

**COOPERATION ARRANGEMENT BETWEEN THE AUSTRALIAN
COMPETITION AND CONSUMER COMMISSION, THE NEW ZEALAND
COMMERCE COMMISSION, AND THE TAIWAN FAIR TRADE
COMMISSION REGARDING THE APPLICATION OF COMPETITION AND
FAIR TRADING LAWS ("ARRANGEMENT")**

BACKGROUND

The Australian Competition and Consumer Commission, the New Zealand Commerce Commission, and the Taiwan Fair Trade Commission (hereinafter referred to as the "Participants") note that:

- (a) the Participants share the view that the sound and effective enforcement of their competition and fair trading laws is a matter of importance to the efficient operation of the respective markets of the jurisdictions of the Participants and to trade among the jurisdictions of the Participants;
- (b) this Arrangement is to replace and supersede the existing operation of the "Co-Operation and Co-Ordination Arrangement between the Taipei Economic and Cultural Office and the New Zealand Commerce and Industry Office Regarding the Application of the Competition and Fair Trading Laws". Accordingly the "Co-Operation and Co-Ordination Arrangement between the Taipei Economic and Cultural Office and the New Zealand Commerce and Industry Office Regarding the Application of the Competition and Fair Trading Laws" will be terminated on the date that this Arrangement comes into effect.
- (c) this Arrangement will not affect the existing operation of the:
 - (i) "Co-operation and Co-ordination Agreement between the Australian Trade Practices Commission and New Zealand Commerce Commission"; and
 - (ii) "Cooperation and Coordination Arrangement between the Taipei Economic and Cultural Office and the Australian Commerce and Industry Office Regarding the Application of the Competition and Fair Trading Laws".

The Participants have decided on the following ten paragraphs:

PARAGRAPH I
PURPOSE AND DEFINITIONS

1. The purpose of this Arrangement is to promote cooperation and coordination among the Participants and to lessen the possibility or impact of differences among the Participants in the application of their competition and fair trading laws.
2. In this Arrangement:
 - (a) "competition and fair trading laws" will mean:
 - (i) for the Australian Competition and Consumer Commission, the *Trade Practices Act 1974* as amended;
 - (ii) for the New Zealand Commerce Commission, the *Commerce Act 1986* and the *Fair Trading Act 1986*; and
 - (iii) for the Taiwan Fair Trade Commission, the *Fair Trade Law*.
 - (b) "enforcement activity(ies)" will mean any application of competition and fair trading laws by way of investigation or proceeding conducted by a Participant.
 - (c) "territory(ies)" will mean the territories in respect of which the competition and fair trading laws are administered by the Participants.
3. Any reference in this Arrangement to a specific provision of the competition and fair trading laws will be interpreted as referring to that provision as amended from time to time and to any successor provisions.

PARAGRAPH II
NOTIFICATION

1. Each Participant will notify the other Participants of amendments to that Participant's competition and fair trading laws.
2. A Participant will notify another Participant in the manner provided by this Paragraph with respect to its enforcement activities that may affect the important interests of the other Participant, including those that:
 - (a) are relevant to enforcement activities of the other Participant;
 - (b) involve any conduct or transaction that may be subject to penalties or other relief under the competition and fair trading laws administered and enforced by the other Participant, other than mergers or acquisitions, carried out wholly or in part in the territory of such Participant, except where those activities are insubstantial;
 - (c) involve a merger or acquisition in which one or more of the Participants to the transaction, or a company controlling one or more of the Participants to the transaction, is a company incorporated or organised under the laws of the other Participant's territory; and
 - (d) involve a Participant seeking information located in other Participant's territory.
3. Each Participant will endeavour to give notification pursuant to this Paragraph when a Participant becomes aware that notifiable circumstances are present.
4. Notifiable circumstances, with respect to mergers or acquisitions, are present:
 - (a) when an application for authorisation is received by the Australian Competition and Consumer Commission under Part VII of the Trade Practices Act 1974;
 - (b) when the New Zealand Commerce Commission receives pre-merger notification, such notice being at the discretion of the merging parties;

and

- (c) when pre-merger notification is received by the Taiwan Fair Trade Commission under Article 11 of the Fair Trade Law.
5. Once a particular enforcement matter has been notified, subsequent notifications on that matter need not be made unless the notifying Participant becomes aware of new issues bearing upon the important interests of the jurisdiction of the notified Participant in the application of its competition and fair trading laws, or unless the notified Participant requests otherwise.
 6. Notifications in respect of enforcement activity will be sufficiently detailed to enable the notified Participant to make an initial evaluation of the effects of the enforcement activity on the important interests of its own jurisdiction.

