出國報告(出國類別：開會)

出席 2018 年 6 月經濟合作發展組織(OECD)競爭委員會相關會議暨第 1 屆國際貨幣基金、OECD 及世界銀行「結構性改革會議」報告

服務機關：公平交易委員會

姓名職稱：洪財隆委員

杜幸峰視察

簡佳盈專員

赴派國家：法國

出國期間：107 年 6 月 2 日至 6 月 13 日

報告日期：107 年 9 月 4 日

摘　　要

本報告詳述本會代表團出席本(107)年 6 月 4 日至 8 日經濟合作發展組織（OECD）競爭委員會(Competition Committee)第二、第三工作小組及競爭委員會例會各項議題討論情形，及參加 6 月 11 日國際貨幣基金(IMF)、OECD 及世界銀行(World Bank) 共同舉辦之「第一屆國際貨幣基金(International Monetary Fund, IMF)、OECD 及世界銀行結構改革聯席會議：產品市場競爭、管制與包容性成長」(1st Joint IMF-OECD-World Bank Conference on Structural Reforms: Product Market, Regulation and Inclusive Growth)情形。

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壹、參與各項會議之緣起、目的及各會議與會人員

一、OECD「競爭委員會」及相關工作小組

(一) 經濟合作發展組織(OECD)於1961年9月成立，其成立宗旨在支持個別會員國之經濟體獲致最大可能之永續經濟成長、就業、提升生活水準、維護金融穩定、協助其他國家經濟發展、促進全球經濟發展。OECD目前共有35個會員國，包括澳大利亞、奧地利、比利時、加拿大、捷克共和國、丹麥、芬蘭、法國、德國、希臘、匈牙利、冰島、愛爾蘭、義大利、日本、韓國、立陶宛、盧森堡、墨西哥、荷蘭、紐西蘭、挪威、波蘭、葡萄牙、斯洛伐克共和國、西班牙、瑞典、瑞士、土耳其、英國、美國、智利、斯洛維尼亞、以色列及愛沙尼亞。

(二) OECD除總理事會及秘書處外，下設有各專業委員會(Committee)。「競爭委員會」(Competition Committee, CC)係源於1961年成立之「限制性商業行為專家委員會」，1991年更名為「競爭法暨政策委員會」(Competition Law and Policy Committee)，2001年再更名為「競爭委員會」，其下轄有2個工作小組「競爭與管制第二工作小組」(Working Party No. 2 on Competition and Regulation, WP2)及「合作與執法第三工作小組」(Working Party No. 3 on Co-operation and Enforcement, WP3)。競爭委員會與WP2、WP3每年定期於法國巴黎OECD總部召開2次會議，主要討論競爭政策及競爭法之制定及執法方向與技巧，以促進執法活動之國際化及促進各國各項政策及法規之透明化，並制定競爭法執行之最佳實務，促進各國之執法合作並對開發中國家進行能力建置。競爭委員會2018年例會分別於6月及11月舉行，本次6月會議於6月4日至6月8日間召開。

(三) 我國於2002年1月1日正式成為OECD競爭委員會一般觀察員(regular observer，自2013年5月起改稱為「參與者」participants)後，即固定派員出席該委員會會議。本會參與競爭委員會相關會議活動，除可與歐美國家直接進行密切互動、交換意見，強化彼此間交流合作外，亦有助於各國對我國競爭政策/競爭法執行成效的了解以及對我國執法面向的建議，且在競爭政策議題上，參與相關會議得使我國從遊戲規則的追隨者成為遊戲規則的制定者，此對提升我國國際地位助益頗鉅。

(四) 本次出席會議人員有35個OECD會員國及歐盟競爭法主管機關官員代表、工商諮詢委員會(BIAC)，及競爭委員會參與者，包括我國、巴西、保加利亞、埃及、俄羅斯、南非、印尼、羅馬尼亞、哥倫比亞、馬爾他、秘魯、烏克蘭及哈薩

克等國競爭法主管機關代表。另新加坡、菲律賓及中國大陸以專案邀請會員(ad-hoc member)身分與會。

(五) 會議出席人員：我國代表團由本會洪財隆委員率綜合規劃處杜幸峰視察、服務業競爭處簡佳盈專員出席上開會議。

二、第一屆國際貨幣基金(International Monetary Fund, IMF)、OECD及世界銀行結構改革聯席會議：產品市場競爭、管制與包容性成長(1st Joint IMF-OECD-World Bank Conference on Structural Reforms: Product Market, Regulation and Inclusive Growth)：OECD預定在2019年正式起動「有效市場管制計畫」(The OECD Programme for Effective Market Regulation, PERMR)，提供OECD會員及非會員國家改革及管制設計，以達到永續、彈性及包容性成長之目標。此一計畫主要對如何改進市場管制，特別是在產品、服務及房地產等市場，提供證據及建議。特別是運用最新的國際可比較之管制指數並分享資料，以達到分析之目的。而面對目前生產力減緩、數位化、全球化及人口統計學的巨大變化趨勢，有關市場管制如何設計與改革的新政策問題正不斷興起。IMF、OECD及世界銀行爰共同舉辦本會議，邀集決策者、國際機構及學者以闡明競爭與管制之新興議題，討論: (1) 1990年以來產品市場競爭的特性及變遷; (2)生產力成長、創新及所得分配的影響；(3) 競爭政策及市場管制的意涵。本項會議由洪財隆委員率杜幸峰視察參加。

貳、OECD各工作小組及競爭委員會會議重點

一、「競爭與管制第二工作小組」(WP2)會議

6月4日舉行「競爭與管制第二工作小組」(Working Party No. 2 on Competition and Regulation, WP2)會議，由WP2主席Alberto Heimler先生(義大利競爭委員會研究與組織關係處前任處長)主持，討論議題包括：

(一) 「計程車與叫車軟體市場」圓桌會議(Roundtable on “Taxi and Ride-Hailing Markets”)：

1、本議題共有25個國家及工商諮詢委員會(The Business and Industry Advisory Committee to the OECD，BIAC)與國際消費者協會(Consumer International，CI)提出報告，主要討論計程車業者管制機關及競爭法主管機關對於叫車及共乘軟體服務業者之新興商業模式所引起之挑戰。

2、美國紐約市計程車及豪華出租車委員會(NYC Taxi and Limousine Commission, TLC)主任秘書兼首席科技官員Dawn Miller女士於會中報告紐約市「對於以應

用程式為主及傳統之叫車服務管理」(Regulating App-Based & Traditional Services in NYC)，略以：

(1) TLC主管紐約市地區183,000位駕駛，超過120,000部車輛，其中106,000輛為出租車(for-hire vehicles, FHVs)，13,857輛為計程車(yellow taxis)。紐約市平均每天有1,032,720趟的叫車行程，其中304,169趟使用計程車，728,551趟使用出租車。1971年至2011年間叫車軟體未出現前，TLC之最大管制焦點在計程車，而出租車與計程車各有其營運範圍，互不侵犯。

(2) 2012年迄今叫車App進入紐約市後即成為出租車之一類，與計程車及傳統出租車業者競爭，且因其成為大眾矚目之市場另類選擇，民眾希望納入管制監督之聲音四起。

(3) 紐約市法規管制框架聚焦於安全性、消費者保護(可及性、保險、責任歸屬、反歧視、透明化)、工作者保障及負的外部性(汙染、基礎設施負擔等)等部分，不及於消費者偏好、工作者績效及市場占有率改變等面向。其盤點計程車及出租車(FHV)法規內容，發現出租車法規在駕駛監督、車輛安全性及保險已有規定，但在駕駛教育、消費者保護(價格透明度、收據、申訴)、易近性、工作者保護及資料報告等部分尚待改善。

(4) Dawn Miller指出，叫車服務軟體未來可能衍生的議題有獨占、價格歧視及自動化等。

3、美國印第安那大學法律學系Max Huffman教授討論共享經濟在反托拉斯上之問題及反托拉斯與管制間之取捨問題(A Monopoly and a Conspiracy Met in a Bar (Here's What Happened))，略以：

(1) 反托拉斯法三大支柱為：(1)不合理交易限制的契約、合併與共謀；(2)獨占(或試圖或合併或共謀獨占「交易或商業之任何一部分」)；(3)實質上降低競爭或意圖創造獨占地位的取得股份或分享資本(資產)。其他準反托拉斯(Quasi-antitrust)之行為尚有：價格歧視及囤積居奇，抬高價格。

(2) M氏引述其與Anderson合著文章中「共享經濟」的定義：(1)須有消費者、供應者、平臺等3方面角色；(2)小型消費者與供應者；(3)銷售者面臨最小的參進及退出障礙，以避免專業化投資；(4)市場資金豐富；(5)平臺提供安全性及可靠性的保證；(6)平臺收取費用或佣金；(7)管制者介入。

(3) 共享經濟領域的反托拉斯議題可能有：共謀、獨占及價格歧視及囤積居奇，抬高價格等，結合部分則與其他產業無異。

(4) Max Huffman指出，在定性何謂「共享經濟」模式，會面臨取捨的部分：(1)

共享經濟廠商宣稱與個別承攬者達成契約，但若其宣稱為真實，就不會產生獨占及勞工法規的疑慮，然共謀的反競爭疑慮的確存在。(2)若共享經濟廠商被視為騾子勞工(hinny employee)，則獨占、勞動法規疑慮仍然存在，但反競爭上的共謀疑慮則消失。

4、Euclid法律事務所合夥律師兼荷蘭Tilburg大學競爭法及經濟學系Damim Geradin教授討論計程車與叫車軟體平臺(ride-sourcing platform)業者關係及其管制或管理方法，略以：

(1) 叫車(ride-souring)商業模式的優勢為：(1)叫車平臺可減少駕駛及乘客的搜尋成本；(2)叫車平臺在消費者不容易招到車子的時段，可增加駕駛的收入；(3)乘客可對駕駛評分的機制，促使駕駛提供服務誘因；(4)所有的交易皆可透過電子化追蹤；(5)叫車平臺不會阻隔乘客及駕駛多對多連結。

(2) 叫車平臺業者並非計程車公司，因為它們並不擁有車輛也不僱用司機。它們只是提供類似已存在許久的車輛派遣服務，但只是利用線上平臺而非用以前的電話呼叫中心。而計程車公司亦可發展自己的平臺或使用第三方平臺來建立自己的叫車服務。事實上，現在已有許多計程車公司擁有自己的叫車APP提供服務。

(3) 叫車平臺業者是否截走計程車公司的生意致其受損？G氏認為，出租車司機利用平臺與計程車司機競爭，此一競爭機制並非叫車業者截走計程車乘客的「零和遊戲」，而叫車平臺業者會成長是因為：(1)叫車業者通常較計程車業者便宜；(2)計程車牌照數量通常受限定，會出現需求超過供給之現象；(3)在某些城市或地區早已出現供給不足現象，而計程車牌照也成為巨額金錢的交易標的；(4)資料顯示，叫車業者通常會在計程車業者及大眾運輸交通工具較不足之市郊地區營運；(5)叫車業者通常較具優勢，因為它們不收取現金，也不期望收到小費，安全性較高且可追蹤司機之個人資料。

(4) 至於是否需要採用類似管制計程車公司的管制方式來避免不公平競爭等議題，G氏認為目前計程車管制領域存在的問題(如價格上限、牌照管制)，係存在於網路出現之前，他認為最好的解決方式是採取促使計程車公司及叫車服務平臺相互競爭的管制架構；管制對象究為平臺或使用者應視個案而定，競爭法主管機關應扮演提倡者的重要角色。

5、BIAC由優步公司(Uber)全球競爭法主任Greg McCurdy報告「對計程車與出租車服務業之管理以保護消費者同時允許創新、成長及效率」(Regulation of Taxi & For Hire Vehicles to Protect Consumers while Allowing Innovation, Growth &

Efficiency)，略以：

(1) 世界各地搭乘分享(ride-sharing)服務快速成長的主要原因為效率及低成本，又因為牌照數量限制帶來的供給與需求失衡，在尖峰時期一車難求，而在離峰時期則是空車充斥造成交通之額外負擔。利用叫車軟體可使供給及價格較具彈性，乘客也可減少等待時間，車輛使用率也可以提高。

(2) 目前美國法律對運輸網絡公司(Transportation Network Company)所提供的管制方式著重安全與背景、乘客保險、稅與執照費用、各州管制者、定價及支付系統透明化及無歧視等。Greg McCurdy則另提出管制可能造成反競爭，而無法達成安全或保護消費者的觀點，如限制計程車數量可能主觀上即已限制競爭；要求計程車結束營業時須返回車庫會浪費時間及油料，增加成本；限制乘客最低雇用時間可能對短程乘客造成排擠，限制地理區域營運造成回程空車浪費等。

6、綜合與會者就近來計程車及叫車服務產業發展，本次圓桌會議之主要結論如下：

(1) 共乘服務應用程式市場的開放前提為叫車服務的自由化。故除了駕駛正直度、安全考量、車輛品質及保險等可能會導致市場失靈的部分需以管制介入外，應取消地方叫車服務的配額管制。

(2) 在自由市場中，計程車應被允許同時在傳統計程車服務及新式乘車服務營業，若市場上對叫車服務不存在不合理的限制，則交易前應適當地向消費者揭露各種服務的收費標準，透過資訊的透明化來促進競爭，如：斯德哥爾摩要求車窗應張貼10分鐘或10公里搭載服務的收費標準，供消費者事前選擇；消費者可透過事前多個派車App的比價再進行訂車。

(3) 競爭法主管機關應同時扮演提倡管制改革及違反競爭法時介入執法的角色。就提倡者角度而言，競爭法主管機關主要面臨的挑戰之一為既有的計程車管制法規並未直接指出法規所要追求的利益或目標，導致微幅改革時容易趨向保護既有廠商。故各國主要的改變方式應朝向將法規所追求的利益、目標予以明確化，並在法院的控制下將法規解釋及應用告知行政機關，使整個產業的發展能提升消費者利益。

(二) 英國與荷蘭報告銀行業開放應用程式介面標準：英國競爭與市場局(CMA)2016年推動「開放銀行計畫(Open Banking)」，要求國內9大銀行可讓第三方在用戶同意下存取帳戶數據，以提供消費者及中小企業更好及更方便的貸款服務，與歐盟「新支付服務指令」(Payment Service Directive 2)目標大致相同。荷蘭及葡

葡牙也報告相同之經驗，澳洲、墨西哥、以色列也報告其金融業有類似之發展。

(三) 數位化下之競爭評估：WP2決議將擴展競爭評估工具書之應用與數位化結合。下次會議中將由秘書處報告可列為工具書內案例之報告以供會員討論。

二、「合作與執法第三工作小組」(WP3)會議

6月5日召開WP3第127次會議，由競爭委員會主席Dr. Frédéric Jenny先生主持，討論議題包括：

(一)「寬恕政策之挑戰與協調」圓桌會議(Roundtab1e on Cha11enges and Coordination of Leniency Programme)：

1、本議題共有我國在內的23個國家提出書面報告，主要討論各國競爭法主管機關對寬恕政策之施行經驗、挑戰、執法策略及改進建議。會議共區分四大主題：寬恕政策成功與失敗之因素、寬恕政策與其他政策之關係、寬恕政策之策略運用及寬恕政策之跨國案件國際合作。

2、OECD秘書處資深專家先報告背景文件，略以：

(1) 運用寬恕政策的基本理由在提高卡特爾之偵測及嚇阻卡特爾行為，提升執法效能。有效之寬恕政策條件尚需包括：偵測之高風險、重大之處分及透明與可預測之結果。

(2) 近年來其他政策之施行對寬恕政策所造成之挑戰包括：(1)個人自行提出卡特爾損害賠償民事訴訟時，可能要求法院公開寬恕政策申請人所提供之資料。(2)卡特爾案件刑事化會增加或抑制寬恕政策之申請？(3)競爭法主管機關與卡特爾成員之和解政策雖與寬恕政策概念不相互牴觸，但其目標確不相同，可能降低申請意願。

