



**Asia-Pacific
Economic Cooperation**

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

**Competition Policy and Law Group
APEC Economic Committee**

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Introduction

The Survey seeks to provide potential **benefits** for the APEC economies by facilitating information exchange on competition law enforcement and policies among them.

Competition policy is one of the five priority work streams in taking the APEC structural reform agenda forward as it is stated in LAISR. The cooperation among competition authorities in APEC economies will strengthen and consolidate competition in the APEC region, and thus facilitate economic growth. Sharing information on enforcement and merger review matters among competition authorities in APEC economies is potentially one of the most efficient and challenging directions of such cooperation.

The Survey of information exchange possibilities, including easily accessible and comprehensible guidance on the relevant rules and procedures will help competition authorities in APEC economies make informed decisions on requesting information they may need from another economy to an extent possible in the prevailing legal conditions. The Survey is intended to raise APEC economies' awareness of opportunities and constraints for obtaining information that may be required for their competition enforcement actions, merger reviews and promotion of competition policies from other competition authorities in APEC economies. The major beneficiaries of the Survey are the competition authorities in APEC economies who will have a guidance on how to request information from foreign competition authorities, whether this information is available or not, and, if so, on what terms. Another category of the beneficiaries are companies seeking compliance with competition norms and rules in several APEC economies, particularly companies engaged in multilateral merger transactions.

Thus, the Survey will contribute to fulfillment of collective actions to the benefit of all APEC economies as provided for in the Osaka Actions Agenda. Since numerous violations of competition law are being replicated across borders in APEC economies, the Survey will help make exchange of information on similar violations and/or violations conducted by the same company(s) in different APEC economies a potentially powerful and cost efficient tool for competition authorities. It will also enhance efficiency of cross-border merger review and, therefore, reduce private sector merger transaction costs.

The project **methodology** provides for processing information received from the APEC economies by means of disseminating a Questionnaire (Annex 1) that is intended to reveal their demands for information from other APEC economies and rules pertaining to provision of different kinds of information. As advised by most of the APEC economies that answered the Questionnaire, the information received will be used in the **aggregate** form. The Survey is based on the Questionnaire responses supplied by the competition authorities of Australia; Chile; Canada; Indonesia; Hong Kong, China; Japan; Mexico; New Zealand;

Peru; Russia; Singapore; Chinese Taipei; and the U.S. (the U.S. FTC and the U.S. DOJ).

For the purposes of this Questionnaire two categories of **definitions** related to information are used: the first category includes definitions related to information disclosure, while the second one comprises definitions related to the nature of information. Both types of definitions can be applied to the same information specifying it, for example, as confidential and factual. The respondents are expected to refer to these terms while preparing answers to the Questionnaire or explain the terms they may like to use instead of the suggested below.

References to the sources of the terms taken from legal dictionaries, ICN and OECD publications are provided in the footnotes, as appropriate.

Definitions related to information disclosure:

Publicly available information – information that is already in the public domain, i.e. information found in open sources and obtained by interested parties without legal restrictions.¹

Agency internal information – information competition authorities are permitted, but not required by law, to limit access to, e.g., the nature or status of their investigations, their investigation theories, or their preliminary conclusions.²

Confidential information – refers to information which is defined as such by the law of the jurisdiction which is answering this Questionnaire. 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.³

¹ “*Public information*. In this case, one agency simply helps another agency gain time by providing information which is already in the public domain (perhaps a hard-to-find market report, or information about the market arising from studies carried out by the agency)...” See ICN Cartel Working Group SG 1 report on Cooperation Between Competition Agencies in Cartel Investigations (<http://www.internationalcompetitionnetwork.org/uploads/library/doc348.pdf>), p. 9.

² “Competition authorities are normally permitted, but not required by law, to limit access to internal information such as the nature or status of their investigations, their investigation theories, or their preliminary conclusions. This note does not refer to such “internal agency information” as confidential information. ... It appears that, as is known to occur in merger cases, some competition authorities discuss this kind of information with foreign authorities on a fairly frequent basis.” OECD Global Forum on Competition. Information Sharing in Cartel Investigations. Note by the Secretariat (Session IV). <http://www.oecd.org/dataoecd/57/40/1820435.pdf>, p. 7. “Agency information. This is information which is not necessarily in the public domain, but which is generated within the agency itself, rather than provided by parties to the investigation (although it may be based on information supplied by the parties). Such ‘agency information’ may concern, for example, the stage which the investigation has reached, the planned timing of further steps, the provisional orientation of the investigation, conclusions reached about the nature of the market and so forth. - ICN Cartel Working Group SG 1 report on Cooperation Between Competition Agencies in Cartel Investigations (<http://www.internationalcompetitionnetwork.org/uploads/library/doc348.pdf>), p. 9.

³ ICN Cartel Working Group SG 1 report on Cooperation Between Competition Agencies in Cartel Investigations (<http://www.internationalcompetitionnetwork.org/uploads/library/doc348.pdf>), p. 35.

Note: Some jurisdictions treat “agency internal information” and “confidential information” as synonymous. Responding agencies that do so are requested to indicate it in their answers.

Definitions related to the nature of information:

Evidence - evidence in a broad sense refers to something that furnishes proof of a matter. In the legal context, it is something legally submitted in court or to other decision-making bodies to ascertain the truth of a matter.

Factual information – information on facts, i.e., something done or performed or something that has occurred without doubt, as well as on statements that are held to be the truth or reality.

Legal information - information about the relevant laws or legislations.

Information on sanctions – information on financial and other penalties imposed on a party deemed guilty of violating competition law.

Information on timing of the case – information on activities to be undertaken throughout an investigation and consideration of a case with indication of their chronological order

Technical assistance – training, advice and capacity-building of a recipient agency by an agency providing assistance.

Note: some jurisdictions treat “evidence” and “factual information” as synonyms. The responding agencies that do so are requested to indicate it in their answers.

The Survey includes three Chapters and the Conclusions section.

Chapter 1 APEC Economies’ Requests for Information from Foreign Competition Authorities – the “Demand-Side Analysis” seeks to analyze the types of information that are most requested by the competition authorities of the APEC economies from each other based on the responses to the Questionnaire.

Chapter 2 APEC Economies’ Abilities and Constraints to Sharing Information with the Foreign Competition Authorities – the “Supply-Side Analysis” describes the major constraints and rules for providing information to the foreign competition authorities, as well as the means used by the competition authorities to disseminate publically available information. Based on the analysis conducted in Chapter 1, Chapter 2 seeks to match the demands for information with possibilities of its provision, subject to the national regulations, specifically – the confidentiality rules.

In an aggregate form this Chapter will also examine possibilities of competition authorities to receive information from foreign competition authorities based on

legal and institutional safeguards a requesting authority uses for keeping information confidential and employing it for the intended purposes.

Chapter 3 Synergies with Other International Initiatives and Projects on Information Sharing is dedicated to examining international projects and initiatives in the field of information exchange for the purposes of competition law enforcement and policy development in terms of supporting and extending the context of the findings of this Survey. Thus, it would facilitate APEC economies in making more informed decisions on requesting and sharing information with each other.

Acknowledgement

The Survey was prepared for APEC by the Federal Antimonopoly Service of Russia (FAS-Russia) with advice and assistance provided by the ALRUD law firm. The competition authorities of Australia; Canada; Chile; Japan; Hong Kong, China; Mexico; New Zealand; Singapore; Chinese Taipei; and the U.S. gave valuable feedback at different stages of the Survey. APEC Secretariat rendered organizational support in the preparation of the Survey. The ALRUD drafting team acknowledges contribution by FAS staff members, including Ms. Lessya Davydova, Dr. Vladimir Kachalin, Ms. Anna Volskaya and Mr. Andrey Yunak to completing this Survey.

Chapter 1. APEC Economies Requests for Information from Foreign Competition Authorities – the “Demand-Side Analysis”

Based on the responses to the Questionnaire this Chapter examines the types of information the competition authorities of the APEC economies may need from each other with regards to the following types of investigations of competition law violations: cartel cases, unilateral abuses of dominant position and merger reviews. The types of information are sorted by their recurrence in the responses by the APEC economies surveyed in a descending order (i.e., the most frequently requested types of information are presented first). As stated in one of the responses, there are generally two reasons why a competition authority may contact a foreign competition authority: (1) for enforcement-related matters; and (2) for matters related to policy research and development.

1.1. Cartel Investigations

The analysis of responses by the surveyed APEC economies helped identify the following types of information that may be needed from other competition authorities of APEC: evidence and factual information, methodology, and other types of information that include legal information and information on timing of the case. For each of these types of information the respondents provided additional explanations on more specific categories of information and advice

they needed, that helped break down these types of information as suggested below.

1. Eleven out of 14 APEC economies that provided answers to the Project Questionnaire indicated **evidence and factual information** as defined above as the kind of information they needed from the foreign competition authorities for the purposes of cartel investigations. Most of the respondents provided more detailed explanation of the types of evidence they may need as follows:
 - Four of the respondents explained that they needed an indication of the **companies involved** in cartel cases considered by foreign competition authorities; one of them also mentioned the need for information on the products involved.
 - Three of the respondents specified that they needed evidence that could help them make a decision on **whether a violation** considered by the foreign authority would **affect their national markets and consumers**. At the same time, effect of the cartel agreements and other horizontal restraints on their respective national markets seemed to be the major reason for the need for evidence by other economies.
 - Some jurisdictions also explained that in addition to hard core evidence proving cartelization, evidence of **anticompetitive effects of horizontal restraints** was also necessary.
 - Two respondents were interested in the information on **what triggered an investigation** by foreign competition authorities, particularly descriptions of facts on the alleged violators and their conduct that were known before the commencement of the official review by a competition authority.
 - Additionally to that, one of the respondents requested information on **behavior** of the entities in question **in the international markets**.
2. The need for advice and information on **methodology** of cartel investigations was also indicated by eleven APEC economies.
 - While describing particular methodologies they may need advice on, seven respondents expressed their interest in being advised on **theory of the case** applied by other APEC competition authorities.
 - Despite universal acceptance of the *per se* approach to treatment of cartels, three (very experienced) economies indicated their interest in receiving advice on the **theory of harm** resulting from the cartel behavior in other APEC economies from their foreign counterparts. Two of these three agencies explained this request by the need to assess the effects of

the behavior in question on their national markets and domestic consumers.

- Three competition authorities acknowledged their interest in the methodology of establishing the **relevant market and dominant position** of the entities under cartel investigations. Two economies were interested in the use of **market studies** and general **market information** for the purpose of anti-cartel investigations.
3. Another frequently requested type of information is that on **sanctions and remedies** imposed by foreign authorities against participants of cartel agreements. Ten of the economies surveyed indicated the need for it.
 - Two of them specified that they needed a methodology for **calculating fines and designing remedies** for ceasing and desisting cartelization.
 4. Seven respondents indicated their interest in information on **timing of the case**, including steps and the current stage of an investigation. Some jurisdictions explained this request by an intention to coordinate their investigatory efforts, including dawn raids, and/or follow-up actions with other APEC competition authorities.
 5. Four APEC economies expressed their interest in receiving **legal information** pertaining to consideration of the anti-cartel cases by other countries' competition authorities, including legal doctrines used for case resolution and settlement approaches. One of these economies was interested in the criteria used for making decisions on bringing cases to official review.

1.2. Unilateral Abuses of Dominant Position

Various **methodologies** appeared to be the type of information most frequently required from foreign APEC counterparts by the surveyed economies while addressing unilateral abuses of dominant positions; closely followed by such types of information as sanctions, factual evidence, and timing of the case.

1. Eleven respondents expressed their interest in methodologies of analysis of unilateral abuses used by their foreign APEC colleagues.

Among the APEC economies that indicated the need for information on methodology, six economies reported their interest in the **theory of the case** used by other APEC competition authorities.

- Four respondents emphasized the need for legal theories of the case and internal agency analysis of **market definitions** (both product and geographic) in order to identify the scope of the relevant market. It corresponded to the requests of three economies for methods of

establishing **market share** in particular cases used by their APEC colleagues as well as general methodologies of setting up share-based thresholds for ascertaining market dominance and economic considerations underlying dominance assessment. One of these economies specifically emphasized the importance of entry/exit analysis as part of dominance assessment techniques and knowledge-sharing that may be required from foreign competition authorities.

- Another four economies expressed their interest in the methods of **impact** assessment of unilateral abuses on the markets and **theories of harm** caused by unilateral abuses of dominant position.

- Additionally, two economies reported their interest in obtaining methodologies for **planning and managing investigations** of abusive unilateral conduct.

- One of the reporting economies expressed its interest in “techniques and methodologies of **case resolution**”.

2. With regards to unilateral abuses the survey helped identify information on **sanctions and remedies** imposed by foreign competition authorities as the next most requested type of information after methodology. The need for it was indicated by ten out of the fourteen of the APEC economies surveyed.

3. **Evidence** or **factual information** appeared to be the third most requested type of information after information on methodologies and sanctions / remedies applied to the unilateral abuses of dominant positions. Nine of the APEC economies surveyed specified their need for such information from other APEC economies. Respondents indicated facts proving unilateral abuse as the evidence needed from other APEC competition authorities, including evidence obtained from the alleged violators. The surveyed agencies were mostly interested in the facts that could help them carrying out domestic investigations as well as assessing whether a particular conduct affects their national markets.

- Three of the responding agencies stated they may need **information that “triggered investigation”** and the criteria used by foreign competition authorities for bringing a case to an official review, separately from the information obtained during an investigation.

- Two of the respondents indicated the need for information on **practices of particular companies in international markets** and two agencies expressed their interest in **identification of entities** allegedly involved in unilateral abuses in other APEC economies.

4. Eight of the surveyed APEC competition authorities reported their interest in receiving information on **timing of the case**, including the current stage of investigations of unilateral abuses addressed by other APEC economies.
5. The need for other types of information was much less compared to the types of information on unilateral abuses mentioned above.
 - Four of the responding economies expressed their interest in receiving **information** related to a particular **industry** or sector, including examples of relevant past entry/exits, vertical integration, and results of market studies.
 - Three economies reported their interest in **legal information** pertaining to jurisprudence and doctrines used in the resolution of cases brought before other foreign competition authorities.
 - One economy expressed its interest in obtaining a **waiver** enabling it to **use confidential information** obtained by a foreign competition authority for the purposes of its own investigation.

1.3. Merger Reviews

1. For the merger review purposes practically all surveyed APEC economies reported their need for information on merger **remedies** imposed by other economies as conditions of clearance of particular merger applications, including both the nature of a remedy and the timing for imposing it.
 - Five of the economies expressed their interest in information on **sanctions** taken **against the merging parties violating national merger review rules**.
2. In terms of its recurrence in the answers provided by the responding APEC economies, information on various aspects of merger review **methodology** was the second most requested type of information with 11 economies emphasizing it.
 - Five economies indicated their interest in **theory of the case** used by their foreign counterparts. Several competition agencies reported they may, in some investigations, discuss case theories with foreign agencies.
 - Four economies stated the need for the methodology used to **define the market** in merger review cases, including the scope of relevant product and geographic markets; legal theories of the case / internal agency analyses of market definitions (both product and geographic).
 - Other requested methodologies indicated in the answers to the

Questionnaire pertained to **legal information** (2 economies), **theory of harm** (1 economy), and **economic analysis** (1 economy).

3. **Evidence** and/or **factual information** on cases considered by other APEC economies was the third most requested type of information indicated by nine economies. The respondents were interested in the evidence characterizing both the facts of the case and actual or potential anticompetitive effects of the merger deals reviewed by their APEC counterparts.
 - One of the economies also indicated the need for **examples of past entry/exits** in/from the market where a merger deal takes place.
 - Another specified its interest in information on **practices of merging entities** in the international market.
4. The need for information on **timing** of merger reviews was indicated by eight of the surveyed economies.
 - Some economies specially emphasized the need for information on **timing and progress of merger reviews** in a situation when it has or may have **cross-border effects** and/or implications.
 - One economy was interested in obtaining information on the **current stage** of a merger review process.
5. Additionally to the types of information mentioned above, one of the surveyed economies expressed interest in obtaining information from foreign authorities on such issues as **identification of the parties** involved and a possibility to request a **waiver** from the merging parties in order **to obtain** access to **additional information** for a national investigation.

1.4. Additional Information

Respondents also indicated information they may need in general or for the purposes of a particular investigation. Based on the recurrence in the surveyed economies' responses to the project Questionnaire, the types of additional information requested by the APEC economies from their foreign counterparts can be ranked as follows:

1. The results of **market studies** conducted by foreign competition authorities. Ten of the surveyed economies were interested in obtaining this information. One of them expressed its interest not only in the results of the market studies but also in the methodology of such studies. Another economy specified that they would be interested in obtaining the results of foreign market studies to the extent the situation in these markets can

influence their domestic consumers as well as other agency's economic analysis of a matter and its views on claimed efficiencies.

2. The exchange of information and discussion of **competition policy** issues is apparently the next priority for the surveyed APEC economies since nine of them reported such need. These economies stressed the importance of such discussions to understand barriers and operational constraints of other APEC competition authorities, their national competition policy and regulatory and enforcement regimes. Furthermore, regarding the bigger picture, one of the economies would consider it helpful to have discussions on the rationale for policy priorities as well as the steps taken to fulfill a particular policy outline. One economy reported that in some cases it may discuss its competition policy with APEC counterparts. Another one acknowledged the usefulness of such competition forums as OECD, ICN and APEC for better understanding of competition policies in other countries and seeking cohesion in this area.
3. The need for **technical assistance** apparently has a similar priority as nine of the surveyed APEC economies also emphasized it. In general these economies were interested in problems faced and solutions used by their foreign colleagues. One of the economies expressed its need in more specific assistance from another economy in gathering information on another economy's company under investigation or suspected in competition law violations in the first economy. The economies also reported their need in technical assistance in case handling and transfer of skills in obtaining information that may serve for initiating a case. Some economies expressed their interest in organizing meetings with their foreign counterparts on the above issues.
4. Five economies expressed their interest in receiving assistance in the agency's **capacity-building**. One of them also reported provision of assistance in capacity-building to smaller economies. The reporting economies considered training provided by foreign colleagues as well as internships and short-term placements with other competition authorities as major sources of assistance to their agency's capacity-building.
5. One of the economies reported the need for information on **particular product markets**, for instance, the broadcasting industry.

The reporting economies indicated a series of **other** instances or described their countries' specific situations, in which they may request information from other APEC competition authorities, including the following:

One of the surveyed competition authorities did not have sufficient legal power to conduct investigations or directly approach other competition agencies to obtain information that may be needed for enforcement purposes. Therefore,

information it may be interested in mostly includes circumstantial evidence and economic approaches used in competition enforcement.

Chapter 2. APEC Economies' Abilities and Constraints to Sharing Information with Foreign Competition Authorities - the "Supply-Side Analysis"

This Chapter describes the major constraints and rules for providing information to foreign competition authorities, as well as the means used by the competition authorities to disseminate publically available information. Based on the analysis conducted in Chapter 1, Chapter 2 seeks to match the demands for information with possibilities of its provision, subject to the national regulations, specifically – the confidentiality rules.

In an aggregate form this Chapter also examines possibilities of competition authorities to receive information from foreign competition authorities based on the legal and institutional safeguards the requesting authority employs for keeping the information confidential and using it for the intended purposes.

These possibilities are primarily determined by the category or type of information to which it can be categorized depending mostly on how it is obtained by a competition authority and its characteristics described below.

2.1. Categories of Information

Following the previously given definitions, the information used by competition authorities is generally **categorized** into confidential information, agency internal information and publically available information. The responding **competition authorities may use different terms to denote these types of information.**

To indicate confidential information the competition authorities also used such terms as information marked as "confidentiality requested," "privileged," "confidential commercial or financial information," "confidential business information," and "highly confidential information." For agency internal information as defined above the responding authorities may also use the terms "internal use only information," "confidential agency information" or similar. The surveyed agencies may refer to publically available information also as "open information."

2.1.1. Confidential Information

The responding competition authorities consider information **submitted by the parties under investigation** to a competition authority during an investigation, a purpose of which is to determine whether any person may have violated the law, as **confidential if the information was obtained pursuant to compulsory process or voluntarily** in lieu of compulsory process (e.g., in course of a

leniency application). This information may include evidence, as well as trade secrets, business plans and other commercially sensitive information, as well as the information obtained as a result of a leniency application.

Generally, the party that provides the information has a privilege to identify particular information that a competition authority must treat as confidential⁴, unless disclosure of certain types of information is mandatory required by the national law⁵. Typically in order to determine the level of confidentiality of a document the agency staff asks the provider to determine whether it contains any highly confidential information. However, one competition authority reported that in order to request confidential treatment of the information provided the party that supplied it should show that disclosing this information might harm its competitive position. In the respective APEC economy the party should also prepare a publically available summary of the data it provides. In case of a failure to do so it is the requested competition authority that has to prepare such a summary.

Several agencies also treat personal information as confidential. An example is complainant details. This information shall not be shared with third parties, including foreign competition agencies, without expressed permission from the person to whom it relates.

One agency also denoted a category of “legally provided” information as a type of confidential information. This covers the information, releasing which would breach legal professional privilege or litigation privilege, as determined by national law.

Within this category two agencies reported that information received from merging companies in the course of a merger notification is **mandatorily** defined as confidential in their respective jurisdictions. This type of information can be disclosed if the submitter of such information officially gives the agency permission to disclose such information in due order determined by the national legislation regulating information disclosure. One competition authority reported that even the identity of the merging parties cannot be disclosed by the agency that received a merger notification.

One agency also explained that the circle of legal persons who may have access to confidential information depends on the investigation proceedings and indicated two types of such proceedings. According to the first type, the agency

⁴ Such information can be of different nature. Generally, it includes company trade secrets, business plans and marketing programs, know-how, characteristics of new products and technologies being developed, personal data, etc.

⁵ The types of information that cannot be kept confidential by its owner vary from one APEC economy to another. They may include, for example, information on environmental pollution by a company, number of its employees, labor conditions, names of the company managers, board members and owners and other information, disclosing which is required by national law. In most economies the types of information that cannot be withheld from public disclosure are indicated in the national legislation on information protection, confidentiality or disclosure. In some economies executive authorities and/or courts have significant discretion in deciding on possibilities of information disclosure or, conversely, its secrecy and a degree of protection.

could initiate preliminary investigations for the purpose of finding evidence of anticompetitive conducts. Information used in these cases is confidential and access to it is only granted to the agency's staff members. According to the second type, the agency can initiate an administrative proceeding based on the evidence gathered during a preliminary investigation or filing an administrative complaint. In such cases, access to the information regarding an administrative proceeding is granted only to a party under investigation, a party who filed an administrative complaint or a third party with legal interest. All parties bear legal responsibility for keeping the information confidential. In the course of an administrative proceeding all information obtained by the agency is only available to the parties, except the information considered commercial or industrial secret, or information which, once disclosed, could affect the privacy of the provider. Such information can be declared confidential by the agency.

Two agencies explained they also use such classification as "private" information, to which only parties of the proceedings can have access, thus delineating it from confidential information that can be used only by the party that provided it and the agency staff involved in handling the relevant case. However, "private" information cannot be shared with any third party, including a foreign competition authority, unless a confidentiality waiver is granted by the party the information originated from. Parties using "private" information are legally responsible for preventing its disclosure to any unauthorized party.

Generally, ***confidential information cannot be disclosed to any third party, including a foreign competition authority, unless the following conditions are met.***

- The provider of such information (primarily, the entity(s) under investigation) has officially authorized a competition authority to disclose it fully or partially in accordance with the national information protection legislation;
- The party that provided information to a competition authority officially published it and, therefore, granted access to the general public.

The provision equally applies to merger notifications. Two competition authorities indicated that they may not even disclose that the parties to an acquisition have filed a notification unless the parties have requested and are granted an official permission to the competition authority to disclose this information and/or a party to a merger or transaction has publically disclosed the existence of that transaction or a proposed transaction in a press release or in a public filing with a government body.

This may contrast with the confidentiality policies for merger reviews used by other agencies. One reporting agency indicated that the merger applications and decisions on them are available on their website.

In the reporting jurisdictions the rules governing information protection and confidentiality are essentially the same for all types of antitrust investigations:

cartels, unilateral violations and merger reviews. In other words, the type of an investigation does not influence the degree of confidentiality of information used, unlike the source of information that is crucial for determination of its protection and confidentiality. Similarly, the circumstances in which a competition authority has received a request for information from another APEC competition authority (as indicated in Question 2.4 of the Project Questionnaire – see Annex A) cannot serve as the grounds for disclosing confidential information to the foreign competition authority unless a confidentiality waiver is granted by the party that provided this information.

Nor does the possibility of sharing information depend on the stage of an investigation, as reported by all surveyed economies. Normally, at the end of an investigation and litigation a competition authority publishes a publically available official report about the case. However, this report does not include the confidential information.

One competition authority specified that this rule is observed unless at a certain stage a confidentiality waiver is granted or information becomes publicly available as a result of a court order. For example, one competition authority explained that when going into a litigation phase, the documents can be classified into two categories. General confidential documents: the agency cannot share with the public but that all parties to the matter may see; and highly confidential documents that typically contain business secrets of a party to a case or a third party. The latter are typically marked as for attorneys' eyes only, and as such are shown only to outside counsels. Disclosure of documents to another party (including possible disclosure to a foreign competition authority) typically takes place under a protective order issued by a judge, which limits the disclosure of highly confidential information to outside counsel only.

