inclusive growth, globalization and digitalization. The exchange of experience by competition authorities and the establishment of best practices address these global challenges. Competition leads to economic growth but it can also contribute to reduce income and wealth inequality. We have held several round tables in the context of our global forum of competition that relates to inclusive growth. Just recently in 2017 round table on competition democracy, last year on competition on human rights. We held in 2015 a round table on "does competition kill or create jobs"?

The links and drivers between competition and employment held in in 2014 on fighting Corruption and promoting Competition Act and in 2013 Competition and Poverty Reduction. We also handle the issues related to globalization and international cooperation.

We know that globalization will continue to task competition law internationally. We have cross-border cultures and mergers on the rise. There are public interest considerations that are wide spread and there is risk for wider use and international cooperation across the globe is key to ensure that dominant firms are not able to gain the system and international cultural firms they are investigated and are prosecuted effectively. I should say that digitalization only further highlights the need for international cooperation. So it's very important to look back at the OECD standard such as recommendation on fighting our core cultural or the recommendation on international cooperation.

Another challenge that countries are facing is digitalization. Cross border digitalization leads to market integration. It promotes international trade and enables data driven business models that promote competition and economic growth. We also know that it can raise competition. So the committee has selected digital economy as strategic theme and thus helped several round tables and hearings on disruptive innovation in several sectors, such as, financial market, transport, electricity, legal services on big data on upgrade exam collusion. We should rethink the traditional anti-trust tools in multi-sided markets. This work is part of a large cross-cutting horizontal project of OECD going digital. In the near future, we expect that the Committee will focus another strategic theme, such as, intellectual property rights and competition. Comparative neutrality, procedural fairness, international cooperation should be given importance, as we will have to look back at the recommendation of 2014 and will see whether it is update and up to the task.

Finally we will continue to look at digitalization in particular at the link between competition and regulation with the aim to review the competition assessment toolkits in the light of digitalization in 2019 and 2020.

5. OECD Forum:

The OECD Forum was created in 2000 to discuss the key economic and social challenges on the international agenda. It is part of the annual OECD main Ministerial meeting and Seminars linked to key international forum. The forum is a public engagement event that gathers high level government representatives CEOs, leaders from civil societies and trade unions as well as prominent members of academia and media.

Three main focuses of OECD Forum:

- International cooperation
- Inclusive growth
- Digitalization

Other focuses are:

- Poverty reduction
- Reduction of disparity/discrimination
- What brings us together?
- Left out and behind
- The future of work: how?
- From analogue to digital.

6. Session-1: How can competition contribute to fairer societies?

This session was chaired by Johannes Laitenberger, Director-General of the Directorate-General for Competition (DG COMP), European Commission. Speakers were (i) Pinar Akman, Professor of Competition Law & Director of Centre for Business Law and Practice, University of Leeds. (ii) Jonathan B. Baker, Research Professor of Law, American University Washington College of Law. (iii) Arsenio M. Balisacan, Chairman, Philippine Competition Commission.

The term fairness is emerging in the announcements of many anti-trust enforcers in the context of competition. Fairness depends upon many factors such as culture, education, experience, society. Common tendency is that despite huge debates, no consensus observed on the point how fairness works in the society. After huge discussion in November 2018, the Global Forum on Competition explored the concept of fairness, whether and how it can relate to competition. What fairness can mean in practical terms to competition enforcers? The session was led by a panel of experts from different policy areas to debate the question and discussed with delegates in an interactive question and answer format.

It was widely discussed and observed in the meeting that due to competition, economic growth has risen. Inspiration to production and marketing among the industries and other sectors has been given momentum. This has created huge perfection in production and positive impacts on the economy. But people who are lagging behind in the society in terms of income and life style, believe and claim that at the same time income disparity has also increased with competition. As a result of too much competition, conditions of many people have been worsened. Global economic situation has worsened. Therefore, a common question has been raised how fairness relate to economic theory? In order to mitigate this problem, non-price elements and market concentration have also got attention for competition. How e-commerce and online activities have changed consumer's behavior is another growing question. What kind of impact has been created on the market needs to be examined. What is the outcome or impact of the new technological development following competition needs to be examined more in future.

7. Session-2: Gender and Competition:

A background paper on Gender and Competition was presented by Estefania Santacreu-Vasut, Associate Professor in Economics, ESSEC Business School and was discussed by the participants. It says that the relation between competition and gender is bi-directional. Competition leads to gender equality. Promoting and protecting competition may help reduce gender inequality. Historically women have faced barriers in accessing formal markets and institutions. Job restriction exist in manufacturing (47 economies), construction (37 economies), agriculture (27 economies) World Bank: 2018.

Political participation of women globally was 25% in 2017 and less than a third senior and middle manager positions held by women. Women are experiencing inferior outcomes when participating in markets. Gender wage gap OECD average is 19.1 pp (latest data).

Women suffered from violence at least one in every five women aged between 15 and 49 years are still victims of violence often sexually related as per UN data. Overall progress in addressing them is still too slow. At the present rate, we may not achieve equality for 217 years.

Barriers: Women have both formal and informal barriers. Formal barriers are legal and regulatory. Informal Barriers are behavioral and cultural.

