



**Asia-Pacific  
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# Competition Policy: A Driver for Economic Recovery in the APEC Region

**APEC Competition Policy and Law Group**

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**Asia-Pacific  
Economic Cooperation**

# **Competition Policy: A Driver for Economic Recovery in the APEC Region**

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**POST-WORKSHOP REPORT**

**APEC Competition Policy and Law Group**

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**Post-Workshop Report. Competition Policy: A Driver for Economic Recovery in the APEC Region**

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The opinions and conclusions are the views of the authors of this report. The Analysis and Recommendations in this report do not necessarily reflect the views of APEC member economies.

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The project also guided from the input and expertise of speakers from APEC economies, including Australia; Canada; Chile; Indonesia; Malaysia; Mexico; New Zealand; Peru; the Republic of the Philippines; Singapore; Chinese Taipei; Thailand; and the United States. The views and opinions expressed in this report are those of the authors and do not necessarily reflect the official policy or opinion of the APEC member economies.

This report outlines the outcomes of the **APEC Workshop on the role of competition policy in the economic recovery post COVID-19**, which was held virtually on 12-13 October 2022.

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## GLOSARY AND ACRONYM LIST

ACCC	Australian Competition and Consumer Commission
APEC	Asia Pacific Economic Cooperation
API	Application programming interfaces
BIU	Business Intelligent Unit, Thailand
BUREAU	Competition Bureau, Canada
CCCS	Competition and Consumer Commission of Singapore
CFE	Federal Electricity Commission, Mexico
COFECE	Federal Economic Competition Commission, Mexico
COMCOM	Commerce Commission, New Zealand
CPI	Consumer Price Index
DAP	Development Academy of the Philippines
SCJN	Supreme Court of Justice of the Nation, Mexico
DOJ	Department of Justice, United States of America
FAS	Federal Antimonopoly Service, Russian Federation
FNE	National Economic Prosecutor, Chile
FTC	Federal Trade Commission, United States of America
HKCC	Hong Kong Competition Commission
ICN	International Competition Network
IFT	Federal Telecommunications Institute, Mexico
INDECOPI	The National Institute for the Defense of Free Competition and the Protection of Intellectual Property, Peru
JFTC	Japan Fair Trade Commission
KPPU	Indonesia Competition Commission, Indonesia
LAASP	Law on Procurement, Leasing and Services of the Public Sector, Mexico
LOPSRM	Law on Public Works and Related Services, Mexico
MoUs	Memoranda of understanding
MSMEs	Micro, small and medium-sized enterprises
MSEs	Micro and small enterprises
M&A	Mergers and acquisitions
MyCC	Malaysia Competition Commission
OECD	Organization for Economic Co-operation and Development
OTCC	Thailand's Office of Trade Competition Commission
PCC	Philippine Competition Commission
PCSF	Procurement Collusion Strike Force
PNO	Premerger Notification Office
PPI	Productor Price Index
RATs	Rapid antigen testing for COVID-19
SAMR	State Administration for Market Regulation
SE	South-East
SFP	Ministry of Public Administration, Mexico
SMEs	Small and mid-sized enterprises
TCCT	Trade Competition Commission of Thailand
TDLC	Tribunal of Defense Free Competition, Chile
TFTC	Chinese Taipei Fair Trade Commission
UNAM	National Autonomous University of Mexico
UPCP	Unit for Public Procurement Policy, Mexico
US	United States of America

## EXECUTIVE SUMMARY

The COVID-19 pandemic impacted all APEC economies. The health and economic crisis derived from the pandemic continues to be a source economic uncertainty in world markets. Addressing the economic challenges generated by the pandemic is a top priority for the governments of APEC economies. The region's competition agencies can contribute to mitigate the negative effects of the pandemic and foster an inclusive economic recovery.

This report summarizes the main ideas, findings and recommendations derived from the Workshop "Competition Policy: A Driver for Economic Recovery in the APEC Region", that was held virtually on October 12-13, 2022. The attendees discussed competition policy and law practices and approaches across the APEC region that addressed the challenges raised by the economic recovery during and after the COVID-19 pandemic. Moreover, they shared lessons that contributed to build knowledge on successful responses to the crisis.

The online format of the Workshop allowed wide participation by speakers and other attendees from APEC economies. The Workshop provided a space for APEC economies to share their insights on the enforcement (e.g. sanction of anticompetitive practices) and non-enforcement activities (e.g. competition assessments of regulatory proposals) that addressed the COVID-19 crisis, as well as the actions that may contribute to economic recovery in the aftermath of the pandemic.

In particular, the Workshop allowed the attendees to strengthen knowledge among APEC economies on the following actions undertaken by the competition agencies: 1. advocacy efforts to support governments in the design, implementation and withdrawal of government support strategies required in the short-run; 2. the use of enforcement powers to address anticompetitive agreements, exclusionary abuses, and excessive pricing in strategic sectors affected by the pandemic (e.g. health, commerce, transport, tourism, etc.); 3. how competition authorities have addressed the challenges posed by economic uncertainty in enforcing their merger control powers; and, 4. the investments competition authorities have made to increase their expertise and data collection capabilities on crisis-affected sectors (e.g. health, commerce, retail, transport, digital platforms), which have helped them make decisions that can support a more sustained and inclusive economic recovery, designed, and implemented to better address the challenges raised by the COVID-19 crisis. Furthermore, it provided an opportunity for APEC economies to discuss and share experiences that would aid on building back better in the aftermath of the crisis.

This post-Workshop report compiles the experiences shared during the presentations, as well as the questions and answers that emerged during the two-day Workshop. In addition, it presents policy and best practice recommendations that could be implemented by APEC economies as a benchmark to address economic recovery from a competition perspective. This report is intended to provide a reference for future policy formulation and measures for APEC economies that aim at coping in times of crisis and promoting economic recovery from competition perspective. Finally, this report is a tool for officials who could not attend the Workshop that will allow them to access its conclusions and recommendations.

This report is divided in four main sections, that address the following matters: 1. "Short Overview of the Workshop": the dates, speakers, and agenda of the Workshop; 2. "Background": the global and regional context of the economic crisis derived from the COVID-19 pandemic, its effect on the markets and how APEC economies responded to it from a competition perspective; 3. "Event Summary": the main topics covered by speakers and the ideas discussed during the Workshop; and, 4. "Recommendations and Best Practices": a compilation of recommendations and best practices that may be implemented by APEC economies.



## I. SHORT OVERVIEW OF THE WORKSHOP

The Workshop “Competition Policy: A Driver for Economic Recovery” was held virtually on October 12-13, 2022. The event was led by Mexico, and co-sponsored by Canada, Malaysia, New Zealand, Peru, the Republic of the Philippines, Singapore, and the United States.

The Workshop<sup>2</sup> had the following format:

- 1) Opening remarks.
- 2) Session One: The role of competition advocacy in the design, implementation and exit of government support.
- 3) Session Two: Ensuring regulatory reforms that tackle the economic crisis in a procompetitive manner.
- 4) Session Three: Competition enforcement for recovery (abuse of dominance, excessive pricing, and cartel investigations during times of crisis).
- 5) Session Four: The impact of merger control in economic recovery.
- 6) Session Five: How to increase expertise and data collection capabilities on crisis-affected sector?
- 7) Closing remarks.

Over 78 participants across APEC economies attended the Workshop over the two-day event, including 29 moderators and speakers from 13 APEC economies: Australia; Canada; Chile; Indonesia; Malaysia; Mexico; New Zealand; Peru; the Republic of the Philippines; Singapore; Chinese Taipei; Thailand; and the United States.

The speakers and moderators, listed in order of appearance, were the following:<sup>3</sup>

- Brenda Hernández, Commissioner, Federal Economic Competition Commission of Mexico;
- Sóstenes Díaz, Commissioner, Federal Telecommunications Institute, Mexico;
- Krisda Piamongsant, Convenor, Competition Policy and Law Group, Asia-Pacific Economic Cooperation;
- Luz María de la Mora Sánchez, Vice Minister of Foreign Trade, Ministry of Economy, Mexico;
- Peter Crone, Commissioner, Australian Competition and Consumer Commission, Australia;
- Deborah Healey, Director of the Herbert Smith Freehills China International Business and Economic Law Centre, University of New South Wales, Australia;
- Andy Chen, Vice Chairperson, Chinese Taipei Fair Trade Commission, Chinese Taipei;
- Andrea Marván Saltiel, General Directorate of Competition Advocacy, Federal Economic Competition Commission, Mexico;
- Claudia Choqueneira, Economist, National Institute for the Defence of Free Competition and the Protection of Intellectual Property, Peru;
- Johannes Benjamin R. Bernabe, Officer-in-Charge, Office of the Chairperson, Philippine Competition Commission, Philippines;
- Juan David Gutiérrez, APEC Consultant and Associate Professor at Universidad del Rosario;
- Encik Iskandar Bin Ismail, Chief Executive Officer, Malaysia Competition Commission, Malaysia;

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<sup>2</sup> See Annex I for the full agenda of the Workshop.

<sup>3</sup> Annex II provides brief biographies of the speakers.

- Anthony Durocher, Deputy Commissioner of Competition, Competition Bureau, Canada;
- Weng Loong Kong, Deputy Director, Policy & Markets Division, Competition and Consumer Commission of Singapore, Singapore;
- José Nery Pérez Trujillo, Head of the Planning, Liaison and International Affairs Unit, Federal Economic Competition Commission, Mexico;
- Ruben Maximiano, Senior Competition Expert, Organisation for Economic Co-operation, and Development;
- Akarapon Houbcharaun, Director of the Foreign Affairs Division, Trade Competition Commission, Thailand;
- Chandra Setiawan, Commissioner, Indonesia Competition Commission, Indonesia;
- Manish Kumar, Chief of the San Francisco Office, Antitrust Division, Department of Justice, United States of America;
- Grant Chamberlain, Cartels Manager, New Zealand Commerce Commission, New Zealand,
- Graciela Miralles, Senior Economist, The World Bank;
- Timothy Hughes, Counsel for Competition Technical Assistance, Federal Trade Commission, United States of America;
- Matthew Huppert, Trial Attorney, Antitrust Division of the Department of Justice, United States of America;
- Francisca Levin, Head of Mergers, National Economic Prosecutor, Chile;
- Tiara Carrick, Competition Law Officer, Competition Bureau, Canada;
- Antonia Horrocks, General Manager, Competition, New Zealand Commerce Commission, New Zealand;
- Carlos García Cueva, General Directorate of Market Intelligence, Federal Economic Competition Commission, Mexico;
- Sally Foskett, Director, Strategic Data Analysis Unit, Australian Competition and Consumer Commission;
- Juan Correa, Head of Anti-Cartels Division, National Economic Prosecutor, Chile.

## II. BACKGROUND

### 2.1 Global and regional context of the economic crisis derived from the COVID-19 pandemic

According to the World Health Organization, COVID-19 infected people that inhabit 215 areas and territories in the world (Irawan & Alamsyah, 2021). While the intensity of the pandemic's economic impact varies among economies, the latest World Bank development report describes it as “the largest global economic crisis in more than a century” (2022, p. 50).

The health emergency generated by the spread of the virus coupled with the measures undertaken by governments to contain it caused acute global negative economic effects.<sup>4</sup> The crises associated with the pandemic affected production, hindered international trade, reduced productivity, distorted labour markets, disrupted domestic and global value chains, weakened consumer and investor confidence, and increased poverty and inequality at a global scale (Belitski

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<sup>4</sup> With regards to the containment measures and non-pharmaceutical interventions adopted by governments to halt COVID-19, Deb et al. (2022, p. 30) estimated that the negative economic effect was “equivalent to a loss of about 10 percent in industrial production over the 30-day period following the implementation of containment measures.”

et al., 2022; Chang et al., 2022; Hernando & San Andres, 2020; International Monetary Fund, 2022; Irawan & Alamsyah, 2021; World Bank, 2022).<sup>5</sup>

Specific markets have been particularly affected by the pandemic. This is the case of tourism and hospitality, travel and transport, entertainment, services affected by mandatory closures, and services that entail close personal contact (Belitski et al., 2022; Gutiérrez, 2020a; Hernando & San Andres, 2020; Kuriyama, 2022). Moreover, the economic crisis has affected more the small and medium sized enterprises (SMEs) than large business (Belitski et al., 2022).

However, COVID-19 and social distancing measures also created new business opportunities. For example, according to Belitski et al. (2022, p. 595), “[t]he emergence of digital technologies has significantly reduced the economic costs of data—search, storage, computation, transmission—and enabled new economic activities during the COVID-19 pandemic and a change in lifestyle.” In a similar vein, a report prepared by the Ministry of Business, Innovation and Employment of New Zealand (2022, p. 5), noted that the pandemic accelerated digital adoption in private and public sectors and that certain digitally connected sectors, such as “teleworking using videoconferencing, e-commerce, remote and distance learning, connected supply chains, online payments and finance, and cloud computing, to identify just a few, are likely to become far more embedded and ubiquitous features of the economy, ways of doing business, and of social behaviours.”

At the onset of the COVID-19 emergency, Hernando and San Andres (2020, p. 2) reported that the Asia-Pacific Economic Cooperation (APEC) economies were “among the first and worst affected by the pandemic”. As it occurred elsewhere, the COVID-19 pandemic also caused a health and economic crisis in the APEC region. Furthermore, Hernando and San Andres (2020, p. 2) found that APEC’s members had swiftly “responded with massive fiscal, monetary and macroeconomic measures aimed at bolstering health service systems, while at the same time providing targeted and direct support to households and businesses, including MSMEs.”

While the region resumed economic growth and regional expanded trade in 2021, APEC economies are still facing specific difficulties associated with the pandemic. Kuriyama (2022, p. 1) reports that the APEC economies must address six critical trade challenges: “(1) disruption in accessing essential goods; (2) disruption of trade in services; (3) difficulties in supply chain logistics; (4) digital transformation; (5) transparency; and (6) regulatory bottlenecks affecting trade in essential goods.” APEC member economies have a diversified trade policy toolbox to tackle these issues, but some of COVID-19’s challenges can also be addressed from a competition perspective.

## **2.2 APEC’s competition law and policy responses to the COVID-19 Challenges**

This section analyses the responses from a competition perspective to address the effects of COVID-19 on economic activities of the APEC economies and on the efforts of the authorities enforcing competition law and policy to promote the reactivation and recovery of the economies. This section is based on an examination of over a hundred actions announced and/or implemented by competition agencies of the 21 APEC economies.<sup>6</sup>

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<sup>5</sup> Some of these supply and demand effects could be significantly reduced in the short term, it is likely that economic recovery from the pandemic will require medium- and long-term efforts from governments, companies, and consumers. Furthermore, the recent level of economic recovery of advanced and developing economies appears to be uneven (International Monetary Fund, 2022).

<sup>6</sup> Australia; Brunei Darussalam; Canada; Chile; People’s Republic of China; Hong Kong, China; Indonesia; Japan; Republic of Korea; Malaysia; Mexico; New Zealand; Papua New Guinea; Peru; The Philippines; The Russian Federation; Singapore; Chinese Taipei; Thailand; United States of America; Viet Nam.

The actions that were surveyed include both enforcement (e.g. investigation, prosecution and/or sanction of anticompetitive practices) and non-enforcement activities (e.g. competition advocacy reports). Each action was codified as one of the following four major types of activities:

**1. Advocacy efforts:** advocacy efforts undertaken by competition authorities to support governments in the design, implementation and exit of government support strategies required in the short run.

**2. Enforcement against anticompetitive practices:** the use of enforcement powers to address anticompetitive agreements, exclusionary abuses, and excessive pricing in strategic sectors affected by the pandemic (e.g. health, commerce, transport, tourism, etc.).

**3. Merger control:** how competition authorities have addressed the challenges posed by economic uncertainty in enforcing their merger control powers.

**4. Expertise and data collection capabilities:** the investments competition authorities have made to increase their expertise and data collection capabilities on crisis-affected sectors (e.g. health, commerce, retail, transport, digital platforms), which have helped them make decisions that can support a more sustained and inclusive economic recovery, designed, and implemented to better address the challenges raised by the COVID-19 crisis.

In sum, this section overviews, classifies, and exemplifies the responses from APEC's competition agencies using the taxonomy explained. Moreover, the section develops subcategories and illustrates each of them with specific examples of APEC's competition agencies.

### 2.2.1 Advocacy efforts

Two types of competition advocacy activities are examined in this section: (i) market studies and monitoring; and (ii) competition assessments that informed policy and regulatory processes<sup>7</sup>.