The reporting competition authorities indicated the following conditions for the confidential information to be disclosed partially or at all (including its disclosure to other competition authority on the condition that the latter keeps it confidential):

- An authorization from the party that provided this information;
- A court order;
- A domestic power enabled the information to be disclosed to other law enforcement agencies;
- Freedom of information laws required the information to be disclosed;
- Information revealed in the course of a criminal/civil trial is thereafter considered as public information unless it is sealed pursuant to a court order;
- Information is exchanged pursuant to a treaty level cooperation agreement between competition authorities;
- Information obtained by the investigatory staff by means of research or from public sources is, absent unusual circumstances, publically available;

2.1.2. Agency Internal Information

Agency internal information (also denoted by the responding competition authorities as “internal use only” information or confidential *agency* information) includes such types of information as information prior to public release; procedures and instructions for investigations; internal messages; the theory of the case developed by the agency staff; and information on the timing of the case and correspondence. Although competition authorities are not legally prohibited from disclosure of this information, they tend not to disseminate it publically.

This information is generally not shared with the public, but may be shared with foreign competition agencies in appropriate circumstances, and provided the foreign agency agrees not to release the information to any third party and use it only for the purposes indicated in the request for such information. This is information that the agency is not prohibited from disclosing, but normally treats as non-public.

Four competition authorities also indicated that this information may be withheld legitimately from public disclosure. It may also be similarly protected against disclosure through discovery in private litigation by qualified privileges protecting government policy deliberations and law enforcement investigations.

Examples of agency internal information may include: the fact that agencies have opened an investigation; the fact that agencies have requested information from a person or a firm located outside the national territory; and how the staff analyzes the case, including product and geographic market definition, assessment of competitive effects, and potential remedies. Information on the issues such as the timing of an investigation or contemplated sanctions is generally considered agency confidential.

One agency also included in this category information that a person has been legally compelled to provide information to the competition authority and that will not be shared with foreign competition agencies without a waiver from the provider. However, given the treatment of this information by the reporting agencies, it can be more likely categorized as confidential for the purposes of this Survey to avoid terminological uncertainty.

Seven APEC competition authorities indicated that they ***conditioned the provision of agency internal information to a foreign competition authority*** by the latter’s obligation to confirm that any information would be kept confidential and/or that it would be used only for the purpose for which it was shared.

2.1.3. Sharing Publicly Available Information

Generally, publicly available information can be freely shared. Moreover, unlike sharing confidential or agency internal information that is provided upon request from a foreign competition authority sharing publicly available information can

be initiated by the national competition authority that has originally obtained or released this information. The reporting competition authorities indicated the following types of outlets they use for sharing publically available information.

Table 1. Means used for sharing publically available information by the surveyed APEC competition authorities

Means for sharing publically available information	Number of APEC competition authorities using these means
Agency web-sites ⁶	14
Government Reports or Annual Reports or their analogs	14
Periodical publications	9
Regular press releases	11
Contact person/department	14
Social networks, e.g., Facebook	1
Presentations at international/domestic forums	14

The degree of development of such official information outlets varies substantially among the APEC economies from well established and comprehensive web-sites, reports in hard copy periodicals, newsletters, etc., to rather limited releases of information (see Annex 2 for more details).

On the “demand” side, practically all surveyed APEC competition authorities reported that they used the following information publically available from foreign competition authorities:

- Annual reports;
- Market studies;
- Guidelines;
- Case law;
- Summary decisions published on foreign agencies’ web-sites;
- Press releases by foreign competition authorities;
- Legal information;
- Information on sanctions.

Among the most useful web-sites containing such information, five agencies indicated the US FTC and DOJ sites; two agencies denoted the EU DG for Competition site and the ACCC site. One agency also reported that it frequently referred to the Competition Commission (UK) site. Among other useful sources of information, agencies pointed to the European Commission’s weekly bulletins which interested subscribing parties can receive via email; APEC Competition

⁶ See Annex 2 for a review of the APEC competition authorities’ web-sites covering all APEC economies (i.e., not only the economies provided responses to this Project Questionnaire).

Policy and Law Database; and sites of international organizations such as the International Competition Network (ICN), the OECD Competition Committee and APEC. One agency also reported that it followed printed and electronic media, such as The Financial Times, Competition Policy International (<https://www.competitionpolicyinternational.com>), as well as antitrust newsletters of global law firms, etc., that report on competition developments in APEC economies.

APEC competition authorities reported that they monitored these sources to keep abreast of the issues affecting other competition agencies in the region. Moreover, this information was also used to guide their inquiries into certain industries/markets.

Depending on the stage of a case investigation and deliberation, the information that can be initially considered as agency internal or confidential can be legally re-classified into publically available information. For example, one competition authority explained that information on sanctions in either criminal or civil matters, once they were imposed by a court, usually became public. In rare criminal cases, information about sanctions may be sealed by a court of law. Information on proposed resolutions of civil merger or non-merger investigations, which have been agreed to by the agency and relevant parties, must be approved by a court of law after a public notice and a comment period. Such information is, at that time, publicly available. However, when sanctions were being contemplated by the agency staff members it was generally considered as agency internal information.

To access publicly available information released by a competition authority, a foreign authority may, or may not, need to contact the releasing authority depending on the character of the information. For example, most of the agencies publish their annual reports or market study reports on their web-sites. However, foreign authorities may need to contact the agency's contact person for advice on searching for the publicly available information on particular pending or completed cases.

2.2. Processing Information Requests from Foreign Competition Authorities

According to most responses, APEC competition authorities split processing the information requests from foreign competition authorities between their international departments and the staff directly involved in the matters a request concerns. As a rule, international and functional departments cooperate in preparation of a response to a request.

The majority of agencies adhere to the top-to-bottom approach to processing information requests from foreign competition authorities. As a rule, information requests from foreign competition authorities arrive to the Head of an agency or its international department. A majority of information requests from foreign agencies are made directly to the staff that will prepare a response and may

consult with the legal team or the General Manager as appropriate. If a request is received by the Chair or Chief Executive of the Commission, or by a General Manager, preparation of a response will be delegated to the appropriate staff. Alternatively, the answer to a request may be prepared by the international department, depending on the nature of the request and competence of the international department.

However, some agencies may use the bottom-to-top approach. For example, one of the competition authorities explained that upon receiving a request the relevant investigating or prosecutorial staff in possession of the requested information would consult with their supervisors and additional relevant agency officials and reach a determination on the appropriate response.

The information can be shared upon a formal or an informal request. The determination as to whether an agency can share information with another competition agency does not depend on the form of a request, but on the protected status of the information requested.

2.3. Managing Confidential Information

When exchanging information between APEC competition authorities, a requesting agency should treat as confidential the following types of information:

- Legally protected confidential information provided by the parties involved in a criminal investigation (such information can only be received according to general or antitrust-specific MLATs or if a confidentiality waiver is granted by the party that submitted the information);
- Confidential information provided by the parties under administrative investigations (such information can be received by the requesting authority only in accordance with some antitrust specific MLATs or if a confidentiality waiver is granted by the parties that submitted the information);
- Agency internal information (this information can be provided within the framework of agency-to-agency or country-to-country cooperation agreements and MoUs; in some instances it can be passed absent of an agreement if a requesting agency can provide sufficient guarantees of keeping it confidential and using it only for the purposes indicated in the request for information).

Therefore, the possibility of information provision depends substantially on the presence of effective confidentiality rules, policies and procedures of the requesting authority and application of these rules to the information received from the foreign competition authorities, as described above.

All surveyed economies have ***effective legal rules for protection and disclosure of information***. Pursuant to these rules, agencies have written policies for safeguarding confidentiality of information in accordance with the law.

These policies include a clear set of procedures for dealing with confidential information. The surveyed competition authorities reported the following major principles upon which their confidentiality policies were built:

- The agency staff will ensure that received confidential information is appropriately filed and stored within its systems;
- The agency staff will ensure that confidential information is appropriately classified and marked;
- The information will be protected against unauthorized access or disclosure;
- Confidentiality of information will be assured.

To implement these policies and principles competition authorities use the following techniques:

Agency staff's access to confidential information is granted only on a “need-to-know” basis. Only the members of staff that work on a specific matter receive access to the materials obtained in connection with the investigation. One reporting competition authority emphasized that its staff members who are not directly engaged in handling a particular case are not allowed to even touch the physical documents related to the case. Electronically produced documents are password-protected, and the passwords to access them are provided only to the personnel that need to work with them. Confidential or commercially sensitive information is maintained by the investigating staff and not disclosed outside the agency absent appropriate court orders, waivers or other necessary and appropriate permissions. All reporting authorities apply this principle.

Compared to confidential information, possibilities of using agency internal information by the agency staff are generally broader. The agency internal information is normally kept within the case handling teams, although it can be discussed with staff members of the other agency to an extent that confidential information is not involved.

Buildings and premises. Three reporting authorities specially explained the importance of using secure premises for handling confidential information. The agency buildings are secure, and access to them is limited to its employees and their authorized visitors who are supervised by an employee at all times. Members of staff hold meetings in special conference rooms, rather than in their offices that may contain sensitive documents.

Information declared confidential by an agency is stored in separate files, which are also stored in special cabinets. Access to such information is granted only to agency staff and the party to whom it belongs.

Three agencies specially indicated using **electronic information management systems** and internal protocols for “shared network spaces” (**electronic documents** accessed by multiple employees).

Special codes and numbers are assigned to documents received from foreign authorities marked as “confidential.” One agency reported that it used special codes for such information received from foreign agencies.

Sanctions for agencies’ personnel engaged in unauthorized release of information obtained by a competition authority from foreign agencies.

Most surveyed APEC competition authorities reported that their national legislations specify sanctions for the competition authority employees for disclosing confidential information, including confidential and internal agency information received from foreign competition authorities. Disclosure of such information is considered a criminal offense, administrative offense, civil offense, or some combination of these, e.g., both a criminal and an administrative offense. If releasing protected information is a criminal offence the penalty can be fines or imprisonment, or both. Additionally, staff engaged in an unauthorized release of any nonpublic information may be subject to disciplinary proceedings.

2.4. International Agreements Facilitating Information Sharing

There are several types of international agreements that provide for information sharing between competition authorities of the APEC economies. The reporting competition authorities indicated their participation in at least one of the following types of agreements⁷:

- Antitrust-Specific Mutual Legal Assistance Agreements
- General Mutual Legal Assistance Treaty (MLAT)
- Memorandum of Understanding
- Agency-to-Agency Cooperation Agreement
- State-to-State Cooperation Agreement
- Free Trade Agreement

A mutual legal assistance treaty can be defined as an agreement concluded between two countries, in order to exchange and gather information, which will help these countries enforce criminal or civil laws. Mutual legal assistance between countries can be related to various issues, for example, money laundering. Assistance may have the form of identifying and examining people, places and things; obtaining and providing evidence to the requesting party of the treaty; or eliminating the instruments used for criminal activities. In some cases, assistance can be denied. This can happen for security or political reasons or when two countries do not punish the same criminal offense in the same way.⁸

⁷ For examples of the antitrust cooperation agreements see the U.S. cooperation agreements (including the antitrust-specific mutual legal assistance agreement with Australia) that can be found at <http://www.justice.gov/atr/public/international/intarrangements.html>

⁸ Examples of general MLATs can be found at <http://corporate.findlaw.com/law-library/mutual-legal-assistance-in-criminal-matters-treaties.html>.

Only MLATs can provide for sharing confidential information to the extent and under the circumstances determined by a particular treaty. Such treaties are generally based on the national information protection and confidentiality rules of the jurisdictions that are parts thereto, as well as on their respective mutual legal assistance legislation. These legal provisions are observed in the course of information sharing.

For example, as explained by one reporting competition authority, factual information/evidence for use in a **criminal** investigation or prosecution may, in most circumstances, be provided, subject to receipt of any necessary court orders, in response to a request that meets the requirements of the relevant MLAT.

With the exception of the antitrust-specific mutual legal assistance agreement between the U.S. and Australia, MLATs between the surveyed APEC economies do not allow for the exchange of confidential information in **civil** investigations. Such information may not be shared except with a waiver.

MLATs provide for the **safeguards** for keeping the legally protected information confidential by both parties of a Treaty. Such Treaties include confidentiality provisions, particularly restrictions that information shared thereunder shall be used only for the purpose specified in a request.

Usually a requested competition authority expects its MLAT partner to abide by the confidentiality provisions in these agreements. Should a treaty partner show an inability to abide by such confidentiality restrictions, the requested competition authority would find it necessary to reevaluate their relationship.

In some APEC economies requests for such safeguards are provided for by the national legislation. MLATs contain references to the national confidentiality rules of the requesting authority. For example, in the U.S. the International Antitrust Enforcement Assistance Act ("IAEAA"), 15 U.S.C. § 6201 et seq., sets out specific confidentiality safeguards for sharing information under mutual antitrust assistance agreements. Art. III.C of the U.S.-Australia Mutual Antitrust Enforcement Assistance Agreement, replicates these requirements in providing that requests for assistance under the Agreement shall be accompanied by written assurances from the relevant competition authority that there have been no significant modifications to the confidentiality laws and procedures described in the Annex thereto.⁹

As for **other types of international agreements** such as MoUs, FTAs and cooperation agreements, they generally support the concept of information sharing among competition authorities. These agreements, however, do not change the laws of the parties thereto, including the laws concerning treatment of confidential information. These agreements, therefore, do not allow sharing

⁹ Available at <http://www.ftc.gov/os/1997/04/annexa.htm>

confidential information related to both criminal and administrative violations unless a confidentiality waiver is granted.

Most of the economies use diplomatic channels for sharing confidential information under MLATs or other types of international cooperation agreements if the confidentiality waiver is granted in the latter case. The possibilities of sharing confidential information under various types of international agreements are summarized in the Table 2 below.

Table 2. Possibilities of sharing confidential information by types of international cooperation agreements between the APEC economies

Type of international cooperation agreement	Possibility of sharing confidential information
General Mutual Legal Assistance Treaty (MLAT)	Confidential information related to criminal violations can, in many circumstances, be shared, subject to receipt of any necessary court orders or otherwise in accordance with the national information protection legislation
Antitrust-Specific Mutual Legal Assistance Agreements	Confidential information related to criminal and civil violations can, in many circumstances, be shared, subject to receipt of any necessary court orders or otherwise in accordance with the national information protection legislation
Agency-to-Agency Cooperation Agreement	Confidential information cannot be shared
State-to-State Cooperation Agreement	Confidential information cannot be shared
Free Trade Agreement (FTA)	Confidential information cannot be shared

Competition authorities can share any non-confidential information, which for some agencies includes their work product, such as the theory of the case, as well as information on the timing of a case. If agencies obtain waivers from the parties to a case or third parties, they can share information obtained from them, subject to the terms of the waiver.

However, under cooperation agreements, MoUs, FTAs and other agreements even if non-confidential information such as agency internal information is shared by a requested party in confidence, a requesting party is bound to keep this information confidential. In such situations each party shall oppose, to the fullest extent possible, and consistent with that party's laws, any application by a third party for disclosure of such confidential information. Several international cooperation agreements contain references to the national confidentiality rules of a requesting authority.

On the recipient side a requesting authority has better chances to receive information upon its request to a foreign authority if it has the relevant information protection legislation and procedures in place. For example, one agency reported that it had a formal instruction for handling documents received from foreign authorities. If the document is marked as “confidential” or “strictly confidential” it is handled equally to confidential information as defined in the national legislation on confidential information. References to similar procedures could be found in the responses from other APEC competition authorities.

2.5. Information Sharing in the Absence of Agreements between Requesting and Requested Parties

In the absence of agreements between the authorities, a request for information can be provided both formally or informally. In most circumstances, the determination as to whether a competition authority can share information with another competition authority does not depend on the form of the request, but on the protected status of the information requested.

Exceptions may arise in specific instances; however, ***publicly available information*** is generally the only type of information that may be readily shared in the absence of an agreement.

Confidential information cannot be shared in the absence of a MLAT and/or a confidentiality waiver from a leniency applicant or a company under investigation. If in case of non-criminal restraints a requested agency obtains waivers from the parties to a case or third parties, it can share information obtained from them, subject to the terms of the waiver.

In the absence of a cooperation agreement competition authorities would assess possibilities of providing agency ***internal information*** (such as the requested agency work product like the theory of the case) for each particular request. However, in such situations provision of agency internal information would be the exception rather than the rule. The reporting competition authorities indicated the following conditions under which they may share agency internal information in the absence of cooperation agreements or MoUs:

- Sharing information is in the public interest of a requested jurisdiction;
- Requested and requesting authorities are coordinating their efforts while investigating an abuse by a multinational company;
- The conduct investigated by the requesting authority may affect the economy of the requested authority.

In such exceptional cases agency internal information can be shared, provided a requesting party would abide by confidentiality restrictions with regard to the information provided. Such restrictions may include but are not limited to using information only for the purposes of the investigation it was requested for and non-disclosing information to any third party. Should a requesting agency violate

those guarantees, it would be taken into consideration when assessing any future requests from that agency.

The APEC economies, who are also OECD members, generally adhere to OECD Recommendations on Cooperation between Member Countries, although they are not legally binding.¹⁰

2.6. The Agencies' Ability to Obtain Evidence on Behalf of a Foreign Competition Authority

The broadest possibilities for APEC economies to obtain evidence on behalf of a foreign competition authority are provided by antitrust-specific mutual legal assistance agreements such as between the U.S. and Australia as mentioned previously¹¹. Such agreements enable their parties to seek evidence on behalf of each other both in criminal and civil cases in response to the requests made thereunder.

The next effective instrument for obtaining evidence on behalf of a foreign competition authority is general-purpose MLATs. These MLATs may only be invoked in the context of criminal investigations and prosecutions. Requirements for compelling evidence are specific to a particular general-purpose MLAT.

Cooperation agreements other than MLATs typically do not provide for the possibility of obtaining evidence on behalf of a foreign competition authority.

Among the surveyed APEC competition authorities only four have general and/or antitrust-specific MLATs enabling them to obtain evidence on behalf of the other party to such an agreement. Meanwhile, eight authorities reported that they had no such powers. One authority specified that it had an agreement with another APEC authority that allowed both competition authorities to put requests for information possessed by any person located in each party's territory, which could provide evidence of an anticompetitive conduct, as long as it did not violate any legal dispositions or affect the course of an investigation. However, this possibility has yet to be exercised.

2.7. Notifications to Foreign Agencies on the Open Investigations

As a rule, notifications on the open investigations are provided for in international cooperation agreements, such as MLATs, MoUs, FTAs or cooperation

¹⁰ Available at <http://www.oecd.org/dataoecd/60/42/21570317.pdf>.

¹¹ Border possibilities of obtaining evidence and information sharing are provided for by the relevant international agreements in place in other regions, especially by the European Competition Network (ECN) that enables joint efforts of two or more EU competition authorities, including collecting evidence on a particular case affecting their economies. See Commission Notice on Cooperation within the Network of Competition Authorities. Official Journal of the European Union 27.4.2004, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2004:101:0043:0053:EN:PDF>.

agreements.¹² Twelve of the reporting agencies indicated they had international agreements with provisions for notifications on open investigations.¹³

Usually a notification is required whenever a competition agency of a signatory jurisdiction becomes aware that its enforcement activities may affect important interests of other jurisdictions. Typical examples are where an investigation:

- Is relevant to the enforcement activities of the other agency;
- Involves anticompetitive activities (other than a merger or an acquisition) carried out in significant part in the other party's territory;
- Involves a merger or an acquisition in which one or more parties to the transaction, or a company controlling one or more parties to the transaction, is a company incorporated or organized under the laws of the other party or one of its states, or member states;
- If one party to an agreement considers that anticompetitive activities in the territory of other party may have an adverse impact upon competition in the first party, it may request the second party to initiate the relevant law enforcement actions.

In practice, the way such notifications are made is determined by the parties to each agreement. For example, one reporting agency explained that its staff prepared a brief (typically, one page) notification to be sent through formal diplomatic channels. To prevent any delays in informing the other competition agency, the agency staff also sends an informal copy of a notification by e-mail directly to their colleagues in the international office of the other agency. Such notifications contained the names and addresses of the foreign parties alleged in a unilateral or collective (cartel-type¹⁴) abuse, a reference to the relevant market and conduct, and the broad statutory framework under which they are being investigated. In addition, they name the contact person at the agency to be reached in connection with the matter. If there is an interest in further communication, the agency staff can share any information that is non-confidential, including its own work product. To the extent the parties grant written waivers of confidentiality, the agency can also share confidential information for which confidentiality was waived.

Notifications of foreign authorities must be sufficiently detailed to enable the notified party to make an initial evaluation of the effect of enforcement activities

¹² For examples of such agreements that include notification provisions see the agreements between the US and Australia, Brazil, Canada, the European Union, Germany, Israel, Japan and Mexico. These agreements can be found at the US DOJ web-site <http://www.justice.gov/atr/public/international/int-arrangements.html>.

¹³ Notifications of foreign agencies on open investigations made by one national competition authority to another national competition authority should not be confused with merger notifications that are made by the merging entities to the national competition authorities. Notifications of the first type of are made within the framework of the relevant international agreements, while the second type of the notifications are made in accordance with the national merger review legislations and procedures of the respective APEC economies.

¹⁴ The relevant agency explained that these procedures were effective for notifications on non-criminal horizontal agreements.

on its own important interests, and describe the nature of the activities under investigation and the legal provisions concerned. Where possible, notifications include the names and locations of the persons involved.

Additionally to notifications on open investigations, some APEC competition authorities also practice making notifications on the proposed decisions. Notifications concerning a proposed consent order or a decree shall either include or, as soon as practical be followed by, copies of the proposed order or decree and any competitive impact statement or agreed statement of facts relating to the matter.

Chapter 3. Synergies with Other International Initiatives and Projects on Information Sharing

This Chapter examines other international projects and initiatives in the field of information exchange for the purposes of competition law enforcement and policy development in terms of how these projects complement the findings of this Survey and provide additional possibilities for the APEC economies to make more informed decisions on requesting and sharing information with each other.

3.1. Review of Some Information Sharing Projects in the Field of Competition Policy and Enforcement

In the context of the globalizing economy, with an increasing number of cross-border mergers / acquisitions and a strong tendency for anti-competitive conduct and unlawful actions involving market players from several countries, efforts towards efficient exchange of information among competition authorities around the world intensify, becoming an integral element of their successful work. Several international and regional organizations have implemented a number of projects and incentives, researching and analyzing various aspects of information exchange on competition law and policy development, the findings of which form valuable additions to the Survey framework. Such projects and incentives are conducted at various levels of generalization and practical conclusions, depending on the project objective and the target audience; therefore, APEC economies can benefit from adopting the findings in various forms. The projects were reviewed for their objectives, methodologies and findings, as well as intercrossing with the APEC Survey.

3.1.1. General Characteristics of Other International Projects

Overall, projects carried out by international organizations tend to focus on more general issues and basic principles of information exchange, including confidentiality issues, rather than on more specific aspects. Being based on the findings of previous related projects and expanded through new studies, over years such projects have resulted primarily in devising and further refining Recommendations concerning cooperation, in particular, exchanging information between competitions authorities, and expanding on specific pressing issues.

Such Recommendations can be adopted as generally acceptable practices for APEC economies.

Projects conducted at the regional / bilateral level by participating competition authorities look in more detail at various practical aspects of information exchange, often in view of regional specifics. Intensifying their international activities, some national competition authorities also independently research specific issues related to information sharing to be able to better satisfy their needs. APEC economies may find such experiences useful and valuable for advancing and harmonizing their information exchange practices.

3.1.2. OECD Projects¹⁵

The projects designed to devise generally accepted Recommendations were carried out on a regular basis, for instance, by the Organization of Economic Cooperation and Development. Due to the increasing threat of international cartels in the globalizing economy, such violations were naturally in the centre of attention of the competition community.

In 1995, OECD issued the ***Revised Recommendations of the Council Concerning Cooperation between Member-Countries on Anticompetitive Practices Affecting International Trade***, accumulating previous Recommendations and the findings of hard-core cartel prevention studies. The major outcome of the project was promoting the idea of mutual information exchange: when permitted by the national laws and consistent with their interests, the member countries were encouraged to coordinate competition investigations of mutual concern and comply with each other's requests to share information.

In 1998, OECD Council issued the ***Recommendation Concerning Effective Action Against Hard Core Cartels***, further detailing the principles of sharing documentation and information and gathering information on behalf of foreign competition authorities "on a voluntary basis and when necessary through use of compulsory process, to the extent consistent with their own laws, regulations, and important interests, and subject to effective safeguards to protect commercially sensitive and other confidential information".

Further developments included 2002 OECD and BIAC [Business and Industry Advisory Committee to OECD] discussion of concerns of the business community related to information exchange - ***Information Sharing in Cartel Investigations***, based on submissions from the interested parties. It exposed differences and areas of agreement between the business community and competition authorities on information sharing issues; in particular, raising awareness of the importance of legal protection in view of a possible subjective assessment by competition authorities as well as the requirement of different treatment for different categories of information.

¹⁵ The information on the projects described below has been taken from the official OECD sources, primarily from the OECD web-site.

A review of the above Recommendations and the Round Table reports of the Competition Committee to the Council as well as further contributions resulted in formulating the **Best Practices for Formal Exchange of Information in Hard Core Cartel Investigations** (2005) that should be applied following requests for assistance or information already in possession by a requested jurisdiction. In particular, the **Best Practices** provided recommendations on efficiently requesting information; justifying the reasons for declining to provide information; observing confidentiality, use and disclosure rules; protecting legal profession privilege; notifying the source of the exchanged information.

In 2012, the OECD Global Forum on Competition focused on the subject of **Improving International Cooperation in Cartel Investigations**, aimed at expanding OECD practices beyond its member-states and promoting a dialog among OECD and non-OECD economies.

Similar projects were accomplished in the field of cross-border merger review, since the number of mergers and acquisitions has been increasing consistently in the modern economy.

