



# ISTANBUL COMPETITION FORUM

DIGITALIZATION AND INTERNATIONAL COOPERATION

25-26 November 2019



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DIGITALIZATION AND INTERNATIONAL COOPERATION  
with the participation of UNCTAD and the support of  TIKA

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## Digitalization and International Cooperation

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**Birol KÜLE**  
**The President of the Competition Authority**

## **FOREWORD**

Due to rapid transformation in global economy in recent years, economic activities are moving to digital platforms increasingly. Besides, data algorithms and artificial intelligence are shaping undertakings' conduct. Consequently, we are facing new business models, new products, new services and new markets.

As a reflection of new market structures arising from the digitalization in economy, it is obviously necessary that investigation and evaluation methods peculiar to competition law should be reconsidered by joint work of competition authorities in order to interpret undertakings' conduct. As an important result of this economic system created by digitalization, economic activities go beyond national borders and thus national

competition authorities' reach. Therefore, international cooperation in the area of competition law is an urgent need.

At this point, Istanbul Competition Forum (ICF) was organized with the aim of strengthening cooperation and creating a joint platform based on the need of international cooperation and a common understanding in the area of competition. With its experience and knowledge of more than 20 years, Turkish Competition Authority has the capacity and willingness to lead the way through international cooperation with other national competition authorities in our region.

Our objectives with ICF are to build trust among national competition authorities in the region, to improve our technical capacities and to understand and solve current competition law problems with collective wisdom. To this end, traditionalizing ICF by creating a platform under the guidance of Turkish Competition Authority, determining the agenda and detecting the problems together and finding solutions jointly within the framework of competition policy and enforcement are among our priorities.

Istanbul Competition Forum, which hosted colleagues from 30 countries, representatives of international organizations active in competition law and policy, distinguished academics, lawyers and experts, who have expertise in the area of competition law and economics, as well as more than 400 participants was organized within the scope of those objectives. This strengthens our hopes and expectations about what ICF could achieve in the future and encourages us for the continuation of the platform.

On this occasion, I would like to thank gratefully national and international agencies and institutions who contributed to the realization of such an important event, Istanbul Competition Forum. I would also like to thank my colleagues who made a great effort to accomplish the organization of the Forum flawlessly with respect to content and arrangements as well as those who contributed to the preparation of this book.



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25-26 November 2019

Venue: Conrad Istanbul Bosphorus

24 NOVEMBER	
TIME	SUBJECT
18.30 – 19.00	Registration
19.00 – 20.00	Welcome Reception at Conrad Istanbul Bosphorus

25 NOVEMBER	
TIME	SUBJECT
08.30 – 09.00	Registration
09.00 – 09.45	Opening Speeches - Birol KÜLE, President of the Turkish Competition Authority - Teresa MOREIRA, Head, Competition and Consumer Policies Branch, UNCTAD
09.45 – 10.15	Coffee Break
10.30 – 12.30	Panel I: “Digitalization and Competition Law and Policy” Moderator: - Ebru GÖKÇE DESSEMOND, Legal Officer, Competition and Consumer Policies Branch – UNCTAD Speakers: - Prof. Pinar AKMAN, Professor of Law, University of Leeds - Ioannis LIANOS, President, Hellenic Competition Authority - Yuriy Terentyev, Chairman, Antimonopoly Committee of Ukraine - Hasan Hüseyin ÜNLÜ, Competition Board Member
12.30 – 14.00	Lunch
14.00 – 16.00	Panel II: “International Cooperation in Competition Law Enforcement” Moderator: - Kürşat ÜNLÜSOY, Vice President, Turkish Competition Authority Speakers: - Antonio CAPOBIANCO, Acting Head, Competition Division, OECD - Elizabeth GACHUIRI, Economic Affairs Officer, UNCTAD - Prof. Juliana LATIFI, Chairwoman, Albanian Competition Authority - Elena KLEININGER, Vice President, Romanian Competition Council - Ljiljana PAVLIC, Board Member, Croatian Competition Agency
16.00 – 18.00	Bilateral Meetings



<b>18.00 – 18.30</b>	<b>Cocktail</b>
<b>18.30 – 20.00</b>	<b>Gala Reception</b>

<b>TIME</b>	<b>SUBJECT</b>
<b>09.15 – 09.45</b>	<b>International Cooperation and the Role of ICF from the Perspective of Turkish Competition Authority</b> - Recep GÜNDÜZ, Head of International Relations, Training and Competition Advocacy Department
<b>09.45 – 10.15</b>	<b>Keynote Speech</b> Prof. Frédéric JENNY, Chairman, OECD Competition Committee
<b>10.15 – 10.45</b>	<b>Coffee Break</b>
<b>10.45 – 12.45</b>	<b>Panel III: “Effective Enforcement Against Cartels”</b> <b>Moderator:</b> - Ahmet ALGAN, Competition Board Member <b>Speakers:</b> - Antonio GOMES, Acting Deputy Director of the Directorate for Financial and Enterprise Affairs, OECD - Francis W. KARIUKI, Director General, Competition Authority of Kenya - Liudmila BORISOVA, Head of Saratov Regional Office, FAS Russia - Arsen ISKAKOV, Deputy Chairman, Competition Authority of Kazakhstan
<b>12.45 – 13.00</b>	<b>Closing Speech</b> - Teresa MOREIRA, Head, Competition and Consumer Policies Branch, UNCTAD
<b>13.00 – 13.15</b>	<b>Closing Remarks</b> - Birol KÜLE, President of the Turkish Competition Authority
<b>13.15 – 14.30</b>	<b>Lunch</b>



## Opening Speeches

25 November 2019  
09.00 – 09.45

**Birol KÜLE**

President of the Turkish Competition Authority

**Teresa MOREIRA**

Head, Competition and Consumer Policies Branch,  
UNCTAD

## ANNOUNCER

We are here in the Istanbul Competition Forum, which is under the subject of digitalization. It will be held between 25th and 26th of November. ICF is organized with the participation of UNCTAD and we have more than 30 countries and institutions.

Esteemed guests, to present their opening speeches I would like to invite the President of the Competition Authority, Birol Küle, to the floor.



**BIROL KÜLE**

President of the Turkish  
Competition Authority

Esteemed Head of the Capital Market Authority, esteemed members of the UNCTAD and OECD, esteemed President and representatives of the national competition authorities, I would like to greet you all with great respect on behalf of my institution and myself, and I would like to express my excitement and appreciation since you are here.

So this is going to be the first of the Istanbul Competition Forum. ICF has been realized to place a common platform and to strengthen our collaboration, which is a requirement and an obligation in global competition. Without doubt, UNCTAD, OECD and International Competition Network have been working in the area of international collaboration and running several different activities where Turkey is also an active member. And we believe that regional collaborations just like ICF will make sure that it will contribute to the international institutions' efforts and lighten the burden on their shoulders.



ICF's goal is to make sure that the mutual trust and confidence between the regional competition authorities are improved and – thanks to technical collaborations – to increase our national and institutional capacity, and to understand the current issues of competition law. We want to make sure that ICF becomes a traditional activity, to come together more often under this umbrella, and to determine the agenda and the hot topics together to run mutual and common efforts.

In this very first meeting, thanks to the active collaboration of UNCTAD that has not been forsaken upon us along with guests that are here in the room from more than 30 countries along with the OECD is a major proof that ICF has a future and it can accomplish a lot.

This year's main theme of ICF is digitalization and international collaboration. I believe that everybody in this hall realizes that this is not a coincidence. Since the industrial revolution, there is an unprecedented transformation, transforming economies, production methodologies, consumption trends. The time spent on the internet has become a part of our daily lives. In OECD countries, the youth spend more than 4 hours on average per day online. As a natural reflection, economic activities are also shifting towards a digital ground. All individuals all around the world – from the youngest to the oldest – have been leaving digital footprints and we are living in a time where economies are shifting towards data algorithms and artificial intelligence. We are facing new business models, new products, new services and new markets are upon us, which we could not even predict or imagine 20 years ago. In 2010, there were about 800 million mobile internet subscriptions. This number has increased by five times to a number of 4.2 billion, covering 56% of the world population. Especially the high volume digital data that is readily available for process increase its value by day.

This system causes a first come first served advantage and network effects, allowing economic power to be gathered in the hands of certain companies. UNCTAD's 2009 Digital Economy Report shows that seven big brands are dominant in digital economy on a global scale and 54% of digital expenditures are spent in two countries.

This economic system also shows that the national boundaries unprecedentedly in any time in history is vague. Therefore, each one of these competition authorities tries to understand this phenomenon on a global scale in the correct manner, and effectively utilize the intervention tools and methodology. On the other side, they want to take measures and decisions influencing other economies and their ways of doing business. As intensification increases, it turns developing countries much more fragile and also makes it very difficult for one single institution or one authority to establish competition by itself and just because of that international cooperation in the field of competition law emerges as an urgent need rather than a volunteer based luxury.

As the new system's economic power intensifies in a couple of countries, in order to provide security for the welfare of our consumers, collaboration between the developing countries is an historical responsibility. The high volume processable data is very important today and we produce the data but ownership of the data and the power to process the data are only in the hands of the global companies. The power of these companies are not actually influential only on the economic life but also in the political life as we have seen recently. Therefore this clustering of power focuses in some countries. The other countries also try to utilize the advantages of digitalization and on the other side make sure that they want to work together to be able to protect their competitive structures.

From the fintech markets to ecommerce, all the decisions that have been taken by our Competition Authority can be considered among the good practices. Besides that, along with our analysis, we are claiming to be one of the most effective competition authorities in the world. According to the OECD standards, we made calculations indicating that our activity in 2017 and in 2018 had an approximate contribution of 3.28 billion Turkish Liras, which is 600 million American dollars in consumers' welfare. So for every single 1 Lira of expenditure of our taxpayers for our activities, we provide 51 Liras of contribution for the consumers.



Esteemed participants, we will be running 3 major sessions today and tomorrow at ICF, where we will be discussing these problems and solution suggestions and at the same time the majority of the bilateral meetings will allow us to run activities to carry us into the future.

While I conclude my speech, I hope that Istanbul Competition Forum is fruitful for all participants and becomes a tool for everyone to have useful discussions.

I would like to thank to all the participants and I would like to greet everybody.

## ANNOUNCER

Thank you very much, Mr. Küle, for the speech.

We have received some telegrams. We have a telegram from the Speaker of the Turkish Grand National Assembly.

I would like to thank for the invitation for this event, the ICF. Because of my previous arrangements, I cannot participate in this meeting. So I wish this conference will pave the way for other endeavors.

In the meanwhile, we have a telegram from the Minister of Justice and from the Deputy Minister celebrating the organization and thanking for the invitation.

Now I would like to invite Ms. Teresa Moreira, Head of Competition and Consumer Policies Branch from UNCTAD.





**TERESA MOREIRA**

Head, Competition and Consumer Policies Branch, UNCTAD

---

Good morning, Dear Mr. President, dear Members of the Board of the Turkish Competition Authority, Dear Colleagues from national competition authorities, from the OECD Secretariat, ladies and gentlemen.

First of all, I would like to express UNCTAD's sincere thanks to President of the Turkish Competition Authority Birol Küle and to his team mainly of the International Affairs for proposing UNCTAD to cooperate with you in the organization of such an important first event that will promote regional cooperation from now on.

As you know, UNCTAD's mandate is to assist developing countries in better integrate in the world economy and in the field of competition law and policy. We are the custodians of the UN Set of Principles and Rules on Competition, which remains the only international agreed Instrument in this field and which recently led to the Guiding Policies and Procedures to Promote and Facilitate International Cooperation in the Interest of Developing Countries. So regional cooperation is really at the core of our activities and I believe that our work in the field of technical assistance at regional level in Latin America, in the Middle East, and North African countries, in the Central and West African countries, and in the Asian region illustrates this goal.

We have also partnered with the Bulgarian Competition Commission for a number of years creating the Sofia Competition Forum, which also has an important regional scope and has led to several important instruments that can guide and assist competition authorities, especially of less experienced countries.

I would still like to mention our work on trade and competition with the Latin and Caribbean American system, SELA, that since 2010 aims to



better interact two different communities of experts in order to promote economic growth and inclusive sustainable development.

Finally, I would give as example our intervention in the negotiations and conclusion of Africa Continental Free Trade Agreement, which, as most of you know, will include a competition protocol that I believe will be the latest instrument to promote regional cooperation in this field.

I would also like to mention that our recent partnerships with the Economic Commission of the United Nations for the Arab Region (ESQUA), with the OECD and with the World Bank Group as well as with the Organization of American States allow us to better address the needs of member states, not only at national level but at bilateral and regional levels.

Finally, just two words to mention that UNCTAD's recent Digital Economy Report really underlines that globalization and digitalization can help developing countries really improve, but huge digital divides still remain. And I think this really makes a very compelling case for increased international cooperation.

So under our motto, which is "Prosperity for all," we are really keen on making digitalization work for the many and not just a few. And I believe the Istanbul Competition Forum is a landmark event that will allow us to discuss this and other important issues in the future.

Thank you very much.

## ANNOUNCER

Thank you very much Ms. Moreira. I would like to invite Mr. Birol Küle for presentation of a token of appreciation.





## PANEL I: “Digitalization and Competition Law and Policy”

Moderator:

**Ebru GÖKÇE DESSEMOND**

Legal Officer, Competition and Consumer Policies Branch - UNCTAD

Speakers:

**Prof. Pınar AKMAN**

Professor of Law, University of Leeds

**Ioannis LIANOS**

President, Hellenic Competition Authority

**Yuriy TERENCEV**

Chairman, Antimonopoly Committee of Ukraine

**Hasan Hüseyin ÜNLÜ**

Competition Board Member

25 November 2019  
10.30 – 12.30

## ANNOUNCER

So we are ready to start with the first panel discussion of the day. Our subject is digitalization and competition law and policies. To chair the session, our moderator will be Ebru Gökçe Dessemond, who is the legal officer for the Competition and Consumer Policies Branch of UNCTAD. The speakers are invited to the floor. Professor Pinar Akman, who is a Professor of Law from University of Leeds; Ioannis Lianos, who is the President of the Hellenic Competition Authority; Yuriy Terentyev, who is the Chairman of Antimonopoly Committee of Ukraine, and Hasan Hüseyin Ünlü, who is a Board Member of Turkish Competition Authority. They are all invited to the floor.



**EBRU GÖKÇE  
DESSEMOND**

Legal Officer, Competition and  
Consumer Policies Branch-UNCTAD

Good morning, esteemed participants. Welcome to Istanbul, to Istanbul Competition Forum. I am very happy to moderate this first panel of the forum. I would like to thank the Turkish Competition Authority for giving me this opportunity.

Just to briefly introduce myself: I am Ebru Gökçe Dessemond, legal officer at the Competition and Consumer Policies team at UNCTAD, and I have been with UNCTAD since 2006.

We can start, we will be discussing digitalization and competition law and policy today. I think if this conference was 5 years ago we would start by a sentence

saying that we live in a more and more globalizing world, more and more globalizing economy. I think that, today we need to add digitalization. It is penetrating every part of our lives and it is raising some challenges for consumers and also for competition authorities, competition



law enforcers. So, we would like to discuss today in this panel about these challenges arising from digitalization of our economies and how competition law and policy can play a role, and what needs to be done to make it effective to deal with these challenges.

We have very good experts on the panel today with us so I want to briefly introduce them to you. So, we have Professor Pınar Akman from the University of Leeds. She's also the Director of the Center for Business Law and Practice at the University of Leeds, and she has some other titles that I won't mention them all now. Yes, we will start with her as the first panelist and then we go from the left hand side.

We have Mr. Yuriy Terentyev, Chairman of the Antimonopoly Commission of Ukraine. He kindly accepted our invitation to speak at this panel today. And we have Mr. Hasan Hüseyin Ünlü from the host authority, Turkish Competition Authority. He is with the Turkish Competition Authority since 1998 and today he is acting as a Board Member.

And on my left, we have Ioannis Lianos. He is the President of Hellenic Competition Authority. He's also a Professor of Law, he is the Chair of Global Competition Law and Public Policy at University College London.

So I won't take too long so I will start with our speakers. I will give them the floor, we will start with Professor Akman. I think she will present us an overview of the digital platforms, the main players of the digital economy, online platforms and competition concerns arising from that and what competition law and policy can do about this. Thank you very much.

Pınar, you have the floor.





**Prof. PINAR AKMAN**

Professor of Law  
University of Leeds

Thank you very much, Ebru, and many thanks to the Turkish Competition Authority and UNCTAD for this kind invitation. I am honored and delighted to be here, and I am sorry for having to speak in English.

So, in the last couple of months I have had the privilege of preparing a White Paper for the World Economic Forum on competition policy in a globalized and digitalized economy. In that context, I have had the privilege and pleasure to hear from several stakeholders coming from businesses, digital technology companies, consumer organizations, international organizations,

academics, consultants and so on. And I want to share with you today some of the insights that came out of that study.

The study itself is being prepared for Davos in January 2020, so in the next couple of weeks the study will be available on the World Economic Forum's website.

I would like to start with the benefits of digitalization and platforms. That is because I think sometimes we lose the sight of the fact that these platforms do generate significant benefits and they are neither all angels nor are they evils. So, we have to probably start with thinking of the benefits that they generate and understand the business model of platforms and digital technology companies before looking at some of the challenges that the business model and technology companies present for competition authorities. Towards the end of my talk, I'll try to share some insights which might hopefully guide competition authorities in preparing their policies and enforcement practices for digital companies. So, the benefits of platforms and digitalization in general are recognized by many. These include everything from utilizing dormant resources. So you might have a spare bedroom or you might have some spare time, and if you did not have a platform maybe facilitating a transaction by which you can offer your spare bedroom to someone who needs a bedroom,



or by which you can offer your spare time to someone who needs some repair work in their house, without the platform in the middle facilitating an exchange that resource lie dormant. So digital platforms facilitate economic value out of resources that may not otherwise be utilized. In that way they expand the economy. And I should have perhaps said that also the reason I am talking about platforms is mostly because even though digitalization is not unique to digital platforms, recent scrutiny by competition authorities and others have mostly concerned digital platforms and there we see key players in the digital economy.

Platforms also facilitate the creation of new types of transactions and new services, so services we as consumers never even thought of or never benefited from in the past have been possible because of the value generated by the platforms in matching users who might have something valuable to exchange with one another. They generate new employment opportunities. I think it is quite obvious for those of us who shop online, they certainly generate more convenience and choice and more delivery options for consumers. For companies, as well, platforms facilitate the reaching of scale perhaps faster, and at a global scale, which would not otherwise be possible for local companies.

Similarly, platforms lower transaction costs because platforms are all about making matches. So two parties to potential exchange who may not otherwise be able to find each other, find each other thanks to the platform and therefore save the transaction cost that they would otherwise have to incur looking for contract parties. We also know that they certainly make it easier to connect with others. We now have many more communication options than we did in the past. I think the average user, at least in the UK, uses about seven different communication apps now to communicate with one another.

Now the interesting fact is that even though we know that platforms generate so many benefits, actually most measures of economic activity – and the most important one being gross domestic product (GDP) – does not actually capture any of this value generated for the economy by platforms. That is mostly because platforms provide many of these services for free. Okay “free” in quotation marks: at a price of zero. And because the price is 0 and GDP is calculated on the basis of actual positive prices, the value generated by platform services that are

provided for free to consumers are normally excluded from calculations of GDP. Therefore, there is sort of a question mark over how much value in monetary terms do these platforms actually contribute to the economy. One study found that a few years ago in the US alone platforms which provide services for free generated value to the economy estimated around 106 billion US dollars. This was just in the US.

So I think the economists say that if you can't measure something you can't actually essentially understand. The first thing to do to understand the impact on the economy would be to measure the value. I think it is useful to remember that because these services are provided for free, we don't necessarily always appreciate how much value they generate to the economy, to the benefit of everyone participating in the economy. Now, with those benefits, we also know that a lot of concerns have been raised in many circles for many reasons, not all of them have to do with competition law or competition policy. There are issues to do with concentration, there are issues to do with income distribution, inequality and so on. But as this is a competition law conference, I'm going to focus on the features of the platform business model which are challenging for competition authorities. I'll sort of present some of the common features first and then I'll take some of these to discuss briefly what sort of challenges these present for competition authorities in practice.

The first feature of the platforms that we commonly talk about is that they provide their services for free to the consumers. As I already mentioned before, there is no monetary price in the provision of most platform services. I will mention the challenges this presents in a few moments. These platforms also operate on multisided markets, which have network effects present on them. So, the business of the platform is to match users: they are matchmakers and therefore they need at least two sides, two different types of users to come on board. Then they benefit or they fail to benefit from network effects. So the more users the platform has, the higher the value of that platform to the users. Either because you don't want to be on the only phone network with only yourself on it because there is no one to talk to, or because there is someone who is trying to sell something to you and they're not going to come on board unless the customers are on board first.



So there is a chicken and an egg problem that the platform business has to resolve. That's why they say – I think a venture capitalist said this – “It has never been so easy to make a billion but it's never been so difficult to make a million either”. So the business model is very difficult to make it work in the first place but once you make it work, for those that it works for, it works beautifully. Because once you actually are able to reach and find the network effects and able to reach scale, then it's a virtuous circle: if the platform is funded by advertising, more customers bring more advertisers, more advertisers bring more money, more money brings better service, better service brings more customers. So as Google called it, this is a wash and repeat cycle for those who can actually make the business model work. But it is a very difficult business model to make work in the first place, because it needs multiple types of different users to come on board. And what we see is, because these platforms benefit from scale and network effects, they tend to compete for almost the entirety of the market. So competition takes place generally in these markets “for” the market rather than “in” the market because it may be difficult for one market to contain more than one platform, depending on the market of course. When you have competition “for” the market, rather than competition “in” the market, you usually end up with an oligopolistic market structure. So there will be few large players who are competing with one another and it's going to be quite difficult to enter into these markets as a result, as well.

Because these are digital platforms, they also heavily rely on algorithms and big data. Without the data, again, it may be difficult to reach the scale or the network effects. I'll come to that in a moment's time.

What we also see with the platform business model is that these platforms generally do not compete with one service or with one product, but competition takes place within ecosystems. So the same provider may provide you with your email, your mobile phone operator, your search engine, your communication tool. Then we have competition between different ecosystems all of which offer users a package of services as an integrated ecosystem.

The platform business model blurs the line between online and offline businesses and that is also partly because digitalization permeates the entire economy. This has implications for competition policy, particularly

if authorities have to decide who the competitors are in a given market, and, for example, whether to include offline businesses in the same market as online businesses.

So taking a closer look at some of the challenges that the business model provides for competition authorities, I think one of the obvious ones has to do with the fact that the product and services in question are usually free; because as you know competition authorities when they're defining the relevant market for competition inquiry, usually start from the question of "to whom would the consumers go to if this company in question increased its prices?" Well, needless to say, if the price is zero, a price increase of a price of zero by a certain percentage is not going to be meaningful.

So there is a pretty formidable challenge, actually, of defining the relevant market. To the point that the recent, for example, EC advisors' report basically says it may no longer be possible to define markets clearly in digital markets. Perhaps market definition is not going to take or should not take as big a role as it did in competition authorities' assessments in digital markets as it did or does in other markets.

Another challenge results from the fact that competition on these markets usually takes place for the market rather than in the market. Because the firms in question are usually competing for almost the entirety of the market, they generally have large market shares. These markets therefore then tend to be also concentrated. When you look at a market structure where there are closely related markets in which there are a few players all of which have rather large market shares, this causes difficulties in measuring market power, and it may be that market shares are also no longer so meaningful in digital platforms because of the nature of the competition that takes place in these markets and because of network effects. So, again, traditional measures of market power may no longer be so useful in digital markets either.

Network effects have lots of different implications for the competition authority assessments. I just took one example here, which has been discussed quite a lot in the context of merger control: whether competition laws should change if they don't do so at the moment to be able to look at mergers and acquisitions which enroll an established technology



platform company buying a small company, a startup, which may not generate any turnover at the moment. If the merger rules only look at the turnover generation of the companies in question, these mergers can go unchecked because the startup usually doesn't generate any turnover at the start. This is an outcome implication of network effects because most startups, when they first start, generate no turnover at all. And that's not unusual in this business model, because the business model is all about getting sufficient parties on board on more than one side of the market. Unless the platform can do that first, unless the platform can add some value from the matching of these different users, the platform will never be able to generate an income because income generation comes much later in the life of a platform business than it would in life of a traditional business – for example a business that buys and sells products. That's because unless you have all the parties on board, and you have added value and you can, for example, facilitate these parties to generate a transaction, and you as a platform have reached sufficient scale – unless you can do all of those, the platform will never generate any turnover. So many startups in the early days of their lifetimes will not generate any turnover. Therefore, such mergers may go unlooked at or unscrutinized by competition authorities, but the reason for which they don't generate turnover in the early days is because they're still trying to benefit from the network effects and sustain the network effects and scale.

One thing I mentioned earlier was data – that these businesses heavily rely on data and algorithms. It's in the nature of their business. The question is whether such data or data advantages establish market power and if so under which circumstances? I think we're going to see this discussed a lot more in the future. I'm not sure anyone at the moment has an answer to this question. Both the empirical evidence and the theoretical research are still not developed to the stage where we can make informed decisions and say, "Okay, this type of data and this type of market create an advantage that's not surmountable and therefore by itself it constitutes market power". Obviously these discussions will always be market specific, but I think we'll have to learn a lot more about the business types and which businesses use which type of data, and what type of data may be essential, and what type may not be essential



when it comes to establishing, for example, market power.

Data and data policies are also relevant when it comes to, of course, establishing abuse. Here I took the example inspired by the Bundeskartellamt's Facebook decision. The question whether a given platform's data policy itself can constitute an abuse of its dominant position, by for example exploiting its users and customers. As you know, that decision is currently suspended by the court, but I'm sure we'll see more developments in this space regarding data policies and actual use of data by dominant companies when it comes to establishing market power and not just when it comes to establishing dominance in the first place.

The fact that they compete in ecosystems where you can find multiple services provided by a given platform, I think, complicates things when it comes to determining which types of leveraging market power from one market to another maybe anticompetitive. That's partly because when you're faced with a platform that offers an ecosystem, it's no longer so easy to be able to say even that this is a separate product, and this is a separate product; this is a separate market, this is a separate market. Because these are offered as systems and compete as systems, deciding what is a distinct service and what is essentially a feature of a different service is no longer easy. That complicates establishing what types of leveraging power from one market into another can be abusive.

Similarly, what's a horizontal restriction of competition and what's the vertical restriction of competition? Because what we see is one ecosystem competing with another ecosystem, who is now in a horizontal relationship with whom when they compete and who's in a vertical relationship? Who supplies whom and who actually competes with whom are actually quite complex questions, and I think increasingly more we'll see hub and spoke type arrangements which will be difficult to assess in terms of deciding whether it is a horizontal restraint between competitors, or whether it is a vertical restraint between parties providing complements.

