



**Asia-Pacific  
Economic Cooperation**

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**2012/SOM1/CPLG/011anx5**

Agenda Item: 7

**Survey on Information Exchange on Competition in  
APEC Region: Phase I - Synergies with Other  
International Projects**

Purpose: Information  
Submitted by: Russia



**Competition Policy and Law Group Meeting  
Moscow, Russia  
12-13 February 2012**



## Survey on Information Exchange on Competition in APEC Region: Phase I

### Synergies with Other International Projects in Information Exchange: Example if ICN CWG Information Exchange Charts

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Moscow, February 12, 2012

#### Institutions Involved:

- ✚ ICN
  - ✚ CWG work products:
    - ✚ Report on Cooperation between Competition Agencies in Cartel Investigations, 2007
    - ✚ Trends and Developments in Anti-Cartel Enforcement
    - ✚ Information Exchange Charts (ongoing)
  - ✚ MWG Merger Review Templates
  - ✚ JFTC initiative on cooperation and information exchange in merger review
  - ✚ SG Substantive Project on International Cooperation
  - ✚ Workshop on International Cooperation in Antitrust Enforcement in Washington
  - ✚ Other.
- ✚ OECD.
- ✚ UNCTAD.
- ✚ Other.

## ICN CWG Information Exchange Charts

- Conducted by ICN CWG subgroup 2 led by ACCC and the Canadian Competition Bureau.
- Prepared by the Drafting team that includes: ACCP (Australia), FNE (Chile), FAS (Russia).
- Charts prepared.
- Answers received from 20 jurisdictions (about 3-4 answers are still expected due to delays with submission). About 1/3 of these are APEC economies.
- Filled-in Charts submitted for the WG approval.

3

## Complementarities with CPLG 032011

- Focus on information exchange for the purposes of cartel investigations.
- Similar definitions used.
- Y/N or “mark as appropriate” principle of structuring most of the questions – can be used complementary with more descriptive CPLG 032011 Survey by the APEC economies.
- “Supply” and “Demand” principle – same as in the Survey Questionnaire.

4

## Structure of the Info Exchange Charts (1)

QUESTION		FEDERAL ANTIMONOPOLY SERVICE (FAS)
1	<b>Mechanisms for information sharing:</b> <b>Details of the relevant point of contact at your agency for information requests</b>	
1.a)	Position	Head of International
1.b)	Branch or office	Department of International Economic Cooperation
1.c)	e-mail address (please include a general email address for a group inbox if possible)	<a href="mailto:international@fas.gov.ru">international@fas.gov.ru</a>
1.d)	Telephone number (please include a general branch or office telephone number if possible)	+ 7-499-254-80-26
2	<b>What formal and informal mechanisms does your agency make available to alert other competition agencies to matters currently being investigated by your agency?</b> (Please put a cross next to all those that apply.)	
2.a)	Markets or conduct that the agency has identified as investigation priorities are listed on the official agency website	
2.b)	Obligations under bi-lateral competition agreements to notify agencies in jurisdictions that may be affected by the investigation	X
2.c)	Obligations under multi-lateral cooperation agreements	X
2.d)	Public announcement of cartel investigations on agency website	
2.e)	Formal/informal internal obligations	X
2.f)	Other (please specify)	Joint planning of investigations with competition authorities of Kazakhstan and Belarus; information exchange (non-confidential) within Interstate Council on Antimonopoly Policies - MSAP
2.g)	None	

5

## Structure of the Info Exchange Charts (2)

3	<b>Do you currently have any cooperation agreements relating to information sharing (bilateral and/or multilateral) [Y/N]</b>	Y
4	<b>If you answered Y to Question 3 above, please indicate the scope of the cooperation agreement below (Please put a cross next to all those that apply.)</b>	
4.a)	Provides for a specific section on information exchanges	X
4.b)	Provides for a general section on cooperation in enforcement	X
4.c)	Other (please specify)	
5	<b>Has your agency established any other cooperation agreements? [Y/N]</b>	Y
6	<b>Has your agency tried to establish a cooperation agreement with another agency and been unsuccessful? [Y/N]</b>	N

6

### Structure of the Info Exchange Charts (3)

7	Does your agency publish information about its past cartel investigations?[Y/N] If YES, where?:	Y
7.a)	Website	X
7.b)	Annual reports and/or other reports	X
7.c)	Other (please specify).	agency bulletin

