

UNIDENTIFIED Welcome again, a bit earlier today, to ICN Virtual Studios. So glad you joined us.

PARTICIPANT 1: Today we'll hear from the agency effectiveness in merger working groups. Before we get to that, 2 reminders. First, did you know that you can follow the ICN on Twitter? Yes, you can. We're using hashtag ICN2020 this week for the conference. Second, don't forget about the additional content related to yesterday's host showcase panel on digital economy issues. We have brief videos highlighting agency perspectives on enforcement and background learning lessons from academics, all posted to the conference web page. Enjoy today's sessions.

UNIDENTIFIED Good day ICN family. It is my privilege to be participating in this forum. My

PARTICIPANT 2: contribution in this discussion will largely be confined to Botswana's experience when we were honored to host 2016 agency effectiveness working group which was held in our nation's capital Gaborone. The workshop was stimulus to a lot of effective changes that our agency has experienced ever since [INAUDIBLE].

The Competition and Consumer Authority, then the Competition Authority hosted a 2-day workshop in ICN's agency effectiveness working group from the 10th to 11th of March 2016. This was the first time ever since inspection for the authority to host an international workshop of this magnitude. More than 120 participants from 25 countries attended the workshop and discussed among others, agency ethics, strategy, planning as well as enforcement tools and procedures.

The workshop was officially opened by the then Minister of Investment Trade and Industry, and the keynote address was delivered by professor William Kovacic. The young agency could not have managed to host such an international event without some collaborative efforts from local institutions including Botswana government, [INAUDIBLE] who availed resources, personnel, and shared experiences.

It was on the strength and success of this workshop that the agency grew in confidence to hold a number of international workshops in subsequent years. The workshop awarded the CCE staff invaluable expert training. It brought competition expert from around the world to Botswana to train staff on a number of strategic topics such as investigations process, advocacy initiatives, practical strategies in carrying out research and other competition-related investigations. Which ordinarily

could have taken a lot of time and resources to accomplish.

The workshop made a number of recommendations with particular regards to Botswana. It became apparent that agency has to be active in a number of workshops and working groups, including cartel working group, mergers working group, advocacy working group, agency effectiveness working group, unilateral conduct working group. Since 2016, we realized that one of the ways in which we could catalyze our learning process was through participation in this forums.

Following this workshop for the Botswana competition and consumer authorities sought to enhance its advocacy functions by adopting advocacy tool kits, and in particular competition assessment element. The confidence became a springboard for future competition assessment training. The workshop became a seedbed for prioritization framework. For us in Botswana, active discussion around prioritization framework gained traction after this workshop leading to the subsequent adoption of prioritization framework.

Various avenues for efficient models that have now been adopted by the agency were first presented under the competition agency ambience and appreciated by some of the young agencies like Botswana and Consumer Competition Authority. These passionate discussions led to the future enhancement and adoption of some practical processes and policies, more focused on a nimble training plan, succession planning, investigation manual, and case management. The workshop made it easy for the tribunal and the Competition and Consumer Authority staff to share experiences with their counterparts from across the world.

Most importantly, the workshop helped to enhance the Competition and Consumer Authority of Botswana standing in the world of competition community, and possibly boosted Botswana as a tourism destination as participants had an opportunity to assemble the tourism potential of the country at the Mokolodi Game Reserve. Following the 2016 ICN conference, the Competition and Consumer Authority of Botswana has continued to partner with other agencies as the co-chair now of the agency effectiveness working group chairing international group of experts for United Nations conference on trading development, which is anchored for the 2019, moderating and making presentations at international forums such as Organization of Economic Cooperation and Development, OECD, being the executive committee

of African competition forum.

The experience of the young agency was drawn from participation in the first conference as this boosted our confidence and experience. The collaboration has yielded several projects, some of which have been executed. Others are ongoing, and the rest are planned for delivery in the coming year. Let me take this opportunity to thank you very much for your audience.

RENEE DUPLANTIS: Hi everyone. Chris and I are honored to be providing the NGA perspective on the ICN's agency effectiveness working group plenary session. We know that these views are our own and do not represent those of our individual firms or clients.

CHRIS MARGISON: The theme of today's session is the digital strategy of competition agencies. And it will focus on how digitalization is affecting the design and makeup of competition authorities.

RENEE DUPLANTIS: The session will cover a wide variety of topics such as the creation of digital teams, the recruitment of non-traditional staff, and innovative approaches to make competition agencies digitally ready. It builds on the working group's webinar earlier this year, which dealt with organizational design and digitalization.

CHRIS MARGISON: To help set the stage for today's discussion, we're here to provide a high level overview of a few of the issues and questions that the digital economy is raising for agencies and practitioners around the world. First, agencies have to consider whether they have the necessary tools to enforce and promote competition in the context of a rapidly changing and disruptive digital economy. For example, the CMA and the ACCC have released comprehensive reports considering this and other issues related to the digital economy. Other agencies, such as the US FTC, have held extensive hearings on these topics.

RENEE DUPLANTIS: Second, cases involving platforms raise a variety of complex issues. For example, what are the defining characteristics of multi-sided platforms? Are any adjustments to antitrust analysis necessary to account for any special characteristics of multi-sided businesses like free services and indirect network effects?

CHRIS MARGISON: Third, for those of you focused on mergers, an important issue involves potential competition cases, and in particular, the subset of those cases relating to nascent

or developing competitors. While there were significant disagreement among commentators on these so-called killer acquisitions, they all agree that these types of acquisitions raise a number of complex questions such as, is current antitrust law sufficient to support the development of challenges to these types of acquisitions, and how should antitrust agencies evaluate whether a nascent technology is likely to develop into a competitive threat.

**RENEE
DUPLANTIS:**

Finally, for those of you focused on cartels or consumer protection, some have raised concerns about the use of algorithms, artificial intelligence, predictive analytics, and business decisions, and conduct. Agencies such as CADE have considered a number of questions such as, does the use of these technologies raise particular antitrust concerns such as the possibility of algorithmic coordination? Are there tensions between consumer protection and competition policy with respect to these technologies?

**CHRIS
MARGISON:**

Recognizing these complex issues many agencies, including those on today's panel and the hosts of this year's conference, have taken steps to prepare for and respond to the tremendous amount of change taking place in today's digital economy. For example, the FTC launched its technology task force last year. This unit is primarily focused on investigating anti-competitive conduct and consummated mergers in the digital economy.

Similarly, the Canadian Competition Bureau hired a digital enforcement officer in July 2019, and announced earlier this year that it will, over the next four years, form a digital enforcement office to provide specialized technological support to drive its work in the digital economy forward. The bureau will also form internal communities of practice that will serve as a platform for knowledge sharing, mentoring, and collaboration. These communities will be challenged to increase innovation, experimentation, and continuous learning in key strategic competencies relevant to the digital economy.

**RENEE
DUPLANTIS:**

Agencies, including those in Canada, Korea, and Portugal, have also committed to take other steps in response to the digital economy such as hiring employees with new and complementary skill sets to create an optimum mix of talent to address enforcement within the digital economy. Hosting digital enforcement summit series that bring together stakeholders to discuss the challenges and opportunities of

competition enforcement in the digital era. Expanding the use of new intelligence gathering tools such as advanced analytical models, algorithms, automated processes, and artificial intelligence capabilities.

For example, we understand that the bureau has used predictive coding and other tools as part of the document review process. They're using digital technology to search the web for non-notifiable anti-competitive mergers and cartels. And they're using digital screening tools with cooperation of public procurement authorities to detect big rigging.

CHRIS MARGISON: Finally, in an effort to better understand the types of conduct that may be harmful to the digital economy, the bureau has conducted market studies in key areas of the digital economy, and has also issued public callers to market participants and consumers for information in this area. More recently, and not without some controversy, the bureau invited market participants to provide input to inform its ongoing civil investigation into certain conduct by Amazon.

RENEE DUPLANTIS: We commend the bureau and other agencies around the world for proactively taking steps to consider the impact of the digital economy on the important work they do. While smaller and emerging agencies may not have access to the same toolkit, we encourage them to look at the work being done by, and to collaborate with, the established agencies, particularly since the digital economy transcends national borders.

CHRIS MARGISON: So whether you're at an agency or in private practice--

RENEE DUPLANTIS: Whether you're a lawyer or an economist--

CHRIS MARGISON: Whether your practice is focused on mergers, cartels, conduct cases, or consumer protection--

RENEE DUPLANTIS: This is an exciting and complex time to be practicing competition law. So with that, let's turn it over to the panelists.

MATTHEW BOSWELL: Hello ICN community. And greetings from Canada. I'm honored to moderate today's agency effectiveness working group plenary session, which will discuss the very

important issue-- the digital strategy for competition authorities. Let me begin by thanking the teams at the FTC and US DOJ for all of their hard work in pulling together this year's ICN virtual conference in the face of tremendous adversity. Congratulations to everyone involved.

Thanks as well to Ms. Renee Duplantis and Mr. Chris Margison for providing us with the NGA perspective on several of the issues to be discussed in this plenary session. In their video, Renee and Chris were able to provide us with an excellent overview of the key issues and to highlight some of the work being done around the world in terms of agencies addressing competition in the digital economy. As you heard, at the Canadian Competition Bureau, we have made our digital strategy a cornerstone of the bureau's strategic vision for the next four years.

I'm happy to report that the amazing team at the bureau is busy making it a reality on many fronts. As we all know, these are challenging times for competition authorities, even without COVID, as we all work to adapt and respond to the ever changing digital economy. Competition agencies around the world are seizing opportunities to implement digital strategies in order to encourage competition and innovation in areas that matter to our citizens and so that consumers and businesses in all our jurisdictions can thrive in the digital economy.

Further, in order to provide the [INAUDIBLE] action, authorities are investing in people and new tools suited for the digital age so that their citizens' businesses can benefit from strong and vigorous competition. As ICN chair Andreas Mundt reminded us yesterday, competition agencies have to prove ourselves in response to the challenges we currently face. Not surprisingly, we have much ground to cover in one hour today. Our excellent roster of panelists are well-known to all of you. And in the interest of time, I will only briefly introduce them.

We're very lucky to have Alexandre Barreto, president of CADE in Brazil, Andrea Coscelli, chief executive, the UK Competition and Markets Authority, Sung Wook Joh, chairwoman, Korea Fair Trade Commission, Margarida Mattos Rosa, President of the Portuguese Competition Authority, and Rod Sims, Chairman of the Australian Competition and Consumer Commission. I'm very much looking forward to having this impressive group of agency heads share their perspectives and strategies on

how their agencies are working to tackle issues in the digital economy. So let's get right to it.

Chairwoman Joh, I will put the first question this morning to you. Many competition authorities have established a digital focused environment within their agencies. Could you let us know the philosophy behind this new direction from the KFTC perspective?

SUNG WOOK

JOH:

OK. First of all, I am very delighted to participate in this ICN virtual annual conference today. My special thanks go to US FTC, DOJ, and Mr. Andreas Mundt, chair of the ICN for hosting this event. I also would like to thank you Mr. Matthew Boswell, panelists, and participants letting me explain the Korean experience. Thanks to the [INAUDIBLE] industrial revolution involving artificial intelligence, big data, and internet platforms that the study economy in Korea is a growing very rapidly.

Internet-based activities rose to \$170 billion in 2017, nearly doubling within 6 years. [INAUDIBLE] transactions increased during the COVID-19 crisis, the digital economy will grow further. For example, at the peak of the COVID-19 pandemic in April, online food delivery sales were 84% higher than in last April.

The digital economy can have opposite effect on consumers versus competition. Compared to the traditional economy, the digital economy has improved with consumer welfare via more choices and lower transaction costs. However, the concentration of economic power in online platforms and data companies can be viewed as competition. In the digital economy, widespread network effects are accelerating market concentration in dominant platforms.

