On the Road to Improved Economic and Social Welfare – the Role of Competition Policy

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I am pleased to have this opportunity to share with you some international perspectives on practical aspects of competition policy.

Of course, each country's circumstances are unique, but I hope that the Australian experience, and that of other countries to which I will refer, will be of interest as you proceed on your own journey with competition law in Oman.

Why focus on competition?

Although I have titled this speech in terms that will be readily recognisable to economists, I am not an economist.

I am an Australian lawyer who has been fortunate to have advised on competition issues and observed international developments in the field for many years.

My interest is in how competition policy, and particularly economic thinking, has moulded competition law in practice.

But before I get to that I want to start by talking about professional sport. What is it about sport that we value so highly? The answer is, of course, quite straight forward.

- We value the spectacle of elite athletes, battling it out to succeed, whether they win or lose.
- We value the fact that there are fair rules, consistently applied by neutral umpires.
- We value that everyone has a fair chance of succeeding on their merits.

In other words, we value the competition.

What does sport teach us about the basic requirements for effective competition? Sport has three important attributes. It has:

- rules that give every participant a fair opportunity to win
- a neutral, independent umpire to uphold the rule of the competition; and
- fans, or in other words, stakeholder and community support.

Without those three elements no sport would be successful.

Now let's think about that in the context of the economy as a whole. The same considerations apply.

Every manufacturer, service provider, importer and trader should have an opportunity to succeed, on the merits. But that is not possible without fair rules, with which all (or the majority) comply – rules that are consistently upheld by neutral, independent umpires.

European adherents to what, in economics literature, is referred to as ordoliberal views, put it this way. They say that what is required is '*a system that [is] able not only to avoid unwarranted government intervention in economic affairs but also to effectively control the market power of private actors*'.[1]

While, as we will shortly see, views on the role of competition policy vary (and have developed with different schools of economic thinking over the past 80 years), that is what competition policy is all about. It is, in essence, a rules-based system that enhances social and economic welfare by controlling market power while avoiding unwarranted government intervention in the market.

That balance has proven to be harder to achieve in practice that it might appear.

[1] Behrens, The Consumer Choice Paradigm in German Ordoliberalism and its Impact upon EU Competition Law (SSRN March 2014).

Best practice tells us that, if competition rules are to deliver improved economic and social welfare, while avoiding unwarranted government intervention in the market, they must address the same four elements as are necessary for a successful sport.

There must be:

- clearly understood competition rules
- an effective, neutral, independent regulator upholding those rules; and
- stakeholder and community support.

Clear policy objectives

First and foremost, competition rules need clear policy objectives.

This is where the sport analogy breaks down. With sport the objectives are clear – to win the game being played, and to do so fairly. But when it comes to competition rules that apply across an economy, policy objectives become far more complex.

Let me first deal with that by recounting the journey other have been on. Progress towards improved economic and social welfare utilising competition rules has been a long, and a somewhat arduous, journey.

Although competition rules are now seen as an important driver for economic prosperity and social development, they were originally simply a legislative reaction to unacceptable conduct - not a reflection of coherent economic theory.

I will take two examples:

- In the USA, statutory competition law has its origins in the 1890 *Sherman Act*. That Act was motivated by public concern about abuses of power by large and powerful conglomerates, especially in the oil, railway and tobacco industries. There was wide-spread public hostility to the corporate behaviour of John D Rockefeller and other industrialists, especially in depressed agricultural communities[2], reacting to the high cost of rail services. Academic economic views did not feature.

Today the *Sherman Act* is regarded as a pathfinding piece of economic legislation.