In 2001, BIAC jointly with ICC (International Chamber of Commerce) put forward the **Recommended Framework for Best Practices in Merger Control Procedures**. It established the general principles of exchanging confidential information, including the issues of legislative framework; notifications to suppliers of information; circumstances of refusals; and waivers, in particular, giving recommendations on drafting model and limited waivers. The **Framework** described the recommended practices related to the appropriate safeguards governing exchange of confidential information between reviewing authorities (from the point of view of protecting legitimate business interests – reducing transaction costs, increasing merger review efficiency), and discussed the methods to encourage voluntary waivers. The follow-up 2003 OECD discussion on **Information Exchange in Merger Investigations** based on BIAC and ABA papers concluded that confidential information should be exchanged on the basis of bilateral or multilateral cooperation agreements.

The 10th OECD Global Forum on Competition in 2011 focused on **Cross-Border Merger Control: Challenging for Developing and Emerging Economies**; the discussion was based on an analytical paper and participants' submissions. Analysis of various information exchange practices by competition authorities confirmed the key role of bilateral contracts for effective review of cross-border transaction control, in particular, to facilitate exchange of information concerning mergers already under investigation. At the same time, the project revealed that absence of formal bilateral links did not necessarily hinder meaningful cooperation between competition authorities.

At the moment, OECD is conducting an **Enforcement and Cooperation** project (started in 2011), collecting contributions from its member-countries, particularly to further elaborate on various aspects of information sharing.

3.1.3. UNCTAD Projects¹⁶

Two notable projects of the United Nations Conference on Trade and Development (UNCTAD) covering the field of information exchange tend to give more weight to case summaries and cover relevant practices across the globe. The 2005 - 2006 analysis of ***Recent Important Cases Involving More Than One Country*** was completed to monitor “competition law enforcement progress in developing countries and draw lessons from developed countries”. The study was based on contributions from various states, made upon a request by the Secretariat, and analysis of publicly available materials. Reviews of cases on mergers and anticompetitive practices included details on exchanging information between competition authorities in the process of case investigation (the nature of requests, efficiency of sharing information, etc.)

In 2011, UNCTAD issued an important ***Review of Experience Gained so far in Enforcement Cooperation, Including at the Regional Level***. It examined the experiences in enforcement cooperation, highlighting the practices and approaches taken by competition authorities, particularly, to share information in order to effectively investigate international cartels and control cross-border mergers. The ***Review*** summarized extensive materials and sources of information, including UNCTAD studies; submissions from the member-states in response to a questionnaire; publications by ICN Working Groups; OECD Round Tables; web-sites of competition authorities; and academic literature. The ***Review*** analyzed examples of the specifics and benefits of various bilateral agreements and Memorandums of Understandings, as well as their limitations, in particular, with regard to the exchange of non-confidential information; and the effect of discrepancies between competition regimes upon the terms of agreements and their implementation across countries. Along with general observations about information sharing the ***Review***, in particular, highlighted some benefits of information sharing, which might be different for developing and developed countries. Importantly, it contained examples of the inability to successfully complete prosecution and enforcement at the national level due to failure to exchange information. The ***Review*** provided a summary of achievements of regional agreements, such as EC and ECN (the European Competition Network), etc., particularly, on information exchange regulation and use of information exchanged; analyzed cooperation between the US and EU authorities at different stages of merger review. One of the ***Review*** conclusions specified that according to the respondents, reluctance to exchange confidential information was a major limitation to cooperation and the 2005 OECD Best Practices for the formal exchange of information between competition authorities in hard-core cartel investigations should be more vigorously implemented.

¹⁶ The information on the projects described below has been taken from the official UNCTAD sources, primarily from the UNCTAD web-site.

3.1.4. ICN Projects¹⁷

Similar efforts were undertaken by the International Competition Network – an organization established in 2001 by and for competition authorities from different countries to “advocate the adoption of superior standards and procedures in competition policy around the world, formulate proposals for procedural and substantive convergence, and seek to facilitate effective international cooperation to the benefit of member agencies, consumers and economies worldwide”. Projects and initiatives are carried out by specialized ICN Working Groups; in particular, WGs on “Cartels”, “Mergers” and “Unilateral Conduct”, and the findings are further discussed at annual ICN conferences. WGs comprise the leading practitioners – serving members of competition authorities as well as experts from academia or legal community on a particular field, representing countries with different levels of economic development, competition authorities with different levels of experience and stages of developing and enforcement of competition policy, and jurisdictions with different legal regimes. Such a pattern enables comprehensive coverage of particular issues in question with a strong emphasis on research-to-practice results and feasibility of implementing specific recommendations, and facilitates harmonized cooperation between agencies.

An illustrative example of such a project is a report of the Cartel WG (Subgroup 1 General Framework) on ***Co-operation between Competition Agencies in Cartel Investigations*** (2005-2007 project), which was discussed at the 6th Annual ICN Conference in 2007. Questionnaire responses from 20 member-agencies and the “cartel template” (norms, standards and procedures for cartel investigation by countries) formed the core basis of the report. The WG also reviewed extensive publications on the issue, materials accumulated by Cartel WG (including two preceding workshops), and relevant OECD Recommendations and Best Practices as well as data on their implementation practice. (The questionnaire was devised by DG Competition of the European Commission in its capacity as a member of WG Subgroup). One of the strong points of the report that makes it particularly useful and valuable for competition authorities is the summary of analysis by the types of cooperation (informal; non-competition-specific agreements and tools; competition-specific agreements; cooperation based on waivers; regional cooperation instruments (an example of the European Competition Network), indicating the type of information that can be exchanged accordingly and the (potential) use of such information. Problems identified as hindering efficient cooperation, and, specifically, information sharing in cartel investigations, are related, in particular, to limitations in the use of certain instruments and exchange of confidential or “agency” information, and a danger of compromising domestic investigations and proceedings. The analysis summarized in the report formed a solid basis for ongoing work by ICN Cartel WG on researching and identifying possible solutions to the discussed problems.

¹⁷ The information on the projects described below has been taken from the official from the ICN web-site at www.internationalcompetitionnetwork.org .

Such work includes drafting ***the Anti-Cartel Enforcement Manual on International Cooperation and Information Sharing*** by WG Subgroup 2 on Enforcement Techniques. Currently the Subgroup is working on adding a new chapter to the Manual which would advance the information sharing agenda and expand the basis for information-sharing techniques including good practices. The Chapter will incorporate 2011 SG 2 Charts Summarizing Information Sharing Mechanisms (an ongoing project) and the 2007 SG 1 report on Cooperation between Competition Agencies in Cartel Investigations (described above); as well as the findings in the relevant OECD reports and member feedback. Another ongoing project (started in 2005) is compiling and updating an ***Anti-Cartel Enforcement Template***, which summarizes the main features of each jurisdiction's rules and procedures on the basis of contribution from ICN members, including new-coming members. The templates are available on ICN web-site and constitute an important source of open information for competition authorities.

Similar initiatives are considered by ICN Merger Working Group. In order to facilitate cooperation between member-agencies reviewing multijurisdictional mergers, ICN is developing a ***Framework for Merger Review Cooperation***, which is a non-binding framework, intended to facilitate effective and efficient cooperation between and among the ICN member agencies. During 2012-2013, the Working Group will review its existing work product related to merger enforcement cooperation. Prior to this initiative, Merger WG already considered certain aspects of facilitating information sharing, such as the model confidentiality waiver (2005).

ICN also is pioneering a new, promising approach centered on “cross-fertilization of ideas” from different areas of competition policy and enforcement. The advantages of this approach can be enhancing the agenda for specific areas of information sharing (enabling to look at possible problems and solutions from a different angle), as well as more efficiently harmonizing relevant practices. ***The ICN Roundtable on Enforcement Cooperation*** (2011) is the first such ICN program to specifically address international enforcement cooperation across cartel investigations, merger reviews and unilateral conduct investigations. The discussion was based on a questionnaire survey, to which 19 jurisdictions responded; the Roundtable participants represented 35 countries. First, specific issues were analyzed in detail by small agency-only groups; and groups including competition practitioners and non-governmental advisors; the next level was more generalized panel discussions; and finally the larger group discussed informal and formal methods of information sharing. Discussions at higher levels were based on summary presentations from the lower-level groups. An important new substantive question raised at the Roundtable was that differences between criminal and civil cartel enforcement systems could raise barriers for information sharing in cartel cases.

This approach is being further employed in a long-term ***International Enforcement Cooperation Project***, launched in 2011 by ICN Steering Group. The objective is to intensify cooperation within the current legal framework, rather

than require amending the established norms and standards, in a way that is beneficial for all ICN members. The project presupposed analysis of the outcome of 2011 Roundtable discussions, surveys, consultations with three WGs on cartels, mergers and unilateral conduct; reviewing the findings of other projects on international enforcement cooperation and the work of international organizations (*i.e.*, OECD, UNCTAD). In particular, a joint ICN – OECD survey (2012) shall be yet another illustration of ICN determination to combine competences and resources and work closely together with other organizations towards end-results of mutual benefit. Coordination between the ICN and the OECD is essential for taking advantage of synergies between the two projects on enforcement cooperation and for avoiding duplication between the two projects. The survey will allow drafting recommendations on the feasibility of devising ICN practical guidance on international enforcement cooperation. The next intermediate stage (2014) will be for the three WGs to analyze and summarize member practices, rules, particularly with regard to treatment of confidential information, etc.; and devise and promote ICN Model Waiver. In the long-run ICN hopes that the proposed approach will help developing new / intensifying the established methods of international enforcement cooperation.

3.1.5. A US-EC Project

The *Best Practices on Cooperation in Merger Investigations* by the US-EU Merger Working Group (2011), were devised on the basis of case reviews; bilateral (DOJ, FTC and DG Competition) agreements on cooperation; and previously issued recommended practices and studies conducted by the working groups of OECD, US – EU, and ICN. The discussion covered procedures, timing, frequency of information sharing, consultations at the key stages of investigations, coordinating collection and evaluation of evidence as well as the type of information to be exchanged: analysis at various stages of an investigation, including market definitions, assessments of competitive effects and efficiencies, the theories of competitive harm, economic theories, and empirical evidence needed to test those theories, necessary remedial measures and relevant past investigations and cases.

3.1.6. Projects of the Interstate Council on Antimonopoly Policy

A good example of a practical application of information exchange at the regional level towards developing market competition is the efforts of the Interstate Council on Antimonopoly Policy (ICAP). ICAP is the basic platform for interaction between competition authorities in the Commonwealth of Independent States (the CIS). Recently ICAP has extended cooperation among the Commonwealth member-states by conducting a series of joint investigations of interregional markets, notably: passenger air transportation, telecommunications and food products retail. This has involved coordination on the part of the various participating states in determining the scope of the investigations, gathering and exchanging information and conducting simultaneous inspections.

3.1.7. A Project of the International Working Group for Developing Oil and Oil Products Markets

The International Working Group for Developing Oil and Oil Products Markets and the Methods of their Functioning was formed in January 2012 upon a joint initiative of the Federal Antimonopoly Service of the Russian Federation and Austria's Federal Competition Authority. The objective of the Group is to expand cooperation with national competition authorities: exchanging experiences and approaches to competition enforcement, and carrying out joint studies and investigations on the oil and oil products markets to support competitive pricing at international markets.

In September 2012 the Group put forward an initiative to establish **a joint database for exchanging information regarding the markets of oil and oil products**. The initiative was unanimously supported by representatives of 17 competition authorities from different countries. The purpose is to be able to promptly and efficiently exchange information on the processes in different jurisdictions and institutionalise information sharing between competition authorities on a regular basis. The project intends to provide an easily accessible and manageable, low-cost instrument that can efficiently supplement other information-exchange channels. There will be no obligation to share confidential information.

The project is an example of developing information exchange with the focus on the markets of particular products at an interregional level (members of the WG represent competition authorities from Europe and the CIS and the Group is open to new members).

3.1.8. FAS Russia Impact Assessment Project

An essential element of developing a system of general information sharing among competition authorities of different countries is creating an environment favorable to easy and convenient acquisition of public information on competition law and policy in order to better satisfy the needs of foreign competition agencies. An illustrative example of a project aimed at facilitating the use of publicly available information by competition authorities of other countries is a 2010 survey commissioned by Russia's Federal Antimonopoly Service (FAS) from independent experts to analyze **Impact of Information Published on the English Version of FAS Official Web-Site upon the Target Audience** (in particular, competition authorities of other countries and ICN Working Groups). The survey database included 1031 respondents from over 80 countries. The findings are based mainly on responses to a questionnaire, distributed in English and Russian, and web-site content analysis (as to what type of information was of the most interest for the target audience, how it was used in the respondents' work, convenience of search, sufficiency of site information for the needs of the respondents). Based on the analysis of the structure and content of the information on the site, researchers devised recommendations on the format and structure of the site material in order to better meet the demands of the target

users. Apart from improving the quality of the FAS site in terms of increasing the efficiency of communicating information to foreign target audiences, an important additional objective of the project was to inform the members of the competition community about the English version of FAS web-site and popularize it, and, as a consequence, enhance awareness of FAS' efforts and strengthen FAS' reputation abroad. In this context, FAS experience can be valuable for competition authorities from other countries.

3.2. APEC Survey Contribution to the Projects on Information Sharing

It appears that although there is a pronounced and growing trend towards international cooperation between competition authorities across the world, so far the issues of information sharing by competition authorities at a regional level, particularly in cartel investigations or multijurisdictional merger reviews, have been considered in detail mostly with regard to the European Union, between the members of the European Competition Network. Some other regional-level organizations do have arrangements on competition issues, but no sufficient data on methodological and practical aspects of information sharing for the purposes of investigating anticompetitive practices and advancing and harmonizing competition policies of participating economies are yet accumulated. For example, joint investigations conducted by ICAP members in the recent years certainly mean accumulating valuable experience in terms of the practice of information sharing, but since this experience was not in the focus of special analysis, no consistent formalized representation of the practical issues of such information sharing, that can be beneficial for competition authorities from other regions, is available.

Therefore, the Survey as ***a project delivering comprehensive analysis of a number of pressing issues of information sharing at a regional level*** can be useful not only to the participating economies, but also for the global competition community in general in terms of better understanding practical aspects of information sharing, especially in view of continuing economic globalization.

The chosen ***methodology is "Supply - Demand analysis"*** in the field of information sharing between competition authorities. On the "Supply side" the Survey analyzes the basic informational demands of APEC economies with regard to competition issues; and then on the "Demand side" - identifies the major constraints and rules for providing information to the foreign competition authorities in the APEC region, as well as the means used by APEC competition authorities to disseminate publically available information. Such "Demand – Supply" scheme of analysis is clearly practice-oriented; and makes it easy to further build-up knowledge and understanding of the strong and weak points in the field of information exchange across the region by updating and expanding demand-supply database and its analysis in possible future projects. Being somewhat distinct from the approaches adopted in other important relevant projects, it helps avoid unnecessary duplications. While focusing on several new research-to-practice aspects of exchanging information; the Survey also deepens

understanding of the issues already under discussion by the competition community.

As follows from the international projects' findings, described previously, all existing co-operation instruments have certain disadvantages, in particular, none is of general usage (for instance, for all types of information). However, a significant portion of agencies' informational needs can be efficiently satisfied with the information available from open sources, first of all, official web-sites of national competition authorities, or through exchanging non-confidential information between competition bodies. Informal co-operation between any two competition agencies is the only category of co-operation which is universally available and, coupled with use of public information, can be rather cost-saving for competition authorities since obtaining and using such information does not require intensive employment of human resources, especially for "younger" agencies, in comparison, for instance, with devising and concluding competition-specific agreements.

Thus, the Survey puts a ***special emphasis on facilitating exchange of publicly available information***. For instance, agencies' web-sites are described in terms of their content; convenience and efficiency of information search; possibilities available for requesting information on-line. A list of cooperation liaisons within APEC is compiled to facilitate informal contacts - a practice already adopted, for instance, by ICN.

As a regional-level initiative, the Survey provides a more detailed, ***region-specific insight to*** the concepts and use of the ***two other universally accepted types of information - confidential information and agency internal information*** - for the purposes of joint investigations and collaboration in the field of competition policy. The Survey summarizes approaches to confidential information and confidentiality policy across APEC economies; and looks into delineation between confidential and intra-agency information, particularly, in terms of their management and employment. Special attention is given to the procedures for considering information requests from foreign competition authorities; and the mechanisms of information protection adopted by APEC competition authorities. Other international projects already discussed in general the specifics and advantages of different types of agreements regulating information exchange between competition agencies, including efficient use of specific types of information. The breakdown of participation of APEC economies by types of the agreements highlights positive experience in strengthening informational cooperation, and can also help identify the current scope of information exchange cooperation, including possible problematic areas.

The Survey contains a review of the national regulations within APEC on information exchange with foreign authorities, with emphasis on competition-specific acts (Annex 4). The review can be beneficial in the context of approximating and harmonizing the norms and standards on information exchange across the region in the long-run, in the meantime serving as a

reference source for the relevant rules and procedures under the existing framework.

Conclusions: Obstacles to Information Exchange and Areas for Improvement

Confidentiality of information compelled or voluntarily received from the party being investigated or third parties will remain a constraint for information sharing, unless a confidentiality waiver providing a possibility to disclose such information partially or in full is granted by the party that provided the information. While confidentiality constraints do constitute an obstacle to information sharing among agencies, they are necessary for the efficient functioning of the investigative process and for the protection of companies and individuals who may become the subjects of an investigation. This problem can be partially solved by increasing the use of **confidentiality waivers** from cooperating partners especially in multi-jurisdictional cartel investigations. In its turn it necessitates provision of incentives to the owners of confidential information in the course of multi-jurisdictional cartel investigations and merger reviews.

Another obstacle to information exchange that is likely to persist in the future is **differences in legal systems** (administrative vs. criminal) and domestic laws in general. Ten of the surveyed authorities pointed it out in the Questionnaire responses.

However, the APEC economies can obtain substantial benefits from sharing agency internal and publically available information between each other. It will help them raise awareness of competition violations having cross-border effect in the Asia-Pacific region, develop common approaches to their investigations and coordinate their efforts in countering anti-competitive practices.

The possibilities for information exchange are quite high, although sometimes not realized to the full extent by the APEC economies. As it was fairly concluded in one of the Questionnaire responses, “**institutional traditions of antitrust cooperation are not well rooted yet.**” Seven economies - with a high level of experience in international cooperation - indicated the lack of awareness of channels for requesting/providing information as an obstacle to information exchange. One of these agencies expressed its concern “if the authorities have not had enough experience to share the information and if they could not identify where the information is and what kinds of information exists.” Language barriers present an additional hurdle to raising awareness of the APEC competition authorities of the information exchange possibilities.

It is important for the APEC competition authorities to increase mutual trust regarding use of information received from foreign competition authorities. Twelve APEC economies stated that **concerns about use of information** provided to the requested party constituted a significant obstacle to information sharing. Efficient legal protection of such information combined with effective

procedures for keeping confidential the information, passed by a foreign authority in confidence, seems to be an important condition facilitating information exchange.

An additional difficulty for information sharing is a **lack of resources** needed for maintaining international cooperation in some agencies. Five of the responding authorities reported encountering this problem. One agency also indicated that intensive exchange of information requires additional costs for translating the relevant documents.

Important obstacles to the exchange of information indicated by the authorities also are:

- **Differences in enforcement priorities** between countries;
- **Different effects of different immunity policies** in different jurisdictions;
- **Challenges of coordinating investigations** when agencies are at different stages of investigation. For example, coordinated efforts (i.e., a search) may not be possible when one jurisdiction is further ahead in its investigation.

The surveyed APEC competition authorities suggested a number of useful ideas for facilitating and streamlining the information exchange process to be implemented at the agency, bilateral and multilateral levels.

At the **agency level** these suggestions mainly related to the following directions of improvement:

- Developing and upgrading internal **procedures of information exchange** (both requesting and receiving information) by preparing the necessary Guidelines, manuals and policy documents;
- Making these procedures **transparent** for other APEC competition authorities by various communication means, including publication of these procedures on the agency website. As it was stated in one of the Questionnaire responses “[i]t is important to deepen mutual understanding of the way of sharing and providing information”;
- Improving the agency procedures for **safeguarding confidentiality** of information, including information received from foreign competition authorities;
- Enhancing the standards of coverage and the level of accessibility of the agency web-sites for potential foreign users; including bilingual presentation of the most demanded information (see Chapter 1 of the Survey for more detail).

At the **bilateral level** the agencies’ proposals were mainly focused on such areas as:

- Streamlining the process for requesting and responding to requests for information related to investigations and merger reviews;

- Including information exchange mechanisms in Agency-to-Agency and Country-to-Country agreements;
- Facilitating communication between staff members of different agencies enabling them to share views and information to the extent consistent with agency policies and obligations;
- Developing informal and formal relationships with competition agencies in other jurisdictions;
- Addressing potential language barriers and costs for translation of documents.

At the ***multinational level*** the responding authorities emphasized the importance of various international forums, including APEC, ICN and OECD that facilitate cooperation and information exchange by providing better understanding of the work and experience of other agencies as well as approaches to various competition problems and abusive practices.

Annex 1. The Survey Questionnaire

CPLG 03 2011 - Survey on Information Exchange on Competition in APEC
Region: Phase I

Project Questionnaire

Introduction

This Questionnaire is used for the purposes of “CPLG 03 2011 - Survey on Information Exchange on Competition in APEC Region: Phase I” Project that is intended to raise APEC economies’ awareness of possibilities, rules and procedures of obtaining information that may be of assistance for their antitrust enforcement actions, including investigation of cartels, unilateral abuses of dominant position and merger reviews as well as for promotion of competition policies from other competition authorities in APEC economies. The project will seek to study the procedures of use and accessibility of such information and present these in easily understandable and time saving survey.

The Questionnaire is related to sharing information used for antitrust enforcement purposes and does not include information related to antidumping investigations or other international trade issues.

Please send your responses to the Questionnaire to Dr. Tatiana Ershova, Ms. Lessya Davydova and Dr. Vladimir Kachalin at CPLG032011@gmail.com and CPLG032011@fas.gov.ru with copy to kachalinicn@gmail.com or kachalin@aanet.ru. Please do not hesitate to contact Dr. Kachalin should you have any questions while preparing answers to this Questionnaire.

Terms and definitions¹⁸

For the purposes of this Questionnaire two categories of definitions related to information are used: the first category includes definitions related to information disclosure, while the second includes the definitions related to the nature of information. Both types of the definitions can be applied to the same information specifying it, for example, as confidential and factual at the same time. The respondents are expected to refer to these terms while preparing answers to the Questionnaire or explain the terms they may like to use instead of these suggested below.

References to the sources of the terms taken from ICN and OECD publications are provided in the footnotes, as appropriate.

¹⁸ The terms and definitions used in this Questionnaire were mostly taken from dictionaries of legal terms and International Competition Network (ICN) or Organization for Economic Development and Co-operation (OECD) publications, particularly:

1. ICN Cartel Working Group SG 1 report on Cooperation Between Competition Agencies in Cartel Investigations (<http://www.internationalcompetitionnetwork.org/uploads/library/doc348.pdf>);
2. OECD Global Forum on Competition. Information Sharing in Cartel Cases – Suggested Issues for Discussion and Background Material. Note by the Secretariat (under Session IV B) <http://www.oecd.org/dataoecd/9/38/1828095.pdf> ;
3. OECD Global Forum on Competition. Information Sharing in Cartel Investigations. Note by the Secretariat (Session IV). <http://www.oecd.org/dataoecd/57/40/1820435.pdf> .

Definitions related to information disclosure:

Publicly available information – information that is already in the public domain, i.e. the information that can be found in the open sources and obtained by any interested party without any legal restrictions.¹⁹

Agency internal information – information competition authorities are permitted, but not required by law, to limit access to, e.g. the nature or status of their investigations, their investigation theories, or their preliminary conclusions.²⁰

Confidential information – refers to information which is defined as such by the law of the jurisdiction which is answering this questionnaire. 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.²¹

Note: some jurisdictions treat “agency internal information” and “confidential information” as synonyms. The responding agencies that do so are kindly requested to indicate it in their answers.

¹⁹ “Public information. In this case, one agency simply helps another agency gain time by providing information which is already in the public domain (perhaps a hard-to-find market report, or information about the market arising from studies carried out by the agency)...” See ICN Cartel Working Group SG 1 report on Cooperation Between Competition Agencies in Cartel Investigations (<http://www.internationalcompetitionnetwork.org/uploads/library/doc348.pdf>), p. 9.

²⁰ “Competition authorities are normally permitted, but not required by law, to limit access to internal information such as the nature or status of their investigations, their investigation theories, or their preliminary conclusions. This note does not refer to such “internal agency information” as confidential information. ... It appears that, as is known to occur in merger cases, some competition authorities discuss this kind of information with foreign authorities on a fairly frequent basis.” OECD Global Forum on Competition. Information Sharing in Cartel Investigations. Note by the Secretariat (Session IV). <http://www.oecd.org/dataoecd/57/40/1820435.pdf>, p. 7. “Agency information. This is information which is not necessarily in the public domain, but which is generated within the agency itself, rather than provided by parties to the investigation (although it may be based on information supplied by the parties). Such ‘agency information’ may concern for example the stage which the investigation has reached, the planned timing of further steps, the provisional orientation of the investigation, conclusions reached about the nature of the market and so forth. - ICN Cartel Working Group SG 1 report on Cooperation Between Competition Agencies in Cartel Investigations (<http://www.internationalcompetitionnetwork.org/uploads/library/doc348.pdf>), p. 9.

²¹ ICN Cartel Working Group SG 1 report on Cooperation Between Competition Agencies in Cartel Investigations (<http://www.internationalcompetitionnetwork.org/uploads/library/doc348.pdf>), p. 35.