We are very concerned that these online platforms may use their dominance to reduce competition and increase costs for training partners or consumers eventually. Due to the multi-sided nature of platform market, competition authorities relying on traditional legal standards have difficulty in enforcing competition law. For example, sales in one market might affect sales in other markets. So defining deliverance markets and assessing the dominance of multi-sided markets is very challenging.

Applying innovative technologies forms increasingly use data to create a digital content for consumers and analyze data to guide the production. Thus, data

becomes an increasingly valuable asset that can enable dominant forms to abuse their data advantage by raising entry barriers, restricting competition, reducing consumer choices, and lowering consumer welfare eventually. Given the importance of the digital economy in Korea, KFTC must maintain its benefits and minimize its harmful effect.

To do so, KFTC service is both fair umpire to monitor unfair conducts and a gardener to fostering innovative market ecosystem that grows our economy. Specifically, KFTC is establishing digital focused policies to create and maintain a fair market order for all stakeholders to help them flourish in a balanced sustainable manner which will improve consumer welfare and invigorate our economy.

**MATTHEW
BOSWELL:**

Thank you Sung Wook. Thank you for the Korean perspective. Let's turn now to Europe and hear about the Portuguese perspective on this from Margarida.

**MARGARIDA
MATOS ROSA:**

Hello to everyone in the panel, and also to those many who have tuned into this conference. So let me briefly explain how and why we set up our digital strategy. At the end of 2018, it was obvious that we needed to gather knowledge and capacity to deal with an expanding digital transformation, which by the way was occurring across virtually all sectors. And so starting in 2019, we added the new angle to our priorities and this meant focusing on new digital strategies that had an element of coordination between competitors as well as abusive dominance.

In particular, the ADC deepens its understanding of the use of algorithms and artificial intelligence that may facilitate anti-competitive practices. And the main outcome of this was the publication in July last year of an issues paper on digital ecosystems big data and algorithms. So for this paper, we engaged with a sample of firms, which were very active online, so that we could understand the impact of digital technologies in their strategies, especially in the context of monitoring and pricing algorithms.

We also found interesting evidence of open calls versus collusive pricing strategies by sellers in the [INAUDIBLE] global marketplaces. So the research and market study carried out in 2019 for the purpose of preparing the issues paper laid the ground for moving from theory to practice. Then at the end of 2019, it became obvious that we were going to handle potential cases with digital features, so we

promoted internal capacity building in this field by creating a digital task force.

And this is the task force which is cross departmental. We believe that the design that we have currently combines the very best analysis from these different angles, different departments within our agency, and moreover, each task force member is expected to bring the rest of its own department up to speed with digital trends in the antitrust field. So this is in addition of being a repository of knowledge for the whole agency.

And because, virtually, every sector is impacted by digitalization, we understand that every case handler must know how digitalization may have affected the sectors and behaviors and the scrutiny. So the mission of the task force is obviously to follow all the policy initiatives and potential enforcement cases, which relate to digital. And it also includes close cooperation and discussion with other authorities on these topics.

The team, therefore, includes staff with experience in case handling from our antitrust investigation department, but also very tech savvy staff from the studies in markets monitoring bureau which have a more analytical focus. And then, to this group, we recently added a data scientist profile. So to sum up, our strategy was to create and expand our internal capacity so as to deal with emerging cases.

**MATTHEW
BOSWELL:**

Yes, Margarida. That's an interesting issue of the people needed something, we'll circle back with in a bit, but thank you very much for that. Now turning to the United Kingdom. Andrea, the CMA has been, it's fair to say, very active in this area. Could you share your thoughts with the audience on the digital strategy and your approaches?

**ANDREA
COSCELLI:**

Thanks Matthew, and thanks for organizing the panel and to the ICN community. It's great to be part of it again. So from our point of view, I think there are 3 aspects to the strategy. So the first one is casework. So it's how do we leverage what we do in casework? And how do we essentially evolve the case work? So if you look at mergers for us over the last 2 or 3 years, we've done much more on digital mergers. We have investigated in greater detail possible concerns, theories of harms and we have tried on purpose to write a fairly detailed decisions to give guidance companies as well. So this is about killer acquisitions, acquisition of startups in

general sort of dynamic concerns.

If you look at our consumer protection work, also has moved very significantly with the digital sphere. A lot of our work right now has to deal with platforms and with issues in digital markets. And in our markets work, which is a bit more discretionary in terms of the areas where we focus on, again we've done much more work digitally. We looked quite significantly, for instance, at Google and Facebook in recent times. So that's the first aspect of the strategy.

The second aspect is people. And so it's partially hiring people who can bring us new skills and knowledge about ways of working that to be fair, 5, 10 years ago, we didn't have and tried to reflect what's happening on the sort of private sector side. But also at the same time, trying to upskill, as we do cases, as we read documents, as we look at evidence, as we think about issues. So it's a combination of these few things.

And the third aspect is the kind of partnership working. So it's both working domestically with other regulators and government whether areas of overlap, which obviously are many, and also working very extensive with international agencies and people who have the colleagues from this core who have very similar issues and concerns. I mean my personal view is that, particularly in terms of advice to government and thinking about how to solve these issues, I think we need to be pretty humble in our fields. I think antitrust is only part of the solution. We need to work very closely with others to design solutions.

I think that the pace of change in the economy and in many ways COVID has increased that is such that I think it's unrealistic for anyone to imagine that our particular mandates and our particular tools are sufficient to deal with it. I think we need to do the best we can with our tools, but also be creative. Think about alternative solutions and engage with others.

**MATTHEW
BOSWELL:**

Thank you Andrea. So all 3 of our first panelists have spoken about the obvious, which is the explosion of big data, artificial intelligence, machine learning, and its impact and economies around the world without regard to borders. So in this context, national competition agencies face an increasing need and it's been touched on already for expert knowledge and in-house technological development.

But first, before we get to the technological developments, let's talk about the people. We need to do our work in the digital economy and discuss the types of either non-traditional personnel or teams that your agencies have either hired or established recently. We heard about Margarida's digital task force.

And of course, this was an important issue that was raised yesterday in the showcase panel as William Kovacic asked the panelists-- do we have the right teams? And that's a question I think that's being asked around the world, and we're all thinking about that and recalibrating as we go. So I turn first to Rod Sims in Australia. Can I ask Rod that you share what the ACCC has been doing in this area in terms of personnel and teams?

ROD SIMS:

Thanks Matt, and look I'm delighted to be involved in this ICN virtual event. So thanks very much to the organizers. The digital economy has changed the ACCC a lot in some ways, but not in others. Yes, we've got new functions, and roles, and skills. But with largely, I'd say almost completely-- almost completely use the people that we had, but we've probably unlocked skills within them that were hidden. We've brought those out, particularly with people interested in these areas who had skills we didn't know they had, and probably they didn't know they had.

I'll talk about four areas or four activities. Obviously, first is our digital platform branch. The core of these people did a digital platform market study, which was completed in mid last year. The government accepted a range of recommendations, and we've now got a 30 person branch with a mandate to keep working on these matters. The branch is doing 3 things. It's got a continuing monitoring role where we're going to be producing reports every six months on data acquisition, market power, apps, everything really.

We've got a market study going into edtech, which is just such a crucial part of this equation, and we really have to get on top of what's going on the edtech market. And also that group is establishing a bargaining code to address the bargaining imbalance between the platforms and the news media businesses. And it's also assisting in other areas that I'll come to.

So the importance of this is it's a dedicated team. It's largely people who are in the organization already. We have grabbed a few from other departments and other

areas, but it's largely in-house skills. And keeping them together, having them as a dedicated unit, means they build and learn skills, also got proactive information gathering powers so they can stay ahead of it's very opaque market. So that's one group we've got a 30 person team.

Secondly, we've put together a strategic data analysis unit. And their job is to analyze data, which they do extremely well. [INAUDIBLE], who's an ex-consultant from a management consultancy firm, who is really an expert in getting the "so what's" out of the data, because if you can't get the "so what," that's not very helpful, and she has put together a team, initially, largely graduates walking through the door, who again we unlocked skills that they had that would have atrophied if we hadn't picked them up and leverage those skills.

But yes, we've also hired some data scientists and actuarial people and so forth. But sometimes they're graduates, sometimes they're people who've been around for a few years, but we haven't gone for high end PhDs largely. These are people who've got these innate analytical skills. And looking to pay dividends is just as one of many examples. They managed to unlock the trivago algorithm, and showed that that algorithm from trivago was feeding consumers sponsored information rather than the best deal that was on offer, and that was a really great effort.

I'll just quickly go-- we've got enforcement cases on the go, 2 against Google and probably 6 or 7 other in competition in consumer investigations that they've done in the enforcement division. But they draw on the skills of the digital platform branch for dedicated skills, they draw on the strategic data analysis branch, and likewise our merger people, we've got Facebook-Giphy at the moment and Google and Fitbit. And so again, they're done by our mergers people, but drawing on the skills of those two other areas.

Lastly, we're using that digital group to keep in touch with people internationally. And this is absolutely crucial. Mainly bilateral contacts, but also through the ICN of course, a bit through the OECD, also through our multinational mutual assistance and cooperation framework that was recently entered into, but that group is right on top of everything going around the world. It's got very close contacts. Digital platforms really are international issues. So the best teams we can build, I think in the end, are going to be international teams. And we've really got to work at that

and draw on each other's skills so that 1 and 1 equals 5. Thanks Matt.

**MATTHEW
BOSWELL:**

Thank you Rod. That's such an important point about how, as a community, we have to work together to tackle these issues, to share our expertise, and what our teams are figuring out as they go. There's no point all of us reinventing the wheel. And from a Canadian perspective, I can say that the question of resources for teams is always a huge one. I don't think it's something we're going to try and tackle today, but the need for these resources is fundamental going forward. So thanks Rod. Turning now to Alexandre in Brazil. Can you tell us about what you've done on the people's side in terms of creating teams to tackle some of the issues you're seeing?

**ALEXANDRE
BARRETO:**

Thank you Matthew. Hello, everyone. Very good to see you. First of all, Matthew, I'd like to congratulate you and ICN for organizing this panel. It's really an honor to me to participate in such an important discussion amongst such a fantastic group of speakers. Well, here in Brazil, CADE has been investing in several fronts to improve our internal practices and policy, and also to ensure technical and scientific updates, and also remain vigilant of the challenges to free competition face of the digital transformation.

In terms of hiring non-traditional personnel, I would like to mention the recruitment of the experts for assisting us in the development of a project that is probably already well known to most of you, which is the brain projects. With the assistance of a team of IT experts, we could develop a platform that allows the integration of a large public procurement database. By applying that meeting tools and economic filters, we can identify and measure the probability of occurrence of cartels in [INAUDIBLE].

Although the brain project was initially established in 2013, we continue to invest in intelligence tools in investigative techniques for proactive cartel detection. For instance, we are currently investing in expanding the use of artificial intelligence and machine learning for monitoring and detection of anti-competitive behavior. Our goal is to make sure that we are well prepared to deal with the challenges the digitalization poses. At the same time, we aim to make good use of the tools brought by digital transformation to improve our ability to fight anti-competitive practices proactively.

And we are also investing in the recruitment of specialized consultants to work on research projects, development of studies, and recommendations. These consultants generally have a background in law or economics, but also in IT. They are also specialists in digital markets, of course, data protection, statistics among other areas, and support CADE to improve our internal policy. As an example of the work conducted with the help of these specialists, we have recently launched a report that summarizes several documents produced by authorities all around the world, including the work conducted by some of the agencies of my fellow colleagues in this panel, also research centers regarding the competitive dynamics of digital markets.

Finally, I believe both Andrea, I believe Rod also mentioned the importance of using existing tools and resources efficiently and developing the skills in-house. In that regard, since 2018, CADE has established an internal working group comprised of officials from our investigative units, economic and international departments that meets regularly to discuss the adequacy of our current legal framework, and existing toolbox to meet the requirements of these new era. The group has been given all the necessary support so that both mergers and investigations of anti-competitive practices in digital markets have an adequate treatment.

