International developments

From APEC

APEC's Senior Officials' Meeting 1 was held in Wellington on 1–10 February 1999 to discuss competition policy issues of member nations. Countries presented reports covering their own experiences with the introduction or enforcement of competition policy, or alternatively discussed general policy considerations. The following summarises the major themes of some of these reports.

Introducing competition policy — the Philippines

The Philippine report discusses the country's experience with introducing competition policy. Its policy is regulated generally by the Philippine Constitution, and in certain specific areas by various statutes — there is no formal policy of competition law. Recently, however, there have been attempts at regulatory reform. These reforms have been in response to certain concerns, including the fact that Philippine business relies heavily on monopoly rents and anti-competitive devices to remain profitable, and that there are many bureaucratic barriers to entry.

The Philippine Government has attempted reform in several ways. It has committed to reducing tariffs to a uniform 5 per cent by 2004, and has opened industries to greater foreign investment and ownership. Public utilities have been deregulated, and government monopolies have been opened to competition. Further, tax reforms and penalties for tax invasion have been increased.

However, the government believes that these reforms have not been extremely effective in preventing anti-competitive behaviour. It is suggested that their ineffectiveness has resulted from a lack of comprehensive competition policy and jurisprudence, and from the fact that enforcement of the existing competition regulation is the responsibility of many different bodies. However, it hoped that these laws will provide a useful springboard to a more effective system of competition regulation. There are plans to open the market to further overseas and domestic competition, for uniform and comprehensive antitrust legislation to be introduced, and possibly for a centralised enforcement agency to be established.

Introducing competition to regulated natural monopolies — Chinese Taipei

Chinese Taipei is in the process of attempting to regulate and restructure natural monopolies. Currently, all 'network' industries are state controlled, although they are undergoing a process of deregulation and privatisation. The report shows that the government is using several methods to encourage competitiveness in these industries.

First, there have been attempts to restructure natural monopolies in such a way as to make them more open to competition. Restructuring occurs in three possible ways — vertical separation, horizontal divestiture and regional restructuring.

Second, there have been greater attempts at regulating natural monopolies. Such regulation includes requiring monopolists to provide competitors with access to their networks at competitive prices or, if the parties cannot reach an agreement themselves, allowing regulators to order access to networks.

Finally, Chinese Taipei is undertaking a process of privatisation and liberalisation. It is thought that privately owned industries are more efficient than state owned industries, and that this, coupled with deregulation, will result in increased competition.

Efforts of competition authorities to set market economy principles in place — South Korea

The economy of the Republic of Korea has suffered because of excessive government intervention. This intervention has distorted markets to the point where some industries have become grossly inefficient, and as a result the government is making attempts to revive market economy principles.

The report illustrates several instances in which it has been forced to restructure several major industries in an effort to increase competition. In the financial industry some banks have been allowed to exit the market, while those that remain have been allowed to merge in order to create bigger and stronger banks. Further, the remaining banks have been able to seek foreign capital. In addition the corporate sector has been restructured. In the past, many of Korea's corporations were parts of conglomerates. These conglomerates suffered from gross inefficiencies and were generally uncompetitive. These groups have agreed to endure increased regulation and to make their activities more transparent.

Korea also cites examples of its legislative reform. Unnecessary regulations are being abolished and government industries are being privatised. The labour market has been given increased flexibility by allowing companies to retrench workers, going against the entrenched 'a job is a job for life' principle that exists. Cross-debt guarantees between companies have been prohibited, and all those currently in existence must be liquidated by the end of March 2000.

There has been increased regulation of cartels and misleading advertising, and the rules relating to mergers and acquisitions (especially by foreigners) have been relaxed. In addition, penalties have been imposed on corporations that unfairly subsidise subsidiaries.

The Republic of Korea is determined to continue with its reforms.

Regulatory reform and competition issues in the financial sector — Mexico

Since 1991 Mexico has been selling state owned banks to private investors. However, the report suggests that non-performing debt and capital shortages have meant that the newly privatised financial sector has had to submit to significant reform. Through these reforms the government is trying to correct market failure, encourage competition and maintain a safe financial system.

The government points to several changes it has instituted in an attempt to achieve its goals. In 1994 Mexico allowed foreign firms to own and run banks in Mexico, although they faced heavy regulation and restrictions when doing so. It was at this time that the government decided to allow banks to join with other financial institutions (such as insurance companies and securities firms) to form financial groups. There are still many restrictions on the types and quantities of assets that banks may own, but banks are unrestricted in other areas and are able to charge whatever interest rates, prices or fees they wish.

Further, in January 1999 the Mexican Congress reformed the Mexican Deposit Insurance System. The newly created Bank Savings Protection Institute (IPAB) is required to manage a new deposit insurance program. It also takes over some of Fondo Bancario para la Proteccion al Ahorro responsibilities in this area.

Banks have also become more accountable for possible anti-competitive conduct. The Federal Competition Commission (FCC) now has the power to review mergers between banks, and has exercised this power several times. The FCC has also investigated several cases of horizontal arrangements between banks.

Overall, Mexico has taken large steps towards fixing its ailing financial sector. However, it still faces shortages of capital and has large amounts of under-performing debt. The restructuring will continue in the years to come.