(3) 另外，寬恕政策在國際合作上的挑戰包括：在多個國家提出申請之成本，處理法律文件之需求及各國保留制度不同，都可能造成申請意願之降低。

3、美國華府Gibson Dunn律師事務所合夥人，前司法部反托拉斯署負責刑事起訴之副署長Scott Hammond律師報告寬恕政策之發展趨勢，略以；

(1) 近年來寬恕政策申請數量下降的理由在於：在美國僅能有一家申請後可以得到「完全免刑事處分」，且各國同時對同一案件進行調查也使寬恕政策申請成本激增，競爭法主管機關對於罰鍰的計算方式成功協調，避免雙重處分。

(2) 競爭法主管機關對於寬恕政策申請人的最重要原則是：不能讓申請者比那些對抗者處於更劣勢之地位，但近年來卻是申請人因為受害者的個人民事訴訟

而使申請者曝露之風險增加，競爭法主管機關保護申請人自我提供罪證的能力在下降，此一現象正如殺雞取卵一樣。競爭法主管機關必須推動保護申請人之立法或政策，減少申請人因為私法行動而造成之曝光風險。

(3) 建議競爭法主管機關應拒絕強迫申請人為了國際合作而簽署「拋棄權利聲明書」(waiver)，及推動政策儘可能保護機密資料。

(4) 可預測得到的刑事處分可能是申請寬恕政策的最大誘因，也可能是最不利的誘因，智利競爭法主管機關FNE的做法可為各國之模範：由1位公正無私之獨立檢察官統籌，與國會合作通過對卡特爾的刑事處罰，並同時保護FNE寬恕政策之整體性及寬恕政策之透明化，包括寬恕政策加1(amnesty plus one)、罰金及刑事責任，以及確保智利與全球反托拉斯界、各國事業及智利人民對執行寬恕政策之信心。

4、都柏林科技學院助理講師Catarina Marvão報告歐盟對於寬恕政策之執行現況及之未來建議設計，略以：

(1) DOJ前副署長Scott Hammond曾說過：「你不能用經濟學家去抓小偷(You can't catch a thief with an economist)」，但是，如果我們可以成功的嚇阻就不會有小偷，或是他們可能會被嚇到自行投案而不必去抓。

(2) 在歐盟，如果能僅對第1個申請者減輕罰鍰，加以高額罰鍰與刑事責任，受害者可以透過寬恕政策之文件求償，便可以達到嚇阻效果。但目前歐盟的寬恕政策減輕罰鍰額度高達總罰鍰之52%，有些案件，如汽車零件案，所有廠商都獲得寬恕及和解。有研究指出，此一現象對卡特爾成員太過寬容。

(3) 在歐盟，罰鍰雖然很高，但卡特爾仍不間斷，有時候政治力介入，如銀行會因「太大而不能罰」，且歐盟目前並無刑事責任之嚇阻力，廠商也學會如何玩弄寬恕政策而不受處分。2014年歐盟損害行動指令(2014 EU Directives on Damage Actions)限制了申請人的部分責任，也限制了受害者對寬恕政策申請人所提供的文件之閱覽權利。此一結果降低嚇阻效果，增加了卡特爾形成之風險。

(4) 目前歐盟的現況就是，雖然提高罰鍰，但是過度使用寬恕政策及罰鍰減免額度，且限制了使用寬恕政策的陳述及文件做為損害賠償訴訟使用，歐盟應引進刑事責任以強化嚇阻力量，或是引入更多工具，例如結構性補救措施、偵測或檢舉獎金等。

5、同為美國前司法部反托拉斯署負責刑事起訴之副署長，現任香港競爭委員會(HKCC)執行長之Brent Snyder報告國際卡特爾調查中寬恕政策激增之挑戰，略

以：

(1) 有效執行寬恕政策的重點在於：創造強烈的申請有利誘因及不申請時的嚴重後果，但一定要有透明化及可預測結果，如果有任何疑慮必須對申請者做有利之解釋，且僅能做合理必要之要求。

(2) 各國採用寬恕政策及民事求償的激增對於國際卡特爾的調查所產生的挑戰可能有：合作的時間與成本太高，太多的民事案件曝光風險，及當事人必須在每一個國家中申請的風險。

(3) 可能的補救措施為：

- 各國的調查程序及實質項目之整合：如保留標準、提供文件之截止日期及內部調查要求等。
- 不一定要有機密拋棄權利聲明書
- 更專注於實質調查。
- 更強力的申請人機密保護制度。
- 引進獎勵吹哨者制度。

6、主席對本會報告所提問題為：請說明貴國吹哨者政策(反托拉斯基金)與寬恕政策之關係。本會代表答以：公平法於2011年引進寬恕政策，但因國內廠商之文化不容背叛者，廠商擔心受責難而不願意申請寬恕政策。為鼓勵第三方知情人士，特別是公司職員，有足夠之誘因舉發違法行為，在2015年立法設立反托拉斯基金，對提供證據足以偵測調查聯合行為者發放檢舉獎金，最高可達新臺幣5千萬元(約170萬美元)。本會至今已發出4筆總計超過2萬2千美元，最近一筆剛於數日前才發出。

(二)「設計及測試有效消費者面向之矯正措施」圓桌會議(Roundtab1e on Designing and Testing Effective Consumer-Facing Remedies)：

1、本議題主要在討論競爭法主管機關如何在廣大的消費者面向市場中針對需求面競爭問題設計矯正措施，並聚焦於需求面問題(如交易與轉換成本、行為面偏誤或限制消費者做出交易決定的情境因素)、供應者將會惡化自身與消費者互動所生的需求面問題。

2、本議題邀請3位專家參與討論：英國競爭與市場局(CMA)資深科長Adam Land先生，英國East Anglia大學教授Amelia Fletcher女士及英國金融行為局Stefan Hunt博士。會中討論各種不同型態的矯正措施，包括：要求廠商提供消費者資訊的簡單方式、要求廠商提供第三方資料、可能對價格訂定的管制等。

3、與會專家認為，消費者在需求面必須能得到充分之訊息(價格、品質、服務等)，

評估所得到之訊息後做出理性之選擇，或在評估轉換成本後決定是否轉換其原來已做之選擇。但消費者經常無法得到充分訊息而無法做出必要之選擇；而供給者經常提高資訊搜尋成本，或提高轉換成本，使消費者面臨資訊不對等之困境或轉換成本過高之困難選擇。競爭法主管機關在審核結合案件時，應針對資訊不對等提高資訊揭露之補救措施，改善消費者認知及瞭解，提高消費者對產品比較之程序，以能對更多消費選擇做出決定。

4、本次會議中有與會國家指出，在設計結合矯正措施時應納入行為面考量，且漏未考量消費者選擇亦將侵蝕矯正措施有效性的基礎。另本次會議亦針對不同型態的矯正措施，包含要求廠商提供消費者資訊、要求廠商提供資料予第三方比較網站，及對價格訂定的潛在管制等，以及競爭法主管機關何時可採用消費者面向的矯正措施、如何判斷所遭遇的需求面問題、如何選擇及測試該等矯正措施等問題進行討論。本次會議專家均指出設計需求面矯正措施應該謹慎，並應該在履行前進行事前測試。

(三) 監督實施有關「打擊惡性卡特爾有效行動建議書」：主席請各國代表在本年7月31日前將修正建議提交秘書處，俾於本年10月中提出第2次修正草稿供下次會議討論，CC預定在明(2019)年上半年完成修訂目標。

(四) 未來討論議題：下次圓桌會議將討論與調查程序與透明化議題有關之「反托拉斯調查中資研保密特權之處理」(Treatment of Privileged Information in Antitrust Investigations)。

三、「競爭委員會」(CC)會議

6月6日至6月8日舉行「競爭委員會」(CC)會議，會議由CC主席Dr. Frédéric Jenny先生主持，討論議題如下：

(一)「結合之非價格效果」圓桌會議(Roundtable on the Non-Price Effects of Mergers)：

1、結合不僅影響價格競爭，也可能對品質、多樣性及創新等面向產生影響，競爭法主管機關在實務上分析這些效果常面臨挑戰。競爭法主管機關受限於時間及資源，通常需優先處理非價格面向的影響，並辨識非價格效果相較於價格效果是否立於輔助的角色。因此，本次會議主要在探討結合對創新、品質(含多樣性及隱私權)等非價格效果的影響，價格與非價格效果間的互動，及競爭法主管機關在結合實務上如何評估這些非價格效果、在哪個審查階段(市場界定、競爭評估、效率考量、矯正措施設計等)進行評估與所面臨的挑戰(如量化及設

計矯正措施)等，並邀請Jorge Padilla、Orla Lynskey等專家進行專題報告。本議題共有22個國家、BIAC及國際消費者協會提交書面報告

2、秘書處報告：

(1) 結合對創新影響：互補性R&D資產合併、規模增加等為創新效果的增項，因競爭減少致創新誘因降低為創新效果的減項。實務上可參考創新對於結合事業及消費者的重要性、哪些事業正承擔或有能力承擔創新，事業的競爭本質為何、如何連結至產品市場、結合的原因及對創新產能的影響等面向，進行評估。

(2) 結合對品質影響：有利產品轉換的潛力、規模或效率性等為提升品質效果的增項，消費者選擇促使品質(含多樣性)單方面改變的潛力為品質效果的減項。實務上可參考消費者重視哪些品質面向、事業間品質競爭的本質為何及如何連結至價格競爭、結合的原因及對品質的影響。

(3) 實務上面臨的挑戰：當非價格效果具相當重要性時，競爭法主管機關面對免費服務、管制價格與頻繁的產品轉變等情形，應如何評估其效果?又價格效果及非價格效果同時存在時應如何分析?在結合審查的哪個階段考量非價格效果?

3、Compass Lexecon顧問公司Jorge Padilla博士報告結合對創新之影響，略以：

(1) 結合是否影響創新關鍵問題為：水平結合會否減少參與結合事業對產品或製程創新的投資誘因?水平結合是否總是降低前述誘因或存在特定前提?水平結合會否影響參與結合事業參與產品或製程創新的能力?競爭法主管機關及法院如何平衡水平結合對創新產生潛在促進競爭及反競爭效果？

(2) 水平結合確實可能使參與結合事業投入創新誘因降低，但並不是所有個案皆如此。水平結合會產生研發及財務綜效，故水平結合能提高參與結合事業投入創新的能力。其次，在平衡水平結合對創新所產生的促進競爭及限制競爭效果方面，競爭法主管機關在調查結合對創新的效果時應該抱持開放的態度，因個別結合案可能產生減少或促進創新的結果。競爭法主管機關應論證水平結合對參與結合事業投入創新的淨誘因效果為負，始能免除其舉證責任。

(3) 再者，水平結合對參與結合事業創新能力的影響，應視其經營情形及有無其他效率抗辯而定。另在結合行為對品質及多樣性的影響部分，與前述分析大同小異。

(4) 至於結合對隱私權的影響，P氏聚焦於結合對隱私條款的影響，並探討結合如何允許廠商建置一特殊的資料庫，供其抬高價格或更有效率地進行價格歧視

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4、英國倫敦經濟學院Orla Lynskey教授報告「結合管制中之資料隱私權」，略以：

(1) 近來許多文獻探討資料的使用、蒐集及其衍生議題，而資料在競爭評估上可被視為進入障礙及市場力量的來源。資料隱私權在結合案所扮演的角色為品質、競爭背景的一部分。

(2) 競爭法主管機關在結合審查所面臨的挑戰有如何建構標準來評估品質、分析如何貼近消費者選擇。

5、與會國家經驗分享

(1) 日本在會中分享2016年半導體設備業者Lam Research Corporation 及KLA-Tencor Corporation的結合案例。日本公平交易委員會(JFTC)在該案中認定參與結合事業因結合而能分享資訊秘密，但對研發為負面衝擊且投入有無法回收的可能性，將產生實質上限制競爭效果。

(2) 美國：事業因結合而能降低成本、提升效率，進而可能導致價格降低、產品品質提升及創新投入。美國水平結合原則(Horizontal Merger Guidelines)詳盡地指出競爭的非價格因素及這些因素在競爭法主管機關審查結合案件時如何應用。該國與會代表並分享在個案中如何處理研發過程的不確定性問題。

(3) EU：在歐盟結合規範架構下，結合的非價格效果與價格效果同等重要。歐盟在進行結合案之相關市場評估(含競爭評估及潛在效率)會考量非價格因素，例如：結合可能產生的創新、品質、資料保護及隱私權等效果。近來在農用化學品產業相關結合案，創新效果亦扮演重要角色，如：Bayer及Monsanto結合案。

(4) 英國：英國競爭和市場管理局(CMA)在審查結合係依損害理論評估其非價格效果，且CMA就數量、服務品質、產品範圍、產品品質及創新等訂有相對應的規範。當競爭與結合評估所重視的品質、範圍、服務、價格等其中之一或二者(含)以上有關，且有價格競爭不存在或不重要、雙邊市場有單邊不用付費等情形時，CMA會考慮靜態的非價格效果。CMA在Phase 1及Phase 2結合審查所有階段(如市場界定、競爭評估及效率)均可能考量非價格效果因素，且會廣泛地參考各種證據，例如：事業文件、第三方(主要消費者及競爭者)文件與相關產業報告、事業與第三方所蒐集資料及消費者調查等。CMA同意價格相較於部分非價格因素(如服務品質)易於衡量，但也指出特定的量化方式可用來間接衡量品質。

(5) 韓國：以航空業結合案為例，說明韓國公平交易委員會在平衡共同經營所產

生的反競爭效果及效率時，如何同時考量價格及非價格效果。另該國在評估該結合案的非價格效果曾使用QSI模型進行量化。

(6) 主席對我國提問之問題為「請分析結合多元化(variety)」，但因會議時間有限，故未於會中提問及報告。

(二)「電子商務與競爭」圓桌會議(Roundtable on E-Commerce and Competition)：

1、 本議題探討的主要議題有：(1)電子商務市場界定及競爭動態(含消費者購買模式的轉變及對製造商、經銷商間關係的影響)；(2)線上零售業之垂直限制；(3)電子商務中的濫用市場地位及其他管制方法。本次會議計有包括我國在內的23個國家及歐洲消費者聯盟(BEUC)、BIAC與國際消費者協會提交報告。

2、倫敦經濟學院Niamh Dunne教授報告背景文件「競爭政策於電子商務之應用」(Implications of E-commerce for Competition Policy)，略以：

(1) 此處「電子商務」係指產品銷售供最終消費者使用過程中所產生的零售價值鏈，常見的商業模式有垂直整合、線上銷售等。

(2) 電子商務市場的動態競爭包含：(1)擴大消費者選擇範圍：如擴大地理區域及提升價格透明度，但也可能同時發生搭便車之行為；(2)以消費者資料為中心及作為關鍵投入而客製化服務，顧客資料將成為必要之設施或成為市場進入之障礙；(3)以廣告為中心，利用所搜集到的資料客製化且針對性的廣告，且廣告與數位化連結等。

(3) 電子商務垂直限制領域常遇到的典型問題為:線上與實體銷售是否同等對待；防止搭便車行為是否為限制價格競爭行為？其他垂直交易問題常見的有尚選擇性配銷、維持轉售價格、線上與實體通路之價格差異、禁止線上銷售、最惠客戶條款等;單方行為部分Niamh Dunne則討論市場優勢地位應由市場界定、市場力面向，分析電子商務市場中是否存在優勢地位廠商。可能的損害理論包括：掠奪性定價、拒絕供貨或交易、搭售、價格擠壓、強迫搭便車、歧視性手段、剝削行為(價格歧視、中間市場超額定價等)。

