

出國報告(出國類別：開會)

出席「第14屆東亞競爭政策高峰會議」  
及「第11屆東亞競爭法與政策會議」  
出國報告

服務機關：公平交易委員會

姓名職稱：黃美瑛主任委員

許淑幸處長

胡祖舜副處長

楊中琳科長

杜幸峰視察

派赴國家：澳大利亞

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## 壹、會議緣起

- 一、「東亞競爭政策高峰會議」(East Asia Top Official's Meeting on Competition Policy, EATOP或稱高峰會議)由日本公平交易委員會(Japan Fair Trade Commission, JFTC)於2005年倡議發起,第1屆會議由JFTC與印尼商業競爭監督委員會(KPPU)在印尼茂物(Bogor)舉行。第2屆以後, JFTC邀請亞洲開發銀行研究院(Asia Development Bank Institute, ADBI)共同主辦,每年由東亞國家競爭法主管機關於首都或主要城市舉辦,邀集東亞國家負責競爭政策或競爭法執法機關首長、高階官員,以論壇方式討論東亞區域競爭法與政策及競爭法立法、執法之技術援助等相關議題,並與「東亞競爭法與政策會議」(EAC)合併舉行。今(2018)年為第14屆會議,由澳洲競爭及消費者委員會(Australian Competition and Consumer Commission, ACCC)主辦,會議日期為8月29日,會議地點在澳大利亞雪梨希爾頓飯店(Hilton Sydney)。
- 二、「東亞競爭法及政策會議」(East Asia Conference on Competition Law and Policy, 下稱EAC會議)為日本JFTC為強化東亞經濟體對於競爭議題相互瞭解,於2004年發起之國際會議。第1屆會議於2004年在馬來西亞吉隆坡舉行,第2(2005)年起,開始與高峰會議合併舉行,並由JFTC與ADBI共同主辦。惟其中2008年因高峰會議與第7屆國際競爭網絡(ICN)京都年會合辦未舉行,另2010年及2016年則因高峰會議由韓國主辦時,分別與第6屆及第9屆「韓國首爾競爭論壇」合辦而未舉行,故今年為第11屆會議,由澳大利亞主辦,與高峰會議合併在澳大利亞雪梨希爾頓飯店舉行。
- 三、本會與日本、韓國公平交易委員會並列東亞競爭法技術輸出國,因執法成效卓著,自2004年首屆EAC及2005年首屆EATOP起,即受日本之邀與會,與各國交換競爭政策及執法之近況與發展。藉由參與前揭國際會議,共同討論競爭政策及其他經濟發展政策之議題,有助於我國與各國競爭法主管機關首長及高階官員建立友誼,並有益於我國際交流合作業務之推展。同時利用與會之便,與日、韓等國競爭法主管機關首長進行雙邊會談,就共同關注議題交換意見,加強彼此交流合作。本次會議本會由黃主任委員美瑛親率本會綜合規劃處許淑幸處長、胡祖舜副處長、楊中琳科長及杜幸峰

視察出席。

## 貳、第 14 屆東亞競爭政策高峰會議

- 一、與會國家：本會議為閉門會議，僅限受邀請之各國競爭法主管機關參加。本次受邀參加國家計有韓國、我國、紐西蘭、緬甸、越南、新加坡、泰國、印尼、寮國、菲律賓、馬來西亞、蒙古、香港、中國及柬埔寨等，另加主辦國日本及地主國澳大利亞，計17個國家或地區競爭法主管機關首長或高層高員受邀參加。
- 二、開幕典禮及歡迎紐西蘭加入：
  - (一) 開幕式首先由地主國 ACCC 主任委員 Rod Sims 先生、日本公平交易委員會主任委員山本和行先生(Kazuyuki Sugimoto)及 ADBI 副主任 Chul Ju Kim 博士致詞歡迎各國代表，JFTC 山本主委及 ADBI 副主任並感謝 ACCC 的全力支持及費心安排。
  - (二) ACCC 主任委員介紹紐西蘭商業委員會(NZCC)代表團及主任委員 Mark Berry 先生，歡迎 NZCC 加入 EATOP 會議成為固定與會會員。
- 三、會議第1場次主題為「各國競爭法最新發展」(Recent Developments and Trends in National Competition Law and Policy)，由ADBI副主任Chul Ju Kim博士擔任主持人，報告人及報告內容如下：
  - (一) 越南：由越南競爭局(Vietnam Competition Authority, 下稱VCCA)反托拉斯調查處副處長Phung Van Thanh先生報告：越南於2004年訂定競爭法，於2016年啟動修法，2018年6月完成修法，新法預計於2019年施行。修法重點在於：
    - 1、組織改造：修法前，Competition Authority負責調查案件，完成調查後，案件交由Competition Council作成決定。新法施行後，前開單位將整併為 National Competition Commission。
    - 2、外國事業違法行為若影響本國市場競爭秩序，VCCA可對該外國事業進行調查。
    - 3、修法前事業市場占有率未達30%者不構成違反聯合行為，修法後惡性卡

特爾採當然違法之立法例，同時並採行寬恕政策。

4、修法前事業市場占有率達30%以上始可能認定濫用市場力，修法後認定事業是否有獨占力，主要是審酌該事業是否具有相當市場力量，考量因素不限於市占率。

(二) 寮國：由工商部(Ministry of Industry and Commerce, 下稱MOIC)副部長 Somchith Inthamith先生報告：寮國雖訂有競爭法，惟因競爭委員會(Lao Competition Commission)仍在籌備中，有關委員人選、委員會權限、競爭法施行細則等尚未通過。寮國目前尚未開始執法，主要致力向國營事業、私營企業進行競爭宣導倡議工作。

(三) 中國：由國家市場監督管理總局(State Administrative for Market Regulation, 下稱SAMR)反壟斷局副局長徐樂夫先生報告：中國反壟斷法執法迄今已逾10年。為使執法明確、透明、公平，中國共發布27則相關法規。執法以來，共禁止結合2件，附條件許可結合37件，調查116件卡特爾案件，54件濫用獨占力案件等。為使執法更有效率，今年3月對反壟斷執法機構進行改組，將國家發展改革委員會、國家工商行政管理總局、商務部有關經營者集中反壟斷執法部門等整合於SAMR下之反壟斷局，由其負責執法，國務院反壟斷委員會仍保留，負責擬定反壟斷法的政策。

(四) 韓國：韓國競爭委員會(Korea Fair Trade Commission, 下稱KFTC)委員 Jaegyue Park先生報告：近來KFTC在執法方面有相當成效，例如分別針對高通公司、西門子之濫用獨占力行為處以高額罰鍰，共調查68件卡特爾案件，2017年附條件許可結合4件。因應產業變化，KFTC刻正研議修法，修法重點在於：(1)放寬結合申報門檻：目前申報門檻是以參與事業規模作判斷，故事業併購新進事業無須申報，修法將增加交易金額作為申報門檻；(2)新增合意內容：交換資訊將可被認定構成卡特爾；(3)強化取證：賦予KFTC取得文件資料權限，以便進行聽證。

(五) 柬埔寨：由商業部競爭處(Competition Department of CAMCONTROL Directorate-General of the Ministry of Commerce of Cambodia, 下稱CAMCONTROL)副處長Songkheang Meng先生報告：柬埔寨參考外國立法例、執法經驗及外國專家學者意見，終於在今年初完成競爭法立法，並

送內閣首相辦公室進行審查。將來立法通過後，柬埔寨將成立競爭委員會(Cambodia Competition Commission)，商業部部長為主任委員，相關內閣閣員及學者擔任委員，委員會負責案件決定，CAMCONTROL負責水平與垂直協議(含卡特爾行為)、濫用獨占力、結合管制等案件調查。

(六) 泰國：由商務部內貿廳交易競爭委員會辦公室(Office of Trade Competition Commission, Department of Internal Trade, Ministry of Commerce, 下稱 OTTC)秘書長Boonyarit Kalayanamit先生報告：泰國競爭法於2017年8月修法通過施行，同年10月新法施行，修正重點為：

- 1、機關獨立性：修法後，競爭法主管機關將不再隸屬於商務部下，而是由9人組成的選拔委員會(Selection Committee)選出7位委員組成交易競爭委員會(Trade Competition Commission)。委員會負責競爭政策及案件決定，轄下局處負責案件調查。
- 2、擴大競爭法適用對象：修法前，國營事業不受競爭法規範，修法後國營事業無法豁免不適用，但政府機關、農民、農會或產業主管法規另有規定者，則無競爭法之適用。
- 3、增加行政罰：修法前，因採刑事罰，須待最高法院判決確定後才可執行，執法效力不彰，修法後，對於違法結合、非惡性卡特爾及不公平競爭行為等違法行為，主管機關可命停止或改正，並裁處罰鍰。

四、會議第2場次主題為「跨境執法及合作實際案例及挑戰」(Actual Cases and Challenges of Cross-border Enforcement and Cooperation)，由印尼商業競爭監督委員會(Commission for Supervision of Business Competition, 下稱KPPU)主任委員Kurnia Toha先生擔任主持人，報告人及報告內容如下：

(一) 中國：由SAMR價格監督及反壟斷處長吳東美女士報告：反壟斷法自2008年開始執法以來，即加強與其他主管機關合作以利查處國際違法案件，例如2012年LED卡特爾案、2014年車燈、軸承等卡特爾案及2015年高通案。高通案由2家美國事業提出檢舉，國家發展和改革委員會(NDRC)經過3年時間蒐集資料並進行1年正式調查後，認定高通公司濫用獨占力。NDRC要求高通公司停止對失效專利權收取權利金、強迫被授權人交互授

權、SEPs搭售非SEPs等違法行為，並裁處60.88億元人民幣，相當於該公司2013年在中國總營收8%。目前中國已與美國、歐盟、日本、韓國及澳洲簽訂MOU，有助相互執法經驗及資訊交流。

(二) 澳洲：由ACCC委員Sarah Court女士報告ACCC近年來與他國競爭法主管機關合作2個案例。第一個案例為2018年由法院起訴之國際海運服務(International Shipping)卡特爾案，第2個案例為2013年的軸承零件全球卡特爾案，該項零件涉及全球450億美元之市場，ACCC與多個國家，包括美國、加拿大、英國、歐盟、日本、韓國、南非、瑞典及挪威等競爭法主管機關進行合作才得以順利調查這些卡特爾案件。所分享的執法資訊包括：各國調查進度、各國所調查的行為態樣、各國所面臨之程序及調查方法之差異、可能之調查目標及相關人士、以及特定人士之居所及聯絡方式等。可能面臨的挑戰包括：合作之當事人拒絕提出「拋棄權利聲明書」(Waiver)、相關機關間沒有合作瞭解備忘錄(MOU)可供遵循、調查進度之差異及可能調查或訴訟方向不同、語言及時差、調查期間調查人員之調動等。

(三) 紐西蘭：由NZCC主任委員Mark Berry先生報告，內容略以：全球化雖帶來經濟上之效益，但也因此許多競爭法案件涉及跨境問題且數量逐漸增長。OECD及ICN一直都是促使國際合作的動力。跨境國際合作執法之挑戰在於：資訊共享，包括機密資訊、各國法律差異，如對寬恕政策及罰責之不同、如何協調調查互助及對企業與競爭法主管的責任負擔等。就如何克服這些挑戰方面，Berry主委建議應有更緊密的雙邊或多邊協定，如紐西蘭與澳大利亞之合作協定、可適用於各國競爭法主管機關更明確的拋棄權利聲明書、及對特定案件相關競爭法主管機關間對調查案定期的協調合作。

(四) 我國：由本會黃主任委員美瑛報告：競爭法國際合作主要在確保有效及有效率之競爭法執法，合作本身應基於競爭法主管機關間相互信任及誠意進行，有效之國際合作可降低各國重大利益之衝突及不同分析與矯正措施之風險。我國在最近幾年的國際合作大都以電子郵件往來及電話會



議進行資訊分享。黃主委並以本會最近調查的谷歌案及跨境電商蝦皮為例說明本會對跨境案件之執法處理與合作。對於跨境執法合作之挑戰，黃主委強調各國在法制與罰責的不同、調查方法與工具的差異皆可能造成合作上的困境，而加強合作，如透過國際組織、簽署雙邊合作協定或自由貿易協定中之競爭專章，或透過機關間之對話、定期會議或諮商等，皆可達到有效跨境執法之目的。

四、會議第3場次主題為「推銷競爭：倡議的主要工具」(Selling Competition-Key Tools for Advocacy)，由菲律賓競爭委員會(PCC)主任委員Arsenio Baliscacan 博士主持。

(一)澳大利亞：由ACCC主任委員Rod Sims先生報告，他強調市場調查(Market Study)對於競爭倡議的重要性。透過市場調查可以瞭解市場的變動並做成政策建議。他以澳大利亞瓦斯及電力市場調查為例，透過市場調查瞭解市場供需，並向政府提出政策建言以解決所謂「負擔不起的能源」問題。

(二)馬來西亞：由馬來西亞競爭委員會(MyCC)委員Tay Lee Ly女士報告MyCC倡議情形。馬來西亞競爭法及競爭委員會法於2010年通過，2011年成立MyCC。競爭委員會法第16條規定MyCC的職掌為：倡議競爭有關事務、公布及提升與商業及交易有關之民眾對於競爭之認知及法律資訊、宣導並教育民眾有關競爭可能對馬國消費者及經濟有益之方式。MyCC在2012、2015及2018年各公布了競爭倡議策略計畫手冊，明定倡議優先產業及主要企業目標，並成立倡議與對話委員會(Advocacy & Communication Committee, ACC)，透過倡議及非執法措施，向企業、政府單位及社會推動有利之競爭環境。ACC的成員包括政府單位、消費者、同業公會、媒體及中小企業代表，ACC並鼓勵事業自行制訂遵法計畫而非由MyCC執行競爭法。

(三)新加坡：新加坡競爭及消費者局(CCCS)處長張委員先生(Teo Wee Guan)說明CCC S運用市場調查及提供政府競爭諮詢以進行競爭倡議。CCC S透過政府反應、消費者檢舉及調查所得、國外競爭法主管機關對市場或產業之調查、價格波動、市場集中度及經濟或其他策略考量選定調查之產

業。進行市場調查時，可以透過公共資源、問卷、同業公會或專家及法定職掌取得資料，必要時可以委外進行(機關能力、獨立性或目標、產業專業性及資訊取得是否容易等考量)。調查所得結果可對政府提供諮詢建議、採取執法行動或改變產業交易行為。渠並以CCCS對汽車零件產業及嬰兒奶粉進行市場調查為例說明CCCS進行競爭倡議之方法。另外他亦以CCCS對政府採購資訊科技(IT)提供競爭相關建議，說明該機關對政府提供競爭倡議之成效。

(四)日本：JFTC主任委員Kazuyuki Sugimoto先生報告JFTC倡議之工具。JFTC倡議活動主要在透過舉辦會議及研討會或利用社交網路讓民眾能瞭解競爭法及政策之內容。另外JFTC也進行市場調查，以提高特定對象對競爭之瞭解，改變市場現況或強化相關管制。JFTC也成立資料與競爭政策研究小組及人力資源與競爭政策研究小組，以研究大數據及人工智慧科技對競爭政策之影響，及工作型態改變與勞動力下降對於人力資源市場之影響。

(五)香港：香港競爭委員會(HKCC)資深執行處長Rasul Butt先生報告HKCC倡議。HKCC倡議之主要目標為政府與公共機構、事業群體及一般大眾與年輕人。對於一般大眾，HKCC的倡議從2014-2015年強調競爭的好處，2015-2016年以一般法規(卡特爾或濫用市場地位)宣導，及從2016年至今以專題宣導(如圍標、市場劃分)為主。倡議主要工具以媒體廣告教育影片及社交網路為主，對於年輕人則以社群網路媒體教育宣導，提高年輕人對競爭之認識。對於事業群體則透過積極宣導，包括發放教育性資料如法規準則、手冊、影片等，及向同業公會宣導遵法計畫。從2014年中至今已舉辦365場宣導及24場研討會，超過28,800人以上企業代表參與這些活動。HKCC同時也對政府單位提供競爭諮詢及建議。

五、會議第4場次主題為「技術援助與相關國際活動之經驗、評估與協調」(Experience, Evaluation, and Coordination of Technical Assistance and related International Activities)，由HKCC執行長Brent Snyder先生擔任主持人，報告國家包括蒙古、中國、日本、澳洲及菲律賓。

- (一) 蒙古：由蒙古公平競爭及消費者保護局(AFCCP)國際事務組組長 Tserendulam Shagdarsuren女士代表該局局長報告。蒙古於1993年通過實施「禁止不公平競爭法」，2004年成立不公平競爭管制局(Unfair Competition Regulatory Authority)，2008年蒙古修正消費者保護法納入該局職掌並改稱現行名稱(AFFCCP)。技術援助對AFCCP是能力建置非常重要的一環。2012年AFCCP參與聯合國貿易及發展會議(UNCTAD)自願性同儕檢視，2014年至2017年歐盟提供「對蒙古標準系統現代化」支援計畫，主要目標在修訂蒙古消費者保護法，2015年至2018年日本提供「強化蒙古公平競爭環境」計畫，主要在修訂蒙古競爭法及提升AFCCP調查、倡議及市場調查能力。
- (二) 中國：由SAMR官員Zhao Yiqin女士報告。中國自10年前開始執行反壟斷法後即接受許多國家及國際組織提供之技術援助。這些技術援助主要分成2大類型：(1)短期類型，指2天至2星期內之演講、座談會及案件演練與模擬。此類型之優點為短期內密集授課，參加官員們與授課各國官員互動良好，但缺點在於時間有限，內容較偏重於理論或執法原則之講授，與會者較無法瞭解實際運用經驗。(2)長期類型，如與歐盟進行之5個月參訪計畫，與其他歐盟國家官員共同研習。參與者可從受理案件開始學到實際調查經驗，同時也與歐盟官員發展緊密之個人關係。長期技術援助雖可得到較佳之學習效果，但其缺點為地主國須付出相當大之資源，且語言也是一大障礙。中國近年來也提供技術援助給新進成立之機關，如今年中國在提供給開發中國家的產業管制課程中即加入競爭課程。
- (三) 日本：由JFTC國際事務處資深官員Makoto FUKUTA先生報告日本技術援助活動。日本技術援助主要著眼於二大方面：透過日本協力機構(Japan International Cooperation Agency, JICA)舉辦對個別國家援助活動(如蒙古、印尼、越南等)，或透過日本與東協整合基金(Japan-ASEAN Integration Fund, JAIF)架構舉辦區域型技術援助活動。日本在舉辦這些活動時也會與其他技術援助提供國家協調，以提高技術援助品質及避免重複而浪費資源。國際組織在此一技術援助活動中也扮演了分享、回饋及提供更廣泛

及多元化資源的角色。日本也運用學術界對技術援助的成果進行評估，以確定提供技術援助之效益。

(四) 澳洲：由ACCC執法及倡議執行總處長Marcus Bezzi先生報告。澳大利亞被視為是競爭法先進國家，也是技術淨輸出國。但實際上ACCC也接受其他國家之技術援助，如接受美國的結合訓練課程及卡特爾執法研習課程。ACCC同時也與其他提供技術援助國家合作協調，以避免重複並提高援助效率，如與東南亞國協(ASEAN)之合作。ACCC同時也與OECD、JFTC合作，加拿大最近也對亞洲國家進行技術援助，其他如韓國、我國等皆為本區域內之技術輸出國家，為本區域內之技術援助共同合作。

(五) 菲律賓：由菲律賓競爭委員會(PCC)主任委員Arsenio M. Balisacan先生報告。菲律賓認為，有效之技術援助須先評估受援助國家之需求及限制，在其整體國家發展策略下，依機關及其人員吸收能力，協調有經驗及專長之國家提供適當之援助並確保不重複以免浪費資源。PCC在成立時公布了「2017-2019年策略與運作職掌計畫」(PCC Strategic and Operational Business Plan 2017-2019)以提供PCC運作方向指引，主要策略即為：與技術援助國、對口競爭法主管機關、政府間組織及學術機關聯繫以進行能力建置及倡議。技術援助的主要架構在：幫助尋找能力建置優先順序及確保技術援助未重複、採行有計畫的方式以加速技術援助之計畫及實施、協助發展夥伴能有效運用其資源達成目標。

六、大會宣布明年 EATOP 將由蒙古公平競爭及消費者保護局(AFCCP)主辦，並邀請 AFCCP 主任委員 Lkhagva Byambasuren 先生上臺致詞，歡迎與會各國代表明年到蒙古首都烏蘭巴托參與會議。

### 參、第 11 屆東亞競爭法及政策會議

一、與會單位：本會議係為開放性會議，參加者除前項高峰會議各國代表外，另邀請東南亞競爭法學者共同參與，我國由政治大學法學院副院長王立達教授出席參加。

二、會議時間：8 月 30 日 8 時 30 分至 14 時 30 分。

三、開幕典禮：由 ACCC 主任委員 Rod Sims 先生、JFTC 主任委員 Kazuyuki Sugimoto 先生及 ADBI 副主任 Chul Ju Kim 先生致詞歡迎參加來賓。

四、會議第一場次為「處理複雜產業中之競爭議題」(Addressing Competition Issues in Complex Industries)，由澳大利亞國立大學法律及經濟中心創辦主任 Robert Ian McEwin 博士主持：

(一) 新加坡競爭及消費者局(CCCS)局長 Han Li Toh 先生報告該局處理的 2 個案例。第 1 個案例為「破壞性進入」(disrupt entry)。2016 年 CCCS 對 10 家金融顧問公司聯合迫使新進入市場之 iFAST 取消保費優惠折扣案。iFAST 為一新進入市場之網路人壽保險銷售網站，於網路銷售時提供 50% 佣金回饋給消費者。此一回饋方案引起金融顧問協會的強力反彈，10 家金融顧問公司合力迫使 iFAST 撤銷此一回饋方案，CCCS 認為此一行為有損競爭而違反該國競爭法規定，因此對 10 家公司分別處以新幣 5000 元至 405,114 元之罰鍰，總計罰鍰達 909,302 元。第 2 案為「破壞性退出」(disrupt exit)。2018 年 3 月 26 日叫車平臺服務業者 Grab 宣布與 Uber 完成合併，Uber 出售其東亞事業分部給 Grab 以交換其 27.5% 之股權。CCCS 認為此一合併案有損叫車服務平臺之競爭，因此於 3 月 27 日宣布展開調查，並於 3 月底提出暫時措施指令以減少對該項交易與乘客之影響，CCCS 將於近期內將對該案做出決議。

(二) ACCC 執法及倡議執行處總處長 Marcus Bezzi 先生提出有關競爭法主管機關調查時是否有足夠之工具議題。他以該委員會曾有 1 件從 2003 年至 2018 年的調查案件為例，該案調查逾 15 年才終止，可見競爭法主管機關對於複雜案件還是需要更多調查工具，例如對強力買家與弱勢經銷商之交易(如農產品、酪農業等)。競爭法主管機關必須透過市場調查以瞭解市場，尤其是在變動較大的產業，如金融、通訊、瓦斯及燃油市場等，並透過倡議以讓政府及民眾瞭解競爭的新興產業重要性。

(三) 墨爾本大學教授 Caron Beaton-Wells 女士說明複雜理論(complexity theory)與市場調查之關係。複雜理論是源於對網路經濟環境下市場的認識及商業生態系統和混沌理論的研究，而複雜系統是由許多不同部分相互交錯

組成的網路型態，市場研究即對於產業的複雜型態進行調查研究(市場架構、行為態樣、供給面、需求面等之交錯，從興起到自我組合到適能市場)，競爭法主管機關做為此一複雜系統的一環，必須先瞭解其自身之使命及功能，運用其職權內之工具及能力與資源，並利用市場調查研究所得結果，妥善配合經濟、政治及社會(如大眾所關切)等因素之最大交集進行有效執法。

(四) 馬來西亞馬拉科技大學 (University of Technology Mara) 法律系資深講師 Angayar Kanni Ramaiah 女士報告馬來西亞執法挑戰。馬來西亞競爭委員會不負責結合審查，而對於勾結(卡特爾)之執法，一般企業認為資訊分享是中小企業生存的必要方法，中小企業應有特別規範以能與大企業公平競爭。

五、第二節討論主題為「競爭倡議與國營企業」(Competition Advocacy and State Owned Enterprises)，由 ADBI 院長特別顧問、資深能力建置及訓練經濟學家 Wawan Juswanto 先生主持：

(一) 菲律賓競爭委員會(PCC)主任委員 Arsenio M. Baliscan 先生報告菲律賓經驗。菲律賓國營事業在 2011 年時有 158 家，透過廢止、民營化及合理化，到 2016 年已降至 123 家，並成立國營事業或控股公司治理委員會，以強化國營事業之公司治理。而菲律賓的競爭法適用國營事業(政府擁有或控制，直接或間接從事經濟活動之個體)，PCC 可以檢視國營事業經濟及管理規範，建議行政部門有關競爭政策事項。PCC 成立獨立專家團隊檢視有競爭疑慮的產業，提出全國競爭政策檢視報告，並列入菲國 2017-2022 國家發展計畫第 16 章「透過國家競爭政策推動公平競爭」，而改革國營事業及強化民營事業是公平競爭的最重要基礎。

(二) 泰國清邁大學助理教授 Pornchai Wisuttisak 先生及澳洲天主教大學法學院資深講師 May Fong Cheong 女士共同發表「泰國及馬來西亞競爭倡議與國營事業」。

1、W 助理教授報告泰國部分，泰國國營事業由財政部國營事業政策署管理，

最終目標為民營化，2006 年開始公司化，並於 2016 年通過國營事業治理及管理發展法案。泰國國營事業享有特權包括：免課公司稅、可獲得較佳之貸款融資條件、獨占地位及競爭法豁免，與新加坡及馬來西亞相比，泰國國營事業顯然享有較大之競爭優勢。而對於泰國競爭倡議之挑戰在於如何撤銷國營事業對競爭法之豁免適用，建立競爭中立之競爭文化及競爭法主管機關與產業管制機關之合作。