**MATTHEW
BOSWELL:**

Thank you Alexandre. I can say from a Canadian perspective, we watched with interest the project brain and some of the results that have been achieved through that. And that's a good example of creating a specialized team to tackle procurement issues. Let's go back now to Korea and hear about how the KFTC is dealing with the need for new expertise or training people already with the KFTC. Sung Wook, can you tell us about that, please?

**SUNG WOOK
JOH:**

OK just like other countries, to cope with the ongoing digital transformation, KFTC also needs teams with new expertise. So what happened is that we recently hired a 15 digital forensic experts to strengthen our internal expertise. And we also upgraded our forensic team to the Division of Digital Investigation and Analysis, and our number of forensic investigators rose up from 5 to 22. So we basically, in terms of net numbers, we increased 17 people.

Specifically, we hired the forensic investigators. These are investigators are not economists, and they are not lawyers. They are the specialists with a specialized

expertise in each forensic domain such as disk, network, and mobile. Furthermore, these forensic experts showed the digital investigation experiences and expertise and trained their colleagues-- usually they are economists-- thereby strengthening the forensic capabilities of many of the KFTC's traditional staff.

In addition to hiring digital specialists, KFTC also tapped to external expertise-- not internationally but domestically-- to monitor industrial trends and quickly detect emergent challenges in the digital economy. For instance, KFTC launched the special information and communication technology task force to address new competition and customer issues. Our task force helps KFTC to cooperate with other government ministries and put an integrated approach to digital economy issues. To strengthen policy responses against forms that have grown into tech giants, KFTC created a special separate task force for policy development which proposes guidelines, regulations, and laws.

KFTC also holds joint symposia with academia, industries, lawyers on key issues such as data. So we have a special team, which is talking about new law about our individual data privacy with our online platforms. So we can incorporate the views from many different parties when we develop KFTC policies. In short, what happened is within KFTC we hired new experts , and we hired basically 15 good digital specialists. But in addition to internal experts, we tapped domestically external experts, including industries and academia, that's what we have done. Thank you.

**MATTHEW
BOSWELL:**

Thank you, Sung Wook. And just on your last point about bringing people together, of course, in Canada we're looking forward to hosting our digital enforcement summit series in the coming weeks, which goes back to the point about agencies around the world coming together to share perspectives on enforcing in the digital economy. So let's turn our attention a bit more to the technology side of the issue. We've heard about the people, and the teams that you've all assembled and continue to think about because it's changing so rapidly. Competition authorities have been developing and procuring several tools that leverage technology and assist with investigations and internal operations, and we've heard a bit about that already. But I'd like to turn the floor to Andrea to share with us some of the tools that have been developed by teams within your agency to assist your agency in

tackling issues.

**ANDREA
COSCELLI:**

Thanks Matthew. Yes, so we have invested quite significant in this space, as the number of others have. So I would say the first area for us is data engineering, which is a fairly new area where essentially that the data engineers are retrying to bring us up to speed with the robust practice in the private sector in terms of analyzing data and documents, fairly large amounts of data and documents. So for instance, a number of the tasks that we're doing in a fairly repetitive way-- for instance, I'm looking at local analysis in merge as we have now found ways of building a data platform through these things.

So it is really a productivity tool for us. On the data science side, another example is we launched the COVID task force at the very beginning with the pandemic here in March. And for the first time in the history of the agency, we basically had a web form where we ask consumers to complain directly to us about price gouging or various other forms of detriment, lack of refunds for cancellation, for instance.

And we did receive many complaints. I mean, as of now, probably more than 100,000. And these were written complaints. So we had to use machine learning and some natural language processing techniques to try to summarize the complaints and trying to use them in a way that was much more user friendly. So the reporting coming to me and to the board was very much trying to categorize and summarize the complaints in a way that we acted upon why what was coming in was really very significant and very difficult to analyze otherwise.

And then the third area I would highlight is behavioral science, where again, bringing in a number of behavioral scientists has been very helpful for us, because we now find ourselves in some of the enforcement activity for securing consumer protection, focusing very extensively on sort of behavioral biases and nudges that the companies use, that are very important for our activity. But also when we now think about remedies and successful remedies, let me explain what success successful remedies would be, it's really very important to draw on this expertise.

And then the most recent one is what we call digital market intelligence, which is essentially having a few people who are constantly doing some proper horizon scanning both in terms of areas for us to be involved in and think proactively about

specific investigations. But also we think about merger control if some of the mergers coming in are in really new fields, really complicated fields, and again having the ability of having some of these in-house expertise, but also building a bit more of an ecosystem having-- mapping all the relevant academics in a number of these areas so that we can quite quickly go and get the expertise we find extremely helpful.

**MATTHEW
BOSWELL:**

Thank you Andrea. Lots going on there. That's impressive, and the behavioral economists issue is one that we've also benefited from in Canada, in terms of our consumer protection work. Let's turn it back to Margarida and ask what have you made in Portugal of new and innovative technologies?

**MARGARIDA
MATOS ROSA:**

Thanks. So it's worth nothing to start with that even if the digital economy may sometimes be a challenge to competition law, it also brings advantages and we've seen through antitrust agencies. And we, like many others, use technology to increase the effectiveness of our investigations and to streamline our internal procedures. Let me give you some examples.

So first, we moved a few years ago to much better performing forensic IT equipment and software and then with this we strengthened the detection capacity in the context of increased digitalization of [INAUDIBLE] targets. This means that computers, emails, mobile phones, and cloud can be swept more rapidly than paper and physical files. It also means that we're bringing back a lot more information that also needs to be tackled. But it's been a plus rather than a minus, of course.

Then second, we've also moved towards the software that enables us and our case teams to review and assess evidence in a much more efficient way. Third, we've focused on implementing fully digital-based procedures in the interface with our stakeholders. As an example of this, merger control has been paperless in about 85% of cases for several years. But with the experience we had during lockdown, we know that this is possible to increase. So we're currently working on moving this rate even higher. And then a similar solution is underway for antitrust proceedings as well, again in the interface with our stakeholders.

We also have, as a fourth point, the complaint website with a dedicated tip line, which was launched three years ago. And this aims to facilitate the job of

complainants who want to bring valuable information to us. This by the way, has been quite used during these new COVID times. We also have had a lot of seminars turned into webinars with experts from the digital area, which have brought us and the community a lot of valuable information in these recent times.

And finally, we're strengthening our detection capacity by developing a cartel screening tool for public procurement procedures. And this can be done because for over 10 years, Portugal's had an encompassing public procurement system, which means that-- there is a very comprehensive set of data to tackle and to which we have access. There are numerous data points covering the entire procedure from the publication of the notice to the contract closure. And then in parallel, the authority carries out statistical tests on these large sets of data. The aim of course, is to detect a possible collusive tendering based on these screens. And this, by the way, has been used recently in a bid rigging investigation. So to sum up, these are main digital tools currently being used.

**MATTHEW
BOSWELL:**

It's great Margarida. Thank you and the screen to detect bid rigging is such a valuable step forward, and many of us are working on that around the world as a great tool to at least notify us of potentially problematic procurement processes. Rod, what can we learn from the ACCC in terms of new technology that you're putting to use to assist you?

ROD SIMS:

I guess one thing to learn, Matt, is that previously our budget was pretty much operating expenditure. Now, we've got to actually spend a lot more on capital to get these tools, and also get people who can help us use them so that we don't drag our people into that activity too much, so they can focus on what they do. And we get people to help us use the tool. So we're in the process of spending a lot more on capital. We're asking the government for more money so we can spend even more. But it is a big change-- the break up of that budget, that it's more capital intensive now.

Of course, the digital economy is both good and bad. It's bad in the sense that when you go for documents, you've got many more documents than you ever would have had before. But, of course, the good news is you've got all these tools, which really we absolutely have to take advantage of. So just to highlight some, we've got digital forensic tools that help us. For example, when you combine them with search

warrants, they can help us understand more interactions between alleged cartelists.

We've got criminal investigation tools. Now, these are absolutely fundamental. They digitally help us plan, sort out a document assembly, get the chronology of documents, bring together evidence and witness statements, briefs to counsel that basically allow us to track everything and produce it quickly to the court room, which if you can't do in a criminal matter, you're in big trouble. So that's an enormous help. Obviously document review, which in a sense I mentioned before, we use artificial intelligence and predictive coding to go through a huge number of documents. And we're trying to do more in that area.

Cartel screening, as Margarida mentioned, I won't repeat it, but we've got that as well in relation to cartels. We've also acquired a platform called Crowdicity, which encourages our people to feed in ideas, test them, and see which ones surface. So it brings together the thinking of the whole organization. We're hoping it's going to bring innovation right across the board to the organization. People feel as if they've got ideas, they've got a ready mechanism to have them tested and have them adopted. So we're hoping that unlocks a lot of innovation as well.

**MATTHEW
BOSWELL:**

That's right, and I completely agree with you in terms of preparing a criminal brief and trying to use all the technology we can to prepare it well and to do it in a timely fashion. And that's work that's ongoing in Canada as well. Let's turn back to Alexandre in CADE and tools there that you've used-- I think you've used some in project brain that we might hear about, Alexandre.

**ALEXANDRE
BARRETO:**

Actually in my previous answer, I mentioned the product brain, which is one of our main narrative tools to assist CADE with proactive investigations. And let me say that we worked in recent past with the Canada competition group in order to sharing experiences and impressions about the project brain. And really believe that nowadays every agency has [INAUDIBLE] two of cartel screening. Well, I remember also that [INAUDIBLE] the importance of coordination and cooperation among competition authorities to tackle the issues that we face.

I really believe that working together is crucial for us. Actually, that's one of the main reasons that ICN itself exists. But now, come back in today-- let me emphasize another tools that we have here at CADE. Let me emphasize the strategy that I

believe that we will have a major impact in how we conduct internal operations. Last month, we established the so so-called plan for digital transformation. In this project, CADE established the project in partnership with the Brazil's secretariat for modernization of corporate administration, and also with the secretariat for digital government. We are working hard in Brazil. And I believe I can say that Brazil is on the global forefront when it comes to providing digital service to society.

The plan for digital transformation allows CADE to integrate [INAUDIBLE] with other public bodies reducing costs in bureaucracy and enhancing the efficiency of the services that we provide to society, and also modernizing our internal operations. In the very brief, I can't say that nowadays all of our internal procedures are electronic. So we don't use paper anymore at CADE, but we have more being constructed.

These new projects include, for example, offering an electronic service for negotiating leniency and a digital platform to collect market data for a merger review. We believe in a very few months we will have more news to share with you in this field.

**MATTHEW
BOSWELL:**

Thanks, Alexandre. I'm going to stay with you, sir and go to the next question for us to discuss, which is as this panel is all about agency effectiveness and how we're all striving to be more effective, we suspect the audience is eager to hear practical examples of your agency's cases-- we've heard some-- and policy work in the digital economy. So Alexandre, as I said, can you give us one example of case analysis you've used in Brazil in digital economy cases?

**ALEXANDRE
BARRETO:**

That's a very good point, Matthew. Due to our short time today, I'll try to summarize some of the main [INAUDIBLE] analysis and policy work conducted by CADE in this field. In last years, CADE has been organizing several initiatives to understand the challenges associated with the digital economy. These initiatives include organizing workshops with the hearings, conference to share experiences and discuss how we can create mechanisms for more effective cooperation, and address common challenges. We also prepared studies and reports, such as the BRICS report that compares how our economies are dealing with the challenges imposed by the digitalization.

Moreover, we prepared studies regarding specific markets mostly influenced by the digital economy such as ride-sharing platforms and electronic means of payments among others. These initiatives provide us with the opportunity to contribute to the global debate on the digital economy, but also to learn from the international community and discuss our current practices.

In terms of practical analysis, not differently from other jurisdictions, in Brazil, we are analyzing an increasing number of cases in digital markets involving our areas of enforcement. Currently, we understand that the Brazilian law and policy is still adequate to deal with the fast-paced digital economy. Our strategy has been to use all tools available to assess the competition, the issues under investigation to the best of our abilities.

