

TAHITI COMPETITION DAYS 2023 AND THE PACIFIC COMPETITION NETWORK AT A GLANCE

*Johanne Peyre**

Recently French Polynesia hosted an international competition law conference dedicated to insular economies in the Pacific. Sharing experiences and combining forces on a regional level is one of the main tools available for small market economies (SMEs) to overcome limitations on the ability to apply competition law effectively. Regional ties were established to benefit the Pacific community.

La Polynésie française a récemment accueilli une conférence internationale sur le droit de la concurrence, consacrée aux économies insulaires du Pacifique. Outre la constitution d'un réseau de professionnels et chercheurs au sein de la communauté du Pacifique, cette conférence a permis un partage d'expériences propres à chaque État ou territoire insulaire, Ce sont autant d'outils précieux mis à la disposition de l'ensemble des acteurs des petites économies de marché (PME) qui leur permettant de mieux appréhender et surmonter les difficultés rencontrées dans la mise en œuvre de leur droit de la concurrence respectifs.

I INTRODUCTION

Decades of supervision of the Polynesian economy have left their mark on all economic actors. There is still a lot of room for improvement, both in terms of fully integrating competition law and in terms of establishing close cooperation with all our partners in the Pacific Ocean, particularly those with a competition agency: Australia, Fiji, Papua New Guinea, New Caledonia, and New Zealand.

Over the last two years, the Polynesian Competition Authority (APC) has become part of an international dimension, contributing to the influence of Polynesia. Contacts among competition authorities are essential. These agencies are and must remain connected to the rest of the world and constantly improve their skills and expertise. The 130 countries or jurisdictions with competition laws apply the same

* Chair of the Polynesian Competition Authority (APC).

basic principles (prohibition of cartels, abuse of dominant position, merger control). It is therefore a common subject on which the jurisdictions or authorities responsible for enforcement can exchange views on the law's implementation. Of course, the treatment of a situation is always a case-by-case matter, but the exchange of best practices, the sharing of successful experiences, mistakes to be avoided and developments in economic theories are essential.

It is with this objective in mind that the APC organised the inaugural Competition Days in the region, held on January 2023. The common theme of this event was to ensure a better expertise, greater regional cooperation, and a good understanding of competition law in French Polynesia. It brought together representatives of institutions and administrations, members of the Pacific competition authorities, international experts, as well as Polynesian practitioners and economic actors. It was a three-day event focusing on themes specific to Polynesian institutions (day 1), Pacific competition authorities (day 2) and Polynesian economic actors and competition law practitioners (day 3).

In partnership with the Tahitian Business School, under the aegis of the local Chamber of Commerce (CCISM), students were involved in the preparation of this event. We went one step further and launched the Competition Trophies: the students worked in teams to produce educational videos on competition law topics. Our agency is keen on participating and engaging with students and the Polynesian community as a whole, contributing to its development and influence.

II THE CREATION OF THE PACIFIC COMPETITION NETWORK (PCN)

The inaugural Competition Days brought together nearly all competition authorities of the Pacific region to discuss common challenges and officially launch the PCN which is designed to promote competition in the region.

Founded by the ACCC, ACNC, APC, FCCC, ICC, NZCC and the PIF, this network includes all competition agencies of the Pacific and is also open to Pacific countries that do not yet have a competition law regime.

We are geographically distant and time zone differences adds a difficulty, but we must not be isolated. We must remain connected to the rest of the world and constantly strengthen our skills and expertise. Competition law is a subject that is intimately linked to the life of undertakings and to the evolution of the economic structure of the markets, it regulates the behaviour of companies with respect to competitors, customers, suppliers, and other economic actors of the market. Exchanging best practices with other competition authorities, sharing successful experiences and mistakes to be avoided, discussing developments in economic analysis theories remain essential. It is our responsibility to embrace all elements of

a case in the most informed way possible, to set a decision that is best suited to the circumstances. We owe it to the economy and to businesses, whether they are notifying parties, complainants, or respondents, and we owe it to consumers.

