

The European Union and Japan have taken a major step towards agreeing to a full trade treaty, reaching a “political agreement” to negotiate a bilateral trade deal on 6 July 2017.

At the same time, the EU Commissioner for Competition, Margrethe Vestager, and JFTC Chairman, Kazuyuki Sugimoto, are preparing for negotiations to expand the existing agreement concerning cooperation in investigations on anti-competitive activities. Foreign ministers have now approved the next step in the process, making the decision to enable the EU Commission and the Japanese Government to commence talks. The general view is that the current EU agreement with Japan, signed in 2003, lacks adequate information sharing provisions. This has become a barrier to streamlined cooperation and efficiency in investigating international cartels.

Under the current cooperation agreement, an express waiver has to be obtained by one authority from the source of the information before it can be shared with the other authority. Through these negotiations, the EU Commission is looking to allow the exchange of certain confidential information without first having to obtain written consent from the parties under investigation. These types of upgraded agreements are being referred to as “second-generation” cooperation agreements. This level of cooperation is already possible within the EU, between the EU Commission and the national competition authorities of the EU member states. But there is only one other notable example with a competition authority of a jurisdiction outside the EU – and that is Switzerland. As with the EU-Swiss cooperation agreement, it is expected that the EU-Japan agreement will contain limitation and confidentiality safeguards.

There is a large trade volume between the EU and Japan and the political deal announced on 6 July 2017 signalled that Japan and the EU are forging ahead with their own treaty to liberalise and promote the continuation of such trade. As a result, the EU Commission has particularly stressed the importance of entering into an agreement on cooperation on antitrust investigations aimed at removing any barriers to such free trade, which could be erected by private cartels, or other anti-competitive behaviour. It is estimated that approximately one fifth of existing EU cartel and other antitrust cases have involved cooperation between the EU Commission and the JFTC.

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