

[Introduction]

[Slide 1 - Overview]

SADAAKI SUWAZONO: Hi, this is Sadaaki Suwazono. With the rapid globalization and digitalization of the economy, many major competition authorities, including Japan Fair Trade Commission, have launched a number of international cooperation or coordination activities since early 2000, which have successfully led to many fruitful results, including a memorandum of understanding, or MOU, or a cooperation agreement, conducting joint investigation or a review of the individual cases based on MOUs or the agreements and also bilateral or multilateral meetings to deepen common understandings.

One of the variations of the cooperation relationship has been built on various kinds of regional framework. Within the framework, competition authorities may conduct notification, communication, coordination of enforcement activities and regular consultations. Besides those frameworks, competition authorities may foster discussion in the region and improve relationships through a merger general forum. Cooperation between competition authorities should be carried out flexibly concerning the human or financial resources, the necessity, the legal constraint, and any other conditions. It is beneficial for all authorities to continue communications and cooperation with others as much as they can.

This module will introduce case studies of regional relationships, first of all, among Asia; secondly, among COMESA; thirdly, among Sweden, Finland, Norway, Denmark, Iceland, Greenland, and the Faroe Islands; fourthly, among COFECE, US FTC, US DOJ, and the Competition Bureau of Canada; and finally, between Australia Competition and Consumer Commission and New Zealand Commerce Commission on how they have developed their relationships with each other and what challenges they have solved, if any.

Then Professor Frederic Jenny, Chairman of OECD Competition Committee, will summarize the roundtable discussion on regional competition agreements, benefits, and challenges at OECD Global Forum on Competition in 2018.

[Regional Relationships among Asian Competition Agencies]

The JFTC has been utilizing various communication channels to build cooperative relationships with Asian competition authorities. In this section, we would like to introduce our experiences in which we have found effective ways for building regional relationships.

First, we will briefly explain the enhancement of bilateral relationships by concluding MOUs and the common partnership agreements and holding bilateral meetings. Second, we will introduce technical assistance programs to Asian authorities which is one of the effective efforts to enhance regional relationships. Finally, we will mention the establishment of cooperative relationships by a regional network, East Asian Top Officials meeting, EATOP.

[Slide 2 - MOU/EPA/FTA]

In the Asia-Pacific region, the JFTC has concluded several MOUs with the authority in Australia, China, Korea, Mongolia, the Philippines, Singapore, and Vietnam. Although the MOUs are non-binding, they are one of the frameworks which can enhance international cooperation between authorities. Those MOUs basically have provisions on notification, information exchange, confidentiality, coordination of enforcement, and technical cooperation.

One of the similar frameworks to promote international cooperation is the Economic Partnership Agreement, EPA, or Free Trade Agreement, FTA, which has competition policy related chapter, although they are legally binding.

The JFTC has also been engaged in efforts of the Japanese Government to conclude economic partnership agreements. Japan has concluded agreements with countries such as India,

Indonesia, Malaysia, Mongolia, the Philippines, Singapore, Thailand, and Vietnam, and with ASEAN in Asia-Pacific region so far. These agreements have the chapter on competition which encourages cooperation between competition authorities in the field of regulating anti-competitive practices.

In addition to the conclusion of MOUs between competition authorities and the EPA/FTA between countries, we have held a number of bilateral meetings on a face-to-face basis and discussed important issues with many authorities within the region. For example, we have discussed recent enforcement cases, amendment of competition laws and specific themes, such as digital economy, intellectual property, and international cartel investigations. Sharing experiences/expertise with each other helps the development of our own competition laws and policies. This kind of dialogue leads to the promotion of mutual understandings and cooperative relationships.

Bilateral meeting normally consists of a high-level meeting and a staff-level meeting. At the high-level meeting, top officials may discuss comprehensive competition policy issues and exchange opinions on issues of mutual interest. At the staff-level meeting, investigators may discuss challenges and stages of ongoing cases. We can promote beneficial discussion and human relationships corresponding to duties.

As noted above, bilateral meeting is one of the effective tools to promote mutual understandings and cooperative relationships. However, it is necessary for competition authorities to have the meetings without excessive burdens or a one-sided burden in order to continue the framework. In this respect, some MOUs stipulate that bilateral meeting is held alternately in Japan and the other country in order not to make the burden one-sided.

[Slide 3 - Technical Assistance Training]

The JFTC has provided technical assistance programs to competition authorities in Indonesia, Malaysia, Mongolia, the Philippines, Thailand, and Vietnam through sharing experiences/expertise with those authorities at seminars held in those countries or Japan.

The JFTC has provided investigative support with Asian authorities, such as sending officials as advisors and regularly providing advice. So far, we have sent recent advisors to Indonesia, Malaysia, and Vietnam.

Through technical assistance programs, the JFTC has provided seminars and workshops to relatively young authorities. Promoting competitive environment in the recipient country is a principal objective of such a technical assistance program. In order to implement effective international cooperation for enforcement, it is desirable that all of the authorities concerned have effective competition laws and capabilities. Technical assistance programs lead to establishing a baseline for cooperation between authorities.

As part of technical assistance programs, seminars spare time for participants to explain their competition laws and regulations which promote mutual understandings between the JFTC's officials and the participants from recipient authorities. Through the seminars, we may also have closer relationships with participants on a face-to-face basis.

However, from the viewpoint of effective and efficient technical assistance programs, we have two major challenges. Firstly, financial resources and, secondly, the overlaps of programs provided by either other competition authorities or donor authorities. Sending officials from donor authorities and inviting officials from recipient authorities require significant amount of financial resources. Without sufficient budget for those programs, it is not easy for competition authorities to implement the programs proactively. Fortunately, the JFTC has implemented effective programs thanks to the financial contributions from external organizations or funds,

such as Asian Development Bank Institute (ADBI), Japan-ASEAN Integration Fund (JAIF), and Japan International Cooperation Agency (JICA).

