

MERGER SEMINAR SERIES (SOUND DECISION MAKING)

In 2019-20, the Mergers Working Group, led by the UK's CMA, has organised regional webinars on sound decision making in merger assessment. Topics included: evidence-based decision making, transparency, independence, and anti-bribery laws. National Competition Authorities (NCAs) and non-governmental agencies (NGAs) discussed common and unique points in five regions, with the following presenters:

- **North and Central America:** chaired by the US DoJ (Antitrust Division of the US DoJ, Patty Brink), with the panel of NCAs of Mexico (COFECE, Jose Luis Ambriz Villalpa), Canada (CCB, Jeanne Pratt) and El Salvador (CDS, Regina Vargas), as well as one NGA (Deborah Feinstein, formerly Director of the Bureau of Competition, US FTC).
- **South America:** chaired by Brazil's NCA (CADE, Cristiane Landerdahl de Albuquerque) with the panel of Colombia's NCA (SIC, Aura Garcia) and two NGAs (Brazilian consulting firm *GO Associados*, Gesner de Oliveira and competition and antitrust practice of Mexico's *Von Wobeser*, Fernando Carreño).
- **Southern Africa:** chaired by Kenya's NCA (CAK, Raphael Mburu and Linus Melly) and the panel of the NCAs of Zambia (CCPCZ, Luyamba Mpamba) and South Africa (CCSA, Grashum Mutizwa).
- **Asia-Pacific:** chaired by Japan's NCA (JFTC, Kaoru Harada) with the panel of NCAs of Taiwan (TFTC, Haw-Kae Chen) and Singapore (CCCS, Ng Mingjie), and one NGA (Nobuaki Ito, NGA for JFTC).
- **Europe:** chaired by the UK's NCA (CMA, Eleni Gouliou) with the panel of NCAs of Ireland (CCPC, Ibrahim Bah), Norway (Trygve Eiken) and Portugal (Rita Prates and Ricardo Bayao Horta), and moderated by an NGA (Rachel Brandenburger, NGA for the CMA).

Key findings from the regional webinars on each topic are summarised below.

Evidence-based decision making

Discussions across regions focused on the tools and best practices which can help NCAs ensure that decisions in merger cases are based on robust evidence. NCAs exercise both voluntary and mandatory evidence gathering powers when collecting evidence from the merging parties, third parties and other government agencies. As part of the merger review process, NCAs increasingly rely on quantitative evidence and analysis (e.g., economic and econometric analysis) as well as qualitative evidence (such as internal documents and third-party statements). In more complex cases, NCAs may involve internal and/or external experts and advisers to ensure that the case teams' assessment is sound. The discussions have highlighted the importance of a system of internal checks and balances within NCAs.

Transparency

Presenters in each region discussed the ways which can help ensure transparency of the NCAs' decision making process in merger investigations. One best practice example is

regular engagement with the merging parties during the investigation process (including by sharing the analysis documents which convey the substance of the merger assessment). Transparency is enhanced by publishing guidelines on the NCAs' merger investigation procedures and substantive assessment. To achieve greater legal certainty, NCAs make the text of the decisions available to the merging parties and the general public. NCAs make the evidence underlying decisions in merger cases available to the merging parties (taking into account confidentiality of third-party evidence). In some cases, interested third parties may also have the right to 'access to file' allowing them to review some of the evidence collected by an NCA in the course of the investigation.

Independence

One key take-away from the discussion is that NCAs' institutional design plays an important role in protecting them from governmental influence in merger investigations. It was stressed that national legislation can help ensure that an NCA is an autonomous body, independent from the government executive branch (including in terms of budget, human resources and priorities). Presenters highlighted that it is also important to demonstrate that decisions in merger investigations are made on legal rather than political grounds. It was discussed that there are some differences between the jurisdictions in the extent to which other regulators' opinions and/or decisions may be binding on an NCA in the context of a merger review. The discussions also highlighted the role of a robust appeal system with independent courts and/or tribunals.

Anti-bribery

Regional webinars' participants discussed the role of national legislation in defining the offences of bribery and corruption as well as providing for adequate punitive measures. It was also considered that codes of conduct play an important role in the prevention of misconduct. In addition to the wider governmental measures, NCAs engage in advocacy and other preventative measures, such as imposing a requirement on their officials to submit a declaration of their interests. Moreover, it was considered that the NCAs' governance structure may help mitigate the risks of bribery where the case team investigating a merger is separated from the decision maker. Lastly, it was discussed that a robust appeal system can support other corruption deterrence mechanisms.

INTERNATIONAL COMPETITION NETWORK

NORTH AMERICA REGIONAL CALL ON SOUND DECISION MAKING ON 3 MARCH 2020

Moderator: Patty Brink, Director of Professional Development, Antitrust Division, US DOJ

Panelists:

1. Jose Luis Ambriz Villalpa, Director General for Mergers, Comisión Federal de Competencia Económica (COFECE), Mexico
2. Deborah Feinstein, U.S. NGA; formerly Director of the Bureau of Competition, US Federal Trade Commission (US FTC), United States
3. Jeanne Pratt, Senior Deputy Commissioner of Mergers and Monopolistic Practices, Canadian Competition Bureau (CCB), Canada
4. Regina Vargas, Competition Advocacy Director, Superintendencia de Competencia (SC), El Salvador

1. Engagement during decision-making processes

Summary: The agencies encourage regular and robust communication between case handlers and decision-makers. Case handlers engage frequently with decision-makers to help keep them informed. This prevents situations in which case handlers and decision-makers have significant misunderstandings late in the review process.

Parties are encouraged to engage directly with case handlers, and are typically permitted a direct meeting with decision-makers before a final decision is made. This engagement allows for more fully informed decision-making process.

- Mexico: COFECE's decision-making system encourages case handlers to engage in regular communication with parties and decision-makers. Case handlers are in frequent contact with the Plenum, COFECE's decision-making body, and this communication helps to address the Plenum's concerns before an investigation is complete.
 - COFECE, for example, described the Tyson-Pilgrim's Pride investigation in 2015, when the technical staff understood the Plenum's concerns only late in the review process.
- Case handlers are also in regular communication with parties to alert them of concerns and provide opportunities to offer remedies.