Discrimination: Women contribute outside of formal market is unpaid labor (household labor). Women surveyed in OECD countries do almost twice as many hours of unpaid work per day than men. Informal sector represents almost 90% of total employment for women in Africa.

Gender inequality: Consequences:

Gender inequality has negative consequences for inclusive growth.

- It possesses threat to fair distribution of resources.
- It may lead to less efficient and less competitive market.
- Talent is misallocated and competition works less efficiently.

Conceptual Framework:

Competition may contribute to the fight against gender inequality by:

- Driving participants that exhibit taste based discrimination against women out of the market.
- Increasing the efficient provision of market substitute for service provided by women in household (childcare, elderly, health...).
- Increasing the efficient provision of services that complement women economic engagement (finance, infrastructure).

Application: Microfinance Industry:

In 2015, 2 billion adults were unbanked. Microfinance started in 1970s. Huge lack of access to credit has been prevailing since then. Microfinance institutions serve 200 million clients globally.

Traditionally, competition in microfinance may reduce price of credit though it is not clear in reality especially for women. Furthermore microfinance may not always contribute to fight against gender inequality. How best to integrate gender considerations in prioritization and in evaluation guidelines. Take into account new challenges.

8. Session-3: Benefits and Challenges of Regional Competition Framework:

The speakers for this session were (i) Mor BAKHOUM, Affiliated Research Fellow, Max Planck Institute for Intellectual Property and Competition (ii) G. Deniz BOTH, Independent Researcher (PHD from King's College London and LL.M from University of East Anglia) (iii) Mario A. UMAÑA, Lead Trade and Competition Specialist, Integration and Trade Sector, Inter-American Development Bank. Presenting ["Regional Competition Arrangements: The Case of Latin American and the Caribbean"](#).

Over the past two decades, the need for effective regional cooperation between competition authorities has grown rapidly. Two main reasons for this can be identified. The first is the rapidly increasing cross-border economic activity, which has led to a growing number of cross-border competition cases. These international cases involve multiple jurisdictions, often located in a geographic region.

The second reason is the increasing global reach of competition law and policy in the last 25 years. This can be illustrated by the increase of more than 600% in the number of jurisdictions with competition law between 1990 and 2015, from fewer than 20 to about 125. This implies that many of these authorities are just a few years old.

There are several challenges resulting from the increasingly interconnected nature of today's world economy, the increased number of jurisdictions enforcing competition law and increasing activity conducted or expected from young or new competition authorities. On the other hand, companies that are active in more than one country are confronted with different designs and application of competition laws per jurisdiction, (potentially) leading to inconsistent outcomes.

What are the challenges and benefits of RCAs from the discussion of the following countries?

It is commonly accepted that Regional Competition Agreements (RCAs) bear political benefits for participating jurisdictions, especially for smaller and developing countries. Regional competition policy may limit anti-competitive behavior that forms an impediment to intra-regional trade, thereby jeopardizing regional integration and economic development. In addition, there is a number of specific benefits as follows:

Benefits:

Addressing the enforcement resource constraints:

Creating regional competition provision, and a RCA in charge of enforcing it, may reduce the problem of resource constraints for smaller agencies, both financial and technical, by achieving economies of scale in their enforcement activities.

Strengthening Competition Culture:

A factor related to the scarce resource is the weakness of the competition culture. Most consumers in WAEMU countries, for example, prefer similar prices for competing products, in order to make choices easier, over lower but different prices. Moreover, half or more of the member states of CARRICOM, CEMAC and ECOWAS do not have a national competition law while even more do not have a NCA. The lack of a competition culture also been identified as one of the reasons for the very few regional competition cases in the Andean community. The lack of a competition culture, leading to under-enforcement of the competition laws, could be mitigated by the establishment of a RCA. A RCA may spur the adoption of competition laws in the region, contributing to competition culture, as well as can create economies of scale in educational and in advocacy activities.

Keep national government in check:

RCAs can help keep national governments in check regarding state-imposed barriers or serve as a better counter balance against strong pressure groups trying to exert influence on policy makers. Creating a level playing field for all firms may in turn foster foreign direct investment in the medium or long term.

The following countries participated in the discussion, such as, Albania, Australia, New Zealand, Sofia Competition Forum, European Commission, Japan, Kenya, Kazakhstan, Latvia, Mexico, Russian Federation, Serbia, Singapore, South Africa, Sweden, Denmark, Finland, Norway, Iceland, United States and CARICOM.

United States:

Competition-related agreements to which the United States is a party operate at two different levels. The general provisions of U.S trade agreements relating to anti-competitive business conduct signal a serious commitment to principles of market competition and to elimination of anti-competitive business conduct. With the negotiation of the USCMA, minimum procedural fairness provisions, transparency, and non-discrimination principles are now also part of the regional framework. However, bilateral anti-trust cooperation agreements are designed to foster practical agency to agency relationship, they are typically better suited to promoting closer cooperation between agencies. Successful bilateral antitrust enforcement cooperation does not have its roots in such agreements nor can it grow from formal agreement alone. These goals can be fostered only by building strong relationships and trust, which in turn can be built only by the experience of working together. Antitrust cooperation instruments are thus best viewed as the formalization of an existing relationship, rather than as the basis for creating one.

