

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 3 on Co-operation and Enforcement

INVENTORY OF PROVISIONS IN INTER-AGENCY CO-OPERATION AGREEMENTS (MoUs)

-- Note by the Secretariat and inventory--

This document sets forth the Secretariat's final review of inter-agency co-operation agreements (MoUs). It has been revised to include feedback by delegates.

*More documents related to international competition co-operation can be found at:
<http://www.oecd.org/daf/competition/inventory-competition-agreements.htm>*

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JT03399496

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1. Introduction*

1. The growing interdependence of economies and the proliferation of competition regimes have raised the number and complexity of cross-border competition cases, making international co-operation crucial for effective enforcement. Competition authorities around the world often face situations in which they need to co-operate or co-ordinate their enforcement actions to ensure effectiveness, avoid inconsistencies and duplications, and allow businesses to comply cost-effectively with multiple competition regimes. In order to facilitate such co-operation and co-ordination, competition authorities have developed various formal and informal tools.

2. For over 50 years, the OECD and its Competition Committee have played a leading role in shaping the framework for international co-operation on competition matters. Recommendations, best practices, and policy roundtables are the basis and inspiration for national initiatives and the primary drivers for promoting co-operation on a global scale. The Competition Committee started a long-term project on international co-operation in 2012, including numerous roundtable discussions and an extensive OECD/ ICN survey on international enforcement co-operation to better understand the experience of competition agencies in case-related enforcement activities¹. Results from this survey fed into the 2014 report “Challenges of International Co-operation in Competition Law Enforcement” [C(2014)51]², produced within the framework of the OECD NAEC project, which gathered evidence on the need for closer co-operation between competition enforcers. OECD’s work on international co-operation provided the background to the negotiation of the 2014 Recommendation of the Council on International Co-operation on Competition Investigations and Proceedings (hereinafter, “2014 OECD Recommendation on International Co-operation” [DAF/COMP(2014)23]³), which replaces the 1995 Recommendation of the Council concerning Co-operation between Member Countries on Anticompetitive Practices affecting International Trade.

3. Agreements on international co-operation in competition enforcement help competition authorities work with each other to enforce the law effectively and efficiently. To provide input for the negotiation and interpretation of such agreements, in 2014, Working Party No. 3 (WP3) of the Competition Committee started building an inventory of these agreements and their provisions. At the meeting of WP3 of 15 June 2015, the Secretariat presented a draft inventory of 15 inter-governmental co-operation agreements where at least one of the signatories is an OECD Member (hereinafter “June 2015 Paper” [DAF/COMP/WP3(2015)12/REV1]⁴). Having approved the inventory, WP3 expressed interest in learning more about co-operation arrangements concluded between competition authorities and agreed that the Secretariat should develop an inventory of such agreements, called for convenience in this note “MoUs”, whatever their formal title (e.g. “Memorandum of Understanding,” “Memorandum on Co-operation,” “Agreement on Co-operation,” “Co-operation Arrangement,” “Practical Guidance,” “Mechanism,” “Agreed Minutes”)⁵.

* This note was prepared by Satoshi Ogawa, with comments from Antonio Capobianco and Despina Pachnou of the OECD Competition Division.

¹ <http://www.oecd.org/daf/competition/oecd-icn-international-co-operation-survey.htm>.

² Also available at <http://www.oecd.org/daf/competition/Challenges-Competition-Internat-Coop-2014.pdf>.

³ Also available at <http://www.oecd.org/daf/competition/2014-rec-internat-coop-competition.pdf>.

⁴ See OECD (2015) Note by the Secretariat on Inventory of Co-operation Agreements [DAF/COMP/WP3(2015)12/REV1], also available at [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=daf/comp/wp3\(2015\)12/rev1&doclanguage=en](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=daf/comp/wp3(2015)12/rev1&doclanguage=en).

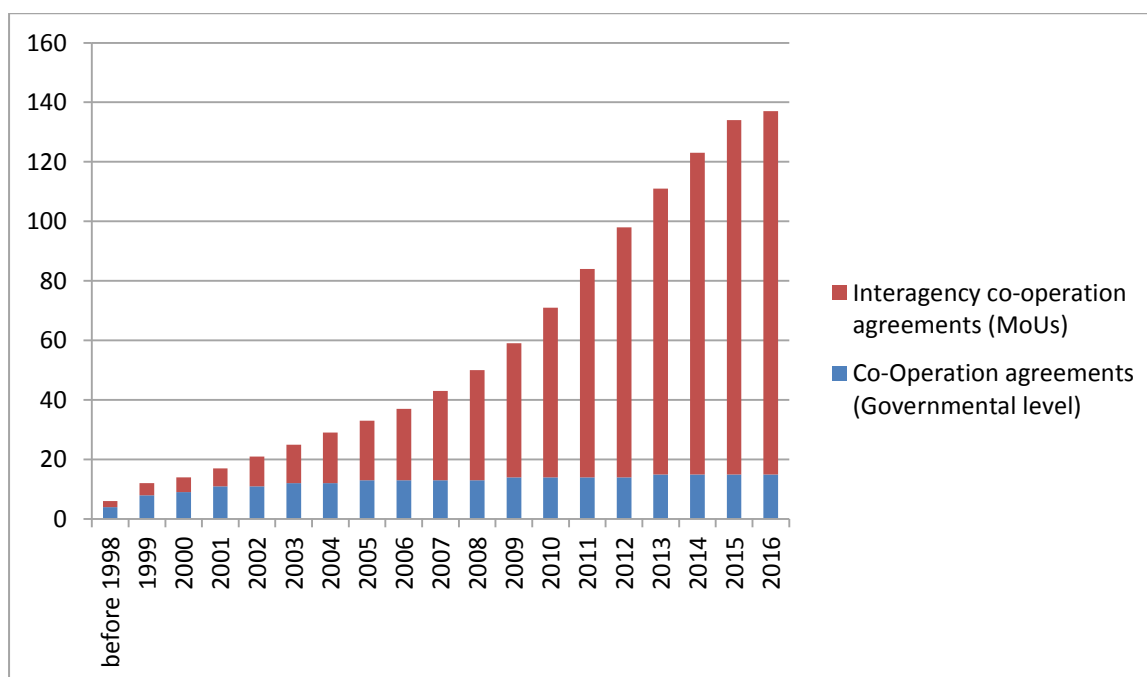
⁵ Other than these types of agreements between competition authorities, there are other types of arrangements such as so-called merger protocols or best practices for co-operation in merger investigations

4. This note sets forth the first findings by the Secretariat and proposes steps forward. It describes some of the main characteristics of MoUs and presents the main differences between inter-governmental co-operation agreements and MoUs.

1.1 Overview

5. Competition authorities are increasingly entering into MoUs, especially since 2000 (Graph 1). To the knowledge of the Secretariat, at the end of April 2016 there are at least 142⁶ MoUs where one of the signatories is a competition authority of an OECD Member, Associate (currently only Romania), or Participant to the OECD Competition Committee, or the European Commission (Annex 1).

Graph 1. Development of co-operation agreements⁷



This graph includes inter-governmental co-operation agreements (concluded up until June 2015) and inter-agency MoUs (concluded up until end April 2016) where at least one of the signatories is an OECD Member or a competition authority of an OECD Member, Associate, or Participant in the OECD Competition Committee, or the European Commission. This graph includes only 122 inter-agency MoUs for which information on their date of execution is available; such information is unavailable for 20 MoUs. Free Trade Agreements (FTAs) or Economic Partnership Agreements (EPAs) are not included.

Source: Calculations by the Secretariat based on publicly available information.

between competition authorities. These documents are softer declarations of existing practice and are not included in the inventory of MoUs.

⁶ This figure (142) includes all the MoUs where at least one of the signatories is a competition authority of an OECD Member, Associate, or Participant in the OECD Competition Committee, or the European Commission, and that were concluded up until the end of April 2016. The Secretariat could only review 90, based on accessibility or language limitations. National competition authorities in EU member states cooperate through the European Competition Network and may not, for this reason, need bilateral MoUs with each other.

⁷ The presentation of Graph 1 is cumulative, rather than by year. Also, information on the number of inter-governmental agreements is based on the June 2015 Paper; Graph 1 does not cover inter-governmental agreements concluded after the reference period of the June 2015 Paper, if any.

6. Competition authorities conclude inter-agency MoUs for various purposes. Some MoUs between competition authorities that have an established and mature relationship, such as the one between New Zealand and Australia on compulsorily-acquired information and investigative assistance (2013)⁸, aim to trigger so-called gateway provisions⁹ to enable the signatories to exchange confidential information. Some other MoUs, such as the one between France and Chinese Taipei (2014), intend to establish a general framework on co-operation and mutual understanding, without a provision on co-ordination in specific cases. In general, MoUs enhance soft voluntary convergence of competition enforcement, and can serve as catalysts of more and better case co-operation between agencies while safeguarding each agency's independence.

7. Competition authorities often choose to enter into MoUs due to the flexibility offered by these instruments: they may be concluded at the initiative of competition authorities quickly and based on their needs, and are easier to enter into or amend than inter-governmental agreements because they do not require the authorisation of legislative bodies and/or involvement of governmental bodies, such as foreign ministries¹⁰.

8. MoUs are not international treaties between countries that create rights or obligations of competition authorities. Contrary to the very legal concept of international treaties, there is much less international consensus of what constitutes a MoU: MoUs are softer legal instruments, practical arrangements or general frameworks of co-operation between competition authorities, and thus their definition and main characteristics (e.g. adoption process, issues which can be covered, legal effects) may vary from jurisdiction to jurisdiction. MoUs are not legally binding, which means that they are generally not legally enforceable, with the exception of binding confidentiality provisions in some. Many MoUs have provisions on the relationship between the MoU and existing laws of the parties; typically they stipulate that the MoUs do not require parties to take any action inconsistent with the laws and regulations of each jurisdiction, or change or amend domestic laws, or prejudice the policy or legal jurisdiction of either party.

9. Therefore, through MoUs competition authorities can relatively quickly establish a flexible and practical co-operation framework. Some MoUs formalise existing working relationships, while others try to achieve a new level of engagement or best endeavours agreement between competition authorities.

10. Over approximately the past two years (2014 to end April 2016), some competition authorities concluded so-called "second generation" MoUs. The 2015 MoU between Australia and Japan contains provisions that allow the competition authorities to exchange confidential information without seeking prior authorisation from the source of the information. The competition authorities of Canada and New Zealand signed a co-operation MoU in April 2016 to enhance co-operation in cross-border competition enforcement in terms of information sharing and the provision of investigative assistance. These recent developments correspond to Section VII of the 2014 OECD Recommendation on International Co-operation, which recommends considering the exchange of confidential information through the use of confidentiality waivers and information gateways and appropriate safeguards.

⁸ All MoUs cited in this note will be referred to by the country names, although concluded between competition agencies.

⁹ Information gateway provisions are "legal provisions allowing for the exchange of confidential information between competition authorities without the need to obtain prior consent from the source of the information" (Article 10, Section VII of the 2014 OECD Recommendation on International Co-operation). For more detail, see OECD (2013) Note by the Secretariat on National and International Provisions for the Exchange of Confidential Information between Competition Agencies without waivers [[DAF/COMP/WP3\(2013\)4](#)].

¹⁰ See the June 2015 Paper, p. 32.

Box 3. Second generation MoUs

So-called “second generation” MoUs enable competition authorities to exchange confidential information under certain circumstances, without the need to seek prior consent from the source of the information.

For example, the MoU between New Zealand and Australia on compulsorily-acquired information and investigative assistance (2013) was concluded to give effect to the information gateway provisions of New Zealand; it gives the competition authority, the New Zealand Commerce Commission (NZCC), the authority to share compulsorily-acquired information and to provide investigative assistance to the Australian Competition and Consumer Commission (ACCC).

The MoU between Australia and Japan (2015), which was concluded to implement a provision of their Economic Partnership Agreement, also allows for the exchange of confidential information obtained from companies during the course of an investigation based on the information gateway provisions in the countries’ respective competition laws.

11. Most MoUs are modelled on inter-governmental co-operation agreements and have a similar structure, albeit with less detailed and formal provisions. Several lack some provisions (such as comity and co-ordination in the same or related investigations) that are usually found in inter-governmental co-operation agreements. There is a difference in the degree of detail of provisions in MoUs, depending on the signatory agencies, and their objectives and experience. One possible classification of the coverage and detail of provisions in MoUs follows:

(i) Some MoUs contain all basic elements of inter-governmental co-operation agreements, such as provisions on notifications, enforcement co-operation, co-ordination, and negative and positive comity. Examples of this kind of detailed MoUs include Japan and Korea (2014), Brazil and Japan (2014) and Korea and Mexico (2004).

(ii) Some MoUs have most or all of the basic elements of inter-governmental co-operation agreements, including provisions on enforcement co-operation such as investigative assistance and co-ordination in the same or related investigations, but their provisions are generally less detailed. Examples of such MoUs are Korea and US (2015) and Canada and India (2014).

(iii) Other MoUs focus more on establishing a framework to enhance co-operation and dialogue between the two competition authorities. These agreements often have provisions on transparency, communication, consultation and/or technical co-operation, but do not provide for specific means of enforcement co-operation, such as investigative assistance, co-ordination of concurrent investigations and comity. The MoUs between France and Chinese Taipei (2014), Australia and China (MOFCOM) (2014), and Turkey and Ukraine (2013) belong to this category.

(iv) Finally, some MoUs include several basic elements of inter-governmental co-operation agreements, but their provisions are not detailed, and they focus more on the desire to establish a structure for dialogue or communication and future co-operation between the two competition agencies. Examples of this type of MoUs are China (MOFCOM) and EU (2004) and China (MOFCOM) and Hungary (2006).

12. MoUs may include unique features that are not present in inter-governmental co-operation agreements. Some MoUs include a provision requiring signatories to promote competition by addressing anticompetitive activities in accordance with their respective competition laws and regulations.¹¹ Such

¹¹ For example, Article 2.1 of Australia-Philippines (2014) states as follows:

“II. Anti-competitive Activities

provisions are often included in Free Trade Agreements (FTAs) or Economic Partnership Agreements (EPAs), but are usually not found in government-to-government co-operation agreements.¹²

13. Second, most MoUs contain a provision on technical co-operation, which is not common in government-to-government co-operation agreements. Some list types of technical co-operation activities covered by the agreement, including conducting or participating in conferences, seminars, workshops or training courses, exchange of personnel or study trips, and providing assistance in advocacy activities.¹³ According to several MoUs, the participant competition authorities must develop a work plan of co-operative activities, which may be revised regularly by mutual consent.¹⁴

14. Third, many MoUs allow the parties to notify each other through informal and flexible means, contrary to the formal and less flexible requirements for notifications under government-to-government co-operation agreements. MoUs also tend to allow flexible consultation between the parties, rather than detail procedures for consultations. The competition authorities' preference for informal communication was taken into consideration in the 2014 OECD Recommendation on International Co-operation, which provides that its adherents should favour notifications directly between competition authorities and allow notifications by emails or other informal written means of communication¹⁵.

15. Fourth, some MoUs stipulate that the parties should regularly evaluate the effectiveness of the co-operation under the MoU to ensure that their expectations and needs are met. Examples of this kind of provision are included in Canada-India (2014), Australia-India (2013), India-US (2012) and China-US (2011).

16. Lastly, MoUs, except for those with the title of 'agreement', tend to stipulate that their provisions are not legally binding and therefore do not intend to create any legal rights or duties, although a few MoUs make it clear that the provision on confidentiality is an exception to the non-binding nature of the MoU¹⁶.

17. To sum up, one of the key benefits of MoUs, as compared to inter-governmental agreements, is their flexibility, which allows competition authorities to conclude or amend them easily based on their

The competition authorities will promote competition by addressing anti-competitive activities in accordance with the laws and regulations of their respective countries, in order to facilitate the efficient functioning of the markets of their respective countries. The competition authorities express their intention to take appropriate measures for such purposes in conformity with the principles of transparency, non-discrimination and procedural fairness."

This kind of provision is also found in Japan-Korea (2014), Brazil-Japan (2014), and Japan-Philippines (2013).

¹² See the June 2015 Paper, p. 33.

¹³ For example, Article 6 of Australia-Philippines (2014) and Article 6 of Indonesia-Korea (2013) list four types of technical co-operation activities and also have a comprehensive provision stating that such technical co-operation may include other forms of technical co-operation, as the competition authorities may decide.

¹⁴ For example, Article 5 of Canada-India (2014), China (NDRC, SAIC and MOFCOM)-Korea (2012), India-US (2012), China-US (2011), and Russia-US (2009) stipulate such a provision of work plans.

¹⁵ Article 2, Section V of the 2014 OECD Recommendation on International Co-operation states that "[n]otifications should be in writing, using any effective and appropriate means of communication, including e-mail".

¹⁶ For example, Article 11.4 of Australia-New Zealand (2007) states that confidential information will continue to be protected notwithstanding the termination of the MoU. Similarly, Article 6 of France-Chinese Taipei (2014) stipulates that obligations of the parties regarding the confidentiality of information received in the framework of the MoU shall continue to be binding after its termination.

priorities, maturity of their relationship and needs, and seek for appropriate co-operation and co-ordination on an *ad hoc* basis. This is important in an era when competition in many sectors is fast moving and business activities with a cross-border geographic scope are becoming more common, requiring more extensive international enforcement co-operation and co-ordination. For instance, competition authorities can enter into a general MoU to facilitate their mutual understanding at first and then revise it to allow them to co-ordinate in specific cases or exchange confidential information, depending on their needs. The structure of MoUs and the contents of their provisions are impacted by a number of factors, including: the frequency of business activities across two jurisdictions, the need for international co-operation and co-ordination, the relationship between signatory agencies, their objectives, and their experience.

2. Main differences between inter-agency MoUs and inter-governmental agreements

2.1. Provisions on “purpose”

18. Most co-operation agreements at a government level begin with “purpose” or “objective” provisions. They generally refer to two broad purposes, namely to (1) contribute to the effective enforcement of each party’s competition laws through co-operation and co-ordination and (2) avoid, lessen or minimise the risk of conflicts in the application of each party’s competition laws.

19. A relatively small number of MoUs have both purposes (1) and (2) above. The large majority refers only to the enhancement of co-operation between the parties and the promotion of competition awareness in general, rather than co-ordination of enforcement in specific cases¹⁷. For example, China-EU (2012) states that *“the ultimate aim is to increase mutual understanding and awareness of current and forthcoming trends and expected developments in competition legislation and its enforcement in their respective jurisdictions in the understanding that competition legislation is an important factor in ensuring consumer welfare and in providing a level playing field as well as legal certainty for the business community in the market”*. Similar provisions are found in Brazil-Korea (2014), Chinese Taipei-France (2014), Brazil-EU (2009), and China-Hungary (2006).

20. Some MoUs expressly mention communication as a means to strengthen the relationship between the parties in the fields of competition law and policy. This is the case in Australia-China (MOFCOM) (2014), Canada-India (2014), Australia-India (2013), Australia-China (SAIC) (2012), and China-US (2011).

2.2. Provisions on “definitions”

21. While inter-governmental co-operation agreements usually include a set of definitions of key terms and concepts, many MoUs do not. When MoUs do have provisions on definitions, these are mostly the same as those in inter-governmental co-operation agreements.¹⁸

2.3. Provisions on “transparency”

22. Most MoUs have provisions on transparency to enable the parties to share information on competition law, policy, and enforcement, so that the parties can co-operate effectively and efficiently,

¹⁷ Some MoUs, e.g. Australia-Philippines (2014) and China-US (2011) state that co-operation includes not only enforcement co-operation but also co-operation on technical assistance.