- El Salvador: Merger review processes at the SC are currently undergoing significant changes as the SC works to adapt administrative procedural laws to competition law. The new law allows for two sessions or audiences: one after the information-gathering process is complete; and the second before the case team's technical file is transferred to the Board of Directors, the SC's decision-making body. The SC's current rules allows less direct engagement with between parties and case handlers than at other agencies.
- Canada: The CCB's system can be described as a one-commissioner prosecutorial model, in which the commissioner makes the ultimate decision about whether to bring a case before a competition tribunal. After a supplemental request for information, the case handlers, economic team, and legal counsel will engage with the commissioner and provide an assessment of the evidence collected, views of the economists and any econometric analysis, and a discussion of legal risks. The parties also typically have the opportunity to meet with case handlers and the commissioner before a decision is made to initiate litigation.
- U.S.: The US FTC is a bipartisan commission with five commissioners. Merger investigations typically have two key decision points: (1) a decision to issue a Second Request. The director of the Bureau of Competition in consultation with legal and economic staff recommends to the Chair (head Commissioner) the issuance of a Second Request. The Chair must approve such a decision. (2) A decision on whether to settle a case, allow the merger, or proceed to litigation: This decision must be made by the full Commission.

Evaluation at Key Points in an Investigation

Summary: Regular meetings among case handlers, management, and decision-makers allow teams to make quick assessments and determinations about which theories of harm should no longer be pursued. Decision-makers should be fully briefed to prevent misunderstandings with case handlers.

- Canada: The CCB's process endeavors to focus early on the most likely theories of harm. In the first 30 days, the case handlers will have constant interaction with the economic staff and legal counsel to review information from the notification filing and initial market contacts and quickly assess the more likely theories of harm. After a supplemental request for information is issued, engagement will focus on the strongest theories and determinations of what needs further investigation. During this time there are short weekly meetings between case teams and managers. There may also be briefings with the commissioner to review evidence, staff and economic assessments, parties' arguments, and a discussion of litigation risks. In cases in which litigation is likely, a governance

committee will focus on broader, cross-cutting enforcement equities and resource implications.

- Mexico: COFECE's merger unit has only 20 people, and there is a close relationship between the case handlers and managers. Case handlers will have almost daily meetings with managers to provide updates and build theories of harm. Each team will also meet with the director general to discuss the strongest theories of harm and identify next steps in an investigation. For cases likely to raise concerns, the director general and technical secretariat will meet with the Board of Commissioners to discuss potential remedies. This allows the case team to present parties with potential remedies that have already been previewed by the commissioners.

To what extent are parties updated on case handlers' findings and eventual recommendations? What are the roles of parties in agencies' review processes?

Summary: Competition agencies are most likely to make the best and most informed decisions when there is frequent engagement with parties. Most agencies endeavor to share theories of harm with parties, though all agencies also protect the confidentiality of third-party information. El Salvador's SC differed in important respects from other agencies in its more limited scope of engagement between case handlers and parties.

- El Salvador: The current rules in El Salvador significantly limit the ability of case handlers to engage with parties. Parties may submit proposed remedies to the superintendent, but the superintendent and case handlers are not authorized to discuss the existence of concerns and whether the parties' proposed remedies might sufficiently address concerns. Instead, discussions of remedies are left almost exclusively to the SC's Board of Directors. El Salvador may in the future consider additional reforms to allow for more robust communication between the superintendent and parties.
- U.S.: The U.S. agencies value transparency and engagement with parties in the merger review process. Both the U.S. FTC and the U.S. DOJ cannot decree a final, non-appealable resolution—those decisions are ultimately made by a court. The case team needs to make the most informed recommendation possible, and benefits from understanding outsiders' perspectives. Parties also benefit when a case team lays out the theories of harm and provides an opportunity to respond.
 - While there are limits on third-party information that can be shared with parties, parties should be able to generally understand the concerns that are raised in the industry.
 - It is important for parties and case teams to have direct discussions, often without the presence of senior decision makers.

- The benefits of including business people in meetings will depend upon the circumstances. Business people are unlikely to contribute when meetings focus on legal or economic findings, and their presence may increase the possibility of improperly sharing confidential information between the merging companies. However, business people can add significant value if discussions focus on specific issues, such as the rationale for the transaction or future plans.
- Mexico: COFECE encourages constant and regular communication with parties. Mexican law requires COFECE to hold one mandatory meeting (“communication of possible concerns”), but in practice, COFECE does much more in complex cases. Meetings with parties can be as often as every week, and staff are encouraged to share theories of harm at early stages. Parties can meet with board of commissioners at any stage of analysis. COFECE, like other agencies, is limited in the third-party information that can be shared with parties due to strict confidentiality rules.

How do agencies make decisions in the really close and difficult cases?

Summary: The most difficult cases are ones that are closest to the line and where there is often diversity in views about whether to challenge the transaction. The adversarial model of decision-making in Canada and the United States, where decisions are ultimately made by a court, encourages an assessment of litigation risks throughout the review process.

- U.S.: In its most difficult investigations, U.S. DOJ has had staff engage in mock arguments in which case handlers form two teams and present best arguments for each side. U.S. DOJ has also experimented with “pre-mortems,” in which case handlers discuss their biggest concerns about how a case may be lost during litigation. The U.S. FTC may bring in their litigation experts and ask for their assessments, or may bring on an external economic adviser and get that person’s perspective about the strength of arguments that could be presented to a court.
- Mexico: After COFECE’s experience in the Tyson-Pilgrim’s Pride merger, COFECE emphasizes the need to keep the Plenum fully informed and understand the commissioners’ views of documents and data in the case file.
- El Salvador: In difficult cases the Board of Directors can ask staff to deepen specific areas of analysis. It may also request the use of industry experts.

Can agencies quickly and efficiently close investigations if it is evident there are not strong competitive concerns?

Summary: Competition agency staff endeavor to be efficient in closing investigations that do not pose competitive concerns. However, case handlers must do more than satisfy themselves, they must also convince decision-makers that an investigation should be closed. This process can take time.

- Canada: The CCB will try to make early calls to take particular theories off the table. However, it is often difficult to make quick assessments within the first 30-day review period.
- Mexico: There are a number of steps that must be completed before an investigation can be closed. The board of commissioners ultimately makes the decision about whether a merger can be approved or blocked. Even in easy cases, the technical team must send information explaining why the merger does not pose competitive concerns.
- U.S.: Staff endeavor to be efficient, but the process of closing an investigation can take time, particularly at the FTC. Staff need to anticipate commissioners' concerns and supply sufficient information to ensure all decision-makers are comfortable with closing the investigation. The process may go more quickly at DOJ where there is a single decision-maker.