Singapore:

The Competition and Consumer Commission of Singapore (CCCS) administers and enforces the Competition Act (the Act) in Singapore. CCCS also acts internationally as the national body representative of Singapore in respect of competition and consumer matters.

CCCS has entered into several forms of regional cooperation agreements (RCAs). These include memorandum of understanding (MoUs) with strategic partners such as JFTC, KPPU, and Competition Chapters within a free trade agreement as well as an ASEAN cooperation framework.

This contribution describes CCCS' experience in international cooperation, particularly in relation to the various types of RCAs that CCCS has entered into, including both competition and non-competition specific RCAs and discuss the factors that CCCS considers when entering into RCAs, the perceived benefits of RCAs, and the challenges encountered by CCCS in establishing RCAs.

Japan:

“East Asia Top Level Officials” Meeting on Competition Policy (hereinafter referred to as EATOP) makes large contribution for strengthening the cooperative relationship among the

member agencies and development of cooperation policy and law in the East Asia region, by enabling the top level officials from the member agencies to get together annually and exchange their views and information candidly each other.

East Asia Conference on Competition Law and Policy (hereinafter referred to EAC) also contributes to the development and strengthening the competition law, policy and enforcement in the East Asia region, by raising competition awareness through the discussions with variety of different participants.

Since the foundation of EATOP and EAC, many jurisdictions/regions in the East Asia regions has introduced comprehensive competition laws and established competition authorities. Besides, several jurisdictions/regions which already had equipped with competition laws have also enhanced their competition law.

Also, there has been fostered common understanding of the need for cooperation regarding cross-border cartels and mergers, and conclusion of cooperation agreements within the East Asia region has been accelerated through the discussions in EATOP and EAC.

9. Session-4: Investigative Powers in Practice:

Protecting competition in the market requires intensive evidence and data gathering. To meet this end, competition authorities are armed with various investigative powers ranging from voluntary interviews to researches in non-business premises.

There were three parallel sub-sessions which provided a forum for participants to discuss practical issues regarding the use of investigative powers:

Breakout Sub-sessions:

Breakout Sub-session-1: Unannounced Inspections on the Digital Age.

Moderator: Sophie Bresny

Head of the Inspections Unit

Autorite de la concurrence, France.

Breakout Sub-session-2: Request for Information: Limits and Effectiveness:

Moderator: Mario YBAR Bio

National Economic Prosecutor

Chilean Competition Authority (FNE).

Breakout Sub-session-3: Due Process in relation to Evidence Gathering:

Moderator: Amir Nabil Gamil Ibrahim

Chairperson

Egyptian Competition Authority.

All around the world competition authorities face significant challenges in seeking to deter anti-competitive conduct mergers. Cartels are secret conspiracies, and cartelists go to great lengths in creating their illegal activities; evidence of direct communications and agreements between competitors is hard to uncover. The assessment of the competition effects of unilateral conduct and mergers requires the collection of significant amounts of complex information, which is to a large extent, in the possession of the investigated or third parties.

The session will focus on issues like use and limits of authorities investigative powers; recurring and new challenges faced by the authorities when investigating anticompetitive conducts and mergers; possible solutions for such challenges; and process in evidence gathering.

Countries participated:

The following countries participated in the discussion of this session. They are Albania, Australia, Austria, Botswana, Brazil, Chili, Croatia, Dominican Republic, European Union, Hong Kong China, Hungary, Kenya, Korea, Mexico, Moldova, Peru, Portugal, Russian Federation, Serbia, Singapore, Slovak Republic, South Africa, Sweden, Chinese Taipei, Ukraine, United Kingdom, and the United States.

Brazil:

After the enactment of the new Brazilian Competition Law, Law 12.529/2011, CADE has established a favorable environment for the development of cartel enforcement in Brazil.

This environment was the result of a coordinated effort to develop a system towards the deterrence of cartels, involving (i) the implementation of new and best practices in the leniency program; (ii) an investment in investigation techniques and information technologies tools to improve ex officio investigations and intelligence; (iii) the development of a settlement system focused in collaboration with the investigations; and (iv) the improvement of cooperation with domestic agents to conduct dawn raids.

These efforts are considered a “virtuous cycle” of the enforcement –the higher the risk of detection and conviction, the higher the awareness and the compliance. Notwithstanding these developments, CADE is aware that to ensure an effective deterrence of cartel, it must be as dynamic as the dynamism of the cartelists, evolving and adapting its practices to grant detection and conviction.

Hong Kong, China:

Hong Kong has a prosecutorial system with the Competition Commission (the “Commission”) responsible for investigating contraventions of the Competition Ordinance (the “Ordinance”). The Commission’s investigations have a range of possible outcomes one of which is the Commission bringing an action for a pecuniary penalty before Hong Kong’s Competition Tribunal. If the Commission has reasonable cause to suspect there has been a contravention of a conduct rule in the Ordinance it will have certain powers available to it.

To require a person to produce specified documents or information relevant to the investigation i.e. compulsory requests for information;

To attend before the Commission and answer questions relevant to the investigation i.e. compulsory interviews; and

Subject to the issue of a warrant by a judge of the Court of First Instance, to enter and search a premise and take possession of or make copies any document that appears to be relevant to the investigation i.e. unannounced inspections. The Commission has experience using each of these powers and these are discussed in the paper.

