



BRICS

COMPETITION  
NEWSLETTER 2018

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## Contributors

**B R I C S**



**Image:** BRICS competition authority heads at the 4th BRICS International Competition Conference in Durban, South Africa, 2015.



## FOREWORD

### Keeping the BRICS promise

*Last year I made a public commitment that when the time came for South Africa to take over the chair of the BRICS competition group, in January 2018, it would “play its part in promoting the competition agenda including the need to promote approaches to competition policy and regulation which align to specific needs and demands in emerging markets such as BRICS. The Commission will seek to pursue this agenda by reinforcing the need for deeper cooperation in relation to, amongst other goals, global competition developments and policy, investigations into cross border anti-competitive conduct and the establishment of the BRICS Competition Research Centre”.*

This newsletter is but one demonstration of that commitment. In the content of these pages I hope you will read more than a compilation of the efforts of five competition agencies to enforce competition laws within their respective jurisdictions. I hope you will see an inclusive network that has grown from very humble beginnings, ten years ago, as a commitment to cooperation between BRICS competition authorities to a much more ambitious commitment by BRICS countries to amplify the voices of younger and emerging agencies throughout the global competition fraternity. This ambition is evident from the accounts of each competition agency of their work over the past year.

Under “international cooperation” on page 32 we observe that the BRICS agencies are all active and prominent members within their own regional competition networks and each BRICS agency has formed working partnerships with other competition agencies in their respective regions. The output of these partnerships and our respective memberships in regional competition bodies ensures that BRICS members benefit from the knowledge and experience of more than just five countries. We benefit from the knowledge and experience of five continents, allowing us all to play a leading role in global competition networks, ultimately influencing the direction of competition law and economics in this world not just for competition’s sake, but for the advancement of the world economy and those who participate in it.

In South Africa we firmly believe that economic growth that is not inclusive growth is not sustainable. World events over recent years have proven this statement. The BRICS agencies bring this powerful realisation, amongst many others, to the competition discourse and are already demonstrating its practical application in the enforcement and merger decisions they make. The discussion on mergers on page ... highlights that even where global mega-mergers are concerned, such as the agro-chemical mergers we considered this year, BRICS agencies do not hesitate to impose local conditions to safeguard the interests of consumers in emerging markets.

International meetings are amongst the most important mechanisms through which BRICS operates. In the gathering of BRICS competition agencies, the network promotes dialogue, the robust exchange of ideas and plots the future agenda of the organisation. The Russian competition agency has announced the dates for the 2019 meeting of BRIC

will take place from 16 to 19 September 2019 in Moscow, Russia.

South Africa hosted the fourth BRICS competition conference in November 2015. The conference was well attended and received due publicity. It attracted over 40 speakers and over 500 delegates from across the globe including members of the South African government, members of competition authorities from across the globe and well renowned law and economics practitioners such as the Nobel Memorial Prize recipient, Joseph E. Stiglitz. Over 20 delegates from BRICS competition authorities were also in attendance and participated in various sessions throughout the conference. Moreover, as it was the first BRICS competition conference on African soil, 30 delegates from the African continent were also in attendance including 18 African competition authorities.

The contribution that international meetings make to the daily work of BRICS agencies is immeasurable. But one area where we can count interactions and measure the output of our networks is in the establishment of bilateral partnerships aimed at achieving a specific outcome. One such example is the collaboration between South Africa and Russia in addressing competition concerns arising in South Africa’s automotive industry. South Africa benefited from Russia’s past experience in this industry coupled with the similarities in our economies. This partnership will continue as we finalise the code of conduct for the South African automotive market and will undoubtedly place South Africa in a good position to assist other countries yet to address competition concerns in this sector. Section ... on international cooperation details this work and the large body of work being done by other agencies and networks to develop competition.

Although BRICS started out as five countries ten years later it has become part of a global community committed to supporting the work of many more competition agencies and thus many more economies with an ambitious vision to change the economic destiny of the world. And ever stronger for its inclusivity.

Happy reading!

**Tembinkosi Bonakele**

Commissioner: Competition Commission of South Africa



**Image:** BRICS competition authority heads sign a historic Memorandum of Understanding at the International Legal Forum in Saint Petersburg, Russia, 2016.

## OVERVIEW OF BRICS

# The formation of a global network

BRICS is an association of five major emerging national economies, namely Brazil, Russia, India, China and South Africa. South Africa began its participation in 2010. Cooperation among BRICS members spans formal diplomatic engagement between the national governments, engagement through government-affiliated institutions, such as state-owned entities, business councils, civil society and people-to-people engagement. BRICS summits comprise discussions representing spheres of political and socio-economic coordination, in which member countries have identified several business opportunities, economic complementarities and areas of cooperation.

The chairing of the forum is rotated annually among the members, in accordance with the acronym B-R-I-C-S. Over and above the summit, BRICS cooperation in the past decade has expanded to include an annual programme of over 100 sectoral meetings. Cooperation among members is predicated on three levels or “tracks” of interaction, namely:

-  **Track I:** Formal diplomatic engagement between the national governments;
-  **Track II:** Engagement through government-affiliated institutions, e.g. state-owned enterprises and business councils; and
-  **Track III:** Civil society and “people-to-people” engagement.

The first BRIC Summit took place in 2009 in the Russian Federation and focused on issues such as reform of the global financial architecture. South Africa was invited to join BRIC in December 2010, after which the group adopted the acronym BRICS. Former South African President Jacob Zuma subsequently attended the third BRICS Summit in Sanya, China, in March 2011.

The BRICS approach is informed by the need to deepen, broaden and intensify relations within the grouping and among the individual countries for more sustainable, equitable and mutually beneficial development. This approach takes into consideration each member's growth, development and poverty objectives to ensure relations are built on the respective country's economic strengths.

The bloc offers a unique opportunity for BRICS countries to extend and advance their cooperation in ways that meaningfully promote their economic development agendas as well as that of other developing countries.

South Africa assumed the rotational chair of BRICS from 1 January to 31 December 2018.

The BRICS competition network was formed in pursuant to the aims of South Africa's participation in the broader BRICS grouping.

Since the formation of the BRICS competition network, the members have concluded various bilateral memoranda of understanding ("MOU's") in order to deepen knowledge and enhance cooperation between the competition agencies of BRICS countries as well as a BRICS MOU demonstrating the commitment of all the BRICS competition agencies to enhanced collaboration and cooperation. These are listed in the table below.

**Table 1: MOU's concluded between members of the BRICS competition network**

<i>Signatories</i>	<i>Date of signing</i>
Memorandum of Understanding between The Federal Antimonopoly Service (The Russian Federation) and the Government of the People's Republic of China on Cooperation in the field of Countering of Unfair Competition and antimonopoly policy.	China - 25 April 1996
Memorandum of Understanding (MoU) between Competition Commission and Federative Republic of Brazil and Federal Antimonopoly Service	Brazil - 12 December 2001
Memorandum of Understanding (MoU) between Competition Commission of India and Federal Antimonopoly Service (Russia)	Russia - 16 December 2011
Memorandum of Understanding (MoU) between Federal Antimonopoly Service (Russia) and Anti-monopoly cooperation in the Ministry of Commerce of the People's Republic of China	Russia – 13 October 2014
Memorandum of Understanding (MoU) between Federal Antimonopoly Service (Russia) and State Administration for Industry and Commerce of the People's Republic of China	Russia – 23 September 2015
The competition authorities of The Federative Republic of Brazil, The Russian Federation, The Republic of India, The People's Republic of China and the Republic of South Africa	Russia - 19 May 2016
The Federal Antimonopoly Service (The Russian Federation) and the Competition Commission of South Africa	South Africa - 06 October 2016
The Competition Commission of South Africa and the Administrative Council for Economic Defense of Brazil	France – 01 December 2016
Memorandum of understanding between The Federal Antimonopoly Services of the Russian Federation and The National Development and Reform Commission of the People's Republic of China	Russia - 12 April 2017



**Image:** BRICS competition authority heads signed a joint declaration on future cooperation among them, 2015.

In pursuit of enhanced co-operation between the members, the BRICS competition network has established working groups in order to conduct research into areas of strategic importance to BRICS markets. To date, the network has established the working groups listed below.

- Working group on telecommunications
- Working group on pharmaceuticals and health care
- Working group on infrastructure and construction
- Working group on energy
- Working group on food and agro-processing

The mission of the working groups is to (1) share best practices and experiences on anti-monopoly and cartel law enforcement in the markets set out above; (2) to conduct joint research on these markets of common social importance; and (3) to coordinate investigations when necessary.

The working groups carry out their respective activities through:

- regular tele-conferences and meetings during specific international events attended by all member countries;
- exchanging of non-confidential information;
- coordinating actions between members of the group while conducting investigation of anti-monopoly law infringements, when necessary, and subject to the signing of MOU's amongst BRICS competition authorities.

With the BRICS competition network firmly established and the activities of the BRICS working groups underway, it has been agreed that the next big step forward in strengthening BRICS cooperation and harmonising of the BRICS competition policies is the building of an institutional partnership and the establishment of a new joint BRICS institution – the BRICS Competition Law and Policy Centre.

The core concept is to associate the competition authorities of the BRICS countries in a genuine public-academic partnership that will promote the study of the global economy and that will work to deliver a specific perspective on competition law and policy matters that will advance the interests and concerns of the BRICS countries.

The aim of the BRICS Competition Law and Policy Centre will be to provide the first systematic effort to establish a genuine BRICS-oriented agenda. It may also provide an opportunity to our research community to explore the possibility of the emergence of a BRICS competition law and policy model, in view of the importance the various BRICS countries put on the objectives of development and growth. Starting from certain economic sectors and developing an academic dialogue among many various academic teams from BRICS, the centre will enable competition agencies to develop incrementally a more general BRICS approach to competition law and policy issues.

The centre could also constitute one of the first, BRICS-created, institutions within the BRICS international system. It can be instrumental in establishing working mechanisms for information exchange and joint investigations between BRICS authorities. Such collaborative mechanisms already exist among the EU and the US competition authorities, and some recent cooperation agreements of the European Commission open even further the possibility of exchanging confidential information, even without the consent of the enterprises involved, for instance the one between EU and Switzerland in 2014.

It is envisaged that the BRICS Competition Law and Policy Centre could be an OECD-like international institution established by the BRICS countries but of a smaller scale and focused only on the competition law and policy issues. FAS Russia proposes to locate its headquarters in Moscow with operational branches in all the BRICS countries. The simple governance structure of the centre could be also inspired by the OECD experience and consist of a steering committee representing the heads of the BRICS competition authorities and a secretariat necessary to conduct its day-to-day operations. The work of the competition committee at OECD may serve as a benchmark for operations.



**Images:** Bilateral meeting between Competition Commission South Africa and FAS Russia at the 11th Annual Competition Law Economics & Policy Conference in Sandton, South Africa, 2017. Deputy Commissioner, Hardin Ratshisusu led the Competition Commission South Africa delegation with Stats-Secretary and Deputy Head of FAS Russia, Andrey Tsarikovskiy.

# COMPETITION LAW AND POLICY DEVELOPMENT

## Building on the foundation of past years

“Friends, we all understand that liberalised markets cannot be presumed to be competitive per se. They can be fraught with distortions caused by vested interest groups, large monopolistic firms or groups of firms in concert. Such distortions break the link between liberalised markets and the productivity and innovation gains that they are believed to yield. Hence the need for a robust competition law and policy.”

**D K Sikri**

Chairperson of India’s Competition Commission, at the 5th BRICS competition conference



### BRAZIL

#### 2017 competition developments in Brazil

In November 2017, CADE proudly held the 5th BRICS International Competition Conference in Brasília. The conference was attended by leaders and representatives from international antitrust authorities and Brazilian ministry officials.

CADE also took important steps to improving partnerships within the state, during 2017, establishing several working groups with other government institutions that are important to the promotion of competition law. For example, CADE established a partnership with the Brazilian National Central Bank, in order to coordinate activities regarding competition in the financial system. This initiative represents an innovation in the institutions' joint action for the promotion of competition.

Another working group was established with the Secretariat for Economic Monitoring (SEAE/MF, in its acronym in Portuguese), which encompasses joint activities on competition

law. The document establishing the joint action between Cade and SEAE was recently signed, strengthening and

legitimizing the activities to be carried out by the group.

In 2017, CADE published the Resolution No 19/2017, which established the new Code of Conduct for Public Agents of the Administrative Council for Economic Defense. The Resolution aims at establishing ethical principles and norms guiding the conduct of CADE's public agents and their activities. It also provides parameters to ensure CADE's accountability for its actions and decisions.

In addition, CADE updated its guidelines on the leniency program and the cease and desist agreement for cartel cases guidelines.



Image: Brazil Head: Mr. Alexandre Barreto de Souza

## RUSSIA

### Russian government leads by example

In 2017 the Russian government chose to lead by example when it drafted legislation aimed at promoting competitiveness within the government. The Russian President signed Decree No. 618 "On the Main Directions of the State Policy on the Development of Competition" (the Decree), which affirms the active promotion of competition in Russia as a priority for the activities of government authorities at all levels. The document contains principles of competition policy and approaches to setting priorities, as well as specific objectives for attaining competitive markets and the expected outcomes.

