

US Inks Antitrust Coop Deal With Australia, Canada, NZ, UK

By **Bryan Koenig**

Law360 (September 2, 2020, 4:31 PM EDT) -- The Justice Department and the Federal Trade Commission on Wednesday announced the signing of an antitrust cooperation framework with their enforcer peers in Australia, Canada, New Zealand and the United Kingdom that the agencies billed as the foundation for bilateral information-sharing agreements.

The Multilateral Mutual Assistance and Cooperation Framework for Competition Authorities by itself does not establish any information-sharing pathways between the enforcers, but it appears to be a template antitrust agencies can use to forge bilateral agreements that extend more current general cooperation arrangements to competition-specific ones permitting direct coordination on investigations and information-sharing.

"Our agencies recognize that evidence crosses borders just as commerce does, and that we need more effective tools to obtain information and evidence of conduct that affects our markets, no matter where it is located," FTC staff attorney Russell W. Damtoft said in a statement.

Damtoft pointed to a model agreement within the framework to help the participating enforcers sign bilateral agreements "that will allow the sharing of confidential information and cross-border evidence gathering in individual competition law matters, while recognizing the importance of confidentiality."

Those agreements, Damtoft said, "will allow the agencies to pursue the maximum level of assistance possible, while respecting the laws of their respective jurisdictions."

U.S. enforcers currently have a "second-generation agreement" that permits antitrust-related investigative assistance and the sharing of confidential details gleaned from probes only with Australia under a deal that has been in place since 1999.

"The other arrangements we have in place with these partners commit to cooperation and coordination in general, but do not provide for the exchange of confidential information or investigative assistance," Damtoft said.

DOJ Antitrust Division chief Makan Delrahim billed the framework as "a new standard for enforcement cooperation, strengthening our tools for international assistance and evidence gathering in the increasingly digital and global economy," The hope, Delrahim said, is that the framework will give other international antitrust enforcers a model for strengthening cooperation.

FTC Chairman Joseph J. Simons said in a statement that the framework will help ensure "strong confidentiality safeguards."

The framework's cross-border focus is not limited to specific investigations, according to Canada's Competition Bureau, which said in a statement that it will also help the enforcers "share their experiences and work on joint projects, including inter-organizational training initiatives."

The head of the U.K.'s Competition and Markets Authority, Andrea Coscelli, noted that the framework comes as the CMA must step up its enforcement role thanks to the U.K.'s current transition out of the European Union. During that process, "it is even more important for us to forge strong relationships across the world, and work with partners both closer to home and further afield," Coscelli said in a statement.

The Australian Competition and Consumer Commission and the New Zealand Commerce Commission, in countries 12 hours or more ahead of the U.S. East Coast, had not put out statements as of press time Wednesday.

The enforcers already had a history of cooperation, according to Morrison & Foerster LLP partner Lisa M. Phelan, who noted that the six agencies come from five countries with similar antitrust approaches that include criminal penalties for price-fixing and similar cartels. That similarity makes it easier to share information legally, Phelan said.

Until the framework is used to pen specific bilateral arrangements with legally-binding pathways, however, it remains "kind of aspirational," Phelan said.

Cross-border cooperation is nevertheless "really valuable," Phelan said, because it allows enforcers to go after conduct that impacts their citizens that may have originated in other jurisdictions.

--Editing by Peter Rozovsky.