Another feature of these business models is that they seem to be able to simultaneously generate procompetitive gains and anticompetitive effects at the same time. In almost all the cases that we have seen regarding



technology companies recently, there have always been arguments, at least, that are credible that these restraints are procompetitive in some way. In particular, I have in mind, for example, most favored customer clauses which clearly do have some procompetitive gains, but also clearly potentially also have anticompetitive effects. Of course, such assessments make it a lot harder for competition authorities to decide whether, on balance, a practice is anticompetitive or not.

I'm going to try to do this quickly and present some insights that emerged both from a review of the existing work out there and also from the discussions that I have had the privilege to have with people who are lot more informed on these issues than I am. I think one of the biggest insights was that when it comes to platforms, one size does not fit all. Platforms, in particular, and others as well, cannot seem to be able to say enough to emphasize the fact that different platforms are very different, and they have to be treated very differently. A platform that facilitates a transaction to generate revenue is very different in business model to a platform that generates revenue mostly on the basis of advertising. If, for example, regulation is adopted without paying sufficient attention to this distinction between different types of platform businesses, it's unlikely that such regulations will be effective. So different platforms have very different business models and these need to be taken into account when drafting policy and also enforcement action.

Another insight that comes out quite strongly is that there's need for a lot more empirical evidence and a far deeper understanding of the relevant markets in which these platforms operate, and a far deeper understanding of the underlying business model is also essential. One of the reports had to do with a retrospective study of mergers. It can essentially be summarized as saying "follow the money". Competition authorities have not always done this in their practice but they have to make sure to follow the money, and for that, they have to appreciate the underlying business model. How does this platform actually generate its revenue? Because that may take you to a different route of analysis than one that looks at, let's say, purely the type of service that appears to be provided to end users as consumers.

Another insight, in my opinion, is the importance of digital literacy. I think several of these competition issues that we are now dealing with could

have been avoided if both the consumers and the businesses who use the platforms understood better or more effectively how these platforms and businesses actually work. And as such as consumers who don't necessarily appreciate how the business model works, I'm not sure what percentage of the population knows how Google is funded for example, and it's also the business users who don't necessarily understand the workings of the platform in between the business and the user. For that, I think it's essential that digital literacy is actually taught at schools and as far as I'm aware Australians are considering it, considering making it compulsory to have digital literacy lessons at school. Because I think with empowered consumers who actually understand what choices they are making and the implications of their choices, and with competition enforcement which would reduce barriers to entry, we would not see so many issues taking place in digital markets because competition would be more effective simply because consumers are more aware of the companies that they're engaging with and their business models.

That brings me to that next point about consumer protection and competition enforcement being really powerful complements and one recommendation that comes out of the study for the World Economic Forum is that it might be worth considering whether the same Authority should have both competition powers and also consumer protection powers, because many of the issues, again, that we see on these markets can be consumer issues as well as competition issues at the same time. Of course – I guess this is quite obvious – but any action by the competition authorities that would actually reduce the barriers to entry into these markets should be priorities to stimulate and encourage entry. Also I think any action to encourage multihoming – again on the part of consumers so that they can use more than one platform company or so that they can switch or use more than one at the same time – would also be beneficial for facilitating competition.

Data and the value and importance of data will only grow in importance, and I know that competition authorities are already preparing for this and many of them are already prepared. But the importance of data is only going to increase in the future, and several commentators have suggested that competition authorities should themselves use data that they gather from the markets with their own tools so that they can more



effectively monitor the markets and also monitor the remedies they may impose on given markets. I personally don't think this would require the creation of digital authorities and I'm not sure how much... Some people and some commentators have proposed that digital markets need their own authorities who would regulate and enforce those regulations on these markets. I don't think they make so much sense in the long run simply because in the not so distant future almost the entire economy will be digital, so digital economy and digital markets are not separate sectors in the economy. Digitalization will continue to permeate the entire economy.

One of the, sort of, last insights, again, that came out of my own research and my studies, my discussions with other colleagues is that competition laws are generally seem to be broad and catch all type of provisions. So most jurisdictions share the same principles in their laws and they're generally broadly worded provisions that can catch many many practices, including novel practices that have never been caught under the law before. So, that would suggest that competition laws themselves probably don't require radical amendments so that they are applicable in the digital economy. Several authorities have applied competition rules in the digital economy already. But it's also clear that some of the tools that we use may no longer be fit for purpose. I think it's obvious for market definition. Market definition we have is not really fit purpose when it comes to looking at markets where the products and services are provided for free. Again, the relevance of market shares and establishing market power doesn't seem to hold so much in digital markets. So we probably need better tools to measure market power for digital platforms.

I think, for example, a lot more work has to be done to understand oligopoly competition which is one of the least understood parts of competition law and probably the least well established parts, so we need a lot more work to be done in these areas to make sure the rules are effective in these respects.

I think actually probably a lot more work has to be done in that regard by economists than lawyers. Because there is a lot of legal work and a lot of policy work out there but it's very difficult to find economic models which actually would tell us whether the proposed solutions when it comes to

the law or the policy are actually sensible. So I think economists are the ones really who have to do a lot more work here in presenting economic models which try to explain what we see or what we may see in these markets, a lot more so than it's happening at the moment.

Just to conclude, so, these markets are very dynamic and we know that competition authority investigations take a relatively long time – and that's relative to how fast the technology itself changes. They don't take a long time because they are slow; I think they take a long time because they have to be detailed and meticulous and that's understandable, but the markets change very quickly. So these markets require dynamic responses coming from policy and I think those responses have to be continuously reassessed, because a given platform market of two years ago is almost certainly not going to look similar in two years' time, except for some, I think, markets where we haven't seen that much change. These markets do change very quickly.

So some tools that many authorities may not have – like the market investigations tool that the UK's Competition and Markets Authority has – I think may prove invaluable when it comes to digital markets, because with such a tool when the authority investigates a market, if it finds that features of the market don't work in that the competition is not delivering the benefits it should deliver to consumers, the authority can impose remedies on the entire market. It can do so without having to pursue separate infringement investigations. I think in markets that change rapidly such tools may become really invaluable.

I'm going to sort of conclude on a cooperation note as expected I suppose, because capacity constraints of competition authorities will be only aggravated when it comes to digital markets and digital platforms. Authorities, I think, will have to do a lot more in terms of formal cooperation so that they can deal with the challenges, the data challenges and the technology challenges of these business models and markets. And let's not forget all of the businesses we're talking about are global in nature: they operate around the world. I think the response, therefore, should be as global as possible, too. This would help not just consumers and facilitate the benefits to continue for consumers from these global businesses, but it will also provide predictability and convergence, which would be very valuable in these markets because essentially all the competition

authorities are dealing with the same companies and the exact same business model.

One last point to make, I think, is that although competition law is great and competition authorities are also great, not every problem is a competition law problem. I think I would predict that in the future we are going to be asking increasingly more the question of “Is this a competition problem or is this not a competition law problem?” This is perhaps also something that the authorities should bear in mind in their work.

Thank you.

## ANNOUNCER

I would like to invite Competition Board Member Mr. Adem Bircan to the floor to present the plaque to Ms. Pinar Akman.



Thank you very much, Pinar, for this very comprehensive presentation and the overview of how digital platforms work. So, just repeat a few takeaways from your presentation, there's a need to understand the business model of platforms, and one thing that I noted is an interesting idea to put the consumer protection and competition enforcement powers in one authority to strengthen action and to empower the authorities because both sides are – both businesses and consumers – are affected by platforms' practices. That was one interesting idea and then you said there's need for actions to reduce entry barriers to these markets by competition authorities and maybe by also restricting concentration through merger reviews. You said competition laws do not need radical amendments but the tools might need to be reviewed and adapted to these new business models. There's work for economists to do to reflect the new business models and what's happening in digital markets in the economic models. And then, of course, these are dynamic markets and they need dynamic policy responses. One tool that Pinar gave as a good example from the UK Competition and Markets Authority is the market investigations power of the Authority to investigate the markets without the need to open a formal investigation. And then these challenges need global responses and cooperation of course.

These were the highlights from her presentation. I would like to thank Pinar for this very good presentation and move on to our next speaker, Professor Ioannis Lianos. He is the President of the Hellenic Competition Authority but he's also as I said the Chair of the Global Competition Law and Public Policy at UCL. Mr. Lianos, BRICS Competition Law and Policy Center has recently conducted a very comprehensive research on digital competition, and we would like to hear from you about the findings and recommendations of

this study, and the BRICS' view on competition in digital markets. What's happening and what we can do and competition authorities can do about this?

Thank you very much.



**Ioannis LIANOS**

President  
Hellenic Competition Authority

Thank you very much for your invitation.

As mentioned, I am actually right now the President of the Hellenic Competition Commission, but at the same time, I had a life before that which was that I'm an academic and was actually the academic director of a project at the BRICS Competition and Policy Center concerning the digital sector. I have been quite active in, basically, drafting, co-drafting and designing this report, which as you said, a draft is available already on the BRICS Competition Law & Policy Center website. The final version will be actually presented globally in January.

That said, because the discussion is about the work I've done under the BRICS hat. So the views that I present here obviously are my personal views. They do not engage at all the Hellenic Competition Commission. At the same time, I cannot also answer your second question which is what the BRICS policy will be, because I'm not a BRICS member. But what I can only say is that the academic team that I was heading came up in the report.

I will say that the first issue that is quite important to have in mind, I think, is that we live in interesting times. We live in interesting times because, of course, we have the fourth industrial revolution coming up and, you know, as citizens and market players we see quite important differences. But as competition lawyers as well, I think, we are facing a period where competition law is in the process of changing. And we see



a number of tensions occurring with the existing mainstream model of competition law, which I will call simple economics, simple neoclassical price theory, which is based basically on three main assumptions. The first one is that we are looking to market definition. We actually are assessing competition infringements in the context of a relevant market. So that's the first thing we always think about when we have a competition case. Secondly, we are very much focusing on prices; so basically the idea is that we are there in order to ensure that there's no collusion in prices, there's no strategy that leads the companies that employ that strategy to increase the prices in the future. And thirdly, we're focusing on consumer welfare, whatever that means. Some of us are taking a narrow perspective and saying that this is basically just consumer surplus. Other people are also adding the rectangle of wealth transfer to that. But basically this is really the DNA of our, you know, competition law nowadays, which is, as I said, simple economics. Why is it simple economics and why I will oppose to that?

I think the first cracks in the system have been a few years ago, when some bright economists, lawyers like Louis Kaplow, raised questions about the value of market definition in our initiative, in our basically process of doing things. And I think there was a quite vibrant discussion concerning this issue and we basically came up to the conclusion – at least this is a consensus view – that that's a useful step; by all means this is not the final step. That's a useful step for administrability reasons. So, basically, don't say that, you know, this is really great as a tool because it's the best tool. Instead, we are thinking that among the things that we have, it is probably the most administrable tool for us to make decisions.

Then, you know, I will say there has been this important change that happened with the literature emanating from IDEI in Toulouse concerning multisided markets and, you know, two-sided markets, where basically the idea was that we have to take into account not only the effects in the context of the relevant market, but actually look to the different sides of the market. And, of course, as it has been mentioned before, understand the business model and the business models the firms are taking. There have been a lot of discussions there about how we change the current framework, how we integrate the multisided markets framework in our



analyses. The US is taking a different perspective after AMEX case of Supreme Court, where the multisided markets issue and transaction platforms became part of, you know, market definition to a certain extent. We take them into account. And the European approach is, as you know, in the Visa Mastercard, were basically multisided. We keep the market definition step and we look to the multisidedness in the context of analyzing the anticompetitive effects of a specific transaction.

The question now is will the US personal transactional platforms be expanded to cover more than just transactional platforms, let's say to advertised based platforms. And that is certainly a debate that the US courts will have.

But again, you know, these discussions have always been based on the simple economics of the micro picture. We need actually to get a micro picture of what is going on in each market and on the basis of the agglomeration of the various micro pictures we get, we will be able – at least we assume we will be able – to get the total view.

Now, I think that view is challenged by complex economics. What is complex economics? It is basically the idea that we are facing intricate systems of interdependent feedback loops connecting market behaviors, interaction patterns and global – as opposed to local – global regularities. So the idea is that there is this what complex economics call emergence. The idea that “Well, sometimes you cannot get the full picture by just adding up the micro pictures. Sometimes a full picture might be very different from the agglomeration of micro pictures.” So that must be something as a system that doesn't necessarily come up of the addition of the micro pictures.

And we see quite significantly this emphasis on feedback loops, which I think you, know, we are more and more discussing about feedback loops in the sense that we are facing nonlinear systems: so we can have a small change in input or a parameter may produce large changes in a behavior. And to a certain extent, we have agents that are constantly adapting and learning. So this focus on learning is completely absent in the context of the neoclassical price theory framework that we have.

So we have already been using some of these concepts of complex

economics that were developed in the 1980s at the Santa Fe Institute. Concepts like increasing in terms of scale and scope. Basically the idea that when you have more users maybe you generate more value. The idea of leverage points: so there are some points where you can basically build on in order to expand your power in the markets. Tipping points: we always now talk about markets that we are going to tip. The idea that at a certain point markets basically can switch so we can actually have an agent taking full control of the market and getting an entrenched position from which it is very difficult to take him out. Or path dependence; past choices in technology might commit ourselves in the future.

So, these are terminologies and concepts that have, as I mentioned before, been generated by research in complex economics and slowly they have been brought in the current framework that we have. So, our starting point in the BRICS support was precisely to take this perspective. This complex economics perspective and try to understand the way changes have been taking place in the context of digital economy before making any recommendations for competition authority and generally for public policy issues.

So what I think is, when we look to, you know, the digital economy nowadays, you know, what we always think about is this idea of we have digital platforms. You know, I think there has been a quite interesting change in the way we are defining and we are understanding digital platforms, because at the beginning, basically – very much influenced by this multisided market theory – the idea was that these platforms were there to create transactions and efficiencies between different groups of users. It was a positive role to a certain extent to basically enable transactions, and that's partly true. But I think, interestingly, the last couple of years, in particular, of the development of algorithms, we see the importance of personal data in the competitive game. We see actually debate moving and we actually are now having concerns like “Well, these are prediction platforms”. We're basing very much in the sense that we have basically these platforms predicting what consumers are basically wanting, and sometimes even framing consumer preferences and consumer choice.



But let's keep this debate apart, this rhetorical, this narrative debate apart. What I will say that is quite interesting and everyone agrees on is that we are facing an economy where we have platforms; they have high fixed costs, a low to zero marginal cost; that these platforms are, basically, collecting and harvesting huge amounts of data. And from that data, you might actually say – some will say – “Well, there might be network effects and barriers to entry in case within that certain types of the data are basically limited. It's big debate about that. Certain types of data are indeed limited. For instance, medical data. I mean, you cannot really disclose and use medical data. Other types of data, like lifestyle data are more available and there's actually nonrivals' consumption there.

Learning effects are becoming very important. Learning effects have been always there in the literature as an important issue. I remember quite an interesting paper in the 1980s by Stiglitz and Dasgupta on learning effects and the way, actually, these might affect monopolization in the context of trade actually. They were writing this article.

But I think learning effects are playing an extremely important role now because of algorithms. It's not just that you are, you know, the more you are in an industry, the more you learn about industry, the better you become so it's difficult for someone else to get you out. Here it is more than that. Here, actually, we have algorithms that learn out of data that they are collecting in the context not of one industry, but of many of industries. And so this learning is basically making it very difficult. In case, actually, you know, you have enormous data and better algorithms because of the data, that may allow you to train your algorithms to have someone else getting into the market. So I think you know we have to focus more on learning effects as a possible barrier to entry.

And these learning effects and network effects in combination, with increasing returns in scale and scope, they create high inequality among companies in sales and profits. So basically we are facing very concentrated markets, we have a top company usually that has much higher sales and profits than the second one. The second company much larger than the third one, and often the fourth and the fifth companies are basically too small to make any particular difference. Now I am not saying that this is a configuration we see in all digital markets. It depends,

really, on many issues. For instance, multihoming might be an issue that could limit that. Or, you know, the fact that we have not strong... indirect network effects and feedback loops. That could be something also where we will see in some markets the development of oligopolies. For instance, if you think about the dating app market, online dating market, we don't really see something like a configuration that we see in the context of search. We have an oligopoly, with sometimes a special niche players, that are specializing in the forms of data. We don't have that with regards to online search.

So what I'm saying is, of course you may have differences from market to market – or I will say not market to market, from industry to industry, rather. But I think a quite interesting issue out of that is that this context of competition creates basically what some people call superstar firms that demand growing market shares and become highly profitable. And you see an important part of labor share within economy that is basically falling, while significant markups and high concentration. That's one of the elements, I think, that we see in the context of the digital economy.

The second one is, I think, the fact that competition is not anymore taking place usually in the context of product markets, but in the context of ecosystems. Let me give you an example. If we look, basically, to the history of the smart phone business, we had, let's say, in 2005, a number of companies basically were using the different operating systems. We have, you know, Google Android obviously from 2006; Symbian operating system, if you remember, some of the older ones here. There was a kind of a combination. It was basically created by Psion, but then you had Erickson, Nokia, and Motorola that were actually using that system. Apple phones, obviously, and the Windows phone. And what is interesting is that, well, nowadays we basically have Google Android and, you know, Apple I would say. And what is interesting is that when look at the history, you look, for instance, to the Windows Phone, in particular, you know, after Symbian was abandoned and in 2010, Nokia with Microsoft put in place the Lumia series of the Windows Phone. If you look to the research about quality of the phone, that was really a good quality phone, probably a better quality phone than the smart phones they had in Android. But still, it did not succeed. And a lot of business literature basically explains why it did not



succeed. It did not succeed because it did not have enough apps. When you know Apple and Android basically had millions, 23 millions of apps, well, you know Windows Phone had two to three hundred thousand apps. That's not enough. What does that show? It shows that competition may have a better product. But if you don't have the better ecosystem – and, you know, apps are parts of the ecosystem: app store, entertainment, etc. – you may actually not win the game.

That is really quite interesting because it puts the emphasis of competition authorities on inter-platform, inter-ecosystem competition. So ideally, we love to have more ecosystems, more platforms to compete within the context of their ecosystems. And in case we have multihoming – which is possible in case the network effects are not very strong – you may actually have success there. But in markets where you actually do not have multihoming operating, or in markets where you don't really have strong network effects, I think the role of competition authority is pretty limited in terms of promoting inter-ecosystem competition. Because whatever you do and whatever type of structure you come up with – with your remedies, for instance – and you try to eliminate, basically, barriers to entry, that of course might generate some competition. But the resulting competition that you will have, will not significantly affect market structure.

So in markets with strong network effects, antitrust authorities may not be able to significantly affect market structure by eliminating barriers to entry. We are not going to have, basically, a competitive market structure emerging, but again the same type of market structure. So it could be probably a competition for the market context, rather than competition in the market. But the question I am asking: if competition authorities have been framed in order to promote competition in the market, rather than competition for the market – we have auctions, you know, as a way to address competition for the market – what is the role of competition authorities in this context, in this world? And I will say that there is a significant element that is definitely missing from the discussion, which is that competition authorities might not necessarily be very effective always in promoting inter-platform competition, because of the network effects and the lack of multihoming. But they can actually promote intra-

ecosystem competition. And I think that is probably sometimes the only form of competition that may occur in these industries. There I am putting the emphasize on a concept I put in place a few years ago and promoted in the context of the ASCOLA meeting back in Stockholm – I think it was like in 2013 – where I basically put forward the idea that well, it would look to the history of the digital revolution, you know, IBM was basically the main player at the beginning of the 1980s in the whole industry. They had almost 80% of the industry revenues in early 1980s. By the mid 1990s; they were down to 20%. Who was actually the company that replaced them as the architect of the whole computing industry? It was actually Microsoft. That was not a competitor of IBM. Microsoft does not produce any hardware. They are producing software. Nowadays, in 2019, which is the company that generates most of the revenue in the context of the computer industry? Well, it is not Microsoft anymore, it is Google. Google is not producing an operating system, at least on the PC. The main function they are playing is in the search engine.

So what I am actually saying is that what we had in terms of competition was basically vertical competition, vertical innovation competition. And this actually generated a lot of work by Michael Porter, also in the context of how you think about the competitive advantage and how actually companies really interact, that puts emphasis not on the horizontal competition that obviously exists – it is a very important element of competition; horizontal competition between the companies in the same industry or companies that are producing substitute products – but actually vertical competition, what I call the competition for the total surplus value of the value chain.

I think that is the word: value chain, which I think is very important to have in mind to possibly create concepts and frameworks that emulate this idea of value chain in competition law in order to understand fully the comparative interactions between the various firms. I think by having this value chain approach, we are going to be able to understand what are the real competitive constraints the firms are facing. And these are not only in the context of product markets or services. These are I think quite important in today's financialized world, in the context of capital markets. And I think that is completely missing from our way of thinking



in competition law.

I want you to take a quick look to this picture that I took from February 23, 2017. This basically explains what are the components of the market value of these specific digital platforms, the firms that we see. It is quite amazing to understand that most of the value of these firms is not coming out of net cash flow; basically, profits they are already making. The market value of these firms comes out of expectations of future profits. And, actually, depending on the firm now, we may be able to take the example of Amazon. Almost 95% of Amazon's current value is based on predictions and expectations about the profits of Amazon after 2022. Right?

So that really shows that if you are the CEO of Amazon or another company like this, what you want is to increase, obviously, the value of your stock. I mean, that is basically what creates the value, the wealth, to a certain extent. So, in your conception of competition, you basically do not take the conception of competition in the product market. You basically take the idea of "How can I be the company that is valued the most by financial markets," by showing to the financial markets that I have a competitive advantage that no one else can basically emulate, can imitate. All right? Therefore, I am going to be playing a very important role, a role of industry architect in the future.

To show you how this complicates our way of thinking in competition law, I just want to show you this figure, which is Google's stock value just after the announcement by the European Commission of their decision to impose 1.5 billion Euros of fines in the context of the AdSense case. One would have expected that the value of Google stock will have gone down after this announcement. I mean, 1.5 billions was more or less something that people somehow expected – I would probably say people were expecting a bit less because there was a kind of a new form of abuse. Interestingly, the value of Google stock increased that day. And not only that day, but the days that followed. And actually one of my Ph.D. students under McLean works on financialization and has collected a number of other examples of this type of behavior in the context of financial markets.



What does this show? It shows that the financial markets are basically valuing this evidence of the fact that you have a Commission decision by “Well, Google has a very dominant position, has an entrenched position in the market.” This is a signal to the markets of something which is there. There has not been any structural remedies, therefore that position will stay on; 1.5 billions is basically peanuts compared to the future gains that Google is going to make.

In order to make you understand why, you know, these financial markets aspect is very important, we need to go a little bit through the shareholding of these digital platforms and understand what really creates the incentives for their action. And this is what we have done with our team. We actually looked at the shareholding of the major US and China based platforms. What is quite interesting is that the US digital platforms have a quite important percentage, I mean most of their shares, are held by institutional investors like index funds in particular. That is completely the opposite in Chinese platforms. Alibaba where you have noninstitutional players that are, basically, having these platforms.

Now, this is very important because there has been a lot of literature concerning financialization, particularly by William Lazonick and other people, who actually tried to put forward the idea that “Well, when you have financialized markets, when you have institutional investors, there might be different ways that they can think about how the company is structured” – and I will explain in a moment what are the implications for us. But just to give you an example of what I am saying, that is basically Alibaba, Intel. So you can see more noninstitutional investors, which is a lighter blue than the dark blue, which is the institutional investors.

What does it mean in principle? Let’s take this example of Google where you have – well, it is very small for me even to read. But you have State Street, BlackRock, Vanguard... that have, basically 6 to 7% of the shares, while Larry Page and Sergey Brin have basically 6%. So it is not, you know... more significant the importance of the index funds.

Now of course Sergey and Larry, they have actually voting rights. So they basically control the company, but in terms of who invests in the company, who are the shareholders, these are basically you know index



funds. And the same thing with Microsoft, and the same thing with Facebook. I mean these are some of the examples you can look for.

Then why this is important? This is important, as I mentioned before, because of this literature concerning financialization. What this literature tells us about financialization? It tells us that until the 1980s – from the 1950s – we have the constitution of conglomerates, big industrial conglomerates. The whole thing was, the whole strategy of the firms was to grow in terms of getting as many, you know, possible companies in different product markets and reinvest in their stuff, in their industry. That basically let the huge conglomerates coming up who were able to have high markups, but they were able, basically, because of their presence of many many markets, they were able, basically, to attract the investment.

In the 1980s, we see financialization coming up, a number of index firms being present and taking over, basically, the various companies and we passed to a model of downsize and distribute. What does it mean? We're basically cutting down the firms, so the end of the conglomerates; we are cutting down to the core function of the firms, and at the same time we try to generate value for the shareholders, and to basically distribute as much dividends as is possible by not investing in workers or in the industry in general.

And what I'm seeing, basically, happening, in particular, with the development of the digital industry from mid2000s and on is what I call the model of expand and distribute. Because we see, as I mentioned before, huge amounts of mergers and acquisitions and the formation of new digital conglomerates. But, actually, quite interestingly, these conglomerates, contrary to what people think, are not investing most of that revenue in R&D in order to reinvest in the company but actually they are distributing it.

Let me give you some examples – and you can see the black line is basically the R&D expenses, the white line is the combination of dividends plus buybacks of stocks, repurchases of stocks that are usually done in order to increase the value of stock and therefore to provide more bonuses to the management. And if you actually look to that you can see the policy is

basically, mostly distributing rather than investing. The same thing with regards of Microsoft. Google is a different story.

So what I'm actually saying is that you should have in mind as well this type of structure developing in order to understand fully and you should have in mind where basically the value goes. Who captures the value that is generated by these companies and who benefits out of that.

Another element that I want to discuss very briefly is – and this was actually also mentioned by Pınar before – is this idea of power. I mean, if the market definition concept doesn't work, if the concept of market power, which is the ability to raise prices profitably and reduce output does not work always in the digital economy – because as I mentioned before, we have zero price markets, right? And sometimes, you know, output increases even if the companies are basically losing money. Why? Because as I said before, they want to attract financial capital. They want to show that they are going to be the leaders, the bottlenecks of the future. So that, actually, type of development leads us to think differently about the various dimensions of power we haven't thought before in the competition law analysis.

Of course, I will not focus that much on, you know, market power, but I will just mention a few types of power, dimensions of power, which I think are really relevant in the current context. What I call the panopticon power. You know, Jeremy Bentham is actually one of the founders UCL so definitely an inspiration here.

What is that? It is basically being at the center of the network, being able to get information; let us imagine that you control cloud, where huge amounts of companies are putting information, some of these companies are your competitors. Well, that gives you panopticon power; that gives you the ability to understand what will be the strategies and predict the strategies of your competitors, their costs, etc. The power to set the agenda, manipulate preferences, which is very important in the context of personalized markets. Being up in the ranking in terms of search result is an indication of the power to set the agenda. Architectural advantage or architectural power, being in the position to influence the way the industries organize structure, and the value allocation between



the industry or ecosystem actors. And this is really a crucial element of the way firms are basically driving their strategy.

