

# Framework for Merger Review Cooperation: Experience of the JFTC

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# Merger Review Cooperation Cases in Japan

FY	M&A cases	Cooperated Agencies	Results of Reviews
2009	Acquisition of Sanyo Electric Co., Ltd., shares by Panasonic Corporation.	USFTC, European Commission	Accepted with conditions
2010	Acquisition of Varian, Inc., shares by Agilent Technologies, Inc.	USFTC	Accepted with condition
	Joint venture establishment between BHP Billiton and Rio Tinto for producing iron ore	ACCC, European Commission, German, Federal Cartel Office, KFTC	The parties abandoned their plan
2011	Two HDD Merger Cases (Hitachi-Western Digital, Samsun-Seagate)	USFTC, European Commission, KFTC	Accepted with conditions
2012	Merger between ASML Holdings N. V. and Cymer Inc.	USDOJ, KFTC	Accepted with conditions
2013	M&A of operations between Thermo Fisher Scientific Inc. and Life Technologies Corporation	USFTC, European Commission	Accepted
2014	Merger between Zimmer, Inc. and Biomet, Inc.	USFTC, European Commission	Accepted with conditions
2015	Integration of NXP Semiconductors N.V. and Freescale Semiconductor, Ltd.	USFTC, European Commission	Accepted with conditions
	Integration of Intel Corporation and Altera Corporation	European Commission	Accepted

FY	M&A cases	Cooperated Agencies	Results of Reviews
2015	Integration of Western Digital Corporation and SanDisk Corporation	USFTC	Accepted
	Integration of Denali Holding Inc. and EMC Corporation	USFTC, European Commission	Accepted
2016	Acquisition of KLA-Tencor Corp. shares by Lam Research Corp.	USDOJ	The parties abandoned their plan
	Integration of the valve business by Emerson Electric Company and Pentair plc	USFTC	Accepted
	Merger between Abbott Laboratories Group and St. Jude Medical Group	KFTC	Accepted with conditions
2017	Acquisition of shares of NXP Semiconductors N.V. by Qualcomm RiverHoldings B.V.	European Commission, KFTC	Accepted with conditions (but parties abandoned)
	Integration of Broadcom Ltd. and Brocade Communications Systems, Inc.	USFTC, European Commission	Accepted with conditions
	Integration of the container shipping business of Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., and Nippon Yusen Kabushiki Kaisha	European Commission, Chile's FNE	Accepted