- In Australia, growing domination of industries by foreign enterprises prompted the first, unsuccessful, attempt at anti-monopoly law in 1906.[3] A common complaint, in and out of Parliament at the beginning of the 20th century, was that infant Australian industries were falling into the hands of foreign corporations, particularly those of United States origin. Indeed that had happened in the petroleum, tobacco and beef industries. In introducing the first Australian anti-monopoly legislation the Minister stated:

  I feel that no excuse is necessary for the introduction of the Bill, but if it were, it could be found in the statements published in the newspapers of the United States of America, showing

  - *the dimensions to which the enormous octopus trusts of that country have grown, and*

[2] Stigler, The Origins of the Sherman Act (The Journal of Legal Studies Vol. 14, No. 1 Jan., 1985). See also Bradley, On the Origins of the Sherman Anti-Trust Act, (Cato Journal, Vol. 9, No. 3 Winter 1990)

[3] Miller, Australian Competition Law and Policy, (Thomson Reuters 3rd ed 2018) pages 11-12.

- *the harm which they have done, … by buying up and destroying the smaller internal business concerns of the United States*

Public reaction to unacceptable conduct may have been the original driver for competition and anti-monopoly laws, but as the 20th century progressed, focus increased on competition policy as an economic driver for prosperity.

That prompted legislators to ask questions such as:

- Is it in the public interest for manufacturers to only supply those retailers who agreed not handle competing brands?
- Or who agree to only resell at the manufacturer's specified price?
- Is it in the public interest for trade associations to tie up suppliers so that only members can obtain products?
- Is it in the public interest for dealers to have exclusive territories?
- Is it in the public interest for powerful retailers to extract discounts from manufacturers that are not available to smaller retailers?

Legislators also asked themselves whether, if restrictive practices such as those I have just listed are not in the public interest, which ones are so presumptively contrary to the public interest that they should be banned absolutely? That remains a question today.

As empirical work in the field of economics developed through the second half of last century we came to recognise that competition policy could deliver tangible economic and social benefits.

There is now an overwhelming body of economic literature on the nature, cause and effect of competition.

Admittedly, there are different views among economists about what the objectives of competition policy should be. Schools of thought - the Freiburg School, the Harvard School, the Chicago School and the Austrian School, to name four - have emerged with different, often competing, views.

In the language of economists, should the goal be economic efficiency, improved consumer welfare or improved total welfare? I am not going to enter that debate. I will only observe that each country is different and must choose the objectives that best suit its own needs and aspirations.

Whatever those aspirations may be, economists around the world would agree that effective competition policy delivers the following benefits identified by the OECD[4]:

- *Low prices for all:*
  As the OECD explained, the simplest way for a firm to improve its market share is to offer a better price. In a competitive market, prices are pushed down. Not only is this good for consumers, making products affordable. It encourages businesses to produce and boosts the economy in general.

- *Better quality:*
  Competition encourages businesses to improve the quality of products they sell – to attract more customers and expand their market share. Quality can mean various things: that products last longer, or work better, or there is better after-sales or technical support, for instance.

[4] http://ec.europa.eu/competition/consumers/why_en.html

- *More choice:*
  The OECD points out that, in a competitive market, businesses will try to make their products different from the rest. This results in greater choice – so consumers can select the product that offers the right balance between price, quality and features.
- *Innovation:*
  Businesses in a competitive market need to be innovative – in their product concepts, design, production techniques, services etc. Without innovation, improved quality and increased choice is not possible.
- *Better competitors in global markets.*
  The OECD points out that strong competitors in home markets are better able to compete in international markets.

Some would add that effective competition laws improve opportunities for foreign investment.

Objectives of Competition Policy

As the benefits listed by the OECD, to which I have just referred, illustrate, competition is not an end in itself.

Competition is valued for the benefits it provides for citizens, and to national economies as a whole. So, it is not surprising that different countries have drawn on competition policy for a range of worthwhile objectives.

A survey by the OECD in 2003,[5] found that respondents thought that the basic objective of competition policy should be *to promote efficient use of resources while protecting the freedom of economic action [by] market participants.*

But the study also found that, in many countries, competition policy has been directed at achieving, or preserving, a range of supplementary objectives. These include "*preventing abuses of economic power, promoting small business, fairness and equity and other socio-political values*".

