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**INVENTORY OF CO-OPERATION AGREEMENTS**

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## INVENTORY OF CO-OPERATION AGREEMENTS

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## 1. Introduction

1. Globalisation, the increasing interdependence of mature economies, the increasing significance of emerging economies and the proliferation of competition regimes have caused a significant increase in cross-border competition law enforcement and its complexity over the last decade. Competition authorities around the world face more than ever situations where the parties or their assets are located in foreign jurisdictions, where evidence or witnesses are located outside their jurisdiction, or where they need to co-ordinate their remedies or other enforcement actions with other authorities in order to ensure the effectiveness of those actions. In such an environment, it has become a common understanding that effective co-operation and co-ordination in competition law enforcement would result in more effective action against anti-competitive practices with a cross-border connotation than would be achieved through unilateral and independent enforcement actions. In order to facilitate such co-operation and co-ordination, competition authorities have developed various formal and informal co-operation instruments, deepened mutual trust and understanding through discussion, and accumulated experiences of co-operation in individual enforcement cases. The OECD has long provided a discussion forum on this important topic and the recent adoption of the OECD Recommendation concerning International Co-operation on Competition Investigations and Proceedings (“the 2014 OECD Recommendation on international co-operation”, [C(2014)108] in 2014 also reflects the high interests of Member countries in enhancing enforcement co-operation with their international counterparts.

2. Although authorities can work together “informally” within their respective domestic laws, i.e. even in the absence of formal co-operation agreements, many enforcers have developed formal co-operation instruments with their counterparts in order to expand and strengthen the scope and degree of co-operation, to deepen the relationship with the other party and to formally express their commitment to co-operate. Among the various formal co-operation instruments, co-operation agreements are the tool more commonly used and relied on by competition authorities. Co-operation agreements are concluded between two or more jurisdictions/competition authorities and may include provisions on notifications of enforcement activities, enforcement co-operation including information exchange, co-ordination of enforcement actions, positive and negative comity and consultation. For purposes of this inventory, co-operation agreements which provide all or most of those components will be called “comprehensive” co-operation agreements. Those comprehensive co-operation agreements may be concluded between governments or between competition authorities (inter-agency agreements may be referred to also as “Memoranda of Understanding” or “arrangements.”). They are generally negotiated and concluded bilaterally, but some are multilateral agreements, such as the Agreement between Denmark, Iceland, Norway and Sweden concerning co-operation in matters of competition in 2001.

3. Next to comprehensive co-operation agreements, some authorities have entered into special arrangements that complement existing co-operation principles or relationships between authorities and/or provide additional co-operation tools in specific areas. These include notably agreements on positive comity<sup>1</sup> and agreements on information exchange and investigative assistance.<sup>2</sup> Also, merger protocols or

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<sup>1</sup> See Agreement between the European Communities and the Government of the United States on the Application of Positive Comity Principles in the Enforcement of Their Competition Laws (4 June 1998); and Agreement between the Government of Canada and the Government of the United States of America on the Application of Positive Comity Principles to the Enforcement of Their Competition Laws (5 October 2004).

<sup>2</sup> See 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 (April 2013); Agreement between the Government of Australia and the Government of the United States of America on Mutual Antitrust Enforcement Assistance (27 April 1999)

best practices on co-operation in merger investigations<sup>3</sup> may be classified in this category although those documents are softer declarations of existing practice. These protocols and best practices are not included in the present inventory.

4. Furthermore, provisions on enforcement co-operation may be also included in broader economic/non-economic agreements entered into by jurisdictions, such as Free Trade Agreements (FTAs), Economic Partnership Agreements (EPAs) or Mutual Legal Assistance Treaties (MLATs). As those agreements have broader objectives and do not focus only on co-operation in competition law enforcement, competition provisions in those broader agreements may have different objectives and scope of application. For example, competition provisions in FTAs or EPAs may have provisions that aim to address anticompetitive behaviour or that require parties to adopt certain minimum standards in relation to competition laws. Provisions of MLATs provide a wide range of legal assistance including taking evidence and execution of searches and seizures, but their applicability is limited to criminal matters.<sup>4</sup>

5. As a reflection of the high interest for many competition authorities to promote enforcement co-operation, the last twenty years have seen a proliferation of agreements on enforcement co-operation in the area of competition. There are still a number of jurisdictions who have so far concluded only a few agreements or no agreement, so it is expected to see more co-operation agreements concluded in future.

6. Working Party No.3 of the OECD Competition Committee set to work in 2014 to build this inventory of co-operation agreements. This inventory is intended to provide inputs which would be useful for negotiation or interpretation of co-operation agreements. The Secretariat has identified fifteen comprehensive co-operation agreements concluded at the government level where at least one of the signatories is an OECD Member Country (Table 1 in Annex 1). This inventory has been developed mainly with reference to these fifteen agreements, although where relevant it also makes reference to provisions in inter-agency agreements or special co-operation agreements. This inventory does not cover co-operation provisions in competition chapters in FTAs, EPAs and MLATs.

### ***1.1 Structure of the inventory***

7. The inventory is divided in several sections according to elements typically appearing in co-operation agreements (e.g. purpose, definitions, notification, co-operation, co-ordination, comity, consultation, confidentiality). This inventory consists of three parts:

(1) *A short summary of the provisions in co-operation agreements.* The first part includes a short introduction of each element. Many co-operation agreements have similar structures with similar language.<sup>5</sup> The introduction is intended to clarify similarities and differences between the agreements, as well as any innovative or unique feature in a particular agreement.

(2) *The relevant languages from the 2014 OECD Recommendation on international co-operation (Annex).* The second part includes relevant language from the 2014 OECD Recommendation on international co-operation.

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<sup>3</sup> See For example, US-EU Merger Working Group Best Practices on Co-operation in Merger Investigations (14 October 2011); Australian Competition and Consumer Commission and New Zealand Commerce Commission Co-operation Protocol for Merger Review (7 August 2006).

