EC/Japan agreement: cooperation on anticompetitive activities

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PURPOSE : cooperation between the competition authorities of the EC and Japan in the application of their competition rules. CONTENT : The problems encountered by firms operating at international level often have a global dimension, and the agreements which they conclude may be examined by different competition authorities. Conflicts between the activities of the various competition authorities are therefore highly probable. So as to deal with increasingly international situations, cooperation agreements must be established between competition authorities that permit improved coordination where the same cases are handled by a number of authorities and will allow action to be taken against conduct originating in one country and having repercussions in another. This approach allows an effective solution to the problems encountered and avoids the conflicts that may arise from a unilateral reaction based on extraterritoriality. The EC has concluded cooperation agreements with the US Government with Canada. Japan is one of the EC's main trading partners. It has a well-developed body of competition law and an established antitrust authority. The agreement has the following objectives: -to establish a system of cooperation and coordination between the EC and the Japanese competition authority; -to promote the effectiveness of antitrust enforcement on each side; -to reduce the likelihood of conflicting or overlapping decisions. As far as the EC is concerned, the scope of the agreement covers Articles 81, 82, and 85 of the Treaty, Regulation 4064/89 on the control of concentrations between undertakings, Articles 65 and 66 of the ECSC Treaty and the implementing regulations adopted on the basis of these provisions, and their future amendments. The competition authority of either Party is to be notified if any of its "important interests" are affected. For both merger and non-merger cases, the events which trigger the need for notification are set out, together with the point in time at which the notification should be carried out. The general approach is that notification is to take place at a stage in the proceedings early enough to allow the Party receiving the notification to react to it and the Party handling the case to take account of the other Party's opinion. Other clauses cover: -the coordination of enforcement activities; -the provision of assistance and information; -a "positive comity clause" allowing a Party whose interests are adversely affected by activities within the other Party's jurisdiction to bring the matter to the other Party's attention. The requested Party may, at its own full discretion, take any appropriate measures to enforce its competition rules. -a "negative comity clause", providing that each Party shall give careful consideration to the other Party's important interests throughout all phases of competition enforcement activities. Once a case has been earmarked for negative comity, each Party will try to provide timely notice of significant developments in its enforcement activities. -there are provisions on the exchange, use and protection of confidential information.