2、Cheong 教授報告馬來西亞國營事業概況。馬國國營事業包括聯邦或各省直接或間接控制企業、與政府相關聯之企業或投資公司、特定法律下成立法人及財政部所屬國庫控股公司。政府擁有的企業總值至少占馬國股市 36%。馬國競爭法適用於與政府相關事業之商業行為，但 1998 年通訊與多媒體法、2001 年能源法、1974 年石油發展法及 2015 年航空委員會法規範之事業除外。最顯著的案例為馬來西亞競爭委員會 2014 年 3 月 31 日決議馬來西亞航空公司與亞細亞航空公司分享市場協議違反馬國競爭法，處以 1 千萬馬幣罰鍰。但此案為馬國競爭上訴法庭撤銷，目前正等候高等法院之判決。馬國競爭倡議與國營事業改革最大挑戰在於競爭文化之建立，如何建立競爭中立，降低政府在商業活動中之角色及競爭法主管機關與管制機關間之合作。

(三) 墨爾本大學資深研究員 Hassan Qaqaya 先生指出，國營事業因為其特殊地位而對競爭有負向之影響，競爭法主管機關應有充分的資源以支持其執法及倡議之職掌。雖然競爭法對民營及國營事業同等適用，但執法機關可能會在對國營事業執法上面臨不同的挑戰，這是因為國營事業在制度及實質特點關係。而競爭法執法機關可能在調查上不會偏頗，但在決議時可能受到政府其他機關影響，或缺乏法律依據對國營事業或其管制機關做出處分。但競爭法主管機關可透過建立競爭中立政策來解決此一問題。

(四) 墨爾本大學法學院講師 Wendy Ng 女士認為競爭倡議在確保競爭中立上是很重要的工作。國營事業與民營事業必須公平競爭，而競爭倡議可為國營事業適用競爭法及針對政府有利於國營事業的限制競爭措施扮演重

要角色。

六、第三節討論主題為「電子商務產業中之競爭議題」(Competition Issues in the Ecommerce Sector) 由澳大利亞南昆士蘭大學講師 Rachel Burgess 女士主持：

(一) 本會代表胡祖舜副處長報告「電子商務之特性與競爭效果」(Characteristics and Competition Effects of E-Commerce)。電子商務的特色在於價格透明化、低進入障礙及動態競爭。而對競爭所產生的效果也源自於此三項特色：價格透明化可能導致廠商監控他人價格而有搭便車之嫌，而市場低進入障礙可能因為網路效果而產生新的障礙，動態競爭效果可能會讓營運成功平臺獲取顯著但短暫之市場力。胡副處長並說明如何在電子商務案件中界定市場及相關之競爭議題，包括垂直價格限制、最惠客戶條款、及掠奪性定價議題等。

(二) 澳大利亞墨爾本商學院副教授 Catherine de Fontenay 女士報告「電子商務與亞馬遜之到來」(E-commerce and the arrival of Amazon)。她以亞馬遜公司 2017 年 12 月開始進入澳大利亞，初期以高定價為主，但漸漸轉為低價模式。亞馬遜同時在 2018 年 6 月推出 Amazon Prime 會員制，保證免運費 2 日內送至 90% 的地區，只要 59 澳元，比較美國 119 元(161 澳元)、英國 79 英鎊(141 澳元)、德國 49 歐元(77 澳元)及加拿大的 79 加元(80 澳元)相對都便宜很多。澳洲亞馬遜此一訂價策略是否構成掠奪性定價行為端視：(1)定價是否低於成本(產品+運費+會員費)；(2)亞馬遜是否以將競爭對手退出市場為目的或以達成其效果；(3)是否在未來可以收回其利潤。但以「掠奪」為目的相當難以證明，因為廠商低於成本訂價可能是因為要達到生產規模，或達到網路外部性，或補貼顧客移轉成本，或許可以以「效果」測試(“effects” test)來檢視，例如亞馬遜 2009 年因收購 Quidsi 網路尿布銷售公司不成而以低價進行競爭，而終致成功收購該公司案例。至於是否回收利潤，應以股票市場測試(Stock-market test)，看投資者是否願意相信多年後亞馬遜可以回收利潤。

(三) 日本公平會(JFTC)副秘書長 Sadaaki Suwazono 先生報告 JFTC 所處理之電子商務案例。第 1 個案例是日本 Coleman 公司要求其零售商網路銷售價



不得低於其所訂之最低價格，JFTC 認為該行為已違反日本獨占禁止法，因此在 2016 年 6 月 15 日要求該公司停止違法行為。第 2 個案例為 DeNA 公司以獨家交易條款銷售網路社群遊戲，JFTC 認為該行為違反日本獨占禁止法，因此於 2011 年 6 月要求該公司停止是項違法行為。第 3 個案例為亞馬遜日本公司網路銷售商品時，要求提供商品賣家簽署最優惠條款，其所提供商品之售價不得高於其他商品價格。該案因為亞馬遜日本公司在調查期間提出自願改正計畫，JFTC 認為該公司所提改正措施已去除可能違法行為，因此已於 2017 年 6 月結案。

(四) Allen & Overy 律師事務所合夥人 Peter McDonald 律師報告大數據運用於競爭之影響。他認為網路交易資料也是一項商品，大量擁有此一商品即可能因此獲得顧客，進而擁有市場力而影響競爭。因此資料的蒐集、運用及分析都可能影響競爭。

七、閉幕典禮：由 ACCC 執法及倡議執行總處長 Marcus Bezzi 先生主持，他感謝所有報告人所提供的精采報告及資料，並感謝所有與會參加者的參與與熱烈討論，明年高峰會議將由蒙古主辦。

#### 肆、心得與建議

一、日本自 2004 年及 2005 年開始在東南亞地區舉辦 EATOP 及 EAC 會議，並透過日本東協整合基金(JAIF)及日本國際協力機構(JICA)，對此地區所有國家提供區域性或個別技術援助，主要著眼於東南亞國協之發展潛力，並已建立相當深厚之基礎。2013 年澳大利亞加入及今年紐西蘭加入，更是壯大 EATOP 及 EAC 之影響力量，我國能善用參與此會議機會，當可加強本會與東協各國之接觸與認識。

二、東南亞國協已從原來的政治組織轉型為最受矚目之新興經濟區域組織，惟在競爭政策與競爭法發展上，東南亞各國發展差異甚大。例如印尼、新加坡發展迅速，已累積一定之執法經驗，新加坡因語言優勢，在東協中隱約居領導地位。印尼則因自 1999 年起即開始施行競爭法，至今已累積近 20 年

之經驗，也已發展為技術輸出國，對東協其他國家提供技術援助。柬埔寨、寮國、緬甸等國則因尚在起步階段，其尋求援助首先目標當即就近以新加坡、印尼為對象，或以鄰近具經驗之國家，如澳洲或紐西蘭為目標。我國如能透過與新加坡及印尼友好關係，亦可與其他國家建立窗口，分享本會執法經驗，並建立未來合作執法關係。

三、「東亞競爭法與政策會議」及「東亞競爭政策高峰會議」受邀參與之成員為東協所有國家加上中國大陸、澳洲、紐西蘭及韓國等國家之首長或高階官員及重要學者，其重要性不可言喻，我國在本會議中以「技術援助提供國」之角色受邀參與，而本會每年都會邀請大部分之東協國家參與在東南亞地區舉辦之反托拉斯區域研討會，與各國競爭法主管機關保有一定之熟稔度，本會利用參與此一會議可與各國競爭法主管機關建立高層關係，加強相互交流合作。

四、本次會議由黃主任委員親自率團參加並於EATOP會中提出國際合作經驗報告，另綜合規劃處胡祖舜副處長也在EAC會中分享本會對電子商務執法之經驗，獲得各國代表之重視與讚許。黃主任委員在會議期間並率本會同仁與印尼、日本、韓國及新加坡代表團進行雙邊會談，且與其他各國代表就未來合作及執法經驗交換意見，對本會與日、韓、澳及東南亞各國交流進展更推進一大步。



The 14th East Asia Top Level Officials'  
Meeting on Competition Policy





# Opening Remarks

Rod Sims  
*Chair – ACCC*

Kazuyuki Sugimoto  
*Chairman – JFTC*

Wawan Juswanto  
*Senior Capacity Building and Training Economist/Special Advisor to  
the Dean – ADBI*





# Introducing the NZCC to EATOP

Mr Kazuyuki Sugimoto  
*Chairman*  
*JFTC*

Dr Mark Berry  
*Chairman*  
*NZCC*





# Panel 1: Recent Developments and Trends in National Competition Law and Policy

**Moderator**

Chul Ju Kim

Deputy Dean, Capacity Building and Training and Special Activities – ADBI





# Panel 1: Recent Developments and Trends in National Competition law and Policy

## Speakers:

Mr Thanh Van Phung

Deputy Director, VCCA

Mr Somchith Inthamith

Deputy Minister, MOIC

Mr Lefu Xu

Deputy Director-General, SAMR

Mr Jaegyue Park

Commissioner, KFTC

Mr Songkheang Meng

Deputy Director, CAMCONTROL

Mr Boonyarit Kalayanamit

Secretary-General, OTCC





# Panel 1: Recent Developments and Trends in National Competition Law and Policy

## Speaker 1

Mr Thanh Van Phung

Deputy Director, Antitrust Investigation Board – VCCA







# Panel 1: Recent Developments and Trends in National Competition Law and Policy

## Speaker 2

Mr Somchith Inthamith  
Deputy Minister – MOIC





**The 14<sup>th</sup> East Asia Top Level Officials' Meeting  
on Competition Policy  
29 August 2018, Sydney, Australia**

**Competition Law and Policy  
in Lao PDR**

**Mr. Somchith INTHAMITH  
Deputy Minister of Industry and Commerce  
Lao PDR**

# **Contents:**

## **I. Overview**

- ❖ **Institutional Arrangement**
- ❖ **Competition Law enforcement**

## **II. Regional Cooperation**

- ❖ **ASEAN (AEGC)**
- ❖ **Others**

## **III. Challenge**

- ❖ **Institutional**
- ❖ **Resources**

# I. Overview

## ❖ Institutional Arrangement:

- Lao Competition Commission (LCC) – ongoing
  - Preparing the proposal
  - Expecting 2018 been approved.

## ❖ Competition Law Enforcement:

- Implementation Regulations
- Advocacy works

## II. Regional Cooperation

### ❖ ASEAN (AEGC):

- ASEAN Competition Action Plan (ACAP)
- ASEAN and Dialogue Partners (RCEP...)
- ASEAN Competition Conferences

### ❖ Others:

- International Forums (EATOP, IGE...)

# III. Challenge

## ❖ Institutional:

- New agency new issues - Advocacy
- Coordination Mechanism – Functional of LCC

## ❖ Resource Constraints:

- Budgeting
- Human resources
- ❖ Background
- ❖ Experiences

**Thank you for your attention!**



Ministry of Industry and Commerce  
Lao PDR



# Panel 1: Recent Developments and Trends in National Competition Law and Policy

**Speaker 3**

Mr Lefu Xu

Deputy Director-General, Anti-monopoly Bureau – SAMR







# Panel 1: Recent Developments and Trends in National Competition Law and Policy

**Speaker 4**

Mr Jaegyue Park  
Commissioner – KFTC



The 14<sup>th</sup> East Asia Top Level Officials' Meeting  
on Competition Policy

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# Recent Developments of the KFTC

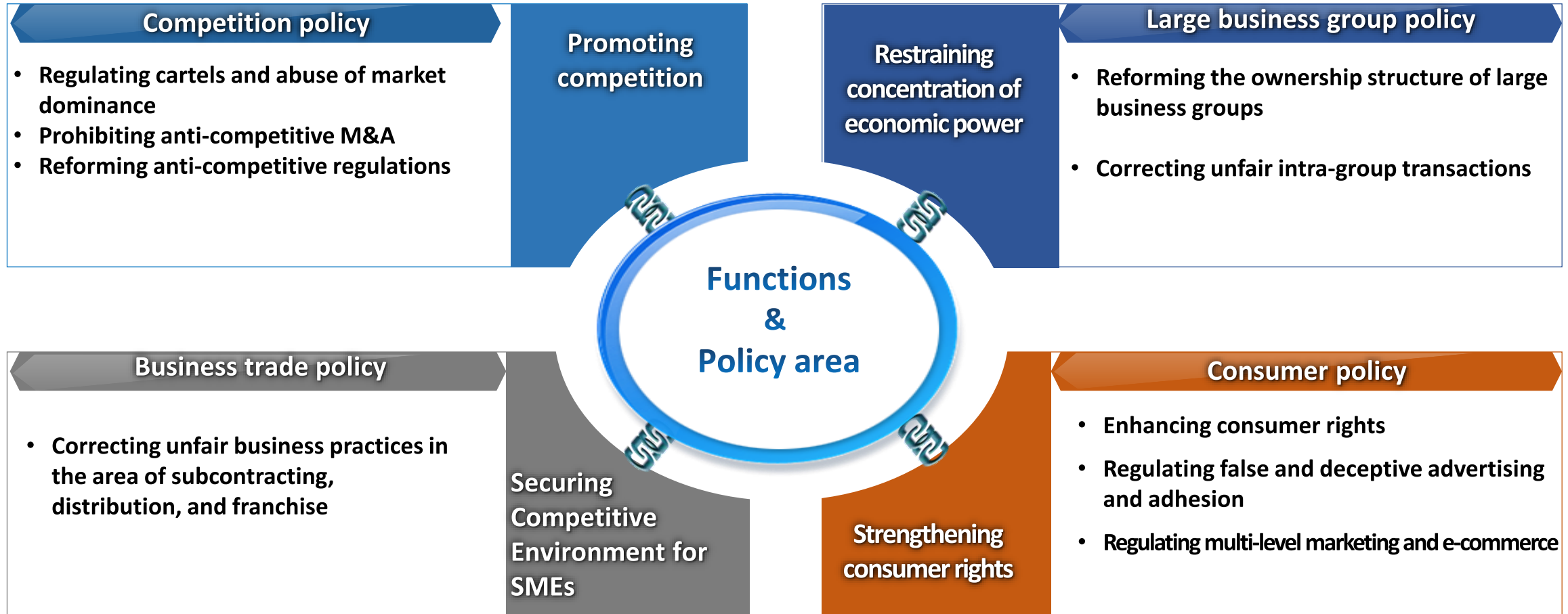
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August 29, 2018

**Park Jaegyue**  
Commissioner  
KFTC



# The Functions and Roles of KFTC



# The Recent Achievement

## Abuse of Market Dominance

- ❖ Imposed remedies and surcharges on **Qualcomm** for its abuse in licensing Standard Essential Patents (SEPs) related to mobile communications technology (KRW 1.03 trillion)
- ❖ Imposed remedies and surcharges on **Siemens** for abusing its market dominance in the medical equipment (CT, MRI) maintenance market (KRW 6.2 billion)

## Cartel

- ❖ Detected a total of **68** cases of domestic and international cartels (Imposed KRW 35.8 billion in surcharges and requested to press charges against 27 cases in total in 2017)

## Merger

- ❖ Reviewed a total of **668** M&A cases in 2017 and imposed remedies for **4** cases  
Ex) Dow(US)-Dupont(US), Maersk(Denmark)-HSDG(Germany), Esmeralda-DS Power(Domestic)

## Competition Advocacy

- ❖ Improved anticompetitive regulations in the 25 areas that are closely related to people's lives  
Ex) Beer, Ultra Light Plane



# Priority in KFTC Policy and Enforcement

## The 4th Industrial Revolution(4IR)

### Characteristics of the 4IR

#### ➤ Rapid pace of changes

→ Widening gap between the market and law

#### ➤ Convergence of industry and market

→ Seamless connection of online and offline markets and various industries

### Issues caused by 4IR

#### ➤ Competition Issues in the new industries

- Online platform
  - multi-sided market
- Abuse of IP rights
  - FRAND commitment issue
- New issues
  - Algorithm and collusion, Big Data

#### ➤ Loopholes in regulating markets

- Algorithm and collusion
- Big data monopoly
- Notification of mergers

➔ Needs for the competition law, policy and enforcement corresponding to the innovative economic environment characterized by the 4IR



# Priority in KFTC Policy and Enforcement

## Abuse of Market Dominance

- ❖ Monitoring the abuse of patents that hinders the growth of innovative companies in pharmaceutical and semi-conductor markets
- ❖ Monitoring the foreclosure of competitors in the mobile applications market.

## Cartel

- ❖ Monitoring cartels that weaken corporate competitiveness and cause consumer harm
- ❖ Discussing on how to regulate new types of conspiracies like algorithmic cartels

## Competition Advocacy

- ❖ Consulting with relevant ministries to improve various anti-competitive regulations that harm innovation in emerging sector such as ICT and healthcare



# Complete Revision of MRFTA

## 1. Background

The MRFTA which was enacted in 1981 during the industrialization era is not catching up with innovative changes such as the 4<sup>th</sup> Industrial Revolution

## 2. Main Contents

### Notification of Mergers

❖ As the criterion for mandatory merger notification is based only on party-size, it's difficult to regulate data monopolists or the acquisition of a startup which could be a potential rival to a merging company

➔ Adding a new threshold such as the value of transaction to the current merger notification criteria.

### Exchange of Information

❖ Difficult to regulate a wide range of cartels such as exchange of information

➔ Expanding the scope of cartels to govern a wider range of cartels



Thank you

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# Panel 1: Recent Developments and Trends in National Competition Law and Policy

**Speaker 5**

Mr Songkheang Meng

Deputy Director of Competition Department – CAMCONTROL





# **Recent Development of CPL in Cambodia and an Overview of the Draft Law**

Songkheang Meng – Deputy Director, Competition Department,  
CAMCONTROL Directorate General, Ministry of Commerce, Cambodia

Sydney, 29-Aug-2018

# I. The current status of CPL in Cambodia

- Recent developments:
  - Finalized the draft law by the Ministry of Commerce (early 2018)
  - Submitted to the Prime Minister Office (called Council of Ministers - COM) (early 2018)
  - Discussing at the Technical working Group of COM
    - Postponed since Cambodia has the National Election
    - Will resume the discussion after the establishment of government
  - Will submit to the Parliament after completing the process at COM

# I. The current status of CPL in Cambodia (Con't)

- Rationales for the delay in introducing CPL
  - Lack of expertise in CPL – Need international assistance – Resolved from time to time.
  - Change of international experts – change draft law and the way of design the draft law as well as many consultation works had been conducted.
  - Allocation of Prioritized works of the Senior Leaders
  - The effort to incorporate the international best practices in the draft law and ensure the consistencies with domestic laws/regulations.

## II. An overview of the draft law

### Purpose:

- Assist consumers to obtain goods and services at lower prices, high quality, greater variety and greater choice,
- Promote the establishment of new businesses,
- Protect the Cambodian economy from harmful anticompetitive behaviours

### Objectives:

- To determine provisions and procedures applicable to unlawful practices that prevent, restrict and distort competition, and to promote and protect the benefits of a competitive market economy for Cambodia.

## II. An overview of the draft law (Con't)

### Scope:

- Applies to all persons conducting business activities or other pro-business activities that significantly prevent, restrict or distort competition in the market of Cambodia, whether the source of those activities is inside or outside Cambodia.
- **'Persons'** includes natural and legal persons, not-for-profit organisations, and entities that are wholly or partly government owned - (SOE).
- Conducting business from inside or outside Cambodia.
- Conduct that effects the Cambodian economy.

## II. An overview of the draft law (Con't)

### General Prohibitions under the draft law:

- Horizontal/Vertical Agreement including cartel conducts
- Abuse of Dominant Position
- Merger Control – Business Combination

### Exemptions and Authorizations

The below three conditions are required for exemptions/authorization:

- benefits directly arising from the agreement or activities which would not arise without the agreement or activities having the effect or preventing, restricting or distorting competition;
- The above benefits outweigh the anti-competitive effect of the agreement or activities; and
- The agreement or activities do not allow the person concerned to eliminate competition completely in respect of a substantial part of the goods or services.

## II. An overview of the draft law (Con't)

### Cambodia Competition Commission (CCC):

- Shall be established in accordance to this law
- Chaired by Minister of Commerce while other commissioner as members of the Commission (from relevant ministries and an expert group who has expertise in law, economic, etc.)
- – CAMCONTROL Directorate General will be the Secretariat of the Commission in charge of investigation while the Commission is in charge of Decision making.



# III. Way forward

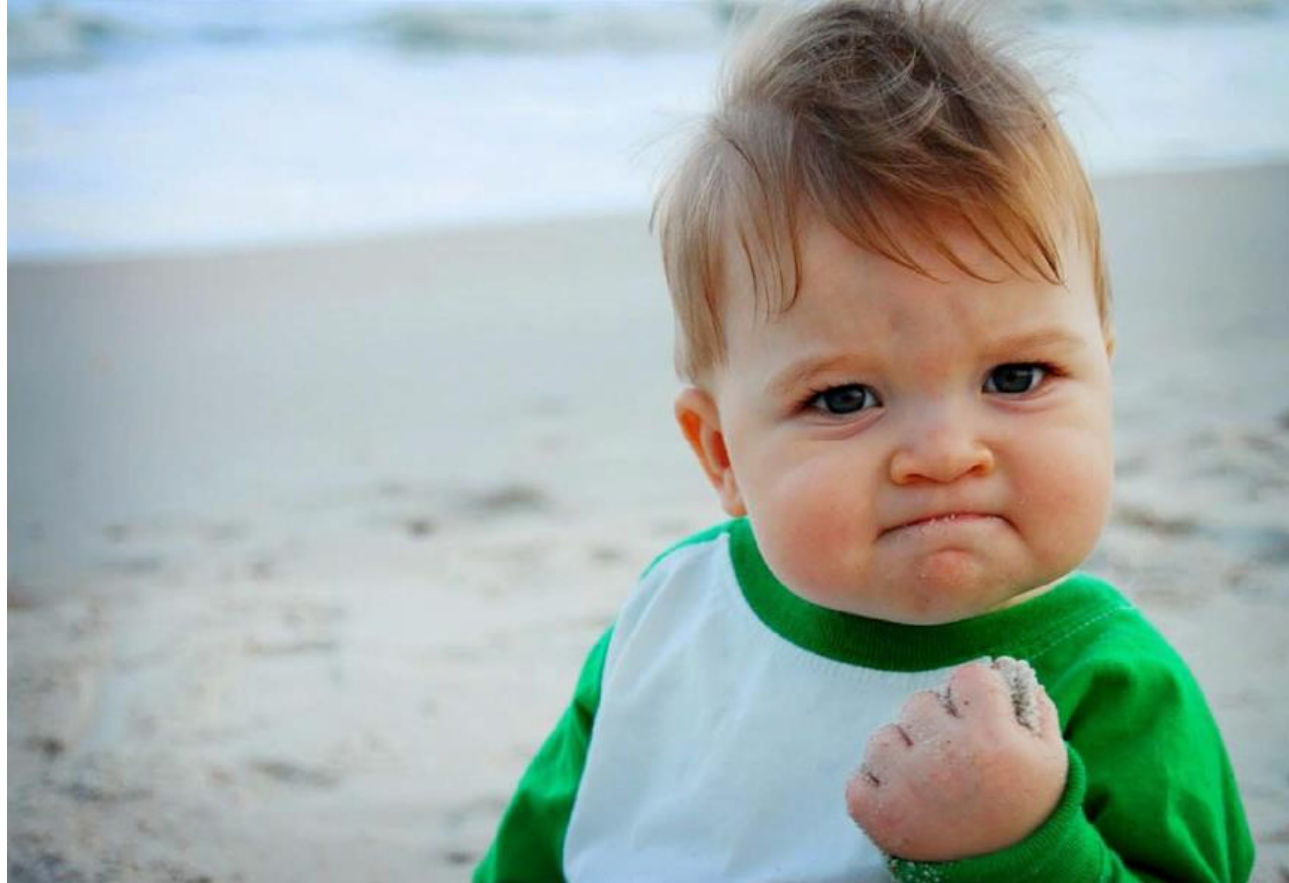
## What to do now while drafting or defending this law

- Building capacity of Competition Department's officials
- Drafting the Sub-Decree on the Establishment of Cambodia Competition Commission (CCC) – Assistance from ACCC experts -
- Advocacy and outreach activities

## What to do now while drafting or defending this law

- Submit the draft sub-decree on CCC to Prime Minister Office (Council of Minister)
- Capacity building, advocacy and outreach activities
- Drafting other necessary implementing rules/regulations for CCC to enforce the law.

Thanks very much for your attention!!





# Panel 1: Recent Developments and Trends in National Competition Law and Policy

## Speaker 6

Mr Boonyarit Kalayanamit  
Secretary General – OTCC



# Recent Developments and Trends in National Competition Law and Policy

## Thailand



Office of Trade Competition Commission  
At the 14<sup>th</sup> EATOP  
Sydney, Australia  
29 August 2018



# Trade Competition Act B.E. 2560 (2017)



Efficiency and transparency

Benefits for the country and national security

Procedural fairness

Benefits for people

International recognition

All business undertakings to be subject to the law.