Korea:

The Korea Fair Trade Commission (KFTC) has the power to order the parties concerned or interested parties to appear in a hearing and seek their opinions; the power to designate expert appraisers and procure their opinions; the power to order an enterprise, an association of enterprises, an executive or employee thereof to submit reports on the cost and conditions of business operation or other necessary materials or things, or retain the submitted materials or things; the power to have affiliated public officials enter the premises of enterprises or their associations in order to examine conditions of business operation, account books, documents, electronic materials, voice-recording materials, video materials and other materials or things, and hear statements from the relevant parties or interested parties at a designated places; the power to order enterprises or their associations or executives and employees thereof to submit materials or things necessary for such investigation, or retain the materials or things submitted.

The KFTC's investigation is an administrative and non-compulsory procedure that is basically conducted with the consent of the investigated party. Failure to comply with the KFTC's investigation may result in administrative penalty or criminal charges. The KFTC has especially made efforts to establish due process in the investigation stage. As the recent shift to the digital ages and the importance of the forensic investigation grows, KFTC has been operating the digital forensic organization since 2010.

Sweden:

The contribution begins with introductory comments on the tool of requests for information (RFIs) and continues with a brief review of the legal framework for RFIs in Sweden. The main part of the submission consists of a presentation of, and reflections based on, the SCA's experiences when working with RFIs.

RFIs generally play a central role in the investigations by the SCA, as they are one of the authority's main tools for acquiring information. They are often used alongside other investigative measures such as inspections and interviews, but are in many cases more versatile and cost effective, as is elaborated on in the submission.

The role of preparatory work in order to increase the efficiency of RFIs is discussed in the submission as well as the kind of information that is best suited to be requested. The

submission also presents the SCA's views on how to handle the acquired information and control for erroneous or insufficient answers. The contributions also contains some experiences concerning how to balance the scope of the RFI in such a way that the relevant information is acquired while at the same time ensuring that the burden of the addressee is proportionate.

Chinese Taipei:

In practice, the FTC decides the object (parties or third parties) from which to request information, the approaches and the content after taking into consideration the type of violation, the characteristics of the industry involved, the market structure and the level of complexity of the case. The parties and third parties have the obligation to accept the FTC's investigations. The FTC has imposed sanctions on the parties and third parties refusing to provide information with regard to facts about the violation in question. Nonetheless, the FTC has never imposed sanctions on parties failing to provide information not associated with the confirmation of facts of violation. Furthermore, related parties are willing to cooperate and provide information in most cases after finding out that government agencies are obligated to keep information confidential. In addition, the verification of the information collected is a quite challenge. Experience and economic analysis are applied to clarify related facts and evaluate the level of impact of the unlawful act on competition and order in the relevant market.

10. Session-5: Competition Law and State Owned Enterprises (SOEs):

The speaker for this session was Deborah HEALEY, Professor, Faculty of Law, University of New South Wales presenting ["Competition Law and SOEs: Enforcement"](#).

This Roundtable discussion has been held to look at investigations into anticompetitive mergers, agreements and conduct by State-Owned Enterprises (SOEs). In particular, it is to examine the type of conduct that they have engaged in, the rationale for doing so, the key analytical questions that arose in these cases and the way in which their status affected those investigations. In doing so, the aim is to draw the main challenges of enforcing competition law against SOEs and look for ways to address them.

Background:

State-Owned Enterprises may, like other charities and social enterprises, offer products or services on markets without having the objective of making a profit from their participation in the market. Instead, their objective might be the expansion of their output or an entirely different goal. This might mean that they are not interested in maximizing profits by restricting output, and so the harm that their actions can cause may not stem from the abuse of market power and the transfer of surplus from consumers to producers. Nevertheless, their conduct while pursuing those goals may not constitute 'competition on the merits', or, as with rent-seeking by firms, may have the effect of distorting competition and reducing efficiency. In other cases, SOEs might seek to maximize profit in order to reinvest. Therefore, competition law enforcement, perhaps with some adaptation of the traditional tools and standards, will be necessary to investigate instances where their behavior risks harming consumers in that market.

Unclassified With respect to both domestic and foreign SOEs, we can look at the different challenges that arise in treating these enterprises within the different actions that they can take:

merger control, collusion, and abuse of dominance. In merger control, challenges might include questions of when the state is able to control an enterprise, and when an SOE is part of a broader group of SOEs that might jointly control the enterprise. This might affect whether there has been a change of control as well as the calculation of turnover.

There may also be institutional challenges, such as an SOE having a dual role as regulator, or having other routes into the decision-making process of government that may threaten the ability of the competition authority to make an independent decision on the case, or to enforce an effective remedy. There may also be a question on whether merger with a foreign SOE creates different theories of harm on collusive agreements; there might be exemptions from competition law, or debate over whether the agreement is between separate entities. There may also be questions of whether fines create a deterrent effect or whether they are simply passed-on to consumers (or taxpayers), all of which might affect the calculation of fines. Where a foreign SOE is involved this may complicate relationships between governments, make it difficult to obtain information, and carry effective, if not explicit immunity, creating an enforcement gap. When investigating anticompetitive conduct, competition agencies may encounter a number of additional challenges, including analytical difficulties that arise from the objectives of the SOE.