#### 2.2.1.1 Market studies

Several competition agencies in APEC economies conducted market studies and/or monitored sectors that were key for addressing the health and economic effects of the pandemic. While health care services and products were one of most reviewed markets, the agencies also studied other markets such as e-commerce services and retail. From the onset of the pandemic until

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<sup>7</sup> There are other competition advocacy activities that were carried out by the APEC's authorities that do not fall in this taxonomy. For example, the Australian Competition and Consumer Commission (ACCC) published basic information in its website to clarify, in the context of the COVID-19 pandemic, which behaviours of companies can be identified as anticompetitive and which exceptions can be granted (ACCC, n.d.-a). Similarly, Canada's Competition Bureau included a specialized section in its website titled "COVID-19: What the Competition Bureau is doing" (Competition Bureau, 2022a). The competition agencies of Mexico (COFECE, n.d.), New Zealand (COFECE, 2020c) and the FTC of United States of America also included a specific tab on their web pages to inform about the information they produced on COVID-19 (FTC, n.d.). Furthermore, competition authorities also organized or participated in workshops and events with the objective of exchanging experiences. In 2020, representatives from the competition agencies of Chile and Mexico participated in academic events in which they described the agency's responses and guidance, in the context of the COVID-19 crisis, with respect to competition advocacy, merger control, and the investigation of anticompetitive practices (Gutiérrez, 2020b). Additionally, the HKCC hosted a webinar on Competition Authorities' Responses to COVID-19 –which included an Expert Panel (HKCC, 2020b).

present times, the agencies have prioritized markets studies of sectors that are associated with the COVID-19 crisis and/or with economic recovery.

**Specific market or sector studies.** In 2020, the Philippine Competition Commission (PCC) published an “issues paper and a policy note identifying the key challenges and potential competition issues in the Philippine pharmaceutical industry” (Quisumbing Torres, 2020). Furthermore, also in 2020, the Malaysia Competition Commission (MyCC) completed a review of the service market, with an emphasis on the e-commerce segments of four products: processed food and beverages; household cleaning products; personal care and toiletries; and, clothing. The report of MyCC addressed, among others, how the incidence of the pandemic on purchasing habits affected the operation of the market (Nanta Linggi, 2020, para. 5). In 2020, the Competition and Consumer Commission of Singapore (CCCS), meanwhile, studied the leasing market for private retail spaces. The interest of the CCSS in the sector was linked to the closure of non-essential business premises at the onset of the COVID-19 crisis and how these government mandates affected competition and market dynamics (McConnell, 2020).

**Market monitoring.** The Australian Competition and Consumer Commission (ACCC) monitored, among others, “the performance of broadband services, the price of fuel, and the operation of energy markets.” (ACCC, 2020b, para. 14). Other agencies, such as Brunei Darussalam’s Competition Commission monitored prices of essential goods to deter anticompetitive conducts and understand supply chain disruptions in markets that were pertinent for the COVID-19 crisis (Brunei Darussalam, 2021).

#### **2.1.1.2 Policy and regulatory recommendations**

**Recommendations to regulators and policymakers.** In October 2020, the Peruvian competition agency (Indecopi) issued recommendations to improve the conditions of competition in the domestic market for medical oxygen, which the agency deemed essential for COVID-19 patients with respiratory difficulties (Indecopi, 2020, 2021b).

**Advice to promote the recovery of the economies.** Competition authorities have also recommended actions to initiate or strengthen post-pandemic economic recovery plans. A report published by the OECD found that 12 of 16 jurisdictions in the Asia-Pacific region “reported that their competition authorities have been involved in the design or development of an economic recovery package related to COVID-19” (OECD, 2021, p. 61). For example, Mexico’s Federal Economic Competition Commission (COFECE), issued a report in October 2020 that proposed 12 measures that could contribute to the economy’s reactivation. Three of the main markets that were subject of these proposals were: financial services, pharmaceuticals and energy (COFECE, 2020f). Finally, the New Zealand Commerce Commission (COMCOM), recognized that the pandemic continues to generate challenges and uncertainty for companies and citizens; therefore, among its priorities is contributing to long-term economic reactivation, through activities such as “provide expert assistance and practical guidance about proposed legislative amendments and regulatory changes related to our areas of expertise” (COMCOM, n.d.-b).

**Advice on COVID-19 related government aid.** Moreover, the competition agencies also offered advice with regards to government aid. For example, the Hong Kong Competition Commission (HKCC) requested the public bodies in charge of managing COVID-19 subsidies of the Anti-epidemic Fund “to take competition concerns into consideration” (HKCC, 2020c). One of the results claimed by the HKCC, that depicted its joint work with other public bodies, was that the Hong Kong Productivity Council “accepted the Commission’s advice on collusion prevention and factored in competition consideration by incorporating the Commission’s Model Non-collusive Clauses and Certificate in the Guidance Notes for the Distance Business Programme under the Anti-epidemic Fund” (HKCC, 2020c).

**Cooperation activities among competition and regulatory bodies.** The competition agencies and regulators also sought broader institutional arrangements to work more closely. For example, in November 2021, Thailand’s Trade Competition Commission (TCC) and the Energy Regulatory Commission signed a memorandum of understanding to cooperate in the supervision of the energy sector (Auychai et al., 2021).

## **2.2.2 Enforcement against anticompetitive practices**

This section overviews four different approaches that were proposed and/or implemented by competition agencies with regards to the enforcement activities against anticompetitive practices: (i) statements reminding about prohibitions during the pandemic; (ii) guidance on horizontal collaboration agreements; (iii) proposals to introduce exemptions or relax the enforcement of competition law during the pandemic; and, (iv) specific enforcement actions.

### **2.1.2.1 Statements reminding about prohibitions during the pandemic.**

In 2020, the Japan Fair Trade Commission (JFTC) issued several statements with Questions & Answers (Q & A) about “activities related to COVID-19” under the Antimonopoly Law, including issues concerning horizontal agreements, as well as samples of specific consultations from businesses that were deemed pertinent for other companies. Similarly, the HKCC also issued a statement reminding businesses, particularly those that received relief measures from the government, of which agreements are considered anti-competitive (HKCC, 2020c). Moreover, in April 2020, the United States of America’s Federal Trade Commission (FTC) and the Department of Justice (DOJ) issued a joint statement announcing that “they are on alert for collusion in U.S. labour markets” and that COVID-19 did not “provide a reason to tolerate anticompetitive conduct that harms workers...” (FTC & DOJ, 2020). In addition, the DOJ warned that it would prosecute anti-competitive conducts, such as price fixing or bid rigging, by economic agents engaged “with the manufacturing, distribution, or sale of public health products such as face masks, respirators, and diagnostics” (DOJ, 2020, para. 1).

Other agencies reminded economic agents that competition law remained “in full force” during the pandemic. In the case of Canada, for example, the Competition Bureau informed that the competition law does not contemplate a provisional suspension or relaxation of measures, therefore “Businesses should evaluate if collaborations may still lead to private actions (class actions) even if not sanctioned by the Competition Bureau” (Banicevic & Bodrug, 2020). Furthermore, the MyCC stated that “businesses are reminded to be mindful of the provisions of the Competition Act 2010 (“Act”), which continue to remain in full force and thus far, no provisions have been suspended”, because “the Act does not carve out any special exemptions during this period and to date” (Abdul Shukor, 2020).

Finally, some of the statements issued by competition agencies were specifically targeted to specific economic agents. For example, Mexico’s COFECE, issued two warnings to business associations linked with the sugar and alcohol industry and the real estate developers. The statements warned about potential illegal price conducts related to sanitizing gel and rents for bar and restaurants, respectively (Navarro, 2021).

### **2.1.2.2 Guidance on horizontal collaboration agreements**

**General guidance on collaboration agreements that are deemed legal.** Some competition authorities of the APEC member economies issued statements and guidance that reminded companies and the public that certain collaboration agreements among competitors are not deemed illegal under the competition law. For example, Singapore’s CCCS issued a guidance

note clarifying the criteria under which collaboration agreements between competitors are considered legal (Seah et al., 2021; Seah & Kao, 2020). Moreover, some authorities published guidelines on horizontal collaboration in the context of the pandemic. For example, in May 2020, New Zealand's COMCOM published two guidelines for economic agents: (i) "Guidelines on Approach to Authorisations under the COVID-19 Response (Further Management Measures) Legislation Act" (COMCOM, 2020b); and (ii) "Business collaboration under COVID-19" (COMCOM, 2020a).

**Consultation mechanisms on specific collaboration agreements.** Some agencies implemented formal and informal consultation mechanisms for companies that wished to undertake future collaboration agreements. For example, the HKCC set up a new informal engagement process, whereby the authority offers business informal guidance on a possible cooperation process (HKCC, 2020a). However, this measure was temporary and was available only for some sectors with the objective of maintaining the supply of essential consumer goods and services (Chim, 2020; Ha & Hickin, n.d.; HKCC, 2020a).

Another example that is worth mentioning is that of Chile. In this economy there are two competition authorities: the National Economic Prosecutor (FNE) that prosecutes and the specialized competition tribunal (TDLC) that adjudicates. The FNE, on the one hand, stated that Decree Law No. 211 does not establish powers that allows the agency to review or authorise collaboration agreements between competitors; therefore, companies that want to celebrate them must be very careful not to break the law (Ybar, 2020). On the other hand, the TDLC stated that, considering the health emergency derived from COVID-19, businesses may consult the tribunal about collaboration agreements that seek to generate efficiencies that overcome anti-competitive risks and that are related to essential goods or services, to maintain the supply chain, the continuity of transportation services and the delivery of medicines or medical supplies, among others that may also be essential (TDLC, 2020b).

### 2.1.2.3 Exemptions to antitrust rules

**Implementation of authorisation procedures (including fast-track authorizations).** Some member economies implemented authorisation procedures that were established by their competition laws before the pandemic started. More specifically, some the authorities implemented fast-tracked applications to authorise companies to enter into limited cooperation agreements between competitors given the effects of COVID-19. For example, in the United States (US), on March 24, 2020, the DOJ and FTC jointly announced "an expedited antitrust review procedure [the Business Review Process] and guidance regarding collaborations to protect health and safety during the pandemic" (Buice, n.d., para. 6). The agencies also stated that they wished "to make clear to the public that there are many ways that companies, including competitors, can engage in pro-competitive collaboration that does not violate antitrust laws" (FTC & DOJ, 2020, p. 1).<sup>8</sup> It is worth noting the effort of the authorities to issue a concept, which previously took several months, to a review of a maximum of seven days once all the information has been received (Wellford, 2020).

**Introduction of new exemptions or authorisation procedures.** Some economies introduced reforms that could facilitate the authorisation of agreements. For example, in China, competitors

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<sup>8</sup> Regarding the Business Review Process, for example: "On July 23, 2020, just eight days after the application was filed, the Division announced that it would not question an exchange of information between six pharmaceutical companies regarding "facilities, capacity, raw materials, and supplies that could be used to successfully produce "COVID-19 monoclonal antibody treatments." The Division's review found that sharing information would accelerate and expand the availability of treatments for the virus once are approved, without facilitating collusion in the markets in which the parties compete." (Wellford, 2020, para. 5)

may submit requests for State Administration for Market Regulation (SAMR) exemptions to obtain greater certainty and guidance on collaboration agreements. The exemption for the collaboration of competitors from antitrust scrutiny is granted if the help fight the pandemic and economic recovery (Bradshaw et al., 2020). It is worth mentioning that there were amendments to the Anti-Monopoly Law: “the draft bill introduced “safe harbours” exempting those agreements where the parties do not possess significant market power” (Svetlicinii & Fali, 2022).

**Temporary exceptions or authorization procedures.** Some APEC members adopted transitory exceptions. For example, in Japan the JFTC issued a guidance note in which it stated that, temporarily and “to ensure the efficient distribution of essential goods and services, [ ...] certain collaboration between companies to coordinate logistics or close the number of sales per customer of certain products when supply is limited”, will not be considered a violation of competition laws (Herbert Smith Freehills LLP, 2020). Moreover, in Singapore, horizontal collaborations were temporarily limited: from February 1, 2020 until July 31, 2021 (Seah et al., 2021). Finally, the Federal Antimonopoly Service (FAS) of the Russian Federation “introduced temporary resolution of certain types of agreements between competitors, which help to prevent a shortage of goods and lead to consumer benefits that outweigh the likely damage to competition” (Latham & Watkins LLP, 2021).

#### **2.1.2.4 Enforcement actions**

**Excessive pricing and addressing shortages.** Several agencies from APEC economies launched investigations against companies on the grounds of alleged excessive pricing with regards to health-related products, such as face masks and sanitiser products. However, most of these investigations were closed because the agencies concluded that it was unlikely that the companies had breached the law.

For example, in Chile, the FNE investigated two complaints due to the increase in prices of products related to the prevention of COVID-19 at the beginning of the pandemic. The FNE ruled out the complaints after verifying that there had been no such “explosive” increase in prices in the private sector, and that in the increase was due to a rise in import costs and the massive use of direct purchases by public organisms (Muñoz, 2021). Brunei Darussalam’s agency received a “high volume of complaints on excessive pricing face masks and hand sanitisers” (Brunei Darussalam, 2021).

Finally, other competition authorities, such as those in Thailand, Japan, and Australia, “took key roles on providing advice and inputs to governments to address shortages or competition concerns in key sectors” (OECD, 2021, p. 64).<sup>9</sup>

#### **2.2.3 Merger control**

In the second half of 2020 and in 2021, some competition authorities faced an increased in the number of requests for mergers and acquisitions (M&A) processes that increased their workload (Alade, 2021; Murugaboopathy & Dogra, 2021). Additionally, debates about the importance of merger control emerged and focused on how authorizations that are beneficial in the short term

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<sup>9</sup> “In Thailand, producers and sellers of face masks and hand-sanitizing gel needed to seek approval from authorities before making price changes. In Japan, the JFTC published an opinion that setting maximum prices for the sale of face masks to avoid excessive prices would be justifiable under Japan’s antitrust laws. ACCC advocacy efforts have also been a strong focus for the authority, mainly by educating businesses and consumers about their rights and obligations, but also through consulting with government ministries and departments on various policy issues such as industry support measures which have implications for competition.” (OECD, 2021a, p. 64)



can bring unwanted or unexpected consequences in the long run (Murugaboopathy & Dogra, 2021).

This section explores three different approaches that were proposed and/or implemented by competition agencies with regards to the merger control: (i) introducing the COVID-19 variable in merger control analysis; (ii) fast-track merger control and e-filing; and (iii) assessing the failing firm defence in a case-by-case basis.

### **2.1.3.1 Introducing the COVID-19 variable in merger control analysis**

Chile's FNE approved in 2020 the merger consisting of the acquisition of control of Cornershop Technologies LLC by Uber Technologies, Inc.. Although this investigation began on December 11, 2019, in 2020 with the outbreak of COVID-19, the FNE expanded its analysis to assess whether the contingency could affect the operation and the market (FNE, 2020a). Australia's ACCC also mentioned and considered the COVID-19 pandemic in some of its merger control decisions.<sup>10</sup>

However, the introduction of the COVID-19 variable in the agencies' analysis did not mean that merger control was less strict nor that it would forsake the consideration of the long-term effects of mergers. For example, the competition authorities of Australia, Germany and the United Kingdom, issued a joint statement in which they reaffirmed that "while it is conceivable that the pandemic could lead to an increase in valid failing firm claims, the pandemic is not a reason to lower the standard for accepting such claims"; also they recalled that "It is important that merger assessments remain focused on the long-term consequences of a merger and do not unduly focus on short-term market features" (CMA et al., 2021).

### **2.1.3.2 Fast-track merger control and e-filing**

Some competition agencies promised to carry out merger control procedures in an expedited manner. In the case of Mexico, COFECE (2020a) committed to expedite the review of operations that derived from the need for creating synergies and that contribute to the increase of production capacities for satisfying the demands derived from the crisis. Other authorities introduced fast-track procedures for mergers that included key markets for addressing the effects of the COVID-19 crisis. The latter was the case of China, that operated a

"fast track channel to expedite merger reviews in: transactions in sectors closely related to the control of the pandemic, such as the manufacture of pharmaceuticals and medical devices; transactions in sectors closely related to daily necessities, such as food and transportation; transactions in sectors severely impacted by the pandemic, such as restaurants, catering services, hotels, hospitality, retail, and tourism; and transactions meant to accelerate the resumption of work and production" (Bradshaw et al., 2020).

Furthermore, other competition agencies allowed the submission of merger filings through email or other electronic means. This was the case of China (Bradshaw et al., 2020; Han & Gao, 2020) and Japan's JFTC (Dokei et al., 2021). While in the United States "due to the COVID-19 pandemic, until further notice, the Premerger Notification Office (PNO) will continue to operate under a temporary e-filing system for the submission of HSR filings" (FTC, 2021b).

Finally, other competition agencies obliged companies to file their merger review requests through electronic means. For example, Mexico's COFECE established that after January 2020, merger notifications had to be carried out electronically (Navarro, 2021), while in Chile the 100%

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<sup>10</sup> For two examples, see ACCC (2020e, 2022a).

online merger filing and the digital request for information and answers were approved (Villalobos, 2021).

### **2.1.3.3 Failing firm defence**

A few competition agencies from APEC economies acknowledged that the effects of the COVID-19 crisis could be considered to assess a “failing firm defence”. In 2020, Chile’s FNE approved a merger in the market of fuel retail in which a company in risk of bankruptcy was acquired by a competitor. The FNE explained that the operation did not substantially reduce competition because the parties proved that the acquired company was dragging an unviable and irrecoverable economic situation, which worsened with the outbreak and the COVID-19 crisis, and that, therefore, its exit from the market was inevitable and imminent if the sale did not take place (FNE, 2020b).

