

**MEMORANDUM ON COOPERATION BETWEEN JAPAN FAIR TRADE COMMISSION
AND THE COMPETITION COMMISSION OF INDIA**

Japan Fair Trade Commission (JFTC) and the Competition Commission of India (CCI) (hereinafter collectively referred to as the “competition authorities” and individually referred to as the “competition authority”);

Recognizing the benefit of cooperation and communication in the field of effective enforcement of the competition laws and regulations of each country through the development of cooperative relationship for efficient operation of markets and economic welfare of the citizens of their respective countries;

Recognizing that the competition authorities will, in accordance with the laws and regulations of their respective countries, promote competition by addressing anticompetitive activities in order to facilitate the efficient functioning of the markets of their respective countries and take any appropriate measures for such purposes in conformity with the principles of transparency, non-discrimination, and procedural fairness;

Recognizing that 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 and their respective important interests, within their reasonably available resources;

Recalling the Comprehensive Economic Partnership Agreement (CEPA) between Japan and the Republic of India which came into force on 1st August, 2011, and specifically Chapter 11 of the Agreement relating to Competition, which inter-alia provides that each Party shall, in accordance with its laws and regulations, take measures which it considers appropriate against anticompetitive activities, in order to facilitate trade and investment flows between the Parties and the efficient functioning of its market; and

Based on principles of equality and mutual benefit;

Have reached the following common recognition:

Paragraph I. DEFINITIONS – For the purpose of this Memorandum on Cooperation, the term “competition laws and regulations” means: -

(a) for Japan, the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Law No. 54 of 1947) and its implementing regulations and any amendment thereto; and

(b) for India, the Competition Act, 2002, (12 of 2003) and its implementing regulations and any amendment thereto.

Paragraph II. COOPERATION – (1) Each competition authority will notify the other competition authority of its own enforcement activities that the notifying competition authority considers may affect the important interests of the other competition authority,

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 notifying competition authority.

(2) The notifying competition authority will notify as soon as it becomes aware of its necessity.

(3) The competition authorities would, to the extent consistent with the laws and regulations of each country and the important interests of each competition authority, and within its reasonably available resources, exchange information on: -

- (a) each other's laws, regulations and competition policy and developments of enforcement in their respective jurisdictions;
- (b) experience in improving legal framework of competition policy;
- (c) experience in conducting investigations of anti-competitive activities in their respective jurisdictions;
- (d) improvement of competition conditions in markets; and
- (e) development of research in the field of competition law.

(4) The competition authorities seek to develop cooperation by deciding areas of common interests relating to implementation of competition laws and regulations, competition policy and, matters connected therewith or incidental thereto based on mutual consultation.

(5) The competition authorities can work together in the field of technical cooperation activities such as: -

- (a) participation in training courses on competition laws and regulations and competition policy organized or sponsored by the other competition authority;
- (b) exchange of personnel of the competition authorities for training purposes;
- (c) participation of personnel of the competition authorities as lecturers or consultants at training courses on the implementation of competition laws and regulations and competition policy organized or sponsored by either or both competition authorities;
- (d) providing assistance, where appropriate, in promoting understanding of sound competition policy among various stakeholders like business community, bar associations, academic institutions and others; or
- (e) any other form of technical cooperation as the competition authorities may mutually decide.

(6) The competition authorities, when they are investigating competition matters that are related to each other, would consider coordination of their enforcement activities, to the extent consistent with the laws and regulations in force in their respective countries and their respective important interests, and within their available resources.

(7) The competition authorities may seek advice from each other regarding matters of the enforcement of competition laws and regulations and competition policy,

provided that information relating to case investigations will not be communicated to any person other than the relevant competition authorities involved in the case, and such information will be used only for the purpose for which it was provided.

(8) The competition authorities may discuss, review and evaluate the effectiveness of the cooperation under this Memorandum on Cooperation on a regular basis to ensure that their expectations and needs are being met.

Paragraph III. COMMUNICATIONS – (1) Under the present Memorandum on Cooperation, periodic high-level working meeting as decided mutually, may be held in addition to discussing issues of common interests and the competition authorities may review and evaluate cooperation between them in such meetings.

(2) The Officials of the competition authorities may meet to share the experience in the fields of competition laws and regulations and competition policy.

(3) Expenses for sending officials for a meeting will be incurred by the sending competition authority, while expenses for holding the meeting will be incurred by the hosting competition authority.

(4) The competition authorities will appoint the following liaisons for the purpose of facilitating cooperation based on this Memorandum on Cooperation, and the communications for cooperation may be carried out by telephone, electronic mail, videoconference, or in person, as appropriate with the following authorities, namely: -

(a) For JFTC:

International Affairs Division, Secretariat, General Secretariat

(b) For CCI:

International Cooperation Division

Paragraph IV. CONFIDENTIALITY – (1) The competition authorities will not communicate information to the other, if such communication is prohibited by the laws governing the competition authority possessing the information or is incompatible with that competition authority's important interest.

(2) Each competition authority will, in accordance with its laws, maintain the confidentiality of any information communicated to it in confidence by the other competition authority.

(3) Information, other than publicly available information, provided by a competition authority to the other competition authority under this Memorandum on Cooperation may only be used by the receiving competition authority for the purpose of the effective enforcement of competition laws and regulations and will not be communicated by the receiving competition authority to other authorities or a third party without the prior written consent of the competition authority providing such information.

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

Paragraph V. IMPLEMENTATION – (1) The competition authorities intend to develop a work plan of cooperative activities that may be revised by mutual consent.

(2) This Memorandum on Cooperation is intended to set forth a framework for cooperation.

(3) The competition authorities reserve their full discretion in implementing this Memorandum on Cooperation, and nothing in it is intended to change existing law, agreements, or treaties.

(4) This Memorandum on Cooperation is not an international treaty for the purpose of creating any legally binding or enforceable rights.

(5) Nothing in this Memorandum on Cooperation will prevent the competition authorities from seeking assistance from or providing assistance to another competition authority pursuant to other agreements, treaties, arrangements or practices and in accordance with their respective laws, rules and regulations.

Paragraph VI. FINAL PROVISIONS – (1) This Memorandum on Cooperation will commence on the date of its signature and will continue for an indefinite period.

(2) Either competition authority may terminate cooperation under this Memorandum on Cooperation by giving ninety days' written notice to the other competition authority;

Prior to terminating this Memorandum on Cooperation, the competition authority terminating this Memorandum on Cooperation will make best efforts to consult with the other competition authority.

(3) Any issue regarding the interpretation or application of this Memorandum on Cooperation should be settled by the competition authorities by mutual consultations or negotiations.

(4) This Memorandum on Cooperation may be modified with mutual consent of the competition authorities.

In witness whereof the undersigned representatives being duly authorised by their respective governments have signed this Memorandum on Cooperation.

Signed at Tokyo / New Delhi on _____ day of _____ 2021 in two originals, in the English language.

For Japan Fair Trade Commission

For the Competition Commission of India

Mr. Kazuyuki Furuya
Chairman
Japan Fair Trade Commission

Mr. Ashok Kumar Gupta
Chairperson
The Competition Commission of India