

(THE IMPLEMENTING AGREEMENT)

Chapter 4
Competition

Article 10
Objective

The objective of this Chapter is to implement the cooperation set forth in Article 148 of the Basic Agreement.

Article 11
Definitions

For the purposes of this Chapter:

- (a) the term "anti-competitive activities" means any conduct or transaction that may be subject to penalties or relief under the competition law of either Country;
- (b) the term "competition authority" means:
 - (i) for Japan, the Fair Trade Commission; and
 - (ii) for Thailand, the Competition Commission;
- (c) 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 amendments thereto; and
 - (ii) for Thailand, the Competition Act B.E. 2542 and its implementing regulations as well as any amendments thereto; and
- (d) the term "enforcement activities" means any investigation or proceeding conducted by a Party in relation to the competition law of its Country. However, (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 industries are not included.

Article 12]
Notification

The competition authority of each Party, to the extent

consistent with the laws and regulations of its Country, shall notify 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.

Article 13
Exchange of Information and Coordination

1. 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 that competition authority of the other Party to the extent consistent with the laws and regulations of the Country of, and the important interests of the Party of, the competition authority providing such information, and within its reasonably available resources.

2. The competition authorities of the Parties shall, as appropriate, consider coordination of their enforcement activities with regard to matters that are related to each other.

Article 14
Transparency

The competition authority of each Party shall:

- (a) promptly inform the competition authority of the other Party of any amendment of competition law and any adoption of new laws and regulations of its Country that proscribe 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 or any other publication that are made generally available to the public.

Article 15
Technical Cooperation

1. The Parties agree that it is in their common interest for their competition authorities to work together in technical cooperation activities related to the implementation of competition law and policy.

2. The cooperation activities may include, within the reasonably available resources of the competition authority of each Party, the following:

- (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 the implementation of competition law and policy organised or sponsored by either or both competition authorities; and
- (c) any other form of technical cooperation as the competition authorities of the Parties may agree.

Article 16 Consultation

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

Article 17 Review

1. The Parties shall, as mutually agreed between the Parties, review and enhance the cooperation pursuant to this Chapter.

2. Upon such review, the Parties may consider enhancing the cooperation pursuant to this Chapter with regard to any of the following activities:

- (a) notification;
- (b) cooperation in enforcement activities;
- (c) coordination of enforcement activities; and
- (d) positive comity and negative comity.

3. Any such enhancement of the cooperation shall be subject to the applicable laws and regulations of each Country and the availability of resources of each Party.

Article 18 Treatment of Confidential Information

1. Information, other than publicly available information,

provided by a Party or a competition authority pursuant to this Chapter:

- (a) shall only be used by the receiving Party or the receiving competition authority for the purpose of effective enforcement of the competition law of its Country, unless the Party or the competition authority providing the information has approved otherwise;
- (b) shall not be communicated by the receiving competition authority to a third party or other authorities, unless the competition authority providing the information has approved otherwise; and
- (c) shall not be communicated by the receiving Party to a third party, unless the Party providing the information has approved otherwise.

2. Notwithstanding subparagraph 1(b) above, unless otherwise notified by the competition authority providing the information, the competition authority receiving the information pursuant to this Chapter may communicate the information to a relevant law enforcement authority of the Party of the competition authority, for the purpose of competition law enforcement, which may use such information under the conditions stipulated in Article 19.

3. Each Party shall, consistently 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.

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 with respect to the limitations of purposes for which the information will be used.

5. Notwithstanding any other provision of this Chapter, neither Party shall be required to provide information to the other Party if such provision is prohibited by the laws or regulations of the Country possessing the information or such provision would be 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 Thailand; and
- (b) the Government of Thailand shall not be required to provide "confidential information" under the Competition Act B.E. 2542 to the Government of Japan.

Article 19
Use of Information in Criminal Proceedings

1. Information provided by a Party to the other Party pursuant to this Chapter, except publicly available information, shall not be presented to a court or a judge in criminal proceedings of the Country of the latter Party.

2. 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 to a court or a judge in criminal proceedings of the Country of the latter Party, that latter Party shall submit a request for such information to the former Party through the diplomatic channels or any other channels established in accordance with the law of the Country of the former Party.

Article 20
Communications

Unless otherwise provided in this Chapter, communications under this Chapter may be directly carried out between the competition authorities of the Parties. Notifications under Article 12, 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 competition authorities of the Parties.