The following countries participated:

Algeria, Argentina, Botswana, Brazil, Costa Rica, Korea, Latvia, Mexico (COEFECE), Mexico (IFT), Mongolia, Peru, Romania, Russian Federation, Singapore, South Africa, Sweden, Tunisia, United States, BIAC, CUTS International.

Brazil:

This article aims to provide an overview of the competition law applicability regarding State-Owned Enterprises (SOEs) in Brazil. In general, there are no exceptions or immunities to SOEs or private companies with State participation under the current Brazilian Competition System, as the law establishes objective criteria for merger control and anti-competitive practices analysis without advantages to this type of companies.

The Brazilian Constitution establishes that the abuse of economic power related to dominance of markets, elimination of competition and arbitrary increase of profits, shall be repressed by the law, without exceptions or immunities for SOEs. In this sense, the Brazilian Competition Law (No. 12.529/2011) is applicable to all legal entities, public or private.

In some recent cases, CADE's Tribunal has analyzed mergers involving SOEs without adopting a differentiated regime; there are a few cases in which the authority considered that public interest matters related to SOEs could affect the efficiency analysis. CADE's Tribunal also adopted the regular regime when ruling about anti-competitive practices by SOEs and their subsidiaries; there was no preferred treatment to SOEs and CADE has applied sanctions, behavioral obligations, established Cease and Desist Agreements with the companies involved.

Korea:

State-owned enterprises should also comply with the competition law as a market participant. And if state-owned enterprises commit acts that distort competition, same set of rules should apply as to the private companies. Regarding the enforcement to the state-owned enterprises, it is necessary to review whether the state-owned enterprise corresponds to a business entity or an act by a state-owned enterprise corresponds to “Lawful conduct pursuant to other laws”. And as examples of the enforcement of the MRFTA for the state-owned enterprises, representative cases such as the abusing of market dominance and the unfair practices are introduced.

Mexico (COFECE):

There are different legitimate rationalities to promote the development of State Owned Enterprises. In this context, Mexican government recognizes that a modern economic development policy must include a transversal competition policy that treats SOEs as other economic agent in any given market, that is be subject to the regulatory framework.

COFECE has conducted competition advocacy and enforcement actions, with special attention to the sectors where SOEs prevail, to promote a competition culture and adherence to the applicable legal framework. The purpose is to deter and sanction practices contrary to competition principles that may harm markets and therefore the general public.

Mexico (IFT):

In this report, the Federal Telecommunications Institute (IFT) presents recent cases of the application of competition law and policy, acting as both competition and regulatory authority, regarding State-Owned Enterprises in telecommunications and broadcasting sectors in Mexico. The IFT employs the tools provided in both the competition and sectoral laws, in order to have a timely and more effective intervention preventing and remedying historical market conditions, especially in the spectrum management for telecommunications and broadcasting sectors.

This document highlights the relevance of the issuance of competition assessments before the granting of concessions to use radio electric spectrum in the public-private projects *Red Compartida* (wholesale shared network) and *Red Troncal* (trunking public national network), and the entry of SOE to the provision of OTT services.

South Africa:

This note summarizes the Competition Commission of South Africa’s (“the Commission”) response to the Organization of Economic Cooperation and Development (“OECD”) call for written submissions to inform the roundtable discussion on investigations into conduct by State-Owned Enterprises (“SOEs”).

The Commission has investigated a number of SOEs for anti-competitive conduct. The results of which can be broadly grouped into outcomes which are considered either “good”, “bad”, or “ugly”. In an example of a ‘good’ outcome, the Telkom case, the Commission faced and overcame jurisdictional challenges to its mandate to enforce competition policy on firms which

are overseen by regulatory bodies. Further, the imposition of well thought-out behavioral remedies into this telecommunications monopoly has resulted in effective competition.

The two 'bad' cases, SAA and Eskom, provide an insight into the difficulties faced by the Commission when investigating SOEs. Namely, SOEs tend to be repeat offenders, the Commission is unable to investigate government support (bailouts, regulations, etc.), and the challenges that arise when an SOE leverages its dominance as a natural monopoly into more competitive levels of the value chain.

Lastly, they provide the 'ugly' example of the Transnet case. This case study shows how the inability for the Commission to investigate government and regulatory bodies can result in detrimental market outcomes. In this case a new entrant was effectively foreclosed, resulting in: the SOE maintaining a monopoly, delays in the construction of an important pipeline, significant cost overruns, and the burden placed on consumers through higher fuel prices. The submission concludes by suggesting behavioral remedies and a government backed competitive neutrality framework initiative may address some of these issues.

11. Final Session: Other Business and Future Work:

While dealing with persistent joblessness, policy makers must confront at least three medium and long-term structural forces that are shaping the world of work more than ever: demographic change, globalization and technology, especially the digital revolution.

Globalization has an effect not only on the types of jobs but also the type of tasks that constitute each job. Another main factor shaking the world of work is digitization. Continuously growing computer power, Big Data, the penetration of the internet, artificial intelligence, the internet of things, and collaborative platforms, among other developments, are radically changing the prospects of what work is needed and by whom, and where and how it will be carried out.