Ultimately the Decree seeks to promote competition throughout government in order to:

- increase customer satisfaction by expanding the range of goods, works, and services as well as improving their quality and reducing prices;
- increase economic efficiency and competitiveness of economic entities, including by ensuring equal access to goods and services of natural monopolies and public services necessary for conducting business activities, as well as stimulating innovation amongst economic entities; and
- achieve stable growth and promote the development of a multi-sectoral economy, develop technologies, reduce costs in the national economy, as well as decrease the social tension in the society, thus ensuring national security.

The Decree provides for a twofold reduction in competition law violations by public authorities, by 2020. It also encourages an increase in procurement by public and municipal customers and state-owned companies from small and medium sized enterprises (SME's).

In order to successfully implement and achieve these goals, the Decree encompasses a National Competition Development Plan in the Russian Federation for 2018-2020 (National Plan). The plan sets out detailed activities for supporting SMEs and states what the expected results of these interventions will be. The plan also sets out the various organisational and legal measures public authorities should put in place in order to reach the goals of the Decree.

In particular, the National Plan is designed to reduce the share of state participation in competitive sectors of the economy, promote tariff reform, improve the prevention and suppression of anti-monopoly violations that lead to the restriction and elimination of competition in the markets, and support entrepreneurial initiative.

The National Plan also creates roadmaps for promoting competition in selected industries in the Russian economy, namely, transport, chemicals, communication and information technologies, road construction, defence, housing, oil and gas, electricity, the agro-industry complex, fishing, health care, education and foreign trade.

The Decree and the National Plan are the first such documents in the history of the Russian Federation. The documents determine the principles of interaction between the state and the society, particularly in the economic arena, and affirms that incidents of unfair competition, cartels and abuse of a monopoly position will not be tolerated.

### Regulating for a digital age

Russia's competition regime recognises that the digital economy is expanding rapidly and globalisation is moving forward at an equally fast pace. In order to keep up with developments and remain relevant in the digital age, the concomitant improvement of anti-monopoly regulation is required. In this regard, the FAS Russia drafted a series of federal laws, referred to as the "fifth anti-monopoly package", aimed at addressing the following:

- the identification of criteria to classify owners of large digital infrastructure platforms that have sufficient market power to be classified as dominant business entities;
- tighter controls over price algorithms that analyse markets and adjust prices, possibly leading to cartel arrangements and other anti-competitive agreements;
- strengthening the requirements for M&A transactions that are associated with acquiring technology or other intangible assets;
- considering immunity for intellectual property that ought to be excluded from the application of competition legislation. ■



Image: Russia Head: Mr. Igor Artemiev

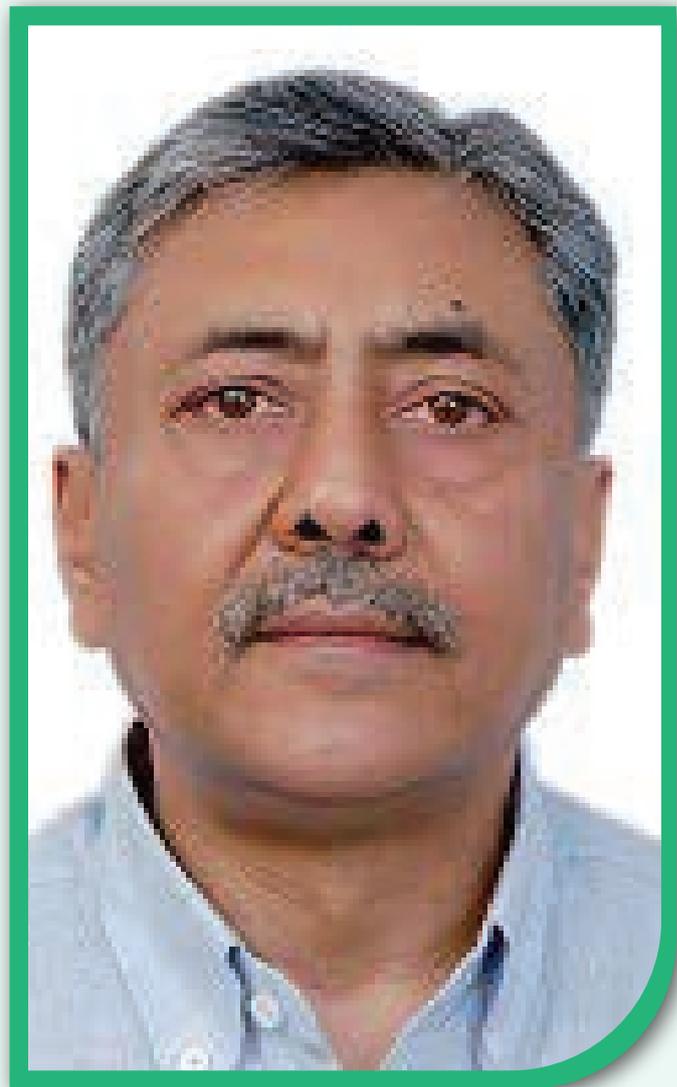
**INDIA`**

## India simplifies its merger filing rules

During 2017 the Government of India issued two notifications for simplifying filing requirements for mergers.

In terms of the notice S.O. 988(E), issued on 27 March 2017, the Government of India achieved two outcomes. It extended the de-minimus exemption (earlier applicable only to acquisitions) to any merger or amalgamation, referred to in clause (c) of Section 5 of the Competition Act, 2002. The notice also stipulated that in cases where a portion of an enterprise or division or business is being acquired, taken control of, merged or amalgamated with another enterprise, only the value of assets of the said portion or division or business and or attributable to it, shall be the relevant assets and turnover to be taken into account for the purpose of calculating the thresholds under Section 5 of the Act.

Additionally, notice S.O. 2039(E), issued on 29 June 2017, removed the obligation to file a notice with the Commission under Section 6(2) of the Act, within thirty days of board resolution or signing of agreement. As a result the notice for review of a combination can be filed any time before consummation of a deal.



**Image:** India Head: Mr. Sudhir Mittal

**CHINA**

## China moves closer to a free market system

China has resolved to move from its unique socialist economy to one that is more market-oriented and this commitment continued to show this year through, amongst other developments, its decision to establish a Fair Competition Review System (FCRS). Other indications are the following:

- frequent international communication and studies on the subject of fair competition and continuing domestic public education and awareness campaigns,
- increasing numbers of provincial governments engaging in the implementation of fair competition review procedures, and
- executive agencies' active response to calls from the private sector and review of policies that allegedly stymie fair competition.

The FCRS comprises regulations aimed at restraining the Chinese government from participating in conduct that results in local protectionism, regional blockades, industry barriers, business monopolies, and grants of preferential policies in violation of the law or illegally prejudicing the interests of market players. It was hailed as one of the most significant developments in China's effort to revamp its unique socialist market economy since the enactment of the Anti-Monopoly Law of the People's Republic of China nine years ago.

In October 2017 the Chinese authorities jointly issued the implementation rules for the FCRS. The implementation rules provide further details and guidance for the successful implementation of the FCRS. The rules improve the supervision and evaluation mechanisms provided for in the FCRS and strengthen the operability of the system. This will assist with a more comprehensive understanding of the FCRS, by policy makers, and serve to prevent abuse of administrative power which has the effect of excluding or restricting market competition.

In addition to issuing the implementation rules, Chinese authorities have also engaged in considerable advocacy to promote the FCRS and its aims within the government machinery. In particular the State Administration for Industry and Commerce deployed teams to six provinces, 12 cities, 12 industry bodies and other regulators in order to promote the implementation rules for the FCRS and thus build a favourable basis for promulgating the implementation rules. The advocacy efforts also required the extensive review of more than 150 documents.

#### **Forging ahead with guidelines on competition matters**

In the past year the Chinese authorities have made significant progress in developing guidelines pertaining to several competition topics. These activities include:

- participation in seminars on the revision of the anti-monopoly law;
- communication with relevant departments to jointly research and draft (1) the anti-monopoly guidelines on the abuse of intellectual property rights; (2) the guidelines on commitments made by business operators in antitrust cases; and (3) the guidelines for the application of the leniency program to cases involving horizontal monopoly agreements;
- the drafting of the guidelines on general conditions and procedures on the exemption of monopoly agreements; and the guidelines on the determination of illegal gains and fines in relation to business operators' monopolistic conduct.

#### **Competition and consumer law revised and adopted**

On 4 November 2017, at the 30th Session of the standing committee of the 12th National People's Congress of the People's Republic of China, the anti-unfair competition law of the People's Republic of China was revised and adopted. This law specifies the rules and regulations pertaining to acts of confusion and counterfeiting, false publicity, commercial bribery, improper sales offering prizes, trade secrets infringements, as well as unfair competition activities on the internet via technical means.

Indeed since China's anti-monopoly law came into effect in 2008 the relevant authorities have been drafting legislation to support and further enhance the country's competition regime. The supporting laws over the last ten years included:

- measures to adapt to new conditions and solve problems related to concentration in merger control;
- the production of a preliminary research report on the revisions of anti-monopoly laws;
- completing a draft report on measures for examining concentration; and
- promulgating the rules for implementing the FCRS, as discussed above



**Image:** China Head: Mr. Tang Jun

## SOUTH AFRICA

### Proposed changes to South Africa's competition law target economic concentration

On 1 December 2017 the Minister of Economic Development published the Competition Amendment Bill 2017 (Competition Bill) for public comment. A primary objective of the Bill is to address structural challenges that constrain the South African economy, namely high levels of concentration and racially skewed ownership patterns in the South African economy. The Competition Bill seeks to address these challenges through various means, such as:

- strengthening the provisions of the Act relating to merger regulation and prohibited practices, with a particular focus on abuse of dominance;
- requiring special attention to be given to the impact of anti-competitive conduct on small businesses and firms owned by historically disadvantaged persons;
- strengthening existing provisions relating to market inquiries so that consequential remedial actions effectively address market features and conduct that prevents, restricts or distorts competition in the relevant markets;

- providing the executive with more effective means of participating in competition-related proceedings and the power to initiate market inquiries; and
- promoting the administrative efficacy of the Commission, market inquiries and the Tribunal.

South Africa revises its merger thresholds and filing fees. As from 1 October 2017, new thresholds for the mandatory notification of intermediate mergers to the Competition Commission and increased filing fees payable in respect of both intermediate and large mergers, will apply. This is the first time the thresholds and prescribed filing fees have been amended since 2009.

Only the thresholds for intermediate mergers have changed. The new thresholds for intermediate and large mergers are set out below.

Threshold	Combined turnover or asset value	Target turnover or asset value	Size of the merger	Filing fee
Lower threshold	R 600 000 000 (\$44 616 000)	R 100 000 000 (\$7 442 700)	Intermediate	R 150 000 (\$11 164.05)
Higher threshold	R 6 600 000 000 (\$490 776 000)	R 190 000 000 (\$14 141 130)	Large	R 500 000 (\$37 213.50)

The turnovers/asset values must be the gross amounts and the turnovers must be those generated in, into or from South Africa for the preceding financial year.

The thresholds are calculated with reference to the turnovers/asset values (whichever is greater) of (i) the acquiring firms together with the target firms; and (ii) the target firms.

A large merger is where (i) the combined turnovers/asset values of the acquiring firms and the target firms exceeds the higher threshold therefor, and (ii) the turnover/asset values of the target firms exceeds the lower threshold therefor.

An intermediate merger is where (i) the combined turnovers/asset values of the acquiring firms and the target firms exceeds the higher threshold therefor, and (ii) the turnover/asset values of the target firms exceeds the lower threshold therefor, and the merger does not qualify as a large merger.

The prescribed filing fee for an intermediate merger has been increased from R100 000 to R150 000 (\$11 164.05), and for a large merger from R350 000 to R500 000 (\$37 213.50).



Image: South Africa Head: Mr. Tembinkosi Bonakele

# ENFORCEMENT ACTIONS

## Local impact, global influence



**Image:** BRICS heads of competition authorities sign a historic Memorandum of Understanding at the International Legal Forum in Saint Petersburg, Russia, 2016.

“We have deepened international cooperation to draw upon successful international experience. Compared with developed countries, China's anti-monopoly work started late comparatively. Thus, it is necessary to consider China's national conditions and learn from the successful experience of foreign countries. The Ministry of Commerce has established or started to establish cooperation mechanisms with anti-monopoly institutions in the United States, Europe, the BRICS countries, neighbouring countries and regions so as to continuously improve the ability of legislation and enforcement and seek to promote technical exchange in terms of major cases.”

### Yao Jian

spokesman of the Ministry of Commerce, at a 2014 media briefing on developments in Chinese competition law



## BRAZIL

**Table 1:** Brazil's enforcement statistics for 2017

Number of cartel investigations initiated in 2017	26
Number of unilateral conduct investigations initiated in 2017	15
Number of cartel investigations completed, with a finding of a contravention, in 2017	7
Number of unilateral conduct investigations completed, with a finding of a contravention, in 2017	26
<b>Value of fines levied in 2017</b>	<b>\$ 95,896,204</b>

Brazil's competition agency initiated 26 cartel investigations in 2017 and 15 investigations concerning unilateral conduct. Of the 26 cartel matters it concluded seven with a finding that the firms under investigation had contravened the competition law. The value of fines the competition authority imposed in 2017 came to approximately USD 96 million.

