

Chapter 4

Conclusion

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IV. Conclusion

1. Status of e-commerce (EC) in East Asian countries

The EC market in the Asian region is rapidly growing, and with government assistance, domestic infrastructure is improving at a fast pace.

As the EC population and cross-border EC transactions are expected to grow, it is imperative to improve the EC environment throughout the region where both consumers and businesses can participate in secure transactions. For that purpose, it is important to understand the current status of the EC market as well as relevant laws, regulations and dispute resolution systems in each country; and the differences in the various EC markets and legal systems among the countries in East Asia.

In light of the above, we have received reports from countries outlining certain common items that have helped us to grasp the basic status of the EC market and the legal systems in these countries (III-1).

Although the reports show that certain legal systems relevant to EC have been established, and institutions and agencies have been available in resolving consumer disputes and complaints in the Asian region, it became evident that each country's legal system in terms of both level and content varies significantly depending upon regulatory policies implemented by each country on EC.

For the future economic integration in the Asian region, it is desirable to take steps to achieve harmonization of legal systems in the region for the long term. However, as initial steps to be addressed immediately, further standardization and visualization of comparative information, as well as expanding the number of countries participating in the project are absolutely necessary in order to deepen mutual understanding among countries and to build a framework for a more effective structure for cooperation.

2. Scheme for building consumer confidence in cross-border transactions

Asian countries are working toward building Trustmark or complaint handling systems as a part of the domestic infrastructure for further development of the EC market. Nevertheless, such systems are far from being established in terms of dispute resolution related to cross-border transactions. While some countries work together to handle complaints under a separate bilateral agreement, a comprehensive network for dispute resolution has not yet been established in the

region, and in some cases the actual operation fails to achieve satisfactory results. As a result, even though EC is growing rapidly throughout the region, a framework for cooperation among Asian countries in handling consumer complaints internationally has not been established for securing consumer confidence in EC transactions.

Although it is possible to file a suit or resort to arbitration as a final means to resolve disputes related to EC, it is not practical to go through such procedures since most EC transactions are small in value. Additionally, as far as international disputes are concerned, issues such as determining the governing law are not easy to resolve. For consumers to feel safe and secure about EC transactions, it is important to establish a dependable, common platform that can support all consumers in the region, and that can bring an effective resolution to any dispute. For that purpose, we need to form an international alliance and to consolidate the system, allowing all countries to cooperate with each other for handling complaints throughout the region, so as to effectively resolve disputes arising from cross-border transactions.

As for the concrete substance of such a system, the efforts taken by the US and European nations could be a useful reference. Specifically, ECC-Net (III-2.2) is a system rendering a type of international dispute resolution that provides information to consumers and communicates consumer complaints to businesses by virtue of the alliance among European Consumer Centres established in each country. ECC-Net is recognized as playing an important role by serving as a translator in disputes between consumers and businesses whose languages are different from each other, and by promoting communication toward dispute resolution.

As a matter of course, it is difficult to tackle dispute resolution involving pernicious EC businesses that are willfully engaged in fraudulent transactions without the cooperation of regulatory agencies (law enforcement bodies). For this reason, some questions may arise about the effectiveness of a dispute resolution system like ECC-Net, which has no legal enforceability.

Nevertheless, in cross-border EC transactions, it appears that a significant number of disputes and complaints exist by virtue of miscommunication due to differences in terms of languages, laws, regulations and business practices. Even a dispute resolution system with no legal enforceability can play an important role in the resolution of these cases by facilitating communication between both parties of different nationalities. Thus, the effect of such a system should not be marginalized.

On the other hand, in the Asian region, it is difficult to establish a centralized governance structure uniting the network among agencies in each country or to obtain financial aid from the central government, as is the case in Europe. In this sense, it is necessary to deliberate on a more sustainable and effective system that could operate at a low cost.

3. ICA-Net test operation

Based on the above factors, we should examine the implementation of ICA-Net as the international dispute resolution system for EC. The details of ICA-Net are outlined in III-3.2. It is a system that supports international dispute resolution through the sharing of information by the respective complaint handling agencies (CALOs) in the countries of the parties to a complaint. The key concept of ICA-Net is “sharing information”. The required tool (i.e., a website serving as the platform of ICA-Net) has been developed by countries under the leadership of Japan, and is currently undergoing testing operations.

The basic functions of a CALO are limited to receiving and providing consultations for complaints originating from consumers in its country against businesses in other countries, and communicating complaints originating from consumers in other countries to businesses in its country. While such limitations reduce the obstacles for implementing ICA-Net, fostering dispute resolution can be achieved to a certain degree by facilitating communication between consumers and businesses. In addition, as the collaboration of CALOs in complaint handling will be made through the use of the above-mentioned tool in a simplified manner, and as there will be no superagency overseeing the activities of CALOs, the overall cost for implementing ICA-Net is significantly reduced. Furthermore, the above-mentioned tool allows countries not only to handle dispute cases and manage the progress of dispute resolution, but also allows for the sharing of useful information such as precedents for handling disputes and information concerning other legal systems in the Asian region. These factors clearly deserve recognition and consideration.

On the other hand, the major issues raised by the participants of the workshops concerning the operation of ICA-Net for sharing information are as follows:

- (1) Limitations under the relevant laws and regulations and required procedures for obtaining permits to share personal information of individuals submitting complaints (consumers) and the content of such complaints with other agencies in the region; and

(2) The manner of handling information related to businesses that receive complaints, especially in terms of sharing such information with regulatory agencies.

Furthermore, the following issues are raised as matters to be considered concerning respective complaint handling agencies:

(1) How can a CALO determine the accuracy or validity of complaints submitted to it by consumers (how can it determine the possibility of false complaints or complaints based on misunderstandings)?

(2) Should lawyers be required to be involved in CALO operations?

In addition to the above, most participants in the workshops shared the view that user registration, and browsing information for the information sharing system of the above-mentioned tool (currently under testing operations) should be simplified. Others shared the view that strict security should be applied for handling consumer complaints, which are sensitive in nature.

It is desired for all these issues to be improved through continued operation and further consideration.

4. Significance of the project and issues to be considered in the future

Based on the benefits of the project outlined above, we should continue reviewing the following issues:

(1) It is necessary to collect and share a greater volume of even more detailed information related to each country's system, especially relevant laws and regulations for EC and consumer protection? Sharing information related to the systems already implemented by some countries and the effectiveness of their measures (including cases of failure) would greatly contribute to the improvement of other countries' systems, increase the level of commitment and establish a common basis to be shared by all countries in the Asian region.

(2) Furthermore, managing the information collected and accumulated to compile a database should be examined. This would contribute to comparative study and analysis on a consistent basis and would make it possible to disclose information determined as non-confidential to the public.

(3) Improvement of infrastructure for handling complaint and dispute resolution is the pressing issue. It is important to continually consider how to overcome relevant problems one by one and to identify the means to create a more stable system. ICA-Net, an effort to build consumer confidence in cross-border transactions, is expected to initiate the establishment of a desirable system with

functions to share information relating to laws and regulations and to collaborate between respective agencies in the region.

(4) By embracing these measures, consumers' confidence in the EC market in Asia can be increased, allowing the enhancement of EC transactions within the region. As the EC market in the region matures, we can also expect to achieve greater competitiveness in conducting transactions with countries outside the region.