We have another challenge. Since the experienced authorities in Asia or outside of Asia have proactively provided technical assistance programs with younger authorities in Asia, they might have duplications of the program among donor authorities. It is desirable for donor authorities to discuss this issue at bilateral meetings or a multilateral forum. In addition to that, the JFTC has always updated technical assistance calendar which enables the EATOP members to share information of regional programs with each other in order to avoid schedule conflicts. By doing so, we have always tried to coordinate programs and face the challenges for effective implementation of the programs.

Furthermore, the JFTC has sent officials to technical assistance programs hosted by the Australian Competition and Consumer Commission, the Korean Fair Trade Commission and the Taiwan Fair Trade Commission and has also received experts from them to the JFTC's programs. Thus, such coordination has contributed to the efficient use of human resources within this region.

[Slide 4 - Multilateral Framework]

The JFTC has been enhancing cooperative relationships through participating in multilateral forums, such as the EATOP, and hosting face-to-face meetings on the margins of this event. The EATOP is a unique opportunity for the top-level officials from competition authorities in the East Asian region to gather at one place. The objective of this meeting is to provide an opportunity to exchanging opinions and information on timely topics and policy developments in a very frank manner and enhancing or improving cooperation relationships among competition authorities in the East Asian region.

From 2005, we have held EATOP 15 times. The EATOP leads to the convergence of competition laws in the East Asian Region. After 2005, when the EATOP was held for the first time, many Asian countries have introduced competition laws and amended the laws to introduce and advance provisions which are consistent with international standards. Moreover, through the dialogue at EATOP, participants have recognized the importance of international cooperation, leading to the conclusion of new cooperation agreements and the promotion of the actual enforcement cooperation based on the concluded agreements.

For example, since the first EATOP meeting, the JFTC has concluded EPAs and MOUs with seven competition authorities. Other competition authorities have also concluded MOUs with each other as well. Furthermore, the EATOP is beneficial not only for the promotion of mutual understanding between the Asian authorities but also for the establishment of human relationships. Holding the EATOP meeting in Asia, not outside of Asia, makes it easier for many competition authority officials to join the meeting.

[Slide 5 - Conclusion]

The JFTC is trying to enhance cooperative relationships with Asian authorities through MOUs, bilateral meetings, technical assistance programs, and multilateral forums.

Having various communication channels and making continuous efforts to make those channels effective have led to the maintenance and the development of regional relationships. However, having various communication channels might bring burdens on competition authorities. It is also important for each authority to consider its own resources and avoid duplication of channels as much as possible.

[Regional Relationship Among Nordic Competition Agencies]

[Slide 1 - History and Current Situation]

GRAEME JARVIE: Cooperation between the Nordic competition authorities began in 1959, meaning that we've had over 60 years of collaboration. Since the first meeting of the Director Generals in Oslo in 1959, we've seen a continuous development into the far-reaching cooperation that we see today. As I'll set out in this presentation, this cooperation involves, among other things, regular meetings between the heads of agency, joint advocacy efforts, and extensive contacts between case handlers.

[Slide 2 - Preconditions for Cooperation]

An important framework for the success of the cooperation in the area of competition is the extensive political, cultural, and economic integration that exists in the Nordic region. There's a formalized cooperation between the Nordic countries in the form of a Nordic council of ministers and a Nordic council consisting of parliamentarians. The council has called the cooperation between the Nordic countries the world's oldest regional partnership with a vision to make it the most integrated region in the world by 2030. We can see a number of similarities in our legal systems, for example, when it comes to our competition regimes.

Given the level of political, cultural, and economic integration, it's not surprising that many companies also see the Nordic region as an increasingly integrated market with similar market conditions. Companies often operate across borders in several Nordic countries. All of this helps to explain the preconditions for and the necessity of effective cooperation between our authorities.

[Slide 3 - Structure of the Meetings]

The first meeting of the competition authorities involved the Director Generals in Denmark, Finland, Norway, and Sweden. In 1975, Iceland was invited to participate. Later on, the Faroe Islands and Greenland joined. Today, the meeting structure involves one meeting in the

spring for the heads of agency and a separate annual meeting in autumn that involves the Director Generals, other agency staff, and also representatives from the respective ministries. The spring meetings allow the Director Generals to discuss questions of common concerns, such as management issues, organizational questions, and agency effectiveness, as well as the evaluation of ongoing initiatives and the planning of future cooperation.

Along with the development of the Nordic cooperation, the annual meeting in the autumn has also expanded in scope and can involve 50 or more participants. To accommodate this, general topics are covered in plenary meetings. This can include presentations by the heads of agency or panel discussions, while specific topics are dealt with in separate workshops, usually attended by agency staff working with those issues.

The Director Generals took a decision in principle early on to speak in their respective Scandinavian languages during the meetings. This can be an advantage in advancing cooperation, but it can also pose challenges. The Scandinavian languages are fundamentally similar, but mutual comprehension is not always guaranteed. Today, respective Scandinavian languages are spoken in the context of plenary sessions, but all workshops are held in English to ensure active participation from all delegates and to allow the facilitation of discussion of what can be complex legal and economic issues.

[Slide 4 - Working Groups]

Complementing these annual meetings, there are also special working groups for cartel issues, merger issues for chief legal officers and for chief economists. These working groups meet regularly, often on an annual basis, which encourages more in-depth experience sharing between staff working with the same issues. Ad hoc meetings can also be arranged for other staff. For example, this has been the case for communications teams in their respective agencies.

