

Chapter 3 Competition

Article 9 Objective and Definitions

1. The objective of this Chapter is to provide for the details and procedures concerning the implementation of the cooperation set forth in Article 104 of the Basic Agreement.
2. For the purposes of this Chapter:
 - (a) “ competition authority ” means:
 - (i) for Japan, the Fair Trade Commission; and
 - (ii) for Switzerland, the Competition Commission and its Secretariat;
 - (b) “ 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 as “ the Antimonopoly Law ”) and its implementing regulations as well as any amendments thereto; and
 - (ii) for Switzerland, the Federal Act on Cartels and Other Restraints of Competition of 6 October 1995 (hereinafter referred to as “ Acart ”) and its implementing regulations, as well as any amendments thereto;
 - (c) “ enforcement activity ” 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; and

(d) “ enterprise ” means any private or public entity subject to the competition law of a Country, regardless of its legal or organisational form.

Article 10 Notification

1. The competition authority of each Party shall notify the competition authority of the other Party of the enforcement activities of its Party that it considers may affect the important interests of the Country of the other Party.

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

(a) are relevant to enforcement activities of the other Party;

(b) are against a national or a permanent resident of that Country, or against an enterprise incorporated or organised under the applicable laws and regulations in the territory of that Country;

(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 organised under the applicable laws and regulations in the territory of that Country;

(d) involve anticompetitive activities, other than mergers or acquisitions, that are substantially carried out in the territory of that Country;

(e) involve conduct considered by the notifying competition authority to have been required, encouraged or approved by the other Party; or

(f) involve the imposition of, or the application for, sanctions or other relief by the Party that would require or prohibit conduct in the territory of that Country.

3. Where notification is required pursuant to paragraph 1 with respect to mergers or acquisitions, the notification shall be given not later than:

- (a) in the case of the competition authority of Japan, the time it seeks production of documents, reports or other information concerning the proposed transaction pursuant to the Antimonopoly Law; and
- (b) in the case of the competition authority of Switzerland, the time it takes the decision to

initiate proceedings according to paragraph 1 of Article 32 of Acart.

4. Where notification is required pursuant to paragraph 1 with respect to enforcement activities other than those related to mergers or acquisitions, the notification shall be given:

- (a) in the case of the competition authority of Japan, as far in advance of the following actions as is practically possible:
 - (i) the filing of a criminal accusation;
 - (ii) the filing of a complaint seeking an urgent injunction;
 - (iii) the issuance of the decision to initiate a hearing;
 - (iv) the issuance of a cease and desist order; and
 - (v) the issuance of a surcharge payment order when no prior or simultaneous cease and desist order with respect to the payer has been issued; and
- (b) in the case of the competition authority of Switzerland, as far in advance of the issuance of a proposal from the Secretariat of the Competition Commission pursuant to paragraph 1 of Article 30 of Acart as is practically possible.

5. Notifications provided for under 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 Country.

Article 11

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 and the important interests of its Country.

Article 12

Exchange of Information

For the purposes of cooperation provided for in Article 11, the competition authority of each Party shall, to the extent consistent with its Country's laws and regulations and important interests:

- (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 territory of the other Country;
- (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 that competition authority.

Article 13 Coordination of Enforcement Activities

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

- (a) they shall consider coordination of their enforcement activities; and
- (b) the competition authority of each Party shall consider, where consistent with the important interests of its Country and upon request by the competition authority of the other Party, inquiring whether natural persons or enterprises 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 the following factors, among others:

- (a) the effect of such coordination on their ability to achieve the objectives of their enforcement activities;
- (b) their relative abilities 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 natural persons or enterprises subject to the enforcement activities; and
- (e) the potential advantages of coordinated relief to the Parties and to the natural persons or enterprises 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, limit or terminate the coordination of enforcement activities at any time and pursue its enforcement activities independently.