Because of remoteness and limited resources, the benefits of establishing or strengthening such links with other authorities are particularly relevant to an agency such as the APC. We must ensure that expertise is maintained and developed. Our ties with the French authority, but also with many authorities in the Pacific (Australia, New Zealand, Papua New Guinea, Fiji, New Caledonia) serve this purpose and go beyond, with cooperation extending to exchanges of information. We benefit from high quality training and technical support from our counterparts from more mature authorities. Our interactions with agencies from small island economies facing similar problems (Fiji, Papua New Guinea, New Caledonia) focus on the methodology applied, the conduct of investigations, the market analysis tools used, the testing of market questionnaires, etc. The aim is to adopt what already works to improve efficiency and effectiveness.

III THE COMMON CHALLENGES FOR SMALL MARKET ECONOMIES

Shared experiences among Pacific agencies show common challenges. Hence, distance is a main issue faced by both small and large economies. To reduce enforcement costs, the competition authorities of SMEs should choose their cases cautiously to ensure that the benefits (both to the specific industry at hand and from setting guiding principles for other market participants) justify the costs. Discussions among authorities highlighted similar difficulties in the economic analysis of competition issues in network industries, where remote northern territories in Australia can be compared to remote archipelagos in French Polynesia or in Fiji. A closer agency cooperation would benefit a more robust, efficient, and consistent enforcement in the region. APC team members already benefited from training and fellowship with counterparts in mainland France, Australia, and New Caledonia. Cooperation encompasses practical feedback and resources on methodology, conduct of investigations, market analysis tools, market test questionnaires, etc.

A Higher Pay-off and Bespoke Policy for SMEs

Discussions among practitioners also highlighted that competition policy for small economies may have relatively higher costs but also higher payoffs than that for large ones. It also underlined the need for a bespoke enforcement of competition policy.

Even in monopolistic or oligopolistic markets, competition policy can significantly improve market performance by reducing the opportunities and incentives for firms to abuse their market power, either commercially or politically.

Beyond purely economic reasons, a culture of competition is positively linked to other social objectives, including employment and democracy. Moreover, the adoption of competition policy principles is often a prerequisite for trade with large economies such as the EU. At the internal level of the Polynesian market, competition rules allow the market to function in an undistorted competitive manner and aim to prevent behaviour that is harmful to the development of competition and to consumers in terms of price, quality, and innovation.

Fair competition leads to lower prices in many sectors. In small market economies, not only can competition exist, but it is also even most needed, even more so in the case of insular economies where it is known that the population suffers from a higher cost of living than elsewhere. While not being the only solution, opening to effective competition contributes to lowering prices; the adoption of competition principles is thus a strong force for efficiency, and necessary in SMEs.

Incumbents frequently argue that there is room for only one player or a very limited number of players on the market. Many use this argument to seek regulatory protection. We now have sufficient hindsight, in many small market economies, to observe that this is false. Actions from our agency contributed to the entry of two additional players in the mobile telecom services in French Polynesia, with subsequent price drops and expanded services. Similar examples can be found in Papua New Guinea and Fiji.

SMEs are known to pose significant challenges for competition policy. Mainly, distance and size of the economy implies that in most markets only a small number of firms can operate efficiently. Yet such concentration dampens competition and reduces allocative efficiency. Economies of the Pacific experience such challenges and try to deal with them.

A high degree of concentration is indeed a common phenomenon in SMEs, even more so in island economies. As is rightly pointed out, only a small number of economic actors can operate efficiently and there is also a high degree of aggregate concentration, with a limited number of players controlling a large part of the local economy via holdings active in different sectors of the economy.

While concentration reduces competition, it also allows economic actors to be more efficient and achieve economies of scale. When passed on, such economies benefit consumers by driving the prices down.

A certain degree of competition remains a must-have incentive for the seller to pass on such savings on resale prices. The higher the barriers, the lower the competitive pressure and economies of scales end up captured in margins. A certain degree of concentration therefore has beneficial aspects, provided that these savings

benefit consumers and are passed on as lower resale prices, more choices, and better quality products.

Consumer goods prices in French Polynesia are overall 40% higher than in mainland France and other French overseas territories. This situation affects more significantly the purchasing power of the most modest households for whom these goods represent a significant portion of their budget (more than 30% compared to 12% for the most affluent households).