## **2.2.4 Expertise and data collection capabilities**

The COVID-19 pandemic posed challenges in terms of greater administrative burdens and difficulties to conduct investigative activities in the context of lockdowns and social distancing rules. This section provides examples of the authorities’ responses to these new burdens and challenges in terms of: (i) working conditions and remote working; (ii) online complaint portals; (iii) investment in technologies, and (iv) creation of taskforces.

### **2.1.4.1 Working conditions and remote working**

Due to measures such as quarantines decreed in most economies, competition agencies had to adapt to the circumstances and start remote operations. That was the case for the authorities in Canada (Boswell, 2020), Indonesia (KPPU, n.d.), Singapore (McConnell, 2020), and New Zealand (where it was specified that during Alert Levels 3 and 4 all staff would be working from home) (COMCOM, n.d.-a). In the Russian Federation, the FAS worked remotely with the use of videoconference (Noerr, 2020). The MyCC adopted alternative working arrangements from March 16, 2020, to maintain a minimum workforce for the provision of its core services (Nanta Linggi, 2020). Lastly, in the US, since mid-March 2020 “the Division moved to a maximum telework plan, under which employees work remotely to avoid unnecessary contact” (Delrahim, 2020, p. 244).

### **2.1.4.2 Online complaint portals**

Some agencies created additional information platforms on COVID-19 and competition policies, or to report anti-competitive practices. For example, the Philippine Competition Commission (PCC) created “COVID-19 complaint portal”, a webpage to report any business behaving anti-competitively with respect to essential goods and services to deal with the COVID-19 outbreak (PCC, n.d.). In Peru, the Citizen Service (SAC) also developed virtual service channels to receive requests from citizen through electronic files, email and the institutional portal (Indecopi, 2021a).

### **2.1.4.3 Investment in technologies**

Some competition agencies have recently invested in greater data processing capabilities. In Chile, for example, the FNE created a new data analysis unit (Intelligence Unit), as part of the Anti-Cartel Division, with the purpose of detecting cartels using data science, improving detection and investigation techniques, with professionals from the data science.

Competition agencies also invested in capabilities to carry out remote inspections and hearings. The Indonesia Competition Commission (KPPU) issued a regulation (Regulation 1) that allowed,

among other things, to conduct KPPU panel hearings electronically through the KPPU website or by email (KPPU, 2020). In Chile, the TDLC decided that the justices could meet through videoconference or other remote means<sup>11</sup> (TDLC, 2020a) and also, one of the recent developments of the FNE in terms of competition, in the midst of the COVID-19 pandemic, was the remote investigation process (Villalobos, 2021). Meanwhile, Mexico's COFECE issued the "Regulatory Provisions on the use of electronic means in investigation procedures and other procedures" in 2020 (COFECE 2020c) and the "Emergency Regulatory Provisions of the Federal Economic Competition Law to make personal notifications by email which further support the use of electronic means" (COFECE 2020d). Also in Mexico, the Federal Telecommunications Institute (IFT) recently published the "Guidelines for the substantiation, by electronic means, of the investigations carried out by the Investigative Authority of the IFT" (IFT, 2021).

#### **2.1.4.4 Creation of taskforces**

Competition authorities in Korea, the US, and Australia have created task forces to address specific issues arising from the COVID-19 pandemic. In Korea, for example, a task force dedicated exclusively "to conduct professional and swift investigations into unfair practices involving domestic and foreign platform and other ICT companies" (Yoon, 2020, para. 15). In the US, the creation of the "COVID-19 Hoarding and Price Gouging Task Force" was announced in March 2020. The Task Force was in charge of "developing effective enforcement measures and best practices, and coordinating economy-wide investigation and prosecution of illicit activities" (OECD, 2020).

In addition, the Procurement Collusion Strike Force (PCSF) was created in the US a few months before the onset of the pandemic (November 2019) and was helpful to identify and prevent these illegal activities. Among some of the activities carried out by this entity, interactive virtual training programs for approximately 2,000 criminal investigators, data scientists and procurement officials stand out (OECD, 2020). Finally, Australia's ACCC created an internal COVID-19 task force to address the immediate harms to consumers and small businesses arising from the COVID-19 pandemic (ACCC, 2020b, 2020f). This working group communicated directly with businesses and consumers about their rights, obligations, and remedies in relation to cancellations, refunds and suspension of services as a result of COVID-19 (ACCC, 2020b, 2020f).

New taskforces have also been created by competition agencies to address economic recovery challenges. For example, in Australia, the competition agency "established a COVID-19 Recovery Coordination Taskforce, which operated from June to December 2020. This taskforce focused on gathering data and intelligence to identify leading indicators of where competition and consumer issues may arise as economic activity increases" (ACCC, 2021). In Peru, the competition agency created "IndecopiReactiva", a working group that had the purpose of proposing services, standards, and an ad hoc instrument to support the reactivation of MSEs (Gob.pe, 2020).

### **III. EVENT SUMMARY**

#### **3.1 Opening remarks and keynote speech**

The opening remarks of the Workshop were delivered by **Mrs. Brenda Hernández**, Acting Chair of the Federal Economic Competition Commission of Mexico (COFECE); **Mr. Sóstenes Díaz**,

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<sup>11</sup> It is important to mention that "In view of the latest announcements of the health authority that eliminate the restrictions on mobility and social interaction and the information provided by the Supreme Court in order to modify the Protocol of Management and Prevention before Covid-19 of the Judiciary", the TDLC returned to its regular operation as of November 1, 2022 (TDLC, 2022).

Commissioner of the Federal Telecommunications Institute of Mexico (IFT); **Mrs. Luz María de la Mora Sánchez**, Vice minister of Foreign Trade, Ministry of Economy of Mexico; and **Amb. Krisda Piamongsant**, Convenor of the APEC Competition Policy and Law Group (CPLG) and Former Vice-Chairperson of the Trade Competition Commission of Thailand (TCCT). The opening remarks highlighted the contribution of competition policy to address the pressing economic challenges that APEC economies are currently facing. The interventions also underscored that this Workshop was an opportunity for APEC economies to learn from each other.

**Commissioner Peter Crone**, Commissioner of the Australian Competition and Consumer Commission (ACCC), delivered the keynote speech. Commissioner Crone overviewed how the COVID-19 pandemic, severely disrupted the production and distribution in many industries due to restrictions on business, operations, and shortages of labour and essential inputs. Additionally, due to the temporary closures, consumers spent more time at home and household spending, while travel, tourism, restaurants, and recreational services declined sharply. To mitigate the adverse consequences of the pandemic and to stimulate economic recovery in the most affected industries, governments introduced several regulatory and policy measures.

Commissioner Crone explained the critical role of competition law to fast track a sustainable economic recovery. Competition policy can be sensitive to differences in the nature and degree of competition in each market. He argued that a well-designed competition policy protects the process of competition, not the competitors. But Commissioner Crone also acknowledged that competition is not a panacea, nor it needs to be. It should leave room for governments to use different policy instruments to address their other policy objectives, including social and environmental objectives.

Commissioner Crone outlined eight areas where competition policy can help drive economic recovery in the coming months or years:

1. Supporting exit strategies for the various forms of short-term assistance that have been provided to businesses in industries, such as temporary support during the pandemic period, support in the way of direct subsidies, concessional loans, tax breaks and exceptions for competition law, among others. For example, in Australia the ACCC granted 28 applications for authorization of agreements of coordination, to ensure consumers had reliable and fair access to some services or goods in response to the pandemic.<sup>12</sup>
2. Using merger control as an essential lever of competition policy, especially in the post pandemic period. For example, in Australia, a debate has begun on the adequacy of its merger control regime and whether it is still fit for purpose.
3. Preventing and deterring anti-competitive, exclusionary, and collusive business conduct in times of crisis.
4. Being sensitive to the role that innovation plays, for example how the digital transformation requires new customer centric models.
5. Placing competitive discipline in state-owned business. For example, competition policy can promote the efficient provision and use of infrastructure in situations where there is no natural competition.
6. Enabling the confident participation of consumers in markets. Consumer protection laws play an important role in promoting effective competition. In the post-pandemic context, economic recovery can be promoted by prohibiting misleading and deceptive behaviour by businesses.

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<sup>12</sup> The ACCC authorised cooperation between supermarkets (ACCC, 2020a, 2022b), in the gas and electricity market (ACCC, 2020c), between oil companies (ACCC, 2020d), among others.

7. Supporting the enforcement data privacy laws. Ideally, data protection and privacy laws should be robust and oblige business to be transparent about what customer data may be used and what safeguards are in place to protect it. This disclosure can help customers make informed decisions about how their data is used, and which vendor best suits their preferences regarding data sharing and privacy.
8. Targeted market studies and price monitoring can also contribute to implement better competition policy. In Australia, the ACCC used market studies as part of a comprehensive methodical approach to understanding the impact of digital platforms on their economy (ACCC, 2021). Since the onset of the pandemic, the agency also conducted or is in the process of conducting market studies into electricity and gas pricing (ACCC, 2020b), regional mobile telecommunications infrastructure, and will soon commence a study into childcare services. These studies, as well as their price monitoring functions, also provide information to assist consumers to participate more effectively in markets. The ACCC is currently monitoring petrol prices, general insurance premiums in northern Australia, following several natural disasters, domestic airline pricing, airport charges, and pricing of container stevedoring services at selected Australian ports.

## 3.2 Day One Sessions

### 3.2.1 Session One: The role of competition advocacy in the design, implementation and exit of government support

**Professor Deborah Healey**, Director of the Herbert Smith Freehills China International Business and Economic Law Centre at the University of New South Wales in Australia, moderated the session. Professor Healey described the current state of the economies impacted by the pandemic and its aftermath. She argued that COVID-19 raised new issues related to the security of the markets and how competition policies should respond to the maintained unpredictability of supply and demand. Professor Healey explained that in —such a context— governments should consider the impacts of their policies on economic competition. In that sense, she stressed the role of competition agencies to provide expert guidance to governments and regulators and raising those economic issues with government and consumers.

The speakers explained how competition agencies from Chinese Taipei, Mexico, the Philippines, and Peru advocated for policies to respond to the pandemic (e.g. government incentives, market intervention, among others). They noted that these policies should consider competition regulation and their potential implications on competition in the short, medium, and long term. Following the opening remarks of the speakers, Professor Healey inquired on the agencies' best practices, how they responded to challenges in their jurisdictions, lessons learned during this period, and their advice to other competition agencies.

**Mr. Andy Chen, Vice Chairperson of the Chinese Taipei Fair Trade Commission**, explained that the agency aimed to harmonise the potential conflicts between competition policy and the drastic short-term measures of the government during the pandemic. Anti-competitive concerns raised by the Commission regarding government interventions influenced this harmonisation.

Mr. Chen described how the Commission sought to participate in all the stages of government interventions: design, implementation, and exit. During the design phase, the agency can contribute through competition advocacy. In this case, the challenge is for the agency to be effectively invited to participate in the discussion of regulatory and policy projects, especially given the short time governments may have to intervene and respond to a crisis. In the implementation phase, the agency can contribute by clarifying how competition law is applied in the context of regulation. Finally, the participation of the competition agency in the exit phase is

also meaningful because specific government interventions tend to remain in place due to regulatory inertia rather than because they are justified.

Additionally, Mr. Chen argued that it was essential to intensify their enforcement of competition law to prevent short-term government support programs from being used as an excuse by the business to engage in anti-competitive arrangements. On the one hand, the Chinese Taipei Fair Trade Commission (TFTC) investigated a complaint about a company allegedly trying to collude on the price of supplies for antigen self-testing (the government had previously allowed negotiations to fix the regulated price of it). In this case, although the authority found no evidence of collusion, this investigation created a precedent that government policy should not be used as an excuse to facilitate an anti-competitive agreement. On the other hand, Mr. Chen explained how the Commission intervened in the market of dried scallops for the Lunar New Year. In this case, the Commission noted a suspicious price increase. During the investigation, the Commission found that several companies had “established a mutual understanding to jointly increase the prices of dried scallops” (TFTC, 2022). Companies importing dried scallops from Japan “exchange market and sensitive price-related information to achieve mutual understanding on price increases” (TFTC, 2022). It is pertinent to note that the TFTC is an active member of the government's task force that investigates market prices during the pandemic.

Mr. Chen also explained that competition agencies could speak out in cases where government support may affect the competition conditions. For example, in the case of fertilisers, one company tried to delay the price increase to cope with the government policy to mitigate the impact of inflation. Faced with these circumstances, one of the competitors filed a complaint alleging predatory low prices. The TFTC found that the company was not a monopoly, so the business strategy was not considered to infringe its law. Concerning other TFTC interventions, Mr. Chen mentioned the case of a merger between a convenience store and a digital platform to create the third largest grocery delivery platform.

After his initial remarks, Mr. Chen answered a question on the best practices of the TFTC regarding these topics. Mr. Chen mentioned the importance of reminding the government and the private sector that any program or exemption to address the effects of the pandemic is short term, and over time it is necessary to reconsider the scenarios and probably revert to previous measures. For example, in response to the initiative to publish a guideline to standardize insurance policy procedures and materials, the TFTC cautioned that such a mandatory guideline could affect the delivery of services, so the guideline was issued but on the premise that it was only advisory, not mandatory.

Finally, in terms of advice to other competition authorities, Mr. Chen firstly highlighted the importance of addressing any opportunity to join the conversation with governments to explain the competitive impacts of their policies, given that it is better to join at an early stage of the debate, especially when drafting legislation. Secondly, he advised on the importance of using the media for competition advocacy, more specifically, to increase public awareness on the relevance of competition law during crises, for both merger and cartel cases. For example, the TFTC is preparing a white paper on competition policy in the digital economy, in addition to a market study on cross-border digital platforms, that they expect to publish in the coming months.

**Mrs. Andrea Marván Saltiel, the General Directorate of Competition Advocacy at Mexico's Federal Economic Competition Commission (COFECE)**, presented three specific advocacy tools used by COFECE during the pandemic and its aftermath. First, COFECE issued advocacy documents to explain topics to different audiences. One of these documents consisted of recommendations to oil and gas regulators to encourage a more competitive gasoline market (COFECE, 2020e). Second, the agency issued non-binding opinions, including assessments of regulatory projects or initiatives. On multiple times the Commission sent recommendations on

the government's proposed regulation of the energy sector (COFECE, 2020g, 2021, 2022a). Third, the Commission ordered the elaboration of market studies to diagnose specific competition issues or entire sectors. For example, COFECE initiated a market study on digital financial services, given their impact on financial inclusion and access to credit for SMEs (COFECE, 2022b). Another example was the market study developed in 2020 on modern retail and food distribution. Its main findings showed how the modern food retail business was concentrated in a small number of competitors, especially given the cost advantage provided by the modernisation of distribution systems that created difficult entry conditions for new competitors (COFECE, 2020h).

Mrs. Marván highlighted that COFECE published an advocacy document with 12 proposals to stimulate the economy. The proposals were based on its experience in different sectors and regulatory needs, mostly building on previous advocacy opinions and focusing on high-impact markets that allowed COFECE to have a build-back-better approach. For example, proposals were made in sectors such as: transport, public procurement and foreign trade (COFECE, 2020f). These markets' prices are related to generalised consumer goods and have a direct impact on the Mexican families' wallet. For the transport sector, the recommendation included reducing prices through competitive measures that allowed the entry of new competitors and the articulation of the network. In the case of public contracting, COFECE recommended reforming the Procurement Law to reduce the exceptions to its applications and to promote competitive procurement rather than direct acquisitions. Finally, in foreign trade, the Commission advised lowering barriers to trade that do not consider consumer welfare (COFECE, 2020f). COFECE sent these recommendations to various public and non-public stakeholders, such as the government, regulators, non-governmental organisations, and Congress.

Moreover, on the topic of agency's best practices, Mrs. Marván underlined that in the third quarter of 2020, the Commission launched an e-learning platform aimed at helping different audiences to acquire competition knowledge. Prior to it, knowledge dissemination was done through face-to-face interactions and training with regulators (on how regulation affects competition and tendering), private companies (with trade associations, compliance officers and lawyer associations), and academics. This new platform allows the Commission to reach a wider audience with a considerable reduction in costs. The platform currently hosts six courses, in which 2,871 people have enrolled, and participants have reported a satisfaction rate of 86%. Some of the platform courses are: "Competition policy in Mexico"; "Competition rights and obligations"; "Regulatory analysis from a competition perspective"; "How public official designs competitive public procurement"; "Competition in the digital economy"; and, "What to expect during a procedure conducted by COFECE" (COFECE, 2020a).

Finally, Mrs. Marván shared three lessons learned during the pandemic: 1. Coordination is critical with federal, state, and local governments. Recommendations need to be implemented through different changes: regulatory, policy and legislature. The agency needs to diversify its partners, including the academia, the private sector, and specific government areas. 2. Some public bodies may not understand how competition can help them or is aligned with their objectives. There is an opportunity for agencies to advocate for competition. 3. Competition agencies must understand that governments may have other priorities at a given time. However, competition agencies may help by identifying anti-competitive impacts and suggesting how it can be done differently. Regulators may not think that competition policy is relevant or practical; hence competition agencies should advocate for competition by informing regulators' decisions with evidence.