Definitions related to the nature of information:

Evidence - Evidence in a broad sense refers to something that furnishes proof of a matter. In the legal context, it is something legally submitted in court or other decision-making body to ascertain the truth of a matter.

Factual information – information on facts, i.e. on something done or performed or something that has occurred for sure, as well as on statements that are held to be the truth or reality.

Legal information – information on legal rules used for consideration of the case

Information on sanctions – information on financial and other penalties imposed on a party deemed guilty of antitrust violation.

Information on timing of the case – information on activities to be undertaken throughout the investigation and consideration of a case with indication of their chronological order

Technical assistance – training, advice and capacity building of a recipient agency by the agency providing assistance.

Note: some jurisdictions treat “evidence” and “factual information” as synonyms. The responding agencies that do so are kindly requested to indicate it in their answers.

Questions

1. Potential requests of competition authorities of the APEC economies for information to competition authorities of other APEC economies.

1.1. What information on current or completed investigations may your agency be interested in obtaining from a foreign competition authority by the following types of antitrust investigations (e.g. evidence, sanctions, remedies, timing of the case and other)?

- Cartel investigations
- Unilateral abuses of dominant position
- Merger review

1.2. What other kinds of information (additionally or apart of these indicated in Question 1.1 your competition authority may be interested in obtaining from a foreign competition authority? For example:

- Ideas on theory of a case.
- Results of market studies.
- Technical assistance in case handling, agency capacity building etc. (please specify as appropriate).
- Exchange of information and discussion of competition policy issues (please specify as appropriate)
- Other – please specify.

1.3. Does your competition authority use publically available information published by competition authorities of other APEC economies? (Y/N) If yes, what kind of information does it use? Can you state an example of foreign authorities having most effective outlets for information that was or may be needed by your competition authority?

2. Ability to provide information upon request by other competition authorities

2.1. How does your authority categorize the information obtained during the course of investigation (please refer to the definitions above, as

appropriate)?²²

2.2. How does your authority manage the information especially when the information is confidential or commercially sensitive?²³

2.3. What information would be available for sharing by your competition authority in the following situations:

2.3.1. Your competition authority and the foreign authority requesting information **are parts of an international agreement** providing for information sharing between the antitrust authorities. Please provide reference to the agreement and its provisions relevant to the information sharing.

If appropriate, please specify the information that may be shared by the following types of antitrust cases:

- Cartel investigations

²² A hypothetical answer to this Question may look as follows: Our authority categorizes the information obtained from a position of possibility of its disclosure into publically available, internal agency information and confidential information basing on criteria stipulated for in the national Law "On Commercial Secret. According to the Law to be classified as a commercial secret the information should meet the following criteria:

- Under existing or possible conditions it allows its owner entity to increase its revenues, avoid unjustified costs, keep its position in the market of goods or/and services or receive other commercial benefits;
- This information may have scientific, technological, financial, economic or other character
- Actual or potential economic value of this information is determined by its unavailability to third parties;
- There is no free lawful access to this information;
- The owner of this information has lawfully introduced the regime of the commercial secret with regards of this information.

The information meeting criteria stipulated for above is considered by our agency as confidential and cannot be shared with the foreign competition authorities.

The agency internal information normally includes the opinions and theories of cases developed by our staff members in the course of investigation. Although generally we do not disclose this information to general public until the close of the case. However, we can share this information with foreign colleagues provided that the requesting authority will acknowledge its obligation not to share this information with any third party until the close of the case by our authority. We are normally helping foreign authorities in obtaining publically available information from our jurisdiction, including the information that is difficult to obtain otherwise due to linguistic and other difficulties.

²³ A hypothetical answer to this Question may look as follows: Our agency is legally precluded from unauthorized disclosure of confidential information and use efficient safeguards against its dissemination. The confidential information is provided only to the staff members directly involved in handling case the information relates to. The staff members have an administrative responsibility for unauthorized disclosure or use of the confidential information provided for by the national Law "On Public Service." The list of staff members eligible for access to this information is limited and determined by the Head of the agency. Any staff member not included in the list is not allowed to request the information.

The agency internal information is normally kept within case handling teams, although it can be discussed with other agency staff members to an extent the confidential information is not involved.

Publically available information is stored electronically or in hard copies if its electronic version is not available and can be easily searched for on the agency web-site.

- Unilateral abuses of dominant position (please specify by types of abuses, e.g. excessive pricing, predatory pricing, price discrimination, exclusive dealing etc. where necessary)

- Merger review

2.3.1.1. Does the agreement include provisions on notification requirements? If so, please explain what these provisions are and how the notifications are made in practice?

2.3.1.2. Does your competition authority have ability/powers to obtain evidence on behalf of foreign competition authority (e.g. under a Mutual Legal Assistance Treaty – MLAT)? If so, could you provide examples of obtaining such evidence?

2.3.2. Your competition authority and the foreign authority requesting information **are not parts of an international agreement** providing for information sharing between the antitrust authorities.

If appropriate, please specify the information that may be shared by the following types of antitrust cases:

- Cartel investigations

- Unilateral abuses of dominant position (please specify by types of abuses, e.g. excessive pricing, predatory pricing, price discrimination, exclusive dealing etc. where necessary)

- Merger review

2.4. In what circumstances your authority would share the information (please refer to your answer to Question 2.3.1 and 2.3.2, if appropriate), e.g.:

- Upon receiving a formal letter from a foreign authority requesting information on particular case or competition policy issue;
 - informal sharing agency internal information;
- waiver of confidentiality is granted by company under investigation;
- the conduct investigated by the foreign authority is illegal under your jurisdiction's legislation;
- your authority and the requesting authority are coordinating their efforts while investigating abuse by a multinational company;
- the conduct investigated by the foreign authority may affect your jurisdiction;
- other – please specify.

- 2.5. Does the possibility to share information with foreign authority depend on the stage of investigation (including whether the investigation is current or completed)? If so, please explain.
- 2.6. If the information can be shared, what safeguards your competition authority would put in place to ensure that the information would be managed appropriately by the receiving agency?
- 2.7. How does your competition authority process an information request from another authority?²⁴
- 2.8. Please provide references to legislation and rules regulating information sharing by your authority.
- 2.9. What means does you agency use for sharing publically available information with other agencies (please tag as appropriate):
- Agency web-site
 - Government Reports or Annual Reports or their analogs (please specify, as appropriate)
 - Periodical publications
 - Contact person/department (e.g. PR, international, other).
 - Other (please specify)
- 2.10. Please indicate a contact person/department to be referred to for requesting information from your competition authority:

Name:

Position:

Mailing address:

e-mail:

²⁴ A possible hypothetical answer to this question may look as follows: The request for information from a foreign competition authority is normally addressed to the Head of our agency who would request the department handling the relevant case to prepare the list of information on the case. Further the Head would request the legal department's opinion on what part of this information is confidential according to the national legislation and international department's opinion on possibility to share this information in part or in whole taking into account the presence (or absence) of the relevant agreement with the jurisdiction requesting information. Basing on the opinions of the legal and international departments the Head will make the decision on possibility of sharing information and inform the requesting agency about it in an official letter. If the information can be shared in part (e.g. results of market research or ideas on the theory of the case) or in whole the Head will instruct the department handling the case to prepare the requested information and pass it to the foreign agency official who signed the request or to the department or official indicated in the request.

Phone/Fax:

3. Ideas and recommendations for improvement of information sharing on antitrust cases among competition authorities of the APEC economies.

3.1. What in your opinion are the major obstacles to broader information sharing among the competition authorities of the APEC economies:

- Differences in legal systems (administrative vs. criminal)
- Lack of resources
- Concerns of use of information provided by requesting party
- Lack of awareness of channels for requesting/provision of information
- Other (please explain)

Please provide a more detailed comment to this Question, if appropriate.

3.2. What should be done to create better conditions for sharing information:

- At agency level?
- At bilateral level?
- At multilateral level?

Please provide a more detailed comment to this Question, if appropriate.

Please indicate any issues related to information sharing that have not been touched upon in this Questionnaire and provide your comments on them.

Thank you.

Annex 2. Review of the Web-Sites of the Competition Authorities of APEC Economies

All competition authorities in APEC economies have official web-sites with no public access restrictions (“authorized persons only”) as observed for the sites of some competition authorities in other regions. With regard to information availability through such sites, APEC economies can tentatively be grouped into the following categories:

- 1) A small group of APEC economies does not have a specific web-site devoted to competition policy and regulation due to absence of a central agency directly and primarily responsible competition policy and enforcement. Any publicly available information related to situation in the field that may be of interest to competition authorities of other APEC members is scattered across various sources, including press cuttings. In this case, expert reports / studies and updates on specific country appear to be the most useful source of information.
Such economies include: Brunei Darussalam; Hong Kong, China; and the Philippines, the latter constituting a special case since competition policy is rather implicit and relevant responsibilities are dispersed between various agencies.
- 2) The second group of competition authorities of APEC economies have web-sites that provide limited (to a various degrees) information - either in term of its content or the bulk of information is rendered in the national language, which in some instances does not prevent information exchange within a specific region that shares the same language (for instance, between APEC economies in the Latin America) but does not suffice to that purpose within the APEC space in general.
- 3) Finally, the third group of competition authorities of APEC economies have a very well-developed web-sites providing extensive information on the subjects of potential interest to other APEC competition agencies in English with clear and easy search options: Australia, Canada, Chinese Taipei, Japan, Korea, New Zealand, Russia, Singapore, and the U.S. (the U.S. FTC and the U.S. DoJ)
- 4) In addition, Chinese Taipei maintains an easy-to-use publically-accessible database on competition laws and policies of all 21 APEC Economies. The 14 categories of information include: policy statements, competition policies / laws, organizational structure, decision guidelines administrative procedures, list of publications and subscription details, Q&A, decisions of administrative or quasi-judicial agencies, judicial cases, international and / or bilateral cooperation arrangements, lists of academics and specialists, issues related to competition laws, statistical data, and announcements (<http://www.apeccp.org.tw>). Every member economy is encouraged to

update its data periodically, and the site remains an important centralized source of information on competition law and policy across the region.

The English versions of the sites of competition authorities across the APEC region are described in terms of their content; convenience and efficiency of information search; possibilities provided for requesting information.

1. AUSTRALIA

Official name of a body: Australian Competition and Consumer Commission

Official site: <http://www.accc.gov.au>

+ “**News**”, “**Announcements**” – under a special category; renewal almost on a daily basis

+ **Legislative documents**

+ **Administrative and judicial practice** - in particular, general information is available on decision-making process. The site has links to several public registers including Authorizations & Notifications register. Merger Register enables browsing for mergers and acquisitions currently being considered or the previous merger decisions by year.

+ **Guidance papers by the competition authority** - include guidelines on mergers (formal – informal reviews, methods of investigations, overview of merger authorizations) and cartels (leniency policy, conduct of cartel litigation, etc.)

+ **Reports, analytical materials; market studies** - annual reports on-line (from 1999) include sections on cartels, misuse of market power, mergers.

+ **References to national government agencies, materials of other agencies** include submissions and consultations involving ACCC

+ **References to competition authorities, international organizations; electronic publications of other countries**

+ **International cooperation**

+ **Conferences, Round Tables** - including schedule of events

+ **References to publications; periodical and specialized electronic publications** - a quarterly ACCC update – an e-version – runs in-depth stories on current priority areas for ACCC, including competition. Other publications include draft papers submitted to ACCC and presented at conferences. Publications can be browsed through an alphabetic catalog.

Additional - some on-site materials are available in the languages used by other APEC economies – Chinese, Japanese, Korean, Spanish, Thai, and Vietnamese.

+ **Site Map**

+ **Extended search function** - using a search option, in particular, for “news releases” section, to look for information on “merger review”, “cartels”, “abuse of dominance” gives good results.

- + **Contact information** – the “Contact Us” window linked through “About Us” on the Menu: office addresses, faxes and phones numbers; hotlines; Infocentre (including a special number for callers from outside Australia); an organizational chart with names and positions.
- + **“Questions-Answers”**- FAQ by categories
- + **“Electronic office” function** - Electronic complaints and enquiries option.

Official name of a body: National Competition Council is a research and advisory body which was established in 1995 by the Agreement of the Council of the Australian Governments (COAG). The Council’s main function is to recommend on the regulation of the third party access to services provided by monopoly infrastructure. Section 29B of the *Competition and Consumer Act 2010* sets out the functions and powers of the Council.

Official site: <http://www.ncc.gov.au>. The web-site publishes annual reports (1995-2011) on the national access regime, and the results of applications.

2. BRUNEI DARUSSALAM

is at an early stage of establishing a competition policy and law framework and as of the date of submitting the Review the time-frame for setting a specialized competition agency is not established.

3. CANADA

Official name of a body: Competition Bureau

Official site: <http://www.competitionbureau.gc.ca>

- + **“News”, “Announcements”** - timely update; news subscription available (through the home page)
- + **Legislative documents** - links to Competition Act and relevant regulations
- + **Administrative and judicial practice** - includes a monthly list of merger review and results. Data on court decision, discontinued cases, alternative case resolution, written opinions by type of abuses
- + **Guidance papers by the competition authority** - various Guidelines, including such as competitor collaboration, bid-rigging, immunity program, leniency program, merger review and enforcement, etc.
- + **Reports, analytical materials; market studies** - annual reports from 2010 – going back to 1995; submissions, reports and studies commissioned from independent or Commission experts.
- + **References to national government agencies, materials of other agencies**
- + **References to competition authorities, international organizations; electronic publications of other countries**
- + **International cooperation** – including agreements

+/- Conferences, Round Tables

+ References to publications; periodical and specialized electronic publications

+ Site Map

+ Extended search function

Additional - home-page icons include “investigating cartels”, “reviewing mergers”, “preventing abuse of market power” which facilitates searching on Review topics. There is also a detailed A-Z index.

+ Contact information - “Contact Us” window on the home page: mailing addresses, fax and phone numbers; organizational chart with names and positions.

+ “Questions-Answers” - FAQ by categories

+ “Electronic office” function - Electronic complaints and enquiries option.

Official name of a body: Competition Tribunal - is an independent judicial body specializing in competition cases such as mergers.

Official site: <http://www.ct-tc.gc.ca>

+ “News”, “Announcements” - upcoming hearings

+ Legislation

+ Judicial practice - decision summaries; information on cases including case documents under such categories as price maintenance, mergers, abusing dominant position; exclusive dealing, refusal to deal, etc; rules of procedures

+ Guidance - Rules of procedures;

+ Reports: departmental reports

+ Site Map

+ Extended search function - It is possible to search documents by a principal word – for example, “cartel”; findings show various documents on different cases – including expert reports, closing arguments, witness statements

+ Contact information - “Contact Us” window on the home page: name, phone, fax, e-mail, business hours, address, business hours.

+ “Questions-Answers”- FAQ

+ “Electronic office” function - obtaining information and documents electronically is possible through registration.

4. CHILE

Official name of a body: National Economic Prosecutor’s Office (*Fiscalia Nacional Economica*)

Official site: <http://www.fne.gob.cl>

Cross-reference of menu / publications structure in the national language / English version: many materials, including information on investigations and cases put before the Tribunal, are in Spanish. There is an English version web page.

+ **“News”, “Announcements”** - only the major news; news archives updated to 2012

+ **Legislative documents** - Competition Act

- **Administrative and judicial practice** - no case information is available through specific search on the subjects of cartels, mergers, abuse of dominance.

- **Guidance papers by the competition authority** (including the versions available in English under Section “Competition Advocacy”)

- **Reports, analytical materials; market studies** (including the versions available in English under Section “Competition Advocacy”)

- **References to national government agencies, materials of other agencies**

- **References to competition authorities, international organizations; electronic publications of other countries**

+ **International cooperation** –including list of agreements

- **Conferences, Round Tables**

- **References to publications; periodical and specialized electronic publications** -

+ **Site Map**

- **Extended search function**

+ **Contact information** – “Contact Us” window on the home page – an electronic form.

- **“Questions-Answers”**

+ **“Electronic office” function** – electronic contact form.

Official name of a body: Tribunal for the Defense of Free Competition

(*Tribunal de Defensa de la Libre Competencia*)

Official site: <http://www.tdlc.cl>

Cross-reference of menu / publications structure in the national language / English version: information in Spanish only.

5. THE PEOPLE’S REPUBLIC OF CHINA

Official name of a body: Anti-Monopoly and Anti-Unfair Competition

Enforcement Bureau, of State Administration for Industry and Commerce

(SAIC). The main competition authority in China, its scope of reference includes devising measures of antimonopoly control, exercising enforcement and case

investigation.

Official site: <http://www.saic.gov.cn>

Cross-reference of menu / publications structure in the national language / English version: information available in English is of more general nature, like departmental functions and areas of activity.

- **“News”, “Announcements”**
- + **Legislative documents** - texts of several regulations and provisions on prohibiting anti-competitive practices (not related to pricing)
- **Administrative and judicial practice** - with no specific reference to cases. No specific information is provided on investigations on anticompetitive agreements or abuse of dominance.
- **Guidance papers by the competition authority**
- **Reports, analytical materials; market studies**
- **References to national government agencies, materials of other agencies**
- **References to competition authorities, international organizations; electronic publications of other countries**
- **International cooperation**
- **Conferences, Round Tables -**
- **References to publications; periodical and specialized electronic publications**

- **Site Map**
- **Extended search function**

- + **Contact information** - “Contact Us” window on the home page - address, fax, phone, e-mail.
- **“Questions-Answers”**
- **“Electronic office” function**

Official name of a body: National Development and Reform Commission is another China’s competition authority with jurisdiction similar to SAIC in matters related to pricing abuses; both authorities can take actions against anticompetitive behavior of government agencies.

Official site: <http://en.ndrc.gov.cn>

Cross-reference of menu / publications structure in the national language / English version: The English version does not provide specific information about cases

- + **“News”, “Announcements”** - major; once a year

Official name of a body: Anti-Monopoly Bureau (Office of the State Council Antimonopoly Commission), Ministry of Commerce is the body responsible

for acquisitions and mergers control.

Official site: <http://fldj2.mofcom.gov.cn>

Cross-reference of menu / publications structure in the national language / English version: information in English covers only the general functions.

6. HONG KONG, CHINA

The first substantive competition law regime has just been approved by the legislature (June 14th, 2012) and Hong Kong competition authorities are currently being established, thus no official web-sites is functional at the time of presenting the Review. (It is expected that in the near future such web-sites in Hong Kong will include the sites of **Competition Commission**, vested with investigatory and enforcement powers, and **Competition Tribunal** – a judicial body responsible for hearing cases brought before it by Competition Commission and imposing sanctions. In addition **Communications Authority** shall have concurrent jurisdiction with Competition Commission to investigate cases in broadcasting and telecommunications sectors.)

7. INDONESIA

Official name of a body: Commission for the Supervision of Business Competition

Official site: <http://eng.kppu.go.id>

+ “News”, “Announcements”

+ **Legislative documents** - texts of several regulations and provisions on prohibiting anti-competitive practices (not related to pricing)

+ **Administrative and judicial practice** - the database of case decisions (2000 - 2009) has few documents in English.

+ **Guidance papers by the competition authority** - Guidelines, including, mergers, cartels, vertical integration, and definition of relevant market. Rules and required merger documentation are explained in detail

+ **Reports, analytical materials; market studies** - annual reports (2008 -2011), with some case statistics and a separate section on mergers

- **References to national government agencies, materials of other agencies**

+ **References to competition authorities, international organizations; electronic publications of other countries**

- **International cooperation**

+ **Conferences, Round Tables** – some (2010)

+ **References to publications; periodical and specialized electronic**

publications - an e-version of a Commission monthly newsletter, with coverage of prominent cases, reports on the state of competition and law enforcement, and various subject-related discussions.

- **Site Map**

+ **Extended search function**

+ **Contact information** —address, phone, e-mail on the home page.

- **“Questions-Answers”**

+ **“Electronic office” function** - through the “Contact Us” window on the home page – on-line form

8. JAPAN

Official name of a body: Japan Fair Trade Commission

Official site: <http://www.jftc.go.jp>

+ **“News”, “Announcements”** - press releases (2002 – 2012) have clear indications whether they relate to mergers, cartels, monopolization, unfair trade practices or other issues, which is quite helpful and time-saving when searching for specific information.

+ **Legislation**

+/- **Administrative and judicial practice** - texts of decisions can be read only in Japanese.

+ **Guidance papers by the competition authority** - including guidelines on mergers, in particular, notification procedures for M&A by companies outside Japan

+ **Reports, analytical materials; market studies** - annual reports - 2007-2010 (including annual reports submitted to OECD Competition Committee - 2000-2010) with case statistics, including summary of main cases under different categories. The web-site also has texts or summaries of some market research reports and fact-finding surveys.

- **References to national government agencies, materials of other agencies**

+ **References to competition authorities, international organizations; electronic publications of other countries**

+ **International cooperation** - including agreements and technical assistance to foreign countries

+ **Conferences, Round Tables**

+ **References to publications; periodical and specialized electronic publications** - the site has links to JFTC Competition Policy Research Centre, which conducts research on the theory underlying antimonopoly law and competition policy enforcement (the content, however, is in Japanese); and East Asia Competition Policy Forum (<http://www.jftc.go.jp/eacpf>) that, in particular, gives information on regional competition events, some competition cases in Indonesia, South Korea, Chinese Taipei and Japan (in English) and some topical presentations of Japanese experts at international conferences and workshops.

+ **Site Map**

+ **Extended search function**

+ **Contact information** – “Contact Us” window under the About US” option on the home page –address, fax, phone, e-mail.

- **“Questions-Answers”**
- **“Electronic office” function**

9. REPUBLIC OF KOREA

Official name of a body: Fair Trade Commission

Official site: <http://eng.ftc.go.kr>

- + **“News”, “Announcements”** - major news (several per month)
- + **Legislation** - Monopoly Regulation and Unfair Trade Act
- + **Administrative and judicial practice** - information on some cases with specific indication of the nature of a case - cartel, acquisition, or abuse of dominance; case statistics for 2009 and 2010
- + **Guidance papers by the competition authority** - an extensive list of translated materials, including review of abuse of market dominance, concerted practice review, etc.
- + **Reports, analytical materials; market studies** annual reports (2001 – 2011)
- **References to national government agencies, materials of other agencies**
- + **References to competition authorities, international organizations; electronic publications of other countries**
- + **International cooperation** - including agreements
- + **Conferences, Round Tables**
- + **References to publications; periodical and specialized electronic publications**

- + **Site Map**
- + **Extended search function**

- + **Contact information** - “Contact Us” window on the home page – fax, phone, e-mail.
- **“Questions-Answers”**
- **“Electronic office” function**

10. MALAYSIA

Official name of a body: Malaysia Competition Commission (formed recently under Competition Commission Act 2010)

Official site: <http://www.mycc.gov.my>

Cross-reference of menu / publications structure in the national language / English version: The content of English web-site is rather limited: for instance, it contains no case decisions and search option does not provide information on

mergers, cartels, abuse of dominance; the section on exemption contains no data.

- + **“News”, “Announcements”**
- + **Legislation**
- **Administrative and judicial practice**
- + **Guidance papers by the competition authority** – such as on market definitions, anticompetitive agreements, and compliant procedures.
- + **Reports, analytical materials; market studies** – particularly, competition advocacy
- **References to national government agencies, materials of other agencies**
- + **References to competition authorities, international organizations; electronic publications of other countries**
- **International cooperation**
- + **Conferences, Round Tables** – particularly, competition advocacy
- **References to publications; periodical and specialized electronic publications**
- **Additional** - a special extended section is devoted to competition advocacy programs with references to conferences, etc.
- + **Site Map**
- + **Extended search function**

- + **Contact information** -on the home page – fax, phone, e-mail.
- + **“Questions-Answers”**- FAQ
- + **“Electronic office” function** - electronic enquiry form (“Contact Us “window through the home page

11. MEXICO

Official name of a body: Federal Competition Commission (*Comision Federal de Competencia*)

Official site: <http://www.cfc.gob.mx>

Cross-reference of menu / publications structure in the national language / English version: The site is mostly oriented for domestic /regional users: most materials, such as legislative framework, including relevant binding legislation (industry specific), annual reports, market studies, presentations, the Guidelines, rules and criteria as well as quarterly bulletins, is given only in Spanish. No translations of decisions, or news. Only information of general nature, like Commission’s scope of reference, is given in English.

12. NEW ZEALAND

Official name of a body: Commerce Commission

Official site: <http://www.comcom.govt.nz>

+ **“News”, “Announcements”** – press releases from 1994 (in archive) to present. Regular update: Subscription to media releases is available.

+ **Legislation**

+ **Administrative and judicial practice** - the agency maintains public registers on M&A clearances, M&A authorization, anti-competitive practices authorizations, and Commerce Act enforcement actions. The later, for instance, gives information on “all litigations and settlements since January 2010 and, all warnings and cease-and-desist orders since January 2011”; listing the year, the parties involved, section of the law, case description, case outcome (resolution) and relevant press-releases. Documentation on selected judgments.

+ **Guidance papers by the competition authority** - various Guidelines (for example, on mergers & acquisitions, trade associations, bid-rigging deterrence, leniency policy), necessary documentations and forms, for instance, with regard to merger

+ **Reports, analytical materials; market studies** - texts of investigation reports of general interest.

+ **References to national government agencies, materials of other agencies**

+ **References to competition authorities, international organizations; electronic publications of other countries**

+ **International cooperation**

+ **Conferences, Round Tables**

+ **References to publications; periodical and specialized electronic publications**

Additional - a separate section focuses on regulated industries.

+ **Site Map**

+ **Extended search function** - search options gives good results on the subjects of merger, cartels, abuse of dominance, decisions on international cases

+ **Contact information** – “Contact Us” window on the home page: mailing addresses, fax and phone numbers.