Distance does not in and of itself explain high price levels which also result from the regulatory framework instituted over time by the country (notably import taxes) and the structure of the markets concerned (routing, production, import and retail distribution), which are often not competitive enough.

Pricing determinants are composed of: (i) the initial purchase price, representing 27% only of the total price of a product; (ii) transport 8%, ie (iii) import duties and taxes (also 8%), (iv) VAT (13% on average), and (v) the remainder, 44% is likely being captured in the distributors' commercial margin (importers-wholesalers and retailers).

B The Detrimental Effect of Regulatory Barriers to External Trade

Mainly due to advantageous custom duties, regional channels are not favoured (28% imported from mainland France; 14% European Union; followed by the US, China, Australia, and New Zealand). Freight for consumer products is mainly by sea transport (99% of the volume and 83% of the value of imports). But the freight market from Europe is highly concentrated (only one operator) and the port of Papeete can only accommodate medium-sized container ships due to the depth of the Papeete channel and the quay. This reduces the shipping companies' ability to achieve economies of scale in the context of the continued increase in the ships' size. The cost of cargo handling (stevedoring) is also higher than in similar ports. It is provided by three companies and is subject to regulated tariffs. There is therefore no competition in the market (in price and quality of service), nor competition for the market (when the public service delegation is renewed). Thus, although the routing to French Polynesia is not the main factor of the additional costs, some costs could be reduced.

Geography also affects access to land in Tahiti (the main geographic market) which is scarce and therefore expensive. There have been reports of companies freezing their land, thus hindering competitive development.

Other regulatory barriers harm the competitive process. French Polynesia has established a broad arsenal of market protections aimed at protecting domestic industrial and agricultural production. Imports are thus highly regulated by tariff

(collection of import duties and taxes, about twenty, which represent nearly 30% of the CIF amount of imports, but much more on certain products, particularly those subject to local development protectionism tax or other specific taxes) and non-tariff barriers (eg import bans or quotas, particularly in agriculture).

Regulated prices expressed as a margin rate, on categories of goods, are an incentive to source at a higher price and does not favour an optimal allocation adapted to consumer preferences. When expressed in absolute value, it encourages sourcing at the lowest price, to the detriment of quality.

In addition, local tax exemptions benefit already powerful players to the detriment of new entrants, restrictions on foreign direct investment limit the entry of new operators or producers into the market and old and not re-evaluated sanitary rules have some anti-competitive effects (French language labelling, EU standards, etc).

The resulting high prices of goods do not encourage the optimal allocation of resources and reflects negatively on economic activity and employment. Hence, the local development tax (TDL), appears particularly penalising: it discourages or prohibits the importation of certain products and promotes, rather than competition on the merits, the creation of a rent for local producers who have no incentive to innovate or control their production costs. Its base appears too broad since it also affects imported goods that have no equivalent in local production or protects goods for which the local added value is very limited (e.g., packaging or assembly activities only).

The system for setting import quotas for fruit and vegetables by the agricultural conference also appears to be ineffective. Demand forecasts are underestimated, supply forecasts are overestimated, and quotas allocated are unpredictable. This limits the ability of importer-wholesalers to buy at lower cost, leads to price increases and frequent shortages, with no favourable effect on the coverage of local production requirements.

C The Lack of Competitive Pressure

As stated, 44% remains captured in the distributors' commercial margin (importers-wholesalers and retailers), likely resulting from a detrimental lack of competitive pressure.

While the small size of the market favours a certain concentration of local producers, this phenomenon is accentuated by the high levels of protection they benefit from (the food industry in particular). It leads to annuity situations and high prices. Producers are not encouraged to improve quality or diversity of production.

Competition law is generally focused on competition in a market. Yet, as economic studies have indicated, one of the main sources of competition concerns in small jurisdictions is the impact of high levels of aggregate concentration in their markets. While high levels of aggregate concentration can bring about some benefits, they also raise significant competitive concerns. Most importantly, oligopolistic coordination in and across markets as well as entry barriers into markets might be increased.