In terms of the assessment of market power, for example, CADE is attempting to take into account more scenarios in defining relevant markets, the connections with marginal [INAUDIBLE] markets, and the relevance of data itself. As examples of how CADE considered these issues in our review, we can condition mergers like the one between Microsoft and Yahoo or the Google shopping case. Another issue that usually arise concerns is the notification criteria. And the question is, should we look only at the turnover and volume in order to calculate market shares in digital markets?

We are aware that when we talk about digital economy, this type of notification criteria can eventually exclude from our assessment important operations. We have also a considerable impact on competition. The situation is even more delicate when a big tech company acquires a small enterprise considering a data-driven innovator, or even obtain access to valuable information.

Under our legal framework, we are able to use CADE's power to request notification of cases that do not meet the turnover criteria, but may raise competition concerns such as the Facebook and Whatsapp case. We can also issue injunctions to block transactions that were not notified, such as recently with the partnership between Whatsapp and Cielo, that's a Brazilian enterprise of payments. In any event, we continue to study if we should change our mergers and acquisitions notification criteria.

We are discussing, for example, if we should incorporate new thresholds such as transactional value, the number of users for the purchase platform, or even some market share criteria of the involved parties. Finally, we are always attentive to finding the right balance to apply [INAUDIBLE] law, to avoid the possibility of incurring over enforcement, which has the potential to hamper innovation. Thank you, Matthew.

**MATTHEW
BOSWELL:**

Thanks, Alexandre. Lots going on, lot of initiatives. Margarida, may be you could share with us some policies or papers that your agency has tackled in this area that might be useful for others around the world to take a look at to see what you've learned.

**MARGARIDA
MATOS ROSA:**

Thanks. We decided to do a few papers because we thought this would bring us up to speed with what was going on in several sectors and digitalization. So we first-- I would first like to mention, of course, our paper on digital ecosystems big data and algorithms published last year. In this, as I said, laid the ground for both our policy and enforcement activities. As I also mentioned before, the paper resulted from our decision to prioritize a better understanding of these markets and in particular how the use of algorithms and artificial intelligence may facilitate anti-competitive practices. Of course, other abusive dominance issues are important. But I think, our paper had an edge there.

In this paper, the we highlighted how the widespread use of simple group-based pricing algorithms can foster both tacit and explicit collusion. We detailed the functioning of these algorithms, their features. We also stressed that behavioral biases can be exploited by firms to implement exclusionary strategies. And ultimately, we warned firms that they are responsible for the algorithms they use.

This paper has the benefit of strengthening, of course, our internal investigative capacity, so expanding from traditional collusion strategies into new ones in the digital space. It also maximizes synergies between our advocacy policy and enforcement areas. And second, this paper followed other initiatives in the digital sector, for example, the one on technological innovation and in competition in the financial sector. The paper identified barriers to entry and expansion that fintech companies might face in the provision of, for example, payment services and prompt funding.

In addition, we also contributed to the legislative process through written opinions and parliamentary hearings. And this is, of course, ongoing work. This year, we're carrying out market survey to follow up on the fintech issues paper and to monitor either the success of our recommendations, but also the trends that have emerged in the last couple of years in this area. The approach used by both incumbents and regulators is nowadays noticeably different from when the ADC began its efficacy initiative. Sector regulators in particular have implemented some initiatives with the potential to make financial services more open to innovation and competition. But overall, I think these papers have very much informed our antitrust department-- investigative department and also the mergers department to possible features and behaviors that are worth taking notice of.

**MATTHEW
BOSWELL:**

It's great. It's great to hear that your advocacy is having an impact with other regulators in your country, Margarida. Now, turning to the United Kingdom again. Andrea, the CMA, as we all know, did some significant work in analyzing competition in digital markets, market study. Maybe you could tell us about that, and what it's led to in terms of positive developments from your perspective in the United Kingdom.

**ANDREA
COSCELLI:**

Thanks Matthew. So we spent a year, looking in detail, with a fairly large team to essentially 3 broad markets-- online search advertising, social media, and the adtech ecosystem. And we published, in July this year, a fairly detailed report with a number of appendices reflecting the depth of the work and the sheer number of documents and data that we have received from the companies and from third party participants. I think the short version is that we obviously found significant market power in search, in social media, and various issues in adtech. To the extent that we basically said that we don't think our current powers our mandatorily sufficient to deal with these problems in a way, at least they can, I'll say permanent way.

And so we essentially switched to advice to government to change legislation, introduce regulation-- [INAUDIBLE] regulation to deal with a number of these issues on a more sustainable basis. So at the moment, we are being asked by government to lead a digital task force with media and telecom regulator in the United Kingdom, and with the information commissioner's office to work together to come up with

specific advice to bring to parliament for new legislation. And in our view, this should create essentially what we call a digital markets unit which is a bit of a version of what Rod has created in Australia, to be discussed about the size and the mandate. Certainly to have a tool which is quicker and more effective than antitrust, what you can really call a code of conduct in terms of behaviors by the digital platforms who have market power in a war where essentially we think we can deal with the complaints and the concerns we get in a more effective and timely way.

**MATTHEW
BOSWELL:**

That's a positive outcome. At least, it's certainly going in the right way. That's great to hear. So turning back to Sung Wook, can you tell us about some of the initiatives the KFTC has taken in this.

**SUNG WOOK
JOH:**

OK. I'm going to focus on 3 areas. First, I'm going to talk about some of the changes in our model guidelines. And number 2, I'm going to also talk about some of our new initiatives to enact new law. And finally, I'm going to talk about some of the issues in terms of a law enforcement. So let me start with merger review changes.

Last year, we amended the merger review guidelines to ensure more practical and comprehensive reviews for mergers in innovation-based industries. The previous guidelines, I believe that, failed to adequately identify some of the negative effects of proposed mergers, such as elimination of potential competitors. So what we did was KFTC clarified the criteria for defining relevant markets, calculating market concentration, and identifying anti-competitive effects.

And we also are going to amended the competition act to impose a transaction value-based merger notification threshold to catch killer acquisitions. Previously, we reviewed based on the size of sales and assets. So we missed some of the cases, which could have some potential impact in the future. So by changing this criteria, we believe that we could catch some of the future killer acquisitions.

And also since KFTC is facing some of the mergers among platform companies, we are going to review these mergers involving acquisition of data assets. And at this time KFTC is going to consider data substitutability, competitors access to some of the important data, and potential restraints on competitions when we are reviewing these merger cases. Second, let me introduce some of the changes in terms of our proposed law.

In June 2020, this year, KFTC announced a new policy to foster a fair digital economy. We prioritized addressing some of the abuse of superior positions by platform companies over online stores and protecting consumers and preventing monopolies. To tackle some of the growing anti-competitive practices by online platform companies, KFTC is enacting the act on fairness in online platform intermediary transactions. This new law will define the categories of frequent, unfair trade policies such as abuse of superior bargaining positions.

And this new law is going to provide some procedural requirements for online platforms such as transparency in contracts with the online stores and standardize the contracts and specifying conflict resolution procedures. That's why we are proposing, and I hope we can finalize this by June of 2021. And also, let me talk about some of the changes in our law enforcement. And as you probably know, Korean courts are increasingly requiring rigorous evidence while the number and complexity of the cases are growing. And to tackle these challenges, KFTC will establish a database of examination reports, evidence, case examples, and judicial precedents while enhancing our forensic and statistics expertise.

We are going to analyze this database to identify sectors with repeated violations and find their causes, and thereby facilitating policy development in the future. In terms of law enforcement, the investigation team within the ICT task force at KFTC is closely monitoring four major sectors-- online platforms, mobile services, intellectual property rights, and semiconductors. We are also using external expertise to enhance our legal and technical capacity to improve with the efficiency of our reviews. Thank you.

**MATTHEW
BOSWELL:**

That's impressive. Thank you very much Sung Wook. So I see the time, we were technically at the end of our time. But I think we can go a tiny bit over, because I think the last question that I'd like to ask is one that would be beneficial for many ICN members. And so I'll ask this question to Rod, Alexandre, and finally give Margarida the last word on this question, which is-- and perhaps we can cut our answers down so that we don't go too far over time. What advice would you give to other agencies, newer agencies, smaller agencies to implement a digital team at their agency taking into account they may have no additional funding, or, at best, very limited additional financial resources. So over to you first, Rod.

ROD SIMS: Thanks Matt. Look, 3 quick things. Firstly, unlock the talent in the younger people. They are a lot more digitally savvy than you think they are. And if you can unlock that talent, there's just a lot of talent there, I'm absolutely convinced of that. Secondly, use the endless ICN materials and materials produced by all the agencies such as the ones represented here. There's a lot there that will get you started. And thirdly, work with other agencies. There's so many other agencies that would be delighted to share their skills. So these 3 things would get you off to a running start I think.

MATTHEW BOSWELL: It's excellent. Alexandre, what would you share with other agencies from CADE's perspective.

ALEXANDRE BARRETO: Well, Matthew, [INAUDIBLE] agencies with limited resources can benefit from project's discussions and the large amount of data that has been produced by its counterparts and international organizations such as the ICN or the OECD. Of course, competition enforcement has to be viewed with the characteristics of each jurisdiction. However, bilateral and multilateral cooperation can help to develop internal capacities, tools, and knowledge that could be adapted to specific needs of each country.

I must say that the level of cooperation that we have between competition authorities is amazing. I've been working for the Brazilian government for 27 years, and I don't know another example of public policy with this level of international cooperation. But in addition, this type of cooperation can be greatly helpful also at the domestic level as the digital economy creates interfaces between multiple dimensions of policies and sectors. Cooperation with domestic agencies and regulators can help the competition authorities to establish coherent and efficient policies while also saving resources.

In Brazil, for example, we cooperate closely with key domestic regulators such as the Central Bank of Brazil, the National Consumer Secretariat among others, which is very helpful to learn from each other and enhance the decision making process. So in short, Matthew, I have 3 main advice-- cooperate, cooperate, and cooperate. Thank you Matthew.

MATTHEW So should we cooperate?

BOSWELL:

ALEXANDRE Yes.

BARRETO:

MATTHEW OK. Thanks very much, Alexandre. And Margarida, to you the last word on this final
BOSWELL: question before we wrap up.

MARGARIDA Thanks, Matthew. I can only agree with everything that has been said, of course. I'd
MATOS ROSA: just add, of course, younger agencies and even more experienced agencies can struggle with limited financial and human resources. Not to mention the digital experts are in high demand all over the world, and therefore scarce and expensive. So my advice to those younger agencies would be threefold-- that we stimulate internal capacity building our forensic IT people, for example, didn't have their current skills 10 years ago. We have to train them, take them to the streets, take them to as many [INAUDIBLE] as possible. And if you need several IT experts and cannot hire them, then you would be surprised by some case handlers and their IT skills when trained, of course.

Second, promote cross reading intelligence, not just internationally, but within the agency as well, between different departments, within different profiles. Identify such staff and create regular discussions among them for possible cases. And then lastly, in our experience sector enquiries are extremely valuable and informative, and this worked well for us on our approach to digital markets. Thank you.

MATTHEW Thanks, Margarida, and thank Rod and Alexandre. What an excellent advice for all
BOSWELL: of us to--

SUNG WOOK Matthew, I just want to add some of the Korean experience when you questioned
JOH: about advice to some younger agencies.

MATTHEW Yeah.

BOSWELL:

SUNG WOOK Because KFTC wants to build our digital team with very limited resources, and the
JOH: success of KFTC's digital team is related to our cooperation with other existing KFTC staff. So using these digital team's expertise, we ask them to share their experience with the existing staff and also train other existing staff. By doing so, we could

actually build our capacity with limited resources. So younger agencies with very limited financial resources, they should cooperate with existing staff members first. And also, if they could build, they should be cooperating with the other ministries to get more financial resources. That is our experience. And I think we are a little bit successful on this issue. Thank you.