A survey on the objectives of anti-monopoly laws – Article 10 of the Oman law – was conducted in 2006 by the International Competition Network.[6] Competition agencies identified 10 different objectives. All but one identified multiple objectives. The ICN reported that:

> *Virtually all responding agencies cited ensuring an effective competitive process as an objective in its own right.*

But they saw this as a *means to achieve other desirable goals such as consumer welfare, economic freedom or efficiency.*

The broader range of objectives included:

- ensuring economic freedom;
- ensuring a level playing field for small and medium-sized businesses;
- promoting fairness and equity;
- promoting or enhancing consumer choice and consumer welfare;

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5 OECD Global Forum on Competition, Note by the Secretariat, The Objectives of Competition Law and Policy (2003), para 3. <http://www.oecd.org/daf/competition/2486329.pdf>.

6 Report on the Objectives of Unilateral Conduct Laws, Assessment of Dominance/Substantial Market Power, and State-Created Monopolies (May 2007).https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/07/UCWG_SR_Objectives.pdf

- achieving market integration - a primary aim of the EU;
- promoting competitiveness in international markets; and
- increasing productivity and the opportunity for foreign investment in smaller economies.

I will use four practical examples to illustrate how the range of objectives has been adopted in some countries.

The first is Jamaica. The aims of the Jamaica's Fair Trading Commission are to "*ensure that all legitimate business enterprises have an equal opportunity to participate in the Jamaican economy*."

The second is the South African competition law.[7] It goes further. That law states that the objective is *the promotion and maintenance of competition in South Africa* in order to achieve six diverse objectives. They are:

- *promote the efficiency, adaptability and development of the economy;*
- *provide consumers with competitive prices and product choices;*
- *promote employment and advance the social and economic welfare of South Africans;*
- *expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic;*
- *ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and*
- *promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.*

The third is the Philippines competition law[8]. It contains an explicit 'Declaration of Policy' that provides:

> *The State recognizes that past measures undertaken to liberalize key sectors in the economy need to be reinforced by measures that safeguard competitive conditions. The State also recognizes that the provision of equal opportunities to all promotes entrepreneurial spirit, encourages private investments, facilitates technology development and transfer and enhances resource productivity. Unencumbered market competition also serves the interest of consumers by allowing them to exercise their right of choice over goods and services offered in the market.*

Finally, the new competition law of Saudi Arabia [9], which I understand came into effect a few weeks ago, is the most recent example. That law states:

> *The Law aims to protect and encourage fair competition and to combat and prevent monopolistic practices that affect lawful competition or consumer interest; leading to [an] improved market environment and economic development.*

Many of these considerations are evident in the Oman competition law and the statute establishing the Centre.

As these practical examples illustrate, others on the journey to improve social and economic welfare have concluded that, in their particular circumstances, competition policy can serve a wide range of social and economic objectives.

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7 South Africa Competition Act 1998 s. 2.

8 Philippine Competition Act No 10667 28 July 2014, s.2.

9 The Saudi Competition Law Royal decree No. (M/75) dated 29/6/1440H Art 2. The law was gazetted on 29 March 2019 and came into effect after 6 months.

Clear competition rules

Economic and social considerations set the direction competition policy should take. But law is the instrument that specifies the rules to achieve chosen objectives.

It follows that, to be effective, competition rules need to be clear, and clearly understood. Without clearly understood rules there can be no progress towards improving social and economic welfare through competition policy.

That takes me to the first of my four best practice requirements.

Economic concepts inherent in competition law – 'market', 'competition', monopoly', 'economic concentration' - to name a few – are not generally well understood terms. Certainly, in Australia, it took us quite a time for lawyers and judges to come to grips with what they meant. I will return to this point a little later.

Each country's competition law is, of course, expressed and administered differently. This reflects each country's history, and social and economic circumstances. But in essence, there are four basic rules of virtually universal application in the over 120 countries throughout the world that have modern competition laws. What are those rules?