<sup>4</sup> Holmes, Müller, Papadopoulos and Sydorak (2005), "A taxonomy of international competition co-operation provisions"

<sup>5</sup> Australia-US (1982) has relatively unique provisions among other agreements.

(3) *Selection of actual provisions in co-operation agreements (Annex)*. The second part lists the relevant provisions of co-operation agreements. Provisions refer to the fifteen co-operation agreements reviewed. They are listed in reverse chronological order, so that readers can recognise any development in the language used.

It should be worth noting that each provision should be construed in the total context of the agreement although the provisions are identified and analysed individually in the inventory for the convenience of comparative analysis. For instance, it should be noted that all co-operation activities are subject to the limitations of the confidentiality provision and the existing law provision of the agreement.

## **1.2 First and second generation agreements**

8. The inventory distinguishes, where relevant, between first and second generation agreements. Based on the high interest and need for competition authorities to strengthen the ability to exchange information, some jurisdictions/authorities have entered into agreements with provisions enabling the authorities to exchange confidential information under certain circumstances, without the need to seek prior consent from the source of the information. These agreements are referred to as “second generation” co-operation agreements in contrast with co-operation agreements which only allow for the exchange of non-confidential information or to exchange confidential information subject to the consent of the information source (“first generation” agreement).<sup>6</sup> In this inventory, we refer to five second generation co-operation agreements listed in Table 3 in Annex 1.<sup>7</sup>

9. Unlike first generation agreements, second generation agreements have been developed in different contexts and they are very different in nature, format and language. For example, provisions allowing the exchange of confidential information are included in comprehensive co-operation agreements in the case of the EU-Switzerland (2013) and Nordic Co-operation Agreement (2001). That being said, special agreements have been entered into between Australia and the United States [Australia-US on mutual antitrust enforcement assistance (1999)] and between New Zealand and Australia [New Zealand-Australia on compulsorily-acquired information and investigative assistance (2013)]. The recent Australia-Japan (2015) agreement is a second generation co-operation arrangement built upon the Economic Partnership Agreement between the two jurisdictions.<sup>8</sup> Some agreements are concluded to trigger the gateway power under their domestic legislations; i.e. these domestic laws require conclusion of co-operation agreements with another jurisdiction/competition authority to provide confidential information to

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<sup>6</sup> For the purpose of the inventory, confidential information refers to information of enterprises or individuals the disclosure of which is either prohibited or subject to restrictions under laws, regulations or policies of each jurisdiction, e.g. non-public business information the disclosure of which could prejudice the legitimate commercial interests of an enterprise. Competition authorities may exchange non-public *agency* information under first generation agreements; i.e. information internally generated by the competition authority that the authority does not routinely disclose and which does not specifically identify confidential information of individual enterprises, such as schedules of agency’s investigations, prospective remedies or sanctions imposed by agencies. Such information is considered to be non-confidential information for the purpose of the inventory.

<sup>7</sup> The European Competition Network also allows its members to exchange confidential information for the purpose of applying the common competition rules. Its framework and legal basis will be discussed in section 4 on “Regional co-operation.”

<sup>8</sup> Article 15.5 (Cooperation on Addressing Anticompetitive Activities) of the Economic Partnership Agreement provides that detailed cooperation arrangements may be made between the competition authorities of the two jurisdictions.

the competition authority of the jurisdiction.<sup>9</sup> The detail of how the agency is empowered to disclose confidential information, as well as the procedural safeguards and considerations that apply, are generally left to domestic legislation and policies in such cases.

10. Three second generation agreements are signed at government level because of the very advanced type of co-operation which requires departure from domestic provisions (i.e. on the inability to exchange confidential information). The New Zealand-Australia on compulsorily-acquired information and investigative assistance (2013) and the Australia-Japan (2015) are inter-agency agreements. Also, the Australia-US on mutual antitrust enforcement assistance (1999) has some characteristic of an MLAT.<sup>10</sup> As second generation agreements are of interest and value for many competition enforcers,<sup>11</sup> their features are specifically discussed in some sections of the inventory.

### ***1.3 Memoranda of Understanding***

11. This inventory does not focus on provisions in Memoranda of Understanding (MoUs) or interagency agreements. However, the inventory includes a separate section on MoUs whose purpose is to provide an overview of the types of MoUs that agencies have entered into, their scope and their characteristics.

12. The inventory may need to be revised at a later stage to reflect further developments and experiences gained by Member countries in the negotiation and practical application of co-operation agreements.

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<sup>9</sup> For example, New Zealand-Australia on compulsorily-acquired information and investigative assistance (2013) was concluded to give effect to the 2012 amendments of New Zealand's Commerce Act, Fair Trading Act, Credit Contracts and Consumer Finance Act and Telecommunications Act, which allow the NZCC to provide compulsorily-acquired information and investigative assistance to international counterparts with whom a co-operation arrangement is in place. Also, Australia-US on mutual antitrust enforcement assistance (1999) was concluded based on the US International Antitrust Enforcement Assistance Act (IAEAA) (15 U.S.C. 6201-6212, Public Law No. 103-438, 108 Stat. 4597.), which authorises the US competition authorities to negotiate bilateral mutual assistance agreements allowing for provision of antitrust evidence to a foreign antitrust authority. For Australia, the Mutual Assistance in Criminal Matters Act 1987 (MACMA) in criminal matters and the Mutual Assistance in Business Matters Act 1992 (MABRA) in non-criminal matters are relevant in the competition authority's exchange of confidential information.

<sup>10</sup> Holmes, Müller, Papadopoulos and Sydorak (2005), "A taxonomy of international competition co-operation provisions" p.56-

<sup>11</sup> Section 10 of the 2014 OECD Recommendation on international co-operation recommends jurisdictions to "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")."