## RUSSIA

Key enforcement actions during 2017

**Table 1: Brazil's enforcement statistics for 2017**

Number of cartel investigations initiated in 2017	26
Number of cartel investigations completed, with a finding of a contravention, in 2017	15
Number of unilateral conduct investigations initiated in 2017	7
Number of unilateral conduct investigations completed, with a finding of a contravention, in 2017	N/A. 847 investigations were closed in 2017
<b>Value of fines levied in 2017</b>	<b>168 447 172 RUB (US \$690 000)</b>

**Below we list the more significant enforcement actions of the Russian competition authority during 2017.**

- The FAS Russia imposed a fine of more than 870 million RUB (15 million USD) on large energy companies for the conclusion of an illegal agreement that led to an overestimation of the planned volumes of electricity consumption in the market, which in turn led to a significant increase in the price of wholesale electricity market.
  - The FAS Russia also found that LG illegally coordinated the economic activity of smartphone resellers using a special algorithm.
- In addition, the FAS Russia issued two warnings to Microsoft Corporation for actions that contained signs of violating anti-monopoly legislation. FAS Russia imposed conditions that aimed to create equal conditions for developers of anti-virus products, not only in Russia, but also in all areas of Microsoft's presence, thereby ensuring effective competition in the global information technology market.

## INDIA

Cartel cases were, once again, in the spotlight for India's competition authority in 2017. The following are the important cases in which the Indian Commission imposed fines on parties for engaging in cartel conduct.

### Film makers reeled in

The CCI found that that FEFKA, a large and influential organisation in the film industry of the Malayalam region, imposed a ban on the Informant (an Actor-Director) resulting in many artists and technicians being prevented from dealing with the Informant or any other non-member. This anti-competitive practice was held to have an appreciable and adverse effect on the Malayalam film industry. After a detailed investigation by Director General, the CCI found the decisions and practice of the film associations were in contravention of Section 3(3) of the Competition Act, 2002. Consequently the CCI passed the following orders:

- That the respondents cease and desist from indulging in the anti-competitive conduct;
- Imposed a monetary penalty on various associations involved in the anti-competitive conduct (AMMA, FEFKA, FEFKA Director's Union and FEFKA Production Executive's Union), calculated at the rate of 5% of their average income; and
- Imposed a monetary penalty on the office bearers of the said associations found to be actively involved in the contravening conduct.

### Cartels in the drug trade

During 2017 the Indian Commission received a large number of cases alleging competition concerns in pharmaceutical distribution. All of these matters involved trade associations of chemists and druggists who tried to manipulate the distribution channel by imposing unjustified conditions on pharmaceutical distributors. The Commission's investigations led them to penalise several State level associations - namely All Kerala Chemists and Druggists Association, the Federation of Gujarat State Chemists and Druggists Association and the Chemists and Druggists Association of Baroda, which was a district level association for specific practices. These associations were mandated to cease and desist from their anti-competitive conduct. Monetary penalties were also imposed, calculated at the rate of 10% of their average income, the maximum penalty allowed in the law.

Considering the public interest involved in the distribution of medicines, the Commission unequivocally deprecated such conduct and its perpetration in any form by the associations of stockists, distributors, wholesalers or retailers as well as pharmaceutical companies. Given the potential for continuing the anti-competitive practices, the Commission intends to monitor the conduct of all such entities in various parts of the country and shall not hesitate to take action, wherever necessary.

### Batting for the wrong side

In the sports industry the CCI found the Board of Control for Cricket in India (BCCI) to be in contravention of the provisions of Section 4(1) read with Section 4(2)(c) of the Competition Act, 2002 (Competition Act) for its assurance to the broadcasters of Indian Premier League (IPL) that BCCI shall not organise, sanction, recognise or support another professional domestic Indian T20 competition that competes with the IPL, for a period of ten years. BCCI is the sports federation for cricket in India and is the only body affiliated to the International Cricket Council (ICC).

After a detailed investigation by the DG, the CCI found that the BCCI holds a dominant position in the relevant market for the organisation of professional domestic cricket leagues and events in India. Based on the nature of activities performed, the CCI concluded that the BCCI could be defined as an enterprise and thus, was subject to the provisions of the Competition Act. In its detailed order, the CCI observed that competition cases relating to sports associations or federations usually arose due to the conflict between their regulatory functions and their economic activities. The CCI also recognised the role of sports federations in taking measures to serve the integrity or development of the sport.

However in the facts and circumstances of the case, the CCI found that the impugned restriction had no nexus to the legitimate interest of cricket in the country. Rather, the restriction was pursued by BCCI to enhance the commercial interest of the bidders of IPL broadcasting rights and the consideration in turn received by BCCI. Such restriction, without any plausible justification, was held to be denial of market access for the organisation of professional domestic cricket leagues or events in India, in contravention of the provisions of Section 4(1) read with Section 4(2)(c) of the Act.

Accordingly, the CCI directed that:

- the BCCI shall cease and desist from indulging in the conduct that was found to be in contravention of Section 4 of the Act;

- the BCCI shall not place a blanket restriction on the organisation of professional domestic cricket league events by non-members. This shall, however, not preclude the BCCI from stipulating conditions while framing or modifying relevant rules for approval or while granting specific approvals that are necessary to serve the interest of the sport. Such changes shall entail norms that underpin principles of non-discrimination and shall be applied in a fair, transparent and equitable manner;

- having done the above, the BCCI shall issue appropriate clarification regarding the rules applicable for the organisation of professional domestic cricket leagues and events in India, either by members of BCCI or by third parties, as well as the parameters based on which applications can be made and would be considered. Besides, BCCI shall take all possible measures to ensure that competition is not impeded while preserving the objective of development of cricket in the country; and

- the BCCI shall file a report to the Commission on complying with the aforesaid directions within a period of 60 days from the receipt of CCI's order. A penalty of INR 522.4 million was also imposed on BCCI for engaging in anti-competitive conduct.

### Cancer patients set to benefit from CCI finding

Recently, CCI decided to initiate an investigation against three firms within the Roche group of pharmaceutical companies for alleged anti-competitive conduct regarding its cancer drug, Trastuzumab. Two informants, Biocon Limited and Mylan Pharmaceuticals Private Limited, alleged that Roche was in violation of section 4(2) of Competition Act of 2002 in that Roche had employed abusive strategies thereby

denying the informants access to the market. These strategies included denigrating the image of bio-similar drugs. Following its investigation CCI concluded that there was prima facie evidence that Roche had indeed contravened the Competition Act by abusing its dominance.

CCI prima facie found Roche to be dominant in the relevant market for "biological drugs based on Trastuzumab, including its biosimilars in India". The CCI held that denial of market access, within the meaning of Section 4(2)(c) of the Act, need not be complete and absolute in nature. Even a partial denial of market access that takes away the freedom of a substitute to compete effectively on merit may amount to a contravention of Section 4(2)(c). The CCI noted that this case involved a highly sensitive sector where the safety of the patient was of paramount importance. Thus, creating any doubt in the minds of doctors could adversely affect the market for bio-similars, which could only be obtained by prescription, beyond repair. Such disparagement could also have ripple effects within the medical community. In this scenario, those bio-similar manufacturers who did not have strong marketing channels amongst doctors could be forced out of the market because of a dominant player's conduct. Based on these observations, the CCI sent the case for detailed investigation to its investigation wing, the Office of the Director General (DG).

## CHINA

Table 1: Brazil's enforcement statistics for 2017

Number of cases notified in 2017	402
Number of cases initiated in 2017	355
Number of cases concluded in 2017	346
Number of concentrations in which MOFCOM imposed restrictive conditions	7
Number of cases filed involving monopoly agreements	10
Number of cases filed involving monopoly agreements and concluded with a penalty	3
Number of cases filed involving abuse of market dominance and terminated	8
Number of cases filed involving abuse of market dominance and concluded with a penalty	2
Number of cases filed involving abuse of market dominance and terminated	2
<b>Total confiscation of illegal gains</b>	<b>2,046,501 yuan (298 816 USD)</b>
<b>Total penalties for cases involving abuse of market dominance</b>	<b>2,555,862.33 yuan (373 189 USD)</b>

### Focus of China's enforcement actions in 2017

In 2017, industry and commerce and market regulatory authorities across the country were mobilised to take special law enforcement action nationwide to rectify acts of public utility enterprises designed to restrain competition. There was a special focus on sectors that concern people's livelihoods such as water, electricity, gas supply, public transport, and funeral services. The investigation and penalising of illegal acts of public utility enterprises included arbitrary charges, forced transactions, and imposition of additional unreasonable transaction conditions.

A total of 862 cases of restricting competition were investigated and prosecuted, confiscating 188 million yuan (27 450 444 USD). The restitution of the overcharges and reduction of the losses of consumers and business operators amounted to a total of 245 million yuan (35 773 185 USD).

## SOUTH AFRICA

**Table 4:** South Africa's statistics on abuse of dominance and restrictive vertical agreements for the year ended March 2018

Complaints received from the public	313
Complaints initiated by the Commission	5
Screening cases carried over from last year	53
Complaints withdrawn	8
Complaints closed (non-referred) at screening stage	31
Complaints that became full investigations (excluding those referred to CD for full investigation)	23
Complaints closed (non-referred) after full investigation	4
Complaints referred to the Tribunal for adjudication after full investigation	8
Screening cases carried over to the next financial year	36
Complaints settled	1

**Table 5:** South Africa's statistics on cartels for the year ended March 2018

Total cases handled in the year	146
Total investigations carried over from the previous year	83
Completed investigations	63
Referrals to the Tribunal	52
Non-Referrals	11
New cases initiated by the Commission	28
New cases received from third parties	35

Below we list the more significant enforcement actions of the South African competition authority during 2017.

## Squeezing every drop out of rooibos farmers

On 14 June 2017, the Competition Commission of South Africa referred a case against Rooibos Ltd to the Tribunal for prosecution. The Commission alleged that Rooibos Ltd, South Africa's largest processor of rooibos tea, had secured for itself significant volumes of the tea farmed out of South Africa's Cederberg region which is known world-wide for its production of the unique caffeine-free tea containing high levels of anti-oxidants.

Rooibos Ltd did this by introducing, in 2014, two exclusionary contracting strategies in its dealings with rooibos farmers.

Firstly, Rooibos Ltd entered into long-term supply agreements with farmers for the period 2014-2018. In terms of the agreements, farmers were required to supply stipulated volumes of rooibos tea to Rooibos Ltd.

Secondly, Rooibos Ltd introduced a supply commitment in exchange for farmers gaining access to its production research output. Specifically, farmers were required to supply up to half of their production to Rooibos Ltd. Rooibos Ltd exploited its research output to lock-in the supply of rooibos tea from farmers after the collapse of the research function undertaken by the South African Agricultural Research Council in 2014.

In the Commission's view Rooibos Ltd's conduct had two significant anti-competitive effects. It forcibly locked farmers into supplying their produce to Rooibos Ltd and it prevent

ed Rooibos Ltd's rivals from accessing supplies of rooibos tea for processing. Indeed the Commission observed that since the introduction of the exclusionary agreements Rooibos Ltd's volumes of rooibos tea purchased from farmers, which were in serious decline at the time, increased significantly and its main rival's purchases of rooibos tea either declined or stagnated, thus threatening the competitive process in this market.

This matter is currently being prosecuted in the Tribunal. The Commission is seeking an order from the Tribunal declaring that Rooibos Limited has contravened the Act and that the company is liable to pay an administrative penalty equal to 10% of its annual turnover.

### Government partnerships help to uncover collusion

One of the Commission's strategic outputs for this and prior years was to establish working partnerships with relevant economic stakeholders. Pursuant to this goal the Commission has worked to promote awareness amongst Government agencies about collusive tendering and its detrimental effects on consumer welfare. The Commission's work in this area empowered stakeholders to identify collusive tendering and to refer suspicious cases to the Commission for investigation. As a result of these efforts the Commission has received more and more complaints from Government agencies, alleging that they may have been victims of collusive tendering after following a tender process. During 2017 two such cases were lodged, by Robben Island Museum and Eskom Holdings SOC Limited (Eskom) respectively.

On 31 May 2017 the Commission referred five boat operators who ferry

passengers between Robben Island and the V&A Waterfront in Cape Town, to the Tribunal on charges of price fixing and collusive tendering. The referral followed a complaint lodged by Robben Island Museum alleging that Thembekile Maritime Services (Pty) Ltd (Thembekile); Silverbuckle Trade 21 CC t/a Yacoob Yatch (Silverbuckle); Nauticat Charters (Pty) Ltd (Nauticat

Charters); Ferry Charters (Pty) Ltd (Ferry Charters); and Tigger 2 Charters (Pty) Ltd (Tigger 2 Charters) had possibly colluded on a tender issued by Robben Island Museum. The Commission's investigation revealed that the respondents did indeed meet and agree to increase the prices they would charge the museum when responding to its tender. The Commission referred the case to the Tribunal and sought an administrative penalty equal to 10% of their annual turnover.