**Commissioner Johannes Bernabe, Officer-in-Charge of the Office of the Chairperson at the Philippine Competition Commission (PCC)**, presented three initiatives the Commission undertook: First, the PCC carried out competition advocacy with the Legislative and Executive branches, especially regarding economic subsidies and fiscal incentives. The PCC is a member of the review board for subsidies for business creation or expansion. This allowed them to ensure

that incentives were widely distributed and not concentrated in specific companies. This was particularly relevant given that the Philippine economy is already highly concentrated.

Second, the PCC created, in collaboration with the Development Academy of the Philippines (DAP), a training program for regulators on conducting competition impact assessments for regulatory impact assessments (PCC, 2021). The DAP was already in charge of developing the capabilities of government agencies and public officials. The PCC was in charge of guiding and conducting the training process on regulatory impact assessment with a focus on competition impacts. This activity allowed the PCC to bring all regulators together in one room and demonstrated the importance of teaming up with the existing government bureaucracy to enhance its advocacy efforts. Third, the Commission was part of a pharmaceutical technical advisory group, that allowed it to suggest pro-competitive government interventions. This technical advisory group did not focus solely on COVID-19, it was also open for discussion of various issues. The discussion included high prices in the market creating a barrier for consumers and how intellectual property laws may impede access to the economy's most vulnerable communities, among other topics.

Commissioner Bernabe explained that the legislator decided to increase the merger threshold to USD 1 billion (PCC, 2020), thereby significantly reducing the agency's merger control activities. Due to this change, the PCC focused on the investigation of abuse of dominance as an opportunity to continue its enforcement activities. In this regard, the PPC drafted guidelines on abuse of dominance, which did not exist before the pandemic, and are now in the final stages of revision and publication. Furthermore, the PCC developed a model to handle abuse of dominance cases and trained staff to conduct more in-depth economic analyses.

Lastly, Commissioner Bernabe highlighted the two main lessons learnt during COVID-19: First, the importance of partnering and working with other government agencies to produce coherent and comprehensive interventions in times of crisis. In this vein, he explained that the PCC reached out to other agencies to ensure that competition principles were considered when drafting regulations. This allowed them to inform regulatory processes with the agency's views and contribute specific suggestions on how to implement less anticompetitive solutions. Secondly, the importance of increasing its presence in the economy. For that purpose, the PCC is developing multi-stakeholder forums in other regions.

**Mrs. Claudia Choqueneira, economist from the National Institute for the Defence of Free Competition and the Protection of Intellectual Property (INDECOPI) of Peru**, showcased the main advocacy initiative led by the Peruvian agency during the pandemic: a market report on medical oxygen (Indecopi, 2020). The report recommended lowering barrier-to-entry requirements (associated with the purity level of oxygen) to encourage entry of new competitors, considering this market's relevance during the COVID-19 crisis. The report also suggested articulating medical oxygen procurement for public hospitals so that they could benefit from economies of scale by making larger purchases. This recommendation was made in recognition of the hospitals' limited capacity to supply medical oxygen through tanks. The health authority adopted these recommendations, and the report won the 2021 Competition Advocacy Contest organised by the World Bank & ICN. The adopted recommendations "contributed to address the critical shortage of oxygen which caused a severe impact in the country" (World Bank, 2021).

Secondly, Mrs. Choqueneira explained the importance of having a technical competition agency that can provide evidence-based recommendations and decisions. In terms of lessons learned, she highlighted how the agency can inform regulatory processes with evidence. Lastly, Mrs. Choqueneira underlined the importance of broadening their audience by developing free courses on competition law with a particular focus on small cities.



### **3.2.2 Session Two: Ensuring regulatory reforms that tackle the economic crisis in a procompetitive manner.**

The session was moderated by **Dr. Juan David Gutiérrez**, Associate Professor at Universidad del Rosario. Dr. Gutiérrez explained how the economic crisis caused by the COVID-19 pandemic increased the burdens of sector regulators, who had to assess, design, and implement regulatory reforms to address the impacts of said crisis. Likewise, he argued that competition authorities faced the challenge of advocating for procompetitive approaches in the regulatory processes.<sup>13</sup>

The speakers described how the competition agencies from Malaysia, Canada, Singapore, and Mexico dealt with those challenges and, particularly, how they advocated for procompetitive regulatory reforms before regulators and parliaments. The speakers presented the main competition advocacy projects and achievements and commented the lessons derived from these processes. They also addressed two questions posed by the moderator, which had been previously agreed with Professor Emerita Eleanor Fox: 1. Did the agencies make trade-offs in their COVID-19 crisis enforcement decisions, for example, relaxing competition laws to allow conduct that was anticompetitive but that may be needed to alleviate the harms of the crisis? And 2. During the initial shock and currently, how was the agency's relationship with the sector regulators?

**Mr. Encik Iskandar Bin Ismail, Chief Executive Officer of the Malaysia Competition Commission (MyCC)**, outlined the Commission's Strategic Plan for the 2021-2025 five-year period. The Plan establishes fundamental actions required to achieve a robust, efficient, and sustainable economy for Malaysia. Moreover, MyCC's plan identifies measures that contribute to overcome the impacts of COVID-19. Mr. Ismail stressed three aspects of the plan. First, amending the Competition Act to strengthen the agency's investigative and enforcement faculties and introduce a merger control regime. Especially, since there has been an increase of M&A transactions due to COVID-19 (MyCC, n.d.). Second, assist the government in building local capacity for the digital economy, given that the sector is expected to contribute significantly to the Malaysian the economy. Third, prioritising the study of digital economies with the objective of issuing guidelines and market studies. For example, the agency carried out a market study on e-commerce and, based on their findings, advocated before the relevant ministries for increasing the capacity of brick-and-mortar companies to access e-commerce channels and to encourage that new entrepreneurs start through digital means (MyCC, 2020). Additionally, the MyCC included in its Strategic Plan the task of evaluating "the effects of financial assistance/subsidies on competition in the markets" due to COVID-19 government aid (MyCC, n.d.).

Regarding the moderator's queries on the trade-offs faced by the agency during COVID-19 and its relationships with regulators, Mr. Ismail first explained that the MyCC received requests from companies that were interested in receiving authorisations for collaboration agreements. The companies alleged that the collaboration agreements were needed due to supply chain disruptions. However, these companies did not deliver the information required by the MyCC to assess these requests. Lastly, Mr. Ismail explained that the MyCC chaired a competition committee that includes sector regulators, like the Energy Commission and the Malaysian Aviation Commission, among others. The competition committee has helped them to strengthen their relationship with regulators and to have direct communication with their leadership. The main message of the MyCC to regulators is the need for balancing policies and regulations with competition; in other words, that the regulators always consider the competition impacts of their policies.

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<sup>13</sup> A study published by the OECD found that 12 of 16 jurisdictions in the Asia-Pacific region "reported that their competition authorities have been involved in the design or development of an economic recovery package related to COVID-19" (OECD, 2021, p. 61).

**Mr. Anthony Durocher, Deputy Commissioner of Competition of the Competition Bureau of Canada (Bureau)**, highlighted the importance of the Workshop to help the agencies prepare for the next crisis and improve their capacity to respond. Moreover, Mr. Durocher summarised the efforts undertaken by the Bureau during and after the pandemic and explained the rationale of its actions.

At the start of the pandemic, the Bureau aimed at ensuring confidence in the agency as an organisation and to give confidence to businesses. For example, the agency issued a statement on how competition laws would be enforced during the crisis and also issued a statement on the application to competitor collaboration agreements in the pandemic context. Additionally, the Bureau issued a note on the enforcement of competition laws during COVID-19 which emphasized that the agency would prosecute companies or individuals that violated laws, including deceptive marketing practices on a product's ability to treat or cure the virus, and price-fixing (Competition Bureau, 2020b). On collaboration among competitors, the Bureau reminded economic agents that competition laws accommodate pro-competitive collaborations between companies to support the delivery of affordable goods and services to meet the needs of Canadians, but the Bureau warned that there would be zero tolerance for abuses of this flexibility.<sup>14</sup> The agency also created a team to assess the proposed collaborations and provide informal guidance to companies with the objective of enabling business to take rapid decisions to support the crisis response efforts (Competition Bureau, 2020c).

Mr. Durocher argued that crises often generate pressure on governments to shore up domestic industries through a variety of protective and supportive measures and that, in such context, the agency reminded policymakers and legislators about the importance of not abandoning competition principles. Amid calls to allow interests to override competition laws permanently, the Bureau advocated for competition by highlighting that policies that restrict competition may deepen recessions and delay recoveries and that these government-led actions can be difficult to reverse.

Afterwards, when the discussion shifted towards finding means for economic recovery, the messaging of the Bureau focused on how competition could help open markets and why competitive markets could stimulate recovery and benefit SMEs. For example, the Bureau filed a submission to the Ontario Standing Committee on Finance and Economic Affairs highlighting the importance of pro-competitive policies in supporting the ongoing participation of SMEs in the marketplace given the impact of the pandemic (Competition Bureau, 2021c). Additionally, the agency "highlighted common warning signs of bid-rigging and provided best practices for government officials to ensure a competitive public procurement process" (Competition Bureau, 2021a, 2021c). In short, the Bureau aimed at messaging about the importance of competitive bidding and to limit sole source contracts to very exceptional circumstances.

In August 2020, the Bureau also "launched a Competition Assessment Toolkit to help policymakers [...] promote competition in Canadian industries during and after COVID-19" (Competition Bureau, 2021c). The Toolkit provided "a step-by-step guide to assess the impact of new and existing policies on competition and innovation. Since the Toolkit's launch, the Bureau has actively promoted it with regulators and policymakers at all levels of government" (Competition Bureau, 2021c, p. 12).

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<sup>14</sup> It is important to mention that, on 7 November 2022, the Bureau rescinded "temporary guidance on competitor collaborations in response to the COVID-19 pandemic" because "The Bureau has determined that the exceptional conditions and challenges that led to this guidance are no longer applicable" (Competition Bureau, 2022b, para. 3).

More recently, the Bureau has participated in the discussion about the role of competition in curbing inflation. However, Mr. Durocher argued that the agency needs to manage expectations on what competition policy can achieve, because competition enforcement has a role to play but it is not a silver bullet to deal with inflation.

With regards to the query on dealing with trade-offs during and after the crisis, Mr. Durocher explained that the agency's mandate is to promote competition and that regulators should do the balancing of different objectives. In other words, the agency can help regulators pursue other public policy objectives while recommending how to minimize any potential harm to competition. In the context of the Bureau's statement on competitor collaboration agreements in the pandemic context, Mr. Durocher explained that the Bureau was open to informally advise businesses. Nevertheless, until now, very few companies approached for advice on the topic of collaboration agreements.

Concerning the Bureau's relationship with sector regulators, Mr. Durocher reiterated that the agency should continue advocating for striking a balance when other policy objectives are pursued by regulators and minimising restriction of competition. One example of this was the Competition Assessment Toolkit for policy makers mentioned above. Also, Mr. Durocher explained that during the pandemic the Bureau was able to maintain strong relationships with regulators and other stakeholders. For example, the agency developed a market study on digital healthcare that involved regulators and stakeholders (e.g. citizens and industry stakeholders). The study offered insights on the power of health data and improving health care through pro-competitive procurement policy (Competition Bureau, 2020a). Lastly, Mr. Durocher concluded that the pandemic helped make people wonder how competition policy is a force for good.

**Mr. Weng Loong Kong, Deputy Director at Policy & Markets Division of the Competition and Consumer Commission of Singapore (CCCS)**, presented on the short-term actions taken by the agency to react to the pandemic. Mr. Kong highlighted the importance of taking quick action to protect competition. The agency's responses aimed at striking a balance between facilitating quick responses to deal with the crisis while preserving a healthy competitive environment.

One of first responses of the CCSS to the crisis was the issuance of a Guidance Note on Collaborations between Competitors that allowed for a formal review process or a self-assessment from the economic operators, without the need to change the law (CCCS, 2020a). The collaborations considered in the Guidance Note were those that aimed at sustaining and improving the supply of essential goods or services. The Guidance allowed companies to contact the CCCS in case of additional queries after their own assessment and it warned companies against taking advantage of the pandemic to engage in anti-competitive activities (CCCS, 2020a). The guidance applied from 1 February 2020 and expired the 31 July 2021. After that time, the CCCS issued a General Guidance Note on Business Collaborations. This new guidance clarified the seven common type of business collaboration that were allowed by the Commission: information sharing, joint production, joint purchasing, joint research & development, standards development, and standard terms and conditions in contracts (CCCS, 2021). The agency also issued a Green Work Competitive Note to promote competition during the pandemic.

Currently, the CCCS is offering more long-term guidance, for example on collaboration agreements and digital markets. For example, the CCCS undertook a Market Study on E-Commerce which recommended the issuance of new competition guidelines that addresses topics such as: defining relevant market for multi-sided platforms, the assessment of market dominance and abuse of dominance, and on merger control when one of the firms is a key innovator (CCCS, 2020b).

On the topic of the trade-offs faced in their COVID-19 enforcement decisions, Mr. Kong explained that the agency did not have to relax the law because the Competition Act allows enforcement discretion based on a legal exception. The CCCS has a process that allows companies to formally notify their collaboration agreements. Nevertheless, the CCCS did not receive, up to date, a single formal notification.

Lastly, Mr. Kong explained the working relationship with regulators that was built prior to the pandemic. Moreover, he characterised such relationship as one of open channels that allowed them to influence competition-friendly regulation. The regulators requested advice from the agency and exchanged ideas on a diversity of topics. Mr. Kong explained that the Commission and the regulators had created a “community of practice” which operated under a common principle: acknowledging that competition is not a magic pill that solves all problems, while recognising that they needed to understand markets to decide courses of action.

**Mr. José Nery Pérez Trujillo, Head of the Planning, Liaison and International Affairs Unit of the Federal Economic Competition Commission (COFECE), Mexico,** explained how governments should focus on guaranteeing broader and equal opportunities to enter the market as the pandemic allowed some companies to gain market share. Mr. Pérez highlighted how SMEs were greatly affected by the pandemic since these companies were generally less capable of coping with the economic closures and drastic changes in demand. Therefore, COFECE aimed at promoting the participation of a greater number of companies with the purpose of guaranteeing free market access and a more sustainable recovery.

COFECE produced a document with 12 concrete proposals, to contribute to economic recovery, related to high-impact markets: healthcare, transportation (freight and passenger), energy financing and public procurement (COFECE, 2020f). Previous work, such as opinions, market studies, and other public policy recommendations related to competition, were considered in the drafting of this document. The document that condenses them was shared with public sector entities (e.g. Congress, ministries), the private sector, academia, and international organizations.

Some of these proposals have already been implemented. For example, with respect to recommendation No. 2, “expedite the entry of generic drugs into the market to increase the purchase options of Mexican families at a better price”, modifications were made to increase clarity and certainty with respect to the generic drug registration procedure, specifically, changes in the technical cooperation request forms issued by the industrial property office and in its response form by the health regulator.<sup>15</sup> Additionally, the industrial property law was amended and the industrial property office launched three online search engines to increase transparency, and access to information on: 1) patents that will expire in the next 10 years, 2) patents associated with allopathic medicines, and 3) responses from the regulatory authority.

On the topic of the trade-offs faced in their COVID-19 enforcement decisions, Mr. Pérez explained that, although the law does not provide for flexibility or possible relaxation in its application, nor does it consider policy objectives other than economic efficiency, COFECE could issue warning letters to remind some economic agents of possible violations of the law. For example, COFECE issued three warning letters during the pandemic: the first, to the National Chamber of the Sugar and Alcohol Industry for an increase in the price of alcohol, its derivatives and some inputs for its production, which could be the result of an agreement between competitors

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<sup>15</sup> As detailed in the COFECE document: “in Mexico, on average, more than two years elapse after the expiration of a patent for the launch of the first generic. In the United States, the launch is immediate, and in Europe the period is seven months. Mexican families would save around 2,552 million pesos a year if the conditions for entering the generic market were similar to those in other countries.” (COFECE, 2020f, p. 7).

(COFECE, 2020c); the second, to the National Association of Real Estate Developers to avoid possible agreements between competitors (COFECE, 2020d); and the third, to tortilla producers against a possible agreement to increase the prices of their product (COFECE, 2020i).

Finally, in terms of COFECE's relations with sector regulators or other government agencies, Mr. Pérez noted that one of the most important advocacy actions taken by the agency was related to a series of measures undertaken by the federal government as part of its Electricity Sector Plan. The government argued that the measures were necessary to maintain the stability of the electricity system during the COVID-19 pandemic and to strengthen the Federal Electricity Commission (CFE). However, COFECE objected because this plan unduly benefited the CFE and harmed competition in the sector. In February 2021, the second chamber of the Supreme Court of Justice of the Nation (SCJN) ruled in favour of COFECE.