## Bilateral/ Multilateral Frameworks

### 1. Bilateral Frameworks

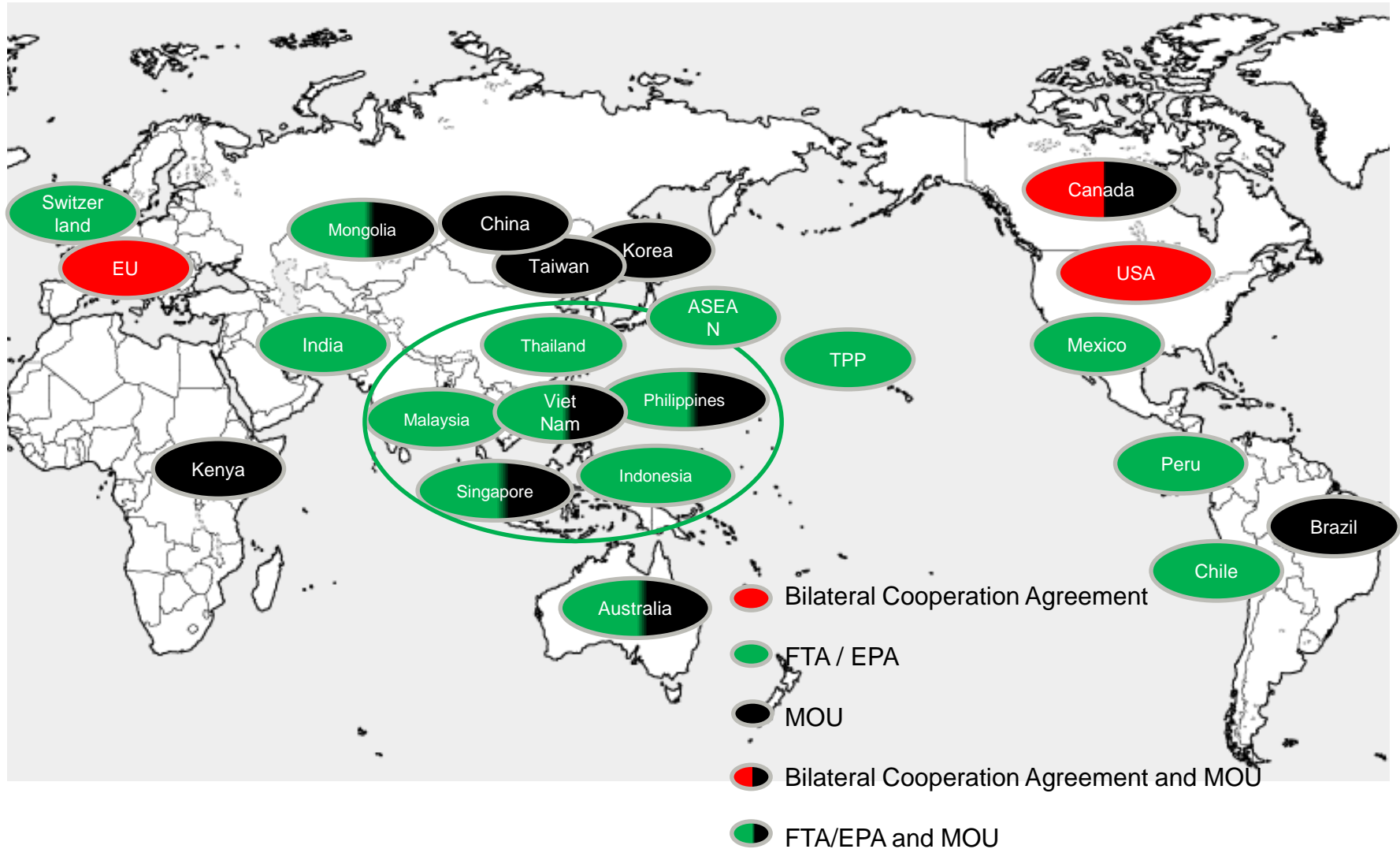
- Governmental Cooperation Agreement
- Competition Chapters of FTA/EPAs
- MOUs between agencies

- Some differences

FTA/EPA	<i>Country to Country</i> <i>Government to Government</i>	legally binding
Cooperation Agreement	<i>Government to Government</i>	legally binding
MOU	<i>Agency to Agency</i>	legally non-binding

- Some common elements
  - Notification
  - Information Exchange
  - Coordination of Enforcement
  - Technical Cooperation

## JFTC's Cooperation Framework with Other Countries/Regions



## 2. Multilateral/Regional Frameworks

Some are more focused on enforcement cooperation and others are more of the nature of promoting international cooperation in

- ICN's Framework for Merger Review Cooperation
  - established to promote enforcement cooperation, but also used for promoting general cooperation and informal cooperative relationship (e.g. inquiries on merger regulation or past cases in other jurisdictions).
- OECD(Notification based on OECD's Recommendation on International Cooperation)
- UNCTAD(Intergovernmental Group of Experts on Competition Law and Policy)
- APEC(Competition Policy and Law Group)
- EATOP(East Asia Top Level Official's Meeting)

## 1. Identification of counterpart agencies

- Merging parties, Press releases (of merging parties), News sources, etc.

## 2. Contact counterpart agencies

- Case team (e.g. past cooperation experience in the same industry)
- Liaison officers (ICN Framework, bilateral & multilateral relations)
- International affairs division or other personal network

## 3. Initiate communication

- Timing:
  - ✓ Early contact, even prior to the merger notification, is helpful, given the time constraints for merger review.
  - ✓ Communication may often be beneficial in later phase (Second phase investigation, coordination of remedies, etc.)
- Tools: Emails, teleconferences, etc.
- Contents: non-confidential & confidential information
  - ✓ The extent of co-operation may vary with specific cases/ counterpart agencies
  - ✓ Waivers enable communication of confidential information

## ➤ Merits of Cooperation Framework

- ✓ Cooperation Framework facilitates:
  - Early contact
  - Information exchanges
  - Informal cooperative relationship (“pick up the phone” relationship)
- ✓ Any improvements?

## ➤ Some challenges for cooperation

- It is sometimes difficult to know in advance to what extent cooperation is necessary or not, with which agency and in which timing to cooperate.
  - Difference of market/competition situation
  - Timing/schedule of notification/review is different
- Sometimes it is also difficult to get timely responses or there may be some constraints on information exchanges.