

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Global Forum on Competition

REGIONAL COMPETITION AGREEMENTS: BENEFITS AND CHALLENGES

Contribution from Japan

- Session III -

29-30 November 2018

This contribution is submitted by Japan under Session III of the Global Forum on Competition to be held on 29-30 November 2018.

More documentation related to this discussion can be found at: oe.cd/rca.

Please contact Ms. Lynn Robertson [E-mail: Lynn.Robertson@oecd.org], if you have any questions regarding this document.

JT03438718

Regional Competition Agreements: Benefits and Challenges

-- Japan --

1. Introduction

1. This contribution paper introduces regional co-operation frameworks in the East Asia region, which are “East Asia Top Level Officials’ Meeting on Competition Policy” (hereinafter referred to as “EATOP”) and “East Asia Conference on Competition Law and Policy” (hereinafter referred to as “EAC”).
2. Section 2 overviews histories and objectives of EATOP and EAC, and section 3 explains the wide-ranging benefits of them for member agencies in terms of the development of national competition policy and law, the facilitation of regional co-operation agreements (“RCAs”) and cross-border enforcement co-operation.

2. Overview of EATOP and EAC

3. EATOP has been taken place annually since it was established in 2005 by JFTC’s initiative. Its aim is to strengthen the cooperative relationship among competition authorities/competition related authorities through candid exchange of views and information regarding their recent activities, future challenges and technical assistance activities, with attendance of the top-level officials from those authorities; it has been held as a closed-door in order to facilitate frank communication.
4. Also, a vision and goal of EATOP is harmonising competition law and policy in the East Asia region by sharing recent experiences with each other.
5. In conjunction with EATOP, EAC has been held for the purpose of raising awareness of competition policy in the East Asia region. Discussions in EAC are open to the public. Not only competition authorities but also other government agencies, practitioners and academia in the East Asia region are invited to the discussions in order to develop the common understanding on importance of competition law and policy among them.
6. EATOP and EAC have been co-hosted by JFTC, host agencies and Asian Development Bank Institute (“ADBI”) so far as follows:

Table 1.

| Time | Location | EATOP | EAC |
|----------------|----------------------------|--------------------------|-----------------------------|
| March 2004 | Malaysia (Kuala Lumpur) | - | 1 st Conference |
| May 2005 | Indonesia (Bogor) | 1 st Meeting | 2 nd Conference |
| June 2006 | Thailand (Bangkok) | 2 nd Meeting | 3 rd Conference |
| May 2007 | Vietnam (Hanoi) | 3 rd Meeting | 4 th Conference |
| April 2008 | Japan (Kyoto) | 4 th Meeting | - |
| June 2009 | Mongolia (Ulaanbaatar) | 5 th Meeting | 5 th Conference |
| September 2010 | Korea (Seoul) | 6 th Meeting | - |
| September 2011 | Singapore (Singapore) | 7 th Meeting | 6 th Conference |
| May 2012 | Malaysia (Kuala Lumpur) | 8 th Meeting | 7 th Conference |
| August 2013 | Philippines (Manila) | 9 th Meeting | 8 th Conference |
| October 2014 | Japan (Tokyo) | 10 th Meeting | - |
| August 2015 | Vietnam (Ho Chi Minh City) | 11 th Meeting | 9 th Conference |
| September 2016 | Korea (Seoul) | 12 th Meeting | - |
| September 2017 | Indonesia (Bali) | 13 th Meeting | 10 th Conference |
| August 2018 | Australia (Sydney) | 14 th Meeting | 11 th Conference |

7. As of today, EATOP comprises 18 agencies (see the chart below). It covers almost all of the major competition authorities in the East Asia region. EATOP was founded in 2005 by 9 authorities, and since then, it has grown its membership one after another by enrolling authorities which can actively engage in technical assistance as donors and other authorities which are willing to establish or strengthen their competition law by receiving technical assistance as recipients.

Table 2.

| Jurisdiction/Region | Agency |
|---------------------|--|
| 1 Australia | ACCC (Australia Competition and Consumer Commission) |
| 2 Brunei | BCC (Brunei Competition Commission) |
| 3 Cambodia | Camcontrol (Ministry of Commerce) |
| 4 China | SAMR (State Administration of Market Regulation) |
| 5 Hong Kong | HKCC (Hong Kong Competition Commission) |
| 6 Indonesia | KPPU (Commission for the Supervision of Business Competition) |
| 7 Japan | JFTC (Japan Fair Trade Commission) |
| 8 Korea | KFTC (Korea Fair Trade Commission) |
| 9 Lao PDR | MOIC (Ministry of Industry and Commerce) |
| 10 Malaysia | MYCC (Malaysia Competition Commission) |
| 11 Mongolia | AFCCP (Mongolian Authority for Fair Competition and Consumer Protection) |
| 12 Myanmar | DCCA (Department of Commerce and Consumer Affairs, Ministry of Commerce), Ministry of Commerce |
| 13 New Zealand | NZCC (New Zealand Commerce Commission) |
| 14 Philippines | PCC (Philippine Competition Commission) |
| 15 Singapore | CCCS (Competition and Consumer Commission of Singapore) |
| 16 Chinese Taipei | TFTC (Taiwan Fair Trade Commission) |
| 17 Thailand | OTCC (Office of Trade Competition Commission) |
| 18 Vietnam | VCCA (Vietnam Competition and Consumer Authority) |