Responsibility for hosting annual meetings, meetings of the Director Generals, and the working groups rotates between the competition authorities.

[Slide 5 - Advocacy Efforts]

The Nordic competition authorities also have a long experience of cooperating on advocacy efforts, primarily through undertaking joint market studies. Since 1998, a dozen reports have been drafted. And as we speak, a team is currently working on a joint report on digital platforms to be published at the end of 2020. The Director Generals jointly decide on the topic for study with the final product usually taking the form of a report, drafted in English by a cross-Nordic project team.

The reports typically include a description of the market in the respective countries, an assessment of the market conditions, and reasons for competition concerns, as well as policy recommendations. Of course, as is the case with any market study, the work requires a significant investment of time and resources in an already busy work schedule. So care must be taken with the identification of relevant topics and appropriate planning needs to be put in place.

[Slide 6 - Cooperation in Competition Cases]

Of course, our cooperation goes beyond meetings and advocacy efforts. Our authorities also cooperate on competition enforcement in specific cases. Sweden, Denmark, and Finland are members of the European Union, meaning that these competition authorities have the legal basis and tools to formally cooperate on individual investigations within the European Competition Network. The other Nordic countries are, however, not EU members and have different legal arrangements with the EU member states. This was a catalyst for the formalizing and strengthening of the cooperation between the Nordic competition authorities.

In 2001, a cooperation agreement was signed between Denmark, Norway, and Iceland.

Sweden adhered to the agreement in 2004. The agreement was drafted to allow the countries to strengthen their ability to exchange information subject to confidentiality. The agreement also includes provisions on notifications. The objective was to enhance the country's enforcement of competition law. However, despite this agreement, challenges for cooperation remained since we lacked the legal basis for active assistance between EU and non-EU members in the Nordic region in antitrust and merger investigations.

So a new cooperation agreement was signed in September 2017 by the competition authorities in Sweden, Finland, Norway, Denmark, Iceland, and Greenland. The agreement replaces the previous, more limited cooperation agreement. It gives us enhanced powers to actively gather information on behalf of one another, for example, through dawn raids and requests for information, and to exchange information in conjunction with investigations.

It's worth mentioning that when the new cooperation agreement was drafted, consideration was given to best practices from the international competition community. The OECD recommendation on international cooperation from 2014 was a specific source of inspiration.

[Slide 7 - Conclusion]

In conclusion, the regional cooperation between the Nordic competition authorities is multifaceted and this means that our agencies benefit in various different respects. Meetings on staff and management levels help to establish professional relationships and allow the mutual enhancing of expertise. Joint market studies can give our authorities a stronger voice in our advocacy work. And the professional relationships that case handlers develop make it easier to collaborate in specific cases. Combined with the formal tools available under our cooperation agreement, this helps to make our competition enforcement even more effective.

[Regional Relationship between Tasmanian Competition Agencies]

MARCUS BEZZI: Hello, I'm Marcus Bezzi. I'm an Executive General Manager with the ACCC. I'm responsible for the Specialized Enforcement and Advocacy Division, and we do international engagement, as well as cartel enforcement and a range of other things.

[Slide 1 - Challenges]

Close cultural, economic, and geographic connections between Australia and New Zealand are the foundation for the strong and deep relationship between the ACCC and the New Zealand Commerce Commission. That goes back many years. Our experience is that effective competition policy and law is a driver of growth and productivity.

Successful regulation in this area requires strong enforcement. As businesses operate beyond national borders, effective enforcement is only achieved through cooperation between enforcement agencies. Cooperation does not require a special legal relationship. Trust and a recognition of possible benefits is most important. Trust lubricates the cooperation machine.

I would summarize it as saying that we engage in five types of cooperation. Capacity building, that is working closely with each other and other agencies to mutually improve our capabilities and effectiveness and to build the capability and effectiveness of other competition and consumer regulators; informal enforcement and compliance cooperation at an operational level; engagement under the terms of cooperation agreements; formal cooperation using powers confirmed under legislative frameworks; and, finally, cross-appointments of commissioners and staff movement between our agencies.

Some of the challenges. Well, the Australian and New Zealand governments have embarked on a decade's long process of working to maximize the cooperation and harmonization of policies and laws between our countries in a range of areas, including competition and

consumer law. The ACCC and NZCC have developed a good shared understanding of the legal framework in which we both operate. This, together with the experience we've had working together over the years, means that our challenges are practical. They arise when staff in each agency have got limited time or resources and are a bit stretched. We do have to invest in the relationship and we do have to realize that the investment's important. And it may not lead to specific or important outcomes, but it is essential for the foundation of trust that's needed for the deeper cooperation.

[Slide 3 - Informal Cooperation on Enforcement Investigations]

Informal cooperation on enforcement investigations is really important. It's cooperation which doesn't rely upon a specific treaty, MOU or domestic legal instrument, and it can be the most effective form of cooperation and it's certainly the most common. Examples include sharing agency information. That might be information about agency or policy developments that might relate to investigations. It can include sharing confidential information from third parties, but it does require their consent if you're doing that. We seek waivers when we're sharing third-party information.

Most common are cartel immunity or leniency waivers and they enable us to discuss case theories, what action the other regulator is likely to take, the timing of search warrants or dawn raids, which we use to preserve key evidence, the availability of witnesses. Often, we'll bring witnesses in to Australasia from other parts of the world and we'll coordinate on when we interview them. We might engage with each other on where we might get the best evidence and also discuss whether immunity applicants have given us full disclosure on everything that they should.

So what does all this cooperation achieve? Well, it can help identify competition

concerns that might arise in our jurisdiction. It can increase the chances of detecting cartels, particularly international cartels. It can help to constructively analyze our case theory by engaging with another agency that's going through a similar case. It can also help make our investigations more efficient through coordination.