(4) 在水平勾結方面，包括演算法勾結(algorithm in collusion)與軸輻網絡勾結(“hub and spoke” collusion)等。他指出可能的管制面向分為：(1)特定主題式管制(issue-specific regulation)，優點是確定且準確，但缺乏彈性且需要政治力之支持；(2)消費者保護與資料保護法規範(Consumer Protection/Data protection Laws)，特別是針對最終消費者及自然人的隱私保護；(3)準「公用事業」管制(quasi-utilities regulation)，但是否需要像一般公用事業一樣，對於一些「必要的」數位平臺事前即進行管制仍有待討論。

3、Latham & Watkins法律事務所Lars Kjolbye律師報告電子商務產業中科技的破壞性與競爭(Technological Disruption and Competition)，略以：

(1) 他首先說明科技如何改變產業價值鏈：從傳統的研發、銷售到售後服務之垂直關係，改變為相互回饋聯結更複雜的點線面「value star」關係，但也會讓演算法讓廠商不用協議及人類接觸下達成且持續勾結行為。因此，我們應多加關注瞭解技術本質、應用挑戰、線上市場競爭及勾結機制的設計。

(2) 在傳統法律規範中，經銷商是獨立銷售供貨商之產品，代理商不必承擔任何經營風險，但從數位發展觀點而言，經銷商及代理商皆為獲利單位且相互爭取零售利潤及佣金，供貨商可自由決定供貨價格。電子商務市場係由連結銷售者及購買者的中介平臺(intermediation platform)構成，競爭的關切點即可能在於產品銷售者間之競爭以及平臺服務者間之競爭。而如果對自己經營的商業平臺有偏袒行為必須有揭露的義務，將會使那些提供給新商品經營者的混合式平臺投資者退卻不前。

4、英國里茲大學Pinar Akman教授報告「平臺業者的最惠客戶條款及競爭法」(Platform 'Most-Favoured-Customer' (MFC) Clauses and Competition Law)，討論最惠客戶條款所引發之競爭議題及各國之不同處理方式，略以：

(1) Pinar Akman指出近來平臺業者訂定最惠客戶條款(MFC)之議題廣受各國關注。MFC條款可能產生協助購買者降低取得成本、減少投資者風險(如搭便車)等促進競爭效果，亦可能產生勾結(collusive)、排他(exclusionary)等反競爭效果。

(2) 他認為，就前述條款的執法而言，仍有部分問題尚待釐清，例如：該條款是否能被TFEU Article 101、Article 102所涵蓋，及對應損害理論與執法工具可能產生落差。Pinar Akman認為該條款所衍生的問題應以TFEU Article 102處理較佳，且在分析此種條款應採取效果為基礎的方式。

5、Oxera顧問公司Avantika Chowdhury女士報告「單方行為及管制之工具」(Unilateral Conducts and Regulatory Tools)，討論各種濫用市場地位態樣及其對消費者之損害，略以：

(1) Avantika Chowdhury提到電子商務的成長使多邊市場的重要性提升，並進一步指出平臺業者的單方行為可能致生的損害風險為何，以及其與業者的市場力有關，然對消費者的影響效果未定。

(2) 其次，以Google為例，從不同立場論辯是否對消費者產生損害。最後，Avantika Chowdhury說明電子商務的發展係以資料為核心，並述及平臺業者相關條款及對資料的使用；線上廣告市場發展方面，則探討Google及Facebook是否應該

提供消費者資料予其他廣告平臺使用之問題。

6、本議題共有包括我國在內的23個國家及歐洲消費者聯盟(BEUC)、BIAC與CI提交報告，與會國家經驗分享如下：

(1) 美國：電子商務作為零售通路的重要性與日俱增，且線上與實體市場的互動及競爭亦持續增加，故與會代表進一步說明線上與實體市場間的關係及競爭政策之應用。其次，美國的競爭法主管機關近來在評估個案廠商行為或交易產生的競爭效果時，會同時考量該行為對實體及線上銷售的影響。

(2) 英國：英國競爭與市場管理局(CMA)分享近期的電子商務相關案例(即書面報告第3.2段)，並說明在電子商務市場相關結合案中如何界定市場，以及如何評析電子商務市場中的垂直交易限制行為。

(3) 日本：日本公平交易委員會(JFTC)1991年發布「Guidelines Concerning Distribution Systems and Business Practices under the Antimonopoly」(DSBPG)，其中述及非價格的垂直交易限制行為的判斷標準；自2016年發布的「Study Group on Competition Policy for Distribution Systems and Business Practices」可發現商業模式的巨變。JFTC於2017年時根據後者的應用情形修正前者，並據其規範框架執法，與會代表也在會中分享2017年Amazon Japan案的執法經驗。

(4) 澳洲：澳洲競爭及消費者委員會(ACCC)說明國際競爭網絡(International Competition Network，ICN)垂直交易限制計畫包含一系列假設的垂直交易限制研究案(如跨平臺線上最惠客戶條款)，並研究其對競爭及潛在效率之效果。另ACCC指出針對最惠客戶條款與其他垂直交易限制，在執法上有何異同。

(5) BIAC：BIAC說明競爭法如何適用在線上市場之垂直交易限制，包含傳統工具的使用、合理原則及安全港。線上市場典型的垂直交易限制行為包含最惠客戶條款、轉售價格維持、線上銷售限制、地理區域限制及線上廣告限制等，並指出競爭法主管機關在執法時常遇到：(1)當競爭法具備足夠彈性時，未授權可使用新的法律分析方式。(2)美國反托拉斯法的合理原則可適用於大多數但非所有的案例。(3)若事業的垂直交易限制行為落在反托拉斯安全港條款範圍外，主管機關應採取個案分析，如：事業採用限制的理由及商業考量。

(6) EU：EU指出因線上市場具備網路效果的特性，故可降低廠商成本及有利於延伸其市場力量。歐盟與會代表亦分享Amazon電子書案(與最惠客戶條款相關的濫用市場優勢地位)及Google shopping案之事實及處理方式。

7、主席於第2部分討論時，請我國代表說明報告中所提之2件網路銷售垂直限制案

例。我國代表說明目前公平交易法對事業之垂直交易行為採取合理原則的規範方式，並報告2件限制線上銷售案例(即自行車製造商因限制經銷商不得於網路銷售之處分案及多層次傳銷事業限制傳銷商不得透過網路銷售傳銷商品之不處分案)事實及不同處理方式，並進一步說明本會認定該等限制行為是否違反公平交易法之重要審酌因素。

(三) 各國2017年競爭政策年度報告(Annual Reports on Competition Policy)：本次會議共有26國提交2017年度競爭政策報告，並有阿根廷、奧地利、墨西哥、以色列及保加利亞於會中提出口頭報告。

(四) 希臘同儕檢視(Peer Review of Greece)：希臘曾於2001年接受OECD競爭委員會同儕檢視，本次係在2017年提出申請再次接受檢視。會中由智利、韓國、葡萄牙及瑞典擔任檢視人，分別就執法、倡議、機關與資源及執法優先順序與效能等提問，由希臘競爭委員會(Hellenic Competition Commission，HCC)主任委員Dimitrios Kyritsakis先生親自主答。

(五)「市場集中度」聽證會(Hearing on Market Concentration)：

1、本議題將討論市場集中度是否正在某些國家中改變，改變之因素為何，及競爭法主管機關如何因應這些改變。本議題共分3大部分討論：(1)市場集中度是否有改變？(2)如何衡量市場集中度及這些衡量方法是否可靠？(3)全球市場集中度之變動趨勢為何？競爭法主管機關之做法為何？

2、會議邀請日本公平會前委員，一橋大學小田切宏之(Hiroyuki Odagiri)教授、美國總統歐巴馬經濟顧問委員會(CEA)主席，哈佛大學Jason Furman教授、美國聯邦交易委員會前委員，喬治梅森大學Joshua Wright教授、美國美利堅大學華盛頓法學院Jonathan Baker教授及OECD科學科技創新處結構政策系之資深經濟學者Chiara Criscuolo女士共同與談。

3、OECD秘書處先就背景文件提出說明，略以：

(1) 一國的政策制訂者通常會注意經濟體或產業競爭的激烈程度，競爭法主管機關則係關注商品或服務競爭的限制程度，故市場集中度可被視為衡量市場競爭程度的工具。

(2) 在衡量市場集中度時，遇到的主要議題為何種占有率(如收入、營業活動、生產力)、哪種群體的集中度及如何衡量集中度(如CR、HHI)，而市場集中度與競爭程度間的連結仍為基礎性議題。近年來市場集中度相關研究文獻聚焦於跨經濟體的競爭程度，並指出盡量不要單獨使用集中度作為衡量指標，較好的方式是觀察不同競爭衡量指標間的一致性。

(3) 目前OECD成員之產業集中度多數呈現增加趨勢，然數位產業的發展與其他產業也存在差異。另集中度的變化部分可由生產力及創新獲得解釋，其餘可能與產業內事業參進率降低、數位產業廠商不僅併購數位產業廠商且非數位產業廠商亦併購數位產業廠商等情形有關。

4、日本小田切教授報告「市場集中度與競爭政策-在日本的應用議題」(Market Concentration and Competition Policy: General Issues with an Application to Japan)，略以：

(1) 就日本公平會1975年至2014年所蒐集之資料及日本經濟產業省普查資料進行檢視及比較，他發現市場集中度(CR)指標至少有市場界定或產業分類、範圍及如何定義廠商等問題。日本的市場集中度可能有溫和提升的情況，但並不明顯。

(2) 整體而言，日本的市場集中度有緩慢增加的情形，但不甚明顯。水平結合的確會增加CR數值，但結合及集中度的增加並非全然是負面的，且以競爭政策觀點而言，應促進新廠商的產生。

5、Furman教授認為美國市場集中度顯著上升，因此呼籲競爭法主管機關必須嚴格審核結合案件：

(1) 據1997年至2012年間統計資料及個別產業研究文獻，多數產業的集中度係增加，且越來越多廠商的獲利為正。整體資料顯示，集中度增加與市場力變大有關。

(2) 集中度減少似乎對流動性及經濟體動態變化減少產生影響，也減緩生產力成長速度。部分集中度增加係緣於政策改變。

(3) Jason Furman提出下列政策建議：(1)效率的改善、無市場失靈致無使用產品市場政策需求等，會影響市場集中程度或減少流動性。(2)市場集中度的變化或流動性減少係政策結果，故不好的政策應加以調整。(3)效率及政策所導致的集中度增加是最棘手的情形。

6、喬梅森大學Joshua Wright教授以「朝向更瞭解市場集中度：衡量結合政策之有效性」(Towards a Better Understanding of Concentration: Measuring Merger Policy Effectiveness)報告，他認為：

(1) Furman教授之實證研究結果推論並不能證明反托拉斯執法過於寬鬆或經濟受到影響，且競爭法主管機關是否應該因此而改變結合審核方式，也言之過早，集中度與競爭應分別看待及衡量。

(2) Joshua D. Wright從集中度、市場力及反托拉斯執法等實證資料分析，發現並

無明顯證據可佐證目前的結合審查過於寬鬆或嚴格。他認為回顧結合案例對結合審查政策的擬定仍有侷限性。

7、Jonathan B. Baker教授報告「美國的市場力及市場集中度」(Market Power and Market Concentration in the US)，他認為：

(1) 政府未能有效制止反競爭協議、結合與排他行為，且因為市場力是持久的，政府對競爭的限制增加，加上優勢資訊科技平臺的興起、寡占為常態且多數產業集中度增加及經濟體系調整減緩等情形，足證在美國市場力具體存在且呈現增加趨勢。

(2) 美國應強化反托拉斯原則及執法。倘若解決競爭問題最好的矯正方式是從結構面著手，則減少集中度或預防其增加不失為解決方案；若市場力或集中度造成非經濟損害為重要議題，則應強化反托拉斯執法避免其發生。

8、EC代表指出，根據2010年至2015年資料，並非所有歐盟國家的集中度均增加，且集中度增加多發生於資訊科技、運輸及金融產業。另EC認為在結合審查上，不論採取事前(Ex-ante)或事後審查(Ex-post perspective)皆各有其考量；當個案中參與結合事業獲利能力越高，則採取傳統的市場占有率門檻標準就越有可能低估結合對競爭的影響

(六)「區塊鏈與競爭」討論會(Scoping Discussion on Blockchain and Competition)：

1、主席說明，區塊鏈科技正受到越來越多的關注並引發各產業廣泛的注意。OECD各會員國也正在研究此一科技發展可影響法律與政策環境。CC為OECD第1個就此議題進行討論之委員會，以做為CC本季「數位與創新」長期討論主題之一部分。

2、會議由R3聯盟資深顧問及管制事務主任Isabelle Corbett女士報告目前最大的區塊鏈聯盟之一的R3聯盟，區塊鏈與分類帳及其自行開發的新分散式分類帳平臺(Distributed ledger) Corda，略以：

(1) R3是一個軟體聯盟，與超過200家金融機構、管制者、同業公會、專業服務廠商及科技廠商共同開發Corda，唯一為企業所設計之區塊鏈平臺。區塊鏈可使競爭廠商間合作維護一套安全的資料庫，操作可以與競爭對手對話溝通的軟體並且可以立即更新其系統而無需仰賴中介者、和解、競價或手動修正。

(2) 金融服務業未來將會被迫掉入成本陷阱，原因為：(1)老式的基礎建設會導致在資訊科技上的支出增加(如2017年全球銀行的資訊花費預估達到2,150億美元)；(2)和解及爭議解決將使廠商變得更無效率；仰賴第三方的結算與清算、貸款與證券紀錄正不可避免的驅使產業走向成本增加；無法通過身分驗證的

廠商可能面臨上億元的罰鍰；且(3)交易過程透過手動變得緩慢、繁雜且暴露於高風險。

(3) 區塊鏈可以讓金融服務業轉型，R3將驅使金融服務業採行區塊鏈並透過Corda進行更多商業交易。

3、英國倫敦帝國學院訪問學者，世界經濟論壇區塊鏈專家Catherine Mulligan女士介紹區塊鏈與分類帳、區塊鏈與交易、供給之關係及未來應用。他認為：隨著區塊鏈解決方案的發展，它需要跨越經濟邊界進行溝通，意即區塊鏈增加了公司之間的信息交換。此外，區塊鏈也創造了能夠按動態需求交付貨物和服務的個人“微小供應鏈”(Micro Supply Chain)可能性，而不必透過企業進行交易。

4、Norton Rose Fulbright 法律事務所合夥人Mark Simpson律師報告區塊鏈與競爭法執法之關係，略以：

(1) 資訊的取得是市場運作及競爭之基本要素，且可以提升消費者福祉，因為：(1)它可以解決資訊不對等，(2)透過有效之基準評價，提升內部效率，(3)有效管理存貨，及(4)促進消費者之選擇。

(2) 區塊鏈同盟的目標在改善交易起源、促進有效交易及提供更廣泛之服務，但是其外溢風險可能為：

- 因為涉及直接競爭者，可能增加了同一或相關市場勾結的機會。此一風險與傳統合資研發計畫討論情況相類似，緩解之策略可能包括：尋求外部專家顧問之建議、聘請公正的團隊與簽訂資訊分享協議、運用外部顧問或非競爭對手之參與者審核資訊。
- 集體杯葛－參與者對於其他人尋求加入同盟的權利義務範圍須予以明白規範。
- 標準制定－須審視是否已同意的標準將封鎖或歧視競爭之技術。

(3) 對於運作中的區塊鏈，資訊交換可提升透明度，因為每一位參與者都擁有一份含有所有交易細節的完整帳本，競爭的敏感度在每一筆交易被記錄時即立即提升。但是區塊鏈同盟可透過參與者的分類，而使參與人可允許取得帳冊內容有所不同，因而提供不同機會之勾結。

(4) 例如：智慧契約可以透過區塊鏈平臺來運作限制性協定，如聯合定價或維持轉售價格。價格運算行為，如Pioneer、Philips及ASUS維持轉售價格案，已在2017年受到歐盟競爭總署之調查，2018年美國司法部也對操控虛擬貨幣案啟動刑事調查。