- First, businesses should compete, not collude.
- Secondly, big businesses should not muscle out small businesses.
- Third, businesses should be free to set their own prices – not required to charge prices set by their supplier.
- Fourth, businesses should not corner markets by buying up competitors.

Of course, when translated into legislation, these rules become more complex. But they are the basic rules on which competition laws around the world are based – from the small Pacific island state of Fiji to the large countries that make up the European Community.

Oman's *Competition Protection and Monopoly Prevention Law* reflects each of these basic rules. It is not necessary for me to do more than illustrate the way in which it does so, taking a few examples.

Businesses should compete, not collude	Article 9: *'practices … for the purpose of prevention of competition'* may not be concluded
Big businesses should not muscle out small businesses	Article 10: *'any person having a dominant position may not practice any activities that may infringe, negatively affect …, eliminate or prevent*' competition
Businesses should be free to set their own prices – not required to charge prices set by their supplier	Article 9: '*practices for the purpose of prevention of competition regarding pricing, discounts, sales or purchase terms and conditions may not be concluded.'*
Businesses should not corner markets by buying up competitors.	Article 11: *'persons intending to take any action resulting in economic concentration shall submit a written request to the authority'*

A sample of other countries[10]

I referred earlier to there being over 120 countries around the world with competition and anti-monopoly laws. I have mentioned a few already. But I should pause here for a moment to observe that many have introduced competition laws quite recently. To take some examples, new competition and anti-monopoly laws were introduced:

- in 2010 Pakistan and Mongolia
- in 2011 in Malaysia
- in 2013 in Algeria
- in 2015 in Hong Kong and The Philippines
- in 2017 in Thailand.

Turning to countries more proximate to Oman, new competition and anti-monopoly laws were introduced:

- in 2004 in Jordan
- in 2005 in Egypt
- in 2006 in Qatar
- in 2012 in Kuwait and UAE
- in March this year in Saudi Arabia (replacing and updating a 2005 law)

In introducing the *Competition Protection and Monopoly Prevention Law* in 2014, and establishing the Centre to administer it, Oman is in excellent company.

What problems are addressed?

If, stated in broad terms, the objective of competition rules is to improve economic and social welfare, what has been the practical position in other countries? To what types of conduct, in practice, have the rules been applied?

It would take a very long time to provide a comprehensive answer to that question. Indeed, my book on the Australian law runs to over 2,000 pages peppered with examples – and that is only Australia.[11]

Internationally there are two key areas of primary focus for competition authorities. They are cartels and monopolies.

Cartels

To illustrate, in relation to cartels, I will draw on two case studies.

ACCC v George Weston Foods Ltd (2004)[12]

In the first case, the facts are these: a company executive said goodbye to his wife and children and went out the front door of their home, as he did every day. But instead of getting into his car, he strolled down the street to a nearby telephone box. He was on a mission, coins in hand to make a call.

Who was this executive? His name was Loneragan. He was Divisional Chief Executive in George Weston, one of the two major Australian flour milling companies.

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[10] An excellent summary of the competition laws of Asia Pacific countries can be found in Groshinski & Davies, Competition Law in the Asia Pacific (Wolters Kluwer 2015)

[11] See Miller, Miller's Australian Competition and Consumer Law Annotated (Thomson Reuters 41st edition 2019)

[12] [2004] FCA 1093

He telephoned the mobile phone of an executive he knew at Manildra, the other major Australian flour milling company. As it happened, that executive, Simpson, was driving at the time. He took the call on the car's hands-free speaker. Loneragan told Simpson that his company, George Weston, intended to increase the price of flour. He asked what Simpson's company intended to do about prices. Simpson's response was that he would have to talk to his boss.

As luck would have it, Simpson's boss was in the car at the time and overheard the conversation.

Things unravelled from there. The call was reported to the Australian Competition and Consumer Commission and a significant penalty was the result.