[Slide 4 - Informal Cooperation on Mergers]

In a mergers context, informal coordination and cooperation is also very important. And we also use waivers in that context. With waivers, we can learn about business operations in each other's market and that might be relevant to the merger we're assessing. It helps us to understand market analysis and theories of harm in the other markets, and that will inform our understanding in our own markets.

There's a great benefit, also, if parties know that we're consulting with other agencies. We think we arrive at the right remedy for our jurisdictions earlier through cooperation. Cooperation is also a way of leveraging the existing work of other jurisdictions and helps us to achieve remedies more efficiently.

[Slide 5 - Formal Cooperation]

Formal cooperation is also important, but it does require a legal framework to balance the rights of individuals in private companies with effective regulation. It can be crucial to preventing and punishing conduct, which is economically harmful by allowing information exchange without a waiver or allowing other parties to obtain evidence for each other's agency. It also can allow the enforcement of legal processes offshore.

The ACCC and NZCC have got a formal cooperation arrangement that we entered into in 2007. The agreement between us covers our competition, consumer protection, and regulatory functions and provides for notification, mechanisms for cooperation and coordination for

enforcement activities, meetings, protection of confidential information, and staff exchange.

[Slide 6 - Formal Cooperation - Agency to Agency]

We've also got a number of agency-to-agency agreements apart from that MOU with New Zealand, and they include bilateral and plurilateral cooperation agreements, some of which also involve the NZCC.

We've also got a number of agency-to-agency agreements and this includes MOUs including bilateral and plurilateral cooperation agreements with the NZCC. The ACCC and NZCC have very important cross-appointment arrangement.

[Slide 7 - Formal Cooperation - Sharing Evidence]

Formal cooperation can enable the gathering of evidence, which includes conducting compulsory information and evidence requests, executing search warrants under mutual legal assistance treaties or similar treaties. Exchanging confidential information, documents and evidence is critical and we both have information gateway provisions in our competition laws that allow confidential information sharing in certain circumstances.

[Slide 8 - Examples of Cooperation]

I'd like to talk now about some examples of cases in which we've cooperated. There was one involving Visy, a cardboard manufacturer, and in that case, the NZCC conducted interviews at the ACCC's offices as part of its investigation.

In the so-called High Voltage Cable investigation, we coordinated the timing of interviews that were brought into Australasia from other parts of the world.

In the Swedish Match tobacco merger, we coordinated on the divestment undertakings that each of us was negotiating.

And in the Air Ambulance investigation, the NZCC obtained confidential interview

transcripts from the ACCC.

[Slide 9 - Cross-appointments: How It Works in Practice]

Cross-appointments, how do they work in practice? Merger clearance applications that are received by both the ACCC and NZCC are considered by cross-appointed commissioners. We have regular meetings of the ACCC's Merger Review Committee, which are held through the merger investigations, and they involve the NZCC cross-appointee. Cross-appointees take part in each of the commissions' merger decisions.

Cross-appointed commissioners have full access to confidential information and this mechanism deepens cooperation at the highest level and allows for more consistency in analytical frameworks. I should note that consistent decisions doesn't mean the same decision. There are different factors in each market. Our market conditions aren't the same and they will impact on the ultimate decision.

[Slide 10 - Conclusion]

Effective cooperation between the ACCC and NZCC is driven by trust, pragmatism, and flexibility. It's underpinned by regular contact at an operational senior management level and commissioner level and cross-appointments. It's also underpinned by legal arrangements. But the relationship isn't driven by those legal arrangements. It's pragmatic in operation. It relies, foremost, on building understanding of our similarities and differences in best practice. We use informal mechanisms whenever possible.

I should say we're always seeking to improve both the legal framework and the legislative and other agreements that allow information sharing and cross-border enforcement. We do that through operational level engagement; for example, regular cartel discussions.

[Regional Relationships Among the U.S./Canada/Mexico]

ELLEN CREIGHTON: Hi, I'm Ellen Creighton from Canada's Competition Bureau. Today, I'm joined here in Canada by representatives of the American and Mexican competition authorities. We'd like to talk to you about how we've built strong regional cooperation among the four competition agencies in North America.

HEIDI SADA: Hi, I'm Heidi Sada of the Executive Director of International Affairs of Mexico's Federal Economic Competition Commission, or COFECE.

RUSS DAMTOFT: And I'm Russ Damtoft of the Office of International Affairs of the U.S. Federal Trade Commission.

LEAH MCCOY: And I'm Leah McCoy of the International Section of the U.S. Department of Justice.

[Slide 1 - Relationships in North American Competition Agencies]

HEIDI SADA: Our four agencies have made a very strong cooperative relationship over the years. While it includes formal agreements and regular meetings of our top leadership, what makes the relationship really work is that we have built deep cross-border network at the level of case handlers. While we international affairs people may encourage a multilateral network, it's the human glue among the case handlers that truly drives this network.

[Slide 2 - International Cooperation]

LEAH MCCOY: So let's discuss cooperation between our three countries, working from the most formal levels to more informal cooperation. At the highest level, we have three bilateral cooperation agreements between Canada and the U.S., the U.S. and Mexico, and Mexico and Canada. International cooperation on competition law enforcement is also part of the framework of the Free Trade Agreement that links our three countries. Together, our bilateral agreements, the Free Trade Agreement, and our shared values reinforce the commitment of each of our

agencies and countries to robust international collaboration and to the protection of any confidential information we exchange.

However, by themselves, these agreements are just words on paper. It's up to the people in the agencies to breathe life into the commitment that these agreements represent.

