



**Asia-Pacific
Economic Cooperation**

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Agenda Item: 6.1

Report of the CPLG Convenor of the CPLG Meetings, February 27-28 2016

Purpose: Consideration
Submitted by: CPLG Convenor



**First Economic Committee Meeting
Lima, Peru
29 February - 1 March 2016**

Competition Policy and Law Group
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In order to follow the Structural Reform Ministerial Meeting Instructions, *encourage member economies to undertake a self-assessment of barriers to competition including a review of current competition laws and policies*, the CPLG Convenor reported:

- **Dialogue with the EC Chair**

The EC Chair presented the EC-s priorities. In particular, the Chair referred a number of the SRMM instructions for the EC intersect with the work of CPLG. Also, referred that the Structural Reform Ministerial Meeting in 2015 encouraged member economies to undertake a self-assessment of barriers to competition, including a review of current competition laws and policies.

It is important to mention that the 2016 APEC Economic Policy Report will be focused on Structural Reform and Services. Also, the EC Chair mentioned the Role of competition policy in inclusive growth, developing a policy framework on how structural reform and contribute to inclusive growth, sharing knowledge and experience relating to structural reforms that may affect inclusive growth.

- **Progress Report on CPLG Projects in 2015**

Based on that APEC Leaders in Beijing, China, stated “to meet our objective of strengthening the implementation of good **regulatory** practices, we will further enhance communications, exchanges and sharing experiences, and foster an open and transparent regulatory environment in our economies, according to individual economies’ needs and circumstances” in 2014, Chinese Taipei, United States of America, Peru and Russia presented the progress report on CPLG projects.

As we know, APEC's Competition Policy and Law Group (CPLG) works to promote an understanding of regional competition laws and policies, to examine the impact on trade and investment flows, and to identify areas for technical cooperation and capacity building among member economies. In order to fulfill the goals set forth by the CPLG, we believe that the exchange of experiences in the proposed forum will not only strengthen cooperation between APEC’s member economies, but will also allow antitrust agencies of each member economy to evaluate the efficacy of their own leniency policies.

These projects aim to achieve, among others, better understanding and/or acknowledgement in competition policy. So there is a contemporary trend towards the enactment of laws that prevent the formation of such economic agreements. The sharing knowledge, best practices and experiences in competition matters from advanced APEC economies and lessons learnt will be disseminated to developing APEC economies, contributing to further capacity enhancement those economies.

- a. **Law Database**

Chinese Taipei reported on progress of the Law Database, which Chinese Taipei set up and maintained. Chinese Taipei noted that the database had received positive responses and acceptance by international community, with increased number of visitors to the database captured.

Emphasising the importance of ensuring that data was regularly updated, Chinese Taipei urged members to periodically update the information in the database.

CPLG Convenor expressed gratitude to Chinese Taipei on its efforts made to establish and maintain the database.

b. Workshop on promoting competition international best practices

United States of America reported on the outcomes of the CPLG project, Workshop on promoting international best practices. The objective of the project was to review the ICN Guidance on Investigative Process.

On February 24-25, CPLG Delegates from 11 economies participated in a workshop in which they examined the principals of the International Competition Networks-ICN Guidance on investigative process relating to competition investigations. The needing effective to conduct investigations, the role of balancing transparency with confidentiality and the importance of an on-going engagement and give and take among the competition authorities, the investigated parties and interested parties. Each economy presented its approach to the issues addressed in the guidance and discussed of the pros and cons of the options.

The participants of the workshop also recommended that the CPLG issue the following statement recognizing the critical importance of fair and informed investigative process in light of the ICN Guidance:

*STATEMENT FROM PARTICIPANTS IN
WORKSHOP ON PROMOTING COMPETITION INTERNATIONAL
BEST PRACTICES*

Having conducted a review of the International Competition Network's Guidance on Investigative Process and efforts by the competition authorities of APEC jurisdictions to implement such processes and practices, and recognizing the contribution of those efforts to structural reform, we ask the CPLG to issue a statement recognizing that fair and informed investigative process is fundamental to effective application of competition law, and encouraging all competition authorities and entities responsible for competition policies and law enforcement to review their processes and practices and consider making any improvements in light of the ICN Guidance.

At the general CPLG Annual Meeting on February 27-28, the consensus among delegates was that advocating review of regulations and legislation that may unnecessarily present obstacles to competition and new entrants into markets would lead to structural reforms that would benefit economies and result in economic growth development. This was supported by interventions of the World Bank and the OECD. Several examples of how regulations and legislation impede innovation were also discussed.

- **New Projects for 2016**

Mr. Alvaro Castro, the Program Director of CPLG APEC, provided briefing on project approval process for 2016 to all economies members. In particular, Mr. Castro mentioned how many projects have been presented and the APEC funds to finance all new projects and proposals in order to contribute to the CPLG goals and accomplish the APEC priorities.