Netherlands construction industry

The second example involves an investigative reporter in the Netherlands. In November 2001 a nation-wide television programme titled – Fiddling with Millions – was aired on Dutch television. It reported on the results of an investigation into the Dutch construction industry. The programme sparked a political controversy in the Netherlands.

The programme centred on allegations by two whistle-blowers of widespread bid rigging in relation to public procurement in the construction industry. The whistle-blowers produced financial statements showing systematic bid rigging on about 3,500 projects. I have drawn on an article by Dutch academic Professor Doree.[13] This is how the cartel worked:

> *For hundreds of these projects, it was noted how much compensation the winning contractor had to pay the 'unsuccessful' competitors. All the bids had been 'adjusted' (i.e. rigged) so that the outcome of the tendering process was inevitable.*

The inevitable result was a Parliamentary enquiry, as well as investigations and prosecutions by the Dutch competition authority. Professor Doree reported that:

> *In March 2002, over 500 police officers, fiscal investigators and prosecutors invaded companies, agencies and the homes of those suspected of being involved in over 50 locations. It was the largest invasion in Dutch legal history.*

This bid-rigging was said to have cost Dutch taxpayers about €0.5 billion each year.

At this point it is appropriate for us to pause to view a case study video that demonstrates, graphically, how cartels unravel. The video you are about to see was produced by the competition agency of the Netherlands.

> *[YouTube clip – Nma Movie: Leniency in Cartel Cases.*
> *https://www.youtube.com/watch?v=5diFAaJdwel&feature=youtu.be]*

The video demonstrates a real-life example of the operation, detection and consequences of a cartel. It does not turn out well for anyone involved – other than the whistle-blower, of course.

Monopolization

Let me now turn to monopolization - the second major pre-occupation of competition agencies world-wide.

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[13] Doree, Collusion in the Dutch Construction Industry: an Industrial Organization Perspective. Building Research and Information · March 2004

The first point to make is that monopolization cases, referred to in the EU as abuse of dominance and in Australia as misuse of market power, are notoriously difficult.

This is not only because it pits competition agencies against some of the largest firms nationally (and often globally). It is because there is no clear bright line between conduct that is benign – tough competition on the merits – and conduct that crosses the line.

It is not the size of a firm, as such, that concerns competition agencies – large firms can deliver significant consumer benefits through innovation and efficiencies that result in lower prices. It is only when they use their market power to take unfair advantage that competition agencies become involved.

I will illustrate with two examples?

- The first is drawn from a case in relation to the pharmaceuticals industry.
  Assume that a pharmaceutical company has one product for which it holds current patents and is therefore the only available supplier, and other products for which there are available substitutes.

  In responding to a tender to supply pharmaceuticals required by public hospitals, the company offers each of the products separately.

  But it also offers to supply all of the products required by the hospitals in a bundle, at a very attractive lower price.

  If the hospitals take the bundle there will be significant price savings, but competing suppliers of some of the pharmaceuticals will be excluded.

  Is that competition on the merits, or exclusionary monopolistic conduct? In Australia and elsewhere conduct of that type has been found to be prohibited by competition law.[14]

- The second is drawn from a case involving brick manufacturing.
  Assume the only manufacturer of building bricks in a metropolitan area faces competition from a new entrant brick factory that has more modern, more efficient production equipment.

  Faced with a downturn in the construction industry and oversupply of bricks as a result of the new competitor coming into the market, the manufacturer drops its prices.

  In fact it drops them so low that the price is below the new entrant's prices and below the manufacturer's cost to make and sell its products.

  Is that competition on the merits, or exclusionary monopolistic conduct? In Australia that conduct was found not to be prohibited by anti-monopoly law?[15]

Of course, each decision turns on its own particular facts.

Other current examples

The examples to which I have so far referred were drawn from actual cases decided over 10 years ago. What is the state-of-play internationally today?