Now, what is interesting with these forms of power is that they are based on the position, the positional advantage of the company. Now this is more about the status, rather than about the ability to raise prices or reduce output, or the control of a specific resource, right? And that is an element that is extremely missing from our current conceptualization of power.

Now, that leads a number of authorities to come up with new concepts. If you look to the German report on “Modernizing The Law on Abuse of Market Power,” a report by Heike Schweitzer, Wolfgang Kerber, etc., they actually coin the term “intermediation power” to explain this idea that you can have a position in a network that will provide you advantage. If you look to the formal report Jason Furman, and his team, basically puts forward to the concept of strategic market status, as an element that will trigger further competition law investigation.

All these, actually, new concepts are there in order to show that we don't really dispose a conceptual framework to understand vertical competition and vertical power. And this is something I am actually working on in a paper that will be out before, hopefully, the end of the year with an economist on vertical power concepts in markets. Let me give you some very quick examples. I mean, we actually created different types of power, we actually tried to link these different types of power with theories in economics, or sociology, or economic sociology, about sources of power. And we tried to develop metrics for these different forms of power. Metrics that very much rely on advanced network analysis and competition economics, which I think could be used by competition authorities.

So these are the types of power for which we have metrics now we are using, and these are the types of power, the new forms of power for which we don't really have any conceptualization and any metrics and which we propose different metrics and different forms of conceptualization. Because I think it's nice to use different words, and each report uses different words. The Stiegler report mentions bottleneck power. Jason

Furman's report mentions strategic market status. The German report, intermediation power. But all of these different concepts are basically not, for the time being, put in the theoretical framework. This is what we are trying to do in our report.

Final thing I want to say is where that brings us in terms of competition authorities and what we can do. I think one of the important elements of the whole debate about digital competition is that we need to focus not only on value generation, but also value capture. And I think that is, probably, the added value of the BRICS report. We were the first report to put emphasis on value capture. Because this is basic to what is happening in the context of the digital economy. We have some players that, basically, were able to capture value because of the lack of an institutional framework. They were able to harvest data and use this data because there were no property rights on this data. There was no specific institutional framework or institution that was basically, you know, somehow regulating this economy.

So we are now, basically, after the fact, right? So, obviously, these companies were possessing the data, there was possession of data. They did not have an ownership right on the data because no one, for the time being, has thought about the ownership rights. We need a discussion but we do not have that.

And at the same time, because of the network effects, feedback loops, etc. we are facing an industry, or economy, which is heavily concentrated. We have these digital platforms, which is very difficult nowadays to contest. If it was possible for Android, the Android phones, to challenge the position of Symbian back in 2006, it was because we were speaking about different types of smartphones. I mean they didn't have the apps for phones 2006. Nowadays they do have apps and everyone buys a phone because we have access to apps. Now, if you have three million apps, that is a huge advantage. If you have an app store that is really prominent, huge advantage. You have a cloud that can actually be integrated into the phone, that's a huge advantage. If you have a payment system – and we talk about AllPay, for instance, as an example, WeChat – that's a huge advantage. Now, is it possible to contest this market? I am not sure.



So I think what we have to think about is – as Pinar was mentioning before, I agree with her, at least, on that – that maybe that is not just the competition law story. The competition law could be one part of the equation. We need to take what I call a toolkit approach.

What is this toolkit approach? First, we need to think about areas where we might probably go towards a pervasive utility style regulation. Now, of course, you know that is a question about “Do we have a natural monopoly, here?” And that’s different. You have, sometimes, you know, winner takes most competition, in which case we do not have a neutral monopoly. But we also have situations where winner takes all competition, where we might have a natural monopoly, in which case, we might have some form of regulation. What will be that regulation? Because we do not have price, it could be regulation, for instance, on the number of ads. It could be regulation on the fact that you have to provide payment to the users for, basically, the use of their data. And we explain a little bit about that in the report.

We have actually self regulation via codes of conduct. That is the approach that has been put forward by the Japanese report – there is a report in Japan as well – and the UK Furman report. We can actually think about more institutional reforms like the creation of missing data markets. What there is a problem with missing data markets here is because what is missing. Well, you know, Google – and I give the example of Google just because it is one the platforms, I have nothing against Google. I like it actually very much. But, for instance, Google, they are actually selling this information, I mean, this data through predictions, to advertisers, alright. So there is a market there in terms of how much the advertisers are valuing the predictions that are generated by Google on the basis of the data collected. However, we do not have a price at the other side of the market. We do not know how much users value their data when they provided the data to the platform. Because we do not really have a market, you do not have a market where Google is buying this data from the users, right? This is a missing market.

So now, I think maybe we should establish the missing market, the data market, and increase the commodification. That is not just about the data, it could be commodification of attention. There’s a lot of research

that shows that the attention span of a human has been reduced from twelve seconds to nine seconds the last ten years, right? The goldfish, I think, has a 8 seconds of attention span. So we are almost there. That is a scarce resource. And obviously it is a resource that is valuable.

So we can actually think about establishing property rights for new, fictitious commodities – data, attention – or, if we do not want to go that far, enhance data portability. Some, actually, legislators have taken even more ambitious plans. They have, actually – like the Indian ones in the draft National e-Commerce Policy – they put forward the idea that the data of a country is best thought of as a collective resource, a national asset that the government holds in trust but the rights to which can be permitted. The analogy of a mine or of a natural resource or spectrum works here. So it can be that the government basically auctions the attention or data of the users of the specific country.

Countervailing powers, collective bargaining is another element that we have to take into account. There has been a lot of discussion in Europe about the possibility of freelancers to constitute a sort of collective bargaining units to collectively bargain with the cartel – sorry, with the digital platforms. Some proposals have also put forward this idea with the users. That is an interesting element to take into account. Commissioner Vestager in her latest mission letter has been, you know, focusing on this issue of freelancers. And Ireland for instance, one of the member states of the EU has already developed exemptions in their law for freelancers to constitute some sort of, you know, cooperation and collective bargaining with digital platforms.

And finally, you know, what I have put forward in some of my papers on polycentric competition – and what I mean by that is that we do not focus, basically, only on price effects, we do not only focus on consumer welfare narrowly defined. We, basically, take into account issues like privacy, democracy and complex inequality in the way we think about it, and that also leads to different tools that we can actually use, like agent base modelling that in my view may be used more often in the context of competition law.

So I end up here my presentation. If you want to have more information about the report, it is actually placed left. A paper I uploaded yesterday that summarizes my talk, not summarizes, expands my talk which is basically on the right hand side. And then there are two books that basically focus also – that just came out – focus on digital competition, and in particular look to block chain competition, which is actually a very important element I have not really touched in my presentation.

Thank you.

## ANNOUNCER

To present the plaque to Mr. Ioannis Lianos, I would like to invite Competition Board Member Ms. Şükran Kodlak to the floor.





## EBRU GÖKÇE DESSEMOND

Thank you very much, Professor Lianos, for this very comprehensive presentation of the findings and some ideas in the BRICS's report. I will move on very fast to our next speaker. We have a very limited time left, about half an hour. So I would like to invite Mr. Terentyev to tell us about Ukraine's experience in this digitalization of the economy and the competition issues arising in this process. Can you give us some examples from your country? Thank you. Thank you very much.



**Yuriy TEREITYEV**  
Chairman, Antimonopoly  
Committee of Ukraine

Thanks a lot.

In fact, I think every competition authority in the world is very keen about digitalization, about penetration of platforms and these are the topics we have been discussing now. But at the same time, I think smaller jurisdictions may, from time to time, get discouraged by hearing all these problems which sometimes may seem out of the jurisdictional reach. It may seem only biggest jurisdictions like United States, European Union indeed have something to do with that. But, basically, with my short intervention, I would like to rebut this assumption and say that in fact digitalization and topics related to

digitalization can indeed fill your daily enforcement local agenda; they may be very practical from concrete enforcement actions also in smaller jurisdictions and also in various parts of the world.

In Ukraine, basically, if you are following the developments of the Eastern Europe, there was a big demand from public for modernization of economy, for transparency, for fight with corruption, for closing the



regulation with the European Union and the close approximation with European standard of economic policy.

So we have done quite a big work related to the improvement of business climate. And since 2014, Ukraine went up 48 positions in doing business ratings. But this is not to advertise Ukraine; this is to say that sometimes these fast changes related to bringing transparency, related to digitalization... They may also entail these so-called growth illnesses, like with the kids.

We now pay a lot of attention to development of digital economy. So in Ukraine, Ministry of Digital Transformation has been established several months ago. There is a really huge attention to make administrative services and all the issues related to the service side of the state as easy and as user-friendly as possible. So we are approaching it like the state in smartphones. And in general the IT sector is really booming and it now amounts to 4% of GDP and it is number 2 in the export structure. But, moving closer to competition issues, definitely one of the best and the probably only viable way to fight corruption is transparency. And in Ukraine, public procurement has always been a very sensitive area with regard to corrupt practices. So, since 2014, we paid a lot of attention to opening up public procurement, to become really open, transparent, competitive. Again, since four years, there is a system, which is called ProZorro. It is actually a game on words, because actually Zorro is a famous movie character. But “prozoryy” means “transparent” in Ukraine. So the idea is, it is something which is cool and which is making everything transparent.

So, this is actually not some kind of a dull, boring system. It is a platform. It is a big online platform the idea of which is to make as easy and as transparent as possible the public procurement process. So we have on the one side, there is a classical situation with a multitude of possible contract awards, public organizations which want to acquire certain services, or works, or merchandise, while the system on the other side – it is fully open for anyone to participate on the supply side.

And as the Antimonopoly Committee, as the competition authority of Ukraine, we have several dimensions in which we interact with this platform. On the one side of this, we act as a procurement appeals

review body. So it is a huge workload for us. We review on annual basis about 10.000 complaints like that. But it has little to do with the subject matter of this panel.

But on the other side, having such a platform and working with this platform serves as a great source for information and for evidence in investigation of bid rigging cases. The launch of the procurement platform since four years facilitated a lot investigation in bid rigging cases. So, on average, we have close to 300 decisions related to bid rigging cases. Basically, the digital evidence, which we use mostly to substantiate our cases comes from this platform. So, well, foremost, same IP addresses from bidders who log in to the system to access auctions, same quantity details, same properties of files, licenses for software, again, uploading of documents belonging to another bidder... All the possible mistakes which bidders can do to get easy supported... This is facilitated as a system and is very helpful throughout the investigations. So, also, the system has an analytical module which allows us to analyze bidding patterns in auctions. And also, looking long term at certain commercial practices, we can establish patterns of certain sequences which also helps us investigate bid rigging cartels.

So basically just this year itself, we already have several dozens of decisions for the total value penalties over 60 million dollars. But this is to say one side, the kind of facility this kind of byproduct which we have coming from digitalization and penetration of platforms, which helps investigative practices.

Also, there are situations when indeed 21st century meets the 90s. So we have online platforms, we have data, we have digital tools. But at the same time we have conduct. We have the conduct of incumbents, we have conduct of undertakings with regard to collusive practices, which really very classical forms of competition abuses but which involve technologies of the 21st century. Which involve data collection, which involve the access to data, which involve access to systems. So just in the last two years, we had a number of investigations and decisions related to these types of conducts.

For instance, recent decision of this year: the national agency which is responsible for maintenance of property registers has launched a pilot



project for an alerting system when certain changes to these property registers are brought. And there was only one entity selected to be a partner for this project, which charged money for these services. Again, with a usage of mix of tools of advocacy and enforcement, we came to a situation that this national agency made public the connection protocols. And this system was a data which was basically in public domain has been modified so that it allowed for free access to many of the companies not creating an artificial monopoly with just one service provider.

Similar situation happened with a system for cargo data registration. Again, in the course of modernization of a system for transparent registration of cargo flow, one company was given exclusive rights to maintain a register for documentation, which was used also for customs clearing. Again, this case may seem relatively simplistic as I described it. There was a combination, again, of actions at the level of ministry, at the level of the company which restricted access to data, and the requested extra, basically, significant charges to be paid for the performance of the services which were just artificially kept with one entity. So this situation discontinued after our enforcement actions.

Online sales of railway tickets, again, one company volunteered – I think three years ago – to launch a pilot project to develop a solution and give it for free to the national railway system. Surprise! As a side effect of this gift, came a situation that the payment module which was vital for connection of banks to the payment system was made not for free, but for money. And this company which developed software for online sales of tickets was not actually acting only for the good of society but it started to charge payment commission on all transactions related to the sale of railway tickets. Basically, there was no transparent contest for this function, there was no, basically, reason why this company acquired this dominant position. So, again, as this type of behavior was the reason for us to start a case. This case is currently under investigation.

Also a notorious situation in Ukraine, again, State Property Fund of Ukraine established this special database for evaluation reports and restricted unreasonably the requirements to the companies which do evaluation of property in a ways that only several companies could access this register. So, basically, we had two actions, two enforcement actions: one at the level of state property fund where this, actually, one

month ago we took decisions on anticompetitive action of a public body. At the same time, this spring we have taken a decision on the cartel of these evaluation companies.

So why am I giving these examples after such bright presentations on platforms? I want to say that, in fact, issues related to data, issues related to the access to systems, issues related to monopolization and privileged positions of companies in specific markets, they can also come and be relevant for the enforcement agenda of competition authorities, even in such situations which may seem more simple.

Just one last example to complete: the ongoing case which we have about the sale of arrested property. The Ministry of Justice, since four years ago, established a platform for the sale of arrested property. And there were several concerns. Firstly, because a lot of market participants believed that such monopolization for the markets of the sale of arrested property is illegal. Secondly, there were numerous signals that, as the system was closed and restricted only with one entity conducting all elements – all services, so to say – related to the sale of arrested property, there are a lot of cases of manipulation with auctions, with prices, and several cases of fraud. So, basically, this was a good case where we mixed advocacy and enforcement efforts, because we involved not only the Ministry of Justice and specifically this enterprise – it is called SETAM – we also involved organizations like Transparency International, anticorruption institutions, also companies involved in development of online platforms. And jointly we came to a procompetitive solution as a result of which, basically, we separated several functions which were concentrated within this organization, platform for the sale of arrested property, so that the functions like filling of the system with data, database management, organization of sales, allowing of access to the trading software, and the physical conduction of auctions have become separated. You may think of a parallel with unbundling process of natural monopolies. With certain elements, they indeed need to be in the hands of some entities, but other elements need to be separated and need to be given for free access to other market participants.

Basically, now the color coding of these blocks basically shows that these functions which used to be under one entity are now with different entities. So you see by color, this allows, really, that activities of this platform

are much more transparent, there is much less room for manipulation and abuses. And this is a good showcase of how ideas and notions of sort of what is a new concept related digitalization can be applied to the practical problems which we face locally in every jurisdiction.

So, again, my intervention had the idea to say that local competition authorities – they should not be afraid to deal with these issues. There is a lot of really practical local enforcement content in them. And, again, the main principles and concepts of competition law with regard to digital economy remain relevant. Again, this proves once more the flexibility of competition law is working well also for really new markets.

Thanks.

## ANNOUNCER

To present the plaque to Mr. Yuriy Terentyev, I would like to invite Competition Board Member, Mr. Ahmet Algan.



## EBRU GÖKÇE DESSEMOND

Thank you very much, Mr. Terentyev, for the presentation. I like the example on this breaking up of one local platform, which is a good example, I think, to share.

And I would like to give the floor to Mr. Hasan Hüseyin Ünlü from Turkish Competition of Authority. He will tell us about Turkey's experience with digital markets. So my questions to you are the following: has Turkey revised its competition law or issued new regulations to deal with online platforms' anticompetitive practices, and have you had any competition cases involving digital platforms in Turkey?

Thank you very much.



**Hasan Hüseyin ÜNLÜ**  
Competition Board Member

Thank you very much.

I know that I have limited time, so I will try to be as fast and as basic as possible.

So, there will be and translation I will just try to be thorough.

I would like to take you back in time to 15 years ago. Based on a personal experience, I would like to share some information.

Does the production or the product matter? Or is it the marketing that matters? Of course, when you consider both issues, production matters. 15 years ago, my wife used to design jewelry and she tried to sell them online. The

digital markets were not available. Social media was there. But it wasn't possible to market through it. So she actually told me how important marketing is. Whatever you produce, if you cannot put it in the market, it doesn't matter. It doesn't exist.

So, currently, today, these digital markets offer endless opportunities. So it's so important, even for the most important player of the market. It brings unique advantages for any kind of homebased producers like my wife, it adds opportunity to her life. So that's how I would like to underline the importance of these platforms. It is already mentioned by the previous speakers. So I would like to just share certain practices currently occurring in Turkey and the issues, and the hurdles, and the solutions that we can suggest.

I would like to start from the time 15 years ago. There are two major decisions that we have made. One is about Biletix. For foreign guests – maybe locals would know what Biletix does – Biletix is like Ticketmaster which markets tickets for events. All kinds of events. It could be entertainment, sports, arts... In 2004, we were consulted with an exclusivity. Back in the time, there were three major football clubs: Fenerbahçe, Beşiktaş and Galatasaray football teams' tickets were marketed over that platform. So it is much more enhanced right now. So they were talking about these exclusivity rights. These were long term exclusivity rights. The reporter was warning about that they were creating a monopoly and it had to be limited to a one-year time basis so that every year the new market players could have the chance to sell these football clubs' tickets.

This is a new subject so our Authority wanted to evaluate it and it just was not an established issue. We thought that Biletix did not hold a dominant position in the market. And we just declined this request. We did not think that there would be any kind of a measure.

Then in 2013, an inquiry was made about exclusivity about Biletix again. There was a higher number of events and new market players in terms of the platforms selling these kind of products. At the end of the investigation, we did not require any kind of penalties, but we established a technical opinion which was obligatory. We decided that there should be two limitations for this kind of exclusivity rights. It becomes kind of difficult to sell some of the tickets at this platform and some of the tickets for the same event on another platform. It is not very efficient for the activities at the event. That is why the Authority decided that this kind of exclusivity is administrable.



As the Competition of Authority – maybe I had to mention it in the beginning - I would like to just give information to our foreign guests: we are acting in all kinds of products and commodities and services, including the digital services. We have power about competition in all markets available.

We have a set of different analysis on digital markets and products, but I consider the number of penalties and fees and decisions that we have, and we see that it has been 22 years and we have carried out 32 investigations in IT sector, the highest number of investigations has been done in this particular sector and this is the highest amount of penalties that have been issued in terms of different business segments.

What kind of issues that we encounter in this field? Let's talk about the violations, and I will also talk about specific cases. There is this exclusivity rights: they say you should not work with anybody else than me. Others are not allowed to enter the market. Usually, it is the subject matter of Article 4. We also require some kind on market power. And this is the most common violation within the article 4 – it is about these conventions and vertical ones, the number of products, the number of services and how they should be limited. This is one of the other types of competition. And there is also another issue of Article 6 about tying practices, making it difficult for other players to act in a market or limiting the number of players. There is an overpricing decision that we have made on digital markets, too.

Second decision is about Yemeksepeti. Yemeksepeti.com – for our foreign guests, I would like to just explain it – is a platform where restaurants and food companies market their services and food. What kind of advantages does it provide? Several different restaurants, several different vendors provide and offer their menus, and you can have access to them all. And you can just get promotions and discounts. Therefore, it gives you a way of comparison. And it also has a great opportunity to choose from a great variety. Yemeksepeti case came in 2004 and we have also analyzed in this case the commission rates – because they charge a commission from these restaurants – during the time. You can see that Yemeksepeti has a huge market share and it has seven competitors. But Yemeksepeti

has been quite effective with a huge market share. But we have to talk about the dominant position and we have to also understand the market power. We have to define the market, and it is very difficult to make that kind of definition because there are too many variables involved. For example, for the Yemeksepeti case, we thought of the market, the platform it can provide the services of online food order, takeaways. So, there are also websites of these companies. You can also call them and make reservations. There are other websites that can provide that kind of services. But we wanted to focus on a platform where there would be a kind of comparison between several different restaurants, and it is what we thought that market should be limited to. Those individual restaurant websites where you can place an order for food, for takeaway were excluded and that is what allowed Yemeksepeti to have a huge market share.

So when we terminated the exclusivity in 2007 – they also had exclusivity. We said that you cannot have that so that the other actors can enter the market, it created a huge obstacle. Yemeksepeti made several different agreements with chain restaurants like McDonald's and etc. So they had huge agreements, so the competitors who wanted to enter the market with these brands could not enter the market because they had exclusivity rights. Of course, Yemeksepeti became the most efficient, the most preferred, and the most inclusive platform. So in 2004 we terminated this exclusivity right.

In 2016, there was another inquiry for the same file. There was no exclusivity condition. The most favored customer, MFC. So, they realized that, they started implementing these most favored customer clauses. So the MFC clause means you're being given the biggest advantage, not any other competitor.

The decision was really obvious. MFC was not banned but because of the rule of reason, it has to be analyzed on a case by case basis. So the market power of Yemeksepeti was very important, it was emphasized. As a conclusion, we decided that this was a violation. Yemeksepeti has a huge share in the market and market features matter. The most number of restaurants that had been contacted and the most preferred ones

were also, and the quality of the conditions were analyzed. And it was decided that the market was foreclosed to any kind of competitors and the most favored customer clauses were banned. That's how the MFC clause was used and it was banned.

So we tried to come up with some kind of remedies. Of course, there were several different defenses applied by Yemeksepeti, which were not observed as violations. One of the joker type applications, what does that mean? So, it is said that you are not going to run any kind of advertisements on your website, on your portal, for the competitors. Since this was also concerned as a feature of competition, it was also discussed by our Board.

Another file that was covered under MFC was the booking.com. It is a platform that everybody wants to work with. It is very effective. Most effective platform and of course nobody can just deny its success in terms of efficiency. It is very important. There were also several different inquires about how the market was adversely affected because of the injustices and the lack of competition. Booking.com can also run this kind of MFC and we have also concluded, made a decision in 2004. Especially, you know that we could come work with all kinds of authority, wanted to provide the best price warranty and they wanted to provide that this cannot exist in any kind of platform. They had been working with these hotels with this kind of basis, which shut down the market to other competitors. So we wanted to work with them as well.

The market is not limited to platform or internet. Or should we just also include the hotel websites as well? That is what we had to consider. Because this changes the position of booking.com and the market. And we made this kind of comparative, all one platform based opportunity. We have decided that this kind of service is not the same with reservations that you make through a website of a hotel. We have defined the market as the online service market for this platform. We have concluded that Booking.com has a huge market share and market influence. But investigation continued on the booking.com side. Booking.com made commitments. As we made it clear, we are also trying to understand the situation. We tried to turn it into a narrower kind of MFC.



So when you work with the booking.com, you reach them, they just run some kind of a mediator service and they don't charge it to the customer. You can just talk to the hotel and make negotiations, and then lock booking.com outside the system. So yes, because of these worries we have seen is as righteous and we have also provided exclusivity to utilization of this narrow MFC.

Of course, booking.com is not operating here in Turkey and it's not due to our decisions. Their activity is stopped in Turkey because of other court resolutions. We don't have authority anyway to suspend activities.

Another decision was about overpricing, and I'm sure you also know that. Overpricing, as you can imagine, is an open subject to any kind of discussion. It's a very dangerous situation it's dangerous waters especially in these kind of big economies where these economies change rapidly, where the old ones replace the new ones, and the new ones replace the old ones. When we are talking about overpricing, it is not an easy subject, actually. Therefore, we have to expect these extraordinary conditions and ideas to appear.

In the example of sahibinden.com – for our foreign guests, let me explain what sahibinden.com means. It is for real estate and vehicle resale and leasing. It is an intermediary website, allowing people to sell their real estate as well as their vehicles, or lease them. And it was also covering individual customers as well as corporate customers. The basic working principle of sahibinden.com partially is similar to booking.com, but they don't charge commissions. They charge fees from subscriptions and ads installed on the platform. But they are bringing the buyer and the seller together on the platform.

So we have covered the activities of sahibinden.com between 2014 and 2017. There were several different complaints because of overpricing. Between 2014 and 2017, the prices have grown extremely. About the definition of the market, there were several different objections by the company. But there was no discussion that they were the dominant company, especially in terms of the market that they were positioned in. And they have not decreased, lost this power within the time frame of

the years. sahibinden.com is a preferred online platform and they believe that they have just gained a strong market position due to that. They are talking about efficacy and efficiency. If their dominant position does not change despite these changes, they had a chance to increase their prices extremely. That is what we have concluded. Within three years, they increased their price thirty times. When you compare it to the closest competitor – of course that provides several different services – in the services that we were looking at, sahibinden.com was seven times more expensive than its closest competitor. And they could continue with that. Although there are illegal pricing or overpricing in digital economies, since there will be new entities entering the market this kind of overpricing, this illegal pricing encourages new entries. So, that was the main idea, but based on the analysis in the three-year actions we have seen that it did not happen. Although the prices consistently increased, the competitors could not get any kind of market share gain. Considering the fact that they have had significant price increases and the competitors' not being able to gain any kind of market share, we have realized that these prices were overpricing and illegal pricing. We have punished and imposed fines on sahibinden.com.

The other case is Google. And we have also talked about Google, we also ran an analysis similar to the Commission. Google as you know runs the Android operating system, and provides these Android system they have provided these kinds of liabilities and sanctions that are not in line with competition like making these searches over only Google.

We're talking about two systems here, there's the iOS, which is a closed operating system. Since it is a closed system, we consider it outside the market. Of course, there is a walking one, there is also a dying system and – it was also mentioned – it was a Windows system. So Android is the only operating system that can be commercialized. So I want to also repeat my comments on sahibinden.com: there is no violation of competition that we have to talk about at this point.

Where does it start? For Android, there are two types of contracts. For phone producers there is OSA, open source agreement that is free of

charge. Any kind of mobile company producer for mobiles can download it for free and use it. But this operating system does not have any kind of store like in Google Play. So it is an empty system. So any kind of operator installing in these company phones, they have to make an addition of these stores. Otherwise, they cannot sell it because nobody would buy if you cannot buy apps, right? So, that's the only opportunity they suggest.

And there is TAIS where all the extensions are included in the package like Google Play service, Google mobile systems, as well as others. But when they offer that, they come up with certain requirements and conditions. One of them is this: for the Google search bar, it has to be up on top of the home screen which is visible, no matter what. They require that the search is made with Google as a default, and also when you make an inscreen search, there is Google Webview, which is an application, this has to be also assigned as the default. That is what they request.

There is another agreement on revenue shares. They ask for exclusivity in any of the agreements so that you can also download other competitors' applications or interfaces. But they want theirs to be predominant, assigned as default. But in terms of revenue shares, they just stop downloading any of the competitors' applications. So if you have any kind of Google, "If you only allow me to be on your phones, I'll share my advertisement then commercial revenues". "We do". "But if there are any other applications downloaded on the app, I won't share it with you".

