

Similarities and Differences between the OECD Recommendation Concerning International Cooperation on Competition Investigations and Proceedings and Sections Dedicated to Competition in Current Competition Law Enforcement Cooperation Agreements and Economic and Trade Agreements

1. Study Background

Due to globalization, emergence of digital economy and increase of competition authorities in recent years, cross-border cases involving competition law have grown in number while cross-border law enforcement cooperation between competition authorities has also become more complicated. As a consequence, competition authorities not only need to guide multinational corporations to abide by competition regulations to prevent likely illegal conduct, but also have to investigate cross-border anti-competition cases. During such investigations, competition authorities must avoid inconsistency in law enforcement and repetition of investigating work. They also need to improve the skills and instruments required for such international cooperation. For this reason, international competition organizations and forums have put forward recommendations on international cooperation. Among them, the practical recommendations and best practices established by the Competition Committee of the Organization for Economic Cooperation and Development (OECD) to set the framework of international cooperation have been generally considered by competition authorities as some of the more valuable referential documents. This paper is intended to compare the similarities and differences between the OECD Recommendations Concerning International cooperation on Competition Investigations and Proceedings and existing documents regarding international cooperation in competition law enforcement to understand the modes and tendencies of cross-border cooperation in competition law enforcement. Cases involving the FTC's engagement in international cooperation over the years will also be reviewed to sort out experiences that are worthy of reference for the FTC in the future.

2. Study Methods and Process

In addition to analyzing related documents on the background and tendencies of international cooperation in competition law enforcement, this study will also review the OECD 2014 Recommendation Concerning International Cooperation on Competition Investigations and Proceedings, the amended version of the Antitrust Guidelines for International Enforcement and Cooperation announced by the US Department of Justice and the Federal Trade Commission in January 2017, and bilateral competition law cooperation agreements signed between representative countries in recent years in order to understand the tendencies of international cooperation in competition law enforcement. In subsequence, past cross-border competition restraint cases in which the FTC has engaged in international cooperation and the actual practices of cooperation will also be discussed.

This study is divided into six chapters. The foreword in Chapter 1 gives a brief description of the motives and methods of this study. In Chapter 2, the evolvement of international cooperation in competition law enforcement and the challenges encountered are presented. Chapter 3 mainly describes the OECD Recommendation Concerning International Cooperation on Competition Investigations and Proceedings and the Antitrust Guidelines for International Enforcement and Cooperation of the US to identify the tendencies in the development of international cooperation in competition law enforcement in recent years. In Chapter 4, the principal frameworks and contents of agreements on international cooperation in competition law enforcement are introduced and compared with the OECD 2014 Recommendation

Concerning International Cooperation on Competition Investigations and Proceedings. Cross-border competition restraint cases in which the FTC has engaged in international cooperation and the actual practices of cooperation are presented in Chapter 5, including agreements and memorandums of understanding signed with other countries on international cooperation in competition law enforcement. Chapter 6 is the conclusion on international cooperation and suggestions to the FTC based on related cases to be references for the FTC in its future administration.

3. Main Suggestions

The following suggestions are proposed to be references for the FTC in its future administration:

- A. Establishing international cooperation through non-official channels to seek opportunities for signature of official cooperation agreements: Besides officially signing bilateral agreements or memorandums of understanding on cooperation in competition law enforcement or free trade agreements, cooperation between competition authorities of different countries can also be established through dialog at international conferences or activities held by regional competition organizations. As a result of the unusual international status of Chinese Taipei, we have no official diplomatic ties with our principal trade partners due to the sensitiveness in the international society and cooperation and exchange can only be done through non-official channels. Hence, maintaining non-official but substantive cooperation with the competition authorities of important countries has to be a key item in the FTC's promotion of international affairs. By accumulating non-official cooperation experience, the FTC can deepen the dialog and cooperation with the agencies in other countries and make clear the necessity of cooperation for maintaining the interests of both sides in order to jointly seek appropriate moments to sign cooperation agreements.
- B. Keeping track of changes of attitude of international organizations toward cooperation and assessing the need and feasibility to adjust related laws and regulations: The legal system and competition regulations in each country are different. To make it possible for the competition authority of every country to continue to improve the effect of international cooperation regardless of the restrictions in the legal and practical aspects, the OECD, the ICN and other international organizations have continued to established and revised best practices and recommended measures in the hope of providing a systematic international cooperation framework as a reference for each nation. This is an issue calls for the attention of the FTC, especially the tendency in information exchange. The FTC ought to compare the differences between the best practices of international cooperation and recommended measures announced by international organizations and existing laws and regulations and practices in Chinese Taipei. It must be assessed whether there is the need to adjust domestic laws and regulations step by step in response. For instance, the FTC may make reference to the suggestions in the "Coordination of Competition Investigations or Proceedings" in the OECD 2014 Recommendation Concerning International Cooperation on Competition Investigations and Proceedings and stipulate in the "Directions for Enterprises Filing for Merger" that merging parties are required to provide the statement that they have filed or will be filing in other countries to be the reference for the FTC when it engages in international cooperation in competition law enforcement or signs bilateral cooperation agreements with other countries in the future.