

IMPLEMENTING AGREEMENT BETWEEN THE GOVERNMENT OF JAPAN
AND THE GOVERNMENT OF MONGOLIA
PURSUANT TO ARTICLE 1.12 OF THE AGREEMENT BETWEEN JAPAN
AND MONGOLIA FOR AN ECONOMIC PARTNERSHIP

Chapter 3
Competition

Article 3.1
Objective

The objective of this Chapter is to provide for the details and procedures concerning the implementation of the cooperation set forth in Article 11.2 of the Basic Agreement.

Article 3.2
Definitions

For the purposes of this Chapter:

- (a) the term "competition authority" means:
 - (i) for Japan, the Fair Trade Commission, or its successor; and
 - (ii) for Mongolia, the Authority for Fair Competition and Consumer Protection, or its successor;
- (b) the term "competition law" means:
 - (i) for Japan, the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Law No. 54 of 1947) (hereinafter referred to in this Chapter as "the Antimonopoly Law") and its implementing regulations as well as any amendment thereto; and
 - (ii) for Mongolia, the Law of Mongolia on Competition of June 10, 2010 and its implementing regulations as well as any amendment thereto; and
- (c) the term "enforcement activities" means any investigation or proceeding conducted by a Party in relation to the application of the competition law of its Country, but shall 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.

Article 3.3
Notification

1. The competition authority of each Party shall notify, to the extent consistent with the laws and regulations of its Country, the competition authority of the other Party of the enforcement activities of the notifying Party that the notifying competition authority considers may affect the important interests of the other Party.

2. Enforcement activities of a Party that may affect the important interests of the other Party include those that:

- (a) are relevant to enforcement activities of the other Party;
- (b) are against a national of the Country of the other Party, or against an enterprise incorporated or organized under the applicable laws and regulations of the Country of the other Party;
- (c) involve mergers or acquisitions in which:
 - (i) one or more of the parties to the transaction; or
 - (ii) an enterprise controlling one or more of the parties to the transaction,

is an enterprise incorporated or organized under the applicable laws and regulations of the Country of the other Party;
- (d) involve anticompetitive activities, other than mergers or acquisitions, substantially carried out in the Country of the other Party;

- (e) involve conduct considered by the notifying competition authority to have been required, encouraged or approved by the other Party; or
- (f) involve relief that requires or prohibits conduct in the Country of the other Party.

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 being carried out by the notifying competition authority, notification in accordance with paragraph 1 shall be given as promptly as possible when the competition authority of a Party becomes aware that the enforcement activities of its Party may affect the important interests of the other Party.

4. Notifications provided in accordance with this Article shall be sufficiently detailed to enable the notified competition authority to make an initial evaluation of the effect on the important interests of its Party.

Article 3.4 Cooperation in Enforcement Activities

The competition authority of each Party shall render assistance to the competition authority of the other Party in its 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 Party of the assisting competition authority, and within its reasonably available resources.

Article 3.5 Exchange of Information

For the purpose of cooperation provided for in Article 3.4, the competition authority of each Party shall, to the extent consistent with the laws and regulations of the Country of the competition authority and important interests of the Party of the competition authority:

- (a) inform the competition authority of the other Party with respect to its enforcement activities involving anticompetitive activities that it considers may also have an adverse effect on competition in the Country of the other Party;
- (b) provide the competition authority of the other Party with any significant information, within its possession and that comes to its attention, about anticompetitive activities that it considers may be relevant to, or may warrant, enforcement activities by the competition authority of the other Party; and
- (c) provide the competition authority of the other Party, upon request and in accordance with the provisions of this Chapter, with information within its possession that is relevant to the enforcement activities of the competition authority of the other Party.

Article 3.6
Coordination of Enforcement Activities

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

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

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

- (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 the competition authority of either Party can secure effective relief against the anticompetitive activities involved;
- (d) the possible reduction of cost to the Parties and to the persons subject to the enforcement activities; and
- (e) the potential advantages of coordinated relief to the Parties and to the persons subject to the enforcement activities.