What does that mean? You can either use my products as a package, or you can only use this OIS which does not have any kind of store. And if you use that you cannot use my store. If you want to you can just come up with other kind of stores but if you want a kind of app where you have enabled my stores you cannot download any kind of store. So they also come up with this idea of copyright issues and we thought that it was a violation.

About the vertical agreements, that is also another online sale. Of course, we know that Sony made some kind of activities that were not in line with the competition law and they violated competition. So there were also discussions about Sony and its position in the market, especially

in terms of TV products. They have a serious market share. When we consider the internet sales, it is also very limited. But despite that, the limitations on the internet sales is very important. That is what we have decided and it will have a major impact on the market. We thought that it would just be a violation and even if it has a limited impact, it was a subject of violations.

Based on all of our experiences, just like Miss Ebru asked me about the amendments in the law and regulations, we are currently working on a draft law. Of course, we are only talking about commitments. We did not have anything related to commitments in our legislation, and so if that is approved by the legislator they will be included. In our guidelines in 2018, both the online sales and other examples that we have made have been explained. It is about internet sales. So the internet sales should be open, there cannot be any limitation on the internet sales, online sales. But that will also provide certain opportunities. So if there are conditions that apply, then there can be certain limitations. Any kind of platform should be required to have a certain quality, if they are going to run limited online sales. We said that there can be another requirement for elective distribution. Any kind of resale of online sales may require to have a physical shop apart from the online sales. So we say that it can be also approved so that we can prevent this kind of free rider problems.

About other nations, there is no limitation related to the online sales of other countries. Another addition that we have made in the law is that the most favored customer clause should be clarified. Because this is the highest number of cases, we wanted to explain it in detail and we wanted to elaborate on the issues related to the most favored customer clauses, and we have added that to the legislation.

So we are talking about 40% of market shares. We said that if the market conditions apply, we can also bring this most favored customer clause. So if it is not over 40%, then it has to be individual exclusivity and then we can just change these definitions on the further days.

That is all I have to say. Last but not least, let me just say one more thing. Of course, we are talking about a time when digitalization skyrockets and



then we see more complaints. There are five investigations now ongoing about platforms. You can also see that on our website. If you want to learn more about it, you can check our website.

Thank you.

## ANNOUNCER

I would like to invite Vice President of the Competition Authority, Mr. Kürşat Ünlüsoy, to the stage to present his plaque to Mr. Hasan Hüseyin Ünlü. Thank you.





## EBRU GÖKÇE DESSEMOND

Well, thank you very much for telling us about the Turkish experience. We are 15 minutes overtime, so we do not have any time for questions but I think our speakers will be around if you can approach them, if you have specific questions.

I would like to thank them all for their very comprehensive and interesting presentations.

## ANNOUNCER

We would like to thank our moderator and our speakers as well. I would like to invite Deputy Chairman of the Competition Board Mr. Arslan Narin, to the floor to present her plaque to our moderator. Thank you.





## PANEL II: International Cooperation in Competition Law Enforcement

Moderator:

**Kürşat ÜNLÜSOY**

Vice President, Turkish Competition Authority

Speakers:

**Antonio CAPOBIANCO**

Acting Head, Competition Division, OECD

**Elizabeth GACHUIRI**

Economic Affairs Officer, UNCTAD

**Prof. Juliana LATIFI**

Chairwoman, Albanian Competition Authority

**Elena KLEININGER**

Vice President, Romanian Competition Council

**Ljiljana PAVLIC**

Board Member, Croatian Competition Agency

25 November 2019  
14.00 – 16.00

## ANNOUNCER

Once again, welcome. I hope you enjoyed your meal and in the second session of the day, we will be talking about the assistance in international competition and competition law enforcement. I would like to invite Mr. Kürşat Ünlüsoy as a moderator and I also would like to invite the panelists: Mr. Antonio Capobianco, Ms. Elizabeth Gachuri, Professor Juliana Latifi, and from Romanian Competition Council Ms. Elena Kleininger, and also from Croatian Competition Agency, Board Member Ms. Ljiljana Pavlic. I would like to leave the floor to Mr. Ünlüsoy.



**Kürşat ÜNLÜSOY**

Vice President  
Turkish Competition Authority

Good afternoon, ladies and gentlemen,

I would like to thank UNCTAD for their efforts and support for our organization, and special thanks to Mr. Adem Bircan. When we were designing this program, he was our Acting President. So he gave many efforts to this organization. Thanks to all our colleagues especially working in the International Affairs Department.

Welcome to Turkey, welcome to Istanbul, and welcome to this session on international cooperation in competition law enforcement. In this session, I believe we will discuss an important topic. I think that all of us being here today is a

demonstration of the topic's importance in itself. Competition agencies do enforce law within their jurisdiction. However, we see increasing number of cross border cases. When agencies can work such cases together, or at least achieve a certain level of cooperation, it is immensely beneficial



for all parties. It is something desirable for involved undertakings in some cases. Merger and leniency cases for example, cooperation decreases the money and time costs of undertakings.

I believe Istanbul Competition Forum and similar initiatives of international cooperation, are especially timely at this point of history, when markets and liberal ideas are seriously questioned. The liberal ideas, the gaps in development between the advanced and emerging economies aside, our existent virtues and benefits of competition are harder to advocate for more than ever. International and national inequalities, of course has a huge role in this puzzle we are in. But if this grand question is to be confronted with an equally grand approach, then we should count terms with our failures and competencies in institutional learning and innovation.

Why? Because questioning of liberalism is nothing new. From Karl Marx to Friedrich Nietzsche, to Karl Schmidt, the promises and disappointments of liberalism have been heavily emphasized. The responsibility to formulate remedies to the new debate of our empowered digital markets versus consumers therefore is ours to fulfill. We should therefore avoid presentism that competition law as it is present will remain that way. And we should do that by enhancing our cooperation, stop denying globalization, and delay reforms by pointing to policy autonomy.

If digitalization allows no immunity and the benefits of information economy and our productivity are now undeniably positive, we should collaborate for more competition. If we cannot prove that collaboration and competition are not an oxymoron, then trust in the markets can be reinjected.

I think we should keep in mind that competition authorities are local but the businesses are global. As we all know, unfortunately, there is no international regime of competition law. Leaving the European Union aside, we are short of integrating our procedures to exploit economies of scale in competition law beyond our jurisdictions. But the companies' number one stakeholders are quite successful in integrating their activities and collaborating with no worries about orders.

One question I believe in all heads, maybe “How will we overcome the problem of collective action?”. In this respect, I would like to share an anecdote or a story from Nasrettin Hodja, a famous Turkish story teller, a wise man in fact, a philosopher, whose stories have been enjoyed by millions from Turkic world, to Persian, Arabian and African cultures and even along the Silk Road to China and India: A friend of the Hodja, found the Hodja on all fours under the street lamp.

“What are you doing, Nasrettin?” asked the Hodja’s friend.

“I’m looking for my keys,” he explained.

“Can I help?” his friend said.

“That’s very kind of you,” the Hodja replied. His friend then went down on all fours and started to look for the keys, too. A little while later, another one of the Hodja’s friends came by, they made the same dialogue, and his other friend also went on all fours and started to look for the keys. Eventually the street under the streetlamp was completely covered by friends of the Hodja, all on their hands and knees, helping him look for his lost keys. Then one of them said, “Hodja, are you sure you lost your keys here?”

“No,” he replied, pointing “I lost them over there, by my front door, but I decided to look for them in here, under the street lamp, because there is much more light here.”

So I think the main challenge is to find the right layer, forum or tool for competition authorities, in terms of international cooperation. As prices are not governed merely by national regulations and conditions, and as plurality of actors is undeniable, we need to expand institutional horizons beyond the “street lamp”. With regard to the problem of collective action we might wonder that with different cultures, different backgrounds and different constituents, how could we succeed reaching a meaningful cooperative framework? We should remember that no local knowledge and no successful collective action on a national scale can be achieved without being a part of transnational networks. If our institutional geography does not overlap with economic geography, collective action would fail everywhere.



As someone in the managerial ranks of the Competition Authority, I see that there are also some obstacles in front of effective cooperation. Sometimes, it is lack of resources, sometimes it is legal restrictions, or confidentiality concerns, but I believe that we must not give up working on this. I believe that coordination and cooperation between competition agencies may yield great results.

A small step we take today, in this meeting, can be the beginning of something beyond we imagine. I assume this is a shared conviction, because as we will discuss in a few minutes, international organizations are intensifying their efforts about cooperation between agencies. Also there are good examples of bilateral cooperation.

To discuss this challenging subject, we have five distinguished speakers. If you do not mind, in order to use the time effectively, I will skip reading the CVs or resumes of our panelists as everybody can reach them via the ICF website.

So let me introduce our panelists: Ms. Elizabeth Gachuri is the Economics Affairs Officer of UNCTAD. Mr. Antonio Capobianco is the Acting Head of Competition Division of the OECD. Ms. Elena Kleininger is the Vice President of Romanian Competition Council. Prof. Juliana Latifi is the Chairwoman of the Albanian Competition Authority, and Ms. Ljiljana Pavlic is the Board Member of Croatian Competition Agency. They will tell us what their experience is with international cooperation in enforcement matters, what they think about international cooperation present and future.

I suggest that we listen to our speakers first and then have questions and comments from the floor, in order to leave plenty of time for discussion. I will kindly ask the speakers to keep time to a fifteen minutes timeframe with their presentations. And let us start with the first presentation today.

I would like to give the floor to Mr. Antonio Capobianco, I believe his presentation will give us a good introduction explaining why international cooperation is important and what the OECD is doing about it. Mr. Capobianco, the floor is yours.



**Antonio CAPOBIANCO**

Acting Head, Competition  
Division, OECD

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Thank you. Good afternoon everyone, I will do my best to be short and for the sake of time to give you an opportunity to ask questions, but I really want to spend a few seconds to thank you and to you, of course, the whole of the Turkish Competition Authority, UNCTAD of course, and all the sponsors that have made this event possible.

It is, first of all, a pleasure to be back in Istanbul, but it's a great honor to be part of this first Istanbul Competition Forum. And I am particularly happy to be on this panel. As you said, cooperation is very important; it is very high on the agenda of competition

authorities and therefore also of international organizations like OECD. Actually the "C" in OECD stands for cooperation, so cooperation has been and is at the core of the mandate of the OECD. And the competition community for many years, actually I would say for many decades, are taking these mandates seriously and has consistently worked on developing good practices, sometimes best practices, to help agencies cooperate on cases and on policy issues.

Now, since I am the first panelist here, maybe I can spend a few words, you know, and explain a little bit of why international cooperation and especially enforcement cooperation of cases has become ever so important for the effectiveness of today's competition law. But first of all – and I think you mentioned this – one of the greatest successes of the competition community as a whole has been the dissemination of competition laws. Twenty or thirty years ago, we had probably a handful, about ten to fifteen jurisdictions around the world who had a competition law. Today it is given for granted, but it is quite amazing how we have more than 120 countries who have effectively adopted and enforcing competition law regimes with an agency mandated to do that.

Now this success comes at a cost and the cost is to maintain consistency across systems and policies, and then across outcomes of competition





enforcement. Now what the OECD and UNCTAD and others have done for many, many years is to make sure that legal systems and policies are consistent. So we offer a platform for authorities, for governments who come to meetings and share experiences. That is something that has been very important and I think has been very extremely successful.

But the needs have moved on, and as cases become more and more international, cross border, I think cooperation on cases – kind of a subarea of cooperation has been raised up on the agenda of competition authorities. And this is for the reason that I think have been mentioned also in the previous panels. First of all, markets are not national anymore. They used to be, and now they are less and less national. They are much more integrated into regional markets, sometimes global markets. So business practices go across borders. They do not stop at the border, they go across their jurisdictions. So they are potentially under investigation in multiple jurisdictions. But countries are taking a national view to competition policy, they have domestic laws. So there is this kind of discrepancy between the reality of markets and the legal systems.

Now, the drivers for cooperation, for more cooperation, on cases have been two, I mean, certainly, one being the spreading, the dissemination of the merger regimes. So more and more cases are now under investigation or under review by different agencies – and when I say different agencies, it is not two or three. Sometimes we talk about 15, 20 or more authorities looking at the same transaction, because that transaction affects markets, national markets, around the world.

The other driver, I think, is more recent and I think you mentioned this. The dissemination, the spreading of the leniency programs around the world is a recent phenomenon, I would say, over the last 10 years. And that has led to global cartels being investigated more and more frequently by multiple jurisdictions.

Now there are developments – and they were also mentioned earlier this morning – in market realities, which are driving the need for more cooperation. Digitalization is clearly the one phenomenon that has changed, to some extent, or sort of raised again the issue of, the question about the effective cooperation. Digital companies, high-tech companies,



big tech giants, they do not operate in any particular jurisdiction. They are really global businesses and so some of the challenges that they have led, they have brought with the digital age, are confronting authorities around the world and that leads for more cooperation.

So with that background in mind, what has been the role of the OECD? As I said, you know, the OECD has been engaged in promoting more and better cooperation for many years. I think what we've done and we continue to do is, so we do not force, we do not provide an element of cooperation on cases, cooperation on enforcement of cases. But what we do, we map needs of authorities. We do look at what are the needs and how changes in the backgrounds of the market and the legal framework affect their needs for cooperation. But we also look at the needs of businesses, which is the other side of the coin. Cooperation is a cost from the regulatory side, but at the same time, it is a cost also for the businesses. We have a way to look at also the needs of the businesses.

So mapping and identifying, sort of, challenges – you mentioned some of these challenges – can be legal, so within the legal system itself. But can be also practical, language issues, time differences, resource issues... All of these affect the quality and the intensity of cooperation. But what we have done beyond mapping is to try to identify some solutions. Offering solutions to the enforcement community, a solution that can be adopted to improve cooperation in cases. And this is where the last two recommendations of the OECD on international cooperation have been quite instrumental in shaping the way cooperation works today. I am referring to the 1995 recommendation on international cooperation, which was recently abrogated and replaced by another recommendation in 2014.

Now, the work continues obviously on cooperation and we are now being asked to report in the coming year to our councils and to the membership of OECD about the experiences with the 2014 recommendation. So all of that will offer us an opportunity to take a step back, go back to the mapping of needs and try to think about solutions that we did already in the past. So we have sort of joined forces with the ICN, International Competition Network, and launched a survey. I know there are many authorities here, so I am calling on them to answer the survey if they have not done yet



because it is an important element to get needs and information about what challenges that your agency have with cooperation.

Now, this work in understanding what are the needs, we, of course, look at our membership. It is traditionally a membership composed by authorities which are experienced, which have, you know, cross border enforcement experience. But I think it is where the work with other international organization like UNCTAD has been very important because they can take a look at the needs of a different set of authorities, at the new agencies, emerging agencies which may be smaller, with other types of challenges that authorities that are a part of the OECD membership. Although I do not want to steal thunder of Elizabeth who will speak about the work of UNCTAD, I just want to praise the work which I think is extremely important and complementary to the work that we do at the OECD.

Now, on the survey, I think we are still collecting answers. I think we have received, you know, around 4550 replies so far. We are starting to look a little bit of what comes out of these replies. But the idea is to draft a report that will synthesize the views from the countries, from the respondents, and the report will be available next year. We will discuss it on OECD and it will be made available then next year.

So what comes out of these first replies? It is still, as I said, very early days. But first of all, I think we see that there is a good implementation of the international best practices. We are looking at the OECD recommendations but we see that many authorities, many governments and authorities of course within those governments, have implemented some of the provisions of the recommendation within the 2014 recommendation.

Two particular areas, you know, were quite innovative at the time. I would mention those. One is information gateways. You mentioned as one of the most important legal challenges to cooperation is the inability of competition authorities to exchange confidential information without the consent of the parties from which the information comes. Now these information gateways offer an opportunity, if implemented in national legislation on cooperation agreements beyond the need to seek for a

waiver, subject to a number of conditions, safeguards allow competition authorities to exchange confidential information. We see some of these gateways being negotiated or being included in bilateral agreements, some jurisdictions have been really pushing for this second generation cooperation agreement, as they are called in the technical jargon. Australia, Canada, the EU, Japan have signed MoUs for cooperation agreements including information gateways.

The other areas where we see some developments but also potential for more developments in the future is investigative assistance. This is the ability of an authority to use its powers or its enforcement power to support the investigation of another jurisdiction. From very basic or simple things, like serving a document to a citizen or a company located abroad, to doing dawn raids, interviewing witnesses... this sort of assistance can be done but they require some legal changes. We'll see some of these moving and developing but there is probably scope for more.

So certainly a good implementation of the 2014 Recommendation. And the rest, I think we are sort of seeing some things that we had a sense of. So, traditional competition authority will do more and more cooperation. Competition authorities already, traditionally, did a lot of cooperation. They are doing more of it. And we see more cooperation in areas like abuse of dominance cases. We see more cooperation developing on abuse of dominance cases, monopolization cases. But we also see new agencies coming into this arena of cross border enforcement and so be more active in cooperation. So authorities have now starting to investigate cross border cases, they are becoming more and more active also on the cooperation side.

The other element that comes out very clearly is the importance of the regional dimension of cooperation. Something that we know, that we have been looking at for some time, but it is clear that cooperation is much more lively, so much more active on regional level rather than on global level. So this is the link to the two basic ideas behind the success of cooperation: one is trust, the fact that authorities and agencies know each other or work with each other more often, more frequently facilitates cooperation. And the other one is reciprocity at the regional



level. It is easy that one day I am helping you and the next day you will help me. So, that facilitates strengthening those bonds and facilitating cooperation.

Now to one last thought – and here really is where I express mostly personal thoughts. Because we're moving into, I would say, uncharted territories but it is the future, where the debate on cooperation going to be is in the future. But here, I think, and like I said, this is a personal sort of set of comments: I think if I look back at the way cooperation was designed, there was no plan. I mean basically it started in 1991 when a couple of years after the European Union, European Community at the time, adopted the Merger Regulation. With two authorities in the United States and Brussels, they thought they needed to institutionalize some form of cooperation because more and more cases, merger cases, were filed on both sides of the Atlantic. So that started the need for cooperation. From that one bilateral agreement, we have now mapped, I think, more than 120 bilateral cooperation agreements at agency levels, and about 20 or 25 cooperation agreements at the state to state level, which deal with cooperation between authorities, between competition authorities.

All of these was not planned. There was no big plan behind this, it basically developed as the needs arose. Now we are faced with an opportunity, we are confronted with an opportunity to build a plan, maybe a plan which will help authorities in ten years' time or twenty years' time to enforce their competition law in a better way. And I say this because while bilateral relationships are still pretty efficient or could work as we have more and more authorities involved in cases, this network of bilateral agreements becomes quite difficult to enforce. Some of these agreements are very far advanced – I mentioned second generation agreements – others are statements of principles: "We will cooperate if the needs arise and the opportunity arise".

So moving from network of bilateral agreements to a multilateral platform where a number of agencies can use the same tools to cooperate, that is certainly something that will make operation easier. We see this happen on regional level. I mean, the ECN and I think the others will talk about the experiences within the European Competition Network, which is a

multilateral platform for cooperation, has been extremely successful. Now there are other examples on a narrower scale in the Nordic countries and Australia and New Zealand. Other jurisdictions are moving towards these multilateral frameworks. But I think this is the way, probably, of the future, moving towards multilateral platform rather than developing bilateral relationships.

The other big question is a difficult question, it is a sensitive question. It is whether we should, or government should rethink the need for cooperation at its roots. Now enforcement cooperation takes for granted that we have parallel investigations on the same transaction or on the same conduct. That is a given. So, the tools and the thinking is being developed towards making sure that these procedures are consistent. Not necessarily leading to an identical outcome, outcomes can be different, but certainly, the analysis should be consistent. Therefore, the need for the agencies to discuss, exchange views, exchange evidence if necessary. Now the question is: as we have more and more competition authorities enforcing their competition laws cross border, do we need to have 20-30, potentially even 40 parallel investigations of the same transaction? That leads to duplications. 20 authorities are defining the market, 20 authorities are deciding which firms have been party to a cartel, how long the cartel has lasted... So they are doing all of the same exercises. Is there a way to centralize or allocate some of these responsibilities to a lead agency? Can we develop models, maybe in issues like leniency or merger filings for one stop shop? Again, going back to the experience in Europe: You file your leniency application in one country and that applies to all of those who join the system. I mean all of these, as you can see, it is theoretically appealing as a concept. Of course, it clashes with sovereignty questions; you know the ability of building legal structures that allow for these kinds of solutions. But there is at least a discussion that needs to take place on whether cooperation should really be reshaped for the future of these enforcement communities. I think the OECD is willing to offer, again, a platform for these discussion whether that would lead to identifying, again, new best practices or new good practices will depend, of course, on the other discussion goals and on the will, of course, of the members.

Thank you.

## ANNOUNCER

I would like to invite the Deputy Chairman of the Competition Board Arslan Narin to present his plaque to Mr. Capobianco.



## KÜRŞAT ÜNLÜSOY

Thank you very much for your presentation and for pointing out what the next steps can be.

So now, I would like to continue with another international organization which plays a significant role in international cooperation. Ms. Elizabeth Gachuri's presentation will give us an overview about guiding policies and procedures under Section F of the UN Set on Competition. Ms. Gachuri, please, the floor is yours.



**Elizabeth GACHURI**  
Economic Affairs Officer  
UNCTAD

Good afternoon everyone. I hope you can be with us this afternoon. We know it, afternoons are not easy.

May I start by saying that I am very grateful to be here with my colleagues, representing UNCTAD and also sharing the platform with enforcers and with Antonio's institution where we facilitate and we give platform for member states to discuss.

So today, I am going to talk about the guiding principles and policies and procedures under section F of the UN Set on Competition. For those who do not know, we as UNCTAD have a mandate document,

which we call the UN Set. It talks about the work on competition. A while ago people sat down and saw there were going to be problems coming up of anticompetitive practices – they used to be called restrictive business practices – and that is the document that we work on and that is the document that is a result of what we are discussing today.

Just as a way of background, my presentation is going to be based on four items; I am going to say a few words about the UN Set, going to talk about the discussions for facilitating international cooperation under Section F; obstacles to international cooperation, and then the guiding principles and the content. For those people who may be asking what are these guiding principles, I'll talk about that a little later, sorry.

So, in 1980, the members of the UN met and came up with these document which is called the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, which we today call anticompetitive practices. Looking forward, the wisdom of that day, they came up with principles and rules for enterprises, including transnational corporations, who should refrain from anticompetitive practices, and the rules were to be implemented at national, regional and subregional levels, enforcement agencies and competitive practices by states.



Looking at it today, we can see that in all those areas there has been development. As Antonio has said, we are not just talking about the state or the national borders or the national situations. We are talking about regional, subregional levels, and now we are even talking about continental free trade agreement in Africa which has competition provisions in it. So these things that were seen in 1980, we can see them today existing and alive.

So then, there is also the issue of international measures and international cooperation and exchange of information, which is important today like it was that time and even more now, even as we talked about this morning about digitalization and the need, even to start rethinking of how information is exchanged and how it affects the market that we operate in today.

And then, the emphasis of this presentation today is on Section F of the UN Set, which is on international measures. This talk is about cooperation at national level and which should be aimed at eliminating and dealing with restrictive business practices again including those of transnational corporations, which we call multinationals today and through strengthening and improving controls of our restrictive business practices that affect international trade, particularly that of developing countries and economic development of these countries. So the people who drafted the UN Set, they looked forward and they were thinking about how trade would look like in the future and they saw that the developing countries, as they come into being, as they develop, would need us to work together for them to be able to go on with development matters.

And so, under the UN Set, there are some main paragraphs. Paragraph 1 talked about achieving common approaches, just like Antonio has said. Consultations among member states, that is paragraph four which we are going to talk about more today, and UNCTAD work on the model law. We have a model law which we have been working on reviewing and revising as member states gives us information. And then our main work of technical assistance and advisories have been going on quite well. But



end of paragraph 4, which had not been implemented so much, is the focus of the presentation today.

So, just to give you some background of the work that we have done as UNCTAD in the past on international cooperation: we started from 2012. We have done certain papers on international cooperation, which you can find further on our website. One was even on informal cooperation where, there may not necessarily be a formal agreement for competition authorities to cooperate. Competition authorities have developed ways even on informal cooperation where even for developing countries they can take the phone and they can exchange information, and they can work together on the cases that are facing them.

So just to come a little bit closer, during the 15th Session of the Intergovernmental Group of Experts on Competition, member states requested UNCTAD to do a study on enhancing international cooperation, investigation on cross border competition cases to some procedures. The paper just put out some tools – they have been mentioned by Antonio – which can be used. But the question to ask always is, yes, those tools are there. They can be applied and they have been applied. But is it across the board? We have recognized that developing countries, many of them cannot cooperate because of the obstacles that have been identified. At the 16th Session of the IGE on competition in 2017, we are asked by the member states to facilitate the establishment of a working group on international cooperation, which is the working group that has produced the documents that we are working on today.

In 2018, the mandate of the working group was extended for one more year and there was an adhoc meeting that was held in Geneva to discuss these issues with the relevant stakeholders. I would say here that member states worked very hard on these principles to make sure they come up with a document that was adopted this year according to guiding policies and procedures. The Secretariat was requested to disseminate the information that was contained in this document. And that is why we are here today to share with these people and member states who are not aware that there was this work going on; and also to



say what the document contains and also what is expected of UNCTAD and what is expected of member states.

That slide is showing the issues that we discussed in the papers that we wrote on international cooperation and identified that there is a lack of awareness on possible cooperation avenues, tools and procedures. There are also legal restrictions, there is also a lack of mutual understanding and trust at the interaction between competition authorities. But I am also happy to say that over the years, we have had more stakeholders coming on board in bringing member states together to discuss competition issues including OECD, ICN and also the EU, and other forums that sometimes are not, kind of, what we call formal, but have done a lot of great work to make sure that competition authorities come together and discuss issues. So the scope is widening and we are hoping to be much better in the future. Also, we are being reminded that we need to be thinking about those countries that cannot be reached in many aspects of the work that we do.

So now, today, why are the guiding policies and principles are needed? I have already said that despite the existence of multiple international cooperation frameworks, competition authorities still face many obstacles, especially those of developing countries. So the guiding principles are aimed to promote mutual trust and understanding of each other's framework like trying to build the understanding that this is how my law looks like, this is how your law looks like, how can we work together, how can we cooperate even though sometimes the legal systems may be different, which are and also to facilitate contacts between competition authorities, and to clarify what is possible in the existing schemes; especially for young agencies with no actual experience on cooperation, and also those who are just passing their laws today and having all this information going around. They are not very sure where they could start. So, the guiding principles are opening doorways, tools and opportunities for countries to come together, and discuss, and be able to benefit from one another, from those who have been there for a long time and those who are coming in.