13. The original texts of co-operation agreements can be obtained in the following websites of the competition authorities of the Member States:

Australia (<https://www.accc.gov.au/about-us/international-relations/treaties-agreements>)

Canada (<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03763.html#tab2>)

Chile (<http://www.fne.gob.cl/english/internacional/co-operation-agreements/>)

Denmark (<http://en.kfst.dk/Competition/International-Co-operation/Agreement-between-Denmark-Iceland-and-Norway-on-co-operation-in-competition-cases>)

Germany ([http://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Others/US\\_GERMANY\\_ANTITRUST\\_ACCORD.html?nn=3590244](http://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Others/US_GERMANY_ANTITRUST_ACCORD.html?nn=3590244))

Greece (<http://www.epant.gr/content.php?Lang=en&id=394>)

Hungary ([http://www.gvh.hu/en/international\\_relations/international\\_bilateral\\_co-operation\\_agreements](http://www.gvh.hu/en/international_relations/international_bilateral_co-operation_agreements))

Japan ([http://www.jftc.go.jp/en/int\\_relations/agreements.html](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](http://eng.ftc.go.kr/bbs.do?command=getList&type_cd=72&pageId=0501))

New Zealand (<http://www.comcom.govt.nz/the-commission/about-us/international-relations/>)

Norway (<http://www.konkurransetilsynet.no/en/about/Nordic-co-operation-in-competition-cases-/>)

Portugal ([http://www.concorrencia.pt/vEN/Sistemas\\_da\\_Concorrencia/International\\_Competition\\_System/Bilateral\\_Co-operation/Co-operation-Agreements/Pages/Co-operation-Agreements.aspx](http://www.concorrencia.pt/vEN/Sistemas_da_Concorrencia/International_Competition_System/Bilateral_Co-operation/Co-operation-Agreements/Pages/Co-operation-Agreements.aspx))

Switzerland (<http://www.weko.admin.ch/themen/01152/index.html?lang=en>)

Turkey (<http://www.rekabet.gov.tr/en-US/Pages/Bilateral-Relations>)

United States (<http://www.justice.gov/atr/public/international/int-arrangements.html>,  
<http://www.ftc.gov/policy/international/international-co-operation-agreements>)

European Union (<http://ec.europa.eu/competition/international/bilateral/>)

## **2. Inventory of provisions in co-operation agreements**

### **2.1. Provisions on “purpose” (Annex 2)**

14. Most co-operation agreements include “purpose” provisions at the beginning of the agreement. Most agreements refer to two broad purposes, namely (1) to contribute to the effective enforcement of each party’s competition law through co-operation and co-ordination and (2) to avoid or lessen the risk of conflicts in the application of each party’s competition laws.

#### *2.1.1. Promotion of co-operation and co-ordination and effective enforcement of each competition law*

15. Globalisation, the increasing interdependence of economies and the proliferation of competition regimes have brought more cases where competition authorities need to work with international counterparts in order to effectively enforce their respective competition laws. For example, competition authorities may need to align the timing of their enforcement actions to maximise their effectiveness, need to access information or evidence located outside their jurisdictions, and/or need to co-ordinate their remedies in order to ensure that the remedies do not impose an excessive burden on target businesses but properly address each of their concerns. Competition authorities have widely recognised the need to co-operate and co-ordinate in their enforcement activities and this is the primary purpose for parties to conclude co-operation agreements.

16. While co-operation and co-ordination in co-operation agreements usually refer exclusively to enforcement activities, some agreements [e.g. Canada-Mexico (2001), Mexico-US (2000), Brazil-US (1999)] explicitly state that co-operation includes not only enforcement co-operation but also co-operation on technical assistance.

### *2.1.2. Avoidance of conflicts*

17. In an interconnected economy where multiple competition authorities may investigate the same/related cases, an enforcement activity taken by the competition authority of one jurisdiction may have a negative implication in another jurisdiction. For example, competition authorities may arrive at inconsistent outcomes after independent proceedings that may undermine the enforcement objective of at least one of the authorities involved. Co-operation agreements are intended to avoid/lessen the possibility of conflicts between parties by providing for various co-operation schemes including notifications, co-ordination or comity.

## **2.2. Provisions on “definitions” (Annex 3)**

18. Co-operation agreements usually provide a set of definitions of key terms and concepts for the purpose of the agreement. Terms and concepts most typically defined are:

- “competition laws” and “competition authorities”: These definitions usually include legal references to competition laws and/or the names of the competition authorities in the respective jurisdictions. When the governments of two jurisdictions are the parties of a co-operation agreement, the co-operation agreement may give different rights and obligations to the parties, namely the governments, and the competition authorities of the parties.
- “enforcement activities” and “anticompetitive activities”: These are typically defined according to the parties’ domestic competition laws, as “any investigation or proceeding conducted by a party in relation to its competition law” and “any conduct or transaction that may be subject to penalties or other reliefs under competition laws of each party” respectively.

19. Other terms and concepts that may be defined in a few agreements include “national” [Canada-Japan (2005)], “territory” [EU-Japan (2003)], “mergers” and “acquisitions” [Nordic Co-operation Agreement (2001)] and “information” [Germany-US(1976)].

### *2.2.1. Definitions in second generation agreements*

20. As is discussed in section 2.6 on “Exchange of Information”, there is an increasing interest in so-called second generation co-operation agreements which allow the competition authorities of the signatory parties to exchange confidential information under certain conditions. Second generation agreements may define additional terms and concepts to properly define the scope and range of the exchange of confidential information permitted under the agreement. For example, the EU-Switzerland (2013) agreement defines terms such as “information obtained by investigative process,” “information obtained under the leniency procedure” or “information obtained under the settlement procedure.” Similarly, the agreement between New Zealand-Australia on compulsorily-acquired information and investigative assistance (2013) includes definitions for “compulsorily-acquired information,” “investigative assistance,” “protected information,” and “request,” and the Australia-US agreement on mutual antitrust enforcement assistance (1999) has definitions for “Antitrust Evidence” or “Request.”