Business operators

SOES, public organizations, other government agencies

Preventive Measures

Administrative Sanction

Advance ruling

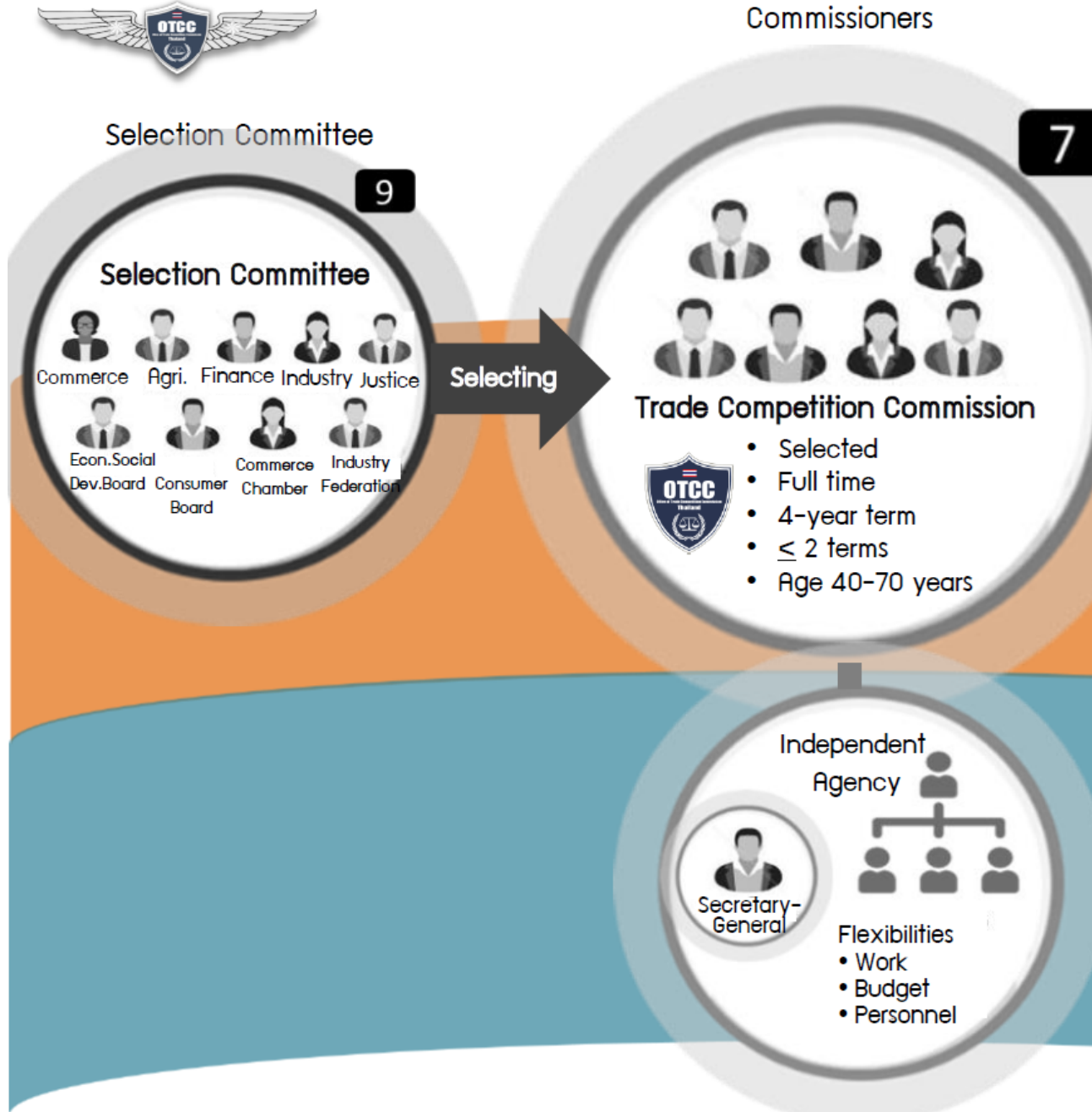
Independence

Commission

Agency



# Independence



## Powers and duties **Section 17**

1. Make recommendations to the Minister in issuing ministerial regulations
2. Issue regulations or notifications
3. Regulate/Impose guidelines
4. Consider complaints/make inquiries
5. Issue advance rulings
6. Issue rules on inquiries/investigations
7. Appoint officers to perform duties
8. Proceed with criminal cases (The Intellectual Property and International Courts)
9. Consider and impose administrative fines
10. Invite any person to provide factual information
11. Propose opinions and recommendations to the Minister and Cabinet
12. Give recommendations to government agencies
13. Determine plans, strategies, and guidelines on management of the Office
14. Issuing regulations or rules regarding operational of the Office
15. Perform other duties by laws

# Trade Competition Act B.E. 2560



## Prevention of Monopoly and Unfair Trade

Protect Competition (not Competitors) & Protect Consumers

Abuse of a Dominant Position

Mergers and Acquisitions

Restrictive Agreements or Arrangements

Unfair Trade Practices

Unreasonable Agreements with Foreign Firms

## Trade Competition Act B.E. 2560



### Section 50

Dominant position in a market

Criminal



≤ 2 ȳ



≤ 10%  
Turnover in the year of offence



### Section 51

Request for permission

Resulting in a monopoly or a dominant position in a market

Administrative



≤ 0.5%  
Transaction value of the merger



### Section 51

Notification of the outcome of a merger

Within 7 days

Reducing competition in the market

Administrative



≤ 0.2 MB.



≤ 0.01  
Million Baht/day



### Section 54

Hardcore Cartel

Criminal



≤ 2 ȳ



≤ 10%  
Turnover in the year of offence



### Section 55

Non-hard Core Cartel

Administrative



### Section 57

Unfair Trade Practices

Administrative



≤ 10%  
Turnover in the year of offence



### Section 58

Contracts with a business operator in a foreign country without appropriate justification

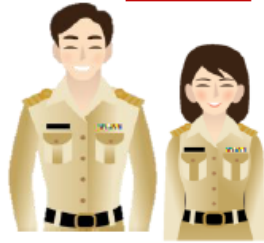
Administrative

# Exemption



## Section 4

1



Government  
Agencies

- Central
- Regional
- Local

2



Actions of

- SOEs
- Public organizations
- Other government agencies

Law

Cabinet  
resolution

- National security
- Public interest
- Interests of society
- Provision of public utilities

3



- Group of farmers
- Cooperatives
- Cooperatives group  
(by law)

Benefits for  
farmers

4



Businesses



Subject to other  
sectoral laws that  
have jurisdiction in  
competition



# Office of Trade Competition Commission



[www.otcc.or.th](http://www.otcc.or.th)



Website



Line



Fan Page





# Panel 2: Actual Cases and Challenges of Cross-border Enforcement and Cooperation

**Moderator**

Mr Kurnia Toha – Chairman, KPPU





# Panel 2: Actual Cases and Challenges of Cross-border Enforcement and Cooperation

## Speakers:

Ms Dongmei Wu

Director, SAMR

Ms Sarah Court

Commissioner, ACCC

Dr Mark Berry

Chairman, NZCC

Dr Mei-Ying Huang

Chairperson, CTFTC





# Panel 2: Actual Cases and Challenges of Cross-border Enforcement and Cooperation

**Speaker 1:**

Ms Dongmei Wu

Director, Bureau of Price Supervision and Anti-Monopoly – SAMR



# **Cross-border Enforcement: Actual Cases and Cooperation**

**29 August 2018  
14<sup>th</sup> EATOP  
Sydney, Australia**

**Bureau of Price Supervision  
and Anti-Monopoly  
State Administration for Market  
Regulation (SAMR)  
People's Republic of China**

# Importance of International Cooperation

Since the implementation of AML from 2008, we are always making efforts to **deepen international cooperation**.

- In view of the globalised nature of trade and the multi-jurisdictional effects of cartels, unilateral conduct and mergers, international cooperation has become a must.
- For China, anti-monopoly enforcement is still in its primary stage, we need to learn related experience from our counterparts of other jurisdictions.

# Actual Cases

## **Cartels:**

LED case, 2012

Car parts case, 2014

Bearing case, 2014

## **Abusing case:**

Qualcomm case, 2015

# Actual Cases

the Qualcomm case

**Complaints:** Firstly two US-based companies raised suspicions that Qualcomm had engaged in monopolistic behavior. Then a number of domestic and other foreign companies complained too.

**Investigation:** After preliminary research for nearly 3 years, and more than 1 year formal investigation and analysis, NDRC determined that Qualcomm had abused its dominant market position. Its abusing behavior includes:

*Charging unfairly high patent royalties;*

*Tying in sales of non-wireless SEPs without justification;*

*Imposing unfair conditions on the sale of baseband chips.*



# Actual Cases

the Qualcomm case

•**Decision:** *Ordering Qualcomm to cease its illegal conduct in China:*

- ✓ provide patent lists, and stop charging patent royalties for expired patents;
- ✓ stop imposing cross-licensing conditions against a licensee's will, or to force them to cross-license their patents to Qualcomm for free without paying reasonable consideration.
- ✓ cease tie-in licensing of non SEPs with SEPs without justifiable reasons.
- ✓ cease tie-in licensing as a condition for supplies of baseband chips to potential licensees.

•**Decision :** *Imposing a fine*

Impose a fine of 6.088 billion yuan (approximately US\$975 million) . This amounted to 8 percent of the company's annual turnover in China in 2013.

# MOUs Signed With Other Jurisdictions

We've signed some MOUs with other jurisdiction, such as:

- MOU signed with **the US Department of Justice and US Federal Trade Commission.**
- MOU signed with **European Commission.**
- MOU signed with **Japan Fair Trade Commission.**
- MOU signed with **Australian Competition and Consumer Commission.**
- MOU signed with **Korea Fair Trade Commission .**

# Framework of MOUs

The MOUs create a framework of cooperation, such as:

- Discussion on competition legislation;
- Enforcement and technical cooperation ;
- Sharing of information ;
- Advocating and promoting competition policy;
- Direct coordination of enforcement activities.

# Conclusions

It's necessary to deepen competition enforcement cooperation with other jurisdictions and international organizations.

- Build bilateral and multilateral relationships;
- Increase mutual understanding and awareness;
- Facilitate the convergence of anti-monopoly law;
- Improve the effectiveness of its enforcement.

# Thank you much !

**Wu Dongmei**

**Email: [wudm@ndrc.gov.cn](mailto:wudm@ndrc.gov.cn)**



# Panel 2: Actual Cases and Challenges of Cross-border Enforcement and Cooperation

**Speaker 2:**

Ms Sarah Court  
Commissioner – ACCC





# Case examples and some challenges of cross-border enforcement and cooperation

Sarah Court  
Commissioner, ACCC

# Recent examples of cross-border cooperation in enforcement

- International Shipping (2018)  
*settled in Australia but related cases ongoing in various jurisdictions*
- Ball Bearing (2013)  
*completed*



## Regulators we had contact with

- Department of Justice (USA)
- Competition Bureau (Canada)
- European Commission
- Competition and Markets Authority (UK)
- Japanese Fair Trade Commission
- Korean Fair Trade Commission
- Competition Commission (South Africa)
- Swedish Competition Authority
- Konkurransen Tilsynet (Norway)

## Information shared to help enforcement

- the status of each jurisdiction's investigation;
- the type of conduct each jurisdiction was investigating;
- procedural issues and/or approaches faced by different jurisdictions;
- potential targets and/or persons of interest; and
- the location and/or contact details of particular individuals.

## Some of the challenges ...

- cooperating parties refusing to provide waivers;
- no relevant MOU in place between certain agencies;
- the different stages of investigations and potential prejudice to investigations/litigation;
- language and time/location barriers;
- changes in staff at both the ACCC and other agencies over the course of the investigation.



# Panel 2: Actual Cases and Challenges of Cross-border Enforcement and Cooperation

**Speaker 3:**

Dr Mark Berry  
Chairman – NZCC



# Actual cases and challenges of cross-border enforcement

Dr Mark Berry

Chair – New Zealand Commerce Commission

East-Asia Top Level Officials Meeting on Competition Policy

29 August 2018



# Introduction

- **Globalisation has brought about large economic benefits.**
- **Many competition law cases have a cross-border dimension and the number is growing.**
- **The OECD and ICN have been the drivers of much of initiatives for increasing cooperation.**

# Challenges to cross-border enforcement

- **Information sharing including confidential information.**
- **Inconsistencies in laws e.g. Leniency and penalties (generating different deterrent effects across jurisdictions).**
- **Coordinating jurisdictions for investigative assistance.**
- **Limiting the burden on business and competition agencies.**

# Recent trends to overcome challenges

- **Closer bilateral agreements and initiatives to strengthen cooperation:**
  - **New Zealand and Australia.**
- **Proposals for multilateral agreements: OECD and DoJ.**
- **Clearer waivers governing what can be passes between agencies.**
- **Coordination on investigations with regular catch ups between agency staff on particular investigations.**



# Trans-Tasman cooperation: challenges and benefits

- **Coordinating:**
  - timetables and oversight.
  - information and witness requests.
  - investigation strategies/focus.
  - interviews of overseas personnel.
  - approaches to outcomes.
- **Sharing experiences of problems dealing with applicants.**

## **Benefits – For the Commission**

- **Prioritisation of resources**
- **Greater alignment of analytical frameworks, theories of harm and effective remedies**
- **Pooling of knowledge, experience and expertise**
- **Consistent decisions**
- **More focused investigations on international conduct**
- **Able to get up to speed on issues quicker**
- **Ensuring we have not missed anything critical in our investigation approach and how we are assessing the matter**

## **Benefits – For the Applicants**

- **Applicants are able to satisfy the information needs of both the ACCC and NZCC in a systematic way.**
- **Parties are able to search for material in databases in coordinated approach.**
- **Less disruption to their business – key staff are interviewed by both regulators in a coordinated manner.**





# Panel 2: Actual Cases and Challenges of Cross-border Enforcement and Cooperation

**Speaker 4:**

Dr Mei-Ying Huang  
Chairperson – CTFTC





The 14<sup>th</sup> East Asia Top Level Official's Meeting on Competition Policy

# **Actual Cases and Challenges of Cross-Border Enforcement and Cooperation - Experiences of Chinese Taipei**



**Dr. Mei-Ying Huang**  
**Chairperson, Fair Trade Commission**  
**29 August, 2018**  
**Sydney, Australia**



## Outline:

1. Reasons for International Cooperation
2. Recent Cross-Border Enforcement and Cooperation Cases
3. Challenges of Enforcement and Cooperation:  
Dealing with differences in different jurisdictions  
in cross-border enforcement cases
4. More International Cooperation Actions



## Reasons for International Cooperation

- To ensure effective and efficient enforcement, cooperation should be based on mutual trust and good faith between competition authorities.
- Cooperation can ensure efficient and effective investigations and proceedings and improve their own analyses.
- Cooperation can reduce conflicts on important interests between jurisdictions and limit the risk of inconsistent analysis and remedies.





## Recent Cross-Border Enforcement and cooperation Cases

- Capacitors Cartel (2015): Canada, EU, Singapore, US (email, telephone conference, take investigation actions at the same time)
- Intel's acquisition of Altera (2015) : US, EU, and Korea (email, telephone conference, information sharing)
- Merger of Denali Holding and EMC (2016): Korea (email, information exchange)
- Merger of ASE Group and SPIL (2016): US (email, telephone conference, information exchange)
- Google case (under investigation, 2018): Israel (email, information exchange)



## Recent Cross-Border Enforcement Cases (1)



Google case: Google is alleged to abuse market dominant position by deterring or eliminating competition in mobile device operating system market (under investigation).

### Focus of investigation in the case:

1. Market definition
2. Pre-installed Apps business conducts
3. Prevent from pre-installing alternative version of Android not approved by Google (Android forks)
4. Make payments to mobile manufacturers to pre-install Google Search App on their devices



## Recent Cross-Border Enforcement Cases (1)

### Features of the case:

- A cross-border enforcement case
- EU issued a decision to fine the company €4.34 billion for breaching EU antitrust rules on July 2018.
- Possible different considerations in the case :
  - market definition
  - internet externalities (network effects)
  - barriers to entry



## Recent Cross-Border Enforcement Cases (2)



### Shopee Case:

- A cross border online shopping platform from Singapore offered "free insertion fees", "free handling fees" and "free shipping fees" for both buyers and sellers at the beginning of its operation in Chinese Taipei to attract users.
- Some domestic incumbent shopping platform operators followed the strategy to compete with Shopee and filed complaints to the Fair Trade Commission.



## Recent Cross-Border Enforcement Cases (2)

 蝦皮購物

### Case analysis:

1. Shopee is an oversea platform operator and a new entrant of on-line shopping platform which counts less than 10% of market share.
2. Free shipping and handling fees was a penetration strategy in the beginning of operation to gain market shares and network effects, instead of “long-term strategy to squeeze out competitors”.
3. On-line shopping platform is a non-regulated, low barrier to entry and highly competitive market (both domestic and overseas).
4. No violation of the Fair Trade Act.



# Challenges of Cross-Border Enforcement and Cooperation-

**Dealing with differences in different jurisdictions in cross-border enforcement cases:**



# Challenges of Cross-Border Enforcement and Cooperation

## 1. Difference in legal systems and penalties:

- Administrative enforcement vs. criminal and civil actions
- Administrative fines vs. criminal imprisonment in cartel cases
- Improve cooperation through consultation and positive comity



# Challenges of Cross-Border Enforcement and Cooperation

## 2. Differences in investigation measures and tools:

- Use of dawn raids, search and seizure power in different jurisdictions
- Use of different economic analysis methods and market definitions in the same case (market)





# More International Cooperation Actions

- ◆ International Organization: OECD/ICN
- ◆ Regional Economic/Trade Cooperation Forums (APEC, EATOP, East Asia Competition Network)
- ◆ Competition Chapter in Free Trade Agreements
- ◆ Bilateral Cooperation Agreements
- ◆ Communications between Agencies/Case Handlers
- ◆ Periodic Information Exchange, Consultation Meetings, International Workshops/Conferences

# Thank You for Your Attention!!



Our Website:

<https://www.ftc.gov.tw/internet/english/index.aspx>



# Panel 3: Selling Competition – Key Tools for Advocacy

**Moderator**

Dr Arsenio Balisacan – Chairman, PCC





# Panel 3: Selling Competition – Key Tools for Advocacy

## Speakers:

Mr Rod Sims

Chair, ACCC

Ms Datin Tay Lee Ly

Commission Member, MYCC

Mr Teo Wee Gaun

Director, CCCS

Mr Kazuyuki Sugimoto

Chairman, JFTC

Mr Rasul Butt

Senior Executive Director, HKCC





# Panel 3: Selling Competition – Key Tools for Advocacy

**Speaker 1:**

Mr Rod Sims  
Chair – ACCC





# Panel 3: Selling Competition – Key Tools for Advocacy

**Speaker 2:**

Ms Tay Lee Ly

Commission Member – MyCC





## **Malaysia Competition Commission**

**14th East Asia Top Level Official's Meeting on Competition Policy  
(EATOP) Sydney, 29 August 2018**

### **SESSION 3: SELLING COMPETITION - KEY TOOLS FOR ADVOCACY**

**Tay Lee Ly**

**Member of the Commission**

**Malaysia Competition Commission (MyCC)**

# CONTENTS

- Development of competition law in Malaysia**
  
- MyCC's efforts in promoting competition law**
  
- Way forward**



## DEVELOPMENT OF COMPETITION LAW IN MALAYSIA

26 Oct 2005

Approval of Fair Trade Practice Policy (FTPP)

March – June  
2010

Approval of Competition Bill and Competition Commission Bill  
April – May 2010: Bills are tabled and passed in Parliament  
10.6.2010: Competition Act 2010 & Competition Commission  
Act 2010 are gazetted

1 Jan 2011

Competition Commission Act 2010 [Act 713] came into force

1 Jan 2012

Competition Act 2010 [Act 712] came into force

# GOVERNING LAWS

## **Competition Act 2010 [Act 712]**

An Act to promote economic development by promoting and protecting the process of competition, thereby protecting the interests of consumers and to provide for matters connected therewith.

## **Competition Commission Act 2010 (Act 713)**

An Act to provide for the establishment of the Competition Commission, to set out the powers and functions of such Commission, and to provide for matter therewith or incidental thereto.

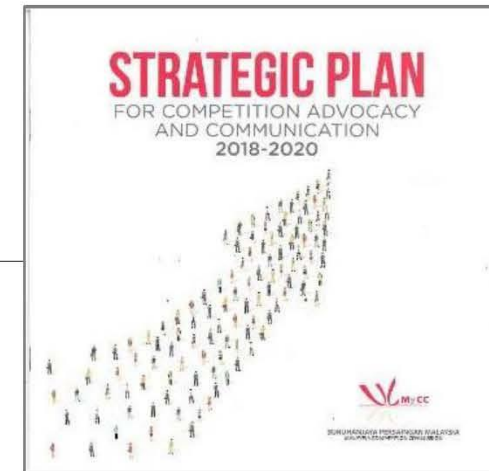
## MyCC's FUNCTIONS

Section 16 of Competition Commission Act 2010 sets out, among others, MyCC's functions:

- (f) to act as an advocate for competition matters;
- (i) to publish and raise awareness among persons engaged in commerce or trade and among the public, information concerning competition laws;
- (j) to inform and educate the public regarding the ways in which competition may benefit Malaysian consumers and economy.

# STRATEGY PLAN FOR COMPETITION ADVOCACY

- ❑ MyCC issued three handbooks on Competition Advocacy Strategic Plan in 2012, 2015 and 2018.
- ❑ Sets out the rationale and framework for MyCC's work programme in first and second phases of implementation of the Competition Act 2010.
- ❑ Identify targeted priority sectors and key stakeholders.



## ADVOCACY & COMMUNICATION COMMITTEE (ACC)

- ❑ **ACC** was established to promote a robust competition-friendly environment through **advocacy** and **non-enforcement initiatives**, directed at targeted stakeholders in the government, business and civil society sectors.
- ❑ **ACC consists of representatives from government agencies, consumer and business associations, media and Small Medium Enterprises (SME).**
- ❑ ACC shall encourage stakeholders to choose **self-compliance** rather than MyCC's enforcement of competition law.

# COMPETITION ADVOCACY IN MALAYSIA

## No. of Awareness Programs and Engagements

Year	No.
2011	26
2012	37
2013	30
2014	31
2015	48
2016	28
2017	18
2018 ( <i>June</i> )	<b>16</b>
<b>TOTAL</b>	<b>234</b>

# COMPETITION ADVOCACY IN MALAYSIA

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# COMPETITION ADVOCACY IN MALAYSIA

## MOU WITH SIX (6) INSTITUTIONS OF HIGHER LEARNING





# COMPETITION ADVOCACY IN MALAYSIA

FIRST MOOT COURT COMPETITION ON COMPETITION LAW IN 2016



# COMPETITION ADVOCACY IN MALAYSIA

## MALAYSIA COMPETITION CONFERENCE 2017

## 7th ASEAN COMPETITION CONFERENCE 2017



7th ASEAN Competition Conference 2017  
- ASEAN@50  
"Managing Change in a Competitive ASEAN"  
8-9 March 2017 | Sunway Resort Hotel & Spa, Selangor, Malaysia

## COMPETITION ADVOCACY IN MALAYSIA (2018)

No.	Programme	Venue & Date	Description
1.	Road tour 2018 - #BEBASKARTEL In conjunction with the 7th anniversary of MyCC on 1 April 2018.	<b><u>In Nine (9) States</u></b>  Between 21 February 2018 and 8 March 2018	<p>1. This tour series is one of the Commission's ongoing efforts to promote and protect competitive process to benefit Malaysian business, consumers and economy by implementing Competition Act 2010.</p> <p>2. The e-learning system was the exercise tool for the #bebaskartel tour.</p>

# COMPETITION ADVOCACY IN MALAYSIA

## ESSAY-WRITING COMPETITION ON COMPETITION LAW 2018 & PHOTOGRAPHY CONTEST 2018

## CHORAL SPEAKING COMPETITION ON COMPETITION LAW 2018



**#BEBASKARTEL**  
**ESSAY WRITING COMPETITION**  
**PRIZES\***

- 1st Prize - RM 1,000.00
- 2nd Prize - RM 800.00
- 3rd Prize - RM 600.00
- 4th Consolation Prize - RM200.00
- 5th Consolation Prize - RM200.00

**2018**

**REGISTRATION**  
Maximum three (3) participants in a group with a registration fee of RM25.00 per entry.

**SUBMISSION DATE : 16 MARCH 2018**  
For further information, please visit the MyCC's website at [www.mccc.gov.my](http://www.mccc.gov.my). Any further query can be forwarded to the MyCC via email at [ecw@mycc.gov.my](mailto:ecw@mycc.gov.my).

Malaysia Competition Commission Level 15, Menara SAMA Building,  
No.7, Jalan Duta Seroja, Duta, Kuala Lumpur, 50021 Kuala Lumpur  
T: +603 2072 1877 F: +603 2072 1872 www.mccc.gov.my  
Promoting Competition, Protecting You



**#BEBASKARTEL**  
**PHOTOGRAPHY CONTEST 2018**

Please submit the registration form via [photocontest@mycc.gov.my](mailto:photocontest@mycc.gov.my)

**PRIZES**

- 1st Prize - RM1,500.00
- 2nd Prize - RM1,250.00
- 3rd Prize - RM1,000.00
- 4th-10th Consolation Prize - RM200.00

**THEME**  
Bebas Kartel / Persempitan Sihat / Akibat Adu Persempitan

**REGISTRATION**  
Registration fee is RM10.00 per entry.  
Please submit the photograph along with the following details:  
1) Full name on per IC and  
2) IC Number.  
Photograph caption (100 CHARACTER ONLY).

**CLOSING DATE : 16 MARCH 2018**  
Entry entry to the MyCC at [www.mccc.gov.my](http://www.mccc.gov.my)

Malaysia Competition Commission Level 15, Menara SAMA Building,  
No.7, Jalan Duta Seroja, Duta, Kuala Lumpur, 50021 Kuala Lumpur  
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Promoting Competition, Protecting You



# COMPETITION ADVOCACY IN MALAYSIA

## MyCC E-LEARNING SYSTEM ON COMPETITION COMPLIANCE PROGRAMME 2018

## #BEBASKARTEL “KAYUH KAW- KAW” CYCLING CONTEST 2018



# WAY FORWARD

## Strategic Plan for Competition Advocacy 2018-2020

In undertaking competition advocacy activities, the Commission adopted the best practices of competition advocacy work of other Competition agencies and learn through its own experience. The Commission adopts a collegial approach by working with various key stakeholders as well as to network and maintain international links in order to learn continuously from successful advocacy activities carried out by other competition agencies. Competition culture is strong in certain jurisdictions due to:

- 01 engagement with key stakeholders;
- 02 interaction with institutions of higher learning;
- 03 resolution of cases with significant media coverage;
- 04 publication of decisions;
- 05 market reviews and case studies;
- 06 experience with competition policy;
- 07 participation of the competition authority in regulatory reform and privatisation processes;
- 08 existence of specialised competition tribunal; and
- 09 personal leadership of the head of the competition authority.

### Key Stakeholders:

The Commission will continue to work with key stakeholders, which include the general public, government agencies, sector regulators, legislature and judiciary at federal and state government level, enterprises and associations, professionals, media, consumer associations and civil society organisations, universities and think-tanks, in order to promote a competition friendly climate in the aforementioned priority sectors.