**MATTHEW
BOSWELL:**

That's great Sung Wook. That's helpful additional advice for those who aren't getting additional resources at all. So what an excellent panel. Thank you to each of our panelists for sharing tons of information in just over an hour, and for telling us about some of the creative and interesting work undertaken by their agencies in the last few years and where they plan to go to stay current as we all struggle to deal with the challenging issues in the digital economy and digital strategies that are at our agencies.

So there is certainly a lot of food for thought in the ideas and experiences that have been shared today. And I think today's panel will inspire a lot more conversations inside agencies on what to do differently, what to do better, how to take lessons learned from our colleagues, and also to have the conversations between agencies. As Alexandre said very well, we have to cooperate, cooperate, cooperate to tackle these challenging issues together.

I'd like to say more, but the ICN secretariat is sitting directly across from me, Nigel Caesar, and he's giving me the death stare that I have to shut up. So a huge thank you to the panelists again. It was fun. Lots of informative information. Thanks again to the FTC and the DOJ for calling this all together. And have a great day or night everyone. And cheers from Canada. Goodbye. Thank you.

[MUSIC PLAYING]

**FLIGHT
CAPTAIN:**

Good morning, afternoon, and evening passengers. This is your captain speaking. Welcome on board ICN Airlines. Our flight MWG 2021 around the world through the promotion and implementation of mergers is ready to depart. Today, we are flying from Los Angeles with stops in Brasilia, Madrid, London, Tokyo and Melbourne. The weather looks good, therefore, we should have a smooth and uneventful flight. Please take your seat, fasten your seat belts and masks and pay attention even if you are a frequent mergers expert. Thank you, and enjoy our COVID free trip from

your desk around the merger world.

UNIDENTIFIED We enhance effectiveness of our merger review mechanisms.

PARTICIPANT 3:

UNIDENTIFIED We facilitate procedural and substantive convergence.

PARTICIPANT 4:

UNIDENTIFIED We promote the adoption of best practices in the design and operation of merger

PARTICIPANT 5: review regimes.

UNIDENTIFIED In the MWG, we promote and maintain the merger cooperation framework.

PARTICIPANT 6:

UNIDENTIFIED We update the MWG contact list.

PARTICIPANT 3:

UNIDENTIFIED We have a network of more than 60 jurisdictions and 500 NGAs participating in our

PARTICIPANT 7: projects.

UNIDENTIFIED We will discuss how we conduct merger reviews for [INAUDIBLE].

PARTICIPANT 3:

UNIDENTIFIED Last year, we published our report on conglomerate mergers.

PARTICIPANT 6:

JOEL BOMFORD: ICN colleagues. I'm Joel Bomford, the Senior Director of Mergers for the UK Competition and Markets Authority. Along with our colleagues from Japan and Spain, we've had the pleasure of co-chairing the mergers working group in 2019-2020. And I'm here to talk through some of the high points of the year. This year, the work product of the mergers group is focused on conglomerate mergers and procedural infringements.

We conducted detailed surveys of agencies' experiences and have produced 2 summary reports, which can be found on the ICN website. These reports that have the experience of agencies across the world can provide information on both analytical assessment and procedural matters. We believe they can be valuable to agencies looking to understand how they compare to others and NGAs wishing to

gain an insight into the different practices across the globe.

The working group is also an excellent way to hear how agencies and NGAs are developing and adapting their approach to certain issues. And as such, we have held a series of global webinars on digital mergers, exploring novel issues around mergers in dynamic and rapidly evolving markets. Over the past couple of years, to help greater participation by members from across the world, we've held a series of regional webinars. And this year, we focused on the topic of sound decision making.

The participants discussed and shared experiences in relation to evidence based decision making, transparency, and independence. Finally, the merger's working group, in cooperation with the ACCC, hosted the 2020 ICN merger workshop in Melbourne, Australia. This was a fantastic event, and led to some very healthy discussion and debate around how to find the right balance in approaching merger control and remedies in a changing market environment, just as we began to see the world impacted by the coronavirus pandemic.

Lastly, I would like to thank all members of the working group, and in particular, our colleagues from Spain and Japan for all their contributions and ongoing efforts in the work of the mergers group. I would also like to extend a warm welcome to our colleagues from CADE in Brazil, and we look forward to working with him in the year to come.

[MUSIC PLAYING]

**BEATRIZ DE
GUINDOS:**

The CNMC was designated in 2019 as a co-chair of the merger working group. It was a great honor and a pleasure to get more actively involved in the ICN merger community. Our main challenges of the first year were twofold. On the one hand, participating in the internal organization and coordination of the merger working group with the help of our colleagues from the former and current co-chairs such as the CMA from UK, CADE from Brazil, and the JFTC from Japan.

On the other, co-leading together with the CMA, the procedural infringements project, which looks into infringements in merger control proceedings. As for the upcoming year, the merger working group has launched several work products. First, merger control in terms of crisis. CADE together with the help of other regional competition authorities such the JFTC, the CNMC, the competition Bureau of Canada,

and the Egyptian Competition Authority will organize a series of regional webinars to learn from experiences all over the world on dealing with the pandemic and merger control. The series will-- the webinars will be conducted during September, October 2020 after the ICN annual conference.

Second, the joint ventures project. The CNMC will lead this project, which will consist in a survey looking into the assessment of joint ventures in different merger regimes in different jurisdictions. The final product will be a report with the results of the survey in 2021. Another work product looks into merger remedies. The CMA will lead a series of webinars focusing on the way competition authorities deal with merger remedies including behavioral remedies, structural remedies, as well as a coordination of multi-jurisdictional remedies. Last, but not least, in light of the relevance of the merger notification and procedures template, the merger working group under the leadership of the colleagues from CADE will review the template, which was last updated in 2009. Thank you.

[MUSIC PLAYING]

**ALEXANDRE
BARRETO:**

Good morning. It's a pleasure to have you on board of the ICN airlines. Thank you for flying me first today, and stopping in Brazil. I am Alexandre Barreto, president of CADE, the Brazilian Competition Authority. Along with my fellow peers from Spain and UK, we are co-chairs of the merger working group. As you could experience during our flights today, the merger working group is committed to promoting the best international practices in merger review and contributing to effective competition enforcement and policy around the globe.

Based on Brazil's experience, we can testify that ICN's recommendations, work products, and of course, the collaboration with our international counterparts have been significant allies in the process of enhancing our practice, especially in merger analysis. Our aim is that the merger working group can continue to serve as a platform for its sharing of experiences becoming more and more diverse and inclusive, and helping the international competition community to better deal with the challenges of our times.

This year, in particular, we face the challenging period with great courage and we were stronger because of each other's support and cooperation. We aim to keep

working on enhancing merger analysis learning and evolving from the challenges in working for the promotion of some competition all around the world. Our voices and experiences matter to the ICN. That's why we encourage all ICN members from all regions to participate in our projects. Your contribution is essential to the ICNs mission.

**FLIGHT
CAPTAIN:**

Passengers, this is your captain speaking again. We are approaching our next stop, Tokyo, where our colleagues from the JFTC will explain the conglomerate mergers project report successfully completed in 2020.

**SHUNGO
OMIYA:**

Thank you, Captain [INAUDIBLE]. We, Japan Fair Trade Commission members, welcome all the passengers of the study tour. We would like to take this opportunity to thank you very much for your full cooperation. And it was such a great pleasure to work with you a co-chair of MWG from 2017 to 2020 [INAUDIBLE]. From Tokyo, we would like to introduce some of the latest MWG activities JFTC [INAUDIBLE].

We'd like to begin with ICN conglomerate merger project report, which is published last June. The ICN merger working group selected a conglomerate mergers as the final topic for its series examining aspects of non-horizontal mergers. For purposes of this project, conglomerate mergers were defined as mergers involving products or services that customers perceive as complementary or for which customers may have independent demand.

The merger working group tour in the digital world continued in 2019 to 2020. We organized a new experience sharing teleseminar series on digital mergers. In October 2019, speakers from agencies introduced expert reports on digital economy and it's relevance to merger review. In January 2020, distinguished speakers discussed cutting edge issues on nascent competitions.

In addition to those activities, the MWG continues to maintain the merger cooperation framework, currently consisting of 61 competition authorities around the world. The framework provides contact details of agency liaison officers to facilitate information exchange between cooperating agency case team. The JFTC continues to administer the framework and promote it based on the user savvy and the creation of the new tools such as a flyer and sample information request form.

Again, thank you very much for your full cooperation. And it was such a great

pleasure to work with you. The JFTC stepped down from co-chair of MWG in May. But we are happy to continue to contribute to the future project of the MWG.

UNIDENTIFIED Now, flight MWG 2021 cleared for takeoff from Tokyo.

PARTICIPANT 4:

UNIDENTIFIED Bye bye.

AUDIENCE

MEMBERS:

FLIGHT Passengers, this is your captain speaking again. We are approaching Melbourne.

CAPTAIN: Last and final destination of our flight around the merger world, where our colleagues from ACCC will explain the latest ICN workshop successfully celebrated in 2020. Thank you for flying with us today. We understand you had a choice of working groups. We're very grateful you spent time with the MWG.

ROD SIMS: In late February, we hosted the 2020 ICN merger workshop. After so many years of being a guest going to this workshop all over the world, it was an absolute delight to host it in Melbourne this year. We welcomed over 200 attendees from 45 countries, a diverse mix of attendees from around the world ranging from agency heads, to case offices, and of course, our distinguished NGAs. I was delighted to see that many of the attendees were from competition authorities who were just developing the merger regimes. I feel it was a blend of differing experiences and perspectives that made the workshop discussions so valuable.

The workshop sessions were built around the theme of how authorities can achieve the right balance in their approach to merger review in a challenging market environment. And of course, we've had one hell of a challenging market environment. The plenaries focused on big picture issues such as, who should bear the burden of proof in military cases? Is there a need to rethink our approach to merger assessment in digital markets, which of course, is an issue that's going to be with us for a number of years to come? And thirdly, how authorities individually and collectively are approaching key questions of process and procedure?

There were also breakout sessions on targeted topics, which included the latest economic thinking, international remedies, technology-assisted document review, and international cooperation in merger review. We received overwhelmingly

positive feedback about the workshop, which was great. Its success, of course, was due to the lively and active participation of both the attendees, but of course, also the speakers and the moderators who contributed so much to setting up the platform for such insightful discussions.

Of course, the benefits of these workshops extend well beyond the formal sessions and the agenda topics. The time attendees have to mix and meet and share stories and experiences is always incredibly valuable. The magnificent dinner at the Melbourne Museum that brought us together highlighted the conglomerate built up during the workshops. I think it is vital that we build on the goodwill and the experiences of that workshop and, of course, all the ones that have preceded it and continue to exchange information and foster cooperation on the common merger issues we all face across the globe.

In February, attending a workshop such as the one we held was commonplace, we did it all the time. But since this absolutely dreadful pandemic, of course, we can't do that. What we can do is use the video facilities we're using today, which I think is just fantastic to keep us all together, to keep us communicating. What I hope and what I know you all hope is that very soon we'll be able to meet again in person, share stories, have great discussions in person over a cup of coffee or a glass of wine. And I hope that's not too far away. Until then, stay safe. Thank you very much.

UNIDENTIFIED Thank you for your active cooperation in merger working group last year.

PARTICIPANT 8:

UNIDENTIFIED You, the national competition authorities, and our valued NGAs are what makes this

PARTICIPANT 4: group proactive and effective.

UNIDENTIFIED We look forward to working with all of you in our project next year.

PARTICIPANT 3:

[MUSIC PLAYING]

EDITH RAMIREZ: Greetings everyone from-- greetings everyone from Los Angeles, and welcome to the merger working group plenary session on digital mergers. I'm really delighted to be here with you and with this terrific panel whom I'd like to introduce. We have first,

Commissioner Reiko Aoki from the Japan Fair Trade Commission. We also have President Cani Fernández, from the National Authority for Competition and Markets, Spain, Chairman Ashok Kumar Gupta from the Competition Commission of India, and President Alejandra Palacios from the Mexican Federal Economic Competition Commission.