- **“Questions-Answers”**

+ **“Electronic office” function** – on-line complaint form.

13. PAPUA NEW GUINEA

Official name of a body: Independent Consumer and Competition Commission

Official site: <http://www.iccc.gov.pg>

+ **“News”, “Announcements”** - Under the “Hot Topics” section. Press-releases include information on mergers. A few news items starting from 2005 - 2011 for each year.

+ **Legislation**

+ **Administrative and judicial practice** - determination are published under the “Hot Topics” section. The site maintains public registers of complaints on unfair

trade practices, including outcomes, authorizations (for mergers and some forms of anti-competitive conduct), M&A clearances, and undertakings (considered for proposed mergers).

+ **Guidance papers by the competition authority**

+ **Reports, analytical materials; market studies** - under the “Hot Topics” section.

- **References to national government agencies, materials of other agencies**

- **References to competition authorities, international organizations; electronic publications of other countries**

- **International cooperation**

- **Conferences, Round Tables**

- **References to publications; periodical and specialized electronic publications**

- **Site Map**

+ **Extended search function** - the search option allows getting additional information on mergers, cartels and abuses of dominance - in the form of case data, and various reports.

+ **Contact information** - “Contact Us” window on the home page: mailing addresses, fax and phone numbers, e-mail.

- **“Questions-Answers”**

+ **“Electronic office” function** - on-line complaint / enquiry (including special forms).

14. PERU

Official name of a body: the National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI)

Official site: <http://www.indecopi.gob.pe>

Cross-reference of menu / publications structure in the national language / English version: the site does not have substantive information on competition protection in English (the relevant section is simply a menu item without links to further translated materials. The Spanish version seems to be much richer on substantive and procedural information.

15. THE PHILIPPINES

Competition policy in the Philippines is rather implicit with no agency responsible specifically for competition policy and regulation, no central competition enforcement agency, and no administrative mechanisms in place, while elements of competition policy are addressed in eight separate legislative acts.

Official name of a body: Bureau of Trade Regulation and Consumer Protection (BTRCP), Department of Trade and Industry

Official site: <http://www.dti.gov.ph>

At the time of drafting the Survey, the site did not contain specific information on mergers, cartels, abuse of dominance – the subjects of particular interests for the purposes of this Survey.

Other agencies involved in implementation and enforcement of competition clauses include:

Official name of a body: Tariff Commission

Official site: <http://tariffcommission.gov.ph/competit.html>

- provides generalized information on competition policy, a list of agencies responsible for sector-specific enforcement of competition rules and a list of related laws, as well as discussions of controversial issues in developing comprehensive competition policy framework.

Official name of a body: Office for Competition, Department of Justice

Official site: <http://www.doj.gov.ph>,

-was established in July 2011 to investigate monopolies and cartels in domestic and international trade and to enforce competition policies and laws. The site contains mostly general information about the body's functions and scope of reference and no information about particular cases or decisions.

16. RUSSIA

Official name of a body: Federal Antimonopoly Service (FAS Russia)

(Федеральная антимонопольная служба)

Official site: <http://en.fas.gov.ru>

Cross-reference of menu / publications structure in the national language / English version: close correlation

+ ***“News”, “Announcements”*** - daily updates. FAS news can also be followed on Twitter.

+ ***Legislation*** - the main laws in the field of competition and regulatory acts issued by FAS

+ ***Comments on legislative documents, explanations of changes in competition law***

+ ***Administrative and judicial practice*** - information under the “Decisions” section, apart from case decisions, seems to also contain some analytical (such as market analysis) and informational materials (like reports on cooperation with other agencies in a particular field, meetings protocols).

+ ***Guidance papers by the competition authority***

+ **Reports, analytical materials; market studies** - translations of annual reports (2005 – 2010) include analysis of latest developments of competition laws and regulations, summary of significant cases, statistics and trends in competition investigations and judicial cases, including statistics on the number of types of mergers and outcomes. Some other important sections of annual reports cover control of anticompetitive acts and actions by committed government authorities, including anticompetitive agreement with involvement of the authorities, violations in public procurement, regulation of foreign investments in Russia.

+ **References to national government agencies, materials of other agencies**

+ **References to competition authorities, international organizations; electronic publications of other countries**

+ **International cooperation** - including agreements

+ **Conferences, Round Tables**

+ **References to publications; periodical and specialized electronic publications**

- **Site Map**

+ **Extended search function** - includes advanced search option under various categories as well as by the principal words.

+ **Contact information** - FAS address, phone number on the page of English version; other details info including (names and position), schedule – only in Russian.

- **“Questions-Answers”**

+ **“Electronic office” function** - on-line complaint / enquiry (including special forms).

17. SINGAPORE

Official name of a body: Competition Commission of Singapore

Official site: <http://www.ccs.gov.sg>

+ **“News”, “Announcements”** - Regular updates on latest cases, press releases and latest projects/events by CCS.

+ **Legislation** - Competition Act (the key prohibitions under the Act are (1) anti-competitive agreements, decisions and practices ("the Section 34 prohibition"), (2) abuse of dominance ("the Section 47 prohibition"), and (3) mergers and acquisitions that substantially lessen competition ("the Section 54 prohibition")); 6 Regulations in pursuance of Competition Act and 2 orders in force (including block exemptions),

+ **Comments on legislative documents, explanations of changes in competition law** - provides explanations on the key prohibitions - anti-competitive agreements, mergers that substantially lessen competition, abuse of dominant position. Information on procedural issues such as cooperating with

and reporting to CCS; preliminary enquiries, notifications for guidance, notifications for decisions, merger notifications, and appeals are covered.

+ **Administrative and judicial practice** - case database is published under the "Public Register" section; searching for information is easy and very clear as it is properly categorized. Categories include: anti-competitive agreements, mergers and acquisitions, abuse of dominant position. Case data include: date, title, type (investigation / notification), decision (summary of the arguments, text of decision).

+ **Guidance papers by the competition authority** - there are currently 13 published Guidelines. These are published to provide greater transparency and clarity to parties on the competition law regime. The CCS Guidelines outline how CCS will interpret and give effect to the Act, including how it will apply and enforce the prohibitions under the Act. The Guidelines include explanations on calculating fines, leniency policy and competition impact assessment for government agencies.

+ **Reports, analytical materials; market studies** - annual reports (from 2005/2006 onwards) and findings of selected market studies.

+ **References to national government agencies, materials of other agencies**

+ **References to competition authorities, international organizations; electronic publications of other countries** (provides information on key competition forums)

+ **International cooperation** - provides information on international agreements and recent CCS' exchanges and visits

+ **Conferences, Round Tables** - information on competition-related events since 2006

+ **References to publications; periodical and specialized electronic publications** - journal articles featuring CCS, featured interviews, ASEAN Experts Group on Competition publications, CCS E-newsletter are published in this section

+ **Site Map** - snapshot of CCS' website in general

+ **Extended search function** - on-line search options give a possibility to search through CCS website as well as other government agencies in Singapore.

+ **Contact information** - "Contact Us" window on the home page: indicates hotline number, fax, and email address. Provides links to online forms for complaints/leniency applications/providing views for ongoing public consultation and/or general feedback.

+ **"Questions-Answers"** - detailed FAQ section by categories

+ **"Electronic office" function** - on-line complaint forms, leniency application, feedback / enquiries

18. CHINESE TAIPEI

Official name of a body: Fair Trade Commission

Official site: <http://www.ftc.gov.tw>

- + “**News**”, “**Announcements**”- press releases from 2008 with regular update
 - + **Legislation** – the Fair Trade Act and relevant regulations
 - + **Administrative and judicial practice** - the site contains case statistics on a monthly basis from 1992 to 2012; number of cases by types of violations and the outcomes. The Commission decisions (2000-2009) are clearly presented under Articles of the Fair Trade Act, with case summary. The web-site also provides information on judicial cases heard in 2000-2009 with case summary.
 - + **Guidance papers by the competition authority** - for instance, on granting immunity, imposing fines, reviewing mergers, investigating concerted actions (including specific types, such as pricing arrangements between SME).
 - + **Reports, analytical materials; market studies** - study reports, for instance, on merger remedies, annual reports (to 2011).
 - + **References to national government agencies, materials of other agencies**, including Chinese Taipei’s Government sites
 - + **References to competition authorities, international organizations; electronic publications of other countries** - including foreign authorities’ web-sites, APEC and non-APEC economies’ web-sites and international organizations’ web-sites
 - + **International cooperation** - including APEC Competition Policy & Law Database and cooperation arrangements
 - + **Conferences, Round Tables** - including the OECD Global Forum on Competition Law and Policy
 - + **References to publications; periodical and specialized electronic publications** - an e-version of Fair Trade Quarterly Journal includes papers on various issues of related to competition regulation, like market structure and developments, vertical integration, illegal cartels, and the like. FTC newsletter covering selected cases, current statistics and developments in regulations, etc.
- Additional:** APEC Competition Policy and Law Database - <http://www.apeccp.org.tw>
- + **Site Map**
 - + **Extended search function.**
 - + **Contact information:** address and phone number on the home page.
 - + “**Questions-Answers**”: FAQ
 - “**Electronic office**” function

19. THAILAND

Official name of a body: Office of Thai Trade Competition Commission

Official site: <http://otcc.dit.go.th>

- +/- **“News”, “Announcements”** - rather than “conventional” news items the content under the “News” category includes international guidelines and information about some past events
- + **Legislation** - Trade Competition Act and enforcement procedures
- + **Administrative and judicial practice** - basic statistics on the number of complaints received in 1999 - 2010 with breakdown on abuse of dominance, mergers and acquisitions, restrictive agreements and unfair trade practices. No more detailed information on particular cases is available.
- + **Guidance papers by the competition authority** - a number of Guidelines (including ASEAN Guidelines on Competition Policy) like notification of market dominance and unfair trade practices.
- **Reports, analytical materials; market studies**
- + **References to national government agencies, materials of other agencies**
- + **References to competition authorities, international organizations; electronic publications of other countries**
- + **International cooperation**
- + **Conferences, Round Tables**
- **References to publications; periodical and specialized electronic publications**

- + **Site Map**
- + **Extended search function** - includes advanced search option

- + **Contact information:** “Contact Us” window on the home page: address, phone number, e-mail.
- +/- **“Questions-Answers”:** only FAQ menu item, the content is empty
- + **“Electronic office” function** - on-line enquiry (through “Contact Us” window).

20. THE UNITED STATES probably have the most extensive and detailed publicly available information on competition regulation.

Official name of a body: the Federal Trade Commission, Bureau of Competition

Official site: <http://www.ftc.gov/bcl>

- + **“News”, “Announcements”** - a special section on the front page. Regular update
- + **Legislation** - Competition Act and enforcement documentation. Published Regulations include on collaboration among competitors, and Licensing of Intellectual Property.
- + **Comments on legislative documents, explanations of changes in competition law** - special sections are focused on the efforts to promote competition in the industries with high consumer impact (health care, oil and gas, real estate, technology).
- + **Administrative and judicial practice** - competition enforcement database presents information on cases under the following categories: merger; non-merger; by industry; by name (includes actions taken).

+ **Guidance papers by the competition authority** - considerable information regarding merger / acquisitions and competition enforcement issues. Apart from the latest version of Horizontal Merger Guidelines and commentaries on them, it includes explanations and policy statements on pre-merger notification, merger review process, explanations and policy statements on remedies.

+ **Reports, analytical materials; market studies** - annual competition enforcement reports (from 1977 to 2011) with detailed statistics and case summaries.

+ **References to national government agencies, materials of other agencies**

+ **References to competition authorities, international organizations; electronic publications of other countries**

+ **International cooperation** – including lists of foreign authorities, and cooperation agreements; technical assistance; programs and guidelines. International waivers of confidentiality in FTC antitrust investigations.

+ **Conferences, Round Tables**

+ **References to publications; periodical and specialized electronic publications**

Additional: the Spanish version has only information about the agency's functions.

+ **Site Map**

+ **Extended search function** - including advance search option.

+ **Contact information:** "Contact Us" window on the home page and a special section: address, fax, phone numbers, e-mail. Detailed information including officer's name, position and e-mail/ phone number under some specific sections e.g., merger notification, international affairs)

+ **"Questions-Answers":** FAQs under specific sections - such as Merger Review - **"Electronic office" function** - for the reasons of confidentiality.

Official name of a body: Department of Justice, Antitrust Division

Official site: <http://www.justice.gov/atr>

+ **"News", "Announcements"** – a special section on the front page, frequent updates. Subscription is available.

+ **Legislation** - relevant statutes (including criminal statutes and leniency policy).

+ **Administrative and judicial practice** - cases with e-version of selected documents from 1994.

+ **Guidance papers by the competition authority**

+ **Reports, analytical materials; market studies** - various discussion papers and speeches. Statistical data and reports are accessible

+ **References to competition authorities, international organizations; electronic publications of other countries**

+ **International cooperation**

+ **Conferences, Round Tables**

+ **References to publications; periodical and specialized electronic publications**

Additional: the site contains an extensive database of public documents on relevant statutes.

+ **Site Map** - for the DoJ in general

+ **Extended search function**

+ **Contact information:** “Contact Us” window on the home page gives links according to the nature of enquiry

+ **“Questions-Answers”:** FAQs under specific sections - such as Leniency program

+ **“Electronic office” function** - on-line comments and suggestions

Official name of a body: National Associations of Attorneys General, Antitrust section **Official site:** <http://www.naag.org/antitrust.php>

Database and civil and criminal litigation record: from 1990 to present; specified by industry, types (e.g., merger, price-fixing, etc.) It also publishes NAAG resolutions on relevant antitrust issues and other information on NAAG’s antitrust-related activities.

Official name of a body: Antitrust Modernization Commission

has completed its work and its report and recommendations on improving competition law and regulations can be found at

http://govinfo.library.unt.edu/amc/report_recommendation/toc.htm.

21. VIET NAM

Official name of a body: Vietnam Competition Authority

Official site: <http://www.qlct.gov.vn>

+ **“News”, “Announcements”** - rather than “conventional” news items the content under the “News” category includes international guidelines and information about some past events

+ **Legislation** - Competition Act and enforcement documentation

+ **Administrative and judicial practice** - There is no information in the section in “case updates”.

+ **Guidance papers by the competition authority** - Guidelines on Competition Law. Specifies exemptions (restricting agreements, economic concentration)

+ **Reports, analytical materials; market studies** - 2010 and 2011 annual reports, a report on competition assessment, a report on economic concentration. Access to annual reports in English is limited.

+ **References to national government agencies, materials of other agencies**

+ **References to competition authorities, international organizations; electronic publications of other countries**

+ **International cooperation** - a general statement

+ **Conferences, Round Tables**

+ **References to publications; periodical and specialized electronic publications** - an e-version of a monthly bulletin has articles discussing important cases.

+ **Site Map**

+ **Extended search function.**

+ **Contact information:** “Contact Us” window on the home page: address, fax, phone numbers, e-mail.

- **“Questions-Answers”:**

+ **“Electronic office” function** - on-line enquiry (through “Contact Us” window)

Official name of a body: Vietnam Competition Council

Official site: <http://www.hoidongcanhtranh.gov.vn>

Cross-reference of menu / publications structure in the national language / English version: the site does not have any translated materials yet, just the menu is given in English. Materials of particular competition cases also are in Vietnamese.

Table 3 below summarizes information available at the web-sites of competition authorities across the APEC region specifically on the issues subject to the Survey:

Table 3 – Publicly Available Information at the Web-Sites of Competition Authorities on the Issues of Interest to Other APEC Economies (in English)

	Cartel investigations	Unilateral abuse of dominance	Merger review	Market studies	Technical assistance, capacity building	Competition policy issues
Australia	+	+	+	+	+ / -	+
Brunei	n/a	n/a	n/a	n/a	n/a	n/a
Canada	+	+	+	+	+ / -	+
Chile	-	-	-	-	-	+
China	-	-	-	-	-	+
Hong Kong	n/a	n/a	n/a	n/a	n/a	n/a
Indonesia				+	-	+
Japan	+	+	+	+	+	+
Korea	+	+	+	-	+	+
Malaysia	-	-	-	-	-	+
Mexico	-	-	-	-	-	-
New Zealand	+	+	+	+	-	+
Papua New Guinea	+	+	+	-	-	-
Peru	-	-	-	-	-	-
Philippines	-	-	-	-	-	-
Russia	+	+	+	+	+	+
Singapore	+	+	+	+		+
Chinese Taipei	+	+	+	+	-	+
Thailand	+ / -	+ / -	+ / -	-	-	-
USA	+	+	+	+	+	+
Viet Nam	-	-	-	-	-	+

* Information on the theory of the case is generally available upon request.

Annex 3. References to the International Agreements Regulating Information Sharing between Competition Authorities of APEC Economies²⁵

1. AUSTRALIA

Free Trade Agreements:

- **Australia - Chile** FTA (2008); Chapter 14 – Competition Policy http://www.sice.oas.org/trade/CHL_AUS_Final_e/CHL_AUS_FTA_e%5B1%5D.pdf
- **ASEAN - Australia - New Zealand** FTA (2010) <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Asean/index.php>; Chapter 14 - Competition <http://www.asean.fta.govt.nz/chapter-14-competition>; Article 2 - Cooperation
- **Australia - New-Zealand** Closer Economic Relations (1983) <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Australia/index.php>
- **Papua New Guinea - Australia** (1976) http://www.wipo.int/wipolex/en/other_treaties/text.jsp?doc_id=155240&file_id=205191
- **Australia - Singapore** FTA (2003); Chapter 12 - Competition Policy, Article 6 (Consultation and Review) <http://www.accc.gov.au/content/item.phtml?itemId=563881&nodeId=cfca7944b370a3aab3018e2d124e3bff&fn=SAFTA.pdf>
- **Australia - Thailand** FTA (2004) http://www.thaifta.com/english/eng_au.html; Chapter 12 - Competition Policy, Article 1205 – Cooperation on Exchange of Information <http://www.accc.gov.au/content/index.phtml/itemId/624748>
- **Australia - United States** FTA (2004); Chapter 14 - Competition-Related Matters http://www.dfat.gov.au/fta/ausfta/final-text/chapter_14.html; Article 14.9 - Cooperation; Article 14.10 – Consultations
- SPARTECA - Preferential Trade Agreement between member of the Pacific Island Forum, including **Australia, New Zealand** and **Papua New Guinea** (1981)
- **Malaysia – Australia FTA** (concluded but undergoing domestic approval process); Chapter 14 Competition Policy includes Article 14.6 on cooperation and coordination.

State-to-State Cooperation Agreements:

- **Australia - United States** Agreement relating to Cooperation on Antitrust Matters (1982) <http://www.accc.gov.au/content/index.phtml/itemId/564911>

²⁵ Information about international agreements is taken from responses to the Questionnaire, cross-country references and public sources. The list of agreements includes only agreements between and with other APEC economies. The agreements (particularly, FTA) that do not comprise a competition chapter are excluded from the list. Where competition authorities made comments about agreements (such as Mexico competition authority), such comments are quoted. Generally the agreement year specifies when a particular agreement was adopted rather than ratified or came into force (unless mentioned otherwise).

Agency-to-Agency Cooperation Agreements:

<http://www.accc.gov.au/content/index.phtml/itemId/564911>

- **Australia - Korea** Cooperation Arrangement regarding Application of Competition and Consumer Laws (2002)
http://eng.ftc.go.kr/files/static/International_Relations/International_Relations/%5BKorea-Australia%5DCooperation%20Arrangement%20between%20KFTC%20and%20AACC%20regarding%20the%20Application%20of%20their%20Competition%20and%20consumer%20protection%20laws.pdf
- **Australia - New Zealand** Cooperation Agreement (2007)
<http://www.comcom.govt.nz/international-relations>
- **Australia - New Zealand** Cooperation Protocol for Merger Review (2006)
<http://www.comcom.govt.nz/international-relations>
- **Australia - New Zealand** Cooperation and Coordination Agreement (1994); Article 5.1 – Exchange of Information <http://www.comcom.govt.nz/international-relations>
- **Australia - Papua New Guinea** Cooperation and Coordination Agreement (1999) Article 4.1 - Exchange of Information
- **Australia - Russia** Declaration on Intentions (2001)
- Cooperation and Coordination Arrangement between **Chinese Taipei** Economic and Cultural Office and the **Australian** Commerce and Industry Office Regarding the Application of the Competition and Fair Trading Laws (1996)
<http://www.apeccp.org.tw/doc/Taipei/Cooperation/tpeaus.html>; Article 4 - Confidentiality; Article 5.1 - Exchange of Information. Article 4 - Confidentiality; Article 5.1 - Exchange of Information
- **Australia - Canada - New Zealand** Cooperation Arrangement regarding the Application of their Competition and Consumer Laws (2000)
<http://www.comcom.govt.nz/international-relations>
- **Australia - New Zealand - Chinese Taipei** (2002) Cooperation and Coordination Arrangement
<http://www.ftc.gov.tw/internet/main/doc/docDetail.aspx?uid=534&docid=1146>, www.comcom.govt.nz/international-relations; Paragraph V - Exchange of Information; Paragraph VIII - Confidentiality and Use of Information
- **Australia - New Zealand - UK** Cooperation and Coordination Agreement (2003) <http://www.comcom.govt.nz/international-relations>
- **Australia - China** (2012) Memorandum of Understanding on Cooperation between ACCC and the State Administration for the Industry and Commerce of the People Republic of China.

MLAT:

in criminal matters:

http://www.austlii.edu.au/au/other/dfat/subjects/Mutual_Assistance_In_Criminal_Matters.html

- **Australia - Canada** (1990)
- **Australia - China** (2006)
- **Australia – Hong Kong** (1999, 2006)

- **Australia - Indonesia** (1999)
- **Australia - Malaysia** (2006)
- **Australia - Mexico** (1992)
- **Australia – the Philippines** (1993)
- **Australia - United States** Agreement on Mutual Antitrust Enforcement Assistance (1999) <http://www.ftc.gov/os/1997/04/lastaus.htm>; Article V – Execution of Requests, Article VI - Confidentiality

Civil matters:

http://www.austlii.edu.au/au/other/dfat/subjects/Judicial_Cooperation.html

- **Australia - Korea** (2000)

2. BRUNEI DARUSSALAM

Free Trade Agreements:

- **ASEAN - Australia - New Zealand** FTA (2010) <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Asean/index.php>; Chapter 14 - Competition <http://www.asean.fta.govt.nz/chapter-14-competition>; Article 2 - Cooperation
- Trans-Pacific Strategic Economic Partnership (P4) - **Brunei Darussalam, Chile, New Zealand, Singapore** (2005) http://www.fta.gov.sg/tpfta/c9_tpsep.pdf; Chapter 9, Article 9.3 - Cooperation, Article 9.5 - Consultations and Exchange of Information

MLAT:

- **ASEAN** (2004) <http://www.aseansec.org/17363.pdf>

3. CANADA

Free Trade Agreements:

- **Canada - Chile** FTA (1997); Chapter J - Competition Policy, Monopolies and State Enterprises <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/chile-chili/chap-j26.aspx?lang=en&view=d>
- **Canada - Peru** FTA (2009); Chapter 13 - Competition Policy, Monopolies and State Enterprises <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/peru-perou/peru-toc-perou-tdm.aspx?lang=eng&view=d>
- **Canada - United States** FTA (1989) <http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/cusfta-e.pdf>
- **North American** FTA (NAFTA) (1993); Chapter 15 - Competition Policy, Monopolies and State Enterprises, Article 1501 – Competition Law <http://www.nafta-sec-alena.org/en/view.aspx?conID=590&mtpilD=146>

State-to-State Cooperation Agreements:

- **Canada - Japan** Agreement Concerning Cooperation on Anticompetitive Activities (2005) <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01944.html>

- **Canada - Mexico** Agreement on Enforcement of their Competition Laws
- **Canada - United States** Agreement on the Application of Positive Comity Principles to the Enforcement of their Competition Laws (2004)
<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01269.html>; Article V - Confidentiality and Use of Information
- **Canada - United States** Agreement Regarding the Application of Their Competition and Deceptive Marketing Practices Laws (1995)
<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01592.html>

Agency-to-Agency Cooperation Agreements:

- **Canada - Australia - New Zealand** Cooperation Arrangement regarding the Application of their Competition and Consumer Laws (2000)
<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01595.html>
- **Canada - Korea** Cooperation Arrangements regarding Application of Competition and Consumer Laws (2006)
<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02075.html>

Memorandums of Understanding:

- **Canada - Chile** MOU regarding Application of Competition Laws (2001)
<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01599.html>
- MOU between the **Canadian Trade Office in Taipei** and the **Taipei Economic and Cultural Office in Canada** Regarding the Application of Competition Laws (2009) <http://www.apeccp.org.tw/doc/Taipei/Cooperation/2009Canada.pdf>; Article 4 - Cooperation and Coordination; Article 7 - Existing Laws and Confidentiality of Information

MLAT:

http://www.oas.org/juridico/mla/en/can/en_can-mla-gen-liste.html

- **Canada - Australia** (1990)
- **Canada - China** (1995)
- **Canada - Hong Kong** (2002)
- **Canada - Korea** (1995)
- **Canada - Mexico** (1990)
- **Canada - Peru** (1998)
- **Canada - Russia** (1997)
- **Canada - Thailand** (1994)
- **Canada - United States** (1990) <http://www.oas.org/Juridico/mla/en/can/>
- Inter-American Agreement on Mutual Assistance in criminal matters (1996)
<http://www.oas.org/juridico/english/treaties/a-55.html> (including **Canada, Chile, Mexico, Peru, United States**)

Other:

