

# **Enhancing Competition Cooperation in the ASEAN Region**

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# Relevance of FTC Experience

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- 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

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- 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

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- 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

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- 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

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- 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

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- 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

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- 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

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- Participate in and take advantage of cooperation work of multilateral organizations including the ICN, OECD, UNCTAD, and APEC.
- The ICN issued a “Practical Guide to International Cooperation in Mergers”  
[www.internationalcompetitionnetwork.org/uploads/library/doc1031.pdf](http://www.internationalcompetitionnetwork.org/uploads/library/doc1031.pdf).
  - 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.
- OECD Recommendation concerning International Co-operation on Competition Investigations and Proceedings [www.oecd.org/daf/competition/international-coop-competition-2014-recommendation.htm](http://www.oecd.org/daf/competition/international-coop-competition-2014-recommendation.htm).
  - Updated in 2014; encourages and provides framework for cooperation.

# Informal Contacts and Other Steps

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- 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

[https://www.ftc.gov/system/files/attachments/international-waivers-confidentiality-ftc-antitrust-investigations/model\\_waiver\\_of\\_confidentiality.pdf](https://www.ftc.gov/system/files/attachments/international-waivers-confidentiality-ftc-antitrust-investigations/model_waiver_of_confidentiality.pdf)

[www.internationalcompetitionnetwork.org/uploads/library/doc330.pdf](http://www.internationalcompetitionnetwork.org/uploads/library/doc330.pdf)



# Conclusion

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- 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](mailto:thughes@ftc.gov).
- We look forward to working with you!