(5) 競爭法主管機關對於此一議題應考量是否需有新的管制法規，或制訂新的指

導原則，甚或考慮訂定監理沙盒以免對試驗中之創新不當懲罰。

5、法國巴黎第1大學副研究員Thibault Schrepel博士報告區塊鏈與單方行為；

(1) 區塊鏈是否具優勢地位應以6項選項觀察：本身是否具優勢地位、使用者人數、交易紀錄數量、使用者之市場地位、管理型態、應用型態。

(2) 對於公共區塊鏈(public blockchain)，所有在此區塊鏈上長期存在的做法都是公開的，而且所有的人都可看到。大多數的單方行為，如搭售、獨家交易，都必須以某種方法呈現在協定中實施，且要修訂協定是非常困難的事。因此在目前公共區塊鏈中有限制競爭的單方行為之機率是相當低的。但在私人區塊鏈(private blockchain)中則不一定會呈現，協議也可能隨時改變，所以限制競爭的單方行為出現的機會是相當高的。

(3) 在管制方面，管制時機應置於科技發展以後，但應對於善意行為進行管理，設定某些「安全港」行為態樣，以保障科技之創新。

6、挪威銀行特別顧問Peder Ostbye先生報告虛擬貨幣市場中之聯合行為與排他行為，略以：

(1) 虛擬貨幣可以提升傳統金融競爭，但也因為防範刑事犯罪及消費者保護而必須予以管制，如何平衡虛擬貨幣市場競爭與管制是管制機關一大課題。

(2) 某些虛擬貨幣相對於其他虛擬貨幣可能較有市場力而做出限制競爭之行為，例如排他行為或剝削行為及經營者與投入者間之垂直限制行為、收取超額交易費用、及限制競爭之結合等。

(3) 競爭法主管機關在處理虛擬貨幣問題上之挑戰首在方法，尤其是虛擬貨幣之管理架構迥異於傳統產業，如何分析競爭與評估市場力是一大問題。

(4) 第二項挑戰在於競爭法之適用。在實體議題上，誰應是競爭法之適用主體，如何區分共同效果及單方效果，如何決定市場支配力及如何判定結合等。而在執法方面，如何處理匿名經營者及跨境經營者，及如何確定正確的矯正措施等，皆為競爭法主管機關應面對之執法問題。

(七) 參與者計畫核准(Approval of Participation Plan)：本節會議討論委員會議2019-2020參與者計畫，僅限會員參加。

(八) 競爭委員會全球關係與推廣活動(Global Relations and Outreach Activities)：

1、會議由韓國及匈牙利報告2個區域中心2016-2017年之活動、OECD秘書處報告2017年6月至2018年6月全球關係之現況、2017年全球競爭論壇(GFC)與2017年OECD/IDB(美洲開發銀行)共同舉辦之拉丁美洲論壇參與者評鑑報告。

2、另2018年GFC將於11月29日及30日兩天舉行，預定討論題目為：(1)競爭與公平

(Competition and Fairness)，(2)競爭與智慧財產權(Competition and Intellectual Property Rights)，(3)區域協定與競爭(Regional Agreement and Competition)，(4)競爭與性別平等(Competition and Gender Equality)。另秘書處將於會議期間擇期舉行第2次東亞高階官員會議及中東與波斯灣區阿拉伯國家(Middle East and Gulf States)競爭法官員會議。

(九) 長期討論主題(Long-term Themes)：CC將於2019-2020討論下列3主題：競爭與智慧財產權、競爭中立及程序公平。

(十) 未來工作：

1、下次例會將於本年11月與全球競爭論壇合併舉行，預定會議日期及討論題目為：

(1) 11月26日(星期一)上午：WP2會議，討論「健保改革之挑戰」(Challenges of Reforming Health Care)。

(2) 11月26日(星期一)下午：WP3會議，討論「資研保密特權之處理」(Treatment on Privileged Information)。

(3) 11月27日(星期二)：CC會議，上午討論偷跑行為(Gun-jumping)之處理，下午討論藥品產業之超額定價(Excessive Pricing on Pharmaceutical Industry).

(4) 11月28日(星期三)：上午CC與消費者委員會(Consumer Committee)聯席會議，討論議題可能為：個人化定價(Personalized Pricing)或市場價格為零之品質(Quality on Market Price of Zero) ，下午為對巴西同儕檢視。

(5) 11月29-30日：全球競爭論壇。

2、未來討論主題：2019年6月CC會議預定討論電信及媒體業之垂直結合(Vertical Merger on Telecom and Media)及結合之共同效果(Coordinated Effects on Merger)。

參、IMF-OECD-WB「第1次結構性改革會議」

6月11日出席國際貨幣基金、OECD及世界銀行共同舉辦之「第1次結構性改革會議：產品市場競爭、規範及包容性成長」(1st Joint IMF-OECD-World Bank Conference on Structural Reforms: Product Market Competition, Regulation and Inclusive Growth)：本會議主要討論: (1) 1990年以來產品市場競爭的特性及變遷；(2)生產力成長、創新及所得分配的影響；(3)競爭政策及市場管制的意涵；會議討論情形如下：

一、開幕式：由OECD政策研究處經濟組組長Luiz Mello及國際貨幣基金首席經濟學者辦公室資深顧問Romain Duval代表主辦單位歡迎各場次主持人、報告人、與談人及與會代表。

二、高階官員與談：主題為「變動世界中之產品市場競爭與管制」(High level panel: Product market competition and regulation in a changing world)，由OECD經濟處政策研究組主任(Director, Policy Studies Branch, Economics Department, OECD) Luiz de Mello先生主持，與談人包括：

(一) 法國學院及倫敦經濟學院Philippe Aghion教授討論市場集中度與生產力減緩之關係。他認為從1997年至2007年間市場集中度明顯增加，生產力降低，尤其是在資訊科技產業、金融服務業、交通及公用事業。生產力降低明顯反映在勞動力占生產力的份額(從68%降為58%)，市場動態變化減緩等事實，他建議政府應強化競爭政策及採行反托拉斯法規，以規範全球化廠商及新興網路產業。

(二) 墨西哥聯邦經濟競爭委員會(COFECE)主任委員Alejandra Palacios女士認為市場集中度增加引發對於競爭之關切問題。她以墨西哥為例，說明墨國過去市場高集中度現象是因為未嚴格執行競爭法(結合及限制競爭之規範)及特權之關係。墨國將在2018至2024採行「競爭－成長之平臺」(Competition, A platform for Growth)以消弭聯邦法規所引起之限制競爭，及提升在某些特定市場，如金融服務、油品、藥品及農產食物等市場之競爭。

(三) 歐盟競爭總署副署長Gert-Jan Koopman先生認為，歐洲所關切的並非市場集中度增加問題，而是邊際利潤率(profit margin)未提升的問題。他指出，勞動力份額降低是因為全球經濟衰退的緣故，在歐洲也沒有超級巨星產業或廠商的問題，而且在過去10年內歐洲也未有生產力降低的明確證據，歐洲的競爭也因為歐盟競爭法確實執行而受到保護。

(四) 美國前聯邦通訊委員會首席經濟學家、美利堅大學華盛頓法學院Jonathan Baker教授認為競爭法執法才是關鍵，對於相關市場應進行競爭評估。

二、第一節：「競爭、管制與生產力」(Competition, regulation and productivity)，由世界銀行總體經濟學、貿易及投資全球行為首席經濟學者(Lead Economist, Macroeconomics, Trade and Investment Global Practice, World Bank)Ivailo Izvorski先生主持，報告人包括：

(一) 世界銀行資深經濟學者Ana Cusolito女士報告「競爭、科技投資與生產力」(Competition, Technological Investment, and Productivity)；探討在智利競爭對於生產力之影響及投資(實體與研發相關投資)之角色以解釋此一影響。

(二) IMF首席經濟學者辦公室資深顧問Romain Duval先生報告「產品市場解除管制，貨幣政策與無形投資：從全球金融危機廠商層面之證據」(Product Market Deregulation, Monetary Policy and Intangible Investment: Firm-Level Evidence

from the Global Financial Crisis)，認為經濟循環穩定政策有助於金融脆弱的公司在全球金融危機後繼續投資無形資產，特別是在競爭較激烈的產業。

(三) 世界銀行廠商生產能量及創新全球單位經理Paulo Correa先生報告「量化廠商層面生產力經濟扭曲效果」(Quantifying the Effects of Economic Distortions on Firm-level productivity)，以其所蒐集之廠商問卷資料探討當資源被扭曲時，廠商如何進行選擇及對生產力之影響。

(四) 本節邀請OECD科學、科技及創新處生產力及企業動態組組長Chiara Criscuolo女士及葡萄牙銀行經濟學家Ana Fontoura Gouveia擔任評論人。

三、專題演講：由芝加哥大學經濟學系副教授Ufuk Akcigit先生報告「競爭、創新及成長最新實證研究趨勢」(Recent Empirical Trends on Competition, Innovation and Growth)，討論市場集中度之增加對事業動態發展、總體成長之影響。

四、第二節：「服務業之競爭與管制結果」(The consequences of competition and regulation in services)：由歐洲重建及發展銀行首席經濟學家(Chief Economist, European Bank for Reconstruction and Development) Sergei Guriev先生擔任主席，報告人包括：

(一) 世界銀行資深經濟學家Mariana Iootty女士報告「歐盟之服務業：何種管制政策強化生產力？」(Services in the European Union: What Kinds of Regulatory Policies Enhance Productivity?)。2016年世界銀行資料顯示之歐盟服務業生產力下降落後於美國，她對此以2006-2014年資料進行實證研究，探討歐盟境內各國對於服務業管制政策影響，結果顯示對行為之規範對服務業影響最為顯著，如能降低對於服務業之管制則可提升其生產力。

(二) 西班牙銀行資深經濟學家Monica Correa-Lopez女士報告「服務管制、投入價格及出口數量：從一組製造廠商所得之證據」(Service Regulations, Input Prices and Export Volumes: Evidence from a Panel of Manufacturing Firms)，探討服務業解除管制對於中間投入財價格之影響。她認為解除管制可降低中間投入財(intermediate inputs)之價格，而好的服務業管制可產生對競爭有利之成本效果，特別是下游廠商為大型廠商時效果更顯著。

(三) 另邀請OECD經濟處資深經濟學者先生Tomasz Kozluk先生及歐盟經濟與金融事務總署副署長Erik Canton先生擔任評論人。

五、第三節：「21世紀中之市場占有率、經濟租及管制」(Market Shares, Rents and Regulation in the 21st Century)，由OECD經濟處政策研究組副組長Alain de Serres先生擔任主席：

(一) 先由比利時荷語魯汶大學Jan De Loecker教授專題演講，討論資源配置與市場力(Resource Allocation and Market Power)之關係。

(二) 另由美國John Hopkins大學經濟學系教授Anton Korinek先生報告「超級巨星之總體經濟學：數位化、市場力及管制因應」(The Macro-Economics of Superstars: Digitization, Market Power, and Regulatory Responses)。資訊科技可以使少數個人供應整個市場而獲取大量利益，「超級巨星」一詞已成為許多產業的特殊現象。他認為，超級巨星的興起是數位化的自然結果，他們蒐集、處理及提供大量資訊，數位創新也讓廠商及企業家運用微不足道的成本複製科技，取代了傳統勞力及資本，數位創新更壯大了超級巨星效果。自由市場經濟因為數位創新不足及低產出而造成獨占扭曲現象。他建議政府應該運用公共投資資助數位創新，降低獨占之經濟租，並且加強國際合作(全球性超級巨星亦即全球獨占商)，考量新的國際貿易政策。

(三) 世界銀行市場及競爭政策組首席經濟學家Martha Martinez Licetti先生報告「21世紀中之市場占有率、經濟租及管制」(Market Shares, Rents and Regulations in the 21st Century)。他認為許多開發中國家管制政策並未有效針對市場機制失靈，OECD-WBG資料庫可協助釐清未針對市場失靈產品及過度限制競爭的市場管制。

(四) OECD秘書處競爭組資深經濟學者Sean Ennis先生報告「產品市場管制改革：操作方法及量化」(Product Market Regulation Reform: Operation Method & Quantification)。政府對於勞動及產品市場的結構改革通常都僅針對產業經濟學所討論的管制限制及影響，而OECD則建議以競爭評估工具書(Competition Assessment Toolkit)進行評估，檢視管制是否限制競爭條件，及選擇備用方案是否較低競爭限制。此一評估自2013年開始已在希臘、羅馬尼亞、墨西哥及葡萄牙採用，檢視超過15個以上的產業。

肆、心得與建議

一、OECD 本次討論「計程車與叫車軟體市場」、「電子商務與競爭」及「區塊鏈與競爭」等議題皆與數位經濟發展議題有關，本次會議內容將上傳本會 BBS 網站「會務資訊區」之「數位經濟專區」，以供本會同仁參考。

二、OECD 會議議題豐富且先進，討論深入，本會應在預算許可下多派員出席本項會議，以培養同仁對各項議題之視野及思考方向，作為執法之參考。

三、本次會議資料相當豐富，所討論議題皆與本會執法息息相關，討論內容可作為本會執法參考。為利同仁瞭解，會議相關文獻將建置於本會 BBS 網站供同仁參閱。

Organisation for Economic Co-operation and Development

DAF/COMP/WP2/A(2018)1/REV2

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29 May 2018

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Cancels & replaces the same document of 28 May 2018

Working Party No. 2 on Competition and Regulation

Draft Agenda: 65th meeting of Working Party No. 2

4 June 2018, CC13

The 65th Meeting of the Working Party No. 2 will be held on 4 June 2018 in Room 13 of the OECD Conference Centre, 2 rue André Pascal, 75116 Paris.

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JT03432601

Monday 4 June 2018

10:00-10:05

Item 1. Adoption of the draft agenda

DAF/COMP/WP2/A(2018)1/REV2

10:05-10:15

Item 2. Approval of the draft summary record of the last meeting

For approval:

Summary record of the 64th Working Party 2 meeting (December 2017) - DAF/COMP/WP2/M(2017)2

For information:

List of participants - DAF/COMP/WP2/PL(2017)2

10:15-13:15

Item 3. Roundtable on Taxi, ride-sourcing and ride-sharing services

For discussion:

Background Note by the Secretariat - DAF/COMP/WP2(2018)1

Notes by delegations:

Summary of contributions - DAF/COMP/WP2/WD(2018)1

Country contributions:

Canada - DAF/COMP/WP2/WD(2018)2

Denmark - DAF/COMP/WP2/WD(2018)3

Estonia - DAF/COMP/WP2/WD(2018)4

Finland - DAF/COMP/WP2/WD(2018)5

Hungary - DAF/COMP/WP2/WD(2018)6

Italy - DAF/COMP/WP2/WD(2018)7

Latvia - DAF/COMP/WP2/WD(2018)8

Mexico - DAF/COMP/WP2/WD(2018)9

Norway - DAF/COMP/WP2/WD(2018)10

Portugal - DAF/COMP/WP2/WD(2018)22

Spain - DAF/COMP/WP2/WD(2018)11

Sweden - DAF/COMP/WP2/WD(2018)12

Switzerland - DAF/COMP/WP2/WD(2018)13

Turkey - DAF/COMP/WP2/WD(2018)28

United Kingdom - DAF/COMP/WP2/WD(2018)25

United States - DAF/COMP/WP2/WD(2018)27

Bulgaria - DAF/COMP/WP2/WD(2018)14

Costa Rica - DAF/COMP/WP2/WD(2018)15

India - DAF/COMP/WP2/WD(2018)23

Indonesia - DAF/COMP/WP2/WD(2018)16

Lithuania - DAF/COMP/WP2/WD(2018)17

Peru - DAF/COMP/WP2/WD(2018)18

Romania - DAF/COMP/WP2/WD(2018)19

Russian Federation - DAF/COMP/WP2/WD(2018)20

South Africa - DAF/COMP/WP2/WD(2018)21

BIAC - DAF/COMP/WP2/WD(2018)26

Consumers International - DAF/COMP/WP2/WD(2018)24

This roundtable will discuss regulatory and competitive challenges raised by new companies and business models in the taxi, ride-sourcing and ride-sharing services.