- Cooperation Arrangement between the Commissioner of Competition, Competition Bureau of the Government of **Canada**, and the **United States** Postal Inspection Service, Regarding the Application of their Deceptive Marketing Practices Laws (2008) [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/USPIS-CB--CooperationArrangement-Eng.pdf/\\$FILE/USPIS-CB--CooperationArrangement-Eng.pdf](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/USPIS-CB--CooperationArrangement-Eng.pdf/$FILE/USPIS-CB--CooperationArrangement-Eng.pdf)

4. CHILE

Free Trade Agreements:

- **Chile - Australia** FTA (2008); Chapter 14 – Competition Policy, Article 14.8 – Exchange of Information, Transparency and Confidentiality
http://www.sice.oas.org/trade/CHL_AUS_Final_e/CHL_AUS_FTA_e%5B1%5D.pdf
- **Chile - Canada** FTA (1997); Chapter J - Competition Policy, Monopolies and State Enterprises <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/chile>
- **Chile - Japan** FTA (2007); Chapter 14 - Competition
- **Chile - Korea** FTA (2003); Chapter 14 – Competition
http://eng.ftc.go.kr/files/static/International_Relations/International_Relations/FTA_AttachedFile_link/%5BKorea-Chile%20FTA%5DCHAPTER%20Fourteen_Apr%201,%202004.pdf
- **Chile - Mexico** FTA (1998); Chapter 14 - Competition, Monopolies and State Enterprises
- Trans-Pacific Strategic Economic Partnership (P4) - **Brunei Darussalam, Chile, New Zealand, Singapore** (2005) http://www.fta.gov.sg/tpfta/c9_tpsep.pdf; Chapter 9 – Competition Policy, Article 9.3 - Cooperation, Article 9.5 - Consultations and Exchange of Information
- **Chile - Peru** FTA (2006); Chapter 8 - Competition Policy
- **Chile - United States** FTA (2003); Chapter 16 - Competition Policy, Designated Monopolies and State Enterprises

Agency-to-Agency Cooperation Agreements:

- **Chile - Mexico** Agreement on Enforcement of Competition Laws
- **United States - Chile** Agreement on Antitrust Cooperation (2011)
<http://www.ftc.gov/os/2011/03/110331us-chile-agree.pdf> Article VII - Confidentiality

Memorandums of Understanding:

- **Chile - Canada** MOU regarding Application of Competition Laws (2001)
<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01599.html>

MLAT:

- Inter-American Agreement on Mutual Assistance in criminal matters (1997)
<http://www.oas.org/juridico/english/treaties/a-55.html> (including **Canada, Chile, Mexico, Peru, United States**)

5. THE PEOPLE'S REPUBLIC OF CHINA

Free Trade Agreements:

- **China - Chile** FTA (2005) <http://fta.mofcom.gov.cn/topic/enchile.shtml>
- **China - Hong Kong**, Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) (2003) <http://fta.mofcom.gov.cn/topic/enhongkong.shtml>
- **China - New Zealand** FTA (2008) <http://www.chinafta.govt.nz>
- **China - Peru** FTA (2009) <http://fta.mofcom.gov.cn/topic/enperu.shtml>; Chapter 12 – Cooperation
- **China - Chinese Taipei** Economic Cooperation Framework Agreement (2010)

State-to-State Cooperation Agreements:

- **China - Russia** Agreement on Cooperation in the field of preventing unfair competition, and antimonopoly policy (1996)

Memorandums of Understanding:

- **China - Russia** MOU between FAS Russia and SAIC (China) on implementing the Agreement between the Government of the Russian Federation and the Government of the People's Republic of China on cooperation in the field of combating unfair competition and conducting antimonopoly policy for 2012-2013 (2011)
- **China - United States** MOU on Antitrust and Antimonopoly Cooperation between SAIC and FTC and DoJ (2011)
<http://www.ftc.gov/os/2011/07/110726mou-english.pdf>

MLAT:

in criminal matters:

- http://www.austlii.edu.au/au/other/dfat/subjects/Mutual_Assistance_In_Criminal_Matters.html
- **China - Australia** (2006)
- **China - Canada** (1995) http://www.oas.org/juridico/mla/en/can/en_can-mla-gen-liste.html
- **China - Chile** (2005)

Other:

- **United States - China** Guidance for Case Cooperation between SAIC, and FTC and DoJ on Concentration of Undertakings (Merger) Cases (2011)
<http://www.justice.gov/atr/public/international/docs/277772.pdf>
- BRICS Arrangements between competition authorities of Brazil, **Russia**, India, **China** and South Africa (2011) http://en.fas.gov.ru/international-cooperation/bilateral-and-multilateral-documents/bilateral-and-multilateral-documents_51016.html

6. HONG KONG, CHINA

Free Trade Agreements:

- **China - Hong Kong**, Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) (2003) <http://fta.mofcom.gov.cn/topic/enhongkong.shtml>
- **Hong Kong, China - New Zealand** Closer Economic Partnership (2011) <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Hong-Kong/index.php>

MLAT:

in criminal matters <http://www.legislation.gov.hk/table3ti.htm>

- **Hong Kong - Australia** (1999, 2006) http://www.austlii.edu.au/au/other/dfat/subjects/Mutual_Assistance_In_Criminal_Matters.html
- **Hong Kong - Canada** (2002) http://www.oas.org/juridico/mla/en/can/en_can_mla-gen-liste.html
- **Hong Kong - Korea** (2000)
- **Hong Kong - Malaysia** (2008)
- **Hong Kong - New Zealand** (2003)
- **Hong Kong - Singapore** (2004)
- **Hong Kong - United States** (2000) <http://www.legislation.gov.hk/table3ti.htm>

7. INDONESIA

Free Trade Agreements:

- **Indonesia - Japan** Agreement for Economic Partnership (2007); Chapter 14 Competition http://www.jftc.go.jp/en/international_relations/agreements/pdf/JCEPA.pdf; Chapter 5 Competition http://www.jftc.go.jp/en/international_relations/agreements/pdf/JIEPA_IA.pdf; Article 12 -Notification; Article 13 - Exchange of Information; Article 19 - Confidentiality of information
- **ASEAN - Australia - New Zealand** FTA (2010) <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Asean/index.php>; Chapter 14 - Competition <http://www.asean.fta.govt.nz/chapter-14-competition>; Article 2 Cooperation

MLAT:

in criminal matters:

- **Indonesia - Australia** (1999) http://www.austlii.edu.au/au/other/dfat/subjects/Mutual_Assistance_In_Criminal_Matters.html
- **ASEAN** (2004) <http://www.aseansec.org/17363.pdf>

8. JAPAN

Free Trade Agreements:

- **Japan - Chile** Agreement on Strategic Economic Cooperation (2007); Chapter 14 - Competition

http://www.jftc.go.jp/en/international_relations/agreements/pdf/JCEPA.pdf

- **Japan - Indonesia** Agreement for Economic Partnership (2007); Chapter 14 - Competition

http://www.jftc.go.jp/en/international_relations/agreements/pdf/JCEPA.pdf;
Chapter 5 - Competition

http://www.jftc.go.jp/en/international_relations/agreements/pdf/JIEPA_IA.pdf;
Article 12 - Notification; Article 13 - Exchange of Information; Article 19 - Confidentiality of information

- **Japan - Malaysia** Agreement for Economic Partnership (2005)

- **Mexico - Japan** Agreement for Strengthening of the Economic Partnership Article 132 (2004)

<http://www.mofa.go.jp/region/latin/mexico/agreement/agreement.pdf>

- **Japan - Peru** Agreement for Economic Partnership (2011)

- **Japan - the Philippines** Agreement for Economic Partnership (2006),

- **Japan - Singapore** Economic Partnership Agreement (2002)

http://www.fta.gov.sg/jsepa/fta_jsepa_agreement13.pdf; Chapter 12, Article 104 - Co-operation on Controlling Anti-Competitive Activities

- **Japan - Thailand** Agreement for Economic Partnership (2007)

<http://otcc.dit.go.th/otcc/upload/en-basic-agreement%20competition.pdf>; Chapter 12 – Competition

- **Japan - Viet Nam** Agreement for Economic Partnership (2008)

State-to-State Cooperation Agreements:

- **Japan - Canada** - Agreement concerning Cooperation on Anticompetitive Activities (2005) <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01944.html>

- **Japan - United States** Agreement concerning Cooperation on Anticompetitive Activities (1999); Article III (covering information exchange issues)

http://www.ftc.gov/bc/international/docs/agree_japan.pdf

9. REPUBLIC OF KOREA

<http://eng.ftc.go.kr/international/relations.jsp?pageld=0501>

Free Trade Agreements:

- **Korea - Chile** FTA (2004), Chapter 14 - Competition

http://eng.ftc.go.kr/files/static/International_Relations/International_Relations/FTA_AttachedFile_link/%5BKorea-

[Chile%20FTA%5DCHAPTER%20Fourteen_Apr%201,%202004.pdf](#)

- **Korea - Peru** FTA (2011)

- **Korea - Singapore** FTA (2006), Chapter 15 - Competition

[http://eng.ftc.go.kr/files/static/International_Relations/International_Relations/FTA](http://eng.ftc.go.kr/files/static/International_Relations/International_Relations/FTA_AttachedFile_link/%5BKorea-)

[_AttachedFile_link/%5BKorea-Singapore%20FTA%5DCHAPTER15%20Competition_Mar%202,%202006.pdf](#)

- **Korea - United States** FTA (2007), Chapter 16 - Competition – Related Matters

[http://eng.ftc.go.kr/files/static/International_Relations/International_Relations/FTA](http://eng.ftc.go.kr/files/static/International_Relations/International_Relations/FTA_AttachedFile_link/Initial%5BKorea-)

[_AttachedFile_link/Initial%5BKorea-America%20FTA%5DCHAPTER%20SIXTEEN_Jun%2030,%202007.pdf](#)

Agency-to-Agency Cooperation Agreements:

- **Korea - Australia** Cooperation Arrangement regarding Application of Competition and Consumer Laws (2002)

http://eng.ftc.go.kr/files/static/International_Relations/International_Relations/%5BKorea-

[Australia%5DCooperation%20Arrangement%20between%20KFTC%20and%20ACCC%20regarding%20the%20Application%20of%20their%20Competition%20and%20consumer%20protection%20laws.pdf](#)

- **Korea - Canada** - Cooperation Agreement regarding Application of Competition and Consumer Laws (2006)

http://eng.ftc.go.kr/files/static/International_Relations/International_Relations/%5BKorea-

[Canada%5DCooperation%20Agreement%20Between%20KFTC%20and%20Commissioner%20of%20Competition%20Regarding%20The%20Application%20of%20Their%20Competition%20and%20Consumer%20Laws.pdf](#)

- **Korea - Mexico** Arrangement regarding Applications of Competition Laws (2004)

http://eng.ftc.go.kr/files/static/International_Relations/International_Relations/%5BKorea-

[Mexico%5DArrangement%20between%20KFTC%20and%20CCUMS%20regarding%20the%20Application%20of%20their%20Competition%20Laws_Apr%2023,%202004.pdf](#)

- **Korea - Russia** Memorandum on Cooperation (1999)

http://eng.ftc.go.kr/files/static/International_Relations/International_Relations/%5BKorea-Russia%5DMemorandum%20on%20co-

[operation%20between%20the%20Ministry%20of%20Russian%20Federation%20for%20APSE%20and%20KFTC_Dec%207,%201999.pdf](#)

MLAT:

Civil matters:

- **Korea - Australia** (2000)

http://www.austlii.edu.au/au/other/dfat/subjects/Judicial_Cooperation.html

criminal matters:

- **Korea - Canada** (1995) http://www.oas.org/juridico/mla/en/can/en_can-mla-gen-liste.html

- **Korea – Hong Kong** (2000) <http://www.legislation.gov.hk/table3ti.htm>

Other:

- Memorandum on Cooperation in the field of competition policy between the **Interstate Council on Competition Policy**, Competition Council of the Republic of Latvia, Romania's Competition Council and Fair Trade Commission of **the Republic of Korea** (2003) http://en.fas.gov.ru/international-cooperation/bilateral-and-multilateral-documents/bilateral-and-multilateral-documents_50527.html

10. MALAYSIA

No information on MCC site or no responses to the Questionnaire

Free Trade Agreements:

- **Malaysia - Chile** (2010)
- **Malaysia - Japan** Agreement for Economic Partnership (2005)
- **Malaysia - New Zealand** FTA (2010) <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Malaysia/index.php>
- **Malaysia - USA**
- **ASEAN - Australia - New Zealand** FTA (2010) <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Asean/index.php>; Chapter 14 - Competition <http://www.asean.fta.govt.nz/chapter-14-competition>; Article 2 - Cooperation

MLAT:

in criminal matters:

- **Malaysia - Australia** (2006) http://www.austlii.edu.au/au/other/dfat/subjects/Mutual_Assistance_In_Criminal_Matters.html
- **Malaysia - Hong-Kong** (2008) <http://www.legislation.gov.hk/table3ti.htm>
- **ASEAN** (2004) <http://www.aseansec.org/17363.pdf>

11. MEXICO

Free Trade Agreements:

- **Mexico - Chile** FTA (1998); Chapter 14 - Competition, Monopolies and State Enterprises
- **Mexico - Canada - United States** FTA (**North American** FTA) (1993); Chapter 15: Competition Policy, Monopolies and State Enterprises; Article 1501 – Competition Law <http://www.nafta-sec-alena.org/en/view.aspx?conID=590&mtpilID=146>
- **Mexico - Japan** Agreement for Strengthening of the Economic Partnership; Article 132 (2004) <http://www.mofa.go.jp/region/latin/mexico/agreement/agreement.pdf>
- **Mexico - United States** (1993)
“Regarding the cooperation and exchange of information, these agreements only provide a set of principles and general provisions”

State-to-State Cooperation Agreements:

“These agreements focus on notifications, consultations, cooperation on enforcement actions and advocacy efforts”.

- **Mexico - Canada** Agreement on Enforcement of their Competition Laws
- **Mexico - United States** Agreement on Enforcement of their Competition Laws <http://www.ftc.gov/os/2000/07/usmexagreeeng.htm>; Article X - Confidentiality of Information

Agency-to-Agency Cooperation Agreements:

“Cooperation in this regard centers on technical assistance activities, seminars, notifications, consultations, cooperation on enforcement actions and advocacy efforts.”

- **Mexico - Chile** Agreement on Enforcement of Competition Laws
- **Mexico - Korea** Agreement on Application of Competition Laws (2004) http://eng.ftc.go.kr/files/static/International_Relations/International_Relations/%5BKorea-Mexico%5DArrangement%20between%20KFTC%20and%20CCUMS%20regarding%20the%20Application%20of%20their%20Competition%20Laws_Apr%2023,%202004.pdf
- **Mexico - Russia** Agreement on Cooperation in the Field of Economic Policy (2010) http://en.fas.gov.ru/international-cooperation/bilateral-and-multilateral-documents/bilateral-and-multilateral-documents_51017.html

MLAT:

in criminal matters:

- **Australia - Mexico** (1992) http://www.austlii.edu.au/au/other/dfat/subjects/Mutual_Assistance_In_Criminal_Matters.html
- **Mexico - Canada** (1990) http://www.oas.org/juridico/mla/en/can/en_can-mla-gen-liste.html
- **Mexico - United States** (1988) http://www.oas.org/juridico/mla/en/traites/en_traites-mla-usa-mex.pdf
- Inter-American Agreement on Mutual Assistance in criminal matters (2001) <http://www.oas.org/juridico/english/treaties/a-55.html> (including **Canada, Chile, Mexico, Peru, United States**)

12. NEW ZEALAND

Free Trade Agreements:

<http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/index.php>

- **New Zealand - Australia** Closer Economic Relations (1983) <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Australia/index.php>
- **ASEAN – Australia - New Zealand** Free Trade Agreement (2010) <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships->

- [and-Agreements/Asean/index.php](#); Chapter 14 - Competition
<http://www.asean.fta.govt.nz/chapter-14-competition>; Article 2 - Cooperation
- **New Zealand - China** FTA (2008) <http://www.chinafta.govt.nz>
 - **New Zealand - Hong Kong, China** Closer Economic Partnership (2011)
<http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Hong-Kong/index.php>
 - **New Zealand - Malaysia** FTA (2010) <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Malaysia/index.php>
 - **New Zealand - Singapore** Closer Economic Partnership (2001)
<http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Singapore/Closer-Economic-Partnership-Agreement-text/index.php>; Part 2 - Competition <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Singapore/Closer-Economic-Partnership-Agreement-text/0-cep-part2.php>
 - **New Zealand - Thailand** Closer Economic Partnership (2005)
<http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Thailand/index.php>; Chapter 11 - Competition Policy
<http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Thailand/Closer-Economic-Partnership-Agreement-text/0-cep-chapter11.php>
 - Trans-Pacific Strategic Economic Partnership (P4) - **Brunei Darussalam, Chile, New Zealand, Singapore** (2005) http://www.fta.gov.sg/tpfta/c9_tpsep.pdf;
Chapter 9, Article 9.3 - Cooperation, Article 9.5 - Consultations and Exchange of Information
 - SPARTECA - Preferential Trade Agreement between member of the Pacific Island Forum, including **Australia, New Zealand** and **Papua New Guinea** (1881)

Agency-to-Agency Cooperation Agreements:

- <http://www.comcom.govt.nz/international-relations>
- **New Zealand - Australia** Cooperation Agreement (2007)
 - **New Zealand - Australia** Cooperation Protocol for Merger Review (2006)
 - **Australia - New Zealand** Cooperation and Coordination Agreement (1994);
Article 5.1 – Exchange of Information <http://www.comcom.govt.nz/international-relations>
 - **New Zealand - Australia - Canada** Cooperation Arrangement regarding the Application of their Competition and Consumer Laws (2000)
<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01595.html>
 - **New Zealand - Australia - Chinese Taipei** (2002) Cooperation and Coordination Arrangement
<http://www.ftc.gov.tw/internet/main/doc/docDetail.aspx?uid=534&docid=1146>;
Paragraph V -Exchange of Information; Paragraph VIII - Confidentiality and Use of Information
 - **New Zealand - Australia - UK** Cooperation and Coordination Arrangement (2003)

MLAT:

- **New Zealand – Hong Kong** (2003) <http://www.legislation.gov.hk/table3ti.htm>

13. PAPUA NEW GUINEA

No information on the agency's web-site or in Questionnaire responses.

Free Trade Agreements:

- **Papua New Guinea - Australia** (1976) http://www.wipo.int/wipolex/en/other_treaties/text.jsp?doc_id=155240&file_id=205191
- SPARTECA - Preferential Trade Agreement between member of the Pacific Island Forum, including **Australia, New Zealand** and **Papua New Guinea** (1881)

Agency-to-Agency Cooperation Agreements:

- **Papua New Guinea - Australia** Cooperation and Coordination Agreement (1999); Article 4.1 -Exchange of Information <http://www.accc.gov.au/content/index.phtml/itemId/564911>

14. PERU

“Some of these international agreements stipulate that the parties can share information as long as it doesn't violate any legal dispositions or affect the course of an investigation”.

Free Trade Agreements:

- **Peru - Canada** FTA (2009); Chapter 13- Competition Policy, Monopolies and State Enterprises <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/peru-perou/peru-toc-perou-tdm.aspx?lang=eng&view=d>
- **Peru - Chile** FTA (2006); Chapter 8 - Competition Policy
- **Peru - China** FTA (2009) <http://fta.mofcom.gov.cn/topic/enperu.shtml>; Chapter 12 – Cooperation
- **Peru - Japan** Agreement for Economic Partnership (2011)
- **Peru - Korea** FTA (2011)
- **Peru - Singapore** FTA (2008); Chapter 14, Article 14.5 - Transparency and Information Requests http://www.fta.gov.sg/fta_pesfta.asp?hl=39
- **Peru - Thailand** FTA (2010) <http://www.insaps.org/page.php?id=Mjk1>
- **Peru - United States** Trade Promotion Agreement (2006) <http://www.ustr.gov/trade-agreements/free-trade-agreements/peru-tpa>

Agency-to-Agency Cooperation Agreements:

- **Peru - Chile**

MLAT:

- **Peru - Canada** (1998) http://www.oas.org/juridico/mla/en/can/en_can-mla-gen-liste.html

- Inter-American Agreement on Mutual Assistance in criminal matters (1994) <http://www.oas.org/juridico/english/treaties/a-55.html> (including **Canada, Chile, Mexico, Peru, United States**)

15. THE PHILIPPINES

Free Trade Agreements:

- **ASEAN - Australia - New Zealand** FTA (2010) <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Asean/index.php>, Chapter 14 - Competition <http://www.asean.fta.govt.nz/chapter-14-competition>; Article 2 - Cooperation

State-to-State Cooperation Agreements:

- **the Philippines - Japan** Agreement for Economic Partnership (2006)

MLAT:

- **the Philippines - Australia** (1993)
- **the Philippines - United States** (1996) <http://www.lawphil.net/international/treaties/mutleg.html>
- **ASEAN** (2004) <http://www.aseansec.org/17363.pdf>

16. RUSSIA

State-to-State Cooperation Agreements:

- **Russia - China** Agreement on Cooperation in the field of preventing unfair competition, and antimonopoly policy (1996)

Agency-to-Agency Cooperation Agreements:

- **Russia - Australia** Declaration on Intentions (2001)
- **Russia - Korea** Memorandum on Cooperation (1999) http://en.fas.gov.ru/international-cooperation/bilateral-and-multilateral-documents/bilateral-and-multilateral-documents_50530.html
- **Russia - Mexico** Agreement on Cooperation in the field of Competition Policy (2010) http://en.fas.gov.ru/international-cooperation/bilateral-and-multilateral-documents/bilateral-and-multilateral-documents_51017.html
- **Russia - Viet Nam** Memorandum on Cooperation (2010)

Memorandums of Understanding:

- **Russia - China** MOU between FAS Russia and SAIC (China) on implementing the Agreement between the Government of the Russian Federation and the Government of the People's Republic of China on cooperation in the field of combating unfair competition and conducting antimonopoly policy for 2012-2013 (2011)
- **Russia - United States** MOU on Antimonopoly Cooperation between FAS and

FTC and DoJ (2009) http://en.fas.gov.ru/international-cooperation/bilateral-and-multilateral-documents/bilateral-and-multilateral-documents_50734.html

MLAT:

- **Russia - Canada** (1997)
- **Russia - United States** (1999)
<http://www.state.gov/documents/organization/123676.pdf>
- **Russia – Viet Nam** (1998)

Other:

- Memorandum on Cooperation in the field of competition policy between the **Interstate Council on Competition Policy**, Competition Council of the Republic of Latvia, Romania's Competition Council and Fair Trade Commission of **the Republic of Korea** (2003) http://en.fas.gov.ru/international-cooperation/bilateral-and-multilateral-documents/bilateral-and-multilateral-documents_50527.html
- BRICS Arrangements between competition authorities of Brazil, **Russia**, India, **China** and South Africa (2011) http://en.fas.gov.ru/international-cooperation/bilateral-and-multilateral-documents/bilateral-and-multilateral-documents_51016.html

17. SINGAPORE

Free Trade Agreements:

All FTAs that Singapore has entered into can be referenced from www.fta.gov.sg.