3. The competition authority of each Party may, subject to appropriate notification to the competition authority of the other Party, at any time, limit or terminate the coordination of enforcement activities and pursue its enforcement activities independently.

Article 3.7

Cooperation regarding Anticompetitive Activities in the Country of a Party that Adversely Affect the Interests of the Other Party

1. If the competition authority of a Party believes that anticompetitive activities carried out in the Country of the other Party adversely affect the important interests of the former Party, the competition authority of the former Party, taking into account the importance of avoiding conflicts resulting from its enforcement activities with respect to such anticompetitive activities and taking into account that the competition authority of the other Party may be in a position to conduct more effective enforcement activities with respect to such anticompetitive activities, may request that the competition authority of the other Party initiate appropriate enforcement activities.

2. The request made in accordance with paragraph 1 shall be as specific as possible about the nature of the anticompetitive activities and their effect on the important interests of the Party of the requesting competition authority, and shall include an offer of such further information and other cooperation as the requesting competition authority is able to provide.

3. The requested competition authority shall carefully consider whether to initiate enforcement activities, or whether to expand ongoing enforcement activities, with respect to the anticompetitive activities identified in the request made in accordance with paragraph 1. The requested competition authority shall inform the requesting competition authority of its decision as soon as practically possible. If enforcement activities are initiated, the requested competition authority shall inform the requesting competition authority of their outcome and, to the extent possible, of significant interim developments.

4. Nothing in this Article limits the discretion of the requested competition authority under the competition law and enforcement policies of its Country as to whether or not to undertake enforcement activities with respect to the anticompetitive activities identified in the request, or precludes the requesting competition authority from withdrawing its request.

Article 3.8

Avoidance of Conflicts over Enforcement Activities

1. Each Party shall give careful consideration to the important interests of the other Party throughout all phases of its enforcement activities, including decisions regarding the initiation of enforcement activities, the scope of enforcement activities and the nature of penalties or relief sought in each case.

2. When a Party informs the other Party that specific enforcement activities of the latter Party may affect the important interests of the former Party, the latter Party shall endeavor, to the extent consistent with the laws and regulations of its Country, to provide timely notice of significant developments of such enforcement activities.

3. Where a Party considers that its enforcement activities may adversely affect the important interests of the other Party, the Parties should consider the following factors, in addition to any other factor that may be relevant, in seeking an appropriate accommodation of the competing interests:

- (a) the relative significance to the anticompetitive activities of conduct or transactions occurring in the Country of the Party conducting the enforcement activities as compared to conduct or transactions occurring in the other Country;
- (b) the relative impact of the anticompetitive activities on the important interests of the respective Parties;
- (c) the presence or absence of evidence of an intention on the part of those engaged in the anticompetitive activities to affect consumers, suppliers or competitors in the Country of the Party conducting the enforcement activities;
- (d) the extent to which the anticompetitive activities substantially lessen competition in the market of each Country;
- (e) the degree of conflict or consistency between the enforcement activities of the Party and the laws and regulations of the Country of the other Party, or the policies or important interests of that other Party;
- (f) whether private persons, either natural or legal, will be placed under conflicting requirements by the Parties;
- (g) the location of relevant assets and parties to the transaction;
- (h) the degree to which effective sanctions or other relief can be secured by the enforcement activities of the Party against the anticompetitive activities; and

- (i) the extent to which enforcement activities of the other Party with respect to the same private persons, either natural or legal, would be affected.

Article 3.9
Technical Cooperation

1. The Parties agree that it is in their common interest that their competition authorities work together in technical cooperation activities aimed at strengthening competition policy and implementing the competition law of each Country.
2. The forms of technical cooperation activities referred to in paragraph 1 shall be:
 - (a) exchange of personnel of the competition authorities for training purposes;
 - (b) participation of personnel of the competition authorities as lecturers or consultants at training courses on strengthening of competition policy and implementation of the competition law organized or sponsored by either or both competition authorities; and
 - (c) other forms to be agreed upon by the competition authorities.

