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ภาคผนวก

ภาคผนวก ก

U. S. - GERMANY ANTITRUST ACCORD

Subject to ratification by both countries, the United States and West Germany agreed to the following on June 23, 1976.

Agreement
Between the
Government of the United States of America
and the Government of the
Federal Republic of Germany
Relating to Mutual Cooperation Regarding
Restrictive Business Practices

[In full text]

The Government of the United States of America and the Government of the Federal Republic of Germany, considering that restrictive business practices affecting their domestic or international trade are prejudicial to the economic and commercial interests of their countries,

Convinced that action against these practices can be made more effective by the regularization of cooperation between their antitrust authorities, and

Having regard, in this respect, to their Treaty of Friendship, Commerce, and Navigation and to the Recommendations of the Council of the Organization for Economic Cooperation and Development Concerning Cooperation Between Member Countries on Restrictive Business Practices Affecting International Trade adopted on October 5, 1967, and on July 3, 1973,

Have agreed as follows:

Article 1

For the purpose of this Agreement, the following terms shall have the meanings indicated:

a. "Antitrust laws" shall mean, in the United States of America, the Sherman Act (15 U.S.C. §§ 1-11), the Clayton Act (15 U.S.C. § 12 *et seq.*), and the Federal Trade

Commission Act (15 U.S.C. § 41 *et seq.*), and in the Federal Republic of Germany, the Act Against Restraints on Competition ("Gesetz gegen Wettbewerbsbeschränkungen") (BGB1. I 1974, 869) as those Acts have been and may from time to time be amended.

b. "Antitrust authorities" shall mean, in the United States of America, the Antitrust Division of the United States Department of Justice and the Federal Trade Commission, and, in the Federal Republic of Germany, the Federal Minister of Economics ("Bundesminister fur Wirtschaft") and the Federal Cartel Office ("Bundeskartellamt") and successors in each country.

c. "Information" shall include reports, documents, memoranda, expert opinions, legal briefs and pleadings, decisions of administrative or judicial bodies, and other written or computerized records.

d. "Restrictive business practices" shall include all practices which may violate, or are regulated under, the antitrust laws of either party.

e. "Antitrust investigation or proceeding" shall mean any investigation or proceeding related to restrictive business practices and conducted by an antitrust authority under its antitrust laws.

Article 2

(1) Each party agrees that its antitrust authorities will cooperate and render assistance to the antitrust authorities of the other party, to the extent set forth in this Agreement, in connection with:

a. antitrust investigations or proceedings,

b. studies related to competition policy and possible changes in antitrust laws, and

c. activities related to the restrictive business practice work of international organizations of which both parties are members.

(2) Each party agrees that it will provide the other party with any significant information which comes to the attention of its antitrust authorities and which involves restrictive business practices which, regardless of origin, have a substantial effect on the domestic or international trade of such other party.

(3) Each party agrees that, upon request of the other party, its antitrust authorities will obtain for and furnish such other party with such information as such other party may request in connection with a matter referred to in Article 2, paragraph 1, and will otherwise provide advice and assistance in connection therewith. Such advice and assistance shall include, but not necessarily be limited to, the exchange of information and a summary of experience relating to particular practices where either of the antitrust authorities of the requested party has dealt with or has information relating to a practice involved in the request. Such assistance shall also include the attendance of public officials of the requested party to give information, views or testimony in regard to any antitrust investigation or proceeding, legislation or policy, and the transmittal or the making available of documents and legal briefs and pleadings of the antitrust authorities of the requested party (or duly authenticated or certified copies thereof).

(4) An antitrust authority of a party, in seeking to obtain information or interviews on a voluntary basis from a person or enterprise within the jurisdiction of the other party, may request such other party to transmit a communication seeking such information or interviews to such person or enterprise. In that event, the other party will transmit such communication and, if so requested, will (if such is the case) notify such person or enterprise that the requested party has no objection to voluntary compliance with the request.

(5) Each party agrees that, upon the request of an antitrust authority of the other party, its antitrust authorities will consult with the requesting party concerning possible coordination of concurrent antitrust investigations or proceedings in the two countries which are related or affect each other.

Article 3

(1) Either party may decline, in whole or in part, to render assistance under Article 2 of this Agreement, or may comply with any request for such assistance subject to such terms and conditions as the complying party may establish, if such party determines that:

a. compliance would be prohibited by legal protections of confidentiality or by other domestic law of the complying party; or

b. compliance would be inconsistent with its security, public policy or other important national interests;

c. the requesting party is unable or unwilling to comply with terms or conditions established by the complying party, including conditions designed to protect the confidentiality of information requested; or

d. the requesting party would not be obligated to comply with such request, by reason of any grounds set forth in items (a), (b) or (c) above, if such request had been made by the requested party.

(2) Neither party shall be obligated to employ compulsory powers in order to obtain information for, or otherwise provide advice and assistance to, the other party pursuant to this Agreement.

(3) Neither party shall be obligated to undertake efforts in connection with this Agreement which are likely to require such substantial utilization of personnel or resources as to burden unreasonably its own enforcement duties.

Article 4

(1) Each party agrees that it will act, to the extent compatible with its domestic law, security, public policy or other important national interests, so as not to inhibit or interfere with any antitrust investigation or proceeding of the other party.

(2) Where the application of the antitrust laws of one party, including antitrust investigations or proceedings, will be likely to affect important interests of the other party, such party will notify such other party and will consult and coordinate with such other party to the extent appropriate under the circumstances.

Article 5

The confidentiality of information transmitted shall be maintained in accordance with the law of the party receiving such information, subject to such terms and conditions as may be established by the complying party furnishing such information. Each party agrees that it will use information received under this Agreement only for purposes of its antitrust authorities as set forth in Article 2, paragraph 1.

Article 6

(1) The terms of this Agreement shall be implemented, and obligations under this Agreement shall be discharged, in accordance with the laws of the respective parties, by their respective antitrust authorities which shall develop appropriate procedures in connection therewith.

(2) Requests for assistance pursuant to this Agreement shall be made or confirmed in writing, shall be reasonably specific and shall include the following information as appropriate:

a. the antitrust authority or authorities to whom the request is directed;

b. the antitrust authority or authorities making the request;

c. the nature of the antitrust investigation or proceeding, study or other activity involved;

d. the object of and reason for the request; and

e. the names and addresses of relevant persons or enterprises, if known.

Such requests may specify that particular procedures be followed or that a representative of the requesting party be present at requested proceedings or in connection with other requested actions.

(3) The requesting party shall be advised, to the extent feasible, of the time, place and type of action to be taken by the requested party in response to any request for assistance under this Agreement.

(4) If any such request cannot be fully complied with, the requested party shall promptly notify the requesting party of its refusal or inability to so comply, stating the grounds for such refusal, any terms or conditions which it may establish in connection therewith and any other information which it considers relevant to the subject of the request.

Article 7

All direct expenses incurred by the requested party in complying with a request for assistance under this Agreement shall, upon request, be paid or reimbursed by the requesting party. Such direct expenses may include fees of experts, costs of interpreters, travel and maintenance expenses of experts, interpreters and employees of antitrust authorities, transcript and reproduction costs, and other incidental expenses, but shall not include any part of the salaries of employees of antitrust authorities.

Article 8

This Agreement shall also apply to Land Berlin provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the United States of America within three months of the date of entry into force of this Agreement.

Article 9

(1) This Agreement shall enter into force one month from the date on which the parties shall have informed each other in an exchange of diplomatic notes that all the domestic legal requirements for such entry into force have been fulfilled.

(2) This Agreement shall remain in force until terminated upon six months' notice given in writing by one of the parties to the other.

Done at Bonn, in duplicate, in the English and German languages, both texts being equally authentic, this twenty-third day of June, 1976.

ภาคผนวก ข

Agreement Between

The Government of The United States of America and

The Commission of the European Communities

Regarding The Application of Their Competition Laws

The Government of the United States of America and the Commission of the European Communities:

Recognizing that the world's economies are becoming increasingly interrelated, and in particular that this is true of the economies of the United States of America and the European Communities;

Noting that the Government of the United States of America and the Commission of the European Communities share the view that the sound and effective enforcement of competition law is a matter of importance to the efficient operation of their respective markets and to trade between them;

Noting that the sound and effective enforcement of the Parties' competition laws would be enhanced by cooperation and, in appropriate cases, coordination between them in the application of those laws;

Noting further that from time to time differences may arise between the Parties concerning the application of their competition laws to conduct or transactions that implicate significant interests of both Parties;

Having regard to the Recommendation of the Council of the Organization for Economic Cooperation and Development Concerning Cooperation Between Member Countries on Restrictive Business Practices Affecting International Trade, adopted on June 5, 1986; and Having regard to the Declaration on US-EC Relations adopted on November 23, 1990;

Have agreed as follows:

Article I

PURPOSE AND DEFINITIONS

1. The purpose of this Agreement is to promote cooperation and coordination and lessen the possibility or impact of differences between the Parties in the application of their competition laws.

2. For the purposes of this Agreement, the following terms shall have the following definitions:

    a. "Competition law(s)" shall mean

        i. for the European Communities, Articles 85, 86, 89 and 90 of the Treaty establishing the European Economic Community, Regulation (EEC) no. 4064/89 on the control of concentrations between undertakings, Articles 65 and 66 of the Treaty establishing the European Coal and Steel Community (ECSC), and their implementing Regulations including High Authority Decision no. 24-54, and

        ii. for the United States of America, the Sherman Act (15 U.S.C. 1-7), the Clayton Act (15 U.S.C. 12-27), the Wilson Tariff Act (15 U.S.C. 8-11), and the Federal Trade Commission Act (15U.S.C. 41-68, except as these sections relate to consumer protection functions), as well as such other laws or regulations as the Parties shall jointly agree in writing to be a "competition law" for purposes of this Agreement;

    b. "Competition authorities" shall mean (i) for the European Communities, the Commission of the European Communities, as to its responsibilities pursuant to the competition laws of the European Communities, and (ii) for the United States, the Antitrust Division of the United States Department of Justice and the Federal Trade Commission;

c. "Enforcement activities" shall mean any application of competition law by way of investigation or proceeding conducted by the competition authorities of a Party; and

d. "Anticompetitive activities" shall mean any conduct or transaction that is impermissible under the competition laws of a Party.

Article II

NOTIFICATION

1. Each Party shall notify the other whenever its competition authorities become aware that their enforcement activities may affect important interests of the other Party.

2. Enforcement activities as to which notification ordinarily will be appropriate include those that:

   a. Are relevant to enforcement activities of the other Party;

   b. Involve anticompetitive activities (other than a merger or acquisition) carried out in significant part in the other Party's territory;

   c. Involve a merger or acquisition in which one or more of the parties to the transaction, or a company controlling one or more of the parties to the transaction, is a company incorporated or organized under the laws of the other Party or one of its states or member states;

   d. Involve conduct believed to have been required, encouraged or approved by the other Party; or

   e. Involve remedies that would, in significant respects, require or prohibit conduct in the other Party's territory.

3. With respect to mergers or acquisitions required by law to be reported to the competition authorities, notification under this Article shall be made:

a. In the case of the Government of the United States of America,

   i. not later than the time its competition authorities request, pursuant to 15 U.S.C. 18a(e), additional information or documentary material concerning the proposed transaction,

   ii. when its competition authorities decide to file a complaint challenging the transaction, and

   iii. where this is possible, far enough in advance of the entry of a consent decree to enable the other Party's views to be taken into account; and

b. In the case of the Commission of the European Communities,

   i. when notice of the transaction is published in the Official Journal, pursuant to Article 4(3) of Council Regulation no. 4064/89, or when notice of the transaction is received under Article 66 of the ECSC Treaty and a prior authorization from the Commission is required under that provision,

   ii. when its competition authorities decide to initiate proceedings with respect to the proposed transaction, pursuant to Article 6(1)(c) of Council Regulation no. 4064/89, and

   iii. far enough in advance of the adoption of a decision in the case to enable the other Party's views to be taken into account.