Since the industrial revolution, major innovations, such as the steam engine, electricity and the assembly line, have led to the decline of some sectors, with large job losses, but to more productive and (often) rewarding jobs in expanding sectors, with substantial improvements in living standards.

Digitization will continue to change how existing jobs are carried out. Information technology tools are already required in all but two occupations in the United States: catering dishwashers and food cooking machine operators and tenders. Similarly, in most OECD countries, workers in over 95% of large businesses and those in over 85% of medium-sized businesses have access to and use the internet as part of their jobs, and workers in at least 65% of small businesses connect to the internet for work.

The digital revolution will continue to alter how work is performed. The internet has enabled more businesses to hire in competitive suppliers around the global supply chain, and workers to enjoy the flexibility and benefits of teleworking and freelancing.

The OECD expects a strong mandate from ministers to develop a new and extended OECD Jobs Strategy in which such factors as ageing, globalization and migration, digitization, and new work practices will be key.

12. Excessive Pricing in Pharmaceuticals:

In 130th meeting of the OECD Competition Committee held on 27-28 November 2018, it was discussed that affordable access to many drugs has been difficult by high prices due to anticompetitive activities. Questions are raised about the degree of innovation and value offered by increasingly costly treatments.

A number of competition enforcement actions have recently taken place in the pharmaceutical sectors despite competition authorities are usually reluctant to intervene directly against high prices. It is therefore needful to understand of market dynamics and sectoral regulation and of the various regulatory responses that may be utilized to address high prices. The OECD Competition Committee promotes regular exchanges of views on competition policy issues. The proceedings from this discussion from countries including submission from countries and invited experts are published within best practice roundtables on competition policy issues.

Chinese Taipei:

For the pharmaceutical industry in Chinese Taipei, drug prices under the National Health Insurance (NHI) system are not decided by pharmaceutical firms themselves or the relevant product markets. When a pharmaceutical firm's drug is listed in the NHI system, its price will be regulated by the National Health Insurance Administration. The pharmaceutical firm needs to consider the approved price when negotiating with every medical care institutions, which may lead to drug price gap in the NHI system. The price gap represents that approved prices the government is willing to pay to medical care institutions are often higher than the prices charged by pharmaceutical firms agreed through procurement processes. This may lead to a restriction of profitability of pharmaceutical firms, disadvantageous conditions for biopharmaceutical development and negative impacts on incentives for research and development. As a result of the NHI system, there are very few cases in relation to excessive pricing in Chinese Taipei.

India:

The Indian Competition Act, 2002 (the "Act") covers both exploitative as well as exclusionary abuses, which are set out in Section 4(2) of the Act. Imposition of unfair price has been explicitly stated as an abusive act under Section 4(2) (a) (ii) of the Act. Though 'unfair price' has not been specifically defined in the Act, CCI/Commission has laid down guiding principles through cases where such issue was under consideration. While dealing with all such cases, the Commission has ensured that the focus is not on controlling prices, but on preserving competitive conditions which would allow market forces to self-correct even if there is any irregularity. Interventions have been made sparingly in cases where markets were found incapable of self-correcting, necessitating the prescription of remedies. Even while devising remedies for rectifying unfair pricing, the Commission identified structural issues in the market, instead of pronouncing any pricing remedies

There are various challenges associated with intervening in excessive pricing cases, foremost being determining the benchmark price. This proliferates manifold when the case arises in pharmaceutical sector as the products/drugs/medicines are a result of years of research and development, generally preceded by series of failed attempts leading to high costs of failure. Thus, applying traditional standards (e.g. price-cost comparison) may wither dynamic efficiencies and disincentives to future research and development. Till date, the Commission has not found a contravention on account of excessive prices in pharmaceutical sector. One of the cases, which involve the issue of excessive pricing of medical syringes by super-specialty hospitals, is presently under investigation. The outcome of the said case is expected to disentangle many issues on excessive pricing in the pharmaceutical sector under the Indian competition regime.

Kazakhstan:

The article is divided into 3 sections. The first one describes the existing provisions of the Competition Law of the Republic of Kazakhstan against excessive prices as a result of dominance abuse and concerted actions and powers of Competition authority to prevent, reveal and eliminate violation. Also, this part describes the penalties for the Competition Law of the Republic of Kazakhstan infringements in terms of abuse of dominance and concerted actions. The second part describes the system of state regulation and control of pharmaceuticals sector in the Republic of Kazakhstan, as well as price regulation in pharmaceuticals market issues. The third part considers the case of violation of the Competition Law of the Republic of Kazakhstan in pharmaceutical market and the decision of Competition authority.

Lithuania:

In Lithuania, the pharmaceuticals sector is subject to regulation. Even though the Lithuanian Competition Council has not investigated excessive pricing cases in this sector so far, the competition authority has been rather active in conducting market studies and making recommendations with the aim to promote competition in this sector. In particular, the focus of the market studies of the Competition Council was on the impact of parallel imports of pharmaceuticals as well as the reimbursable pharmaceuticals market in Lithuania.