¹⁸ For instance, definitions of “competition laws”, “competition authorities”, “enforcement activities” and “anticompetitive activities”. The second generation MoU between New Zealand and Australia on compulsorily-acquired information and investigative assistance (2013) further provides definitions for “compulsorily-acquired information”, “investigative assistance”, “protected information” and “request”.

even when working under different enforcement systems.¹⁹ As in the case of agreements at government level, some MoUs just require the parties to make publicly available sufficient information on their competition regimes by appropriate means. Other MoUs further require the parties to actively inform each other of any substantive changes in their national legislative and enforcement systems.

2.4. Provisions on “notifications”

23. Provisions on notifications of competition investigations and proceedings in the inter-governmental agreements and MoUs can help to establish effective co-operation among competition authorities. Notifications make the notified party aware of the notifying party’s enforcement activity and may trigger subsequent co-operation activities, such as co-ordination or consultations²⁰. In practice, notifications on enforcement activities are typically made when a competition authority initiates an investigation of international activity or makes important progress in the investigation, or when a competition authority issues a request for information in cross-border investigations.

24. Like agreements at government level, most MoUs include provisions on notifications, but generally they require fewer formalities. Only a few MoUs, such as Australia-Japan (2015) and Korea-Mexico (2004), define all notification requirements, like the circumstances requiring notifications, the timing of the notification, its content and modality. Notification provisions in many MoUs tend to be limited to the basic structure of notification. Some MoUs simply lay down a general principle that parties will notify each other of enforcement activities that may affect their important interests, without specifying anything else. Some MoUs do not have provisions on notifications, although each party can notify the other party of its enforcement activities through *ad hoc* consultation or communication. This preference for less formal notification provisions, without specifying the parties’ duties, derives in part from competition agencies’ concern for the administrative burden and manageability of excessive notification obligations.

2.5. Provisions on “enforcement co-operation and investigative assistance”

25. Co-operation agreements at government level often include provisions allowing a competition authority in one jurisdiction to request information and enforcement co-operation from another jurisdiction. Some of these provisions list the activities that are included in the notion of enforcement co-operation; in some cases they may also include enhanced investigative co-operation.²¹

26. Many MoUs also have provisions on enforcement co-operation, but the level of detail varies. A few MoUs have detailed provisions requiring the parties to endeavour to assist each other or listing the activities that might be provided as part of enforcement co-operation.²² Most of them, however, only lay down a general principle of enforcement co-operation, without listing activities or providing additional

¹⁹ For that purpose, Article 2, Section II of the 2014 OECD Recommendation on International Co-operation recommends to “*make publicly available sufficient information on their substantive and procedural rules, including those relating to confidentiality, by appropriate means with a view to facilitating mutual understanding of how national enforcement systems operate.*”

²⁰ For this reason, the 2014 OECD Recommendation on International Co-operation has included provisions on notifications of enforcement activities among member countries (in Section V).

²¹ According to Section VIII of the 2014 OECD Recommendation on International Co-operation, investigative assistance may include providing public information, assisting in obtaining information, employing an agency’s authority to compel the production of information, ensuring service of official documents, and executing searches to obtain evidence on behalf of another agency.

²² Examples of MoUs having such lists are Brazil-Japan (2014), Japan-Korea (2014), and Korea-Mexico (2004).

details²³. Some MoUs only refer to exchange of information, although *ad hoc* consultation and communication can enable some degree of enforcement co-operation.

Box 4. Investigative assistance provisions in second generation MoUs

Second generation MoUs provide for investigative assistance, such as obtaining testimony and statements from witnesses or conducting searches on behalf of another authority. One example is New Zealand-Australia on compulsorily-acquired information and investigative assistance (2013), which allows the New Zealand Commerce Commission (NZCC) to provide, on request, investigative assistance to the Australian Competition and Consumer Commission (ACCC). This includes assistance by way of exercising statutory information gathering powers. The provision of protected information from ACCC to the NZCC continues to be governed by section 155AAA of the Australian Competition and Consumer Act 2010 (Section 5 of New Zealand-Australia on compulsorily-acquired information and investigative assistance (2013)). The provision of investigative assistance from ACCC to the NZCC is not explicitly covered by the 2013 arrangement but is available under Australian mutual assistance legislation, the Mutual Assistance in Business Regulation Act 1992 and Mutual Assistance in Criminal Matters Act 1987.

Another example is Australia-Japan (2015), under which assistance may include supporting the other competition authority in the application for approval to obtain information or evidence from enterprises or individuals, by a separate governmental body in the country of the assisting competition authority.

2.6. Provisions on the “exchange of information”

27. Information exchange is one form of investigative assistance and the ability to exchange information, particularly confidential information, is crucial for competition authorities to co-operate effectively. Exchange of confidential information may take place either through confidentiality waivers or through the so-called “information gateway” provisions, which are defined as “*legal provisions allowing for the exchange of confidential information between competition authorities without the need to obtain prior consent from the source of the information.*”²⁴

28. Most MoUs concluded to date are first generation MoUs and, as is the case for the inter-governmental agreements, they often include provisions on the exchange of non-confidential information in the enforcement co-operation section²⁵.

2.7. Provisions on “co-ordination of investigations and proceedings”

29. Provisions on co-ordination of investigations and proceedings require the parties to co-ordinate their enforcement activities in parallel investigations. They are increasingly important as competition authorities are facing many situations in which they investigate the same or related matters. The 2014 OECD Recommendation on International Co-operation recommends co-ordinating parallel investigations

²³ For example, Paragraph III-1 of Australia- New Zealand-Chinese Taipei (2002) states as follows:

“Each Participant will endeavour to render assistance to another Participant in its enforcement activities to the extent compatible with the laws and important interests of the jurisdiction of the assisting Participant.”

²⁴ Section VII, Article 10 of the 2014 OECD Recommendation on International Co-operation.

²⁵ To date, only the second generation MoUs between Canada-New Zealand (2016), Australia-Japan (2015), and New Zealand-Australia on compulsorily-acquired information and investigative assistance (2013) contain provisions which allow the competition authorities to exchange confidential information without seeking prior authorisation from the source of the information. For a detailed analysis of the provisions in second generation agreements, please refer to the June 2015 Paper, pp. 15-19.

or proceedings and lists examples of possible co-ordination arrangements.²⁶ Most agreements at government level include provisions encouraging the competition authorities to co-ordinate enforcement activities. These provisions typically include (1) a general statement on co-ordination, (2) a list of factors to be considered when deciding whether to co-ordinate actions, (3) details on how co-ordination should work in practice, and (4) a termination clause allowing one party to terminate or limit the co-ordination arrangement.

30. Approximately half of the 90 MoUs that the Secretariat reviewed do not include a provision on co-ordination of investigations and proceedings. This can be explained by the fact that MoUs focus on establishing general co-operation, a good relationship or communications between competition authorities rather than co-ordination in specific cases. Some MoUs, e.g., Australia-Japan (2015), Korea-Mexico (2004), Australia-Korea (2002), Australia-Papua New Guinea (1999), and Australia-Chinese Taipei (1996), have clauses on co-ordination with some or all elements of (1) to (4) above. Others provide just a general statement on co-ordination, such as “(w)here the competition authorities of both Parties are pursuing enforcement activities with regard to related matters, each intends to consider co-ordination of their enforcement activities as appropriate.”²⁷

2.8. Provisions on comity (including “negative comity” and “positive comity”)

31. Comity is a legal principle in international law whereby a country should take other countries’ important interests into account while conducting its law enforcement activities, in return for their doing the same. There are two types of comity, namely “negative” and “positive” comity.²⁸

- Negative comity is also called “traditional comity” and involves a country’s consideration of how to prevent its laws and law enforcement actions from harming another country’s important interests. Negative comity is often included in inter-governmental co-operation agreements as a mechanism to avoid conflicts and usually consists of (1) a general principle of negative comity requiring a party to give careful consideration to (or take into account) the important interests of the other party, (2) obligations on the party taking the enforcement action to notify any activity which may affect important interests of the other party, and (3) factors that a party should consider in assessing appropriate measures to address the conflict. In addition to those, some agreements may mention (4) in which cases an important interest of a party is affected and (5) how a party’s important interests may be affected.
- Positive comity allows one party to request the other party to initiate and take appropriate enforcement actions with respect to anticompetitive activities occurring in the territory of the requested party that adversely affect the interests of the requesting party. Provisions on positive comity in inter-governmental agreements usually consist of (1) a general statement on the principle of positive comity, (2) the conditions when a request for positive comity activity can be made, (3) how the requested party should respond to the request, and (4) a statement on the voluntary nature of positive comity activities. Some jurisdictions have concluded special inter-

²⁶ Section VI of the 2014 OECD Recommendation on International Co-operation recommends that “where two or more Adherents investigate or proceed against the same or related anticompetitive practice or merger with anticompetitive effects, they should endeavour to co-ordinate their investigations or proceedings where their competition authorities agree that it would be in their interest to do so.”

²⁷ For example, Section I-2 of Korea-US (2015).

²⁸ For a detailed description of provisions on negative and positive comity in inter-governmental agreements, please see the June 2015 Paper, pp. 22-27. Also see Section III and IV of the 2014 OECD Recommendation on International Co-operation.

governmental agreements dedicated to positive comity, which further deepen the positive comity principle and clarify the positive comity requests and conditions²⁹.

32. Most inter-governmental agreements provide both negative and positive comity provisions. However, MoUs generally do not have detailed provisions on comity or have none at all. About half of the MoUs reviewed do not have a provision on comity. A few, e.g., Brazil-Japan (2014) and Japan-Korea (2014), have detailed negative and positive comity provisions. Some MoUs, such as Chile-US (2011) and Canada-Korea (2006), have only a negative comity provision requiring a party to give careful consideration to the important interests of the other party.

2.9. Provisions on “consultation”

33. Competition authorities frequently consult each other, but consultations are mostly done informally. Most inter-governmental co-operation agreements have formal consultation provisions, which can include details on the form of requests for consultation and the obligations of the parties to respond with relevant information.

34. MoUs do not usually include detailed provisions on consultations as they focus on flexibility and informality of inter-agency exchanges. About half of the reviewed MoUs do not have a provision on consultations, while most of those that do provide only that consultations may be requested by either party regarding any matter relating to the agreements, without setting forth formal duties of the parties in relation to consultation.³⁰

2.10. Provisions on “regular meetings”

35. Many inter-governmental agreements provide for periodic meetings between the competition authorities of the parties and several stipulate a specific frequency and the purposes of these meetings. Although more than half of the MoUs have provisions requiring the parties to hold a regular meeting, only a relatively small number specify the frequency of the periodic meetings and their purposes.³¹ Rather, they tend to state that the parties will periodically hold meetings if deemed necessary, in a flexible manner.

2.11. Provisions on “confidentiality”

36. Many inter-governmental agreements have provisions on confidentiality of the information exchanged, recognising that adequate protection of information exchanged is crucial for co-operation between competition authorities. Inter-governmental co-operation agreements usually include an obligation to maintain the confidentiality of information exchanged, and may provide for the sending party’s discretion to limit the communication only to non-confidential information³² and/or to set terms and conditions on the use and disclosure of the confidential information exchanged.

²⁹ EU-US on positive comity (1998) and Canada-US on positive comity (2004) are examples of such special agreements concluded at the government level.

³⁰ However, Korea-US (2015), Mexico-Russia (2010), and Korea-Mexico (2004) have detailed provisions on consultation, like those usually found in inter-governmental agreements.

³¹ Australia-New Zealand (2007) provides not only for annual meetings between the officials of the two agencies, but also annual meetings at Commissioner level.

³² Article 2, Section VII of the 2014 OECD Recommendation on International Co-operation also states that the transmitting party retains full discretion when deciding whether to transmit information.

37. As is the case for the inter-governmental agreements, most MoUs reviewed have provisions on confidentiality. Many provisions have the same level of detail as in inter-governmental agreements.

2.12. Provisions on “existing law”

38. Most inter-governmental agreements have provisions on existing law, which provide that (1) a competition authority need not take any action that is inconsistent with the laws and regulations in each jurisdiction, and (2) no change in the laws of the parties will be required as a result of the application of the agreement. Only about half of the MoUs reviewed have provisions on existing law, which may be due to the fact that many MoUs are legally non-binding and therefore do not create any legally enforceable right or duty.

2.13. Provisions on “communication”

39. Many inter-governmental agreements and MoUs have provisions on communication between the parties. Provisions in inter-governmental agreements tend to require formal ways of communication; for example, with respect to communication regarding notifications, many agreements require that certain notifications and requests (e.g. positive comity requests, consultation requests) should be confirmed in writing through diplomatic channels.

40. In contrast, MoUs allow informal communication between competition authorities; they often stipulate that communication between the parties may be carried out by informal means such as telephone, email, video conference or other methods as appropriate, thereby enabling agencies to communicate in a more timely and flexible manner.³³ MoUs often require designating a contact point/liaison/communications officer for each party for the purpose of facilitating effective communication.

3. Inventory of provisions in MoUs

41. This note identifies some features in MoUs and describes the main differences between inter-agency MoUs and inter-governmental co-operation agreements.

42. Based on the analysis of 90 reviewed MoUs, Annexes 2 to 16 provide inventories of provisions in MoUs, for the same 14 categories used in the June 2015 Paper for inter-governmental agreements, adding one category: miscellaneous provisions (which include provisions on the non-binding nature of MoUs, duration of MoUs, termination of MoUs, provision on ‘entire agreement’, etc.).

43. Each of Annexes 2 to 16 includes only some examples of provisions in the category that it covers (going from typical to less typical examples), rather than inventorying all provisions in the 90 MoUs.

³³ Article 2, Section V of the 2014 OECD Recommendation on International Co-operation provides in relation to notifications that they “*should be in writing, using any effective and appropriate means of communication, including e-mail*”.

ANNEX 1. LIST OF MOUS ON INTERNATIONAL CO-OPERATION³⁴³⁵

1. [Canada-New Zealand (2016)]
Cooperation Arrangement between the New Zealand Commerce Commission and the Commissioner of Competition (Canada) in relation to the Sharing of Information and Provision of Investigative Assistance (12 April 2016)
Available at; <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04050.html>, and
<http://www.comcom.govt.nz/dmsdocument/14229>
2. [China (MOFCOM)-Japan (2016)]
Memorandum on Antimonopoly Cooperation between the Fair Trade Commission of Japan and the Ministry of Commerce of the People's Republic of China (11 April 2016)
Available at; http://www.jftc.go.jp/en/int_relations/agreements.files/160411.pdf
3. [Canada-China (NDRC) (2016)]
Memorandum of Understanding on Cooperation between the Commissioner of Competition, Competition Bureau of the Government of Canada and the National Development and Reform Commission of the People's Republic of China (1 February 2016)
Available at; <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04021.html>
4. [Georgia-Lithuania (2015)]
Memorandum of Partnership in the field of the Competition Law Enforcement between the Competition Council of the Republic of Lithuania and the Competition Agency of Georgia (16 December 2015)
Available at; http://kt.gov.lt/en/international/Memorandumas_KT_GruzijosKI_EN.pdf
5. [Namibia-South Africa (2015)]
Memorandum of Understanding between Competition Commission South Africa and Namibian Competition Commission in the field of Competition law, enforcement and policy (11 November 2015)
Available at; <http://www.compcom.co.za/wp-content/uploads/2014/09/MOU-CCSA-Namibia-CC-signed.pdf>
6. [Australia-China (NDRC) (2015)]
Memorandum of Understanding between the National Development and Reform Commission of the People's Republic of China and the Australian Competition and Consumer Commission (5 November 2015)
Available at;
<https://www.accc.gov.au/system/files/Memorandum%20of%20understanding%20between%20the%20National%20Development%20and%20Reform%20Commission%20and%20the%20Australian%20Competition%20and%20Consumer%20Commission.pdf>
7. [China (MOFCOM)-EU (2015)]
Practical Guidance for Co-operation on Reviewing Merger Cases between Directorate-General for Competition of European Commission and Ministry of Commerce of People's Republic of China (15 October 2015)
Available at; http://ec.europa.eu/competition/international/bilateral/practical_guidance_mofcom_en.pdf

³⁴ This Annex 1 lists the MoUs where at least one of the signatories is an OECD Member agency or an agency of the Associate or of a Participant in the OECD Competition Committee, or the European Commission, and that were concluded by the end of April 2016.

³⁵ All internet references were active as of 26 April 2016.

8. [China (NDRC)-Japan (2015)]

Memorandum on Antimonopoly Co-operation between the Fair Trade Commission of Japan and the National Development and Reform Commission of the People's Republic of China (13 October 2015)

Available at; http://www.jftc.go.jp/en/int_relations/agreements.files/151013MOU.pdf

9. [China (SAIC)-Russia (2015)]

Memorandum of Understanding between the Federal Antimonopoly Service of the Russian Federation and the State Administration of Industry and Commerce of the People's Republic of China (23 September 2015)³⁶

10. [Korea-US (2015)]

Memorandum of Understanding on Antitrust Co-operation between the United States Department of Justice and the United States Federal Trade Commission, on the one part, and the Korea Fair Trade Commission, on the other part (8 September 2015)

Available at; https://www.ftc.gov/system/files/documents/cooperation_agreements/150908kftc-ftc-dojmou.pdf

11. [Canada-China (MOFCOM) (2015)]

Memorandum of understanding on Anti-Monopoly Co-operation Between the Commissioner of Competition, Competition Bureau of the Government of Canada and the Ministry of Commerce of the People's Republic of China (15 May 2015)

Available at; <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03930.html>

12. [Australia-Japan (2015)]

Co-operation Arrangement Between the Australian Competition and Consumer Commission and the Fair trade Commission of Japan (29 April 2015)

Available at;

http://www.jftc.go.jp/en/int_relations/agreements.files/150429MOU.pdf

13. [Canada-China (SAIC) (2015)]

Memorandum of Understanding on Co-operation Between the Commissioner of Competition, Competition Bureau of the Government of Canada and the State Administration for Industry and Commerce of the People's Republic of China (23 March 2015)

Available at; <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03929.html>

14. [Kyrgyzstan-Turkey (2015)]

Memorandum for Co-operation in the Sphere of Competition Policy between the Turkish Competition Authority and the Government Antimonopoly Regulation Agency under the Government of Kyrgyz Republic (25 February 2015)

Available at;

<http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fPages%2fprotocol%2fMemorandumkirgiz.pdf>

15. [France-Chinese Taipei (2014)]

Memorandum of Understanding between the Taiwan Fair trade Commission and the French Autorité de la concurrence Regarding the Application of Competition Laws (18 December 2014)

Available at; <http://www.ftc.gov.tw/upload/49636e48-3eb1-4698-be4f-417f6f07dc6e.pdf>

16. [Canada-India (2014)]

Memorandum of Understanding Between the Commissioner of Competition, Competition Bureau Canada and the Competition Commission of India on Co-operation in the Application of Competition Laws (1 December 2014)

Available at; <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03852.html>

³⁶ <http://en.fas.gov.ru/press-center/news/detail.html?id=44125>

17. [Cyprus-Greece³⁷ (2014)]

Agreement between the Hellenic Competition Commission and the Commission for the Protection of Competition of Cyprus (30 October 2014)

Available at;

http://www.epant.gr/img/File/2015_01_08%20Protokollo%20sinergias%20metaksi%20kiprou%20EPA%20kai%20EPANT.pdf

18. [China (MOFCOM)-Russia (2014)]

Memorandum of Cooperation between the Federal Antimonopoly Service of the Russian Federation and the Ministry of Commerce of the People's Republic of China (13 October 2014)³⁸

19. [Colombia-US (2014)]

Agreement on Antitrust Co-operation Between the United States Department of Justice and the United States Federal Trade Commission, of the One Part, and the Superintendence of Industry and Commerce of Columbia³⁹, of the Other Part (16 September 2014)

