

**MEMORANDUM ON COOPERATION BETWEEN
THE FAIR TRADE COMMISSION OF JAPAN
AND
THE ADMINISTRATIVE COUNCIL FOR ECONOMIC DEFENSE OF THE
FEDERATIVE REPUBLIC OF BRAZIL**

The Fair Trade Commission of Japan and the Administrative Council for Economic Defense of the Federative Republic of Brazil (hereinafter collectively referred to as “competition authorities” and individually referred to as “competition authority”),

RECOGNIZING the importance of cooperation and coordination between the competition authorities to an effective, transparent, fair and non-discriminatory development of the competition law enforcement of both countries;

EXPRESSING their will to develop and strengthen cooperation in the field of competition law and policy; and

AIMING at the creation of favorable conditions to the development of bilateral relations on competition matters,

HAVE hereby reached as follows:

**Paragraph 1
Purpose of Cooperation**

1.1. The purpose of this Memorandum is to contribute to the effective enforcement of the competition laws of each country through the development of a cooperative relationship between the competition authorities.

1.2. The competition authorities will cooperate with and provide assistance to each other, to the extent consistent with the laws and regulations in force in their respective countries, their reasonably available resources and their respective important interests.

**Paragraph 2
Anti-competitive Activities**

2. The competition authorities will promote competition by addressing

anti-competitive activities in accordance with the laws and regulations of their respective countries, in order to facilitate the efficient functioning of the markets of their respective countries. The competition authorities express their intention to take any appropriate measures for such purposes in conformity with the principles of transparency, non-discrimination and procedural fairness.

Paragraph 3

Definitions

3. For the purposes of this Memorandum:
 - (a) the term “competition law” means:
 - (i) for Japan, the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Law No. 54, 1947) and its implementing regulations as well as any amendments thereto; and
 - (ii) for the Federative Republic of Brazil, the Law No. 12529 of November 30, 2011 and its implementing regulations as well as any amendments thereto; and
 - (b) the term “enforcement activities” means any investigation or proceeding conducted by a competition authority in relation to the application of the competition law of its country, but will 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.

Paragraph 4

Notification

4.1. Each competition authority will notify the other of the enforcement activities of the notifying competition authority that the notifying competition authority considers may affect the important interests of the other competition authority.

4.2. 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 proceedings being carried out by the notifying competition authority, notification under subparagraph 4.1 will be given as promptly as possible when the notifying competition

authority becomes aware that its enforcement activities may affect the important interests of the other competition authority.

Paragraph 5
Cooperation in Enforcement Activities

5.1. Each competition authority will render assistance to the other competition authority 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 assisting competition authority, and within its reasonably available resources.

5.2. Each competition authority will, to the extent consistent with the laws and regulations of its country and its important interests:

- (a) inform the other competition authority on its enforcement activities involving anti-competitive activities that the informing competition authority considers may also have an adverse effect on competition in the country of the other competition authority;
- (b) provide the other competition authority with any significant information, within its possession and that comes to its attention, about anti-competitive activities that the providing competition authority considers may be relevant to, or may warrant, enforcement activities of the other competition authority; and
- (c) provide the other competition authority, upon request and in accordance with this Memorandum, with information within its possession that is relevant to the enforcement activities of the other competition authority.

Paragraph 6
Coordination of Enforcement Activities

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

- (a) the competition authorities will consider coordination of their enforcement activities; and
- (b) each competition authority will consider, upon request by the other

competition authority and where consistent with laws and regulations of the country of the former competition authority and the important interests of the former competition authority, inquiring whether persons who have provided confidential information in connection with the enforcement activities will consent to the sharing of such information with the other competition authority.

6.2. In considering whether particular enforcement activities should be coordinated, the competition authorities will 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) the relative abilities of the competition authorities to obtain information necessary to conduct the enforcement activities;
- (c) the extent to which either competition authority can secure effective relief against the anti-competitive activities involved;
- (d) the possible reduction of cost to the competition authorities and to the person subject to the enforcement activities; and
- (e) the potential advantages of coordinated relief to the competition authorities and to the person subject to the enforcement activities.

6.3. Each competition authority may, subject to appropriate notification to the other competition authority, at any time, limit or terminate the coordination of enforcement activities and pursue its enforcement activities independently.

Paragraph 7

Cooperation Regarding Anti-competitive Activities in the Country of a Competition Authority that Adversely Affect the Interests of the Other Competition Authority

7.1. If a competition authority believes that anti-competitive activities carried out in the country of the other competition authority adversely affect the important interests of the former competition authority, the former competition authority, taking into account the importance of avoiding conflicts resulting from its enforcement activities with regard to such anti-competitive activities and taking into account that the other competition authority may be in a position to conduct more effective enforcement activities with regard to such anti-competitive activities, may request that the other

competition authority initiate appropriate enforcement activities.

7.2. The request made under subparagraph 7.1 will be as specific as possible about the nature of the anti-competitive activities and their effect on the important interests of the requesting competition authority, and will include an offer of such further information and other cooperation as the requesting competition authority is able to provide.

7.3. The requested competition authority will carefully consider whether to initiate enforcement activities, or whether to expand ongoing enforcement activities, with respect to the anti-competitive activities identified in the request made under subparagraph 7.1. The requested competition authority will inform the requesting competition authority of its decision as soon as practically possible. If enforcement activities are initiated, the requested competition authority will inform the requesting competition authority of their outcome and, to the extent possible, of significant interim developments.

7.4. Nothing in this paragraph limits the discretion of the requested competition authority under the competition law of its country and its enforcement policies as to whether or not to undertake enforcement activities with respect to the anti-competitive activities identified in the request, or precludes the requesting competition authority from withdrawing its request.

