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REGIONAL COMPETITION AGREEMENTS: BENEFITS AND CHALLENGES

Contribution from Japan

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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.