Available at; <https://www.ftc.gov/system/files/attachments/international-competition-consumer-protection-cooperation-agreements/140916agree-colombia.pdf>

20. [Australia-Philippines (2014)]

Memorandum of Co-operation Between the Department of Justice in the Republic of the Philippines and the Australian Competition and Consumer Commission (16 September 2014)

Available at;

<https://www.accc.gov.au/system/files/Memorandum%20of%20understaning%20between%20the%20Deprartment%20of%20Justice%20in%20the%20Republic%20of%20the%20Philippines%20and%20the%20Australian%20Competiti%20on%20and%20Consumer%20Commission.pdf>

21. [Japan-Korea (2014)]

Memorandum on Co-operation Between the Fair Trade Commission of Japan and the Fair Trade Commission of the Republic of Korea (25 July 2014)

Available at; http://www.jftc.go.jp/en/int_relations/agreements.files/140725MOU.pdf

22. [Australia-China (MOFCOM) (2014)]

Memorandum of Understanding on Anti-Monopoly Co-operation between the Australian Competition and Consumer Commission and the Ministry of Commerce of the People's Republic of China (20 May 2014)

Available at; <https://www.accc.gov.au/system/files/Memorandum%20of%20understanding%20in%20anti-monopoly%20cooperation%20between%20the%20Australian%20Competition%20%26%20Consumer%20Commissi%20on%20and%20the%20Ministry%20of%20Commerce%20of%20the%20People%20E2%80%99s%20Republic%20of%20China%20-%20English%20version.pdf>

³⁷ Note by Turkey: The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

³⁸ <http://en.fas.gov.ru/press-center/news/detail.html?id=38841>

³⁹ The Colombian Competition Authority concluded 8 other MoUs (9 MoUs in total) on international co-operation with Brazil, Chile, Ecuador, Mexico, Panama, Peru (2 MoUs), and Spain. <http://www.sic.gov.co/drupal/en/deputy-superintendence-for-the-protection-of-competition>

23. [Brazil-Korea (2014)]
Memorandum of Understanding on Co-operation in the Competition Field Between the Fair Trade Commission of the Republic of Korea and the Administrative Council for Economic Defence (CADE) of the Federative Republic of Brazil (24 April 2014)
Available at; http://eng.ftc.go.kr/bbs.do?command=getList&type_cd=72&pageId=0501
24. [Brazil-Japan (2014)]
Memorandum of Co-operation Between the Fair Trade Commission of Japan and the Administrative Council for Economic Defence (CADE) of the Federative Republic of Brazil (24 April 2014)
Available at; http://www.jftc.go.jp/en/int_relations/agreements.files/140425MOU.pdf
25. [Czech-Slovak Republic (2014)]
Memorandum on Cooperation between the Antimonopoly Office of the Slovak Republic and the Czech Office for the Protection of Competition (16 April 2014)⁴⁰
26. [Panama-Chinese Taipei (2013)]
Agreement between the Fair Trade Commission of the Republic of China (Taiwan) and the Authority of Consumer Protection and Competition Defense of the Republic of Panama regarding the application of Competition laws (4 December 2013)
Available at; <http://www.ftc.gov.tw/upload/33a55f2b-04fe-4094-b3de-2baa67c5dcb3.pdf>
27. [Indonesia-Korea (2013)]
Co-operation Arrangement Between the Fair Trade Commission of the Republic of Korea and the Komisi Pengawas Persaingan Usaha of the Republic of Indonesia (8 November 2013)
Available at; http://eng.ftc.go.kr/bbs.do?command=getList&type_cd=72&pageId=0501
28. [EU-India (2013)]
Memorandum of Understanding between the Directorate-General for Competition of the European Commission and the Competition Commission of India on co-operation in the field of competition laws (21 November 2013)
Available at; http://ec.europa.eu/competition/international/bilateral/india_agreement.pdf
29. [China (SAIC)-Portugal (2013)]
Memorandum of Understanding between the PCA and with the State Administration for Industry and Commerce (15 November 2013)⁴¹
30. [Turkey-Ukraine (2013)]
Memorandum for Co-operation in the Field of Competition Policy Between the Turkish Competition Authority and the Antimonopoly Committee of Ukraine (9 October 2013)
Available at; <http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fPages%2fprotocol%2fukrayna.pdf>
31. [Albania-Italy (2013)]
Memorandum of Understanding between Italian Competition Authority and Competition Authority of Albania in the competition policy field (18 September 2013)
Available at; <http://www.caa.gov.al/activity/read/id/35>
32. [Japan-Viet Nam (2013)]
Co-operation Arrangement between the Fair Trade Commission of Japan and the Competition Authority of the Socialist Republic of Viet Nam (28 August 2013)
Available at; http://www.jftc.go.jp/en/int_relations/agreements.files/VCAforJFTC.pdf

⁴⁰ <http://www.antimon.gov.sk/the-antimonopoly-office-of-the-slovak-republic-concluded-memorandum-on-cooperation-with-the-czech-office-for-the-protection-of-competition/>

⁴¹ http://www.concorrenca.pt/vEN/News_Events/Noticias/Pages/Memorandum-of-Understanding-with-SAIC.aspx

33. [Japan-Philippines (2013)]

Memorandum on Co-operation between the Fair Trade Commission of Japan and the Department of Justice of the Republic of the Philippines (28 August 2013)

Available at; http://www.jftc.go.jp/en/int_relations/agreements.files/MOU_for_JFTC.pdf

34. [Australia-India (2013)]

Memorandum of Understanding on Co-operation between the Competition Commission of India and the Australian Competition and Consumer Commission (3 June 2013)

Available at;

<https://www.accc.gov.au/system/files/Memorandum%20of%20understanding%20between%20the%20Competition%20Commission%20of%20India%20and%20the%20Australian%20Competition%20%26%20Consumer%20Commissi on%20E2%80%93%202013.pdf>

35. [Kazakhstan-Turkey (2013)]

Memorandum for Co-operation in the Sphere of Competition Policy between the Turkish Competition Authority and the Agency of the Republic of Kazakhstan for Competition Protection (Antimonopoly agency) (23 May 2013)

Available at;

<http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fPages%2fprotocol%2fkazakistan.pdf>

36. [New Zealand-Australia on compulsorily-acquired information and investigative assistance (2013)]

Co-operation Arrangement between the New Zealand Commerce Commission and the Australian Competition and Consumer Commission in relation to the provision of compulsorily-acquired information and investigative assistance (19 April 2013)

Available at;

<https://www.accc.gov.au/system/files/Cooperation%20arrangement%20between%20the%20New%20Zealand%20Co mmerce%20Commission%20and%20the%20Australian%20Competition%20and%20Consumer%20Commission.pdf>

37. [Chile-Ecuador (2012)]

Agreement of Technical Assistance between the FNE and the Ministry of Industry and Productivity of Ecuador (15 December 2012)

Available at; http://www.fne.gob.cl/wp-content/uploads/2013/02/acop_ecuador_2012.pdf

38. [Egypt-Turkey (2012)]

Memorandum of Understanding on Bilateral Co-operation Between the Turkish Competition Authority and the Egyptian Competition Authority (17 November 2012)

Available at; <http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fPages%2fprotocol%2fegyp.pdf>

39. [India-US (2012)]

Memorandum of Understanding on Antitrust Co-operation Between the United States Department of Justice and the United States Federal Trade Commission, and the Ministry of Corporate Affairs (Government of India) and the Competition Commission of India (27 September 2012)

Available at; <https://www.ftc.gov/sites/default/files/attachments/international-antitrust-and-consumer-protection-cooperation-agreements/1209indiamou.pdf>

40. [China (NDRC and SAIC)-EU (2012)]

Memorandum of Understanding on Co-operation in the area of anti-monopoly law between on the one side the European Commission (Directorate-General for Competition) and on the other side the National Development and Reform Commission and the State Administration for Industry and Commerce of the People's Republic of China (20 September 2012)

Available at; http://ec.europa.eu/competition/international/bilateral/mou_china_en.pdf

41. [Australia-China (SAIC) (2012)]

Memorandum of Understanding on Co-operation between the State Administration for Industry and Commerce of the People's Republic of China and the Australian Competition and Consumer Commission (18 September 2012)

Available at; <https://www.accc.gov.au/system/files/Memorandum%20of%20understanding%20between%20the%20S AIC%20of%20the%20PRC%20and%20the%20ACCC.pdf>

42. [Brazil-China (SAIC) (2012)]

Memorandum of Undertaking on Cooperation in Competition Field between the Brazilian Council for Economic Defense of the Federative Republic of Brazil and the State Administration for Industry and Commerce of the People's Republic of China (13 September 2012)

Available at; <http://www.cade.gov.br/upload/Acordo%20em%20Ing%C3%AAs%20CHINA.pdf>

43. [China (NDRC)-Korea (2012)]

Memorandum of Understanding on Antimonopoly and Antitrust Co-operation between the Fair Trade Commission of the Republic of Korea and the National Development and Reform Commission of the People's Republic of China (30 May 2012)

Available at; http://eng.ftc.go.kr/bbs.do?command=getList&type_cd=72&pageId=0501

44. [China (SAIC)-Korea (2012)]

Memorandum of Understanding on Competition Co-operation between the Fair Trade Commission of the Republic of Korea and the State Administration for Industry and Commerce of the People's Republic of China (30 May 2012)

Available at; http://eng.ftc.go.kr/bbs.do?command=getList&type_cd=72&pageId=0501

45. [China (MOFCOM)-Korea (2012)]

Memorandum of Understanding on Antimonopoly Co-operation between the Fair Trade Commission of the Republic of Korea, and the Ministry of Commerce of the People's Republic of China (29 May 2012)

Available at; http://eng.ftc.go.kr/bbs.do?command=getList&type_cd=72&pageId=0501

46. [Romania-Serbia (2012)]

Memorandum for Cooperation between the Competition Authority of Serbia and the Romanian Competition Council (24 May 2012)⁴²

47. [China (MOFCOM)-UK (2012)]

Memorandum of Understanding on Anti-Monopoly Cooperation between the Ministry of Commerce of the People's Republic of China and the Office of Fair Trading of the United Kingdom (17 April 2012)⁴³

48. [France-Russia (2012)]

Memorandum of Understanding between the Federal Antimonopoly Service of the Russian Federation and Autorité de la concurrence (16 February 2012)⁴⁴

49. [India-Russia (2011)]

Memorandum of Understanding between Competition Commission of India and the Federal Antimonopoly Service of the Russian Federation (16 December 2011)⁴⁵

⁴² <http://www.consiliulconcurentei.ro/en/international-relations/international-cooperation/bilateral-relations.html>

⁴³ Ohlhausen "Illuminating the Story of China's Anti-monopoly Law" The Antitrust Source October 2013, p. 7, footnote 25, available at; <https://www.ftc.gov/public-statements/2013/10/illuminating-story-chinas-anti-monopoly-law>.

⁴⁴ <http://en.fas.gov.ru/press-center/news/detail.html?id=41496>

⁴⁵ <http://www.cci.gov.in/international-cooperation>

50. [Austria-Turkey (2011)]

Memorandum of Understanding on Bilateral Co-operation in the Field of Competition Law and Policy between the Turkish Competition Authority and the Austrian Federal Competition Authority (1 December 2011)⁴⁶

Available at;

<http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fPages%2fprotocol%2favusturya.pdf>

51. [China-US (2011)]

Memorandum of Understanding on Antitrust and Antimonopoly Co-operation between the United States Department of Justice and Federal Trade Commission, on the one hand, and the People's Republic of China National Development and Reform Commission, Ministry of Commerce, and State Administration for Industry and Commerce, on the other hand (27 July 2011)

Available at; <https://www.ftc.gov/sites/default/files/attachments/international-antitrust-and-consumer-protection-cooperation-agreements/110726mou-english.pdf>

52. [Austria-Russia (2011)]

Co-operation Agreement in the field of competition policy between the Federal Antimonopoly Service of the Russian Federation and the Austrian Federal Competition Authority (19 May 2011)

53. [EU-Russia (2011)]

Memorandum of Understanding on Co-operation (10 March 2011)

Available at; http://ec.europa.eu/competition/international/bilateral/mou_russia_en.pdf

54. [Chile-US (2011)]

Agreement on Antitrust Co-operation between the United States Department of Justice and the United States Federal Trade Commission, of the One Part, and the Fiscalía Nacional Económica of Chile, of the Other Part (31 March 2011)

Available at; <https://www.ftc.gov/sites/default/files/attachments/international-antitrust-and-consumer-protection-cooperation-agreements/110331us-chile-agree.pdf>

55. [China (SAIC)-UK (2011)]

Memorandum of Understanding on Cooperation between the Office of Fair Trading of the United Kingdom of Great Britain and Northern Ireland and the State Administration for Industry and Commerce of the People's Republic of China (21 May 2011)

56. [Croatia-Turkey (2011)]

Memorandum of Understanding on bilateral co-operation between the Croatian Competition Agency and the Turkish Competition Authority (17 February 2011)

Available at; <http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fPages%2fprotocol%2fcrotia.pdf>

57. [Russia-Turkey (2011)]

Memorandum on Co-operation between the Turkish Competition Authority and the Federal Antimonopoly Service of the Russian Federation (16 February 2011)

Available at; <http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fPages%2fprotocol%2frusya.pdf>

58. [China (NDRC)-UK (2011)]

Memorandum of Understanding between The Office of Fair Trading of the United Kingdom of Great Britain and Northern Ireland and National Development and Reform Commission of the People's Republic of China (10 January 2011)

⁴⁶

The Austrian Federal Competition Authority concluded 14 other MoUs (15 MoUs in total) on international co-operation with Albania, Algeria, Croatia, Ecuador, Egypt, Kazakhstan, Moldova, Montenegro, Morocco, Serbia, Tunisia, Ukraine, the Russian Federation and Romania (MoUs with the Federal Antimonopoly Service of the Russian Federation on 9 May 2011, and the Romanian Competition Council on 27 May 2008 are listed on this Annex separately). <http://www.en.bwb.gv.at/InternationalCooperation/MemorandumofUnderstanding/Seiten/default.aspx>

59. [Romania-Ukraine (2010)]
Memorandum of Cooperation between the Competition Authority of Ukraine and the Romanian Competition Council (18 November 2010)⁴⁷
60. [Hungary-Chinese Taipei (2010)]
Co-operation Agreement between the Hungarian Competition Authority and the Taiwan Fair Trade Commission Regarding the Application of Competition and Fair Trading Laws (28 October 2010)
Available at; http://www.gvh.hu/en//data/cms1001687/Tajvani_megallapodas_vegleges_alairt_20101028.pdf
61. [Hungary-Russia (2010)]
Co-operation Agreement in the field of competition policy between the Federal Antimonopoly Service (the Russian Federation) and the Hungarian Competition Authority (28 September 2010)
Available at; http://www.gvh.hu/en//data/cms1001686/Orosz-magyar%20egy%C3%BCttm%C5%B1k.%20meg%C3%A1llapod%C3%A1s_2010_09_28_a_pdf.pdf
62. [Kazakhstan-Lithuania (2010)]
Agreement between the Competition Council of the Republic of Lithuania and the Agency of the Republic of Kazakhstan for Competition Protection (Antimonopoly Agency) concerning cooperation in the area of competition policy (2 August 2010)
Available at; <http://kt.gov.lt/en/international/docs/bc2.pdf>
63. [Hungary-Serbia (2010)]
Agreement on Cooperation in the field of Competition Policy between the Commission for Protection of Competition, Republic of Serbia and the Gazdasagi Versenyhivatal (the Hungarian Competition Authority) (24 June 2010)
Available at; http://www.gvh.hu/en//data/cms1001685/Szerb-magyar%20egy%C3%BCttm%C5%B1k.%20meg%C3%A1llapod%C3%A1s_2010_06_a_pdf.pdf
64. [Mexico-Russia (2010)]
Agreement between the Federal Antimonopoly Service of the Russian Federation and the Federal Competition Commission of the United Mexican States on Co-operation in the field of competition policy (15 June 2010)
65. [SEECF (2010)]
The Mechanism of the Exchange of Information among Competition Authorities of SEECF (South-East European Co-operation Process) (25 May 2010)
Available at; http://www.epant.gr/img/File/2015_01_08%20Memorandum%20SEECF.pdf
66. [Mongolia-Turkey (2010)]
Memorandum of Understanding on Co-operation between the Authority for Fair Competition and Consumer Protection of Mongolia and Turkish Competition Authority (28 April 2010)
Available at;
<http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fPages%2fprotocol%2fmongolia.pdf>
67. [Bosnia and Herzegovina-Turkey (2010)]
Memorandum of Understanding on Co-operation between the Council of Competition of Bosnia and Herzegovina and the Turkish Competition Authority (28 April 2010)
Available at; <http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fPages%2fprotocol%2fbosna.pdf>
68. [China (SAIC)-Romania (2010)]
Memorandum of Cooperation between the State Administration for Industry and Commerce of China and the Romanian Competition Council (13 April 2010)⁴⁸

⁴⁷ <http://www.consiliulconcurentei.ro/en/international-relations/international-cooperation/bilateral-relations.html>

⁴⁸ <http://www.consiliulconcurentei.ro/en/international-relations/international-cooperation/bilateral-relations.html>

69. [Brazil-Portugal (2010)]

Technical Cooperation Agreement between the Polish Competition Authority and the Brazilian Competition Defense System (14 January 2010)

Available at;

http://www.concorrenca.pt/vPT/Sistemas_da_Concorrenca/Sistema_Europeu_da_Concorrenca/Associacao_de_Autoridades_de_Concorrenca_Europeias_ECA/Documents/Protocolo-SBDC-AdC.PDF

70. [Russia-US (2009)]

Memorandum of Understanding on Antitrust Co-operation between the United States Department of Justice and the United States Federal Trade Commission, on the One Hand, and the Russian Federal Anti-monopoly Service, on the Other Hand (10 November 2009)

Available at; <https://www.ftc.gov/sites/default/files/attachments/international-antitrust-and-consumer-protection-cooperation-agreements/091110usrussianou.pdf>

71. [Brazil-EU (2009)]

Memorandum of Understanding on Co-operation between, on the one side, the Directorate-General for Competition of the European Commission (DG Competition), and, on the other side, the Administrative Council for Economic Defence (CADE), the Secretariat of Economic Law of the Ministry of Justice (SDE), and the Secretariat for Economic Monitoring of the Ministry of Finance (SEAE) of the Government of the Federative Republic of Brazil (8 October 2009)

Available at; http://ec.europa.eu/competition/international/bilateral/brazil_mou_en.pdf

72. [Hungary-Poland (2009)]

Agreement on Co-operation Between the Polish Office of Competition and Consumer Protection and the Hungarian Competition Authority (14 October 2009)

Available at; http://www.gvh.hu/en//data/cms1001685/Szermagyar%20egy%C3%BCttm%C5%B1k.%20meg%C3%A1llapod%C3%A1s_2010_06_a_pdf.pdf

73. [Armenia-Romania (2009)]

Memorandum of Cooperation between the Competition Authority of Armenia and the Romanian Competition Council (8 October 2009)⁴⁹

74. [Chile-Spain (2009)]

Collaboration Agreement between the National Competition Commission (CNC) and the FNE for the technical cooperation between both agencies (11 September 2009)

Available at; http://www.fne.gob.cl/wp-content/uploads/2011/03/acoop_2009_españa.pdf

75. [Chile-El Salvador (2009)]

Memorandum of Understanding for Technical Assistance between the FNE and the Superintendence of Competition of the Republic of El Salvador (11 September 2009)

Available at; http://www.fne.gob.cl/wp-content/uploads/2011/03/acoop_2009_elsalvador.pdf