Concerns about governmental influence in decision-making:

Summary: An agency's institutional design plays an important role in protecting against governmental influence in decision-making. El Salvador's SC stresses the importance of transparency in showing that decisions are made on technical and legal grounds rather than on political grounds. Mexico's constitutional reforms in 2015 created COFECE as a constitutional autonomous body, which protects its autonomy from the executive branch.

- El Salvador: At the SC, there is only one head of the board of directors who is employed full-time; the remaining board members are employed part-time and often have employment outside the board. This can create a perception of outside influence or conflicts of interest in decision-making. Decisions of board appointments are also made by the president, and there are no current written procedures to guide these appointments.
 - The SC strives to make its decisions transparent to lessen concerns about political influence. Decisions are often made available publicly online, and

show that decisions are the product of technical and legal analysis rather than political influence.

- Mexico: The autonomy of Mexico's competition agency has improved significantly over time. The previous competition agency, the CFC, relied on the executive branch for its budget. After constitution reforms in 2015, the CFC was eliminated and COFECE was created as a constitutional autonomous body. Its budget is determined by a chamber of deputies. Leadership appointments are made on the basis of rigorous technical tests and evaluation. Although the current federal government has tried to centralize decision-making, COFECE's institutional design provides protections against political influences.

INTERNATIONAL COMPETITION NETWORK

SOUTH AMERICA CALL ON SOUND DECISION MAKING ON 16 MARCH 2020

Overview

The Regional webinar on Sound Decision Making for South America took place on March 16th from 11:00 to 12:30 (Brasília Time) and gathered a global audience of 51 participants among NGAs and representatives from NCAs.¹ CADE/Brazil was the lead agency for the region in the organizing of the webinar and rates the event as very successful in its purpose of providing a platform for the discussion and exchange of experiences on sound decision making in merger review. The topics under discussion encompassed transparency, independence of the NCAs, evidence-based decision making and the relationship between the NCA and other stakeholders. In addition to speakers from South America (Brazil and Colombia), the webinar benefited from a presentation of a Mexican NGA and interventions from the audience in the Q&A session.²

Agenda and Key takeaways

1 - Webinar overview

Moderator: Mr. Fábio Lopes de Sousa, Consultant on Competition and International Organizations at CADE/Brazil

The moderator welcomed the participants and provided a brief introduction on the regional webinar project organized by the MWG.

2 – Independence and transparency in merger analysis

Mrs. Cristiane Landerdahl de Albuquerque, Head of Merger and Antitrust Unit for regulated markets at CADE/Brazil.

¹ It was not possible to identify all the jurisdictions represented in the webinar, but from the general information concerning registered participants, we can conclude that not only South American participants attended the event but also other jurisdictions, such as France, the US, UK and Egito.

² The webinar was designed aiming at gathering a range of speakers considering wider geographical diversity and different levels of experience in South America. However, due to the COVID-19 crisis, some of the speakers had to change their schedules and CADE had to made amendments in the agenda.

In its presentation, Mrs. Cristiane de Albuquerque stated that there are two elements that she considers as key for achieving sound decision: clear rules and independence. The presentation focused on how these elements are applied in Brazil by the competition authority. Regarding clear rules, the Brazilian competition law enacted in 2012 sets out the main principles for merger review. According to the law, CADE has powers to review not only mergers, but also acquisitions of minority shares and contracts between competitors. The law also establishes thresholds for mandatory notification, deadlines for merger review and procedures adopted in merger analysis. Aside from the competition law, CADE has issued several regulations and guidelines to make clear how the analysis is conducted and what to expect from the competition authority. These instruments include Regulation on fast track proceedings (2012), Guidelines on Gun Jumping (2015), Guidelines on horizontal mergers (2016), Regulation on contractors between competitors (2016) and guidelines on non-fast track proceedings (2017).

Concerning independence, she described CADE's structure regards investigation and assessment of mergers. The agency is composed by a Tribunal - formed of 6 Commissioners and the President - and the General Superintendence which is under the responsibility of the General Superintendent who conducts all the investigate work. She noticed that Commissioners, the President and the General Superintendent are appointed by the Brazil's President and confirmed by the Senate and that they have their own mandate in order to ensure that the agency is not affected by external influence. She noticed that any decision that is different from clearance must be submitted to the Tribunal for further decision by the Commissioners. Decisions to clear a merger can either end at the General Superintendence or be reviewed by the Tribunal under a Commissioner's request. The law also establishes procedures for third parties to challenge decisions.

3 - Evidence based decision making and merger trends in digital markets

Mr. Gesner de Oliveira, Partner of the Consulting Firm GO Associados/Brazil;

The presentation covered three main points: Types of evidence that the Brazilian Competition authority obtains when assessing mergers, the relevance of quantitative evidence the relationship between competition and regulatory agencies.

Mr. Gesner noticed that the Brazilian law provides enough powers to the NCA to obtain enough and relevant information from the merging parties, consumers and third parties in the merger review process. He noticed that the quality of this information is generally good, but it must be interpreted considering the interest of the party that provided the information. Regulatory agencies can be another important source of information and Brazil has been progressing in terms of the legal framework for these agencies.

Regarding the relevance of quantitative evidence, he stated that there are some practical difficulties to measure elasticities and undertaking a complete hypothetical monopolist test and in many cases this test is not really undertaken. Usually one considers a set of pieces of evidence to conclude the analysis, some exercises simulations counterfactuals, which are useful but are only part of sound decision. He observed that jurisprudence in Brazil has been showing improvements in terms of quantitative analysis and are adequately combined with qualitative analysis.

Concerning the relationship between competition and regulatory agencies, Mr. Gesner de Oliveira, discussed the possible interaction between CADE and the authority for data protection that is in process of implementation in Brazil and the challenges associated with qualitative and quantitative analysis.

He discussed the difficulties regarding finding a balance between social welfare and privacy. He noticed that CADE has been promoting discussions about the difficulties associated with analyzing digital platforms related to information asymmetries, zero prices and quality measures. In conclusion, he suggested that the cooperation between the competition and the regulatory agency for data protection should take into consideration scale and scope gains of the two areas that perhaps would be maximized if this analysis was integrated.

4 - Transparency in merger analysis

Mrs. Aura Garcia, Economic Advisor to the Superintendent of Industry and Commerce – SIC/Colombia

Mrs. Aura Garcia focused her presentation on the importance of transparency for achieving sound decision. She discussed the main tools adopted by SIC/Colombia to ensure transparency, which are SIC's webpage, guidelines, and meetings held with undertakings during mergers analysis. According to her, in addition to providing transparency, these tools contribute for building trust and compliance.