And just like in many UN documents, even the UN Guidelines on Consumer Protection – which are also our mandate – these documents are not binding. But competition authorities can use them and they do use them as a guide in communicating with other authorities in practice. We have seen that in many cases, many countries, many authorities that come into existence, they need somewhere to start. So we are hoping that the guiding principles and procedures document will be another guide to the ones that we already have, and will make it easier for us to work with member states.

So, that is the frame of the guiding principles. It is in three parts: there is the guiding policies, toolkit for cooperation in competition cases, and then they also discuss the role of UNCTAD in the framework of the UN Set on Competition. So, the guiding principles include benefits of cooperation, importance to provide tools for developing countries, cooperation based on mutual trust. Because sometimes it just takes to meet people for you to develop trust. When talking about people that you do not know, it is very difficult for you to be able to trust them. But when the opportunity comes, people meet, they interact, then they are able to trust one another and they are able to share that which they could not when they had no trust and when they had not met.

And then you are talking about significant flexibility that exist in the way authorities may seek to cooperate with each other. And that key requisite of success for cooperation in competition cases is the ability to provide effective and credible assurances that shared information is maintained in confidence, and will be used only for purposes that these sharing authorities have permitted. That also is a point for discussion, because sometimes we also see that the description, the definition of confidential information differs from one country to the other, from one jurisdiction to the other. So there is that framework that is supposed to be developed for discussion on what is confidential and what is not in different jurisdictions so that when you want to ask for help, then you know what to expect.



Then there is also the issue of flexibility between authorities in initiating cooperation, based on each other's relevant domestic laws and policies for mutual understanding. Cooperation among authorities may also include initial contacts – when you make contacts with one another and it also grows with trust, and knowing one another and being able to understand what they do and how they do it, then you develop trust.

Then there is need to take communication to that next level and to make sure that the people, the authorities, at all stages of enforcement of competition law, are included. Then there is the issue of timing and alignment of the exchange of information because sometimes things work in certain jurisdiction at certain times. There is also the timing of the kind of information you need in the case and at what point. So, exchange of information, confidentiality and waivers of confidentiality is important to understand. Discussions on the substance and on the case resolution is part of the package of the toolkit.

Okay, so, the role of UNCTAD in facilitating cooperation under Section F of the act: when member states who are members of the discussion group on the international cooperation sat down, they came up with some points where they thought UNCTAD could be of help in times of implementing of the principles and the policies. So, it was agreed and put in the document that UNCTAD would help in developing confidentiality provisions and the promotion of mutual trust among authorities; that will facilitate them and have more effective cooperation. UNCTAD can also help member states by providing publicly available legal texts and guidelines that are relevant to cooperation, such as confidentiality rules, rules concerning investigations, data protection rules and other jurisdictions. Because sometimes, as competition authorities become very busy with their own work and running against time deadlines and the thresholds they have to fulfill... And even looking at developing countries where there could be shortages of resources in terms of staff, it would be helpful if UNCTAD is requested to put these things together and share it with member states like we always do.

UNCTAD could also maintain a list of contact persons who may facilitate international cooperation at each member state's authority, including the appropriate identifying contacts for particular types of conduct in competition authorities and also identifying linguistic abilities among contacts, because, you know, one of the challenges that we have as UNCTAD is, across our membership many many languages are spoken. Sometimes it becomes difficult to communicate among member states because of these language barriers. But at UNCTAD that can be taken care of because when we do meetings, we provide for at least six UN languages.

And going on with the role of UNCTAD, in case of consultation under section F of the UN set, the requesting authority may ask UNCTAD Secretariat to assist in preparing the request to advise on procedural matters within the scope of the consultation, and provide mutually agreed conference facilities by the Secretariat of UNCTAD. That is something that can be done by UNCTAD, and member states have requested.

So further on the consultations, UNCTAD can also offer guidance, especially for authorities from developing countries and countries with economies in transition, with regard to confidentiality assurances and in the use of information shared in the course of such consultations, based on the works listed in the Annex. The guiding principles of an annex of tools and works that can be referred to when talking about international cooperation. Also, the interpretation of the UN Set provisions, and upon specific request and consent by authorities involved participation in the consultation.

In case the assistance of the UNCTAD Secretariat is needed to facilitate consultations, the scope of the assistance needs to be determined before the consultation officially begins. Of course, consultation means agreeing on the timing, the alignment of the discussion matters, and everything else that needs to be done, because, of course, UNCTAD operates within a guideline on mandates of a work plan that has to be accomplished. To fit this in, then you need to be consulting in good time.



Consultations should be in compliance with the laws and rules on confidentiality applicable in the jurisdictions involved. And this is very important, because when you bring matters to the UN level, the UN always has to abide by the member states and what is provided under the domestic laws, and would not like to go outside of that. So it is a good thing to understand what the law says and what do the jurisdictions allow or do not allow.

Then finally, there is the guiding principles have been translated in Russian, Spanish, Arabic; and the translations were provided by the Russian Federation for the Russian version, Ecuador and Mexico for the Spanish, Egypt for Arabic, and the French version was prepared by the Secretariat. So whatever language you are comfortable with, you can be able to get a copy of the guiding policies, so that you can study more.

So my conclusion remarks would be that this document is for member states, that the work that is supposed to be done to decide to organize, UNCTAD is available as we have been asked in the document to facilitate, but it is the take and their personalization of this document is on the member states. As always, UNCTAD is ready to provide assistance, to provide the framework, to provide the space and the platform for member states.

Thank you very much.

## ANNOUNCER

To present the plaque to Elizabeth Gachuri I would like to invite Competition Board Member Mr. Adem Bircan.



## KÜRŞAT ÜNLÜSOY

Thank you for this detailed presentation.

I think the discussion section will give us an opportunity to answer any questions from interested competition authorities about the guidance, if we have time.

Now, we will move to the experiences of national authorities. I would like to start with Ms. Elena Kleininger. She will present us Romania's experience regarding case-specific and general cooperation.

Ms. Kleininger, the floor is yours.



**Elena KLEININGER**

Vice President  
Romanian Competition Council

Thank you, Mr. Chairman and thank you Competition Authority of Turkey for the invitation. It's an honor for me to be here. I will begin my presentation with a question. Is Romanian Competition Council a young competition authority? Because we have 22 years since its creation, 12 years as member of ECN, member of ICN since 2001 and member of OECD Competition Committee since 2014.

About international cooperation, I like to make some general remarks. As Competition Authority of a candidate country, because Romania was a candidate country for European Union between

1997 and 2007, Romanian Competition Council signed memoranda of understanding with many national competition authority from European Union and benefited from European Union support through twinning for projects and TAIEX. Romanian Competition Council became member of ECN in 2007. When Romania joined European Union and at that time, Competition Council was already applying the European regulation and rules. And our legislation has the right to use of dawn raids during investigation. In 2011, Romanian Competition Authority established a cartel unit, and a department dealing only with bid rigging cases has been created. I can add that in 2007 we just handled 3-4 cases in cartels, now we have almost 20 per year.

Cooperation with European Commission. For instance, in 2016 and 2017, two unannounced inspection of DG Competition to Romanian companies was executed in natural gas sector and in pharmaceutical products. That means a very close cooperation with the European Commission team. So, it was a mixed team that included almost nine case handlers and we selected the best placed case handlers based on their previous experience in carrying out dawn raids and knowledge of English language and easy adaptation to new rules and communication skills. What we



learned from that cooperation with European Commission in mixed inspections? We learned that we need to reconsider our IT investment strategy. Because our forensic system must be updated and we need to invest in training of staff on using new technologies of company inspected because sometimes they have better software than us.

About cooperation with other competition authorities, I mean other national competition authorities, Regulation 1/2003 set out the legal basis for cross-border cooperation between competition authorities. That may include raids on the office or even private homes of individuals that are suspected of hosting relevant evidence. Inspections are decided by Romanian Competition Council although the procedural law governing the collection of evidence will be that of the host state. I will give you two examples. Case A: in aviation insurance market, in 2017, Romanian Competition Council conducted an investigation in that domain, aviation insurance market, and collected information from companies based in United Kingdom. This is a support of the Competition Market Authority of Great Britain. That was actually the first cross-border cooperation in history of Romanian Competition Council. You can see on that slide how that works in our case. So, we have indicators that came from complaints of government or consumer or our internal market research. Then we have to follow the procedure and to obtain juridical approval from the judge to execute that dawn raids. Then we communicate with the other national competition authorities. And at the end, follow the investigation.

Case 2, it is in the immunoglobulin market, in 2018 Romanian Competition Council teams carried out unannounced inspection with help of Italian Competition Authority and Belgium Competition Authority and Belgium police. All that inspection was conducted simultaneously, and that was a little bit complicated because involved actually three national competition authorities but followed the same procedure at the first and we draw attention that because Belgium Competition Authority works with the police, that was a little bit complicating for coordination in term of times. But actually, was very well done.

I like to add some words about the European mergers and the cooperation



in that area. Also, an example, Arcelor-Mittal notified the European Commission about its intention to acquire the Italian steelmaker Ilva. The company was present at that time in many European countries including Romania. The European Commission approved that merger with condition, disposal of assets of Italy, Romania, Macedonia, Czech Republic, Luxemburg and Belgium. So, in that case Romanian Competition Council and the other European competition authorities of course, have to apply regulation 139 on merger control. International mergers also an example, single control of Chimcomplex SA Borzești over asset of Oltchim SA Râmnicu Vâlcea, which is a major producer in the chemical industry in Romania was notified to competition authorities of Romania, Moldova and Macedonia. Since the other two competition authorities are not EU member states, the ICN practical guide to international enforcement cooperation in mergers was applied in that case. So, Romanian Competition Council decision was communicated to those authorities and information sharing consist with confidential obligation.

Cooperation with European Competition Network. The cross-border interaction is likely to increase and ECN plus directive seeks to further empower the national competition authorities, aims to further facilitate cross border investigation including mutual assistance in dawn raids. The deadline for transposing the ECN plus directive is 2021 and Romanian Competition Council collaborate the government already have a draft of that law and the draft provided for cooperation with other competition authorities within the ECN in order to ensure effective and uniform application of the Treaty. Thank you for your attention.

## ANNOUNCER

To present the plaque to Elena Kleininger, I would like to invite Competition Board Member Mr. Ahmet Algan.



## KÜRŞAT ÜNLÜSOY

Thank you, Ms. Kleininger. Next, I'd like to turn to Professor Latifi. She will focus on general cooperation. Ms. Latifi, floor is yours.



## Prof. Juliana LATIFI

Chairwoman  
Albanian Competition Authority

Thank you, Mr. Chair. It's pleasure for me to be here. And this forum is one of excellent signs of our cooperation. We meet today with colleagues. We discuss the same problem, we speak for the independence of the agency, our budget and our cases that we have at hand. But I want to introduce the experience of Albania, and the competition authority in Albania, in the international development and the cooperation. International cooperation is one of the main focus of Albania Competition Authority. And so, this cooperation in two lines: The first the relationship between national



competition authority and the second with international organization that operate in the field of competition. I have to mention the cooperation that we have with a lot of agency and the most important was the benefit of this cooperation that we have between us. And I want to bring example in the framework of the bilateral agreement and the same time on different work of the financial support by EU programs. We have succeeded to make possible the training of Albanian civil servant staff in the other competition agency. I mentioned here in my slide. We have of a program TAIEX in the framework of competition. We have the relations with agency, at the same time the European Union. We have TAIEX programs made possible our training of all the staff, for example in the competition of authority of Italia, in Austria and Germany the same time.

The most important in our relationship is the fact that we are part of the communication network and when I speak for the communication network, I mention OECD, special RCC, UNCTAD and the ICN. In the framework of Regional Center for Competition in Budapest, this is the center that include competition authorities from South Eastern European countries. And we have the good way how we are collaborating between each other and this is request for information. Request for information is the way how we share information and receive the answer to various questions. I bring the example, administrative fee in the authorization process of the concentration. We took the initiative to make some amendments in the regulations for the administrative fee. And for this reason, it is necessary to take the experience for another country not only in the region Balkan but in the other European country. And we shared the information between us to know how we proceeded for the first phase and the second phase of a notification of concentration. After, when we make the analysis, we see the procedure by one state in another state. We find the solution and we base it in the model of the country in the region which have the same economic level with Albania. And now we share the first phase from deep investigation because we have a different price, administrative fee that a party has to pay.

Also, I have to mention our collaboration with UNCTAD. Every year, we attend the annual meeting of the intergovernmental groups of experts on competition law and policy. We can mention here the case at issue in the football sport sector, we are on the agenda of the 17th session of the IGM. It was already interesting for us. It's really interesting for us. In Albania we have the Albania Football Federation and this is an NGO. We have to clarify that this NGO develop the activity, economic activity and for this reason can be a part of our investigation. And now we are closing this investigation and we are preparing the decision of the Commission and I can say it can be the one of the best cases of this year for the Albania Competition Authority.

Also, in the framework of ICN this year, the Competition Commission signed the document of CAP. The document that involves the Agency to have some rules in the procedure framework and I have to mention here, up to now that 72 state that signed this agreement. And we look forward to cooperation of Competition Authority in the future under this document.

Also, with OECD I can say that it is important to know that all the activity and the investigation activity in terms of the market investigated are based on the OECD manual of best practices. The investigation carried out in banking and insurance market, hospital market, public procurement fuel market, telecommunication market, education market. Also, for the first time in 2018, the Albania Competition Authority participated and made a written contribution to the OECD Global Competition Forum, first investigative power in practice session and secondly regional cooperation session. And this year so we again contribute but in the session for competition for the market.

One of the most important cooperation is the case of a concentration transaction. Albania Competition Authority in this activity has faced a new case and few cases where the national market has been affected by activities taking place outside of the Republic of Albania in particular the case of concentration transaction. Here I mention two cases: acquisition of one Bulgarian Bank that have a lot of branch in the Balkan



area. We give authorization after we receive some information from the buyer that this procedure is realized in Serbia, Turkey and Moldova.

Also, for us it is important the collaboration in the framework of European integration. Albania is a candidate state status from June 2004. Our law is amended. It is in line with the Treaty of European Union. Not only our law but the same time also our legal acts are in line with EU acquis. Here I have to mention one of directives that European Union, Commission of European Union has approved, it is ECN plus directive. If you are reading the directive, the directive should be applied only for the candidate states. Back to the question, how much important is the directive for our country? We are not a part of European Union but we are a candidate country. If we see the title of the directive, this directive is to improve competition authority to be a more effective enforcer and to ensure the proper function of the internal market. And we discuss in our Commission with the members of the Commission that directive is important not only for EU member country but this directive is important for the candidate country. Because in the framework of this directive we can collaborate with each other not only to share information but to succeed to implement this directive like in investigative procedures and after to execute the decision given not only by Albania agency by given by the other agency. And always in our jobs we have a lot of problem special with company. They are not acting in Albania or have another forms like off-shore companies or holding companies and for this reason we think that we have to work hard to succeed that our decision to take power to come in the first. And in the framework of integration of national plan, we have foreseen the directive to be part of our legislation but I understand that the directive cannot be a part one hundred percent of our legislation. This directive can enter into force with some reserve. Like the agency, we can apply, for the future, this directive.

And basis in our experience, we have with national competition authority and other international organization, I can say like the conclusion, that it's important to coordinate our activity special in the concentration project. Also, exchange of information allow us to

evaluate regional benchmark based on comparative methods and the last through transposition of legislation into national legislation. We are in this small agency and we are trying to have a good collaboration in all agencies in the Balkan area and at the same time with the agency of European Community. We understand that our collaboration gave us the opportunity to find the best solution and to give the good decision for competition that the competition to be really in our market and to ensure the defense of the law and apply of this law in the right way. Thank you.

## ANNOUNCER

To present the plaque to Ms. Latifi, I would like to invite Competition Board Member Mr. Adem Bircan.



## KÜRŞAT ÜNLÜSOY

Thank you for your valuable contribution. Now we will move to another experience of a national authority. I'd like to turn to Ljiljana Pavlic. She'll present us the practical experiences they had in international cooperation within the Croatian Competition Agency. Ms. Pavlic the floor is yours.



**Ljiljana PAVLIC**

Board Member  
Croatian Competition Agency

Thank you Chair. First of all, I would like to say thanks to the UNCTAD and the Turkish Competition Authority for inviting me here. It's a pleasure to be here as a speaker. I will say something like the Chair said about practical experiences we had as a member state of the European Union. But even we had a good cooperation with some member state during the accession period. Also, it is well known that once you become the member state of the European Union, you have the power to apply in parallel national law but also the EU legislation and that means that you have to work closely with European Commission and some relevant

authorities within the EU. How does this work in practice? We were quite surprised when we had the first case with European Commission. We sent everything in written to them, the draft of the statement of objections like we are mandatory to do so. But actually, they didn't send anything in written back to us. They just called us to give us some oral propositions or some proposals, suggestions etc. and nothing in written. So, we were quite surprised by this practice now we used to do. But at first it was really hard for the case handlers to explain to the Board what the commission actually said because nothing fully wasn't written to case handler. It's not like an official statement from



the European Commission. But also we used this ECN network for the so called RFI's - request for information. This is useful tool. Every time we have some open issues, open questions about for example relevant market of something. We send a request to all the member states and we give them like a timeframe like two weeks three weeks or something like this to answer our questions. But the problem with this instrument is that it is usually done by the international department within the agency. Then international department on the other side received this and they tried to find somebody to actually fulfill this questionnaire. So you never know if you actually got the right answer from the right person in a way. I think that a better tool we have within this European Competition Network are the working groups and the subgroups. Working groups are like cartels, chief economist group, merger group, vertical restraints group and subgroups like pharmaceuticals, telecom, energy sector etc. And they meet regularly at least once a year something like that so the experts from Competition Authorities, which are experts for example on energy, they meet regularly at least once a year to discuss the cases some of the questions etc. So, it's a really useful tool when for example we have one of the cases in energy sector it was really novelty to us. We had some previous cases in this sector but that was done when the new package, EU package related to EU sector was introduced. So, there were some provisions within the agreements that were quite suspicious from our point of view. So, we contacted directly from the mailing list of this ECN subgroup, working subgroup of the energy, some of the people even the commissions. Within a few days, we got the answer what could be the possible theories of harm and what we should look at this certain case. That doesn't mean that the commission or some other authority will deal the case for you. They will just help you out to make you safe on a safe track, not to be misguided by the huge amount of data you have or something like this. This is really helpful because you don't have to really start the case from the scratch, you already have some good foundation for the case to run.

Also, that doesn't mean that we just take some benefits from the other. We also give away our proposals to the others or we reply to



the questionnaires. Even we send some of our documents that we've found useful to the regional so-called National Competition Authorities that are not member states yet but in the process of joining this, of joining European Union. So, for example we drafted the questionnaires for the grocery retail and grocery wholesale market. It was done in Croatian language. We got a really good feedback from the market so it was really done in proper ways. There were no dubious questions or something like this. And then we decided that this template should be sent also to the relevant competition authorities like for example Macedonia or Montenegro, Serbia etc. Because it's in a language that they could easily understand and they don't have to invent their own template for it. It was also useful for them because they could ask us questions why we ask certain data, why these data are relevant, what will be the output of the analysis etc.

Also, when it comes to the exchange of information, I'm going to say that Croatian Competition Authority and also the Romanian Competition Authority may disclose, use or exchange any confidential information with the European Commission and also with the competent national competition authorities within the European Union and use these as evidences exclusively in the procedure, and the article 101 and 102 of the European legislation. That is the case. With some other jurisdiction, we have memorandum of understanding. It's not possible, it's not written in our law. So, we can just give them the hint we have in certain cases, but we cannot send them evidence or we cannot use the evidence maybe they gather from the parties or maybe during the dawn raid, something like this. But as we heard from our speakers already, once the final decision is reached, then we disseminate those data to others nevertheless they are members of the European Union or not.

Also, when it comes to the workshops, I must say that OECD regional center in Budapest is of paramount value to Croatian Competition Authority because we all, I think every single case handler we have within our institutions, took their first baby steps in competition at this regional center of OECD. It's not just the lessons learned there but also the networking opportunities because you have all the contacts there and you can discuss the cases in front of the people who are

case handlers just like you but they have different view on it. And also, you have the mentors there so it is easier to discuss to bring home something really useful for your daily work.

Also, when it comes to the study visit, we use this tool as often as we could when we were in this pre-accession period. Right now, we are not using this so often but for example our government is pushing hard to liberalize some of the market and to remove some entry barriers for example in liberal professions. Then we ask the Czech Republic to organize some study visit for us because they are far ahead with this liberalization process. So, we went there a couple of days to talk to the relevant ministry and to the competition authority just for the exchange of views and to make proposal to our government how to actually amend the law in this respect. Also we are happy to host the study visit from other jurisdictions. Last week, we had study visit from Moldova, Ukraine and Georgia. The case handlers from those respective competition authorities came for two weeks of study visit in Croatia. And also, at the same time the judge from Italy came. So, we exchanged the views for some of the cases and the way they see as judges, those cases. They were really interested in IP rights in competition because they are dealing with such cases. So it was good for us to see their point of view and the standard of proof they were really looking for from the competition authority.

Also, when it comes to the projects, we already heard from Albania presentations something about the twinning projects and from Romania presentations as well. They had like four twinning projects in the past and there are some ongoing with Albania. We used to have also this beneficiary status because we were in this accession process.

And right now, at this moment we are now offering the service of our expertise to the others. So far, we had like four projects some of them are on an individual basis like the experts from Croatia to various countries. And one of the projects we've done entirely as on our own. It was done completely by Croatian Competition Authority. It was done in Montenegro this year. And some other countries were involved where we sent our experts. It was Kosovo it was Cyprus and Serbia. So, if you have any questions please ask. Thank you for your attention.

## ANNOUNCER

To present the plaque to Ljiljana Pavlic, I would like to invite Competition Board Member Şükran Kodalak.



## KÜRŞAT ÜNLÜSOY

Thank you very much for your presentation. Now, I open the floor for general discussion. If you have a question to one of our speakers or panelists please raise your hand, so we can help you with a microphone. Also, could you please introduce yourself and affiliation before asking the question. I think we can take a couple of questions. There is a question.

**PROF. DR. ERDAL TÜRKKAN:**

Thank you, Chairman. I am Professor Erdal Türkkan, President of the Turkish Competition Association. I would like first to congratulate the organizers of this seminar. I believe that this seminar constitutes a kind of cooperation, international cooperation. There is exchange of views, very precious views. And I'd like to thank to all speakers with their valuable contributions. I would like to ask a question to representative of UNCTAD, Madame Elizabeth whether or not UNCTAD may help to the NGO's - non-governmental organization - functioning in the field of competition which constitute in fact a complimentary role, which play a complementary role with the competition authorities. Is there any request or demand in that purpose? And if not, I propose that UNCTAD play a role in the cooperation, in helping the cooperation among the NGO's working in the field of cooperation, national NGO's. Thank you very much.

**KÜRŞAT ÜNLÜSOY:**

Thank you very much. And the question is I think for you, Elizabeth.

**ELIZABETH GACHUIRI:**

Thank you for your question. UNCTAD walks with NGO's as civil society but when it comes to matters of policy and issues that needs to, which are mediated through the consultations of member states, NGO's can only come in terms of joining forces with the organizations that are government oriented. And then they can present their views through them to us. But when we have meetings in Geneva, we welcome NGO's on observer status and they can raise their points. But as I said on matters of policy, member states' formal ministries and institutions are the ones that can make decisions concerning certain aspects. But as I said, we welcome the comment, we welcome the participation of non-governmental organizations in our meetings, we have them in our panels. And they have been very helpful in shaping the debate on competition and even on consumer protection issues but on policy matters, it is member states. It's formal, official institutions, we can call them. Thank you.



## **KÜRŞAT ÜNLÜSOY:**

Any other question?

## **DAVID CHICHINADZE:**

David Chichinadze from Competition Agency of Georgia. First of all, let me express my sincere gratitude to Turkish Competition Authority. It's a privilege to be here and you are exceptional hosts. Thanks a lot, to all distinguished participants. We are really a young agency Mrs. Kleininger. Definitely as we are five years old. Four years ago, we started signing memorandums of understandings with our colleague authorities. Turkey was one of the first. And this was to promote, to enhance and develop our cooperation with friendly authorities. At the same time, for us, it was the most important, as young agency to share experience, exchange best practices with our colleagues worldwide. And I think we've been quite efficient together with our friends and colleagues. I wanted to suggest one issue. Usually, at the conferences we come up with ready, organized, scheduled planned panels in which we invite distinguished and prominent experts. But what if in future, and I have this idea myself, whenever we organize any conference and we send invitations, when, month before the conference, we have the name of participants, why not spread a questionnaire among those countries who are participating. What is the hottest competition topic of their agenda? And devote one of the panels to that topic? That can be market, one of the competition issue and challenge. We can identify common problems and common ways of solution. At the same time, we can ask our colleague authorities who are participating in that specific conference to bring down not only managers but specific case handlers, heads of divisions, who are working on that specific issue and marked common interests. I think that will give some improvisation element and some common interest and inspiration to any conference in future. I am going to do this at the first conference which will be organized in Georgia. Thanks.

## **KÜRŞAT ÜNLÜSOY:**

Thank you very much. Any comments from the speakers of panels?

**ANTONIO CAPOBIANCO:**

It is not a question. It is a good idea, so thanks.

**KÜRŞAT ÜNLÜSOY:**

Thank you for your contribution. Any other question? I guess everybody is tired, so I want to end this panel and thank all of the panelists that shared their ideas and experience with us. I hope this discussion was fruitful and interesting for all of us. Thank you very much. See you tomorrow.

**ANNOUNCER**

So, we would like to thank our moderator and our panelists and esteemed guests before we leave. I would like to invite the Deputy Chairman of the Competition Board Arslan Narin to present a plaque to Mr. Ünlüsoy. I would like to thank you again for your participation. I would like to thank to our speakers. Hope to see you tomorrow. Thank you for coming today.





26 November 2019  
09.15 – 10.15

### **Recep Gündüz**

Head of International Relations, Training and  
Competition Advocacy Department  
International Cooperation and the Role of ICF from  
the Perspective of Competition Authority

### **Frederic Jenny**

Chairman, OECD Competition Committee  
Keynote Speech

## **ANNOUNCER**

Distinguished President of the Competition Authority, distinguished participants, we are now on the second day of the Competition Forum, which we started yesterday and I welcome you all.

I'd like to invite Mr. Recep Gündüz to the stage for the opening remarks on international cooperation and the role of ICF from the perspective of the Turkish Competition Authority. He is the Head Of International Relations, Training And Competition Advocacy Department.





**Recep GÜNDÜZ**

Head of International Relations,  
Training and Competition  
Advocacy Department

Distinguished presidents and members of the boards of national authorities, distinguished representatives of international organizations, dear guests, ladies and gentlemen, good morning and welcome to the second day of the Turkish Istanbul Competition Forum (ICF). It is a pleasure and honor for me to address such a distinguished audience of global competition community, including respectable representatives of both international organizations and national authorities. On behalf of Turkish Competition Authority and myself, I'd like to express my sincere gratitude to everyone

present here for their support in the first year of ICF. But especially to UNCTAD for their generous support and help and representatives of the OECD for their participation. The cooperation atmosphere we have been experiencing here since yesterday encourages us for the future of ICF.