Peru presented a concept note, Seminar on investigative powers in Competition Authorities. This project will organize two day workshop in Viet Nam, in which economies will exchange experience regarding the development of investigative powers of competition agencies in order to implement more effective mechanism against anticompetitive conducts. The implementation of competition policy provides markets with a framework that encourages market discipline, eliminates distortions and promotes economic efficiency, which are the main objectives of the CPLG.

It is essential that competition authorities have the necessary powers to investigate effectively suspected competition law infringements. To that end, the Authorities must have appropriate fact-finding tools at their disposal which enable them to require such information to be supplied and to undertake such investigations as a necessity to bring to light an infringement of the competition rules.

This concept note was supported by Philippines and Singapore as Co Sponsors and was endorsed by all the economies.

- **World Bank and Peru's presentations**

The World Bank presented a method in order to identify barriers that affect competition in the market. The World Bank propose an opportunity for APEC and WSBG to collaborate on: Database of cartel instances, identification of facilitating factors, identification of gaps in implementation and measure effects of cartels region/wide. Also, presented the Competition in Transport and Logistics rapid assessment tool.

On the other hand, Indecopi from Peru presented the results of their investigations about how to eliminate this distortion established by regulations.

- **OECD Competition Toolkit**

The OECD made a presentation about the OECD Competition Assessment Toolkit. It first explained the challenges of restrictive government regulations for economic growth as well as the benefits of removing such regulations. Competitive reform in Australia and its effect on economic growth were discussed. The OECD explained the principles of the Competition Assessment Toolkit as a simple and straightforward reform tool that can help policy makers to identify regulatory restrictions and design alternatives. Next, the OECD gave a practical example, namely the competition assessment project in Romania. It discussed how the examined sectors were chosen, the timeframe and the five different stages as well as the organisational structure of the project. Capacity building efforts were explained. Finally a concrete example concerning public procurement in the Romanian

construction sector was given. After the presentation the OECD answered various questions.

- **Leniency Program as a tool for detecting anticompetitive behaviors**

Leniency Program offers to the companies involved in a cartel, the possibility to get total immunity from fines or reductions in exchange to present to the Authority evidence of such cartel. Conscious about the importance of this tool used to fight against conducts that affect markets, Chinese Taipei and Peru presented Leniency Program as a tool for detecting anticompetitive behaviors.

- **How disruptive innovation could affect competition**

Disruptive innovation is related to how a product or service that initially is in the bottom of the market, with a technical process, could moves up market, displacing competitors. The advocacy efforts towards disruptive innovations are a good way forward. Through advocacy, competition agencies can open the path for disruptive companies to provide their services. Bearing in mind that competition and free market access result in more benefits for consumers. In this sense, at an international level it is important to highlight initiatives such as the ICN Special Project and Workshops in order to help other agencies to have a better understanding on how to approach disruptive innovations. The importance of this mechanism have been presented by Singapore and United States.

- **Bid Rigging in Public Procurement. Prevention and Detection**

As OECD mentioned, bid rigging occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods or services for purchasers who wish to acquire products or services through a bidding process. Public and private organizations often rely upon a competitive bidding process to achieve better value for money. Low prices and/or better products are desirable because they result in resources either being saved or freed up for use on other goods and services. The competitive process can achieve lower prices or better quality and innovation only when companies genuinely compete. Bid rigging can be particularly harmful if it affects public procurement. Economies presented its assessment of anticompetitive conducts presented in public procurement.

In particular, Japan made a presentation on prevention of bid rigging in public procurement. It explained the efforts to enhance detection and deterrence of bid rigging in Japan and necessity of outreach procurement agencies to supplement the enforcement. It further presented various menus for outreach to procurement officials such as training program and liaison meetings.

- **Presentation on up-dated and development of competition policy**

In order to exchange information, CPLG Meetings allows the economies to share important information, promote dialogues and encourage cooperation. To accomplish those goals, some economies presented interesting topics, like Compliance Program, as a tool used to diffuse information that the main objective is to prevent competitive behaviors.

Chile presented about competition policy in free trade agreements and provided a case. Firstly, Chile explained the general principles of the Chilean competition policy. Then gave an overview of Chile's trade agreements, after which the focus was turned on the objectives of the competition policy chapters. Finally a case regarding Chilean Kiwifruit exporters was explained, which involved exporters commercial interests being affected by anticompetitive behaviour in third market economies.

Japan made a presentation on the efforts to enhance corporate compliance. It focused on the surveys on compliance conducted by the Japan Fair Trade Commission. It found that deterrence, detection, and damage control is important for ensuring the effectiveness of compliance.

On the other hand, the FAS Russia's presentation was about updates of competition policy law in Russia. In 2015 FAS received a new responsibilities in the sphere of tariff regulation. At the present the FAS Russia exercises legal control in price and tariff regulation for goods and services. Moreover in July FAS received functions for control over state defense procurement. Authority makes all efforts to improve legislation. In 2015 was elaborated new amendments to the Federal Law "On protection of competition". The main issue relates to the elimination of excessive powers and functions of FAS, considerably reducing administrative constraints for business and the simultaneous reduction of state involvement in the economy.