Concerning SIC's webpage, Information on case files are updated in at most three days after a case is filed. Under this deadline, a summary of the merger is published in SIC's webpage, except those that concerns public safety issues. SIC also keep an updated database containing all previous decisions and approaches taken which contributes for providing legal certainty.

As regards the guidelines, SIC published its merger guidelines in 2018 to provide transparency on how SIC reviews mergers in phase one and phase two, including how it defines markets and assesses competition effects. This guidance has been particularly helpful because it has introduced the definition of potential competitors. In addition, the guidance presents more detailed information on how the competition authority considers coordinated effects in its analysis. Prior to the guidelines, there were only general criteria, whereas now SIC and undertakings have an objective tool. SIC also noticed that the guidelines encourage merging parties to come to the authority for a meeting before the merger notification.

Meetings between the undertakings and SIC contribute to the understanding of the market and help clarify the information. The meetings also contribute to the process of updating the parties regarding the merger analysis and by enabling them to discuss the remedies where appropriate. Depending on the case, SIC might also meet with other stakeholders to obtain further information.

She also shared that a recently enacted law in Colombia makes mandatory for SIC to charge fees for merger notification and the authority is working to adapt all the instruments to reflect these changes.

5 - Transparency - Tools and practices to ensure clarity in disclosure of procedures and evidence

Mr. Fernando Carreño, Head Partner in the Competition and Antitrust practice of Von Wobeser in México

Mr. Fernando Carreño started his presentation acknowledging that COFECE/Mexico is an open and transparent authority and his presentation focused on the efforts taken to achieve even more transparency.

He presented general information on the merger review process, presenting information regarding the economic thresholds that stipulate mandatory review. These thresholds are generally related with economic aspects of the transaction.

He described that one difficulty that Mexico had in the past in terms of transparency was related to a regulatory provisions that allowed COFECE's Technical Secretariat, which is the last instance in merger review, to express potential concerns either orally or written. According to him, oral statements might create difficulties for the parties to clearly understand the concerns and define specific remedies. For instance, COFECE blocked a the Soriana/Walmex case, which was challenged and revoked in court due to the argument that the possible risks of the transaction to the competition process must be communicated in writing to guarantee the parties the right to propose clear remedies. Since August 2019, the Mexican Antitrust Law Regulatory Provisions have been amended and COFECE must present notify concerns to the parties by a written statement. Mr. Carreño concluded that Mexico is willing to recognize when there is room for providing more transparency and that clear communication between merging parties and the competition authority is key for sound decision.

6 – Questions & Answers session

After the presentations, an interactive Q&A session took place. Speakers answered answers from the audience and shared complementary aspects of their presentations among each other.

Speakers' short bio:

Mrs. Aura Garcia: She is an Economic Advisor to the Superintendent of Industry and Commerce in Colombia. She also works as a professor in microeconomics and competition law at Javeriana and Externado universities. She holds a MSc. in Economics, competition and regulation from Tilburg University.

Mrs. Cristiane Landerdahl de Albuquerque: She is Head of the Merger and Antitrust Unit for Regulated Markets at CADE since 2012. She holds a bachelor's degree with a double major in Economics and Government & Politics from the University of Maryland and a master's degree in Economics from the Federal University of Santa Catarina.

Mr. Fernando Carreño: He is Head Partner of the law firm Von Wobeser y Sierra, S.C. He has more than 20 years of experience in competition and antitrust, as well as in corporate, M&A's, and joint ventures. He holds an LLM in Law by the University of Chicago.

Mr. Gesner de Oliveira: He is Head Partner of the Consulting firm Go Associados and Professor in the Economics Department at Fundação Getúlio Vargas. He holds a PHD in Economics from University of California and has twenty years of experience in consulting for international and national institutions in several areas of microeconomics and macroeconomics.



REPORT ON THE ICN MWG WEBINAR ON SOUND DECISION MAKING

A. INTRODUCTION

1. The Competition Authority of Kenya hosted the ICN Merger Working Group Webinar on Sound Decision Making, 2020.
2. The event took place on 2nd April, 2020 via Zoom, an online conferencing tool.
3. Being a first of its own, the Authority received a tremendous response with a registration of over one hundred and sixty-nine (169) and the platform could only accommodate a maximum of one hundred (100) participants.
4. The Webinar involved four (4) presentation topics presented by three (3) panellists with question and answer sessions. The South African panellist pulled out of the Webinar presentations after forwarding their slides due to a lockdown in the country occasioned by Covid-19.

B. PROFILES OF PANELISTS

5. The panelists who prepared the presentations were;
 - a. **Grashum Mutizwa:** He has worked with the Competition Commission of South Africa for 13 years. Eleven of these, have been in the Mergers and Acquisitions Division at various levels, including his current Principal Analyst position. He has gained experience over the years in investigations, analysis and supervision of many complex mergers including adjudication. Grashum has a master's degree in competition economics from Kings College, London and is also a qualified Chartered Financial Analyst from the CFA Institute, USA.
 - b. **Luyamba Mpamba – Kapembwa:** She is the Director of Mergers and Monopolies at the Competition and Consumer Protection Commission of Zambia (CCPC). She has eleven years' experience in Competition and Consumer Protection related work whose focus has been analyzing unfair trading practices, anti-competitive trade

- practices and merger regulation. She has a Bachelor Degree in Economics, and a Master of Arts in International Business & Administration.
- c. **Raphael Mburu:** He is the manager, Mergers and Acquisitions Department, Competition Authority of Kenya (CAK). He is responsible for economic analysis of mergers including private equity investments, venture capital and joint ventures. He has completed graduate studies in Economics for Competition Law and EU Competition Law from King's College, London and in Quantitative Methods for Competition Analysis from Barcelona Graduate School of Economics. Mr. Mburu possesses advanced skills in Competition Law dealing with regulation of market structure. He has played the role of a panelist at several ICN workshops including 2019's ICN MWG Workshop in Tokyo and this year's Australia workshop.
 - d. **Linus Melly** is an astute Economist, currently working as a Senior Analyst, Mergers and Acquisitions department of Competition Authority of Kenya. He is responsible for economic analysis of mergers, merger remedies and vertical restraints, gathering intelligence on merger trends, assisting in gathering information on unwarranted concentration of economic power, collecting data and information for merger analysis, tabulating data on merger applications and drafting reports on merger applications. He recently spearheaded the just concluded review of the Market Definition Guidelines and has been championing the Authority's migration to e-filing.
6. Grashum prepared a presentation on Evidence Based Decision Making, Luyamba on Transpaency, Raphael on Independence and Linus prepared slides for Anti-Bribery Laws. The presentations were made by three (3) panellists. The fourth panellist, Grashum pulled out due to Covid-19 lockdown in the South Africa. To fill in the gap, Mr. Raphael Mburu made a brief presentation on an overview of the topic that was to be presented by Grashum.