3. Benefits of EATOP and EAC for member agencies

8. EATOP makes large contributions for strengthening the cooperative relationship among the member agencies and development of competition policy and law in the East Asia region, by enabling the top-level officials from the member agencies to get together annually and exchange their views and information candidly with each other.

9. To be more precise, the member agencies exchange information on developments and trends in competition law and policy in their jurisdictions, and discuss international cooperation on competition case investigations among authorities. Also, EATOP is an ideal venue for communication among technical assistance donors and recipients; donor agencies can achieve coordination on their technical assistance activities and recipient agencies can express their needs to donors directly.

10. EAC also contributes to the development and strengthening of competition law, policy and enforcement in the East Asia region, by raising competition awareness through the discussions with variety of different participants.

11. One of the member agencies, ACCC, has expressed a positive feedback on EATOP and EAC; ACCC considers engagement in EATOP to be a key component of efforts to improve regional cooperation outside of formal Regional Competition Agreements in the East Asia region. ACCC has been able to [1] strengthen bilateral ties with the competition authorities in some of its closest trading partners, and [2] contribute to, and learn from, the knowledge and capability of competition authorities in the region. ACCC considers there is much to gain by establishing regional networks of competition agencies in a similar fashion to EATOP due to the strong benefits it offers in terms of knowledge, cooperation and understanding, which in turn establishes a foundation of mutual purpose and trust that is essential in establishing successful RCAs.

3.1. Convergence and development of competition policy and law in the East Asia region

12. Since the foundation of EATOP and EAC, many jurisdictions/regions in the East Asia region has introduced comprehensive competition laws and established competition authorities. Besides, several jurisdictions/regions which already had equipped with competition laws have also amended their competition law to strengthen their investigative capabilities, to ensure the independence of competition authority or to introduce leniency programmes, bringing them up to the international standards. Coordination of technical assistance and development of common understanding through discussions in EATOP and EAC also contribute to this movement.

13. The chart below shows jurisdictions/regions which have introduced comprehensive competition law after the establishment of EATOP and EAC:

Table 3.

| Jurisdiction/Region | Year in force of comprehensive competition law |
|---|--|
| Japan | 1947 |
| Australia | 1965 |
| Korea | 1981 |
| New Zealand | 1986 |
| Chinese Taipei | 1992 |
| Thailand | 1999 |
| Indonesia | 2000 |
| Establishment of EAC (2004) and EATOP (2005) | |
| Mongolia* and Vietnam | 2005 |
| Singapore | 2006 |
| China | 2008 |
| Malaysia | 2012 |
| Hong Kong and Philippines | 2015 |
| Lao PDR | 2016 |
| Brunei and Myanmar | 2017 |

* Competition law of Mongolia was enacted in 1993 but came into full operation in 2005 when the competition authority (AFCCP) was formally established.

14. Besides, there are also some jurisdictions/regions which have been enhancing their competition laws.

3.2. Co-operation agreements

15. EATOP supports regional co-operation agreements by facilitating discussion and relationships between experienced and emerging regulators in the region. Importantly, the forum offers an opportunity for informal bilateral meetings, which can either be [1] an important component of the early stages of discussion for regional co-operation agreements or [2] communications as a result of conclusion of those agreements.

16. Through the discussions in EATOP and EAC, there has been fostered common understanding of the need for co-operation regarding cross-border cartels and mergers.

17. Accordingly, conclusion of co-operation agreements (MoUs/Competition agreements) within the East Asia region has been accelerated since the establishment of EATOP and EAC. For example, JFTC concluded its co-operation agreements between following competition (related) authorities: Philippines (2013), Vietnam (2013), Korea (2014), Australia (2015), China (2015 & 2016), Mongolia (2017) and Singapore (2017). Based on those co-operation agreements, competition authorities in the East Asia region have coordinated investigations against cross-border cartel cases or designed remedies for international merger cases.

4. Summary

18. Almost all East Asia jurisdictions/regions including ASEAN member states have already introduced its comprehensive competition law and established its competition authority. However, experience of competition authorities, the level of developments of competition law, policy and practice, and surrounding economic circumstances still vary with each jurisdiction/region. Therefore, there has been a growing need for further development of competition law and policy across the East Asia region, cross-border enforcement co-operation, and tailor-made technical assistance. We will surely make our all effort to have EATOP and EAC offer various opportunities for close coordination and co-operation among donor agencies and recipient agencies.