Later, the Federal Government promoted a reform to the Electricity Industry Law. Again, the Mexican competition authority expressed its concerns in an opinion that was sent to Congress:

“The Initiative, if approved in its terms, would severely damage the conditions of competition in the generation and commercialisation of electricity. Because: 1) it eliminates the rule of dispatching the cheapest electricity to artificially benefit CFE, to the detriment of other generators, 2) it unjustifiably restricts open access to transmission and distribution networks, 3) it allows CFE SSB to acquire electricity by non-competitive methods, eliminating the need for auctions, and 4) it grants broad discretion to the CRE to decide on the granting (or not) of permits to operate as a generator or supplier.” (COFECE, 2021)

Congress approved the reform and COFECE challenged the law before the CSJN, but the judges, with a narrow six to five votes, dismissed the lawsuit, considering that there was a lack of legitimate interest (COFECE, 2022a). Despite the final outcome, this is an example of how the Mexican competition authority has worked to alert other authorities about possible policies or reforms that may affect competition.

### **3.3 Day Two Sessions**

#### **3.3.1 Session Three: Competition enforcement for recovery (abuse of dominance, excessive pricing, and cartel investigations during times of crisis)**

**Mr. Ruben Maximiano**, Senior Competition Expert at OECD, moderated the third session of the Workshop. Mr. Maximiano argued that short-term market failures during COVID-19 required short-term collaboration among competitors; thus, competition agencies should remain vigilant because these collaborations may turn into anticompetitive practices. The moderator allowed the speakers to make initial remarks on the session's topic and then proceeded to ask them questions about the activities of their agencies.

**Mr. Akarapon Houbcharaun, Director of Foreign Affairs Division of the Trade Competition Commission of Thailand (TCCT)**, was the session's first speaker. Mr. Houbcharaun explained that the agency aims to prevent companies from taking advantage of the crisis through price gouging or taking advantage of SMEs. He explained that the pandemic severely affected SMEs and disrupted supply chains. During the lockdown, most of the SMEs depended on the explosive growth of the digital economy, but the service sector (that contributed roughly 40% of the GDP) was highly concentrated. Hence, the TCCT's aim was to promote an inclusive and competitive economy to support SMEs and strengthen the healthcare market. Mr. Houbcharaun explained how the agency carried out investigations on price fixing in the vaccine supply, monitored prices, and issued warnings against price-gouging healthcare products.

During the pandemic, the TCCT took actions related to SMEs and digital platforms. For example, the agency published guidelines for the post-COVID recovery period in topics such as franchise business, food delivery platforms and credit for SMEs. Firstly, in November 2020, they issued the “Guidelines on Unfair Trade Practices between Digital Platform Operators for Food Delivery and Restaurant Operators”. Later, the Commission also published a negotiated Guideline to reduce fees and commissions from food delivery platforms (TCCT, 2020). Then, in 2021, the TCCT published the “Guideline on Credit Terms for SMEs”. This Guideline included conditions on terms, terms counting, payment and potentially unfair trade practices.<sup>16</sup> Lastly, the Commission published a Guideline on the franchise business to ensure transparency and fair treatment from the franchiser to the franchisee by prohibiting enclosing information.

Mr. Maximiano asked the speaker about his agency's actions in the pandemic's exit phase. Mr. Houbcharaun mentioned efforts on merger control, capacity building, and cooperation with other regulators. Regarding merger control, Mr. Houbcharaun explained that during the pandemic, the mergers & acquisitions authorisation requests surged. To answer the surge in demand, the TCCT rapidly built capacity and enhanced analysis tools of the merger division. Alongside building capacity in merger control, the Commission also established a Business Intelligent Unit (BIU) that conducts in-depth studies and monitors economic activities and concentration in a specific sector through the competition index and using a big data system and other technological tools.

Additionally, Mr. Houbcharaun explained that the TCCT made efforts to deepen cooperation and alliances with other regulators, the government in general, and the region. In anticipation of economic recovery, the Commission also became part of the central committee that designed the stimulus packages for economic recovery.

Lastly, Mr. Houbcharaun emphasised the need to prioritise enforcement and outreach businesses to use compliance programmes.

The second speaker, **Commissioner Chandra Setiawan, of the Indonesia Competition Commission (ICC)**, focused on the main reforms introduced by the government to tackle the impacts of COVID-19 and how the ICC sought to support the government's policies.

Commissioner Setiawan argued that, in times of crisis, agencies should be more flexible in implementing the law. For example, the Commission issued regulations to relax the enforcement of competition law, including public procurement processes and activities that were required to handle Covid-19 and/or that increased the economic capacity of businesses.

In 2020, the Commission issued Regulation Number 3 to relax law enforcement of monopolist practices and unfair business practices and relax the supervision of the implementation of partnerships in support of the economic recovery program. The Regulation also included a relaxation on law enforcement for the procurement of goods and/or services financed by the State Revenues and Expenditures Budget or the Regional Revenues and Expenditures Budget and planned agreements, activities, and/or use of a Dominant Position aimed at handling the COVID-19 and/or enhancing the economic capacity of economic agents in running their businesses (ICC, 2021).

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<sup>16</sup> These practices were: “1. Postponement of payment beyond the credit term without reasons; 2. Modification of contract terms and conditions without reasons; 3. Modification of credit term without the 60-day notice; and 4. Other controlling actions by any entrepreneur against SMEs, such as special conditions, restrictions, or harmful obstruction of SMEs' operations.” (TCCT, 2021).

Additionally, the ICC issued Regulation Number 1 of 2022 for the electronic handling of cases. Currently, the Commission uses electronic means for case handling, merger assessment and partnership supervision. Since April 2020, the ICC has issued 25 decisions electronically (after provisionally using electronic media for their handling, due to the pandemic).

Lastly, Commissioner Setiawan highlighted the importance of monitoring essential products directly related to COVID-19 (e.g. medical masks), and cooking oil, and investigating potential breaches of competition law. In both cases, the ICC advised the government to adjust the ceiling price for these products. The government set the ceiling price of essential medical and healthcare goods (medical masks, oxygen, among others). The ICC also remained vigilant on possible violations of competition laws regarding the supply of said products.

**Mr. Manish Kumar, Chief of the San Francisco Office at the Antitrust Division of the Department of Justice (DOJ), US**, presented three cartel enforcement initiatives pursued by said authority in response to the pandemic. First, the DOJ targeted alleged collusions linked to the economic shocks produced by the pandemic, namely, supply chain disruptions and price inflation.<sup>17</sup> The DOJ has outreached industries, particularly upstream suppliers, that may be negatively impacted by anticompetitive practices. For that purpose, the DOJ introduced new proactive techniques to identify situations where collusion may be occurring, such as data analytics, human intelligence, and data-driven approaches. The DOJ has also engaged with other bodies of the Federal Government and international partners (using international cooperation tools) to identify competition problems and share intelligence.<sup>18</sup>

Second, the DOJ prioritises the criminal prosecution of labour market-related conducts, such as no-poach agreements. Monopsonist conduct is equally harmful, so they are looking at upstream markets. Mr. Kumar explained that the DOJ had various degrees of success in courts. The authority received favourable rulings from trial courts that have created helpful legal precedents that prohibit agreements against workers. In the case of jury trials, they have faced more mixed outcomes. The courts agree that setting prices from the consumer side is worrying but challenging to prove.

Third, the DOJ prioritises investigating and prosecuting collusion and fraud in public procurement. The DOJ is training public procurement officials to address the issue and has already opened 20 grand jury investigations.

Mr. Maximiano asked the speaker from the DOJ about the updated leniency policy and its link with recovery work. Mr. Kumar explained two changes to the leniency policy: 1. The obligation to properly self-report the conduct and report as soon as reasonably possible after identifying the conduct; and 2. Requiring companies to undertake compliance measures to ensure that the conduct does not happen again. However, Mr. Kumar acknowledged that the updates were largely driven by reasons different than the pandemic.

To conclude, Mr. Kumar emphasised the need to remain vigilant as we emerge from the pandemic. The DOJ saw evidence that cartels would use any opportunity to do things they should not.

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<sup>17</sup> “As part of the initiative, the Antitrust Division is prioritising any existing investigations where competitors may be exploiting supply chain disruptions for illicit profit and is undertaking measures to proactively investigate collusion in industries particularly affected by supply disruptions” (DOJ, 2022a).

<sup>18</sup> “The Antitrust Division has also formed a working group focusing on global supply chain collusion with its global partners, the Australian Competition and Consumer Commission, the Canadian Competition Bureau, the New Zealand Commerce Commission and the United Kingdom Competition and Markets Authority. The working group is developing and sharing intelligence, utilizing existing international cooperation tools, to detect and combat collusive schemes” (DOJ, 2022a).

**Mr. Grant Chamberlain, Cartels Manager at the New Zealand Commerce Commission**, was the last speaker of the panel. New Zealand's government urged the Commission to consider the exceptional circumstances of COVID-19. The Commission allowed business collaborations given the context by issuing a guideline (COMCOM, 2020a). Nevertheless, Mr. Grant argued that the Commission used court cases to clarify what types of cooperation were acceptable in times of crisis and to set examples making clear that, even during COVID-19, the agency would not tolerate blatant collusion. For example, the Commerce Commission imposed a fine on two taxi companies that agreed to price-fix a minimum charge for pick-up taxi trips from the on-demand taxi rank at the airport (COMCOM, 2021b). The Commission also took proceedings against individuals and sent a message that individuals would also be held accountable.

The agency prioritised cartel investigations in specific sectors (e.g. shipping containers, freight sector, public procurement) that were key for economic recovery, experienced price shocks or were prone to cartelisation. In the case of the freight sector, the Commerce Commission had two areas of enforcement: 1. The supply of international freight services, in which the Commission imposed fines on two freight forwarders for longstanding cartel agreements to remove competition (COMCOM, 2022); and 2. The supply of containers, where the Commission imposed a penalty for fixing the price of container depot (COMCOM, 2021a). In both cases, the Commission imposed penalties on companies and their directors. The idea was to prioritise a key sector for the economy and send a message. In the public procurement sector, the Commission has two ongoing investigations focused on significant public procurement that may go to enforcement in the next year.

Mr. Chamberlain mentioned that the Commerce Commission is vigilant of the rising inflation and its effects on local economies. The Commission partnered with the New Zealand's statistics agency to find economic sectors prone to cartels. The officials check the Consumer Price Index (CPI) and the Producer Price Index (PPI) data and human intelligence to identify the sectors with price shocks. The sectors with price shocks are generally susceptible to cartel conduct. Moreover, Mr. Chamberlain pointed out that the New Zealand competition law does not allow to intervene in labour markets and does not address the issue of excessive pricing. However, since the start of COVID-19, the government has set up a new website called PriceWatch that enables consumers to report industries with significant price increases.

Mr. Maximiano asked Mr. Chamberlain how they prioritised the monitored and investigated sectors. Mr. Chamberlain explained that the agency interacted with its international counterparts to understand which sectors were affected globally; and they looked at import and export data and what was going on in those sectors. However, the authority mainly used the information that was available through their divisions (consumers, mergers, abuse of market). The agency pulled all that data into one central database of information and then ranked it against risk factors, such as market concentration, CPI, PPI, and international economics, among a total of eight criteria. Then, the agency had three rounds of prioritisation to identify eight key sectors.

To conclude, Mr. Maximiano shared his main takeaways from the panel: 1. Competition law does not have to be relaxed in times of crisis, as it is flexible and can deal with these challenges because it considers economic facts, circumstances, and context. 2. Competition agencies must adequately prioritise their efforts because they have limited resources, and specific sectors are essential during a crisis. 3. Agencies need to be involved in policy processes associated with the prioritised sectors and monitor what is happening in these sectors.



### 3.3.2 Session Four: The impact of merger control in economic recovery

The session was chaired by **Dr. Graciela Miralles**, Senior Economist of the World Bank. Dr. Miralles explained that competition agencies have done a great job in keeping up the merger control during the pandemic. Moreover, she highlighted the critical role that merger control policies can have in fostering economic recovery and economic growth at a time where we face important challenges both in global and in domestic markets. Dr. Miralles invited the speakers to address four questions: 1. How can merger control be an instrument for economic recovery? 2. Provide examples in which agencies used merger control as an instrument of economic recovery. 3. Do we need to adapt the analytical tools that are used traditionally in merger control to foster economic recovery? 4. Regarding merger control in digital markets, are the challenges faced by agencies different?

**Timothy Hughes, Counsel for Competition Technical Assistance at the Federal Trade Commission (FTC) of the United States of America (US)**, provided an overview of one of the main concerns of several competition authorities around the world on this issue: the increase in market concentration in certain sectors of the economy. According to Mr. Hughes, market concentration increased during the pandemic and was accentuated by problems in the supply chain.

The FTC is concerned about increased market concentration in certain sectors and wants to be more active in this front, using its merger control tools. For example, the merger guidelines in the US are currently under review. The review may update how the agencies address highly concentrated markets, and the FTC is particularly interested in certain markets, such as labour markets (FTC & DOJ, 2020).<sup>19</sup> With regards to labour markets, the FTC's merger analysis has found that there are non-compete clauses that many employees sign, which are ultimately vertical agreements where the employer imposes on the employee an agreement not to leave his/her job and go to a competitor. As a mechanism to prevent this type of conduct, the FTC has requested remedies that require the parties of the merger to drop non-compete agreements that affect their employees.

Moreover, with regards to the query on the examples of how merger control can be used as a tool for economic recovery, Mr. Hughes presented the case of the healthcare sector in the US, which absorbs a huge part of the economy. Recently, the FTC and the DOJ have opposed certain mergers of hospitals and of pharmaceuticals and medical services (e.g. tests). For example, in June of this year, the FTC blocked the acquisition of Saint Peter's Healthcare System by RWJBarnabas Health, arguing that "the acquisition will harm competition for inpatient general acute care services, which are a broad range of essential medical and surgical diagnostic and treatment services that require an overnight hospital stay" (FTC, 2022, para. 1). Additionally, for the FTC, among other reasons, this acquisition "would eliminate important direct competition between the parties [...], would likely increase concentration and substantially decrease competition in the market for general acute care services in Middlesex County; and [...] leave insurers with fewer attractive alternatives" (FTC, 2022, para. 5).

Finally, Mr. Hughes explained that the FTC will assess the foreclosure effects of vertical mergers that involve the acquisition of intellectual property by a dominant firm. As an example, the FTC has filed an administrative complaint "to block Illumina's proposed acquisition of Grail—a maker of a non-invasive, early detection liquid biopsy test that can screen for multiple types of cancer in asymptomatic patients at very early stages using DNA sequencing" by arguing that "Illumina is the only provider of DNA sequencing that is a viable option for these multi-cancer early

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<sup>19</sup> In this regard, it is worth noting that academic research has found that labour markets have become more concentrated. See, for example, Azar et al. (2018, 2022).

detection, or MCED, tests in the United States [and] the proposed acquisition will diminish innovation in the U.S. market for MCED tests” (FTC, 2021a, paras 1–2).

**Mr. Matthew Huppert, Trial Attorney at Antitrust Division of the Department of Justice (DOJ), US**, argued that economic competition fosters resiliency against exogenous shocks like COVID-19. It does that by creating a larger number of “nimble and innovative” firms that are sort of tested through competition processes, so they are better equipped to respond to shocks. Consumers are not reliant on a few suppliers of critical goods or services, and this spreads out opportunities for growth and recovery.

With regards to the question on the examples of how merger control has been used as an instrument for economic recovery, Mr. Huppert informed that the DOJ has focused on the industries that support the supply chain, such as shipping, logistics, and transportation. The DOJ has learnt that the supply chain is, in many ways, the backbone of the economy. One of the key reasons why the DOJ raised objections to two recent mergers (container handling equipment at ports and refrigerated containers) was that the industries were key for supply chains. In the first case, when a merger agreement was proposed between Cargotec Corporation (Cargotec) and Konecranes Plc (Konecranes), the DOJ stated that the Antitrust Division of the DOJ would investigate such merger, because in the words of Attorney General Merrick B. Garland “The proposed merger of these two shipping giants [...] threatened the global supply chain and the free and fair markets upon which the integrity of our economy depends” (DOJ, 2022b, para. 2).<sup>20</sup>

In a second case mentioned by Mr. Huppert, after the DOJ Antitrust Division’s thorough investigation the acquisition of Maersk Container Industry (MCI) by China International Marine Containers Group Co. Ltd. (CIMC) was abandoned. The DOJ’s investigation stated that “the proposed transaction would [...] have consolidated control of over 90% of insulated container box and refrigerated shipping container production worldwide in Chinese state-owned or state-controlled entities” (DOJ, 2022c, para. 2).<sup>21</sup> The Assistant Attorney General Jonathan Kanter of the DOJ Antitrust Division justified the agency’s position:

“CIMC’s acquisition of MCI threatened to harm this critical aspect of our economy leading to higher prices, lower quality, and less resiliency in global supply chains. It would have cemented CIMC’s dominant position in an already consolidated industry and eliminated MCI as an innovative, independent competitor. The deal also would have substantially increased the risk of coordination among the remaining suppliers in the marketplace, most of whom would have been aligned through common ownership and related alliances” (DOJ, 2022c, para. 3).