76. [Canada-Chinese Taipei (2009)]

Memorandum of Understanding Between the Taipei Economic and Cultural Office in Canada and the Canadian Trade Office in Taipei Regarding the Application of Competition Laws (14 July 2009)

Available at; <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03777.html>

77. [Albania-Hungary (2009)]

Agreement on Co-operation in Competition Policy between the Albanian Competition Authority and the Hungarian Competition Authority (18 June 2009)

Available at; http://www.gvh.hu/en//data/cms1001672/Coop_agreement_Albania_2009.pdf

⁴⁹ <http://www.consiliulconcurentei.ro/en/international-relations/international-cooperation/bilateral-relations.html>

78. [Brazil-Chile (2008)]

Cooperation Agreement between the FNE and the Council for Economic Defense (CADE), the Secretariat of Economic Law of the Ministry of Justice (SDE) and the Secretariat of Economic Supervision of the Ministry of Finance (SEAE) of the Federal Republic of Brazil, in relation to the enforcement of their respective competition laws (23 October 2008)

Available at; http://www.fne.gob.cl/wp-content/uploads/2011/05/accoop_2008_brasil_esp.pdf

79. [Romania-Russia (2008)]

Memorandum for Cooperation between the Federal Antimonopoly Service of the Russian Federation and the Romanian Competition Council (21 October 2008)⁵⁰

80. [Italy-Russia (2008)]

Memorandum of Understanding between the Federal Antimonopoly Service (Russian Federation) and the Italian Competition Authority (19 September 2008)

81. [Portugal-Turkey (2008)]

Memorandum of Understanding on Co-operation between the Portuguese Competition Authority and the Turkish Competition Authority (28 July 2008)

Available at; <http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fPages%2fprotocol%2fPortugal.pdf>

82. [Croatia-Hungary (2008)]

Co-operation Agreement in the Competition Policy field concluded between the Hungarian Competition Authority and the Croatian Competition Authority (11 June 2008)

Available at; http://www.gvh.hu/en//data/cms1001671/coop_agreement_Croatian_2008.pdf

83. [Austria-Romania (2008)]

Memorandum for Cooperation between the Austrian Competition Authority and the Romanian Competition Council (27 May 2008)⁵¹

84. [Brazil-Canada (2008)]

Co-operation Arrangement Between the Commissioner of Competition, Competition Bureau of the Government of Canada, and the Council for Economic Defence, the Secretariat of Economic Law of the Ministry of Justice (SDE), and the Secretariat for Economic Monitoring of the Ministry of Finance (SEAE) of the Government of the Federative Republic of Brazil Regarding the Application of their Competition Laws (May 2008)

Available at; <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02680.html>

85. [Bulgaria-Turkey (2007)]

Memorandum of Understanding on Co-operation Between the Turkish Competition Authority and the Bulgarian Commission on Protection of Competition (1 December 2007)⁵²

Available at;

<http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fPages%2fprotocol%2fBulgaria.pdf>

⁵⁰ <http://www.consiliulconcurentei.ro/en/international-relations/international-cooperation/bilateral-relations.html>

⁵¹ <http://www.consiliulconcurentei.ro/en/international-relations/international-cooperation/bilateral-relations.html>

⁵² The Commission on Protection of Competition of Bulgaria concluded 9 other MoUs (10 MoUs in total) on international co-operation with the Former Yugoslav Republic of Macedonia, Ukraine, Azerbaijan, Albania, Bosnia and Herzegovina, Serbia, Croatia and Romania (MoUs with the Hungarian Competition Authority on 19 February 2007 and the Romanian Competition Council on 15 March 2006 are listed on this Annex separately).
<http://www.cpc.bg/Competence/Cooperation.aspx>

86. [Hungary-Moldova (2007)]

Agreement on Co-operation in Competition Policy between the Hungarian Competition Authority and National Agency for the Protection of Competition of Moldova (16 October 2007, amended on 12 November 2007)

Available at; http://www.gvh.hu/en//data/cms1001684/Coop_agreement_Moldavia_2007_11_12_amendment.pdf and, http://www.gvh.hu/en//data/cms1001683/Coop_agreement_Moldavia_2007_10_16.pdf

87. [Australia-New Zealand (2007)]

Co-operation Agreement between the Australian Competition and Consumer Commission and the New Zealand Commerce Commission (31 July 2007)

Available at;

<https://www.accc.gov.au/system/files/Cooperation%20agreement%20between%20the%20ACCC%20%26%20the%20NZCC.pdf>

88. [Czech-Russia (2007)]

Memorandum on Co-operation between the Federal Antimonopoly Service of the Russian Federation and the Office for the Protection of Competition of the Czech Republic (31 May 2007)

89. [Mongolia-Chinese Taipei (2007)]

Memorandum of Understanding regarding the Cooperation of Competition Law Implementation between the Fair Trade Commission of Taiwan and the Unfair Competition Regulatory Authority of Mongolia (15 March 2007)

Available at; <http://www.ftc.gov.tw/upload/4e67d019-5d62-4cf6-b4e9-4316eff81a3f.pdf>

90. [Bulgaria-Hungary (2007)]

Memorandum of Understanding for Enhancing Bilateral Co-operation between the Bulgarian Commission on Protection of Competition and the Hungarian Competition Authority (19 February 2007)

Available at; http://www.gvh.hu/en//data/cms1001668/Coop_agreement_%20Bulgarian_2007_a_pdf.pdf

91. [China (MOFCOM)-Hungary (2006)]

Agreed Minutes on China-Hungary Competition Policy Co-operation (22 June 2006)

Available at; http://www.gvh.hu/en//data/cms1001667/Comp%20policy%20agreement_China_2006_a_pdf.pdf

92. [Canada-Korea (2006)]

Co-operation Arrangement Between the Commissioner of Competition, Competition Bureau of the Government of Canada and the Fair Trade Commission of the Government of the Republic of Korea Regarding the Application of their Competition and Consumer Laws (4 May 2006)

Available at; <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02075.html>

93. [Bulgaria-Romania (2006)]

Memorandum of Understanding between the Commission on Protection of Competition of Bulgaria and the Romanian Competition Council (15 March 2006)⁵³

94. [Hungary-Ukraine (2006)]

Agreement on co-operation on competition policy between the Competition Authority of the Republic of Hungary and the Antimonopoly Committee of Ukraine (27 January 2006)

Available at; http://www.gvh.hu/en//data/cms1001665/Coop-agreement_Ukrania_2006_a_pdf.pdf

95. [Romania-Turkey (2005)]

Memorandum of understanding for enhancing bilateral co-operation between the Romanian Competition Council and the Turkish Competition Authority (12 December 2005)

Available at;

<http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fPages%2fprotocol%2fRomanya.pdf>

⁵³ <http://www.cpc.bg/ViewResult.aspx?type=Article&id=1183>

96. [Korea-Turkey (2005)]
Memorandum of Understanding on Co-operation between the Fair Trade Commission of the Republic of Korea and the Competition Authority of the Republic of Turkey (17 November 2005)
Available at; <http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fPages%2fprotocol%2fkore.pdf>
97. [Hungary-Romania (2005)]
Agreement on Co-operation on Competition Policy between Competition Council of Romania and the Hungarian Competition Authority (27 September 2005)
Available at; http://www.gvh.hu/en//data/cms1001663/Coop_Agreement_Romania_2005.pdf
98. [Korea-EU (2004)]
Memorandum of Understanding on Co-operation between the Fair Trade Commission of the Republic of Korea and the Competition Directorate-General of the European Commission (28 October 2004)
Available at; http://eng.ftc.go.kr/bbs.do?command=getList&type_cd=72&pageId=0501
99. [Chile-Mexico (2004)]
Agreement between the Federal Competition Commission (CFC) of Mexico and the FNE on enforcement of legislation concerning competition matters (14 June 2004)
Available at; http://www.fne.gob.cl/wp-content/uploads/2011/03/acoop_2004_Mexico.pdf
100. [China (MOFCOM)-EU (2004)]
Terms of Reference of the EU-China Competition Policy Dialogue (6 May 2004)
Available at; http://ec.europa.eu/competition/international/bilateral/mou_china_en.pdf
101. [Korea-Mexico (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 (23 April 2004)
Available at; http://eng.ftc.go.kr/bbs.do?command=getList&type_cd=72&pageId=0501
102. [Canada-UK (2003)]
Co-operation Arrangement between the Commissioner of Competition (Canada) and Her Majesty's Secretary of State for Trade and Industry and the Office of Fair Trading in the United Kingdom Regarding the Application of Their Competition and Consumer Laws (14 October 2003)
Available at; <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01596.html>
103. [Korea-Latvia-Romania-CIS countries (2003)]
Memorandum Regarding Co-operation in Competition Policy among the Fair Trade Commission of the Republic of Korea, the Competition Council of the Republic of Latvia, the Competition Council of Romania and the Interstate Council for Antimonopoly Policy of CIS countries (17 September 2003)
Available at; http://eng.ftc.go.kr/bbs.do?command=getList&type_cd=72&pageId=0501
104. [Chile-Costa Rica (2003)]
Memorandum of Understanding in matters of the Defense of Competition between the Ministry of Economy, Industry and Trade of the Republic of Costa Rica and the FNE (6 August 2003)
Available at; http://www.fne.gob.cl/wp-content/uploads/2011/03/acoop_2003_CostaRica.pdf
105. [Australia-Korea (2002)]
Co-operation Arrangement between the Australian Competition and Consumer Commission and the Fair Trade Commission of the Republic of Korea Regarding the Application of Their Competition and Consumer Protection Laws (29 September 2002)
Available at;
<https://www.accc.gov.au/system/files/Cooperation%20arrangement%20between%20the%20ACCC%20%26%20the%20FTC%20of%20the%20ROK%20regarding%20the%20application%20of%20their%20competition%20%26%20consumer%20protection%20laws.pdf>

106. [Korea-Romania (2002)]

Memorandum on Co-operation between the Fair Trade Commission of the Republic of Korea and the Competition Council of Romania (23 July 2002)

Available at; http://eng.ftc.go.kr/bbs.do?command=getList&type_cd=72&pageId=0501

107. [Australia-New Zealand-Chinese Taipei (2002)]

Co-operation Arrangement between the Australian Competition and Consumer Commission, the New Zealand Commerce Commission, and the Taiwan Fair Trade Commission Regarding the Application of Competition and Fair Trading Laws (30 July 2002)

Available at;

<https://www.accc.gov.au/system/files/Cooperation%20arrangement%20between%20the%20ACCC%2C%20the%20NZCC%20%26%20the%20TFTC%20regarding%20the%20application%20of%20their%20competition%20%26%20fair%20trading%20laws.pdf>

108. [Australia-Fiji Islands (2002)]

Memorandum of Understanding between the Commerce Commission of the Fiji Islands and the Australian Competition and Consumer Commission (16 May 2002)

Available at;

<https://www.accc.gov.au/system/files/Memorandum%20of%20understanding%20between%20the%20CC%20of%20the%20Fiji%20Islands%20%26%20the%20ACCC.pdf>

109. [Canada-Chile (2001)]

Memorandum of Understanding Between the Commissioner of Competition (Canada) and the Fiscalía Nacional Económica (Chile) Regarding the Application of Their Competition Laws (17 December 2001)

Available at; <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01599.html>

110. [Australia-Canada-New Zealand (2000)]

Co-operation Arrangement Between the Commissioner of Competition (Canada), the Australian Competition and Consumer Commission and the New Zealand Commerce Commission Regarding the Application of Their Competition and Consumer Laws (October 2000)

Available at; <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01595.html>

111. [Korea-Russia (1999)]

Memorandum on co-operation between the Ministry of the Russian Federation for Antimonopoly Policy and Support to Entrepreneurship and the Fair Trade Commission of the Republic of Korea (7 December 1999)

Available at; http://eng.ftc.go.kr/bbs.do?command=getList&type_cd=72&pageId=0501

112. [Australia-Papua New Guinea (1999)]

Co-operation and Co-ordination Agreement between the Australian Competition and Consumer Commission and Papua New Guinea Consumer Affairs Council (26 November 1999)

Available at;

<https://www.accc.gov.au/system/files/ACCC%20%26%20CACPNG%20cooperation%20%26%20coordination%20agreement.pdf>

113. [Lithuania-Ukraine (1997)]

Agreement on co-operation between State Competition and Consumer Protection Office of Lithuanian Republic and Antimonopoly Committee of Ukraine (18 February 1997)

Available at; <http://kt.gov.lt/en/international/docs/bc.pdf>

114. [Australia-Chinese Taipei (1996)]

Co-operation and Coordination Arrangement Between the Taipei Economic and Cultural Office and the Australian Commerce and Industry Office Regarding the Application of Competition and Fair Trading Laws (13 September 1996)

Available at;

<https://www.accc.gov.au/system/files/Cooperation%20and%20coordination%20arrangement%20between%20the%20TECO%20and%20the%20ACIO%20regarding%20the%20application%20of%20competition%20%26%20fair%20trading%20laws.pdf>

NOTE:

The original texts of inter-agency MoUs and other information can be also obtained through the following (parent) websites of some of the competition authorities of the OECD Members, Associate and Participants in the OECD Competition Committee.

Australia (<https://www.accc.gov.au/about-us/international-relations/treaties-agreements>)
 Austria (<http://www.en.bwb.gv.at/InternationalCooperation/MemorandumofUnderstanding/Seiten/default.aspx>)
 Bulgaria (<http://www.cpc.bg/Competence/Cooperation.aspx>)
 Canada (<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03763.html#tab2>)
 Chile (<http://www.fne.gob.cl/english/internacional/cooperation-agreements/>)
 Colombia (<http://www.sic.gov.co/drupal/en/deputy-superintendence-for-the-protection-of-competition>)
 Greece (<http://www.epant.gr/content.php?Lang=en&id=394>)
 Hungary (http://www.gvh.hu/en/gvh/international_relations/international_bilateral_cooperation_agreements)
 India (<http://www.cci.gov.in/international-cooperation>)
 Japan (http://www.jftc.go.jp/en/int_relations/agreements.html)
 Korea (http://eng.ftc.go.kr/bbs.do?command=getList&type_cd=72&pageId=0501)
 Lithuania (<http://kt.gov.lt/en/index.php?show=international>)
 New Zealand (<http://www.comcom.govt.nz/the-commission/about-us/international-relations/>)
 Portugal
 (http://www.concorrenca.pt/vEN/Sistemas_da_Concorrenca/International_Compensation_System/Bilateral_Cooperation/Cooperation-Agreements/Pages/Cooperation-Agreements.aspx)
 Romania (<http://www.consiliulconcurrentei.ro/en/international-relations/international-cooperation/bilateral-relations.html>)
 Chinese Taipei (<http://www.ftc.gov.tw/internet/english/doc/docList.aspx?uid=1075>)
 Turkey (<http://www.rekabet.gov.tr/en-US/Pages/Bilateral-Relations>)
 United States (<http://www.justice.gov/atr/public/international/int-arrangements.html>,
<https://www.ftc.gov/policy/international/international-cooperation-agreements>)
 European Union (<http://ec.europa.eu/competition/international/bilateral/>)

ANNEX 2. PROVISIONS ON “PURPOSE”

Relevant provisions in MoUs:

(i) those similar to the co-operation agreements at the government level, stating two broad purposes, namely to (1) contribute to the effective enforcement of each party’s competition laws through co-operation and co-ordination and (2) avoid, lessen or minimise the risk of conflicts in the application of the each party’s competition laws

Korea-Mexico (2004)

Article 1 Purpose and Definitions

1. The purposes of this Arrangement are to promote co-operation, including both enforcement and technical co-operation, and coordination between the Agencies, to avoid conflicts arising from the application of their competition laws, and to minimize the impact on their respective important interests of any differences that may arise.

(ii) those focusing on enhancing co-operation and mutual understanding

France-Chinese Taipei (2014)

Article 1 Purpose of the Memorandum of Understanding and Definitions

The purpose of the present Memorandum of Understanding (“the Memorandum”) is to promote co-operation and mutual understanding between the Parties in the field of competition law enforcement and competition advocacy.

EU-India (2009)

Article 1 Purpose

(1) The purpose of this Memorandum of Understanding (“MoU”) is to promote and strengthen co-operation and coordination between the two Sides, to increase their understanding and awareness of current and forthcoming policy approaches in their respective jurisdictions in the area of competition policy, legislation and enforcement.

(iii) those focusing on establishing a framework for co-operation

Australia-China (SIAC) (2012)

Article 1 Purpose

The purpose of this Memorandum is to set up an institutional partnership between the Participants by establishing a general framework for bilateral co-operation.

(iv) those simply stipulating co-operation

EU-India (2013)

Article 1 Purpose

1. The purpose of the present Memorandum of Understanding is to further strengthen co-operation between the two Sides in the area of competition law enforcement and applicable domestic laws of the Sides.

(v) those relatively unique

Australia-Fiji (2002)

Article 1.0 Purpose

1.1 The purpose of the Memorandum is to:

- (i) promote co-operation and coordination between the Parties, recognising that such co-operation and coordination of enforcement, training and technical assistance activities may result in more effective resolution of the Parties' respective competition and consumer law issues than would otherwise be attained through independent action;
- (ii) achieve a more efficient use of the Parties' scarce resources; and
- (iii) create benefits for the economies of both Australia and the Fiji Islands.

(vi) an example requiring signatories to promote competition

Australia- Philippines (2014)

II. Anti-competitive Activities

The competition authorities will promote competition by addressing anti-competitive activities in accordance with the laws and regulations of their respective countries, in order to facilitate the efficient functioning of the markets of their respective countries. The competition authorities express their intention to take appropriate measures for such purposes in conformity with the principles of transparency, non-discrimination and procedural fairness.

Relevant provisions in the 2014 OECD Recommendation on International Co-operation

Commitment to Effective International Co-operation

II. RECOMMENDS that Adherents commit to effective international co-operation and take appropriate steps to minimise direct or indirect obstacles or restrictions to effective enforcement co-operation between competition authorities.

To this end, Adherents should aim inter alia to:

- 1. minimise the impact of legislation and regulations that might have the effect of restricting co-operation between competition authorities or hindering an investigation or proceeding of other Adherents, such as legislation and regulations prohibiting domestic enterprises or individuals from co-operating in an investigation or proceeding conducted by competition authorities of other Adherents;
- 2. make publicly available sufficient information on their substantive and procedural rules, including those relating to confidentiality, by appropriate means with a view to facilitating mutual understanding of how national enforcement systems operate; and
- 3. minimise inconsistencies between their leniency or amnesty programmes that adversely affect co-operation.

ANNEX 3. PROVISIONS ON “DEFINITIONS”

Relevant provisions in MoUs:

(i) typical examples of provisions on definitions

Colombia-US (2014)

Article 1 PURPOSE AND DEFINITIONS

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

(a) "Anticompetitive practice(s)" means any conduct or transaction that may be subject to penalties or other relief under the competition laws enforced by the U.S. antitrust agencies or the SIC;

(b) "Competition authority(ies)" means the U.S. antitrust agencies and the SIC;

(c) "Competition law(s)" means

(i) For the SIC, Laws 155 of 1959, 256 of 1996, and 1340 of 2009; Decrees 2153 of 1992 and 4886 of 2011, and specific legislation directly associated with these legal instruments, as well as any amendments thereto;

(ii) For the U.S. antitrust agencies, 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 (15 U.S.C. §§ 41-58), to the extent that it applies to unfair methods of competition, as well as any amendments thereto; and

(d) "Enforcement activity(ies)" means any investigation or proceeding conducted by the U.S. antitrust agencies or the SIC in relation to the competition laws they enforce.