**The Commission's 5-year Strategic Plan spells out its vision that is to be a leading competition authority to promote and protect the process of competition in Malaysia whereas its mission is to execute its mandate efficiently and effectively, with a commitment to ensure a conducive competition culture to make markets work well for consumers, businesses and the economy.**

STRATEGIC PLAN FOR COMPETITION ADVOCACY AND COMMUNICATION 2018-2020

## STRATEGIC PLAN FOR COMPETITION ADVOCACY 2018-2020

### Priority Sectors:

Some of the priority sectors identified below are a continuation from the last two plans as work on these areas are ongoing and complaints on the inefficiency of the sectors are still forthcoming. The priority sectors identified can or will be modified depending on the circumstances and needs. The **priority sectors for 2018 - 2020** are as follows:



# WAY FORWARD

## Strategic Plan for Competition Advocacy 2018-2020

### Strategic Goals:

1. Advocate, inform and educate the public on competition matters

2. Conduct studies on competition issues

3. Create more 'Competition Champions' among key stakeholders

4. Engage and build strong relationships with key stakeholders

5. Utilise the best communication instruments



**THANK YOU**



**[www.mycc.gov.my](http://www.mycc.gov.my)**



# Panel 3: Selling Competition – Key Tools for Advocacy

**Speaker 3:**

Mr Teo Wee Guan

Director, International & Strategic Planning – CCCS





## Market Studies and Government Advisories

Teo Wee Guan, Competition & Consumer Commission of Singapore

# Market Studies and Government Advisories

## What role do they play?

- Competition policy and law in Singapore seeks to make markets work well
  - » Create opportunities and choices for businesses and consumers
  - » Encourage economic efficiency, productivity and innovation
- Enforcement of competition law can only deal with business practices that infringe competition law, but not
  - » Industry-wide practices or consumer behaviour that weaken competition
  - » Government policies, regulations, or activities that impact competition
- CCCS carries out the following non-enforcement activities
  - » Conduct market studies
  - » Advise other government agencies on competition matters

# Market Studies

## Selection of markets

- Feedback from the government
- No. of complaints received; findings from complaints/investigations
- Markets/sectors looked into by competition authorities overseas
- Price movements
- Market concentration
- Economic and other strategic considerations

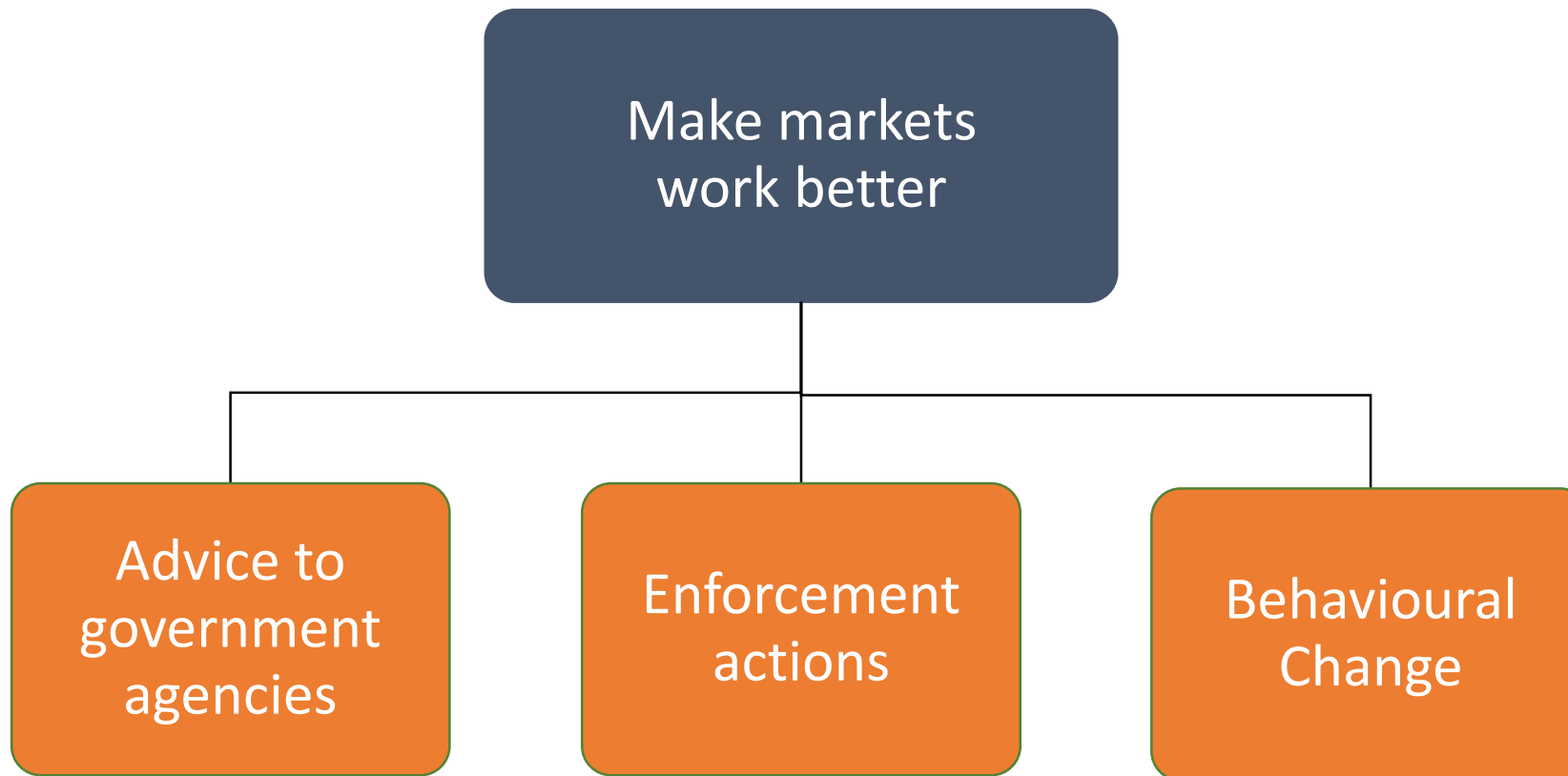
# Market Studies

## How are they conducted?

- Scoping and identifying potential issues
- Gathering information through:
  - » Public sources, e.g. desktop research, industry reports, databases
  - » Surveys of relevant stakeholders
  - » Stakeholder engagement, e.g. with government agencies, experts, businesses and associations
  - » Legal powers (section 61A of the Competition Act)
- Outsourcing partially or even fully, where necessary or useful
  - » Capacity considerations
  - » Independence and objectivity
  - » Industry expertise
  - » Ease of obtaining information

# Market Studies

## Possible outcomes



# Car Parts Market Inquiry

## Overview of approach

- To understand how the car parts market in Singapore works and the effects of market features on competition
- Conducted in 3 phases
  - » Phase 1 – Consultancy study of car parts supply chain to identify and narrow down competition issues
  - » Phase 2 – Formal inquiry to gather information from market players to study the issues identified
  - » Phase 3 – Address competition concerns by getting major authorised car dealers to remove their requirements for customers to service/repair their cars exclusively at their authorised workshops in order to maintain the warranty



# Car Parts Market Inquiry

## Key findings

- Importation and wholesale distribution of car parts are generally competitive
- Technical information, equipment and diagnostic tools are generally available
- Concerns with car warranty terms that deter car owners from using independent workshops, thus restricting competition between authorised workshops and independent workshops

# Car Parts Market Inquiry

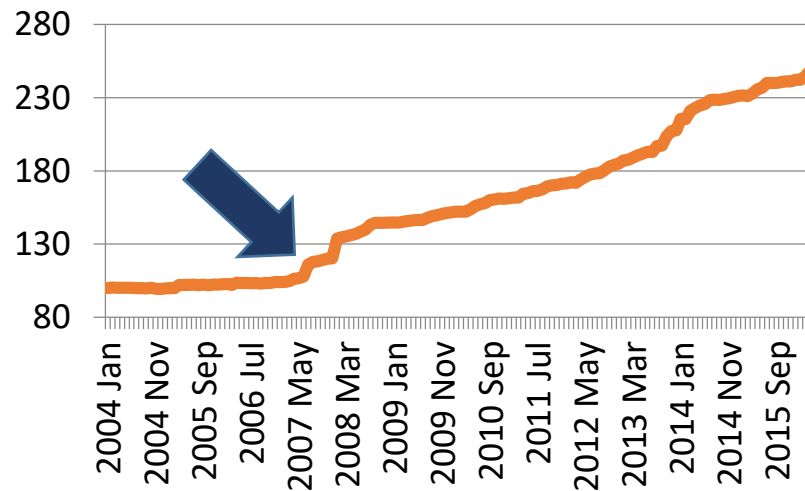
## Actions taken to address competition concerns

- Obtained cooperation of 10 major authorised dealers to remove warranty restrictions
- All agreed changes to the warranty terms to be retrospectively implemented for existing warranties in force and new warranties
- Car dealers may void car warranties only if they establish that the damage or defect to be claimed under the warranty is caused by independent workshops

# Milk Powder Market Inquiry

- CCCS commenced the market inquiry to identify the cause of rising price of infant formula milk.
- The market inquiry was conducted in-house using legal powers.

**Average Retail Price for 900g tin  
(Jan 2004 = Base)**



Level	Findings	Recommendations
<b>Wholesale</b>	Manufacturers adopt premiumisation strategy and seek to entrench consumer brand loyalty through aggressive marketing & branding, and sponsorship to private hospitals to participate in milk rotation system	<b>Reviewing sponsorship to hospitals and healthcare professionals:</b> <ul style="list-style-type: none"> <li>• Marketing expenditure in hospitals increasing. Linked to milk rotation</li> <li>• Reduce barrier to entry and expansion for new and existing brands</li> </ul>
<b>Retail</b>	Supermarkets/Pharmacies source from local authorised distributors of formula milk manufacturers ; limited parallel import (which could be due to labelling or import documentation requirements).	<b>Encouraging Entry:</b> <ul style="list-style-type: none"> <li>• Review import requirements while maintaining food safety and security</li> <li>• Explore introduction of private labels</li> <li>• Widens pool of Formula Milk suppliers into Singapore</li> </ul>
<b>Consumer</b>	Parents exhibit strong brand loyalty and are influenced to perceive premium products as better quality, due to information asymmetry on nutritional content and requirements.	<b>Improving consumer awareness on:</b> <ul style="list-style-type: none"> <li>• Nutritional content and requirements of babies, infants and young children to reduce information asymmetry</li> <li>• Availability of products at different price points</li> <li>• Allow consumers to understand available choices and to make more informed decisions</li> </ul>

# Why competition advisories?

- CCCS's role as defined in the Competition Act  
*“to advise the government or other public authority on national needs and policies in respect of competition matters generally”*
- Achieve policy objectives in the manner that is least restrictive on market competition
- Non-binding on government agencies

# Competition advisory

## Competition in public procurement relating to IT goods and services

- CCCS provided advice to a government agency on its procurement practices for computer systems that control the operations of different hardware devices
- Seeks to ensure that for the procurement of hardware device and IT related solutions, the agency can:
  - Maximise benefits of competition
  - Obtain best value for money
  - Minimise risk of abuse of dominance

# Competition concerns in procurement design

1. Need to ensure inter-operability between the computer system currently in use and the hardware devices and related IT solutions to be replaced
2. Incumbent computer system provider is also competing for tenders for the hardware device replacement and related IT solutions
  - » Incumbent has incentives to deny potential bidders to access the system or charge prohibitively high price for the access

# Advice to encourage competition

## Access restrictions

- No outright denial or refusal for third-party access to computer system, unless there are valid & objective justifications

## Fees charge for access

- If fee is charged for third-party access, should be on cost-recovery basis
- Fees to be charged to be made known upfront
- Should not be excessive or prohibitive in nature

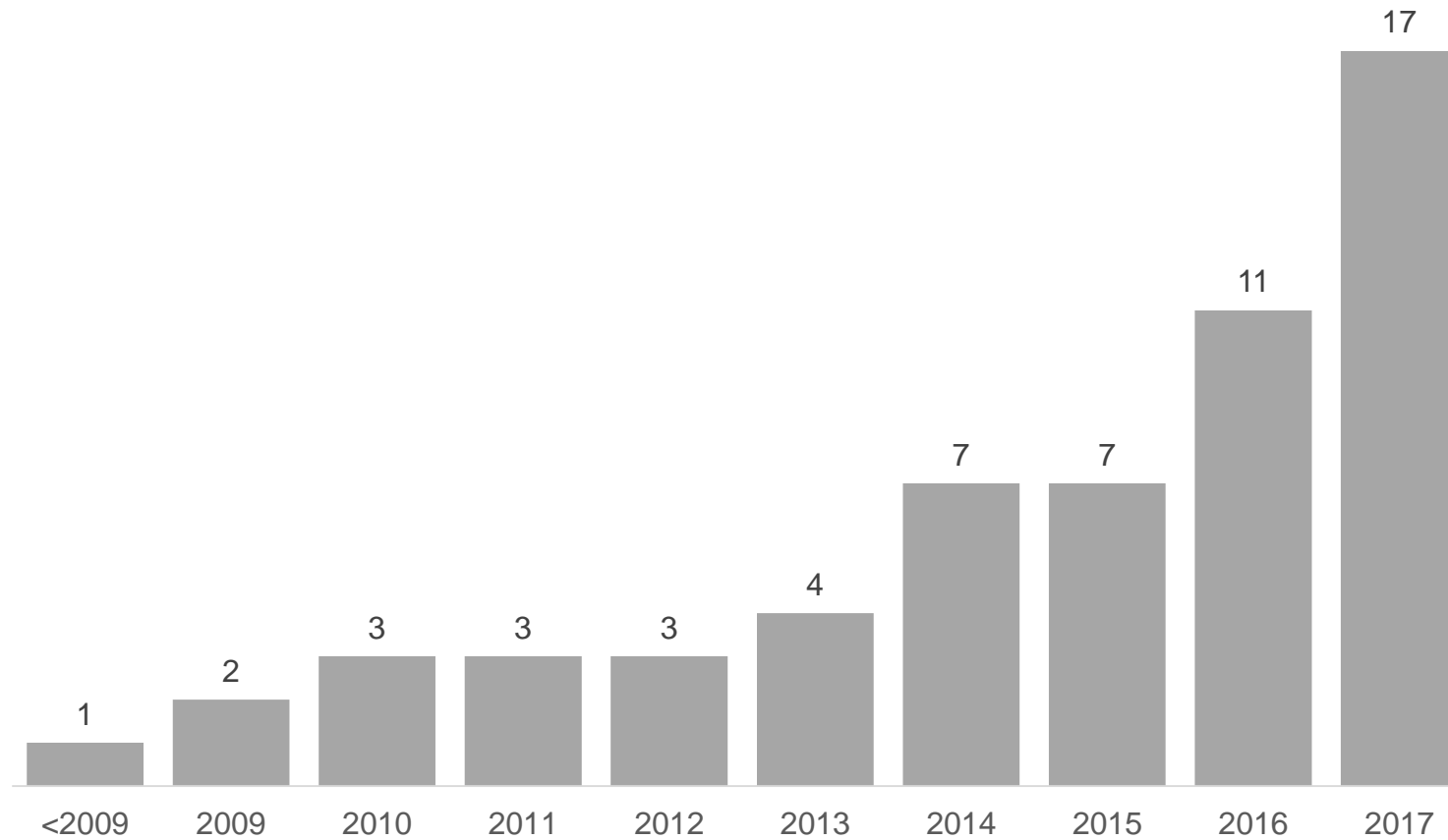
## FRAND

- Under 'FRAND' commitment – Fair, Reasonable And Non-Discriminatory access to an essential input
- This commitment will be taken as a condition for the award



# Competition advisory to MAS:

Over the years, CCCS had advised MAS on an increasing number of issues with regard to the financial sectors in Singapore



Source: CCCS

# Cooperation in area of competition advice

- Advice relating to the **Financial Advisory Industry Review (“FAIR”)** aim at raising standard of practice in the financial advisory industry, including improving the efficiency in distribution of life insurance and investment products
- CCCS undertook Competition Impact Assessment (CIA) for several initiatives relating to FAIR, including the implementation of Balanced Scorecard Framework (BSC) that MAS is seeking to impose on financial industry players
- CCCS also provided advice from competitive perspectives on the proposed establishment of a national payment system and related solutions

# Lessons Learnt

## #1 – Engage policy makers early

- » Competition authorities not industry experts.
- » Engage policy makers early to obtain overview of industry and understand existing concerns or issues which will help to better scope market study.
- » Allows competition authorities to tap into industry contacts.
- » Gives an opportunity for policy maker to voice concerns eg. sensitivity of market study and concerns with any public engagement.

# Lessons Learnt

## #2 – Staying firm while managing broader policy considerations

- » Competition is not an end-in-itself. Competition authorities need to work with policy makers to balance recommendations against other policy considerations.
  - **Public messaging** – balance the need to promote breastfeeding against educational messages that formula milk is sufficient to meet infant’s nutritional needs.
  - **Labelling and import requirements** – balancing safety and quality concerns with need to facilitate parallel imports
- » However, the findings and recommendations of market study should still stem from primarily preserving competition and be based on the evidence collected during the study.

# Lessons Learnt

## #3 – Partnering like-minded agency

- » Policy recommendations may cover multiple govt agencies' jurisdiction. Not all agencies may agree with recommendations due to competing policy or operational considerations.
- » Partnering with a like-minded agency which shares a competition agency's objectives can help bring about the desired policy responses.

## #4 – Capitalising on opportunity

- » Heightened public interest a few months prior to release of report created added impetus for government to act → facilitated public support and the subsequent adoption of certain policy recommendations.
- » Importance of addressing an issue that is pertinent to stakeholders, which further helps the competition authority build credibility.

# Lessons Learnt

## #5 – Managing public communications

- » Should the competition authority proceed with its own media release or have a joint media release with policy making agencies? How should the media releases be timed?
- » Considerations
  - Managing public expectations; more demanding and active citizenry; need to ensure swift and coordinated responses to media/public queries
  - Public policy becomes increasingly complex
  - balancing confidentiality and due process issues with transparency and timeliness
- » Use of data analytics and other sensing tools to gather insights and for ground sensing
- » Tap on media channels & advocates/champions available to other policy making agencies e.g. social media, reporters who might be able to do special features.

# Conclusion

- Competition law enforcement alone is necessary, but insufficient
- Competition advocacy is necessary to achieve competitive markets
- CCCS actively advises government agencies on the competition impact of their policies, regulation and practices
- Market studies, including post-action studies, can serve as useful tool

# Thank You



[www.cccs.gov.sg](http://www.cccs.gov.sg)



[cccs\\_feedback@cccs.gov.sg](mailto:cccs_feedback@cccs.gov.sg)



6325-8282





# Panel 3: Selling Competition – Key Tools for Advocacy

**Speaker 4:**

Mr Kazuyuki Sugimoto  
Chairman – JFTC





## Selling Competition – Key tools for advocacy

### Panel 3

### The 14<sup>th</sup> East Asia Top Level Officials' Meeting on Competition Policy

Sydney, Australia  
29 August 2018

Kazuyuki Sugimoto  
Chairman  
Japan Fair Trade Commission



## Advocacy Activities by JFTC

Activities to let people know the outline of competition law and policy

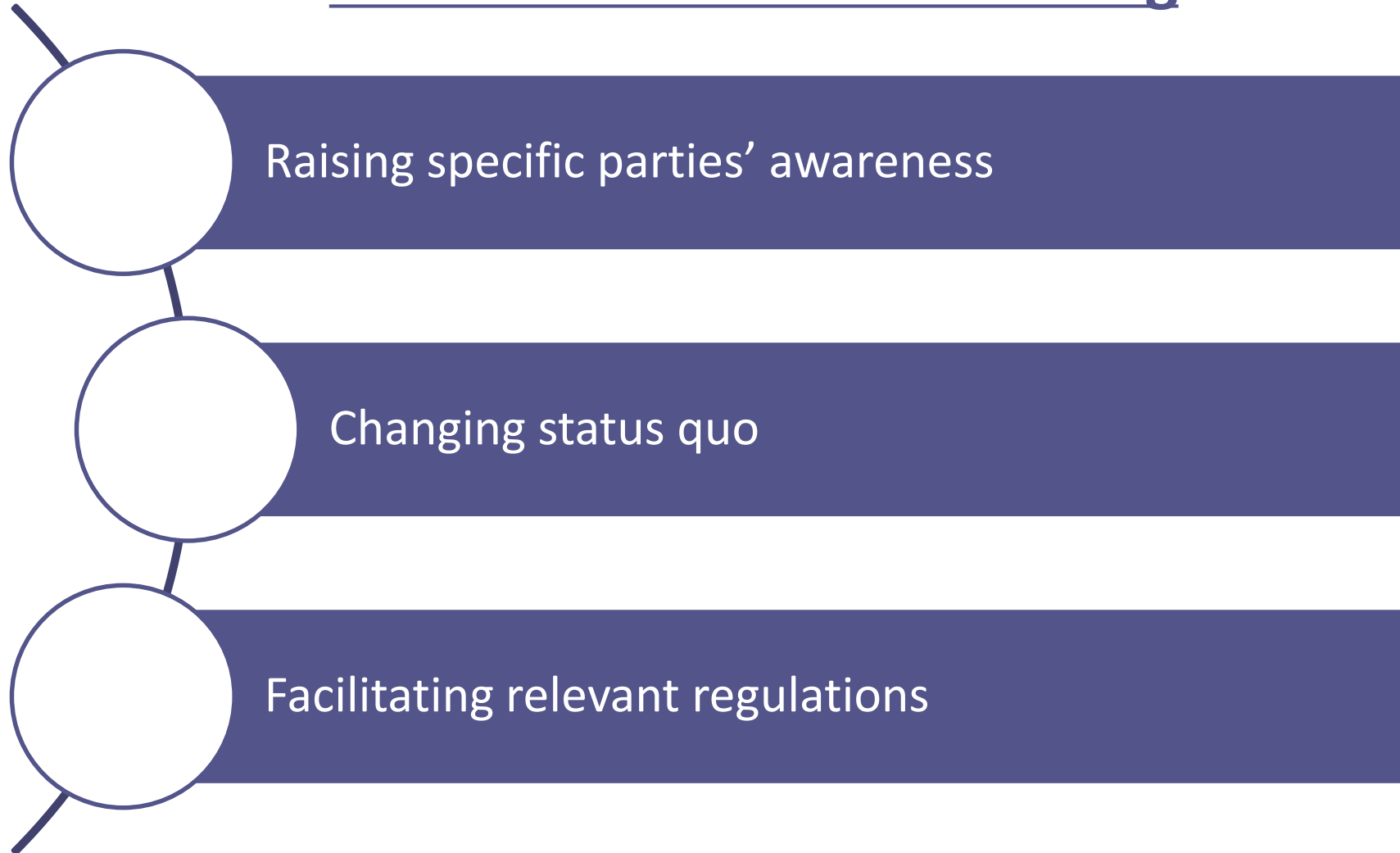
- Holding conference and seminar
- Using website and SNS

Market study

- Mobile phone market
- Human resource
- Big data and AI
- Trade of LNG ...

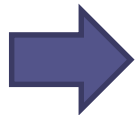


## Benefits market studies bring

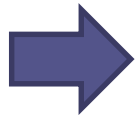


## “Study Group on Data and Competition Policy”

The spread of IoT and the advancement of AI-related technology



Knowledge derived from “big data” analysis will inspire further innovation.



JFTC established “Study Group on Data and Competition Policy”



**The report pointed out the examples of Unjust Data Collection and Unjust Data Hoarding.**



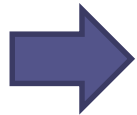
**The government will establish a rule that corresponds to the rise of businesses with platform business models.**

## “Study Group on Human Resources and Competition Policy”

Diversifications of work  
styles



Labor population decline



Competition for human resources is expected to intensify



**The report indicates anticompetitive practices.**



**JFTC has been urging the parties concerned to review and improve the current contractual relationship.**

## Using the Media

JFTC held an international symposium in collaboration about the report on the digital data and competition policy with an economic newspaper.



### CPRC International Symposium on

#### “New Business and Competition Policy brought by Utilization of Big Data and AI”

[Host] Competition Policy Research Center (CPRC), Japan Fair Trade Commission

[Co-Host] Nikkei Inc., Fair Trade Institute

#### 1. Aim

In recent years, fresh technologies like internet of things (IoT) and AI facilitate new business practices blurring the boundaries between markets. Moreover, valuable new products and services are provided by utilizing a huge amount of customer data. On the other hand, the data-driven economy poses many unsolved competition issues; market foreclosure through conduct by platformers who own large volume of data such as data hoarding; digital cartel using algorithms without any formal agreement and human interaction.

Taking these backgrounds into account, this symposium discusses the competition policy issues where competitive environment utilizing big data and AI is rapidly changing. In Part I of the symposium, distinguished economists and legal scholar from North America and Europe will give keynote speeches on anticompetitive conduct by enterprises such as platformers owning a large volume of data. In Part II, a panel discussion will be held with these speakers and a commentator. It would be a big challenge to extract lessons and best practices from North America and Europe with advanced digital eco-system and enforcement experience related to platformers.