Mr. Huppert also mentioned that there is a current process of revising the merger guidelines. While the final version of the guidelines is yet not finalised, the DOJ wanted to set a high bar for divestitures as an acceptable remedy for transactions.

Finally, with regards to the query on merger control in digital markets, Mr. Huppert explained that technology markets are often characterized by dynamic or nascent competition. Therefore, assessing mergers in technology markets is more difficult because the counterfactual is harder to construct when the market is nascent. But the DOJ aims at preventing that proposed mergers do not cut off competition in early stages.

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<sup>20</sup> In this investigation, the DOJ thanked “the Australian Competition and Consumer Commission, the European Commission, and the United Kingdom’s Competition and Markets Authority, for their close and constructive collaboration on this matter” (DOJ, 2022b, para. 5).

<sup>21</sup> In this case, “The Justice Department’s Antitrust Division and the German Bundeskartellamt cooperated during the course of their respective investigations.” (DOJ, 2022c, para. 4)

**Mrs. Francisca Levin, Head of Mergers at National Economic Prosecutor (FNE) of Chile,** explained that the economic crisis can be seen as an opportunity to step back and try to understand why companies want to merge in the first place, that is to say: why companies acquire other companies. Given that not all mergers are positive or neutral for competition and, in some cases, mergers can lead to concentration in certain markets, the role of antitrust agencies to analyse in detail these mergers or to design remedies that can be instruments to help during economic recovery is crucial. In this sense, she argued that the failing firm defence is an option to allow certain mergers to come through to support economic recovery, but that it should be a last resort mechanism. To clear a transaction under the failing firm defence, the FNE would need to be certain that the firms would exit the market if the merger was not authorised and that the best alternative to prevent their exit is a merger.

Another merger control mechanism used by the FNE as an instrument for economic recovery is the design of effective remedies. The FNE has observed that during the pandemic and post-pandemic period that there is a tendency of companies to offer less costly remedies, such as behavioural commitments on price. In such context, a recent question raised within FNE is whether the agencies should lower the remedies during a crisis or to encourage economic recovery. While there is no definitive answer to the question, Mrs. Levin reminded that behavioural remedies could operate as market regulations, which may inhibit market entry, and that the agency should aim at remedies that effectively restore competition.

Mrs. Levin also explained that the FNE has used merger control as a tool to foster recovery in at least two ways. Firstly, in May 2021 the agency issued a guidance on prenotification of concentrations, that allows the parties to contact the agency's emergency team before filing to discuss their procedural and substantive doubts regarding the merger filing (FNE, 2021a, 2021b, 2021c). The new guidance aims at reducing the decision times of transactions and to provide certainty to merging parties, particularly in times of crisis.

Secondly, from a more substantive perspective, the FNE has relied more on consumer preferences to evaluate whether a merger could meet or not their standards. For example, some months ago the FNE prohibited a merger between the fourth and the fifth player in the private insurance market, because such a merger could result in

“higher prices in the health plans of current or new affiliates and/or affect the quality of such plans in terms of granting less effective coverage or in the quality of service provided [...], without the parties having offered mitigation measures capable of offsetting the risks arising from the transaction” (FNE, 2022, para. 1).

According to Mrs. Levin, consumer preferences are always a relevant for merger control, but in times of crisis consumer preferences may be even more relevant for certain critical markets as a piece of evidence that complements economic analysis.

With regards to the query on whether the agencies need to adapt the analytical tools that are used traditionally in merger control to foster economic recovery, Mrs. Levin argued that the pandemic altered the type of data needed to assess the counterfactual, that is, the level of competition and the degree of innovation if the merger did not occur. Before the pandemic, the counterfactual was, most of the time, assumed to be the pre-merger competitive conditions. However, after the pandemic it became clear that the counterfactual is not necessarily a snapshot of a particular point in time. Mrs. Levin argued that the agency must now assess, to determine the counterfactual, to what extent, without the merger, the firms would have innovated, launched new services or third parties would have entered the market. In a post-COVID-19 world, assessing what is the right counterfactual is a greater challenge.

Finally, the FNE issued a new version of the Guidelines for the Analysis of Horizontal Merger Transactions, replacing the 2012 version (FNE, 2021a), which included a chapter “with specific guidance on digital markets and platforms and makes explicit some general criteria to be used when assessing transactions involving these markets, in which notifications are increasingly frequent and which require dynamic competition and innovation analysis” (FNE, 2021c, para. 5).

**Mrs. Tiara Carrick, Competition Law Officer at the Competition Bureau of Canada,** explained that the agency’s mandate is to maintain and foster competition, as well as to promote the efficiency and adaptability of the Canadian economy. Merger control is one of the tools the Bureau uses for that purpose. For example, merger control contributes to ensure that SMEs have equal opportunity to participate in the economy and for consumers to have access to affordable prices.

On the one hand, in the first half of 2020, the Bureau experienced a sharp decline in the number of merger notifications it received; in contrast, in late 2020 and early 2021, there was an influx of mergers and acquisitions. The Bureau received 246 pre-merger notifications for the 2021-2022 fiscal year, 67 more notifications than the previous fiscal year. Hence, the Bureau had to adjust quickly to meet the demand while maintaining its rigorous analytical approach. The Bureau prioritised cases to meet the needs of Canadians and that would not deviate the agency away from its analytical standards.

As an example of how the Bureau has used merger control for economic recovery, Mrs. Carrick presented the case of a proposed acquisition in the oil and gas industry which, according to the agency’s findings, would lead to higher prices for oil and gas producers (Competition Bureau, 2021b, 2021d). In March 2021, the Bureau was notified of Secure Energy Services Inc’s proposal to acquire Tervita Corporation. These two companies “are the two largest suppliers, and in many areas, the only suppliers of oil and gas waste services in the Western Canadian Sedimentary Basin (WCSB) and vigorously compete with one another to win customers” (Competition Bureau, 2021b, para. 3). In June 2021, the agency challenged the acquisition stating that “Secure’s acquisition of Tervita is likely to substantially lessen competition for services provided at oil and gas waste disposal facilities in the Western Canadian Sedimentary Basin (WCSB) – likely resulting in customers paying higher prices and suffering reductions in service quality” (Competition Bureau, 2021d, para. 3). The Bureau is waiting for a final decision from the Competition Tribunal on this matter.

With respect to the query on whether merger control analysis should change to foster economic recovery, Mrs. Carrick explained that the Bureau has found that in recent times it has been difficult to rely on data primarily from a period of severe economic downturn to make predictions about the effects of a merger, in a time of economic recovery and into the future. Therefore, in recent cases, the Bureau has had to adjust the time period for which they are requesting data to ensure that they have sufficient information from a more comparable economic period to construct a more accurate counterfactual and prediction of a merger’s long-term effects.

Finally, with respect to merger control in digital markets, Mrs. Carrick argued that a challenge for the agency was the statute of limitations. While the Bureau can review any merger that occurs in Canada, the merger cannot be challenged after a year has passed since the closing of a transaction. Since market conditions tend to change rapidly in the digital sector, it is possible that mergers that at the time of their review did not raise competition concerns, could present problems later but it would be too late for the agency for challenging the transaction.

### 3.3.3 Session Five: How to increase expertise and data collection capabilities on crisis-affected sector?

This session addressed the strategies and the investments competition authorities of Mexico, Australia and Chile have made to increase their data collection capabilities during the pandemic. Greater data capabilities contribute to the development of their tasks, for example, to detect cartels and other conducts that harm consumers, to support ongoing investigations, to monitor prices of essential goods during the pandemic, among others.

The session was chaired by **Mrs. Antonia Horrocks**, General Manager of Competition at the New Zealand Commerce Commission. She explained that the COVID-19 pandemic posed challenges in terms of greater administrative burdens and difficulties to conduct investigative activities in the context of lockdowns and social distancing rules. Mrs. Horrocks invited the speakers to comment on how their respective agencies developed intelligence units or strengthened the tools they already had at their disposal; how the process was developed; what challenges and lessons learned were derived from this process; and how they foresee that they will be able to increase their data collection capabilities in the future. Moreover, at the end of the session the speakers were asked to address three questions: 1. Provide examples of solutions and practices that your agency has considered implementing to deal with infrastructure and technological challenges in data collection; 2. How do you build a multidisciplinary team for data collection? And 3. How did the increase in e-commerce affect how the agencies assess markets?

**Mr. Carlos García Cueva, General Directorate of Market Intelligence at the Federal Economic Competition Commission (COFECE) of Mexico**, shared the importance of data collection and monitoring of public procurement processes, particularly those related to public health. Procurement was a strategic priority for COFECE since 2014, but the stakes were raised by COVID-19. For that purpose, the agency developed a set of inhouse tools and methods to detect possible illegal conducts, such as bid rigging. The tools are being used to assess current and past procurement processes with the objective of supporting the authority's investigative work and, if any infringement of competition law is found, formal investigations will be launched.

With regards to public procurement and bid-rigging investigations, Mr. García explained that COFECE follows three steps. First, data collection. At this stage, different devices and tools are used to collect large volumes of information from different public procurement databases, for example, from the federal public procurement database CompraNet.<sup>22</sup> In some cases, it is also necessary to supplement such information with additional sources, to fill “gaps” in the data or due to the difficulties of processing the data in the available format. To retrieve additional data, COFECE uses web scrapping tools and compares how certain prices behave in public procurement versus their trends in normal market transactions. In addition to collecting information, the competition authority must “prepare” and “clean” data.

Second, extract and transform data. Once the agency has information from a wider variety of potential sources, it proceeds to extract the data. This can be done using different techniques such as text mining and database transformation which require the use of algorithmic tools. For example, COFECE developed an in-house algorithm to search, process and classify content within documents.

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<sup>22</sup> “CompraNet is the electronic system of governmental public information on public procurement and is mandatory for the subjects indicated in Article 1 of the Law on Procurement, Leasing and Services of the Public Sector (LAASSP) and the Law on Public Works and Related Services (LOPSRM). The CompraNet system is managed and operated by the Unit for Public Procurement Policy (UPCP) of the Ministry of Public Administration (SFP)” (Gobierno de México, n.d., para. 1).

Third, data screening: searching for potential anticompetitive patterns. This basically involves looking for potential anticompetitive patterns that may suggest behaviours such as market segmentation (e.g. pricing for specific products, among others). After these three steps, a more specific study of these possible patterns is initiated with additional resources or tools, to support or rule out these first indicia of collusion.

With regards to technological and infrastructure challenges in data collection, Mr. García highlighted that COFECE plans to use artificial intelligence and natural language processing tools to analyse large volumes of documents. In COFECE's experience, data collection in public procurement processes would be more effective for screening purposes than in other sectors, but the effectiveness of screening is conditioned on whether it is used in open tendering processes rather than direct contracting.

Mr. García also mentioned other challenges faced by the Directorate General of Market Intelligence,<sup>23</sup> such as data quality and availability, recruiting human talent, accessing the required equipment, and the impact of false positives. However, with regards to infrastructure challenges in data collection, he argued that there are other options apart from buying computers and licences. The Commission's unit develops most of its algorithms with open-source software, such as Python and R, and uses flexible cloud-based storage and services. Additionally, the Directorate General of Market Intelligence has invested in data visualization skills and platforms to improve how they present the results of their research to the agency's leadership.

Finally, Mr. García underlined that it is important for COFECE to have spaces to share its experiences and to listen to other agencies' experiences regarding best practices, methods, tools, strategies, challenges, and mistakes, because in this way it can learn from the experience of others, with the purpose of strengthening the capabilities of competition authorities to detect potentially anticompetitive behaviour either in public procurement or in other markets.

**Mrs. Sally Foscett, Director of the Strategic Data Analysis Unit of the Australian Competition and Consumer Commission (ACCC)** explained that data collection is not new for agencies and regulators since fact-finding is at the core of their work. However, Mrs. Foscett argued that it is a good time to invest in data collection capabilities because of the change in volume, variety, and velocity of information that is generated while doing business:

- Volume in the sense that there is more information.
- Variety because it comes in many different shapes and sizes, less easy to work with than others.
- Speed, because information is now generated and transmitted seemingly instantaneously.

Furthermore, Mrs. Foscett highlighted that this change was already occurring before the pandemic due to the decreased costs in data science, but that it accelerated with the pandemic and the lockdowns, along with the digital transformation. She argued that the proliferation of data brings new challenges for competition authorities, but also new opportunities for fact finding.

Mrs. Foscett explained that the ACCC has been strengthening data collection capabilities through three main means. First, the ACCC's statutory information gathering powers, including the extraction of data. Traditionally these powers are used to obtain emails and other business

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<sup>23</sup> Within COFECE, the Investigative Authority is the body "in charge of initiating and conducting investigations to determine the possible existence of monopolistic practices, illicit concentrations, essential inputs, barriers to competition and absence of effective competition conditions" (COFECE, 2017, p. 3). One of the four General Directorates that make up the Investigating Authority is the General Directorate of Market Intelligence, which "was created with the purpose of having a more proactive role in the fight against anticompetitive practices (...) for which it is in charge of collecting, integrating, systematising, analysing and presenting information" (COFECE, 2017, p. 5).

documentation from companies under investigation; but requests are being applied to obtain more information, such as in the case of digital platforms. The authority recognises that while statutory information gathering powers are a very effective tool, they can be burdensome, sometimes invasive, and there is a threshold that must be met before they can be used.

Second, using data collected by the Infocentre,<sup>24</sup> which provides telephone and online guidance for consumers and businesses. The Infocentre collects information about issues that are affecting consumers on a day-to-day basis, including issues relating to competition. When someone contacts the ACCC through the Infocentre, a record of that contact is created, and these records are used to create a report of the issues affecting consumers on a day-to-day basis, including those related to competition. The intelligence team uses these reports to produce a monthly summary of trending issues, which is considered by the enforcement committee of the agency. For example, in December last year, they noticed a dramatic increase in the number of reports that were being submitted about the price of rapid antigen testing for COVID-19 (RATs). Consequently they publicly called out several suppliers for their high-priced RATs and wrote about 50 different suppliers asking them to explain their costs. The ACCC also warned them that they needed to be able to substantiate the reasons that they were claiming.<sup>25</sup>

Third, more recently, the ACCC has used web scraping to download data from websites. The agency's Intelligence Unit used web scraping as part of its analysis of the RATs case, drawing on a website (set up by a generous community benefactor) where consumers could share information about where they could buy tests and how much they cost. ACCC officials used web scraping to collect data from that site to supplement the information they received through the Infocentre.

In terms of future data collection capabilities, the Intelligence Unit's officials are considering how they might make greater use of social media data and third-party data more generally. As an example of this, they recently launched a project to bring together different datasets to identify the industries that are arguably most susceptible to competition problems, in a collaborative effort between researchers, data scientists, economists and other officials, and which focuses initially on assessing market concentration, as well as considering the extent to which certain industries have historically been subject to competition problems. According to Mrs. Foskett, there are increasing opportunities to use application programming interfaces (API) to collect data, even from marketplace infrastructure.

Mrs. Foskett also outlined some limits of data and potential pitfalls of using data in competition activities: 1. Data is a representation of reality, it is not a reality itself, hence officials should not take it at face value but rather engage with it critically. 2. Data is necessary but not sufficient, therefore it should be complemented by other sources of information. 3. Be conscious of cognitive biases such as precision bias, availability bias, and confirmation bias. 4. Regarding analysing data in crisis sectors, it may be difficult to know where the baseline is because it is changing very rapidly. Hence, attributing causation is difficult in general, but even more when key variables and factors are moving simultaneously.

Finally, regarding the question on how to build a multidisciplinary team for data collection, Mrs. Foskett argued that it is not enough to hire or build skills, hence it is necessary to integrate the skills to the agency's work (problem - solving ability in a multi-disciplinary context). The mindset

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<sup>24</sup> "The Infocentre is part of the Consumer, Small Business and Product Safety Division (...) It is the initial response centre for all enquiries and reports to the Commission on competition and consumer issues in Australia." (ACCC, n.d.-b, paras 1–2)

<sup>25</sup> For further information, see a press release from the ACCC, available at: <https://www.accc.gov.au/media-release/concerning-pricing-of-rapid-antigen-tests>

is also key: being ready to test assumptions through the lowest costs possible, giving space to officials for experimentation, and accepting that one out of five experiments may work.

**Mr. Juan Correa, Head of the Anti-Cartels Division at the National Economic Prosecutor (FNE) of Chile**, provided an overview of the process of developing the Intelligence Unit that was set up in August 2020.<sup>26</sup> Mr. Correa explained that the experiences and lessons learned by the FNE provide a perspective that is particularly pertinent for small competition agencies that are taking their first steps to setup data units.

Before the Intelligence Unit was established, the FNE signed memoranda of understanding (MoUs) with different public agencies (e.g. the public procurement agency) who had data of interest for the agency. These initial data collection efforts allowed them to start successful investigations by running simple and unsophisticated screening tools. Nowadays, the FNE has signed more than 15 MoUs with different agencies, which allows the FNE to collect critical information. Furthermore, even before the Intelligence Unit was created, the FNE invested in training its economists in data science.