To give you a flavour of what is happening in the competition field in other countries I will draw on seven current examples – examples reported in the past 3 months:

[14] ACCC v Baxter Healthcare Pty Ltd [2006] FCAC 128
[15] Boral Besser Masonry Ltd v ACCC [2003] HCA 5

- In Malaysia, the Competition Commission has proposed to fine a Singapore – based ride hailing company, Grab, for imposing restrictions on its drivers to prevent them from the promoting services of firms competing with Grab. After a merger with Uber, Grab had become the dominant ride-hailing company in Malaysia. The Malaysian Commission provisionally found that Grab abused its dominant position. The Commission said that:[16]

  the restrictive clauses had the effect of distorting *competition in the relevant market … by creating barriers to entry and expansion for Grab's existing and future competitors.*

- In Mexico, the anti-monopoly agency has fined the Cancun International Airport the equivalent of US$3.7 million for not allowing more taxis to compete and thereby lower fares for travellers. The agency claimed the airport improperly resisted allowing more taxis at the airport, resulting in prices that were about 8% higher than they should have been. The reason for the airport doing this was claimed to be that the airport got a cut of each fare. The suggestion is that it kept fares high to maintain that income.[17]

- In Mauritius the Competition Commission has ordered Visa and MasterCard to cap their interchange fees after finding the credit card issuers abused their dominance by setting unreasonably high rates. According to African Antitrust[18]:

  The Commission found that Visa and Mastercard had set an interchange fee of 1%, which in turn led to higher merchant fees. As a consequence, the interchange fees were found to have hampered the incentive for banks to issue credit/debit cards and to provide card facilities to merchants. This led to either some merchants electing not to have card accepting facilities or to increase *the final price to consumers.*

- In South Korea, the antitrust agency fined the four largest automobile parts makers from Japan a combined total US$76 million for fixing the prices of auto parts. The Korean Herald reported that: *According to the Fair Trade Commission, four Japanese car parts firms had fixed prices in collusion when selling alternators and ignition coils to local automakers for 10 years.*[19]

- In Brazil, the antitrust authority, CADE, announced a probe into the possible existence of a cartel. The cartel is said to have affected the cost of construction and re-modelling of the country's soccer stadiums for the 2014 FIFA World Cup. According to reports in *America Econima*[20] the investigation began after the leniency agreement was reached by the Brazilian authorities with the construction company Andrade Gutiérrez, one of the largest in the country, and several of its former executives.

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16 Malaysia Competition Commission media statement 3 October 2019

17 https://www.competitionpolicyinternational.com/mexico-regulator-fines-cancun-airport-3-7m-for-taxi-monopoly/ 25 August 2019

18 https://africanantitrust.com/2019/08/15/mauritius-competition-commission-orders-visa-and-mastercard-to-lower-interchange-fees/#targetText=%E2%80%9CThe%20decision%20of%20the%20Commission,the%20local%20payment%20card%20market. 15 August 2019

19 http://www.koreaherald.com/view.php?ud=20190804000119/ 4 August 2019

20 https://www.americaeconomia.com/politica-sociedad/politica/brasil-abre-investigacion-por-supuesto-cartel-de-constructoras-en-obras/ 23 July 2019

- Returning to South Korea, the KFTC has fined a local tyre manufacturer, Hankook Tyre, for forcing its dealers to sell tires at higher prices. The Korean Times reported:[21]

  > *The company monitors all tire purchases and entered a permissible range for discounts in its smart transactions system that prevents dealers from offering tires at lower prices. The FTC said the tire maker threatened to reduce or stop supplying tires to dealers not complying with its demand, which is an unfair trading practice and illegal resale price maintenance.*

And to finish off, in Turkey last month the competition authority commenced investigating a complaint that 4 cement companies had engaged in a cartel to fix cement prices and allocate customers. The hearing on that complaint is being held the day after tomorrow.[22]

These are not isolated examples. Furthermore, the conduct with which they deal is conduct that would be at risk under competition rules in any country with a modern competition law, including Oman.

A neutral umpire

Let me now turn to the second-best practice requirements - a neutral umpire overseeing an effective system upholding competition rules.