C. OVERVIEW OF THE PRESENTATIONS

i. Evidence Based Decision Making by Grashum Mutizwa

7. The presentation focused on best practices in ensuring probative value of evidence looking at empirical analysis. It also mentioned the powers bestowed on the Competition Commission of South Africa (CCSA) through various sections of the Competition Act on gathering of evidence. The CCSA Act mandates the Commission to compel parties to provide information and may go ahead to acquire search and seizure warrants where it deems necessary.

8. Grashum noted that the CCSA relies on empirical evidence, market intelligence and testing of remedies before they are imposed. He cited *MArinvest S.r.l and Ignazio Messina* Merger. The CCSA also engages expert economists in complex cases, that are likely to be challenged to give expert opinion regarding the case. He gave the example of *Greif/Rheem; Pioneer/Pannar; Mediclinic/Matlosana Mergers*.

ii. Transparency by Luyamba Mpamba

9. In Zambia, tools and procedures put in place to ensure transparency in the merger handling process include; engaging the parties to a merger during the analysis process, balancing the right to confidentiality as well as communication of decisions. The Competition and Consumer Protection Commission of Zambia (CCPC), also engages other stakeholders likely to be affected by a merger by writing to them. If the stakeholders do not respond in time, it is deemed that they are not likely to be negatively affected by a merger.

iii. Independence by Raphael Mburu

10. Mr. Mburu stated that the Competition Authority of Kenya has distinct judicial and administrative powers and is granted independence by the Competition Act (the Act). It, however, depends on the government for funding. The panellist went ahead to demonstrate how the Authority engages government in its merger review process.
11. Further, Mr. Mburu, stated that the Act applies to all persons including the government, state corporations and local authorities in so far as they engage in trade. In analysing merger cases, the Authority looks at public interest considerations to support public policy objectives of the government. Generally, the Authority's decisions are based on neutral, transparent and objective evidence devoid of any external influence. To buttress transparency and independence, the Authority publishes its decisions in the Kenya Gazette and its decisions are reviewed by the Competition Tribunal and the High Court of Kenya.

iv. Anti-Bribery Laws by Linus Melly

12. The presentation centred on understanding the existing anti-bribery regulations, deterrence measures against bribery; and the measures CAK has put place against corruption and especially bribery in handling of mergers. Melly observed that that the merger process is prone to corruption. However, being an amorphous topic each jurisdiction had a way of dealing with bribery threats and cases. In Kenya for instance

Section 100 of the Act empowers the Authority to develop a Code of Conduct to guide stakeholder interactions. Additionally, the Bribery Act, anchored with the Ethics and Anti-Corruption Commission, guides on what a bribery is and how not to engage in bribery. It also stipulates measures likely to be taken against a person involved in a bribery.

13. On deterrence, the Authority has put in place case handling measures to curb bribery. The Authority's process and decisions can be challenged at the Competition Tribunal and the High Court of Kenya. The merger handling process is predictable and clear.
14. On enforcement, all of the Authority's decisions are made by the Board that exercises due diligence as guided by the Act before a decision is arrived at. Stern action is taken against any officer found engaging in corruption in accordance with the Bribery Act and the Code of Conduct.

D. CONCLUSION AND RECOMMENDATIONS

15. The Webinar received many questions from almost all the Southern Africa participants and was an indication that the Webinar topics were well delivered and understood. In addition, some of the Webinar attendees were not members of the ICN MWG. Rather, they were persons who showed interest in the Webinar topics after the Authority publicized the event.
16. From the feedback of the Webinar, it is therefore recommended that;
 - a. The ICN increases its awareness activities to reach out to more stakeholders who might be crucial to the merger activities;
 - b. More Webinars should be arranged in this manner as relevant discussions take place when people from the same region meet. However, this should not incapacitate the centrally organized ICN MWG activities;
 - c. The ICN MWG should dedicate more time to question and answer sessions.

INTERNATIONAL COMPETITION NETWORK

ASIA PACIFIC REGIONAL CALL ON SOUND DECISION MAKING ON 24 MARCH 2020

Date: March 24, 2020 (hosted by the JFTC)

Moderator: **Ms. Kaoru Harada**, Senior Staff for Merger and Acquisition, Japan Fair Trade Commission (JFTC)

Speakers: **Mr. Nobuaki Ito**, Senior Associate, Nagashima Ohno & Tsunematsu, NGA, Japan

Mr. Haw-Kae (Charles) CHEN, Inspector, Department of Service Industry Competition, Taiwan Fair Trade Commission (TFTC)

Mr. Ng Mingjie, Deputy Director, Policy and Markets division, Competition and Consumer Commission of Singapore (CCCS)

Summary of Presentations

This regional webinar was led by the UK CMA (Competition and Markets Authority) and aimed to highlight Sound Decision Making in different regions of the world. 4 topics were provided by the CMA and they are: (1) **Transparency** (tools and practices to ensure clarity in disclosure of procedures and evidence), (2) **Evidence-based decision making** (best practices in ensuring probative value of evidence), (3) **Independence** (managing relationships with stakeholders) and (4) **Anti-bribery laws** (best practices in ensuring compliance with anti-bribery law).

In the Asia-Pacific regional webinar, 3 distinguished speakers made presentations. The first presenter was Nobuaki Ito, Japanese NGA. He overviewed Japanese trends regarding the topics of transparency, evidence-based decision making and independence, based on his private/public experiences. The second presenter was Haw-

Kae (Charles) CHEN of TFTC. He focused on the topic of evidence-based decision making with a case study (Partyworld/Holiday). The third presenter was Ming-Jie of CCCS. He focused on the topic of independence explaining how his authority keeps it. The main points of their presentations are outlined below.

1) Mr. Nobuaki Ito (NGA, Japan)

The speaker overviewed the JFTC's practice to ensure sound decision making from the viewpoint of transparency, evidence-based decision making and independence. As regards transparency, the JFTC's review process is generally considered quite transparent. This is because it has published guidelines for the procedures and substantive assessment of the merger review, and a number of major decisions. This is also because the case team communicate with merging parties closely even during the pre-notification stage.