4. With respect to other matters, notification shall ordinarily be provided at the stage in an investigation when it becomes evident that notifiable circumstances are present, and in any event far enough in advance of

   a. the issuance of a statement of objections in the case of the Commission of the European Communities, or a complaint or indictment in the case of the Government of the United States of America, and

b. the adoption of a decision or settlement in the case of the Commission of the European Communities, or the entry of a consent decree in the case of the Government of the United States of America, to enable the other Party's views to be taken into account.

5. Each Party shall also notify the other whenever its competition authorities intervene or otherwise participate in a regulatory or judicial proceeding that does not arise from its enforcement activities, if the issues addressed in the intervention or participation may affect the other Party's important interests. Notification under this paragraph shall apply only to

   a. regulatory or judicial proceedings that are public,

   b. intervention or participation that is public and pursuant to formal procedures, and

   c. in the case of regulatory proceedings in the United States, only proceedings before federal agencies.

   Notification shall be made at the time of the intervention or participation or as soon thereafter as possible.

6. Notifications under this Article shall include sufficient information to permit an initial evaluation by the recipient Party of any effects on its interests.

Article III

EXCHANGE OF INFORMATION

1. The Parties agree that it is in their common interest to share information that will

   a. facilitate effective application of their respective competition laws, or

   b. promote better understanding by them of economic conditions and theories relevant to their competition authorities' enforcement activities and interventions or participation of the kind described in Article II, paragraph 5.

2. In furtherance of this common interest, appropriate officials from the competition authorities of each Party shall meet at least twice each year, unless otherwise agreed, to

    a. exchange information on their current enforcement activities and priorities,

    b. exchange information on economic sectors of common interest,

    c. discuss policy changes which they are considering, and

    d. discuss other matters of mutual interest relating to the application of competition laws.

3. Each Party will provide the other Party with any significant information that comes to the attention of its competition authorities about anticompetitive activities that its competition authorities believe is relevant to, or may warrant, enforcement activity by the other Party's competition authorities.

4. Upon receiving a request from the other Party, and within the limits of Articles VIII and IX, a Party will provide to the requesting Party such information within its possession as the requesting Party may describe that is relevant to an enforcement activity being considered or conducted by the requesting Party's competition authorities.

Article IV

COOPERATION AND COORDINATION IN ENFORCEMENT ACTIVITIES

1. The competition authorities of each Party will render assistance to the competition authorities of the other Party in their enforcement activities, to the extent compatible with the assisting Party's laws and important interests, and within its reasonably available resources.

2. In cases where both Parties have an interest in pursuing enforcement activities with regard to related situations, they may agree that it is in their mutual interest

to coordinate their enforcement activities. In considering whether particular enforcement activities should be coordinated, the Parties shall take account of the following factors, among others:

a. the opportunity to make more efficient use of their resources devoted to the enforcement activities;

b. the relative abilities of the Parties' competition authorities to obtain information necessary to conduct the enforcement activities;

c. the effect of such coordination on the ability of both Parties to achieve the objectives of their enforcement activities; and

d. the possibility of reducing costs incurred by persons subject to the enforcement activities.

3. In any coordination arrangement, each Party shall conduct its enforcement activities expeditiously and, insofar as possible, consistently with the enforcement objectives of the other Party.

4. Subject to appropriate notice to the other Party, the competition authorities of either Party may limit or terminate their participation in a coordination arrangement and pursue their enforcement activities independently.

Article V

COOPERATION REGARDING ANTICOMPETITIVE ACTIVITIES IN THE TERRITORY OF ONE PARTY THAT ADVERSELY AFFECT THE INTERESTS OF THE OTHER PARTY

1. The Parties note that anticompetitive activities may occur within the territory of one Party that, in addition to violating that Party's competition laws, adversely affect important interests of the other Party. The Parties agree that it is in both their interests to address anticompetitive activities of this nature.

2. If a Party believes that anticompetitive activities carried out on the territory of the other Party are adversely affecting its important interests, the first Party may notify the other Party and may request that the other Party's competition authorities initiate appropriate enforcement activities. The notification shall be as specific as possible about the nature of the anticompetitive activities and their effects on the interests of the notifying Party, and shall include an offer of such further information and other cooperation as the notifying Party is able to provide.

3. Upon receipt of a notification under paragraph 2, and after such other discussion between the Parties as may be appropriate and useful in the circumstances, the competition authorities of the notified Party will consider whether or not to initiate enforcement activities, or to expand ongoing enforcement activities, with respect to the anticompetitive activities identified in the notification. The notified Party will advise the notifying Party of its decision. If enforcement activities are initiated, the notified Party will advise the notifying Party of their outcome and, to the extent possible, of significant interim developments.

4. Nothing in this Article limits the discretion of the notified Party under its competition laws and enforcement policies as to whether or not to undertake enforcement activities with respect to the notified anticompetitive activities, or precludes the notifying Party from undertaking enforcement activities with respect to such anticompetitive activities.

Article VI

AVOIDANCE OF CONFLICTS OVER ENFORCEMENT ACTIVITIES

Within the framework of its own laws and to the extent compatible with its important interests, each Party will seek, at all stages in its enforcement activities, to take into account the important interests of the other Party. Each Party shall consider important interests of the other Party in decisions as to whether or not to initiate an investigation or

proceeding, the scope of an investigation or proceeding, the nature of the remedies or penalties sought, and in other ways, as appropriate. In considering one another's important interests in the course of their enforcement activities, the Parties will take account of, but will not be limited to, the following principles:

1. While an important interest of a Party may exist in the absence of official involvement by the Party with the activity in question, it is recognized that such interests would normally be reflected in antecedent laws, decisions or statements of policy by its competent authorities.

2. A Party's important interests may be affected at any stage of enforcement activity by the other Party. The Parties recognize, however, that as a general matter the potential for adverse impact on one Party's important interests arising from enforcement activity by the other Party is less at the investigative stage and greater at the stage at which conduct is prohibited or penalized, or at which other forms of remedial orders are imposed.

3. Where it appears that one Party's enforcement activities may adversely affect important interests of the other Party, the Parties will consider the following factors, in addition to any other factors that appear relevant in the circumstances, in seeking an appropriate accommodation of the competing interests:

    a. the relative significance to the anticompetitive activities involved of conduct within the enforcing Party's territory as compared to conduct within the other Party's territory;

    b. the presence or absence of a purpose on the part of those engaged in the anticompetitive activities to affect consumers, suppliers, or competitors within the enforcing Party's territory;

c. the relative significance of the effects of the anticompetitive activities on the enforcing Party's interests as compared to the effects on the other Party's interests;

d. the existence or absence of reasonable expectations that would be furthered or defeated by the enforcement activities;

e. the degree of conflict or consistency between the enforcement activities and the other Party's laws or articulated economic policies; and

f. the extent to which enforcement activities of the other Party with respect to the same persons, including judgments or undertakings resulting from such activities, may be affected.

Article VII
CONSULTATION

1. Each Party agrees to consult promptly with the other Party in response to a request by the other Party for consultations regarding any matter related to this Agreement and to attempt to conclude consultations expeditiously with a view to reaching mutually satisfactory conclusions. Any request for consultations shall include the reasons therefor and shall state whether procedural time limits or other considerations require the consultations to be expedited.

   These consultations shall take place at the appropriate level, which may include consultations between the heads of the competition authorities concerned.

2. In each consultation under paragraph 1, each Party shall take into account the principles of cooperation set forth in this Agreement and shall be prepared to explain to the other Party the specific results of its application of those principles to the issue that is the subject of consultation.

Article VIII

CONFIDENTIALITY OF INFORMATION

1. Notwithstanding any other provision of this Agreement, neither Party is required to provide information to the other Party if disclosure of that information to the requesting Party

    a. is prohibited by the law of the Party possessing the information, or

    b. would be incompatible with important interests of the Party possessing the information.

2. Each Party agrees to maintain, to the fullest extent possible, the confidentiality of any information provided to it in confidence by the other Party under this Agreement and to oppose, to the fullest extent possible, any application for disclosure of such information by a third party that is not authorized by the Party that supplied the information.

Article IX

EXISTING LAW

Nothing in this Agreement shall be interpreted in a manner inconsistent with the existing laws, or as requiring any change in the laws, of the United States of America or the European Communities or of their respective states or member states.

Article X

COMMUNICATIONS UNDER THIS AGREEMENT

Communications under this Agreement, including notifications under Articles II and V, may be carried out by direct oral, telephonic, written or facsimile communication from one Party's competition authority to the other Party's authority. Notifications under Articles II, V and XI, and requests under Article VII, shall be confirmed promptly in writing through diplomatic channels.

Article XI

ENTRY INTO FORCE, TERMINATION AND REVIEW

1. This Agreement shall enter into force upon signature.

2. This Agreement shall remain in force until 60 days after the date on which either Party notifies the other Party in writing that it wishes to terminate the Agreement.

3. The Parties shall review the operation of this Agreement not more than 24 months from the date of its entry into force, with a view to assessing their cooperative activities, identifying additional areas in which they could usefully cooperate and identifying any other ways in which the Agreement could be improved. The Parties agree that this review will include, among other things, an analysis of actual or potential cases to determine whether their interests could be better served through closer cooperation.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Agreement.

DONE at Washington, in duplicate, this twenty-third day of September, 1991, in the English language.

FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA:

FOR THE COMMISSION OF
THE EUROPEAN COMMUNITIES:

By Direction of the Federal Trade Commission:

ภาคผนวก ค

Agreement Between
The Government of the United States of America
and the European Communities
on the Application of Positive Comity Principles
in the Enforcement of their Competition Laws

THE GOVERNMENT OF THE UNITED STATES OF AMERICA of the one part, and THE EUROPEAN COMMUNITY AND THE EUROPEAN COAL AND STEEL COMMUNITY of the other part (hereinafter "the European Communities"):

Having regard to the September 23, 1991 Agreement between the Government of the United States of America and the European Communities Regarding the Application of Their Competition Laws, and the exchange of interpretative letters dated May 31 and July 31, 1995 in relation to that Agreement (together hereinafter "the 1991 Agreement");

Recognizing that the 1991 Agreement has contributed to coordination, cooperation, and avoidance of conflicts in competition law enforcement;

Noting in particular Article V of the 1991 Agreement, commonly referred to as the "Positive Comity" Article, which calls for cooperation regarding anticompetitive activities occurring in the territory of one Party that adversely affect the interests of the other Party;

Believing that further elaboration of the principles of positive comity and of the implementation of those principles would enhance the 1991 Agreement's effectiveness in relation to such conduct; and

Noting that nothing in this Agreement or its implementation shall be construed as prejudicing either Party's position on issues of competition law jurisdiction in the international context,

HAVE AGREED AS FOLLOWS:

ARTICLE I

Scope and purpose of this Agreement

1. This Agreement applies where a Party satisfies the other that there is reason to believe that the following circumstances are present:

(a) anticompetitive activities are occurring in whole or in substantial part in the territory of one of the Parties and are adversely affecting the interests of the other Party; and

(b) the activities in question are impermissible under the competition laws of the Party in the territory of which the activities are occurring.

2. The purposes of this Agreement are to:

(a) help ensure that trade and investment flows between the Parties and competition and consumer welfare within the territories of the Parties are not

impeded by anticompetitive activities for which the competition laws of one or both Parties can provide a remedy, and

(b) establish cooperative procedures to achieve the most effective and efficient enforcement of competition law, whereby the competition authorities of each Party will normally avoid allocating enforcement resources to dealing with anticompetitive activities that occur principally in and are directed principally towards the other Party's territory, where the competition authorities of the other Party are able and prepared to examine and take effective sanctions under their law to deal with those activities.

ARTICLE II

Definitions

As used in this Agreement:

1. "Adverse effects" and "adversely affected" mean harm caused by anticompetitive activities to:

(a) the ability of firms in the territory of a Party to export to, invest in , or otherwise compete in the territory of the other Party, or

(b) competition in a Party's domestic or import markets.

2. "Requesting Party" means a Party that is adversely affected by anticompetitive activities occurring in whole or in substantial part in the territory of the other Party.

3. "Requested Party" means a Party in the territory of which such anticompetitive activities appear to be occurring.