On 6 February 2018 the Commission referred four companies to the Tribunal for prosecution after finding that they had tendered collusively for a R4.5 billion tender to supply scaffolding and thermal insulation for 15 Eskom coal-fired power stations. The Commission's investigation found evidence of price fixing and collusive tendering on the part of Waco Africa (Pty) Ltd, acting through its division, SGB Cape, Tedoc Industries (Pty) Ltd, Mtsweni Corrosion Control (Pty) Ltd and Superfecta Trading 159 CC and three joint ventures which SGB Cape formed with each of the aforementioned companies through bilateral agreements. Eskom lodged the complaint about possible collusive tendering after observing similar trends and information in the tender responses of the respondents. Because the respondents have a shareholder in common in the form of SGB-Cape, the presumption of collusion in terms of section 4(2) of the Act was triggered.



## MERGER REVIEW

### Concentration in a changing world

“The global seed market is being monopolised, national markets depend on supplies of imported goods, and there can be system-wide failures in supplying food products to the population due to exterritorial risks; foreign companies can control famers’ profitability, and there is an adverse impact upon adjacent industries. All this predetermines the need to strengthen cooperation between BRICS anti-monopoly bodies in this field.”

#### Anna Mirochinenko

Head of FAS Department for Control over Chemical Industry and Agro-Industrial Complex, Anna Mirochinenko, presenting the draft report of a BRICS working group.

## BRAZIL

**Table 6:** Brazil's merger statistics for 2017

Number of mergers notified in 2017	369
Number of merger assessments completed in 2017	379

### Merger of entertainment giants raises foreclosure concerns

AT&T proposed to acquire Time Warner in October 2016. AT&T owns Sky, a pay-TV company in Brazil and Time Warner owns and distributes a series of channels to pay-TV operators, such as TNT, CNN, Cartoon Network, HBO and Esporte Interativo, a growing Brazilian sports channel. The merger would then result in a vertically integrated company, since Time Warner provides channels to Sky and to other TV operators.

CADE found that the resulting company would have the ability and incentive to foreclose both the upstream and the downstream market. Regarding input foreclosure, CADE found that although Time Warner's market shares were not extremely high for some genres, its channels and packages were very important for the TV operators and it would be hard for them to compete without these channels. CADE also found that a complete foreclosure would be unlikely since the channels' revenue is a factor of the number of subscribers they have. However, there was evidence that Time Warner could adopt a number of strategies to make its competitors worse off, such as raising prices and selling channels in bundles. CADE also found that such strategies had been used before by another company that was vertically integrated.

For customer foreclosure, CADE found that Sky had the second-largest market share in the pay-TV market, at 30% and it was extremely important for channels to be distributed by it. Sky

also had the incentive to completely foreclose the market, especially for smaller channels, since it would have, through Time Warner, a wide diversity of channels. Other strategies of partial foreclosure could also be used, such as changing its line-up, enhancing Time Warner's channels in Sky's programming and paying lower prices to third parties' channels. These kinds of strategies were also observed in the past by another company that was vertically integrated.

Finally, CADE found that the merger could increase the probability of collusion between the new company and another company that was vertically integrated (Globo/Claro), since it would make them more symmetrical and allows the flow of information between them.

The parties proposed behavioral remedies, which included mechanisms of transparency, Chinese walls and the possibility of arbitration in case a third party felt harmed. The merger was approved in 2017 with these remedies.

### CADE blocks private education merger

This transaction related to a merger between Brazil's two biggest private higher education institutions. CADE's Tribunal found that the proposed remedies would not solve the potential competitive impacts identified during the transaction analysis and hence proposed to block it. CADE's General Superintendent stated that the merger could harm competition and that there were not specific and verifiable efficiencies that could be passed on to consumers.

The merger between Kroton and Estácio would generate competitive

concerns related to the on-site education modality, due to the lack of sufficient rivalry, in eight Brazilian municipalities: Macapá, Campo Grande, Niterói, São José, Santo André, São Luís, Belo Horizonte and Brasília. In addition, the remedies presented by the parties were not satisfactory to solve the identified concerns and, because of that, the merger control agreement proposed by both companies was rejected.

### Competing fuel distributors denied a merger

The acquisition of the fuel distributor Alesat Combustíveis S/A by its competitor Ipiranga Produtos de Petróleo S/A was unanimously rejected by the CADE Tribunal. The commissioners understood that regional markets would be negatively affected by the merger and no agreement was reached with the parties to adopt remedies capable of neutralising the risks identified during the assessment of the transaction.

It was verified that Ipiranga's market share in a post-merger scenario would raise the probability of it exercising its market power in 11 states and in the Federal District (corresponding to approximately 65% of the operation), without the presence of efficiencies that could neutralise the harmful effects to the economic order. Furthermore, the entry of a new agent is unlikely and there is a low possibility of other regional or local distributors absorbing Alesat's current demand in these areas.

## RUSSIA

**Table 7:** Russian merger statistics for 2017

Number of mergers notified in 2017	1231 (1103 pre-merger notifications, 128 post-merger notifications)
Number of merger assessments completed in 2017	144 mergers- in-depth review 50 mergers- blocked or resolved with remedies

## Uber forms a joint venture with local Russian taxi operator

In 2017, the FAS Russia approved a merger, in the form of a joint venture, between Uber and Yandex.Taxi (Yandex).

The FAS Russia analysed the market for taxi aggregators and held a number of meetings with participants in the local industry. A survey of market participants showed that administrative barriers to entry could be easily overcome, reducing the risk of competitive harm arising from the merger. Coupled with the fact that the market for taxi aggregators was relatively new and subject to constant change and modernisation, the merger did not raise significant competition concerns for the authorities. The FAS Russia found that no single entity dominated the market but Yandex and Uber, given their size and scope of influence, displayed signs of dominance that could impact the market in future.

The FAS Russia thus issued an order to Yandex, Uber and their joint venture to implement action aimed at optimising the relationship between aggregators, taxi drivers and passengers. In particular, companies were required: (1) to provide the most complete and accessible information to users about the legal entity that carried out transportation; (2) to preserve the history of trips; and (3) not to ban partners, drivers and passengers from working with other taxi aggregators.

As part of the merger, the FAS Russia consulted with the competition authorities of Kazakhstan and Belarus after receiving waivers from the companies. Russian leg of the Bayer and Monsanto tie-up raises competition concerns. In 2017, the FAS Russia concluded a review of the merger between Bayer AG (Germany) and the Monsanto Company (USA).

This merger affected the markets for products used by agricultural producers including seeds, certain crop protection products, in particular non-selective herbicides as well as digital offerings for agriculture.

In the course of this merger review, the FAS Russia organised a series of negotiations with the relevant federal authorities, scientific and business communities, foreign competition authorities, as well as the parties of the merger. On the basis of waivers received from the merging companies, the FAS Russia held detailed consultations with India, China, Brazil and the European Commission.

In light of the global technological and digital transformation of the agricultural sector, the FAS Russia applied a new approach to identifying the potential anti-competitive effects of the merger, both in the Russian and in the global markets. The FAS Russia also relied on the best practices developed within other jurisdictions, relevant recommendations of the Competition Committee of the Organisation for Economic Cooperation and Development (OECD), and international academic society, as well as on the proceedings of the BRICS working group on global food value chains, which was formed by the BRICS competition agencies in 2015.

In assessing the impact of the transaction on competition in the Russian market, the FAS Russia assumed that the merged company would possess strong capacities including big genetic data, latest technologies for accelerated genetic selection as well as big data and algorithms for digital farming. All this would allow the combined company to increase its market power in a technologically changing environment. This would possibly lead to a rapid increase in the combined company's market share leading to a dominant position in the affected markets - depending on the abovementioned technological changes and the extent of entry barriers for market players who may lack some of the technological and data capacities.

The FAS Russia concluded that the merger could result in the following anti-competitive effects:

- the creation of new and increasing existing entry barriers in relevant markets;

- the increased risk of anti-competitive agreements and concerning practices (considering already high level of concentration in this sector, the merger might substantially reduce access to technical and data capacities for a number of market players which would undermine their ability to compete effectively in the new technological and economic environment); and

- the increased possibility of abuse of market power (combining innovative technologies, data, and platform solutions would allow the combined company to rapidly increase its market share). Hence, the FAS Russia concluded that the merger posed substantial and likely risks to fair competition.

The merger assessment took one year and, on 20 April 2018, the FAS Russia approved the transaction, issuing a prescription to the merging company. The FAS Russia prescribed that:

- the merged company should transfer, to Russian participants of the agro-industrial market, a certain amount of molecular selection tools and germplasm of the selected crops which were important for the Russian Federation;

- Bayer would support the training of Russian specialists in each culture and would create the training centre in Russia; and that

- the Centre for Technology Transfer would assist in the execution of the obligations assumed on the basis of one of the leading Russian universities - the Higher School of Economics under the Government of the Russian Federation. Despite the fact that the decision taken by the FAS Russia on this transaction was a novelty in the Russian practice of anti-monopoly regulation, it followed the general direction of changing approaches to merger transactions in innovative markets. It also corresponded to developing trends in international competition law.



**Images:** Commissioner Tembinkosi Bonakele, Competition Commission South Africa and Mr. Andrey Tsarikovskiy, Stats-Secretary, Deputy Head of the FAS Russia sign a Memorandum of Understanding during the 10th Annual Competition Law Economics & Policy Conference in Cape Town, South Africa, 2016

## INDIA

### Commission imposes local conditions on global agro-chemicals merger

In 2017 the CCI was notified of a merger between Dow Chemical Company (Dow) and E. I. du Pont de Nemours and Company (DuPont). Both the parties were inter-alia, active in chemical, plastic, agriculture products (including crop protection products and seeds), performance chemicals and performance materials.

The Commission noted that there was a product overlap between the parties which meant that a merger between the two would lead to a reduction in competition, as far as the overlapping products were concerned. The Commission considered the said combination and approved it subject to conditions aimed at protecting competition in the local Indian market. These were in addition to the global remedies that applied to the tie-up. The local Indian conditions applied to the following two markets: (a) fungicides for grapes which target fungus 'Ascomycota' in India; and (b) MAH grafted polyethylene (low graft) in India.

The conditions proposed by the Commission in relation to the two markets inter-alia, included the following: Regarding fungicides for grapes which target fungus 'Ascomycota' in India, the Commission instructed the merging parties: (1) not to re-enter the commercialisation of Flusilasole AI and the products / formulations containing the Flusilasole AI; (2) to withdraw registration of the products / formulations containing Flusilasole AI; and to (3)

cancel the trademark for Flusilasole AI and surrender the same for all purposes.

Regarding MAH grafted polyethylene (low graft) in India, the Commission instructed the merging parties: (1) to sell the trademark Amplify TY 1351" for the Indian Territory to a purchaser; (2)

to supply the purchaser with raw materials for the production of "low graft" MAH grafted polyethylene; (3) to sell its existing inventory to the purchaser; and (4) to seek the Commission's approval regarding the purchaser.

### Divestiture commitments sought in the merger between Agrium Inc. and Potash Corporation of Saskatchewan, Inc.

Agrium Inc. (Agrium) and Potash Corporation of Saskatchewan, Inc. (PCS) notified the Commission of their proposed merger on 10 October 2016. Agrium was a producer of primary crop nutrients and a direct-to-grower distributor of crop inputs, services and solutions. PCS was a producer of fertilisers and related products. Agrium and PCS were equal shareholders in Canpotex Limited (Canpotex) along with Mosaic Canada Crop Nutrition, LP (Mosaic). Canpotex was the exclusive worldwide (excluding Canada and the United States) distributor of potash produced by Agrium, PCS and Mosaic in Canada.

The Commission observed that Agrium and PCS were directly or indirectly involved in the sale of: (1) potash; (2) nutritionals and adjuvants; and (3) phosphates in India. While both Agrium

and PCS were present in the Indian potash market through Canpotex, the latter was also involved in sale of potash in India through Arab Potash Company (APC), Sociedad Quimica y Minera (SQM) and Israel Chemicals Limited (ICL) by virtue of holding ownership interests in these firms. Based on the presence of the parties, for the purpose of competition assessment, the Commission identified potash as an area of significant product overlaps between the parties in India. The Commission observed that the proposed merger would lead to strengthening of the exclusive joint venture of the parties, i.e., Canpotex due to reduction in number of shareholders of Canpotex from three to two and consequent reduction in competitive constraints exercised by shareholders and leading to greater alignment of interests and incentives of the shareholders controlling Canpotex.

The Commission also noted that Canpotex, APC, ICL and SQM collectively accounted for 45 to 50 per cent of the Indian potash market and observed that potash market was highly concentrated. Any further

increase in concentration would therefore lead to adverse effects on competition. The merger also raised concerns about possible coordinated effects - because of the parties' ability to control or materially influence other companies having operations in the Indian potash market such as APC, SQM and ICL.

Accordingly, the Commission imposed conditions on the merger which required the parties to divest all shares that PCS held in APC, ICL and SQM. The Commission approved the proposed combination with these conditions.

## CHINA

### Significant MOFCOM merger decisions in 2017

The Chinese competition authority reviewed and decided a number of significant mergers during the 2017 year. The noteworthy matters are briefly described below.