As regards the topic of evidence-based decision making, the JFTC may request a wide range of documents and information from the merging parties, including internal documents, depending on the characteristics and complexity of the cases. The JFTC often sends written questionnaires and/or has face-to-face interviews with third parties such as customers and competitors. In addition, the JFTC's M&A division has its own economist team, and all merger cases will be reviewed by the economist team as well as the case team. In relatively complex cases, the economist team issues RFIs and conducts economic analysis.

As regards the topic of independence, the JFTC has sole authority to review transactions from the competition law perspective and there is no intervention process by other regulators. While another regulator may submit its opinion to the JFTC during the review period (as a third party), the JFTC is not bound by the opinion. There is a proposal, however, to make one exception to the JFTC's sole authority in favor of mergers between regional infrastructure companies. Under the proposal, mergers between regional banks and those between bus companies which meet certain requirements will be exempted from JFTC's merger review.

2) Mr. Haw-Kae (Charles) Chen (TFTC)

Background for Cashbox Partyworld/Holiday

The merging parties, Cashbox Partyworld and Holiday, filed the merger notification at the end of February 2019. Cashbox Partyworld intended to acquire 100% shares of Holiday. The merging parties also had filed the merger notification in the past but TFTC made the decision to prohibit the acquisition in April 2009.

Market Definition & Market Power

KTV service provides audiovisual and singing equipment for entertainment. Cashbox Partyworld and Holiday were the top two enterprises in Taiwan's KTV service market, and the market share of the merging parties was almost 50% in Taiwan. The TFTC made a prohibition decision for the last merger application because the merging parties would have had a dominant position in Taiwan's KTV service market and would have had an incentive and capacity to increase prices after the acquisition.

Evidence gathering and analysis

The TFTC asked the merging parties to provide more business data such as service price tables of all the merging parties' branches. The TFTC also held seminars and interviews to request opinions from the third parties including relevant competent authorities, music companies, KTV product agents and consumer protection groups. The TFTC also initiated the consumer behavior survey of KTV service to gather information like consumer preference, the maximum service fee and the transportation cost which the consumer is willing to pay. The relevant competent authorities provided raw data such as the yearly turnover of all enterprises providing KTV service for the TFTC's further economic analysis. Based on this evidence, the TFTC finally made the decision to prohibit the acquisition.

3) Mr. Ng Ming Jie (CCCS)

In general, competition agency's independence from the government is important for the competition authority to ensure objective and sound decisions on its cases that are free from political or private interests, though such independence may be expressed differently depending on the context of individual country/region.

In the case of Singapore, the competition authority - the Competition and Consumer Commission of Singapore (CCCS) - is independent in various aspects. Institutionally, it

is a separate entity established under the competition law. CCCS reports its activities to the government but it is independent from the government. Financially, the funding of the CCCS is allocated and not subject to any government influence. Organizationally, the chairman and members of the Commission of the CCCS are appointed by the Minister for a limited term and based on their ability, qualification and experience, while the day-to-day operations are delegated to staff who are directly recruited and employed by the CCCS. Operationally, the CCCS makes independent decisions on whether to investigate, whether an infringement has occurred, and the necessary directions including financial penalties.

It is these aspects of independence from the government that safeguard the CCCS's ability to make sound and objective decisions on its cases, including for mergers.

Summary of Q&A session

Following the presentations above, a Q&A session was held. The summary of it is as below.

Question 1 (to all authorities, from Koren Wong-Arvin, Qualcomm)

Antitrust is fundamentally an economic analysis, and the consumer welfare standard, in particular, tethers antitrust to the methodological rigors of economics in terms of theories that can be tested and either supported or rejected with empirical and other evidence. How does the JFTC and Competition and Consumer Protection Agency of Singapore test their theories of harm? What types of economic evidence, how many Ph.D. economists are there to do the analysis, and what do the Agencies do when there is documentary evidence that is contrary to the economic analysis?

What types of evidence are most helpful from the investigated and third parties? How much weight is given to the investigated parties' economic analysis, particularly when the underlying data is provided such that the Agencies can re-run the analysis themselves?

(JFTC)

In the JFTC, 2 to 4 economists from the economic team in the M&A division conduct economic analysis for merger cases that potentially diminish competition. Usually, 1 or 2 economists in the team have a Ph.D. degree in economics. The economist team joins about 10 cases to conduct qualitative and quantitative economic analysis.

Relatively speaking, quantitative analysis has more weight in the economic team's assessment. The normal steps of an economic analysis are that, first, the economic team constructs high processes based on economic theories, and the second step is empirical using publically available data and merging firm's data.

The economic team makes an economic analysis report independently, which is attached to the case team report. Also, the economic team checks all reports made by case teams and makes comments from the viewpoint of economics. If the economic team finds their results are contradictory to documental evidence, the economic team first discusses with the case team why this has happened. This is sometimes because the dataset is not complete, or the economic team has a different assumption from their counter parts in the case team.

In many situations, the case team and economic team can resolve the gap between the empirical and qualitative findings. If the case team decides to emphasize the economic team's findings, the case team may take the report. However, if the gap between the empirical and the qualitative findings cannot be closed, then the economic team's report is still attached to the case team report, and the decision maker decides which evidence should be adapted.

(Japanese NGA)

In general, responses from customers are most helpful for the JFTC to conclude their cases. However, economic analysis submitted by the parties is also really helpful especially when the responses from customers are not so decisive. When the merging parties submit economic analysis, the JFTC usually asks the parties to submit the underlying data and the program used to confirm whether the analysis is plausible or not.

(CCCS)

I think my answer would not differ too much from what has been shared. The framework

for competition assessments is quite clear and there is at least some convergence internationally. In every case, we consider what kind of theory of harm we should apply and whether the evidence would support that theory. As for the evidence, we look for hard data (e.g., market shares) and soft data (e.g. feedback from customers). Aside from the parties, we also get data from and speak to industry players and relevant government agencies. We may contact other competition authorities to explore the theories of harm that they are considering.

Regarding the question on how we should address the situation where the economic team found a result which contradicts documental evidence, it also could happen in different ways (e.g., the market share is high, but no concerns are raised on the merger). My answer to that question is that there is no magic formula. We try our best to collect as much evidence as we can and come to a decision after considering all the evidence.