So today, based on the experience of TCA, I'm going to talk about why an effective international cooperation is a real and urgent issue more than ever for all but especially for developing countries. Nowadays, you can hardly ever find an antitrust meeting that does not cover the international cooperation theme. If anyone thinks that this is a temporary fashion in the global competition community, I have to say that they are seriously wrong. Because the history has proven that competition law or antitrust is always a global issue. The OECD Competition Committee's first recommendation on international cooperation dates back to 1967 if I'm not mistaken. Also, the UN set of principles and rules for the control of restrictive practices was agreed in 1980.

However, today, international cooperation is sometimes confusing even for the competition authorities themselves, especially in the developing



world. Because there are several legal and practical obstacles that we have to face. We have to deal with the sensitive information of the undertakings that we must protect. Waivers are very time consuming and we have very strict legal time constraints. On the other hand, building trust among counterparts in different jurisdictions is the cornerstone of an effective coordination but it is not an easy task to achieve. Moreover, economic and business norms are in flux and unfortunately, legal forms have been following rather than leading this fast and this unpredictable evolution. Advanced and emerging markets alike are under considerable pressure to bend the digital transformation for the benefit of consumers. As politics is always a part of institutional arrangements, we do not have the luxury to be or seem naive on this front. We, as competition authorities, need to bargain more forcefully on behalf of consumers. In an era marked by disruption and agility, institutional arrangements also need to be flexible and innovative in its forms. So, I believe an institutionalized regional cooperation like ICF will be a catalyst to such institutional innovations with the support of international organizations.

So, before delving into the role of ICF with respect to international cooperation, I'd like to take this opportunity to give you some insights on Turkish Competition Authority's (TCA) recent enforcement activity which at the end clearly reflects the need for effective international cooperation. As you can see on the first chart, full-fledged investigations initiated by TCA are constantly on the rise. Although we are still in 2019, the number of full-fledged investigations initiated this year, which is 28, is the highest number in the Authority's 21 year-long history.

You can also see that, in the second chart, the case load of the Turkish Competition Authority has increased almost six-fold since 2014. These unprecedented numbers partly stem from the proactive approach adopted by TCA in recent years. If you look at the numbers again, you can see the increase in the percentage of the cases initiated ex officio. As mentioned earlier yesterday by our president, we also regularly conduct an impact assessment of our decisions, in accordance with the OECD methodology in order to reveal the economic effects of

our decisions or our activities and compare our public cost with the benefits we gain for the consumers.

When we look at our last study, which over these 2017 and 2018, we estimated that TCA's decisions contributed more than 3 billion Turkish liras to consumer benefits annually. This means that every Turkish lira invested in the Turkish Competition Authority brings 51 Turkish liras back to consumer welfare. We share these numbers a lot because we love them.

Another remarkable point in the numbers is the sectors that have increasing shares in our recent activities. As you can see on the chart, ICT, platforms, e-commerce, and payment systems are having bigger shares over the years and have almost become usual suspects of antitrust investigations. Therefore, I would like to mention briefly about the TCA's noteworthy cases in these sectors. Actually, Turkish Competition Board is one of the most active boards in the world in the digital economy with its decisions in every file from, let's say e-commerce from fin-tech, from online search to services using online platforms.

For example, as the share of e-commerce activities increases in our retail sector, maintaining competitive e-commerce has become an important goal for TCA. We, for example, examined restrictions of online sales in the recent decisions Jotun case and Bosch cases. As a result, we sent warning letters to undertakings that they should avoid practices preventing dealers from making online sales. Another example is the Sony decision, which is very important, I believe. Although the turnover generated by the online sales was relatively small in proportion with Sony Turkey's turnover, the Board decided that restricting distributors' ability to autonomously determine their online prices was a serious threat to consumer welfare because online prices impose competitive constraints on offline retailers' prices as well. So the consumer welfare is directly related to an effective online price competition which TCA is determined to protect.

What if platforms with strong network externalities apply price parity clauses in their vertical agreements? This question was examined by TCA in *yemeksepeti.com* and *booking.com* decisions. The Board decided that most favorite nation clauses and best price guarantees are within the scope of competition act and concluded that MFN provisions implemented by platforms reduce competition in the relevant platform services market, in terms of commission rates taken and foreclose the market for competitors. The Board made it clear that any conduct by platform economies with a substantial market power that restricts competition by creating entry barriers on and harm consumer choices aren't welcomed.

While applying more traditional rules to the digital economy, TCA is also dealing with more complex cases in the sector. Take *sahibinden.com* excessive price and Google Android Tying Cases as an example. Could excessive prices in platform economies cause consumer harm? In *sahibinden.com* investigation, TCA dealt with the validity of allegations of abuse of dominance by excessive pricing in terms of online platform services. This decision is important that it concludes violation one of the first of its kind in terms of excessive price claims in platform markets, and this decision is also important to evaluate the excessive price claims in two or multisided markets, with a sophisticated analysis on market definition and market power and economic value tests.

Now, I'd like to continue or move on with another complex case that we had to deal with, Google Android Tying Case. Google that holds a dominant position in mobile operating system market was tying its mobile search application to its android and making Google Search the default search engine for most of the mobile devices in Turkey. Taking into account the very high market share of android and android devices in Turkey, TCA concluded that Google's actions were basically excluding actual or potential rivals and search engine rivals especially by blocking their path to device manufactures. According to the Board, this was a restriction of choices and restriction of competition on search results and in addition to that, it was harming consumer welfare not only by restricting alternatives but also by increasing the duration of the

advertisements that consumers were exposed to. So, this decision is a good example of dealing with complex market definitions and also rethinking our understanding of consumer welfare, which should not be reduced or limited to price only.

Last but not the least, TCA also dealt with financial technologies as well. In recent years, some of the actions taken by established players in the financial markets have been brought to the agenda of TCA. The Interbank Card Center Decision (BKM), which is an exemption case about card data services provided by BKM, sets out the approach of TCA towards this area. We can observe the unique dynamics of the markets in this decision and the Board highlighted the importance of the access of fin-tech companies to the existing banking infrastructure.

So, let me now draw your attention to another issue from TCA's recent experience. The cooperation or information requests that we receive and/or sent have efficiently in recent years. At the beginning of 2000s, TCA's experience of international cooperation was limited to sending investigation notifications to undertakings which were located in other jurisdictions but had commercial activity in Turkey. In the same period, unfortunately, many cooperation attempts failed despite TCA's willingness. However, in the last few years, this trend seems to have changed. TCA is mostly involved in informal exchange of non-confidential information about the cases that have a similar subject with its counterparts' cases. Only in the last three years, TCA has engaged in more than 20 international cooperation mostly by sharing or requesting non-confidential information regarding the status of investigations and also public information, the substantive theories in the investigations and less frequently remedy coordination. Let me share with you an example, while we were designing our remedies in the Google Case, we consulted with our colleagues in the EU Commission concerning the effectiveness of the remedies that have been imposed on Google. Likewise, we informed both EU Commission and CMA on our approach to MFN clauses in our booking.com decision. For our ongoing Google investigations, which we have many, sending information requests to other companies in different jurisdictions



with no office in Turkey has become a daily routine for the related department at TCA. But unfortunately, due to the lack of an effective mechanism for international cooperation, all the cooperation requests that we have received and sent were informal. That is to say, they were conveyed via e-mail or phone without referring to any bilateral or multilateral arrangements. So, this is an old-style of, pick up the phone style of coordination. We can say that mergers and acquisitions are exceptional because competition authorities do not usually suffer or have troubles in obtaining waivers for international cooperation since quick conclusion of the cases are in the interest of the parties as well.

According to our experience, the greatest difficulty in international cooperation rises from legal issues. Legal vacuum or obstacles hinder investigatory assistance including even delivery of investigation or final decision notifications on behalf of the investigating competition authority. One of the reasons for this from our perspective is that general law provisions are not very well suited for competition proceedings. For instance, in 2005 TCA initiated an investigation in the coal market. TCA suspected that three coal suppliers infringed article four of our Competition Act, which prohibits basically anti-competitive agreements. Two of the undertakings were located outside the borders of Turkey. TCA enquired if it was possible to send notifications to these undertakings through competition agencies of these jurisdictions. This was not possible because general administrative law and international public law provisions were not suited to this situation. Following efforts to establish such a channel failed since including all administrative procedures complicated the process and surged the costs. Two undertakings couldn't be sanctioned, unfortunately.

There are also other limitations to international cooperation such as lack of a road map for collaboration, confidentiality concerns regarding third party information and most importantly lack of trust, familiarity and dialogue between competition agencies. For instance, another example in 2015, TCA received a leniency application from an undertaking. Although we knew that similar applications might have been submitted to other competition agencies especially in Europe, we

could not coordinate conducting on-site inspections and initiating the investigations. Lack of a single contact point in other agencies created concerns concerning with respect to the confidentiality of TCA's proceedings. Moreover, there wasn't a previously set a road map and the coordination process was unpredictable. As a result, unfortunately, TCA decided to investigate the case without coordination because previous attempt to coordinate failed.

Another interesting point is that an effective international cooperation will benefit not only competition authorities but also businesses. A fresh example of this is Google Android Case, I believe. The tying claims as most of you are aware of that, the tying claims were investigated by both EU Commission and by TCA, independently but almost simultaneously. Although both the EU commission and TCA concluded an infringement of competition rules in their decisions, their assessment was different in details and the remedies they offered differed as well. Google, for example, defended that its practices with respect to android forks didn't constitute a violation and if decided otherwise, that would result in adverse effects on the sustainability of the android operating system and it would finally share the same destiny with Symbian operating system in the past. TCA accepted this defense on the basis of dynamic efficiency gains and IP rights. But EU commission didn't. So, Google now needs to submit different remedies and has to offer different contracts to device manufacturers accordingly in EU and Turkey. So, suppose that this applies to all countries, this wouldn't be a very business-friendly economic environment. So, international cooperation will not only contribute to strengthen or harmonize our understanding of what should constitute a violation but also especially in remedy design, it will increase the likelihood of non-conflicting remedies being accepted by the competition agencies and minimizes the risks of subsequent difficulties in their implementation.

Thankfully, international organizations like UNCTAD, OECD, and ICN have increasing efforts to foster international cooperation that encourages competition authorities worldwide. As TCA, we are also proud of to be actively involved in these efforts. As we listened to



yesterday's sessions, guiding policies and procedures under section F of the UN set on competition, is an important step especially for younger agencies with no actual experience of cooperation. In addition to that, International Competition Network has adopted competition agency procedures that aim to establish a fundamental due process, principals and to obtain participants' commitment to abide by these norms. We also observe increasing number of free trade agreements that contain a reference to competition clauses. For example, in our case, Turkey has 20 free trade agreements and 19 of them contain a reference to competition clauses. But on the other hand, the fact that a formal cooperation agreement exists between two agencies or two countries is not a guarantee that they will cooperate. That's why trust and dialogue should accompany formal proceedings. We believe that ad-hoc networks on competition and regional cooperation can assist international organizations' efforts and can provide opportunities for competition authorities to meet regularly and exchange views and strategies on enforcement of competition law in cases of mutual interests. Also, it gives a chance to collaborate on potential actions for cross border enforcement. We see no reason why ICF may not be one of them in the near future.

In creating ICF, our number one goal is rendering it a truly idea and experience-sharing platform. As you would all appreciate, many issues we face today require a critical outlook. TCA's experience that we shared with you today is a crystal clear reflection of that. How should we deal with the market definitions in two or multisided markets? Is excessive price a reward to successful platforms with no barriers to entry and to only way to zero priced services or they are just a familiar enemy to consumers' welfare, as we know from the brick and mortar markets? What is an algorithm, block chain and AI's in the first hand and how can we fight against cartels governed by them? How should we design remedies that work for both consumers and businesses worldwide? Many markets of the new era do not exist spontaneously. They're a product of design or sometimes they are purely at the command of some algorithms. Many monopoly-like entities that command both



price and distribution creates shock therapies for many business models. All these points to one thing: Competition law has a big burden on its shoulder and its classical mindset of acting within the national borders only is not working as effectively as we wish anymore.

So that's why we believe that instead of meeting only once in this beautiful city of Istanbul, an institutionalized Istanbul Competition Forum would contribute more to everyone under this roof. What do we mean by an institutionalized ICF? Together with the support of UNCTAD, we want to establish an active platform for technical assistance, exchange of experience and consultations in the field of competition policy and enforcement. We wish to have working groups with the participation of every respected competition authority who wish to contribute our joint efforts to meet more often and acquire some insights into what might help us to overcome the problems of mutual interests. We hope this collaboration will enhance our enforcement capabilities, increase detection and deterrence of anticompetitive conduct and contribute to developing trust among competition authorities, which are the cornerstone of effective international cooperation. Hopefully, this cooperation will also minimize the risks and uncertainty for businesses as well as authorities because when we cooperate the outcomes will become more consistent. In this manner, we are offering and we will continue to offer memorandums of understanding to our respected counterparts to be a part of our efforts. Confidently, next year's ICF's agenda will reflect results of a year-long collaboration and solid remedy offers to common problems. I believe and sincerely hope that ICF will open the black boxes of institutional arrangements and substance of competition law and policy to its members and wider audience.

I'd like to express once again my appreciation for your participation to ICF and I hope that ICF will be able to draw attention to these topics and provide an opportunity to establish a regional dialogue. Thank you for your time and attendance.

## ANNOUNCER

Thank you very much Mr. Gündüz, now I'd like to give the floor to Frédéric Jenny for his speech.



**Prof. Frédéric JENNY**

Chairman  
OECD Competition Committee

Ladies and Gentlemen, let me first say how happy I am to be back in Istanbul and honored to have been asked to address this very impressive audience in the ICF. What I'd like to talk about today is something which is directly related to what Mr. Gündüz was talking about but maybe in a more general point of view: the question of convergence and cooperation in the area of competition law. As a background, I think that we should remember that in the 1990s and the early 2000s, there have been huge movements in the economy around two areas which are the particular interests for this audience. The first one

has been the progressive but rapid globalization of markets. The second has been the rise of competition law and competition law enforcement in many countries.

What are the forces that underline these movements? When we first think of globalization, I think 2-3 parts that have to be kept in mind. The first one is the fact that ever since the second world war to the multilateral organization that get first, the WTO, there has been a big push on the part of the government as a matter of policy to try to open up their frontiers and to try to eliminate at least governmental barriers of trade that existed. We have seen the successive grounds of negotiation

and those successive grounds of negotiation have increased slowly but truly the intensity of international competition on markets by making it easier to export or to invest in a different country. This is the policy driver of globalization.

There has been also a technical driver of globalization and this have been changes in the technology of communication and transportation. In transportation, you have to remember that the invention of the containers is not that old but it allowed to reduce considerably the costs of trading across nations, the costs of transporting from one country to the other. The next step has been of course the emergence of the digital economy which we have talked about yesterday and we will talk about again today. The reason for this is that the digital economy is extraterritorial it is everywhere, by nature, it is international. This has been a part of globalization. In parallel to this, there has been a development of competition law enforcement and competition laws in many countries in the world. When I started in OECD, there was a small club of countries that have a competition law, very small, roughly the fingers of two hands. Now we know that there are more than 130 countries that have one.

This movement or those two movements, when put together, are interesting. Because on the one hand, the globalization of the economy has unified international markets, on the other hand, that same globalization has fragmented nations states and has led to the creation of fragmented and complex legal orders. How has globalization helped the fragmentation of nations? Well, thanks to international trade, even very small countries have hope to survive. They couldn't hope to survive economically I mean, if they couldn't trade with the rest of the world, but as soon as they can exchange, they can get the things that are too small to produce themselves. We see that since the Second World War until today, there has been an increase in the number of countries which have been observed throughout the world, roughly between 1947 and today the number of countries in the world has been multiplied by two. There's a link between the development of economic globalization and the multiplication of nation-states. Those nation-states as I said, more and more of them have adopted competition laws. We should also



remember that competition laws are a combination between what I call economic theory applied to markets that is the competition part but there are also domestic laws. And domestic laws are necessarily or nearly universally grounded in the history of the political atmosphere, the sociological development and the economic development of countries. That explains why similar laws in different countries may not be exactly aligned with each other because they are created in different legal, historical, economic environments. There are some problems which are more important to some countries and that are not necessarily that important to other countries.

So, this double movement of globalization of the economic scene, and the fragmentation of the nation-states and the legal order has led to interesting dynamics. The first dynamics is that the proliferation of competition law and competition laws which aren't the same has, in a sense, reduced the advantage of globalization. In the sense that it means that multinationals are faced with different competition laws in different countries. We all know that when it comes to let's say abuse dominance or when it comes to verticals, Europeans don't have the same kind of competition law as the US. What does it mean for which is present both in US and the EU? It has to adapt to the fact that the same strategy can be found as a violation of the competition law in Europe and not a violation of competition in the US so it complexifies the problem. On the one hand, the multiplication of competition laws with the differences has slowed down or been an obstacle to international trade because it has made international trade more complex.

On the other hand, it's quite clear that competition and the increase in the interest of competition has helped globalization because competition, among other things, is one of the factors that can allow somebody who exports to another country to be sure that his exports are not going to be the victim of private anticompetitive practices that substitute for public regulations that would restrict competition. We have the complexity. Competition law helps globalization but the diversity and the multiplication of competition laws sometimes can be a break on globalization.

The other way around, we also have a complex relationship. The globalization of economic activity as I said earlier, has increased international competition globally. But at the same time it has created problems for national competition authorities. The problems are at two levels. One of them, as we heard for example, when it came to remedies, some of the remedies that were adopted in the Google Android Case were not the same in Turkey as they were in the EC. That's not a conflict but it could be a conflict at least in a different analysis. That's the first problem. The same practice examined by different competition authorities in different countries lead to different results. And sometimes what national competition authority does may increase competition in its domestic area but reduce competition elsewhere. And we do find some of those conflicts. In the 1990s, the conflicts were largely conflicts between the Europe and the US but now they have spread because of the spread of globalization. The second is that globalization means that there can be gaps for competition authorities. There can be anticompetitive practices which a national competition authority cannot get into because the practice is initiated elsewhere in another country where the national competition authority doesn't have powers of investigation or the ability to open and follow investigations. The development of globalization can create a problem for national competition authorities at two levels: At the levels of conflicts and gaps. The reason is because we have economic globalization and proliferation or fragmentation of nation-states.

What has been the response to that challenge, the challenge between the economy going on a way and the political or legal reality going another way? There were roughly around two ideas. The first idea is that competition laws should converge. We should make every possible effort to come to a common understanding of what competition law should be all about. Second, competition authorities that have only a limited mandate when it comes to territorial jurisdiction, should try to cooperate with each other. Within the second area, I'll talk a little bit about regional integration.

What do we mean by convergence? We mean policy movement among jurisdiction toward a common or shared legal and economic



understanding and shared legal and economic standards. We have seen stunning developments there, with the beginning of the 2000s starting in 1999 and ended in 2008, a huge movement of Europe to adopt a less formalistic, more economic-based interpretation of competition law. It started with changes for example when we looked at vertical restraints in 1999, which were originally, practically a presumption of anticompetitive. Then, economic analysis told us “That’s not necessarily true. There are plenty of cases you may want to have a vertical restriction which is in fact to increase the competition among the suppliers. So you should not look at those such negative aspects.” And we changed the system in the Europe to get closer to what was the economic norm there. But then, we moved on and in Europe we adopted, for example, we changed the standard for evaluating mergers from the creation of a dominant position to either the creation of a dominant position or a substantial lessening of competition. Again, this was a movement for a formalistic interpretation to a more economic approach. Why was this movement? Because in the dialogue over the Atlantic, the US which had initiated this movement towards a more economic approach in the understanding of competition law had discussed in many forums with the Europeans and they were trying to eliminate some sources of tension that came particularly in the 1990s in the area of merger control.

The second development has been cooperation. The fact that we need to help each other if we are going to avoid the conflicts and make the remedies as Mr. Gündüz mentioned earlier more consistent and try to eliminate the gaps, in other words, the practices that we cannot get at. Just one word on the movement for convergence because there are a number of forces that lead to the convergence. External pressure. External pressure sounds bad but it’s not as nearly bad as it looks. It is the fact that if today a country wants to become an OECD member, if a country wants to become WTO member, it has to have competition law. That’s now one of the requirements in those organizations. It puts an external pressure, yes I’d like to be a part of this international network, yes I would like to benefit from the WTO, therefore, I have to adopt a competition law. Best example of this is the adoption of competition law in China, the ML which was about the time when China joined WTO. There

was clearly a link between those.

The second dimension which pushes towards convergence is the fear that if we do not have in a country the appropriate laws that are going to guarantee that investors can do their business or exporters can do their business, we are going to lose out in the economic competition to other countries. That's the economic threat. In some countries the idea is that we should deregulate, open to competition because otherwise, we are going to lose out in the international competition.

The third dimension is the power of autonomous agents, which is the policy which is set by the country, the deregulation which has been quite large and rapid in many countries and which cause for competition as a complement to deregulation.

Finally, there is the ideational pressures which are academics, doing their jobs and saying, "You have an economic law, we are economists, we have some sense of what this law should deliver. So, this is how you should adopt or change or update the law that you have." Academia plays with the price a great role in pushing countries towards having more open, transparent competitive systems compared to the kind of systems that we have before.

OK, enough about convergence, because what I really want to talk about is cooperation. One can illustrate very easily typical situations where there could be benefits from cooperation. The first one is the case where you have an exporter in country A and you have a cartel of importers in country B. Maybe the two countries have eliminated their tariffs or their governmental barriers to trade; it doesn't mean that the export from country A to country B can take place because there's this anti-competitive practice in country B. It is not much a country can do by itself, because the importers are in country B and if they restrict competition in country B, it is a matter for the competition authority in country B. That's why it's necessary to try to get over that kind of problem for the competition authorities in country A to try to establish some kind of cooperation with country B and say "You should look at this because this is something that is to my detriment but this is also



something that reduces competition in your country and this is probably action under your competition law.”

Second thing is, in reverse, it can help fight the export cartels. If country A and B have liberalized their trade and then the exporters of country B would export to country A, have created a cartel or have a dominant position, it means that the benefit from trade that country A expected from having open its border is not going to be realized because they are going to have to pay monopolistic prices or they are going to get lower quality products. Again, the victims, in this case, are in country A, the practice is located in country B. Country A doesn't necessarily have the means of investigation that would be necessary because that would require to go and seize documents in country B which the authority of country usually cannot do. If country A wants to act against this cartel which victimizes its own consumers, it has somewhere to try to get the help of the authorities in country B who have the means and power of investigation. They can find the proof that would allow the competition authority to eliminate this practice. Of course, we have many more complex problem, really transnational problems whether they are mergers or international cartels, in which case it is the victims can be distributed in many more countries. Again, we have heard recently in the previous intervention of Mr. Gündüz how it is important to arrive at a common determination of what the violation could be and what the remedies could be.

There is another dimension to international cooperation which is because it increases the possibility for the competition authority to intervene because it makes the intervention of competition authorities in different countries more consistent. It can help countries, particularly small countries have a lot of difficulty with very large multinationals. Particularly when the country is small, to be more respected by saying “Maybe I'm a small player but I'm part of a large set of competition authorities facing the same problem and we talk with each other and we adopt similar solutions.”

I always remember that George Lipimile was now the head of COMESA was at the time when the head of the Zambian competition authority. One



day Coca Cola was buying the only bottler in Zambia, and competition authority was worried that if this bottler was owned by Coca Cola, the competitors of Coca Cola would have a lot of difficulties getting their product being bottled. They raised the issue with Coca Cola that maybe this merger was anti-competitive and should not proceed. First, they had a lot difficulty even getting someone on the phone, because there is no local representative of Coca Cola in Zambia. There was a representative of Southern Africa that was located in South Africa. He said that he was busy, didn't have time to come to Zambia. Finally, he showed up and said "Gentlemen, what is your problem?" Lipimile explained what the problem was. Then the head of Coca Cola looked at them and said "You don't like my merger? I don't need Zambia. It is fine to get out of the country", which of course wouldn't have increased competition. That is what happens to small countries which have a small domestic market. They're not taken seriously by competitive authorities unless they're part of a larger network or larger organization. This is quite important. This is, by the way, one of the reasons why COMESA, which now has a centralized merger control, which is a regional organization with around 20 countries in South Africa and East Africa up to North Africa. Now, they have a centralized merger regime which means that when the head of Coca Cola South Africa has to deal with them in one procedure, he has to deal with 21 countries 21 competition authorities. He cannot say, "I get out."

The fifth benefit of cooperation was referred to earlier, which is learning about potential anti-competitive practices, learning from other competition authorities, what other problems that they face. We all have a cement industry and we all have problems with the cement industry. We all have the same type of cases, and sometimes it is very useful to know how another competition authority want about finding, establishing the proof of violation in a particular industry, what was the logic which was applied and to look domestically to see whether we have the same logic. This was by the way one of the major problems in Africa again. I have other examples but Africa comes to mind because there was a time when you had very large multinationals like SABMiller or Castel in the beer business, exchanging countries rather than dividing markets within



countries. Though one would stop operation one country change with the other one, stop operation one country, there would be the reverse in another country. Unless competition authorities communicate, they don't know that is going on and they don't realize that the fact that one firm decided to stop operation maybe in fact the division of the market. You have to have the bigger picture to understand why it is, so we've had various cases in East Africa for example.

The sixth benefit of competition is exchanging experience and best practices in enforcement. That by the way contributes well to the convergence that we have been talking about. There are many examples of this. One that I like particularly is the UNCTAD COMPAL Program in Latin America, which developed a common understanding of many countries in Latin America on competition issues. The OECD has regional foras and the reason it has regional foras is precisely to try to exchange about best practices. But they are secondment from one authority to another which is also a way to transmit experience and best practices. We have the ICN cartel workshop, we have many different types of activities of cooperation, whereby competition authorities come together to try to compare the practices and try to come to a mutual understanding of what's the best practice, and try to develop in various forms those best practices.

Within cooperation, there is a particular interest for regional cooperation on competition and I think there are three main reasons why regional cooperation on competition is particularly useful. The first one is that the economy of a country is very often more linked to the economy of the neighboring countries. This is not always true but it is very often true that it is more linked to the neighboring economies than to the economies which are more distant. The second reason is that very often neighboring countries share the same legal system, or the same history, or the same culture or the same language, the same something, which makes coordination and cooperation between them easy. The third one is that negotiating an agreement at a regional level may be much easier to do than negotiating anything at a multilateral level. We know that for many years. The multilateral negotiations were kind of the dominant

type of negotiations. For some years now, there has been stalling of these negotiations and they have been replaced either by bilateral or by regional agreements. Why? Because there are fewer countries in the region than there are at the multilateral level and as I said, they are more homogeneous so that is easier. So we see from CARICOM to the European Community to the East African Community, a grouping of regional agreements where countries which are likeminded share something in common not only in geography but something else beside the geography as well, come together and like to discuss with each other. It is quite interesting from that point of view, if I take the experience of OECD. There, we established three regional forums or institutions. One is in South Korea for Asian and East Asians, one in Budapest for East transition economies and we have just opened one in Latin America. We already had a Latin American forum where the Latin American countries liked to talk to each other about the mutual problem they had. They all have a civil law system. So, that is one thing they have in common. They have to a large extent, except Brazil, they have a language in common and they have similar competition problems. Okay, there has been a big rise in regional cooperation agreements.