- The conditional approval of the agro-chemicals merger between Dow and Dupont. Dow and Dupont mainly engaged in research, production and sales of chemical products. MOFCOM found that the proposed transaction would enhance the parties' control in the relevant global and domestic markets; reduce the competition between two market-leading and competing companies; have the effect of eliminating and restricting competition in the relevant markets; and ultimately impair the interests of Chinese consumers. MOFCOM cleared this concentration with remedies which enhanced fair competition in both the global and domestic agro-chemical markets. The conditions also protected consumers' interests.
- The conditional approval of Broadcom's acquisition of Brocade. Broadcom engaged in research, production and sales of semi-conductor devices. Brocade engaged in providing network hardware, software and service. MOFCOM found that the proposed transaction would have the effect of eliminating and restricting competition in China's domestic fibre channel switch and adapter market. Following the transaction, Broadcom might eliminate and restrict competition in relevant markets by misusing confidential information from the third-party suppliers, impairing interoperability, bundling or tying and other means. MOFCOM cleared this concen-

tration with remedies, which enhanced fair competition in the global and Chinese fibre channel switch and adapter market and also protecting consumers' interests.

- The conditional approval of HP's acquisition of Samsung's printer business. HP was engaged in the computer and printing business. Samsung's printing business consisted of several subsidiaries and underlying assets. MOFCOM found that the merger would cause HP's control in the relevant markets to be further enhanced. HP would have the ability and motivation to bundle consumables, which might lead to the restriction of competition in the Chinese A4 printing and supplies markets. MOFCOM cleared this concentration with remedies which advanced fair competition and consumer interests in China's domestic printing and supplies markets.
- The conditional approval of the merger between Agrium and Potash Corp. Agrium and Potash Corp are both Canadian fertiliser companies. MOFCOM found that the parties' control in the global potassium chloride market would be further enhanced and the bargaining power of buyers in the Chinese potassium chloride market would be weakened by the proposed merger. MOFCOM therefore cleared this merger with remedies aimed at addressing the competition and consumer concerns arising from the deal.
- The conditional approval of Maersk Line A/S' acquisition of Hamburg. Maersk and Hamburg are both global container transportation companies. MOFCOM found that Maersk's control in relevant routes they travelled would be significantly enhanced. Maersk would possibly

have the ability to initiate or lead coordination in the relevant market thus eliminating or restricting competition, and potentially have the ability and motivation to unilaterally increase prices. MOFCOM cleared this concentration with remedies which protected competition and consumers.

- The conditional approval of ASE's acquisition of SPIL. ASE and SPIL were both active in the assembly, testing and foundry service of semi-conductor. MOFCOM found that the market share of ASE would increase and the alternative choices of assembly and foundry service suppliers for consumers would decrease. The pricing power of ASE would be strengthened, leading to it being able to unilaterally eliminate and restrict competition. MOFCOM cleared this concentration with remedies aimed at protecting consumers and competition in the market.
- The conditional approval of the merger between Becton Dickinson and Bard. Becton provided medical devices and solutions globally. Bard engaged in medical diagnosis, design, production and sales of patient care equipment. MOFCOM found that the parties' control would be strengthened in the Chinese market of coarse needle puncture biopsy apparatus, which would have the negative effect of restricting competition in the relevant markets. MOFCOM cleared this concentration with appropriate remedies.

## SOUTH AFRICA

**Table 8:** South Africa's merger statistics for the year ended March 2018

Classification	Number of cases	Number of cases
Notified		365
Large		155
Intermediate		203
Small		7
Finalised		388
Large		120
Intermediate		261
Small		7
Approved without conditions		321
Large		92
Intermediate		225
Small		4
Approved with conditions		52
Large		23
Intermediate		27
Small		2
Prohibited		12
Large		4
Intermediate		7
Small		1
Withdrawn / No jurisdiction		9
Large		4
Intermediate		5
Small		0

## Commission grounds airline merger over competition concerns

SA Airlink, a South African airline, featured prominently as a respondent in the Commission's activities during the 2017/18 financial year. The Commission referred SA Airlink to the Tribunal for prosecution on charges of excessive pricing and pricing below cost in February 2018. Together with South African Express Airways SOC Ltd t/a SA Express (SA Express) and South African Airways SOC Ltd (SAA), SA Airlink was alleged to be engaged in cartel conduct in that the respondents agreed to allocate flight routes between them. The Commission referred this matter to the Tribunal for adjudication. Finally, on 23 February 2018, the Commission prohibited a proposed merger between SA Airlink and Safair Operations (Pty) Ltd (Safair) as the transaction was likely to result in the removal of an effective competitor from the market.

SA Airlink provides cargo and scheduled passenger services on feeder routes to major hubs in South Africa and destinations across Southern Africa. Airlink also provides belly cargo services and maintenance services. Safair provided scheduled passenger services to and from major airport hubs in South Africa. Safair also provided non-scheduled or chartered humanitarian aid and relief services to and from African countries as well as outside of Africa, with a principal focus on remote regions like Antarctica.

Safair is a growing airline in the aviation industry and a potential competitor to SA Express on the routes it had not yet entered. As such it was likely to pose a competitive constraint on SA Airlink bearing in mind its competitive pricing on competing and non-competing routes before the proposed merger. The Commission found that there were

significant price differences between Safair and SA Airlink and that if the merger were to be approved, there was a likelihood of significant price increases. Moreover, since SAA had a shareholding in SA Airlink, the Commission was concerned that SAA and Safair might exchange competitively sensitive information leading to more coordinated, rather than competitive, conduct between the airlines.

The Commission could find no suitable remedies to address these concerns and therefore prohibited the merger from taking place.

## Promoting healthy competition through merger regulation

The Commission prohibited, or recommended prohibition, in 3,1% of the mergers it finalised between April 2017 and March 2018. Three of these were mergers in the private health care industry.

On 6 July 2017 the Commission recommended that the proposed large merger between Mediclinic Southern Africa (Pty) Ltd (Mediclinic) and Matlosana Medical Health Services (Pty) Ltd (MMHS) be prohibited. Both health care groups had competing hospitals in and around the Klerksdorp area therefore consolidating the two groups in this area would have reduced competition for patients in and around Klerksdorp. Another worrying outcome of the anticipated merger was that MMHS prices would immediately increase to the Mediclinic fee structure, which would negatively impact both private and insured patients. The Commission and the merging parties could find no suitable remedies to address these concerns. Therefore the Commission recommended the deal be prohibited.

On 29 September 2017 the Commission prohibited a merger that had already taken place between Netcare Hospitals (Pty) Ltd (Netcare Hospitals) and Lakeview Hospital, requiring the merging firms to unbundle their

December 2016 consolidation. The Commission uncovered this merger during its assessment of a separate transaction involving Netcare Hospitals. This led the Commission to request the parties to file the Lakeview Hospital transaction for consideration.

Upon investigation the Commission found that the deal had a negative impact on competition. Netcare Hospitals and Lakeview Hospital operated as competitors in and around the Benoni area, before the merger, therefore the transaction led to a reduction in competition. As with the Mediclinic / MMHS merger discussed above, the merger between Netcare Hospitals and Lakeview Hospitals resulted in higher prices for both insured and private patients. Given the removal of Lakeview Hospital as an effective competitor, the higher tariff scale that Lakeview Hospital adopted after the merger and the high barriers to enter the private health care industry, the Commission decided to prohibit the merger.

On 25 October 2017 the Commission recommended that the Tribunal prohibit a large merger between the Netcare Hospital Group (Netcare) and mental health care provider Akeso Group (Akeso). Both Netcare and Akeso were active in the provision of private healthcare in South Africa. The Commission initially recommended a prohibition because it was concerned that Netcare would increase Akeso's existing lower tariffs for mental healthcare to Netcare's higher general healthcare tariffs. It was concerned the merged entity would acquire market power in a local market in Gauteng, giving it the unfettered ability to control market conditions. However, on receiving remedies tendered by the merging parties the Commission reversed its recommendation to an approval subject to conditions. During the Tribunal hearing into the merger Netcare tendered conditions addressing its 2018 prices for Akeso and future price increases at Akeso's current facilities. It also undertook to divest its Rand and Bell Street Hospitals. The merger was accordingly approved by the Tribunal subject to these pricing and divestiture conditions.

**Image:** Commissioner Tembinkosi Bonakele, Minister of Economic Development, Ebrahim Patel and Deputy Commissioner, Hardin Ratshisusu at the Liquefied Petroleum Gas press conference in Pretoria, South Africa, 2017.



## ADVOCACY INITIATIVES

Promoting compliant markets and supportive governments

“Despite the geographical, cultural, and legislative differences between Brazil, Russia, India, China, and South Africa, we also have some similarities. I believe that we are countries that will play a very important global role in different areas, including in the competition domain.”

### Alexandre Barreto

Alexandre Barreto was appointed president of Brazil’s Administrative Council for Economic Defense (CADE), in a 2018 interview with Antitrust Source



## RUSSIA

### *Russia's advocacy efforts win the day*

The FAS Russia not only holds international conferences every year, where hundreds of eminent competition experts gather, but also successfully improves the norms of competition law, writes interpretations of these norms and recommendations and creates ambitious road maps for solving the most pressing problems in various sectors of the economy such as electricity, finance, digital aspects and so forth. The FAS Russia continues to be in constant dialogue with market participants through a network of 28 expert councils and numerous working groups in key markets.

In 2017 the FAS Russia promoted the development of competition in the procurement of medicines for public and municipal needs. On the initiative of the FAS Russia descriptions or specifications of medicine purchased for public needs were developed and approved by a resolution of the Government of the Russian Federation. The main purpose of the FAS Russia activities was to increase the availability of medicines for citizens of the Russian Federation and the efficiency of budgetary spending on medicines through the reduction of prices for pharmaceutical products in tenders. Moreover the FAS Russia aimed to suppress the actions of dishonest customers. Starting from January 1, 2018, state and municipal customers will not be able to purchase medicines by manipulating therapeutic or other characteristics related to forms and doses, by pointing to a specific manufacturer or setting the remaining shelf-life of medicines.

With this advocacy initiative, the FAS Russia took part in the competition advocacy contest of the World Bank – the International Competition Network (ICN). Within the contest, four nominations were proposed: “Advancing structural reforms in the key sectors”, “Building up markets for developing the private sector”, “Using the advantages of globalization and commercial openness” and “Improving administrative procedures to eliminate obstacles for competition”. The criteria for selecting the best competition measures included successful competition advocacy activities, cooperation mechanisms, advocacy strategies, achieved results, related effects and others. Agencies and companies from 50 countries took part in the contest.

The FAS Russia won the nomination “Building up markets to develop the private sector” with a project under the title “Developing competition at tenders for public and municipal procurement of medicinal drugs by preventing individualization of procurement objects through identifying insignificant secondary drug characteristics”.

The World Bank published the following commentary on its website regarding the FAS Russia's achievement:

***“Based on the studies performed in 2010 - 2017, the FAS Russia advocated elimination of the most typical and unnecessary characteristics of products that restricted competition, encouraged collusion and foreclosure of pharmaceutical procurement markets. In cooperation with the Ministry of Health Care, the Ministry of Economic development and the Ministry of Finances, the FAS Russia facilitated adopting the Government Decree No. 1380, which will stimulate competition through supporting market entry and participation of private players in the tenders. It is expected that intensified competition will reduce prices, increase drugs availability for the population”.***

Apart from this, in 2017, the FAS Russia advocated for competition in financial markets, gas and coal markets and the electric power industry.

Thus, the Central Bank of the Russian Federation agreed on and signed the action plan titled "Development of competition on the financial services market" approved by the FAS Russia. The main purposes of the action plan was the creation of regulatory legal conditions for the development of competition in the financial services market, the elimination of the negative impact of individual actions of public authorities on the state of competition, as well as the reduction of the possibility of the influence of individual market participants on the general conditions of the circulation of services on this market. The formation of the action plan began in September 2016 when the FAS of Russia requested 21 largest associations of financial organisations for proposals to fill the action plan.

The action plan was established in 2017, aimed at simplifying, speeding up and reducing the cost of connecting industrial and capital construction projects to electricity and heat networks, creating preferential terms for some types of consumers, including small and medium business. Thanks to the implementation of the provisions of this Plan, Russia took the 10th place in the “Doing Business” rating on connection to electrical supply (in 2016 - 29th place).

## INDIA

### *India advocates for competitiveness across all sectors*

The advocacy of competition law assumes all the more significance when the law is relatively new and cuts across all the sectors of economy. Keeping this in mind, along with the unique features of Indian markets, the Commission had to reach a wide spectrum of stakeholders through advocacy measures. The stakeholders included central & state governments, trade associations, universities and other research or academic institutions. Considering the importance of competition and fair play in public procurement, the CCI conducted as many as 31 programmes with departments of central and state governments.

Besides, 34 initiatives were also undertaken with trade associations and related bodies given their special role as pressure groups and hubs of information for various sectors of economy. The chairperson, members and secretary of the Commission took every chance to address such associations and to convey the message about how important competition is for economic growth and the welfare of people.

As students are the future torch-bearers the Commission sponsored seven moot court competitions in various prominent universities of law and deploying senior officers to judge the competitions in numerous other universities and law schools. Also, as a special measure to train and guide students the CCI provided internship to about 90 students on key issues of competition law.

As state governments constitute an important part of stakeholders and have heavy outlays of expenditure, the chairperson, members and secretary of the Commission took a keen interest in competition issues regarding the states. In this regard the chairperson, members and secretary of the CCI had meetings with chief ministers, chief secretaries and key functionaries of respective state governments during which Commission representatives delineated ways and measures to promote competition policies in state governments.