Mongolia-Turkey (2010)

Article 1 PURPOSE AND DEFINITIONS

2. In this MoU:

(a) "competition laws" will mean:

i. for the AFCCP, The Law on Prohibiting Unfair Competition

ii. for the TCA, Act No 4054 on the Protection of Competition

(b) "enforcement activity(ies)" will mean any application of competition laws by way of investigation or proceeding conducted by a Party.

(c) "territory(ies)" will mean the territories in respect of which the competition laws are administered by the Parties.

Japan-Korea (2014)

Paragraph 3 Definitions

3. For the purposes of this Memorandum:

(a) the term "competition law" means:

(i) for Japan, the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Law No. 54, 1947) and its implementing regulations as well as any amendments thereto; and

(ii) for the Republic of Korea, the Monopoly Regulation and Fair Trade Act (Law No. 3320, 1980) and its implementing regulations as well as any amendments thereto;

(b) the term "enforcement activities" means any investigation or proceeding conducted by a Side in relation to the application of the competition law of its country, but will not include:

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

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

(c) the term "anti-competitive activities" means any activities that may be subject to penalties or relief by either Side under the competition law of its country.

(ii) provisions on definitions in second generation MoUs

Canada-New Zealand (2016)

Definitions

6. In this Arrangement, these terms will have the following definitions:

6.1. "competition and consumer laws" means:

6.1.1. for the Commissioner of Competition, the *Competition Act*, the *Consumer Packaging and Labelling Act* (except as it relates to food), the *Precious Metals Marking Act*, the *Textile Labelling Act* and any regulations made under those Acts; and

6.1.2. for the NZCC, the *Commerce Act 1986* and the *Fair Trading Act 1986*.

as well as any amendments to these Acts;

6.2. "information" means:

6.2.1. for the Commissioner of Competition, any information in its possession or control; and

6.2.2. for the NZCC, information that is not in the public domain, and which has been compulsorily-acquired by the NZCC as a result of, or in relation to, the exercise by the NZCC of its search and notice powers under its competition and consumer laws and any power incidental to those powers ("compulsorily-acquired information");

6.3. "investigative assistance" includes the provision of assistance by way of the NZCC exercising any of its search and notice powers under, or in relation to, its competition and consumer law and any power express or implied that is incidental to those powers;

6.4 "request" means:

6.4.1. a request from the Commissioner of Competition to the NZCC for the NZCC to provide information or investigative assistance; or

6.4.2. a request from the NZCC to the Commissioner of Competition for the Commissioner of Competition to provide information and/or assistance under, or in relation to, Canada's competition and consumer laws;

6.5 "search and notice powers" means any of the NZCC's powers under:

6.5.1. sections 98, 98A and 98H of the Commerce Act 1986; and

6.5.2. sections 47 and 47G of the Fair Trading Act 1986.

Relevant provisions in the 2014 OECD Recommendation on International Co-operation

I. AGREES that, for the purpose of the present Recommendation, the following definitions are used:

- [...]
- "Anticompetitive practice" refers to business conduct that restricts competition, as defined in the competition law and practice of an Adherent;
- "Competition authority" means an Adherent's government entity, other than a court, charged with primary responsibility for the enforcement of the Adherent's competition law;
- "Confidential information" refers to information the disclosure of which is either prohibited or subject to restrictions under the laws, regulations, or policies of an Adherent, e.g., non-public business information the disclosure of which could prejudice the legitimate commercial interests of an enterprise;
- "Co-operation" includes a broad range of practices, from informal discussions to more formal co-operation activities based on legal instruments at the national or international level, employed by competition authorities of Adherents to ensure efficient and effective reviews of anticompetitive practices and mergers with anticompetitive effects affecting one or more Adherents. It may also include more general discussions relating to competition policy and enforcement practices;
- "Investigation or proceeding" means any official factual inquiry or enforcement action authorised or undertaken by a competition authority of an Adherent pursuant to the competition laws of the Adherent;
- "Merger" means merger, acquisition, joint venture or any other form of business amalgamation that falls within the scope and definitions of the competition laws of an Adherent governing business concentrations or combinations;
- "Merger with anticompetitive effects" means a merger that restricts or is likely to restrict competition, as defined in the competition law and practice of an Adherent and, for the purpose of this Recommendation, may include a merger that is under review by the competition authority of an Adherent according to its merger laws with a view to establishing if it has anticompetitive effects;
- "Waiver" or "confidentiality waiver" means permission granted by a party subject to an investigation or proceeding, or by a third party, that enables competition authorities to discuss and/or exchange information, otherwise protected by confidentiality rules of the Adherent(s) involved, which has been obtained from the party in question.

ANNEX 4. PROVISIONS ON “TRANSPARENCY”

Relevant provisions in MoUs:

(i) those requiring the parties to make publicly sufficient information on their competition law regimes by appropriate means

France-Chinese Taipei (2014)

Article 2- Cooperation on general matters

As regards cooperation on general issues of competition policy, the Parties' initiatives shall be mutually agreed between them and shall, inter alia, and subject to their reasonably available resources, comprise the following:

4. making available to each other information related to legislation, decisions, case law, procedural notices, annual reports, and other publicly available relevant material;

Korea-US (2015)

SECTION III COMMUNICATIONS

1. The U.S. antitrust agencies and the KFTC intend to keep each other informed of significant competition policy and enforcement developments in their respective jurisdictions, including policy changes proposed by each competition authority and significant legislative proposals.

(ii) those requiring the parties to inform each other of changes in their legislative and enforcement systems

EU-Russia (2009)

VII. COMMUNICATIONS UNDER THE PRESENT MEMORANDUM OF UNDERSTANDING

17. The Sides will intend to notify each other promptly of all changes in their authorities with regard to competition law and competition enforcement.

Canada-Chile (2001)

I. PURPOSE AND DEFINITIONS

3. Each Party will promptly notify the other of any amendments to its competition law.

(iii) those relatively unique

Australia-New Zealand (2007)

Article 6.0 Changes in Applicable Functions

6.1 The Parties should use their best efforts to provide to each other prompt written notice of any changes to the Party's competition, consumer and regulatory functions.

6.2 In the event of a significant modification to a Party's competition, consumer and regulatory functions, the Parties should use their best efforts to consult promptly to determine whether this Agreement or subsidiary Protocols should be amended.

Panama-Chinese Taipei (2013)

Article 3. General Principles

2. Each Party shall ensure that the application procedures of the competition law are carried out in compliance with non-discrimination, transparency, and principles and guarantees that ensure due process.

Article 6. Transparency and Exchange of Information

1. The Parties recognize the value of transparency in competition policies.

Relevant provisions in the 2014 OECD Recommendation on International Co-operation

Commitment to Effective International Co-operation

II. RECOMMENDS that Adherents commit to effective international co-operation and take appropriate steps to minimise direct or indirect obstacles or restrictions to effective enforcement co-operation between competition authorities.

To this end, Adherents should aim inter alia to:

2. make publicly available sufficient information on their substantive and procedural rules, including those relating to confidentiality, by appropriate means with a view to facilitating mutual understanding of how national enforcement systems operate;

ANNEX 5. PROVISIONS ON “NOTIFICATIONS”

Relevant provisions in MoUs:

Brazil-Japan (2014)

Paragraph 4 Notification

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

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

Australia-Korea (2002)

Paragraph 5 Scope of Cooperation

2. Notification of enforcement and related activities

(a) In respect of investigations by the Agencies, each Agency will notify the other whenever an investigation, enforcement or a related activity may affect the essential interests of the other. Each Agency will, in particular, notify the other when it makes inquiries of persons located in the other's jurisdiction.

(b) Notifications will include sufficient information to facilitate a proper evaluation by the recipient Agency of any effect on its interests. The recipient Agency may request from the notifying Agency any further information it deems necessary for such evaluation.

Panama-Chinese Taipei (2013)

II. NOTIFICATIONS

1. If one of the Parties establishes that actions of enterprises in its own territory may have a negative impact on competition in the territory of the other Party, the former shall notify the latter.

2. If one of the Parties establishes that competition in its own territory may be negatively affected by the actions of enterprises taking place in the territory of the other Party, the former shall notify the latter.

3. Notifications shall be sent in written form and shall contain a brief account of the essence of the case, references to relevant legal norms, and related information which the sending Party considers necessary.

4. The Party receiving notification shall study the possibility of taking appropriate measures pursuant to the requirements of laws enforced by the Parties and inform the other Party of the results.

Canada-UK (2003)

II NOTIFICATION

1. Subject to Section VI, a Participant will notify another Participant with respect to its enforcement activities which may affect the other Participant's interests in the application of its competition and consumer laws, including those that:

- a. are relevant to the enforcement activities of the other Participant;
- b. involve any conduct or transaction that may be subject to penalties or other relief under the competition and consumer laws administered and enforced by the Participants, other than mergers or acquisitions, carried out in whole or in part in the other Participant's territory, except where those activities are insubstantial;
- c. involve mergers or acquisitions in which one or more of the parties to the transaction carries on a business activity in the other Participant's territory, or is under the control of a body which is incorporated or organized under the laws of the other Participant's territory;
- d. involve remedies that expressly require or prohibit conduct in the other Participant's territory or are otherwise directed at conduct in that territory;
- e. involve the seeking of information located in the other Participant's territory, whether by personal visit by officials of a Participant or otherwise, except with respect to telephone contacts with a person in the other Participant's territory where that person is not the subject of investigation and the contact seeks only an oral response on a voluntary basis.

2. Notification will ordinarily be given as soon as it becomes evident that notifiable circumstances are present.

3. Once a particular matter has been notified, subsequent notifications on that matter need not be made unless the notifying Participant becomes aware of new issues bearing on the interests of the other Participant in the application of its competition and consumer laws, or unless the notified Participant requests otherwise.

4. Notifications will include the nature of the activities under investigation and the competition and consumer law provisions concerned and will be sufficiently detailed to enable the notified Participant to make an initial evaluation of the effect of the activities on its interests in the application of its competition and consumer laws.

5. Enforcement activities notified pursuant to the Agreement Between the Government of Canada and the European Communities Regarding the Application of Their Competition Laws are not required to be notified pursuant to this Arrangement.

Australia-Japan (2015)

Paragraph [*03] Notification

3.1. Each competition authority will endeavour to notify the other competition authority of the enforcement activities of the notifying competition authority that the notifying competition authority considers are likely to affect the important interests of the other competition authority.

3.2. Enforcement activities of a competition authority that are likely to affect the important interests of the other competition authority are investigations or proceedings that:

- (a) are directly relevant to enforcement activities of the other competition authority;
- (b) are known by the notifying competition authority to be against a national or nationals of the country of the other competition authority, or against an enterprise or enterprises incorporated or organised under the applicable laws and regulations of the country of the other competition authority;
- (c) involve anticompetitive activities, other than mergers or acquisitions, substantially carried out in the country of the other competition authority;

- (d) involve conduct required, encouraged or approved by the other competition authority; or
- (e) involve relief that requires or prohibits conduct in the country of the other competition authority.

3.3. Provided that it is not contrary to the laws and regulations of the country of the notifying competition authority and does not affect any investigation or proceedings being carried out by the notifying competition authority, notification pursuant to subparagraph 3.1 will be given as promptly as possible after the notifying competition authority becomes aware that its enforcement activities are likely to affect the important interests of the other competition authority.

3.4. Notifications provided under this Paragraph need not be formal (email will usually suffice for initial contact, followed by telephone dialogue) but will be sufficiently detailed to enable the notified competition authority to make an initial evaluation of the effect on its important interests.

Mexico-Russia (2010)

Article III NOTIFICATION

1. Pursuant to the Point 1 of the Article V each Party shall notify the other Party in the manner provided by the present Article and Article VIII with respect to its enforcement activities that:

- a. may influence the enforcement activities of the other Party;
- b. involve anticompetitive practices, including abuse of dominant position and anticompetitive agreements, carried out in whole or in substantial part within the jurisdiction of the other Party;
- c. involve mergers, acquisitions and other actions, where one or more of the parties involved in the transaction, or a company controlling one or more of the parties of the transaction is a person registered or established under the other Party's laws and legislation;
- d. involve activity of economic entities specified in the laws of the other Party's state;
- e. involve remedies that expressly require or prohibit conduct in the territory of the other Party's state or are otherwise directed at conduct in the territory of the other country Party's state within the frameworks of ensuring competition law compliance;

2. Notification on actions indicated in Point 1 of the present Article shall be sent in sufficient time to allow the other Party to take appropriate measures.

3. Where notifications pertain to private persons' information, each Party shall observe its domestic legislation on privacy, confidentiality and reserved information.

4. Notification pursuant to the present Article is not required for each subsequent request for information in relation to the same matter unless the Party seeking information becomes aware of new facts, indicated in Point 1 of the present Article, or the other Party requests otherwise in relation to a particular issue.

5. Notification pursuant to the present Article shall be sent in writing and shall be sufficiently detailed to enable the notified Party to make an initial evaluation of the effect of the enforcement activity carried by the notifying Party. The notification shall include information on the nature of the enforcement activities, the legal provisions concerned of the laws of the Parties' states. Where possible, notifications shall include the names and locations of the persons involved in the enforcement procedure.

6. Each Party shall endeavor to immediately notify the other Party on any amendments to its competition law.

Relevant provisions in the 2014 OECD Recommendation on International Co-operation

Notifications of Competition Investigations or Proceedings

V. RECOMMENDS that an Adherent should ordinarily notify another Adherent when its investigation or proceeding can be expected to affect the other Adherent's important interests.

1. Circumstances that may justify a notification include, but are not limited to (i) formally seeking non-public information located in another Adherent; (ii) the investigation of an enterprise located in or incorporated or organised under the laws of another Adherent ; (iii) the investigation of a practice occurring in whole or in part in the territory of another Adherent, or required, encouraged, or approved by the government of another Adherent; or (iv) the consideration of remedies that would require or prohibit conduct in the territory of another Adherent.

2. The notification should be made by the competition authority of the investigating Adherent through the channels requested by each Adherent as indicated in a list to be established and periodically updated by the Competition Committee; to the extent possible, Adherents should favour notifications directly to competition authorities. Notifications should be in writing, using any effective and appropriate means of communication, including e-mail. To the extent possible without prejudicing an investigation or proceeding, the notification should be made when it becomes evident that another Adherent's important interests are likely to be affected, and with sufficient detail so as to permit an initial evaluation by the notified Adherent of the likelihood of effects on its important interests.

3. The notifying Adherent, while retaining full freedom of ultimate decision, should take account of the views that the other Adherent may wish to express and of any remedial action that the other Adherent may consider under its own laws, to address the anticompetitive practice or mergers with anticompetitive effects.

ANNEX 6. PROVISIONS ON “ENFORCEMENT CO-OPERATION AND INVESTIGATIVE ASSISTANCE”

Relevant provisions in MoUs:

(i) examples of simple provisions

Canada-Korea (2006)

III COOPERATION AND COORDINATION

1. The Participants acknowledge that it is in their common interest to cooperate and share information where appropriate and practicable.

Australia-New Zealand-Chinese Taipei (2002)

Paragraph III COORDINATION OF ENFORCEMENT ACTIVITIES

1. Each Participant will endeavor to render assistance to another Participant in its enforcement activities to the extent compatible with the laws and important interests of the jurisdictions of the assisting participant.

(ii) provisions on technical co-operation

Japan-Philippine (2013)

VI. Technical Cooperation

6.1. The competition authorities recognize that it is in their common interest to work together in technical cooperation activities related to strengthening of competition policy and implementation of the competition law of each country.

6.2. The technical cooperation activities may include, within the reasonably available resources of the competition authorities, the following:

(a) exchange of personnel of the competition authorities for training purposes;

(b) participation of personnel of the competition authorities as lecturers or consultants at training courses on the implementation of competition law and policy organized or sponsored by either or both competition authorities; and

(c) any other form of technical cooperation as the competition authorities may decide.

Panama-Chinese Taipei (2013)

Article 7. Technical Assistance

1. The Parties agree to share technical assistance so as to benefit from their experiences and reinforce the application of their competition laws.

2. All activities related to the exchange of experiences concerning technical assistance to be held under this Agreement are subject to the availability of funds budgeted by each Party:

(a) The Party benefiting from the technical assistance shall assume the necessary expenses for the carrying out of the technical assistance, to include such items as the cost of airfare and travel expenses for the expert providing the assistance, materials, and availability of installations necessary for the execution of the Program.

(b) The Party that offers the technical assistance shall maintain the salaries and benefits the expert enjoys in his home country.

(iii) those relatively detailed

Brazil-Japan (2014)

Paragraph 5 Cooperation in Enforcement Activities

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

5.2. Each competition authority will, to the extent consistent with the laws and regulations of its country and its important interests:

(a) inform the other competition authority on its enforcement activities involving anti-competitive activities that the informing competition authority considers may also have an adverse effect on competition in the country of the other competition authority;

(b) provide the other competition authority with any significant information, within its possession and that comes to its attention, about anti-competitive activities that the providing competition authority considers may be relevant to, or may warrant, enforcement activities of the other competition authority; and

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

Chile-US (2011)

ARTICLE II ENFORCEMENT COOPERATION

1. The U.S. antitrust agencies and the FNE agree that it is in their common interest to cooperate in the detection of anticompetitive practices and the enforcement of their competition laws, and to share information that will facilitate the effective application of those laws and promote better understanding of each other's competition enforcement policies and activities, to the extent compatible with their respective laws and important interests, and within their reasonably available resources.

2. Nothing in this Agreement shall prevent the U.S. antitrust agencies or the FNE from seeking or providing assistance to one another pursuant to other agreements, treaties, arrangements, or practices applicable to them.

(iv) technical assistance in second generation MoUs

Australia-New Zealand on compulsorily-acquired information and investigative assistance (2013)

Definitions

8. In this Arrangement, these terms will have the following definitions:

8.3 "investigative assistance" includes the provisions of assistance by way of the NZCC exercising any of its search and notice powers under or in relation to its competition and consumer law and any power express or implied that is incidental to those powers;

Australia-Japan (2015)

Paragraph [*04] Cooperation and Information Exchange in Enforcement Activities

4.1. Each competition authority will endeavour to render assistance to the other competition authority in the other's enforcement activities to the extent consistent with the laws and regulations of the country of the assisting competition authority and the important interests of the assisting competition authority, and within its reasonably available resources. Such assistance may include supporting the other competition authority in the application for approval of a separate governmental body of the country of the assisting competition authority if such approval is required to obtain information or evidence from enterprises or individuals of the country of the assisting competition authority.

Relevant provisions in the 2014 OECD Recommendation on International Co-operation

Investigative Assistance to another Competition Authority

VIII. RECOMMENDS that regardless of whether two or more Adherents proceed against the same or related anticompetitive practice or merger with anticompetitive effects, competition authorities of the Adherents should support each other on a voluntary basis in their enforcement activity by providing each other with investigative assistance as appropriate and practicable, taking into account available resources and priorities.

1. Without prejudice to the applicable confidentiality rules, investigative assistance may include any of the following activities:

- (i) Providing information in the public domain relating to the relevant conduct or practice;
- (ii) Assisting in obtaining information from within the assisting Adherent;
- (iii) Employing on behalf of the requesting Adherent the assisting Adherent's authority to compel the production of information in the form of testimony or documents;
- (iv) Ensuring to the extent possible that official documents are served on behalf of the requesting Adherent in a timely manner; and
- (v) Executing searches on behalf of the requesting Adherent country to obtain evidence that can assist the requesting Adherent country's investigation, especially in the case of investigations or proceedings regarding hard core cartel conduct.

2. Any investigative assistance requested should be governed by the procedural rules in the assisting Adherent and should respect the provisions and safeguards provided for in this Recommendation. The request for assistance should take into consideration the powers, authority and applicable confidentiality rules of the competition authority of the assisting Adherent.