4. "Competition law(s)" means

(a) for the European Communities, Articles 85, 86, and 89 of the Treaty establishing the European Community (EC), Articles 65 and 66(7) of the Treaty establishing the European Coal and Steel Community (ECSC), and their implementing instruments, to the exclusion of Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings, and

(b) for the United States of America, the Sherman Act (15 U.S.C. §§1-7), the Clayton Act (15 U.S.C. §§12-27, except as it relates to investigations pursuant to Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. §18a), the Wilson Tariff Act (15 U.S.C. §§8-11), and the Federal Trade Commission Act (15 U.S.C. §§41-58, except as these sections relate to consumer protection functions),

as well as such other laws or regulations as the Parties shall jointly agree in writing to be a "competition law" for the purposes of this Agreement.

5. "Competition authorities" means:

(a) for the European Communities, the Commission of the European Communities, as to its responsibilities pursuant to the competition laws of the European Communities, and

(b) for the United States, the Antitrust Division of the United States Department of Justice and the Federal Trade Commission.

6. "Enforcement activities" means any application of competition law by way of investigation or proceeding conducted by the competition authorities of a Party.

7. "Anticompetitive activities" means any conduct or transaction that is impermissible under the competition laws of a Party.

ARTICLE III

Positive Comity

The competition authorities of a Requesting Party may request the competition authorities of a Requested Party to investigate and, if warranted, to remedy anticompetitive activities in accordance with the Requested Party's competition laws. Such a request may be made regardless of whether the activities also violate the Requesting Party's competition laws, and regardless of whether the competition

authorities of the Requesting Party have commenced or contemplate taking enforcement activities under their own competition laws.

ARTICLE IV

Deferral or Suspension of Investigations in Reliance On Enforcement Activity by the Requested Party

1. The competition authorities of the Parties may agree that the competition authorities of the Requesting Party will defer or suspend pending or contemplated enforcement activities during the pendency of enforcement activities of the Requested Party.

2. The competition authorities of a Requesting Party will normally defer or suspend their own enforcement activities in favor of enforcement activities by the competition authorities of the Requested Party when the following conditions are satisfied:

(a) The anticompetitive activities at issue:

(i) do not have a direct, substantial and reasonably foreseeable impact on consumers in the Requesting Party's territory, or

(ii) where the anticompetitive activities do have such an impact on the Requesting Party's consumers, they occur principally in and are directed principally towards the other Party's territory;

(b) The adverse effects on the interests of the Requesting Party can be and are likely to be fully and adequately investigated and, as appropriate, eliminated or

adequately remedied pursuant to the laws, procedures, and available remedies of the Requested Party. The Parties recognize that it may be appropriate to pursue separate enforcement activities where anticompetitive activities affecting both territories justify the imposition of penalties within both jurisdictions; and

(c) The competition authorities of the Requested Party agree that in conducting their own enforcement activities, they will:

(i) devote adequate resources to investigate the anticompetitive activities and, where appropriate, promptly pursue adequate enforcement activities;

(ii) use their best efforts to pursue all reasonably available sources of information, including such sources of information as may be suggested by the competition authorities of the Requesting Party;

(iii) inform the competition authorities of the Requesting Party, on request or at reasonable intervals, of the status of their enforcement activities and intentions, and where appropriate provide to the competition authorities of the Requesting Party relevant confidential information if consent has been obtained from the source concerned. The use and disclosure of such information shall be governed by Article V;

(iv) promptly notify the competition authorities of the Requesting Party of any change in their intentions with respect to investigation or enforcement;

(v) use their best efforts to complete their investigation and to obtain a remedy or initiate proceedings within six months, or such other time as

agreed to by the competition authorities of the Parties, of the deferral or suspension of enforcement activities by the competition authorities of the Requesting Party;

(vi) fully inform the competition authorities of the Requesting Party of the results of their investigation, and take into account the views of the competition authorities of the Requesting Party, prior to any settlement, initiation of proceedings, adoption of remedies, or termination of the investigation; and

(vii) comply with any reasonable request that may be made by the competition authorities of the Requesting Party.

When the above conditions are satisfied, a Requesting Party which chooses not to defer or suspend its enforcement activities shall inform the competition authorities of the Requested Party of its reasons.

3. The competition authorities of the Requesting Party may defer or suspend their own enforcement activities if fewer than all of the conditions set out in paragraph 2 are satisfied.

4. Nothing in this Agreement precludes the competition authorities of a Requesting Party that choose to defer or suspend independent enforcement activities from later initiating or reinstituting such activities. In such circumstances, the competition authorities of the Requesting Party will promptly inform the competition authorities of the Requested Party of their intentions and reasons. If the competition authorities of the Requested Party continue with their own investigation, the competition authorities of the two Parties shall,

where appropriate, coordinate their respective investigations under the criteria and procedures of Article IV of the 1991 Agreement.

ARTICLE V

Confidentiality and Use of Information

Where pursuant to this Agreement the competition authorities of one Party provide information to the competition authorities of the other Party for the purpose of implementing this Agreement, that information shall be used by the latter competition authorities only for that purpose. However, the competition authorities that provided the information may consent to another use, on condition that where confidential information has been provided pursuant to Article IV.2 (c) (iii) on the basis of the consent of the source concerned, that source also agrees to the other use. Disclosure of such information shall be governed by the provisions of Article VIII of the 1991 Agreement and the exchange of interpretative letters dated May 31 and July 31, 1995.

ARTICLE VI

Relationship to the 1991 Agreement

This Agreement shall supplement and be interpreted consistently with the 1991 Agreement, which remains fully in force.

ARTICLE VII

Existing Law

Nothing in this Agreement shall be interpreted in a manner inconsistent with the existing laws, or as requiring any change in the laws, of the United States of America or the European Communities or of their respective states or Member States.

ARTICLE VIII

Entry into Force and Termination

1. This Agreement shall enter into force upon signature.

2. This Agreement shall remain in force until 60 days after the date on which either Party notifies the other Party in writing that it wishes to terminate the Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Agreement.

DONE at Washington and Brussels, in duplicate, in the English language.

For the Government of the United States of America

June 4, 1998 [*Janet Reno*]

June 4, 1998 [*Robert Pitofsky*]

For the European Community and for the European Coal and Steel Community

3 June 1998 [*Margaret Beckett*]

4 June 1998 [*Karel Van Miert*]

ภาคผนวก ง

AGREEMENT

between the Government of People's Republic of China and the Government of Russian Federation on Cooperation in Antimonopoly Policy & Consumer Protection

signed on Apr.25,1996

this copy is just for reference in APEC database

Bearing in mind the importance and common interests shared by two sides in the field of strengthening antimonopoly policy and consumer protection, on the basis of equality and mutual benefit, the Government of the People's Republic of China and the Government of Russian Federation (hereinafter refereed to as the two Governments), conclude the following agreement concerning bilateral cooperation and exchanges:

Article 1

The two Governments will provide each other with documents and materials of formulated policies, laws, regulations and rules as well as relevant statistics in respect of their own functions, including:

1. Documents, laws, regulations and rules regarding antimonopoly and countering unfair competition;

2. Documents, laws, regulations and rules regarding the protection of consumers' rights and interests;

3. Documents, laws ,regulations and rules regarding the administration of advertising industry.

If possible, the two sides should exchange investigation cases regarding monopoly, unfair competition and infringement upon consumers' rights and interests.

Article 2

The two Governments will carry out cooperation in strengthening antimonopoly and consumer protection:

1. One side should provide protection in sphere of fair competition for the other side's enterprises which operate in its territory;

2. One side should inform the other side about the counterfeitness, provide detailed materials and evidence concerning the commodities imported from the other and their problems that may damage consumers' health and safety. The other side, within its area of practice, should carry out investigation and deal with these issues according to the laws and regulations of its own country;

3. The two Governments will study the possibility to establish and share the database for the above two cooperative activities.

Article 3

Subject to mutual necessity, the two Governments will host meetings of expert exchanges, seminars, forums, and training workshops concerning antimonopoly and consumer protection.

Article 4

The two Governments will jointly encourage their local offices to establish direct relations with those of the other, and provide guidance and support for their mutual exchanges.

Article 5

Authorities responsible for implementation of activities within the framework of the Agreement are to be: on the Chinese side, it is State Administration for Industry & Commerce(SAIC)of People's Republic of China; on the Russian side, State Committee for Antimonopoly Policy and Promotion of New Economic Structure(SCAP) of Russian Federation.

Article 6

The two Governments should make reasonable efforts to settle, through friendly means, all discrepancies and disputes, if any arising from this agreement.

Article 7

The agreement shall come into force on the date of effective signature of the two Governments. The agreement is signed on (date) in (venue).

Two copies of the agreement, written in both Chinese and Russian language, are of equal authenticity and force.

For the Government of People's Republic of China

For the Government of Russian Federation

ภาคผนวก จ

AGREEMENT BETWEEN JAPAN AND THE REPUBLIC OF SINGAPORE FOR A NEW-AGE ECONOMIC PARTNERSHIP

CHAPTER 12

COMPETITION

Article 103

Anti–competition Activities

1. Each Party shall, in accordance with its applicable laws and regulations, take measures which its applicable laws and regulations, take measures which it considers appropriate against anti-competitive activities, in order to facilitate trade and investment flows between the Parties and the efficient functioning of its markets.
2. Each Party shall, when necessary, endeavour to review and improve or to adopt laws and regulations to effectively control anti-competitive activities.

Article 104

Co-operation on Controlling Anti-competitive Activities

1. The Parties shall, in accordance with their respective laws and regulations, co-operate in the field of controlling anti-competition activities subject to their available resources.
2. The sectors, details and procedures of co-operation under this Chapter shall be specified in the Implementing Agreement.
3. Pursuant to paragraph 1 of this Article, the Parties shall exchange information as provided for in the Implementing Agreement with respect to the implementation of this Chapter. Article 3 shall not apply to such exchange of information.

ภาคผนวก ฉ

Implementing Agreement between the Government of Japan and the Government of the Republic of Singapore Pursuant to Article 7 of the Agreement Between Japan and the Republic of Singapore for a New-Age Economic Partnership

CHAPTER 5 (Competition)

Article 15

Purpose

The purpose of this Chapter is to implement the co-operation set forth in Article 3 of Chapter 12 (Competition) of the Basic Agreement.

Article 16

Definitions

For the purposes of this Chapter:

(a) the term "contact point(s)" means:

(i) for Japan, the Fair Trade Commission; and

(ii) for Singapore, Ministry of Trade and Industry;

(b) the term "anti-competitive activity(ies)" means any conduct or transaction that may be subject to penalties or relief under the competition laws of the respective Countries;

(c) the term "competition laws" means:

(i) for Japan, the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Law No. 54 of April 14, 1947) and its implementing regulations; and

(ii) for Singapore, the Code of Practice for Competition in the Provision of Telecommunications Services pursuant to the Telecommunications Act 1999 (Act 43 of 1999), Part VIII "Competition" of the Electricity Act 2001 (Act 10 of 2001), and Part IX "Competition" of the Gas Act 2001 (Act 11 of 2001);

(d) the term "implementing authority(ies)" means:

(i) for Japan, the Fair Trade Commission; and

(ii) for Singapore, the Info-communication Development Authority for the telecommunications sector and the Energy Market Authority for the electricity and gas sectors;

(e) the term "enforcement activity(ies)" means any investigation or proceeding conducted by the implementing authorities of a Party pursuant to the competition laws of its Country, but shall not include:

(i) the review of business conduct or routine filings;

(ii) research, studies or surveys with the objective of examining the general economic situation or general conditions in specific industries; and

(iii) criminal proceedings; and

(f) the term "important interests" means such interests as are considered to be important by the Party undertaking the co-operation activity(ies) under this Chapter.

Article 17

Notification

1. Each Party shall notify the other Party with respect to its enforcement activities that the notifying Party considers may affect the important interests of that other Party.

2. Enforcement activities that may affect the important interests of the other Party include those that:

(a) are relevant to enforcement activities of the other Party;

(b) are conducted against a national or nationals of the other Country, or against a company, association or body incorporated or organised under the applicable laws and regulations in the territory of the other Country ; (c) involve anti-competitive activities, other than mergers or acquisitions, carried out in any substantial part in the territory of the other Country ;

(d) involve mergers and acquisitions in which:

(i) one or more of the parties to the transaction; or

(ii) a company controlling one or more of the parties to the transaction, is a company incorporated or organised under the applicable laws and regulations in the territory of the other Country ;

(e) involve conduct considered by the notifying Party to have been required, encouraged or approved by the other Party; or

(f) involve relief that requires or prohibits conduct in the territory of the other Country .