### 2.3. *Provisions on “transparency” (Annex 4)*

21. The OECD/ICN report on international co-operation<sup>12</sup> identifies differences in legal standards applied by the agencies involved and differences in enforcement systems (criminal vs. civil/administrative) as the most important limitations on international co-operation. In order for competition authorities with different enforcement systems to co-operate effectively and efficiently, it is imperative that the co-operating parties have a good knowledge of their respective substantive and procedural rules, including confidentiality and disclosure rules, and understand the differences in their legal systems and any existing limitations or constraints. It is for this reason that 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.”

22. To promote mutual understanding of relevant legislations, nine out of the fifteen agreements reviewed in this inventory include transparency provisions which require the parties to inform each other of changes in their national enforcement system. The scope of the changes that may require notice depends on the agreements. Obviously, all agreements which have transparency provisions require “any amendments to its competition laws” to be notified to the other party. In addition to this, some agreements lay down further requirements for notice with respect to other relevant laws/regulations, enforcement practice, guidelines, and policy statements. To be more specific, EU-Switzerland (2013), Nordic Co-operation Agreement (2001), and Brazil-US (1999) require notice with respect to other laws (and regulations) that may be relevant to the agreement, and EU-Switzerland (2013) requires notice of “any change in the enforcement practice.” Japan-US (1999) further requires that copies of its publicly-released/publicly-proposed guidelines, regulations or policy statements in relation to the competition laws should be provided to the other party. Given that such notice would promote the understanding of the parties on their respective legal systems, a broader requirement would generally be desirable to the extent practical.

23. Sometimes, transparency provisions may include additional procedures. For example, the EU-Switzerland (2013) states that consultations may be held to assess the specific implications for the co-operation agreement of amendments or changes in the respective competition laws of the parties. Japan-US (1999) requires the parties to pay due consideration to the comments from the other party on the proposed regulations, guidelines and policy statements. In order to enhance convergence and improve the relationship of the parties, those additional procedures are worth considering.

### 2.4. *Provisions on “notifications” (Annex 5)*

24. Notifications of competition investigations and proceedings can be important to establishing effective co-operation among competition authorities. Notifications make the notified party aware of the notifying party’s enforcement activity and trigger subsequent co-operation activities, such as co-ordination or consultations. It is for this reason that the 2014 OECD Recommendation on international co-operation has included provisions on notifications of enforcement activities among member countries. In practice, notifications on enforcement activities are made, for example, when a competition authority initiates an investigation of international cartels or makes important progress in the investigation, or when a competition authority issues request for information in cross-border merger investigations.

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<sup>12</sup> OECD/ICN Survey on International Competition Enforcement Co-operation, 2013, available at <http://www.oecd.org/daf/competition/oecd-icn-international-co-operation-survey.htm>

25. In co-operation agreements, fourteen out of the fifteen co-operation agreements reviewed have detailed provisions on notifications. Those provisions usually define the notification requirements concerning enforcement activities with possible effect on the other party's important interests, the circumstances requiring notifications, its timing, content and modality.

#### 2.4.1. *Circumstances that may require a notification*

26. Thirteen out of the fourteen co-operation agreements with notification provisions provide that the competition authority of a party should notify the other's authority when it considers its *enforcement activities* may affect important interests of the other party. They also provide a non-exhaustive list of enforcement activities that may affect important interests of the other party, therefore ordinarily require notification. Enforcement activities which might be the object of a notification include those that:

- involve anticompetitive activities, other than mergers or acquisitions, carried out in any substantial part in the territory of the country of the other Party (13 agreements);
- involve mergers or acquisitions in which (i) one or more of the parties to the transaction, or (ii) a company controlling one or more of the parties to the transaction, is a national of the country of the other Party (13 agreements);
- involve conduct considered by the notifying competition authority to have been required, encouraged or approved by the other Party (13 agreements);
- involve remedies that require or prohibit conduct in the territory of the country of the other Party (13 agreements);
- are relevant to enforcement activities of the other Party (11 agreements);
- involve the seeking of information located in the territory of the other Party (6 agreements);
- are against a national or nationals of the country of the other Party<sup>13</sup> (4 agreements); or
- against a company or companies incorporated or organised under the applicable laws and regulations within the territory of the other Party (4 agreements).

27. In addition, where one party's officials are allowed to visit the territory of the other party in the course of a competition law investigation, some agreements require the visiting party to notify the other party when such visit takes place [Canada-Mexico (2001), Mexico-US (2000), Brazil-US (1999), Israel-US (1999) and Canada-US (1995)].

#### 2.4.2. *Timing of notifications*

28. Notifications are usually due as soon as possible after a party becomes aware that a notifiable circumstance has materialised and anyway sufficiently in time to permit the views of the other party to be taken into account. In addition to this general principle embedded in most co-operation agreements, some agreements provide for specific deadlines in specific circumstances:

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<sup>13</sup> Although the second item only concerns mergers and acquisitions, this item also covers enforcement activity regarding matters other than mergers or acquisitions.