International experience shows that, while it may be satisfying to have a competition law on the statute books, an effective system of upholding that law, overseen by a special purpose umpire, is essential.

I referred earlier to the dates on which a number of countries introduced their competition law, but that is only part of the story. Having a competition law is of little utility without a neutral, independent umpire to uphold it. It is no different to sport. If there were no umpire at a football match, none of us would be much interested in the game.

I am not familiar with the position in all of the countries I mentioned, but I do know that many countries have had competition laws on their books for a very long time, to little or no effect. Thailand is one example. Vietnam is another. India had an ineffective competition law from 1969 until 2003. Australia was in the same position from 1911 until 1975.

Experience globally shows that the benefits of competition are best realised if there is a well-resourced competition agency, upholding competition law independently, with judgment and integrity. Making the right choices of cases to pursue, and not to pursue, and utilising the full range of remedial options available to do so, is the hallmark of a successful competition agency.

I should add here that, the organisation of competition regulators - the International Competition Network - has provided practical assistance for many new competition agencies, assisting them to achieve their full potential. It has done so through dialogue and its practical guidance materials.

Returning to the video clip, leniency policies encourage those involved in cartels to come forward and provide competition agencies with valuable information. This has proven to be a significant source of evidence needed to combat cartels.

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[21] http://m.koreatimes.co.kr/pages/article.asp?newsIdx=272625/ 21 July 2019

[22] http://reuters.com 5 March 2019

According to the OECD, over 60 competition agencies around the world have formal or informal cartel leniency policies. [23] The ICN has reported[24]:

> *Leniency encourages cartel participants to confess their cartel conduct and implicate their co-conspirators, providing first-hand, direct "insider" information or evidence of conduct. Leniency programs help to uncover conspiracies that would otherwise go undetected and can destabilise existing cartels. They also act as a deterrent to those contemplating entering into cartel arrangements.*

Stakeholder and community support

Finally, the third best practice requirement to which I referred earlier is stakeholder and community support. Indeed, competition laws are unlikely to be effective without it.

While stakeholder support is essential, it has proven to be problematic in many countries. This is because competition law requires a fundamental change in business attitude, particularly by those responsible for businesses essential to economic prosperity.

Part of the problem is that competition rules are replete with economic concepts such as 'market', 'competition', monopoly', 'economic concentration', to name a few. These are not generally well understood terms. Yet they are central to any competition law and certainly to your *Competition Protection and Monopoly Prevention Law*.

Well-established competition agencies around the world invest significant resources in effective advocacy and outreach strategies. These strategies are aimed at informing stakeholders in government, in business and in the community, on the fundamental competition rules and their importance.

Of course, this workshop, and the Centre's earlier workshop in conjunction with the Oman Chamber of Commerce and Industry, are good examples of the work the Centre is undertaking in that regard.

New agencies have so much to do in the early stages that often advocacy and outreach programs take second or third place.

Turkey is an example of a competition agency that has formalised its advocacy objectives by setting them out in its published strategic plan. The stated objectives are[25]:

- *To carry out studies that will contribute to the formation of a national competition policy and share the results with the Government and the public.*
- *To ensure that public institutions and authorities have a competitive perspective in their regulations and disposals so that activities restrictive of competition are minimized.*
- *To develop cooperation between the [Commission] and universities.*
- *To share the main principles of the competition law and positive impacts of the Board decisions on economic life with the public.*

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[23] OECD Working Party No. 3 on Co-operation and Enforcement: Challenges and Co-Ordination of Leniency Programmes - Background Note by the Secretariat, 5 June 2018

[24] ICN Anti-Cartel Enforcement Manual, Drafting and Implementing an Effective Leniency Policy, April 2014

[25] Rekabet Kurumu Strategic Plan 2019-23 https://www.rekabet.gov.tr/Dosya/geneldosya/tca-strategic-plan-05-07-19-pdf

Recognising the challenges agencies new and old face, the International Competition Network set up an Advocacy Working Group as one of its first endeavours. The working group provides practical opportunities for agencies to share experiences.