3. Notification pursuant to paragraph 1 of this Article shall be given by the contact point of a Party as promptly as possible, taking into account the important interests of the other Party.

4. Notifications shall contain such details that would, in the view of the notifying Party, enable the notified Party to make an initial evaluation of the effect on its important interests.

5. Each Party shall:

(a) promptly notify the other Party of any amendment of competition laws and any adoption of new laws and regulations of its Country that control anti-competitive activities; and

(b) provide the other Party with copies of its publicly-released guidelines or policy statements issued in relation to the competition laws of its Country.

Article 18

Exchange of Information

Each Party shall, to the extent consistent the laws and regulations of its Country and its important interests, and within its reasonably available resources, endeavour to:

(a) inform the other Party with respect to its enforcement activities involving anti-competitive activities that the informing Party considers may also have an adverse effect on competition in the territory of the other Country ;

(b) provide the other Party with any significant information, within its possession, which comes to its attention about anti-competitive activities that the

providing Party considers may be relevant to, or may warrant, enforcement activities by that other Party; and

(c) provide the other Party, upon request and in accordance with the provisions of this Chapter, with information within its possession that is relevant to the enforcement activities of that other Party.

Article 19

Technical Assistance

Each Party may render technical assistance to the other Party for the effective management and adoption of laws and regulations controlling anti-competitive activities.

Article 20

Terms and Conditions on Provisions of Information

1. Unless the Party providing the information has approved otherwise, information which has been communicated by a Party to the other Party pursuant to this Chapter shall:

   (a) be used by the implementing authorities of the receiving Party only for the purpose of effective enforcement of the competition laws of its Country; and

   (b) not be communicated to a third party.

2. Each Party shall, maintain the confidentiality of any information which has been communicated to it in confidence by the other Party pursuant to this Chapter, unless the latter Party consents to the disclosure of such information.

3. Each Party may limit the information it communicates to the other Party when the latter Party is unable to give the assurance requested by the former Party with respect to confidentiality or with respect to the limitations of purposes for which the information will be used.

4. Notwithstanding any other provision of this Chapter, a Party shall not be required to communicate information to the other Party if such communication is prohibited by the laws or regulations of the Country of the former Party or if the

former Party considers such communication incompatible with its important interests.

Article 21

Use of Information in Criminal Proceedings

1. Information communicated by a Party to the other Party pursuant to this Chapter shall not be presented by that other Party to a court or a judge in criminal proceedings.
2. In the event that information communicated by a Party to the other Party pursuant to this Chapter is needed for presentation to a court or a judge in criminal proceedings, that other Party shall submit a request for such information to the Party that communicated the information (hereinafter referred to in this Article as "the requested Party"), through the diplomatic channel or other channel established in accordance with the laws of the Country of the requested Party. The requested Party will make its best efforts to respond promptly and favourably to meet any reasonable deadlines indicated by the other Party.

Article 22

Scope

1. Articles 3 and 4 of this Chapter shall only apply to the sectors of telecommunications, electricity and gas.
2. When the Parties adopt new laws and regulations controlling anti-competitive activities, the Parties shall, upon the request by either Party, consult with each other to consider whether or not to amend this Chapter for the purpose of extending the scope of co-operation specified in paragraph 1 above.

Article 23

Review and Further Co-operation

1. The Parties shall, not more than three years after the entry into force of this Agreement, review the co-operation pursuant to Articles 3 and 4 of this Chapter.

2. Upon such review, the Parties may consider extending the co-operation pursuant to this Chapter to any of the following activities:

(a) co-ordination of enforcement activities;

(b) positive comity; and

(c) comity.

3. Any such extension of co-operation shall be subject to the applicable competition laws and regulations and available resources of the Parties.

Article 24

Consultations

The Parties may, as necessary, hold consultations on any matter which may arise in connection with this Chapter.

Article 25

Communications

Communications under Articles 3 and 4 of this Chapter may be directly carried out between the implementing authorities through the contact points of the Parties. Notification under Article 3 of this Chapter, however, shall be confirmed in writing through the diplomatic channel. The confirmation shall be made as promptly as practically possible after the communication concerned between the contact points of the Parties is made.

ภาคผนวก ซ

UNITED STATES – SINGAPORE FREE TRADE AGREEMENT

CHAPTER 12 : ANTICOMPETITIVE BUSINESS CONDUCT, DESIGNATED MONOPOLIES, AND GOVERNMENT ENTERPRISES

ARTICLE 12.1 : OBJECTIVES

Recognizing that the conduct subject to this Chapter has the potential to restrict bilateral trade and investment, the Parties believe proscribing such conduct, implementing economically sound competition policies, and engaging in cooperation will help secure the benefits of this Agreement.

ARTICLE 12.2 : ANTICOMPETITIVE BUSINESS CONDUCT

1. Each Party shall adopt or maintain measures to proscribe anticompetitive business conduct[12-1] with the objective of promoting economic efficiency and consumer welfare, and shall take appropriate action with respect to such conduct.

2. Each Party shall establish or maintain an authority responsible for the enforcement of its measures to proscribe anticompetitive business conduct. The enforcement policy of the Parties' national authorities responsible for the enforcement of such measures includes not discriminating on the basis of the nationality of the subjects of their proceedings. Each Party shall ensure that a person subject to the imposition of a sanction or remedy for violation of such measures is provided with the opportunity to be heard and to present evidence, and to seek review of such sanction or remedy in a domestic court or independent tribunal.

[12-1] Singapore shall enact general competition legislation by January 2005, and shall not exclude enterprises from that legislation on the basis of their status as government enterprises.

ARTICLE 12.3 : DESIGNATED MONOPOLIES AND GOVERNMENT ENTERPRISES

1. Designated Monopolies

(a) Nothing in this Chapter shall be construed to prevent a Party from designating a monopoly.

(b) Where a Party designates a monopoly and the designation may affect the interests of persons of the other Party, the Party shall:

(i) at the time of the designation endeavor to introduce such conditions on the operation of the monopoly as will minimize or eliminate any nullification or impairment of benefits in the sense of Article 20.4.1(c) (Additional Dispute Settlement Procedures); and

(ii) provide written notification, in advance wherever possible, to the other Party of the designation and any such conditions.

(c) Each Party shall ensure that any privately-owned monopoly that it designates after the date of entry into force of this Agreement and any government monopoly that it designates or has designated:

(i) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions, or impose quotas, fees or other charges;

(ii) acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, including with regard to price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, except to comply with any terms of its designation that are not inconsistent with subparagraph (iii) or (iv);

(iii) provides non-discriminatory treatment to covered investments, to goods of the other Party, and to service suppliers of the other Party in its purchase or sale of the monopoly good or service in the relevant market; and

(iv) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, subsidiaries, or other enterprises with common ownership, in anticompetitive practices in a nonmonopolized market in its territory that adversely affect covered investments.

2. Government Enterprises

(a) Nothing in this Agreement shall be construed to prevent a Party from establishing or maintaining a government enterprise.

(b) Each Party shall ensure that any government enterprise that it establishes or maintains acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such enterprise exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges.

(c) The United States shall ensure that any government enterprise that it establishes or maintains accords non-discriminatory treatment in the sale of its goods or services to covered investments.

(d) Singapore shall ensure that any government enterprise:

(i) acts solely in accordance with commercial considerations in its purchase or sale of goods or services, such as with regard to price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, and provides non-discriminatory treatment to covered investments, to goods of the United States, and to service suppliers of the United States, including with respect to its purchases or sales;[12-2] and

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[12-2] The Parties recognize that shareholders do not oversee the day-to-day operations of enterprises. Nothing in this provision is intended to require or encourage action that would be inconsistent with applicable U.S. or Singapore law.

(ii) does not, either directly or indirectly, including through its dealings with its parent, subsidiaries, or other enterprises with common ownership:

(A) enter into agreements among competitors that restrain competition on price or output or allocate customers for which there is no plausible efficiency justification, or

(B) engage in exclusionary practices that substantially lessen competition in a market in Singapore to the detriment of consumers.

(e) Singapore shall take no action or attempt in any way, directly or indirectly, to influence or direct decisions of its government enterprises, including through the exercise of any rights or interests conferring effective influence over such enterprises, except in a manner consistent with this Agreement. However, Singapore may exercise its voting rights in government enterprises in a manner that is not inconsistent with this Agreement.

(f) Singapore shall continue reducing, with a goal of substantially eliminating, its aggregate ownership and other interests that confer effective influence in entities organized under the laws of Singapore, taking into account, in the timing of individual divestments, the state of relevant capital markets.

(g) Singapore shall:

(i) at least annually, make public a consolidated report that details for each covered entity:

(A) the percentage of shares and the percentage of voting rights that Singapore and its government enterprises cumulatively own;

(B) a description of any special shares or special voting or other rights that Singapore or its government enterprises hold, to the extent different from the rights attached to the general common shares of such entity;

(C) the name and government title(s) of any government official serving as an officer or member of the board of directors; and

(D) its annual revenue or total assets, or both, depending on the basis on which the enterprise qualifies as a covered entity.

(ii) on receipt from the United States of a request regarding a specific enterprise, provide to the United States the information listed in clause (i), for any enterprise that is not a covered entity or an enterprise excluded under Article 12.8.1 (d) and 12.8.1(e), with the understanding that the information may be made public.

3. The charging of different prices in different markets, or within the same market, where such differences are based on normal commercial considerations, such as taking account of supply and demand conditions, is not in itself inconsistent with this Article.
4. This Article does not apply to government procurement.

ARTICLE 12.4 : COOPERATION

The Parties recognize the importance of cooperation and coordination to further effective competition law and policy development in the free trade area and agree to cooperate on these matters.

ARTICLE 12.5 : TRANSPARENCY AND INFORMATION REQUESTS

1. The Parties recognize the value of transparency of their competition policies.
2. Each Party, at the request of the other Party, shall make available public information concerning the enforcement of its measures proscribing anticompetitive business conduct.
3. Each Party, at the request of the other Party, shall make available public information concerning government enterprises, and designated monopolies, public or private. Requests for such information shall indicate the entities involved, specify the particular products and markets concerned, and include some indicia that these

entities may be engaging in practices that may hinder trade or investment between the Parties.

4. Each Party, at the request of the other Party, shall make available public information concerning exemptions to its measures proscribing anticompetitive business conduct. Requests for such information shall specify the particular products and markets of concern and include some indicia that the exemption might hinder trade or investment between the Parties.

ARTICLE 12.6 : CONSULTATIONS

1. To foster understanding between the Parties, or to address specific matters that arise under this Chapter, each Party shall, at the request of the other Party, enter into consultations regarding representations made by the other Party. In its request, the 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 other Party.
2. Where consultations under paragraph 1 concern conduct covered by Article 12.3.2(d)(ii), Singapore shall inform the United States of the steps it has taken or plans to take to examine the conduct at issue, shall apprise the United States when Singapore's responsible authorities decide to initiate or not to initiate enforcement proceedings regarding the conduct, and shall keep the United States regularly apprised of developments in, and the results of, any enforcement proceedings it initiates.

ARTICLE 12.7 : DISPUTES

A Party shall not have recourse to dispute settlement under this Agreement for any matter arising under Article 12.2, 12.4, or 12.6.

