



**Asia-Pacific
Economic Cooperation**

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Agenda Item: 7

Information Exchange on M&A - JFTC's Experience

Purpose: Information
Submitted by: Japan



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公正取引委員会
Japan Fair Trade Commission

Information exchange on M&A – JFTC’s experience –

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Tatsuro KUCHINOMACHI
Japan Fair Trade Commission (JFTC)
Mergers and Acquisitions Division

1

Overview



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- Anti Monopoly Act (AMA)
- Relevant Laws (Protection of Secret)
- Bilateral Agreement and EPA
- Notification, Cooperation and Coordination
- Case Study-BHP Billiton/Rio Tinto
- Brief Review

2

Anti Monopoly Act (AMA)



□ AMA Article 43-2

➤ Paragraph 1 (providing information)

- ✓ JFTC may provide a foreign competition authority with information that is deemed helpful necessary for the execution performance of its duties
- ✓ Unlikely to interfere with proper executions of AMA or to infringe on the interests of Japan (cf. AMA Article 39 and NPSA Article 100)

➤ Paragraph 2 (reciprocity principle)

- ✓ The relevant foreign competition authority is capable of providing information corresponding to that is equivalent of the provided information
- ✓ Secret will be protected under the law and regulations of the relevant foreign economy
- ✓ The provided information will not be used by the relevant foreign competition authority for a purposes other than those contributing to execution performance of its duties

➤ Paragraph 3 (criminal proceedings)

- ✓ The provided information will not be used for criminal proceedings

3

Relevant Laws (Protection of Secret)




□ AMA Article 39

- The members of the JFTC have an obligation not to divulge or make bad use of trade secrets (confidential information)

□ NPSA (National Public Servant Act) Article 100

- An official shall not divulge any secret which may have come to his/her knowledge in the course of duties
- ✓ Confidential Information
 - To share confidential information with other competition authorities, JFTC shall receive the waiver for the restriction of confidentiality
- ✓ Non-Confidential Information
 - To share non-confidential information with other competition authorities, JFTC shall consider the balance between benefit and detriment from sharing the information

4

Bilateral Agreement and EPA  公正取引委員会
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□ **Bilateral Agreement**


economy (Region)	Effective Date	Notification	Cooperation on Enforcement	Coordination of Enforcement
USA	Oct. 1999	Article 2	Article 3	Article 4
EU	Aug. 2003	Article 2	Article 3	Article 4
Canada	Oct. 2005	Article 2	Article 3	Article 4

□ **EPA (Economic Partnership Agreement)**

economy (Region)	Effective Date	Notification	Cooperation on Enforcement	Coordination of Enforcement
Singapore	Nov. 2002	Article 17	Article 18	×
Mexico	April 2005	Article 2	Article 3	Article 4
Thailand	Nov. 2007	Article 12	Article 13	Article 13
Indonesia	July 2008	Article 12	Article 13	Article 14

□ **OECD Recommendation of the Council (Revised in 1995)**

5

Notification, Cooperation and Coordination  公正取引委員会
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□ **Notification**

- Timing : Not later than
 - ✓ JFTC requests for reports, etc. concerning a proposed M&A plan to notifying parties based on “AMA Chapter 4” (Beginning of Secondary Review)


□ **Cooperation on enforcement**

- Without the waiver
 - ✓ Provide non-confidential information (*Publically Available Information*) such as the relevant press release by JFTC, the articles in news papers or journals, and general industry practices based on the request or voluntarily
- With the waiver
 - ✓ Provide *Confidential Information* such as the sales price, production cost, lists of customers about the relevant parties based on the request or voluntarily

□ **Coordination of enforcement**

- Exchange *Agency Internal Information* such as schedule for reviews, market definition and preliminary conclusions


6

Case Study: BHP Billiton / Rio Tinto 

- ❑ The parties and a proposed M&A plan
 - BHP Billiton and Rio Tinto - the joint venture for iron ore production
- ❑ Process of the case

Date	Process of the case
Jan. 20, 2010	Request for prior consultation by BHP Billiton and Rio Tinto
June 16, 2010	Start of Primary Review
July 16, 2010	Start of Secondary Review
Sep. 27, 2010	Explanation of Point at issue (Serious competitive concerns)
Oct. 18, 2010	Closing of JFTC's review (Withdraw from the proposed M&A plan)
- ❑ Cooperation with overseas competition authorities
 - ACCC, EC, GFCO and KFTC with the waivers
- ❑ Notification, Cooperation and Coordination

7

Brief Review 

- ❑ AMA and Relevant Law
- ❑ Confidential and Non-confidential Information
- ❑ Relevant Agreements
- ❑ Notification, Cooperation and Coordination
- ❑ Case study

8

End of my presentation



Thank you for your attention!

Reference:

(JFTC website)

<http://www.jftc.go.jp/e-page/index.html>

(OECD website)

http://www.oecd.org/document/32/0,3746,en_2649_34715_4494_0896_1_1_1_1,00.html