The case against protectionist regulatory rules that bar innovative new entrants is now well established amongst competition authorities. These have had varying degrees of success in combatting these rules through advocacy. However the debate and the market is now moving onto the antitrust treatment of these new firms, the reform of the regulatory requirements applying to traditional taxis (to enable them to compete with the new entrants), and the future business models that may come through to challenge the new incumbents (e.g. decentralised platforms).

The discussion will focus on alternative regulatory scenarios – such as diminishing the regulatory burden on the traditional taxi services – which have been implemented or suggested to allow traditional service providers to compete with new entrants. The roundtable will also explore the impact different business models may have on competition and regulation, with a particular attention on the difference between centralised and decentralised platforms. While the former are those companies where the pricing is uniform across drivers and established only by the company, decentralised platforms are new structures in which drivers can autonomously decide the tariffs. Different business models may have consequences on the challenges competition authorities face in the future such as the risks arising from pricing that targets users individually and potential market power. The discussion will benefit from contributions from delegations, a background paper by the secretariat and the views of three expert speakers: Professor Damien Geradin (Euclid Law and Tilburg University); Professor Max Huffman (Indiana University); and Dawn Miller (Chief Technology officer at the New York City Taxi and Limousine Commission)

Lunch break 13:15-15:15

15:15-16:45

Item 4. Presentation and discussion of Open API standards in banking in the UK and the Netherlands

These presentations will look at open application programming interface (API) standards in banking. These were introduced in the UK following the recommendations of the CMA's market investigation, while in the Netherlands the ACM recently released a report looking at the foreclosure risk that is posed where Fintech firms do not have access to the information in these APIs. An industry representative will also join as a discussant.

16:45-17:30

Item 5. Revision of the Competition Assessment Toolkit and Recommendation

For discussion:

Notes by the Secretariat - DAF/COMP/WP2(2018)2

DAF/COMP/WP2(2018)3

In this item, delegates will discuss:

- The different options on how to update the Competition Assessment Toolkit in light of digitalisation and the recent survey
- Whether and how to revise the 2009 Recommendation of the Council on Competition Assessment [C(2009)130], and the 1979 Recommendation of the Council on Competition Policy and Exempted or Regulated Sectors [C(79)55/FINAL].

17:30-17:50

Item 6. Other business and future topics

Delegates have expressed in writing an interest in a number of potential future topics. The most popular thus far has been a session on healthcare. A suggested topic for November is therefore a Roundtable on "Challenges in designing and reforming healthcare and other publically-funded markets". This might look at practical issues including the relative merits of competition-for-users and competition-for-contracts; the challenges in preventing service disruption while facilitating efficient exit; and minimizing potential spillover effects on privately funded markets.

Depending on timing, there may also be an opportunity for a second substantive discussion. Other suggested topics have included rail, water, public procurement, education and state aid. Other possibilities might also include the institutional arrangements for regulators, real estate or telecoms.

Organisation for Economic Co-operation and Development

DAF/COMP/WP3/A(2018)1/REV2

For Official Use English - Or. English

4 May 2018

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Working Party No. 3 on Co-operation and Enforcement

Draft Agenda: 127th meeting of Working Party 3 on Co-operation and Enforcement

5 June 2018

The 127th Meeting of Working Party 3 on Co-operation and Enforcement will be held on 5 June 2018 (10 am to 5:40 pm) in Room 1 of the OECD Conference Centre, 2 rue André Pascal, 75116 Paris

Despina PACHNOU
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JT03431207

Tuesday 5 June 2018

10:00-10:05

Item 1. Adoption of the draft agenda

DAF/COMP/WP3/A(2018)1/REV1

10:05-10:10

Item 2. Approval of the draft summary record of the last meeting

For approval:

Summary record of the 126th meeting – DAF/COMP/WP3/M(2017)2

For information:

List of participants – DAF/COMP/WP3/PL(2017)2

Summary of Discussion of the Roundtable on the Extraterritorial Reach of Competition Remedies - DAF/COMP/WP3/M(2017)2/ANN2

10:10-13:00

Item 3. Roundtable on challenges and co-ordination of leniency programmes

For discussion:

Background paper by the Secretariat – DAF/COMP/WP3(2018)1

Notes by delegations:

Summary of contributions - DAF/COMP/WP3/WD(2018)2

Country Contributions:

Australia - DAF/COMP/WP3/WD(2018)22

Canada - DAF/COMP/WP3/WD(2018)25

Chile - DAF/COMP/WP3/WD(2018)3

Hungary - DAF/COMP/WP3/WD(2018)4

Israel - DAF/COMP/WP3/WD(2018)5

Japan - DAF/COMP/WP3/WD(2018)6

Korea - DAF/COMP/WP3/WD(2018)7

Latvia - DAF/COMP/WP3/WD(2018)8

Mexico - DAF/COMP/WP3/WD(2018)9

Poland - DAF/COMP/WP3/WD(2018)10

Portugal - DAF/COMP/WP3/WD(2018)11

Spain - DAF/COMP/WP3/WD(2018)12

Brazil - DAF/COMP/WP3/WD(2018)13

Colombia -DAF/COMP/WP3/WD(2018)14

Croatia - DAF/COMP/WP3/WD(2018)15

Egypt - DAF/COMP/WP3/WD(2018)16

Lithuania - DAF/COMP/WP3/WD(2018)17

Peru - DAF/COMP/WP3/WD(2018)18

Russian Federation - DAF/COMP/WP3/WD(2018)24

Singapore - DAF/COMP/WP3/WD(2018)19

Chinese Taipei - DAF/COMP/WP3/WD(2018)20

Ukraine - DAF/COMP/WP3/WD(2018)21

EU - DAF/COMP/WP3/WD(2018)23

The introduction of amnesty/leniency programmes is widely regarded one of the most notable developments in cartel enforcement in the last twenty years. Still, in spite of their overall success, enforcement agencies and commentators highlight that optimising the design and administration of leniency programmes, especially in cases involving parallel applications in several jurisdictions, is crucial for their continued effectiveness.

Currently, many jurisdictions are in the process of assessing the effectiveness of their leniency programme and are considering means to improve it, increase its attractiveness and strengthen co-operation with other agencies in cross-border cartel cases. Such initiatives include looking at ways to increase the predictability and transparency of the programme, enhance the incentives for co-operation between undertakings and the competition agency, introduce criminal immunity for individuals, and clarify the confidentiality protection for documents submitted as part of the leniency process.

The purpose of this Roundtable is to discuss, based on country experiences, challenges to which leniency programmes are exposed, enforcement inefficiencies, and proposals for improvements.

The Roundtable will be backed by a Secretariat background paper, written contributions by jurisdictions, and a panel of experts comprised of Catarina Marvão (Assistant Lecturer at the Accounting and Finance School of the Dublin Institute of Technology), Brent Snyder (Chief Executive Officer of the Competition Commission of Hong Kong, China) and Scott Hammond (Partner, Gibson Dunn, Washington).

Lunch break: 13:00 to 14:30

14:30-16:30

Item 4. Roundtable on designing and testing effective consumer-facing remedies

For discussion:

Background paper by the UK Competition and Markets Authority - DAF/COMP/WP3(2018)2

The purpose of this Roundtable is to discuss how competition authorities can design remedies to demand-side competition problems in mass consumer-facing markets, such as energy or retail banking. These remedies may be required to address poor market outcomes, including high prices or low service quality, that are not necessarily associated with structural concerns, such as barriers to entry. Demand-side factors, such as search and switching costs, behavioural biases, and other characteristics of consumer decision-making processes, may play a significant role.

Agencies have implemented a variety of remedies aimed at tackling these market failures. These include remedies aimed at: informing customers about the options available; developing tools, such as price

comparison websites, to help customers make a more informed choice; removing impediments to switching; or actively prompting customers to seek a better deal. In many such cases, consumer protection authorities or sector regulators have been involved in the remedy design process.

This Roundtable will consider the circumstances in which authorities can apply consumer-facing remedies, how to diagnose demand-side problems correctly, how to select consumer-facing remedies (including with reference to supply-side remedies and new technology solutions), and how to test consumer-facing remedies. The UK Competition and Markets Authority (CMA) will lead the organisation of this Roundtable and prepare the background paper. Experts will include Professor Amelia Fletcher and Dr. Stefan Hunt.

16:30-17:30

Item 5. Monitoring the implementation of the Recommendation concerning Effective Action against Hard Core Cartels

For discussion: Report by the Secretariat - DAF/COMP/WP3/WD(2018)1

At the December 2017 meeting of Working Party 3, the Secretariat presented the findings of a survey on the implementation of the Recommendation concerning Effective Action against Hard Core Cartels, showing how jurisdictions have applied it.

At the June meeting, the Secretariat will present a longer report, including, in addition to the findings from the survey, salient points out of the OECD's work on various aspects of hard core cartels in the last fifteen years. The Secretariat will also present a note proposing actions forward, including proposals put forward by delegates for revising the Recommendation.

17:30-17:40

Item 6. Future topics

In its meeting on 27 November 2018, Working Party 3 on Enforcement and International Co-operation can hold (a) a Roundtable on professional privilege and the scope for preventing disclosure of documents during competition investigations; (b) a Roundtable on gun jumping in merger cases, addressing the issue of closing notifiable transactions before their approval by the reviewing competition agency.

Delegations are encouraged to propose additional topics to be discussed in 2019.

Organisation for Economic Co-operation and Development

DAF/COMP/A(2018)1/REV2

For Official Use **English - Or. English**

28 May 2018

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Cancels & replaces the same document of 28 May 2018

Draft Agenda: 129th meeting of the Competition Committee

6-8 June 2018, CC13

The 129th Meeting of the Competition Committee will be held on 6-8 June 2018 in Room 13 of the OECD Conference Centre, 2 rue André Pascal, 75116 Paris.

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JT03432537

Wednesday 6 June 2018

10:00-10:05

Item 1. Adoption of the draft agenda

DAF/COMP/A(2018)1/REV2

10:05-10:15

Item 2. Approval of the draft summary record of the last meeting

For approval:

Summary record of the 128th Competition Committee meeting - DAF/COMP/M(2017)2

For information:

List of participants - DAF/COMP/PL(2017)2

Summary of Discussion of the roundtable on Price Discrimination - DAF/COMP/M(2016)2/ANN3/FINAL

Executive Summary of the roundtable on Price Discrimination - DAF/COMP/M(2016)2/ANN5/FINAL

The OECD Global Forum on Competition: report on the 2017 meeting - DAF/COMP(2018)6

10:15-10:30

Item 3. Report by Working Party Chairmen and Co-ordinators

The Chairmen of Working Party No. 2 and of Working Party No. 3 will report on the meetings of the Working Parties held on 4 June (WP2) and 5 June (WP3). The UNCTAD co-ordinator may report on UNCTAD related developments. The ICN co-ordinator will report on recent work and projects by the ICN.

10:30-13:00

Item 4. Roundtable on the Non-Price Effects of Mergers

For discussion:

Background Note by the Secretariat - DAF/COMP(2018)2

Notes by delegations:

Summary of contributions - DAF/COMP/WD(2018)1

Notes by experts:

Note by Orla Lynskey - DAF/COMP/WD(2018)70

Country contributions:

Australia - DAF/COMP/WD(2018)9

Belgium - DAF/COMP/WD(2018)10

Canada - DAF/COMP/WD(2018)11

Chile - DAF/COMP/WD(2018)55

France - DAF/COMP/WD(2018)58

Germany - DAF/COMP/WD(2018)12

Italy - DAF/COMP/WD(2018)15

Japan - DAF/COMP/WD(2018)16

Korea - DAF/COMP/WD(2018)17

Mexico - DAF/COMP/WD(2018)18

New Zealand - DAF/COMP/WD(2018)20

Norway - DAF/COMP/WD(2018)21

Portugal - DAF/COMP/WD(2018)50

United Kingdom - DAF/COMP/WD(2018)54

United States - DAF/COMP/WD(2018)45

EU - DAF/COMP/WD(2018)14

Argentina - DAF/COMP/WD(2018)22

Brazil - DAF/COMP/WD(2018)23

Indonesia - DAF/COMP/WD(2018)25

Russian Federation - DAF/COMP/WD(2018)19

Chinese Taipei - DAF/COMP/WD(2018)27

Ukraine - DAF/COMP/WD(2018)28

BIAC - DAF/COMP/WD(2018)71

Consumers International - DAF/COMP/WD(2018)64

Mergers can have effects on numerous dimensions of competition other than price, including quality, variety, and innovation. However, the analysis of these effects can pose several practical challenges for competition authorities. It can be challenging to identify markets in which non-price effects require substantial attention in merger review. Non-price effects play a role in all markets that competition authorities examine, but the degree to which they are fundamental to competition will vary significantly. Given the required time and resources, competition authorities may need to prioritise certain non-price dimensions, or recognise when they play an ancillary role to price in the market. The roundtable will discuss the precise interaction of price and non-price effects, when non-price effects may be relevant (from market definition, to the competition assessment, the consideration of efficiencies, and the formulation of remedies) and how these effects can be measured.

Lunch break 13:00-15:00

15:00-18:00

Item 5. Roundtable on E-commerce and Competition

For discussion:

Background Note by the Secretariat - DAF/COMP(2018)3

Notes by delegations:

Summary of contributions - DAF/COMP/WD(2018)2

Country contributions:

Australia - DAF/COMP/WD(2018)65

France - DAF/COMP/WD(2018)29

Germany - DAF/COMP/WD(2018)57

Israel- DAF/COMP/WD(2018)31

Italy- DAF/COMP/WD(2018)32

Japan- DAF/COMP/WD(2018)33

Korea- DAF/COMP/WD(2018)34

Mexico- DAF/COMP/WD(2018)35

Netherlands - DAF/COMP/WD(2018)62

Spain - DAF/COMP/WD(2018)60

Sweden- DAF/COMP/WD(2018)36

United Kingdom - DAF/COMP/WD(2018)53

United States - DAF/COMP/WD(2018)48

EU- DAF/COMP/WD(2018)61

Brazil- DAF/COMP/WD(2018)37

Colombia - DAF/COMP/WD(2018)56

Croatia- DAF/COMP/WD(2018)38

India - DAF/COMP/WD(2018)52

Lithuania- DAF/COMP/WD(2018)39

Romania- DAF/COMP/WD(2018)40

Russian Federation- DAF/COMP/WD(2018)41

Singapore- DAF/COMP/WD(2018)42

Chinese Taipei- DAF/COMP/WD(2018)43

BEUC - DAF/COMP/WD(2018)49

BIAC - DAF/COMP/WD(2018)73

Consumers International - DAF/COMP/WD(2018)63

Recent advocacy and enforcement work by some competition agencies has explored a number of competition related questions arising from the spreading of electronic commerce. This roundtable will build on the roundtable organised by the Committee in 2000 on Competition Issues in Electronic Commerce when the Internet was starting to develop as a major trading platform. It will cover issues ranging from changes in consumers' purchasing patterns and the implication this may have on the relationships between manufacturers and distributors, to competition effects of vertical contractual restrictions imposed in online sales and how they should be assessed by competition agencies, to the relationship between online platforms and the content they distribute.

Thursday 7 June 2018

9:00-10:00

Item 6. Annual Reports on Competition Policy

Delegations listed below are invited to submit their annual report for 2017. Following a recommendation by the Bureau, only some Delegations will be allocated time to make presentations on a key development that has taken place during the relevant period (e.g. a legal reform, a new policy approach, an important decision, etc.). Delegations are welcome to contact the Secretariat to suggest a topic for an oral presentation at this session if they wish to do so. The Secretariat will collect these expressions of interest and coordinate with the Chair of the Competition Committee. It will subsequently contact Delegations to ensure a consistent approach to such presentations.