ARTICLE 12.8 : DEFINITIONS

For purposes of this Chapter:

1. **covered entity** means:

(a) an enterprise organized under the laws of Singapore in which effective influence exists, or is rebuttably presumed to exist, whose annual revenue is greater than SGD 50 million;

(b) an enterprise organized under the laws of Singapore in which effective influence exists, or is rebuttably presumed to exist, whose total assets are greater than SGD 50 million; and

(c) any entity organized under the laws of Singapore in which the Government of Singapore owns a special voting share with veto rights relating to such matters as the disposal of the undertaking, the acquisition by any person of a specified percentage of the enterprise's share capital, appointments to the board of directors or of management, winding up or dissolution of the enterprise, or any change to the constituent documents concerning the aforementioned matters; but excludes:

(d) government enterprises organized and operating solely for the purpose of:

(i) investing the reserves of the Government of Singapore in foreign markets; or

(ii) holding investments referred to in clause (i); and

(e) Temasek Holdings (Pte) Ltd. The revenue and total asset thresholds above shall be adjusted for inflation (or deflation) every five years. The Parties may otherwise revise the thresholds by mutual agreement;

2. **covered investment** means, with respect to a Party, an investment in its territory of an investor of the other Party. Covered investments shall include those existing at the date of entry into force of this Agreement as well as those established, acquired, or expanded thereafter;

3. **a delegation** includes a legislative grant, and a government order, directive, or other act, transferring to the monopoly or government enterprise, or authorizing the exercise by the monopoly or government enterprise of, government authority;

4. **designate** means to establish, designate, or authorize a monopoly, or to expand the scope of a monopoly, to cover an additional good or service, whether formally or in effect;

5. **effective influence** exists where the government and its government enterprises, alone or in combination:
   (a) own more that 50 percent of the voting rights of an entity; or
   (b) have the ability to exercise substantial influence over the composition of the board of directors or any other managing body of an entity, to determine the outcome of decisions on the strategic, financial, or operating policies or plans of an entity, or otherwise to exercise substantial influence over the management or operation of an entity. Where the government and its government enterprises, alone or in combination, own 50 percent or less, but more than 20 percent, of the voting securities of the entity and own the largest block of voting rights of such entity, there is a rebuttable presumption that effective influence exists. Annex 12A provides an illustration of how the analysis of effective influence should proceed;
6. **government enterprise** means:
   (a) for the United States, an enterprise owned, or controlled through ownership interests, by that Party; and
   (b) for Singapore, an enterprise in which that Party has effective influence;
7. **government monopoly** means a monopoly that is owned, or controlled through ownership interests, by the national government of a Party or by another such monopoly;
8. **in accordance with commercial considerations** means consistent with normal business practices of privately-held enterprises in the relevant business or industry;
9. **market** means the geographical and commercial market for a good or service;
10. **monopoly** means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant; and
11. **non-discriminatory treatment** means the better of national treatment and most-favored nation treatment, as set out in the relevant provisions of this Agreement and subject to the terms and conditions set out in the relevant Annexes thereto.

ภาคผนวก ซ

Chapter Sixteen

Competition Policy, Designated Monopolies, and State Enterprises

Article 16.1: Anticompetitive Business Conduct

1. Each Party shall adopt or maintain competition laws that proscribe anticompetitive business conduct, with the objective of promoting economic efficiency and consumer welfare, and shall take appropriate action with respect to such conduct.

2. Each Party shall maintain an authority responsible for the enforcement of its national competition laws. The enforcement policy of each Party's national competition authorities is not to discriminate on the basis of the nationality of the subjects of their proceedings. Each Party shall ensure that:

   (a) before it imposes a sanction or remedy against any person for violating its competition law, it affords the person the right to be heard and to present evidence, except that it may provide for the person to be heard and present evidence within a reasonable time after it imposes an interim sanction or remedy; and

   (b) an independent court or tribunal imposes or, at the person's request, reviews any such sanction or remedy.

3. Nothing in this Chapter shall be construed to infringe each Party's autonomy in developing its competition policies or in deciding how to enforce its competition laws.

Article 16.2: Cooperation

The Parties agree to cooperate in the area of competition policy. The Parties recognize the importance of cooperation and coordination between their respective authorities to further effective competition law enforcement in the free trade area. Accordingly, the Parties shall cooperate on issues of competition law enforcement, including notification, consultation, and exchange of information relating to the enforcement of the Parties' competition laws and policies.

Article 16.3: Designated Monopolies

1. Nothing in this Chapter shall be construed to prevent a Party from designating a monopoly.

2. Where a Party designates a monopoly and the designation may affect the interests of persons of the other Party, the Party shall:

(a) at the time of the designation endeavor to introduce such conditions on the operation of the monopoly as will minimize or eliminate any nullification or impairment of benefits in the sense of Annex 22.2 (Nullification or Impairment); and

(b) provide written notification, in advance wherever possible, to the other Party of the designation and any such conditions.

3. Each Party shall ensure that any privately-owned monopoly that it designates after the date of entry into force of this Agreement and any government monopoly that it designates or has designated:

(a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions, or impose quotas, fees, or other charges;

(b) acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, including with regard to price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, except to comply with any terms of its designation that are not inconsistent with subparagraph (c) or (d);

(c) provides non-discriminatory treatment to covered investments, to goods of the other Party, and to service suppliers of the other Party in its purchase or sale of the monopoly good or service in the relevant market; and

(d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, subsidiaries, or other enterprises with common ownership, in anticompetitive practices in a nonmonopolized market in its territory that adversely affect covered investments.

4. This Article does not apply to procurement.

Article 16.4: State Enterprises

1. Nothing in this Agreement shall be construed to prevent a Party from establishing or maintaining a state enterprise.
2. Each Party shall ensure that any state enterprise that it establishes or maintains acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such enterprise exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges.
3. Each Party shall ensure that any state enterprise that it establishes or maintains accords non-discriminatory treatment in the sale of its goods or services to covered investments.

Article 16.5: Differences in Pricing

The charging of different prices in different markets, or within the same market, where such differences are based on normal commercial considerations, such as taking account of supply and demand conditions, is not in itself inconsistent with Articles 16.3 and 16.4.

Article 16.6: Transparency and Information Requests

1. The Parties recognize the value of transparency of government competition policies.
2. On request, each Party shall make available to the other Party public information concerning its:

(a) competition law enforcement activities; and

(b) state enterprises and designated monopolies, public or private, at any level of government.

Requests under subparagraph (b) shall indicate the entities or localities involved, specify the particular products and markets concerned, and include indicia of practices that may restrict trade or investment between the Parties.

3. On request, each Party shall make available to the other Party public information concerning exemptions provided under its competition laws. Requests shall specify the particular goods and markets of interest and include indicia that the exemption may restrict trade or investment between the Parties.

Article 16.7: Consultations

To foster understanding between the Parties, or to address specific matters that arise under this Chapter, each Party shall, on request of the other Party, enter into consultations regarding representations made by the other Party. In its request, the 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 other Party.

Article 16.8: Disputes

Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under Article 16.1, 16.2, or 16.7.

Article 16.9: Definitions

For purposes of this Chapter:

a **delegation** includes a legislative grant, and a government order, directive, or other act, transferring to the monopoly or state enterprise, or authorizing the exercise by the monopoly or state enterprise of, governmental authority;

designate means to establish, designate, or authorize, formally or in effect, a monopoly or to expand the scope of a monopoly to cover an additional good or service;

government monopoly means a monopoly that is owned, or controlled through ownership interests, by the national government of a Party or by another such monopoly;

in accordance with commercial considerations means consistent with normal business practices of privately-held enterprises in the relevant business or industry;

market means the geographic and commercial market for a good or service;

monopoly means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant; and

non-discriminatory treatment means the better of national treatment and most-favored nation treatment, as set out in the relevant provisions of this Agreement.

ภาคผนวก ฌ

ความตกลงระหว่างราชอาณาจักรไทยและญี่ปุ่น
สำหรับความเป็นหุ้นส่วนทางเศรษฐกิจ

บทที่ 12
การแข่งขันทางการค้า

ข้อ 147
การส่งเสริมการแข่งขันที่เป็นธรรมและเสรี
โดยห้ามกิจกรรมที่จำกัดการแข่งขัน

ภาคีแต่ละฝ่ายจะต้องส่งเสริมการแข่งขันที่เป็นธรรมและเสรีโดยห้ามกิจกรรมที่จำกัดการแข่งขันในภาคีนั้น โดยเป็นไปตามกฎหมายและข้อบังคับของแต่ละฝ่าย เพื่ออำนวยความสะดวกแก่การไหลเวียนของการค้าและการลงทุนระหว่างคู่ภาคีและให้ตลาดทำงานอย่างมีประสิทธิภาพ

ข้อ 148
ความร่วมมือในการส่งเสริมการแข่งขันที่เป็นธรรมและเสรี
โดยห้ามกิจกรรมที่จำกัดการแข่งขัน

1. คู่ภาคีจะต้องร่วมมือกันในด้านการส่งเสริมการแข่งขันที่เป็นธรรมและเสรีโดยห้ามกิจกรรมที่จำกัดการแข่งขัน โดย ขึ้นอยู่กับทรัพยากรที่มีอยู่ของแต่ละฝ่าย ทั้งนี้โดยเป็นไปตามกฎหมายและข้อบังคับของแต่ละฝ่าย
2. รายละเอียดและขั้นตอนของความร่วมมือภายใต้ข้อนี้จะระบุไว้ในความตกลงเพื่อการปฏิบัติตาม

ข้อ 149
การไม่เลือกประติบัติ

ภาคีแต่ละฝ่ายจะต้องใช้กฎหมายและข้อบังคับว่าด้วยการแข่งขันของตนในลักษณะที่ไม่เป็นการเลือกประติบัติบนพื้นฐานของสัญชาติ

ข้อ 150
ความเป็นธรรมของวิธีปฏิบัติ

ภาคีแต่ละฝ่ายจะต้องดำเนินวิธีปฏิบัติทางปกครองและทางตุลาการที่เกี่ยวข้องในลักษณะที่เป็นธรรมในการส่งเสริม การแข่งขันที่เป็นธรรมและเสรีโดยห้ามกิจกรรมที่จำกัดการแข่งขันตามกฎหมายและข้อบังคับที่เกี่ยวข้องของตน

ข้อ 151
การไม่ใช้บังคับของข้อ 8 และบทที่14

ข้อ 8 และบทที่14 จะไม่ใช้บังคับกับบทนี้

ภาคผนวก ญ

ความตกลงเพื่อการปฏิบัติตาม
ระหว่าง
รัฐบาลแห่งราชอาณาจักรไทยและรัฐบาลญี่ปุ่น
ตามข้อ 12 ของความตกลงระหว่างราชอาณาจักรไทยและญี่ปุ่น
สำหรับความเป็นหุ้นส่วนทางเศรษฐกิจ

บทที่ 4
การแข่งขันทางการค้า

ข้อ 10
วัตถุประสงค์

วัตถุประสงค์ของบทนี้คือเพื่อนำความร่วมมือที่ระบุไว้ในข้อ 148 ของความตกลงพื้นฐานมาปฏิบัติ

ข้อ 11
คำนิยาม

เพื่อความมุ่งประสงค์ของบทนี้

(เอ) คำว่า "กิจกรรมที่จำกัดการแข่งขัน" หมายถึง การดำเนินการหรือธุรกรรมใดๆ ที่อาจจะตกอยู่ภายใต้การลงโทษหรือการบรรเทา ภายใต้กฎหมายการแข่งขันทางการค้าของประเทศของภาคีฝ่ายใดฝ่ายหนึ่ง

(บี) คำว่า "หน่วยงานผู้มีอำนาจด้านการแข่งขัน" หมายถึง

(หนึ่ง) สำหรับญี่ปุ่น คณะกรรมการการค้าที่เป็นธรรม และ

(สอง) สำหรับประเทศไทย คณะกรรมการการแข่งขันทางการค้า

(ซี) คำว่า "กฎหมายการแข่งขันทางการค้า" หมายถึง

(หนึ่ง) สำหรับญี่ปุ่น กฎหมายว่าด้วยการห้ามการผูกขาดโดยเอกชนและการรักษาการค้าที่เป็นธรรม (กฎหมายฉบับที่ 54 ปีค.ศ.1947) (ซึ่งต่อไปในบทนี้จะเรียกว่า "กฎหมายต่อต้านการผูกขาด") และข้อบังคับเพื่อการปฏิบัติตาม ตลอดจนการแก้ไขเพิ่มเติมใดๆ ต่อกฎหมายนั้น และ

(สอง) สำหรับประเทศไทย พระราชบัญญัติการแข่งขันทางการค้า พ.ศ. 2542 และข้อบังคับเพื่อการปฏิบัติตาม ตลอดจนการแก้ไขเพิ่มเติมใดๆ ต่อกฎหมายนั้น และ