- With respect to mergers and acquisitions, eight agreements specify particular timings in respective merger proceedings. In those agreements, notifications are typically required (i) at an early stage of their proceedings, namely by the time when one agency requests documentary material or some sort of information on the proposed transaction or initiates formal proceedings pursuant to its competition laws. Some of these agreements [EU-Korea (2009), EU-Japan (2003) and EU-US (1991)] require additional notifications (ii) by the time when one of the competition authorities adopts some forms of decision on the transaction, for example, when it issues a statement of objections, files a complaint challenging the transaction, or takes a decision to call for a hearing, or enters into a consent decree.
- Eight agreements provide specific timings with respect to notifications regarding matters other than mergers and acquisitions. Notifications are usually required far enough in advance of the important enforcement actions of the case. Those enforcement activities listed vary across agreements, but include (i) the filing of a court claim, (ii) the seeking of temporary restraining order or preliminary injunction, (iii) initiation of criminal/civil proceedings, (iv) the entry into a settlement, (v) the issuance of a statement of objections (vi) the adoption of a decision, (vii) the entry into a proposed consent order or decree, and (viii) the issuance of a business review or adversary opinion that will ultimately be made public.
- Five co-operation agreements [Canada-Mexico (2001), Mexico-US (2000), Canada-EU (1999), Israel-US (1999) and Canada-US (1995)] include special timeframes for notifications when a party to the agreement requests information located in the other party's territory or from a person located in the other party's territory. Different deadlines may be provided depending on whether the request for written information is voluntary or compulsory, or whether or not the request involves oral testimony or interviews.

#### 2.4.3. *Content and modality of notifications*

29. In order for the recipient of a notification to assess the impact of the notified event in its jurisdiction and to ensure that its views can be taken effectively into account, it is preferable that notifications contain sufficient details of the notified event. Thirteen out of the fourteen agreements have provisions to confirm this principle. Nine of those further specify items which should be included in notifications. Those are (i) the nature of the activities and the practices under investigation (9 agreements), (ii) the legal provisions concerned (9 agreements), (iii) names (and locations) of the persons involved (8 agreements), (iv) the relevant markets (2 agreements) and (v) the date of the enforcement activities (2 agreements).

30. Three agreements [Canada-Mexico (2001), Mexico-US (2000) and Canada-US (1995)] have an additional requirement with respect to notifications concerning a proposed undertaking or a consent order or decree and require that copies of the relevant documents including any statement of the competitive impact are included in such notifications.

31. Notifications should normally be carried out between the competition authorities and some agreements require confirmation through the diplomatic channels after the initial notification between competition authorities.<sup>14</sup> Available methods for notifications vary depending on agreements; those listed in some agreements include oral, telephonic, written, facsimile communication and electronic mail.

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<sup>14</sup> Only Australia-US (1982) requires that notifications be made through diplomatic channels without requiring prior direct communication between competition authorities.

2.4.4. *Notification of activities other than enforcement activities*

32. In addition to *enforcement activities* that may affect important interests of the other party, 8 agreements require notifications when the competition authorities intervene or publicly participate in a regulatory or judicial (or administrative) proceeding if the issues addressed may affect the other party's important interests. In this case, a notification is usually required at the time of the intervention or participation.

33. Japan-US (1999) requires a notification when a party initiates a survey which the party considers may affect the important interests of the other party.<sup>15</sup> It also calls for a notification when a party initiates a civil action in the courts of the other against a private party based on the competition laws of the other party.<sup>16</sup>

2.4.5. *Notification in MoUs*

Notifications are often provided in MoUs/interagency agreements, but notifications in MoUs tend to be less formal. For example, some MoUs may simply state that each party will notify the other party of its enforcement activities that may affect the important interests of the other party and that such notification will be given as promptly as possible. This preference for less formal notifications derives from agencies' concern for the administrative burden and manageability of excessive notification obligations.

2.5. ***Provisions on “enforcement co-operation and investigative assistance” (Annex 6)***

34. Competition authorities face an increasing number of cases with an international dimension where they need to access information or evidences located outside their jurisdiction. In these circumstances, they have recognised that mutual enforcement co-operation can contribute to efficient competition law enforcement in their respective jurisdictions. Thus, co-operation agreements often include a provision allowing a competition authority in one jurisdiction to take an enforcement action for the enforcement of the competition authority in another jurisdiction.

35. According to the 2014 OECD Recommendation on international co-operation, investigative assistance may include providing public information, assisting in obtaining information, employing its authority to compel the production of information, ensuring service of official documents, and executing searches to obtain evidence on behalf of another agency. The scope and range of enforcement co-operation/investigative assistance which one competition authority can provide varies according to the requirements of respective domestic laws and/or co-operation agreements. Generally, exchange of non-confidential information would be easier for competition authorities to engage in as there is normally no legal limitation to prevent it, whereas executing searches or employing any other statutory authority might require a specific legal authority for the authority to engage in. Regardless of those differences, enforcement co-operation would generally help competition authorities to access information which would otherwise be difficult to obtain, thus contributing to effective competition law enforcement in their respective jurisdictions.

36. Fourteen out of the fifteen co-operation agreements reviewed have sections related to enforcement co-operation (including information exchange). Those sections vary in structures and components. Some co-operation agreements may include information exchange in the enforcement co-operation section, whereas other co-operation agreements may have a separate section dedicated to information exchange in addition to the enforcement co-operation section because information exchange is

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<sup>15</sup> Article 2-6

<sup>16</sup> Article 2-8

particularly important among various enforcement co-operation activities. Sections dedicated to information exchange will be discussed in the next section (2.6. Exchange of Information).

37. Sections on enforcement co-operation generally consist of (1) general principles and (2) lists of activities which might be provided as enforcement co-operation.

#### 2.5.1. *General principles*

38. Some agreements begin with provisions confirming the common interest of the signatory parties to co-operate in competition law enforcement. For example, five agreements confirm the parties' acknowledgement that co-operating in the detection of anticompetitive activities and the competition law enforcement is their common interest to the extent compatible with their respective laws and important interests, and according to their reasonably available resources. Seven agreements specifically mention the importance of information exchange. They typically state that "the parties further acknowledge that it is in their common interest to share information which will facilitate the effective application of their competition laws and promote better understanding of each other's enforcement policies and activities."

39. Other agreements (six) more directly require the competition authority of each party to render assistance to the competition authority of the other party in its enforcement activities to the extent consistent with the laws and regulations of the party rendering the assistance and the important interests of that party, and within its reasonably available resources.