PARAGRAPH III COORDINATION OF ENFORCEMENT ACTIVITIES

1. Each Participant will endeavour to render assistance to another Participant in its enforcement activities to the extent compatible with the laws and important interests of the jurisdiction of the assisting Participant.
2. In cases where the Participants have an interest in pursuing enforcement activities with regard to related matters, they may decide that it is in their common interest to coordinate their enforcement activities. In considering whether particular enforcement activities should be coordinated, either in whole or in part, each Participant will endeavour to take into account the following factors:
 - (a) the effect of such coordination on the ability of each Participant to achieve the objectives of its enforcement activities;
 - (b) the relative ability of each Participant to obtain information necessary to conduct the enforcement activities;
 - (c) the extent to which each Participant can secure effective preliminary or permanent relief against any conduct or transaction that may be subject

to penalties or other relief under the competition and fair trading laws administered and enforced by the Participants involved;

- (d) the opportunity to make more efficient use of resources; and
- (e) the possible reduction of cost to persons subject to enforcement activities.

PARAGRAPH IV AVOIDANCE OF CONFLICT

1. It is in the common interest of the Participants to minimise any potentially adverse effects of one Participant's enforcement activities on any of the other Participants' interests in the application of their competition and fair trading laws.
2. Where one Participant informs another Participant that specific enforcement activity by the second Participant may affect the first Participant's interests in the application of its competition and fair trading laws, the second Participant will endeavour to provide:
 - (a) timely notice of significant developments relating to those interests; and
 - (b) an opportunity to the first Participant to provide input regarding any proposed penalty or remedy.
3. Any questions arising out of this Arrangement will be addressed in as timely and practicable a manner as circumstances permit.

PARAGRAPH V EXCHANGE OF INFORMATION

The Participants have decided that it is in their common interest to share information which will facilitate the effective application of the competition and fair trading laws respectively and promote better understanding of each Participant's enforcement policies and activities. To further their common interests, the Participants will

endeavour to exchange and provide information in relation to:

- (a) investigations and research conducted;
- (b) speeches, research papers, journal articles, and other materials;
- (c) compliance education programs;
- (d) amendments to relevant legislation; and
- (e) human resources development and management.

PARAGRAPH VI MEETINGS

To further their common interest in cooperation and coordination in relation to their enforcement activities, the Participants will hold periodic meetings, as necessary, to:

- (a) exchange information on their current enforcement activities and priorities;
- (b) exchange information on economic sectors of common interest;
- (c) discuss competition and fair trading law changes which they are considering;
and
- (d) discuss other matters of mutual interest relating to the application of competition and fair trading laws.

PARAGRAPH VII COMMUNICATIONS UNDER THIS ARRANGEMENT

Communications under this Arrangement may be carried out by direct oral, telephonic, facsimile or e-mail communication among the Participants.

PARAGRAPH VIII
CONFIDENTIALITY AND USE OF INFORMATION

1. Notwithstanding any other provision of this Arrangement, no Participant is required to communicate information to any other Participant where such communication is prohibited by the law of that Participant or would be incompatible with the important interests in the application of its competition or fair trading laws.
2. Unless otherwise decided by the Participants, each Participant will, to the fullest extent possible, maintain and protect the confidentiality of any information communicated to it in confidence by the other Participants under this Arrangement, unless the Participant providing the confidential information consents, in writing, to the release of the information.
3. Information received by a Participant under this Arrangement will only be used for the purpose of this Arrangement.
4. A Participant may require that information furnished pursuant to this Arrangement be used subject to the terms and conditions it may specify. The receiving Participant will not use such information in a manner contrary to such terms and conditions without the prior consent, in writing, of the providing Participant.

PARAGRAPH IX
EXISTING LAW

Nothing in this Arrangement will require a Participant to act, or omit to act, in a manner inconsistent with the existing laws of its jurisdiction, or require any change in the laws of the jurisdictions of the Participants.

PARAGRAPH X
ENTRY INTO EFFECT, TERMINATION AND OTHER PARTICIPANTS

1. This Arrangement will come into effect when signed by all Participants.

2. This Arrangement will remain in effect until terminated by one, or more, of the Participants.
3. Any Participant may terminate the Arrangement by providing 30 days written notice to the other Participants.
4. The Participants will endeavour to periodically review the operation of this Arrangement with a view to assessing ways in which the Arrangement could be improved.
5. Other competition authorities may join this Arrangement on terms to be decided between it and the Participants to the Arrangement at the time of the application to join. The Participants may develop, as they consider appropriate, procedures to deal with such new Participants.

FOR THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION:

SIGNED at *Canberra*, on the *30* day of *July*, 2002.

Allan Fels

PROFESSOR ALLAN FELS

CHAIRPERSON

FOR THE NEW ZEALAND COMMERCE COMMISSION:

SIGNED at *Wellington*, on the *25th* day of *July*, 2002.

John Belgrave

JOHN BELGRAVE

CHAIR

FOR THE TAIWAN FAIR TRADE COMMISSION:

SIGNED at *Wellington*, on the *25* day of *July*, 2002.

Tzong-Leh Hwang

HWANG, TZONG-LEH

CHAIRPERSON