The FNE did not obtain additional resources to setup their Intelligence Unit, so the agency had to rely on the human talent and tools that were already available. The unit is run by a small group of people who carry out data collection and analysis using different techniques and tools, such as web scraping, open-source software, big data, among others. This information is complemented with other sources of information such as previous complaints filed before the FNE and information of previous investigations.

Regarding the challenges faced by the FNE, Mr. Correa mentioned three: 1. Those related to data quality, since the Intelligence Unit's officials spend a considerable amount of time "cleaning" the data they obtain from other public agencies. 2. Recruiting people with knowledge or skills that are not available in the agency is difficult because the market for data scientists is very competitive. 3. Difficulties in securing the necessary resources for investment given that the results are uncertain.

Finally, Mr. Correa explained the main lessons related to the creation and operation of the Intelligence Unit: 1. The importance of being patient, because the results are not seen necessarily in the short term. 2. Not all data collection or screening requires complicated methods or algorithms, in fact, there are some old-fashioned ways to collect data, like the MoUs, that could help the authority to detect patterns that are suspicious. 3. Be flexible and keep your eyes open. 4. Choose the markets the agency wants to focus on.

#### **IV. POLICY RECOMMENDATIONS AND BEST PRACTICES**

Due to the pandemic, governments introduced various measures to cope with the crisis or to mitigate its consequences and, more recently, public bodies are designing and implementing diverse policy actions to stimulate economic recovery. Some of these measures may effectively achieve their objectives, but others will fall short and may even generate negative side-effects related to competition in key markets. The Workshop "Competition Policy: A Driver for Economic Recovery in the APEC Region", illustrated how competition policy can help prevent or curb COVID-19 related regulations and policies that significantly reduce competition and can

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<sup>26</sup> The Intelligence Unit was organised under the programme for the improvement of investigative techniques for the prosecution of cartels and under the Anti-Cartel Division. For further information, see a press release from the FNE, available at: <https://www.fne.gob.cl/fne-crea-unidad-de-inteligencia-dependiente-de-la-division-anticarteles/>



contribute to promote economic recovery through its competition advocacy, merger control, and antitrust enforcement tools.

This section presents policy recommendations and best practices identified from the discussions at the two-day Workshop and the analysis prior to the Workshop. These recommendations are valuable for dealing with the present crisis and challenges and may also be pertinent to deal with future crises.

### **1. Early and constant cooperation with other government bodies**

Competition agencies need to build strong channels of communication and cooperation with other governmental and regulatory bodies to confront economic crisis in an effective and timely manner.

First, as Mrs. Marván (COFECE) mentioned, competition authorities need “other partners or colleagues” to push forward competition policy initiatives and to ensure that regulatory and policy projects are informed by sound competition theory and evidence. In this vein, Commissioner Bernabe (PCC) commented that it is essential to “cultivate relationships and channels of communication with other government entities, academia, and other stakeholders” not only to advance initiatives but also as part of a strategy to make more people aware of the importance of competition policy in times of crisis and to help in the recovery of the economy.

Second, it is in times of economic crisis that the authorities are most required to be vigilant against any kind of government actions that, despite its good intentions, may harm competition or cause undesirable effects in the medium and long term. In this sense, and as argued by Mr. Chen (TFTC), “competition agencies should take every opportunity to join the conversation” with other government bodies and regulators. Furthermore, as advised by Mr. Chen, the engagement with regulators and policymakers should take place as early as possible.

Third, it may be pertinent for competition authorities to be part of formal and permanent forums of discussion with regulators and other government bodies. During the Workshop, some competition agencies described positive outcomes from participating in regulatory committees, technical advisory groups or other government working groups, which has allowed them to be at the centre of the debate and, in some cases, to express their opinions in time to prevent the adoption of measures that may affect the economy.

### **2. Informal consultations and guidance notes**

Under situations of economic stress, competition agencies should seek to promote confidence about competition law enforcement and offer expeditious channels for economic agents that seek informal guidance on law compliance. In this vein, some APEC competition agencies, such as those in the economies of Malaysia, Canada, and Chile, offered informal guidance and consultation instances on merger cases and/or collaboration agreements.

Other means for dialoguing with the agencies’ stakeholders, which may include the business community, consumers and even regulators, is to issue guidance notes. Several competition agencies in APEC economies have published guidelines, manuals and toolkits during the pandemic that have helped regulators and government bodies to assess their projects from a competition perspective, and that guided economic agents on how to comply with the law.

### **3. Proactive support: Helping other government bodies to balance their policy objectives**

Competition agencies do not have to wait until they are “invited to the table” by regulators and government bodies to offer their recommendations on how to balance the policy objectives sought through government actions with competition principles. In recent times, COFECE offered an example of how a competition agency can proactively propose concrete measures that can contribute to the recovery of the economy.

The mandate to promote economic competition can be fulfilled by helping regulators and policymakers to strike a balance between sectoral objectives and preserving competitive markets. As it was argued by Commissioner Bernabe (PCC), it is not enough that the agency’s views are imbued in their conversations with regulators, the agency must also come up with useful suggestions of how to implement less anticompetitive solutions. For example, Canada’s Competition Bureau published a step-by-step toolkit for regulators on competition assessment.

Furthermore, as it was highlighted by Mr. Chen (TFTC), competition agencies can proactively participate in all the stages of regulatory processes: design, implementation, and exit.

#### **4. New means for disseminating knowledge on competition policy**

The agencies should find new means to reach key stakeholders (e.g. regulators, parliamentarians, policymakers) and new audiences to explain what competition policy is, how decisions are made within the authority, why it is relevant to protect competition policy, how it can help mitigate the consequences of the crisis, and why competition policy can contribute to economic recovery.

The competition agencies of Peru and Mexico, for example have offered competition courses to new audiences. On the one hand, Indecopi aimed at offering courses in small cities rather than only concentrating its offer in the capital; on the other hand, COFECE developed a digital platform to offer free education on competition law at a lower cost (compared to phase-to-face interaction), which enables it to disseminate its competition law courses and reach a wider public.

Other agencies, such as Canada’s Competition Bureau and New Zealand’s Commerce Commission have recently used antitrust cases for competition advocacy, The cases pursued by the agencies have helped send strong messages of what types of practices are allowed and which are the limits for economic agents with regards to collaboration agreements.

#### **5. Managing expectations about the role of competition policy**

Although competition policy has a role to play during economic crisis and its aftermath, it is pertinent to manage the government and the public’s expectations on what competition agencies can achieve. The enforcement of competition laws can contribute to deal with current global challenges, such as inflation and supply chain disruption or guaranteeing that SMEs can participate in markets, but agencies cannot be expected to have the capacity to solve such problems on their own.<sup>27</sup>

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<sup>27</sup> As elaborated in detail in a recent OECD report (2022), inflation is currently high on the list of concerns for economies around the world, and while it is the product of a number of factors beyond the effects of the pandemic, “Competition authorities are likely to be under pressure from politicians and the media to act in times of rising prices” (2022, p. 5). However, it is critical that expectations regarding what competition authorities can achieve are tempered because “competition policy should not be seen as a prominent short-term anti-inflation tool. Competition interventions take time, both to assess and implement, and rushing them could create procedural unfairness and undermine the rule of law. Further, despite having the potential to reduce prices significantly, competition enforcement is unlikely to be capable of reducing prices substantially enough on its own. Interventions typically focus on a few markets, meaning that even strong price reductions will have limited impact on the overall price level. [...] Competition is vital for a low inflationary environment and competition enforcement should be prioritised, but not at the expense of fiscal

While competition policy can contribute to alleviate the consequences of the crisis and can help in the recovery of the economy, as Mr. Durocher (Competition Bureau) mentioned “competition enforcement is not the silver bullet”, nor “a magic pill that solves all problems” as stated by Mr. Kong (CCCS), or in the words of Commissioner Crone (ACCC) “competition is not a panacea, nor does it have to be”.

## **6. Rather than relaxing competition law, take advantage of its flexibility**

Although not all competition laws of the APEC economies include exemptions for certain conducts, most of the competition agencies of the region found that their legislation was flexible in times of crisis and did not hinder private or public measures that were necessary to deal with economic challenges. As Mr. Kong (CCCS) and Mr. Durocher (Competition Bureau) mentioned, enforcement discretion can be applied to contribute to solve temporary problems. For that purpose, for example, warning letters can be issued before formal investigations are initiated, as it was explained Mr. Pérez (COFECE) and Mr. Houbcharaun (TCCT).

A very clear message was delivered by the participants of the Workshop: forsaking competition policy during economic crisis can deepen the economy’s difficulties and competition law, driven by facts, can be flexible enough for governments and regulators to pursue policy objectives such as economic recovery without undermining competition.<sup>28</sup>

## **7. Prioritise, prioritise, and prioritise**

Given that resources are limited, especially during crisis times, agencies should improve their capacity of prioritising their work and resources. This prioritisation should be undertaken in levels. First, prioritising the investigations or sectors to be targeted. For example, some competition authorities have focused their efforts on investigating the markets that are critical for supply chains, such as New Zealand, and agencies that focused on shipping containers and freight transport, such as the US DOJ. Other agencies focused their work on markets that were particularly stressed during the pandemic, such as the healthcare and labour markets.

Second, since many governments opted to ease the crisis by relaxing certain mandatory processes and measures (e.g. reducing requirements for procurement of medical supplies) and offering significant subsidies for certain sectors, competition agencies could focus on helping government bodies and regulators to prepare “exit strategies” for those temporary measures, as it was argued by Commissioner Crone (ACCC) and Mr. Chen (TFTC).

Third, since government expenditures are critical both for dealing with economic crisis and to foster economic recovery, it is pertinent to remind government bodies of the importance of competition to enhance public procurement and to remain vigilant for potential bid-rigging schemes, as the Mexican and Chilean competition authorities did during the pandemic.

## **8. Building data collection and processing capacities step-by-step**

Data collection and processing capacities within competition agencies are very important for competition advocacy, merger control and antitrust enforcement. One of the key features of competition agencies is their capacity to inform policy processes and to take decisions based on

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or monetary policy. To hold competition authorities accountable for general inflation is likely to be both unrealistic and unproductive” (OECD, 2022, p. 32).

<sup>28</sup> This insight has recently been also mentioned in recent international competition forums: “History and experience teach us that it is important to keep competition front-of-mind in enforcement and policymaking. Competitive markets are more flexible and resilient” (ICN, 2022, p. 1).

empirical evidence, as it was pointed out by Mrs. Choqueneira (Indecopi). Such capabilities enable better oversight (e.g. price monitoring) and improved targeted markets studies, as suggested by Commissioner Peter Crone (ACCC).

The examples of building data analytics and data intelligence units by APEC economies shows that these teams can be setup with relatively few resources and can generate a significant positive impact in the processes of competition agencies. However, the results of the investments in training, capabilities and technology for data collection and processing may not emerge in the short term, hence competition agencies should develop medium and long-term plans to build data analytics and data intelligence units.

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## ANNEX I – WORKSHOP’S AGENDA



**Asia-Pacific  
Economic Cooperation**

**APEC Project CPLG 01 2021A**  
**Virtual Workshop: Competition Policy: A Driver for Economic Recovery**  
**12-13 October 2022,**

### AGENDA

#### Day 1

09:00 – 09:50 (Singapore time)

**Opening Remarks & Keynote by International Expert – The role of competition policy in economic recovery**

Moderator:

- **Juan David Gutiérrez**, Asia-Pacific Economic Cooperation Consultant

Speakers:

- **Brenda Hernández**, Commissioner, Federal Economic Competition Commission, Mexico (5 minutes)
- **Sóstenes Díaz**, Commissioner, Federal Telecommunications Institute, Mexico (5 minutes)
- **Luz María de la Mora Sánchez**, Vice ministry of Foreign Trade, Ministry of Economy, Mexico (5 minutes to declare the opening of the Workshop)
- **Krisda Piampongsant**, Convenor, Competition Policy and Law Group, Asia-Pacific Economic Cooperation, (5 minutes)
- **Peter Crone**, Commissioner, Australian Competition & Consumer Commission, Australia – Keynote (35 minutes)

10:00 – 11:00 (Singapore time)

**Session I – The role of competition advocacy in the design, implementation and exit of government support**

Moderator:

- **Deborah Healey**, Director of the Herbert Smith Freehills China International Business and Economic Law Centre, University of New South Wales, Australia

Speakers:

- **Andy Chen**, Vice Chairperson, Chinese Taipei Fair Trade Commission, Chinese Taipei
- **Andrea Marván Saltiel**, General Directorate of Competition Advocacy, Federal Economic Competition Commission, Mexico
- **Johannes Benjamin R. Bernabe**, Officer-in-Charge, Office of the Chairperson, Philippine Competition Commission, Philippines

- **Claudia Choqueneira**, Economist, National Institute for the Defence of Free Competition and the Protection of Intellectual Property, Peru

## **Session II – Ensuring regulatory reforms that tackle the economic crisis in a procompetitive manner**

Moderator:

- **Juan David Gutiérrez**, Asia-Pacific Economic Cooperation Consultant

Speakers:

- **Encik Iskandar Bin Ismail**, Chief Executive Officer, Malaysia Competition Commission, Malaysia
- **Anthony Durocher**, Deputy Commissioner of Competition, Competition Bureau, Canada
- **Weng Loong Kong**, Deputy Director, Policy & Markets Division, Competition and Consumer Commission of Singapore, Singapore
- **Jose Nery Pérez Trujillo**, Head of the Planning, Liaison and International Affairs Unit, Federal Economic Competition Commission, Mexico

12:00 – 12:05 (Singapore time)

### **Closing remarks for Day 1**

- **Jose Nery Pérez Trujillo**, Head of the Planning, Liaison and International Affairs Unit, Federal Economic Competition Commission, Mexico

## **Day 2**

09:00 – 09:10 (Singapore time)

### **Opening remarks**

- **Juan David Gutiérrez**, Asia-Pacific Economic Cooperation Consultant

09:10 – 10:00 (Singapore time)

## **Session III – Competition enforcement for recovery (abuse of dominance, excessive pricing and cartel investigations during times of crisis)**

Moderator:

- **Ruben Maximiano**, Senior Competition Expert, Organisation for Economic Co-operation, and Development

Speakers:

- **Akarapon Houbcharaun**, Director of the Foreign Affairs Division, Trade Competition Commission, Thailand
- **Chandra Setiawan**, Commissioner, Indonesia Competition Commission, Indonesia
- **Manish Kumar**, Chief of the San Francisco Office, Antitrust Division, Department of Justice, United States of America
- **Grant Chamberlain**, Cartels Manager, New Zealand Commerce Commission, New Zealand

10:00 – 11:00 (Singapore time)

## **Session IV – The impact of merger control in economic recovery**

Moderator:

- **Graciela Miralles**, Senior Economist, The World Bank

Speakers:

- **Timothy Hughes**, Counsel for Competition Technical Assistance, Federal Trade Commission, United States of America
- **Matthew Huppert**, Trial Attorney, Antitrust Division of the Department of Justice, United States of America
- **Francisca Levin**, Head of Mergers, National Economic Prosecutor, Chile
- **Tiara Carrick**, Competition Law Officer, Competition Bureau, Canada

11:00 – 12:00 (Singapore time)

**Session V – How to increase expertise and data collection capabilities on crisis-affected sectors?**

Moderator:

- **Antonia Horrocks**, General Manager, Competition, New Zealand Commerce Commission, New Zealand

Speakers:

- **Carlos García Cueva**, General Directorate of Market Intelligence, Federal Economic Competition Commission, Mexico
- **Sally Foskett**, Director, Strategic Data Analysis Unit, Australian Competition and Consumer Commission
- **Juan Correa**, Head of Anti-Cartels Division, National Economic Prosecutor, Chile

12:00 – 12:10 (Singapore time)

**Closing remarks of the Workshop**

- **Jose Nery Pérez Trujillo**, Head of the Planning, Liaison and International Affairs Unit, Federal Economic Competition Commission, Mexico



## ANNEX–II - BIOS FOR MODERATORS AND SPEAKERS

### Opening Remarks & Keynote by International Expert – The role of competition policy in economic recovery

#### *Speakers*

- **Brenda Hernández**

Mrs. Brenda Gisela Hernández is the Acting Chair Commissioner due to a vacancy of the Federal Economic Competition Commission of Mexico (COFECE). Chair Commissioner Hernández holds a law degree from the Escuela Libre de Derecho and a master's degree in International Law by the University of Bologna, Italy. From 2014 and until prior to her ratification as Commissioner in 2016, Hernández Ramírez was General Director at the Coordination Office of COFECE's Investigative Authority. She has dedicated practically her entire professional life to the practice of competition law, serving at the extinct Federal Competition Commission, the Federal Telecommunications Institute and at COFECE. Commissioner Brenda Hernández is a renowned expert and academic on the subject of competition law.