#### 2. Date and Venue

Date : 13:30~17:25, 18 May 2018

Venue: Iino Hall (2-1-1, Uchisaiwai-cho, Chiyoda-ku, Tokyo)

Directly linked to Exit No. C4 of Kasumigaseki Station, Hibiya / Chiyoda Subway Line

5 minute-walk from Exit No. B2 of Kasumigaseki Station, Marunouchi Subway Line

3 minute-walk from Exit No.9 of Toranomon Station, Ginza Subway Line

Map: <https://www.iino.co.jp/hall/access/>

Language: English and Japanese Simultaneous Interpretation



**Thank you very much  
for your kind attention.**

**Opinions expressed in this presentation are those of the speaker  
and are not necessarily those of the JFTC.**





# Panel 3: Selling Competition – Key Tools for Advocacy

**Speaker 5:**

Mr Rasul Butt

Senior Executive Director – HKCC





# Advocacy as a Key to Success

**Rasul BUTT**, Senior Executive Director  
Hong Kong Competition Commission

**14th East Asia Top Level Officials' Meeting on Competition Policy**

29 August 2018

# Advocacy and Education

Government  
& public  
bodies

Business  
community

General public  
& youths

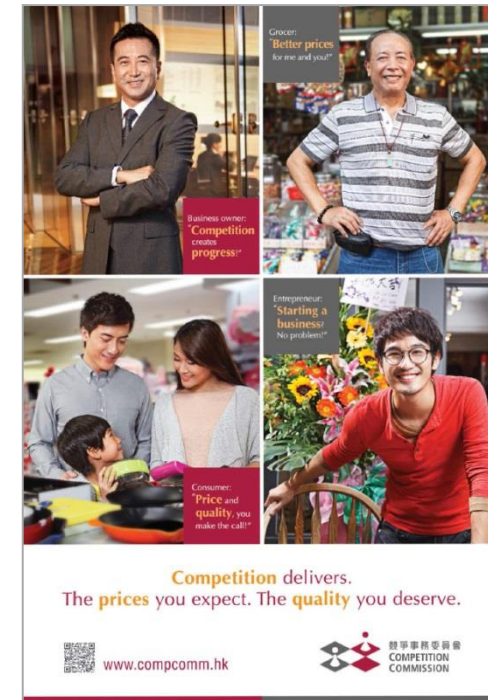
- To engage the business community and promote compliance
- To promote public awareness and understanding of the law
- To advise the Government and public bodies on competition matters and mainstream competition principles into public policies and regulations.



# Reaching out to the public

## From “Benefits” to “General” to “Thematic”

- Mid 2014 to mid 2015 – focusing on the benefits of competition
- Mid 2015-2016 – the Ordinance in general: “Cartels” & “Big Bullying Small”
- From 2016 – Thematic Campaigns



# Reaching out to the public

## Thematic Campaigns

- **Fighting Bid-rigging Campaign (2016)** : effective in bringing cases and relevant evidence to our attention (led to Commission's first case)
- **Combat Market Sharing Campaign (2017)**: riding on Commission's second case (led to leniency application)



# Reaching out to the public

- Use of mass media, e.g. advertisements, and educational videos in the form of drama to facilitate easy understanding of key messages
- Outdoor advertising e.g. at MTR stations to maximise outreach
- Roving exhibitions – community outreach
- Publishing articles in relevant media & media interviews
- Use of social media



# Reaching out to youths

- Educational campaign for senior secondary schools: Advocacy Contest in early to mid 2017
- “Post to Compete” Social Media Advocacy Challenge for university students in 2018
- Leveraging the power of social media to reach out to youths



# Engaging the business community



... with a particular focus on SMEs

Extensive and proactive outreach to the business community through:

- Educational materials including guidelines, brochure, toolkit, videos etc.
- Guidance on specific issue e.g. non-collusion clause
- Seminars, meetings and briefings
- Trade shows targeting SMEs and new start-ups
- Compliance project with trade associations





## Engagement facts & figures (Mid 2014 – June 2018)

**over 365** briefings / meetings  
with different stakeholders

**24** major seminars targeting businesses  
in particular SMEs

**over 28,800** representatives of business chambers, industry  
associations, SMEs, professional bodies and members of the public reached



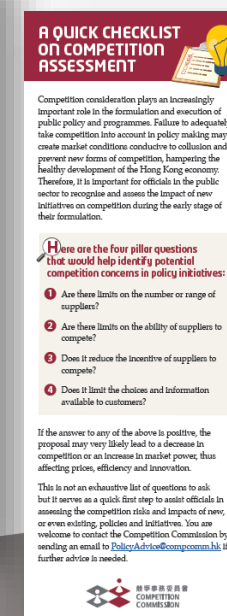
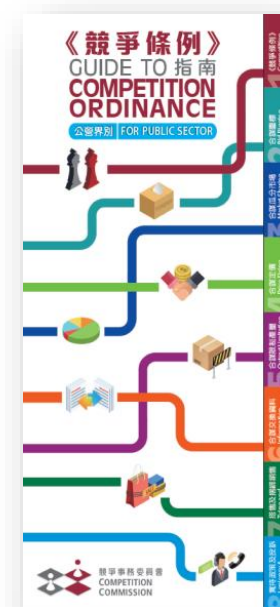
# Advising government & public bodies

## Policy Advisory

- in close liaison with Government and various public bodies on a wide range of issues
- Advised on around 30 issues that relate to competition

## Other assistance:

- Handy Guide for the Public Sector recently published
- Training workshops scheduled for September 2018



# Advising government & public bodies

***Advisory bulletin as an advocacy tool - a public announcement aimed to draw attention to certain practices that may hinder competition***

- (1) Supply of LPG in public housing estates**
- (2) Trade associations' practices**
- (3) Practices in employment marketplace**  
(for HR sector, employers and employees)





Thank you!  
[www.compcomm.hk](http://www.compcomm.hk)





# Panel 4: Experience, Evaluation, and Coordination of Technical Assistance and Related International Activities

**Moderator**

Mr Brent Snyder – CEO, HKCC





# Panel 4: Experience, Evaluation, and Coordination of Technical Assistance and Related International Activities

## Speakers:

Ms Tserendulam Shagdarsuren	Head of Cooperation Department, AFCCP
Ms Yiqin Zhao	Director, SAMR
Mr Makoto Fukuta	Senior Planning Officer, JFTC
Mr Marcus Bezzi	Executive General Manager, ACCC
Dr Arsenio Balisacan	Chairman, PCC





# Panel 4: Experience, Evaluation, and Coordination of Technical Assistance and Related International Activities

## Speaker 1:

Ms Tserendulam Shagdarsuren  
Head of Cooperation Department – AFCPP





# THE AUTHORITY FOR FAIR COMPETITION AND CONSUMER PROTECTION

*14<sup>TH</sup> EAST ASIA TOP LEVEL OFFICIALS' MEETING  
ON COMPETITION POLICY*

*Sydney, Australia*

*30 August, 2018*



# CONTENT

Regulating agency of Government of Mongolia  
**THE AUTHORITY FOR FAIR  
COMPETITION AND  
CONSUMER PROTECTION**



**1. Introduction / Current AFCCP international cooperation development**

**2. Role of international technical assistance for the development of competition good policy and legal environment in Mongolia**

**3. Our view: Efficient way to improve the types of technical assistance**

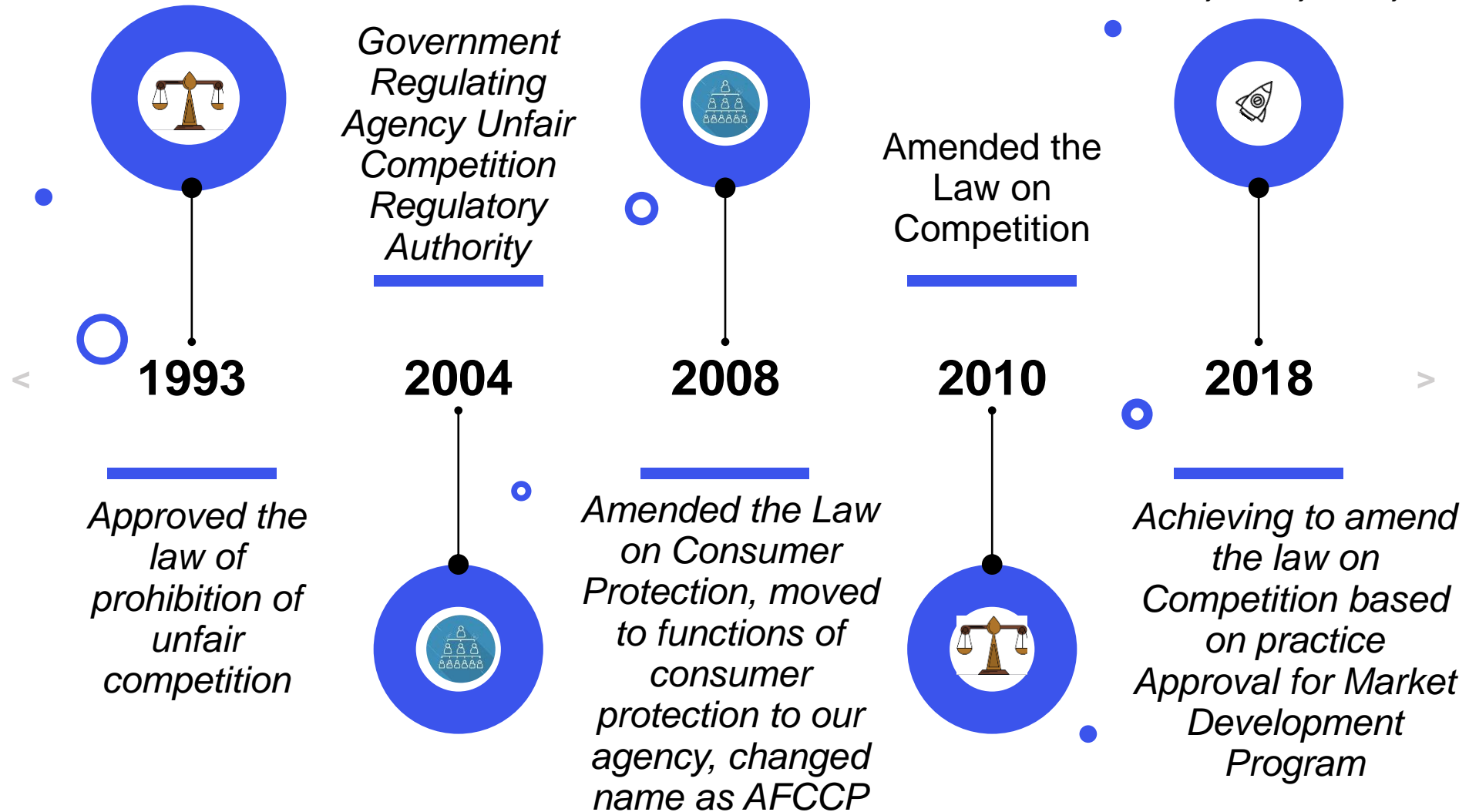
**4. Conclusion**



AFCCP

# SECTION I: HISTORY OF AFCCP

- *Promulgated and became effect in 1993.*
- *Amendments: 1995, 2000, 2002, 2005 & 2010*



# HISTORY



AFCCP

1993

1

At that time, the **Ministry of Industry and Trade** was responsible for implementing the law.

2004

**Law on Prohibition of Unfair Competition** was approved in 1993. It is establishment of legal environment of fair competition related regulation.

1993

2

The **Unfair Competition Supervisory Agency** was established by the Resolution No. 222 of the Government of Mongolia on November 17, 2004, **under the Deputy Prime Minister.**

1992

3

The mandate to enforce the Consumer Protection Law has been moved to the agency and our agency name has been changed to **Authority for Fair Competition and Consumer Protection.**

2010

The **Consumer Protection Law** was first adopted.

2008

The **Law on Competition** was adopted, and extended activity direction to enforce laws such as **Law on Advertisement & the Law on the Public procurement.**

# Section II: Technical Assistance for AFCCP, 2012-2018

Regulating agency of Government of Mongolia  
**THE AUTHORITY FOR FAIR  
COMPETITION AND  
CONSUMER PROTECTION**



“Voluntary peer review of  
competition law and policies”  
PROJECT  
(2012)

The report examines the current state of  
competition law and policy in Mongolia.



“Support to the Modernization of  
Mongolia's Standardization System”  
PROJECT  
(2014-2017)

Project aims to amend law of Consumer protection.



“Enhancement of Fair competition  
environment of Mongolia”  
PROJECT  
(2015-2018)

The project is focusing on the amendment of  
competition law, improvement of capacity of  
investigation, advocacy of competition policy &  
strengthening market research.

## Main result,

- **The evaluation of legal environment of Competition and Consumer Protection in Mongolia**
- **Capacity building of human resource of AFCCP**

# Section II: Technical Assistance for AFCCP, 2012-2018

Regulating agency of Government of Mongolia  
**THE AUTHORITY FOR FAIR  
COMPETITION AND  
CONSUMER PROTECTION**



In the Competition policy level:

- Research work on evaluating competitiveness law was carried out. Based on this, we have identified the necessary amendments of the law.
- The National program for competition promotion in the market has been developed
- Duplicate number of around 470 delegations from ministries, government agencies, local governments and business entities were involved in 5 times policy discussions on the competition issues.

# Section II: Technical Assistance for AFCCP, 2012-2018

Regulating agency of Government of Mongolia  
**THE AUTHORITY FOR FAIR  
COMPETITION AND  
CONSUMER PROTECTION**



Improvement for Inspection capacity of the AFCCP investigators:

- A total of 28 training sessions related to economics and legal environment of competition policy were conducted by Professors of the National University of Mongolia local universities among all inspectors of AFCCP.
- In Japan (5 times) and Indonesia (one time), international experience and sharing seminar/workshops were organized among 90 inspectors of AFCCP.
- For the local inspectors, the National Regional trainings were organized. Project office carried out professional competence among local inspectors of AFCCP. In the result, some inspectors attended at the foreign trainings.

# Section II: Technical Assistance for AFCCP, 2012-2018

Regulating agency of Government of Mongolia  
**THE AUTHORITY FOR FAIR  
COMPETITION AND  
CONSUMER PROTECTION**

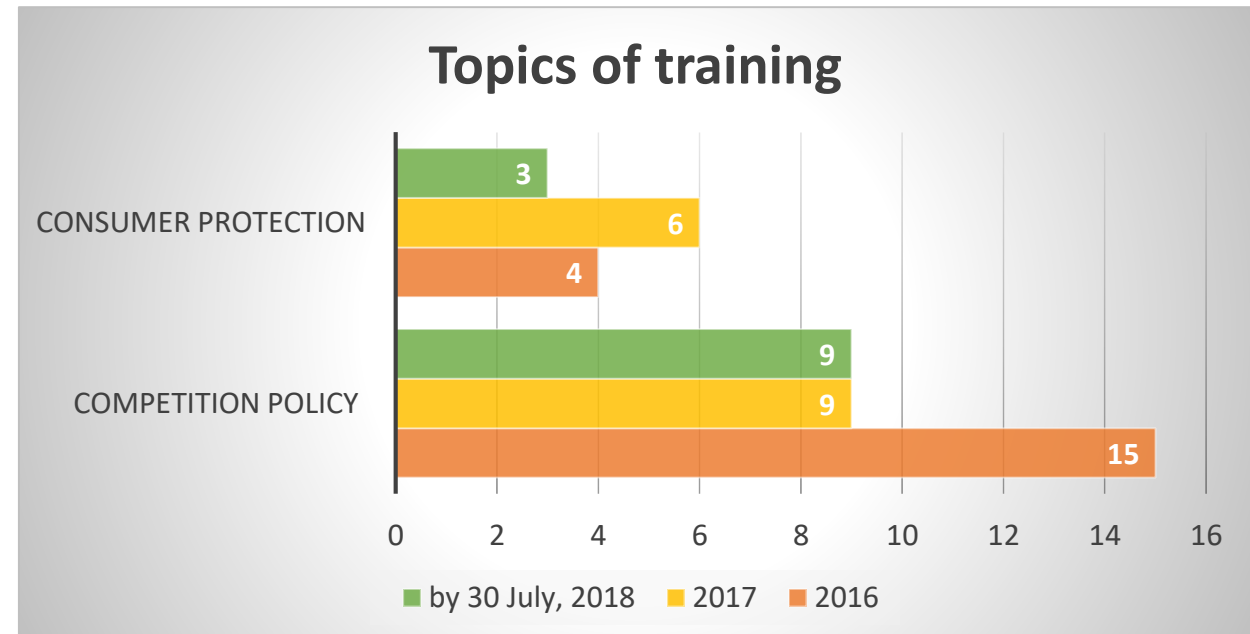
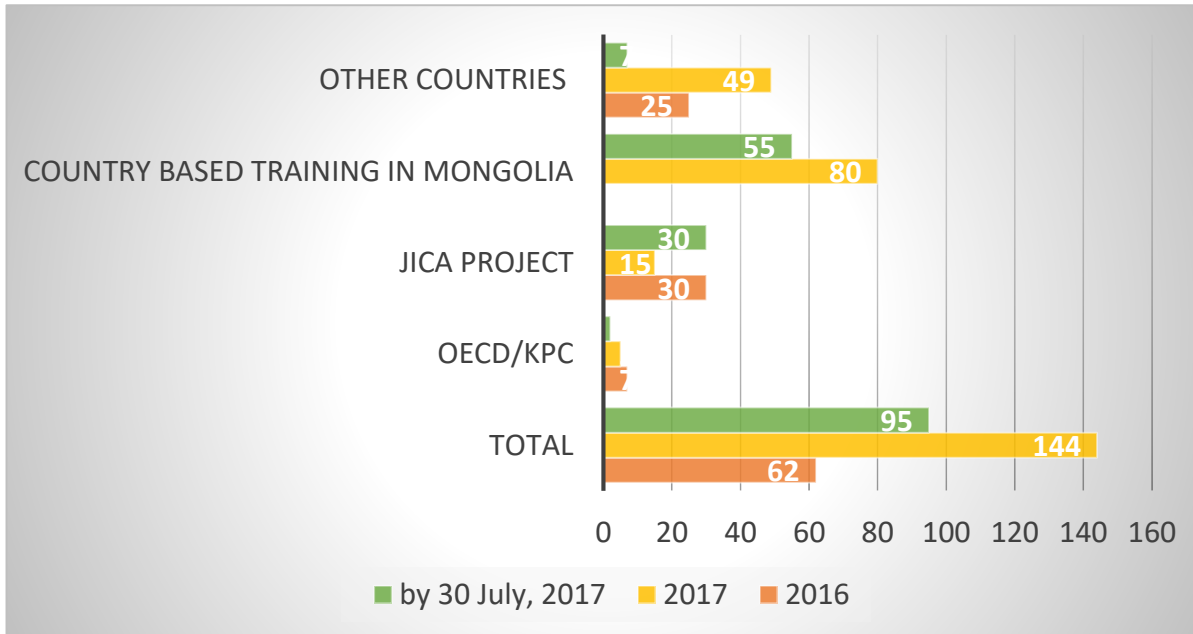


Effectiveness of public advocacy for the competition policy:

- Handouts, journals pamphlets related to the Competition current situation were published for community.

# Capacity building for AFCCP, 2016-2018

Regulating agency of Government of Mongolia  
**THE AUTHORITY FOR FAIR COMPETITION AND CONSUMER PROTECTION**



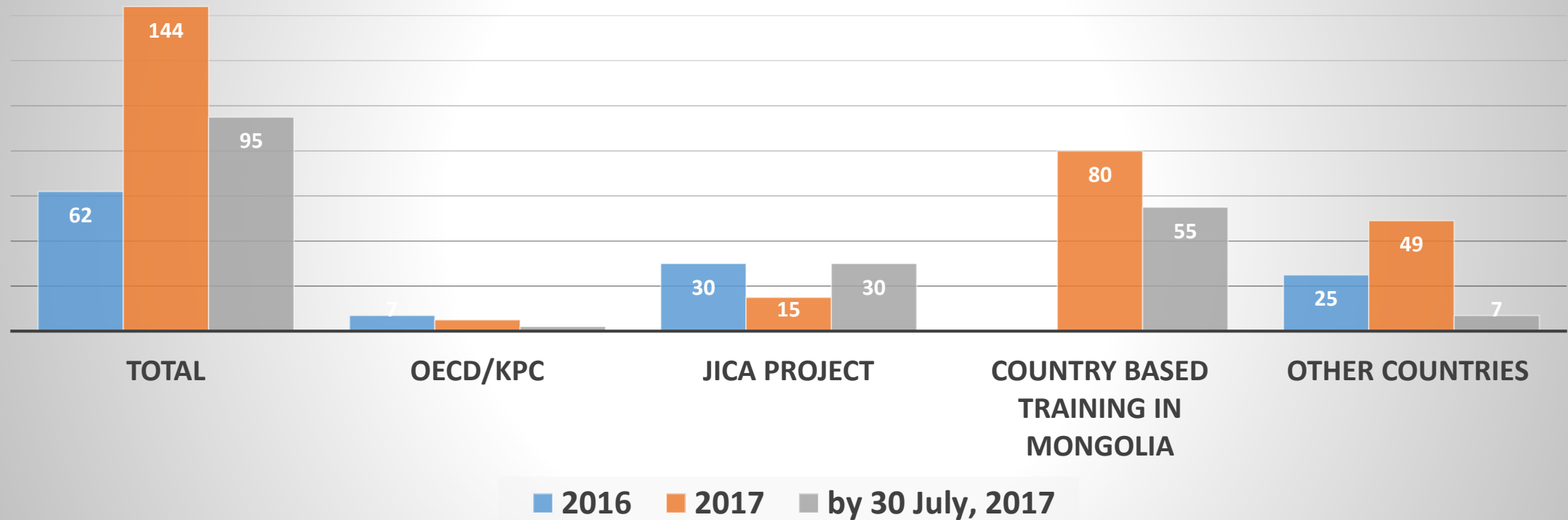


# Capacity building for AFCCP, 2016-2018

Regulating agency of Government of Mongolia  
**THE AUTHORITY FOR FAIR  
COMPETITION AND  
CONSUMER PROTECTION**



### International training by organizer & location

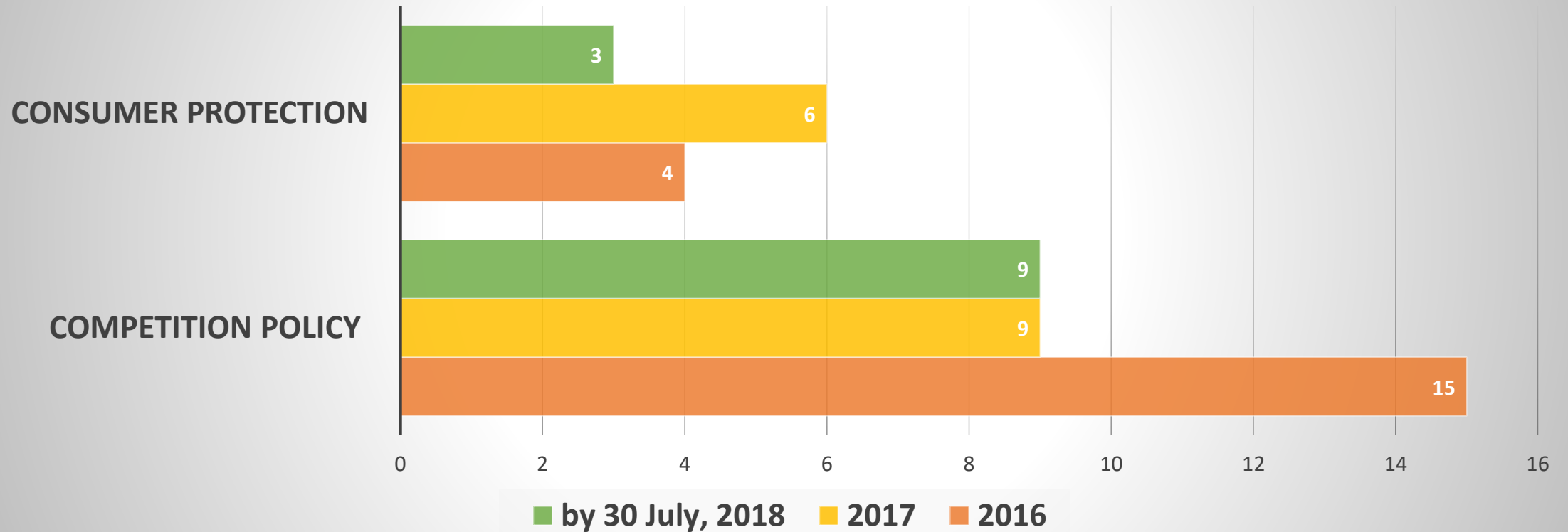


# Capacity building for AFCCP, 2016-2018

Regulating agency of Government of Mongolia  
**THE AUTHORITY FOR FAIR  
COMPETITION AND  
CONSUMER PROTECTION**



## Topics of training



## SECTION III: Our Suggestion of Efficient Technical Assistance

Regulating agency of Government of Mongolia  
**THE AUTHORITY FOR FAIR  
COMPETITION AND  
CONSUMER PROTECTION**



- Joint training between competition agencies for capacity building of human resource
  - i.e., Joint training of KPPU, REKAMET KURUMU, TFTC
  - Country level international training of OECD/KPC etc
- Complex technical assistance project for capacity building of Competition agency
  - JICA project of PERCEM

# CONCLUSION

Regulating agency of Government of Mongolia  
**THE AUTHORITY FOR FAIR  
COMPETITION AND  
CONSUMER PROTECTION**



- In 2012-2018, the technical capacity of the above-mentioned enhancement of technical assistance has led to the strengthening of the AFCCP's internal capacity, increasing number of consumer completions and improving quality of investigation through the UNCTAD, EU and JICA projects.



**THANK YOU FOR YOUR ATTENTION!**

**Contact address:**

*The Authority for Fair Competition and Consumer Protection  
Mongolia, Ulaanbaatar, Chingeltei district, J Sambuu street, Government  
building -11, 9F*

*Mail address: [info1@afccp.gov.mn](mailto:info1@afccp.gov.mn)*

*Website: [www.afccp.gov.mn](http://www.afccp.gov.mn)*



# Panel 4: Experience, Evaluation, and Coordination of Technical Assistance and Related International Activities

**Speaker 2:**

Ms Yiqin Zhao

Director, Anti-Monopoly and Anti-Unfair Competition Bureau – SAMR





# Panel 4: Experience, Evaluation, and Coordination of Technical Assistance and Related International Activities

**Speaker 3:**

Mr Makoto Fukuta  
Senior Planning Officer – JFTC





# Experience, Evaluation, and Coordination of Technical Assistance and Related International Activities

**The 14<sup>th</sup> EATOP Meeting,  
29 August 2018, Sydney**

**Makoto FUKUTA  
Senior planning officer, International Affairs Division  
Japan Fair Trade Commission**





## **Overview**

### **1 Introduction**

### **2 Coordination of Technical Assistance**

### **3 Role of International Organization**

### **4 Role of Academia**

### **5 Conclusion**



# 1 Introduction

Two main activities of the JFTC's technical assistance

## 1. Country-Focused Activities

- Technical assistance in JICA Framework  
e.g., Indonesia, Mongolia, Vietnam, etc.