[Slide 3 - Reinforcing Commitments]

ELLEN CREIGHTON: At the next level, maybe to prove to the rest of us that they really mean it, our agency heads get together about once a year to discuss important issues in competition law enforcement. Some are substantive matters; others are broader policy questions and sometimes they deal with pragmatic endeavors to improve our cooperation. For example, we're filming this in Gatineau, Quebec, at our Competition Bureau headquarters since it's our turn to hold this year's annual trilateral meeting.

Earlier today, our agencies' leaders and senior staff discussed competition enforcement and international collaboration in digital markets and shared lessons learned and challenges. The fact that the heads of our authorities have good relationships demonstrates their commitment to international cooperation. This makes our jobs of coordinating actual case work much easier.

[Slide 4 - Importance of International Cooperation]

RUSS DAMTOFT: And this is where we find the importance of international cooperation in competition cases. We have lots of cases that affect and even interlock with each other's work, Canada/U.S., U.S. and Mexico, Canada/Mexico, and sometimes even all three. It's an everyday occurrence in merger and cartel cases, but it's increasingly true in unilateral conduct cases as well.

So here's how it works in practice. When one of our case handlers realizes that their case

has a cross-border component, they get in touch with one of their international colleagues – that's us -- who finds out if there's an open investigation of the case in the other country. Then we put our case handlers in touch with each other, usually by telephone. It's very pragmatic and it happens quickly, sometimes even the same day.

The first conversation usually happens without waivers, but even without waivers, we can share general ideas of markets, theories of harm, timing, and so forth without disclosing any confidential information that our laws obligate us to protect. If it looks like more intensive cooperation is going to be needed, we discuss whether we should ask the parties for waivers of confidentiality so we can cooperate more deeply.

If you haven't seen it already, I suggest you look at the ICN Training on Demand module on international cooperation which explains how this works in more detail.

The important thing is that we've established day-to-day points of contact between our agencies and we use these on a regular basis to cooperate in real-time about cases in which we have a mutual interest.

[Slide 5 - Purpose of Face-to-Face Meetings]

HEIDI SADA: A few years ago, we decided to take it a step further. Since mergers are the kinds of cases that most often involve international cooperation, we decided to hold an annual working-level roundtable. Senior case handlers can discuss their concrete issues in merger reviews and compare their approaches to particular cases. Of course, we observe our confidentiality rules in these meetings.

We rotate these meetings between Washington, Ottawa, and Mexico City. They enable us to learn from each other's practices, but also to get to know each other. This is essential when we later have a case that we all are looking at. Cooperation is a lot easier when we know each other,

we have met in person, and maybe we have shared a molé, a crab cake, or even a poutine.

We are looking to expand these meetings to unilateral conduct, cartels, and other areas to ensure we have strong pick-up-the-phone relationships that help us work more efficiently and effectively. So by working together flexibly and informally, our four agencies have made a routine out of international cooperation which helps us achieve good results for all the consumers we work for.

[Slide 5 - Conclusion]

LEAH CREIGHTON: We have developed a very strong cooperative network among the four North American competition agencies. What has made it work for us is strong support from our agency leadership, together with a commitment to work together to identify where collaboration can bring real value for all of us. We are committed to continue this cooperation along the same lines. Thank you very much for your attention.

[Regional Relationships Among Eastern and South African Competition Agencies]

[Slide 1 - Overview]

WILLARD MWEMBA: Good afternoon. My name is Willard Mwemba. I'm the head of the Mergers and Acquisitions Division at the COMESA Competition Commission. The Commission is a regional competition authority established under Article 6 of the COMESA Competition regulations. The purpose of the regulations is to promote and encourage competition by preventing restrictive business practices and other restrictions that deter the efficient operation of markets, thereby enhancing the welfare of consumers and, of course, protecting consumers from offensive or against offensive conduct by market actors.

Now, if you hear the purpose of the Commission and what it is, it is a regional competition authority and its purpose is quite broad. It fits in very well with the subject of

discussion that is fostering regional relationships and cooperation among competition agencies. One of the mandates of the Commission activity under Article 7 is to ensure that it cooperates with national competition authorities in the enforcement of the regulations and, of course, competition policy at a regional level.

The other function or mandate of the Commission as regards cooperation is also to ensure that it enters into such arrangements with competition authorities outside the common market in order to ensure that anti-competitive concerns emanating from outside the common market but having affected the common market are adequately addressed.

So the subject of fostering regional relationships is -- makes the Commission actually sit in a very unique position because exactly that's what it does.

[Slide 2 - Cooperation with Competition Authorities]

The Commission regulates competition -- or regulates competition matters involving twenty-one member states.

Now, for the Commission to efficiently and effectively achieve or realize its mandates as we've said and ensure that the competitive process in the common market is protected, it has to work very closely with national competition authorities. Therefore, even if the regulations actually by virtue of the treaty as published in the common market of Eastern and Southern Africa binds all the member states and it ensures or it obliges all the member states to actively help the Commission in terms of enforcement of their regulations.

[Slide 3 - Formal Cooperation Relationships]

The Commission has also entered in what we call MOUs, memorandum of understanding, to ensure that we cooperate properly, we cooperate effectively, we cooperate efficiently as regards their assessment of transactions that come before the Commission.

Why is this cooperation important? Cooperation is very important, number one, cooperation assists in bringing efficiency. Cooperation also assists in ensuring that the affected countries or member states work together in terms of identifying the theories of harm of a competition case that they are looking at. They work together in terms of identifying or crafting their remedies to address the competition concern that could have been identified.