Of course, effective advocacy can take many forms. Time does not permit me to do more than refer to a couple of examples drawn from the work of the ICN:

- In Mexico, activities include addressing and liaising with identified stakeholder groups in the public and private sectors, and with consumers, *academic* experts, journalists and international institutions. The Mexican Competition Authority has an internal advocacy working group that meets on a quarterly basis and is chaired by a member of the Board of Commissioners.[26]

- In Japan the Authority uses various tools such as public relations and public hearing activities and market studies. It engages actively with government agencies and businesses in suggesting pro-competition policies and approaches.[27]

- In Finland, the advocacy strategy of the Finnish Competition and Consumer Authority is developed in an interactive process between the Ministry of Economic Affairs and Employment, the top-level management of the Competition Authority and the Authority's advocacy unit. The result is an advocacy performance agreement between the Ministry and the Competition Authority[28].

Experience shows that a consistent program of explaining the benefits of competition to business, to government, to legislators and to the community, pays both long term and short term dividends.

An interesting approach to advocacy has been taken by the Malaysia Competition Commission. It has created an online group, called REACT, aimed at facilitating better understanding and awareness by all relevant stakeholders regarding C*ompetition Act.*[29]

Some agencies have made significant progress utilising a different type of advocacy. They have recognised that there are many in business who want to do the right thing – to comply with competition laws.

But how do large businesses with many employees make sure that everyone does the right thing? One answer is rigorous and consistent compliance training. That is something that competition agencies have promoted and supported. As the Australian Competition and Consumer Commission explains[30]:

> *A compliance program is an internal system or process employed by a business that is designed to:*
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> - *identify and reduce the risk of breaching the Competition and Consumer Act (CCA)*
> - *remedy any breach that may occur*
> - *create a culture of compliance within the organisation.*

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[26] ICN Advocacy Working Group, Planning Competition Advocacy Initiatives Report 2017 page 4
[27] Ibid
[28] Ibid page 5.
[29] https://www.mycc.gov.my/react-membership-application-form
[30] https://www.accc.gov.au/business/business-rights-protections/implementing-a-compliance-program

Depending on the size and risk profile of the company, different components will need to be included in a compliance program to ensure that it is effective in achieving compliance with the CCA at all levels of business operations.

In Japan, a competition agency survey in 2012 showed that more than 80% of the largest companies listed on the Tokyo Stock Exchange had conducted anti-monopoly law compliance training internally. But a survey in 2016 disclosed that less than 50%of trade associations were implementing some sort of compliance efforts.[31]

In closing I will observe that, in the longer term, the academic community also has an important part to play. Teaching international comparative competition law courses in university and publishing learned articles explaining competition law and policy provides a unique opportunity to train future lawyers and business leaders in this exciting new area of the law.

Malaysia provides a worthwhile example. In August this year the Malaysian Competition Commission signed an MOU with a Malaysian university to promote and develop education and research in relation to competition law. The Commission's media release says[32]:

> *This is one of the measures aimed at strengthening the implementation of the Competition Act 2010 and furthering the Commission's objective to safeguard a healthy and beneficial competition process for businesses, consumers and the economy.*

Fostering teaching and research in competition law and policy is a tangible way to equip future generations of business leaders and lawyers with the knowledge they will need to uphold competition rules.

Close

It is an exciting time for competition policy in Oman. I am sure your journey on the road to improved economic and social welfare though effective competition policy will be a rewarding one.

Thank you.

[31] https://www.jftc.go.jp/en/pressreleases/yearly-2016/December/161221.html

[32] Malaysian Competition Commission media release 20 August 2019 https://www.mycc.gov.my/sites/default/files/pdf/newsroom/%28ENG%29%20Press%20Release%20-%20MyCC%20MoU%20with%20UPM%20and%20MPC.pdf