Article 3.10
Transparency

The competition authority of each Party shall:

- (a) promptly inform the competition authority of the other Party of any modification of the competition law and any adoption of new laws and regulations by its Country that control anticompetitive activities;

- (b) provide, where appropriate, the competition authority of the other Party with copies of its publicly-released guidelines or policy statements issued in relation to the competition law of its Country; and
- (c) provide, where appropriate, the competition authority of the other Party with copies of its annual reports and/or any other publication that are made generally available to the public.

Article 3.11
Consultations

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

Article 3.12
Confidentiality of Information

1. (a) Information, other than publicly available information, provided by a Party to the other Party in accordance with this Chapter shall only be used by the other Party for the purpose of effective enforcement of the competition law of its Country and shall not be communicated to a third party, unless the Party providing the information has approved otherwise.
- (b) Information, other than publicly available information, provided by the competition authority of a Party to the competition authority of the other Party in accordance with this Chapter shall only be used by the competition authority receiving the information for the purpose of effective enforcement of the competition law of its Country and shall not be communicated to a third party or other authorities, unless the competition authority providing the information has approved otherwise.

2. Notwithstanding subparagraph 1(b), the competition authority of a Party which receives information, other than publicly available information, in accordance with this Chapter may, unless otherwise notified by the competition authority of the other Party, communicate such information, for the purpose of enforcement of competition law, to relevant law enforcement authorities of the former Party, which may use the information under the conditions referred to in Article 3.13.

3. Each Party shall, in accordance with the laws and regulations of its Country, maintain the confidentiality of any information provided to it in confidence by the other Party in accordance with this Chapter, unless the latter Party consents to the disclosure of such information.

4. Each Party may limit the information it provides to the other Party when the other Party is unable to give the assurance requested by the former Party with respect to confidentiality or the limitations of purposes for which the information will be used.

5. Notwithstanding any other provisions of this Chapter, neither Party shall be required to provide information to the other Party if it is prohibited from providing the information by the laws and regulations of its Country or it finds providing the information incompatible with its important interests. In particular:

- (a) the Government of Japan shall not be required to provide "trade secrets of entrepreneurs" covered by the provisions of Article 39 of the Antimonopoly Law to the Government of Mongolia, except for those provided in accordance with subparagraph 1(b) of Article 3.6 and with the consent of the entrepreneurs concerned; and
- (b) the Government of Mongolia shall not be required to provide "secrets of organizations" covered by the provisions of Article 3 of the Law on Organization's Secret of May 16, 1995 to the Government of Japan.

6. This Article shall not preclude the use or disclosure of information to the extent that there is an obligation to do so under the laws and regulations of the Country of the Party receiving the information. Such Party shall, whenever possible, give advance notice of any such use or disclosure to the Party which provided the information.

Article 3.13

Use of Information for Criminal Proceedings

1. Information provided by a Party to the other Party in accordance with this Chapter, except publicly available information, shall not be used in criminal proceedings carried out by a court or a judge of the Country of that other Party.

2. In the event that information provided by a Party to the other Party in accordance with this Chapter, except publicly available information, is needed for presentation in criminal proceedings carried out by a court or a judge of the Country of that other Party, that other Party shall submit a request for such information to the former Party through the diplomatic channel or other channels established in accordance with the laws and regulations of the Country of the former Party.

Article 3.14

Communications

Unless otherwise provided for in this Chapter, communications under this Chapter may be directly carried out between the competition authorities. Notifications in accordance with Article 3.3 and requests in accordance with paragraph 1 of Article 3.7, however, shall be confirmed in writing through the diplomatic channel. Such confirmation shall be made as promptly as practically possible after the communication concerned between the competition authorities.

Article 3.15

Miscellaneous

1. Detailed arrangements to implement this Chapter may be made between the competition authorities.

2. Nothing in this Chapter shall prevent the Parties from seeking or providing assistance to each other in accordance with other bilateral or multilateral agreements or arrangements.

3. Nothing in this Chapter shall be construed to prejudice the policy or legal position of either Party regarding any issues related to jurisdiction.

4. Nothing in this Chapter shall be construed to affect the rights and obligations of either Party under other international agreements or arrangements or under the laws of its Country.