You may agree with me that some of the remedies that may be crafted may resolve a competition concern in one part of the common market within a certain member state and this may raise other concerns in another member state. So to ensure that there is uniformity in terms of approach or assessment of these competition cases, it becomes very important that the Commission cooperates with other member states involved in crafting those remedies, coming up with the theories of harm. And as a result, there is efficiency and effectiveness in terms of disposing of these cases. Now, this efficiency and effectiveness is to the advantage of the Commission and indeed, the parties under investigation or those whose merger is being reviewed in the case of a merger. Why? Because the time within which such cases are concluded is faster and, hence, the Commission, instead of spending much of its resources on one case, will use those resources for other cases. And then for business certainty one thing that is so important is that businesses would love is for those cases to be disposed of as quickly as possible.

Now, the Commission also cooperates with competition authorities outside the common markets, as we heard in my preamble, in my opening remarks, when I said the regulation empowers us to enter into such agreements and will enable the Commission to regulate competition issues and manage from outside the common market but having an effect in the common market.

[Slide 4 - Informal Cooperation Relationships]

So pass on to that, or in view of that, the Commission has engaged in informal cooperation arrangements with jurisdictions outside the common market, for example, South Africa and Botswana, which are jurisdictions we've effectively cooperated informally in some of the common cases that have raised competition [concerns] in the common market and in those jurisdictions.

Now we've given the benefits of cooperation and talked about the good things that emanate from this cooperation, but don't we face any kind of challenges -- challenges in ensuring that this cooperation is effective? Of course, we do.

[Slide 5 - Challenges Encountered in Cooperation]

And what are some of those challenges? Some of those challenges are that -- you see, the Commission also ensures or tries to ensure that there's also cooperation among national competition authorities themselves in handling some of the cases that are common to them. Now, member states or national competition authorities find it easy to cooperate with another country or another competition authority where they already view that their relationship is symbiotic. For example, in other words, where they do think that they'll have something to benefit from that cooperation arrangement. Where they do not have such a view, then cooperation becomes a challenge and is not effective.

And how do such competition authorities arrive at the conclusion that they're going to be benefitting out of that relationship? It stems from the different levels of development of these competition authorities. Some of them are very advanced and quite experienced. Others are new and they're just learning ways of enforcing competition law. So those that are advanced and experienced, sometimes they do think that probably it's a waste of time engaging in such

cooperation because they will do it even without such cooperation.

The other one is different -- the other challenge is that there are different legal frameworks in the common market, and as a result of these different legal frameworks, cooperation sometimes is hampered. For example, within the cooperation framework, there may be an issue or an item regarding the collection and admission of evidence. So while this may be supported by an MOU, it may not be supported, for example, by the legal framework of a certain jurisdiction. And in that case, what may happen is even though the evidence is collected under the MOU, such evidence may not be admissible in the judicial systems of a certain member state. So that becomes a challenge as well.

[Slide 6 - Solutions]

What has the Commission done to ensure some that these challenges are addressed? What the Commission has done is to ensure that they equip all competition authorities with the tools and training to ensure that they understand, they have a full and effective understanding of competition law and policy. And how does it do that? Every year, the Commission holds a minimum of two regional training workshops for officials of national competition authorities, teaching them or training them on the tools of competition assessment, investigative procedures and approaches and the like.

The other thing the Commission is doing in order to address some of its challenges is to ensure that the laws of national competitive authorities are harmonized, and when it is harmonized, competition cooperation becomes easy.

[Slide 7 - Conclusion]

So those are some of the things that the Commission is doing. And going forward, the Commission shall continue to ensure that it engages national competition authorities through

these training workshops. It will make sure that it engages national competition authorities to enter into bilateral MOUs amongst themselves, which are more effective than multilateral MOUs in that they have more focused issues and subjects to look at.

And then the Commission shall also ensure that it reviews the cooperation agreements it has with each and every member state and it will also ensure that it enters into other cooperation agreements with more authorities outside the common market, but within the geographical proximity of the common market. For example, we are already in talks with the East African Community Competition Authority and we are working towards having a working MOU that will assist us in looking at some of the cases that will involve both jurisdictions, especially where we have overlapping memberships of member or partner states.

Thank you so much.

[Benefits and Challenges of Regional Competition Agreements: Lessons from the OECD Meeting]

[Slide 1 - Overview]

FREDERIC JENNY: I'm very pleased to briefly present some insight into benefits and challenges on regional cooperation for the ICN Training on Demand module, Building Regional Relationships Among Competition Authorities.

Multilateral forums, such as the ICN and the OECD, provide valuable platforms for discussion on how to improve international cooperation and a training like this one is an excellent example of this. For 50 years, the OECD and its competition committee have been shaping the framework for international cooperation among competition agencies. Recommendations, best practices, policy roundtables have served not only as models for and inspiration for national initiatives, but also as the primary driver for promoting cooperation on a

global scale.

During this short video, I will draw on the discussion during the roundtable on regional competition agreements at the Global Competition Forum in 2018 in Paris. The discussion during this roundtable focused mainly on those regional competition agreements that have established a regional competition authority. However, I will also include some general perspective on some benefits and challenges of regional cooperation.

[Slide 2 - Necessity of International Cooperation]

There are a number of drivers behind the increasing necessity of international or regional cooperation among competition authorities. The first driver is the increasing number of jurisdictions that have adopted and actively enforced a competition law and policy, the number of jurisdictions where the competition law increased by more than 600 percent in between 1990 and 2015 from fewer than 20 to about 125. The second driver is the increasing international nature of competition cases as a result of increasing trades and the development of the digital economy.

When competition expands from a national to a regional level, competition law and policy is needed to ensure that the benefits of trade and investment liberalization are not compromised by cross-border anti-competitive practices.