(TFTC)

The economic analysis plays a more important role when the TFTC makes a decision on the merger case. As for the case of Partyworld/Holiday which I presented, the TFTC's economic analysis division involved the KTV service merger case team from the beginning and cooperated with the investigation division. We had many results of economic analysis based on gathered evidence, information and documents. For example, we calculated HHI, market shares and the upward pricing pressure index (UPPI) which show the unilateral effect (e.g., increase of price) caused by the acquisition. We used all kinds of information including these economic analyses to make a conclusion.

Of course, the TFTC has an economic analysis team and they collaborate with the case team. They involve in the case from the beginning, use the data and help the case team to make a final decision.

Question 2 (to TFTC, from the moderator)

What was the purpose, process and benefit of a consumer behavior survey of the KTV service in the Partyworld/Holiday case?

(TFTC)

When we define the market, we usually consider both demand and supply substitution. Generally speaking, to get the information for supply substitution will be easy. However, the TFTC treated this case as a very serious one, so we tried to define the proper market considering the demand substitution. Therefore, we wanted to do the survey and get data to use the SSNIP. That is why we did the survey of the customer behavior in this case.

Because we did not have professional staff who can do the survey, we chose to outsource and cooperate with customer survey companies to finish the survey. Of course, we helped the companies by providing lists of questions. Thanks to that survey, we had information to calculate the SSNIP in order to define the proper market as well as information about other customer behaviors such as considering transportation costs, etc. That information was really helpful for the TFTC to make a final decision.

Question 3 (to CCCS, from the moderator)

Have there been any actual cases to illustrate the authority's independence from the government?

(CCCS)

One example is a merger decision in 2011 with regard to an anticipated merger, the proposed joint venture between Greif International Holding B.V and GEP Asia Holdings Pte Ltd, where the parties' key area of business is the supply of industrial packaging in Singapore and Malaysia.

In this case, after the CCCS proposed a decision to block the merger, the parties appealed to the minister and argued that the joint venture should be exempted on the public interest ground, that is, the merger would bring wider economic progress and public benefit to Singapore. Eventually, the parties' appeal was rejected by the minister after considering their submission relative to the submission of the Commission. This case illustrates how it is also important for the government to be independent from the Commission to ensure that its decision for such appeal remains objective.

Question 4 (to the Japanese NGA, from the moderator)

As a practitioner, do you have any suggestions to improve the transparency of the JFTC's review process? How about evidence-based decision making?

(Japanese NGA)

The JFTC review process is quite transparent and there is not much room to improve. But as a practitioner, it will be better if the JFTC publishes its decisions in more detail, for example, what kind of evidence was used to support the decision.

As regards evidence, the practice of requesting internal documents, especially e-mails, could be a bit more streamlined. I think information exchange among competition authorities through the ICN regarding how to gather and use internal documents in merger review would be a good option to improve practice.

Comment (from TFTC)

In the Partyworld/Holiday case, you may wonder if the TFTC considered remedies instead of its prohibition decision or not. The TFTC has not made any decisions which include structural remedies in merger cases in the last 20 years. We did not have any suggestions of behavioral remedies which could help overcome doubts that the merging parties would have the incentive and capacity to increase prices. Therefore, the TFTC made the decision to prohibit the acquisition.

INTERNATIONAL COMPETITION NETWORK

EUROPE REGION CALL ON SOUND DECISION MAKING ON 18 MARCH 2020

Introduction

In conducting a merger investigation, it is not only important what the ultimate decision is, but also how that decision is determined. This is essential for both the merging parties under investigation and concerned third parties. Having appropriate procedures for the determination of cases ultimately leads to trust in competition agencies and affects their reputation for fair and sound decision making.

A panel of speakers chaired by the UK's Competition and Markets Authority (**CMA**) presented their experiences related to separate aspects of sound decision making from different jurisdictional perspectives on 18 March 2020. Rachel Brandenburger, former Special Advisor, International to the US Department of Justice's Antitrust Division and currently Visiting Research Fellow at Oxford University's Institute of European & Comparative Law, moderated the discussion. The CMA and the Norwegian, Portuguese and Irish competition authorities made compelling points, highlighting both common and unique qualities of each jurisdiction. The following is a list of speakers that constituted the panel, in order of presentation:

Competition Authority	Speaker
The CMA	Eleni Gouliou, Director, Mergers
The Norwegian Competition Authority	Trygve Eiken, Senior Adviser
The Portuguese Competition Authority	Ricardo Horta, Senior Legal Adviser Rita Prates, Legal Adviser
The Competition and Consumer Protection Commission (CCPC), Ireland	Ibrahim Bah, Director, Competition Enforcement

Evidence-based decision making (Eleni Gouliou, CMA, UK)

Evidence is the core of assessing merger cases and is therefore vital to decision making. The CMA, like other authorities, has a number of tools at its disposal that enable it to collect and assess evidence.

During investigations the CMA gathers information in several different ways and formats. In anticipated cases, merging parties complete a merger notice form where pertinent questions are asked about the transaction and their activities.

Questionnaires are also sent to the merging parties and third parties for responses which form an important part of the evidence base.

The CMA can also give notice to any person under section 109(1) of the Enterprise Act 2002, requiring that person to give evidence to the authority at a specified date and time in person. Such powers are used rarely. More commonly, section 109(2) is used to give notice to any person requiring them to produce specified documents in his/her custody or control at a specified time and place.

The CMA also makes use of economic and econometrics data in many cases, as a complement to other forms of qualitative evidence. These can take the form of complex technical analyses to estimate, for example, the upward pricing pressure generated from a merger, as was used in the recent high-profile Sainsbury's/ASDA prohibition decision.

Large consumer surveys are also conducted where appropriate. These were also done in the Sainsbury's/ASDA case. The merging parties themselves may carry out their own surveys but they are told by the CMA that the surveys that follow the principles set out in CMA guidelines¹ are more likely to be given evidential weight in the CMA's merger investigations.

The CMA also relies on merging parties' internal documents having specified the parameters to use in identification of documents of most relevance. These can be especially important in the case of dynamic markets where past data might not be a good guide to present and future competition. In such cases internal documents may provide useful insight as to how competition will develop. In such dynamic markets, industry reports are also useful. However, the CMA is careful to interpret particular internal documents which may have limitations. Hence the CMA considers all the merging parties' internal documents in the round, and within the context of other evidence gathered.