## 2. Regional Activities

- Technical assistance in JAIF\* Framework

\* Japan-ASEAN Integration Fund

→ Proponent; KPPU      → 2016-2018 (2years)      → for all AMSs

- Training Courses in Japan and AMSs
- Regional Workshop
- Staff Exchange amongst Competition Authorities in AMSs



## 2 Coordination of Technical Assistance

### Coordination and Competition in TA

**Several Competition Agencies provide the technical assistance to the same targets**

Coordination among the Competition Agencies :  
Aiding agencies have to make the best use of limited resource  
→ Avoid the duplications

Competition among the Competition Agencies :  
It could improve the quality of assistance and give the choice to the aided countries





## 2 Coordination of Technical Assistance (Cont.)

### ➤ Next TA project in JAIF Framework (Phase2)

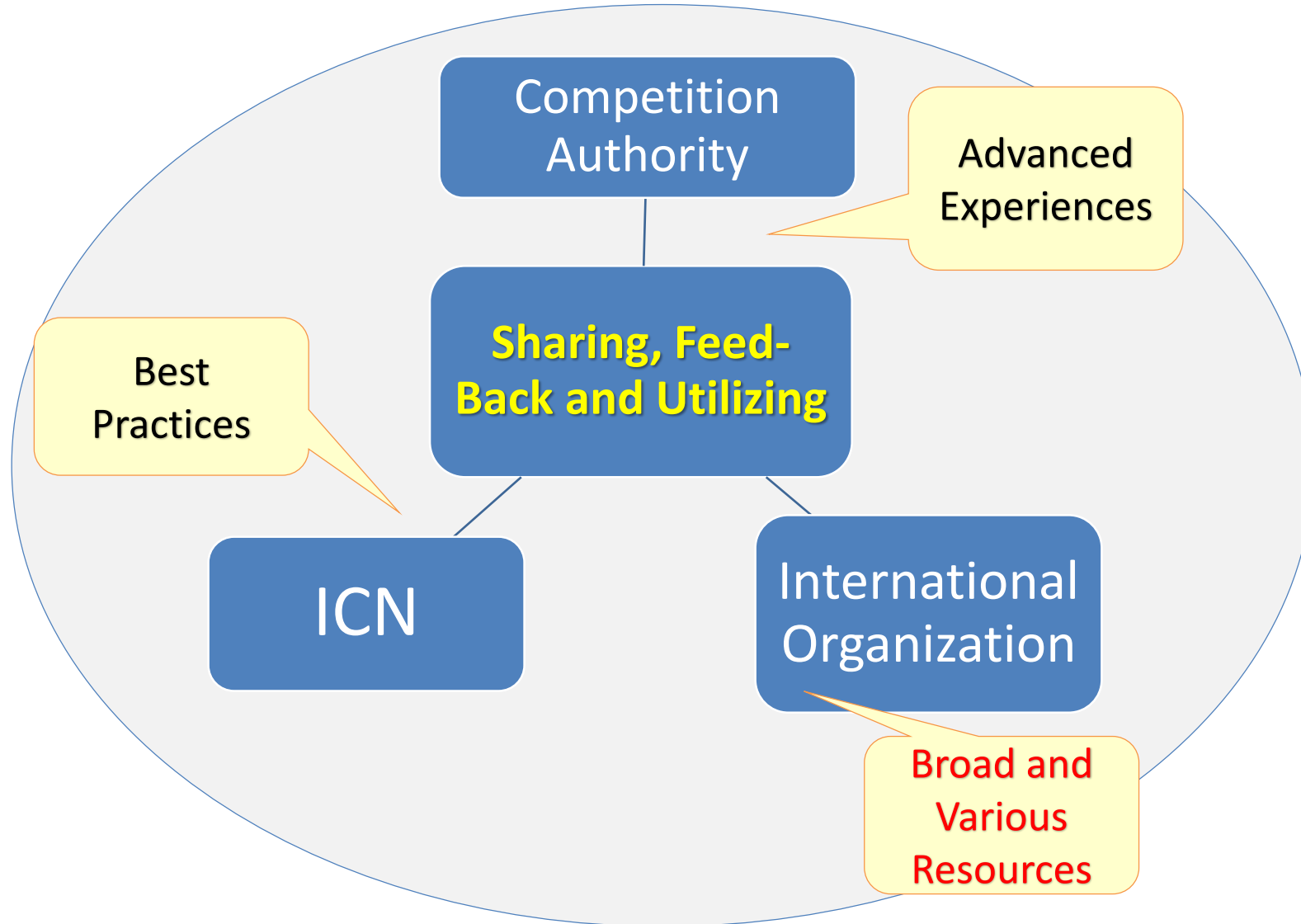
- ✓ The JFTC / The ASEAN Experts Group on Competition (AEGC) will start the Phase2 TA project under Japan-ASEAN Integration Fund (JAIF) to Assist ASEAN Competition Authorities in 2019.
- ✓ Proponent; KPPU
- ✓ Jan. 2019 – Dec. 2020 (2years)

⇒ Broadly covering for all ASEAN member states

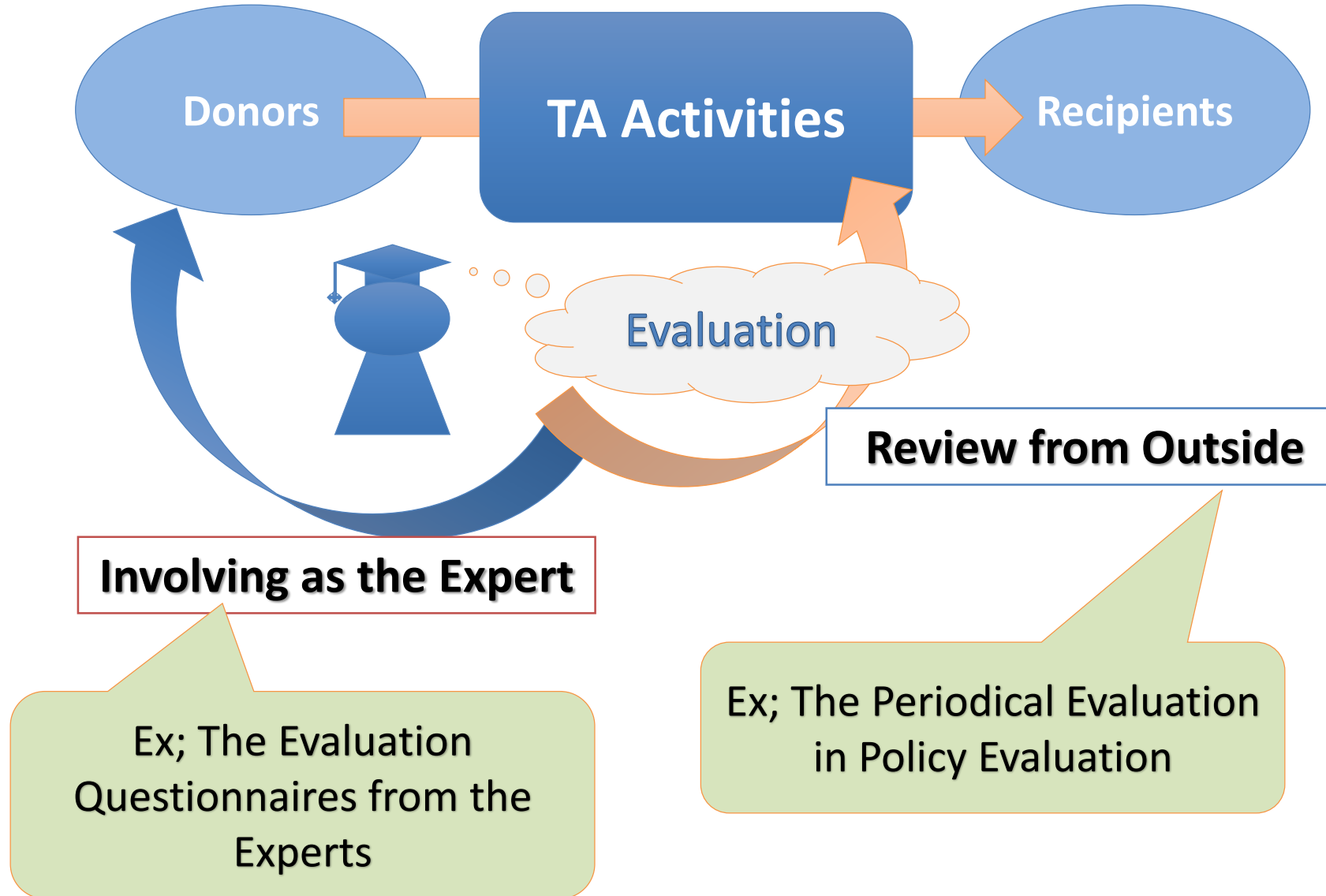
- Training Courses in Japan and AMS / Regional Workshop in AMSs
- Staff Exchange amongst Competition Authorities in AMSs
- Peer Review Project
- Other Study / Survey in ASEAN Region



### 3 Role of International Organization



## 4 Role of Academia in Evaluation





## 5 Conclusion

- Excessive Competition, Inefficient Enlargement and Pushing are Unnecessary in TA.
  
- Interactive Planning is needed;
  - i) Coordination among Donors,
  - ii) Reflecting Recipients' Needs and
  - iii) Evaluation and Feed-Back with Academia.



**Thank you very much  
for your kind attention.**

**Opinions expressed in this presentation are those of the speaker  
and are not necessarily those of the JFTC.**





# Panel 4: Experience, Evaluation, and Coordination of Technical Assistance and Related International Activities

## Speaker 4:

Mr Marcus Bezzi

Executive General Manager, Specialised Enforcement and Advocacy  
Division – ACCC





# Experience, Evaluation and Coordination of Technical Assistance and related International Activities

Marcus Bezzi  
Executive General Manager  
Specialised Enforcement and Advocacy Division  
ACCC

[acc.gov.au](http://acc.gov.au)

## 2018

<b>September</b>	3 Sept – 23 Nov Hanoi, Viet Nam	Resident Adviser to Vietnam Competition & Consumer Authority (to be followed by some remote mentoring for 4-6 months if there is demand)
<b>October</b>	10-12 October, Jakarta, Indonesia	Tools launch: Judicial Primers
	Canberra, Australia	Tools launch Online e-learning Tutorial Four: Competition Investigations Skills
	October Vientiane, Lao PDR	Expert placed in Competition Division, Ministry of Industry and Commerce, Lao PDR (up to six weeks)
	3 October Phnom Penh, Cambodia	Expert placed in Competition Division, CAMCONTROL, Cambodia (up to six weeks)
	22 <sup>nd</sup> AEGC Meeting, Singapore	9 <sup>th</sup> AANZFTA Competition Committee meeting and M&E Outcome Mapping Session  AEGC Donor Coordination Meeting
	30-31 October Brunei Darussalam	Sectoral Interface Workshop: Construction Sector and Competition Regulation
	New Zealand	Secondment to NZCC from Cambodia
<b>November</b>	6-8 November Hanoi, Viet Nam	Group workshop Module Four: Investigating Abuse of Dominance (KPPU, PCC, OTCC, VCCA, MyCC)
<b>December</b>	Canberra, Australia	Tools launch Toolkit for investigators: how to build and manage investigation teams



# Panel 4: Experience, Evaluation, and Coordination of Technical Assistance and Related International Activities

**Speaker 5:**

Dr Arsenio Balisacan  
Chairman – PCC





# **Coordination of Technical Assistance: The PCC Experience**

**Arsenio M. Balisacan, PhD**  
Chairman  
Philippine Competition Commission

**14<sup>th</sup> East Asia Top Level Officials Meeting**

The Hilton Hotel  
Sydney, Australia

29 August 2018

# Context

New competition law,  
young competition  
authority

Wealth of experience  
and expertise from more  
mature jurisdictions



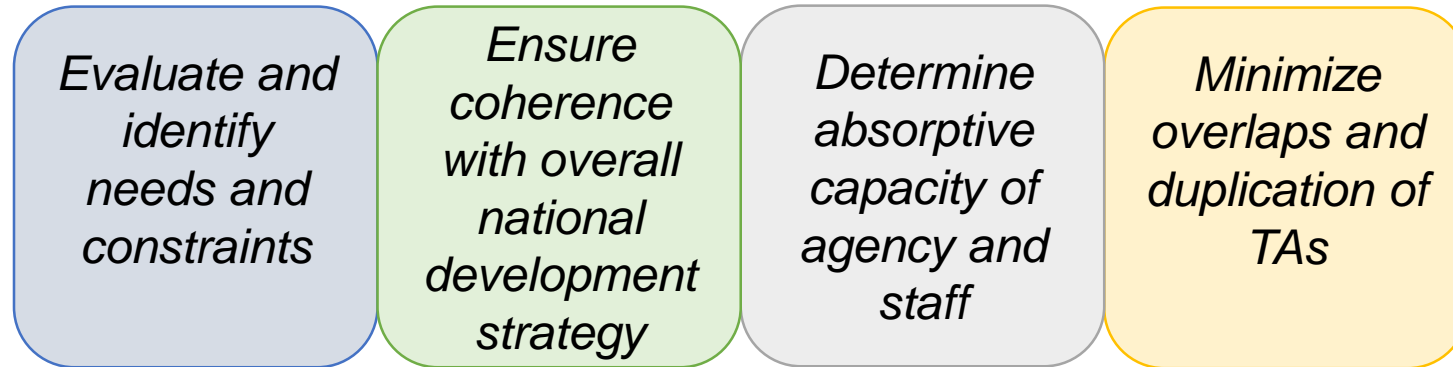
**How to effectively coordinate TAs?**

Limited domestic  
knowledge base,  
resource constraints

Vast opportunities for  
technical assistance (“TAs”)

# Whose role is it to coordinate TAs?

National competition agency (“NCA”) in the driver’s seat:



# PCC Strategic and Operational Business Plan

- **First order of business: conduct of needs assessment, prioritization and planning exercises**



## PCC Strategic and Operational Business Plan 2017-2019

- Provides direction in addressing PCC's immediate needs by the end of 2-year transitory period (8 Aug 2017) and achieving its key targets by end of 2019



# PCC Strategic and Operational Business Plan

- **Key strategy:** engage donor agencies, counterpart competition authorities, intergovernmental organizations, and academic institutions for capacity-building and advocacy



# Platform: Partnership for Competition Development Forum



- Consultations and dialogues with Development Partners leading to the Partnership for Competition Development Forum in 2016
- Served as an investment programming platform to optimize and harmonize the flow of existing and potential TAs
- Institutional Development Assistance Framework 2017-2019 reflects the TAs and support pledged by Development Partners in the Forum

# PCC Institutional Development Assistance Framework



- Facilitates identification of priority areas for capacity building and ensures that overlaps are avoided
- Adopts a programmatic approach to facilitate planning and delivery of TAs
- Assists Development Partners in better targeting their resources

# PCC Technical & Service Support Unit



- ✓ Ensures consistency of TAs with PCC Plan and Framework
- ✓ Facilitates requests for TAs from PCC units and links them with potential Development Partners
- ✓ Shares inventory of completed, ongoing, and proposed TAs to avoid overlaps and duplication
- ✓ Enables complementarity among Development Partners by advocating “division of labor” based on their mandate and core competencies or niche
- ✓ Ensures flexible and active collaboration between PCC and Development Partners from planning to implementation and monitoring of TAs





## Key Takeaways

- Faced with resource and capacity constraints, PCC has ensured that it has taken appropriate steps to **assess and identify its needs** and **set its priorities** for institutional capacity building. **Mobilizing development partners is key to doing more with less.**
- TAs have been pivotal in ensuring that PCC gets off to a **quick and strong start**. TAs have helped PCC build necessary foundations in time for the end of the law's 2-year transitory period.
- **Coordination** between NCAs and development partners is necessary to optimize the value of TAs especially when there seems to be a “competition” to provide TAs to young NCAs.
- NCAs should take the driver's seat in coordinating TAs to ensure **enhanced sense of ownership, commitment and accountability.**





**PHILIPPINE  
COMPETITION  
COMMISSION**

*Ensuring businesses compete and consumers benefit*

**Thank you.**



The 14th East Asia Top Level Officials'  
Meeting on Competition Policy





# Remarks from Incoming 2019 EATOP Host, *AFCCP*

Mr Lkhagva Byambasuren  
Chairman  
AFCCP





# 15th eatop

THE 15TH EAST ASIA TOP LEVEL OFFICIALS' MEETING  
ON COMPETITION LAW AND POLICY

**WELCOME TO MONGOLIA IN 2019**

The Authority for  
Fair Competition and  
Consumer Protection



ADBInstitute



The 14th East Asia Top Level Officials'  
Meeting on Competition Policy





# The 11th East Asia Conference on Competition Law and Policy





# Opening Remarks

Rod Sims  
*Chair – ACCC*

Kazuyuki Sugimoto  
*Chairman – JFTC*

Chul Ju Kim  
*Deputy Dean, Capacity Building and Training and Special Activities – ADBI*





# Panel 1: Addressing competition issues in complex industries

**Moderator:**

Dr Robert Ian McEwin  
Competition Consulting Asia





# Panel 1: Addressing competition issues in complex industries

## Speakers:

Mr Han Li Toh

Chief Executive Officer – CCCS

Mr Marcus Bezzi

Executive General Manager – ACCC

Prof Caron Beaton-Wells

Director of Studies, Competition and Consumer Law – University of Melbourne

Ms Angayar Kanni Ramiah

Senior Lecturer – University of Technology Mara





# Panel 1: Addressing competition issues in complex industries

**Speaker 1:**

Mr Han Li Toh

Chief Executive Officer – CCCS





# Panel 1: Addressing competition issues in complex industries

**Speaker 2:**

Mr Marcus Bezzi

Executive General Manager, Specialised Enforcement and Advocacy Division –  
ACCC







# Panel 1: Addressing competition issues in complex industries

## Speaker 3:

Prof Caron Beaton Wells

Director of Studies, Competition and Consumer Law –  
University of Melbourne





# Panel 1: Addressing competition issues in complex industries

**Speaker 4:**

Ms Angayar Kanni Ramiah

Senior Lecturer - University of Technology Mara





# Panel 2: Competition Advocacy and State Owned Enterprises

**Moderator:**

Dr Wawan Juswanto

Senior Capacity Building and Training Economist and Special Advisor to the Dean  
- ADBI





# Panel 2: Competition Advocacy and State Owned Enterprises

## Speakers:

Dr Arsenio Balisacan

Chairman – PCC

Dr May Fong Cheong

Senior Lecturer - Australian Catholic University

Dr Pornchai Wisuttiack

Assistant Professor - Chiang Mai University

Mr Hassan Qaqaya

Senior Fellow – Melbourne Law School

Dr Wendy Ng

Lecturer – Melbourne Law School





# Panel 2: Competition Advocacy and State Owned Enterprises

**Speaker 1:**

Dr Arsenio Balisacan  
Chairman – PCC



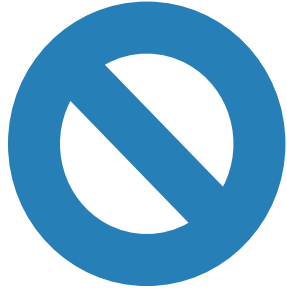
# **Competition Advocacy and State-Owned Enterprises: The Philippine Experience**

**Arsenio M. Balisacan, PhD**  
Chairman  
Philippine Competition Commission

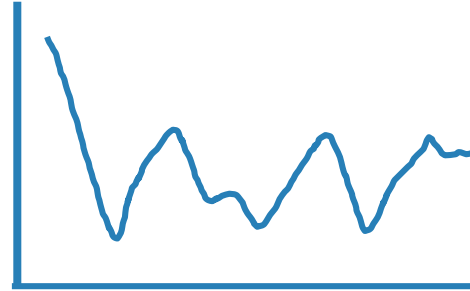
**11<sup>th</sup> East Asia Conference on Competition Law and Policy**  
The Hilton Hotel  
Sydney, Australia

**30 August 2018**

# Historical Context



1960s-1970s



1980s – 2000s



PHILIPPINE  
COMPETITION  
COMMISSION

*Ensuring businesses compete and consumers benefit*

Late 2000s onward

- Highly restrictive and regulated economy
- High level of external/public debt

- Selective reforms (trade liberalization, deregulation, privatization)
- Political instability and social unrest
- Global economic/financial crisis
- High level of external/public debt

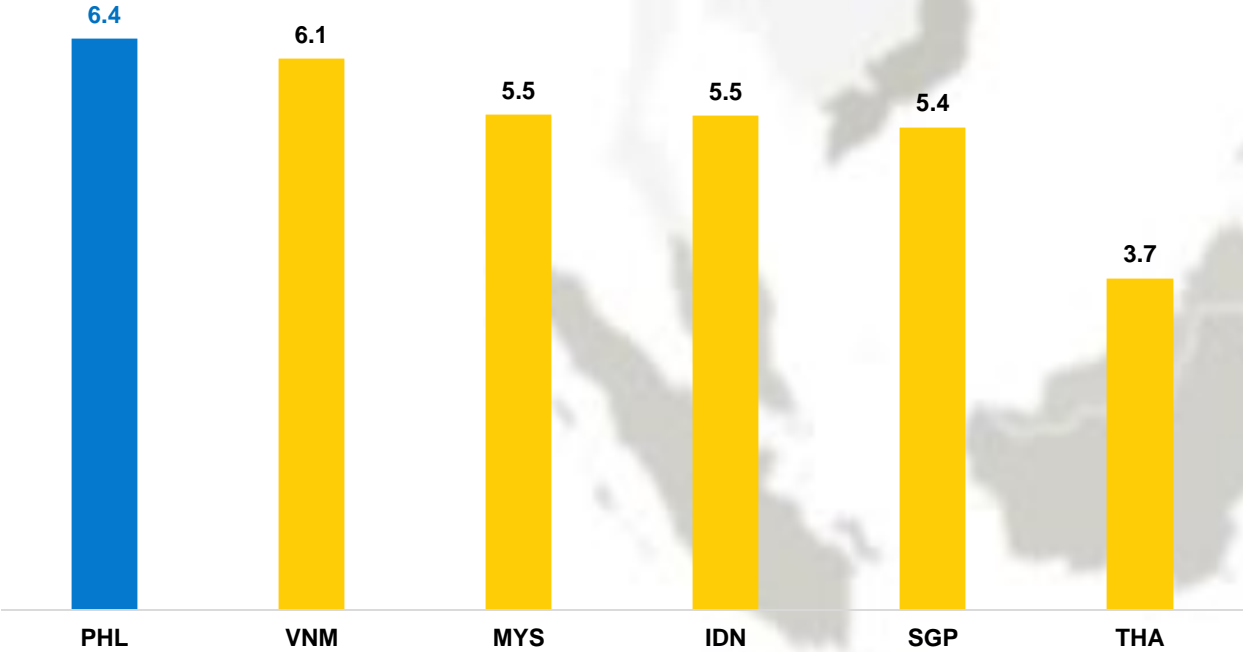
**Boom-bust** economic growth

- Relatively open trade regime
- Deepening of economic reforms: fiscal, monetary, financial; industry-level
- More manageable external/public debt
- Stronger push for inclusive growth
- **Philippine Competition Act (PCA)**

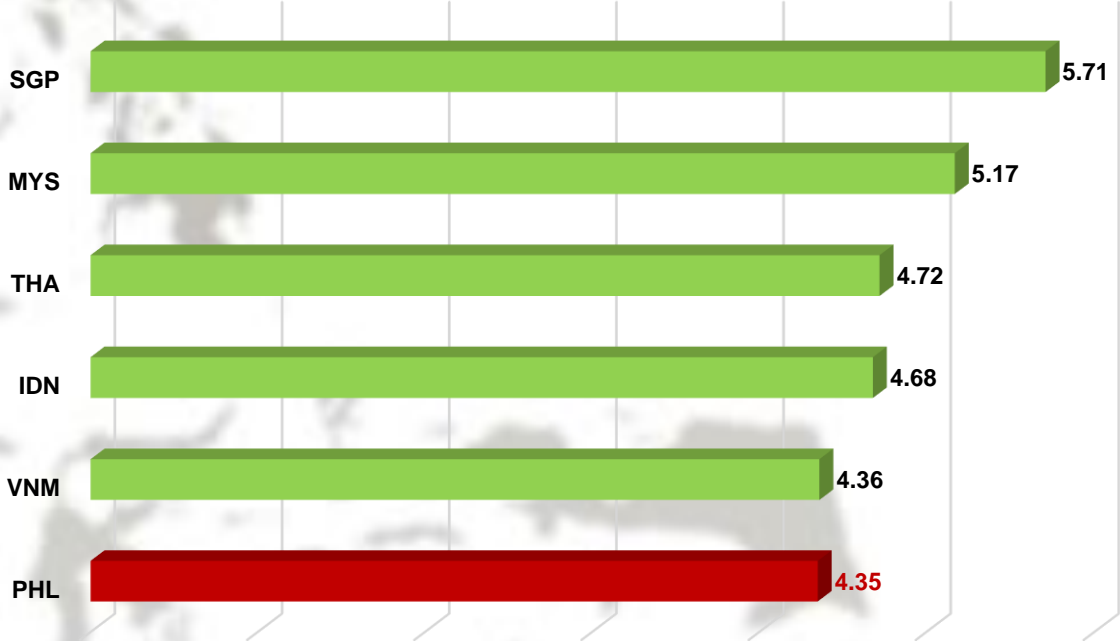
**Rapid** economic growth...  
but is it **sustainable**?

