



**Asia-Pacific
Economic Cooperation**

2012/SOM1/CPLG/013

Agenda Item: 7

Information Exchange: Korean Experiences

Purpose: Information
Submitted by: Korea



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

Meeting of APEC Competition Policy and Law Group, Moscow

Information Exchange : Korean Experiences

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1

Information : Public vs. Confidential

- ▶ **Public information**
 - ▶ Venue : bilateral meetings with 18 economies including Russia regularly or irregularly.
 - ▶ Subjects : cases, policy initiatives, etc.

- ▶ **Confidential information**
 - ▶ Korean competition law : strict duty to maintain confidentiality (criminal violation)
 - ▶ No legal ground authorizing exchange of confidential information with foreign competition authorities
 - ▶ Exception : Reception of waiver in cartel, merger cases, etc.

2

OECD recommendations & FTA

- ▶ OECD recommendation of the Council Concerning Cooperation between Member economies (1995)

“Cooperation btw economies in the form of notification, exchange of information, co-ordination of action, consultation and conciliation, on a fully voluntary basis, should be encouraged”
- ▶ Free Trade Agreement(FTA) & MOU
 - Eg : FTA with US, EU, Chile, Singapore, etc.
 - ▶ Cooperation through notification, consultation, information exchange
 - ▶ Notification of an enforcement activity which may affect important interests of counterpart nation
 - Notification at an early stage of the enforcement activity

3

Int'l Cartel(1) : *Air-cargo case*

- ▶ Information exchange continued through the investigation process('06-'10)
 - ▶ Simultaneous dawn raids with Economy A & B
- ▶ Conference call with Economy A on jurisdiction issues & prevention of double surcharge calculation
- ▶ Discussion with Economy B on cartel structure, prosecution progress, etc
- ▶ KFTC notified 11 agencies as the examination report was sent to defendants ('09)

4

Int'l Cartel(2) : *Copy Paper* case

- ▶ Initiation : KFTC received documents which Economy C's competition agency submitted to the court (Apr. '07) → Inspection on Korean branch (Jun. '07)
- ▶ Waiver received (Jul. '07) : exchange of all the lists & contents submitted to C allowed
- ▶ Leniency applicant's affidavit received after becoming public information at the point of release in C's court (Aug. '07)
- ▶ Discussions with C on investigation progress, evidence, schedule, impact of measures, etc.

5

Merger : *Rio Tinto-BHP Billiton JV* case (1)

- ▶ Dec. 2009 : Agreement to establish JV for coproduction of iron ore btw *Rio Tinto*(No.2.) & *BHP Billiton* in Western Australia (No.3)
- ▶ Australian iron ore exported to :
 - ▶ China(59%), Japan(25%), **Korea(11%)**, Chinese Taipei(3%), EU(2%)
- ▶ Korea : **67%** of imported iron ore from 2 companies (100% dependent on imported iron ore)
 - ▶ Requested for cooperation to other similarly situated agencies by sending a letter by director-general

6

Merger : *Rio Tinto-BHP Billiton JV case(2)*

- ▶ Waivers of confidentiality received
- ▶ Face-to-face meetings with Economy A (working-level meeting & director-general level meeting)
- ▶ Annual Bilateral meeting also utilized for coordination including information exchange
- ▶ Scope of information exchanged : timetable for investigation & final decision, possible conclusion, remedies, etc.

7

Abuse of dominance : *Microsoft case*

- ▶ Korean *Microsoft case (02-06)* : Tying of instant messenger program & media player program
 - * no waiver requested or received
- ▶ Similar cases in US(Web browser) & EU(Media player)
- ▶ Informal meetings with relevant economies in working level
 - *scope : experiences of similar cases, elements for illegality, timetable, etc (mostly, public information)

8