Those regional agreements can be extremely different from one agreement to the other. Some of them are just places where we exchange experience and we talk, some others are places where there's kind of an integration of the competition policy. COMESA, as I mentioned, for example, is a regional forum where merger control and the rest of competition law enforcement has been centralized at the level of the COMESA Commission. It is fairly flexible.

Just because it's regional doesn't mean that it is necessarily a particular forum to this type of cooperation. There have been uneven results we have to be honest with this. For example, the ASEAN acted as a regional forum, in this case, to try to push its members to adopt a competition law because most of them did not have a competition law. And that worked very well. In fact, this regional forum decided that there was a year, which was 2015, by 2015 everybody should have competition law. It didn't quite get there, but now I think that all of the countries except one



do have competition law so it has pushed countries to move together. Uneven results, some of those agreements or regional groupings have been more effective than others. One aspect which is quite clear is that being part of a regional network means that there's going to be some peer pressure on each one of the members who look good compared to the other countries, to do the right thing to adopt, to change its law, to update its law so it is going to be adopting best practices.

The second area in which they can't have been useful is to avoid conflict between those countries. And indeed the conflicts that we hear about are mostly conflicts across regions rather than intraregional conflicts these days. One thing which has been quite successful has been the technical assistance, talking about how one goes about doing an investigation, what kind of instruments can be useful, whether its leniency program or whether its commitment decisions, etc. Examples in Europe, Nordic Cooperation Agreement, where there is quite a deep level of cooperation because within Nordic Cooperation Agreement, there is the possibility to exchange confidential information between the competition authorities. The ECN (European Competition Network). Even though we are all part of the EU, there is still need for competition authorities to come together and to agree on the basic principles of EU law. A grouping which is not really a regional grouping but which is an interesting grouping: The BRICS. The BRICS idea was that those very large and important developing countries would want to have something in common, a common approach the competition law. The BRICS have been very active whether in Brazil or whether Russia in the digital area. They have elaborated quite a jurisprudence in different countries around the digital area, which by the way is very interesting. First of all, because it changes our understanding of what competition law should be all about, because in the digital area, you have disruptive innovations so you have competitors that come from outside of the market. So, it changes the notion of market, because in the digital world, you don't have hierarchical forums with a chief and then staff and then people who execute. You have a combination of independent people come together through a platform so it changes the notion of a forum.

Pretty much all the tests and instruments we need have to be adopted to this new reality. But what's interesting is that we are all throughout the world facing the same problem at the same time. This is possibly the first time in the history of competition law where we don't have what we used to have, experienced agencies, and agencies with less experience, where the idea was that "Agencies with less experience should look up to the agencies with more experience." When it comes to the treatment of digital issues, we are all learning at the same time and therefore we all have to contribute together, to try to adapt competition law to the new environment.

Just to summarize what I've been saying, international cooperation on competition can come in very diverse forms and can have different scope, can have different context, sometimes it is a part of a trade agreement, sometimes part of a government agreement, sometimes part of an MoU between competition authorities. Different levels can go from consultations to exchange of confidential information and different types. As a matter of fact, it is the dominant type now which is the optional bilateral volunteering cooperations. There was an attempt for one within the context of WTO to ask consent whether there should be a political forcing country to cooperate and it didn't go very well. So it has been replaced by system of bilateral cooperation. Bilateral cooperation has a lot of advantages. It is much more flexible. It does have a drawback which we heard about implicitly earlier this morning, which is the fact that it takes two to tango or it takes to have a regional agreement. There are some countries that may not want to cooperate with others which creates holes in the cooperation. What can agencies practically cooperate on, we have a long list on the slide, from locating and identifying persons who might be responsible for competition law violations, seeking documents. Remember I'd like you to seek documents that I'm going to use in my procedure in my country because this person located outside is violating the competition law, taking evidence, executing requests for searches and seizures, providing publicly available evidence, exchanging information, providing documents and reports, discussing theories of harm. This is one of the major activity within the ECN to discuss theories of harm, to try to get them aligned among the different European



countries, to enforce administrative and judicial decisions in some cases.

The instruments to get there are very varied as I said earlier. You have competition-specific agreements or non-competition-specific agreements. So, I think that one should have an open mind and try to use what is the best possible instrument. I'll give you just an example because there has been, recently, a development in cooperation which has been initiated in fact mostly by the European Community and Switzerland. European Community used to have and still has cooperation agreements with like-minded countries, in fact countries with which it trade quite a bit. These are the U.S., Canada, Japan, and Korea. Those are bilateral agreements. But they are relatively weak, we would say first-generation cooperation agreements because they don't allow the exchange of confidential information between the country unless there is a waiver which has been given voluntarily by the parties to the proceeding. But this type of agreement has been replaced. There has been a development which occurred in 2013, with the emergence of a new cooperation agreement, deeper cooperation agreement. This is the case of EC and Switzerland, where you can have exchange of confidential information between the Swiss authorities and EC authorities. So, there are plenty of safeguards. The information that you receive can only be used in the same case if both jurisdictions are looking in the same case with some caveats as to the protection of confidentiality. But this is clearly what is called a second-generation agreement. If I take my example from OECD, what we are very interested in OECD's C, C is cooperation. We are interested in cooperation. We spent a lot of time thinking about it. The main discussions that we have now is how to try to find ways to cooperate more deeply than we used to. What are the new instruments that we could have that would allow for a greater level of cooperation? We are trying to explore various areas. One of them is to have an exchange of confidential information. What would be protocols that we would have to have? But there could be other things. There could be the idea that a country A would recognize the decision of a country B and adopt it immediately. So, there would be kind of a mutual recognition. Okay, that would be an even deeper level of cooperation. We are exploring this, the push is clearly to have more cooperation and deeper cooperation.

What happens when there's no cooperation? There are plenty of things which are to the detriment of competition authorities. One of them of course is that there may be a political clash, remember the EU and the US in the 1990s over some major mergers where there was a battle of words, battle of press releases, battle of influence of governments about whether such merger should be prohibited or not and divided views over that. If you think about a buying, a merger or couple of other cases there was a real political battle. The competition authorities really want the issue become political, however enough. This is not good for the enforcement of the law and it is not even good for the independence or the ability of the competition authority prevail on its own merit. The government may be intervening in conflicts when there are conflicts to the extent that cooperation eliminates the conflicts. That is good for the competition authorities. But when there are divergences between competition authorities, then multinational forums can choose where they are going to bring their case and to some extent it exist already. Why is it that the EU deals with all the big digital cases? Because everybody knows that when it comes to abuse of dominance we have a more restrictive interpretation of competition law and therefore if I am fighting Google or if I'm fighting Facebook or if I'm fighting anybody else, I'd rather bring that case to EU, where it's easier to get them convicted than in the US. That's what happens when there are differences. One competition authority played against another. There is competition between competition authorities. Very bad.

Finally, judges are unsettled because they do realize that the same facts are interpreted very differently by different jurisdictions. They tend, in those cases, to look at what the competition authority has been doing with a certain level of skepticism as saying "well it's very relative because in another country it would have had a different interpretation of the law". So it's not terribly good for the reputation of the competition authority. There are plenty of good reasons for competition authorities aside to strengthen their independence, to transcend their ability to deliver decisions which are based on the law and based on the economics to try to cooperate with them.



If we did some work on cooperation, I'm going to be very close to what Mr. Gündüz was saying earlier. First of all, what we see is tremendous increase in the number of inter-agency cooperation agreements, memorandum of understanding where competition authorities negotiate on themselves what is going to be the scope. This is easier to do of course than to have government level, first of all because if you have government level agreement, you have to involve the government. But we see second very rapid rise in those agreements. Second, there is a tremendous increase in the number of cases of cooperation, this is among the OECD members. It covers pretty wide. And you see the increase in cases involving cooperation between 2007 and 2011, five years - four years. Significant increase 50% for cartels, 35% for mergers and 30% for abuse of dominance. So, there is this tendency to cooperate either on the remedies or on the theory of harm or on the exchange of information.

And when it comes to the constraints, we do find some of the constraints that Mr. Gündüz was mentioning in the case of Turkey, the existence of domestic legal limits, for example blocking statutes. If you have blocking statutes, the low willingness of some countries to cooperate with others, why? Because trust has to be built between national competition authorities before they start cooperating. The absence of waivers, if you don't have a second new generation agreement, then you need waivers to be able to exchange confidential information which in cases is often very important. Lack of resources and time, that's where by the way regional cooperation is very useful. Regional cooperation is more efficient than sets of bilateral cooperation. And finally, different legal standards, but that's where convergence is trying to overcome those problems. So, those are pretty much the main obstacles that one has to overcome to try to develop cooperation.

Now I'm not going to give you a speech on the OECD and International Cooperation. We have been doing a lot of things but there is a recommendation which was part of the work that we did on cooperation. There is a recommendation which was adapted in 2014. Right now, we are doing by the way an inventory of cooperation agreements to have



the typical clauses, provisions that you have in cooperation agreements. And this is going to be useful hopefully for any country who wants to consult these to get an idea what are the typical provisions that you find in such cooperation agreement. But let me just leave you with idea that there are still some challenges. The movements that are definitely are towards more cooperation. And the regional level is probably the most efficient level. Cooperation among competition authorities, why? Because it is good not only for the enforcement of the law but it is also good for competition authorities.

Thank you very much.

## ANNOUNCER

Thank you Professor Jenny.

Now we would like to present him a token of appreciation and I would like to invite Adem Bircan from the Board Members of the Competition Authority to present a token of appreciation.





## PANEL III: “Effective Enforcement Against Cartels”

Moderator:

**Ahmet ALGAN**

Competition Board Member

Speakers:

**Antonio GOMES**

Acting Deputy Director of the Directorate for Financial and Enterprise Affairs, OECD

**Francis W. KARIUKI**

Director General, Competition Authority of Kenya

**Liudmila BORISOVA**

Head of Saratov Regional Office, FAS Russia

**Arsen ISKAKOV**

Deputy Chairman, Competition Authority of Kazakhstan

26 November 2019  
10.45 – 12.45

## ANNOUNCER

Distinguished guests, once again, welcome. So we continue with the third panel of the conference. For moderation, I would like to invite Mr. Ahmet Algan, who is a Board Member of the Turkish Competition Authority. Also, I would like to invite Antonio Gomes, Acting Deputy Director of the Directorate for Financial and Enterprise Affairs from OECD, Mr. Francis Kariuki, Director General, Kenya Competition Authority, and I would like to invite Liudmila Borisova and Arsen Iskakov.



**Ahmet ALGAN**

Competition Board Member

Distinguished guests and ladies and gentlemen, sorry for the delay. Before beginning, I would like to also convey my greetings as well. On behalf of myself and Turkish Competition Authority, I'd like to say it is a great honor for us to host you and welcome you in our country. Also, welcome on the second day of the ICF and to our panel "Effective Enforcement Against Cartels".

As Adam Smith states in his book, "The Wealth of Nations", rival undertakings rarely come together but once they come together, these meetings end up with agreements against society.

These agreements contain provisions and trade conditions in favor of undertakings; moreover, intent to limit output with the objective of undertakings, increasing prices and profits. As you all know in practice, this is generally done by means of price fixing, allocation of product quotas or sharing of geographic markets or product markets.

Yes, cartels are cancers on the open market economy. As Mario Monti who is former European Commissioner for Competition, describes, and



also on the other side of the ocean, US Supreme Court's judge Antonin Scalia identified cartels as the supreme evil of antitrust.

So yesterday, today and most probably tomorrow, cartels are the most egregious form of infringement in the competition world. Because of these characteristics, cartels have always been the main priority for competition authorities. As you all acknowledge, economic and social life doesn't function as prescribed by the invisible hand principle. Market failures arise as a result of the conflict between social interest and private interest, which are not sufficient to solve economic problems by the means of market mechanism alone. In such cases, the visible hand of the collective will need to intervene in the economic system. This collective will appears as leniency programs which are the most effective tool today for detecting cartels and obtaining evidence to prove their existence and effects. But unfortunately, they also pose some important challenges. On one hand, there is a risk that leniency programs will lead competition authorities into inertia. On the other hand, it has been questioned where these programs rarely achieve the desired results. But I believe that at the end of this panel, we will be enlightened and informed about these dilemmas.

Other main themes of our panel are digitalization and digital cartels. As you will appreciate, there is no area of life left untouched by more sophisticated technology at our disposal. Competition in the markets and collusion are also heavily influenced by digital technologies such as machine learning, algorithms and other tools rendered possible by technical innovations.

Cartel enforcement has become even more complicated with the forms having digital tools in their commands. In the last few years, many new regulations and amendments to the law have been undertaken in various jurisdictions. This is why in this area, we could benefit from international cooperation and learning more. Policy learning and diffusion will undoubtedly mark how the competition rules on digital markets and services will unfold.

After this brief introduction, let's turn to our distinguished speakers. I would like to first of all introduce them to you.

Mr. Antonio Gomes is the Acting Deputy Director for Financial and Enterprise Affairs of OECD.

Mr. Francis Kariuki is the Director General of the Kenya Competition Authority.

Ms. Liudmila Borisova is the Head of Saratov Regional Office of Federal Antimonopoly Service of Russia.

Finally, Mr. Arsen Iskakov is the Deputy Chairman of The Competition Authority of Kazakhstan.

As you all know, we have five panelists but the Chairwoman of the Pakistan, Ms. Khalil is not able to come to our panel due to the some reasons beyond her control.

We will first hear from Mr. Gomes who will kindly share the background of the OECD work, Recommendation of the Council concerning effective action against hardcore cartels published this year. As you know this recommendation paper replaces 1998 version. We will have a chance to see how a grateful of progress we have achieved as well as how long of the path in the front of us cartel enforcement is. The floor is yours, Mr. Gomes.



**Antonio GOMES**

Acting Deputy Director of the  
Directorate for Financial and  
Enterprise Affairs, OECD

Thank you very much Ahmet and I would like to thank the Turkish Competition Authority for such a kind invitation to be here at the very first Istanbul Competition Forum. Congratulations for a very successful event so far and I'd also like to congratulate UNCTAD for supporting this initiative. I'm sure it will be a very very important initiative for regional cooperation in the region. We were just listening from Frédéric Jenny saying how important regional cooperation is and I think that Turkish Competition Authority certainly perform its role in bringing dynamics into the competition in the regional sphere.



So, I'll be talking about effective actions against cartels and especially our recent revised recommendation in this topic. As you know, the OECD seeks to address cutting-edge problems, we also develop international best practices. We provide also assistance and support to competition authorities around the world. And the fight against cartel is certainly a very very important part of the OECD's work and why? Because it is also a very important part and it should be a very important part of the competition authorities' work around the world. In fact, one of the most consensual ideas in competition law is that hardcore cartels are the most serious violation of competition law and that they have potential to cause harm to the economy to consumers, to businesses and also to the state. And so, competition authorities should intervene against cartels, in a robust in a forceful way. So those cartels should be severely sanctioned.

I would like to focus my intervention on a couple of key challenges to hardcore cartel enforcements. Those that are posed by digitalization and globalization which at the end are the main topics of the forum in these last two days. And I will also as you were saying Ahmet, I will focus on the recent work of the OECD on how we can help competition authorities address these challenges, focusing on the recently approved OECD recommendations. So, I will try to outline how this recommendation contributes to bringing cartel enforcement up to date with a global and a digital environment.

Starting with these key challenges that we already discussed, both digitalization and globalization have the potential to effect enforcement. And they require smart responses from enforcements. Digitalization brings new challenges as you referred, such as algorithms and collusion or we have recently discussed how block chain can affect collusive outcomes. The Competition Committee of the OECD has been doing a lot of work on digitalization and it will certainly continue to do so in the future. And the number of our conclusions are actually reflected in the new recommendation or the revised recommendation that we have approved. Globalization is also creating challenges to hardcore cartels because we know that cartels cross national borders but our competition laws or

our enforcement powers are normally national. This has been mentioned yesterday and today again as released in the OECD international, well actually as published on Recommendation in 2014 on international cooperation, the importance of actually going beyond the competition authorities. And we recently also approved, we recently launched a database on international cartels, which I invite you to explore. What we see is that between 2000-2016, on average 50 new international cartels were detected each year. And the growing number of international cartels that have been uncovered really showed the importance of cooperating and coordinating as we have been saying in these last 2 days. We see that evidence and witnesses are often scattered in different countries, different jurisdictions. They are often outside the reach of one single jurisdiction. We see that the lack of cooperation in investigating an international cartel can actually jeopardize the investigations if one agency decides to move alone and start the dawn raid on its own. It may actually jeopardize the investigations in other countries which may lead to the destruction of evidence in other countries. We can also have the duplication of investigation efforts, which will lead to unnecessary cost for businesses and we are also concerned about the cost that we are imposing on businesses. We may have divergent decisions and we can have situations of double jeopardy where we are sanctioning exactly the same infringement twice or more.

So, recognizing this as I mentioned, the OECD has issued this Recommendation on international cooperation in 2014 and we have also done a lot studies on the development of international cooperation in international cartels enforcement. We see a lot of, as Frédéric Jenny mentioned, a lot of formal instruments that are coming into play. So, in 2015, we looked at the number of bilateral, government to government cooperation agreements and we identified 15 of those agreements signed, where at least one of the signatories is an OECD member. We have actually around 180 MoU's, at least one of the signatories is a participant of the OECD Competition Committee. This is growing all the time. And I'm sure that just in the side meetings here at the Istanbul Competition Forum, there will be a lot of bilateral agreements being





signed. But again, I think that we should start moving also into looking much more at the regional cooperation level.

But there are still difficulties on exchange of information, we discussed this, on lack of investigative assistance, on the possibility of notifying form defendants and so on so on. But I think that we are building trust amongst agencies and cooperation is improving a lot and will continue to improve and will continue to be a very important area of focus.

I wanted to say that I'm quite optimistic regarding addressing the challenges the digitalization and globalization pose for the future. And we have been looking at some members and what they tell us is that cartel enforcement has actually been quite successful over the last few years. We have started at the OECD database on the activities of competition authorities in the OECD and participant countries of the Competition Committee. And now we have quite an important information of the last four years of enforcement. And we see that OECD competition agencies have fined approximately 1270 cartels in the past four years and have imposed fines that amounts to 17.3 billion Euros with an average fine per cartel 14 million.

Even if our data is limited to the last four years, we can also see that the average number of cartel decisions for competition authorities has been relatively stable in the last four years. And actually, if we go even beyond that, we see that in the European Commission, at the US, in Germany for example that there has not been any decline in the number of cartel cases over the last 10 to 15 years.

Despite what we can say a successful outcome so far, competition authorities need to ensure that we are able to tackle these new challenges. This is why I think that the Recommendation can be quite useful. But previous Recommendation from 1998 was already a big step; it was actually one of the first Recommendations telling governments that they should tackle hardcore cartels. But it was rather generic in terms of the powers and tools that competition authorities need to have to fight cartels successfully. This recommendation in 2019, of this year tries to address this gap, tries to bring all the developments of the last 20 years in cartel enforcement into the recommendation. And one of the



things that I should say is that all OECD countries agreed that cartels should be considered illegal regardless of their effects. So, that's one of the important messages that we should retain.

The second thing is what kind of powers and what kind of instruments should competition authorities have? And of course, leniency is identified as one of the most notable developments in cartel enforcement in the last 20 years. In 2008, we have less than ten jurisdictions with leniency program. We currently have more than 90 with leniency program, this is still counting. The number of cartel cases has certainly increased in the 2000s with the adoption of leniency program. We can see in the data, a big increase in the number of cartels that have been uncovered. We really should not underestimate the power of leniency. Of all 52 cartel decisions by the European Commission between 2004 and 2014, a leniency application occurred in 94% of the cases. If you look at the US, for the DOJ, prosecution that are assisted by a leniency application corresponds to more than 90% of total commerce that was affected. So, leniency is indeed still a very important tool and it has been considered by OECD competition authorities as the single most effective tool for detecting cartels.

We also recognize that there are still issues with the effectiveness of leniency programs. Of course, that depends a lot on their correct design, on their implementation but also more and more in the interaction between the leniency programs and criminal liability with settlement procedures and other early termination procedures, and also private action damages. It will be interesting to see, how for example, the transposition of the private enforcement directive in Europe will effect leniency applications in the future. We will be looking at our database to see how these things evolve.

So, we also see that probably we have a lower than hoped number of leniency applications in some jurisdictions. We see that there is a poor awareness of leniency procedures in many countries. We see in many countries that the procedures are sometimes inefficient or opaque, so they don't give the right incentives to cartelists to bring their cartel forward. We see indeed a low incentive for often members of cartels



to cooperate with competition authority. So, there is a lot of work to be done. The Recommendation actually identifies some of the detailed requirements for the leniency programs to be effective and actually provide the right incentives. One of the most important thing is that we have a clear procedure that provides the necessary certainty for cartelists. But if we rely on leniency programs and we should rely on leniency programs, but if we solely rely on leniency programs we will certainly see that the stable movement of cartel detection of over the last few years will start to decline. I think that competition authorities have realized that if they are proactive in detecting or trying to detect cartels that is actually way of reinforcing their leniency programs. So, they are more and more trying to introduce new ways of detecting cartels such as cartel screening. I think that because we are in the digital age, there is a lot more data available and competition authorities should be smart to use that data. And one of the best areas to start using that data is public procurement because we do have a lot of electronic databases on procurement that can be used to find potential patterns of collusion between the bidders. So, this is very important aspect. The other one is we see competition authorities facilitating unanimous reporting with whistleblowing programs and so on.

In the Recommendation, we also highlight the importance of having investigatory or investigative powers. Of course, that dawn raids are still the most important investigative power and it is important that it doesn't focus only on business premises, but it also extends to private premises.

Another important thing is that competition authorities should be able to access all information and all types of information. There are still a lot of competition authorities with limitations in the type of information that they can access to and especially digitally stored data, electronic information that is often even stored remotely in some clouds somewhere.

So it is very important to have access to information. And it is very important also that the staff are adequately trained and that they have the right hardware and the software. You can think of starting to do a lot of dawn raids. But if you don't prepare your teams to the dawn raids,

especially to know when they start looking at servers, what to look for, how to look for, what kind of software they should be using, you will not be effective. And you will end up as I have my own experience as the President of the Portuguese Competition Authority, at some point we were dealing with cases where we seized more than 5 million documents in just one dawn raid. And then you ask yourself what am I going to do with 5 million documents. How many years am I going to take to actually deal with this. And then we find ways of actually reducing that to ninety thousand and then even ninety thousand is really a tremendous amount of information. So we need to be very specific trying to only bring with what you actually need or what might be relevant. And then you will be able to continue searches on the evidence. Otherwise, you would be flooded by evidence. And sometimes the best defense strategy of cartelists is actually to know that you are going to be flooded with evidence that you will not be able to sweep through and find the important evidence.

So, another thing that is important and I would like to highlight is cooperation. We talk a lot about cooperation, international cooperation between competition authorities. We often talk too little about cooperation with other law enforcement bodies. But if we see the countries that have been successful in fighting cartels and I'm thinking for example the case of Brazil; the cooperation with the public prosecutor's office has been incredible in the last years. And this has actually contributed to uncovering a lot of important cartels. So, public procurement agencies, you should cooperate with them because they often have the data that you need and anti-corruption agencies as well. And often what we see is that cartels may be linked to other criminal or other fraudulent activities.

So, sorry, so one last recommendation that I would like to point is the need to have effective and deterrent sanctions against companies and individuals. We see that even if there is a perception that fines have been always continuously increasing, but in fact what we see is that monetary funds have been relatively stable in the OECD. We do see that cartels keep rising. And we also see repeat offenders. So, we looked up the data and in 14 percent of all international cartels, the offenders are fined more than once for more than one cartel. So, we should look at repeat



offenders. If we look at criminal liability, here we see that in practice even for those jurisdictions that do have criminal sanctions, it is only very very few places that you actually have jail sentences being imposed on individuals.

So, to conclude, in all jurisdictions, there is still struggle to have the right resources, but we always complain about resources, also the right powers. And we've just seen even at the EU level with ECN Plus initiative trying to give more powers and more coherent or consistent powers to competition authorities at the EU level. And we also have the struggle, the difficulty of keeping abreast of technological change. And we see a lot of competition authorities now building their own technological teams with their own scientists trying to, for example, look more for algorithms and collusion.

So, I hope that this Recommendation which, it doesn't bring anything new but states what cartel enforcement should be like. And, it gives guidance too, because even if we all recognize ourselves and we say well it's so obvious, there are still a lot of countries that do not have these powers or these instruments. I hope that this will be an ally to all the competition authorities around the table. Even if you want improvements in your competition laws, I think that you should be able to use these instruments and of course that you can continue to count on the OECD to support you in more and more better fighting cartels around the world. Thank you very much.

## ANNOUNCER

I would like to invite the Deputy Chairman of the Competition Board, Mr. Narin to present his plaque to Mr. Antonio Gomes.



## AHMET ALGAN

Thank you for your presentation Mr. Gomes. Mr. Gomes has provided recent statistics on globalization and has emphasized how to deal with the hardcore cartels from detection to terminate a cartel. I think this presentation gives us a good background to start our discussion as well. Now we will switch to the experience in Kenya and listen Mr. Kariuki, Director General of Kenya Competition Authority, who will inform us on compliance and leniency program experience in their jurisdiction. Now the floor is yours, Mr. Kariuki.



**Francis W. KARIUKI**

Director General  
Competition Authority of Kenya

Thank you and let me take this opportunity to thank the Turkish Competition Authority and also the UNCTAD for inviting us to this forum. Nonetheless, I feel like I am at home because in 2005, when UNCTAD held its first peer review, Kenya was the country to be peer reviewed. And the document on the output of the peer report in our town is the one which proposed deformation of the Competition of Authority of Kenya. Also, I remember in 2010, when we had the ICN here. We attended as a department regulating competition. Therefore, I really feel at home. Having said that, I wanted to share with you in regard to our experience in terms of cartel enforcement in Kenya and also initiatives to make it more effective both locally and also international corporation or other regional cooperation in region with specific focus on COMESA, the Common Market for Eastern and Southern Africa.

