

**MEMORANDUM ON COOPERATION BETWEEN
THE FAIR TRADE COMMISSION OF JAPAN
AND
THE FAIR TRADE COMMISSION OF THE REPUBLIC OF KOREA**

**Paragraph 1
Purpose of Cooperation**

1.1. The purpose of this Memorandum is to contribute to the effective enforcement of the competition laws of two countries through the development of a cooperative relationship between the Fair Trade Commission of Japan and the Fair Trade Commission of the Republic of Korea (hereinafter collectively referred to as “Sides,” and individually referred to as “Side”).

1.2. The Sides 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 Sides 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.

**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 Republic of Korea, the Monopoly Regulation and Fair Trade Act (Law No. 3320, 1980) and its implementing regulations as well as any amendments thereto;
- (b) the term “enforcement activities” means any investigation or proceeding conducted by a Side 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; and
- (c) the term "anti-competitive activities" means any activities that may be subject to penalties or relief by either Side under the competition law of its country.

Paragraph 4

Notification

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

4.2. Provided that it is not contrary to the laws and regulations of the country of the notifying Side and does not affect any investigation or proceedings being carried out by the notifying Side, notification under subparagraph 4.1 will be given as promptly as possible when the notifying Side becomes aware that its enforcement activities may affect the important interests of the other Side.

Paragraph 5

Cooperation in Enforcement Activities

5.1. Each Side will render assistance to the other Side in its enforcement activities to the extent consistent with the laws and regulations of the country of the assisting Side and the important interests of the assisting Side, and subject to its reasonably available resources.

5.2. Each Side will endeavor, to the extent consistent with the laws and regulations

of its country and its important interests, to:

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

Paragraph 6

Coordination of Enforcement Activities

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

- (a) the Sides will consider coordination of their enforcement activities; and
- (b) each Side will consider, upon request by the other Side and where consistent with the important interests of the requested Side, 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 Side.

6.2. In considering whether particular enforcement activities should be coordinated, the Sides 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 Sides to obtain information necessary to conduct the enforcement activities;
- (c) the extent to which either Side can secure effective relief against the anti-competitive activities involved;
- (d) the possible reduction of costs to the Sides and to the persons subject to the enforcement activities; and
- (e) the potential advantages of coordinated relief to the Sides and to the persons

subject to the enforcement activities.

6.3. Each Side may, subject to appropriate notification to the other Side, 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 Side that Adversely Affect the Interests of the Other Side

7.1. If a Side believes that anti-competitive activities carried out in the country of the other Side adversely affect its important interests, that Side, 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 Side may be in a position to conduct more effective enforcement activities with regard to such anti-competitive activities, may request that the other Side initiate appropriate enforcement activities.

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

7.3. The requested Side 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 Side will inform the requesting Side of its decision as soon as practically possible. If enforcement activities are initiated, the requested Side will inform the requesting Side of their outcome and, to the extent possible, of significant interim developments.

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

Paragraph 8
Avoidance of Conflicts over Enforcement Activities

8.1. Each Side will give careful consideration to the important interests of the other Side 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 Side informs the other Side that specific enforcement activities of the latter Side may affect the important interests of the former Side, the latter Side will endeavor to provide a timely notice of significant developments of such enforcement activities.

8.3. Where either Side considers that its enforcement activities may adversely affect the important interests of the other Side, the Sides 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 Side conducting the enforcement activities as compared to conduct or transactions occurring in the country of the other Side;
- (b) the relative impact of the anti-competitive activities on the important interests of the respective Sides;
- (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 Side 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 Side and the laws and regulations of the country of the other Side, or the policies or important interests of the other Side;
- (f) whether private persons, either natural or legal, will be placed under conflicting requirements by the Sides;
- (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 Side against the anti-competitive activities; and
- (i) the extent to which enforcement activities of the other Side with respect to the same persons, either natural or legal, would be affected.

Paragraph 9 **Annual Consultation**

9.1. Unless otherwise jointly decided, the Sides will hold consultations at least once a year to:

- (a) exchange information on their current enforcement efforts and priorities in relation to the competition law of each country;
- (b) exchange information on business sectors of their common interest;
- (c) discuss policy matters in which they are interested;
- (d) discuss other matters of mutual interest relating to the application of the competition law of each country;
- (e) discuss development relating to bilateral or multilateral fora that may be relevant to the cooperative relationship between the Sides; and
- (f) discuss any other matters that may be jointly decided upon by the Sides.

9.2. Unless otherwise jointly decided by the Sides, the consultations mentioned in subparagraph 9.1 will be held alternately in Japan and the Republic of Korea.

Paragraph 10 **Communication**

10.1. The Sides will work together in the following areas, subject to reasonably available resources of each Side:

- (a) keeping each other informed of significant developments in competition policy and enforcement of their competition laws, and any modifications to confidentiality laws and regulations;
- (b) exchanging experiences on the enforcement of their competition laws, when appropriate; and
- (c) seeking information from one another regarding matters of competition policy

and enforcement of their competition laws.

10.2. The Sides will appoint the following liaisons for the purpose of facilitating cooperation under this Memorandum, and will ensure effective communication and cooperation between the liaisons. The liaisons of each Side are as follows:

- (a) for the Fair Trade Commission of Japan: International Affairs Division, Secretariat, General Secretariat; and
- (b) for the Fair Trade Commission of the Republic of Korea: International Cooperation Division, Competition Policy Bureau.

10.3. Communication between the Sides may be carried out by telephone, electronic mail, videoconferences, face-to-face meetings or other means, as appropriate.

Paragraph 11

Confidentiality

11.1. Each Side 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 Side under this Memorandum.

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

11.3. Notwithstanding any other paragraphs of this Memorandum, neither Side is required to provide information to the other Side 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.

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

11.5. 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 receiving Side. In such case, the receiving Side will, wherever possible, give advance notice of any such use or disclosure to the providing Side.

Paragraph 12

Miscellaneous

12.1. Nothing in this Memorandum is intended to create legally binding rights or obligations.

12.2. All cooperation under this Memorandum will be conducted in accordance with the laws and regulations in force in their respective countries and subject to the reasonably available resources of each Side.

12.3. The Sides will consult any questions concerning this Memorandum.

12.4. Detailed arrangements to implement this Memorandum may be jointly decided upon by the Sides as necessary.

Paragraph 13

Commencement, Termination and Modification

13.1. The cooperation under this Memorandum will commence upon signature by the representatives of the Sides.

13.2. Either Side may terminate the cooperation under this Memorandum by notifying the other Side in writing of its intention to do so at least (30) days in advance.

13.3. This Memorandum may be modified with mutual written consent of the Sides.

Signed in duplicate at Tokyo, Japan, on the 25th day of July, 2014, in the English language.

For the Fair Trade Commission of
Japan

For the Fair Trade Commission of the
Republic of Korea

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Chairman
The Fair Trade Commission of Japan

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Chairman
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