# Sustaining the growth requires further deepening reforms in various sectors of the economy...

Ave. Annual GDP Growth Rate (2010-2017)



Global Competitiveness Score (2017)



Sources: WB Development Indicators, WEF Global Competitiveness Report 2017-2018

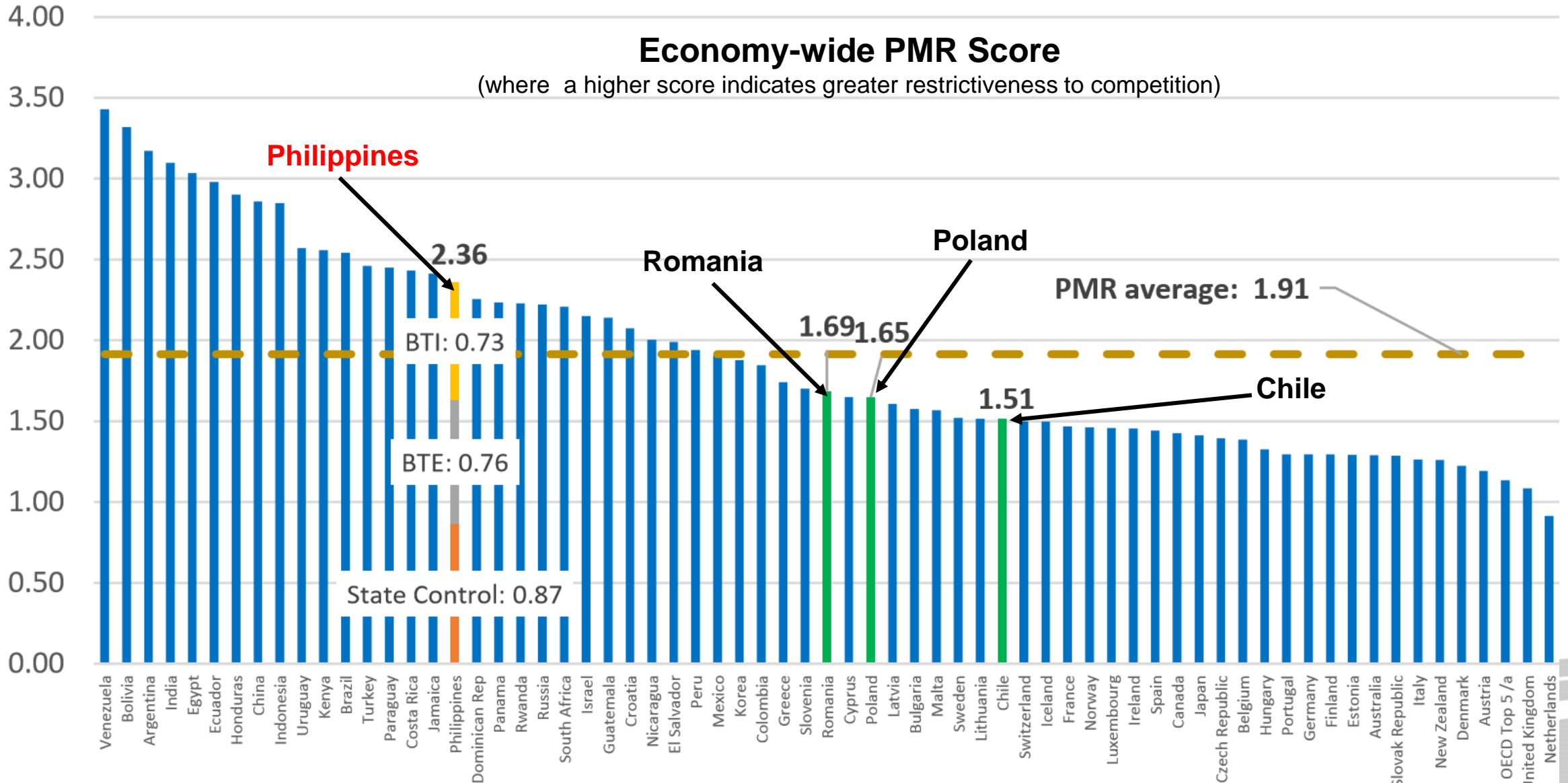




# ...including State-Owned Enterprises.

## Economy-wide PMR Score

(where a higher score indicates greater restrictiveness to competition)

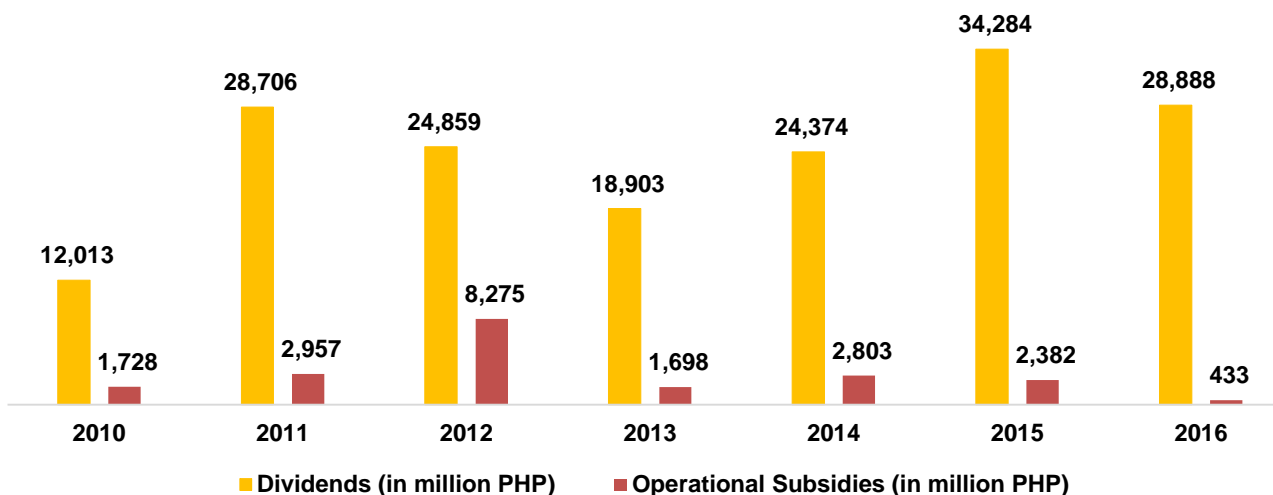


# Figures and Key Reforms for PH SOEs

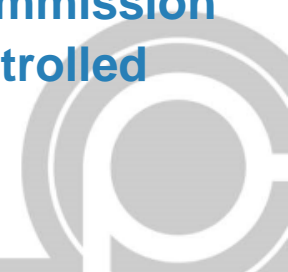
Sector	Number
Government Financial Institutions	28
Trade, Area Development, and Tourism	20
Coconut Industry Investment Fund & Holding Companies	20
Utilities and Communications	18
Energy and Materials	13
Agriculture, Fisheries, and Food	11
Others	13
<b>Total Current Coverage (2016)</b>	<b>123</b>

- From **158 (2011)** to **123 (2016)** SOEs through abolition, privatization, and rationalization
- **Governance Reforms:**
  - A.O. 59 (1988) – Rationalization of the Government Corporate Sector: in response to excessive proliferation of SOEs
  - R.A. 10149 (2011) – The GOCC Governance Act: strengthened corporate governance & effective exercise of State’s ownership rights

SOEs Dividends & Operational Subsidies (2010-2016)



- Recognized need for **clear separation between regulatory and proprietary activities of SOEs** to achieve a level playing field with private sector
- Established the **Governance Commission for Government-Owned or Controlled Corporations (GCG)**

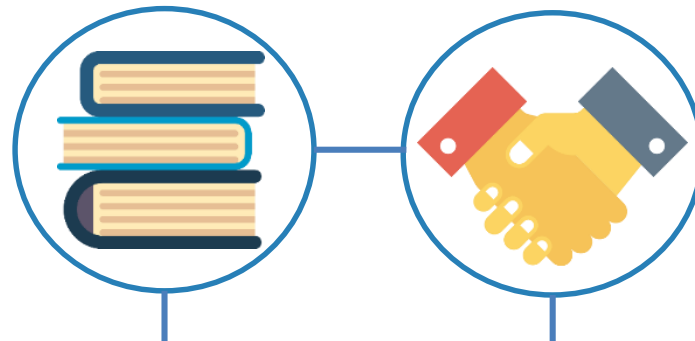


# Philippine Competition Act (PCA)

## Section 4(h):

SOEs are covered by PCA and fall under PCC's jurisdiction:

- definition of “**Entity**” includes “**those owned or controlled by the government, engaged directly or indirectly in any economic activity**”



## Section 12(r):

- Reviewing economic and administrative regulations
- Advising the Executive on competitive implications of its policies and programs

## Section 12(o):

- Assisting the National Economic and Development Authority (NEDA) in the formulation of the National Competition Policy (NCP)



# Assessing the Competition Landscape



## National Competition Policy Review

- Organized an independent **Experts Review Team**
- **Evidence-based** identification of key competition issues and enforcement priorities:
  - Sectors with **serious competition challenges**
  - **Roots** of market inefficiencies
  - **Political-economy considerations**
  - Areas with potentially **large impact** on consumer welfare
- Served as **key document** for drafting the **National Competition Policy Chapter of the Philippine Development Plan (PDP) 2017-2022**



# Competition chapter in the PH Development Plan 2017-2022

## Chapter 16: Leveling the Playing Field through a National Competition Policy

- Based on PCC's **National Competition Policy Review**
- Recognizes that competition policy is **part and parcel of the government's development strategy** towards a more inclusive and sustained economic development
- **Competitive neutrality as a key policy challenge**: state-enabled policies and barriers have created distortions in the market
  - Longstanding **government-owned monopolies**
  - **Government-authorized** private monopolies
  - **Government control of entry and expansion** of market players
  - **Government provision of goods and services** similar to those provided by private entities



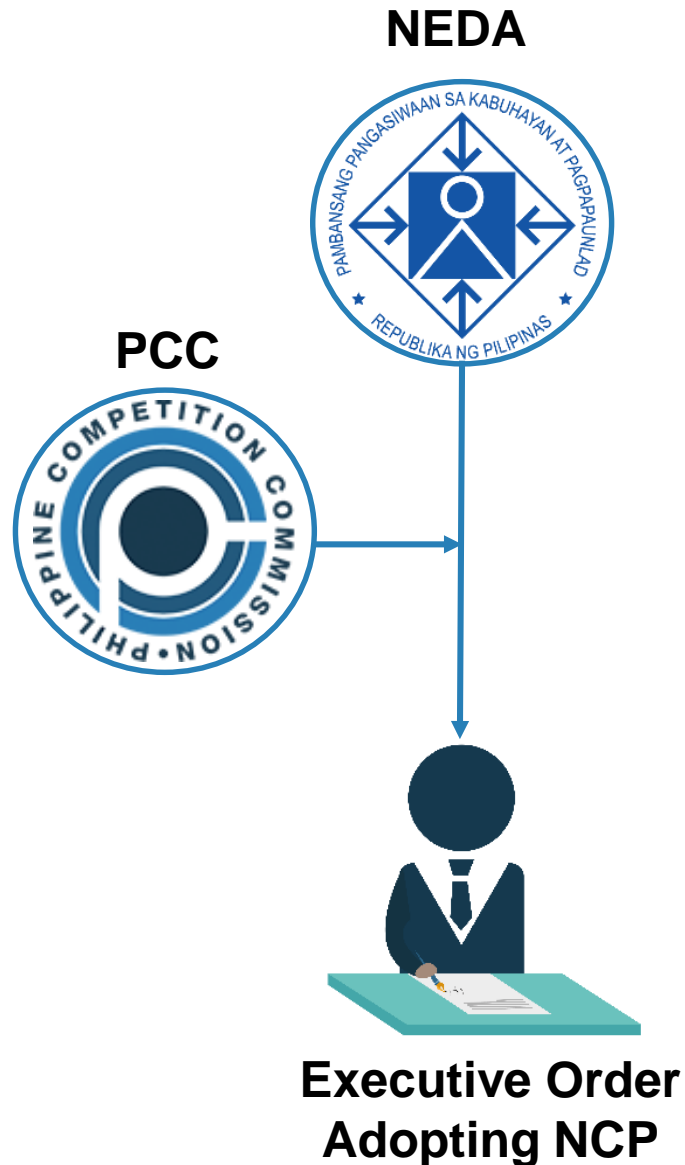
# Competition chapter in the PH Development Plan 2017-2022

## Chapter 16: Leveling the Playing Field through a National Competition Policy

- PCC works closely with the Governance Commission for Government-Owned or Controlled Corporations (GCG) to **initiate corrective measures** for SOEs with **competitive neutrality issue**
  - Target: 100% of SOEs reviewed by 2022
- GCG recommends action for cases where there is **conflict between regulatory and commercial functions** of an SOE
  - E.g.: recommendation to privatize state-owned casinos operated by the gaming regulator (Apr 2018)



# Formulation and Adoption of the National Competition Policy (NCP)



- **NCP** to be adopted through **Executive Order** by late 2018
- Executive Order to cover all national government agencies, local government units, and SOEs
- **Competitive neutrality as one of the pillars of NCP:**  
“SOEs and private sector businesses **shall compete on a level playing field. SOEs shall be held in the same standards as private sector businesses and shall not enjoy net competitive advantages or disadvantages over private sector businesses** simply by virtue of public sector ownership, unless it can be clearly demonstrated that the greater public interest will be served.”
- **NEDA and PCC** to spearhead creation of an **inter-agency mechanism** to operationalize NCP



## **NCP: All agencies exercising oversight functions over SOEs shall...**

- Review mandates of SOEs and validate that their business activities are not best carried by private sector, **examine conflicts in their proprietary and regulatory functions**, and **adopt structural measures** to address any identified anti-competitive behavior relating to their mandate and/or operations
- **Assess existing subsidies in favor of SOEs**, and enforce measures to prevent SOEs from deriving undue and preferential access to financing / credit
- Implement regulatory and non-regulatory measures necessary to **neutralize any advantages or disadvantages** that may accrue by reason of public sector ownership







## Key Takeaways

- **Resurgence of the Philippine economy** in recent years: Economic growth has been impressive by the standard of regional peers.
- Competition policy is **part and parcel of the country's development strategy** to sustain the growth and make it more inclusive.
- Reforming SOEs is crucial to **leveling the playing field and strengthening the private sector**.
- The **political commitment** needed to further deepen the reforms is stronger than ever.





**PHILIPPINE  
COMPETITION  
COMMISSION**

*Ensuring businesses compete and consumers benefit*

**Thank you.**



# Panel 2: Competition Advocacy and State Owned Enterprises

## Speaker 2:

Dr May Fong Cheong

Senior Lecturer - Australian Catholic University

and

Dr Pornchai Wisuttisak

Assistant Professor - Chiang Mai University



# Competition Advocacy and State Owned Enterprises (SOEs): Thailand and Malaysia

**Pornchai Wisuttisak & May Fong Cheong**

**The 11th East Asian Conference on Competition Law and Policy  
30<sup>th</sup> August 2018**

This presentation as updated is based on the chapter by Pornchai Wisuttisak and May Fong Cheong, “Competition Law, State-Owned Enterprises and Regional Market Integration in ASEAN”, in Burton Ong (ed), *The Regionalisation of Competition Law and Policy within the ASEAN Economic Community*, Cambridge University Press, 2018, 94-139.

# Outline

- Overview of SOEs presence in the economy
- SOEs dominance and impact on the private sector
- Competition Law application and enforcement against SOEs
- Challenges on advocacy to SOEs reform

# Overview of SOEs presence in the economy (THAILAND)

- 4 categories of SOEs established by: specific laws, private limited companies, public limited companies, public listed companies
- SOEs regulated by State Enterprise Policy Office, Ministry of Finance
- Privatization – Master Plan
- 2006 Corporatization
- 2014 State Enterprise Policy Committee/Superboard
- National State Enterprise Corporation
- Development on Governance and Management of State Enterprise Bill, 2016

# SOEs impact on the private sector

- **Advantages enjoyed by SOEs (Capobianca & Christiansen, 2011)**
  - *outright subsidization*
  - *concessionary financing and*
  - *other preferential treatment by the government*
  - *monopolies and advantages of incumbency*
  - *captive equity*
  - *exemption from bankruptcy rules*
- **Advantages enjoyed by Thai SOEs**
  - *Not subject to corporate tax*
  - *Access to better funds and loans conditions*
  - *Inherited exclusive monopoly positions*
  - *Exemption from Competition Act (only ASEAN jurisdiction)*
- **Thailand, Malaysia & Singapore compared**
  - *Thailand- enjoy most advantages*
  - *Malaysia- enjoy some advantages*
  - *Singapore – run comparably on a commercial basis*

# Thailand's Competition Act 2017

- Exempts 'SOEs, independent agency or government agency which operate according to law or cabinet approval for public securities and benefits, providing infrastructure'
- SOEs in major economic sectors
- Calls for reform – Master Plan for State Enterprise Reform, 1998
- State Enterprise Corporatization Act 1999
- Exemption under specific laws



# Challenges on advocacy to SOEs reform

- SOEs and competition culture
- SOEs and market reform and market liberalization
- Removal of exemptions
- Competitive neutrality and national champion and interest
- Intersection and cooperation between competition law and sectoral regulation.

# Overview of SOEs presence in the economy (MALAYSIA)

- Direct or indirect, federal or state (Johor SEDC)
- Government linked Companies (GLCs)
- Government linked Investment Companies (GLICs)
- Statutory bodies under specific laws (Petronas)
- Minister of Finance Inc, Khazanah, MAS
  
- Colonial legacy – ‘agency houses’ –plantation, tin mining, natural resources
- National Economic Policy, 1970s
- Economic Transformation Program 2009

# SOEs impact on the private sector

- **Advantages enjoyed by Malaysian SOEs**
  - *Government as guarantor to some GLICs (Employees Provident Fund)*
  - *Inherited exclusive monopoly positions in key utilities: telecommunications, electricity (Telekom, Pos Malaysia)*
- **Khazanah**
  - Government sovereign fund, Largest GLIC, share capital owned by MOF Inc
  - Chairman, 2 other Ministers on Board of Directors
  - Local, regional and international investments - varied commercial activities
- **Government owns 36% value of firms listed on Malaysian stock exchange**
- **Privatisation 2011, tapering off 2016**
- **GLC Transformation Plan 2004**
  - Putrajaya Committee 2005 , 10 year Transformation plan 2015
  - G20 – top 20 GLICs, GLC club headed by Telekom Malaysia, to be opened to rest of corporate Malaysia
- **Public Private Partnership (PPP) Unit 2009**
- **Divestment to diversification**
- **GLCs crowding out the private sector**

# Malaysian Competition Act 2010 (wef 01.1.2012)

- Covers GLCs in commercial activities covered except for ...
- First Schedule exemptions - commercial activity regulated by
  - Communications and Multimedia Act 1998
  - Energy Commission Act 2001
  - Petroleum Development Act 1974
  - Malaysian Aviation Commission Act 2015
- Significant decision: 31 March 2014, the Malaysian Competition Commission held that the Collaboration Agreement entered into between MAS and AirAsia infringed s 4(2)(b) - agreement had the object of sharing of markets within air transport services sector in Malaysia. Financial penalty of RM10 million on each party.
- Decision reversed by Competition Appeal Tribunal, 4 Feb 2016
- Currently awaiting judicial review application before the High Court

# Challenges on advocacy to SOEs reform

- **SOEs and competition culture**
- **Competitive neutrality**
  - Institutional reforms
  - Reducing the government's role in business, NEAC report 2011
  - Corporate Social Responsibility (CSR) Framework
  - Public procurement practices
- **Cooperation between competition law and sectoral regulation: Special committee in Competition, 2011**

# Thank you for your attention

## **Pornchai Wisuttisak**

*Dean, Faculty of Law, Chiang Mai University, Thailand.*

*Email: [pornchai.w@cmu.ac.th](mailto:pornchai.w@cmu.ac.th)*

## **May Fong Cheong**

*Senior Lecturer, Thomas More School of Law, Faculty of Law and Business, Australian Catholic University*

*Email: [May.Cheong@acu.edu.au](mailto:May.Cheong@acu.edu.au)*



# Panel 2: Competition Advocacy and State Owned Enterprises

**Speaker 3:**

Mr Hassan Qaqaya

Senior Fellow – University of Melbourne





**EAST ASIA CONFERENCE ON  
COMPETITION LAW AND POLICY**

**30 August 2018**

**Competition advocacy and State Owned  
Enterprises**





## Advocacy : necessary conditions

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- **A commonly accepted definition of competition advocacy is that it includes all activities of a competition agency that are intended to promote competition apart from those that involve enforcement of the competition law. Such a definition suggests that advocacy and enforcement are mutually exclusive, but they are not. In many ways, they are interdependent and complementary.**
- **Operational independence, in the context of competition advocacy, refers both to the freedom that the agency has to make comments and otherwise to participate in government and regulatory matters, and, in the course of those activities, to take positions that are independent of those held by others in the public and private sectors.**

# Advocacy and SOEs

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- **The concept of state-owned enterprise (SOE) encompasses a broad range of entities united by the common feature of government control. In many countries, SOEs operate in a wide range of markets and represent a significant part of national economies.**
- **Due to their privileged position SOEs may negatively affect competition and it is therefore important to ensure that, to the greatest extent possible consistent with their public service responsibilities, they are subject to similar competition disciplines as private enterprises. Although enforcing competition rules against SOEs presents enforcers with particular challenges, competition rules should, and generally do, apply to both private and state-owned enterprises, subject to very limited exceptions.**

## Advocacy : necessary conditions

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- **The agency should have sufficient resources to support both its enforcement and advocacy functions. The resource issue is well understood as critical to all aspects of a competition agency's work.**
- **The agency can probably be most effective in this regard if the competition law applies directly to privatisation transactions. That is, the agency can review and block, or require modifications to, a proposed privatisation just as it could with regard to any other merger or restrictive agreement.**
- **This is not the case in many countries, however, which means that the agency has available only its powers of advocacy. Ideally the applicable law will permit the competition agency to participate formally in privatisations – to receive timely notice of proposed transactions, to request the submission of information and to submit formal statements or opinions regarding the competitive effects of the proposal**

## Competition rules and SOEs

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- **Competition law alone is not sufficient in ensuring a level playing field for SOEs and private enterprises, which is why policies aimed at achieving competitive neutrality between the two play an essential role. Competitive neutrality can be understood as a regulatory framework (i) within which public and private enterprises face the same set of rules and (ii) where no contact with the state brings competitive advantage to any market participant.**
- **Presence of competitive neutrality policies is of particular importance in recently liberalised sectors, where they play a crucial role in leveling the playing field between former state monopoly incumbents and private entrants. Equally important is their effective monitoring and enforcement.**
- **Enforcing competition rules against SOEs presents enforcers with particular challenges.**

## Competition rules and SOEs

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- **Even though competition law generally applies to both private and public economic entities, competition authorities may face distinct challenges when enforcing it against SOEs. These may be of institutional as well as substantive character.**
- **While the vast majority of competition authorities are impartial in their investigations, it is nevertheless theoretically conceivable that, in some instances, they could be exposed to the risk of undue government influence. Also, competition authorities may often lack sufficient statutory power over the SOE, in particular, with respect to industries that are subject to oversight by sectoral regulatory agencies.**

## Competition rules and SOEs../..

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### **Substantive challenges :**

- **obtaining relevant information from SOEs could be very difficult due to lack of transparency regarding costs and insufficient standard accounting procedures.**
- **the application of the traditional competition law tests, such as recoupment in predatory pricing, may be limited as some SOEs have goals other than profit maximization, such as maximizing revenue and size of the workforce;**
- **the complexity SOEs often present due to the variety of their activities, it is very difficult to determine whether an SOE is cross-subsidizing, pricing at below competitive levels or engaging in other forms of anticompetitive conduct..**

## Competition rules and SOEs../..

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- **There has been significant progress in developing countries in the liberalisation of many of the sectors traditionally dominated by state monopolies. While this process can be coupled with full or partial privatisation of state monopoly incumbents, privatisation alone is not sufficient in eliminating the advantages that such entities enjoy due to their past state ownership and their position in the market.**
- **For example, distortions cannot always be addressed through competition law enforcement, a possible solution may be found in policies aimed at achieving competitive neutrality in markets where public and private enterprises compete.**
- **Presence of competitive neutrality policies is of particular importance in recently liberalised sectors, where they play a crucial role in leveling the playing field between former state monopoly incumbents and private entrants.**

## Competition rules and SOEs../..

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- **There are situations where insistence on strict competitive neutrality is not appropriate as it may hamper the achievement of important societal goals.**
- **While competitive neutrality is desirable in general, there are instances where its strict application may hamper the achievement of important societal goals, such as in crisis situations or when dealing with market failures.**



## Competition rules and SOEs

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- **Insisting on a strictly neutral approach under these circumstances may have prevented the government from responding effectively to the economic crisis. With respect to market failures, government intervention may be necessary to overcome the inefficiencies of entrenched oligopolistic markets.**
- **For example, in recent bank bailouts Governments had to decide, often within days, which banks to rescue and which to allow to fail, in view of their resource limitations and keeping in mind various factors, such as the systemic importance of each bank to the financial system.**

# Advocacy tools

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- **Market studies for advocacy purposes**
- **When competition authorities do not have the powers to undertake market investigations and to impose remedies, they may nevertheless undertake market studies and use them as the basis on which they advocate with regulatory authorities, government officials and the public opinion at large for the appropriate measures to be taken to improve competition in the market studied.**
- **As defined by the International Competition Network, market studies are research projects aimed at gaining an in-depth understanding of how sectors, markets, or market practices are working.**
- **The aim is to understand the functioning of markets arising from one or more of the following: (i) firm behaviour; (ii) market structure; (iii) information failure; (iv) consumer conduct; (v) public sector intervention in markets; and (vi) other factors which may give rise to consumer detriment.**

# New challenging area : Big Data and SOE

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- **One of the most challenging issues facing competition agencies is how to handle BIG Data while maintaining competition as a process. The issue arise not only in private but also public sectors. Public sector, including central and local government, as well as public hospitals, clinics, social security and other public services, collects Big Data from citizens and, occasionally, from platforms and sellers, when the latter are required to provide information to comply with the law.**
- **The public sector is, indeed, one of the most data-intensive sectors of the economy, using national databases for scientific research and to support the provision of public services. Still, there is a potential to exploit further the data in hands of governments for public purposes, by implementing the new data mining and machine learning techniques that have been developed by the private sector. At the same time, the use of Big Data for the provision of public services may pose a problem of**

## New challenges : SOEs and trade liberalisation

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**Anti-competitive practices, whether they are originating from private or public enterprises may negate the benefits of trade and investment liberalisation if they are not addressed explicitly in trade liberalisation agreements. Therefore, FTA, bilateral and regional, should include provisions that would apply to all undertakings , including SOEs and ensuring a playing field between private and public enterprises.**

## **New challenges : SOEs and trade liberalisation**

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### **United Nations Set of Principles on Competition Policy : Scope**

**Art 6" The principles and rules for enterprises are addressed to all enterprises."**

**Art 7. The provisions of the Set of Principles and Rules shall be universally applicable to all countries and enterprises regardless of the parties involved in the transactions, acts or behavior.**

**Art 8. Any reference to "States" or "Governments" shall be construed as including any regional groupings of States, to the extent that they have competence in the area of restrictive business practices.**

**E.3. States, in their control of restrictive business practices, should ensure treatment of enterprises which is fair, equitable, on the same basis to all enterprises, and in accordance with established procedures of law..**

**One such approach is Chapter 15 and 17 of the PPT 11.**



# Panel 2: Competition Advocacy and State Owned Enterprises

**Speaker 4:**

Dr Wendy Ng

Lecturer – University of Melbourne





# Competitive Neutrality, State-owned Enterprises, and the Role of Competition Advocacy

Dr Wendy Ng, Melbourne Law School

*The 11<sup>th</sup> East Asian Conference on  
Competition Law and Policy, Sydney,  
Thursday 30 August*



- Competition advocacy is important in ensuring competitive neutrality
  - State-owned enterprises (SOEs) and private firms compete on a level playing field
- What role can competition advocacy play in
  1. Improving the application of competition law to SOEs?
    - What are the weaknesses/gaps in competition law enforcement against SOEs?
    - What are the potential causes of these weaknesses/gaps?
  2. Addressing anticompetitive government measures that favour SOEs?