Market regulatory reform 1990–98 — Peru

Peru states that it has taken a market enhancing approach in developing competition regulation, and that it perceives its role as helping industry develop institutions of their own to overcome market failure. The government points to several broad structural reforms it has undertaken to achieve greater levels of competition. Many major industries, including public transportation, electricity and sanitation, have been privatised and deregulated, and the economy has become increasingly opened up. Further, more favourable rules have been introduced allowing increased foreign investment, and regulatory agencies have been created to deal with competition and infrastructure issues.

One of the regulatory bodies created during the government's reforms is Indecopi, which is a statutory body responsible for regulating competition issues. Indecopi views its role as being one of market promotion, as opposed to market enforcement or regulation. The government believes Indecopi helps to promote a more stable and certain environment in competition matters, and that overall it has had success in effecting greater competition within markets, without having to resort to excessive regulation.

Regulatory practices and competition in a globalising world economy — the United States

The United States has tried to avoid regulating industries, instead preferring to leave its markets open to competition. However, where certain sectors have been regulated the report indicates that attempts are generally made to accommodate competition concerns. It is suggested that this approach has had the effect of encouraging foreign competition, as well as providing significant benefits for consumers.

The United States concedes that government regulation of an industry has the potential to raise barriers to entry in that market, but it also points out that few industries are completely excluded from the prevailing antitrust regime. In industries where there is a significant degree of regulation relieving the industry of antitrust concerns, the report outlined what measures the government usually takes to protect competition considerations.

Primarily, the mechanisms used in the United States in these circumstances involve allowing anti-competitive conduct only if some nominated panel believes that the 'public interest' (or some other relevant consideration) is served by allowing the conduct. Alternatively, several different groups may be given the power to regulate an industry (this usually includes the Department of Justice and Federal Trade Commission) and any or all of the nominated bodies has the power to prevent anti-competitive conduct that does not serve the public interest.

Overall, the United States believes that it tends to avoid market intervention where possible. However, it also believes that there are occasions where regulating an industry is necessary. In such cases significant administrative safeguards are usually put in place to protect competition policy.

The inter-relationship between policies for regulatory reform and policies for economic development — People's Republic of China

In its submission the People's Republic of China attempted to show how policies for the regulatory reform of competition law and policies for economic development are closely inter-related. Regulatory reform is aimed at improving the efficiency of economies, and policies for economic development are designed to maximise growth in a market. It was suggested that these concepts are closely inter-related because, in order to maximise growth in a market, it is necessary to have an economy that is functioning efficiently (and evidence of high growth is therefore evidence of high levels of efficiency).

However, from a policy point of view the major difficulty is knowing when and how to use regulatory reform in conjunction with policies for economic development. The paper goes into some detail as to when and how these policies should be used, depending on the level of development within the economy.

The inter-relationship between trade and competition policies — Australia

Australia dealt with the inter-relationship of international trade policy and competition policy. It agreed that international trade policy and competition policy generally attempt to promote competition in the marketplace and increase economic efficiency. It was suggested that it is preferable for economic reforms and trade liberalisation to be undertaken at the same time as introducing competition policy. By undertaking both changes together the risk of government failure, or private market failure, is greatly reduced.

At present most trade policy reforms within the APEC group are based on the rules in GATT. It was suggested that because GATT encourages free trade, this means that there is a move away from closed or heavily protected economies, and that any moves toward free trade are pro-competitive because trade among nations without barriers is economically efficient.

In general, Australia suggested that competition policy is concerned with enhancing welfare or achieving an efficient allocation of resources. In addition it should also aim to create competition. This can be done through decreasing anti-competitive regulation, and increasing regulation in areas where there is traditionally anti-competitive behaviour (e.g. in natural monopolies). However, competition policy is still mainly a domestic concern, and there is very little international framework for addressing competition matters. It was these factors that the Australian report suggested were responsible for the inconsistent levels of regulation across countries in the APEC group.

It suggested that the most favourable outcome would result from countries having a system of competition law that has extensive coverage and is well enforced, in conjunction with an open trade regime. This would result in significant competition, high levels of growth and efficiency gains.

In the long term it was thought to be ideal if APEC could develop some common principles on competition policy that can serve as a guide for members wishing to develop their own policies.

Encouraging policy coherence through a broad approach to competition and regulatory policies — New Zealand

New Zealand suggested that APEC should attempt to break down impediments to competition and should try to develop a competition policy framework. The framework's goal should be to increase consumer welfare, but it should not resort to creating advantages for producers, as this has the effect of increasing welfare for some consumers to the detriment of others. In order to achieve this framework it is suggested that three policy areas need to be addressed — trade policy, regulatory policy and competition policy. New Zealand believes that the Pacific Economic Cooperation Council has already put in a lot of work to help achieve this goal.

New Zealand, as this year's APEC host economy, would like to see APEC attempt to develop a suitable competition policy framework among member nations. With this, APEC will be able to show how countries at different levels of development can move together at different paces towards the same goal. It will also allow APEC to achieve greater coherence to its trade facilitation agenda.