(ดี) คำว่า "กิจกรรมการบังคับใช้กฎหมาย" หมายถึง การไต่สวนหรือกระบวนการพิจารณาใดๆ ที่ดำเนินโดยภาคีที่เกี่ยวข้องกับกฎหมายการแข่งขันทางการค้าของประเทศตน อย่างไรก็ดีไม่รวมถึง

(หนึ่ง) การทบทวนการดำเนินการทางธุรกิจหรือการจัดเก็บเอกสารตามปกติและ

(สอง) การวิจัย การศึกษา หรือการสำรวจเพื่อวัตถุประสงค์ในการตรวจสอบสถานการณ์เศรษฐกิจทั่วไป หรือสภาวะทั่วไปในอุตสาหกรรมเฉพาะ

ข้อ 12
การแจ้ง

หน่วยงานผู้มีอำนาจด้านการแข่งขันของภาคีแต่ละฝ่ายจะต้องแจ้งให้หน่วยงานผู้มีอำนาจของภาคีอีกฝ่ายรู้เกี่ยวกับกิจกรรมการบังคับใช้กฎหมายของภาคีฝ่ายที่แจ้งที่หน่วยงานผู้มีอำนาจด้านการแข่งขันที่เป็นผู้แจ้งพิจารณาว่าอาจกระทบต่อผลประโยชน์ที่สำคัญของภาคีอีกฝ่าย ทั้งนี้เท่าที่สอดคล้องกับกฎหมายและข้อบังคับของประเทศตน

ข้อ 13
การแลกเปลี่ยนข้อมูลและการประสานงาน

1. หน่วยงานผู้มีอำนาจด้านการแข่งขันของภาคีแต่ละฝ่ายจะต้องให้ข้อมูลที่เกี่ยวข้องกับกิจกรรมการบังคับใช้กฎหมายของหน่วยงานผู้มีอำนาจด้านการแข่งขันของภาคีอีกฝ่ายแก่หน่วยงานผู้มีอำนาจด้านการแข่งขันของภาคีอีกฝ่ายนั้นตามความเหมาะสม เท่าที่สอดคล้องกับกฎหมายและข้อบังคับของประเทศและผลประโยชน์ที่สำคัญของภาคีของหน่วยงานผู้มีอำนาจด้านการแข่งขันที่ให้ข้อมูล และภายในทรัพยากรที่มีอยู่ตามควร

2. หน่วยงานผู้มีอำนาจด้านการแข่งขันของคู่ภาคีจะต้องพิจารณาประสานกิจกรรมการบังคับใช้กฎหมายของตนที่เกี่ยวกับเรื่องที่เกี่ยวข้องตามความเหมาะสม

ข้อ 14
ความโปร่งใส

หน่วยงานผู้มีอำนาจด้านการแข่งขันของภาคีแต่ละฝ่ายจะต้อง

(เอ) แจ้งให้หน่วยงานผู้มีอำนาจด้านการแข่งขันของภาคีอีกฝ่ายรู้โดยพลันเกี่ยวกับการแก้ไขเพิ่มเติมใดๆ ต่อกฎหมายการแข่งขันทางการค้า และการนำมาใช้ซึ่งกฎหมายและข้อบังคับใหม่ๆ ใดๆ ของประเทศตนที่ห้ามกิจกรรมที่จำกัดการแข่งขัน

(บี) ให้สำเนาของแนวทางหรือคำแถลงนโยบายที่เผยแพร่ต่อสาธารณชนที่เกี่ยวข้องกับกฎหมายการแข่งขันทางการค้าของประเทศตนแก่หน่วยงานผู้มีอำนาจด้านการแข่งขันของภาคีอีกฝ่ายตามความเหมาะสม และ

(ซี) ให้สำเนาของรายงานประจำปีหรือเอกสารตีพิมพ์อื่นใดที่เผยแพร่ต่อสาธารณชนเป็นการทั่วไปแก่หน่วยงานผู้มีอำนาจด้านการแข่งขันของภาคีอีกฝ่ายตามความเหมาะสม

ข้อ 15
ความร่วมมือทางวิชาการ

1. คู่ภาคีตกลงกันว่าจะเป็นผลประโยชน์ร่วมกันของทั้งสองฝ่ายที่หน่วยงานผู้มีอำนาจด้านการแข่งขันจะทำงานร่วมกันในกิจกรรมความร่วมมือทางวิชาการที่เกี่ยวข้องกับการปฏิบัติตามกฎหมายและนโยบายการแข่งขันทางการค้า

2. โดยอยู่ภายในทรัพยากรที่มีอยู่ตามควรของหน่วยงานผู้มีอำนาจด้านการแข่งขันของแต่ละฝ่าย กิจกรรมความร่วมมืออาจรวมถึงกิจกรรมดังต่อไปนี้

(เอ) การแลกเปลี่ยนบุคลากรของหน่วยงานผู้มีอำนาจด้านการแข่งขันเพื่อความมุ่งประสงค์ในการฝึกอบรม

(บี) การเข้าร่วมของบุคลากรของหน่วยงานผู้มีอำนาจด้านการแข่งขันในฐานะผู้บรรยายหรือที่ปรึกษาในหลักสูตรการฝึกอบรมที่เกี่ยวกับการปฏิบัติตามกฎหมายและนโยบายการแข่งขันทางการค้า ซึ่งจัดหรือสนับสนุนค่าใช้จ่ายโดยหน่วยงานผู้มีอำนาจด้านการแข่งขันของฝ่ายใดฝ่ายหนึ่งหรือทั้งสองฝ่าย และ

(ซี) ความร่วมมือทางวิชาการในรูปแบบอื่นใดตามที่หน่วยงานผู้มีอำนาจด้านการแข่งขันของคู่ภาคีอาจจะตกลงกัน

ข้อ 16
การปรึกษาหารือ

หน่วยงานผู้มีอำนาจด้านการแข่งขันของคู่ภาคีจะต้องปรึกษาหารือซึ่งกันและกัน เมื่อมีการร้องขอจากหน่วยงานผู้มีอำนาจด้านการแข่งขันฝ่ายใดฝ่ายหนึ่งในเรื่องใดๆ ที่อาจจะเกิดขึ้นที่มีความเกี่ยวข้องกับบทนี้

ข้อ 17
การทบทวน

1. คู่ภาคีจะต้องทบทวนและสร้างเสริมความร่วมมือตามบทนี้ตามที่ได้ตกลงกันระหว่างคู่ภาคี

2. เมื่อมีการทบทวนดังกล่าว คู่ภาคีอาจพิจารณาสร้างเสริมความร่วมมือตามบทนี้ในส่วนที่เกี่ยวกับกิจกรรมต่อไปนี้

(เอ) การแจ้ง

(บี) ความร่วมมือในกิจกรรมการบังคับใช้กฎหมาย

(ซี) การประสานกิจกรรมการบังคับใช้กฎหมาย และ

(ดี) การมีไมตรีจิตระหว่างกันในการบังคับใช้กฎหมาย

3. การสร้างเสริมความร่วมมือดังกล่าวใดๆ จะอยู่ภายใต้บังคับของกฎหมายและข้อบังคับที่เกี่ยวข้องของประเทศของแต่ละภาคีและทรัพยากรที่มีอยู่ของภาคีแต่ละฝ่าย

ข้อ 18
การประติบัติต่อข้อมูลลับ

1. ข้อมูลที่นอกเหนือจากข้อมูลที่เผยแพร่ต่อสาธารณะ ที่ให้โดยภาคีฝ่ายหนึ่งหรือหน่วยงานผู้มีอำนาจด้านการแข่งขันตามบทนี้

(เอ) จะต้องใช้เฉพาะโดยภาคีผู้รับหรือหน่วยงานผู้มีอำนาจด้านการแข่งขันผู้รับ เพื่อความมุ่งประสงค์ของการบังคับใช้กฎหมายการแข่งขันทางการค้าอย่างมีประสิทธิผลของประเทศของภาคีนั้น เว้นแต่ภาคีหรือหน่วยงานผู้มีอำนาจด้านการแข่งขันที่ให้ข้อมูลจะอนุญาตเป็นอย่างอื่น

(บี) จะต้องไม่ถ่ายทอดโดยหน่วยงานผู้มีอำนาจด้านการแข่งขันผู้รับไปยังบุคคลที่สามหรือหน่วยงานอื่นๆ เว้นแต่หน่วยงานผู้มีอำนาจด้านการแข่งขันที่ให้ข้อมูลจะอนุญาตเป็นอย่างอื่น และ

(ซี) จะต้องไม่ถ่ายทอดโดยภาคีผู้รับไปยังบุคคลที่สามเว้นแต่ภาคีที่ให้ข้อมูลจะอนุญาตเป็นอย่างอื่น

2. โดยไม่คำนึงถึงอนุวรรค 1 (บี) ข้างต้น หน่วยงานผู้มีอำนาจด้านการแข่งขันที่รับข้อมูลตามบทนี้อาจถ่ายทอดข้อมูลไปยังหน่วยงานผู้บังคับใช้กฎหมายที่เกี่ยวข้องของภาคีของหน่วยงานผู้มีอำนาจด้านการแข่งขันนั้น ซึ่งอาจใช้ข้อมูลดังกล่าวภายใต้เงื่อนไขที่ระบุไว้ในข้อ 19 เพื่อความมุ่งประสงค์ในการบังคับใช้กฎหมายการแข่งขันทางการค้า เว้นแต่จะได้รับแจ้งเป็นอย่างอื่นโดยหน่วยงานผู้มีอำนาจด้านการแข่งขันที่ให้ข้อมูล

3. ภาคีแต่ละฝ่ายจะต้องรักษาความลับของข้อมูลใดๆ ที่ให้มาด้วยความไว้เนื้อเชื่อใจโดยภาคีอีกฝ่ายตามบทนี้ทั้งนี้โดยสอดคล้องกับกฎหมายและข้อบังคับของประเทศตน

4. ภาคีแต่ละฝ่ายอาจจำกัดข้อมูลที่ให้แก่ภาคีอีกฝ่าย เมื่อภาคีอีกฝ่ายไม่สามารถให้ความมั่นใจตามที่ได้รับการร้องขอจากภาคีฝ่ายแรกเกี่ยวกับการรักษาความลับหรือการจำกัดความมุ่งประสงค์ของการนำข้อมูลนั้นไปใช้

5. โดยไม่คำนึงถึงบทบัญญัติอื่นใดของบทนี้ภาคีทั้งสองฝ่ายจะไม่ถูกกำหนดให้ต้องให้ข้อมูลแก่ภาคีอีกฝ่าย หากการให้ดังกล่าวถูกห้ามโดยกฎหมายหรือข้อบังคับของประเทศที่เป็นเจ้าของข้อมูล หรือการให้ดังกล่าวอาจจะขัดแย้งกับผลประโยชน์ที่สำคัญของประเทศนั้นโดยเฉพาะอย่างยิ่ง

(เอ) รัฐบาลของญี่ปุ่นจะไม่ถูกกำหนดให้ต้องให้ "ความลับทางการค้าของผู้ประกอบการ" ที่ครอบคลุมโดยบทบัญญัติของมาตรา 36 ของกฎหมายต่อต้านการผูกขาดแก่รัฐบาลของประเทศไทย และ

(บี) รัฐบาลของประเทศไทยจะไม่ถูกกำหนดให้ต้องให้"ข้อมูลลับ" ภายใต้พระราชบัญญัติการแข่งขันทางการค้า พ.ศ. 2542 แก่รัฐบาลของญี่ปุ่น

ข้อ 19
การใช้ข้อมูลในกระบวนพิจารณาทางอาญา

1. ข้อมูลที่ภาคีฝ่ายหนึ่งให้แก่ภาคีอีกฝ่ายตามบทนี้ยกเว้นข้อมูลที่เผยแพร่ต่อสาธารณชนจะต้องไม่นำเสนอต่อศาลหรือผู้พิพากษาในกระบวนพิจารณาทางอาญาในประเทศของภาคีฝ่ายหลัง

