

**COOPERATION ARRANGEMENT BETWEEN THE FAIR TRADE COMMISSION OF JAPAN AND THE
COMMISSIONER OF COMPETITION, COMPETITION BUREAU OF THE GOVERNMENT OF
CANADA IN RELATION TO THE COMMUNICATION OF INFORMATION IN ENFORCEMENT
ACTIVITIES**

THE FAIR TRADE COMMISSION OF JAPAN AND THE COMMISSIONER OF COMPETITION, COMPETITION BUREAU OF THE GOVERNMENT OF CANADA, (THE “COMMISSIONER OF COMPETITION”), referred to as the “competition authorities”;

HAVING REGARD to the *Agreement Between the Government of Japan and the Government of Canada Concerning Cooperation on Anticompetitive Activities* (the “Agreement”), done at Ottawa on 6 September 2005, which provides a framework for cooperation between the competition authorities;

INTENDING to consider the *Recommendation of the Organisation for Economic Co-operation and Development Council concerning International Co-operation on Competition Investigations and Proceedings*, approved on 16 September 2014, when entering into bilateral arrangements related to cooperation in competition enforcement;

NOTING that Article X(2) of the Agreement permits the competition authorities to make detailed arrangements relating to the implementation or operation of the Agreement;

NOTING that Article III(2)(b) and Article III(2)(c) of the Agreement permit either competition authority to provide the other with information relevant to the enforcement activities of the receiving competition authority;

ACKNOWLEDGING the renunciation of the non-binding Agreed Minutes which accompany the Agreement signed at Ottawa on 6 September 2005;

NOTING that amendments made to Japan’s Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Law No. 54, 1947) (the “*Antimonopoly Law*”) in 2009 allow the Fair Trade Commission of Japan to provide a foreign competition authority with information that is deemed helpful and necessary for the performance of the foreign competition authority's duties, without the need to obtain the prior consent of the source of the information, subject to the conditions set out in the Article 43-2 of the *Antimonopoly Law*; and

BELIEVING that further elaboration of the principles relating to the communication of information relevant to the enforcement activities of the competition authorities would enhance the Agreement’s effectiveness, increase the efficiency of their respective investigations, and facilitate effective outcomes;

Recognise the following:

Paragraph [*01] Purpose

The purpose of this Cooperation Arrangement (the “Arrangement”) is to promote cooperation, coordination, and the communication of information between the competition authorities in relation to their enforcement activities.

Paragraph [*02] Definitions

For the purposes of this Arrangement:

(a) the terms used in this Arrangement that are also used in the Agreement will have the same meanings as in the Agreement, including:

- (i) “competition authority(ies)”;
- (ii) “competition law(s)”;
- (iii) “enforcement activity(ies)”;

(b) “information” means any information in the possession or control of a competition authority.

Paragraph [*03] Communications under this Arrangement

(a) The competition authorities will notify each other of their respective designated contact points to facilitate communications under this Arrangement.

(b) The competition authorities may communicate by any technological means available.

Paragraph [*04] Communication of Information in Enforcement Activities

(a) The competition authorities may, to the extent consistent with their interests and the laws and regulations of their respective countries, share views or communicate information, including information obtained through enforcement activities, to each other without obtaining the consent of the source of the information, as necessary to carry out the cooperation and coordination provided for under the Agreement.

(b) The competition authorities will not share views on, or communicate information obtained under an application for immunity or leniency, unless the immunity or leniency applicant expressly consents to the communication.

(c) The 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 the communication of information, including information received voluntarily from any person.

Paragraph [*05] Requests for Information

A competition authority may make a written request for information, which will include a description of:

- (i) the subject(s) of the investigation or proceeding;
- (ii) the subject-matter and nature of the investigation or proceeding to which the request relates, and the specific legal provisions involved; and
- (iii) the information sought.

Paragraph [*06] Communication of Information

- (a) Each competition authority retains full discretion when deciding whether to communicate information to the other competition authority, having regard to its interests and the laws and regulations of its country.
- (b) The Fair Trade Commission of Japan will communicate information in accordance with Article 43-2 of the *Antimonopoly Law*, and in accordance with any policies, guidelines, or practices of the Fair Trade Commission of Japan in relation to the communication of information.
- (c) The Commissioner of Competition will communicate information in accordance with section 29 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, or any other relevant information sharing powers related to the administration or enforcement of Canadian competition laws, and in accordance with any policies, guidelines, or practices of the Commissioner of Competition in relation to the communication of information.
- (d) The competition authority communicating the information may attach conditions (including privacy protections) to the communication of information, including conditions as to:
 - (i) the confidentiality of information (including electronic protection or password protection);
 - (ii) the storage, use of, or access to any information communicated;
 - (iii) the copying, returning, or disposal of copies of any information communicated once it has served its purpose; and
 - (iv) the payment of costs reasonably incurred by the competition authority communicating the information.
- (e) If a competition authority becomes aware that information provided under this Arrangement is incorrect, it will inform the other competition authority as soon as reasonably practicable.

Paragraph [*07] Protection and Use of Information

The competition authority receiving information will:

- (i) use the information in accordance with Article IX of the Agreement and any conditions attached under paragraph 6(d), or as required or permitted by law;
- (ii) keep the information confidential in accordance with Article IX of the Agreement, to the fullest extent possible consistent with the laws and regulations of its country, unless the competition authority communicating the information consents otherwise; and
- (iii) keep the information secure in accordance with its standard evidence handling procedures, and in accordance with any conditions under paragraph 6(d).

Paragraph [*08] Interpretation and Application

The competition authorities will discuss any questions arising out of this Arrangement, including questions on its interpretation or application, and will address them in as timely and practicable a manner as circumstances permit.

Paragraph [*09] Legal Effect

- (a) This Arrangement is not legally binding.
- (b) This Arrangement is subject to the terms of the Agreement.
- (c) This Arrangement will not affect the understandings of the competition authorities contained in the Agreement, existing treaties, agreements and arrangements (including with other foreign regulators).

Paragraph [*10] Final Matters

- (a) This Arrangement will commence on the date of final signature.
- (b) A competition authority may terminate this Arrangement by giving a 30-day written notice to the other competition authority.
- (c) The competition authorities may modify this Arrangement upon their mutual written consent.
- (d) Unless terminated, this Arrangement will apply to any successor of either competition authority.

Signed in duplicate at Porto, the Portuguese Republic, this 11th day of May, 2017, in the Japanese, English and French languages, each version having equal value.

| | |
|--|---|
| | |
| For the Fair Trade Commission of Japan | For the Commissioner of Competition, Competition Bureau of the Government of Canada |