

**AGREEMENT BETWEEN JAPAN AND THE PEOPLE'S REPUBLIC OF BANGLADESH
FOR AN ECONOMIC PARTNERSHIP**

**Chapter 13
Competition Policy**

**Article 13.1
Definitions**

For the purposes of this Chapter:

- (a) the term “anticompetitive activities” means any conduct or transaction that adversely affects competition and may be subject to penalties or other relief under the competition law of either Party;
- (b) the term “competition authority” means:
 - (i) for Bangladesh, the Bangladesh Competition Commission, or its successor; and
 - (ii) for Japan, the Fair Trade Commission, or its successor.
- (c) the term “competition law” means:
 - (i) for Bangladesh, the Competition Act, 2012 (Act No. 23 of 2012) and its implementing regulations, guidelines as well as any amendments thereto; and
 - (ii) for Japan, the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Law No. 54 of 1947) and its implementing regulations as well as any amendments thereto.

Article 13.2

Competition Law, Competition Authorities and Anticompetitive Activities

1. Each Party shall maintain its competition law that proscribes anticompetitive activities, with the objective of promoting economic efficiency and consumer welfare through economic efficiency, and shall take appropriate measures with respect to these activities.
2. Each Party shall apply its competition law to all entities engaged in commercial activities in its Area. However, each Party may provide for certain exemptions from the application of its competition law provided that those exemptions shall be mentioned in its competition law and be based on public policy grounds or public interest grounds.

Note: For greater certainty, nothing in this paragraph shall be construed to preclude a Party from applying its competition law to commercial activities outside its borders that have anticompetitive effects within its

jurisdiction.

3. Each Party shall endeavor to maintain an operationally independent competition authority which is responsible and competent for the effective enforcement of its competition law.
4. Each Party shall apply and enforce its competition law in a manner that does not discriminate on the basis of nationality.

Article 13.3

Procedural Fairness in Competition Law Enforcement

1. For the purposes of this Article, the term “enforcement proceeding” means an administrative or judicial proceeding following an investigation into the alleged violation of competition law.
2. Each Party shall implement administrative and judicial procedures in a fair manner to control anticompetitive activities in accordance with its relevant laws and regulations.
3. Each Party shall ensure that before it imposes a sanction or remedy against a person for violating its competition law, it affords that person:
 - (a) information about competition concerns regarding the sanction or remedy;
 - (b) a reasonable opportunity to be represented by that person or counsel; and
 - (c) a reasonable opportunity to be heard and present evidence in its defense, except that a competition authority may provide for the person to be heard and present evidence within a reasonable period of time after it imposes an interim sanction or remedy.

In particular, each competition authority shall afford that person a reasonable opportunity to present evidence or testimony in its defense, including: if applicable, to offer the analysis of a properly qualified expert, to cross-examine any testifying witness, and to review and rebut the evidence introduced in the enforcement proceeding.

Note: For greater certainty, for the purposes of this paragraph, the term “sanction” does not exclude orders or legal measures.

4. Each competition authority shall adopt or maintain written procedures pursuant to which its relevant investigations are conducted. If these investigations are not subject to definitive deadlines, the competition authority shall endeavor to conduct its investigations within a reasonable time frame.
5. Each Party shall adopt or maintain rules of procedure and evidence that apply to enforcement proceedings concerning alleged violations of its competition law and the determination of sanctions and remedies thereunder. These rules of procedure and

evidence shall be applied equally to all parties to an enforcement proceeding.

6. Each Party shall provide a party to the enforcement proceeding that is subject to the imposition of a sanction or remedy under competition law with the opportunity to seek review of the sanction or remedy, including review of alleged substantive or procedural errors, before the competition authority or in a court or other independent tribunal as established and empowered under that Party's laws and regulations.
7. Each Party shall authorize its competition authority to resolve alleged violations voluntarily by mutual consent of the parties to the proceeding concerning the alleged violation with the approval of the competition authority in such manner as may be prescribed by the respective laws of each Party.
8. If a Party alleges a violation of its competition law, that Party shall be responsible for establishing the legal and factual basis for the alleged violation in an enforcement proceeding.

Note: Nothing in this paragraph shall prevent a Party from requiring that a person against whom such an allegation is made be responsible for establishing certain elements in defense of the allegation.

9. Each Party shall provide for the protection of business confidential information, and other information treated as confidential under its laws and regulations, obtained by that Party during the investigative process. If a Party uses or intends to use that information in an enforcement proceeding, that Party shall, if it is permissible under its laws and regulations and as appropriate, provide a procedure to allow the person under investigation timely access to information that is necessary to prepare an adequate defense to its allegations.
10. Each Party shall endeavor to ensure that its competition authority affords a person under investigation for possible violation of the competition law of that Party reasonable opportunity to consult with the competition authority with respect to significant legal, factual or procedural matters relating to the investigation.

Article 13.4

Private Rights of Action

1. For the purposes of this Article, the term "private right of action" means the right of a person to seek redress, including injunctive, monetary or other remedies, from a court or other independent tribunal for injury to that person's business or property caused by a violation of competition law, either independently or following a finding of violation by a competition authority.
2. Recognizing that a private right of action is an important supplement to the public

enforcement of competition law, each Party shall adopt or maintain law or other measures that provide an independent private right of action.