To ensure compliance of competition law across the corporate sectors, CCI organised customised advocacy programmes with professional institutes like ICAI, ICSI, CMA etc. which train professionals in various economic laws and their compliance. To facilitate and to aid their endeavour the Commission has brought out a comprehensive "Compliance Manual on Competition Law" to help executives and employees of the enterprise to distinguish between permissible business conduct and illegal anti-competitive behaviour.

## CHINA

### *China reaches far and wide to advocate for competition*

For the Chinese competition authority advocacy encompasses: the publicity of the decisions on administrative penalties in monopoly cases; MOFCOM personnel participating in high-level seminars on anti-monopoly and competition policy organised by international competition policy bodies; participation in the China Council for the Promotion of International Trade and the United Nations Conference on Trade and Development (UNCTAD); the introduction of China's anti-monopoly system and the latest progress in law enforcement of industry and commerce instrumentalities; the interpretation and publication of competition policies; and the development of work programs relating to the new anti-unfair competition law, such as publicity and training. The Anti-Monopoly Committee of the State Council is responsible for organising, coordinating and guiding antitrust work, with its office under MOFCOM. In 2017 MOFCOM comprehensively implemented the decisions and arrangements of the Anti-Monopoly Commission under the State Council and promoted strategic planning and coordination under overall planning.

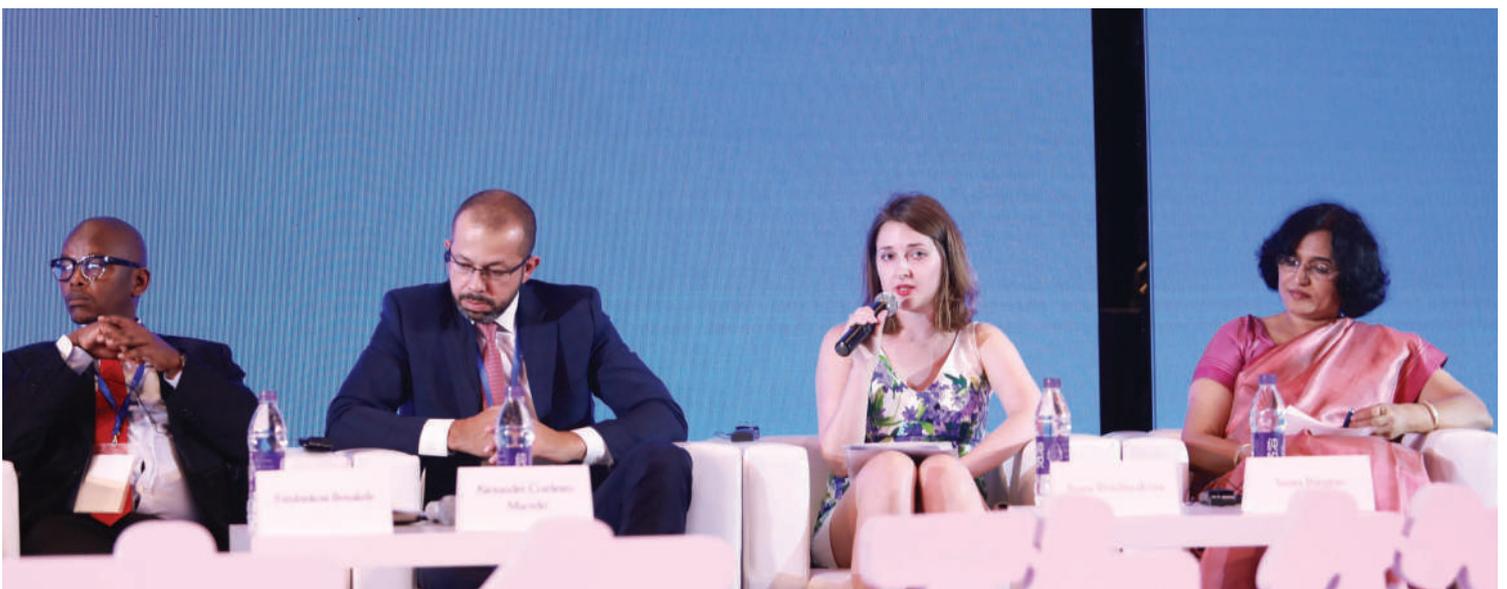
In 2017 MOFCOM also made solid progress in the drafting of four guidelines, namely (1) the anti-monopoly guide on abuse of intellectual property rights; (2) the guidelines on anti-monopoly in the automobile industry; (3) guidelines for operator commitment in anti-monopoly cases; and (4) the guidelines for the application

of the leniency program to cases involving horizontal monopoly agreements. MOFCOM also completed its market competition assessment in key sectors. Conducted the assessment of the overall market competition in China and completed the assessment of the market competition in six key industries such as automobile, steel and semi-conductor industries.

MOFCOM gathered market competition data on new sectors. It added data of four key industries, namely the semiconductors, pesticides, communication equipment and mid-to-high end medical equipment industries.

The agency held two training courses on the anti-monopoly law to promote public awareness of the competition law. Successfully held the 6th China Competition Policy Forum and built the forum into an important platform for exchanging experiences in international anti-monopoly work.

2018 will be the tenth anniversary of China's anti-monopoly law enforcement, based on concluding past legislation and enforcement experiences. MOFCOM will further perfect the systematic legislation, raise the level of anti-monopoly enforcement, actively participate in global competition governance, strengthen overall coordination of the anti-monopoly committee, continuously start new work situation of anti-monopoly work and provide solid assurance of building a business environment under the rule of law, internationalisation and facilitation and promoting healthy and stable development of economy.



**Images:** Commissioner, Tembinkosi Bonakele, Competition Commission South Africa, Superintendent, Alexandre Cordero Macedo, CADE, Deputy Head of Department, Anna Pozdnyakova, FAS Russia and Secretary, Smita Jhingran, Competition Commission of India are participating in the 7th China Competition Policy Forum, 2018.

## SOUTH AFRICA

### ***South Africa's advocacy function***

Through the advocacy function the Commission engages with key stakeholders in order to promote voluntary compliance with the Act, both in the public and the private sector. It is a responsive function which determines its strategy on the basis of the Commission's priorities in a given period. This year bid rigging in public procurement continued to feature prominently in the cases investigated by the Commission. Hence the Advocacy Division hosted several meetings to raise awareness about bid rigging and to impart the tools needed for procurement officials to identify and report the conduct.

The ongoing school uniform investigation called for a dual advocacy and investigation approach prompting the Commission to engage stakeholders in this industry in order to influence the industry's tendency to conclude exclusive agreements for the supply of school uniforms.

A third priority for the Commission is the successful implementation of the criminal provisions stipulated in the amended Act. For this reason the Advocacy Division, together with other divisions within the Commission, engaged various stakeholders in the criminal justice system with a view to understanding the implications of individual criminal liability in competition law and to reach agreement on the roles of each institution going forward in the new dispensation.

The Advocacy Division also gave input on policy, participated in awareness-raising events and communicated the Commission's key messages through broadcast, print and social media throughout the year. Below we discuss some of the highlights from the year.

### ***Raising awareness about collusive tendering***

The Commission provided training on how to identify and detect bid-rigging to 50 senior provincial auditors of the Office of the Auditor General (AG) in Pretoria in April 2017. The training covered prohibited practices in the Act, guidelines for fighting bid rigging in public procurement, designing tenders to reduce bid rigging, detecting bid rigging in public procurement, bid rigging patterns and the role of the certificate of independent bid determination in mitigating bid rigging.

The outcome of the Commission's training was that the Office of the AG amended its audit procedures to include bid-rigging detection. The collaboration with the Office of the AG demonstrates the importance of partnerships in addressing anti-competitive conduct in the economy.

From 24 to 27 July 2017 the Commission provided bid-rigging training to the procurement staff of the City of Cape Town. The audience comprised staff from supply chain and procurement, internal audit, contracts, finance as well as members of the bid evaluation and bid adjudication committees. In this interaction the Commission reached a target of 330.

On 26 September 2017, the Commission provided similar training to the procurement staff of the Nelson Mandela Bay Metropolitan Municipality. The audience was staff from finance, procurement, supply chain, internal audit and members of bid evaluation and bid adjudication committees. The training workshop was attended by 50 delegates.

### ***School uniforms in the spotlight***

The Commission drafted a Circular to assist the National Department of Education in promoting competitive bidding for the procurement of school uniform by schools in South Africa. The purpose was to encourage a move away from the common practice of exclusive agreements between schools and school uniform suppliers. The department then issued the Circular to all provinces on the 15 May 2016.

Thereafter the Commission undertook a survey to test the extent to which schools have complied with the department's circular. The preliminary report indicated that some schools have taken measures to implement competitive bidding in the procurement of school uniform.

In November 2017, a Commission team presented to the senior management of the National Department of Basic Education, focusing on the results of the school uniform survey.

In the last quarter of the 2017/18 financial year, the Commission engaged with the National Education Collaboration Trust on school uniform procurement. The engagement was attended by various delegates including by the Minister of Basic Education, Honourable Angie Motshekga and the Deputy Minister, Enver Surty. The engagement highlighted various concerns and areas of consensus from many stakeholders in the sector.

### ***Commission helps to prepare the criminal enforcement landscape***

On 27 June 2017 a workshop on the practical implementation of the section 73A amendment of the Act was held. Section 73A criminalises cartel conduct and was promulgated into South African

competition law in 2016. Representatives from the Department of Justice and Constitutional Development and the Commission attended the workshop. Recommendations were made by the participants concerning the best possible approach in implementing section 73A of the Act.

In addition, the Commission hosted a workshop on 22 November 2017 between Commission representatives and senior representatives from the Directorate for Priority Crime Investigations. The aim of the workshop was to create platforms for future collaboration on the criminal enforcement of competition law.

### ***Driving change in the automotive industry***

The Commission published a draft code of conduct for competition in the automotive industry on 22 September 2017. The code of conduct is aimed at resolving the competition problems in the automotive aftermarket sector, following multiple complaints received.

The Commission is concerned about the exclusive arrangements between original equipment manufacturers (OEM's) and approved dealers, repairers and parts suppliers in carrying out in-warranty service and repair work. These exclusive arrangements have the effect of limiting the participation of some players in the market, especially small and medium sized enterprises (SME's). The arrangements concerning the sales, distribution and use of spare parts also limit competitiveness in this market. The Commission is also pursuing broader reforms in the sector, including promoting the increased ownership of dealerships by historically disadvantaged persons. The Commission is also advocating for transparency in the pricing of vehicles, including the unbundling of vehicle costs from the costs of a maintenance and service plan.



**Image:** Comparative work and the role of FAS Russia at the Automotive Aftermarkets workshop in Pretoria, South Africa, 2017. Deputy Commissioner, Hardin Ratshisusu led the Competition Commission South Africa delegation with Mr. Dmitry Chuklinov, Mr. Mukhamed Khamukov and Mr. Ruslan Makhmudov from FAS Russia.

**Image:** Panel discussion on Big Data, Internet of things, Algorithms and Competition Law: Threats and opportunities for developing countries at the 11th Annual Competition Law Economics & Policy Conference in Sandton, South Africa , 2017.



## INTERNATIONAL COOPERATION

Uniting our efforts, igniting our markets.

The five BRICS economies are all concerned with how best to promote competitive, balanced and dynamic economies that help their societies achieve national development goals. Competition policy has increasingly come to the fore as an instrument to help achieve these objectives.

### Ebrahim Patel

Minister of South Africa's Economic Development Department,  
Ebrahim Patel, in 2015



# BRAZIL

## Overview of BRICS conference in Brasilia

Bringing together more than 250 competition experts from 20 countries for two days of intense discussions, the 5th BRICS International Competition Conference was successful in achieving its purpose of providing an opportunity for the sharing of experiences and the identification of areas for future joint work and cooperation in the field of competition law, economics and policy.

The Conference was rated highly by participants, who highlighted the “opportunity to have a comparative view of competition policy in BRICS countries and to hear different perspectives on the application of competition law” as one of its most beneficial aspects.

The signing of the Brasilia Joint Statement has reaffirmed the commitment of competition authorities from BRICS countries to work together to “address the challenges of global economic development including growing inequality and technological transformation through the strengthening of cooperation in the analysis of global markets and innovation landscape for improving merger review and antitrust enforcement.”

Next steps in furthering cooperation between the BRICS in the field of Competition policy include the compilation of the 2018 BRICS Joint-agenda on cooperation on competition; and the establishment of a Digital Market Working Group.

## CADE’s participation in local and international competition bodies

The active dialogue with public authorities, private parties, and the international competition community is one of the pillars that maintain a healthy competition environment in Brazil.

The ICN, OECD and the Program for Competition and Consumer Protection in Latin America (COMPAL) can be highlighted, apart from the BRICS, as the key international forums that CADE participates in.

The ICN is the main international forum exclusively dedicated to competition law enforcement. The work activities are produced through informal involvement within the five Working Groups (Advocacy, Agency Effectiveness, Cartel, Merger and Unilateral Conduct) and in annual conferences and workshops where these products are discussed. Brazil currently serves as a co-chair of the ICN’s Cartel Working Group and is also a member of the ICN Steering Group.

Brazil has been strongly engaged with the OECD’s work on competition. The recommendations of the 2005 and 2010 OECD peer reviews are reflected in Brazil’s current law, notably regarding merger control, fines and sanctioning.