So I want to-- before we get started, I'd like to tell everybody that we are going to be reserving time at the end to answer audience questions. I really encourage everyone to be thinking of questions as we go through the session. And please email them to either icn2020@usdoj.gov or icn2020@ftc.gov. Why don't we go ahead and just dive right into our session? Now, the focus of our panel is digitalization and its impact on merger analysis. I'd like to ask each of you to talk about how the digital economy has been impacting your jurisdictions? And how much of an issue you've had to address in connection with the digital economy and digital mergers in particular? And specifically, please highlight any particular unique challenges that you may be facing at your agencies in connection with the complexities of digital mergers. So why don't we start with Reiko. How about if we lead off with you?

REIKO AOKI:

Thank you Edith. First of all, I'd like to thank the ICN team and the people at this cartel, and the organizers-- local organizers, at FTC and DOJ for making this digital annual conference possible, and also thank you, Edith, for organizing this panel and getting up at 5:00 AM in the morning in LA to [INAUDIBLE]. It's great, we appreciate it. And I am very grateful for this opportunity to share the Japanese experience with the panel of distinguished heads of authorities.

Now, getting back to Edith's question about unique challenges-- yes, there are unique challenges and JFTC has responded in 2 fronts-- 1, revision of documents, such as the merger guidelines, and 2, the actual review of the digital mergers. So the first one, JFTC revised the merger guidelines and also documented that outlines of merger review procedure. And both were revised last December. The changes clarifies JFTC's views on how to analyze the acquisition of startups, firms that are small, but have important assets for competition, such as data or intellectual property.

We also made it clear how we actually take into consideration important

characteristics of digital services such as multi-sidedness of markets, quality competition-- not just price, but quality competition-- direct and indirect [INAUDIBLE] cost. On the second front, we'll review 2 merger cases, which I'll elaborate later, I think. We identified 3 important aspects of the digital merger review compared with the non-digital cases. 1, importance of review of internal documents. They can give an insight into the unobservables and possible future plans of the [INAUDIBLE]. 2, evaluation of indirect [INAUDIBLE].

Digital platforms often conduct different businesses such as advertising and news delivery. Transactions in one market can effect competitive position in another indirect network effects in one side of the market. And 3, assessment of data JFTC evaluated the relevant data according to the criteria for 4 Vs-- variety, volume, velocity, and value as it has been described in the newly revised merger guidelines. Thank you.

CANI Hi, Edith. You were on mute, but I guess--

FERNANDEZ:

EDITH I apologize. Please tell us what's been happening in Spain.

RAMIREZ:

CANI Thank you, thank you Edith. Well, as you all know, many of the issues that digital
FERNANDEZ: mergers pose are not entirely new. We have challenges that are there for many other sectors, not only digital. But it is often, the actual scale of the issues that arise, and the speed of change that can be a challenge. Reiko was mentioning aspects such as multi-sided markets, network effects, and economic scale are not new.

But digitalization greatly broadens the scope and the same can be said for innovation, which also plays a very relevant role in these markets and can be a key part of matter of competition. As I will mention later, and I think that is probably the most significant difference that we are facing in Spain with digital mergers, we have reviewed a number of digital mergers due to our market share threshold. We will see that later on when we discuss it, but we have a merger through threshold on top of the turnover 1, and that has allowed us to review several mergers in the digital area, which are reviewed by a specific unit that handles all cases related to

information society. This has made us-- let's say that we have had the ability of gaining experience in this particular field, and the amount of expertise that we have gained has also allowed us to interact with the European Commission, as you would see, for these fast changing markets. Thank you.

EDITH

Thank you, Cani for that. Let me turn to Ashok to tell us about what's been

RAMIREZ:

happening at the CCI when it comes to digital mergers? And how it's been impacting the agency's work?

ASHOK KUMAR

Thank you Edith. Let me, at the outset, thank the organizers for this virtual

GUPTA:

conference. Effective merger control is critical in the inherently concentrated digital markets to preserve competition and protect consumer interests. However, it presents some unique challenges. First, do the competition enforcers have jurisdiction over all potentially anti-competitive transactions in digital mergers, or is there an enforcement gap? Second, is the competition toolbox at the disposal of the authorities adequate for substantive assessment of digital measures? And finally, what remedies are suitable to mitigate the harm likely to be caused by a digital merger?

For instance, a competition authority may face challenges while defining the relevant market. The relevant market definition adopted, say, 2 years back may not necessarily work today. For instance, when we reviewed a merger between 2 online travel agencies in 2017, the commission incorporated online and offline modes in the same relevant market. However, 2 years later, in a recent antitrust case related to the same OTAs, it was observed that the intervening period has seen the online travel portals gaining a distinct and a significantly more prominent position in the hotel reservations based in India. Accordingly, the commission found it imperative to consider the online segment as a separate relevant market.

Another key challenge relates to the postulation of the theories of harm In digital markets the theories of harm may need to be augmented as the focus cannot just be on price effects, price being a non significant metric of competition in many digital markets. Factors such as data, quality, choice, and innovation that shape the competition landscape would therefore, be the relevant matrix for formulating the theories of harm.

Similarly, in cases of acquisition of nascent firms, a major challenge would be formulation of a relevant counterfactual. How likely is the target maturing into a competitor in the absence of the merger? This may be difficult to gauge at the time of the acquisition. The evidence gathering exercise may thus have to focus on likely development path and growth of the target product and the acquirers product, and therefore-- and there could also be data driven acquisitions which may lead to concentration of data or may give rise to issues of market power on account of data synergies. Here too it may be challenging to determine whether the data sets that are being integrated are unique and cannot be replicated.

Merger cases in digital markets reviewed by the commission have not been many. This could be either due to the fact that not many deals qualify to be notified or the global deals do not have a local nexus. The legal framework set out in the Indian competition act for determination of appreciable adverse effect on competition is broad enough and gives us the flexibility to develop and test all such theories of harm that may be relevant in digital markets. We are open to bringing such new dimensions in our substantive assessment. At the same time, we are cautious not to let speculative theories replace objective and evidence-based analysis. Our interventions are guided by case-specific economic evidence of competing concerns, and we intend to follow the same even in digital markets. Thank you.

**EDITH
RAMIREZ:**

Thank you very much. Let me now turn to Alejandra. Alejandra, can you tell us how much of an impact the digital economy is having in Mexico? This is a topic, of course, that we discussed at virtually every conference and then certainly it is that key focus of this annual conference. Can you tell us what-- is it impacting the day to day work of your agency?

**ALEJANDRA
PALACIOS:**

Yes, it is, of course, in many ways in enforcement, of course, and also in our internal organization in terms of how many resources we're dedicating it to our new digital unit. And mergers is not different from that. And we have been acquiring experience in the digital era now regarding merger review. We had one very interesting one last year between Walmart and Cornershop, which was blocked by the commission. So we have a blocked merger review now.

And I'll explain the case a little bit further. But of course, this type of mergers do represent important challenges. And as my colleagues of the table have said, I

think challenges, are both in the definition of the relevant market and then also in analyzing and trying to demonstrate if there is a theory of harm. And I think this is especially challenging in those cases where the purpose of the transaction seems to be the diversification and creating an ecosystem. We believe in Mexico it's more challenging when the merger has to do, as I was saying, with expanding the ecosystem because this transaction, if it is in that case, will strengthen entry barriers that will discourage end users from multihoming and other behaviors in several markets, not just in the market that you are primarily analyzing.

And as you said, these digital markets have certain intrinsic characteristics that are relevant for competition and that's why this is a theme in the ICN-- the network effects, no marginal cost, that accumulation multi-sided market with different prices, et cetera, et cetera. And that's why, it's also very challenging to assess a theory of harm behind this analysis. And then there's always a challenge that when you're analyzing digital markets, this involves the processing of large volumes of data. It's not that you analyze the data, the merging parties will accumulate-- you do that, of course, and they expect that. But then as you make your analysis, you need to process a large volumes of data. And that's something new.

And then there's another level of uncertainty in these markets that has to do with judicial review. We were analyzing something that's new and challenging and that eventually will be reviewed by the judiciary. And we don't know yet [INAUDIBLE] how these markets work. So that's another level of challenge. Thank you.

**EDITH
RAMIREZ:**

Thank you Alejandra. I'd like to take a slightly deeper dive into a few of the issues that have been mentioned. I'd like to start off by discussing the issue of notification thresholds, which has been an obstacle for certain jurisdictions and certain agencies to reach digital mergers. So let me turn to Cani to tell us about what's been happening in Spain in that arena.

**CANI
FERNANDEZ:**

Thank you Edit. Yeah, as you mentioned, one of the challenges that the agencies face regarding digital mergers is capturing those that have competitive significance. In spite of the turnover of the parties involved below, this as we know is the case, for example, in highly dynamic markets in which users do not pay a monetary price for a given service. Therefore, no rise in the midturnover. In this context, I see no others, but this particular market share come be a better proxy for

the competitive relevance of a merger than turnover.

As I was mentioning before, the Spanish system along with a classical turnover threshold, that is a market share one, that allows transactions where the resulting market share is relevant, typically 30% with some exceptions [INAUDIBLE] 50%, but typically the market [INAUDIBLE] 30% to be reviewed. This threshold has, in fact, now enabled us to analyze the number of mergers in the digital sphere.

In 2019, we reviewed 8 digital mergers, 6 of which-- so roughly 75% of them-- only made the market sharing threshold. We have looked into sectors ranging from online pricing, comparison of financial products, apps for mobile paid parking, and other platforms in the food delivery sector. And we have analyzed the competitive significance of some of the aspects that are generally associated with digital markets, of course-- network effects, returns to scale or innovation. This threshold has also allowed us international cooperation inside the ECN, because we have been able to refer some cases to the European Commission in cases where the European Commission would not have their jurisdiction. So yeah, I think it is allowing us doing our job properly, I would say. Thank you.

EDITH Ashok, tell us about India.

RAMIREZ:

ASHOK KUMAR The merger control regime in India has a mandatory premerger notification system with transactions that need the notification thresholds having the statutory obligation to notify the commission for ex-ante, competition scrutiny, and preclearance. The threshold is stipulated in terms of the turnover and asset. The threshold is relatively high in India, thus imposing the notification requirement only on high turnover or asset enterprises. The commission also does not have jurisdiction over transactions if the targets turnover or asset is below \$134.6 million and \$47 million respectively.

This raises a concern of a potential enforcement gap in merger control in digital markets. The business model in digital markets is such that they may not generate sufficient revenue in the early stages of development. The focus of a business may then be typically on creating a large user base, collection and analysis of significant amounts of data, but unleashing the network effects. Further, technology startups

may also be asset lite and derive their value from intangible assets, such as data. In such cases, the value of the target's turnover or asset is a rather poor indicator of the acquisitions significance for competition. Therefore, relies solely on the turnover or asset thresholds exposing the regime to the risk of letting high value transactions in digital markets escape the radar of permission despite such transactions posing anti-competitive risks.

In 2018, the government constituted a competition law review committee to comprehensively examine this issue. In view of the blind spot that asset turnover based thresholds may lead in digital markets, the committee recommended introduction of any other criteria for notification that may include a deal value threshold. Information available in public domain suggests that the digital space in India has witnessed a number of transactions in goods, e-commerce, ride hailing, online food delivery, et cetera, some of which might have been used as a strategy to consolidate market positions, eliminate potential threats or to expand into new lines of businesses.

However, there is no readily available comprehensive data set on digital mergers in India to assess the number of transactions that escape the competition scrutiny on account of the turnover or asset-based notification system, and whether some of those posed anti-competitive risk, which warranted the commission's attention and intervention. With a view to bridge such information gaps that currently limits the understanding of combinations in digital markets in India, the CCI has initiated a study on mergers and acquisitions in digital markets to track the non-notified acquisitions and mergers in the digital sector in India, the deal values and the trends and patterns of such transactions to provide an empirical basis for the legislative amendment going forward.

