



Report of the Second Meeting of the Working Group on Cross-border Cartels - 13th April 2021

(44) Representatives from competition authorities:

Australia, Austria, Bangladesh, Barbados, Bahrain, Belarus, Botswana, Brazil, Chile, Colombia, COMESA, Costa Rica, ECOWAS, Egypt, El Salvador, Eswatini; EU, Eurasian; Germany, Hungary, Israel, Italy, Kazakhstan, Kenya, Korea, Kyrgyz Republic, Latvia, Malaysia, Mexico, Moldova, Namibia, Nigeria, Peru, Poland, Romania, Russia, South Africa, Spain, Switzerland, Turkey, Uganda, United States, Uzbekistan, Zambia and Zimbabwe

Other representatives from the Academia and International Organizations.



The Second meeting of the Working Group on Cross-border Cartels (WG-CBC) was held virtually on April 13th, 2021 for 2 hours and in four languages (Spanish, English, French and Russian) provided by the UNCTAD Secretariat. This meeting comprised of two sets of presentation of case studies: one from Peru and Chile (Cross border cooperation case Arica Tacna) and one from South Africa (Cross Border Cement case in

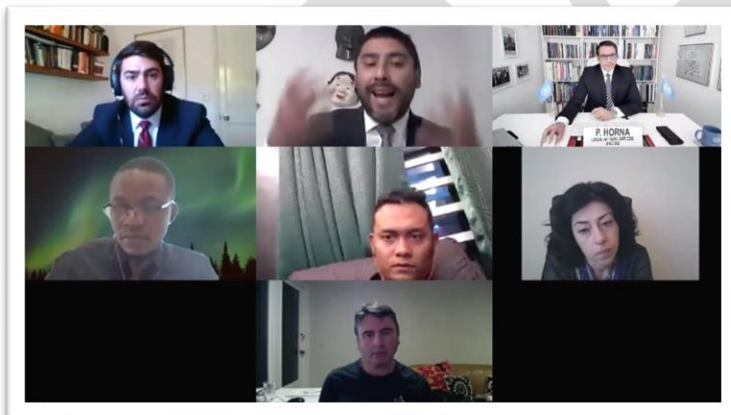
SACU Lafarge) with a follow up from Zambia on its recent enforcement measures in the cement sector. The presentations were followed by a QA session. More than 140 participants attended the event.

At the onset of the meeting the UNCTAD Secretariat first presented briefly different types of cross border cartels (CBC) and reminded delegates of the distinction between regional and transnational CBCs which are the most prominent types. In its brief intervention, UNCTAD emphasized that recent developments in technology have led to the emergence of oligopolistic cross border collusion which needs to be watched out for due to its potential negative spillover effects.



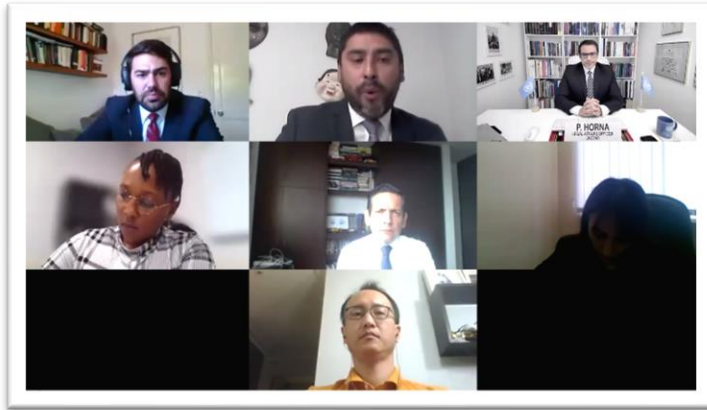
Mr. Juan Correa (FNE – Chile) and Mr. Jesus Espinoza (INDECOPI-Peru) introduced the first case study on Cross-Border Cartel Cooperation between “Arica-Tacna”. The Peruvian competition authority (Indecopi) undertook an investigation into an alleged collective taxi service agreement between two cross border cities Arica and Tacna. The FNE

collaborated with the INDECOPI, which was conducting a parallel investigation regarding the same events, on the notification process, on the exchanges of non-confidential information, including public information (such as data to identify and notify the investigated persons) and internal information of the agency (referring mainly to the status and nature of their respective investigations, as well as their preliminary conclusions). Even if the investigation from INDECOPI and FNE did not result in any sanction, it highlighted the potential of cooperation on cross border matters.