The OECD’s convening power, whether through its Competition Committee, Global Forum on Competition or the OECD-IDB Latin American and Caribbean Competition Forum (LACCF) promotes peer to peer learning, international co-operation between competition authorities, and facilitates

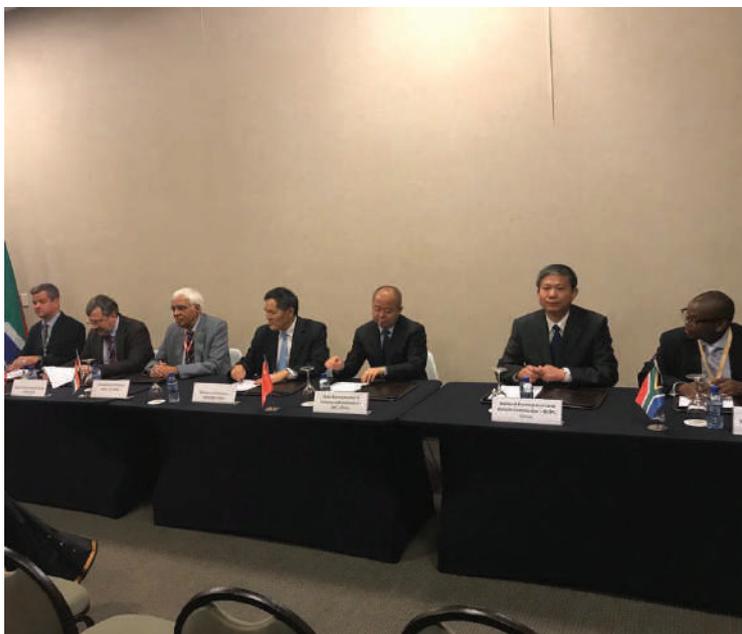
the dissemination of OECD standards and best practices. As one of the leading competition authorities in Latin America, Brazil contributes substantially to the OECD’s competition knowledge and the development and revision of standards and guidelines.

In December 2017, Brazil has formally requested to become an associate of OECD’s Competition Committee. CADE believes that a more active participation in the Competition Committee will contribute to the continuity and the strengthening of the cooperation with OECD. Besides, it will foster the relationship with domestic antitrust agencies from several countries and facilitate the exposure of the Brazilian positions regarding competition matters, which influence the Interna

tional debate, such as the agenda and futures works of the Organization.

On a regional basis, CADE was recently confirmed as a member of the program Competencia y Proteccion al Consumidor en America Latina – COMPAL, linked to the United Nations Conference on Trade and Development – UNCTAD, and that provides capacity building and institutional strengthening on competition and consumer protection matters to 18 beneficiary countries in Latin America. The membership follows a meeting between CADE and UNCTAD held in Brazil in 2017 to discuss the matter. In this occasion, the Brazilian competition authority manifested its interest in becoming a partner of the program and received a positive feedback from UNCTAD’s representatives. It is expected that the Brazilian experience on competition serves as a guide to the member countries that are aiming to consolidate the competition defense system in their jurisdictions.

# 5th BRICS International Competition Conference, Brasilia, 2017.



# RUSSIA

## Russia's extensive commitment to international cooperation

The challenges of the modern world caused by globalisation and digitalisation dictate the need to expand and deepen the interaction between the competition authorities and the scientific community of all the countries. The FAS Russia regularly organises regional and international conferences to gather eminent competition experts and leading lawyers and actively cooperates with international organisations and foreign agencies in the field of anti-monopoly policy in order to combat unfair competition violations of competition law.

The main directions of the international activity of the FAS Russia include the bilateral cooperation with competition authorities, the multilateral cooperation within BRICS and CIS, and cooperation with international organisations, especially UNCTAD, ICN and OECD.

On a regular basis, with the aim of gathering a large number of experts from foreign countries, the FAS Russia holds annual international events such as "Russian Competition Week", the FAS Russia track within the St. Petersburg International Legal Forum, as well as the research-to-practice conference: "Antimonopoly Policy: Science, Practice, Education".

## BRICS

Cooperation within BRICS is one of the most promising and priority areas of the FAS Russia's international activities. At the moment, cooperation is carried out both in bilateral format and within the framework of the BRICS coordination committee and working groups for the research of competition issues in socially important sectors, namely pharmaceutical, automotive, digital markets and global food value chains.

In 2017, three meetings of the BRICS coordination committee were held. Also, in 2017, two meetings of the

working group on pharmaceuticals were held, and two meetings of the working group on food value chains were organised. The first meetings of the working group in automobile and digital markets are planned to be held in 2018.

In 2017, we also continued the debates on the need of the institutionalisation of BRICS competition cooperation and up to date we are still considering the next steps of forming the BRICS Competition Research Centre.

## CIS

International cooperation regarding the development of tools to combat cartels, one of the most dangerous violations of competition law, was deepened within the CIS in 2017. In 2017, the Interstate Antimonopoly Policy Council (ICAP), with the active participation of the FAS Russia and the CIS Executive Committee, prepared a draft "Joint Statement of Heads of CIS States to intensify efforts against international cartels". The Joint Statement was signed by the heads of CIS states governments in November 2017 in Tashkent (Uzbekistan). This document strongly condemns the activity of cartels in all its forms, confirms the need to create a global international mechanism for combating illegal agreements. The fight against cartels should stipulate the development and adoption of the relevant international instruments, for example the Convention on the fight against cartels.

## ICN

International platforms such as the ICN are also a good source for gathering new knowledge and interacting with experts from foreign competition authorities to combat the most frequent violations of antimonopoly law.

The FAS Russia has always been an active participant of the ICN and 2017 was not an exception. The FAS Russia is a member of the ICN Steering Committee and the co-chair of the 2nd subgroup of the ICN Cartel Working Group. From its side, the FAS Russia takes part in the majority of the events and special projects organised within

the ICN and always ready to share its experience. The FAS Russia also plays an important role in advocating ICN best practices.

## UNCTAD

In July 2017, within the 16th session of Intergovernmental Group of Experts on Competition Law and Policy UNCTAD held in Geneva, the FAS Russia presented a draft Toolkit on International Cooperation of Competition Authorities on Combating Restrictive Business Practices of Transnational Corporations and Transborder Violations of Rules on Competition, proposing that it be adopted as an Annex to the Section F of the UN Set on Competition.

Within the UNCTAD session it was also decided to establish a discussion group on international cooperation aiming at further discussions and debating over the Toolkit. To date, the work of the discussion group is very intensive and involves the impact of many foreign competition authorities. Such an initiative of the FAS Russia confirms the commitment of the Russian Federation to the topic of enhancing international cooperation of competition authorities of the world and incorporating into UN Set on Competition of practical tools and procedures on combating challenges of the modern world, including restrictive business practices of large international companies.

## OECD

On the margins of the OECD committees, the FAS Russia actively interacts with foreign competition authorities and shares the experience of Russian anti-monopoly law enforcement. In 2017, the FAS Russia actively participated in the OECD Committee on Competition Law and Policy and the OECD Investment Committee within which the eminent experience was gathered and the best world law enforcement practices were collected. Apart from this, in 2017, MoU's were signed with the anti-monopoly bodies of Uzbekistan, Serbia, China, cooperation programs were signed for two-year periods with competition authorities of Brazil, Finland and China.

# INDIA

International cooperation is imperative in today's globalised economy. It gives exposure to best practices and provides support for capacity building as well as knowledge sharing. Over the years, CCI has developed close linkages and networks with various multilateral agencies and competition jurisdictions for effective international cooperation including capacity building, enforcement cooperation and experience sharing. CCI formally and informally interacts with competition authorities of other jurisdictions on substantive issues, such as merger assessments, market definition and competition concerns to mitigate competition issues.

CCI continues its endeavours to regularly engage with the other competition authorities and multilateral institutions such as OECD, UNCTAD and ICN. As a co-chair of the ICN Agency Effectiveness Working Group (AEWG), CCI took the lead of the project on "Competition Agency Staff Training Program". The objective of this project was to examine what agencies do to train their staff doing investigation. The findings were presented during 2017 ICN Annual Conference in Porto, Portugal.

Important international cooperation activities undertaken by CCI are mentioned below:

(i) International Competition Network  
CCI is currently a co-chair of the Agency Effectiveness Working Group (AEWG) of ICN along with Finnish Competition and Consumer Authority, US FTC and Norwegian Competition Authority.

As a co-chair of the ICN Agency Effectiveness Working Group (AEWG), CCI undertook the lead of the project on "Competition Agency Staff Training Program".

It was decided by ICN that CCI will host the 2018 ICN Annual Conference at New Delhi in March 2018. By virtue of being host of this event, CCI has also been inducted as an ex-officio member of the steering group of the ICN for a period of three years. Being a steering group member of ICN, CCI guides, reviews and approves the work plan of ICN.

CCI also participated in workshops organised by different working groups of ICN. In the last year CCI participated in following events:

- ICN Merger Workshop during 15-17 February 2017, Washington DC, USA.
- ICN Annual Conference during 10th -12th May 2017 in Porto, Portugal.
- ICN Agency Effectiveness Working Group Outreach Program on 18th August 2017 in Singapore.
- ICN Cartel Workshop during 6th -8th October 2017 in Ottawa, Ontario, Canada, Canada.

## BRICS competition authorities

CCI regularly participates in meetings of BRICS competition authorities scheduled during various international events. Recently, CCI delegation comprising the Chairperson, one member, the Secretary and an officer participated in 5th BRICS International Competition Conference during 8th -10th November 2017 in Brasilia, Brazil.

## Organisation for Economic Co-operation and Development (OECD)

The Commission has observer status with the Competition Committee of OECD. The Chairperson and members of the Commission regularly participate in the meetings of OECD Competition Committee and OECD Global Competition Forum to gain exposure to the global best practices in the field of competition law and policy.

CCI has been making regular written contributions at various roundtables during the conferences and meetings of OECD.

CCI is also regularly invited for participation in various competition related workshops/seminars organised by OECD- Korea Policy Centre (KPC). OECD-Korea Policy Centre in collaboration with Competition Commission of India (CCI) organized workshop on "Best Practices in Cartel Procedure" during 24th -26th October 2017 in New Delhi. The workshop was attended by delegates from competition authorities of Asia Pacific Region like China, Hong Kong, Vietnam, Indonesia

Malaysia, Philippines along with officers from CCI.

## United Nations Conference on Trade and Development (UNCTAD)

Two officers participated in the meeting of Intergovernmental Group of Experts (IGE) on Competition Law & Policy during 5th -7th July 2017 in Geneva, Switzerland. CCI is also a part of UNCTAD discussion group on international cooperation.

## Training with MoU partners and mature Jurisdictions

In order to get exposure to best practices, CCI participated as well as organised workshops/conferences/seminars in collaboration with our MoU partners and other mature jurisdictions so as to share their experiences in field of competition law and economics. In the year 2017, CCI has participated and organised following capacity building programs:--

- One officer participated in International Fellowship Programme of the United States Federal Trade Commission (USFTC) during 21st August 2017 to 25th September 2017 in Washington, D.C, U.S.A
- Four officers participated in CITD Workshop on "Antitrust Enforcement Procedural Issues" during 06-10 February, 2017 in Rome, Italy.
- Four officers went on secondment at office of DG Competition and CMA, UK under CITD project
- One officer participated in Secondment at CB Canada during 06th March to 06th April, 2017 at Gatineau, Quebec Canada and one officer participated in secondment at Competition Bureau, Canada during 16th October – 14th November 2017 in Gatineau, Quebec, Canada.
- Senior officials from CCI participated in various workshops/seminars organised by FAS Russia namely 10th Session of International Working Group for Research of Competition Issues in Pharmaceutical market during 21 – 22 March, 2017 in Moscow, Russia and 7th St. Petersburg International Legal Forum during 16th -20th May 2017 in St. Petersburg, Russia.



**Image:** Commissioner Tembinkosi Bonakele, Professor Ioannis Lianos, University College London and Deputy Commissioner, Hardin Ratshisusu at the 10th Annual Competition Law Economics & Policy Conference in Cape Town, South Africa, 2016.



**Images:** Alexey Ivanov, Skolkovo Foundation is participating in a closed session with the BRICS competition authority heads at the 4th BRICS International Competition Conference in Durban, South Africa, 2015.