40. In addition to these provisions, four agreements require the parties to consider adopting further arrangements to enhance enforcement co-operation.

#### 2.5.2. *Lists of activities which might be provided as part of enforcement co-operation*

41. Although some agreements contain only a general statement confirming the importance of, or requiring enforcement co-operation, other agreements list concrete activities which would be provided as enforcement co-operation. Those activities typically listed are:

(1) to provide the competition authority of the other party, upon request and in accordance with the provisions of the agreement, with information within its possession that is relevant to the enforcement activities of the competition authority of the other party (10 agreements);

(2) to provide the competition authority of the other party 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 by the competition authority of the other party (9 agreements);

(3) to inform the competition authority of the other party with respect to its enforcement activities involving anti-competitive activities/ conduct that the informing competition authority considers may also have an adverse effect on competition within the territory of the other party (8 agreements);

(4) to assist the other party, upon request, in locating and securing evidence and witnesses and in securing voluntary compliance with requests for information in its territory (4 agreements).

### 2.5.3. *Enhanced investigative assistance*

42. Some agreements provide further investigative assistance, such as obtaining testimony/statements or conducting searches on behalf of another authority. One example of such agreements 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).<sup>17</sup> The investigative assistance under the interagency agreement includes the provision of assistance by way of exercising any of their statutory information gathering powers.<sup>18</sup> Another example is Australia-US on mutual antitrust enforcement assistance (1999), which contemplates the competition authorities of each party to obtain evidence at the other party's request by taking testimony/statements, by obtaining documentary evidence, by locating or identifying persons, and by executing searches and seizures.

43. Also, the earliest co-operation agreement, Germany-US (1976) provides a wide range of investigative assistance activities. For example, it explicitly states that assistance includes for "the attendance of public officials of the requested party to give information, views or testimony" and "the transmittal or the making available of documents and legal briefs and pleadings of the requested party." It also provides for the competition authority of a party to transmit a communication seeking information or interviews to a person or enterprise in its jurisdiction on behalf of the other party when the authority of the other party seeks to obtain information or interviews from the person or enterprise.

### 2.6. *Provisions on the "exchange of information" (Annex 7)*<sup>19</sup>

44. The ability to exchange information is crucial for competition authorities to co-operate effectively. Competition authorities highlighted that the ability to exchange information, particularly confidential information, can substantially contribute to more effective co-operation and competition law enforcement and this has been the central area of the competition authorities' discussion on enforcement co-operation. One of the important outcomes of the discussion is reflected in the recent adoption of the 2014 OECD Recommendation on international co-operation, which significantly expanded its provisions on information exchange, including a provision recommending adopting tools to allow the exchange of confidential information.

45. Information exchange is one form of investigative assistance. It can be divided into exchange of non-confidential information and exchange of confidential information.<sup>20</sup> Exchange of confidential information may take place according either to confidentiality waivers or to 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

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<sup>17</sup> The provision of protected information from ACCC to the NZCC continues to be governed by the section 155AAA of the Australian Competition and Consumer Act 2010 (Section 5 of New Zealand-Australia on compulsorily-acquired information and investigative assistance (2013)). Thus, the 2013 arrangement only governs the provision of assistance from NZCC to ACCC.

<sup>18</sup> NZCC "A New Level of co-operation with the ACCC" on available at: <http://www.comcom.govt.nz/the-commission/media-centre/features/co-operation-arrangement-acc/>

<sup>19</sup> Note that information exchange between competition authorities is also subject to the confidentiality provision of each agreement.

<sup>20</sup> For the distinction between confidential information and non-confidential information, see Footnote 6.

the information.”<sup>21</sup> Such legal provisions allowing for the exchange of confidential information may be national law provisions or provisions in international agreements.

#### 2.6.1. *Exchange of non-confidential information based on provisions in first generation agreements*

46. Exchange of non-confidential information is generally encouraged by co-operation agreements. Most co-operation agreements which have been concluded to date are first generation agreements which allow only for exchange of non-confidential information.

47. In first generation co-operation agreements, provisions on information exchange are often included in the enforcement co-operation section. Three agreements have a specific section dedicated to information exchange, but the scope of the information exchange do not differ from provisions on information exchange in the enforcement co-operation section of the other agreements.

#### 2.6.2. *Exchange of confidential information based on confidentiality waivers*

48. In practice, the exchange of confidential information most often takes place through the use confidentiality waivers. As exchange of confidential information under confidentiality waivers is generally governed by the terms and conditions of the waivers, co-operation agreements generally do not have detailed provisions on exchange of confidential information based on waivers. In this respect, only the EU-Switzerland (2013) agreement has a provision to confirm that “(t)he competition authorities of the Parties may transmit information in their possession to each other when the undertaking which provided the information has given its express consent in writing” and put conditions when such transmission involves personal data.<sup>22</sup> Also, a few agreements have a provision encouraging the competition authorities to ask for confidentiality waivers in relation to co-ordination of parallel investigations.

#### 2.6.3. *Exchange of confidential information based on provisions in second generation agreements*

49. Only a few bilateral/multilateral co-operation agreements include provisions for the competition authorities to exchange confidential information without the need to seek prior authorisation from the source of the information. To date, Australia-Japan (2015), EU-Switzerland (2013), New Zealand-Australia on compulsorily-acquired information and investigative assistance (2013), Nordic Co-operation Agreement (2001) and Australia-US on mutual antitrust enforcement assistance (1999) contain such provisions (or “information gateways”) and are therefore referred to as second generation agreements.

50. Despite their differences, information gateway provisions in second generation agreements generally cover types of information exchange (i.e. the ability to discuss, transmit or obtain information, etc.) and include confidentiality safeguards, limitations on use or further disclosure of the information. As the language of the provisions varies to a significant extent,<sup>23</sup> this section only highlights some of the major similarities and differences existing between the information gateways.

