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Agenda Item: 5a

Competition Policy and Law Group Meeting, 26 February 2017 - Convenor's Summary Report

Purpose: Information
Submitted by: CPLG Convenor



**First Economic Committee Meeting
Nha Trang, Viet Nam
27-28 February 2017**

APEC COMPETITION POLICY AND LAW GROUP MEETING FOR 2017
26 February, 2017
Nha Trang, Viet Nam

CONVENOR'S SUMMARY REPORT

The Competition Policy and Law Group (CPLG) held its meeting on 26 February 2017 in Nha Trang, Viet Nam. The meeting was chaired by Mr Jesus Espinoza of Peru, and attended by Chile; the People's Republic of China; Japan; Malaysia; New Zealand; Papua New Guinea; Peru; the Philippines; the Russian Federation; Singapore; Chinese Taipei; Thailand; the United States of America; and Viet Nam.

The Chair of the Economic Committee (EC) also attended the meeting, and the SOM Chair's Office.

1. Convener's Opening Remarks

The CPLG Convenor opened the meeting by welcoming the CPLG members to the meeting. The Convenor expressed his appreciation to Viet Nam for its hospitality.

The draft agenda for the meeting was adopted.

2. APEC Priorities for 2017

Viet Nam's SOM Chair Office outlined the APEC Host Economy priorities for 2017 under the theme of "Creating New Dynamism, Fostering a Shared Future".

3. Progress Reports on CPLG Projects in 2016

a. Report about the progress of the Seminar on OECD Self-Assessment of Barriers to Competition

Mr. Timothy Hughes from the US FTC attended the CPLG SOM1 meeting as U.S. delegate. Mr. Nicholas Klissas from USAID in Washington, DC also attended. Mr. Klissas reported on the U.S. self-funded Seminar on OECD Self-Assessment of Barriers to Competition held on February 20-21. The U.S. delegation asked CPLG to forward to EC with CPLG endorsement the following statement adopted by the participants of the Self-Assessment Seminar:

As a result of the workshop, participants supported the idea to continue working with OECD to promote the use of competition assessments to improve regulatory frameworks by looking to develop an APEC-OECD Framework on Competition Assessments, which would include a competition assessment checklist. Viet Nam, as APEC host economy, volunteered to work with the OECD on a first draft inter-sessionally with a view to getting endorsement by economies through CPLG and EC this year.

The CPLG members endorsed and agreed to forward the statement to the EC.

b. Report about the "Seminar on Economics of Competition Policy"

Vietnam briefed about the workshop on Economics of Competition Policy. This workshop had over 50 participants, being officials of APEC competition authorities, delegates and high-profile experts. The presentations were well-organized to facilitate understandings and discussions. The workshop also dedicated a session for discussing experiences of various APEC member economies. The workshop received excellent feedbacks from participants. The US and Japan congratulated Vietnam for the successful workshop.

c. Peru reported about the progress of its projects

Peru reported on the outcomes of the CPLG project, the “Seminar on International experience regarding the Role of Leniency Programs in the Repression of Anticompetitive Conducts – Highlighting its effectiveness in the fight against cartels”, in Lima.

In this seminar, Professor Joseph Harrington spoke about *Why should competition agencies implement the leniency program? Theoretical Support for the implementation of the leniency as a tool to detect anti competitive conduct.* Mister Marvin Price, Director of Criminal Enforcement of the Antitrust Division of the United States Department of Justice of America, spoke about the *Design of the Leniency Program (economic literature and comparative jurisprudence). Multiple applicants, leader, repetition, Leniency (Amnesty) Plus. Benefits. Scheme-Internal structure of the program. How to make the program work in your country?* And Professor William Kovacic spoke about *How to maximize the effectiveness of the Leniency Program. Relevant aspects in the institutional design of the program. Markers, cooperation among competition agencies, confidentiality of information, commitment of exemption from punishment. Dissemination of the program. American experience in the application of the Leniency. Claim for damages form a legal perspective in the United States of America.*

In addition, Peru organized a Seminar on Investigative Powers of Competition Agencies in Nha Trang last 24-25 February 2017. In this seminar the participants discussed the importance 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. At the end of the event, the participants endorsed the following statement:

STATEMENT FROM PARTICIPANTS IN THE SEMINAR ON INVESTIGATIVE POWERS

The APEC economies participant in the Seminar on Investigative Powers of Competition Agencies in the context of the First Senior Officials’ Meeting and related meetings held in Nha Trang, Vietnam, on 24-25 February 2017 state that:

- *In order to enhance the investigative powers of the competition agencies, it is important that the investigator and prosecutor know how to prepare and conduct an interview or and interrogation. This tool can provide the agencies great amount of information for the purpose of the investigation and to initiates proceedings against undertakings involved in anticompetitive behaviors.*
- *It is important to learn the legal and technical aspects of the management of information in order to improve the tools that competition agencies have in the investigation. The use of forensic tools and maintaining the chain of custody can introduce better practices for the treatment of the evidence. In addition, the different information obtained in the dawn raids or searches should be treated according to the laws of each economy for preserving the evidence of the investigation.*
- *The economies recognize the importance of searches in the prosecution of anticompetitive conducts, highlighting the necessity to develop guidelines and good practices in its implementation.*

The CPLG members endorsed and agreed to forward the statement to the EC.