- **Singapore - Australia** FTA (2003); Chapter 12 – Competition Policy, http://www.fta.govsg/safta/fta_safta_chp12.pdf; Article 6 - Consultation and Review
- **Singapore - Japan** Economic Partnership Agreement http://www.fta.gov.sg/jsepa/fta_jsepa_agreement13.pdf; Chapter 12, Article 104
 - Co-operation on Controlling Anti-Competitive Activities
- **Singapore - Korea** FTA (2006); Chapter 15 - Competition [http://www.fta.gov.sg/ksfta/korea-singapore%20free%20trade%20agreement%20\(ksfta\)_chap15.pdf](http://www.fta.gov.sg/ksfta/korea-singapore%20free%20trade%20agreement%20(ksfta)_chap15.pdf)
- **Singapore - New Zealand** Closer Economic Partnership (2001) <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Singapore/Closer-Economic-Partnership-Agreement-text/index.php>, Part 2 Competition http://www.fta.gov.sg/anzscep/part_2_anzcep.pdf
- **Singapore - Peru** FTA (2008); Chapter 14, Article 14.5 - Transparency and Information Requests http://www.fta.gov.sg/fta_pesfta.asp?hl=39
- **Singapore - United States** FTA (2003) http://www.fta.gov.sg/ussfta/chapter_12_us.pdf; Chapter 12, Article 12.5 - Transparency and Information Requests
- **ASEAN - Australia - New Zealand** FTA (2010) <http://www.mfat.govt.nz/Trade->

[and-Economic-Relations/2-Trade-Relationships-and-Agreements/Asean/index.php](#); Chapter 14 - Competition
<http://www.asean.fta.govt.nz/chapter-14-competition>; Article 2 – Cooperation
- Trans-Pacific Strategic Economic Partnership (P4) - **Brunei Darussalam, Chile, New Zealand, Singapore** (2005) http://www.fta.gov.sg/tpfta/c9_tpsep.pdf;
Chapter 9, Article 9.3 - Cooperation, Article 9.5 - Consultations and Exchange of Information

MLAT:

- **Singapore – Hong Kong** (2004) <http://www.legislation.gov.hk/table3ti.htm>
- **ASEAN** (2004) <http://www.aseansec.org/17363.pdf>

18. CHINESE TAIPEI

Free Trade Agreements:

- **China - Chinese Taipei** Economic Cooperation Framework Agreement (2010)

Agency-to-Agency Cooperation Agreements:

- Cooperation and Coordination Arrangement between **Chinese Taipei** Economic and Cultural Office and the **Australian** Commerce and Industry Office Regarding the Application of the Competition and Fair Trading Laws (1996) <http://www.apeccp.org.tw/doc/Taipei/Cooperation/tpeaus.html>; Article 4 - Confidentiality; Article 5.1 - Exchange of Information.
- **Chinese Taipei - Australia - New Zealand** (2002) Cooperation and Coordination Arrangement <http://www.ftc.gov.tw/internet/main/doc/docDetail.aspx?uid=534&docid=1146>; Paragraph V -Exchange of Information; Paragraph VIII - Confidentiality and Use of Information

Memorandums of Understanding:

- MOU between the **Canadian Trade Office in Taipei** and the **Taipei Economic and Cultural Office in Canada** Regarding the Application of Competition Laws (2009) <http://www.apeccp.org.tw/doc/Taipei/Cooperation/2009Canada.pdf>; Article 4 - Cooperation and Coordination; Article 7 - Existing Laws and Confidentiality of Information

19. THAILAND

Free Trade Agreements:

- **Thailand - Australia** FTA (2004) http://www.thaifta.com/english/eng_au.html;
Chapter 12 – Competition Policy, Articles 1201 -1208 Article 1205 – Cooperation on Exchange of Information
<http://www.accc.gov.au/content/index.phtml/itemId/624748>;
http://otcc.dit.go.th/otcc/content_en/catcontent_detail.php?typeld=14&catld=107&ID=31
- **Thailand - Japan** Agreement for Economic Partnership,

<http://otcc.dit.go.th/otcc/upload/en-basic-agreement%20competition.pdf>; Chapter 12 – Competition

- **Thailand - New Zealand** Closer Economic Partnership (2005) Chapter 11 - Competition Policy <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Thailand/Closer-Economic-Partnership-Agreement-text/0-cep-chapter11.php>;

http://otcc.dit.go.th/otcc/content_en/catcontent_detail.php?typeld=14&catld=107&ID=32

- **Thailand - Peru** FTA (2010) <http://www.insaps.org/page.php?id=Mjk1>

- **ASEAN - Australia - New Zealand** Free Trade Agreement (2010)

<http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Asean/index.php>; Chapter 14 - Competition

<http://www.asean.fta.govt.nz/chapter-14-competition>

MLAT:

- **Thailand - Canada** (1994) http://www.oas.org/juridico/mla/en/can/en_can-mla-gen-liste.html

- **Thailand - United States** (1993)

20. THE UNITED STATES

Free Trade Agreements:

- **United States - Australia** FTA, 2005; Chapter 14 - Competition-Related Matters http://www.dfat.gov.au/fta/ausfta/final-text/chapter_14.html ; Article 14.9 - Cooperation; Article 14.10 – Consultations

- **United States - Canada** FTA (1989) <http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/cusfta-e.pdf>

- **North American** FTA (1993); Chapter 16 - Competition Policy, Monopolies and State Enterprises, Article 1501 – Competition Law <http://www.nafta-sec-alena.org/en/view.aspx?conID=590&mtpilD=146>

- **United States - Chile** FTA (2003); Chapter 16 - Competition Policy, Designated Monopolies and State Enterprises

- **United States - Korea** FTA (2007), Chapter 16 – Competition-Related Matters http://eng.ftc.go.kr/files/static/International_Relations/International_Relations/FTA_AttachedFile_link/Initialed%5BKorea-America%20FTA%5DCHAPTER%20SIXTEEN_Jun%2030,%202007.pdf

- **United States - Peru** Trade Promotion Agreement (2006)

<http://www.ustr.gov/trade-agreements/free-trade-agreements/peru-tpa>

- **United States - Singapore** FTA (2003) <http://www.ustr.gov/trade-agreements/free-trade-agreements/singapore-fta>; Chapter 12, Article 12.5 - Transparency and Information Requests

State-to-State Cooperation Agreements:

- **United States - Australia** Agreement relating to Cooperation on Antitrust Matters (1982) http://www.ftc.gov/bc/international/docs/agree_australia.pdf

- **United States - Canada** Agreement regarding the Application of Their Competition and Deceptive Practices Law (1995)

http://www.ftc.gov/bc/international/docs/agree_canada.pdf

- **United States - Canada** Agreement on the Application of Positive Comity Principles to the Enforcement of Their Competition Laws (2004)

<http://www.ftc.gov/os/2004/10/0410comityagreeenglish.pdf>; Article V -

Confidentiality and Use of Information

- **United States - Japan** Agreement Concerning Cooperation on Anticompetitive Activities (1999); Article III (regarding information exchange issues)

http://www.ftc.gov/bc/international/docs/agree_japan.pdf

- **United States - Mexico** Agreement regarding the Application of Their Competition Laws (2000) <http://www.ftc.gov/os/2000/07/usmexagreeeng.htm>; Article X - Confidentiality of Information

Agency-to-Agency Cooperation Agreements:

- **United States - Chile** Agreement on Antitrust Cooperation (2011)

<http://www.ftc.gov/os/2011/03/110331us-chile-agree.pdf>; Article VII -

Confidentiality

Memoranda of Understanding:

- **United States - China** MOU on Antitrust and Antimonopoly Cooperation between SAIC and FTC and DoJ (2011)

<http://www.ftc.gov/os/2011/07/110726mou-english.pdf>

- **United States - Russia** MOU on Antimonopoly Cooperation between FAS and FTC and DoJ (2009) <http://www.ftc.gov/os/2009/11/091110usrussiamou.pdf>

MLAT:

- **United States - Australia** Agreement on Mutual Antitrust Enforcement Assistance (1999) <http://www.ftc.gov/os/1997/04/lastaus.htm>; Article V –

Execution of Requests, Article VI - Confidentiality

- **United States - Canada** (1990) <http://www.oas.org/Juridico/mla/en/can/>

- **United States – Hong Kong** (2000) <http://www.legislation.gov.hk/table3ti.htm>

- **United States - Mexico** (1988)

http://www.oas.org/juridico/mla/en/traites/en_traites-mla-usa-mex.pdf

- **United States - the Philippines** (1996)

<http://www.lawphil.net/international/treaties/mutleg.html>

- **United States - Russia** (1999)

<http://www.state.gov/documents/organization/123676.pdf>

- **United States - Thailand** (1993)

- Inter-American Agreement on Mutual Assistance in criminal matters (1995)

<http://www.oas.org/juridico/english/treaties/a-55.html> (including **Canada, Chile, Mexico, Peru, United States**)

A more complete listing of U.S. Mutual Legal Assistance Agreements can be found at: <http://thomas.loc.gov/cgi-bin/thomas> .

Other:

- Cooperation Arrangement between the Commissioner of Competition, Competition Bureau of the Government of **Canada**, and the **United States**

Postal Inspection Service, Regarding the Application of their Deceptive Marketing Practices Laws (2008) [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/USPIS-CB--CooperationArrangement-Eng.pdf/\\$FILE/USPIS-CB--CooperationArrangement-Eng.pdf](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/USPIS-CB--CooperationArrangement-Eng.pdf/$FILE/USPIS-CB--CooperationArrangement-Eng.pdf)

- **United States - China** Guidance for Case Cooperation between SAIC, and FTC and DoJ on Concentration of Undertakings (Merger) Cases (2011) <http://www.justice.gov/atr/public/international/docs/277772.pdf>

21. VIET NAM

Free Trade Agreements:

- **Viet Nam - Japan** Agreement for Economic Partnership (2008)

- **ASEAN - Australia - New Zealand** Free Trade Agreement (2010)

<http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Asean/index.php>; Chapter 14 - Competition

<http://www.asean.fta.govt.nz/chapter-14-competition>

Agency-to-Agency Cooperation Agreements:

- **Viet Nam - Russia** Memorandum on Cooperation (2010)

MLAT:

- **ASEAN** (2004) <http://www.aseansec.org/17363.pdf>

- **Viet-Nam - Russia** (1998)

Annex 4. The National Laws of APEC Economies Regulating Information Sharing

The information in this Annex is based on the responses provided by the surveyed competition authorities. When such responses were not given, the relevant nation legislation and regulations were reviewed. If no specific regulations on information sharing in the field of competition enforcement were identified, references were given to the acts and regulations of a more general nature with regard to information disclosure.

1. AUSTRALIA

Confidentiality Laws and Procedures

Confidentiality provisions are included in the ***Competition and Consumer Act 2010 (CCA)*** <http://www.comlaw.gov.au/Details/C2012C00514> . Section 155AAA of the CCA provides that the Australian Competition and Consumer Commission (ACCC) and its officers must keep protected third party information confidential (protected information). A failure to do so in accordance with the Section can attract criminal sanctions for the officers involved.

Section 155AAA also provides that ACCC with discretion to disclose protected information to other parties, including foreign counterparts, in limited circumstances. Such disclosures are subject to careful consideration, having regard to competing interests of the parties involved in each circumstance and broader considerations, such as whether disclosing the protected information may impact the effective operation of the ACCC's cartel immunity and cooperation regimes.

According to the ***Mutual Assistance in Criminal Matters Act 1987 (MACMA)*** Australia may provide and obtain assistance from foreign governments in relation to criminal investigations via mutual legal assistance, which occurs under the remit of Australia's Mutual Assistance in Criminal Matters Act 1987. Australia can make or receive a request for mutual assistance from any country. The process is assisted by over 20 bilateral mutual assistance treaties and some multilateral international conventions to which Australia is a party (http://www.austlii.edu.au/au/legis/cth/consol_act/maicma1987384).

Mutual Assistance in Business Regulations Act 1992 (MABRA) <http://www.comlaw.gov.au/Details/C2004A04316> enables Australia to provide assistance to foreign regulators in obtaining relevant information, documents and evidence for the purposes relating to the administration of enforcement of a foreign business law.

1982 Agreement between the Government of Australia and the Government of the United States of America on Mutual Antitrust Enforcement Assistance (the US-Australia Agreement)

<http://www.accc.gov.au/content/index.phtml/itemId/564911> provides that Australia and the United States of America can exchange evidence on a reciprocal basis for use in competition law enforcement and help each other obtain evidence from the other's country while ensuring that confidential information is protected.

The general principles are established in **1982 Freedom of Information Act** http://www.austlii.edu.au/au/legis/cth/consol_act/foia1982222 that provides for the right to access public information; outlines the mechanisms and procedures for publishing information and disclosing information upon requests; and exemptions, particularly on the basis of legal professional privilege and confidentiality.

Australia is a signatory to **the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (the Hague Evidence Convention)** http://www.hcch.net/index_en.php?act=conventions.status&cid=82.

2. BRUNEI DARUSSALAM

Although it appears that Brunei does not have specific regulations concerning information sharing in the field of competition, the FTAs, into which Brunei has entered as an ASEAN member-state, contain special clauses on competition enforcement cooperation.

For example, **ASEAN - Australia - New Zealand** FTA (2010) <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Asean/index.php> specifies that the Parties may engage in co-operation activities in the field of competition, including exchange of experience regarding the promotion and enforcement of competition law and policy; and exchange of publicly available information about competition law and policy (**Chapter 14, Article 2**).

3. CANADA

Confidentiality Laws and Procedures:

Under **Section 29 of the Competition Act** (1985, with further amendments) <http://www.laws.justice.gc.ca/eng/acts/C-34>, communication of the information obtained during an investigation, including information produced voluntarily or obtained pursuant to the exercise of formal powers, is permitted "for the purposes of the administration or enforcement of the Act." This allows information that is considered confidential under the Act to be communicated to a foreign agency where the purpose is the administration or enforcement of the Act (e.g.,

where communication of this information would advance a specific investigation). When confidential information is communicated to a foreign agency, the Bureau takes rigorous steps to maintain the confidentiality of the information. This is accomplished via formal international instruments or specific assurances from a foreign agency. The Bureau does not communicate information protected by **Section 29 of the Act** unless it is fully satisfied with the assurances provided by a foreign authority with respect to maintaining the confidentiality of the information and its use. The Bureau requires a foreign agency to limit the use of the confidential information to the specific purpose for which it was provided. Similarly, the Bureau is willing to provide assurances to a foreign agency that the information provided will be treated confidentially, and will only be used for the administration and enforcement of the Act. The Bureau will provide notice to, and seek the consent of a foreign agency if it intends to use the information for any other purpose. (The Bureau's *Information Bulletin on the Communication of Confidential Information under the Competition Act*. <http://www.competitionbureau.gc.ca/eic/site/cbbc.nsf/eng/01277.html>).

Section 30 of the Act determines the rules that must be observed for concluding a mutual legal assistance agreement, for instance, foreign laws on confidentiality are substantially similar to Canadian laws. **Section 30 also** determined the procedures for approval of requests from abroad to obtain evidence; refusals based on the Canadian law on non-disclosure of information or privilege, or based on foreign law.

Access to Information Act (1883, with amendments through July 2008) <http://laws-lois.justice.gc.ca/eng/acts/A-1> and **Access to Information Regulations** (1985) <http://laws-lois.justice.gc.ca/eng/acts/A-1/index.html> puts forward the general principles of information disclosure. The Regulations provide for the right to access information and establish the relevant procedures, including refusals to disclose information on the grounds of the restricted nature of the requested information.

4. CHILE

The legislation and rules regulating information sharing by the Chilean Competition Authority include: the General Legal Framework of the Administration Act ("Ley de Bases Generales de la Administración del Estado"); Freedom of Information Act ("Ley de Transparencia") – both available only in Spanish; the Law for the Defence of Free Competition (Decree Law 211 - 1973); Competition Act (2009 – a revised version of Decree Law 211); FTAs; Agency-to-Agency cooperation agreements.

Under **Article 22** of the Decree Law 211 / Competition Act (http://www.fne.gob.cl/wp-content/uploads/2012/03/DL_211_ingles.pdf) the restricted or confidential nature of information, exhibits must be observed. Under **Article 39 (m)** the National Economic Prosecutor's Office may enter into an agreement with other public services and government bodies for the electronic

transfer of information, not of a secret or reserved nature, in accordance with the law to ease the fulfillment of the Prosecutor's duties. Additionally, and with prior, well-founded resolution by the National Economic Prosecutor, he or she may agree on the electronic interconnectivity with private bodies or institutions. In the same manner, the Prosecutor may enter into an interconnectivity agreement with foreign public bodies or international organizations, with who the National Economic Prosecutor's Office has concluded an agreement or a memorandum of understanding.

Free Trade Agreements concluded by Chile incorporate provisions of cooperation in the field of competition, particularly, on exchanging relevant information. For instance, the **Chile - Australia FTA** (2008) specifies that on a request from a Party, the other Party shall endeavor to make available public information concerning: (a) the enforcement of its measures proscribing anticompetitive activities; (b) its state enterprises, and enterprises with special or exclusive rights, including designated monopolies, provided that requests for such information shall indicate the entities involved, specify the particular goods and/or services and markets concerned, and indicate that these entities may be engaging in practices that may hinder trade or investment between the Parties; and (c) exemptions to its measures proscribing anticompetitive activities, provided that requests for such information shall specify the particular goods and/or services and markets to which the request relates. (d) Any information or documents exchanged between the Parties on a confidential basis pursuant to the provisions of this Chapter shall be kept confidential. Neither Party shall, except to comply with its domestic legal requirements, release or disclose such information or documents to any person without a written consent of the Party which provided such information or documents. Where the disclosure of such information or documents is necessary to comply with the domestic legal requirements of a Party, that Party shall notify the other Party where possible before such disclosure is made or otherwise at the earliest practicable time. (e) The Party providing such confidential information shall furnish non-confidential summaries thereof if requested by the other Party. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. When a Party indicates that such confidential information is not susceptible to a public summary and where such information is submitted to a judicial authority, it shall be at the discretion of that judicial authority whether to consider such information

(http://www.sice.oas.org/trade/CHL_AUS_Final_e/CHL_AUS_FTA_e%5B1%5D.pdf)

The **Agreement on Antitrust Cooperation between Chile and the United States** (2011) <http://www.ftc.gov/os/2011/03/110331us-chile-agree.pdf> specifies that the competition authorities are not required to communicate information to the other country's competition authority if such communication is prohibited by the laws of the country of the competition authority possessing the information or if that country deems that it would be incompatible with that country's important interests. The receiving competition authority shall, to the extent consistent with

any applicable domestic laws, maintain the confidentiality of any such information communicated to it in confidence. Each competition authority shall oppose, to the fullest extent possible consistent with the applicable domestic laws, any application by a third party for disclosure of such confidential information (**Article VII** – Confidentiality).

5. THE PEOPLE’S REPUBLIC OF CHINA

The Provisions on Disclosure of Government Information (2007) <http://chinesefoi.org/regulation.aspx> outline the general rules for providing information by the government bodies of different levels and specify the types of information that may be disclosed, the forms and procedures for providing access to information. Violating the procedures shall make a responsible agency liable to administrative or criminal sanctions.

6. HONG KONG, CHINA

The ***Code on Access to Information*** (1995) <http://www.access.gov.hk/en/code.htm> specifies what kind of information the government agencies shall publish or make public on a routine basis, what kind of information can be provided upon requests, and the relevant legal obligations and restrictions. The Code regulates the procedures for requesting information, and handling such requests. Part 2 highlights the categories of information, disclosure of which can be denied, including legal proceedings – on the grounds of legal professional privilege, incomplete research / analysis, information the disclosure of which would harm or prejudice the conduct of external affairs, or relations with other governments or international organizations; information received in confidence from and conveyed in confidence to other governments, courts in other jurisdictions, and international organizations; internal agency information; information including commercial, financial, scientific or technical confidences, trade secrets or intellectual property, the disclosure of which would harm the competitive or financial position of any person; Information the disclosure of which would constitute a contravention of any law which applies in Hong Kong, or a breach of any obligation arising under common law or under any international agreement which applies to Hong Kong.

An example of industry-specific regulation in this field is Section 27 of the Broadcasting Ordinance (Cap. 562 of the Law of Hong Kong) (2001 with further amendments) http://www.wipo.int/wipolex/fr/text.jsp?file_id=187154#LinkTarget_484

7. INDONESIA

The Public Information Disclosure Act (2008) <http://ccrinepal.org/files/documents/legislations/12.pdf> establishes the right to have access to public information and the rights and obligations of the government agencies with regard to providing such information, including information about the agency's decisions and the current policy. **Chapter V** defines the categories of the information that is considered classified and may not be subject to disclosure. **Chapter VI** outlines the mechanisms and principles for providing information promptly and at low cost. Failure of an agency to execute its obligations under the Act for providing access to information is penalized by imprisonment (up to a year) or a fine (up to five million rupiah).

Article 39 of the **Law on Prohibition of Monopolistic Practice and Unfair Business Competition** (1999) <http://eng.kppu.go.id/wp-content/uploads/2010/04/uu-en.pdf> requires that the Commission for the Supervision of Business Competition shall be obligated to keep confidential the information obtained from business actors in course of investigations and classified as company secrets.

8. JAPAN

Information sharing with competition authorities of other economies is regulated by **Article 43-2** of the **Antimonopoly Act** (1947, with revisions): http://www.jftc.go.jp/en/legislation_guidelines/ama/amended_ama09/08.html.

Japan Fair Trade Commission may disclose information to the competition agencies abroad except the cases when giving access to such information is deemed likely to interfere with proper executions of this Act or to infringe the interests of Japan in any other way. When disclosing information to other competition authorities the following conditions shall be met: the relevant foreign competition authority is capable of providing information which would be equivalent of the information provided by Japan; the secrecy of the information provided will be protected under the laws and regulations of the relevant foreign country to a degree that is equivalent of a degree to which the secrecy of such information is protected in Japan; and the information provided shall not be used by the relevant foreign competition authority for the purposes other than contributing to execution of its duties.

Article II 1 of the **Agreement between the Government of Japan and The Government of The United States of America Concerning Cooperation on Anticompetitive Activities** requires that the competition authority of each Party shall notify the competition authority of the other Party regarding enforcement activities of the notifying Party that in the opinion of the notifying competition authority may affect the important interests of the other Party. There are several other state-to-state cooperation agreements and free trade agreements between the Government of Japan and other APEC economies containing similar

provision on notification. In practice, the JFTC notifies the competition authority of the other party by fax, telephone call and other means.

The 1999 ***Law Concerning Access to information Held by Administrative Organs*** outlines the general principles and procedures for information disclosure, including the grounds for partial disclosure or non-disclosure (http://www.soumu.go.jp/main_sosiki/gyoukan/kanri/low0404_2.htm).

9. REPUBLIC OF KOREA

No.5242 Act on Disclosure of Information by Public Agencies (1996) <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN025690.pdf> establishes the general principles for information disclosure by the government agencies and specifies the categories of information that may be subject to non-disclosure. The Act outlines the procedures for requesting information and for decision-making whether such requests shall be granted, including partial disclosure.

The ***Monopoly Regulation and Fair Trade Act*** (as amended in 2011) http://eng.ftc.go.kr/files/static/Legal_Authority/Monopoly%20Regulation%20and%20Fair%20Trade%20Act_mar%2014%202012.pdf establishes the duty to preserve confidentiality of information and to not divulge any business secrets of market players (***Article 62***) by top executives and members the Fair Trade Commission in course of exercising the functions of FTC under the Act. The Act does not have specific provisions with regard to information sharing with foreign competition authorities; under ***Article 36-2***, however, the Fair Trade Commission may support a foreign government in a request for law enforcement activities if there is an enforcement agreement in place or, in the absence of such an agreement, on the condition of a guarantee from the requesting country that it shall provide support on the same or a similar matter upon a request by Korea.

10. MALAYSIA

Article 21 – Confidentiality of the Competition Act (2010; came into effect in 2012) gives a definition of “confidential information”, specifies the rules for disclosing or using confidential information and establishes that disclosing or using it in breach of the rules constitutes an offence. Article 22 concerns protection of ***Privileged Information***. <http://www.mycc.gov.my/files/Competition%20Act%202010.pdf>.

11. MEXICO

Confidentiality Laws and Procedures

The information gathered or obtained during the course of an investigation by the CFC (federal Competition Commission) shall be classified in accordance with **Article 31 bis I of the Federal Law of Economic Competition (FLEC)**. This provision categorizes information as “*reserved, confidential and public*”. The Article gives the definitions of each category:

Section I: “Reserved information is the information access to which is only permitted to the economic agents with legal interest in the procedure”.

Section II: “Confidential information is the information that if disclosed to other undertakings with legal interest in the proceeding may deteriorate or harm the competitive position of the party which provided it; it includes information containing personal data which requires personal consent to be disclosed or that which might pose a risk of security or that which disclosure is prohibited by law.

The information shall only be classified as confidential upon a request by an undertaking, as long as it meets the criteria and it is accompanied by a public summary of an approval by the CFC. In case of a failure to do so, the CFC will require the undertaking to submit a new summary and if the undertaking fails to comply, the CFC will then generate the summary”.

The **Federal Law of Transparency and Access to Public Government Information** (2002) <http://www.ifai.org.mx/publicaciones/taia.pdf> highlights the general principles of information disclosure. It states that all information with regard to operations and functions of the government agencies, except deemed as confidential or privileged, is considered public. Chapter III explains what constitutes the **Privileged and Confidential Information**. The Law also outlines the basic procedures for considering and granting information requests and liability for failure to do so.

12. NEW ZEALAND

The **Official Information Act** (1982) contains a detailed overview of the right of access to information; legitimate grounds for withholding information; the procedures for providing access to information, including request processing and decision-making

(<http://legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html#contents>).

The **Privacy Act** (1993) focuses on the issues of collecting, disclosing / using and protecting / limiting use of personal information, and in this respect, identifying the excluding circumstances when such information is publicly available or can be used for prevention, detection, investigation, prosecution, and punishment of offences, etc.
<http://www.legislation.govt.nz/act/public/1993/0028/latest/DLM296639.html>.

13. PAPUA NEW GUINEA

The Constitution of the Independent State of Papua New Guinea http://www.paclii.org/pg/legis/consol_act/cotisopng534 guarantees the rights to freedom of information (**Article 51**) “subject to a reasonably justified secrecy”, including confidential information, investigation and prosecutions/ prevention of crimes.

14. PERU

A. Laws and Procedures

The goal of *Law 27806, Transparency and Access to Public Information Act* (2002) <http://www.right2info.org/laws/useful-resources-and-web-links#peru> is to "promote transparency in the acts of the State and regulate the fundamental right to access of information that is enshrined in Section 5 Article 2 of the Political Constitution of Peru". Articles 10 - 11 describe the procedures for access to public information. Article 15 lists information classified as “secret information”, “reserved information” and “confidential information”, access to which can be legally restricted.

Information sharing procedures are further regulated by *1034 Legislative Decree (2008), Chapter V - Public and Confidential Information (Articles 31 and 32)* - access to the case file, the procedures for requesting information and refusals to grant it <http://www.apeccp.org.tw/doc/Peru/Competition/Legislative%20Decree%201034.pdf>.

B. Sanctions

Under Article 4 of *27806 Law, Transparency and Access to Public Information Act, on Responsibilities and Sanctions* officials or public servants who fail to observe the norms of the Law shall be held administratively, and possibly criminally, liable for committing a major offense of the Abuse of Authority under **Article 377** of the *Penal Code*.

15. THE PHILIPPINES

Article III Section 7 of the Philippine Constitution (1987) <http://www.lawphil.net/consti/cons1987.html> recognizes the right of the people to information on the matters of public concern. The Constitution guarantees access to official records, and to the documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as the basis for policy development subject to such limitations provided by the law. In the absence of special competition acts, some issues of information

confidentiality are covered in other regulatory acts, such as, for instance, **Republic Act No. 6713** - Code of Conduct and Ethical Standards for Public Officials and Employees (1989), Section 7, (c) - **Disclosure and/or misuse of confidential information**. Public officials and employees are prohibited to use or divulge confidential or classified information, known to them through their professional duties and not made available to the public (http://www.lawphil.net/statutes/repacts/ra1989/ra_6713_1989.html).

