



Japan Fair Trade Commission

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Mini Plenary 6

How to manage an investigation being conducted simultaneously in several countries

(Issues to take into account when cooperating on specific cases as from the start of a case and throughout the investigation:
challenges for enforces and challenges for private practitioners)

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1. Overview of JFTC's cooperation in cartel investigations with other competition agencies (CAs)

- The leniency program introduced in 2006.
- JFTC's cooperation/coordination with other CAs mostly triggered by leniency applications of cross border cartel cases.
 - Recent series of cross border cartels where Japanese companies were mainly involved: e.g. Auto parts cartels etc.
- Dawn raid ("on the spot inspection"): a key step in JFTC's investigations
 - Coordinating timing of dawn raids with other CAs
 - Big time difference between Japan and each of EU and US
 - ✓ e.g. 9:00 am in Tokyo, 1:00 am in Brussels, 7:00 pm in DC
- Information Exchange with other CAs:
 - within legal restrictions by Japanese laws
 - Normally exchange investigative information; and
 - leniency information: with waiver by leniency applicant

2. Coordination of Cartel Investigations

What we sometimes face:

- Simultaneous dawn raids, but who dawn-raids first?
- Sequential multilateral coordination
- Overlap of timing of use of investigative tools:
 - interviews with the same key persons
 - “request for information” to the same companies

What we can do would be:

- Keeping in mind locations of key companies, persons & evidential material as one of the key factors
- Brief timetable coordination
- Early & timely coordination.
 - Simultaneous leniency applications to different CAs?

3. Information Exchange & Evidence Sharing

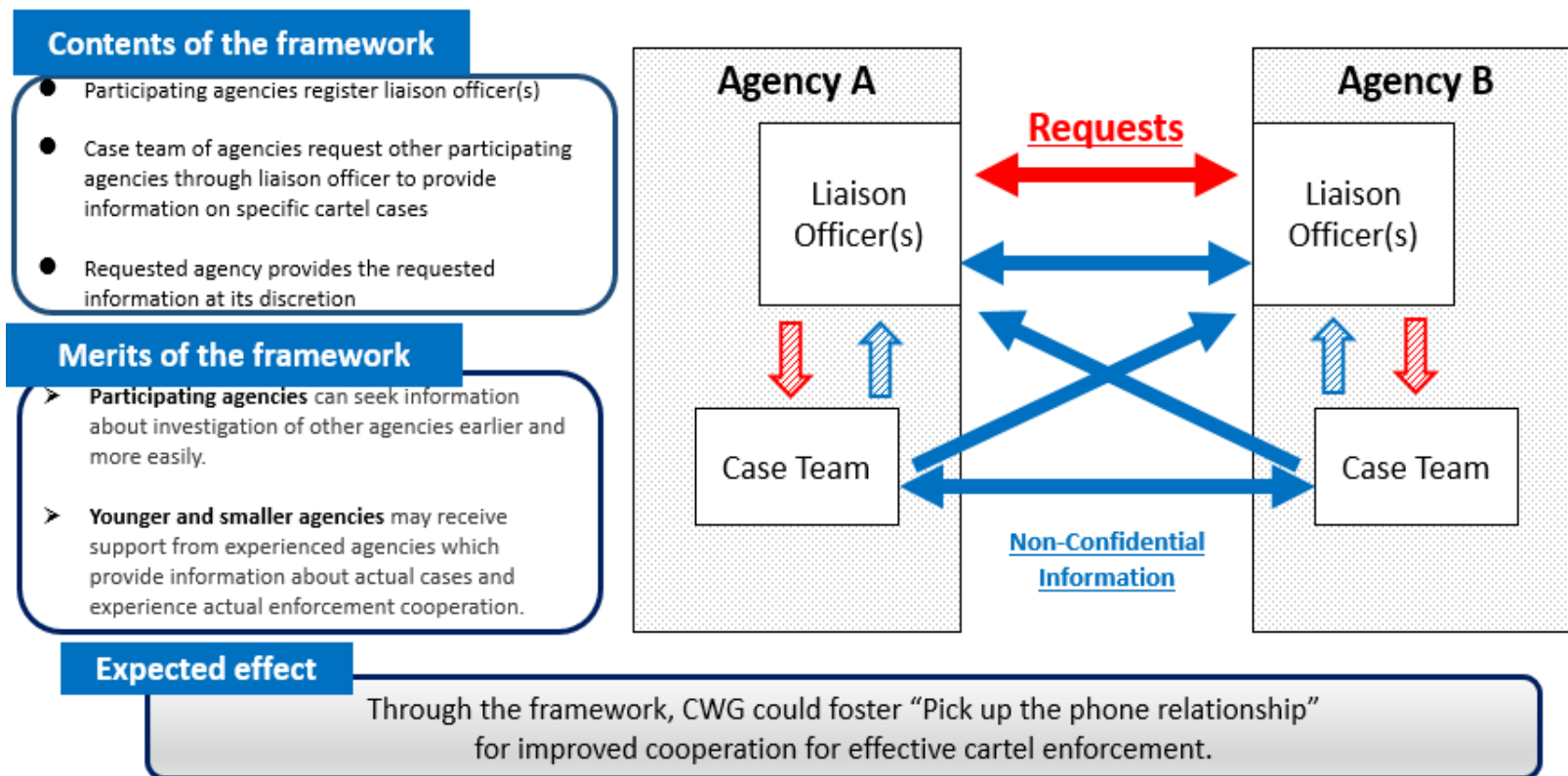
We sometimes face:

- Legal limitations on sharing confidential information
 - Confidentiality of JFTC's officials (Article 39 of the AMA)
- Legal basis for JFTC to share confidential information
 - “Information Gateways” provision (Article 43-2 of the AMA)
 - allowing JFTC to share confidential information with other CAs
 - Cooperation agreements with other countries, governments, CAs
e.g. cooperation agreements, FTA/EPAs, MOUs
 - Leniency applicant's waiver for leniency information

Evidence sharing?

- Normally not need to share evidence
 - Simultaneous leniency applications normally with same/similar evidence
- Lack of legal basis allowing evidence sharing.
 - recent “second generation” agreements with some CAs
 - allowing the party agencies to share confidential information without waiver

➤ The ICN Framework for Promotion of Sharing Non-Confidential Information for Cartel Enforcement (“Info-Sharing Framework”) since January 2016



➤ Survey Questionnaire on the Info-Sharing Framework in October 2018

In order to promote use of the Info-Sharing Framework,
CWG SG2 will circulate to the CWG authorities an online-based questionnaire mid-October 2018.
We truly appreciate your kind understanding and cooperation on the questionnaire above!



Thank you very much
for your attention.

Opinions expressed in this presentation are those of the speaker
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