

**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**

1. BACKGROUND

1.1 The Taipei Economic and Cultural Office (TECO) and the Australian Commerce and Industry Office (ACIO) (the Parties) note that cooperation and coordination between the Fair Trade Commission, Taipei (FTC) and the Australian Competition and Consumer Commission (ACCC) (hereinafter referred to collectively as "the Agencies") will enhance the sound and effective application of the competition and fair trading laws administered by the Agencies.

1.2 However, the Agencies note that from time to time differences may arise between them concerning the application of the competition and fair trading laws administered by the Agencies to conduct or transactions that implicate a significant interest of either of the Agencies or the territories in which their relevant laws are administered. They further note that in this regard, there are some material differences between the competition and fair trading laws administered by the Agencies.

1.3 The Agencies note the existence of the Mutual Assistance in Business Regulation and Mutual Assistance in Criminal Matters legislation in Australia. This Arrangement is to operate concurrently with that legislation.

1.4 The Agencies note the existence of the Osaka Action Agenda of the Asia-Pacific Economic Cooperation Forum Concerning the Competitive Environment in the Asia-Pacific Region which was adopted on 16 November 1995 which encourages the establishment of cooperation arrangements, such as this, among the competition authorities in that region, including the FTC and the ACCC. This Arrangement is to operate concurrently with that Action Agenda.

2. PURPOSE

2.1 The purpose of this Arrangement is to promote cooperation and coordination between the Agencies and to lessen the possibility of differences between the Agencies in the application of the competition and fair trading laws administered by the Agencies where these differences are not the result of statutory provisions. The

ongoing exchange of information and cooperation in a number of areas will enable each agency to be more efficient and effective.

3. SUBJECT MATTER

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

3.2 The agency to whom a request for information or assistance is made (the Requested Agency) is to provide all information and grant assistance required unless the Requested Agency considers it is prejudicial to important interests or would be prevented from doing so by law. The agency seeking information or assistance (the Requesting Agency) is to seek such information as it is within its power and functions to do so.

4. CONFIDENTIALITY

4.1 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:

- is prohibited by relevant laws, or is incompatible with the important interests of the jurisdiction of the Requested Agency;
- would require disclosure of information which has been provided to the Requesting Agency on a confidential basis.

4.2 The Requesting Agency is to maintain to the fullest extent possible the confidentiality of any information provided in accordance with this Arrangement. The Requesting Agency is to protect to the fullest extent possible confidential information provided in accordance with this Arrangement, including requests made pursuant to the Freedom of Information Act 1982 (Australia). The Requesting Agency is not to release to any other authority any confidential information provided in accordance with this Arrangement without the prior written permission of the Requested Agency.

4.3 The Requesting Agency is to maintain confidential files to which access is limited for the purpose of storing and handling of confidential information provided in accordance with this Arrangement.

4.4 Where the Requested Agency requires specific measures for protection of confidential information it is to notify the Requesting Agency prior to the transfer of that information. The Requesting Agency is to confirm it is willing and able to comply prior to accepting the transfer of information.

5. SCOPE OF COOPERATION

5.1 Exchange of Information

5.1.1 It is in the common interests of the Agencies to share information that will:

- facilitate effective application of their competition and fair trading laws administered by the respective Agencies;
- avoid unnecessary duplication;
- facilitate coordinated investigations, research and education;
- promote a better understanding by each Party of economic and legal conditions and theories relevant to their respective competition and fair trading laws enforcement and related activities;
- keep each other informed of developments in their respective jurisdictions or companies based in that jurisdiction.

5.1.2 In furtherance of this common interest the Agencies are to, on a regular basis, exchange and provide information in relation to:

- investigations by the Agencies and research;
- speeches, research papers, journal articles, etc.;
- compliance education programs;
- amendments to relevant legislation;
- human resources development and management.

5.2 Notification of enforcement and related activities

5.2.1 In respect of investigations by the Agencies, each of the Agencies is to notify the other whenever an investigation, enforcement or related activity of an agency may affect important interests of that other. In respect of investigations by agencies other than the Agencies, each of the Agencies is to notify the other whenever it becomes aware that an investigation, enforcement or related activity of an agency may affect important interests of that other. Each of the Agencies is to, in particular, notify the other when they make enquiries of persons located in the other's jurisdiction.

5.2.2 Notifications are to include sufficient information to facilitate a proper evaluation by the recipient agency of any effect of such interest and the other agency is free to follow up with the notifying agency for any further information.

5.2.3 A notification in respect of any investigation is to be made to the Chairperson of the respective party.

5.3 Assistance in enforcement and related activities

5.3.1 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 Clause 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. Where that assistance cannot be provided because of the laws governing the Requested Agency, the Requested Agency is to advise accordingly.
- (c) coordination of enforcement activities when the Agencies agree that would be beneficial in a particular case. In determining whether a particular enforcement activity should be coordinated the parties are to take account of the following:
 - effect on resources;
 - operational effects;
 - efficiency and effectiveness of any joint action;
 - impact on the Agencies, economies or citizens.

In any coordination arrangement each agency is to conduct its activities expeditiously and insofar as possible consistent with the objectives of the other agency.

6. PROCEDURE FOR ASSISTANCE

6.1 Requests for administrative assistance are to be made by the Requesting Agency through the Chairperson of the Requested Agency.

6.2 A request for administrative assistance is to include:

- a description of the parties involved in the conduct;
- an outline of the industry characteristics;
- the alleged breach;
- a description of the information sought and the purpose for which it is sought;
- a description of the type of assistance required;
- a suggested time period for reply;
- requirements for confidentiality.

6.3 The Requested Agency is to acknowledge the request for administrative assistance, and expeditiously provide that assistance in accordance with its procedures.

7. EXCHANGE OF STAFF

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

8. AGENCY SUPPORT ACTIVITIES

8.1 The Agencies are to develop cooperative arrangements in relation to:

- staff development and training;
- information technology, including direct access to E-mail systems and non-corporate data base;
- compliance education;
- mutual assistance in legislation;
- assistance in the delivery of documents.

9. AVOIDANCE OF CONFLICT

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

10. REVIEW OF ARRANGEMENT

10.1 This Arrangement is to be reviewed annually and an agreed report prepared on the cooperation and coordination between the Agencies for each 12 month period. Such a review is to be undertaken on the anniversary of the signature of this Arrangement.

10.2 Each agency can terminate this Arrangement with 30 days written notice.

This Arrangement will come into effect on the date of signature.

Signed at Taipei on this 13th day of September 1996, in duplicate in the English language.

For the Taipei Economic and
Cultural Office

For the Australian Commerce and
Industry Office

David Hong
Representative

Colin Heseltine
Senior Representative