Continuing with the agenda, the CPLG Family Photo was taken with the participation of all the APEC Economies attended.

4. CPLG Work Plan in 2017

The CPLG Chair’s Assistant presented the CPLG Work Plan for 2017. Considering that all the projects that APEC Economies will present following, he focused into the CPLG objectives that all the projects are addressed. In that sense, the 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 APEC member economies.

The CPLG is responsible for practical aspects of competition law and enforcement to develop and enhance competition law and policy in APEC member economies. It covers the legal and regulatory

issues of competition law and enforcement, including sharing new developments in the law, comparative aspects of competition law, the role of the courts, the degree of autonomy granted to competition authorities, better methods to improve success of monitoring and enforcement of the law and appropriate remedies. It requires high degree of technical expertise, in-depth understanding and ability to analyze the legal and regulatory issues from the members involved.

5. New Projects for 2017

a. APEC Secretariat will provide briefing on project approval process for 2017

The CPLG Program Director outlined CPLG projects in 2016 and the procedures for both funded and self-funded projects in 2017.

b. Papua New Guinea's concept note for an Information Sharing Workshop on Merger Control Regimes.

PNG's concept note proposes for a two (2) days Information Sharing Workshop on Merger Control Regimes. An effective Merger Control Regime (MCR) can prove an important tool to foster effective competition and facilitate benefits like economic growth and productivity. The workshop seeks to help APEC developing economies, especially for new competition agencies to gain a better understanding of MCR's and aim to collectively share information, ideas and good practices from APEC economies and experts. Workshop would align with APEC's RAASR agenda.

c. Peru's Concept Notes

Peru presented the following concept notes:

- Seminar on Challengers in prosecuting individuals involved in hard core cartels: The purpose of this seminar is to exchange experiences and share views and information of the APEC members in prosecuting individuals involved in hard-core cartels, with the intention to analyze in detail the pros and cons of the mechanisms that the different economies have and in order to identify best practices.
- Seminar on Settlements as an effective tool for fighting cartels: when, how and where to use them. The purpose of this seminar is to facilitate information sharing on settlements experiences among APEC members, in order to identify, evaluate, apply and improve best practices related to the settlements, as a tool for solving in less time cartel investigation that enables the competition authorities to be more efficient in time and resources.

d. Viet Nam's Concept Note

Vietnam proposes to a one-year project on "Promoting the use of economic evidence for more effective competition policy and market functioning", to be implemented in May 2017-May 2018. The key activities are trainings for local competition agencies in Vietnam on the using economic evidence in their professional work and a policy dialogue on the margin of EC2 in 2017. This Project fits with the priority of APEC and EC, and Vietnam's individual action plan to implement the RAASR for 2016-2020. Vietnam thanked Peru and Australia for co-sponsoring the project. Japan also indicated co-sponsorship of Vietnam's proposal.

6. APEC Competition Policy and Law Database

Chinese Taipei reported on progress of the APEC Competition Policy and Law Database, which Chinese Taipei set up and maintained. Since its last report, Chinese Taipei noted that the database had received positive responses and acceptance by international community, with increased number of visitors to the database captured. Chinese Taipei encouraged all member economies to continuously submit updated information and related documents for inclusion in the database so as to make the database comprehensive in promoting transparency in regional competition policy and laws.

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

7. Members' reports/Presentations on updates and developments of Competition Policy

Economies updated the meeting on developments within their respective competition policy and legal frameworks. The presentations were made by Chile, China, Japan, Malaysia, New Zealand, Papua New Guinea, Peru, Philippines, Russian Federation, Singapore, Chinese Taipei, the United States of America and Viet Nam. The presentations prompted a wide range of questions and good exchange of views among members on the different approaches that were taken by economies towards the enforcement of competition policy and law.

8. Updating on Preliminary results from Markets and Competition Policy Assessment Tool application to road cargo and logistics sector in Peru, Philippines and Viet Nam

Mr. Nicholas Klissas from USAID in Washington, DC, on behalf of the World Bank, reported on the preliminary results from a program developed with USAID support specifically identifying barriers to competition in road transport. The program consists of a multistage process that uses a checklist similar to that of the competition assessment described by the OECD in the recent seminar. It specifically searches likely areas where competition is stymied either through barriers to entry, restrictions on growth, or limits on information.

The World Bank Group focused its application of the toolbox on three economies: The Philippines, Peru, and Viet Nam. It has almost finalized the analysis of all the information collected on regulatory barriers to the road transport and logistics sector through the questionnaires based on the WBG Markets and Competition Policy Assessment Tool (MCPAT). The preliminary results from Vietnam, Philippines and Peru are very interesting and speak to a diverse regulatory framework that highlights restrictions to competition.

With a final report expected in July with rollout to other economies

9. Dialogue with the EC Chair

The EC Chair Mr Rory McLeod outlined the EC's priorities for 2017 under the framework of the Renewed APEC Agenda on Structural Reform.

10. Other Business

Next CPLG Convenor (2018-2019)

The APEC Secretariat Program Director presented the proceeding for electing the next CPLG Convenor and Vice Convenor for next two years. The procedure will commence at the latest by end-September.

11. Next/Future Meeting

Papua New Guinea welcomed to the APEC Economies for the next APEC meeting in PNG 2018.

CPLG Convenor thanked all participants and adjourned the meeting.