[Slide 3 - Elements of International Cooperation]

Let me go into three elements which I think are important: The rationale for international cooperation, the benefits of international cooperation, and then the types of international cooperation.

The rationale for international cooperation, when you have increasingly globalized

economic markets and nation states with different competition laws, you do have a problem or a set of problems. You may have a problem, for example, of gaps. My country is affected by a transnational transaction or transnational anti-competitive practices which is initiated abroad. And I do not have the tools to go abroad, investigate and, therefore, use my law to sanction this violation. That's one type of problem, one type of gap.

But there can be also contradictions. The same merger is assessed by different countries but with completely different results because the different countries do not have strictly similar competition law, even though sometimes the market conditions are the same in those two countries. In that case, the remedies in one country may contradict the remedies in another country. As we have more and more globalized firms operating throughout the world, those kind of gaps in enforcement or contradiction in enforcement need to be solved.

Two ways to do this, one of them is convergence of competition laws, and the OECD has been trying to bring countries to a common understanding of what competition is all about and competition laws should be about. The second dimension besides convergence is cooperation. The ability for the competition authority to go to another competition authority and ask would you help me solve this case. That's one type of cooperation which we will talk about.

Secondly, we'll talk briefly about the benefits. Some of the benefits are obvious and they fall from what I've said. If we have cooperation between competition authorities, we are in a better position to avoid the gaps in enforcement or to avoid inconsistent enforcement between countries. So this is the first two benefits, but there's a third one. Think about competition authority in a very small country. It has a lot of difficulty being respected by multinationals because the multinationals don't need this country. If the competition authority tries to impose constraints, maybe the multinational will say, oh, I will just leave your country, I don't need to

be in your country. And there's nothing much that a competition authority in a small country can do to try to be respected by very large multinationals.

But when you have cooperation between competition authorities in several countries, then all of a sudden things change. A multinational cannot easily get out of a large number of countries who are cooperating on competition. So all of a sudden, each competition authority is taken much more seriously because the multinational knows that there is cooperation between all those institutions.

So another benefit of cooperation is indeed the ability for competition authorities in small countries to make an impact, to have a better dialogue with possible violators of their competition law.

And there's a last benefit that I want to point out. When different countries come to different conclusion about the same practice or about the same transaction, that creates a difficulty between the countries, and we have seen in the past difficulties between the U.S. and Europe, for example, on some mergers because there was a different assessment of the benefits and the costs of those mergers.

Well, when something like this happens, very rapidly, it becomes a political issue and, very rapidly, the competition authorities lose their independence, they lose their ability to treat the problem from a technical point of view because ministries or governments get involved in a case. So cooperation between competition authorities, by eliminating or reducing the scope for differences between competition authorities, help eliminate those cases where all of a sudden the political world takes over what is essentially a competition issue. So protection of the independence of competition authority is also a benefit from cooperation.

Let me now go to the types of cooperation, what we are thinking about when we talk

about regional cooperation in the field of competition and developing successful regional relationships is the following: International cooperation can come in the field of competition in different forms. First, there can be case-specific and non-case-specific cooperation and, second, there can be formal and informal cooperation.

Let me start with the first point, case-specific and non-case-specific cooperation. It is sometimes tempting to narrow the definition of cooperation used to facilitate the enforcement of national antitrust law, for instance, in transnational cases. And case-specific cooperation through, for instance, consultations, the exchange of confidential information or nonconfidential information, joint investigation, this is certainly a crucially important part of cooperation regarding competition law enforcement.

However, clearly, this case-specific cooperation is not the only valuable outcome of cooperation between competition authorities, especially in developing countries or in countries that have not much experience. There's also a substantial amount of cooperation on broader issues, such as the proper design of competition law and competition law enforcement institutions, exchanges of experience among competition officials about substantive issues and antitrust law, the definition of best practices, the development of tools of cooperation, such as positive or negative committees, and the adoption of recommendation pertaining to specific topics of law enforcement as competition advocacy.

Now, the second distinction that I wanted to make is the way in which competition authorities choose to cooperate. Authorities can choose the formal option through a formal agreement or they can choose informally to cooperate between them. There are different ways in which jurisdiction can enter into a formal cooperation agreement in the field of competition law and policy. Jurisdictions can, for instance, choose between bilateral, plurilateral, regional, or

even multilateral agreements and between agreements that are specific to competition law or agreements that also include other policy areas. All of these agreements can be called regional competition agreements.

In practice, regional competition agreements take different forms and show a greatly varying degree of regional cooperation convergence depending on the objectives that they tend to achieve. Especially for a small and developing jurisdiction, a competition agreement could help overcome obstacles that these jurisdictions are facing when enforcing their competition law.

I will name three. They can reduce enforcement resource constraints. This is possibly the main obstacle for a small and developing jurisdiction and has to do with their limited financial means. Regional cooperation enables authorities to pool these case resources to reach economies of scale in enforcement activities, as well as in competition advocacy and capacity building. They can reduce enforcement capacity constraints. Even if a jurisdiction has sufficient resources, it may encounter evidence-gathering problems if evidence is located elsewhere, for instance, when cartel members meet in another jurisdiction in order to avoid getting caught.

Regional cooperation can enable evidence sharing. They can improve a competition culture. Smaller developing jurisdictions often struggle with low enforcement level resulting from the weakness of competition culture. A competition law that does not enjoy full and consistent government support can lead to the priority of short-term industry policy considerations over competitive concerns. Cooperation can play an important role in educational efforts towards improving a competition culture.

[Slide 4 - Discussions During 2018 Global Forum on Competition]

This discussion, during the roundtable on regional competition agreements at the Global Forum on Competition 2018, provided some successful and less successful examples of regional

competition agreements. Challenges that were raised by countries included limited resources on the regional level, the lack of enforcement, reticence to yield certain powers to a supranational authority, the lack of harmonization of laws across different countries, and the lack of political will to enter into regional competition enforcement agreements on a standalone basis.