The study is expected to serve as a groundwork necessary to come up with possible notification criteria that may be appropriate to capture digital transactions for antitrust scrutiny. However, it will be ensured that the threshold catches only those transactions that have a significant economic link to India and the parties are not burdened with unnecessary compliances.

**EDITH
RAMIREZ:**

Thank you. Reiko, I know this is an issue that the JFTC has also been thinking about. So would you tell us about what's been happening?

REIKO AOKI: In the revision of the draft guidelines, JFTC made clear that we will review non-notifiable mergers with potentially significant impact on competition because of a local nexus. Under the anti-monopoly log, JFTC has always had the authority to review non-notifiable mergers. So even if the transaction has been completed, JFTC can take proper measures if necessary. And one of the examples that I will talk about later was such a case. So while the JFTC feel compelled to review non-notifiable mergers, if a large digital platform upgrade or acquires a startup that has small Japanese sales that potentially can impact competition in the Japanese market in the future, such transactions will not be notified to the JFTC because they are not [INAUDIBLE] threats, so it is based mainly on the turnover.

The revised merger procedure policies makes it clear that JFTC will be concerned and will provide a benchmark when non-notifiable mergers should consult JFTC. So 1, total consideration for the acquisition exceeds JPY 40 billion and 2, the transaction is expected to affect Japanese consumers-- specifically if the merger satisfies one of the following 3 conditions. 1, the business base or research development base of the acquired company is located in Japan. 2, the acquired company conducts sales activities targeting Japanese consumers such as opening a Japanese website, or using a pamphlet in written in Japanese. 3, the total domestic sales of the acquired company exceeds JPY 100 million. We feel this clarification is flexible, yet predictable and therefore workable. Thanks.

EDITH RAMIREZ: Thank you Reiko. Now, once your agencies are looking at these mergers, we've been talking about some of the characteristics of digital mergers that may lead to specific challenges during the course of a merger analysis including potentially market definition, the fact that there may be multi-sided markets, network effects, the role of data. Let me start with Alejandra. Alejandra, can you give us an example of merger analysis in which you've been confronting some of these issues? And explain to us how your agency has dealt with them.

ALEJANDRA PALACIOS: Yes, Edith. Thank you very much for the question. As I mentioned before, our landmark operation analysis or case in the digital markets is the acquisition by Walmart of Cornershop. Walmart, as many of you know, is a retail company that operates supermarkets and pharmacies, online stores, and it's particular in Mexico because it is by far-- when I say by far, I mean really by far-- the largest chain of

retail stores in Mexico, measured both in the number of stores and total sales. For example, total sales are 4 times larger than its closest competitor.

And Cornershop offers immediate delivery of products offered by retailers through its website and a mobile app. And Cornershop at that time, when we analyzed the transaction, was and maybe is the largest in its type-- within those type of companies that operated in Mexico's different cities. So the merger would have implied a vertical integration in terms of the challenge regarding relevant markets.

As an agency, when you have a two-sided platform, there are 2 ways or 2 different approaches that could be followed. One could be to define a market for each side. And so then there what you do is you analyze each side, and you analyze the interdependence or the interaction between both markets through the platform, and that we analyze [INAUDIBLE] effects, and that is referred to as multi-market approach. That could be a way of analyzing. And then there's the alternative of defining a single market for both sides of the platform. And this is referred to as the single-market approach.

And from what I understand from the literature is that neither of the two approaches seems to be right or wrong as long as the analysis appropriately takes into account the interdependence, and all the competitive forces of each side of the market. And as always, it's a case by case scenario. And the thing that is important is that if you decide to analyze separate markets for each customer group, it is very important that you take into account the linkage generated with the platform interaction.

So what we believe is that the bigger the independence of both markets, the correct approach would be to define the single market. And that's what we did in the Walmart-Cornershop case. We decided to follow a single-market approach. And then also, being very conservative, we also analyzed the effects of the merger in both sides of the market. And we found 3 types of potential concerns-- 1, that Cornershop would refuse to offer its service to other retail chains, competitors of Walmart. We also found that Walmart could refuse to retail its products on other platforms starting to operate in Mexico because it wanted to protect its Cornershop. And then, another one had to do with that Cornershop and Walmart together, they would have access to information produced from everybody who sold in that

platform-- I mean, stores.

So it could happen that other stores, competitors of Walmart, could abandon the platform because they didn't want Walmart to have access to the strategic information. So these concerns were notified to the parties. We didn't find specific remedies that could eliminate our concerns. And as a consequence, we decided to block the operation.

EDITH

RAMIREZ:

Thank you, Alejandra. And certainly, multi-sided markets are a major issue in the United States, particularly following Supreme Court's decision in the American Express case. Let me turn it over to Reiko to discuss one of the matters that JFTC has looked at.

REIKO AOKI:

Thank you If we could put up the slides. It's up there, isn't it? OK. The slides are up there. I'd like to introduce one case that involves a two-sided market and database, and briefly go over another one if I have time. Could we go to case 1 slide, please. As it says in the left hand corner, this is the case where Ultra Mark bought shares in M3. And it is a vertical merger, and conglomerate merger involving drug information provision platform, operation business, which is a two-sided market with doctors on the one side and pharmaceutical companies on the other.

And it also involves a very big database-- a medical database called MDV. And Ultra Mark is the owner of MDV. MDV is very unique because it includes the doctor computer file code unique for each and every doctor. It also has the license status of the doctors that are confirmed. And it's also kept up-to-date through open source maintenance mechanism by members. So it's a very valuable database. We evaluated based on what we stated in the revision of merger guidelines assessing the importance of data by asking what kind of data and how's they collected, how much, how wide range of data on the health is collected, how frequently collected, and how the data ownership is distributed among the relevant parties.

While going to be two-sided platform, M3 is one of the largest competitors in the drug information provision platform operation business. And Ultra Mark provides the data base as noted in blue lines to M3 and to all its competitors. So what were our concerns? They're stated in red in the slides-- 1, obviously refusing to provide the data to M3's competitors, 2, acquisition of confidential information about

competitors by M3 through Ultra Mark and M3 [INAUDIBLE] data and service to pharmaceutical companies that it caters to.

These were our concerns, and we agreed on the following remedies. 1, commitment by Ultra Mark M3 to provide data to all members of the platform visitors on nondiscriminatory terms, information firewall between Ultra Mark and M3 by separation of appointments-- so it's almost a physical firewall, and regularly reporting to JFTC for the next 5 years, and we have 4 more years to go. So we'll see what happens. But we're quite confident the remedy is very workable.

I'd just like to say briefly [INAUDIBLE] on case 2 if I may. The next slide, please. And this is the merger of Line, which is a social network platform and Z holdings, which owns Yahoo. And Line is a social network that does advertising, also provides news, and provides online payment service using QR code on its platform. ZHD is a holding company that owns Yahoo and also PayPay, which is separate from Yahoo, but is also an online payment service. So Line and ZHD holding actually interact, have presence in several common markets use distribution service, advertisement related business, which are not on the slides, and online QR code-based payment service, which is on the slides.

There are other big players in the first two markets. So our greatest-- our main concern was the online QR code-based payment service. Our concern focused on several factors. 1, it's a two-sided market with indirect network effect and the combined share of the two firms is going to be 60% in this code-based payment service. There's limited pressure from alternatives such as credit cards and other payments, and use of data that is accumulated from other servers, and how the data will be merged. And to address our concerns, the merger was approved with several remedial measures which are on the slides. And I think I'll have an opportunity to talk about it later. So I'll leave it there. Thank you.

EDITH

Thank you Reiko. Let me turn to Cani.

RAMIREZ:

CANI

Hello. Thank you Edith. In fact, I do have 2 slides, if we can project them. The first one, well, most of the digital mergers that we have reviewed concern online platforms. In fact 5 out of 8 in 2019, which as I was saying before, giving us the

FERNANDEZ:

opportunity to look into some of the characteristics of market definition in multi-sided markets. As you can see in the first one, a good example of this are the online food delivery platform cases that we have handled. Since in 2016 Just Eat acquired its competitor La Nevera Roja-- so for those known speaking, The Red Fridge that is called La Nevera Roja.

You see that there have been 4 mergers in this field-- in the food ordering marketplaces. I'm going to discuss only those 2 that Just Eat carried out. So as I was saying in 2016, Just Eat acquired La Nevera Roja, and the competition commission decided to analyze the transaction to define 2 different markets, one for each side of the market. Please, can you go to the second slide.

So in this first transaction in 2016, these 2 different markets that we had were on the one hand, the national online platform market for food delivery in which restaurants demanded services from the platform and on the other hand local markets for whom-- sorry, for home food delivery services where platforms compete with restaurants that provide their own delivery to final customers. As we will mention later on when we discuss remedies in this particular transaction, all competition concerns were addressed and one remedy was imposed. So I will leave that for later on.

But let's go to 2019, where we have to look at this market again when Just Eat bought a competitor that only operated locally in the Canary island, which for us is a clear relevant market in itself. So in light of the fact that these were transactional platforms, we can see whether one-sided market should be defined instead of two. We, therefore, conducted a market test, which pointed towards the restaurant delivery systems being more complementary than it's substitute for online platforms.

However, I have to say that the market test was not conclusive enough and the definition ultimately adopted would not alter the conclusions of the analysis. So we decided to leave the definition of the market open. In both cases, the interaction between both sides of the market were, of course, analyzed as well as the existence of network effects and economies of scale. So I would say that sometimes this is more a question of semantics than what we do, in fact, because we really look at those effects that in fact produces this interaction of the markets.

But it was very interesting to check how the markets had evolved from the first [INAUDIBLE] to the second, not only in terms of market definition, but also in terms of how our remedies in the first case interacted with the market in itself and [INAUDIBLE] evolve. We will discuss that later on because there is a specific question on remedies. Thank you very much Edith.

CANI
FERNANDEZ: Thank you Cani. Just a reminder to our audience. This is an opportunity to ask questions to our very esteemed panelists. So just as a reminder, please send your questions to either icn2020@usdoj.gov or icn2020@ftc.gov. So please ask your questions, and we will turn to those at the end of the panel. Let me ask a question about what the impact of COVID and the resulting financial and market uncertainty that we've seen. Is that having any impact on your review of digital mergers? And I know that this has been a bit of an issue in Mexico, so let me have you address that.

ALEJANDRA
PALACIOS: Well, without any question, we all know that the pandemic will lead to long term shifts in competition patterns-- in consumption patterns, and that has an impact on competition. However, there's always winners and losers in these type of crises. So many industries and firms including some digital ones are or will be in distress, and may exit the markets due to the economic crisis. And in these cases, what we have to do as competition agencies is to conduct a rigorous analysis, but very important, in a timely manner to avoid loss of supply. And we also need to be receptive regarding failing firms-- yeah, receptive to their defense.

And in Mexico, for example, we've never had a filed case where there is a defense regarding failing firm. So that will come-- I'm sure it will come, and it will be something new for the Mexican antitrust agency. And also certain firms started their negotiations prior to the pandemic and their cases are filed, and they're being analyzed by us and they're in financial distress. And it does happen that we have cases that were filed previous to the pandemic and maybe they won't come about because of this financial distress I mentioned.

And then also, of course, there's other firms that are striving and expanding, and many in the digital arena are within this bucket. Clear examples are e-commerce and grocery delivery services through all platforms. For example, we have a case-- we're analyzing a case, where from when the case was filed up till today, their sales

have grown dramatically, and it has to do with a pandemic. So they've grown and they're deep in their market power during the crisis. So maybe the information we had at the beginning of the analysis is different from what is happening now several months later.

But I suppose that this growth allows us as a commissioner-- as a commission, I'm sorry, to anticipate the future and better predict how the market will work in the following years. So the issue that they've grown might help us make better decisions regarding those types of transaction in particular. We know those firms are growing and because of consumption patterns, they will grow in time and they will be with us for a long time. Thank you.