Annual Reports due at this meeting:

Belgium - DAF/COMP/AR(2018)2

Czech Republic - DAF/COMP/AR(2018)3

Denmark - DAF/COMP/AR(2018)4

Estonia - DAF/COMP/AR(2018)5

Finland - DAF/COMP/AR(2018)6

Greece - DAF/COMP/AR(2018)7

Ireland - DAF/COMP/AR(2018)8

Israel - DAF/COMP/AR(2018)9

Luxembourg - DAF/COMP/AR(2018)10

Mexico - DAF/COMP/AR(2018)11

Poland - DAF/COMP/AR(2018)12

Portugal - DAF/COMP/AR(2018)13

Slovak Republic - DAF/COMP/AR(2018)14

Spain - DAF/COMP/AR(2018)15

Sweden - DAF/COMP/AR(2018)16

Turkey - DAF/COMP/AR(2018)17

United States - DAF/COMP/AR(2018)18

Argentina - DAF/COMP/AR(2018)19

Brazil - DAF/COMP/AR(2018)20

Colombia - DAF/COMP/AR(2018)21

Croatia - DAF/COMP/AR(2018)22

Kazakhstan - DAF/COMP/AR(2018)23

Lithuania - DAF/COMP/AR(2018)24

Romania - DAF/COMP/AR(2018)25

Russian Federation - DAF/COMP/AR(2018)26

Singapore - DAF/COMP/AR(2018)27

10:00-12:30

Item 7. Peer Review of Greece

For discussion:

Draft Report by the Secretariat – DAF/COMP/WD(2018)3

An In-Depth review of Greece's Competition Law and Policy will take place on Thursday 7 June morning (10.00-12.30). This review will be led by Lead Examiners and it will be open to members, associates, participants and to the European Union. The review will be performed based on a Secretariat report to be circulated in advance of the meeting.

Lunch break 12:30-15:00

15:00-18:00

Item 8. Hearing on Market Concentration

For discussion:

Note by the Secretariat - DAF/COMP/WD(2018)46

Notes by experts:

Note by Jason Furman - DAF/COMP/WD(2018)67

Note by Hiroyuki Odagiri - DAF/COMP/WD(2018)68

Note by Joshua Wright - DAF/COMP/WD(2018)69

Country contributions:

Mexico (IFT) - DAF/COMP/WD(2018)24

United States - DAF/COMP/WD(2018)59

BIAC - DAF/COMP/WD(2018)72

The Hearing will discuss whether and how concentration is changing in different countries; it will explore the consequences of these changes; and it will consider what might be driving these changes and how agencies might respond. A growing populist contention is that big is bad and that the growth of large firms with high market shares is driving up profits, damaging innovation and productivity, and increasing inequality. Some have even argued that the competition rules need to be rewritten and a crackdown by overly lenient antitrust agencies is required. The simplicity of this framing has found supporters across the political spectrum. But does it survive scrutiny? Should we be concerned with increasing aggregate concentration, how reliable is it as an indicator of market concentration? Is market concentration actually increasing? And if it is, by how much? And what can we conclude from that, what is driving the changes that we see? Does increased concentration indicate increasing market power? Or are economies of scale and network effects driving greater size and concentration without an accompanying increase in market power? Is higher concentration leading to higher mark-ups, less innovation or weaker productivity? And are these levels of concentration (and mark-up) enduring or is there churn? The Hearing will benefit from a Secretariat note and will provide a timely opportunity to discuss and hear from a range of experts on these important questions: Professor Hiroyuki Odagiri (Hitotsubashi University), Professor Joshua Wright (George Mason University), Professor Jason Furman (Harvard University), Professor Jonathan Baker (American University, Washington College of Law), and Chiara Criscuolo of the OECD.

Friday 8 June 2018

9:30-12:30

Item 9. Scoping discussion on Blockchain and Competition

For discussion:

Note by the Secretariat - DAF/COMP/WD(2018)47

Blockchain technologies are receiving increasing attention and raising significant interest from businesses across a broad range of industries. As a consequence a number of OECD communities are looking at how this technology development can affect the legal and policy environment in which they operate. As part of the long-term theme of the Committee on Competition, Digitalisation and Innovation this session will welcome external experts who will introduce the Committee to the blockchain technology and will start identifying possible competition and regulatory law issues that blockchain may raise. The purpose of this session is to offer an opportunity to the Committee to identify areas of possible future work. The discussion will benefit from a Secretariat note and a panel of experts: Catherine Mulligan (Imperial College London); Peder Østbye (Norges Bank); Mark Simpson (Norton Rose Fulbright); Thibault Schrepel (University of Paris 1 Panthéon-Sorbonne); Ajinkya Tulpule (Ferrero); and Isabelle Corbett (R3).

Lunch break 12:30-14:30

14:30-15:00

Item 10. Approval of Participation Plan [CONFIDENTIAL]

For discussion:

Global Relations Strategy and Participation Plan of the Competition Committee – DAF/COMP(2018)4

The Committee will discuss in a confidential session its Participation Plan for 2019/2020.

15:00-16:00

Item 11. Annual Reports on Competition Policy

This item will be a continuation the presentation of Annual reports under Item 6 of this agenda.

16:00-16:30

Item 12. Competition Committee Global Relations and Outreach activities

For discussion:

Note by the Secretariat on Global Relations - DAF/COMP(2018)1

A Secretariat Note will present to the Committee the outreach activities of the Competition Division. It will include: (i) the activities in the two Regional Competition Centres (Hungary and Korea) (2016-2017); (ii) a Secretariat update on OECD Global relations (June 2017-June 2018); and (iii) the results of the evaluation by participants of the 2017 Global Forum on Competition (GFC) and the 2017 OECD/IDB Latin American and Caribbean Forum (LACCF) as well as the topics for the 2018 GFC.

16:30-17:00

Item 13. Long-term Themes for the Committee

For discussion:

Scoping note by the Secretariat on Intellectual Property Rights – DAF/COMP/WD(2018)4

Scoping note by the Secretariat on Competitive Neutrality – DAF/COMP/WD(2018)5

Scoping note by the Secretariat on Procedural Fairness – DAF/COMP/WD(2018)6

The Programme of Work and Budget of the Competition Committee for 2019/2020 will include work on three long-term themes: (i) Competition and Intellectual Property Rights; (ii) Competitive Neutrality; and (ii) Procedural Fairness. In June 2018, delegates will discuss the Committee work-plans regarding these themes, based on separate Secretariat proposals.

17:00-18:00

Item 14. Other business

For information:

Future Roundtable Topics – DAF/COMP/WD(2018)7

Competition Delegates will be called to decide topics for substantive discussions to be held in December 2018. Delegates should feel free to send to the Secretariat as soon as possible any other suggestion that they would like to submit to the Committee's consideration.

Organisation for Economic Co-operation and Development

DAF/COMP/WP3/WD(2018)20

Unclassified

English - Or. English

4 May 2018

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Working Party No. 3 on Co-operation and Enforcement

Roundtable on challenges and co-ordination of leniency programmes - Note by Chinese Taipei

5 June 2018

This document reproduces a written contribution from Chinese Taipei submitted for Item 3 at the 127th Meeting of the Working Party No 3 on Co-operation and Enforcement on 5 June 2018.

More documentation related to this discussion can be found at

www.oecd.org/daf/competition/challenges-and-coordination-of-leniency-programmes.htm

Please contact Ms. Despina Pachnou if you have any questions regarding this document [phone number: +33 1 45 24 95 25 -- E-mail address: despina.pachnou@oecd.org].

JT03431256

Chinese Taipei

This paper explains Chinese Taipei's leniency programme of the Fair Trade Act and discusses the experiences as well as challenges of its implementation.

1. The Development and Legal Framework of the Leniency Programme in Chinese Taipei

1. The Fair Trade Act (FTA) of Chinese Taipei took effect in 1992. Similar to other countries, Chinese Taipei encountered many difficulties in detecting and collecting evidence of concerted actions during the law enforcement process since the implementation of the FTA. On February 9th, 2006, Chinese Taipei accepted a competition law and policy peer review by more than 70 competition authorities in the OECD Global Forum on Competition. One of the policy options for consideration recommended in the report of the review was to implement a leniency programme to invigorate the FTC's enforcement against hard core cartels. After considering international trends and communicating with related agencies for many years, an amendment to the FTA was announced on November 23rd, 2011, adding Article 35-1 to include the leniency programme with a view to effectively preventing and investigating illegal concerted actions[1]. The Fair Trade Commission (hereinafter referred to as the "Commission") immediately enacted the "Regulations on Immunity and Reduction of Fines in Illegal Concerted Action Cases" (hereinafter referred to as the "Regulations") on January 6th, 2012 based on its authorization from the FTA[2], so as to provide specific items for implementing the leniency programme.

2. Chinese Taipei's leniency programme for illegal concerted actions adopts "administrative leniency" (fine reduction and exemption) rather than "criminal immunity" (exemption from criminal liability) due to the current system that prioritizes administration over justice in the FTA. The Regulations have also taken into consideration precedents in other countries, which include two forms of leniency: "fine exemption (all)" and "fine reduction (partial)." According to the Regulations, the first

[1] The leniency programme was added as Article 35-1 of the FTA in the amendment in November 2011. In the amendment in 2014, Article 35-1 was changed to Article 35, and the text was slightly revised to the current content: "The competent authority may grant exemption from or reduction of fines to be imposed in accordance with Paragraphs 1, 2 of Article 40 on enterprises in violation of Article 15 but meeting one of the following conditions: (1) The enterprise files a complaint or informs the competent authority in writing about the concrete illegal conduct of the concerted action in which it has partaken and also submits the evidence and assists the investigation before the competent authority is aware of the said illegal conduct or initiated an investigation in accordance with this Act. (2) The enterprise reveals the concrete illegal conduct as well as submits the evidence and assists the investigation during the period in which the competent authority investigates the said illegal conduct in accordance with this Act. The competent authority shall enact the regulations with regard to the eligibility of the subjects to whom the preceding paragraph applies, the criteria of the said fine reduction and exemption and the number of enterprises to be granted the said fine reduction or exemption, evidence submission, identity confidentiality, and other matters in relation to the enforcement of the said regulations.

[2] Please see https://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1302&docid=12223.

applicant for the leniency programme that is approved by the FTC may be exempted from the entire fine, and at most 4 subsequent applicants will be eligible for a 30-50% fine reduction, 20-30% fine reduction, 10-20% fine reduction, and under 10% fine reduction, respectively. The FTA has also raised the maximum fine for specific actions (illegal monopoly or severe concerted actions) up to 10% of the company's revenue in the previous fiscal year while adding the leniency programme to increase the incentive for companies participating in illegal concerted actions to apply for the leniency programme.

3. The Regulations clearly specify the leniency programme's conditions, qualifications, number of applicants, applicable subjects (limited to 5 companies, companies that force other companies to take part or restrict other companies from withdrawing from concerted actions are not eligible), application time, procedures and methods (applications may be submitted in writing or verbally before and after the competent authority begins its investigation, and evidence must be attached), matters requiring cooperation from applicants (confidentiality obligation, assistance with investigation, etc.), and possible fine exemption or reduction.

4. When the leniency programme was first established, applications originally could only be submitted in writing. The Commission referred to international legislation trends in the EU and Japan and amended the Regulations on August, 22nd, 2012 to increase companies' willingness to apply for the leniency programme, and relaxed the application method from only written applications to allow companies to also submit applications verbally.

2. Implementation and Challenges of the Leniency Programme

2.1. Implementation Results of the Leniency Programme

5. The provisions of the leniency programme of Chinese Taipei are considered to be in line with trends in international competition law. Not long after the leniency programme was introduced to the FTA, the Commission received the first application which led to the Commission's disposition on September 12th, 2012 that 4 CD drive manufacturers from Japan, South Korea and Holland had engaged in a concerted action in violation of Article 14 (now Article 15) of the FTA. In this case, the first applicant applied for a fine exemption and was granted a marker from the Commission.

6. Aside from the case above, there were also 2 applications for the leniency programme in 2015 that assisted in the Commission's detection of concerted actions: the Commission's disposition in its 1240th meeting on August 12th, 2015 that 2 freezing equipment companies engaged in a concerted action through bid rigging in violation of the FTA, as well as the Commission's disposition in its 1257th meeting on September 9th, 2015 that 7 aluminum capacitor companies and 3 tantalum capacitor companies, including companies from Japan and Hong Kong, had engaged in a concerted action. In the capacitor case, due to the period of violation lasting nearly a decade and considerable illegal profits in Chinese Taipei's market, the total fine imposed reached NT$5.7966 billion (approximately US$ 193 million). Even though the Commission cooperated with

competition authorities of other countries in the case[3], it did not coordinate the leniency programme.

2.2. Challenges of Implementing the Leniency Programme

7. The cases mentioned above are all major cases in which the leniency programme was applicable in the Commission's disposition, showing that the leniency programme is gradually having the effect of fighting against illegal concerted actions in Chinese Taipei. However, domestic companies generally consider it to be immoral to report peers for taking part in concerted actions, and snitchers have no place in traditional society. Companies are also unwilling to submit applications because they worry about taking the blame for their business ethics. Hence, Chinese Taipei does not have much experience with the leniency programme as there have only been three successful cases up to now.

8. Sanctions on hard core cartels are mainly divided into criminal sanctions and administrative sanctions in international competition law enforcement. Hence, the legislation of the leniency programme in different countries can be divided into exemption from criminal prosecution or administrative penalty exemption or reduction. In Chinese Taipei, under the system to prioritize administration over justice for illegal concerted actions, the penalty for the first violation is to impose an administrative fine. Only when the company does not cease or correct the concerted action or adopt other necessary measures within the specified period after receiving a penalty will the company be subject to criminal punishment. Hence, the leniency programme of Chinese Taipei is only for an administrative fine exemption or reduction rather than an exemption for criminal liability. Cases in Chinese Taipei involving the leniency programme have not yet involved criminal prosecution by competition authorities in other countries, and do not affect class actions brought by infringed companies or consumers for the damages they sustained as a result of the concerted action.

9. Even though the leniency programme of Chinese Taipei was established after referring to the system of other countries and is not much different, the challenges it faces mainly involve the national conditions of Chinese Taipei, as well as how to raise incentives and increase the penalty for concerted actions. With regard to the implementation of the leniency programme, increasing incentives is only the first step. From the perspective of the competition authorities, future challenges include: how to eliminate concerns that companies have when applying for the leniency programme, as well as communicating and promoting the leniency programme among lawyers and the business sector. The Commission has dedicated efforts to organizing special topic lectures, presentations, and forums for sharing experiences over the years to help companies fully understand the leniency programme's content and application procedures. The Commission is also actively communicating with companies and lawyers to increase the willingness of companies to apply for the leniency programme.

[3] The Commission cooperated with competition authorities in the US, EU and Singapore when it first began investigating the concerted action case of capacitor companies. Besides agreeing to simultaneously start the investigation on March 28th, 2014, the Commission also engaged in numerous telephone conferences or e-mail contact with other competition authorities during the investigation to exchange experience and thoughts on evidence collection and case investigation for an effective investigation on the cross-border concerted action.

10. Based on the cases that successfully applied the leniency programme in Chinese Taipei, applicants are mainly multinational enterprises. They applied the leniency programme to competition authorities in different jurisdictions simultaneously for involvement in a cross-border cartel case. Hence, future coordination with other competition authorities will only become even more important. Furthermore, the statutes of limitations on concerted actions and provisions on search and seizure vary in different countries. If a company involved in a cross-border concerted action applies for the leniency programme to the competition authorities in different countries at the same time, it must provide evidence in accordance with the application regulations of each country, and this may result in inconsistent investigation results among countries. Furthermore, the statutes of limitations are not recalculated after being interrupted in Chinese Taipei and this has therefore limited the time period in which the Commission may handle complicated, severe concerted actions, which also affects possible coordination with other competition authorities.