7

### Structure of the Info Exchange Charts (4)

8	Which of the following types of cartel enforcement regimes does your agency operate? (Please put a cross next to the most appropriate answer)	
8.a)	Criminal	
8.b)	Civil/administrative	
8.c)	Hybrid	X
9	Do your answers vary depending on the cartel enforcement regime in which you operate and the cartel enforcement regime of the agency with which you are cooperating/sharing information? [Y/N] If Y, Please provide a brief explanation	N
10	Does your agency have a leniency policy? [Y/N]	Y
10.a)	Does your agency encourage leniency applicants to seek leniency in other jurisdictions affected by the conduct? [Y/N] If Y, please explain.	Y, we recommend them to do so when we coordinate the investigation with a foreign agency
11	Does your agency have a marker system? [Y/N]	Y
12	Are applicants required to provide a waiver? [Y/N]	N

8

## Structure of the Info Exchange Charts (5)

13	Does your agency have experience in requesting/sharing information with a foreign competition authority? [Y/N]	Y							
13.a)	If you answered Y to Question 13 above, was your overall experience of the information sharing mechanisms available to your agency positive? [Y/N/NA]	Y							
14	During the last 3 years, has your agency provided information to or requested information from another agency in relation to a cartel case using an informal cooperation mechanism? [Y/N] If Y, the type of information requested and/or shared was:	Y							
14.a)	Product and market information	X							
14.b)	Agency internal information	X							
14.c)	Confidential information								
14.d)	Case-specific information	X							
15	Does your agency have formal powers to obtain evidence in relation to a cartel case on behalf of foreign agency [Y/N]? If Y, which of the following is the legal basis for obtaining such evidence:	Y							
15.a)	Mutual Legal Assistance Treaty (MLAT) – bilateral	X							
15.b)	MLAT – multilateral	X							
15.c)	Cooperation Arrangement	X							
15.d)	Other (please specify)								NOTE: the evidence is normally obtained by the Office of the Prosecutor General, FAS may provide methodological support

## Structure of the Info Exchange Charts (6)

16	If you have provided information in relation to a cartel investigation to foreign competition agencies, have you received any feedback from that agency regarding the utility of the information? [Y/N]	Y							
17	For your agency, the most useful mechanism for sharing information in relation to cartel investigations has been:								
17.a)	Informal cooperation								
17.b)	Formal cooperation								
17.c)	Both	X							
17.d)	Neither								
17.e)	Not applicable								
18	Has your agency taken any steps to improve or increase the sharing of information in relation to cartel investigations with other agencies in the last 3 years? [Y/N]	Y							

10

## Structure of the Info Exchange Charts (7)

19 Terms and conditions under which information is provided to foreign competition authorities		
<b>19.a) Publicly available information:</b>		
19.a)(i)	Upon formal request	X
19.a)(ii)	Upon informal request	X
19.a)(iii)	Available through the competition agency website and/or other publications	X
19.a)(iv)	Other (Please specify.)	
<b>19.b) Agency internal information:</b>		
19.b)(i)	Upon formal request	X
19.b)(ii)	Upon informal request	X
19.b)(iii)	Upon grant of judicial or administrative authorisation (different from the competition agency) (Please specify.)	
19.b)(iv)	Under an international agency-to-agency cooperation agreement (see references to the agreement, where available)	X
19.b)(v)	Other (Please specify)	

11

## Structure of the Info Exchange Charts (8)

<b>19.c) Information covered by professional secrecy:</b>		
19.c)(i)	Under no conditions	
19.c)(ii)	If confidentiality waiver is granted by the parties under investigation	X (unless the information includes the state secret of the Russian Federation)
19.c)(iii)	If waiver is granted by the party, the agency will evaluate the risks and benefits of sharing the information	
19.c)(iv)	If a judicial or administrative authorization is granted	
19.c)(v)	Under an international agency-to-agency cooperation agreement. (See references to the agreement when available)	
19.c)(vi)	Other (please specify)	
<b>19.d) Confidential information can be shared:</b>		
19.d)(i)	Under no conditions	
19.d)(ii)	If confidentiality waiver is granted by the parties under investigation	
19.d)(iii)	If waiver is granted by the party, the agency will evaluate the risks and benefits of sharing the information	X
19.d)(iv)	If a judicial or administrative authorization is granted	
19.d)(v)	Under an international agency-to-agency cooperation agreement. (See references to the agreement when available)	X
19.d)(vi)	Only at certain stages of the investigation process (pre-investigation, during investigation, after completion of investigation, when no investigation is conducted, during litigation, other (please specify)).	
19.d)(vii)	Other (please specify)	

