

Chapter 5
Competition

Article 11
Purpose and Definitions

1. The purpose of this Chapter is to provide for the details and procedures concerning the implementation of the cooperation set forth in Article 127 of the Basic Agreement.
2. For the purposes of this Chapter:
 - (a) the term "competition authority" means:
 - (i) for Japan, the Fair Trade Commission; and
 - (ii) for Indonesia, the Commission for the Supervision of Business Competition;
 - (b) the term "competition law" means:
 - (i) for Japan, the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Law No. 54, 1947) (hereinafter referred to in this Chapter as "the Antimonopoly Law") and its implementing regulations as well as any amendments thereto; and
 - (ii) for Indonesia, the Law No. 5 of Year 1999 Concerning Prohibition of Monopolistic Practices and Unfair Business Competition (hereinafter referred to in this Chapter as "the Law No. 5") and its implementing regulations as well as any amendments 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 12 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 its Party that it considers may affect the important interests of the other Party.
2. Notifications pursuant to 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.

Article 13 Exchange of Information

The competition authority of each Party shall, as appropriate, provide the competition authority of the other Party with information that is relevant to the enforcement activities of the competition authority of the other Party to the extent consistent with the laws and regulations of its Country, subject to its available resources.

Article 14 Coordination of Enforcement Activities

1. The competition authorities of the Parties (hereinafter referred to in this Chapter as "the competition authorities") shall, as appropriate, consider coordination of their enforcement activities with regard to matters that are related to each other.
2. Nothing in paragraph 1 shall be construed to affect the right of each Party to enforce the relevant laws and regulations of its Country and to implement its competition policy, and the right of the competition authority of each Party to limit or terminate, at any time, the coordination of enforcement activities and to pursue its enforcement activities independently.

Article 15
Technical Cooperation

1. The Parties agree that it is in their common interest for the competition authorities to work together in technical cooperation activities for capacity building related to strengthening of competition policy and implementation of competition law.
2. The forms of technical cooperation activities for capacity building 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 competition law organized or sponsored by either or both competition authorities;
 - (c) assistance by the competition authority of a Party to advocacy and educational campaign of the competition authority of the other Party for the consumers, business sector and related agencies of its Country; and
 - (d) other forms to be mutually agreed upon by the competition authorities.
3. The technical cooperation activities under this Article shall be implemented within the available resources of the competition authority of each Party.
4. Other details of technical cooperation activities under this Article may be agreed between the competition authorities.

Article 16
Transparency

The competition authority of each Party shall:

- (a) promptly inform the competition authority of the other Party of any amendment of the competition law of its Country and any adoption of new laws and regulations by its Country that address anti-competitive activities;

- (b) provide, as 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, as 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 17 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 18 Review

1. The Parties shall, as mutually agreed between the Parties, review the cooperation pursuant to this Chapter.
2. Upon such review, the Parties may consider enhancing the cooperation pursuant to this Chapter such as notification, exchange of information, coordination of enforcement activities and technical cooperation.
3. Any such enhancement of the cooperation shall be subject to the applicable laws and regulations of each Country and the available resources of each Party.

Article 19 Confidentiality of Information

1. 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 pursuant to this Chapter.
2. 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 the maintenance of confidentiality or the limitations of purposes for which the information will be used.

3. Information, other than publicly available information, received by a Party or its competition authority pursuant to this Chapter:

- (a) shall only be used by that Party or competition authority for the purpose of effective enforcement of the competition law of its Country, unless the other Party or its competition authority has approved otherwise;
- (b) shall not be communicated by the former competition authority to other authorities or a third party, unless the competition authority of the other Party has approved otherwise;
- (c) shall not be communicated by the former Party to a third party, unless the other Party has approved otherwise; and
- (d) shall not be used in criminal proceedings carried out by a court or a judge of the Country of the former Party.

4. In the event that information provided by a Party to the other Party pursuant to 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 the other Party, the 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.

5. Notwithstanding subparagraph 3(b), the competition authority of a Party which receives information, other than publicly available information, pursuant to 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 stipulated in subparagraph 3 (d) and paragraph 4.

6. Notwithstanding any other provision of this Chapter, neither Party is required to provide information to the other Party if such provision is prohibited by the laws and regulations of the Country of the former Party or would be incompatible with the important interests of the former Party. 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 Indonesia; and
- (b) the Government of Indonesia shall not be required to provide "company secrets" covered by the provisions of Article 39(3) of the Law No. 5 to the Government of Japan.

Article 20
Communications

Unless otherwise provided for in this Chapter, communications under this Chapter may be directly carried out between the competition authorities. Notifications under Article 12, 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 21
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 one another pursuant to 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 issue 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.