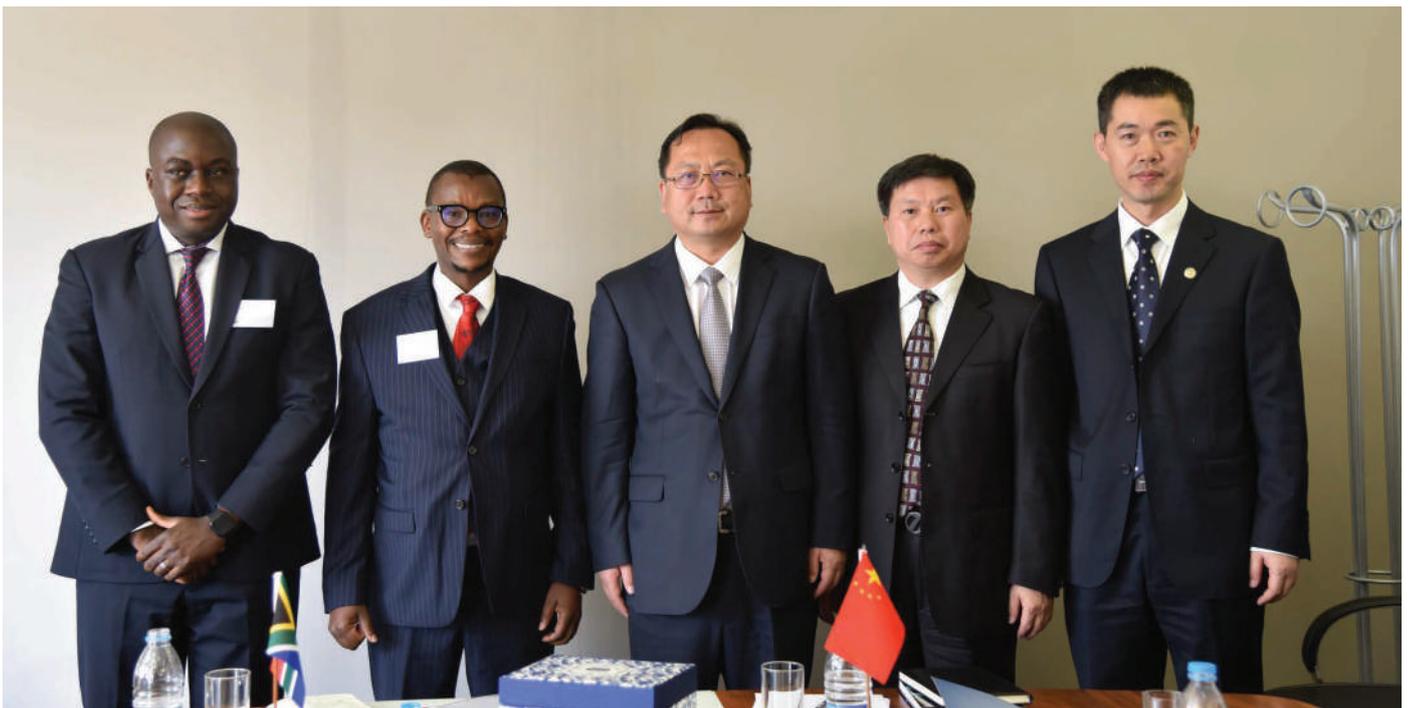
# CHINA

## China partners with various economies for the benefit of competition

The activities listed below detail China's efforts, in the past year, to cooperate with foreign and international bodies for the advancement of competition law within its borders:

- China participated in high-level dialogue with the United States on anti-monopoly regulation and with Europe on competition policy;
- China fully developed the role of the State Administration for Industry and Commerce among the BRICS competition agencies;
- China took part in the BRICS Coordinating Committee and the working group on competition in key areas;
- China took part in negotiations and text reviews on the competition chapters of the China-Canada, China-Eurasian Economic Union, China-Singapore Upgrade, China-New Zealand Upgrade, China-Chile, China-Peru Upgrade, China-Colombia, China-Norway Free Trade Agreements;
- China cooperated with the WTO on completion of trade policy reviews on China, Nigeria, Japan and Australia;
- China signed memoranda of understanding with Morocco, Saudi Arabia, Zimbabwe, Cameroon and other countries in the field of competition;
- China participated in the China-US Strategic and Economic Dialogue, and the anti-monopoly negotiations initiated by the China-US Joint Commission on Commerce and Trade;
- China had an active participation in relevant international conferences and international seminars organised by the OECD/Korea Policy Centre Competition Program, with a view to strengthening publicity and communication.

- MOFCOM's international cooperation aims to achieve the following outcomes:
  - To adapt to the trends of economy globalisation and enterprise competition internationalisation, MOFCOM has always been putting effort into constructing a cooperation framework for equal dialogue and win-win cooperation with major jurisdictions, and promoting international antitrust cooperation.
  - Achieve fruitful results in bilateral cooperation. Concluded anti-monopoly memorandums with anti-monopoly law enforcement authorities in the UK, Spain, Brazil and held the China-EU Competition Policy Dialogue and the China-EU Competition Week.
  - Make further progress in BRICS competition cooperation. Participated in the BRICS International Competition Conference in Brazil and concluded the Joint Statement of Leaders of BRICS Competition Authorities.
  - Comprehensively deepen the cooperation in law enforcement. Cooperated with the US, the EU, South Africa, India and other jurisdictions in more than 20 cross-border M&A cases. Among them, the "case of merger between Dow and DuPont" was called by the EU as "a model of bilateral competition enforcement cooperation".
  - Push forward the negotiation of Competition Chapters in FTA/ECAs. Substantively concluded negotiations on the Agreement on Cooperation between China and the Eurasian Economic Union and China-Chile Free Trade Agreement and other competition issues, promoting trade and investment liberalisation and facilitation.
  - Expend multilateral cooperation. Actively participated in such international conferences as conferences of the OECD and other multilateral organizations, Conference of the American Bar Association and the German International Competition Conference, to profit from the advanced international enforcement experience and spread Chinese antitrust experience.



**Image:** Visit by the State Administration for Market Regulation (SAMR) of the People's Republic of China to the Competition Commission South Africa, 2018.

# SOUTH AFRICA



## South Africa hosts the 10th BRICS Summit

The tenth BRICS Summit took place from 25 to 27 July 2018. It was a milestone in the history of BRICS and was held under the theme “BRICS in Africa: collaboration for inclusive growth and prosperity in the 4th industrial revolution”.

The summit focused on the need to strengthen the relationship between BRICS and Africa. In this regard BRICS leaders interacted with African leaders on how best to bring about inclusive growth and shared prosperity through heightened collaboration. In this context, leaders of the Republics of Namibia, Gabon, Angola, Senegal, Uganda, Togo and Rwanda participated in a BRICS-Africa outreach session.

The summit culminated in a declaration in which the heads of the BRICS members reaffirmed their commitment to enhanced cooperation and collaboration amongst the BRICS economies. Amongst other things the members:

- reaffirmed their commitment to the principles of mutual respect, sovereign equality, democracy, inclusiveness and strengthened collaboration. They further committed themselves to enhancing strategic partnerships for the benefit of people through the promotion of peace, a fairer international order, sustainable development and inclusive growth, and to strengthening the three-pillar-driven cooperation in the areas of economy, peace and security and people-to-people exchanges;

- recommitted BRICS to a world of peace and stability and to supporting the central role of the United Nations, the purposes and principles enshrined in the UN Charter and respect for international law, promoting democracy and the rule of law. BRICS reinforced its commitment to upholding multilateralism and to working together on the implementation of the 2030 Sustainable Development Goals while fostering a more representative, democratic, equitable, fair and just international political and economic order.

- reiterated BRICS' determination to work together to strengthen multilateralism and the rule of law in international relations, and to promote a fair, just, equitable, democratic and representative international order.

The Johannesburg declaration officially endorsed and encouraged the work of the BRICS competition working groups, the meetings of the heads of the BRICS competition authorities and the other efforts within the BRICS competition network aimed at strengthening cooperation

## Competition development remains on the SADC agenda

During 2017/18 the Southern African Development Community (SADC) continued to dedicate resources to the promotion of competition law within its member states. SADC's Committee

on Competition and Consumer Policy and Law, which South Africa is a member of, met in Botswana on 24 and 25 May 2017

to discuss work related to competition and consumer protection matters within SADC. 12 of the 15 SADC member states were present. Reports from each member state and the working groups on cartels, mergers and research were presented.

For the first time, the SADC secretariat invited written contributions which formed the basis for detailed discussion. As the SADC industrialisation strategy is a critical component of SADC's agenda in the region, the written contributions related to this. The Commission submitted papers on mergers and cartels. At this meeting it was agreed that the SADC cartels working group would hold its training in conjunction with the African Competition Forum (ACF), hosted by Zambia, in August 2017.

As planned, the SADC cartels working group held its second annual meeting in Lusaka, Zambia in August 2017. The meeting was attended by 11 competition authorities. The meeting discussed recent developments on cartel enforcement in SADC member states; progress reports from the SADC cartels legal framework sub-group and the SADC cartels investigative techniques sub-group as well as enhancing cooperation on cross-border cartel enforcement activities.

Following the working group meeting, a joint capacity building workshop with the ACF was held on 9 and 10 August 2017. This was the first time that SADC and the ACF collectively designed capacity building. The training was delivered by trainers from South Africa, Mauritius, Zambia, Namibia and Botswana. The capacity building focused on investigative skills and preparation and execution of dawn raids. It included a mock dawn raid exercise designed and led by the Commission. The capacity building workshop was attended by more than 20 participants.

As part of its effort to promote competition law and to build the capacity of competition practitioners in the region, SADC conducted a training course for judges and commissioners on 15 and 16 March 2018 in Johannesburg. The training was attended by 12 sitting commissioners from three jurisdictions, namely Tanzania, Botswana and Swaziland. The principal objective of the training workshop was to familiarise judges with the economic principles underpinning national competition laws and to discuss the legal approach to enforcing competition policy in order to promote effective enforcement of competition legislation in SADC member states. The training programme was hosted jointly with UNCTAD's competition and consumer programme.

## African Competition Forum enhances cooperation amongst member agencies

The ACF was established in Nairobi, Kenya, in March 2011. It is a network of African national and multinational competition authorities whose main objective is to promote the adoption of competition principles in the implementation of national and regional economic policies of African countries. The Commission is an active member of the ACF and this year continued to participate in the ACF agenda.

The Commission attended the 16th session of UNCTAD's Intergovernmental Group of Experts meeting on competition law and policy which took place from 5 to 7 July 2017 in Geneva. Two meetings took place on the margins of this conference: the ACF steering committee meeting and the meeting of Brazil, Russia, India, China and South Africa (BRICS) competition authorities.

The ACF meeting was held on 6 July 2017 and attended by authorities from Botswana, Burkina Faso, Cameroon, CEMAC, COMESA, Egypt, ECOWAS, Kenya, Malawi, Mauritius and South Africa. UNCTAD's Competition Branch attended the meeting, and a commitment was made to strengthening collaboration between the ACF and UNCTAD.

A further ACF capacity building workshop and steering committee meeting was held on the side-lines of the OECD Global Forum on Competition in Paris on 6 December 2017. Fifteen national and regional authorities attended the meeting. These were Algeria, Botswana, COMESA, Cote d'Ivoire, ECOWAS, Kenya, Mauritius, Namibia, Morocco, SADC, Senegal, South Africa Tunisia, Zambia, and Zimbabwe. The capacity building workshop explored the future of competition policy in Africa with some of the speakers including Eleanor Fox, Hassan Qaqaya, David Lewis, and Francis Kariuki. The workshop also discussed ways of strengthening cooperation among African national and regional competition authorities as well as with the OECD and ICN.

## BRICS global partnership celebrates ten years of cooperation

The Commission attended the 5th International BRICS competition conference from 9 - 10 November 2017 in Brasilia, Brazil. The conference theme, Towards a Successful Second Decade of Cooperation, celebrated the success of the first decade of BRICS cooperation and set the scene for the next decade of partnership. The event was attended by approximately 340 participants from BRICS and other competition agencies, lawyers, economists and academics. The Commission also attended the pre-BRICS workshop on Advances in Competition Analysis, the Lectures on Competition Analysis and the Post-BRICS Conference on General Purpose and Competition Law. The Commission participated in all the sessions of the conference, either as presenter, panellist or facilitator.

The Commission has allocated participants to each of the BRICS working groups on competition matters.

# UPCOMING EVENTS

## Looking forward to the year ahead

Table 9: Competition events to be hosted by BRICS competition agencies in the year ahead

Host country	Event title and description	Date
<b>Brazil</b>	VIII Reunión Annual del Grupo de Trabajo sobre Comercio e Competencia – SELA – UNCTAD, Brasilia, Brazil	10 – 11 October 2018
	First meeting of the working group on competition in digital markets	24 – 26 October 2018
	Evento Annual do IBRAC, Seminário internacional de Defesa da Concorrência Campos do Jordão, São Paulo, Brazil	24 – 26 October 2018
<b>Russia</b>	BRICS competition conference	24 – 26 October 2018
	Russian competition week	24 – 27 September 2018
	4th annual international conference: anti-monopoly policy, science, practice and education	December 2018
	VI BRICS Competition Conference	16 –19 September 2019
<b>South Africa</b>	Namibia study tour, hosted by the South African Competition Commission	16 – 19 September 2019
	Joint Workshop between	20 – 24 August 2018
	ICN unilateral conduct workshop	5 – 6 September 2018
	12th annual competition conference	5 – 6 November 2018
	ACF capacity building workshop	19 – 20 November 2018

# 4th BRICS International Competition Conference, Durban, 2015.



# 4th BRICS International Competition Conference, Durban, 2015.



# 4th BRICS International Competition Conference, Durban, 2015.



# 4th BRICS International Competition Conference, Durban, 2015.



# BRICS Working Group, 2017.



# 5th BRICS International Competition Conference, Brasilia, 2017



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# BRICS

## Social Media Platforms

**Brazil:**

Twitter: @CadeGovBr

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**Russia:**

Twitter: @FAS\_RF

Facebook: ФАС России / FAS Russia

Instagram: fas\_time

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**India:**

Twitter: CCI\_India

Facebook: Competition Commission of India

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**China:**

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YouTube: The Competition Commission South Africa

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