

COOPERATION ARRANGEMENT BETWEEN THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION AND THE FAIR TRADE COMMISSION OF JAPAN

Paragraph [*01]

Purpose

This Arrangement, pursuant to paragraph 4 of Article 15.5 of the Agreement between Australia and Japan for an Economic Partnership (hereinafter referred to as “the Agreement”), establishes a framework for constructive cooperation between the Australian Competition and Consumer Commission and the Fair Trade Commission of Japan (hereinafter collectively referred to as “competition authorities” and individually referred to as “competition authority”) and provides for the details and procedures concerning the implementation of the cooperation set forth in Article 15.5 of the Agreement.

Paragraph [*02]

Definitions

For the purposes of this Arrangement:

- (a) the terms used in this Arrangement that are also used in Chapter 15 of the Agreement will have the same meanings as in Chapter 15 of the Agreement,
- (b) the term “enforcement activities” means any investigation or proceeding conducted by a competition authority in relation to the application of the competition law of its country, but will not include:
 - (i) the review of business conduct or routine filings; and
 - (ii) research, studies or surveys with the objective of examining the general economic situation or general conditions in specific sectors,
- (c) the term “enterprise” means any private or public entity subject to the competition law of its country regardless of its legal or organisational form.

Paragraph [*03]
Notification

3.1. Each competition authority will endeavour to notify the other competition authority of the enforcement activities of the notifying competition authority that the notifying competition authority considers are likely to affect the important interests of the other competition authority.

3.2. Enforcement activities of a competition authority that are likely to affect the important interests of the other competition authority are investigations or proceedings that:

- (a) are directly relevant to enforcement activities of the other competition authority;
- (b) are known by the notifying competition authority to be against a national or nationals of the country of the other competition authority, or against an enterprise or enterprises incorporated or organised under the applicable laws and regulations of the country of the other competition authority;
- (c) involve anticompetitive activities, other than mergers or acquisitions, substantially carried out in the country of the other competition authority;
- (d) involve conduct required, encouraged or approved by the other competition authority; or
- (e) involve relief that requires or prohibits conduct in the country of the other competition authority.

3.3. Provided that it is not contrary to the laws and regulations of the country of the notifying competition authority and does not affect any investigation or proceedings being carried out by the notifying competition authority, notification pursuant to subparagraph 3.1 will be given as promptly as possible after the notifying competition authority becomes aware that its enforcement activities are likely to affect the important interests of the other competition authority.

3.4. Notifications provided under this Paragraph need not be formal (email will usually suffice for initial contact, followed by telephone dialogue)

but will be sufficiently detailed to enable the notified competition authority to make an initial evaluation of the effect on its important interests.

Paragraph [*04]

Cooperation and Information Exchange in Enforcement Activities

4.1. Each competition authority will endeavour to render assistance to the other competition authority in the other's enforcement activities to the extent consistent with the laws and regulations of the country of the assisting competition authority and the important interests of the assisting competition authority, and within its reasonably available resources. Such assistance may include supporting the other competition authority in the application for approval of a separate governmental body of the country of the assisting competition authority if such approval is required to obtain information or evidence from enterprises or individuals of the country of the assisting competition authority.

4.2. Each competition authority will endeavour, to the extent consistent with the laws and regulations of its country and its important interests, to:

- (a) provide the other competition authority with any significant information, within its possession and that comes to its attention, about anticompetitive activities that the providing competition authority considers may be relevant to, or may warrant, enforcement activities of the other competition authority; and
- (b) provide the other competition authority, upon request and in line with the contents of this Arrangement, with information within its possession that is relevant to the enforcement activities of the other competition authority.

4.3. Each competition authority will, where practicable and to the extent consistent with the laws and regulations of its country, give due consideration to sharing information obtained during the course of an investigation. Each competition authority retains full discretion when deciding whether to share such information or not. The terms of use and disclosure of such information will be decided in writing on a case-by-case

basis.

4.4. Where both competition authorities are simultaneously conducting a review of the same merger transaction and one of them becomes aware of the likelihood that the transaction may impact on a market within the jurisdiction of the other competition authority, each competition authority recognises the benefits of contacting one or more of the merging parties to seek approval to disclose confidential information of such merging party or parties to the other competition authority under appropriate conditions in order to facilitate the discussions between the competition authorities on such impact.

4.5. Both competition authorities recognise that this Arrangement is not intended to affect any regulation, policy or practice adopted or maintained by each competition authority with respect to exchange of information including that received from a leniency applicant.

**Paragraph [*05]
Coordination of Enforcement Activities**

5.1. Where the competition authorities are pursuing enforcement activities with regard to matters that are related to each other:

- (a) the competition authorities will consider coordination of their enforcement activities; and
- (b) each competition authority will consider, upon request by the other competition authority and where consistent with the respective important interests of the competition authorities, inquiring whether persons who have provided confidential information in connection with the enforcement activities will consent to the sharing of such information with the other competition authority.

5.2. In considering whether particular enforcement activities should be coordinated, the competition authorities will take into account the following factors, among others:

- (a) the effect of such coordination on their ability to achieve the objectives

- of their enforcement activities;
- (b) the relative abilities of the competition authorities to obtain information necessary to conduct the enforcement activities;
 - (c) the extent to which either competition authority can secure effective relief against the anticompetitive activities involved ;
 - (d) the possible reduction of cost to the competition authorities and to the persons subject to the enforcement activities; and
 - (e) the potential advantages of coordinated relief to the competition authorities and to the persons subject to the enforcement activities.