Concentration is reinforced by vertical integration of main actors in import, production, and distribution activities. Products are imported either: (i) via a short channel (retailer directly delivered by the manufacturer on its storage platforms, if necessary, via its central purchasing office (this is mostly the case for large-scale distribution private labels)), or (ii) via a longer channel (passage through an intermediary, importer-wholesaler, or brand agent) which remains the majority. The latter channel allows for economies of scale and provides services to distributors (supply, shelving, advertising, promotions, after-sales service).

Importers often benefit from exclusive import rights for one or several brands, *de jure* (formalised by a written contract) or *de facto* (without a formal agreement but with the choice by the supplier of a privileged distributor who alone has access to the entire range of the brand's products, their promotional budgets or product training). This limits intra-brand competition between importers.

Yet, in a small, concentrated economy where inter-brand competition is structurally weak, the incentive to pass on the gains resulting from economies of scale is also limited. Importers benefiting from these exclusivities have little incentive to use competition between suppliers. Their market power is strengthened when the exclusive importer is also a retailer, which is common in French Polynesia. For this reason, as a precaution in all the French overseas territories, there is a prohibition in principle on these types of exclusive agreements. French Polynesia is an exception and no longer benefits from it (abolished in 2018).

In the retail sector, the leading operator can take advantage of this to set reference prices for the entire market at a high level, aligned with the most affluent consumers' consent. The other brands match these prices, and thus have no incentive to compete on price.

IV THE APC EXAMPLE

A Enforcement on the Ridge

Remoteness and small size of its market does not allow the local industry to reach a critical mass when fixed costs are important. French Polynesia is heavily dependent on imports, especially for consumer goods.

Analysis used for mature non-island economies cannot thus simply be transposed "as is" to island economies, let alone those made up of several archipelagos. However, the "small domestic market" and "efficiency needs" arguments cannot be used to justify any merger. If these arguments are to be considered, caution must be exercised. It is a case of case-by-case management, where the slightest error of judgement can have a long-term and strong impact on the structure of the Polynesian economy. Indeed, the risk of a false negative is very high precisely because of structural characteristics (small market, insularity, etc). The consequences of the creating or strengthening a dominant position are difficult to remedy through ex post lengthy and costly legal proceedings, not to mention the potential economic consequences and damage suffered in the meantime by competitors, hindered in their expansion, to the detriment of consumers.

France's overseas (eg the situation in the island of la Réunion) experience is instructive. There has been too much concentration based on efficiency arguments, which were certainly valid but which ended up causing problems. Studies show that the cost of living (*la vie chère*) – even before the inflation we are experiencing following the health crisis – is linked to this excessive concentration.

In this complex economic context, the decision-making process of our agency is made more complicated. We are on the ridge line. Like any agency, we must on the one hand be careful not to block deals that enhance concentration but which are necessary to achieve beneficial economies of scale and, on the other hand, we must block on condition deals likely to create or reinforce the market power of an already dominant player. What makes it harder is the extremely limited self-correcting power of the market resulting from high barriers to entry. The risk of a false negative is higher and so are the subsequent consequences which can be detrimental for a long-lasting basis.

Existing barriers already limit competitive pressure, with additional market power freeing the player of any competitive pressure, the risk of higher price increases, lower quality and choice, and no incentive to innovate is elevated. Every assessment requires a complex analysis of upstream and downstream markets in various vertically integrated and entrenched sectors and operators, considering all Polynesian economic complexities.

Post-clearance, as a corrective measure, we are left with ex post control of anti-competitive practices. A lengthy and complex procedure. Yet, in a small economy it poses additional difficulties which prove traditional competition law tools insufficient to deal with some of the root problems of limited competition in SMEs.

Perhaps most importantly, the prohibition of agreements in restraint of trade does not apply to oligopolistic coordination, where firms act in parallel without a prior

agreement. Yet such conduct is often prevalent in SMEs where there is often a high degree of aggregate concentration, where a small group of entities controls a large part of the economic activity through holdings in many markets. Strong social connections also characterise SMEs. While such connections are an important aspect of social life, they may also serve to dampen competition. For example, leniency programmes often are inefficient where market participants are connected in more than just the economic sphere.

