



**COOPERATION ARRANGEMENT BETWEEN
THE AUSTRALIAN COMPETITION AND
CONSUMER COMMISSION AND THE FAIR
TRADE COMMISSION OF THE REPUBLIC OF
KOREA REGARDING THE APPLICATION OF
THEIR COMPETITION AND CONSUMER
PROTECTION LAWS**

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The Australian Competition and Consumer Commission (ACCC) and the Fair Trade Commission of The Republic of Korea (KFTC) (hereinafter referred to as “the Agencies”);

Noting that cooperation and coordination between them will enhance the sound and effective application of the competition and consumer protection laws administered by them; and

Having regard to the Osaka Action Agenda of the Asia-Pacific Economic Cooperation Forum Concerning the Competitive Environment in the Asia-Pacific Region adopted on 16 November 1995, to the Recommendation of the Council of the Organization For Economic Co-Operation and Development (OECD) Concerning Co-Operation Between Member Countries On Restrictive Business Practices Affecting International Trade adopted on 28 July 1995, and to the Recommendation of the Council of the OECD Concerning Effective Action Against Hard Core Cartels adopted on 25 March 1998;

Have agreed as follows:

**PARAGRAPH 1
DEFINITIONS**

1. “Agency” refers, in the case of Australia, to the ACCC. In the case of the Republic of Korea, the term refers to the KFTC.
2. “Competition Laws” refers, in the case of Australia, to Part IV of the Trade Practices Act of 1974, other provisions of that Act except Part X in so far as they relate to Part IV, Regulations made under that Act in so far as they relate to Part IV except Regulations to the extent that they relate to Part X, and the Competition Code of the Australian States and Territories,

and, in the case of the Republic of Korea, to the Monopoly Regulation and Fair Trade Act (Law No. 3320,1980) and Regulations made under that Act; as well as any amendments thereto, and such other laws or regulations as the Agencies may agree in writing to be 'Competition Laws' for the purposes of this Arrangement.

3. "Consumer Protection Laws" refers, in the case of Australia, to Parts IVA, V, VC and Section 75AYA of the Trade Practices Act of 1974 and Regulations made under that Act as far as they relate to Part V and, in the case of the Republic of Korea, to the Fair Labelling and Advertising Act (Law No. 5814,1999) and Regulations made under that Act; as well as any amendments thereto, and such other laws or regulations as the Agencies may agree in writing to be 'Consumer Protection Laws' for the purposes of this Arrangement.

PARAGRAPH 2 PURPOSE

The purpose of this Arrangement is to promote the effective enforcement of the competition and consumer protection laws of each country through the development of cooperative relationships between the Agencies. The Agencies will, in accordance with the provisions of this Arrangement, share information, cooperate with and provide assistance to each other in their enforcement activities to the extent compatible with their essential interests.

PARAGRAPH 3 SCOPE OF ARRANGEMENT

1. This Arrangement relates to all of the activities of the Agencies including enforcement and adjudication by the Agencies, compliance education, research, human resource development and management.

2. The Agency to which a request for information or assistance is made (the Requested Agency) will provide all information and grant assistance unless the Requested Agency considers it is prejudicial to its essential interests or it would be prevented from doing so by its national laws. The Agency seeking information or assistance (the Requesting Agency) will only seek such information as it is able to within its powers and functions.

**PARAGRAPH 4
CONFIDENTIALITY**

1. Notwithstanding other provisions of this Arrangement, the Requested Agency is not required to provide information to the Requesting Agency if disclosure of that information to the Requesting Agency:
 - (a) is prohibited by relevant laws, or is incompatible with the essential interests of the Requested Agency; or
 - (b) would require disclosure of information which has been provided to the Requested Agency on a confidential basis by a third party and is so protected.
2. The Requesting Agency will maintain to the fullest extent possible, under the laws and regulations of its country, the confidentiality of any information provided in accordance with this Arrangement. Further, subject to the laws and regulations of its country, the Requesting Agency will not release to any other authority any confidential information provided in accordance with this Arrangement without the prior written permission of the Requested Agency.
3. The Requesting Agency will maintain the confidentiality of files to which access is limited when storing and handling confidential information provided in accordance with this Arrangement.
4. Where the Requested Agency requires specific measures for the protection of confidential information, it will notify the Requesting Agency prior to the transfer of that information. The Requesting Agency will confirm it is willing and able to comply with the instructions given prior to accepting the transfer of information.