Article 14

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

1. If the competition authority of a Party believes that the important interests of its Country are adversely affected by anticompetitive activities carried out in the territory of the other Country, it may request that the competition authority of the other Party initiate appropriate enforcement activities, taking into account the importance of avoiding conflicts regarding jurisdiction and the fact that the competition authority of the other Party may be in a position to conduct more effective enforcement activities with regard to such anticompetitive activities.

2. The request made pursuant to paragraph 1 shall be as specific as possible about the nature of the anticompetitive activities and their effect on the important interests of the Country 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 pursuant to paragraph 1. The requested competition authority shall inform the requesting competition authority of its decision as soon as practically possible. If the requested competition authority initiates enforcement activities, or expands ongoing enforcement activities, it 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 15

Avoidance of Conflicts over Enforcement Activities

1. Within the framework of the laws of its Country and to the extent compatible with the important interests of its Country, a Party shall give careful consideration to the important interests of the other Country throughout all phases of its enforcement activities, including decisions regarding the initiation and scope of enforcement activities and the nature of sanctions or other 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 Country of the former Party, the latter Party shall endeavour 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 Country 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 for the anticompetitive activities of conduct or transactions occurring in the territory of the Country of the Party conducting the enforcement activities as compared to conduct or transactions occurring in the territory of the other Country;
- (b) the relative impact of the anticompetitive activities on the important interests of the respective Countries;
- (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 territory of 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 a Party and the laws and regulations of the Country of the other Party, or the policies or important interests of that Country;

- (f) whether private natural persons or private enterprises will be placed under conflicting requirements by both Countries;
- (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 natural persons or private enterprises would be affected.

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 control anticompetitive 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 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 Confidentiality of Information

1. Notwithstanding any other provisions of this Chapter, neither Party is required to provide information to the other Party if it is prohibited from doing so by the laws and regulations of its Country or finds providing the information incompatible with the important interests of its Country. 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 Swiss Federal Council, except for those provided with the consent of the entrepreneurs concerned obtained as a result of the inquiry carried out in accordance with subparagraph 1(b) of Article 13; and
- (b) the Swiss Federal Council shall not be required to provide “ business secrets ” covered by the provisions of Article 25 of Acart to the Government

of Japan, except for those provided with the consent of the entrepreneurs concerned obtained as a result of the inquiry carried out in accordance with subparagraph 1(b) of Article 13.

2. (a) Information, other than publicly available information, provided by a Party to the other Party pursuant to this Chapter shall only be used by the latter Party for the purpose of effective enforcement of the competition law and shall not be communicated by that latter Party to a third party, unless the former Party 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 pursuant to this Chapter shall only be used by the latter competition authority for the purpose of effective enforcement of the competition law and shall not be communicated by that latter competition authority to other authorities or a third party, unless the competition authority of the former Party has approved otherwise.
3. Notwithstanding subparagraph 2(b), the competition authority of a Party which receives information, other than publicly available information, pursuant to this Chapter may, unless otherwise informed 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 Article 19.
4. 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.

5. A Party may require that information communicated pursuant to this Chapter be used subject to the terms and conditions it may specify. The Party receiving such information shall not use it in a manner inconsistent with such terms and conditions without the prior consent of the Party providing such information.

6. 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.

Article 19

Use of Information for Criminal Proceedings

1. In criminal proceedings carried out by a court or a judge of the Country of a Party, information, other than publicly available information, provided by the other Party pursuant to this Chapter, shall not be used.

2. Notwithstanding paragraph 1, in the event that information, other than publicly available information, provided by a Party pursuant to this Chapter is needed for presentation in criminal proceedings carried out by a court or a judge of the Country of the other Party, the latter Party shall request such information through the diplomatic channel or another channel established in accordance with the laws and regulations of the former Country. Based on the request, the former Party may provide such information in accordance with its laws and regulations through such channel.

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 10 and requests under paragraph 1 of Article 14, 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 necessary 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 issues related to jurisdiction.
4. Nothing in this Chapter shall be construed to affect the rights and obligations of a Country under other international agreements or arrangements or under its laws.