

Chapter 2 Competition

Article 8 Objective

The objective of this Chapter is to provide for the details and procedures concerning the implementation of the cooperation set forth in Article 190 of the Basic Agreement.

Article 9 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 the Republic of Peru (hereinafter referred to as "Peru"), the National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI) and the Supervisory Body for Private Investment in Telecommunications (OSIPTEL), or their successors;
- (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 Peru, the Repression of Anticompetitive Conducts Law (Legislative Decree No. 1034 of June 25, 2008) and the Antimonopoly and Antioligopoly Law of the Electricity Sector (Law No. 26876 of November 19, 1997) and their implementing regulations as well as any modifications thereof; 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 10 Notification

1. The competition authority of each Party 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.

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 or nationals of the country of the other Party, or against a company or companies 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) a company controlling one or more of the parties to the transaction,

is a company 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 or proceeding being carried out by the Party of the notifying competition authority, notification 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.

4. Notifications provided 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 Party.

Article 11 Cooperation in Enforcement Activities

1. 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.

2. In accordance with paragraph 1, the competition authority of each Party shall:

- (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 12 Coordination of Enforcement Activities

1. Where the competition authorities are pursuing enforcement activities with regard 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 by 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 13

Cooperation Regarding Anticompetitive Activities in the Country of One 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 regard 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 regard to such anticompetitive activities, may request that the competition authority of the other Party initiate appropriate enforcement 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 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 pursuant to 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.

Article 14

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 either 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 provide timely notice of significant developments of such enforcement activities.

Article 15

Technical Cooperation

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

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 competition law organized or sponsored by either or both competition authorities; and
- (c) other forms to be agreed upon by 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 modification of the competition law 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/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
Confidentiality of Information

1. (a) Information, other than publicly available information, provided by a Party to the other Party pursuant to this Chapter shall only be used by that 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 pursuant to 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, 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 Article 19.
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 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 the limitations of purposes for which the information will be used.

5. Notwithstanding any other provisions of this Chapter, neither Party is 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 Peru, except for those provided in accordance with subparagraph 1(b) of Article 12 and with the consent of the entrepreneurs concerned; and
- (b) the Government of Peru shall not be required to provide "trade secrets", "industrial secrets", or "private information" covered by the provisions of Article 32 of the Repression of Anticompetitive Conducts Law to the Government of Japan, except for those provided in accordance with subparagraph 1(b) of Article 12 and with the consent of the entrepreneurs concerned.

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, wherever possible, give advance notice of any such use or disclosure to the Party which provided the information.

Article 19

Use of Information for Criminal Proceedings

1. Information provided by a Party to the other Party pursuant to 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 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 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 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 13, 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 each other 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 either Party under other international agreements or arrangements or under the laws of its country.