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**Thank you**

[wendy.ng@unimelb.edu.au](mailto:wendy.ng@unimelb.edu.au)



# Lunch

Held in Foyer outside conference room





# Panel 3: Competition issues in the ecommerce sector

**Moderator**

Ms Rachel Burgess

Lecturer - University of Southern Queensland





## Panel 3: Competition issues in the ecommerce sector

### Speakers:

Mr Tzu-Shun Hu

Deputy Director - CTFTC

Assoc Prof Catherine de Fontenay

Associate Professor of Economics – Melbourne Business School

Mr Sadaaki Suwazono

Deputy Secretary General - JFTC

Mr Peter McDonald

Partner - Allen & Overy





# Panel 3: Competition issues in the ecommerce sector

**Speaker 1:**

Mr Tzu-Shun Hu  
Deputy Director – CTFTC





# **Competition Issues in the E-commerce Sector**



**Hu, Tzu-Shun  
Deputy Director, CTFTC  
EAC, Sydney  
30, Aug, 2018**



# **CHARACTERISTICS AND COMPETITION EFFECTS OF E-COMMERCE**



# Characteristics of E-commerce

## Price transparency

- Emerging of price comparison websites (PCWs)
- Automated pricing algorithms

## Low barriers to entry

- For new entrants and smaller retailers
- Selling goods on the online marketplaces

## Dynamic competition

- Fast-paced innovation
- Cyclical nature of competition





# Competition Effects of E-commerce

## Price transparency

- Emerging of price comparison websites (PCWs)
- Automated pricing algorithms



It may also result in free-riding behavior and allow firms to monitor more easily their prices

## Low barriers to entry

- For new entrants and smaller retailers
- Selling goods on the online marketplaces



New barriers to entry may be present in multi-sided markets where network effects are present

## Dynamic competition

- Fast-paced innovation
- Cyclical nature of competition



Successful platforms may tend to acquire significant but transient market power



# MARKET DEFINITION OF E-COMMERCE



# Characteristics of Two-sided Markets

Two groups of consumers

- Platforms enable interactions between two groups of consumers (e.g. E-commerce consumers and sellers transact a deal on a platform )

Indirect network effects across groups

- The benefit one side of the market derives from being on the platform depends on the number of users on the other side of the market (cross-platform network externality)

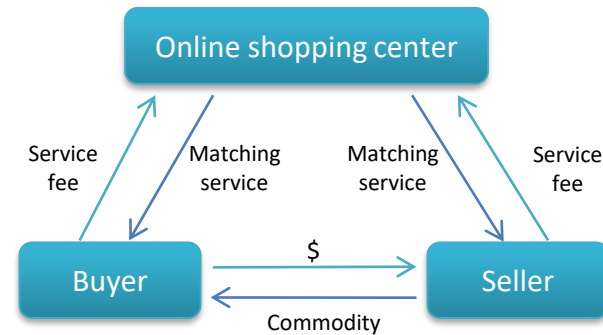
Non-neutrality of the price structure

- Platforms try to get the two sides “on board” by appropriately charging each side
- The structure of prices that the platform sets will determine volume across the different sides of the market

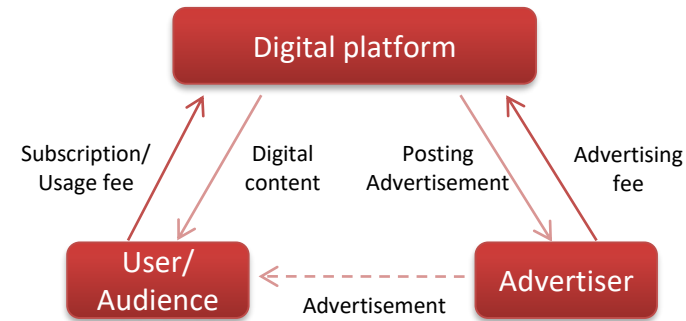


# How Many Markets to Define

Two-sided transaction markets



Two-sided non-transaction markets



American Express (2018)



# How to Define the Market(s)

- Existing approaches to define the relevant market(s) may no longer apply due to the zero pricing as well as interrelationships and externalities between distinct sides of the market

SSNIP

v.

SSNDQ

Small but significant and non-transitory **increase in price**

Small but significant and non-transitory **decrease in quality**

A two-sided platform may attract users by offering products or services free in one side

Measuring changes in consumption in response to a small but significant change in quality may confront practical difficulties

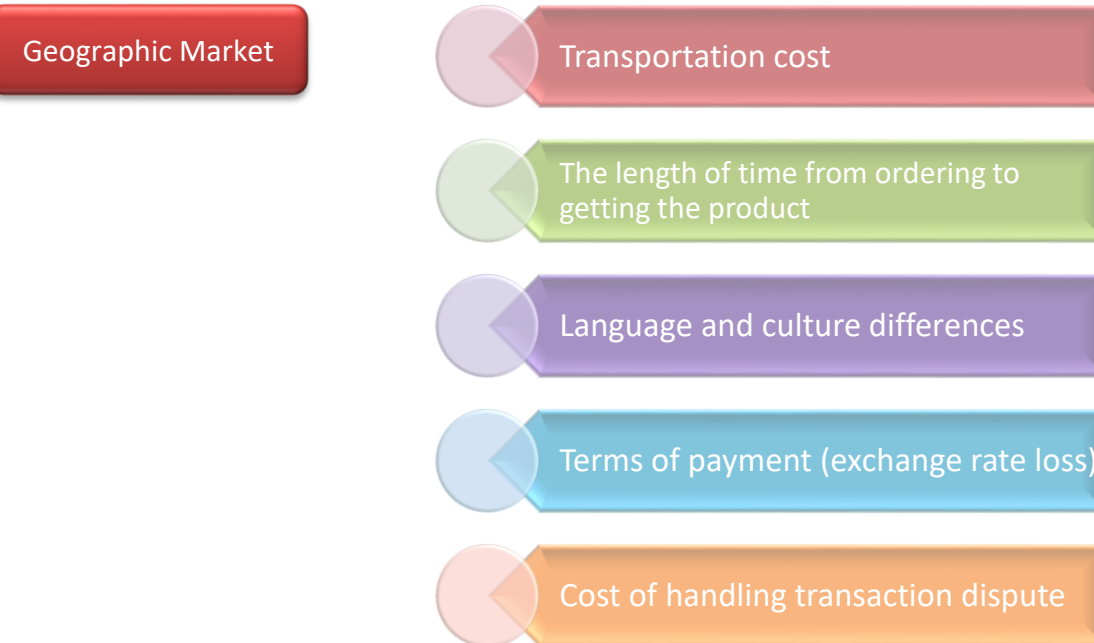
➔ Without price, the SSNIP test is unlikely to apply

➔ measure the degree of substitutability by “quality”

➔ SSNDQ



# How to Define the Market(s)





# COMPETITION ISSUES RELATED TO E-COMMERCE



# Concerned Issues

- Is existing competition policy and law sufficient to handle competition issues arising from E-commerce market?

## Anti-competition Practice

### Online Vertical Restraints

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- Fix online resale prices
- Most favored nation clauses

### Unilateral conduct

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- Predatory pricing





## Case Study: Fix Online Resale Prices

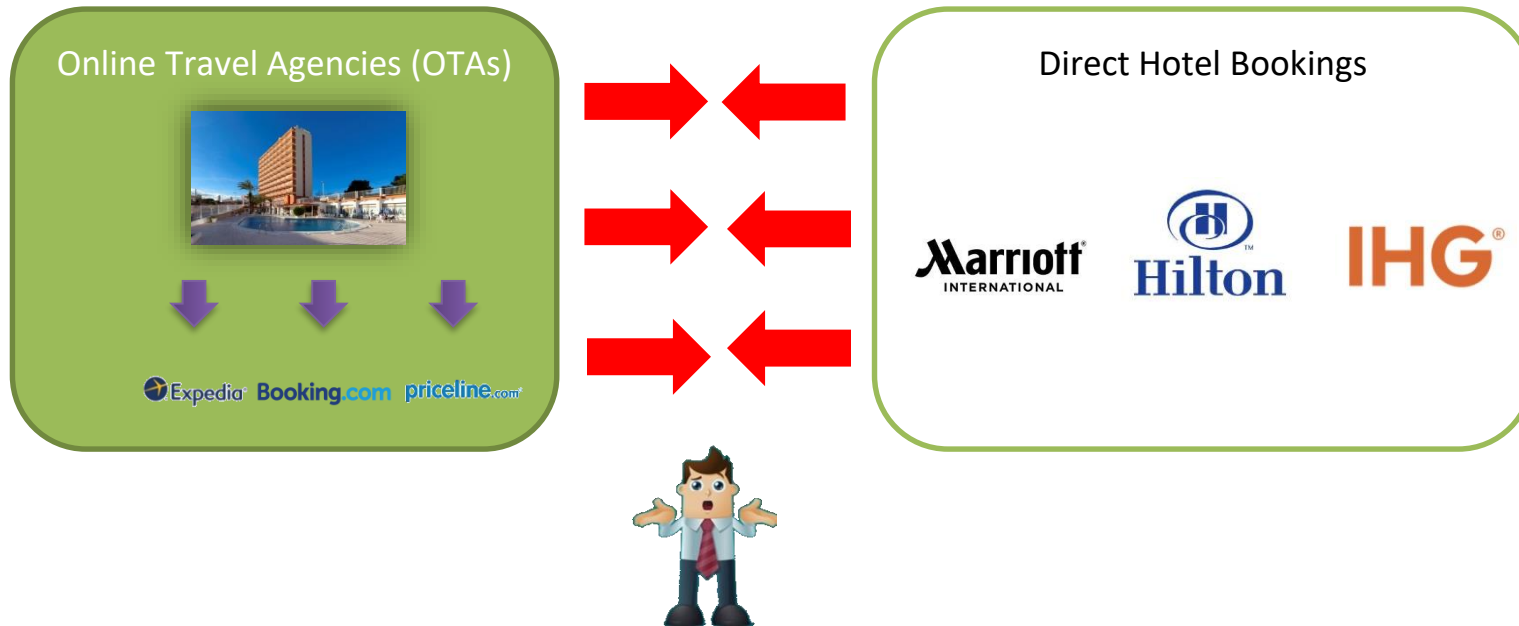
### Case of EU

- EU fines Asus, Denon & Marantz, Philips and Pioneer \$130M for online price fixing
- The four companies engaged in so-called “fixed or minimum resale price maintenance (RPM)” by restricting the ability of their online retailers to set their own retail prices for widely used consumer electronics products — such as kitchen appliances, notebooks and hi-fi products
- The manufacturers put pressure on ecommerce outlets who offered their products at low prices, writing: “If those retailers did not follow the prices requested by manufacturers, they faced threats or sanctions such as blocking of supplies



# Vertical or Horizontal Relation







# Most Favored Nation (MFN) Clauses

Wide MFN – firms include restrictions in contracts with their trading counterpart to ensure that no other competitor will receive more favorable terms

Narrow MFN – firms prevent a trading counterpart from being able to set a lower price on its own website, but it is free to agree lower prices with other platforms

MFN clauses pose a challenge to competition authorities in that they have both pro- and anticompetitive effects

- ✓ restrict intra-brand competition
- ✓ facilitate collusion between sellers in the market by enforcing uniform prices
- ✓ overcome issues of free-riding



# Predatory Pricing



## Facts

- Shopee, an overseas online shopping platform, offered "free insertion fees", "free handling fees" and "free shipping fees" for both buyers and sellers at the beginning of its operation to attract users
- Is this penetration pricing strategy adopted by Shopee while it was a new entrant in the market constitute predatory pricing?



## Competition analysis

- Two-pronged test
  - market structure
    - market share / power
    - entry barrier
  - price & cost
- The domestic or foreign online shopping market is a highly competitive market
- The online shopping platform is not regulated, and the online shopping platform market does not have obvious barriers to entry
- Multi-homing behavior of platform users
- By subsidizing the buyers and sellers to increase the number of members, Shopee can achieve the economic scale and reduce the fixed cost allocated by each member The pricing strategy is not for the purpose of eliminating competitors



# CONCLUSIONS



## Law Enforcement Directions in the Future

- Because of the dynamic and technical nature of E-commerce, excessive or inappropriate regulatory intervention will wind up damaging competition rather than protecting it
- Existing competition policy and law is sufficient to handle competition issues arising from E-commerce market
- However, in defining relevant market regarding E-commerce cases, especially two-sided platforms, a holistic approach is required which goes beyond the application of traditional antitrust analytical tools





**Thank you for listening**



# Panel 3: Competition issues in the ecommerce sector

**Speaker 2:**

Assoc Prof Catherine de Fontenay

Associate Professor of Economics – Melbourne Business School



# E-commerce and the arrival of Amazon

Associate Professor Catherine de Fontenay  
Melbourne Business School  
University of Melbourne



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SCHOOL

# Amazon in Australia

- Amazon enters the Australian market in December 2017
- High initial prices give way to aggressive pricing

**Exhibit 1:** Changes in average price differential between Australian retailers and Amazon

Average price differential			
Category	5th Dec 2017	27th Feb 2018	Change
<b>Sports</b>	-1%	-16%	-14%
<b>Electronics</b>	13%	-11%	-24%
<b>Groceries</b>	-13%	-1%	12%
<b>Apparel</b>	3%	-17%	-20%

Source: Company website as at December 5th, 2017 and 27th Feb. 2018, Morgan Stanley Research

<https://www.businessinsider.com.au/amazon-australia-prime-launch-2018-6>

# Amazon Prime

- Amazon Prime = a membership that guarantees free 2-day shipping to 90% of locations
- **Prime launched in June 2018 at \$59 per year**
  - \$US119 in the US, or \$161;
  - £79 in Britain, or \$141;
  - €49 in Germany, or \$77;
  - \$C79 in Canada, or \$80.

<https://www.businessinsider.com.au/amazon-australia-prime-launch-2018-6>

# Predatory Pricing?

To prosecute **predatory pricing**, one must show that

1. Amazon is pricing below cost (products + shipping + memberships)
2. Amazon is doing so (a) for the purpose of driving competitors out of the market, or (b) with the effect of driving competitors out of the market
3. Amazon will recoup the lost profits, in the form of higher profits in the future.

## 2. Predatory “purpose”

- Very difficult to prove!
  - A firm may price below cost
    - To achieve scale
    - To achieve network externalities
    - To subsidise switching costs for customers
- “Effects” test may be useful.

# “Amazon’s Antitrust Paradox”

Khan (Yale Law Journal, Aug 2018)

- Quidsi (launchers of Diapers.com) rejects a purchase offer by Amazon in 2009
  - Shortly Amazon cuts prices for diapers and baby products by 30%
  - Amazon launches “Amazon Moms”: free shipping, further 30% discount on diapers
  - After Quidsi finally sells out to Amazon, benefits of “Amazon Moms” scaled back significantly over several years.



# 3. Recouping profits

- Could a new firm enter the online retail market and compete successfully?
  - Scale economies in delivering to a neighborhood
  - Scale might get too large in warehousing: then duplicate!
- Should have a **stock-market test**: Willingness of Amazon investors to receive zero or negative returns for years suggests that they expect to recoup.



# Panel 3: Competition issues in the ecommerce sector

## Speaker 3

Mr Sadaaki Suwazono  
Deputy Secretary General – JFTC





# Competition Issues in the Ecommerce Sector

## Panel 3

**The 11<sup>th</sup> East Asia Conference on Competition Law  
Sydney, Australia  
30 August, 2018**

*Sadaaki Suwazono*

*Deputy Secretary General  
for International Affairs  
Japan Fair Trade Commission*

## Case 1: RPM by Coleman Japan Co, Ltd. (Cease and Desist order on June 15, 2016)

Formulate sales regulations for retailers to comply with

Request and receiving agreements from retailers to comply with sales regulations

Sell in accordance with sales regulations

**Coleman**

**Sales regulations**

- (1) Sell at a higher price than the minimum floor price set by Coleman
- (2) Approve a discount sale only in certain cases

Camping equipment



Please comply with sales regulations. We will have other retailers comply with the same.

We comply with if same rules are applied to competitors.

Camping equipment



Camping equipment

Please have retailers comply with sales regulations. We will have other retailers comply with the same.

Please comply with sales regulations. We are having other retailers comply with the same.



OK. We will.

We comply with if same rules are applied to competitors.



Camping equipment



Sales at a retail outlet

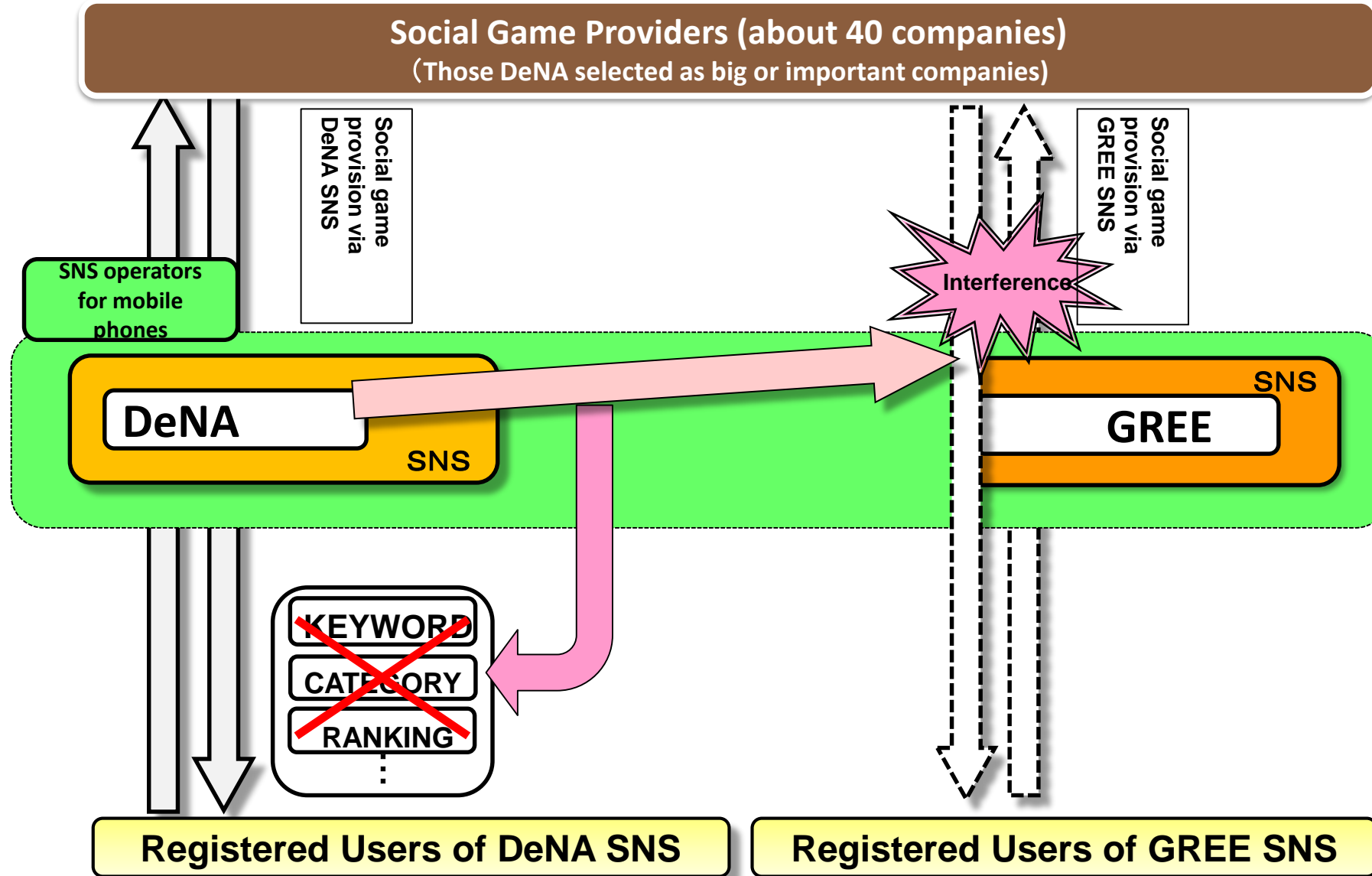


Sales via internet

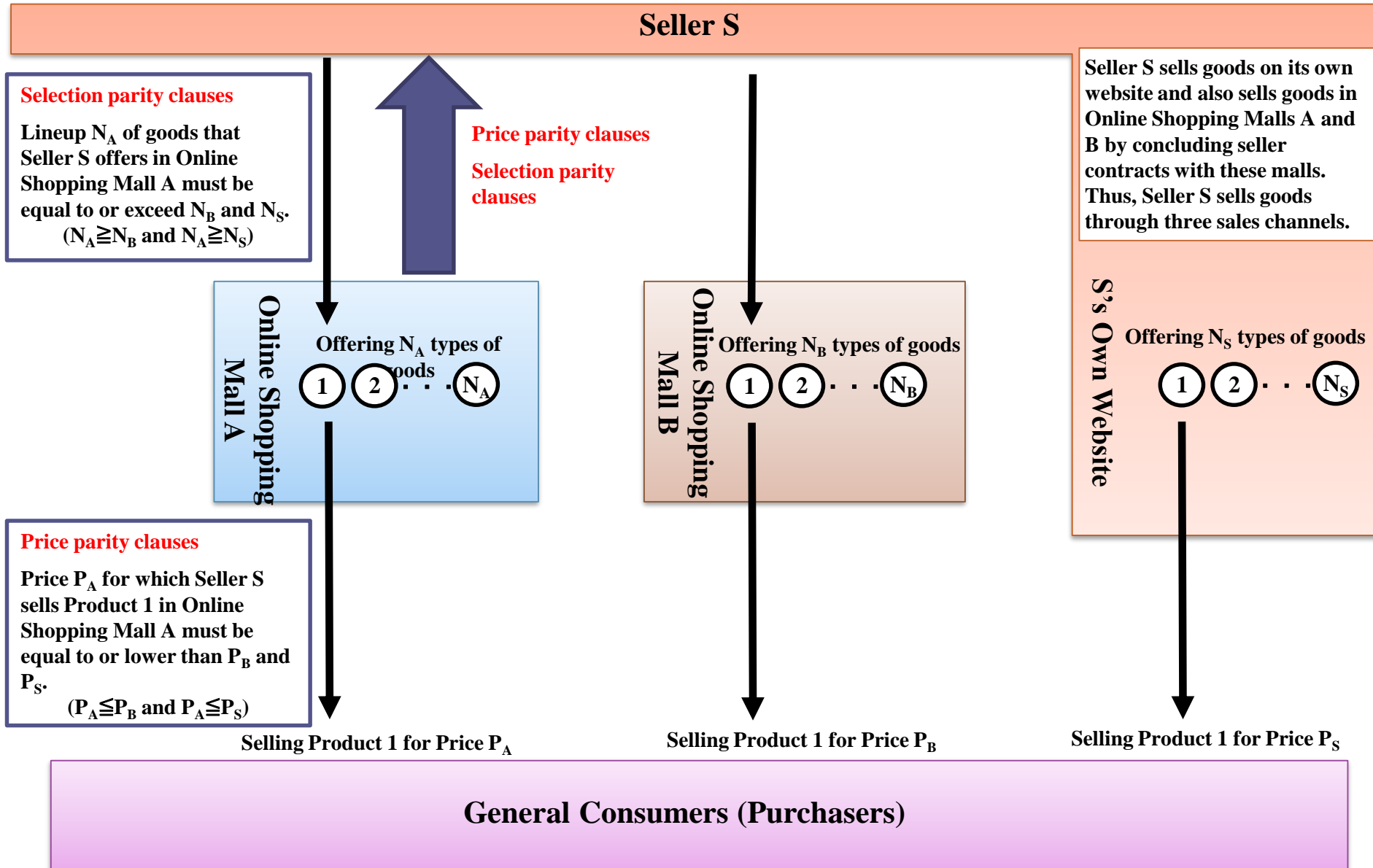


General consumer

**Case 2: Exclusionary Conduct by DeNA Co., Ltd. (Cease and Desist order on June 2011)**



**Case 3: MFN Clauses by Amazon Japan G.K. (Case closing on June 2017)**





**Thank you very much  
for your kind attention.**



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**Opinions expressed in this presentation are those of the speaker  
and are not necessarily those of the JFTC.**



# Panel 3: Competition issues in the ecommerce sector

## Speaker 4

Mr Peter McDonald  
Partner - Allen & Overy







# The 11th East Asia Conference on Competition Law and Policy