Paragraph 8

Avoidance of Conflicts over Enforcement Activities

8.1. Each competition authority will give careful consideration to the important interests of the other competition authority 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.

8.2. When either competition authority informs the other competition authority that specific enforcement activities of the latter competition authority may affect the important interests of the former competition authority, the latter competition authority will endeavour to provide timely notice of significant developments of such enforcement activities.

8.3. Where either competition authority considers that its enforcement activities may adversely affect the important interests of the other competition authority, the competition authorities will consider the following factors, in addition to any other factor that may be relevant in the circumstances in seeking an appropriate accommodation of the competing interests:

- (a) the relative significance to the anti-competitive activities of conduct or transactions occurring in the country of the competition authority conducting the enforcement activities as compared to conduct or transactions occurring in the country of the other competition authority;
- (b) the relative impact of the anti-competitive activities on the important interests of the respective competition authorities;
- (c) the presence or absence of evidence of an intention on the part of those engaged in the anti-competitive activities to affect consumers, suppliers, or competitors in the country of the competition authority conducting the enforcement activities;
- (d) the extent to which the anti-competitive activities substantially lessen competition in the markets of their respective countries;
- (e) the degree of conflict or consistency between the enforcement activities of a competition authority and the laws and regulations of the country of the other competition authority, or the policies or important interests of the other competition authority;
- (f) whether private persons, either natural or legal, will be placed under conflicting requirements by both competition authorities;
- (g) the location of relevant assets and parties to the transaction;
- (h) the degree to which effective penalties or relief can be secured by the enforcement activities of the competition authority against the anti-competitive activities; and
- (i) the extent to which enforcement activities of the other competition authority with respect to the same persons, either natural or legal, would be affected.

Paragraph 9 Communication

9.1. The competition authorities will work together in the following areas, subject to reasonably available resources of each competition authority:

- (a) keeping each other informed of significant developments in competition policy and enforcement of the competition law, and any modification on confidentiality laws and regulations;
- (b) exchanging experiences on enforcement of the competition law, when appropriate;
- (c) seeking information from one another regarding matters of competition policy and enforcement of the competition law; and
- (d) discussing development relating to bilateral or multilateral fora that may be relevant to the cooperative relationship between the competition authorities.

9.2. The competition authorities will appoint the following liaisons for the purpose of facilitating cooperation based on this Memorandum, and will effectively operate sufficient interchanges and cooperation between the liaisons.

The Fair Trade Commission of Japan: International Affairs Division, Secretariat, General Secretariat

The Administrative Council for Economic Defense of the Federative Republic of Brazil: International Unit

9.3. Communication between the competition authorities may be carried out by telephone, electronic mail, videoconference, meeting or other suitable means.

Paragraph 10 Confidentiality

10.1. Each competition authority will, in accordance with the laws and regulations of its country, maintain the confidentiality of any information provided to it in confidence by the other competition authority under this Memorandum.

10.2. Information, other than publicly available information, provided by a competition authority to the other competition authority under this Memorandum, will only be used by the receiving competition authority for the purpose of the effective enforcement of the competition law and will not be disclosed by the receiving competition authority to other authorities or a third party.

10.3. Notwithstanding any other paragraphs of this Memorandum, neither competition authority is required to provide information to the other competition authority if it is prohibited from providing the information by the laws and regulations of its country or if it finds providing the information incompatible with its important interests.

10.4. Information, other than publicly available information, provided by a competition authority to the other competition authority under this Memorandum, will not be used by the receiving competition authority in criminal proceedings carried out by a court or a judge.

10.5. This paragraph will not preclude the use or disclosure of information provided under this Memorandum to the extent such use or disclosure is required by the laws and regulations of the country of the competition authority receiving the information. Such competition authority will, wherever possible, give advance notice of any such use or disclosure to the competition authority providing the information.

Paragraph 11 Miscellaneous

11.1. The cooperation under this Memorandum will commence upon signing by the competition authorities. Regarding transparency and publicity, the Fair Trade Commission of Japan will publish a press release on the Memorandum on or immediately after the signing date, and the Administrative Council for Economic Defense of the Federative Republic of Brazil will publish in the Brazilian Federal Gazette a summary of the Memorandum no later than on the fifth business day of the month following the signature.

11.2. Either competition authority may terminate the cooperation under this Memorandum upon thirty (30) days written notice to the other competition authority.

11.3. Nothing in this Memorandum is intended to create legally binding rights or obligation.

11.4. This Memorandum does not require any kind of transfer of financial resources between the competition authorities.

11.5. All cooperation under this Memorandum will be conducted subject to the laws and regulations in force in their respective countries and within the reasonably available resources of each competition authority.

11.6. The competition authorities will consult regarding any questions concerning this Memorandum.

11.7. This Memorandum may be modified with mutual consent of the competition authorities.

11.8. Detailed rules to operate this Memorandum may be made between the competition authorities as necessary.

Signed in Marrakech, the Kingdom of Morocco on this 24th day of April, 2014. This Memorandum is made in two originals, each composed of Japanese, Portuguese and English versions, each of them having equal values. If any discrepancies arise from the interpretation of this Memorandum, English version will be referred to.

For the Fair Trade Commission of
Japan

For the Administrative Council for
Economic Defense of the Federative
Republic of Brazil

Mr. Kazuyuki Sugomoto
Chairman
The Fair Trade Commission of Japan

Mr. Vinicius Marques de Carvalho
President
The Administrative Council for
Economic Defense of the Federative
Republic of Brazil