3. Adherents should take into account the substantive laws and procedural rules in other Adherents when making requests for assistance to obtain information located abroad. Before seeking information located abroad, Adherents should consider whether adequate information is available from sources within their territory. Requests for information located abroad should be framed in terms that are as specific as possible.

4. When the request for assistance cannot be granted in whole or in part, the assisting Adherent should inform the requesting Adherent accordingly, and consider providing the reasons why the request could not be complied with.

5. The provision of investigative assistance between Adherents may be subject to consultations regarding the sharing of costs of these activities, upon request of the competition authority of the assisting Adherent.

ANNEX 7. PROVISIONS ON “EXCHANGE OF INFORMATION”

Relevant provisions in MoUs:

(i) provisions on exchange of non-confidential information

Japan-Viet Nam (2013)

Paragraph 4 Exchange of Information

Each competition authority will, as appropriate, provide the other competition authority with information that is relevant to the enforcement activities of the other competition authority to the extent consistent with the laws and regulations of the country of the providing competition authority and the important interests of the providing competition authority, subject to its reasonably available resources.

Panama-Chinese Taipei (2013)

Article 6. Transparency and Exchange of Information

2. Where it does not contravene the legislation or an undergoing investigation, at the request of any of the Parties, the other Party shall provide information related to the activities of application of its legislation.

EU-India (2013)

II. COOPERATION

3. Cooperation between the Sides under the present Memorandum of Understanding will be subject to the respective laws of the Sides, and in particular the protection of confidential information and business secrets as provided under relevant competition laws of the Sides.

4. The Sides acknowledge that it will be in their mutual interest to exchange non-confidential information, experiences and views with regard to:

- a) Competition policy and enforcement developments in their respective jurisdictions, including with regard to investigations of competition law infringements;
- b) Operational issues affecting the efficiency and/or effectiveness of the respective Sides;
- c) Multilateral competition initiatives, such as interactions with the International Competition Network, the Organization for Economic Cooperation and Development, the World Intellectual Property Organization and the United Nations Conference on Trade and Development.
- d) Competition advocacy including raising awareness of companies and the wider public about competition legislation and enforcement,
- e) Technical cooperation initiatives in the area of competition law and its enforcement.

Australia-Papua New Guinea (1999)

4.1 Exchange of information

4.1.1 The agencies agree that it is in their common interests to share information that will:

- facilitate effective application for their respective competition and consumer laws;
- avoid unnecessary duplication;
- facilitate co-ordinated investigations, research and education;
- promote a better understanding by each of economic and legal conditions and theories relevant to their respective competition and consumer law enforcement and related activities; and
- keep each other informed of developments in their respective countries or companies based in that country.

4.1.2 In furtherance of this common interest the agencies will, on a regular basis,

exchange and provide information in relation to:

- regular publications, including annual reports, journals and information bulletins;
- investigations and research;
- speeches, research papers, journal articles, etc;
- compliance education programs;
- amendments to relevant legislation; and
- human resource development and corporate resources.

Brazil-Korea (2014)

Paragraph 4 – Exchange of Information

4.1 Each Participant will, to the extent consistent with its laws and regulations of, and its important interests, provide the other Participant, upon request by the other Participant and in accordance with the provisions of this Memorandum of Understanding, with information within its possession that is relevant to the enforcement activities of the other Participant.

4.2 The exchange of information will be made via mail, email or, where appropriate³, via telephone. In order to facilitate communication, the language used should be English.

4.3 It is understood that the Participants do not intend to communicate information to the each other, if such communication is prohibited by the laws governing the Participant that possesses the information or if it is incompatible with that Participant's interests.

4.4 Each Participant will keep confidential the information provided by the other according to this Memorandum of Understanding in line with the laws of its country, unless agreements are reached through negotiations stating otherwise.

4.5 All exchange of information will be conducted in strict confidentiality in line with the Participant's applicable laws unless stated otherwise in agreements reached through negotiations.

(ii) exchange of confidential information in second generation MoUs

Australia-Japan (2015)

Paragraph [*04] Cooperation and Information Exchange in Enforcement Activities

4.2. Each competition authority will endeavour, to the extent consistent with the laws and regulations of its country and its important interests, to:

(a) provide the other competition authority with any significant information, within its possession and that comes to its attention, about anticompetitive activities that the providing competition authority considers may be relevant to, or may warrant, enforcement activities of the other competition authority; and

(b) provide the other competition authority, upon request and in line with the contents of this Arrangement, with information within its possession that is relevant to the enforcement activities of the other competition authority.

4.3. Each competition authority will, where practicable and to the extent consistent with the laws and regulations of its country, give due consideration to sharing information obtained during the course of an investigation. Each competition authority retains full discretion when deciding whether to share such information or not. The terms of use and disclosure of such information will be decided in writing on a case-by-case basis.

4.4. Where both competition authorities are simultaneously conducting a review of the same merger transaction and one of them becomes aware of the likelihood that the transaction may impact on a market within the jurisdiction of the other competition authority, each competition authority recognises the benefits of contacting one or more of the merging parties to seek approval to disclose confidential information of such merging party or parties to the other competition authority under appropriate conditions in order to facilitate the discussions between the competition authorities on such impact.

4.5. Both competition authorities recognise that this Arrangement is not intended to affect any regulation, policy or practice adopted or maintained by each competition authority with respect to exchange of information including that received from a leniency applicant.

Canada-New Zealand (2016)

Definitions

6. In this Arrangement, these terms will have the following definitions:

6.2. "information" means:

6.2.1. for the Commissioner of Competition, any information in its possession or control; and

6.2.2. for the NZCC, information that is not in the public domain, and which has been compulsorily-acquired by the NZCC as a result of, or in relation to, the exercise by the NZCC of its search and notice powers under its competition and consumer laws and any power incidental to those powers ("compulsorily-acquired information");

6.4 "request" means:

6.4.1. a request from the Commissioner of Competition to the NZCC for the NZCC to provide information or investigative assistance; or

6.4.2. a request from the NZCC to the Commissioner of Competition for the Commissioner of Competition to provide information and/or assistance under, or in relation to, Canada's competition and consumer laws;

Requests for information and/or assistance

7. The Participants may make a request under this Arrangement:
8. Any request under paragraph 7 will be accompanied by a statement:
 - 8.1. confirming that the requesting Participant considers that the provision of the information and/or assistance will assist, or will be likely to assist, the requesting Participant in performing functions or exercising powers in relation to its competition and consumer laws; and
 - 8.2. explaining why the requesting Participant considers that the information and/or assistance may not be more conveniently obtained from another source.
11. In responding to a request, a Participant may impose conditions (including privacy protections) on the provision of information and/or assistance, including as to:
 - 11.1. the confidentiality of information;
 - 11.2. the storage, use of, or access to any information provided;
 - 11.3. the copying, returning, or disposal of copies of any information provided; and
 - 11.4. the payment of costs reasonably incurred by the responding Participant.
12. The NZCC will not provide any communication or information that is protected by the privilege for settlement negotiations or mediation provided for in section 57 of the *Evidence Act 2006* (New Zealand) (2006 No 69), without the consent of every other party who holds that privilege.
13. In accordance with section 99J of the *Commerce Act 1986*, the NZCC will not provide copies of statements made by any person in answer to a question put by or before the NZCC that might tend to incriminate the person, unless the Commissioner of Competition gives a written undertaking that:
 - 13.1. the Commissioner of Competition will not use the statements as evidence in criminal proceedings against the person (other than in respect of the falsity of the person's testimony) or in proceedings against the person for a pecuniary penalty; and
 - 13.2. to the extent possible, the Commissioner of Competition will ensure that the statements are not used by any other person, authority, or agency as evidence in such proceedings.

Relevant provisions in the 2014 OECD Recommendation on International Co-operation

Exchange of Information in Competition Investigations or Proceedings

VII. RECOMMENDS that in co-operating with other Adherents, where appropriate and practicable, Adherents should provide each other with relevant information that enables their competition authorities to investigate and take appropriate and effective actions with respect to anticompetitive practices and mergers with anticompetitive effects.

1. The exchange of information should be undertaken on a case-by-case basis between the competition authority of the Adherent that transmits the information ("the transmitting Adherent") and the competition authority of the Adherent that receives the information ("the receiving Adherent"), and it should cover only information that is relevant to an investigation or proceeding of the receiving Adherent. In its request for information, the receiving Adherent should explain to the transmitting authority the purpose for which the information is sought.

2. The transmitting Adherent retains full discretion when deciding whether to transmit information.

3. In order to achieve effective co-operation, Adherents are encouraged to exchange information that is not subject to legal restrictions under international or domestic law, including the exchange of information in the public domain and other non-confidential information.

4. Adherents may also consider the exchange of information internally generated by the competition authority that the authority does not routinely disclose and for which there is no statutory prohibition or restriction on disclosure, and

which does not specifically identify confidential information of individual enterprises. In this case, the transmitting Adherent may choose to impose conditions restricting the further dissemination and use of the information by the receiving Adherent. The receiving Adherent should protect it in accordance with its own legislation and regulations and should not disclose the views of the transmitting Adherent without its consent.

5. When the exchange of the above information cannot fully meet the need for effective co-operation in a matter, Adherents should consider engaging in the exchange of confidential information subject to the following provisions.

Exchange of confidential information through the use of confidentiality waivers

6. Where appropriate, Adherents should promote the use of waivers, for example by developing model confidentiality waivers, and should promote their use in all enforcement areas.

7. The decision of an enterprise or an individual to waive the right to confidentiality protection is voluntary.

8. When receiving confidential information pursuant to a confidentiality waiver, the receiving Adherent should use the information received in accordance with the terms of the waiver.

9. The information should be used solely by the competition authority of the receiving Adherent, unless the waiver provides for further use or disclosure.

Exchange of confidential information through “information gateways” and appropriate safeguards

10. Adherents should consider promoting the adoption of legal provisions allowing for the exchange of confidential information between competition authorities without the need to obtain prior consent from the source of the information (“information gateways”).

11. Adherents should clarify the requirements with which both the transmitting and receiving authorities have to comply in order to exchange confidential information and should establish sufficient safeguards to protect the confidential information exchanged, as provided in this Recommendation. Adherents might differentiate the application of the provisions, e.g., on the basis of the type of investigation or of the type of information.

12. The transmitting Adherent should retain full discretion whether to provide the information under the information gateway, and may choose to provide it subject to restrictions on use or disclosure. When deciding whether to respond positively to a request to transmit confidential information to another Adherent, the transmitting Adherent may consider the following factors in particular:

(i) The nature and seriousness of the matter, the affected interests of the receiving Adherent, and whether the investigation or proceeding is likely to adequately safeguard the procedural rights of the parties concerned;

(ii) Whether the disclosure is relevant to the receiving authority's investigation or proceeding;

(iii) Whether competition authorities of both the transmitting and receiving Adherents are investigating the same or related anticompetitive practice or merger with anticompetitive effects;

(iv) Whether the receiving Adherent grants reciprocal treatment;

(v) Whether the information obtained by the transmitting Adherent under an administrative or other non-criminal proceeding can be used by the receiving Adherent in a criminal proceeding; and

(vi) Whether the level of protection that would be granted to the information by the receiving Adherent would be at least equivalent to the confidentiality protection in the transmitting Adherent.

13. The transmitting Adherent should take special care in considering whether and how to respond to requests involving particularly sensitive confidential information, such as forward-looking strategic and pricing plans.

14. Before the transmission of the confidential information can take place, the receiving Adherent should confirm to the transmitting Adherent that it will:

(i) Maintain the confidentiality of the exchanged information to the extent agreed with the transmitting Adherent with respect to its use and disclosure;

(ii) Notify the transmitting Adherent of any third party request related to the information disclosed; and

(iii) Oppose the disclosure of information to third parties, unless it has informed the transmitting Adherent and the transmitting Adherent has confirmed that it does not object to the disclosure.

15. When an Adherent transmits confidential information under an information gateway, the receiving Adherent should ensure that it will comply with any conditions stipulated by the transmitting Adherent. Prior to transmission, the receiving Adherent should confirm to the transmitting Adherent the safeguards it has in place in order to:

(i) Protect the confidentiality of the information transmitted. To this end, the receiving Adherent should identify and comply with appropriate confidentiality rules and practices to protect the information transmitted, including: (a) appropriate protection, such as electronic protection or password protection; (b) limiting access to the information to individuals on a need-to-know basis; and (c) procedures for the return to the competition authority of the transmitting Adherent or disposal of the information transmitted in a manner agreed upon with the transmitting Adherent, once the information exchanged has served its purpose; and

(ii) Limit its use or its further dissemination in the receiving Adherent. To this end, the information should be used solely by the competition authority of the receiving Adherent and solely for the purpose for which the information was originally sought, unless the transmitting Adherent has explicitly granted prior approval for further use or disclosure of the information.

16. The receiving Adherent should take all necessary and appropriate measures to ensure that unauthorised disclosure of exchanged information does not occur. If an unauthorised disclosure occurs, the receiving Adherent should take appropriate steps to minimise any harm resulting from the unauthorised disclosure, including promptly notifying and, as appropriate, co-ordinating with the transmitting Adherent, to ensure that such unauthorised disclosure does not recur. The transmitting Adherent should notify the source of the information about the unauthorised disclosure, except where to do so would undermine the investigation or proceeding in the transmitting or receiving country.

Provisions applicable to information exchange systems

17. The Adherent receiving confidential information should protect the confidentiality of the information received in accordance with its own legislation and regulations and in line with this Recommendation.

18. Adherents should provide appropriate sanctions for breaches of the confidentiality provisions relating to the exchange of confidential information.

19. The present Recommendation is not intended to affect any special regime adopted or maintained by an Adherent with respect to exchange of information received from a leniency or amnesty applicant or an applicant under specialised settlement procedures.

20. The transmitting Adherent should apply its own rules governing applicable privileges, including the privilege against self-incrimination and professional privileges, when transmitting the requested confidential information, and endeavour not to provide information deemed privileged in the receiving Adherent. The transmitting Adherent may consider working with the parties to identify privileged information in the receiving Adherent in appropriate cases.

21. The receiving Adherent should, to the fullest extent possible:

(i) not call for information that would be protected by those privileges, and

(ii) ensure that no use will be made of any information provided by the transmitting Adherent that is subject to applicable privileges of the receiving Adherent.

22. Adherents should ensure an appropriate privacy protection framework in accordance with their respective legislation.

ANNEX 8. PROVISIONS ON “CO-ORDINATION OF INVESTIGATION AND PROCEEDINGS”

Relevant provisions in MoUs:

(i) those having a general statement on enforcement co-ordination

Korea-US (2015)

Section 1 COOPERATION AND COORDINATION

2. Where one of the U.S. antitrust agencies and the KFTC are both pursuing enforcement activities with regard to related matters, each intends to consider coordination of their enforcement activities as appropriate.

China (NDRC and SAIC)-EU (2012)

2. Content of the cooperation and coordination activities between the two Sides

2.3 Should the two Sides pursue enforcement activities concerning the same or related matters, they may exchange non-confidential information, experiences views on the matter and coordinate directly their enforcement activities, where appropriate and practicable.

Colombia-US (2015)

ARTICLE III COORDINATION WITH REGARD TO RELATED MATTERS

1. Where one of the U.S. antitrust agencies and the SIC are both pursuing enforcement activities with regard to related matters, they shall consider coordination of their enforcement activities.

2. In any coordination arrangement, each competition authority shall seek to conduct its enforcement activities consistently with the enforcement objectives of the other competition authority.

(ii) examples of relatively detailed provisions

Australia-Japan (2015)

Paragraph [*05] Coordination of Enforcement Activities

5.1. Where the competition authorities are pursuing enforcement activities with regard to matters that are related to each other:

- (a) the competition authorities will consider coordination of their enforcement activities; and
- (b) each competition authority will consider, upon request by the other competition authority and where consistent with the respective important interests of the competition authorities, inquiring whether persons who have provided confidential information in connection with the enforcement activities will consent to the sharing of such information with the other competition authority.

5.2. In considering whether particular enforcement activities should be coordinated, the competition authorities will take into account the following factors, among others:

- (a) the effect of such coordination on their ability to achieve the objectives of their enforcement activities;
- (b) the relative abilities of the competition authorities to obtain information necessary to conduct the enforcement activities;
- (c) the extent to which either competition authority can secure effective relief against the anticompetitive activities involved ;
- (d) the possible reduction of cost to the competition authorities and to the persons subject to the enforcement activities; and
- (e) the potential advantages of coordinated relief to the competition authorities and to the persons subject to the enforcement activities.

5.3. Each competition authority may at any time, after notifying the other competition authority of its decision, limit or terminate the coordination of enforcement activities and pursue its enforcement activities independently.

Korea-Mexico (2004)

Paragraph IV COORDINATION WITH REGARD TO RELATED MATTERS

1. Where both Agencies are pursuing enforcement activities with regard to related matters, they will consider coordination of their enforcement activities.

2. In considering whether particular enforcement activities should be coordinated, either in whole or in part, the Agencies will take into account the following factors, among others:

- (a) the effect of such coordination on the ability of both Agencies to achieve their respective enforcement objectives;
- (b) the relative abilities of the Agencies to obtain information necessary to conduct the enforcement activities;
- (c) the extent to which either Agency can secure effective relief against the anticompetitive practices involved;
- (d) the possible reduction of cost to the Agencies and to the persons subject to enforcement activities; and
- (e) the potential advantages of coordinated remedies to the Agencies and to the persons subject to the enforcement activities.

3. In any coordination arrangement, each Agency will seek to conduct their enforcement activities consistently with the enforcement objectives of the other Agency.

4. In the case of concurrent or coordinated enforcement activities, each Agency will consider, upon request by the other Agency and where consistent with the important interests of the requested Agency, ascertaining whether persons that have provided confidential information in connection with those enforcement activities will consent to the sharing of such information between the Agencies.

5. Either Agency may at any time notify the other Agency that they intend to limit or terminate coordinated enforcement and pursue their enforcement activities independently and subject to the other provisions of this Arrangement.

Relevant provisions in the 2014 OECD Recommendation on International Co-operation

Co-ordination of Competition Investigations or Proceedings

VI. RECOMMENDS that where two or more Adherents investigate or proceed against the same or related anticompetitive practice or merger with anticompetitive effects, they should endeavour to co-ordinate their investigations or proceedings where their competition authorities agree that it would be in their interest to do so.

To this end, co-ordination between Adherents:

4. might include any of the following steps, insofar as appropriate and practicable, and subject to appropriate safeguards including those relating to confidential information:

- (i) Providing notice of applicable time periods and schedules for decision-making;
- (ii) Co-ordinating the timing of procedures;
- (iii) Requesting, in appropriate circumstances, that the parties to the investigation and third parties voluntarily grant waivers of confidentiality to co-operating competition authorities;
- (iv) Co-ordinating and discussing the competition authorities' respective analyses;
- (v) Co-ordinating the design and implementation of remedies to address anticompetitive concerns identified by competition authorities in different Adherents;
- (vi) In Adherents in which advance notification of mergers is required or permitted, requesting that the notification include a statement identifying notifications also made or likely to be made to other Adherents; and
- (vii) Exploring new forms of co-operation.

ANNEX 9. PROVISIONS ON “NEGATIVE COMITY”

Relevant provisions in MoUs:

(i) typical examples

Colombia-US (2014)

ARTICLE IV AVOIDANCE OF CONFLICTS; CONSULTATIONS

1. The U.S. antitrust agencies and the SIC shall, within the framework of their own laws and to the extent compatible with their important interests, give careful consideration to the other country's competition authority's important interests throughout all phases of their enforcement activities, including decisions regarding the initiation of an investigation or proceeding, the scope of an investigation or proceeding, and the nature of the remedies or penalties sought in each case.