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<sup>21</sup> Article 10 of the Recommendation

<sup>22</sup> Article 7-3

<sup>23</sup> For example, provisions in Nordic Co-operation Agreement (2001) are rather simple whereas those in Australia-US on mutual antitrust enforcement assistance (1999) are very detailed.

51. As to the types of information exchange permitted under each agreement, all second generation agreements cover the exchange of information already in the possession of the competition authority.<sup>24</sup> New Zealand-Australia on compulsorily-acquired information and investigative assistance (2013) and Australia-US on mutual antitrust enforcement assistance (1999) further allow the competition authorities to proactively obtain evidence for the other party using its investigatory authority,<sup>25</sup> such as taking the testimony or statements or executing searches and seizures.

52. Three agreements [EU-Switzerland (2013), New Zealand-Australia on compulsorily-acquired information and investigative assistance (2013) and Australia-US on mutual antitrust enforcement assistance (1999)] provide that transmission/ provision of confidential information may take place at the request of the other party or the competition authority of the other party.<sup>26</sup> These three agreements require such request to be made in writing and specify what elements should be included or accompanied in the requests.

53. Each second generation agreement provides various limitations/conditions on the exchange of confidential information. For example, special treatment/consideration may be given to information obtained under leniency or settlement procedures<sup>27</sup> and/or information covered by procedural rights and/or privileges.<sup>28</sup> The EU-Switzerland (2013) agreement requires that both signatory parties must be investigating the same or related conduct or transaction in order for confidential information to be transmitted without waivers.<sup>29</sup>

54. As to the limitation on use, second generation agreements may limit the use of the confidential information transmitted to the other party only (i) by the competition authority, (ii) for the competition law enforcement, and/or (iii) for a defined purpose.<sup>30</sup> Two agreements further limit the use only to the investigation of the same or a related subject.<sup>31</sup> Some agreements put restrictions on the use in criminal proceedings.<sup>32</sup> The EU-Switzerland (2013) agreement excludes the possibility to use such information to impose sanctions on natural persons.<sup>33</sup>

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<sup>24</sup> Australia-Japan (2015) Article 4.3, EU-Switzerland (2013) Article 7-2, 7-3, 7-4, New Zealand-Australia on compulsorily-acquired information and investigative assistance (2013) Article 8.2, 11, Nordic Co-operation Agreement (2001) Article IV 1, Australia-US on mutual antitrust enforcement assistance (1999) Article II E.1.

<sup>25</sup> New Zealand-Australia on compulsorily-acquired information and investigative assistance (2013) Article 8.3, 11, Australia-US on mutual antitrust enforcement assistance (1999) Article II E. 2.

<sup>26</sup> EU-Switzerland (2013) Article 7-4, New Zealand-Australia on compulsorily-acquired information and investigative assistance (2013) Article 9, 10, Australia-US on mutual antitrust enforcement assistance (1999) Article III.

<sup>27</sup> EU-Switzerland (2013) Article 7-6.

<sup>28</sup> EU-Switzerland (2013) Article 7-7, New Zealand-Australia on compulsorily-acquired information and investigative assistance (2013) Article 13.3, 16, Australia-US on mutual antitrust enforcement assistance (1999) Article II. I, III. B. 4, and IX. D.

<sup>29</sup> Article 7-4.

<sup>30</sup> Australia-Japan (2015) Article 10.2, EU-Switzerland (2013) Article 8-2, 8-3, Nordic Co-operation Agreement (2001) Article IV (b), Australia-US on mutual antitrust enforcement assistance (1999) Article VII A. B.

<sup>31</sup> Australia-Japan (2015) Article 10.3, EU-Switzerland (2013) Article 8-2.

<sup>32</sup> Article 15.8 of the Agreement between Australia and Japan for an Economic Partnership, New Zealand-Australia on compulsorily-acquired information and investigative assistance (2013) Article 14.

<sup>33</sup> Article 8-4.

55. As for the confidentiality of the information, second generation agreements require maintaining the confidentiality of the information exchanged according to the respective laws or procedures of the parties.<sup>34</sup> The Nordic Co-operation Agreement (2001) further requires protecting the information with a level of confidentiality that is at least equivalent to that of sending party.<sup>35</sup> Those agreements may require parties to oppose/protect against a third party application for disclosure.<sup>36</sup> Two agreements require a notification to the other party in case of unauthorised use or disclosure of the information received through the gateway.<sup>37</sup> Also, the EU-Switzerland (2013) agreement has a special provision for the protection of personal data.<sup>38</sup>

56. Further disclosure of the confidential information exchanged under second generation agreements is generally restricted. These agreements usually list the different circumstances where disclosure may be permitted: for example, where the providing authority gives consent,<sup>39</sup> where the further disclosure is required by the respective laws,<sup>40</sup> where the information is used in the investigation or court proceedings.<sup>41</sup> Under the Australia-US on mutual antitrust enforcement assistance (1999) agreement, the information may be used or disclosed with respect to the administration or enforcement of other laws only if such use or disclosure is essential to a significant law enforcement objective and the providing authority gives consent.<sup>42</sup>

57. Furthermore, four agreements explicitly state that the sending party can impose on a case-by-case basis additional terms/conditions which the receiving party must comply with when receiving the information.<sup>43</sup>

58. The Australia-US on mutual antitrust enforcement assistance (1999) agreement has a provision for the returning of all evidence obtained and their copies at the conclusion of the investigation or proceeding.<sup>44</sup>

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<sup>34</sup> Australia-Japan (2015) Article 10.1, EU-Switzerland (2013) Article 9-1, New Zealand-Australia on compulsorily-acquired information and investigative assistance (2013) Article 15.2, Australia-US on mutual antitrust enforcement assistance (1999) Article VI. B.

<sup>35</sup> Article IV (a).