## Structure of the Info Exchange Charts (9)

20.d)	When no investigation is conducted	X						
20.e)	During litigation	X						
<b>21</b>	<b>Are the following types of information generally treated by the jurisdiction as: (i) publically available; (ii) agency internal information; (iii) information covered by professional secrecy; (iv) privileged</b>							
21.a)	Factual information (e.g. evidence obtained by the national competition authority in the	v						
21.b)	Information provided voluntarily to foreign competition authority by a party under	v						
21.c)	Methodology of anti-cartel investigations (without indication of particular parties	ii						
21.d)	Results of market studies conducted by the foreign competition authority into markets	i						
21.e)	Legal information	i						
21.f)	Information on sanctions	i						
21.g)	Information on timing of the case	ii						
21.h)	Other (please specify)							

13

## Structure of the Info Exchange Charts (9)

<b>22</b>	<b>In the absence of an information sharing agreement or formal information sharing powers, your agency is likely to respond to an information sharing request in the following manner: (Please put a cross next to your choice of answer.)</b>							
22.a)	Will not share information except that which is open to the public							
22.b)	May share information provided that certain conditions are met	X						
<b>23</b>	<b>If you put a cross next to Question 22.b) above, which of the following conditions (if any) must a foreign agency requesting information meet before your agency will share confidential or agency internal information? (Please put a cross next to all that a</b>							
23.a)	Keep the information provided confidential	X						
23.b)	Keep the information provided confidential unless subject to a court order							
23.c)	Use best endeavours to keep the information confidential							
23.d)	Use this information only for the originally intended purpose	X						
23.e)	Other (please specify)							
<b>24</b>	<b>If another agency provides your agency with information on a confidential basis, will it be treated as confidential, subject to the relevant laws of the recipient agency's jurisdiction (such as freedom of information laws)? [Y/N]</b>							
<b>25</b>	<b>Is there any law or situation that may require information received from another agency to be divulged? [Y/N] If Y, please specify.</b>							



## Structure of the Info Exchange Charts (10)

26	<b>If your agency maintains the relevant statistics, please assess what is the average time required for the agency to:</b>								
26.a)	Assess the possibility of responding to the information request	up to 1 month							
26.b)	Respond to the information request	up to 1 month							
	NOTE: If your agency does not record the timing required to process information requests from foreign agencies, please indicate NA for in response to Questions 24. a) and 24. b).								
27	<b>Nature of information requested</b>								
	<b>Please rank in order of importance to your agency (rank 1 being the highest and 8 the lowest) the following types of information about current/completed cartel investigations that may be requested from foreign agencies. (We note that the order of these it</b>								
27.a)	Factual information, e.g. evidence obtained by the national competition authority in the course of investigation	1							
27.b)	Information provided voluntarily by a party under investigation/leniency applicant to foreign competition authority	4							
27.c)	Methodology of anti-cartel investigations (without indication of particular parties involved) – foreign "know-how" in relation to cartel investigations.	5							
27.d)	Results of a foreign authority's market studies into markets potentially affected by cartelisation	2							
27.e)	General legal information	7							
27.f)	General information on sanctions	6							
27.g)	Information on timing of the case	3							
27.h)	Other (please specify)	8							

## Structure of the Info Exchange Charts (11)

28	<b>On average, how many times per year does your agency: (please provide NA answer if you have difficulties with assessing frequency of sharing/receiving information from foreign agencies as described below):</b>								
28.a)	Request confidential information in relation to cartel investigations?	1 - 2							
28.b)	Provide confidential information in relation to cartel investigations?	1 - 2							
28.c)	Request publically available information or internal agency information?	5 - 10							
28.d)	Provide publically available information or internal agency information?	5 - 10							
29	<b>Does your agency have formal information sharing powers? [Y/N]</b>								

## Structure of the Info Exchange Charts (12)

30	Are you aware of any imminent legislation or policy changes regarding information sharing in your jurisdiction? [Y/N] If Y, please provide a very brief description or a link to further information if possible.	N
31	<b>Competition agencies often exchange information through regional competition networks such as the European Competition Network (ECN).</b>	
31.a)	Is your agency part of a regional competition network? [Y/N] If Y, please list.	Y (MSAP)
31.b)	Are there types of information that your agency can share with other members of the regional competition network, which would not be able to be shared in the absence of the network? [Y/N] If Y, please provide a brief description.	Y (information on markets potentially subjected to cartelization in several MSAP states and/or suspected cartels affecting several MSAP states)
31.c)	Are there types of information that your agency can share in the absence of the network? [Y/N] If Y, please list.	Y (as described in answers to questions 1- 30)