3. If a Party does not adopt or maintain law or other measures that provide an independent private right of action, that Party shall adopt or maintain law or other measures that provide a right that allows a person:

(a) to request that the competition authority initiate an investigation into an alleged violation of competition law; and

(b) to seek redress from a court or other independent tribunal as prescribed by the law following a finding of violation by the competition authority.

4. Each Party shall ensure as may be prescribed by the law that a right provided pursuant to paragraph 2 or 3 is available to a person of the other Party on terms that are no less favorable than those available to its own persons.

5. A Party may establish reasonable criteria for the exercise of any rights it creates or maintains in accordance with this Article.

Article 13.5

Cooperation

1. The Parties recognize the importance of cooperation and coordination between their respective competition authorities to foster effective competition law enforcement.

Accordingly, each Party shall:

(a) cooperate in the area of competition policy by exchanging information on the development of competition policy; and

(b) cooperate, as appropriate, on issues of competition law enforcement, including through notification, consultation and the exchange of information.

2. A Party's competition authority may consider entering into a cooperation arrangement with the competition authority of the other Party that sets out terms of cooperation.

3. The Parties agree to cooperate in a manner compatible with their respective laws, regulations and common interests, and within their reasonably available resources.

Article 13.6

Technical Cooperation

Recognizing that the Parties can benefit by sharing their diverse experience in developing, applying and enforcing competition law and in developing and implementing competition policies, the Parties shall consider undertaking mutually determined technical cooperation activities, subject to available resources, including:

- (a) providing advice or training on relevant issues, including through the exchange of officials;
- (b) exchanging information and experiences on competition advocacy, including ways to promote a competition culture; and
- (c) assisting the other Party as it implements its competition law.

Article 13.7

Consumer Protection

1. The Parties recognize the importance of consumer protection policy and enforcement to creating efficient and competitive markets and enhancing consumer welfare.
2. For the purposes of this Article, the term “fraudulent and misleading commercial activities” means those fraudulent and misleading commercial practices that cause actual harm to consumers, or that pose an imminent threat of such harm if not prevented, for example:
 - (a) a practice of making misrepresentations of material fact, including implied factual misrepresentations;
 - (b) advertising goods or services for supply without intention or reasonable capability to supply;
 - (c) a practice of failing to deliver products or provide services to consumers after the consumers are charged; or
 - (d) a practice of charging or debiting consumers’ financial, telephone or other accounts without authorization as may be prescribed by the law.
3. Each Party shall adopt or maintain consumer protection laws or other laws or regulations that proscribe fraudulent and misleading commercial activities.

Note: For greater certainty, fraudulent and misleading commercial activities can be proscribed by civil or criminal laws or regulations a Party adopts or maintains.

4. The Parties recognize that fraudulent and misleading commercial activities increasingly transcend national borders and that cooperation and coordination between the Parties is desirable.
5. Accordingly, the Parties shall promote, as appropriate, cooperation and coordination on

matters of mutual interest related to fraudulent and misleading commercial activities, including in the enforcement of their consumer protection laws.

6. The Parties shall endeavor to cooperate and coordinate on the matters set out in this Article through the relevant national public bodies or officials responsible for consumer protection policy, laws or enforcement, as determined by each Party, in a manner compatible with their respective laws, regulations and common interests, and within their reasonably available resources.

Article 13.8 **Transparency**

1. The Parties recognize the value of making their competition enforcement policies as transparent as possible.
2. Each Party shall endeavor to maintain and update its public information concerning its competition law, policies and enforcement activities through links on its official websites consolidated into a single portal that is publicly accessible, recognizing the value of transparency of competition law, policies and enforcement activities.
3. On request of the other Party, a Party shall make available to the requesting Party public information concerning:
 - (a) its competition law enforcement policies and practices; and
 - (b) exemptions and immunities to its competition law, provided that the request specifies the particular good or service and market of concern and includes information explaining how the exemption or immunity may hinder trade or investment between the Parties.
4. Each Party shall ensure that a final decision finding a violation of its competition law is made in writing and sets out, in administrative matters, findings of fact and the reasoning, including legal and, if applicable, economic analysis, on which the decision is based.
5. Each Party shall further ensure that a final decision referred to in paragraph 4 and any order implementing that decision are published, or if publication is not practicable, are otherwise made available to the public in a manner that enables interested persons and the other Party to become acquainted with them. Each Party shall ensure that the version of the decision or order that is made available to the public does not include confidential information that is protected from public disclosure by its law.

Article 13.9
Consultations

In order to foster understanding between the Parties, or to address specific matters that arise under this Chapter, including the content of administrative or judicial enforcement of competition law, on request of the other Party, a Party shall enter into consultations with the requesting Party. In its request, the requesting Party shall indicate, if relevant, how the matter affects trade or investment between the Parties. The Party addressed shall accord full and sympathetic consideration to the concerns of the requesting Party.

Article 13.10
Non-Application of Dispute Settlement

Chapter 21 shall not apply to this Chapter.