Finding solutions, regulatory or otherwise, to overcome such entrenched limitations to competition is not an easy task. Lowering barriers to entry is necessary to increase competitive pressure. Preventive actions also add another dimension.

In this context, while French Polynesia unfortunately can no longer rely on prohibiting imports exclusive agreements, its competition toolbox includes an interesting preventive instrument: the ex ante control of retail outlets.

Hence, the APC controls the creation and modification of commercial space to maintain a sufficiently competitive landscape in the retail sector. Any creation, extension, or modification of a commercial outlet of more than 300 square metres is subject to prior authorisation from the Authority.

The Authority examines whether the transaction is likely to lead to the creation or strengthening of a dominant position. Following this analysis, it may either approve the transaction, prohibit it, or order the applicant to take appropriate measures to ensure sufficient competition. The APC does not and should not regulate the number of retail outlets in a given area. Its role is to maintain a competitive equilibrium. Various economic factors must be considered, and we carry out a prospective analysis of the situation. We do not protect competitors, but the virtuous competitive process. Several players of similar size and strength can apply for and receive authorisation to operate in the same commercial area. Where there is not enough demand for all of them to succeed, strategies of lower prices, better quality and a wider range of products will make the difference, to the benefit of the consumer. Conversely, there may be times when the entry of a single player raises concerns and threatens the competitive process in an area. For example, a reduction in the number of players from two or more to one may arise from the size of the project, the size of the company behind the project, its degree of vertical integration, including a central purchasing unit that also supplies competing distributors.

These are all factors that we need to consider on a case-by-case basis. Everything that comes under the heading of foresight is not easy to grasp. Especially being conscious and conscientious of not unlawfully hindering the development of major players that Polynesia needs. To limit this risk (of false positives or false negatives), we have an efficient tool that allows the parties to submit and negotiate commitments

upstream, at the assessment stage. If the Authority identifies competition concerns, we invite the parties to propose remedies to address these concerns before the decision phase, in order to achieve an outcome that is not unfavourable to them and which at the same time preserves the competitive process.

In a recent decision, the APC blocked the installation of a Carrefour hypermarket of more than 1,800 square metres in Pao Pao, on the island of Moorea. This is the first prohibition decision adopted by the Authority in the retail outlet development sector. The transaction raised competition concerns. It was likely to displace several competing projects, hindering the competitive landscape in the area, and to strengthen the Wane group's leading position in the food retail market. In addition, the operator's vertically integrated structure and the fact that its buying centre also supplied competing retailers in the area raised concerns about discrimination and self-preferencing risks. The Wane Group did not subsequently offer adequate remedies to address these concerns.

While we must encourage firms to create and develop. It is also important to ensure that this does not happen at the expense of competition in the long term, ensure that the economy is not held in an integrated way (importers, wholesalers, distributors) by groups that could be in a position to control an entire sector in the long term, to the detriment of the healthy development of this sector and, ultimately, to the detriment of the Polynesian economy and consumers.

It is a sensitive issue, and we must strike the right balance on a case-by-case basis. Interestingly, this topic is not island or SMEs specific. Ultra-liberalism has shown its limits, and the example of GAFAM speaks for itself. The US accused Europe of being too restrictive, but after forty years of its ultra-liberal competition policy and in the face of the unprecedented concentration of power on the Internet, it recognises that it was wrong. A US parliamentary committee has passed several laws to try to make up for the mistakes, hoping to bring Google, Apple, Facebook and Amazon, accused of abusing their dominant positions, into line. They approved these mergers because their analysis was not broad enough. Who could have predicted that these start-ups would have a tentacular grip on the global economy and even threaten the sovereignty of states? The lesson we are learning is that we need a slightly finer sieve to assess the dangers of certain concentrations. In short, we are learning as we go, and we must learn from the mistakes of others. It is interesting to note that the European Commission itself has just announced that it is undertaking a major project to quantify the costs to society of failing competition.