As I have indicated, the Competition Authority of Kenya and the law establishing it came into being in the year 2011. We have been 8 years, first four years focusing on merger enforcement because it's non-suspensory regime. So, it was a tactical move because as Antonio has said that you really require a lot of resources and capacity to handle the cartel enforcement. Within the first four years, we started building adequate resources and capacity to handle cartel enforcement. And this was coming up with guidelines and procedures on how to handle them. Because one thing is that most of the cartel cases are lost through procedural means. The number two is that we built the capacity in terms of the members of the persons to be dealing with cartel cases. And then, the other issue is in regard to deterrent sanctions, especially the settlement agreements relating to cartels. The other focus we had is in regard to building credibility with other government agencies which we are supposed to walk with when we're dealing with cartels. And having

done that we had many to do with for cartels for the last four years. And we have been able to do with a cartel in the insurance sector, where the insurance companies had agreed on the amount to be charged in the government agencies who are acquiring insurance services from them. We were able to penalize the association which had come up with this kind of an arrangement.

Then also, in regard to the advertising sector, where the outdoor advertisers had agreed on the amount of money they are going to be charging especially on the billboards they put on the highways. We were able to penalize twelve companies.

Then in terms of the cement sector, we did an investigation but we were not able to come up with evidential information which could have made the companies culpable. But we were able to come up with a commitment decision, where we stop them from sharing information in terms of a kind of information they were sharing and also the period they were sharing that information. According to some inquiry Professor Simon Robat is doing now, the moment we entered into that commitment decision, we have seen the prices of cement in Kenya going down by about thirty percent. So even the commitment decision really worked.

Then right now, we are dealing with a cartel case in the construction industry. We have settled with one party. The other parties have not come forward to settle and we want to detriment them with an unassertive penalty.

So, dealing with these cartels, we have been using two investigative tools we have. One is the dawn raids we discussed and also summoning evidence through some intelligence gathering. We have the challenges of dawn raids in terms of coordinating the dawn raids, in terms of the resources required. I am an authority with about 50 technical staff. The others, the statue of them is support staff. And when we are conducting dawn raids in four companies, literally we shut the whole office. And also, you need to coordinate with courts, you need to coordinate with police. So that kind of resource usage is quite damage to the authority.

The other one is when we have so many people dealing with this case,



and also outside agencies within the authority, how to deal with the confidentiality of where you are going to raid becomes quite a messy issue. And Antonio mentioned it also, you go collect the information, you go collect the evidence, bring it into a room, you don't know where to start or to end. And this happened in the first dawn raid we did in the fertilizer sector. We collected a lot of evidence. We put it in the room. We did not know where to start. We had what we called info glut. We just sat down, and then decided what is the best way to approach in terms of procuring evidence. That's why in June 2017, we decided to develop what we call leniency program guidelines so that we can motivate and incentivize the parties to come and share intelligence reports about how they are conducting their business. Has it been successful? Unfortunately not. The reasons why it has not been successful, one may be the reason, which is documented. The parties are not sure that when they come for leniency, the director of public prosecution, who is constitutionally empowered to prosecute all criminal matters in Kenya, will not take up that and take it to court. So there has been an issue in regard to the leniency program does not have a nexus with the director of public prosecution, who has the primary jurisdiction in terms of prosecution matters. Although that is the documented one, we are talking with the director of public prosecution to see how he can donate those powers to the authority to remove this caveat.

The other challenge has been generally mistrusts of the investigation agencies, of government, across government. The question has always been why should you trust the competition authority among one of the government agencies. So sharing information by the people who are coming on board has not been very forthcoming because of that what I may call commonality view regarding the investigatory agencies within the government.

The other challenge we have realized is the cultural and close network of the business community. If I told you share this in temple, if I told you share this in mosque, with the people, with your competitors and if I may use this term, you snitch on them, do you stop going to that temple? So,



that kind of cultural network and close network of business relationships has really made LPG guidelines not to be very effective in Kenya.

And also, awareness in regard to what they are doing is wrong. As I have indicated, we are a young agency, the people or associations who were offending the current law and the generations which was doing business then, the other ones are still continuing this kind of infractions and therefore they don't see anything wrong with whatever they have been doing or what they are doing currently.

So what are we doing? Obviously, we are publicizing the decisions we take. The penalties. We penalize the people. We have penalized that is to increase the awareness in regard to the detriment if you infringe the law. Also, we upscale cartel enforcement. As I indicated, the first four years was on mergers. And we have realized that out of all the mergers 148 we analyze in Kenya, 96-97 % are approved without conditions. So, we need to share the resources to the more egregious forms of competition law infringement. That's what we are doing.

Also, we are working a lot with the members of the press. Because even some of the cases we have handled, we have gotten them from the press. So nationally, that is the situation.

In terms of cooperating regionally, as I have indicated, we have COMESA, Common Market for Eastern and Southern Africa. COMESA is a regional competition agency created by some regulations which have been promulgated by about 19 members states. And the challenge we are facing in terms of cooperating at this regional level, it is prioritization of the activities. And you know COMESA have realized that they have been focusing on merger regulation. There is a tend of building the capacity in terms of numbers in the organization to deal with cartels. Also, when we talk about prioritization, also picking the case, identifying the case which has the greatest social impact, this time at national level we are focusing on the food sector and then they have put us to focus on football on soccer. So how do you relate these two?

The other challenge we are having in terms of COMESA at regional level, it has institutions but municipal level that is 19 member countries.



In terms of the institutional and regulatory capacity, it does not have the greatest foundation. And when you look at COMESA laws, is that municipal institutions are the ones which are supposed to enforce or COMESA has a right that? And also, in terms of coordinating, it is the municipal institutions. There is a challenge we are having. COMESA may be big at the top. But other foundations, it become weaker, obviously such a house is susceptible to collapse.

Then the other challenge has been in terms of different procedures and approach. As indicated, in terms of cartel enforcement the procedure is key. And also the national institutions will always consider your national procedures when you are undertaking this.

What we recommend in terms of deepening or mitigating against this, this have been mentioned in the presentation by Frédéric Jenny. In terms of having regional networks before formalizing a network like how COMESA is formalized now, there is a need of building trust. And I've seen this in a situation where we have African Competition Forum. Most of the work we have done across Africa, it has from African Competition Forum. Brick and mortar. It is not a monetary joined organization but we have built trust. We have done inquiries. And from those inquiries, we have prioritized work plans. These were most of the cartels we have identified. I can share with you the cement market, we dealt with it emanating from the African Competition Forum.

The other area we have identified, we have identified it having bilateral MoU's first before expanding to other member countries. We are working very closely with South Africa with an MoU, where we have been sharing information in mergers we are dealing with. And when other people see how we are working, they have been gravitating towards coming together and joining in terms of cooperating in dealing with cartels.

I am also happy to appreciate ICN framework on competition agency procedures as coming up. This would help in terms of coming and converging the procedures across my region. So at least, the municipal institutions can appreciate where we are coming. Lastly but not the least, obviously appreciating UNCTAD's guiding principles and policies on competition. Thank you very much.

## ANNOUNCER

To present his plaque to Francis Kariuki, I would like to invite Mr. Bircan.



## AHMET ALGAN

Thank you very much for your presentation and for the solutions you pointed out Mr. Kariuki. Mr. Kariuki shared with us the experience of cartel enforcement in Kenya and the main challenges in international cooperation, especially in COMESA.

I'd like to go on with Ms. Liudmila Borisova. Ms. Borisova will share with us the Russian experience on digital cartels. We know that Russia has interesting detection tools and cases. I will give the floor now to Ms. Borisova.



**Liudmila BORISOVA**

Head of Saratov Regional Office  
FAS Russia

Thank you very much. And I also would like to thank for this good organization by the Competition Authority. This has been really an honor for me to be given an opportunity for the speech. I would like to tell you about the practices that we have done so far. And Antonio mentioned that witnesses regarding the cartel formation. Witnesses are very important. The evidence is very important and there are some statistics here in 2017.

In terms of applications made regarding the cartels, we see that five point seven percent of them were rejected

and the others actually are at jurisdiction. During jurisdiction, not only the companies but also we can also utilize the digital mechanisms and accordingly the program has been already prepared for this. And this program certainly helps us to continue with the combating.

So, the digitalization of the economy has created new forms of market monopolization. Digital program has been already prepared and it has the name big digital cat. You'll see the icon of this big digital cat. So, the competition authorities use this in an intensive way. And as well the federal organs, the Administrative Organs of the Government prepare certain tenders within the scope of usage of this tool. And this icon actually represents protection. Actually, this summarizes our activities. So we have got certain tangible results regarding the application of this program already in 2017. All regional competition authorities will be utilizing this program. And the results actually enable to carry out certain analysis. There are certain parameters. Human intelligence and artificial intelligence are not enough for evaluations. For example, the parameters of procurement of the pharmaceuticals as well as in public procurement of other services, we see that this is a phase of insufficiency so that we need to have extra and additional studies. For that reason,

other means or tools are the robots. By the federal government there have been some studies carried out. And of course, we see that we have to review who is behind the boots. There are two companies. One of them is Valeria and the other one is Gamlet. And these are the cartels on the market of medical supplies. Some of these procurements are related with the procurement of pharmaceuticals. And through certain websites, through the interference of websites, the controls and inspections were carried out. Accordingly, the monopoly was hindered. Other matters which would hinder competition and also to change the prices and to avoid price changes, certain programs were applied. Within the scope of these, these studies have yielded certain results. These programs are used in the Central Bank as well as other related authorities.

And another example is Samsung Electronics. This is a distributor, this is a dealer. The company does not do the sales itself. It sells smartphones and it works in that market. It tried to ensure coordination. And there have been 13 pre-sales. Coordination has been ensured. As you see that the prices here are the recommended prices and there's the deviation of the prices here identified and indicated right here. So here the company, as it tries to adjust the prices, this is what has been done by the company. And of course the Samsung company cooperated with us and during the investigation they presented us the required evidences and how these resales should be evaluated. According to the evaluation of resales, we have received required documents. At the end of the day, the Samsung company admitted or accepted to apply an anti-monopoly program.

And I am representing the Saratov competition authority. And there are also many federal agencies that help us. I just would like to give a few information. Our population is 2.5 million people, the total area is 100.200 km<sup>2</sup>. Saratov name, it means yellow mountain in Tatar language. And I also would like to give an example that this is not random. We take an example. This actually shows us the slides or example what could be the challenges that our competition authority may face with. These challenges is that we do not have sufficient number of tools in hand and anti-monopoly digital program is being prepared. And this is actually a new market. There are new technologies that are implemented, applied



and there are new data. These programs, these innovations to be working more intensely in future, this is what is required. We have to have an accumulation of the data. And we have to be able to present certain works. As per the students, we have already made an agreement with RUS Telekom and also with the Minister of Education, as Saratov competition authority. This agreement has aimed at obtaining millions of contracts up to date regarding the software. Today intellectual property relate to not having a violation of the intellectual property rights. Such interventions are to be controlled by our competition authority in public procurement regarding these actions in order to hinder the violence in competition. There are certain phenomena that have been already formed. And there is also similar case related to RUS Telekom, which has been a company who was awarded regarding the tender. And in 2015-2016 the Ministry of Education has held auctions to determine the contract for IS modernization. The ministry form the price of contracts where requested prices from PJC, RUS Telekom and LLC, which overvalued services in proposals. Based on the results of the auctions, the ministry signed contracts with RUS Telekom, which is not a manufacturer of the software products and entered into subcontracting agreements with LLC.

We know that there are no sanctions in some of the countries, but there are certain parts related to the fraud. And in penalty court there is a sanction for these frauds. It is related to the formation, related to cartels, hardcore cartels. And in the penal court, these crimes have intensified punishments.

So thank you very much for listening.

## ANNOUNCER

To present her plaque to Ms. Borisova, I would like to invite Şükran Kodalak, Competition Board Member.



## AHMET ALGAN

Thank you very much for your presentation and for the lessons you pointed out. Ms. Borisova shared with us the experience of interesting cases in Russian Federation. Our panel will conclude with Mr. Iskakov; Deputy chairman of the Competition Authority of Kazakhstan, who will share his experiences of meeting the challenges of more effective dawn raids, monitoring for bid-rigging compliance programs. Floor is yours Mr. Iskakov.



**Arsen ISKAKOV**

Deputy Chairman, Competition  
Authority of Kazakhstan

I would like to actually thank the organizers and our hosting country for giving us the opportunity to be here. It has been a great host showing the best possible hospitality. This is a wonderful event. The Turkish Competition Authority has succeeded in such a great work and we have seen great examples and they have given us the chance to meet our colleagues.

So, what can we say about the cases and the examples in Kazakhstan? My colleagues from the Russian Federation also mentioned. I would like to mention one thing before that. One thing that we work on has been about cartel enforcement. We

had a major screening in 2016, which has been a huge milestone and a breakthrough for us. For the very first time in history, the Kazakhstan administration and the government made a definition for cartel and cartel enforcement. Because since the beginning, the public authorities have been working in order to make sure that any kind of violation and infringement is prevented and stopped. After a certain level of screening, after a certain monitoring and investigation, the results gathered, and the findings have been analyzed and have resulted in a serious platform to set on path so that we can stop working. We have realized that in 88 cases we have established, we have the chance to work on and we had several different investigations done annually. And I would like to mention one more thing. There have been a separate individual department to fight against cartels, to cartel enforcement. And of course, our staff number is very limited and it's much less compared to our peers but we wanted to make sure that we take the necessary measures. We want to increase the number of experts working it out. There are baby steps taken and we're working on it actually.

As it is mentioned before, I would like to also mention some of the issues and challenges that we encounter. There are also some actions about



eliminating certain proofs and evidence. So, Kazakhstan Competition Authority is the only government body that can run unnoticed, impromptu onsite investigations without letting anyone know that they're going to run any kind of investigation. So, in order to stimulate people so that they can contact us, we take some measures. And that was our effort. And this kind of approach to us, understanding this perception is embraced by the public opinion using certain tools to make sure that these instruments are communicated. And people started to respond to that.

And I would like to also mention one thing there are certain issues which are about preliminary investigations. They just come to our institution mentioning their concerns about the market about monopolization. And they are encouraged to do that. In 2019, we have conducted a very important piece of work. We have contacted all the digital commercial platforms. We have reached out to them. And yesterday a little information had been presented by different parties. And all the instruments that are doing work, the government tools and instruments have been reached by us and our institution. We started taking actions to provide prevention of any kind of infringement or violation. And so far, the work has been done manually because considering the human factor we have to take that into consideration. Our institution has certain resources dedicated to that. We have followed up all the exchange indicators and try to find some indicators, locate some indicators that can just provide hints to us on any particular subject on any particular issue or challenge. And we are also preparing certain indicators and my colleague from Russian Federation also mentioned that. Let's say that you have an authentic product. But we now are using this intellectual system of taxation institutions. We are trying to use their indicators to reveal certain infringement, violation cases. So, we try to utilize these intellectual systems. In principle, the work conducted allows to reveal certain results and conclusion.

About the initiated work, we have future planning. We believe that we have made sure that one point two billion Kazakh Tenges worth of gaining up to date. So, our work focuses on anti-trust, anti-cartel establishment



and we work with several different institutions and we usually provide the final conclusion in the subject matter after the complaint has been initiated. Within 10 days, we solve the problem and we just provide the preliminary conclusion and then we can provide a detailed investigation.

Shortly, I would like to just touch upon certain issues in some cases. I just removed the name of the company because it may be possible that there may be penalties involved. We took the initiative and we have submitted the relevant documents to the Ministry of Justice. This is a company drilling out uranium, excavating uranium and feeding it and, also sulphuric acid supply companies are involved in their transactions. This is very important for these companies who have been selling sulphuric acid to the uranium drilling company. So its utilization is captured by these two companies. They just executed a deal on unearthing uranium. In the first level where they were using this money, they had some kind of pricing. And the price was, which is about fifteen thousand six hundred and twenty-five Kazakh Tenge. I think they couldn't just locate it from other resources they just started increasing the price. They have shared the amount that needed to be supplied by these two companies, so they also shared the revenues almost at the rate of 50 to 50 percent. So, they share the market. We have seen that. Considering the monopoly value, we have contacted the Ministry of Internal Affairs.

Another cartel that I would like to refer to is about a pharma cartel. In Kazakhstan, we have a central pharmaceutical purchasing system. We are trying to make it free of charge in the future. So, what is the essence of this cartel? There are three different competitors providing pharmaceuticals to the market as well as medical appliances. So, one of the companies became kind of a coordinator. Other companies wanted a subcontractor agreement so they stopped competition and three of these started sharing the market; like one third of the market was kind of granted to each one of these so there was no competition. This was kind of a cartel, so we have spotted that and also took their administrative sanctions to stop them.

In principle, this is what I have to tell you. Before I finish, I'd like to say one more thing. Actually, I neglected to say it in the beginning. As the

Kazakhstan Competition Authority, we are the representatives of this authority, but we are a department working in the competition authority. Our agency is very young. And in that framework the experience you own, and the experience of our previous organization really matters to us.

I would like to thank every single one of my colleagues here once more. Because currently the efforts and the expertise had contributed a lot to our work, and I would like to extend my gratitude to the Turkish Competition Authority. And I hope that we will have close cooperation with them. Thank you very much.

## ANNOUNCER

I would like to invite Board Member Mr. Hasan Hüseyin ÜNLÜ to present his plaque to Arsen Iskakov.





## AHMET ALGAN

Thank you very much for your presentation Mr. Iskakov and thank all of you for your comprehensive presentations. If you let me, we have time for about five and 10 minutes. If you would like to ask questions, feel free to ask your questions to our panelists. I'd like to hear your comments as well as your questions. Do you have any questions, please raise your hand. Then, I'd like to wrap and close the panel. On behalf of the audience, let me thank the speakers for sharing their perspectives and allowing us to learn from their experiences. As we see, regardless of geography we face common problems. We observe that the business can be ahead of enforcement in exploiting the technical developments. We see that the unintended consequence of leniency or compliance programs has the potential to weaken the efficacy of deterrence efforts. We see that digitalization can also benefit us, agencies if we better use it. Once again, I thank very much to our speakers. And I hope to have the chance to meet you again. Thank you for your attention and participation.

## ANNOUNCER

We also thank our moderator and our speakers as well. Again, I would like to invite Adem Bircan back to stage to present his plaque to our moderator, Mr. Ahmet Algan, who is a Board Member.





## Closing Speeches

26 November 2019  
12.45 – 13.15

**Teresa MOREIRA**

Head, Competition and Consumer Policies Branch, UNCTAD

**Birol KÜLE**

President of the Turkish Competition Authority



### **Recep GÜNDÜZ**

Head of International Relations,  
Training and Competition  
Advocacy Department

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Actually, the last speech, the closing remarks are the most important part. Now, I would like to invite first Teresa Moreira for the closing remarks.



### **TERESA MOREIRA**

Head, Competition and Consumer  
Policies Branch, UNCTAD

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Good afternoon to all of you. I can be very brief. I would like again to thank very much the Turkish Competition Authority, hospitality and warm welcoming to all the participants of this first Istanbul Competition Forum. I hope you will allow me, in particular of course, to thank Mr. President Birol Küle, the distinguished Members of the Board of the Turkish Competition Authority but also in particular the team that I believe was in charge of the organization of the conference. So, Mr. Recep Gündüz, the head of international affairs and Mr. Tan Çatalcalı and Ms. Beyza Ağvaz, who I think

were fantastic in providing all the comfort and all the arrangements for this conference to be a success.

If you allow me, I would also like to mention UNCTAD Competition and Consumer Policies Branch team Ms. Ebru Gökçe Dessemmond, who was the liaison from our side with the Turkish Competition Authority and Ms. Elizabeth Gachuri. I would also like to congratulate the Turkish



Competition Authority not only for this initiative and proposal as I mentioned yesterday but for the details or the specifics that were shared with us earlier today to explore avenues for regional cooperation in a very practical and I believe very effective way.

UNCTAD is firmly committed towards promoting cooperation either at regional and international level between developing countries and between developed and developing countries and countries with economies in transition. We do believe that with our 194 member states and our continuous dialogue with governments and in particular, with competition authorities, we are quite representative of the world's international community. And this should be an advantage in working as a platform to identify common challenges, to foster shared learnings and of course to promote the gathering and bringing together competition authorities in this case.

I think that our close and very active relationships also with other international organizations such as the OECD, with whom I mentioned, we have recently celebrated a memorandum of understanding as well with the regional economic commission of the UN for Western Asia, which actually is mostly dedicated to the Arab countries, shows that also between international organizations there is room for improvement and for better working together. And of course, our Memorandum of Understanding with the World Bank Group hopefully will also benefit some of the countries here present.

So I can only say that UNCTAD is sincerely thankful for this initiative. We are very much looking forward to work with the Turkish Competition Authority and all the competition authorities here present and those who are not able to make it and of course, with our partners especially from the OECD in improving regional and international cooperation for a more effective competition law enforcement across the world.

Thank you very much.



## ANNOUNCER

Also, we would like to thank Ms. Moreira and for the closing remarks, I would like to invite the President of the Turkish Competition Authority Birol Küle.



**BİROL KÜLE**

President of the Turkish  
Competition Authority

Distinguished participants, distinguished colleagues. We are at the end of the Istanbul Competition Forum. For two days, we have representatives, our colleagues from 30 countries. We have the presentations by the experts, who have expertise in competition law and policy. The interest that was shown was far beyond our expectation. For the interest you have shown, thank you very much.

For two days, the moderators and participants have contributed to the sessions in the fields of digitalization and competition law as well as interaction among the policies and international cooperation. And also, we tackled with the issue of combatting against cartels. I hope that all the sessions had been beneficial for all of the participants. And I hope that we had an opportunity to exchange our ideas and experiences. I think that one of the important aspects of ICF is that it provided an opportunity to strengthen the relations among the competition authorities. We did not only discuss the opportunities for international cooperation but also the experiences itself. And also, we have made a good investment for the future. There has been a memorandum of understanding between North Macedonia and Romania. We have really had the honor to be hosting this important event. And

I know that we have seized good opportunities regarding the bilateral meetings.

And as I mentioned before, I once again would like to express my thanks to all the related parties and one of the parties is UNCTAD and Ms. Teresa Moreira. The contribution of UNCTAD was really important for the organization of ICF. They have undertaken important goals for the organization. I hope that we will continue with our cooperation together in future. Once again, I would like to thank the Chairman of the Committee Prof. Jenny. It was a really inspiring speech by him. For the organization of ICF, TİKA made a great contribution as well. I would like to extend my thanks to TİKA as well.

I once again would like to mention that having such a big organization in our country really strengthens us. I would finally like to extend my thanks to the colleagues who have made efforts for the organization of this event and worked committedly. This has been a flawless organization with their efforts. During the event, we have received many positive feedbacks which have encouraged us to organize the next ICF, where we will be discussing the important agenda items and I hope that we will convene during the next ICF. Once again, I would like to greet you with respect and love, and I would like to see you all again. Thank you.





## Bilateral Meetings

President of Turkish Competition Authority Birol Küle made bilateral meetings with the participants of Istanbul Competition Forum to improve regional relationships.

President Küle met with the presidents of Albania, Azerbaijan, Bosnia Herzegovina, Greece, Kazakhstan, Kosovo, Moldova, and Monte Negro, Competition Authorities on the first day of the Forum. On the second day, Mr. Küle held bilateral meetings with the presidents of Mongolia and North Macedonia Competition Authorities.

Besides, Vice Presidents Kürşat Ünlüsoy and Abdulgani Güngördü held bilateral meetings with their counterparts from Hungary, Morocco Kyrgyzstan and Uzbekistan Competition Authorities.

Authorities exchanged views to develop regional cooperation and cooperation between countries.

The Forum also hosted a Memorandum of Understanding between North Macedonia and Romania.









## REVIEWS OF THE FOREIGN GUESTS WHO PARTICIPATED IN THE ISTANBUL COMPETITION FORUM

### **Teresa Moreira, Head, Competition and Consumer Policies Branch, UNCTAD**

Hello. I am very pleased to be here, at the first Istanbul Competition Forum, organized by the Turkish Competition Authority, in collaboration with UNCTAD that I here represent. We believe this is a very important initiative to promote regional cooperation in a more relaxed, informal framework that will surely foster mutual understanding and provide for shared learnings. The Turkish Competition Authority has considerable experience, since it has been working for 22 years with highly qualified staff and very committed. And so we are extremely pleased also to use the Turkish Competition Authority as an example to support young and less experienced competition authorities from developing countries. I hope this will be the first of many more gatherings in the years to come and I hope I will have the opportunity to speak with you again. Thank you.

### **Antonio Gomes, Acting Deputy Director of the Directorate for Financial and Enterprise Affairs, OECD**

So it is a great pleasure to be here in Istanbul for the very first Istanbul Competition Forum. I would like to congratulate the Turkish Competition Authority for organizing such an important forum – a forum that will not only discuss very important issues such as digitalization, globalization, international cooperation and effective actions against cartels, but that will help bring together a lot of the countries of the region to promote regional cooperation. And it is quite impressive that we have around 30 countries of the region attending this Forum. So, really, my congratulations to the Turkish Competition Authority, and I am sure that this initiative will be a very, very big success for the future.

### **Valon Prestreshi, President of the Kosovo Competition Authority**

All right, so the experience with the ICF is one of the greatest experiences I have ever had and based on this, even in the previous meetings that we had, we were able to reach an agreement together with the Turkish Competition Authority and the Kosovo Competition Authority where we invited the President in Kosovo to reach the memorandum. I believe



that this ICF Conference is well-organized and it is very - how should I say - very good for other young competition authorities to exchange experiences with other countries and other institutions and competition authorities. I believe that the organization went excellently; the hospitality was always great and is great. Let us keep it up and hopefully in the near future you will continue with the ICF program

### **Ioannis Lianos, President of the Hellenic Competition Authority**

Hello, I am Ioannis Lianos. I am the Head of the Hellenic Competition Commission and Professor of Global Competition Law and Policy at UCL. I was invited to the Istanbul Competition Forum, which I think is an extraordinary initiative bringing together lawyers, economists, academics and officials to discuss recent developments in competition law and practice. The topic of the Conference today was mostly on digital economy. This is obviously a very hot topic. Everyone is working on this, there are many reports published and I think that the discussion today brought to the fore some of the important issues and changes we need to do in competition law theory and practice. I definitely think that fora like the Istanbul Competition Forum will be extremely important in order to promote the global discussion that is needed in this new globalized digital world. Thank you very much again for the opportunity to present in your conference and the opportunity to discuss with the excellent people here. Thank you.

### **Araz ALIYEV Deputy Head, Azerbaijan Competition Authority**

ICF meeting is a beneficial preparation for international cooperation, learning latest experiences and practices and developing legal infrastructure. This preparation has enabled experience sharing and research on common issues.

Participants can benefit from each other's experience and put that into practice after returning to their countries. And this international meeting helps developing competition laws.

Moreover, it provides opportunity for experts to combine their knowledge and apply it in their countries. It provides a beneficial platform.

Arrangements related to international cooperation should be realized and as competition environment is also effected by globalization, this meeting has created positive effects on cooperation between countries.