Secondly, next to formal cooperation, competition authorities cooperate informally which in general is easier to establish and can also provide tremendous value to the participating jurisdictions. Informal cooperation can take numerous forms, including, for instance, the exchange of staff, periodic meetings in person or by telephone, skilled training of frequent operational or high-level events.

Again, during the discussion at the roundtable on regional competition agreement at the GFC in 2018, many countries have indicated that these informal forms of cooperation are critical in themselves. They also continue to add value even in the presence of a potential formal agreement. The exchange of and communication between staff in national and regional competition authorities was deemed crucial and was very much encouraged by the participants.

[Slide 5 - Key Factors of Success]

Let me add a few things about the keys factors of success in regional cooperation. And here, I will inject my own personal experience, as well as some of the lessons that we've learned through international discussions. The first thing is that when we conceive of cooperation, whether it is formal or informal, a key factor of success of this cooperation is the trust which is developed between the competition authorities. Competition authorities do not want to cooperate with other competition authorities if they don't trust that the procedures, the quality, the confidentiality of this cooperation is going to be questioned. So building trust through informal exchange is very useful to deepen the level of informal cooperation, as well as to establish it on a

more formal basis.

The second element is that the countries that want to cooperate must have some common interest. So it can be an economic interest, for example, because they are trade partners and, therefore, they exchange quite a bit and, therefore, they have a common interest in making sure that those exchanges are going to develop in a satisfactory way. So it is one of the reasons why competition authorities at the regional level tend to cooperate because they do have common interest because of their geographical proximity.

The third dimension is the fact that it's easier for competition authorities to cooperate when they share broadly the same legal environment than when they need to cooperate with countries which have a completely different system. So the consistency -- and, again, I mean, it happens that in many regions, countries which are neighboring countries may have the same history and, therefore, the same kind of legal system, so that helps. So this is the third factor.

The fourth factor, I would say, is some level of equality between the countries. If you think about the reason why Mercosur, for example, hasn't led to much development, it may be because Brazil -- the Brazilian economy is so much bigger than the other economies in the Mercosur that there is an element of difficulty in cooperating between those small countries and a very big power like Brazil. If you take, on the other hand, the ECN, the cooperation between the European countries, they are all middle-sized countries that all share the same legal system, are next to each other, trade a lot with each other, and there you have factors which are making cooperation much easier.

The last element of the key factors of successful cooperation is, I would say, the institutional design of the cooperation to make sure that all of the actors are involved. If one

takes, for example, a regional agreement like WAEMU, where there is not much cooperation because there was a WAEMU decision by the Court of Justice to say that the WAEMU Commission, at the federal level, was the only institution which was in charge of all of the competition problems. And as a result of this, the national competition authorities did not have a role or did not have much of a role in -- because everything was sent to the central level.

That raised two sets of issues. One of them, a lack of resources of the central level to deal with all the competition problems at the local level, but the second one, it did not establish a clear cooperation between the central level and the different competition authorities. So trying to have a setup where everybody will actually cooperate in what is the perimeter of cooperation which has been defined I think is very important.

[Slide 6 - Conclusion]

To conclude, although the required type of cooperation very much depends on the circumstances, on the mutual understanding amongst the coordinating agencies and on various local factors, we do need to think about the elements for an effective and lasting cooperative relationship. In this regard, the OECD recommendation on international cooperation and competition investigations and proceedings provide for good principle for competition authorities to make that cooperation more effective and efficient.

Moreover, I would like to mention the three inventories on regional cooperation that the OECD has developed. The first is from 2015 and focuses on international intergovernmental cooperation agreements and competition. The second is from 2016 and focuses on provisions included in international cooperation, memorandum of understanding between competition agencies. And the third is the result of a GFC session on the regional cooperation agreement in 2018, which includes relevant competition provisions of the 11 regional competition frameworks

that have established a regional competition authority.

These inventories provide a depth of legal provisions on cooperation that are found in MOUs, agreements, and competition laws. And this is a very useful reference.

I hope that this video has provided you with some valuable insight on what are the benefits and challenges of regional cooperation and how this could be improved. The potential of cooperation is enormous, but this potential can only be achieved if there is mutual trust, good faith between the cooperating authorities, and a good institutional setup. Thank you very much.

[Conclusion]

SADAAKI SUWAZONO: Let me conclude this module. As you see from the series of presentations, how to improve regional relationships varies widely. In other words, there is no one size fits all theory or method for this topic. It depends on historical, geographical, or legislative situations among the cooperating authorities.

Thanks to the great presentations by the wonderful contributors, we find some common features from the case studies. They shed light on their laws and efforts. Every authority has been trying to improve regional relationships by utilizing both formal and informal cooperation in both authority heads level and staff level. For example, in order to implement the international case cooperation, cooperation agreements between competition authorities are essential for informational exchange. However, without active communications based on the agreements, international cooperation doesn't work well.

How can we establish close relationships with frequent communications? We can begin by holding high-level and staff-level meetings or through the technical assistance programs. Various types of and various levels of efforts complement each other. Those efforts surely lead to effective and efficient case cooperation and policy discussion.

Finally, I would like to introduce two relevant ITOD modules. The first one is a module on international-to-international cooperation and the second one is on international-to-international organizations. These two would provide more details of each topic.

I hope this module will help all competition authorities to establish robust regional relationships. Thanks a lot for the great contribution made by our distinguished presenters and the tremendous help provided by our colleagues at the U.S. FTC's Office of International Affairs.