**EDITH
RAMIREZ:**

Thank you Alejandra. Did anyone else want to comment on that. Certainly back during the 2008 global financial crisis, there were certainly arguments being made about how the antitrust laws are to be applied, perhaps more leniently or differently as a result of that. So if anybody else wants to comment, let me know. But if not, we're happy to have you to move on to the issue of remedies. Let me start with Ashok, but both Reiko and Cani have touched on the issue of remedies. Given the particular characteristics that we see in digital mergers, is that leading, Ashok, to a different approach when it comes to remedy perhaps a move away from the preference from structural remedies in certain jurisdictions? How are you examining that issue and thinking about that issue?

**ASHOK KUMAR
GUPTA:**

Thank you. Designing appropriate and effective remedies that eliminate the potential harming consequences of digital mergers is critical and not without challenges. The guiding principles under which remedies are devised in digital mergers remain the same as in any other sector that is to impose remedies only when a threat to competition has been identified. To devise remedies that are effective as well as proportionate to address the competition concerns and to have a flexible approach in remedy design so as to account for the specificities of the market and the transaction in question.

The nature and scope of remedies are tied to the identified theories of harm. In digital markets, competition harm often may not emerge from horizontal concentration or due to removal of a vigorous competitor, but from vertical or complementary issues. There could be concerns relating to data concentration,

collection, and sharing of user data. Large horizontal platforms acquisition of a vertical platform or that of a business, which arrives on the platform may give rise to conflicts of interest and platform neutrality issues.

Potential conglomerate effects may enable tying and bundling strategies that foreclose competition or incentivize discrimination and may raise specific concerns about digital platform envelopment. Many of these issues are best resolved through behavioral remedies. Hyundai-Ola remedy-- in a case in ride hailing industry, a transaction was accorded conditional clearance by the commission with a behavioral remedy imposed to preserve platform neutrality.

The commission assessed the impact of a car manufacturer taking stake in a radio-taxi aggregation service provider as well as entering into a strategic alliance to supply cars to the car leasing company of the target enterprise. Given the significant market position of the target enterprise, the commission required the parties too ensure that the radio-taxi platform operated by target is run objectively without any preference or discrimination solely based on the cars manufactured by the acquirer group.

Bayer-Monsanto remedy-- in Bayer-Monsanto, which involved both traditional as well as innovation markets, the commission imposed behavioral as well as structural remedies. The approval was contingent upon the combined entity granting access to the Indian agroclimatic data owned by the parties and used for the combined entities digital solutions on FRAND terms. It was also ensured that third parties have access to the combined entities commercialized digital farming platforms in India for supplying agricultural inputs to farmers. Non-discriminatory access issues or neutrality issues may in some cases be checked by sectoral regulations.

Thus, in evaluating mergers and devising remedies, the commission also takes note of the relevant regulations in order to see if some of the identified potential harms are addressed by them. Further, if the parties in their submissions give voluntary commitments which may alleviate such concerns, that too are taken into account by the commission. In the recent Jaadhu and Jio combination, Facebook made a categorical submission data sharing is not the purpose of the proposed commercial arrangement. In view of the above, the commission did not assume any data sharing or data integration resulting from the combination.

The digital economy is evolving, so we'll have to-- our approach. The digital markets being global, we also will have to work with our international counterparts through forums such as this who share best practices. Thank you.

EDITH

Thank you. Let me turn now to Cani. I'll just ask Cani, I want to make sure that we leave enough time at the end for questions. So just maybe short couple of minute answer on remedies. Thank you.

RAMIREZ:

CANI

Thank you Edith. Yeah, as you were mentioning, it is true that the competition may insist to prepare structural remedies to behavioral ones due to their immediate effect, often irreversible in nature, because they don't need to be monitored over time. However, in digital mergers, there are certain aspects that make behavioral remedies more appropriate.

FERNANDEZ:

For example, we are converting to highly dynamic markets, often innovative nature, and with notable scope for efficiencies most of the times. So in this scenario, these irreversible structural remedies may not be the most appropriate solution. And as Ashok has already mentioned, some behavioral ones like for example, access to relevant data or ensuring multihoming may be a better solution.

I was mentioning our Just Eat review in 2016. And I mentioned that we had imposed there a behavioral remedy. This was not-- I mean, we imposed Just Eat an obligation, what they assumed the commitment, not to enter into exclusivity agreements with restaurants for a given period. Now in the review of the 2019 case where Just Eat bought local online platform in the Canary island, we had the opportunity to look into the effectiveness of this remedy.

And we could see that 3 years after the merger, new players have successfully entered the market by signing on relevant restaurants. As a result, the market was noticeably less concentrated than in 2016, and we believe that that was the real quick remedy. Thank you, Edith.

EDITH

Thank you Cani. Reiko, I know that this is also an issue that you wanted to talk about briefly. Thank you.

RAMIREZ:

REIKO AOKI:

OK. Thank you Edith. I'd just like to finish up what I was talking about with the ZHD

and Line merger case. What happened at the end? We did not proceed to the second phase review. We let the merger go through with just the first phase. However, we agreed on the following measures-- they were not remedies in the strict sense. The measures were annual reporting to the JFTC for 3 years, taking additional measurements in the future if JFTC finds necessary.

And there are things that they are to report-- competition status of the market, merchant fees for the online market, and data related to core payment market. We decided that given the unpredictability of the market, but the concerns that we still had about data and the two-sided markets, we decided to leave a path for us to be involved and gather more information in the future. And we believe that this kind of remedy or measure can be a good solution to new challenges facing us with digital platforms. Thanks.

EDITH RAMIREZ: Thank you Reiko. I'd like to turn now to the topic of international cooperation. And I'll ask each of you to talk a bit about your experience cooperating with other agencies given that you are confronting issues that are challenging, areas where we still need to learn a great deal, about how these digital markets are working. Can you tell me if your experience has been that you're finding there to be greater divergence? What do you think can be done better in this area? So whoever wants to lead us off?

ALEJANDRA PALACIOS: I can start.

EDITH RAMIREZ: Great.

ALEJANDRA PALACIOS: Well--

EDITH RAMIREZ: And I'm sorry-- let me also just say, if I could-- I'll ask you all to just do a very concise answer of one minute so that we can get to a couple of questions at least.

ALEJANDRA PALACIOS: Yes, of course. Well, international cooperation has always been key for avoiding inconsistent results in the design of proper mergers and cross-border-- excuse me, to design proper remedies and cross-border mergers. And in the digital market, this

is especially important. Because in traditional markets, sometimes you can devise structural remedies that are very cross-cut where you divest assets, and with that you also divest brand patents, employees, clients, or whatever. This is different in the digital markets, because that information and other things are typically in the cloud. So in that case, we'll need more cooperation.

And then also what has happened to us, for example, in our Walmart-Cornershop case is that it was authorized in Chile, it was not authorized in Mexico. We had many conversations. And then, I find it very important to share experience in the digital markets. We've learnt important lessons, specifically from the US, United Kingdom, and the European Commission. We've been speaking about cases.

Our investigative authority in Mexico has been having conversations with other jurisdictions regarding possible future cases. And we've also learnt from our peers, and it was an input for the creation of our own digital strategy and our digital unit within the commission. So we have conversations all the time, and digital markets make international cooperation more important.

EDITH Thank you.

RAMIREZ:

CANI Let me add something on to Alejandra. I fully agree with what she said. Only from
FERNANDEZ: the European perspective, I would like to contribute that we have this merger referral system that I was mentioning at the beginning. And this has allowed the European Commission to be able to review merger cases in the digital area where the commission would not have had the jurisdiction in the first place, for example. And this was the case in the Apple-Shazam or in Facebook-Whatsapp.

First one was referred by several competition authorities that have market share through [INAUDIBLE] among them is Spain. And in the second case, Facebook-Whatsapp, it was request for referral that was done by the parties themselves for the commission to review it, because they could see that it was better a one-stop shop. So we have this mechanism that allows us in a way that the authority is best placed to analyze a merger that's it in the first place. Yeah, thank you.

EDITH Thank you. Reiko or Ashok-- go ahead Reiko.

RAMIREZ:

REIKO AOKI: Oh, thank you. I just wanted to mention the ICN merger working group's conglomerate project report that's on the ICN website, and JFTC was able to contribute to the project as a leader. And the report has theories and case studies of conglomerate mergers, also web seminars, webinars to enhance the members' understanding of the theories and to share experiences. And it's often said that these reports are good reference for young agencies. But as far as digital mergers go, I think we're all young agents in a way and we probably can all learn from a report such as this. Thank you.

EDITH Ashok, any brief remark.

RAMIREZ:

ASHOK KUMAR Yeah. CCI is a votary of cooperation amongst competition agencies. As regards to
GUPTA: merger cases, we have more cooperation in this area with various competition authorities than any other area. CCI has successfully utilized the international cooperation framework of ICN for experience sharing and capacity building.

In addition, CCI has also entered into MoUs with a number of jurisdictions and is in the process of doing so with several others. This too has enabled CCI to pursue international cooperation successfully in the area of merger cases with different jurisdictions in more than a dozen cases. We have been cooperation in some very complicated merger matters such as Bayer AG and Monsanto company, Halliburton company and Baker Hughes, Agrium Inc and Potash Corporation to name a few. Our experience has been very positive and therefore, CCI recognizes the need for international cooperation and information sharing with other jurisdictions to deal more effectively with both conduct and merger cases. Thank you.

EDITH Thank you. So we've got time for questions. I think it's going to be a really good
RAMIREZ: question to close out this very interesting session. One of our audience has asked, what one issue would you recommend an antitrust agency to have top of mind in the mergers field in the coming year? So I will ask each of you just as a concluding remark, give very brief comment because we're very close to completing our hour. So very short answer to that. So well, who wants to lead us off?

CANI Let me start by saying access to data.

FERNANDEZ:

EDITH Anyone else? What's the one issue to have top of mind?
RAMIREZ:

REIKO AOKI: Could you repeat the question. I'm sorry, I missed it.

EDITH What issue would you recommend in antitrust agency to have top of mind in the
RAMIREZ: mergers arena?

REIKO AOKI: Top of mind?

EDITH Top of mind, what's an important piece of advice or an important issue that you
RAMIREZ: think is vital to be keeping in mind in the digital mergers arena?

ALEJANDRA PALACIOS: In my case, learning from others is really relevant, how to approach and analyze these markets, finding similar cases in other jurisdictions, and asking how they approach these analysis [INAUDIBLE].

EDITH Anyone else?
RAMIREZ:

ASHOK KUMAR GUPTA: I will say-- yeah, I will say that data is posing a big challenge in the merger analysis so far as digital platforms are concerned. Our laws are robust enough to take data as a resource while doing due diligence in the merger cases. But definitely it poses a challenge.

ASHOK KUMAR GUPTA: Thank you. Reiko any concluding--

REIKO AOKI: I also think data is important, but I think sophisticating theory of harm is very important, because things are so unpredictable. It's important to have a theory of harm in order to have an idea of what we should be looking for or what to ask for. It's partly a very personal view, but that--

ALEJANDRA PALACIOS: That is why, Edith, I talk about approaching other jurisdictions, because sometimes it's difficult to from nowhere have a theory of harm. So it's always good to learn and listen to what others are seeing and analyzing and seeking.

EDITH Absolutely, a great concluding thought on which to close. So let me thank all of you

RAMIREZ: for a terrific session. And also want to thank our audience. This concludes the program for today. I hope that I will see you at the virtual reception, which follows immediately the close of this panel. And also, I want to remind everyone that day 3 begins tomorrow at 8:00 AM eastern. And we'll have programs by the unilateral conduct and cartel working groups. So thank you again.

ALEJANDRA Thank you Edith. Thank you all.

PALACIOS:

EDITH Bye. Thank you very much.

RAMIREZ:

[INTERPOSING VOICES]