**PARAGRAPH 5
SCOPE OF COOPERATION**

1. Exchange of information
 - (a) It is in the common interests of the Agencies to share information that will:

- (i) facilitate effective application of the competition and consumer protection laws administered by the respective Agency;
 - (ii) avoid unnecessary duplication;
 - (iii) facilitate coordinated investigations, research and education;
 - (iv) promote a better understanding by each of the Agencies of the economic and legal conditions and theories relevant to their respective competition and consumer protection law enforcement and related activities;
 - (v) keep each other informed of developments in their respective jurisdictions.
- (b) In furtherance of this common interest, the Agencies will, on a regular basis, exchange and provide information in relation to:
- (i) investigations and research conducted;
 - (ii) speeches, research papers, journal articles, and other materials;
 - (iii) compliance education programs;
 - (iv) amendments to relevant legislation; and
 - (v) human resources development and management.

2. Notification of enforcement and related activities

- (a) In respect of investigations by the Agencies, each Agency will notify the other whenever an investigation, enforcement or a related activity may affect the essential interests of the other. Each Agency will, in particular, notify the other when it makes inquiries of persons located in the other's jurisdiction.
- (b) Notifications will include sufficient information to facilitate a proper evaluation by the recipient Agency of any effect on its interests. The recipient Agency may request from the notifying Agency any further information it deems necessary for such evaluation.

3. Assistance in enforcement and related activities

The assistance available under this Arrangement includes:

- (a) providing access to information in the files of the Requested Agency, including confidential files, except if provision of such information would breach Paragraph 4 of this Arrangement.
- (b) in respect of parties appearing on a voluntary basis, preparing witness statements, conducting formal interviews and obtaining information and documents on behalf of the Requesting Agency.
- (c) coordination of enforcement activities when the Agencies agree that it would be beneficial in a particular case. In determining whether a particular enforcement activity should be coordinated, the Agencies will take account of the following:
 - (i) effect on resources;
 - (ii) operational effects;
 - (iii) efficiency and effectiveness of any joint action; and
 - (iv) impact on the Agencies.

In any coordination arrangement, each Agency will conduct its activities expeditiously and, insofar as possible, in a manner consistent with the objectives of the other Agency.

PARAGRAPH 6 PROCEDURE FOR ASSISTANCE

1. Requests for assistance and notifications in respect of any investigation will be made to the Chairperson of each respective Agency.
2. A request for assistance will include:
 - (a) a description of the parties involved in the conduct;
 - (b) an outline of the industry characteristics;
 - (c) the alleged breach;
 - (d) a description of the information sought and the purpose for which it is sought;
 - (e) a description of the type of assistance required;
 - (f) a suggested time period for reply; and
 - (g) confidentiality requirements.

3. The Requested Agency will acknowledge the request for assistance, and expeditiously provide that assistance in accordance with its procedures.
4. Where assistance cannot be provided pursuant to this Arrangement, the Requested Agency will promptly advise the Requesting Agency and provide an explanation of the basis for refusal.

PARAGRAPH 7 EXCHANGE OF STAFF

The Agencies will arrange visits and/or the exchange of staff as appropriate.

PARAGRAPH 8 MEETINGS

The Agencies will endeavour to hold an annual consultation meeting on competition and consumer protection policy, law and enforcement to bring together representatives of the Agencies in order to enhance mutual understanding and reinforce cooperation.

PARAGRAPH 9 ACTIVITIES SUPPORTED BY THE AGENCIES

The Agencies will develop cooperative arrangements in relation to:

- a. staff development and training;
- b. compliance education;
- c. mutual assistance in legislation; and
- d. assistance in the delivery of documents.

**PARAGRAPH 10
SETTLEMENT OF DISPUTE**

Within the framework of its own laws, and to the extent compatible with its own interests, each Agency will endeavour, at all stages in its activities, to take into account the essential interests of the other. Where there are any instances where the other's interests may be impinged, urgent and immediate consultation should take place.

**PARAGRAPH 11
COMING INTO EFFECT, TERMINATION AND REVIEW OF
ARRANGEMENT**

1. This Arrangement will come into effect on the date of signature.
2. Each Agency may terminate this Arrangement with thirty days' written notice to the other Agency.
3. The Agencies will review this Arrangement within three years after its coming into effect.

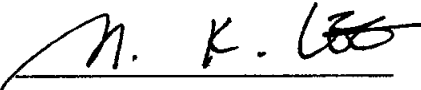
Signed at Naples, Italy on this 29th day of September 2002, in duplicate in the English language.

For the Australian Competition
and Consumer Commission



Professor Allan Fels AO
Chairman

For the Fair Trade Commission
of The Republic of Korea



Dr. Nam-Kee Lee
Chairman