The presentation of the first case study sparked interesting discussions among participants on the different approaches taken by FNE and INDECOPI (Zimbabwe), on the mechanisms of informal cooperation such clearance from Ministry of Foreign Affairs (Malaysia). Both FNE And INDECOPI stressed that trust and willingness are very useful for cooperation through informal communication (i.e. WhatsApp) but

which also need to respect internal and international rules. EEC asked how fines would have been imposed if the case would have been successful. FNE replied that in this case international mechanisms exist and referred to a recent Chilean case which led to imposing fines on Japanese companies in Chile. For INDECOPI, rules of enforcement establish that no court order is necessary so penalties can be imposed regardless of the localization as long as the entity took an active part in the abuse and notification will be delivered to the foreign agent via the consulate.



FNE pointed out that treaties for sharing information are necessary and important, but complex and difficult to implement for younger agencies. FNE stressed that informal cooperation is easier to implement, and a lot can be achieved through it. Regarding the access to evidence, the EU pointed out that the 10-month gap between the investigations might have jeopardized the investigation. FNE and INDECOPI stated that since

it was a public agreement, this did not impede the carrying out of the investigation nor preserving the evidence. To reply to the case where the information would not have been publicly available (COMESA), INDECOPI stated that under the Peruvian norm, incubating document cannot be transferred. However, that does not deter from letting other jurisdictions know about the case. Finally, a Practitioner from Korea, (Sanghoon Shin) stressed that carrying out the same interview in different jurisdictions is very inefficient and burdensome on the investigative parties. FNE and INDECOPI stated that they lack experience in multijurisdictional interview processes and would need to explore such mechanisms in light of their respective legal restrictions.



For the second case study, the South African Competition Commission (CompCom) presented a cartel agreement between four cement producers that operated in the South African Custom Union (SACU) which comprises South Africa, Botswana, Namibia and eSwatini. Although the cartel operated in the SACU region, it was only prosecuted in South Africa due to lack of cooperation among the other agencies despite having the information readily available. Since this case, there

has been a significant increase in cooperation among agencies on cartel cases (forex, fishing, automotive). Nevertheless, CompCom is yet to investigate a cross-border cartel which requires coordination among the agencies in SACU.



Zambia then presented a recent success story in the same sector which resulted in prosecution after evidence uncovered during a dawn raid in January 2020. It involved similar companies and would also result in price wars whenever there was a new entrant. There was a concern from COMESA Competition Commission that cement cartel in Zambia affected Malawi. This was seen as a Zambian cartel with cross border effects into DRC, Malawi and Great lakes region. No information was

shared with COMESA or any other agency. Despite the fact that Zambia Competition Commission did not cooperate with CompCom, it still learnt from the experience of the SACU cement cartel and this experience paved the way for further cooperation.



Based on this case study, Zimbabwe raised a fundamental question on what can be done in order to increase international cooperation / information sharing. South Africa highlighted that what is crucially needed is more organization and more effective interaction since information is available. It is time we should move from talking cooperation to implementation of cooperation arrangement. Zambia stressed that having different priorities as well as different levels of development leads to obstacles. It suggested to agree on specific priority sectors to investigate because sharing informal information is duly overrated and can be difficult in some jurisdictions.



On a final note, the UNCTAD Secretariat drew a parallel between the regional liquid oxygen cartel case and the case presented by CompCom and asked Chile and Brazil what lessons were drawn. Chile mentioned that coordination on dawn raids will take time. Peru stated it was the first case with cross-border effect. The result was not the same between jurisdictions.