2. ในกรณีที่ข้อมูลที่ภาคีฝ่ายหนึ่งให้แก่ภาคีอีกฝ่ายตามบทนี้ยกเว้นข้อมูลที่เผยแพร่ต่อสาธารณชน จำเป็นสำหรับการนำเสนอต่อศาลหรือผู้พิพากษาในกระบวนพิจารณาทางอาญาในประเทศของภาคีฝ่ายหลัง ภาคีฝ่ายหลังจะต้องยื่นคำขอข้อมูลดังกล่าวต่อภาคีฝ่ายแรกผ่านช่องทางทางการทูตหรือช่องทางอื่นใดที่จัดตั้งขึ้น โดยเป็นไปตามกฎหมายของประเทศของภาคีฝ่ายแรก

ข้อ 20
การติดต่อสื่อสาร

เว้นแต่จะกำหนดไว้เป็นอย่างอื่นในบทนี้การติดต่อสื่อสารภายใต้บทนี้อาจกระทำได้โดยตรงระหว่างหน่วยงานผู้มีอำนาจด้านการแข่งขันของคู่ภาคีอย่างไรก็ดีการแจ้งภายใต้ข้อ 12 จะต้องได้รับการยืนยันเป็นลายลักษณ์อักษรผ่านช่องทางทางการทูต การยืนยันจะต้องทำโดยพลัน

เท่าที่จะทำได้หลังจากการติดต่อสื่อสารที่เกี่ยวข้องระหว่างหน่วยงานผู้มีอำนาจด้านการแข่งขันของคู่ภาคี

ภาคผนวก ฏ

ความตกลงการค้าเสรี ไทย - ออสเตรเลีย
(มีผลบังคับใช้ตั้งแต่ 1 มกราคม 2548)

โดย กองวิชาการและกิจการต่างประเทศ
โทร.0-2507-5591-92 ,95

บทที่ 12
นโยบายการแข่งขัน

ข้อ 1201
วัตถุประสงค์และคำนิยาม

1. จุดมุ่งหมายของบทนี้ คือ เพื่อมีส่วนในการทำให้บรรลุวัตถุประสงค์ของความตกลงนี้ โดยการส่งเสริมการแข่งขันที่เป็นธรรมและการขจัดการปฏิบัติที่จำกัดการแข่งขัน
2. เพื่อความมุ่งประสงค์ของบทนี้ "การปฏิบัติที่จำกัดการแข่งขัน" หมายถึง การดำเนินการทางธุรกิจหรือการดำเนินธุรกรรมที่ส่งผลกระทบอย่างรุนแรงต่อการแข่งขัน เช่น
   (เอ) ข้อตกลงที่จำกัดการแข่งขันระหว่างคู่แข่งขันที่เป็นผู้ประกอบการระดับเดียวกันในตลาด
   (บี) การใช้อำนาจทางการตลาดอย่างไม่ถูกต้อง ซึ่งรวมถึงการกำหนดราคาเพื่อทำลายคู่แข่งขัน
   (ซี) ข้อตกลงที่จำกัดการแข่งขันของผู้ประกอบการต่างระดับกันในตลาด และ
   (ดี) การควบกิจการและการซื้อกิจการที่เป็นการจำกัดการแข่งขัน

ข้อ 1202
การส่งเสริมการแข่งขัน

ภาคีแต่ละฝ่ายจะต้องส่งเสริมการแข่งขันโดยแก้ปัญหาการปฏิบัติที่จำกัดการแข่งขันในดินแดนของตน และโดยการนำมาใช้และบังคับวิธีการหรือมาตรการตามที่ตนถือว่าเหมาะสมและมีประสิทธิผล เพื่อตอบโต้การปฏิบัติดังกล่าว

ข้อ 1203
การใช้กฎหมายการแข่งขัน

1. คู่ภาคีจะต้องทำให้มั่นใจว่า ธุรกิจทั้งหมดอยู่ภายใต้กฎหมายทั่วไปว่าด้วยการแข่งขัน หรือกฎหมายว่าด้วยการแข่งขันรายสาขาธุรกิจที่เกี่ยวข้อง ซึ่งอาจมีผลใช้บังคับในดินแดนของคู่ภาคี

2. มาตรการใดๆ ที่ใช้โดยภาคีในการยุติการปฏิบัติที่จำกัดการแข่งขัน และการดำเนินการในการใช้บังคับที่ดำเนินการตามมาตรการเหล่านั้น จะต้องสอดคล้องกับหลักการของความโปร่งใส ความเหมาะสมกับกาลเวลา การไม่เลือกปฏิบัติ การเข้าใจง่ายและมีขั้นตอนที่เป็นธรรม

ข้อ 1204

การได้รับการยกเว้น

ภาคีฝ่ายใดฝ่ายหนึ่งอาจยกเว้นมาตรการหรือสาขาธุรกิจใดๆ เป็นการเฉพาะจากบทนี้ โดยมีเงื่อนไขว่าการให้ยกเว้นดังกล่าวมีความโปร่งใส และได้ดำเนินการบนพื้นฐานของนโยบายสาธารณะหรือผลประโยชน์สาธารณะ

ข้อ 1205

ความร่วมมือและการแลกเปลี่ยนข้อสนเทศ

คู่ภาคียอมรับถึงความสำคัญของความร่วมมือและการประสานงาน เพื่อบรรลุวัตถุประสงค์ของการใช้บังคับที่มีประสิทธิผลภายใต้กฎหมายการแข่งขันของตน คู่ภาคียอมรับเช่นกันถึงความสำคัญของการรักษาความลับในส่วนที่เกี่ยวกับข้อตกลงเหล่านี้ ดังนั้น คู่ภาคีจะต้องร่วมมือกันตามความเหมาะสมในเรื่องของการใช้บังคับกฎหมายการแข่งขัน รวมถึงโดยการแลกเปลี่ยนข้อสนเทศ การแจ้ง การปรึกษาหารือ และการประสานงานในเรื่องการใช้บังคับที่มีลักษณะข้ามพรมแดน

ข้อ 1206

การปรึกษาหารือและการทบทวน

1. โดยการร้องขอของภาคีฝ่ายใดฝ่ายหนึ่ง คู่ภาคีจะต้องปรึกษาหารือกัน ด้วยความมุ่งหมายที่จะกำจัดการปฏิบัติที่จำกัดการแข่งขันใดๆ ที่กระทบต่อการค้าหรือการลงทุนระหว่างคู่ภาคี
2. ภายในสามปีของการใช้บังคับความตกลงนี้ คู่ภาคีจะต้องปรึกษาหารือกัน เพื่อที่จะทบทวนขอบเขต และการดำเนินการของบทนี้ ด้วยความมุ่งหมายที่จะให้มีการเจรจาแก้ไขบทนี้ที่อาจมีความจำเป็น เพื่อทำให้มั่นใจว่ามีการคุ้มครองโดยครอบคลุมถึงผลประโยชน์ทางการพาณิชย์ที่ถูกต้องชอบธรรมของภาคีอีกฝ่ายหนึ่งในดินแดนของคู่ภาคี
3. ในการดำเนินการปรึกษาหารือใดๆ ตามวรรค 2 คู่ภาคีจะต้องปรึกษาหารือกันถึงความต้องการในการจัดทำข้อตกลง เพื่อความร่วมมือและความช่วยเหลือซึ่งกันและกันใน

ด้านนโยบายการแข่งขัน และการใช้บังคับ ไม่ว่าจะเป็นการแก้ไขบทนี้หรือเป็นข้อตกลงแยกต่างหากระหว่างหน่วยงานผู้มีอำนาจในด้านการแข่งขัน

4. ข้อสนเทศหรือเอกสารใดๆ ที่แลกเปลี่ยนระหว่างคู่ภาคีที่เกี่ยวกับการปรึกษาหารือ หรือการทบทวนร่วมกันใดๆ ที่ดำเนินการตามบทบัญญัติของบทนี้ จะต้องเก็บรักษาไว้เป็นความลับ ภาคีทั้งสองฝ่ายจะต้องไม่เผยแพร่ หรือเปิดเผยข้อสนเทศหรือเอกสารดังกล่าวต่อบุคคลใดๆ โดยไม่ได้รับความยินยอมเป็นลายลักษณ์อักษรจากภาคีที่ให้ข้อสนเทศ หรือเอกสารดังกล่าว เว้นแต่เป็นการปฏิบัติตามข้อกำหนดของกฎหมายภายในของตน ในกรณีที่การเปิดเผยข้อสนเทศหรือเอกสารดังกล่าว มีความจำเป็นต่อการปฏิบัติตามข้อกำหนดของกฎหมายภายในของภาคีฝ่ายหนึ่งฝ่ายใด ภาคีฝ่ายนั้นจะต้องแจ้งต่อภาคีอีกฝ่ายหนึ่งก่อนมีการเปิดเผยดังกล่าว

ข้อ 1207

ความโปร่งใส

คู่ภาคีจะต้องเผยแพร่ หรือมิฉะนั้นจะต้องจัดให้สาธารณะหากกฎหมายที่ส่งเสริมการแข่งขันที่เป็นธรรม และกฎหมายว่าด้วยการปฏิบัติที่จำกัดการแข่งขันของตนได้โดยง่าย

ข้อ 1208

เรื่องทั่วไป

1. บทที่ 18 จะต้องไม่ใช้กับบทบัญญัติต่างๆ ของบทนี้
2. ในกรณีที่มีความไม่สอดคล้องกัน หรือการขัดแย้งกันระหว่างบทบัญญัติใดๆ ในบทนี้ และบทบัญญัติใดๆ ที่มีอยู่ในบทอื่นใดของความตกลงนี้ ให้ถือตามบทบัญญัติในบทอื่นเป็นสำคัญเท่าที่เกี่ยวกับความไม่สอดคล้องกันหรือการขัดแย้งกันดังกล่าว

ภาคผนวก ฏ

Bilateral Agreement on Competition Law Enforcement

Agreement between the Government of the United States of America and the Government of Federal Republic of Germany relating to Mutual Cooperation regarding Restrictive Business Practices (Bonn, 23 June 1976)

Agreement between the Government of the United States of America and the Government of Australia relating to Cooperation on Antitrust Matters (Washington, D.C., 29 June 1982)

Agreement of the Federal Republic of Germany and the Government of the French Republic concerning Cooperation on Restrictive Business Practices (28 May 1984)

Agreement between the Government of the United States of America and the Commission of the European Communities on the Application of the Their Competition Laws (Washington, D.C., 23 September 1991; entry into force, 10 April 1995).

Cooperation and Coordination Agreement between the Australian Trade Practices Commission and the New Zealand Commerce Commission (July 1994).

Agreement between the Government of the United States of America and the Government of Canada regarding the Application of Their Competition and Deceptive Marketing Practices Laws (Washington, D.C., 1 August 1995 and Ottawa, 3 August 1995).

Agreement of Cooperation between the State Competition and Consumer Protection Office of the Republic of Lithuania and the Anti-Monopoly Office of the Republic of Poland, 3 January 1996.

Agreement of Cooperation between the State Competition and Consumer Protection Office of the Lithuania Republic and the Antimonopoly Committee of Ukraine, 18 February 1996.

Memorandum of Understanding between the Competition Authorities of the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania, 11 April 1996.

The Agreement of Co-operation between the Competition Authorities of the Republic of Latvia and the Republic of Lithuania, 11 April 1996.

Agreement between the Government of Australia and the Government of the United States of America on Mutual Antitrust Enforcement, 27 April 1999.

Agreement between the Government of the United States of America and the Commission of the European Communities on the Application of Positive Comity Principles in the Enforcement of Their Competition Laws (Brussels and Washington, D.C., 4 June 1998).

Agreement between the Government of the United States of America and the State of Israel, regarding the Application of their Competition Laws, (Washington, 15 March 1999).

Agreement between the Government of Japan and the Government of the United States of America concerning Cooperation on Anticompetitive Activities (Washington, D.C., 7 October 1999)

Agreement between the Government of the People's Republic of China and the Government of the Republic of Kazakhstan on Cooperation in the Field of Countering Unfair Competition and Antimonopoly, (1999).

Agreement between the Government of the United States of America and the Government of Japan regarding Cooperation on Anti-competitive activities, (Washington, D.C., 7 October 1999)

Co-operation and Co-ordination Agreement between the Australia Competition and Consumer Commission and Papua New Guinea Consumer Affairs Council, 26 November 1999.

