



International Competition Network's Framework for Merger Review Cooperation

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Japan Fair Trade Commission

1. Background

Recognizing the benefits of cooperation in multijurisdictional merger review,¹ and the desire to promote effective and efficient multijurisdictional merger review, the Japan Fair Trade Commission (JFTC) proposes the establishment of the “International Competition Network’s Framework for Merger Review Cooperation” (the framework).

2. Purpose of the framework

The non-binding framework is intended to facilitate effective and efficient cooperation between and among member agencies of the International Competition Network (ICN) reviewing the same merger, under their respective laws, through the identification of agency liaisons and possible approaches for information exchange among agency case teams. The JFTC proposes establishing this framework within the ICN given the breadth of the ICN’s membership and its mission, which includes facilitating effective international cooperation.² The framework is to be established specifically within the ICN’s Merger Working Group, where it is to be informed and refined by existing and future Merger Working Group work, including member input on ways to promote merger review cooperation and feedback on the framework’s utility.

¹ “Multijurisdictional merger” refers to a merger or an acquisition that is reviewed by multiple jurisdictions regardless of whether notification is mandatory or voluntary. Depending on the definition of merger in the legislation of each jurisdiction, transactions to which the merger regulation does not apply (e.g., joint ventures) may be included as the object of the cooperation in a specific case under this framework.

² See the ICN’s Vision for its Second Decade at:

<http://www.internationalcompetitionnetwork.org/uploads/library/doc755.pdf>

3. Participation in the framework

(A) Framework participation is open to all ICN member agencies (“ICN members”) responsible for reviewing mergers. ICN members with experience in reviewing or that expect to review multijurisdictional mergers are particularly encouraged to join the framework.

(B) For merger cooperation between ICN members that is facilitated through framework contacts, it is intended that:

(a) any exchange of information is subject to the laws and regulations governing the confidentiality of information of the agencies cooperating; and

(b) participating agencies should, to the extent consistent with their respective laws, maintain the confidentiality of any information communicated to them during the course of a multijurisdictional matter.

(C) The framework does not create any legally binding rights or obligations for any of the ICN members participating in the framework. For example, multijurisdictional merger cooperation does not prejudice an agency’s independent decision-making with respect to its cases. An ICN member’s participation in the framework and related cooperation in no way binds their decisions or necessitates a particular outcome.

(D) The framework does not limit agencies from cooperating or otherwise providing assistance to one another pursuant to existing or future cooperation agreements, arrangements, or practices; nor does it require cooperation in any given case.

4. Framework contacts

(A) ICN members are invited to complete an information form to be submitted to the JFTC.

(B) The JFTC should, on behalf of the ICN Merger Working Group, create and maintain a contact list of liaison officers for the framework based on the information provided by ICN members. The JFTC should make the contact list available to ICN members.

(C) Agencies should inform the JFTC of any changes to their liaison officer(s). The JFTC will update and circulate the contact list when there are new agencies that submit an information form or changes to liaison officer(s).

5. Contacting relevant agencies and exchanges of information

The following outlines steps that agencies may take to promote effective and efficient cooperation in the review of individual multijurisdictional merger matters pursuant to the framework. These steps, which address early contact of agencies reviewing the same merger and exchange of information among such agencies under their respective laws, are based on existing ICN workproduct.³ Cooperating agencies are not required to take any or all of these steps and may choose to have differentiated cooperation with individual cooperating agencies depending on, *e.g.*, the nature of each member's review of a particular merger and the competitive impact expected in the jurisdiction.

(A) Contacting agencies interested in the matter

It is generally desirable for an agency that reviews a multijurisdictional merger matter to be aware of other agencies reviewing the same matter as soon as practicable. An agency may use the contact list to contact counterpart agency liaison officers to determine whether they would be interested in cooperating on the matter under the framework.

³ See, for example, ICN Recommended Practices for Merger Notification & Review Procedures available at <http://www.internationalcompetitionnetwork.org/uploads/library/doc588.pdf> and paper on Waivers of Confidentiality in Merger Investigations, including Model Waiver of Confidentiality, available at <http://www.internationalcompetitionnetwork.org/uploads/library/doc330.pdf>. Creation of further guidance may be developed by the Merger Working Group.

(B) Exchanges of information in individual matters

Once agencies choose to cooperate under the framework on an individual multijurisdictional merger matter, they may seek to exchange relevant information on the matter to the extent compatible with their laws and regulations as well as important interests, and within their reasonably available resources.

(a) Such cooperating agencies may exchange non-confidential information,⁴ which may include, for example, publicly-available information, review timetables, and/or staff views on markets, potential competitive effects, theories of harm and possible remedies (to the extent they do not involve confidential information), at any time that they consider appropriate and consistent with their respective laws and regulations. Individual agencies may choose to exchange different information with different cooperating agencies, depending on the nature of the cooperation the cooperating agencies consider appropriate in the individual matter.

(b) In instances in which an individual agency considers it useful for its investigation of a particular matter, it may seek waivers of confidentiality (“waivers”) from the merging and/or third parties to enable discussion of confidential materials submitted in connection with that matter to one or more cooperating agencies.⁵ Obtaining waivers from the merging and/or third parties may enable cooperating agencies to discuss and/or exchange confidential information that those agencies otherwise may be precluded from doing. Agencies should recognize that it may not be necessary or useful to request waivers in all cases or for use with each and every cooperating agency.

⁴ Confidential information refers to information which is defined as such by the law of the jurisdiction. For example, information could be defined as confidential if it constitutes business secrets of a company or if its disclosure in normal circumstances could prejudice the commercial interests of a company.

⁵ For information about waivers of confidentiality, including the ICN model waiver for merger investigations, *see* ICN, Waivers of Confidentiality in Merger Investigations, at: <http://www.internationalcompetitionnetwork.org/uploads/library/doc330.pdf>.