16. RUSSIA

A. Confidentiality Laws and Procedures

Article 26 of No.135-FZ Federal Law “On Protection of Competition” (2006, with amendments) obligates the Federal Antimonopoly Service (FAS) to observe commercial, official, and other legally protected secrets. Such information, obtained by FAS in the process of exercising its powers, cannot be disclosed except in the cases established by the federal laws. Officers of the antimonopoly authority bear civil, administrative, criminal liability for disclosing such information. The damage inflicted on a physical person or a legal entity as a result of disclosing information constituting commercial, official, and other legally protected secret by the antimonopoly body or its officials must be compensated at the expense of the Russian Federation treasury (http://en.fas.gov.ru/legislation/legislation_50915.html).

Article XIV of the Regulations on the Federal Antimonopoly Service (2007) establishes that information regarding FAS work and the decisions made by the Antimonopoly Service is open to public, except when specified by the law, and shall be published at the official agency’s web-site and in the media. The Regulations describe the content of FAS open informational resources, including relevant legislation, in particular, draft laws, initiated cases, FAS decisions and determinations, judicial acts, market analysis, international cooperation agreements on competition matters, and other information that is authorized for disclosure.

FAS Document Control Instructions (2007) require that restricted-access and secret information and data must be handled and processed in accordance with the procedures determined by **the Instructions for Handling Confidential Information** (2005) as well as **the Instructions for Handling Information as Part of Cooperation with Foreign Government Bodies in Investigations of Antimonopoly Violations**.

As for more general provisions, **No.149-FZ Federal Law “On Information, Information Technology and Information Protection”** (2006) <http://www.svobodainfo.org/ru/node/441> establishes the general regulatory principles in this field; the right and restrictions for accessing publicly available

information; and information protection. The general principles, methods and forms of providing access to the information regarding the work of the government agencies in the Russian Federation, including restricted information, the procedures for requesting such information, conditions for granting the access and liability for failure to do so are outlined in **No.8-FZ Federal Law “On Providing Access to Information of the Activities of Government Bodies and Local Self-Government Bodies”** (2009) <http://www.svobodainfo.org/en/node/439>.

B. Laws and Procedures Providing Sanctions for Breaches of Confidentiality

Part 1 Article 13.14 of the Code of the Russian Federation on Administrative Violations (the 2009 edition) specifies a person that through exercising one’s professional duties has access to the information prohibited to be disclosed under the federal legislation and that fails to observe this prohibition is held administratively liable and can be fined from 500 to 1,000 Rubles (a physical person), from 4,000 to 5,000 (officials), unless such actions are subject to criminal liability under the law.

17. SINGAPORE

The Competition Act, Cap. 50B (the revised edition, 2006) <http://statutes.agc.gov.sg> **Article 88 – Cooperation between Commission and Foreign Competition Bodies** provides for exchanging information with and offering assistance to foreign competition authorities. Information shall be disclosed subject to fulfillment of the requirements set by the Commission. **Article 89 – Preservation of Secrecy** outlines the basic rules for information disclosure including confidential information.

18. CHINESE TAIPEI

The Fair Trade Act (2011) does not contain specific provisions regarding information sharing or handling confidential information with foreign competition authorities <http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=644&docid=12106>.

The Regulation Governing Access to Materials and Files of the Fair Trade Commission (2002, with amendments of 2012) <http://www.ftc.gov.tw/internet/english/doc/docDetail.aspx?uid=647&docid=1570> outlines the range of materials of the Fair Trade Commission (FTC) available for access and the procedures with regard to confidential information (**Article 3**). **Article 10** requires that information obtained from FTC must not be used for any other purpose than specified.

The Freedom of Government Information Law (2005) describes the general principles of sharing and utilizing information by government agencies, including disseminating public information; the procedures regarding requests for governmental information; and the restrictions on publication of agencies' information

<http://law.moj.gov.tw/Eng/LawClass/LawContent.aspx?PCODE=I0020026>

Section 7 of the **Administrative Procedure Act** (2005) further specifies the rules and procedures for providing information upon request. Generally such requests cannot be denied unless the requested information is of confidential nature.

<http://law.moj.gov.tw/Eng/LawClass/LawContent.aspx?PCODE=A0030055>

19. THAILAND

The Trade Competition Act (1999) <http://otcc.dit.go.th/otcc/upload/TradeAct.pdf> does not contain specific provisions regarding information sharing or handling confidential information.

General issues and procedures of information disclosure, requests, handling procedures, and restrictions for information disclosure are covered in the **Official Information Act**

http://www.oic.go.th/content_eng/act.htm.

Article 11.6 – Cooperation and Exchange of Information of the New Zealand – Thailand Closer Economic Partnership Agreement

http://otcc.dit.go.th/otcc/content_en/catcontent_detail.php?typeld=14&catId=107&ID=32 and **Article 1205 of the Thailand – Australia Free Trade Agreement**

http://otcc.dit.go.th/otcc/content_en/catcontent_detail.php?typeld=14&catId=107&ID=31 state that recognizing the importance of cooperation and coordination in achieving effective enforcement outcomes under the economies' respective competition laws and the importance of confidentiality, the parties shall cooperate, where appropriate, on the issues of competition law enforcement, including through exchange of information, notifications, consultations, and coordination of enforcement matters that are cross-border in nature.

Article 148 – Cooperation on Promoting Fair and Free Competition of the Japan – Thailand Economic Partnership Agreement

http://otcc.dit.go.th/otcc/content_en/catcontent_detail.php?typeld=14&catId=107&ID=91 endorses joint efforts in this field and indicates that the cooperation procedures are specified in the Implementing Agreement.

Article 2 Chapter 14 – Competition of the Agreement Establishing ASEAN – Australia – New Zealand Free Trade Area specifies that the parties may engage in cooperation activities in the field of competition, including exchange of

experience regarding promotion of and enforcement of competition law and policy and exchange of publicly available information on competition law and policy http://otcc.dit.go.th/otcc/upload/AANZFTA_EN.pdf.

Article 53 of Agreement on Comprehensive Economic Partnership among Member States of the Association of Southeast Asian Nations and Japan includes competition as one of the major fields for economic cooperation between the parties to the agreement http://otcc.dit.go.th/otcc/content_en/catcontent_detail.php?typeld=14&catId=107&ID=106.

20. THE UNITED STATES

A. Confidentiality Laws and Procedures

15 U.S.C. §§ 6201-6212, International Antitrust Enforcement Assistance Act <http://www.justice.gov/atr/public/international/docs/annexa.htm> authorizes the Department of Justice (DOJ) and the Federal Trade Commission (FTC) to enter into bilateral agreements with other economies permitting mutual assistance in the enforcement of the antitrust laws. Specifically, it permits DOJ and FTC to exchange certain otherwise confidential investigative information with foreign antitrust authorities, where this will be in the public interest of the United States and where it satisfies the important confidentiality and other safeguards outlined in the statute. Section 6207(b) of the statute prohibits DOJ and FTC from disclosing, in violation of an antitrust mutual assistance agreement, any antitrust evidence received under such agreement, except to the extent such disclosure is required by law to be made to a defendant or respondent in an action brought by DOJ or FTC. Such antitrust evidence is exempt from other provisions of law that might otherwise be construed to require disclosure, including the Freedom of Information Act, 5 U.S.C. § 552, described below. This statute does not provide specific enforcement mechanisms for the confidentiality provision, or penalties for its breach. Other laws and regulations, however, prohibit the improper use of non-public information.

15 U.S.C. §§ 41-68, the Federal Trade Commission Act (applies only to FTC)
The confidentiality provisions of the Federal Trade Commission Act are as follows:

Section 6(f) [15 U.S.C. § 46(f)]

<http://www.law.cornell.edu/uscode/text/15/46> states that the Commission shall not have any authority to make public any trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential, except that the Commission may disclose such information to officers and employees of appropriate Federal law enforcement agencies or to any officer or employee of any State law enforcement agency upon the prior

certification of an officer of any such Federal or State law enforcement agency that such information will be maintained in confidence and will be used only for official law enforcement purposes.

Section 21(b) [15 U.S.C. § 57b-2(b)]

<http://www.law.cornell.edu/uscode/text/15/57b-2> provides that any document, tangible thing, or transcript of oral testimony received by the Commission pursuant to compulsory process in an investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, may not be made available for examination by any individual other than a duly authorized officer or employee of the Commission (including contractors and consultants) without the consent of the person who produced the document, thing, or transcript. Such materials may be used in Commission proceedings and in judicial proceedings in which the Commission is a party. Such materials may also be made available to other Federal and State law enforcement agencies upon the certification of an officer of such an agency that such information will be maintained in confidence and will be used only for official law enforcement purposes. This section does not prevent disclosure to Congress, but the Commission is required to notify immediately the owner or provider of any such information of a request from Congress for information designated as confidential by the owner or provider.

Section 21(c) [15 U.S.C. § 57b-2(c)]

<http://www.law.cornell.edu/uscode/text/15/57b-2> provides that all information reported to or otherwise obtained by the Commission which is not subject to the requirements of Section 21(b) shall be considered confidential when so marked by the person supplying the information. If the FTC determines that information may be disclosed because it is not protected by Section 6(f), it must notify the submitter of the information that the Commission intends to disclose the information (*i.e.*, place it on the public record, pursuant to Commission Rule 4.9) not less than 10 days after receipt of the notification. Upon receipt of such notification, the submitter may bring an action in United States District Court seeking to restrain disclosure, including an application for a stay of disclosure. The Commission shall not disclose the information until the Court has ruled on the application for a stay.

Section 21(d) [15 U.S.C. § 57b-2(d)] provides that the provisions of 21(c) shall not be construed to prohibit disclosures: (A) to Congress (with notice to the owner or provider of the information); (B) of the results of investigations or studies (without identifying information or disclosing trade secrets or any commercial or financial information obtained from any person which is privileged or confidential); (C) of relevant and material information in FTC adjudicative proceedings or judicial proceedings in which the FTC is a party, according to the FTC's rules for adjudicative proceedings or by court rules or orders; (D) to Federal agencies of disaggregated information for economic, statistical, or policymaking purposes only.

Section 21(f) (1) [15 U.S.C. § 57 b-2(f) (1)]

<http://projects.propublica.org/foia-exemptions/statutes/123> provides that any document, tangible thing, written report or answers to questions, or transcript of oral testimony received by the Commission in any investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, and which is provided pursuant to any compulsory process or which is provided voluntarily in place of such compulsory process, shall be exempt from disclosure under FOIA.

Section 21 (f)(2) [15 U.S.C. § 57b-2(f)(2)]

<http://www.law.cornell.edu/uscode/text/15/57b-2> exempts from disclosure under FOIA any material obtained from a foreign law enforcement agency or other foreign government agency, if that foreign agency has requested confidential treatment, or has precluded such disclosure under other use limitations, as a condition of providing the material. The section similarly exempts from FOIA disclosure materials reflecting consumer complaints obtained from foreign agencies, or submitted to the Commission reporting mechanism that is sponsored in part by foreign law enforcement or foreign government agencies.

Section 10 of the FTC Act [15 U.S.C. § 50]

<http://www.law.cornell.edu/uscode/text/15/50> provides for criminal penalties for the unauthorized disclosure of information obtained by the Commission; see the discussion in part B, *infra*.

16 C.F.R. § 3.1, et seq., FTC Rules of Practice for Adjudicative Proceedings (applies only to FTC)

<http://www.ftc.gov/os/2008/12/P072104part3frn.pdf>

Adjudicative proceedings are formal proceedings conducted under the statutes administered by the Commission which are required by statute to be determined on the record after an opportunity for an agency hearing. An adjudicative proceeding is commenced when an affirmative vote is taken by the Commission to issue a complaint. The rules provide for the respondent to answer the complaint within a specified time, for discovery, and for a hearing held before an Administrative Law Judge (ALJ) for the purpose of receiving evidence relevant and material to the Commission's complaint and the respondent's answer. The hearings are open to the public, except to the extent that an *in camera* order is entered by the ALJ or the Commission.

See Rule 3.41(a).

Rule 3.45 [16 C.F.R. § 3.45] <http://www.gpo.gov/fdsys/pkg/CFR-2012-title16-vol1/pdf/CFR-2012-title16-vol1-sec3-45.pdf> provides for *in camera* treatment of documents and testimony which keeps such documents and testimony confidential and not part of the public record of the hearing. Rule 3.45(b) provides that the ALJ may order documents, testimony, or portions thereof offered into evidence, whether admitted or rejected, to be placed *in camera* upon a finding that their public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting their *in camera* treatment; only

respondents, their counsel, authorized Commission personnel, and court personnel concerned with judicial review shall have access thereto. The order shall provide the date on which *in camera* treatment will expire.

16 C.F.R. § 4.10(g), et seq., FTC Rules of Practice (applies only to FTC)

<http://www.law.cornell.edu/cfr/text/16/4.10>

Rule 4.10(g) provides that the following categories of materials obtained by the FTC may be disclosed in FTC administrative or court proceedings subject to FTC or court protective or *in camera* orders as appropriate: (1) material obtained through compulsory process or voluntarily in lieu thereof, and protected by sections 21(b) and (f) of the FTC Act; (2) material designated by the submitter as confidential, and protected by section 21(c) of the FTC Act; or, (3) material that is confidential commercial or financial information protected by section 6(f) of the FTC Act. Prior to disclosure of such material in a proceeding, the submitter will be afforded an opportunity to seek a protective or *in camera* order. All other material obtained by the FTC may be disclosed in FTC administrative or court proceedings at the FTC's discretion except where prohibited by law.

Rule 26(c) of the Federal Rules of Civil Procedure

http://www.law.cornell.edu/rules/frcp/rule_26

This rule provides that a court may grant, in civil litigation in federal court, a protective order concerning discovery, including, *inter alia*, that certain matters not be inquired into, or that the scope of discovery be limited to certain matters; and that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a certain way. A court may impose sanctions for violations of protective orders entered pursuant to this rule.

Rule 6 of the Federal Rules of Criminal Procedure

http://www.law.cornell.edu/rules/frcrmp/rule_6

This rule governs the conduct of grand jury proceedings. **Subsection (e)** of this rule prohibits, without the permission of a court, public disclosure of matters occurring before the grand jury by any person having knowledge of such proceedings, except witnesses, who are free to disclose their testimony. Knowing violations of this rule are punishable as a contempt of court.

5 U.S.C. § 552, Freedom of Information Act (FOIA)

<http://www.gpo.gov/fdsys/search/pagedetails.action?st=5+U.S.C.+%C2%A7+552&granuleId=USCODE-2010-title5-partI-chap5-subchapII-sec552&packageId=USCODE-2010-title5>

FOIA is a statute that provides that any person has a right of access to federal agency records, except to the extent that FOIA authorizes the agencies to withhold certain records from disclosure. Of the categories of records which may be withheld under FOIA, those of primary relevance to the antitrust enforcement agencies are: trade secrets and commercial or financial information, obtained from a person, that is privileged or confidential (subsection 552 (b)(4)); records or information compiled for law enforcement purposes to the extent that disclosure

thereof could reasonably be expected, *inter alia*, to interfere with enforcement proceedings or to disclose the identity of a confidential source (subsection 552(b)(7)(A) and (D)); intra-agency and inter-agency memoranda or letters that would be routinely privileged in civil discovery, e.g., attorney work-product or attorney-client information (subsection 552(b)(5)); national defense or foreign policy information that is properly classified (subsection 552(b)(1)); information that may be withheld on the basis of other specific statutory authority (subsection 552(b)(3)). FOIA does not authorize withholding information from Congress.

5 U.S.C. § 552a, Privacy Act

<http://www.law.cornell.edu/uscode/text/5/552a>

The Privacy Act permits federal agencies to maintain "systems of records," *i.e.*, records that are retrievable by the name, social security number or other personal identifier of an individual U.S. citizen (or permanent resident alien), subject to requirements that the agencies disclose the existence of such records systems and that individuals have access to records concerning themselves. The Privacy Act, however, sets forth several exceptions to this general restriction, including one that permits, under specified circumstances, agencies to exempt investigatory material compiled for law enforcement purposes from such "systems of records" and, thereby, to deny access to such material.

B. Laws and Procedures Providing Sanctions for Breaches of the Confidentiality Laws and Procedures

18 U.S.C. § 1905, Trade Secrets Act

<http://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-part1-chap93-sec1905.pdf>

This statute provides criminal penalties for unauthorized disclosure of trade secrets or confidential business information by any government employee or agent of DOJ within the meaning of the Antitrust Civil Process Act, who comes into possession or gains knowledge of such information during the course of his or her employment or official duties. Said penalties include a fine of not more than \$1,000, one year's imprisonment or both, and removal from employment.

18 U.S.C. § 641, Theft of Government property, records

<http://www.gpo.gov/fdsys/granule/USCODE-2011-title18/USCODE-2011-title18-part1-chap31-sec641/content-detail.html>

This statute provides criminal penalties for the theft, embezzlement, knowing conversion, or unauthorized conveyance of any record, voucher, money, or "thing of value" (which, according to judicial interpretation, includes information) possessed by the United States Government. Said penalties include a fine or imprisonment of not more than 10 years, or both.

18 U.S.C. § 1831 et seq., Economic Espionage Act

<http://www.law.cornell.edu/uscode/text/18/1831>

This statute provides criminal penalties for theft of trade secrets, as that act is defined in the statute. It also provides criminal penalties for economic espionage, which the statute, in essence, defines as the theft of trade secrets to benefit a foreign power. The penalty for individuals convicted of theft of trade secrets under the statute includes a fine of not more than \$500,000, or imprisonment of not more than ten years, or both, and for an organization includes a fine of not more than \$5 million. The penalty for individuals convicted of economic espionage under the statute includes a fine of not more than \$500,000, or imprisonment of not more than 15 years, or both, and for organizations includes a fine of not more than \$10 million. Penalties also include forfeiture of property used in or derived from trade secret theft or economic espionage. The statute specifically does not prohibit any otherwise lawful activity conducted by a governmental entity of the United States, a state, or a political subdivision of a state, nor shall it be construed to affect the otherwise lawful disclosure of information by any government employee under FOIA. The statute also preserves the confidentiality of trade secrets in court proceedings brought hereunder.

5 C.F.R. § 2635.703, Office of Government Ethics - Standards of Ethical Conduct for Employees of the Executive Branch
<http://www.gpo.gov/fdsys/pkg/CFR-2011-title5-vol3/pdf/CFR-2011-title5-vol3-sec2635-703.pdf>

This section prohibits the improper use of non-public information by an Executive Branch employee to further his or her own private interest or that of another person. Non-public information is defined as information that the employee gains by reason of federal employment and that he or she knows or reasonably should know has not been made available to the general public. Section 2635.106 provides that any violation may be cause for appropriate corrective or disciplinary action pursuant to Government wide regulations or agency procedures, which action may be in addition to any action or penalty prescribed by law. These sections have been incorporated by reference in the FTC's Rules. See 16 C.F.R. § 5.1 *et seq.*

15 U.S.C. § 50 (Federal Trade Commission Act)
<http://www.law.cornell.edu/uscode/text/15/50> **and 16 C.F.R. § 4.10(c) (applies only to FTC)** <http://www.gpo.gov/fdsys/pkg/CFR-2010-title16-vol1/pdf/CFR-2010-title16-vol1-sec4-10.pdf>

This section of the FTC Act (and the above-referenced Rule) provides that any officer or employee of the Commission who shall make public any information obtained by the Commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

21. VIET NAM

The **Competition Law** (2004) gives a definition of “business secret information” in view of unfair competition conduct by market participants; however, the text body of the law does not contain specific provisions regarding information sharing or handling confidential information <http://www.vcad.gov.vn/Web/Zone.aspx?zoneid=203&lang=en-US>.

Annex 5. List of Contacts for APEC Competition Authorities *

APEC economy	Competition authority	Name of the contact person	Position	Mailing address	E-mail	Phone / Fax
Australia	Australian Competition and Consumer Commission	n/a	Director, International unit	GPO Box 3131, ACT, 2601, Australia	international@acc.gov.au	+61-2-6243-1251
Brunei Darussalam	n/a	-	-	-	-	-
Canada	Competition Bureau	Christian Warren	Senior Competition Law Officer – Legislative and International Affairs	50 Victoria St., Gatineau, Quebec, Canada, K1A 0C9	Christian.warren@cb-bc.gc.ca	+1 -819-997-0726; +1-819-953-6400
Chile	National Economic Prosecutor's Office	Fernando Araya Mario Ybar	International Coordinator Head, Mergers and research Department	Agustinas N° 853 piso 12, Santiago de Chile	faraya@fne.gob.cl mybar@fne.cob.cl	+56 -2 -753-5639 +56 -2 -753-5639
People's Republic of China	Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau, of State Administration for Industry and Commerce (SAIC)	n/a	n/a	8 Sanlihe Donglu, Xichengqu, Beijing, 100820, P. R. China	dfa@saic.gov.cn (general for SAIC)	Ph.: +86-10-68010463/68013447 Fax: +86-10-68010463/68013447

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Hong Kong, China	** see Notes below	-	-	-	-	-
Indonesia	Commission for the Supervision of Business Competition	Deswin Nur	Head of Foreign Cooperation Division	KPPU Building, 2 nd Floor, Jl. Ir. H. Juanda No. 36, Jakarta 10120, Indonesia	international@kppu.go.id	Ph.: 6221-348-31-563; Fax: 6221-350-7008
Japan	Japan Fair Trade Commission	n/a	n/a	6-B building, Chuo Godo Chosha, 1-1-1 Kasumigaseki, Chiyoda-ku, Tokyo, 100-8987	intnldiv@jftc.go.jp	Ph.: +81-3-3581-1998 Fax: +81-3-3581-1944
Republic of Korea	Fair Trade Commission	n/a	n/a	217 Banpo-daero, Seocho-gu, Seoul, Korea	kftc@korea.kr – general for FTC	Ph.: +82-2-2023-4248 Fax: +82-2-2023-4241
Malaysia	Malaysia Competition Commission	n/a	n/a	Level 15, Menara SSM@Sentral, No.7 Jalan Stesen Sentral 5, Kuala Lumpur Sentral, 50623 Kuala Lumpur	enquiries@mycc.gov.my – general for MCC	Ph. : +603-2273 2277 Ffx : +603-2272 1692 Alt Fax : +603-7803 2637
Mexico	Federal Competition Commission	Paolo Franco Benedetti	General Director for Institutional and International Affairs	Av. Santa Fe 505, Col. Cruz Manca, Delegación Cuajimalpa, Distrito Federal, 05349 Mexico	Pbenedetti@cfc.gob.mx	+52 - 55 2789 - 6681
New Zealand	Commerce Commission	Fazleen Izmail	Manager, Competition Branch	PO Box 2351, Wellington 6140, New Zealand	fazleen.ismail@comcom.govt.nz	+64 4 924 3600

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Papua New Guinea	<u>Independent Consumer and Competition Commission</u>	n/a	n/a	1st Floor, Garden City, Angau Drive P O Box 6394 BOROKO National Capital District	info@iccc.gov.pg-general	Ph.: (675) 325 2144 Fax: (675) 325 3980
Peru	the National Institute for the Defense of Competition and Protection of Intellectual Property	Mauricio Gonzales del Rosario	Head of the Technical Cooperation and International Relations Department of the Communications and International Relations Office	Calle de la Prosa 104, San Borja, Lima, Perú	mgonzalesd@indecopi.gob.pe	+511- 224-7800 - ext. 1393
The Philippines	Bureau of Trade Regulation and Consumer Protection, Department of Trade and Industry	n/a	Office of the Director	2/F Trade and Industry Bldg. 361 Sen. Gil J. Puyat Ave., Makati City	btrcp@dti.gov.ph	Ph.: (+632) 751.3233 / 751.3288 Fax: (+632) 890.494
Russia	Federal Antimonopoly Service	Lessya Davydova	Head of the Department of International Economic Cooperation	11, Sadovaya Kudrinskaya St., Moscow, Russia, 123995	ldavydova@fas.gov.ru ; cc to international@fas.gov.ru	+7-499-254-80-26
Singapore	Competition Commission	Teo Wee Guan	Director, Strategic Planning	45 Maxwell Road, #09-01 The URA Centre Singapore 069118	teo_wee_guan@ccs.gov.sg	+65 6325 8229

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Chinese Taipei	Fair Trade Commission	Chia-Lin, Yen	Section Chief	14 F, No. 2-2 Jinan Rd., Sec. 1, Taipei City 100, Chinese Taipei	cindra@ftc.gov.tw	+886-2-23517588 ext. 442
Thailand	Office of Thai Trade Competition Commission	n/a	Technical and International Affairs Division	44/100 Nonthaburi 1 Rd. Muang district, Nonthaburi 11000	jasda.s@uaeconsultant.com	Ph.: 0-2507-5585-87 Fax: 0-2507-5590
The United States	the Federal Trade Commission, Bureau of Competition Department of Justice, Antitrust Division	Randolph Tritell Edward T. Hand	Director, Office of International Affairs Chief, Foreign Commerce Section	600 Pennsylvania Ave. NW, Washington DC 20580 USA 450 Fifth Street, N.W. 11th floor Washington, D.C. 20530 USA	rtritell@ftc.gov Edward.hand@usdoj.gov	+1-202-326-3051 + 1-202-514-2464
Viet Nam	Vietnam Competition Authority	n/a	n/a	25 Ngo Quyen, Hanoi	ccid@moit.gov.vn	Ph.: 04.22205002 Fax: 04.22205003

** 14 APEC competition authorities provided information regarding their respective contacts (valid as of March 2012); additional information is obtained on the agencies' web-sites.*

*** In Hong Kong the Competition Bill was passed by the Legislative Council on 14 June 2012. The Hong Kong Government is in the process of establishing a Competition Commission and a Competition Tribunal.*