¹ [*Good practice in the design and presentation of customer survey evidence in merger cases \(CMA78\)*](#)

Having a good evidence base also involves setting out the CMA's core arguments and evidential analysis for the merging parties to consider before a decision is made. This provides the merging parties with an opportunity to respond to the CMA's concerns. For example, in phase 1 of CMA investigations, for cases that raise more complex or material competition issues, the merging parties are sent an 'issues letter'. The letter presents the core arguments in favour of a reference for a Phase 2 in-depth investigation. This is then followed by an 'issues meeting' where the merging parties are invited to meet with the CMA case team, including the decision maker, and respond to the arguments raised in that letter.

An enhanced level of scrutiny over the CMA case team's recommendations fortifies the evidence analysis process. For example, in phase 1 of CMA merger investigations someone from outside the mergers department is charged specifically with acting as a 'devil's advocate' to comment critically on the case team's recommended outcome.

Transparency (Eiken Trygve Bertin, Norwegian Competition Authority)

Merging parties' right to defence is facilitated by transparency.

Transparency of process ensures that the merging parties do not spend more resources than necessary. The Norwegian Competition Authority has published guidelines to enable merging parties to have a full understanding of procedure and principles to be followed in carrying out any economic analysis.

Transparency informs the merging parties of the details of the case against them. Where initial concerns are found in relation to a merger, the Norwegian Competition Authority sends a first brief statement of objections² to the merging parties within 25 working days of the investigation. After an additional 45 working days (in day 70 of the investigation), the authority then sends a reasoned preliminary decision, detailing the reasons for the prohibition of the transaction, the authority's understanding of the relevant markets and the substantiation of the stated theories of harm.

By law in Norway, there is a general right to access to file in merger cases. Such a right is not limited to the merging parties; the general public also possesses this

² In the language of the Competition Act 2004 this is a mandatory 'notification' to the parties that intervention or prohibition of the merger may take place. The purpose of this notification is to enable the parties to assess and propose any remedies that may resolve the competition issues at an early stage of the process. The first statement of objections explains the reasonable grounds found at that point of the investigation that have led the Norwegian Competition Authority to believe that the merger may lead to a significant impediment to effective competition (SIEC).

right.³ In order to facilitate such transparency, the authority regularly provides the merging parties' lawyers with updated logs of evidence⁴ that it has received from third parties, having removed any confidential information. The key question in determining what third party information is confidential is to what extent others, including the merging parties, may exploit that information for their own business activities. The authority considers whether public disclosure may lead to economic loss for the party the information belongs to, should that information be exploited. The merging parties therefore have access to non-confidential third party evidence throughout the investigation, including those supporting the statement of objections.

Independence (Ricardo Horta, Rita Prates, Portuguese Competition Authority)

The Portuguese Competition Authority is independent from government and has a public interest mission. Its independence allows it to have autonomy over budget, human resources and priorities. Furthermore, none of the authority's funds are allocated by government. Funds are sourced partially from fines and from sector regulators, which provide a fixed percentage of their income every year.

There is, however, involvement from other authoritative bodies in the authority's merger investigations. For example, for merger investigations concerning regulated sectors the authority is obliged to ask the relevant sector regulators for a formal opinion. Such opinions have helped in the understanding of product frames of reference and the effectiveness of potential remedies very often monitored by sector regulators. Whilst the opinion must be considered as part of the merger investigation, it is not binding on the authority. There is one exception to this; merger investigations concerning media are decided by the opinion of the media regulator that aims to ensure media pluralism irrespective of any competitive assessment.

Merger decisions have no governmental interventions, with one exception. Merging parties may make an 'extraordinary appeal' against a prohibition decision directly to the Council of Ministers instead of applying for judicial review. However, such an appeal can only be successful where the government considers that the merger would advance the Portuguese economy in harmony with government strategies, outweighing any adverse competitive effects. In such cases the government consults with the competition authority on remedies.

³ In practice, the merging parties may be afforded greater access to file to enable effective exercise of their rights of defence. Generally, access to file by the public is required by law to ensure transparency and this allows third parties to put forward views on the merger.

⁴ This is generally done on a weekly basis.

Anti-bribery (Ibrahim Bah, The Competition and Consumer Protection Commission, Ireland (CCPC))

Sound decision making is a process that needs to be devoid of any form of corruption. Corruption is understood to be an abuse of a position of trust to gain an undue advantage. Bribery is the practice of offering consideration (usually in the form of money) to gain an illicit advantage.

In Ireland corruption and bribery are criminal offences under the Criminal Justice (Corruption Offences) Act 2018, which addresses a range of behaviours including active and passive corruption that can be investigated by the police.

At government level, advocacy includes awareness through informative websites about corruption, the obligations on public officials in relation to tackling corruption, and government-issued codes of practice for staff that need to be followed by authorities such as the CCPC.

The CCPC has engaged in internal advocacy, taken preventative measures and is cognisant of anti-bribery and anti-corruption laws to protect the decision making process. A number of preventative measures are also taken. For example, all CCPC officials are required to sign an acknowledgement of these codes of conduct. Officials occupying certain positions in government offices, including the CCPC, are required to submit an annual declaration of their interests, including those of related persons such as spouses. This enables identification of any conflicts of interests.

In addition, the governance structure in the CCPC is set in a way to ensure that no single individual can determine the outcome of a merger investigation. Functions are also kept separate to maximise objectivity in decision making. For example, investigative teams are separate from the decision making bodies. There is accountability of decision making as merger decisions of the CCPC prohibiting or clearing with conditions are appealable to courts in Ireland.

The Corruption Offences Act has also set a number of strong deterrents, using strict punitive measures. Penalties include fines but also imprisonment terms up to 10 years.

Concluding remarks (Rachel Brandenburger, Moderator)

Ensuring sound decision making is a challenge, as demonstrated by the presentations, and generally tends to involve a delicate balancing act of potentially competing priorities.

The CMA's use of powers and internal documents as a way of attaining evidence varies from case to case, and raises particular challenges when dynamic markets are being investigated. One size does not fit all.

The Norwegian Competition Authority's assurance of transparency requires balancing stakeholders' right to access to file against confidentiality of sensitive commercial information and the authority's ability to have trust that confidential information will be protected by these stakeholders in the market.

Sound decision making is also supported by laws that keep the process independent and free from corruption. The Portuguese competition authority explained how its decision making processes are insulated from any government intervention, with exceptions expressly stated in legislation.

The CCPC reminded us of the stringent regulations that can be in place to ensure that individuals involved in the decision making process are free from any external influence.

Whilst different aspects of sound decision making were presented separately by each competition authority, all aspects apply equally to all such authorities.

Sound decision making requires attention not just to what guidelines and manuals say but also to what actually happens in practice, as the experiences shared by the four agencies on the panel demonstrated.