Canada-Korea (2006)

Article IV. AVOIDANCE OF CONFLICTS

1. The Participants acknowledge that it is in their common interest to minimize any potentially adverse effects of one Participant's enforcement activities on the other Participant's interests in the application of its competition and consumer laws.

2. Where one Participant informs the other that a specific enforcement activity by the second Participant may affect the first Participant's interests in the application of its competition and consumer laws, the second Participant will endeavour to provide timely notice of significant developments relating to those interests and an opportunity to provide input regarding any proposed penalty or remedy.

Australia-Chinese Taipei (1996)

Article 9. Avoidance of Conflict

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

EU-India (2013)

Article IV. AVOIDANCE OF CONFLICTS

9. The Sides acknowledge that it will be in their common interest to minimize any potentially adverse effects of one Side's enforcement activities on the other Side's interests in the application of their respective competition laws.

10. Should one Side inform the other Side that enforcement activities of the latter may affect the informing Side's interests in its application of its competition law, the other Side will endeavour to provide an opportunity to exchange views and conduct consultations on the issues raised by the informing Side consistent with the interests of the Sides.

(ii) *an example with detailed provisions*

Brazil-Japan (2014)

Paragraph 8 Avoidance of Conflicts over Enforcement Activities

8.1. Each competition authority will give careful consideration to the important interests of the other competition authority throughout all phases of its enforcement activities, including decisions regarding the initiation of enforcement activities, the scope of enforcement activities and the nature of penalties or relief sought in each case.

8.2. When either competition authority informs the other competition authority that specific enforcement activities of the latter competition authority may affect the important interests of the former competition authority, the latter competition authority will endeavour to provide timely notice of significant developments of such enforcement activities.

8.3. Where either competition authority considers that its enforcement activities may adversely affect the important interests of the other competition authority, the competition authorities will consider the following factors, in addition to any other factor that may be relevant in the circumstances in seeking an appropriate accommodation of the competing interests:

- (a) the relative significance to the anti-competitive activities of conduct or transactions occurring in the country of the competition authority conducting the enforcement activities as compared to conduct or transactions occurring in the country of the other competition authority;
- (b) the relative impact of the anti-competitive activities on the important interests of the respective competition authorities;
- (c) the presence or absence of evidence of an intention on the part of those engaged in the anti-competitive activities to affect consumers, suppliers, or competitors in the country of the competition authority conducting the enforcement activities;
- (d) the extent to which the anti-competitive activities substantially lessen competition in the markets of their respective countries;
- (e) the degree of conflict or consistency between the enforcement activities of a competition authority and the laws and regulations of the country of the other competition authority, or the policies or important interests of the other competition authority;
- (f) whether private persons, either natural or legal, will be placed under conflicting requirements by both competition authorities;
- (g) the location of relevant assets and parties to the transaction;
- (h) the degree to which effective penalties or relief can be secured by the enforcement activities of the competition authority against the anti-competitive activities; and
- (i) the extent to which enforcement activities of the other competition authority with respect to the same persons, either natural or legal, would be affected.

Relevant provisions in the 2014 OECD Recommendation on International Co-operation

Notifications of Competition Investigations or Proceedings

V. RECOMMENDS that an Adherent should ordinarily notify another Adherent when its investigation or proceeding can be expected to affect the other Adherent's important interests.

3. The notifying Adherent, while retaining full freedom of ultimate decision, should take account of the views that the other Adherent may wish to express and of any remedial action that the other Adherent may consider under its own laws, to address the anticompetitive practice or mergers with anticompetitive effects.

Consultation and Comity

III. RECOMMENDS that an Adherent that considers that an investigation or proceeding being conducted by another Adherent under its competition laws may affect its important interests should transmit its views on the matter to, or request consultation with, the other Adherent.

1. To this end, without prejudice to the continuation of its action under its competition law and to its full freedom of ultimate decision, the Adherent so addressed should give full and sympathetic consideration to the views expressed by the requesting Adherent, and in particular to any suggestions as to alternative means of fulfilling the needs or objectives of the competition investigation or proceeding.

ANNEX 10. PROVISIONS ON “POSITIVE COMITY”

Relevant provisions in MoUs:

(i) those similar to the co-operation agreements at the government level

Japan-Korea (2014)

Paragraph 7 Cooperation Regarding Anti-competitive Activities in the Country of a Side that Adversely Affect the Interests of the Other Side

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

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

7.3. The requested Side will carefully consider whether to initiate enforcement activities, or whether to expand ongoing enforcement activities, with respect to the anti-competitive activities identified in the request made under subparagraph 7.1. The requested Side will inform the requesting Side of its decision as soon as practically possible. If enforcement activities are initiated, the requested Side will inform the requesting Side of their outcome and, to the extent possible, of significant interim developments.

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

Brazil-Japan (2014)

Paragraph 7 Cooperation Regarding Anti-competitive Activities in the Country of a Competition Authority that Adversely Affect the Interests of the Other Competition Authority

7.1. If a competition authority believes that anti-competitive activities carried out in the country of the other competition authority adversely affect the important interests of the former competition authority, the former competition authority, taking into account the importance of avoiding conflicts resulting from its enforcement activities with regard to such anti-competitive activities and taking into account that the other competition authority may be in a position to conduct more effective enforcement activities with regard to such anti-competitive activities, may request that the other competition authority initiate appropriate enforcement activities.

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

7.3. The requested competition authority will carefully consider whether to initiate enforcement activities, or whether to expand ongoing enforcement activities, with respect to the anti-competitive activities identified in the request made under subparagraph 7.1. The requested competition authority will inform the requesting competition authority of its decision as soon as practically possible. If enforcement activities are initiated, the requested competition authority will inform the requesting competition authority of their outcome and, to the extent possible, of significant interim developments.

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

(ii) relatively unique provision; not requesting an action but requesting consultation

Australia-Japan (2015)

Paragraph [*06] Cooperation Regarding Anticompetitive Activities in the Country of a Competition Authority that Adversely Affect the Interests of the Other Competition Authority

6.1. If a competition authority believes that anticompetitive activities carried out in the country of the other competition authority substantially and adversely affect the important interests of the former competition authority, the former competition authority may request consultation with such other competition authority.

6.2. The request made pursuant to subparagraph 6.1 will be as specific as possible about the nature of the anticompetitive activities and their effect on the important interests of the requesting competition authority.

6.3. The requested competition authority will give full and sympathetic consideration to such views and factual materials as may be provided by the requesting competition authority and, in particular, to the nature of the alleged anticompetitive activities in question, the enterprises or individuals involved and the alleged harmful effects on the interests of the requesting competition authority. Without prejudice to any of their rights, the competition authorities will endeavour to find a mutually acceptable solution in light of the respective interests involved.

6.4. Nothing in this Paragraph (or the withdrawal of the requesting competition authority's request) will limit the discretion of the requested competition authority under the competition law and enforcement policies of its country as to whether or not to conduct enforcement activities with respect to the anticompetitive activities identified in the request. Any request by a competition authority under this Paragraph is without prejudice to its freedom to take any action it may choose to under its own competition laws.

Relevant provisions in the 2014 OECD Recommendation on International Co-operation

Consultation and Comity

IV. RECOMMENDS that an Adherent that considers that one or more enterprises or individuals situated in one or more other Adherents are or have been engaged in anticompetitive practices or mergers with anticompetitive effects that substantially and adversely affect its important interests, may request consultations with such other Adherent or Adherents.

1. Entering into such consultations is without prejudice to any action under the competition law and to the full freedom of ultimate decision of the Adherents concerned.

2. Any Adherent so addressed should give full and sympathetic consideration to such views and factual materials as may be provided by the requesting Adherent and, in particular, to the nature of the alleged anticompetitive practices or mergers with anticompetitive effects in question, the enterprises or individuals involved and the alleged harmful effects on the interests of the requesting Adherent.

3. If the Adherent so addressed agrees that enterprises or individuals situated in its territory are engaged in anticompetitive practices or in mergers with anticompetitive effects harmful to the interests of the requesting Adherent, it should take whatever remedial action it considers appropriate, including actions under its competition law, on a voluntary basis and considering its legitimate interests.

4. In requesting consultations, Adherents should explain the national interests affected in sufficient detail to enable their full and sympathetic consideration.

5. Without prejudice to any of their rights, the Adherents involved in consultations should endeavour to find a mutually acceptable solution in light of the respective interests involved.

ANNEX 11. PROVISIONS ON “CONSULTATION”

Relevant provisions in MoUs:

(i) examples of simple provisions

Australia-Japan (2015)

Paragraph [*09] Consultations

9.1. The competition authorities will consult with each other, upon request of either competition authority, on any matter which may arise in connection with this Arrangement.

Japan-Korea (2014)

Paragraph 12 Miscellaneous

12.3 The Sides will consult any questions concerning this Memorandum.

(ii) examples of detailed provisions

Korea-US (2015)

Section III Communications

3. Each competition authority may request consultations with the other country's competition authority or authorities regarding any matter relating to this Memorandum. A request for consultations should indicate the reasons for the request and whether any procedural time limits or other constraints require that consultations be expedited. Each competition authority intends to consult promptly when so requested, with a view to reaching a conclusion that is consistent with the purpose of this Memorandum.

Austria-Russia (2011)

Article 5. Consultations

1. During the investigation of actions of the economic entities that affect or could affect competition on the territory of the Parties' states, each Party shall have the right to request another Party for holding consultations on any matters related to the investigation.

2. The Party interested in holding consultations shall submit the written request on holding the consultations with attachment of the necessary documents as well as with the grounds and conditions for holding such consultations.

3. The Parties shall hold the consultation not later than three months after receipt of the request unless otherwise agreed by the Parties.

France-Chinese Taipei (2014)

Article 3. Consultations

The Parties may consult each other when the activities conducted by one of the Parties may be of interest to the other Party.

Should a Party inform the other Party that activities conducted by the latter may be of interest to the former in its application of competition law, it may request the informed Party to hold consultations in connection with these activities.

Should a Party express its interest in holding such consultations, the other Party will make its best effort to arrange for these.

Hungary-Romania (2005)

Article 6. Consultations

1. If requested the Parties shall hold consultations on matters covered by the present agreement in order to avoid conflicting decisions in the case of the same infringement.

2. Request on holding the consultation should contain grounds of its necessity.

3. The Parties shall hold the consultation in the terms not later than three months after the receipt of the request unless otherwise agreed.

4. In the case of disagreement the result of the consultations does not preclude the Parties to adopt final decisions.

Korea-Mexico (2004)

Paragraph VIII CONSULTATIONS

1. Either Agency may request consultations regarding any matter relating to this Arrangement. The request for consultations will indicate the reasons for the request and whether any procedural time limits or other constraints require that consultations be expedited. Each Agency will consult promptly when so requested with the view of reaching a conclusion that is consistent with the principles set forth in this Arrangement.

2. Consultations under this Paragraph will take place at the appropriate level as determined by each Agency.

3. During consultations under this Paragraph, each Agency will provide to the other as much information as it is able in order to facilitate the broadest possible discussion regarding the relevant aspects of the matter that is the subject of consultations. Each Agency will carefully consider the representations of the other Agency in light of the principles set out in this Arrangement and will be prepared to explain the specific results of its application of those principles to the matter that is the subject of consultations.

*Relevant provisions in the 2014 OECD Recommendation on International Co-operation***Consultation and Comity**

III. RECOMMENDS that an Adherent that considers that an investigation or proceeding being conducted by another Adherent under its competition laws may affect its important interests should transmit its views on the matter to, or request consultation with, the other Adherent.

1. To this end, without prejudice to the continuation of its action under its competition law and to its full freedom of ultimate decision, the Adherent so addressed should give full and sympathetic consideration to the views expressed by the requesting Adherent, and in particular to any suggestions as to alternative means of fulfilling the needs or objectives of the competition investigation or proceeding.

IV. RECOMMENDS that an Adherent that considers that one or more enterprises or individuals situated in one or more other Adherents are or have been engaged in anticompetitive practices or mergers with anticompetitive effects that substantially and adversely affect its important interests, may request consultations with such other Adherent or Adherents.

1. Entering into such consultations is without prejudice to any action under the competition law and to the full freedom of ultimate decision of the Adherents concerned.

2. Any Adherent so addressed should give full and sympathetic consideration to such views and factual materials as may be provided by the requesting Adherent and, in particular, to the nature of the alleged anticompetitive practices or mergers with anticompetitive effects in question, the enterprises or individuals involved and the alleged harmful effects on the interests of the requesting Adherent.

3. If the Adherent so addressed agrees that enterprises or individuals situated in its territory are engaged in anticompetitive practices or in mergers with anticompetitive effects harmful to the interests of the requesting Adherent, it should take whatever remedial action it considers appropriate, including actions under its competition law, on a voluntary basis and considering its legitimate interests.

4. In requesting consultations, Adherents should explain the national interests affected in sufficient detail to enable their full and sympathetic consideration.

5. Without prejudice to any of their rights, the Adherents involved in consultations should endeavour to find a mutually acceptable solution in light of the respective interests involved.

ANNEX 12. PROVISIONS ON “REGULAR MEETINGS”

Relevant provisions in MoUs:

(i) several examples of typical provisions

Australia-Japan (2015)

Paragraph [*09] Consultations

9.2. The competition authorities will hold a consultation meeting once a year in principle in order to enhance mutual understanding and reinforce cooperation.

Russia-US (2009)

COMMUNICATIONS

Officials of the U.S. antitrust agencies and FAS Russia should meet, as appropriate, to exchange information on their current and contemplated policy and enforcement efforts and priorities.

EU-India (2013)

V. MEETINGS

12. The Sides will endeavour, in case of need, to conduct meetings to:

- a. discuss current issues, experiences and new developments of mutual interest with respect to competition policy development, legislation and enforcement or the operation of the present Memorandum of Understanding;
- b. exchange non-confidential information on the competition environment in economic sectors of common interest;
- c. exchange views with respect to multilateral competition initiatives.

Korea-US (2015)

Section III COMMUNICATIONS

6. Officials of the U.S. antitrust agencies and the KFTC may meet periodically to exchange information on their current enforcement and priorities in relation to their competition laws.

(ii) examples of relatively detailed provisions

Indonesia-Korea (2013)

Article 4 Cooperation through Regular Joint Dialogue

1. The Parties shall endeavor to have regular joint dialogue between the head of competition authorities and meet periodically every two year to exchange information on recent enforcement efforts and key issues regarding each Party's competition laws, and/or on economic and policy issues of mutual interest;
2. The Parties may have technical meeting or working-level meeting on request of a Party;
3. The meeting shall take place in one of the Party's countries in which the venue shall be decided with prior communication and consent;

Mongolia-Chinese Taipei (2007)

Article 3 Mutual Visits

1. The mutual exchange visits shall include:
 - a) Visiting of top level officials of the Parties;
 - b) Organizing study visits for UCRA staff in Taiwan;
 - c) Providing instructors/lecturers by TFTC for staff training programs, seminars held in Mongolia.
2. In principle, the visiting of top level officials shall take place every other year by each party, alternating between the Parties.
3. In principle, study visits and staff training programs shall take place every year between the Parties.
4. The purpose, timing, duration, and the content of each visit shall be determined after consultation between the Parties.

Canada-Korea (2006)

V. MEETINGS

Officials of the Participants will meet periodically, as necessary, to:

- (a) exchange information on their enforcement efforts and priorities in relation to their competition and consumer laws;
- (b) exchange information on economic sectors of common interest;
- (c) discuss competition and consumer law changes under consideration; and
- (d) discuss other matters of mutual interest relating to the application of their competition and consumer laws or the operation of this Arrangement.

Japan-Korea (2015)

Paragraph 9 Annual Consultation

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

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

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

Australia-New Zealand (2007)

7.0 Meetings

7.1 Officials of the Parties shall meet annually, or as necessary, to:

- (a) review and discuss the cooperation, coordination and enforcement assistance undertaken between the Parties for each 12 month period;
- (b) exchange information on their enforcement efforts and priorities in relation to their competition, consumer and regulatory functions;
- (c) exchange information on economic sectors of common interest;
- (d) discuss and coordinate contributions to international competition, consumer and regulatory fora;
- (e) discuss review or amendments under consideration with respect to their competition, consumer or regulatory functions;
- (f) discuss other matters of mutual interest relating to the application of their competition, consumer and regulatory functions or the operation of this Agreement, including the development of frameworks, guidelines or international developments in the application of economic theory; and
- (g) discuss visits of officials, as appropriate.

8.0 Joint Meeting of Commission

On an annual basis, or as otherwise agreed, there will be a meeting of Commissioners of the Parties to discuss cooperation and coordination efforts between the Parties.

ANNEX 13. PROVISIONS ON “CONFIDENTIALITY”

Relevant provisions in MoUs:

(i) typical examples

Canada-Korea (2006)

VI. EXISTING LAWS AND CONFIDENTIALITY OF INFORMATION

2. Notwithstanding any other provision in this Arrangement, no Participant is required to communicate information to the other Participant if such communication is prohibited by the laws of the Participant possessing the information or would be incompatible with the interests of that Participant in the application of its competition and consumer laws.

3. The degree to which one Participant communicates information to the other pursuant to this Arrangement may be subject to, and dependent upon, the acceptability of the assurances given by the other Participant with respect to confidentiality and with respect to the purposes for which the information will be used.

4. Unless otherwise decided by the Participants, each Participant will, to the fullest extent possible, maintain the confidentiality of any information communicated to it in confidence by the other Participant. Each Participant will oppose, to the fullest extent possible, any request by a third party for communication of such confidential information, unless the Participant providing the confidential information consents in writing to its communication.

France-Chinese Taipei (2014)

Article 5 - Confidentiality

Each Party recognises the necessity to ensure confidentiality of all information communicated by the other Party in the framework of the Memorandum in accordance with their national legislations.

Each Party commits to complying with all applicable legal rules including, but not limited to, business confidentiality, professional secrecy and the protection of personal data.

EU-India (2013)

VI. EXISTING LEGISLATION AND CONFIDENTIALITY OF INFORMATION

16. Neither Side will be required to communicate information to the other Side if communication of such information is prohibited by the legislation of the Side possessing this information or if it would be incompatible with the interests of that Side in its application of the competition law.

Korea-US (2015)

SECTION II CONFIDENTIALITY

1. Notwithstanding any other provision of this Memorandum, the U.S. antitrust agencies and the KFTC commit not to communicate information to the other if such communication is prohibited by the laws governing the agency possessing the information or would be incompatible with that agency's interest.

2. Insofar as information is communicated between competition authorities pursuant to this Memorandum, the recipient should, to the extent consistent with any applicable domestic laws, maintain the confidentiality of any such information communicated to it in confidence. Each competition agency should oppose, to the fullest extent possible consistent with applicable domestic laws, any application by a third party for disclosure of such information.

Japan-Korea (2014)

Paragraph 11 Confidentiality

11.1. Each Side will, in accordance with the laws and regulations of its country, maintain the confidentiality of any information provided to it in confidence by the other Side under this Memorandum.

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

11.3. Notwithstanding any other paragraphs of this Memorandum, neither Side is required to provide information to the other Side if it is prohibited from providing the information by the laws and regulations of its country or if it finds providing the information incompatible with its important interests.

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

11.5. This paragraph will not preclude the use or disclosure of information provided under this Memorandum to the extent such use or disclosure is required by the laws and regulations of the country of the receiving Side. In such case, the receiving Side will, wherever possible, give advance notice of any such use or disclosure to the providing Side.

(ii) confidentiality provisions in second generation MoUs

Australia-Japan (2015)

Paragraph [*10] Confidentiality of Information

10.1. Each competition authority will, in line with the laws and regulations of its country, maintain the confidentiality of any information communicated by the other competition authority that is not publicly available, and will protect such information against disclosure in response to a request by a third party, unless the competition authority providing the confidential information otherwise consents in writing.