United States:

U.S. antitrust law does not recognize excessive pricing as an antitrust violation in and of itself, thus allowing legitimate market participants acting independently to set their prices as high as they choose. This policy choice stems from the legislature's determination that ultimately competition will produce not only lower prices, but also better goods and services. Additionally, the policy reflects the difficulty in identifying what prices are excessive and concerns that antitrust enforcement against excessive pricing may chill incentives to compete and innovate in the first place and interfere with the proper functioning of markets. Market participants who violate the antitrust laws, however, may be subject to remedies that affect their ability to charge supra-competitive prices. In addition, high or rapidly increasing prices often play an important role in the Agencies' antitrust investigations because they may constitute evidence of anticompetitive effects of potential antitrust violations. There are many tools available to U.S. antitrust agencies today to address high drug prices, including law enforcement; competition advocacy before the legislature and the courts; reports, studies, hearings, and workshops; and

working with other governmental entities and sector regulators to promote consumer access to affordable medicines.

Italy:

The Italian Competition Authority (AGCM) has been particularly active, in recent years, in the pharmaceutical sector in light of its importance, not only economically but also in terms of access to healthcare and medicines and impact on public expenditure. Enforcement has concerned exclusionary behaviors aimed at delaying generic drugs entry, a market partitioning conduct and an exploitative practice towards the National Health System. In relation to the latter, AGCM's intervention complemented the action of the Italian pharmaceutical regulator - that displayed, because of incomplete regulation, a weaker bargaining power towards regulated companies - leading to a reduction of the prices of the drugs considered by as much as 80%. Indeed, according to the Authority, the specific facts of the Aspen case warranted an antitrust intervention: the market was not likely to self-correct, the regulator did not have the ability to curb the significant and unjustified price increases as well as the need to remunerate R&D did not arise. As the drugs under examination had been developed in a distant past and were since a long time off-patent, there was no risk of distorting dynamic competition. The need to remunerate R&D expenditures was, consequently, not relevant as the risk to distort innovation. If cases are well screened, agencies intervene only when the stringent conditions identified to justify intervention arise, ensuring that the potential of innovation is fully realized. Intervention should, indeed, be limited to cases where the risk of distorting dynamic competition is very limited, if non-existent. The AGCM has been, in general, very cautious in identifying circumstances where intervention against alleged excessive prices might be necessary following a case-by-case approach aimed at finding an appropriate balance between static and dynamic considerations based on the specific circumstances of each intervention.

Observation:

Excessive pricing is a complex area of competition law. Competition authorities, therefore, ought to consider carefully the need for intervention, not least to avoid the risk of over-enforcement.

However, these risks and complexity can be overstated and should not result in under-enforcement where intervention is appropriate. In particular, intervention may be appropriate where there is an absence of effective regulation and where markets conditions are such that very high prices are unable to stimulate effective entry allowing the market to properly self-correct in a reasonable timeframe.

Some of these features may be present in specific sectors of the pharmaceutical industry. In particular, generics markets are often characterized by the absence of effective regulation, the existence of high, non-transitory barriers to entry and fragmented national health systems.

13. Recognition and Gratitude:

At the end of the conference, we met Mr. Frederic Jenny, Chairman of the OECD Competition Committee. We took some snapshots with him. He talked to us and mentioned that Bangladesh Competition Commission has been participating Annual conference of OECD from the last two

years. He was very pleased with us and congratulated on our attending the conference. He also told that OECD will try to give all sorts of cooperation to Bangladesh Competition Commission in future in the field of capacity building, technical and cultural affairs. He inspired us to continue contact with OECD. We expressed our heartfelt thanks and gratitude to the Chairman of the OECD Competition Committee.

14. Lessons Learnt:

- 1) Due to competition, inspiration to production and marketing among different sectors has got momentum leading to increasing economic growth. This has created huge perfection in production and positive impacts on economy, which may be nurtured for sustainability.
- 2) People lagging behind in the society in terms of income and life-style believe that income disparity has also increased with too much competition and conditions of many people have been worsened. In order to mitigate this problem, non-price elements and market concentration may also get attention for competition.
- 3) How e-commerce and online activities have changed consumer's behavior and what is the outcome of the new technological development following competition needs to be examined more in future.
- 4) We learn from the conference that the relation between competition and gender is bi-directional. Competition leads to gender equality. Promoting and protecting competition may help reduce gender inequality.
- 5) Political participation of women globally is less and the position held by them is lower than senior and middle manager positions. Women are experiencing inferior outcomes when participating in markets, which may be improved through competition.
- 6) Women of different ages suffer from violence and often harassed sexually. Overall progress in addressing them is still too slow. This issue may be addressed carefully.
- 7) Gender inequality has negative consequences for inclusive growth. It possesses threat to fair distribution of resources. It may lead to less efficient and less competitive market. Due to gender inequality, talent is misallocated and competition works less efficiently.
- 8) These lessons suggest that institutional supports may be increased with a view to combating these challenges for the women.
- 9) Regional competition provision may reduce the problem of resource constraints for smaller agencies, both financial and technical, by achieving economies of scale in their enforcement activities.
- 10) The lack of a competition culture leads to under-enforcement of the competition laws, which could be mitigated by the establishment of a RCA.