5.3. Each competition authority may at any time, after notifying the other competition authority of its decision, limit or terminate the coordination of enforcement activities and pursue its enforcement activities independently.

Paragraph [*06]

Cooperation Regarding Anticompetitive Activities in the Country of a Competition Authority that Adversely Affect the Interests of the Other Competition Authority

6.1. If a competition authority believes that anticompetitive activities carried out in the country of the other competition authority substantially and adversely affect the important interests of the former competition authority, the former competition authority may request consultation with such other competition authority.

6.2. The request made pursuant to subparagraph 6.1 will be as specific as possible about the nature of the anticompetitive activities and their effect on the important interests of the requesting competition authority.

6.3. The requested competition authority will give full and sympathetic consideration to such views and factual materials as may be provided by the requesting competition authority and, in particular, to the nature of the alleged anticompetitive activities in question, the enterprises or individuals involved and the alleged harmful effects on the interests of the requesting competition authority. Without prejudice to any of their rights, the

competition authorities will endeavour to find a mutually acceptable solution in light of the respective interests involved.

6.4. Nothing in this Paragraph (or the withdrawal of the requesting competition authority's request) will limit the discretion of the requested competition authority under the competition law and enforcement policies of its country as to whether or not to conduct enforcement activities with respect to the anticompetitive activities identified in the request. Any request by a competition authority under this Paragraph is without prejudice to its freedom to take any action it may choose to under its own competition laws.

Paragraph [*07]

Avoidance of Conflicts over Enforcement Activities

Either competition authority may inform the other competition authority that specific enforcement activities of the latter competition authority are likely to adversely affect the important interests of the former competition authority. In this case, the former competition authority will transmit its views on the matter to, or request consultation with, the latter competition authority. Without prejudice to the continuation of its action under its competition law and to its full freedom of ultimate decision, the requested competition authority will give full and sympathetic consideration to the views expressed by the requesting competition authority, and in particular to any suggestions as to alternative means of fulfilling the needs or objectives of the investigation or proceeding by the requesting competition authority.

Paragraph [*08]

Transparency

Each competition authority will:

- (a) promptly inform the other competition authority of any material amendment of the competition law of its country and any adoption of new laws and regulations by its country that control anticompetitive

activities; and

- (b) provide, as appropriate, the other competition authority with copies of its publicly-released guidelines or policy statements issued in relation to the competition law of its country.

Paragraph [*09]

Consultations

9.1. The competition authorities will consult with each other, upon request of either competition authority, on any matter which may arise in connection with this Arrangement.

9.2. The competition authorities will hold a consultation meeting once a year in principle in order to enhance mutual understanding and reinforce cooperation.

Paragraph [*10]

Confidentiality of Information

10.1. Each competition authority will, in line with the laws and regulations of its country, maintain the confidentiality of any information communicated by the other competition authority that is not publicly available, and will protect such information against disclosure in response to a request by a third party, unless the competition authority providing the confidential information otherwise consents in writing.

10.2. Information, other than publicly available information, provided by a competition authority to the other competition authority under this Arrangement, will only be used by the receiving competition authority for the purpose of effective enforcement of its competition law, and will not be communicated by the receiving competition authority to other authorities or a third party except when the information is communicated in line with paragraph 4 of Article 15.8 of the Agreement.

10.3. Notwithstanding subparagraph 10.2, information shared pursuant to subparagraph 4.3 will, unless otherwise decided in writing, only be used by the receiving competition authority for its current or future enforcement activities with regard to:

(a) the conduct or transaction; and/or

(b) the goods or services of one or more of the enterprises, which are, or were, the subject of the enforcement activities of the competition authority sharing the information, or other conduct or transaction and/or goods or services related thereto.

Paragraph [*11]

Miscellaneous

11.1. This Arrangement is subject to the terms of Chapter 15 of the Agreement.

11.2. Nothing in this Arrangement is intended to create legally binding rights or obligations on the competition authorities or their respective governments.

11.3. All cooperation under this Arrangement between the competition authorities will be conducted subject to laws and regulations in force in their respective countries and within the reasonably available resources of each competition authority.

11.4. Nothing in this Arrangement will prevent a competition authority from seeking assistance from or providing assistance to the other competition authority pursuant to other agreements, treaties, arrangements, or legislation.

11.5. Supplementary arrangements to implement this Arrangement may be made between the competition authorities.

Paragraph [*12]

Commencement, Review, Modification and Termination

12.1. The cooperation under this Arrangement will commence on the date of signature.

12.2. Either competition authority may terminate the cooperation under this Arrangement with 30 days' written notice to the other competition authority.

12.3. This Arrangement may be modified by the mutual written consent of the competition authorities.

12.4. The competition authorities will review the operation of the cooperation under this Arrangement from time to time, as consented to by the competition authorities.

Signed in Sydney, the Commonwealth of Australia on this 29th day of April 2015, in two copies in the English language.

For the Australian Competition and
Consumer Commission

For the Fair Trade Commission of
Japan



Mr. Rod Sims
Chairman
The Australian Competition and
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