Enhancing Competition Cooperation in the ASEAN Region

5th ASEAN Competition Conference
4-5 June, 2015; Ho Chi Minh City, Viet Nam

Randolph Tritell - Director, Office of International Affairs
United States Federal Trade Commission
Relevance of FTC Experience

- The FTC places great importance on the development of competition policy in the ASEAN region.
- International cooperation has become a critical component of the Federal Trade Commission’s antitrust enforcement.
- The US antitrust agencies have built strong cooperative relationships with a wide variety of competition agencies around the world. The US experience can be instructive for ASEAN region competition agencies.
Types of Cooperation

- Case cooperation.
- Informal contacts among agency officials and staff regarding, for example, competition rules, investigation practices, development of competition culture.
- Policy coordination.
- Coordination of involvement in multilateral competition bodies.
- Technical assistance.
- Comments on draft laws, regulations, and guidelines.
- Staff exchanges.
Importance of Cooperation

• Case Cooperation
  • Obtain more information about the parties, industry, markets, etc.
  • Share legal and economic theories and analysis of competitive effects.
  • Leads to more efficient and effective investigations for agencies and parties, and better informed outcomes.
  • Reduces the risk of incompatible decisions and remedies.

• Other types of cooperation
  • Build capacity, leverage resources, increase mutual understanding.
Case Cooperation in Practice

• First, need to learn of other agencies’ investigations, for example through notification pursuant to an agreement, consulting with other agencies’ staff, asking the parties, or media reports.

• Most cooperation takes place in merger investigations – timing is often aligned and parties have incentives to facilitate cooperation.

• Cooperation is increasingly occurring in other types of investigations such as cartels and dominance.
Types of Information Sharing

- Timing of investigations – so agencies can try to align key stages.
- Publicly available information – for example about parties, industry.
- “Agency confidential” information – not protected by law but not usually made public, for example market definition, competitive effects, legal and economic theories.
- Proposed remedies – important to minimize risk of incompatibility.
Possibilities to Share Confidential Information

• Information submitted to agencies is generally confidential and cannot be shared without parties’ permission.

• “Second generation” agreements and some laws allow sharing of confidential information.

• The most common mechanism is through a waiver granted by the parties.
  • Not required, but parties often find it to their benefit.
  • Very helpful to reaching consistent analyses and results.
  • Important that the receiving agency maintain the confidentiality of the shared information.
Possible Steps to Increase Cooperation

• Formal agreements – can be helpful in providing a legal framework and can also serve as a catalyst for cooperation by the agencies’ staffs.
  • The US has 13 cooperation agreements and MOUs as well as several agreements on best practices in merger review. https://www.ftc.gov/policy/international/international-cooperation-agreements
  • Free Trade Agreements can also provide for cooperation in competition enforcement.
• However, cooperation can and does take place without formal agreements.
Cooperation Efforts in Multilateral Bodies

- Participate in and take advantage of cooperation work of multilateral organizations including the ICN, OECD, UNCTAD, and APEC.
  - Covers topics such as timing alignment, information sharing, analysis, remedies.
  - ICN best practice recommendations on merger review and anti-cartel enforcement also contain provisions encouraging international cooperation.
  - Updated in 2014; encourages and provides framework for cooperation.
Informal Contacts and Other Steps

- Build relationships between staffs – important to develop understanding and trust.
- Look for opportunities to cooperate on cases under parallel review.
- Seek to align timing of merger review and other investigative steps through statutes, guidelines, or agency practice.
- Seek parties’ consent to share information and adopt mechanisms to facilitate confidentiality waivers.
  - The US agencies and the ICN have issued model waiver forms
Conclusion

• The FTC has benefited greatly from international cooperation and encourages ASEAN to continue to explore ways to further cooperation both within ASEAN and with other partners.

• The FTC will be glad to assist ASEAN agencies in implementing cooperation.
  • Tim Hughes is the FTC’s main contact for ASEAN agencies – thughes@ftc.gov.

• We look forward to working with you!