- 11) A Regional Competition Agreement may spur the adoption of competition laws in the region, contributing to competition culture, as well as can create economies of scale in educational and in advocacy activities.
- 12) Competition authorities all over the world face significant challenges in seeking to deter anti-competitive conduct mergers. Cartels are secret conspiracies, and cartelists go to great lengths in creating their illegal activities; evidence of direct communications and agreements between competitors is hard to uncover.
- 13) The assessment of the competition effects of unilateral conduct and mergers requires the collection of significant amounts of complex information, which is to a large extent, in the possession of the investigating or third parties.
- 14) In order to reduce cartel activities, it is of urgent need to emphasize on investment in investigation techniques and information technologies tools to improve ex officio investigations and intelligence. It is also important to develop a settlement system focused in collaboration with the investigations.
- 15) There may also be institutional challenges, e.g. an SOE having a dual role as regulator, or having other routes into the decision-making process of government that may threaten the ability of the competition authority to make an independent decision on the case, or to enforce an effective remedy.
- 16) Merger with a foreign SOE creates different theories of harm on collusive agreements; there might be exemptions from competition law, or debate over whether the agreement is between separate entities.
- 17) When investigating anticompetitive conduct, competition agencies may encounter a number of additional challenges, including analytical difficulties that arise from the objectives of the SOE. This issue should be addressed well ahead by the commission.

15. Conclusion and recommendations:

Overall discussion in the conference was lively and fruitful. Many countries shared their field level experiences. The OECD Conference on different issues continues round the year. There are several issues which take place for more than about ten days during annual conference on competition. This conference actually was held from 23 to 30 November, 2018. The member countries which have participated in the written discussion have indicated that competition has a very positive relation with economic growth, fairness, gender development and trade. The Bangladesh Competition Commission has a great role to play to extend cooperation with OECD and its member countries in future.

In pursuant to the above discussion, the following recommendations may be made.

- 1) Officials from Bangladesh Competition Commission in future may attend the OECD Conference for five days instead of two-three days only.

- 2) Communication with OECD may be extended in future in order to take cooperation from OECD and its member countries through expanding communication network.
- 3) Officers of different levels of the Commission may be sent to OECD conference in order to increase communication network so that capacity of the Commission may be enhanced in the field of technical, legal and market areas.
- 4) Capacity of the Bangladesh Competition Commission may be increased to seek for strategies to address linkage between competition and gender development.
- 5) Investigating capability of the Commission may be increased to find out anticompetitive activities of the market such as collusion.
- 6) Commission's network may be extended with a view to cope with the issues such as Competition Assessment, Anti-collusion, and Anti-Bid rigging to enhance competition in the market.
- 7) Different workshops/seminars may be arranged based on the important issues discussed in the annual conferences of the OECD-GFC.
- 8) The report may be displayed in the website of the Bangladesh Competition Commission.
- 9) A copy of the report may be sent to the Ministry of Commerce.
- 10) A soft and a hard copy of the report may be preserved by maintaining a register for future reference.

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Bangladesh Competition Commission

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Member
Bangladesh Competition Commission

Acronyms:

AGCM: The Italian Competition Authority.

ASEAN: Association of Southeast Asian Nations.

BIAC: Independent international business association for advising government policy-makers at OECD.

CADE: Administrative Council for Economic Defense of Brazil.

CARRICOM: The Caribbean Community.

CCCS: Consumer Credit Counseling Services.

CEMAC: Central African Economic and Monetary Community.

COFECE: Economic Competition- A Platform for Growth, Mexico.

CUTS International: Consumer Unity & Trust Society International.

EAC: East Asia Conference on Competition Law and Policy.

EATOP: East Asia Top Level Official Meeting on Competition Policy.

ECOWAS: The Economic Community of West African States.

Eskom: A development organization of South Africa.

FNE: An organization of Nicaragua that partners with communities in developing nations.

GFC: Global Forum on Competition.

GVH: Hungarian Competition Authority.

IFT, Mexico: Federal Telecommunications Institute, Mexico.

JFTC: Japan Fair Trade Commission.

KFTC: Korean Fair Trade Commission.

KPC: Korea Productivity Center.

KPPU: Competition Commission of Indonesia.

MoU: Memorandum of Understanding.

MRFTA: Monopoly Regulation and Fair Trade Act (revised to strengthen Korea Fair Trade Commission).

NCA: The National Committee on Accreditation.

OECD: Organization for Economic Cooperation and Development.

OEEC: Organization for European Economic Cooperation.

OTT: Over the Top.

RCA: Regional Competition Authority.

RCF: Regional Competition Framework.

RFI: Radio France International.

SAA: South African Airways.

SOEs: State Owned Enterprises.

U.S: United States

UN: United Nations.

USCMA: United States-Mexico-Canada Agreement.

WAEMU: West African Economic and Monetary Union.



Mr. Frederic Jenny, Chairman of the OECD Competition Committee encourages tightening hands with us.



Introducing with the OECD Official.



Conference going on



Conference going on



Introducing with the Chairman of the OECD Competition Committee.



Including the OECD Officials.



In a cultural event organized by OECD-GFC



With Ms. Dilara Begum, Commercial Councillor, Bangladesh Embassy, Paris, France.



In front of Bangladesh Embassy, Paris.



With officials of Bangladesh Embassy, Paris.



Gateway to Conference Hall