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CHAPTER 5

Competition

Article 15

Purpose of Chapter 5

The purpose of this Chapter is to implement the co-operation set forth in Article 104 of the Basic Agreement.

Article 16

Definitions under Chapter 5

For the purpose of this Chapter:

(a) the term "contact point(s)" means:

(i) for Japan, the Fair Trade Commission; and

(ii) for Singapore, the Competition Commission of Singapore;

(b) the term "anti-competitive activity(ies)" means any conduct or transaction that may be subject to penalties or relief under the competition laws of the respective Countries;

(c) the term "competition laws" means:

(i) for Japan, the Law concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Law No. 54 of April 14, 1947) and its implementing regulations; and

(ii) for Singapore, the Code of Practice for Competition in the Provision of Telecommunications Services pursuant to the Telecommunication Act (Cap. 323), Part VIII "Competition" of the Electricity Act (Cap. 89A), Part IX "Competition" of the Gas Act (Cap. 116A), and the Competition Act (Cap. 50B);

(d) the term "implementing authority(ies)" means:

(i) for Japan, the Fair Trade Commission; and

(ii) for Singapore, the Info-communications Development Authority of

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Singapore for the telecommunications sector, the Energy Market Authority of Singapore for the electricity and gas sectors and the Competition Commission of Singapore for sectors regulated by the Competition Act (Cap. 50B);

(e) the term "enforcement activity(ies)" means any investigation or proceeding conducted by the implementing authorities of a Party pursuant to the competition laws of its Country, but shall not include:

(i) the review of business conduct or routine filings;

(ii) research, studies or survey with the objective of examining the general economic situation or general conditions in specific industries; and

(iii) criminal proceedings; and

(f) the term "important interests" means such interests as are considered to be important by the Party undertaking the co-operation activity(ies) under this Chapter.

Article 17

Notification

1. Each Party shall notify the other Party with respect to its enforcement activities that the notifying Party considers may affect the important interests of that other Party.

2. Enforcement activities 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 conducted against a national or nationals of the other Country, or against a company, association or body incorporated or organized under the applicable laws and regulations in the territory of the other Country;

(c) involve anti-competitive activities, other than mergers or acquisitions, carried out in any substantial part in the territory of the other Country;

(d) involve merges and acquisitions in which:

(i) one or more of the parties to the transaction; or

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(ii) a company controlling one or more of the parties to the transaction, is a company incorporated or organized under the applicable laws and regulations in the territory of the other Country;

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

(f) involve relief that requires or prohibits conduct in the territory of the other Country.

3. Notification pursuant to paragraph 1 of this Article shall be given by the contact point of a Party as promptly as possible, taking into account the important interests of the other Party.

4. Notification shall contain such details that would, in the view of the notifying Party, enable the notified Party to make initial evaluation of the effect on its important interests.

Article 17A

Transparency

Each Party shall:

(a) promptly notify the other Party of any amendment of competition laws and any adoption of new laws and regulations of its Country that control anti-competitive activities; and

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

Article 18

Exchange of Information under Chapter 5

Each Party shall, to the extent consistent with the laws and regulations of its Country and its important interests, and within its reasonably

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available resources, endeavour to;

(a) inform the other Party with respect to its enforcement activities involving anti-competitive activities that the informing Party considers may also have an adverse effect on competition in the territory of the other Country;

(b) provide the other Party with any significant information, within its possession, which comes to its attention about anti-competitive activities that the providing Party considers may be relevant to, or may warrant , enforcement activities by that other Party; and

(c) provide 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 other Party.

Article 19

Technical Assistance

Each Party may render technical assistance to the other party for the effective management and adoption of laws and regulations controlling anti-competitive activities.

Article 20

Terms and Conditions on Provision of Information

1. Unless the Party providing the information has approved otherwise, information which has been communicated by a Party to the other Party pursuant to this Chapter shall:

(a) be used by the implementing authorities of the receiving Party only for the purpose of effective enforcement of the competition laws of its Country; and

(b) not be communicated to a third party.

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2. Each Party shall maintain the confidentiality of any information which has been communicated to it in confidence by the other Party pursuant to this Chapter, unless the latter Party consents to the disclosure of such information.

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

4. Notwithstanding any other provision of this Chapter, a Party shall not be required to communicate information to the other party if such communication is prohibited by the laws or regulations of the Country of the former Party or if the former Party considers such communication incompatible with its important interests.

Article 21

Use of Information in Criminal Proceedings

1. Information provided pursuant to this Chapter shall not be used by the receiving Party in criminal proceedings carried out by a court or a judge.

2. In the event that information communicated by a Party to the other Party pursuant to this Chapter is needed for presentation to a court or a judge in criminal proceedings, that other Party shall submit a request for such information to the Party that communicated the information (hereinafter referred to in this Article as "the requested Party"), through the diplomatic channel or other channel established in accordance with the laws of the Country of the requested Party. The requested Party will make its best efforts to respond promptly and favourably to meet any reasonable deadlines indicated by the other Party.

Article 22

Scope of Chapter 5

1. Articles 17 and 18 shall only apply to the sectors of telecommunications, electricity and gas.

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2. The Parties shall, as mutually agreed between the Parties, consult with each other to consider whether or not to amend this Chapter for the purpose of extending the scope of co-operation specified in paragraph 1 above.

Article 23

Review and Further Co-operation

1. The Parties shall, not more than three years after the entry into force of this Agreement, review the co-operation pursuant to Articles 17 and 18.

2. Upon such review, the Parties may consider extending the co-operation pursuant to this Chapter to any of the following activities:

(a) co-ordination of enforcement activities;

(b) positive comity, and

(c) comity.

3. Any such extension of co-operation shall be subject to the applicable competition laws and regulations and available resources of the Parties.

Article 24

Consultations under Chapter 5

The Parties may, as necessary, hold consultations on any matter which may arise in connection with this Chapter.

Article 25

Communications

Communications under Articles 17 and 18 may be directly carried out between the implementing authorities through the contact points of the Parties. Notification under Article 17, however, shall be confirmed in writing through the diplomatic channel. The confirmation shall be made as promptly as practically possible after the communication concerned between the contact

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points of the Parties is made.