11. Current provisions of the leniency programme in Chinese Taipei do not include any provisions or policies on waivers, and they may also cause difficulties when coordinating with other countries for the leniency programme. In practice, even though the Commission may obtain the applicant's prior consent before providing the applicant's information to competition authorities of other countries, international society recognizes the importance of information exchange (especially confidential information) to an investigation, especially cross-border cartel cases. The Commission will continue to follow up on developments in regard to this issue and consider whether or not to add waiver provisions in the future.

12. Due to the short period of time the leniency programme has been in effect in Chinese Taipei, the Commission has only approved 3 applications for the leniency programme. The purpose in implementing the leniency programme is not only to boost investigations on concerted actions, but also to deter companies from engaging in concerted actions. In order to encourage third parties (especially company employees) who are aware of illegal concerted actions to have enough incentive to report illegal actions, Article 47-1 was added to the FTA in 2015 to setup an anti-trust fund to provide rewards that will encourage citizens to provide evidence of illegal concerted actions. The Commission also announced the Regulations on Payment of Rewards for Reporting of Illegal Concerted Actions[4] in October 2015 to provide a maximum reward of NT$50

[4] The Regulations on Payment of Rewards for Reporting of Illegal Concerted Actions were established by the Commission on October 7th, 2015 with authorization from the FTA, so as to increase incentives for reporting that will help the Commission to effectively investigate concerted actions. Provisions of the regulations related to persons that may not be informers, the calculation method and issuing standards for reporting rewards, reporting reward payment standards and raising the limit of reporting rewards, the reporting reward payment method, and the time limit for requesting reporting rewards were amended on April 19th, 2016. According to Article 47-1 of the FTA, the Commission may set up an anti-trust fund to provide rewards for the reporting of illegal concerted actions, and thereby strengthen the investigation of concerted actions. According to Article 2 of the Regulations on Payment of Rewards for Reporting of Illegal Concerted Actions, informants who provide the competent authority with evidence of illegal concerted actions not yet known by it shall be given a reporting reward once the involved enterprise is confirmed to have violated the FTA after investigation by the competent authority and a fine is imposed. Persons who force other companies to take part in a concerted action or restrict companies from withdrawing from a concerted action may not be informants due to the maliciousness of their actions. Hence, Article 4 was added to the regulations in 2016 to effectively prevent illegal actions. Article 6 was

million (about US$1.67 million) for reporting illegal concerted actions. Up to now the Commission has decided to issue 3 rewards amounting to about US$20,000.

3. Conclusion

13. Chinese Taipei has added provisions on the leniency programme to the FTA in line with international law enforcement trends for strengthening law enforcement against cartels. The Regulations on Immunity and Reduction of Fines in Illegal Concerted Action Cases were announced on the Commission's website for the general public to fully understand and also to step up promotion. The Commission hopes to strengthen the elements of application and the clarity and predictability of effects through the design of a complete system and policy communication. This will increase incentives for applications and also deter companies from engaging in concerted actions, thereby preventing hard core cartels from forming while maintaining market competition order.

further added in 2016 to increase incentives by adjusting the interval and calculation method for issuing standards, thereby raising the maximum reward to NT$50 million. For the details, please visit https://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=1430&docid=14680.

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Non-price Effects of Mergers - Note by Chinese Taipei

6 June 2018

This document reproduces a written contribution from Chinese Taipei submitted for Item 4 of the 129th OECD Competition committee meeting on 6-8 June 2018.

More documents related to this discussion can be found at www.oecd.org/daf/competition/non-price-effects-of-mergers.htm.

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Chinese Taipei

1. This report will introduce regulations of the Fair Trade Act (hereinafter referred to as the "FTA") on reviewing merger cases, and will also illustrate factors taken into consideration and evaluation methods of the Fair Trade Commission (hereinafter referred to as the "FTC") when reviewing mergers in Chinese Taipei.

1. Regulations of the Fair Trade Act on Merger Review

2. A pre-merger notification regime has been established since the 2002 amendments to the FTA. The purpose of pre-notification is to prevent those mergers that may result in anti-competitive effects by means of the ex-ante regulation of market structure.

3. According to Article 13 of the FTA, the FTC may not prohibit any of the mergers filed if the overall economic benefits of the merger outweigh the disadvantages resulting from competition restraints. The FTC may also impose conditions or undertakings on any of the decisions in order to ensure that the overall economic benefits of the merger outweigh the disadvantages resulting from the competition restraint. Thus, the net effect between the economic benefits and the disadvantages in terms of the competition restraints resulting from the merger is the basis of the substantive test.

4. The FTC has established the "Fair Trade Commission Disposal Directions on Handling Merger Filings" (hereinafter referred to as the "Merger Directions") to set standards when reviewing mergers for improving transparency. In practice, when reviewing different types of mergers, the FTC considers different factors in weighting the disadvantages resulting from competition restraints. The factors taken into consideration by the FTC when determining the competition restrictions and overall economic benefits include some non-price effects of the merger. If the FTC determines that the potential competition restrictions are deemed to be insignificant after reviewing factors that may restrict competition, it may be considered that the overall economic benefits of the merger are greater than the disadvantages resulting from the competition restrictions. If the FTC determines that the potential competition restrictions are considered to be significant, the overall economic benefits shall be evaluated to determine whether the benefits are greater than the disadvantages resulting from the competition restrictions. When reviewing merger cases, the FTC may consider the opinions of the competent authority for the industry of concern to assess the overall economic benefits and disadvantages from the competition restrictions thereof incurred.

5. When assessing the effects of the likely competition restrictions thereof incurred in horizontal mergers, the FTC considers unilateral effects, coordinated effects, market entry, countervailing power and other factors that have an influence on competition. If a horizontal merger meets any of the following circumstances, it may be presumed to raise significant competition concerns: (i) the aggregate market share of the merging enterprises reaches half of the total market; (ii) the top two competitors in the relevant market account for two thirds of the total market share, and the aggregate market share of the merging enterprises amounts to twenty percent or more of the total market; or (iii) the top three competitors in the relevant market account for three quarters of the total market share, and the aggregate market share of the merging enterprises accounts for twenty percent or more of the total market.

6. With regard to vertical mergers, the FTC considers the following factors in determining the likely effects on competition restrictions: (i) the possibility for other competitors to choose trading counterparts after the merger; (ii) the level of difficulty to enter the relevant market for businesses not participating in the merger; (iii) the possibility for the merging parties to abuse their market power in the relevant market; (iv) the possibility of raising rivals' costs; (v) the possibility of concerted actions occurring as a result of the merger; and (vi) other factors likely to lead to market foreclosure.

7. In a conglomerate merger, the FTC considers the following factors when determining whether potential competition exists between the merging enterprises: (i) the possibility of a change in regulations and its impact on the cross-industry operations of the merging enterprises; (ii) the possibility of technological improvements enabling the merging enterprises to engage in cross-industry operations; (iii) whether any of the merging enterprises originally had the intention to develop cross-industry operations; and (iv) other factors likely to affect market competition. When the existence of significant potential competition is deemed likely in a conglomerate merger according to the assessment described above, further analysis of the likely effects on competition restrictions shall be taken into account in regard to the post-merger status similar to those in a horizontal or vertical merger.

8. If a merger is considered likely to entail competition restrictions, the applicant(s) may submit proof of the following factors regarding the overall economic benefits to be assessed by the FTC: (i) efficiency; (ii) consumers' interests; (iii) one of the merging parties is originally a weaker competitor; (iv) one of the merging parties is a failing firm; and (v) other concrete evidence of the overall economic benefits to be expected. The economic benefits stated above shall meet the following requirements: (i) they can be brought to realization within a short period of time; (ii) they cannot be achieved other than through the merger; (iii) they can reflect consumers' interests.

9. In addition, for specific industries, such as for cable TV, telecommunications, digital convergence, and finance, the FTC has also established corresponding administrative rules for such enterprises to follow as well as to serve as reference when the FTC reviews merger cases. The FTC has further proposed the following factors to be taken into consideration when determining the overall economic benefits of mergers in specific industries, such as innovation, quality and product diversity.

10. For vertical mergers that are likely to incur competition restrictions in the cable TV industry, the FTC will further consider: (i) Will the merger drive the digitalization of cable TV? (ii) Will the merger diversify program content? (iii) Will the merger benefit competition between platforms? (iv) Will the merger drive digital convergence developments and competition? and (v) Will the merger provide consumers with more options?

11. For mergers in the telecommunications industry, the FTC may evaluate: (i) the effects of the merger on improving production efficiency, allocation efficiency, and dynamic efficiency; (ii) Will the merger increase competition in the market? (iii) Will the merger help provide a broader scope, wider variety and high quality services? and (iv) Will the merger benefit international competitiveness?

12. For mergers in the digital convergence industry, the FTC will further consider: (i) Will the merger contribute to competition in the relevant market? (ii) Will the merger enhance service provision in respect of quality, variety or geographic coverage? (iii) Will the merger enhance competition power in the global society and promote research as well

as development? (iv) Will the merger include any network externalities in terms of consumption? (v) How will the merging enterprises transform their internal profits into an externality? and (vi) Will the merger contribute to content digitalization, application diversification, and provide innovative digital convergence services?

13. When reviewing mergers in the financial sector, the FTC will also consider: (i) the impact on the stability and integrity of the financial markets; (ii) the impact on the availability and convenience of financial services; (iii) the impact on innovation in financial services; and (iv) policies formulated by the competent authority that are relevant to the financial sector.

2. Case Study：T Optical Platform Co., Ltd. and Eastern Broadcasting Co., Ltd.

14. T Optical Platform Co., Ltd. (TOP), the Multiple System Operator (MSO, i.e., an enterprise that controls two or more cable television system operators), filed a pre-merger notification with the FTC. TOP planned to acquire 65% of the shares of Eastern Broadcasting Co., Ltd. (EBC) through Subsidiary A. TOP already owned shares of four cable television system operators, and Subsidiary A and EBC had five and eight channels, respectively. This case complied with the definition of a merger in the FTA and reached the threshold required to file a pre-merger notification. The four cable television system operators had to obtain a license from their upstream satellite channel program providers before broadcasting programs. Subsidiary A and EBC were both satellite channel program providers. TOP represented four cable television system operators in negotiating channel license affairs with satellite channel program providers. Hence, the case involved both a horizontal merger and a vertical merger.

15. Besides posting a public announcement on its website, the FTC sent letters to request that the National Communications Commission (hereinafter referred to as the "NCC"), the Consumer Protection Committee, related associations or institutes and related enterprises provide their opinions in writing to collect opinions from different sectors. The FTC analyzed competition restraints specified in the Merger Directions and overall economic benefits listed by administrative rules relevant to the cable television industry, and took industry information and the opinions of various parties into consideration as well. On this basis, the FTC concluded that:

1. The merger would not have a significant effect on the market structure of the cable television system operator market, MSO market, and satellite channel program provider market.
2. Analysis of competition restrictions incurred by a horizontal merger: Subsidiary A was required to pay a fee to cable television system operators before its five channels could be broadcasted. TOP would acquire several popular channels after the merger. TOP had the lowest number of subscribers among MSOs in Chinese Taipei. Hence, if the trading counterpart for a channel license was an MSO with stronger bargaining power, or if the MSO was also the agent for popular channels, then the countervailing power would prevent TOP from engaging in tie-in sales of its original channels and new channels. However, the motivation and possibility for TOP to force tie-in channel programs on cable television system operators with weaker bargaining power could not be ruled out.
3. Analysis of competition restrictions incurred by a vertical merger: (i) Based on the current situation in the domestic cable television market, competitors still had many

trading counterparts to choose from after the merger. (ii) The merger did not change regulatory or investment restrictions on cable television services and satellite channel program supply. (iii) The merger did not affect the market structure of the relevant market, and enterprises participating in the merger still faced high levels of competition. Hence, the merger would not increase the probability of the enterprises abusing their market power. (iv) EBC's channels were among the top 30 in ratings, and two of them were the most commonly viewed news channels. Hence, TOP might engage in discriminatory treatment in its trading conditions when licensing EBC's channels to its own cable television system operators and their competitors. Furthermore, the cost to competitors of obtaining licenses for the channels would increase. (v) The merger did not change the market structure of the relevant market, and the rate charged for cable television services was controlled by the competent authority. Hence, the merger did not increase the transparency of rates. The merger therefore did not increase the probability of a concerted action.

4. Assessment of overall economic benefits: The merger could bring in capital for the merging enterprises to speed up the improvement of channel content and image quality as well as help accelerate digital convergence. Since cable television system operators involved in the merger had already completed cable TV digitalization, the merger would not have much of an effect on cable TV digitalization. However, the cable television system operators of TOP had moved the position of a specific channel without permission from the NCC, and the channel was subsequently removed from MOD. Hence, as to whether the merger would promote cross-platform businesses competition, the FTC still had reservations.

16. Current development trends in digital convergence and competition among cross-platform businesses might reduce the power of the merging enterprises in the satellite channel program supply market, and lower the above competition concerns. The FTC determined not to prohibit the merger, but attached the following undertakings to eliminate disadvantages from competition restraints being incurred as a result of the merger and ensure overall economic benefits: (i) In principle, Merging enterprises and the companies they controlled or their affiliates were to make the two news channels of EBC available on multimedia content transmission platforms or other public broadcasting within six months after the merger was to take effect. (ii) The enterprise filing the merger notification had to provide licensing conditions for channels produced by or by agents of the merging enterprises and their controlling company or their affiliates (including but not limited to the licensing fee, contract period, and basis for calculating the number of subscribers), regulations on sales (including but not limited to regulations on discounts on the price of each channel and broadcasting rights for the number of channels purchased), and the names and quantities of channels purchased by cable television system operators in Chinese Taipei to the FTC on June 1st of each year for five years starting in the year of the merger.

3. Conclusion

17. The FTC reviews merger cases based on the assessment of the overall economic benefits and disadvantages resulting from competition restraints. The Merger Directions lists the factors to be taken into consideration by the FTC when assessing competition restraints and the overall economic benefits. Administrative rules for the cable TV, telecommunications, digital convergence and financial industries further provide factors that should be taken into consideration when the FTC determines the overall economic

benefits of mergers in the above industries. Except for unilateral effects and coordinated effects that may involve price effects of the merger, the factors listed by the Merger Directions and administrative rules of specific industries are mostly non-price effects. Hence, the FTC usually considers non-price effects when determining the competition restraints and overall economic benefits of mergers, and also considers the information and opinions provided by relevant competent authorities, research institutes, experts and scholars, related associations or institutes, and related enterprises as well. If the FTC deems it necessary to attach conditions or undertakings to the merger to ensure that the overall economic benefits are greater than the disadvantages resulting from the competition restraints, the conditions or undertakings may be related to the results of evaluating the non-price effects.

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Implications of E-commerce for Competition Policy - Note by Chinese Taipei

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More documents related to this discussion can be found at www.oecd.org/daf/competition/e-commerce-implications-for-competition-policy.htm

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Chinese Taipei

This report will introduce regulations on vertical restrictions set forth in the Fair Trade Act of Chinese Taipei and also share the Fair Trade Commission's law enforcement experience associated with vertical restrictions in e-commerce markets.

1. Regulations regarding vertical restrictions in the Fair Trade Act

1. As set forth in Article 19 of the Fair Trade Act (hereinafter referred to as the "FTA"), "An enterprise shall not impose restrictions on resale prices of the goods supplied to its trading counterpart for resale to a third party or to such third party for making further resale. However, those with justifiable reasons are not subject to this limitation. The provision of the preceding paragraph shall apply mutatis mutandis to services provided by an enterprise." The "justifiable reasons" in the article refer to evidence presented by participating enterprises, including encouraging downstream enterprises to improve the efficiency and quality of their pre-sale services, preventing free rides, facilitating the market entry of new businesses or brands, promoting inter-brand competition and other reasonable economic grounds concerning competition, as assessed by the Fair Trade Commission (hereinafter referred to as the "FTC").