- **Sóstenes Díaz González**

Mr. Sóstenes Díaz is a Commissioner of Mexico's Federal Telecommunications Institute (IFT), ratified in 2018 by the Mexican Congress for a 9-year term. He has more than 16 years' experience in the telecommunications sector and he has been responsible for several regulatory projects in Mexico, such as the design and implementation of the current cost models for interconnection and wholesale services; the current cost methodology of interconnection; the definition of interconnection points of the Preponderant Economic Agent in the telecommunications sector (PEA), among others. In addition, Commissioner Díaz is a professor of Microeconomics in the Postgraduate Program of the School of Economics of the National Autonomous University of Mexico (UNAM). Commissioner Díaz has a Bachelor's degree in Economist by UNAM and a Master's degree on the same field by El Colegio de México.

- **Luz María de la Mora**

Mrs. Luz María de la Mora is Vice minister of Foreign Trade at Ministry of Economy of Mexico. Vice Minister de la Mora holds a PhD in Political Science from Yale University, an M.A. in International Political Economy from Carleton University, in Canada, and a B.A. in International Relations from El Colegio de Mexico (COLMEX). She was head of the Economic Relations and International Cooperation Unit at the Ministry of Foreign Affairs of Mexico, as well as head of the Coordination Unit of International Negotiations at the Ministry of Economy. She also served as a representative of the SE of Mexico to the European Union in Brussels, Belgium, and as an alternate representative of Mexico to the Latin American Integration Association in Montevideo, Uruguay.

- **Krisda Piampongsant**

Ambassador Krisda Piampongsant is the former Vice – Chairman of the Trade Competition Commission of Thailand and the Convenor of the APEC Competition Policy and Law Group. He holds a Public Policy and Administration from University of Wisconsin at Madison, and a B.A. from the University of Western Australia. He has served as Thailand's Ambassador and Permanent Representative to the World Trade Organization, Deputy Permanent Secretary at Ministry of Commerce, Minister at Royal Thai Embassies in the United States, Brussels, Belgium and the European Union. He was also Associate Judge at the Intellectual Property and International Trade Court of Thailand.

#### *Keynote speaker*

- **Peter Crone**

Mr. Peter Crone was appointed a Commissioner of the ACCC in December 2020. Peter chairs the Consumer Data Right Committee and is a member of the ACCC's Communications Committee, Mergers Review Committee, Digital Platforms Inquiry Board, Financial Services Competition Board, and East Coast Gas Market Board. He has more than 30 years of experience in economic policy and commercial strategy at the highest levels of government and business in Australia. Peter holds a Master's Degree in Economics from the Australian National University and a Bachelor of Economics (Honours) from the University of Western Australia. He is also a Graduate of the Australian Institute of Company Directors.

### **Session I – The role of competition advocacy in the design, implementation and exit of government support**

#### *Moderator*

- **Deborah Healy**

Mrs. Deborah Healey is a Professor at UNSW Law and a Director of the Herbert Smith Freehills China International Business and Economic Law Centre. Her research and teaching focus on competition law and policy in Australia, China, Hong Kong and the ASEAN nations and she has written widely around them over a long period of time. She is a regular visitor to those jurisdictions to research and teach. She is a Non-Government Adviser to the International Competition Network and a member of the Law Council of Australia Competition Law Committee.

#### *Speakers*

- **Andy Chen**

Mr. Andy Chen is the Vice Chairperson for the Chinese Taipei Fair Trade Commission. He is also Professor of Law in the Department of Financial and Economic Law at Chung Yuan Christian University, where he also served as the dean of its law school from 2019 to 2021. Vice Chairperson Chen earned his law degrees from National Taiwan University, Soochow University, Duke University. He is a Doctor of Juridical Science by the Northwestern University. He has published extensively on antitrust and regulatory issues in both Chinese and English, mainly from the perspective of economic analysis.

- **Andrea Marván**

Mrs. Andrea Marvan is the Director General of Competition Advocacy of the Federal Economic Competition Commission of Mexico, where she also served as Executive Director at the Investigative Authority. She holds a Masters Degree in Law by the University of Chicago, and a B.A. in Law by Universidad Iberoamericana. Andrea Marván is also a professor at the Mexican university Tecnológico de Monterrey.

- **Johannes Benjamin R. Bernabe**

Mr. Johannes Benjamin R. Bernabe is Commissioner and Officer-in-Charge of the Philippine Competition Commission. Commissioner Bernabe graduated cum laude with a degree in Economics at the University of the Philippines, where he also subsequently finished his law degree. He pursued further studies as a Chevening Fellow in University of London, and at the International Development Law Institute in Sydney, Australia. He has served as a Senior Fellow at the Geneva-based International Centre for Trade and Sustainable Development, and as Trade Negotiator World Trade Organization. During the 16th Congress, he served as the lead adviser to the Philippine Senate and House of Representatives on key economic legislation, which includes the Philippine Competition Act.

- **Claudia Choqueneira**

Mrs. Claudia Choqueneira is an economist from the Pontificia Universidad Católica del Perú. She has postgraduate studies in Competition from the Pontificia Universidad Católica de Chile.

Currently, she is an economist at the National Directorate of Investigation and Promotion of Competition of Indecopi, where she has participated and coordinated the development of market studies and tools for the dismantling of cartels. Previously, she worked as an economist at the Ministry of Economy and Finance of Peru. Mrs. Choqueneira is a collaborator of the Competition Program of the Pontificia Universidad de Chile. She has contributed with several studies and research articles in her areas of expertise.

## **Session II – Ensuring regulatory reforms that tackle the economic crisis in a procompetitive manner**

### *Moderator*

- **Juan David Gutiérrez**

Dr. Juan David Gutiérrez, Ph.D., LL.M., is an associate professor at Universidad del Rosario in Colombia. He is the co-director of the Latin America chapter of the Academic Society for Competition Law – ASCOLA. He holds a PhD in Public Policy from the University of Oxford's School of Government, a Master of Law and Economics (LL.M.) jointly awarded by the University of Bologna and the University of Erasmus Rotterdam, and an M. Sc. in Public Policy from the University of Oxford. He has a bachelor's degree in law from the Universidad Javeriana (Bogotá).

### *Speakers*

- **Encik Iskandar Bin Ismail**

Mr. Iskandar is the Chief Executive Officer of the Malaysia Competition Commission of Malaysia. Before his appointment, he was Director of the Investigation and Enforcement Division for more than 5 years. Prior to MyCC, Mr. Iskandar was an Assistant Trial Attorney with the United Nations for the International Criminal Tribunal for Rwanda in Tanzania for 8 years. He also prosecuted financial crime cases at the Central Bank of Malaysia. Mr. Iskandar received his education at the International Islamic University of Malaysia and holds a M.A. in International and Comparative Law at the George Washington University Law School.

- **Anthony Durocher**

Mr. Anthony Durocher is Deputy Commissioner of the Competition Promotion Branch at the Competition Bureau of Canada. Mr. Durocher holds a Bachelor of Economics from McGill University and a Master of Economics from the University of British Columbia. As Branch head, Deputy Commissioner Durocher supports the success of the International Affairs; Policy, Advocacy and Planning; Communications; Compliance and Outreach; and Economic Analysis teams. Anthony has held increasingly senior roles in his 18 years at the Competition Bureau including Deputy Commissioner responsible for the Monopolistic Practices Directorate and Assistant Deputy Commissioner in the Mergers Directorate.

- **Weng Loong Kong**

Mr. Weng Loong Kong is the Deputy Director, Policy & Markets Division, at Competition Commission of Singapore (CCCS). Mr. Kong holds a BSc Business Administration and BSc Engineering from the University of California at Berkeley and an MSc in Applied Economics from Singapore Management University.

- **José Nery Pérez Trujillo**

Mr. José Nery Pérez Trujillo is the Head of the Planning, Liaison and International Affairs Unit (UPVAI) at the Federal Competition Commission of Mexico (COFECE). He is an economist by the Instituto Tecnológico de Monterrey and M.A. in Public Policy by the University of Chicago. He has 20 years of professional experience on matters of competition and regulation, market analysis, planning and evaluation. José Nery joined the extinct Federal Competition Commission in 2012 as Assistant Director General of Planning, Evaluation and afterwards he was appointed Director General of the same area. He is professor at Instituto Tecnológico Autónomo de México

and at Tecnológico de Monterrey. Among his publications are “Reform on matters of economic competition” (co-authored with Alejandra Palacios), as well as “Introductory study on the evolution of market power and its impact on welfare”.

**Session III – Competition enforcement for recovery**  
**(abuse of dominance, excessive pricing and cartel investigations during times of crisis)**

*Moderator*

- **Ruben Maximiano**

Mr. Ruben Maximiano is a Regional Manager and Senior Competition Expert at the OECD in Paris and a lecturer at Lille Catholic University, where he teaches EU Merger Control course at Masters 2 level. At the OECD he is responsible for the work on competition policy in Asia Pacific region and coordinates the work on the Covid-19 crisis in the Competition Division. Before joining the OECD, Mr. Maximiano worked at the European Commission for 5 years, having worked mostly on merger control and as part of the Financial Crisis Task Force. Prior to that he worked at the Portuguese Competition Authority where he was Senior Legal Case Handler and as a Lawyer in Vieira de Almeida & Associados in Lisbon, Portugal in the Competition Law and Telecoms regulation field. Mr. Maximiano received an LL.M. in European Law from the College of Europe, Belgium.

*Speakers*

- **Akarapon Houbcharaun**

Mr. Akarapon Houbcharaun, Ph.D., is the director of Foreign Affair Division, Trade Competition Commission of Thailand (TCCT); his duties encompass heading Thailand’s free trade agreement negotiation on competition chapters team and issuing recommendations for enhancing Thailand’s competition policy enforcement in line with the international standards. Prior to his tenure at the TCCT, Mr. Houbcharaun’s accumulated over 15 years of experience in economic and development policies. He served as a member of taskforces driving Thailand’s National Reform Plans, National Strategy and National Reconciliation under Ministry of Agriculture and Cooperatives (MoAC), with specialization in the climate change and agricultural development policy. For his academic background, Mr. Houbcharaun received his doctoral and master’s degree in economics from University of Hawaii at Manoa with a dissertation on economic liberalization and spatial economics.

- **Chandra Setiawan**

Mr. Chandra Setiawan is Commissioner of the Indonesia Competition Commission, Mis a B.A. in Corporate Economics from Islamic University of Indonesia. He attained his master’s degree in Investment & Banking from Gadjah Mada University. He continued his doctoral education at State University of Jakarta majoring in Education Management and graduated in 2001. In addition to this education, Mr. Setiawan also attended doctoral education majoring in finance at the Graduate School of Management, UPM Malaysia. He has also served as a lecturer at President University since 2012. He was entrusted to become the Rector of the President University in 2012-2016.

- **Manish Kumar**

Mr. Manish Kumar is the Chief of the San Francisco Office, Antitrust Division, Department of Justice, United States of America. The office maintains both a civil and criminal antitrust practice, which includes international price-fixing investigations, civil antitrust investigations, and domestic bid-rigging and procurement fraud investigations involving the western United States. Mr. Kumar has served in various roles at the Department over the past thirteen years, including as Trial Attorney, Special Assistant U.S. Attorney, and Assistant Chief in the Antitrust Division.

- **Grant Chamberlain**

Mr. Grant Chamberlain is the Cartel Investigations Manager at the NZ Commerce Commission managing and overseeing all cartel related work including our reporting systems such as leniency as confidential informants. Grant has worked on a number of large international investigations and numerous domestic investigations since joining the Commerce Commission in 2006. Grant has worked with numerous agencies to assist them in developing cartel case pipelines and adopting leniency programs. Grant has been the Cartel Investigations Manager since 2013 and prior to joining the Commerce Commission was a partner in a law firm in London.

#### **Session IV – The impact of merger control in economic recovery**

##### *Moderator*

- **Graciela Miralles**

Dr. Graciela Miralles Murciego, PhD, LL.M, is a Senior Economist at the Markets and Technology Global unit of the World Bank Group. In this function, she has been involved in a wide variety of operational and analytical projects to promote competition policy reforms across economies in Latin America (LAC), Europe and Central Asia (ECA), East Asia Pacific (EAP) as well as the Middle East and North Africa (MENA). Graciela has led/supported several projects focusing on increasing the effectiveness of competition policies in more than 30 economies. Graciela has been the main author in a wide variety of instruments for competition authorities around the world covering, among other topics, cartel exemptions, mergers, fines, leniency, public procurement and competitive auctions. Additionally, she is leading the outreach agenda on competition policy regarding the relations with the OECD, UNCTAD and the International Competition Network. Graciela holds a PhD in Competition Law and Economics from the European University Institute (EUI, Florence, Italy) and graduate degrees from the College of Europe (Bruges) as well as the EUI.

##### *Speakers*

- **Timothy Hughes**

Mr. Timothy Hughes is an attorney in the Federal Trade Commission, Office of International Affairs, where he has overall charge of the FTC's Competition Technical Assistance Program and engages directly with the economies of SE Asia. He has lived for extended periods in Romania, Indonesia, Vietnam and Colombia, providing training to the competition authorities of those economies and conducted short-term training missions in SE Europe, the Middle East, Latin America and SE Asia. He also practiced competition law as a partner in the law firm of Steel, Hector & Davis (merged into Squire Sanders), headquartered in Miami, Florida with offices in Brazil, the Dominican Republic and Venezuela. He received his degree in law, Juris Doctor, in 1976 from Northwestern University in Chicago and his undergraduate Bachelor's degree with honors from Fordham University in New York City. He is a member of the Illinois Bar and has practiced in the U.S. District Courts of the Northern District of Illinois, Southern and Central Districts of Florida, the Federal Courts of Appeals for the 7<sup>th</sup> and 11<sup>th</sup> Circuit, and the U.S. Supreme Court.

- **Matthew Huppert**

Mr. Matthew Huppert is a Trial Attorney in the Defense, Industrials, and Aerospace Section of the Antitrust Division of the United States Department of Justice. He has a Bachelor's degree in Political Economy by Georgetown University. He is also a Doctor of Law by the Columbia Law School. Before joining the DOJ, Matthew was a practitioner in a private firm, and in the Court of Appeals and the District court in Washington, D.C.

- **Francisca Levin**

Mrs. Francisca is the Head of Mergers at the Fiscalía Nacional Económica (National Economic Prosecutor) since 2019. She is a lawyer from the Pontificia Universidad Católica de Chile, and holds an LL.M in Competition Law from King's College London (2013) and a MSc in Regulation

from the London School of Economics (2014). She was appointed member of the Women Experts Committee at the Chilean Bar in Antitrust (2021). She has more than ten years of practice in competition law, and previously worked as a senior associate in the antitrust practice at Carey, and as a case handler in the Mergers and Enforcement Division of the FNE.

- **Tiara Carrick**

Mrs. Tiara Carrick is a Competition Law Officer at the Mergers Directorate of the Canadian Competition Bureau. Prior to joining the Competition Bureau, Tiara graduated with a Bachelor of Arts in Economics from the University of Calgary and a Master of Arts in Economics at the University of British Columbia. Since joining the Mergers Directorate in 2018, Tiara has contributed to a variety of merger investigations involving a wide range of industries including transportation, telecommunications, natural resources, and food retail. Tiara has also been involved in various projects related to international cooperation.

### **Session V – How to increase expertise and data collection capabilities on crisis-affected sectors?**

#### *Moderator*

- **Antonia Horrocks**

Mrs. Antonia Horrocks is the General Manager of Competition at the New Zealand Commerce Commission. Mrs. Horrocks manages the Competition Branch which is responsible for delivering the Commission's market studies, merger control, cartels and competition investigations work. Antonia joined the Commission in August 2016 from the UK Competition & Markets Authority. Prior to joining the UK regulator, she worked on as an antitrust lawyer in London from 2003. She started her career at a law firm in New Zealand.

#### *Speakers*

- **Carlos García**

Mr. Carlos is Director General of Market Intelligence of the Federal Economic Competition Commission of Mexico. He currently leads several strategic activities and projects which include developing market analysis and screenings for potential ex officio cases, as well as initiatives in data analytics, IT forensics and intelligence. Since 2014, Mr. García has been focused on the implementation of tools and mechanisms to enhance the Commission's investigation and enforcement capabilities. Previously, he served as Executive Director/Deputy Director General of Intelligence, Director of Strategic Investigations, and Deputy Director of Planning & International Affairs. Prior to joining COFECE, Carlos worked for the Mexican Federal Judicial Branch, for the Canadian Embassy in Mexico, for the Mexican Ministry of Interior, and in consulting services. He holds a Master's in Regulation from the London School of Economics, a Master's in Public Administration from Tec de Monterrey, and a Master's in Intelligence from King's College London.

- **Sally Foskett**

Mrs. Sally Foskett is the Director of the Strategic Data Analysis Unit at the Australian Competition and Consumer Commission. She is a Bachelor of Laws by the Australian National University and a Master of Data Science & Innovation, by the University of Technology Sydney. Prior to joining the ACCC, Sally was a Project Officer at the New South Wales Crime Commission and a private lawyer.

- **Juan Correa**

Mr. Juan Correa is the Head of the Anti-Cartels Division at the Chilean National Economic Prosecutor (FNE), since 2016. He has been at the agency since 2011. He holds a law degree from Universidad de Chile, and an LLM from New York University School of Law. He is admitted to practice in Chile and in the State of New York.