B Competition Culture and APC's Recent Successes

One of the most important tasks for a competition authority is the establishment of a competition culture. The experience of many small market jurisdictions has

indicated that creating an ecology of antitrust in which competition law can thrive is not an easy task, given entrenched interests of some market players and the fact that many stakeholders are not aware of the benefits of competition law.

For a young Authority, getting competition law off the ground is not an easy task. The full understanding and effectiveness of competition law, the integration of its benefits and effects, often requires several decades of practice. Competition law was first adopted in French Polynesia in 2015, and the Authority was established in 2016. The first six years of the institution have revealed the complexity of operating in an economic microcosm where insularity is not the only parameter of singularity. How to enforce without rigidity? How to reach the most appropriate decisions? How can the APC strengthen its expertise and its presence locally and internationally? These are some of the challenges the agency faces.

Nevertheless, the APC has already reached a good cruising speed, with over 24 productions in 2022, including 2 fining decisions, despite the scope of intervention limited by the competition and human resources turbulence it faced on its debut.

Unlike most agencies, including its neighbours from New Caledonia (ACNC), Australia (ACCC), New Zealand (NZCC), Fiji (FCCC) and Papua New Guinea (ICCC), the APC does not have jurisdiction in areas such as consumer protection, telecoms, or energy, nor does it benefit from the prohibition of exclusive imports. Our focus is purely on competition matters.

With these considerations in mind, the APC has therefore been quite active from the outset. As expected from an authority at the beginning of its activity, our agency issued important opinions with high structuring value for the Polynesian economy, with a high number of referrals for opinions and self-referrals covering necessities, import and distribution mechanisms, agricultural and industrial production mechanisms, oil, and energy. Following the publication of the latter opinion, the government initiated an exchange with the APC, a presentation by the APC to an inter-ministerial committee and incorporated most of our recommendations into its negotiations with the oil companies. This dialogue between French Polynesia and the APC undoubtedly makes it possible to take better account of the agency's recommendations and even common objectives. The quality of the opinions issued by the APC and the follow-up given to the recommendations contained in these opinions help to establish the Authority's legitimacy and contribute to triggering referrals for anti-competitive behaviour. The consultative role of the APC also serves a useful educational dimension, providing companies with a framework for analysing potentially anti-competitive behaviour.

In the telecoms sector, the APC's first decision on abuse of a dominant position contributed to more effective competition between the two operators in the mobile

market and a very significant fall in prices. Helpful guidance from our agency also led to a landmark decision by the Administrative Court in that sector.

More recently, the APC clearly served its purpose by imposing a 6 million XPF fine on twelve undertakers and funeral parlours that colluded to fix the prices of their services during the COVID-19 pandemic, incurring overcharged prices to bereaved families. More than a thousand families were affected by this agreement. Agreements not to compete are illegal. Price cartels are among the most serious breaches of competition law. They directly affect consumers. The victims of these practices were the bereaved families. Their situation of extreme vulnerability, combined with the emergency nature of the health crisis, added to the gravity of the infringement. However, the accused funeral companies did not dispute the reality of the alleged abuses. The decision took that into account by reducing the fine by half.

Six years is still young for an institution that has the heavy task of being a watchdog over the Polynesian economy. The APC constantly advocates in relationship to its mission, the rules and stakes of competition, but also how it operates, so that the agency can fully play its role as a driving force for the Polynesian economy and consumers. Three priorities to achieve it are: strengthen the APC's integration into the local economic and institutional fabric; strengthen the expertise and develop the skills of the agency's staff; and integrate the APC into the network of competition authorities around the world, particularly in the Pacific region. These actions will create a virtuous circle in terms of producing quality opinions and decisions that will continue to underpin the legitimacy of the institution.

Interactions with local institutions and economic operators are essential if we are to carry out our task in an efficient, informed, and fair manner. Surprisingly it led to some very startling remarks, about the compatibility of these meetings with the independence of the institution. These criticisms are appalling. They do not serve the general interest, and that is regrettable. All competition authorities have contacts with economic operators. We do not sit in an ivory tower imposing dogmatic theories. Our activities and analyses are inextricably linked to the life of markets, businesses, and their development. Contact with Polynesian economic operators and institutions is key. Competition law is a subject closely linked to the life of companies and the evolution of the economic structure of markets. It is the law that governs the behaviour of companies towards their competitors, customers, suppliers, and other economic operators in the market.