10.2. Information, other than publicly available information, provided by a competition authority to the other competition authority under this Arrangement, will only be used by the receiving competition authority for the purpose of effective enforcement of its competition law, and will not be communicated by the receiving competition authority to other authorities or a third party except when the information is communicated in line with paragraph 4 of Article 15.8 of the Agreement.

10.3. Notwithstanding subparagraph 10.2, information shared pursuant to subparagraph 4.3 will, unless otherwise decided in writing, only be used by the receiving competition authority for its current or future enforcement activities with regard to:

- (a) the conduct or transaction; and/or
- (b) the goods or services of one or more of the enterprises,

which are, or were, the subject of the enforcement activities of the competition authority sharing the information, or other conduct or transaction and/or goods or services related thereto.

Australia-New Zealand on compulsorily-acquired information and investigative assistance (2013)

Protection and use of information

15. Where the NZCC provides the ACCC with compulsorily-acquired information in response to a request, the ACCC will:

15.1 use the information only in accordance with any conditions imposed by the NZCC under clause 12.2 of this Arrangement and in accordance with section 155AAA of the CCA;

15.2 keep the information secure in accordance with the ACCC's standard evidence handling procedures, and in accordance with any conditions imposed by the NZCC under clause 12.2 of this Arrangement; and

15.3 protect to the fullest extent possible confidential information provided in accordance with this Arrangement, including in response to requests made by third parties under the Freedom of Information Act 1982.

16. Where the NZCC provides any information or communication which is protected by privilege under New Zealand law:

16.1 the NZCC is not to be regarded as having waived that privilege; and

16.2 the ACCC will treat that information or communication as being subject to the analogous privilege under Australian law.

Commencement, amendment and termination

18. All understandings created under the section entitled "Protection and use of information" will remain in effect despite any termination of this Arrangement.

Relevant provisions in the 2014 OECD Recommendation on International Co-operation

Exchange of Information in Competition Investigations or Proceedings

VII. RECOMMENDS that in co-operating with other Adherents, where appropriate and practicable, Adherents should provide each other with relevant information that enables their competition authorities to investigate and take appropriate and effective actions with respect to anticompetitive practices and mergers with anticompetitive effects.

2. The transmitting Adherent retains full discretion when deciding whether to transmit information.

4. Adherents may also consider the exchange of information internally generated by the competition authority that the authority does not routinely disclose and for which there is no statutory prohibition or restriction on disclosure, and which does not specifically identify confidential information of individual enterprises. In this case, the transmitting Adherent may choose to impose conditions restricting the further dissemination and use of the information by the receiving Adherent. The receiving Adherent should protect it in accordance with its own legislation and regulations and should not disclose the views of the transmitting Adherent without its consent.

Exchange of confidential information through "information gateways" and appropriate safeguards

10. Adherents should consider promoting the adoption of legal provisions allowing for the exchange of confidential information between competition authorities without the need to obtain prior consent from the source of the information ("information gateways").

11. Adherents should clarify the requirements with which both the transmitting and receiving authorities have to comply in order to exchange confidential information and should establish sufficient safeguards to protect the confidential information exchanged, as provided in this Recommendation. Adherents might differentiate the application of the provisions, e.g., on the basis of the type of investigation or of the type of information.

12. The transmitting Adherent should retain full discretion whether to provide the information under the information gateway, and may choose to provide it subject to restrictions on use or disclosure. When deciding whether to respond positively to a request to transmit confidential information to another Adherent, the transmitting Adherent may consider the following factors in particular:

- (i) The nature and seriousness of the matter, the affected interests of the receiving Adherent, and whether the investigation or proceeding is likely to adequately safeguard the procedural rights of the parties concerned;
- (ii) Whether the disclosure is relevant to the receiving authority's investigation or proceeding;
- (iii) Whether competition authorities of both the transmitting and receiving Adherents are investigating the same or related anticompetitive practice or merger with anticompetitive effects;
- (iv) Whether the receiving Adherent grants reciprocal treatment;
- (v) Whether the information obtained by the transmitting Adherent under an administrative or other non-criminal proceeding can be used by the receiving Adherent in a criminal proceeding; and
- (vi) Whether the level of protection that would be granted to the information by the receiving Adherent would be at least equivalent to the confidentiality protection in the transmitting Adherent.

13. The transmitting Adherent should take special care in considering whether and how to respond to requests involving particularly sensitive confidential information, such as forward-looking strategic and pricing plans.

14. Before the transmission of the confidential information can take place, the receiving Adherent should confirm to the transmitting Adherent that it will:

- (i) Maintain the confidentiality of the exchanged information to the extent agreed with the transmitting Adherent with respect to its use and disclosure;
- (ii) Notify the transmitting Adherent of any third party request related to the information disclosed; and
- (iii) Oppose the disclosure of information to third parties, unless it has informed the transmitting Adherent and the transmitting Adherent has confirmed that it does not object to the disclosure.

15. When an Adherent transmits confidential information under an information gateway, the receiving Adherent should ensure that it will comply with any conditions stipulated by the transmitting Adherent. Prior to transmission, the receiving Adherent should confirm to the transmitting Adherent the safeguards it has in place in order to:

- (i) Protect the confidentiality of the information transmitted. To this end, the receiving Adherent should identify and comply with appropriate confidentiality rules and practices to protect the information transmitted, including: (a) appropriate protection, such as electronic protection or password protection; (b) limiting access to the information to individuals on a need-to-know basis; and (c) procedures for the return to the competition authority of the transmitting Adherent or disposal of the information transmitted in a manner agreed upon with the transmitting Adherent, once the information exchanged has served its purpose; and
- (ii) Limit its use or its further dissemination in the receiving Adherent. To this end, the information should be used solely by the competition authority of the receiving Adherent and solely for the purpose for which the information was originally sought, unless the transmitting Adherent has explicitly granted prior approval for further use or disclosure of the information.

16. The receiving Adherent should take all necessary and appropriate measures to ensure that unauthorised disclosure of exchanged information does not occur. If an unauthorised disclosure occurs, the receiving Adherent should take appropriate steps to minimise any harm resulting from the unauthorised disclosure, including promptly notifying and, as appropriate, co-ordinating with the transmitting Adherent, to ensure that such unauthorised disclosure does not recur. The transmitting Adherent should notify the source of the information about the unauthorised disclosure, except where to do so would undermine the investigation or proceeding in the transmitting or receiving country.

Provisions applicable to information exchange systems

17. The Adherent receiving confidential information should protect the confidentiality of the information received in accordance with its own legislation and regulations and in line with this Recommendation.

18. Adherents should provide appropriate sanctions for breaches of the confidentiality provisions relating to the exchange of confidential information.

19. The present Recommendation is not intended to affect any special regime adopted or maintained by an Adherent with respect to exchange of information received from a leniency or amnesty applicant or an applicant under specialised settlement procedures.

20. The transmitting Adherent should apply its own rules governing applicable privileges, including the privilege against self-incrimination and professional privileges, when transmitting the requested confidential information, and endeavour not to provide information deemed privileged in the receiving Adherent. The transmitting Adherent may consider working with the parties to identify privileged information in the receiving Adherent in appropriate cases.

ANNEX 14. PROVISIONS ON “EXISTING LAW”

Relevant provisions in MoUs:

Australia-Japan (2015)

Paragraph [*11] Miscellaneous

11.3. All cooperation under this Arrangement between the competition authorities will be conducted subject to laws and regulations in force in their respective countries and within the reasonably available resources of each competition authority.

Brazil-Canada (2008)

VI. EXISTING LAWS AND CONFIDENTIALITY OF INFORMATION

1. Nothing in this Arrangement will require a Participant to take any action, or to refrain from acting, in a manner inconsistent with existing laws, or will require any change in the laws of Canada or the Federative Republic of Brazil.

Korea-Mexico (2004)

Paragraph XI Existing Laws

Nothing in this Arrangement will require an Agency to take any action, or to refrain from acting, in a manner that is inconsistent with the existing laws, or require any change in the country's laws.

Chile-US (2011)

Article VIII EXISTING LAWS

Nothing in this Agreement shall require a competition authority to take any action, or to refrain from acting, in a manner that is inconsistent with the existing laws, or require any change in the laws it enforces.

EU-India (2013)

VI. EXISTING LEGISLATION AND CONFIDENTIALITY OF INFORMATION

15. Nothing in the present Memorandum of Understanding will require any Side to take any actions or to refrain from acting in a manner inconsistent with the existing legislation of the Sides or will require any change to that legislation.

Relevant provisions in the 2014 OECD Recommendation on International Co-operation

IV. RECOMMENDS that an Adherent that considers that one or more enterprises or individuals situated in one or more other Adherents are or have been engaged in anticompetitive practices or mergers with anticompetitive effects that substantially and adversely affect its important interests, may request consultations with such other Adherent or Adherents.

1. Entering into such consultations is without prejudice to any action under the competition law and to the full freedom of ultimate decision of the Adherents concerned.

VI. RECOMMENDS that where two or more Adherents investigate or proceed against the same or related anticompetitive practice or merger with anticompetitive effects, they should endeavour to co-ordinate their investigations or proceedings where their competition authorities agree that it would be in their interest to do so.

To this end, co-ordination between Adherents:

2. should not affect Adherents' right to make decisions independently, based on their own investigation or proceeding.

ANNEX 15. PROVISIONS ON “COMMUNICATION”

Relevant provisions in MoUs:

Chile-US (2011)

Article IX COMMUNICATIONS UNDER THIS AGREEMENT

Communications under this Agreement may be carried out by direct communication between the competition authorities of each country.

EU-India (2013)

VII. COMMUNICATIONS UNDER THE PRESENT MEMORANDUM OF UNDERSTANDING

17. Each Side will designate a contact point to which the information necessary for the effective execution of the present Memorandum of Understanding will be communicated.

Australia-New Zealand-Chinese Taipei (2002)

Paragraph VII COMMUNICATIONS UNDER THIS ARRANGEMENT

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

Canada-India (2014)

Communications

6. The Participants will communicate directly with each other under this MOU through a designated contact point that each Participant will notify in writing to the other.

7. The Participants may carry out their communications by telephone, electronic mail, video conference, or in person, as appropriate. The Participants understand that the working language will be English.

Relevant provisions in the 2014 OECD Recommendation on International Co-operation

Notifications of Competition Investigations or Proceedings

V. RECOMMENDS that an Adherent should ordinarily notify another Adherent when its investigation or proceeding can be expected to affect the other Adherent's important interests.

2. The notification should be made by the competition authority of the investigating Adherent through the channels requested by each Adherent as indicated in a list to be established and periodically updated by the Competition Committee; to the extent possible, Adherents should favour notifications directly to competition authorities. Notifications should be in writing, using any effective and appropriate means of communication, including e-mail. To the extent possible without prejudicing an investigation or proceeding, the notification should be made when it becomes evident that another Adherent's important interests are likely to be affected, and with sufficient detail so as to permit an initial evaluation by the notified Adherent of the likelihood of effects on its important interests.

ANNEX 16. MISCELLANEOUS PROVISIONS

(i) provisions on the non-binding nature of MoUs

Australia-Japan (2015)

Paragraph [*11] Miscellaneous

11.2. Nothing in this Arrangement is intended to create legally binding rights or obligations on the competition authorities or their respective governments.

Canada-Korea (2006)

VIII. FINAL PROVISIONS

3. This Arrangement is not intended to be legally binding at international law.

Czech-Russia (2007)

6. The present Memorandum shall not be considered as an international treaty and does not establish any rights or obligations for the Parties, which are regulated by international law.

Indonesia-Korea (2013)

Article 10 Non-binding Effect

This Arrangement, signed for the purpose of reinforced cooperation of the Parties, will not incur any legally binding or obligations nor be interpreted to have any influence over each Party's rights or obligations pursuant to international agreements and domestic law.

(ii) provisions on dispute resolution

Australia-Korea (2002)

Paragraph 10 SETTLEMENT OF DISPUTE

Where there are any instances where the other's interests may be impinged, urgent and immediate consultation should take place.

Australia-China (SAIC) (2012)

Article 7 Resolution of Disputes

The Participants will resolve any discrepancies or disputes arising out of the interpretation or application of this Memorandum through consultations.

Indonesia-Korea (2013)

Article 9 Resolution of Disputes

Wherever possible, the Parties will amicably settle any discrepancies or disputes arising from the cooperation under this Arrangement to the maximum extent possible.

(iii) provisions on commencement, duration, renewal, and termination of MoUs

Canada-Chile (2001)

VIII. ENTRY INTO FORCE AND TERMINATION

1. This Memorandum shall enter into force upon signature of the Parties.

2. This Memorandum will remain in force until 60 days after the date on which either Party notifies the other in writing that it wishes to terminate, or until the time of the entry into force of an agreement between Canada and Chile regarding the application of their competition laws.

Australia-Japan (2015)

Paragraph [*12] Commencement, Review, Modification and Termination

12.1. The cooperation under this Arrangement will commence on the date of signature.

12.2. Either competition authority may terminate the cooperation under this Arrangement with 30 days' written notice to the other competition authority.

Colombia-US (2014)

ARTICLEX ENTRY INTO FORCE AND TERMINATION

1. This Agreement shall enter into force upon signature.

2. This Agreement shall remain in force for an indefinite period of time, unless one Party notifies the other Party

in writing that it wishes to terminate the Agreement. In that case, the Agreement shall terminate 60 days after such written notice is given.

France-Chinese Taipei (2014)

Article 6- Final provisions

The Memorandum shall enter into force upon the date of the signature for a period of one year and will be tacitly renewed for consecutive one-year periods thereafter.

The Memorandum is subject to termination by either Party upon one-month prior written notification.

China (NDRC)-Japan (2015)

VII. OTHERS

1. The cooperation under this Memorandum will commence on the date of signature and will continue for an initial term of two years. If both Sides decide it is of continued benefit it can be extended for a period of time with mutual consent of the Sides.

2. Either Side may terminate the cooperation under this Memorandum upon thirty (30) days written notice to the other Side.

(iv) provisions on 'survival' and similar provisions in case of termination

Canada-New Zealand (2016)

Commencement, amendment and termination

18. All understandings created under the section entitled "Protection and use of information" will remain in effect despite any termination of this Arrangement.

Australia-New Zealand (2007)

11.0 ENTRY INTO FORCE AND TERMINATION

11.4 Confidential information will continue to be protected, as outlined in clauses 4.1- 4.5, notwithstanding the termination of this Agreement.

France-Chinese Taipei (2014)

Article 6- Final provisions

Obligations of the Parties regarding the confidentiality of information received in the framework of the Memorandum shall continue to be binding after its termination.

Korea-Turkey (2005)

9. Such termination will not affect any cooperative programs and projects under this Memorandum of Understanding that are in progress and not yet completed at the time of termination.

Mongolia-Chinese Taipei (2007)

Article 6 Modification and Termination of the MOU

2. Either Party may terminate this Memorandum of Understanding by giving six months' prior written notice to the other Party. However, the termination of this Memorandum of Understanding will not affect the development and conclusion of ongoing cooperative activities.

EU-India (2013)

VIII. FINAL PROVISIONS

20. Termination of the present Memorandum of Understanding is not intended to affect the implementation of projects that are already in process under the present Memorandum of Understanding.

(v) provisions on 'entire agreement' in cases where there is a previous bilateral arrangement between the parties

Australia-New Zealand (2007)

11.0 ENTRY INTO FORCE AND TERMINATION

11.1 This Agreement will come into effect on the date of signature and will replace the Co-operation and Co-ordination Agreement between the Australian Trade Practices Commission and the New Zealand Commerce Commission dated July 1994.

France-Chinese Taipei (2014)

Article 6 – Final Provisions

The Memorandum is to replace and supersede the “Cooperation Arrangement between the Taiwanese Fair Trade Commission and the French Competition Council Regarding the Application of their Competition Rules” (“the Arrangement”) signed on 5 January 2004. Accordingly, the Arrangement will be terminated on the date that the Memorandum comes into effect.

(vi) provisions on amendment and review of MoUs

Australia-New Zealand (2007)

12.0 REVIEW OF AGREEMENT

12.1. Officials of the Parties shall review the terms and operation of the Agreement from time to time as agreed by the Parties.

12.2. This Agreement may be amended by a written arrangement of the Parties.

Australia-Japan (2015)

Paragraph [*12] Commencement, Review, Modification and Termination

12.3. This Arrangement may be modified by the mutual written consent of the competition authorities.

12.4. The competition authorities will review the operation of the cooperation under this Arrangement from time to time, as consented to by the competition authorities.

France-Chinese Taipei (2014)

Article 6 Final Provisions

Any amendment to the Memorandum shall be made by mutual agreement of the Parties in the written form, executed as a protocol and signed by both Parties.

Japan-Korea (2014)

Paragraph 13 Commencement, Termination and Modification

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

China (NDRC and SAIC)-EU (2012)

5 Final provisions

The Sides will review the operation of this Memorandum of Understanding not more than three years from the date of signature.

(vii) provisions on co-operation and agencies' discretion

Russia-US (2009)

The U.S. antitrust agencies and FAS Russia reserve their full discretion in implementing the Memorandum.

Brazil-EU (2009)

VII. FINAL PROVISIONS

(19) The two Sides will apply the provisions of this MoU on a voluntary basis.

(viii) provisions on costs associated with MoUs

Australia-China (SAIC) (2012)

Article 4 Resources

All commitments made in this Memorandum are subject to the availability of funds and each Participant's budget priorities. This Memorandum is not meant to oblige the expenditure of funds.

Austria-Russia (2011)

Article 9. Financial conditions

All the expenses related to travel, accommodation and meals of the Parties' representatives in the territory of the receiving Party's state within the frameworks of their participation in different events and meetings shall be covered by the sending Party.

Hungary-Chinese Taipei (2007)

Article 10 Concluding provisions

1. Unless special funds are dedicated to it or otherwise are agreed by the Parties, the co-operation under this Agreement shall be financed by the requesting Party.

Brazil-Japan (2014)

Paragraph 11 Miscellaneous

11.4. This Memorandum does not require any kind of transfer of financial resources between the competition authorities.

Canada-China (MOFCOM) (2015)

Article 5 COOPERATION RESOURCES

This MOU does not oblige the Participants to commit resources in terms of funds, time, staff or other administrative resources.

For meetings and visits, the host Participant will provide venues and bear the relevant expenses. The visiting Participants will be responsible for its expenses incurred for international travel, local transportation, accommodation and meal and subsistence costs. Costs for telephone/video conferences will be borne by the Participant incurring such costs.

Wherever possible, visit requests from Participants' regional or local offices will be channeled through each Participant to ensure coordination.

(ix) provisions on future possible multilateral co-operation

Canada-UK (2003)

VIII. FINAL PROVISIONS

2. On entry into operation, this Arrangement will be open to the participation of other competition or consumer protection authorities, in addition to the Participants. Such Participation shall be based on agreement between the Participants and the new participant.

Australia-New Zealand-Chinese Taipei (2002)

PARAGRAPH X ENTRY INTO EFFECT, TERMINATION AND OTHER PARTICIPANTS

5. Other competition authorities may join this Arrangement on terms to be decided between it and the Participants to the Arrangement at the time of the application to join. The Participants may develop, as they consider appropriate, procedures to deal with such new Participants.

(x) provisions on relationship with other MoUs and co-operation with other competition authorities

Australia-Japan (2015)

Paragraph [*11] Miscellaneous

11.4. Nothing in this Arrangement will prevent a competition authority from seeking assistance from or providing assistance to the other competition authority pursuant to other agreements, treaties, arrangements, or legislation.