Memorandum on Cooperation between the Fair Trade Commission of the Republic of Korea and the Ministry of the Russian Federation for Antimonopoly Policy and Support for Entrepreneurship, Seoul, 7 December 1999.

Agreement between the Government of the United States of America and the Government of the United Mexican States regarding the application of their Competition Laws, (Mexico City, 11 September 2000).

Cooperation Agreement between the Commissioner of the Competition (Canada) the Australian Competition and the Consumer Commission and the New Zealand

Commerce Commission Regarding the Application of their Competition and Consumer Laws, (Wellington, October 2000).

Agreement between Denmark, Iceland and Norway regarding cooperation in competition cases, (Copenhagen, 16 March 2001, entry into force 1 April 2001).

Agreement between Mexico and Canada for Cooperation on Economic Competition, Veracruz, 14 November 2001.

Memorandum of understanding between the Fiscalia Nacional Economica of Chile and the Competition Bureau of Canada, 17 December 2001.

Agreement on Cooperation in the sphere of Competition Policy between the Government of the Federative Republic of Brazil and the Government of the Russian Federation, 2001.

Memorandum of understanding between the Commercial Commission of the Fiji Islands and the Australian Competition and Consumer Commissions, 30 April 2002.

Cooperation Arrangement between the Fair Trade Commission of the Republic of Korea and the Australian Competition and Consumer Commission regarding the Application of their Competition and Consumer Protection Laws, 29 September 2002.

Agreement Between the European Community and the Government of Japan concerning Cooperation on Anti-Competitive Activities, Brussels, 10 July 2003.

Memorandum regarding Cooperation in Competition Policy among the Fair Trade Commission of the Republic of Korea, the Interstate Council for Antimonopoly Policy of CIS countries, the Competition Council of the Republic of Latvia and the Competition Council of Romania, September 2003.

Cooperation Arrangement between the Commissioner of Competition (Canada) and Her Majesty's Secretary of State for Trade and Industry and the Office of Fair Trading regarding the Application of their Competition Laws, April 2004.

Arrangement between the Fair Trade Commission of the Republic of Korea and the Federal Competition Commission of the United Mexican States regarding the Application of their Competition Laws, April 2004.

Agreement between the Government of the United States of America and the Government of Canada on the Application of Positive Comity Principles to the Enforcement o their Competition Laws, Washington, 5 October 2004.

Memorandum of understanding on Cooperation between the Fair Trade Commission of the Republic of Korea and the Competition Directorate-General of the European Commission, 28 October 2004.

ภาคผนวก ฐ

Selected Free Trade, Custom Union, Economic Partnership or Common Market Agreements with Competition Law and Policy Provisions

Treaty Establishing the European Coal and Steel Community (Paris, 18 April 1951).

Treaty Establishing the European Economic Community (Rome, 25 March 1957).

Convention establishing the European Free Trade Association (Stockholm, 4 January 1960), amended at Vaduz on 21 June 2001.

Association Agreement between the European Economic Community and Turkey (1961), with Decision No. 1/95 of the European Union-Turkey Association Council on Implementing the Final Phase of the Customs Union (22 December 1995).

Treaty Establishing the Central African Customs and Economic Union (Brazzaville, December 1964).

Andean Subregional Integration Agreement (Cartagena, 26 May 1969), together with Decision 285 of the Andean Commission, "Norms to prevent or correct competitive distortions caused by practices that restrict free competition" (21 March 1991).

Australia-New Zealand Closer Economic Relations Agreement (entry into force, 1 January 1983), with the Protocol on the Acceleration of Free Trade in Goods (1998; entry into force, 1 July 1990), and the Memorandum of Understanding between the Government of New Zealand and the Government of Australia on Harmonization of Business Law (1 July 1998).

Southern Agreement Common Market (Asuncion, 26 March 1991), together with Decision 17/96 containing the Protocol on the Defence of Competition (17 December 1996).

Treaty Establishing the Southern African Development Community (Windhoek, 17 August 1992), together with the Protocol on Trade (August 1996).

North American Free Trade Agreement between the Government of the United States of America, the Government of Canada and the Government of the United States of Mexico (Washington, D.C., 8 and 17 December 1992; Ottawa, 11 and 17 December 1992; and Mexico City, 14 and 17 December 1992).

Traite Modifie de l'Union Economique Et Monetaire Ouest Africaine (UEMOA), 29 January 2003.

Commonwealth of Independent States Treaty on Economic Union (Moscow, 24 September 1993).

Treaty on the Harmonization of Business Law in Africa (Port Louis, 17 October 1993).

Treaty Establishing the Common Market for Eastern and Southern Africa (Kampala, 5 November 1993).

Agreement on the European Economic Area between the European Communities, their member States and the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Kingdom of Sweden (13 December 1993; entry into force, 1 January 1994).

Treaty Establishing the Central African Economic and Monetary Community (N'Djamena, 16 March 1994).

Europe agreements establishing an association between the European Communities and their member States, of the one part and of the other part respectively, the Republics of Bulgaria and Romania (entry into force, 1 February 1995).

Agreement on partnership and Cooperation between the European Community of the one part and the other part respectively: Ukraine (14 June 1994); the Russian Federation (24 June 1994); the Republic of Kazakhstan (23 January 1995); the Kyrgyz Republic (9 February 1995); the Republic of Moldova (28 November 1994); and the Republic of Belarus (6 March 1995).

Osaka Action Agenda, 1995, adopted by the Asia-Pacific Economic Cooperation forum (APEC).

Euro-Mediterranean agreements establishing an association between the European Communities and their member States, of the one part and of the other part respectively: the People's Democratic Republic of Algeria (22 April 2002); Egypt (25 June 2001); the State of Israel (Brussels, 22 November 1995); the Republic of Lebanon (27 March 2002); the Kingdom of Morocco (30 January 1996); the Republic of Tunisia

(17 July 1996); the Palestinian Authority (2 June 1997); and the Hashemite Kingdom of Jordan (24 November 1997).

Framework cooperation agreement leading ultimately to the establishment of a political and economic association between the European Community and its member States, of the one part, and the Republic of Chile, of the other part (Florence, 21 June 1996).

Protocol on Trade in the Southern African Development Community, Maseru, 24 August 1996.

Canada/Chile Free Trade Agreement (Ottawa, 14 November 1996; entry into force, 1 June 1997).

Treaty on Free Trade between the Republic of Chile and the Republic of Mexico, 1998.

Treaties on Free Trade between the Dominican Republic and each of the member countries of the Central American Common Market, 1998.

Treaties on Free Trade between the Republic of Chile and each of member countries of the Central American Common Market (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua), 1999.

Agreement on Trade, Development and Co-operation between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part, 29 July 1999.

Treaty Establishing the East African Community, Arusha, 20 November 1999.

Protocol VIII on Competition Policy, Consumer Protection, Dumping and Subsidies, amending the Treaty Establishing the Caribbean Community (Chaguaramas, 4 July 1973 and 14 March 2000).

Partnership Agreement between the African, Caribbean and Pacific States and the European Community and its Member States, adopted at Cotonou, Benin, on 23 June 2000.

Free Trade Agreement between the EFTA States and Mexico, Mexico City, 27 November 2000.

Decision No 2/2000 of the EC-Mexico Joint Council of 23 March 2000 and Economic Partnership, Political Co-ordination Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part, 28 September 2000.

The Treaties on Free Trade and Preferential Exchange between Panama and each of the member countries of the Central American Common Market, 2001.

Free Trade Agreement between Chile and Mexico, 2001.

Free Trade Agreement between the Government of Canada and the Government of the Republic of Costa Rica (Ottawa, 23 April 2001).

Agreement between Japan and the Republic of Singapore for a New Age Economic Partnership and Implementing Agreement Pursuant to article 7, 13 January 2002.

Free Trade Agreement between the EFTA States and Singapore, Egilsstaðir (Iceland), 26 June 2002.

Southern African Customs Union Agreement between the Governments of the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia, the Republic of South Africa and the Kingdom of Swaziland, 21 October 2002.

Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, 30 December 2002.

Singapore-United States Free Trade Agreement, Washington, 6 May 2003.

Chile-United States Free Trade Agreement, Miami, 6 June 2003.

Australia-United States Free Trade Agreement, Washington, 18 May 2004.

Australia-Thailand Free Trade Agreement, 5 July 2004.

Agreement between Japan and the United Mexican States for the Strengthening of the Economic Partnership and Implementing Agreement pursuant to article 132, 17 September 2004.

COMESA Competition Rules and Regulations, Lusaka, 7 December 2004.

Thailand-New Zealand Closer Economic Partnership Agreement, 19 April 2005.

Free Trade Agreements between Albania and respectively, Bosnia and Herzegovina, Bulgaria, Croatia, Serbia and Montenegro, Macedonia, Moldova and the United Nations Interim Administration Mission in Kosovo (Unmik).

Free Trade Agreements between Armenia and respectively, Georgia, Kazakhstan, Kyrgyz Republic, Moldova, the Russian Federation, Turkmenistan and Ukraine.

Free Trade Agreements between the Republic of Bulgaria and respectively, the State of Israel, Turkey and the Former Yugoslav Republic of Macedonia.

Free Trade Agreements between Croatia and Bosnia and Herzegovina.

Free Trade Agreements between the EFTA States and respectively, Chile, Croatia, Jordan, the Former Yugoslav Republic of Macedonia, Morocco, Palestine, Romania and Turkey.

Interim Agreements between the EU and, respectively, Croatia and the Former Yugoslav Republic of Macedonia.

Free Trade Agreements between Georgia and respectively, Azerbaijan, Kazakhstan, Russia, Turkmenistan and Ukraine.

Free Trade Agreements between Kyrgyz Republic and respectively, Kazakhstan, Moldova, the Russia Federation, Ukraine and Uzbekistan.

Protocol on Trade in the Southern African Development Community.

Free Trade Agreements between Turkey and respectively, Bosnia and Herzegovina, Croatia, Israel and the Former Yugoslav Republic of Macedonia.

Agreements between New Zealand and Singapore on a Closer Economic Partnership.

Trans-Pacific Strategic Economic Partnership Agreements among Brunei Darussalam, Chile, New Zealand and Singapore, June 2005, entry into force 1 May 2006.

ภาคผนวก ฑ

Multilateral and Plurilateral Instruments Dealing with Competition Law and Policy

Recommendation of the OECD Council on restrictive business practices affecting international trade, including those involving multinational corporations (20 July 1978).

The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, adopted by General Assembly resolution 35/63 of 5 December 1980.

Recommendation of the OECD Council for cooperation between member countries in areas of potential conflict between competition and trade policies (C(86)65(Final), 23 October 1986).

Recommendation of the OECD Council, "minimizing conflicting requirements: approaches of moderation and restraint" (1987).

Final Act of the Uruguay Round of Multilateral Trade Negotiations (Marrakech, April 1994).

Revised recommendation of the OECD Council concerning cooperation between member countries on anti-competitive practices affecting international trade (27 and 28 July 1995 (C(95)130/Final).

Recommendation of the OECD Council concerning effective action against hard-core cartels (13-May-1998, C(98)35/FINAL).

WTO Agreement on Basic Telecommunications Services (15 February 1997; entry into force, 1 January 1998).

OECD Guidelines for Multinational Enterprises, adopted by the Governments of the 29 Member countries of the OECD and of Argentina, Brazil, Chile and Slovakia at the OECD Ministerial Meeting on 27 June 2000.

Recommendation of the OECD Council on merger review (25 March 2005, C(2005)34).

International Competitive Network, Guiding Principles for Merger Notification and Review, 29 September 2002.

ประวัติผู้เขียนวิทยานิพนธ์

นางสาว อารยา วรัญญาพร เกิดเมื่อวันที่ 5 กรกฎาคม 2524 ที่กรุงเทพมหานคร จบหลักสูตรนิติศาสตรบัณฑิต จุฬาลงกรณ์มหาวิทยาลัย เมื่อปี พ.ศ.2546 ปัจจุบันทำงานที่ธนาคารกรุงเทพ ตำแหน่งพนักงานพิธีการสินเชื่อ 10