We must also advocate competition law to stakeholders in a more innovative way. Informing businesses about their rights and obligations under competition law takes different forms. All our activities must serve this purpose. Meeting and interacting

with economic operators prove very useful in this respect and allows us to improve our knowledge of how markets work and of companies' needs.

Our decisions and opinions also have a great educational value. This does not mean, however, that we should issue soft decisions that are merely explanatory: The need to educate should not distract us from the responsibility that the legislator has entrusted to the institution. The imposition of justified and proportionate sanctions also sends the right messages.

The Tahiti Competition Days held in January 2023 brought together local stakeholders and practitioners, international experts, and representatives of the competition authorities of countries in the Pacific. There were three days of successful training and exchanges focusing on competition law in French Polynesia and the Pacific region. It contributed to strengthening the expertise of local lawyers in this field. In the long run, this will reduce the need for local companies to hire expensive counsel from abroad.

V GOING FORWARD

The network agreed that the next Pacific Competition Days will be held in Fiji. We were also honoured and delighted to receive support and interest from the Competition Law Center of George Washington University, under the leadership of Professor William E Kovacic and fellow researcher Alejandro Ibarra. Projects are on the way including regular workshops designed for the PCN members to exchange ideas on competition institutional design and policy, including management, regulatory, performance, decision-making, judicial review, etc.

Comparing how jurisdictions in the Pacific regulate network industries is also an interesting add-on. Competition remains imperfect in these sectors. It works well when it is coupled with innovation. The creation of new services naturally leads to the arrival of new players, and it creates a new demand that was not expressed before, as we have seen in the airline industry with the development of low-cost carriers. It could be the same thing with transportation (ground, sea, air) in Polynesia, as in telecoms and energy services, which has great potential but is currently limited by a Malthusian regulatory framework with governmental interlocking links, working as disincentives to disturb the comfort of a monopoly or oligopoly. Entry into these markets remains difficult, as old (im)balances persist.

Entrusting the task of regulating these sectors to an independent entity is a sufficient solution to these problems. In its operation, this entity should be independent and have powers of coercion, human and technical resources commensurate with the complexity of the task, and be subject to judicial control. The competences of the APC could be extended, and it could be given such a regulatory mission, combining skills under the same roof with the same staff. Hence, most

competition agencies now oversee regulating sectors of the economy (telecoms, energy, consumer protection etc.) in addition to their competition main function. Entrusting the APC with such a regulatory task has advantages in terms of economies of scale and efficiency gains (pooling of administrative, logistical, management, and to some extent human resources and technical and procedural expertise). It would require a modification of the regulations of the sectors concerned as well as of the competition code (legislative and regulatory part).

Exploring additional preventive tools is another area worth brainstorming on. A ban on exclusive import arrangements could be considered, as well as the possibility for the Authority to issue structural injunctions (eg the divestiture of a subsidiary or business) in the context of litigation, building on the progress made in other jurisdictions, like in the EU since the implementation of the directive ECN+.

Other practical considerations are worth discussing, such as the ability for the authorities to communicate and to what extent. In Polynesia, the APC would for instance welcome changes to the Competition Code, providing that the obligation of professional secrecy which binds the members of the Board and the staff of the Authority does not prevent the publication by the Authority of summary information relating to the actions it takes to investigate, detect or punish anti-competitive practices, where the publication of such information is in the public interest and in strict compliance with the presumption of innocence of the undertakings or associations of undertakings concerned. This would inform the public on the work carried out by the agency during lengthy litigation procedures and would prove a powerful advocacy tool.

There is room for improvement in our system. Our agency will not miss the opportunity to propose or accompany changes to the competition code to make it even more relevant and efficient. To that end, our interactions and involvement into the PCN will be of tremendous support. While changes can be made to competition policy and enforcement, root problems of limited competition in SMEs will be better and more quickly addressed by removing regulatory barriers that limit competitive pressure.