2. Meanwhile, it is also specified in Article 20 of the FTA that "No enterprise shall engage in any of the following acts that is likely to restrain competition: …5. Impose improper restrictions on its trading counterparts' business activity as part of the requirements for trade engagement." The "restrictions" in the article refer to tie-in sales, exclusive dealing, and restrictions on the operating region, customers, use, and other aspects of business activities. In determining whether such restrictions are improper and likely to restrain competition, the FTC will consider the intent, purposes and market status of the parties of concern, the structure of the relevant market, the characteristics of the products or services in question, and the impact that imposing such restrictions would have on market competition.

3. Since vertical restrictions imposed by enterprises may simultaneously have pro-competitive and anti-competitive effects on market competition, they are subject to rule of reason analysis. In other words, the imposition of vertical restrictions does not automatically constitute a violation against the FTA. So far, the FTC's law enforcement experience in e-commerce markets has been associated with improper restrictions on business activity imposed on trading counterparts by enterprises as part of the requirement for trade engagement. When handling related cases, the FTC will examine the concrete content of vertical restrictions and determine whether such restrictions are in violation of the FTA by taking into consideration the assessment factors specified in the aforementioned regulations. The same handling approach is applied whether online or offline environments are involved.

2. Cases of vertical restrictions in e-commerce markets

2.1. Online sales restriction clauses

4. Company A, a large domestic bicycle manufacturer, stipulated in its distribution contract that distributors could not directly or indirectly display and sell its products on the Internet without acquiring its written consent in advance. Measures to be taken against breaches of contract were also specified. Company A claimed the main reasons for establishing such provisions were: (i) Customers buying bicycle parts to assemble bicycles on their own could lead to safety concerns and disputes, and the provisions were stipulated to avoid the negative influence of inappropriate online marketing on brand image and product quality; and (ii) The process from assembling to handing over a Company A bicycle to a customer had to be handled by professionally trained salespeople or technicians to prevent customers from getting injured when using the products.

5. After an investigation, the FTC concluded that: (i) Company A's market share in the domestic bicycle market exceeded 20% and it was unlikely that Company A's distributors would switch to selling bicycles of other brands; therefore, Company A had certain market power. (ii) At the time of signing the contracts, Company A disclosed to distributors the content of the online sales restriction clause and also the liability (such as revocation of distributorship, or disconnection of supply) should the contract be breached; hence, the clauses definitely had the effect of deterring distributors from engaging in online marketing even though Company A never actually penalized any distributor. However, Company A never issued any written consent for distributors to sell its products online, either. (iii) Company A permitted its distributors to sell bicycles of other brands and sold its products outright to them. Distributors should have been able to choose their sales channels in accordance with their costs, and supply and demand in the bicycle market. Yet, the clauses restricted the freedom of the distributors to seek transaction opportunities, and the arrangements that the distributors could make to sell bicycles of different brands. At the same time, the clauses suppressed the transparency of transaction information that could promote competition and also reduced the opportunities for customers to choose from a number of transaction channels. (iv) Although Company A asserted that the restriction on online sales was meant to ensure the customer's safety when using the bicycles, there were several kinds of online transaction models, including placing an order online and picking up the product at a physical outlet, and some customers might even have had the professional capacity to assemble bicycles. Company A could not interfere with the liberty of customers to choose from among different transaction channels.

6. Company B, a multi-level marketing enterprise, was another example. The FTC launched an investigation after learning that the company had imposed restrictions on participants intending to sell its products online. Company B contested that, besides ensuring that water purifiers were properly installed and providing buyers with a decent product return or exchange services to maintain brand image, the restriction was imposed after the company took into consideration the characteristics of multi-level marketing, including online sales being inconsistent with the multi-level personnel structure and face-to-face promotion and sales of products. Meanwhile, the investigation showed that Company B did not have market power in the domestic water purifier market. Based on the company's contestation and the coverage of the restriction clause, the FTC found it hard to conclude that the restriction was intended to restrain competition in the water purifier market. The online sales restriction was necessary for the further development of

its multi-level sales organization and could also push participants to understand the importance of product promotion and provide better services to ensure product quality and encourage inter- and intra-brand competition. As specified in the Multi-level Marketing Supervision Act, multi-level marketing enterprises have the obligation to buy back the products when participants rescind or terminate the participation contracts, and this creates a heavier management burden and higher risk for multi-level marketing enterprises, compared to enterprises in other distribution systems. Therefore, the FTC made the decision that the online sales restriction imposed by Company B on its participants did not violate the FTA.

2.2. The most favored customer clause

7. The online purchase agreement template of Company C, a large local online shopping platform, carried a "best price support" clause with the wording, "The supplier guarantees that the product price offered to Company C during the contract period is the best price in the domestic market, and (i) if the price (P1) the supplier offers to a third party is lower than the price (P2, P2 > P1) offered to Company C for the same product, it shall be considered that the supplier offers the same price (P1) to Company C. (ii) When lowering the price of the product (P3), the supplier shall immediately notify Company C and, starting from the time point when the price decrease takes effect, the supplier may not offer the product to Company C at a price (P4, P4≦P3) higher than the reduced price; for products that the supplier has already sent to a location designated by Company C for storage, the reduced price (P4) shall also apply. Company C gave two reasons for establishing the clause: (i) to reduce the cost of price negotiations between Company C and suppliers for the purpose of facilitating the promotion of e-commerce; and (ii) to protect the large amount of money and effort Company C had invested in software and hardware systems and management to promote e-commerce and upgrade service quality, as well as to prevent competitors from taking free rides.

8. Considering the differences between the operating model for online shopping platforms (B2C) and other e-commerce models, and taking into account the sales channel management support available from suppliers and the convenience for shopping customers, the FTC defined the product market as the "online shopping platform market." Then, after considering the cost of physical product transportation, the importance of delivery time for consumers, transportation fees, language and cultural differences, the cash flow, transaction safety and dispute handling costs, the FTC defined the geographic market as the domestic market.

9. After the investigation, the FTC concluded that: (i) The aforementioned provision appeared to be a most favored customer clause, but it was simply to request that the supplier not put Company C in a disadvantageous position as far as price was concerned. It was not meant to ask the supplier to give Company C better transaction conditions than other competitors. For this reason, the FTC found it hard to consider that Company C had the intent to push up the costs of competitors. (ii) The reasons that Company C claimed were not improper. And it was not feasible that Company C obtained the information about the prices suppliers offered to different online shopping platforms. (iii) The supplier could revise or delete the clause in the agreement while Company C never held any supplier liable, nor did it issue warnings to any supplier for violation of the clause; in other words, the clause was never enforced. (iv) It was specified in Company C's agreement that suppliers could terminate the agreement at any time. This meant that other online shopping platforms could persuade suppliers to switch to other marketing

channels. In addition, there were many potential cooperation partners in the market for online shopping platforms and suppliers to choose from. There was no evidence that any significant foreclosure had taken place. Hence, even if Company C had a considerable market share in the domestic online shopping market, the FTC concluded that the "best price support" clause in Company C's agreement did not violate the FTA.

2.3. Exclusive dealing clauses

10. Company D, an online store platform operator, signed with online stores service contracts that included the following provisions: (i) As of the time of contract signature, the store operator had not opened online stores to sell products or services on other online store platforms that provided similar services or were competitors of Company D. (ii) The store operator agreed that during the contract period it would only open an online store to sell products or services on the platform of Company D and would not open online stores on other online store platforms that provided similar services or were competitors of Company D. (iii) If the store operator violated the agreement, Company D could shut down the store operator's operations or suspend the entire or part of the service system that the store operator was using, and also terminate the contract. If damages or expenses were incurred by Company D as a result, the store operator would be held liable for compensation. The aforesaid restrictions were typical exclusive dealing clauses. Company D claimed the provisions were established to prevent free rides. The company had invested large amounts of capital, manpower, time and resources over the years to set up and manage the online store platform to provide services, including online sales, online marketing, cash flow and backend management, to allow store operators to sell and display their products or services online. Store operators only needed to pay a fee to open online stores. That lowered the threshold for businesses to enter the e-commerce market. If any online store operator moved to other online store platforms to market its products or services after making enough sales, winning positive ratings, establishing a good reputation and developing the capacity to acquire products as a result of using the platform of Company D, it would benefit other online store platforms even though Company D had shared the operational risk of the store operator. Company D would end up in a disadvantageous position when competing in the e-commerce market.

11. After considering the operating mode of online store platforms (B2B2C), the independence of online store operators and the level of difficulty in brand establishment, the FTC defined the product market as the "online store platform market." Online store platforms made transactions through the Internet, and appear to be borderless. Although virtual products could be delivered through the Internet, most physical products still needed to be delivered to the buyer by traditional logistics channels and shipping costs needed to be considered. Moreover, enterprises preferred to open online stores on domestic online store platforms due to language and cultural differences between countries. Even if foreign online store platforms charged the same or a lower fee than domestic platforms, they did not provide reasonable substitutability as they could not provide a similar channel for serving customers. Therefore, when investigating cases as to whether online store platform enterprises had restricted the business activities of their trading counterparts, the FTC defined the geographic market as the domestic market.

12. As Company D had certain market power in the domestic online store platform market, the FTC considered the following factors: (i) The exclusive dealing clauses imposed by Company D were not an across-the-board restriction on the use of e-commerce models by online store operators. (ii) The exclusive dealing clauses were not a

unilaterally imposed take-it-or-leave-it regulation; online store operators could have the clauses modified or removed after negotiation. (iii) The online store platform market was still rapidly growing and there were no significant barriers or capital thresholds for physical stores to set up online operations. Therefore, besides the enterprises already operating on the platform of Company D, there were still a large number of potential trading counterparts for Company D's competitors to choose from. (iv) Company D allowed store operators to terminate contracts or stop using its service at any time. This meant that even if the store operators were restricted by the exclusive dealing clauses during the contract period, competitors of Company D could still persuade the store operators to change platforms. (v) There was no concrete evidence to show that the exclusive dealing clauses imposed by Company D had increased market entry barriers, created any foreclosure or limited the choice of trading counterparts. Hence, the FTC concluded that Company D had not violated the FTA.

3. Conclusion

13. The regulations regarding price- or non-price vertical restrictions in the FTA have been established in accordance with the rule of reason. As for the former type, the FTC will consider whether there are justifiable reasons. Regarding the latter, the FTC will consider the intent, purpose and market status of the parties of concern, the structure of the relevant market as well as the impact on market competition of the execution of such restrictions to determine whether such restrictions are in violation of the FTA. In principle, the FTC's law enforcement against vertical restrictions will not differ regardless of whether they involve online operations or brick-and-mortar businesses. For example, apart from resale price restrictions, it is only possible for enterprises having certain market power and imposing non-price vertical restrictions to violate the FTA.

14. So far, the law enforcement experience of the FTC in e-commerce markets has been mostly associated with non-price vertical restrictions, including online sales restrictions, and most favored customer and exclusive dealing clauses. Most enterprises have claimed that the purpose in establishing such clauses was to prevent competitors from free riding, and some of them have contested that the restrictions had to be imposed to promote business. In terms of the market definition for cases involving online retail business, the FTC has concluded that online store platforms (B2B2C) and online shopping platforms (B2C) are independent product markets and has also defined the geographic market as the domestic market after taking language and cultural differences, product transportation costs and transaction dispute handling costs, etc. into consideration.

15. At present, there is no monopolistic enterprise in the e-commerce market of Chinese Taipei. Relatively speaking, vertical restrictions are unlikely to lead to restrictive competition or concerted actions. Nonetheless, the FTC will continue to observe whether such restrictions will have an effect on new entrants in the market.

AGENDA

1st Joint IMF-OECD-World Bank

Conference on Structural Reforms

Product Market Competition, Regulation and Inclusive Growth

Monday, 11 June, 2018

OECD Headquarters, Paris

Conference Centre, Room CC9

OECD
BETTER POLICIES FOR BETTER LIVES

INTERNATIONAL MONETARY FUND

WORLD BANK GROUP

Monday, 11 June, 2018

8:40 – 9:00	**Registration of participants and welcome coffee**
9:00 – 9:20	**Opening remarks** • *Luiz de Mello, Director, Policy Studies Branch, Economics Department, OECD* • *Romain Duval, Senior Advisor, Office of the Chief-Economist, IMF*
9:20 – 10:50	**High level panel: Product market competition and regulation in a changing world**
	Chair: • *Luiz de Mello, Director, Policy Studies Branch, Economics Department, OECD* **Panellists:** • *Philippe Aghion, Professor, College de France and London School of Economics* • *Gert-Jan Koopman, Deputy Director-General, DG Competition, European Commission* • *Alejandra Palacios, Commissioner and Chair, Federal Economic Competition Commission of Mexico (COFECE)* • *Jonathan Baker, Research Professor of Law, American University Washington College of Law, Former Chief Economist of the Federal Communications Commission* **Floor discussion**
10:50 – 11:15	**Coffee Break**
11:15 – 12:45	**Session I: Competition, regulation and productivity**
	Chair: • *Ivailo Izvorski, Lead Economist, Macroeconomics, Trade and Investment Global Practice, World Bank* **Speakers:** • *Ana Cusolito, Senior Economist, Finance, Competitiveness and Innovation, World Bank "Markups, Technological Investment, and Productivity"* • *Romain Duval, Senior Advisor, Office of the Chief-Economist, IMF "Product Market Deregulation, Monetary Policy and Intangible Investment: Firm-Level Evidence from the Global Financial Crisis"* • *Paulo Correa, Manager, Firm Capability and Innovation Global Unit, Finance, Competitiveness and Innovation, World Bank "Quantifying the Effects of Economic Distortions on Firm-level productivity"* **Discussants:** • *Chiara Criscuolo, Head of Productivity and Business Dynamics Division, Directorate for Science, Technology & Innovation, OECD* • *Ana Fontoura Gouveia, Economist, Research & Economics Dpt., Bank of Portugal* **Floor discussion**
12:45 – 14:15	**Lunch break**

14:15 – 15:00	**Keynote Address:**

Chair:

- *Romain Duval, Senior Advisor, Office of the Chief-Economist, IMF*

Speaker:

- *Ufuk Akcigit, Assistant Professor of Economics, University of Chicago*

15:00 – 16:20	**Session II: The consequences of competition and regulation in services**

Chair:

- *Sergei Guriev,Chief Economist, European Bank for Reconstruction and Development*

Speakers:

- *Mariana Iootty, Senior Economist, Macroeconomics, Trade and Investment Global Practice, World Bank*
  "Services in the European Union: What Kinds of Regulatory Policies Enhance Productivity?"
- *Monica Correa-Lopez, Senior Economist, Bank of Spain*
  "Service Regulations, Input Prices and Export Volumes: Evidence from a Panel of Manufacturing Firms"

Discussants:

- *Tomasz Kozluk, Senior Economist, Economics Department, OECD*
- *Erik Canton, Deputy Head of Unit, DG ECFIN, European Commission*

Floor discussion

16:20 - 16:45	**Coffee Break**
16:45 - 18:15	**Session III: Market shares, rents and regulation in the 21st century**

Chair:

- *Alain de Serres, Deputy Director, Policy Studies Branch, Economics Department, OECD*

Keynote address:

- *Jan De Loecker, Professor of Economics, KU Leuven, Research Professor, Research Council*

Floor Discussion

Speakers:

- *Anton Korinek, Assistant Professor, Dept. of Economics, John Hopkins University*
- *Martha Martinez Licetti, Lead Economist, Markets & Competition Policy, World Bank*
- *Sean Ennis, Senior Economist, Competition Division, Directorate for Financial and Enterprise Affairs, OECD*

Floor discussion

18:15 – 18:30	**Closing remarks**

- *Álvaro S. Pereira, Acting Chief Economist, Economics Department, OECD*

18:30	**Cocktail Reception**

VENUE

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CONTACTS

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