<sup>36</sup> Australia-Japan (2015) Article 10.1, EU-Switzerland (2013) Article 9-1, New Zealand-Australia on compulsorily-acquired information and investigative assistance (2013) Article 15.3, Australia-US on mutual antitrust enforcement assistance (1999) VI.A.

<sup>37</sup> EU-Switzerland (2013) Article 9-2, Australia-US on mutual antitrust enforcement assistance (1999) Article VI. C. D.

<sup>38</sup> Article 9-3.

<sup>39</sup> Nordic Co-operation Agreement (2001) Article IV 1. (c), Australia-US on mutual antitrust enforcement assistance (1999) Article VII B.

<sup>40</sup> Australia-Japan (2015) Article 10.2.

<sup>41</sup> EU-Switzerland (2013) Article 9-1, Australia-US on mutual antitrust enforcement assistance (1999) Article VI E.

<sup>42</sup> Article VII. C.

<sup>43</sup> Australia-Japan (2015) Article 4.3, EU-Switzerland (2013) Article 8-5, New Zealand-Australia on compulsorily-acquired information and investigative assistance (2013) Article 12, Australia-US on mutual antitrust enforcement assistance (1999) Article V B.

<sup>44</sup> Article XI.

**Table 4. Information gateway provisions in second generation agreements\***

Agreement	Types of information exchange	Request for information	Condition/ limitation to the exchange	Limitation on use	Confidentiality of information	Disclosure may be permitted
1 Australia-Japan (2015)	Sharing information obtained during the course of an investigation.	N/A		Only by the receiving authority for the competition law enforcement.  Only for the investigation with regard to the same or related subject.  (No use in criminal proceedings**)	Protect according to respective laws and regulations.  Protect against third party application for disclosure.	If such use or disclosure is required by respective laws and regulations. **
2 EU-Switzerland (2013)	Discussing and/or transmitting for use as evidence information obtained by investigative process.	Must be in writing.	Both parties need to investigate the same or related subject.  Information obtained under leniency or settlement procedures shall not be discussed or transmitted without waivers.  Information covered by procedural rights and privileges will not be discussed, requested or transmitted.	Only for the competition law enforcement by the competition authority.  Only for the investigation with regard to the same or related subject.  Only for the purpose defined in the request.  No use to impose sanctions on natural persons.	Protect according to the receiving party's legislation.  Oppose third party application for disclosure.  Notify in case of unauthorised use or disclosure.  Personal data should be protected by respective legislation	For obtaining a court order in relation to the competition law enforcement.  If made to undertakings subject to a competition law investigation/procedure and against whom the information may be used if such disclosure is required by the respective laws.  If made to courts in appeal procedures.  For the right of access to documents by laws.

3	New Zealand-Australia on compulsory-acquired information and investigative assistance (2013)	Providing compulsory-acquired information  Providing investigative assistance (e.g. exercising its search and notice power)	Must be in writing	Information intended to be confidential, made in relation to settlement or mediation between the parties, or protected by a privilege will not be provided.  The provision of statements made by individuals in response to the NZCC investigations are subject to certain restrictions (e.g. no use for criminal proceedings)		Protected according to the receiving party's procedures.  Protect against the third party application for disclosure.	
4	Nordic Co-operation Agreement (2001)	Exchange classified information	N/A		Only for the purpose established in the agreement.	Equivalent protection required.	With the consent of the providing authority.
5	Australia-US on mutual antitrust enforcement assistance (1999)	Disclosing, providing, or exchanging or discussing antitrust evidence in the possession of an Antitrust Authority  Obtaining antitrust evidence for the other party (e.g. taking testimony or statements, executing searches and seizures)	Must be in writing	Assistance may be denied if a request is not made according to the agreement, if it would exceed the reasonably available resource, if it would not be authorized by the domestic laws of the assisting party, or if it would be contrary to the public interest of the assisting party.	Only for the competition law enforcement  Only in the investigation or proceeding specified in the request and for the purpose stated in the request.	Protected according to the receiving party's laws and regulations.  Report in case of unauthorised use or disclosure.  Oppose third party application for disclosure.	In an action or proceeding for a competition law violation if such disclosure is required by laws.  With the consent of the providing authority.  May be used or disclosed with respect to the administration/enforcement of other laws only if such use or disclosure is essential to a significant law enforcement objective and the providing authority gives consent.

\* The purpose of this table is to compare the language of provisions in second generation agreements. Although the exchange of confidential information is also governed by domestic laws in each jurisdiction, requirements by domestic laws are not covered by the table.

\*\* Provided in Article 15.8 of the Agreement between Australia and Japan for an Economic Partnership on 8 July 2014.

## 2.7. Provisions on “co-ordination of investigations and proceedings” (Annex 8)

59. Competition authorities face increasing situations where they are investigating the same or related transactions. In parallel investigations, it is often more effective and efficient for the enforcers involved to work closely together and to co-ordinate their actions considering the effects that one enforcement action may have on the other jurisdictions. For example, agencies may co-ordinate each other before opening formal investigations/proceedings to discuss the initial theory of the case or to co-ordinate dawn raids; in the course of the proceedings to discuss the theory of harm or the likely anti-competitive effects of the investigated conduct/transaction; or when the investigation is completed to discuss possible remedies or sanctions. This is today standard agencies’ practice in international cartel investigations and in cross-border merger investigations. The 2014 OECD Recommendation on international co-operation also recommends co-ordinating parallel investigations or proceedings and lists examples of possible co-ordination arrangements, including (i) providing notice of applicable time periods and schedules for decision-making; (ii) co-ordinating the timing of procedures; (iii) requesting 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; and (v) co-ordinating the design and implementation of remedies.<sup>45</sup>

60. Thirteen out of the fifteen co-operation agreements include provisions encouraging the competition authorities to co-ordinate enforcement activities with their counterparts in parallel investigations. Co-ordination provisions typically consist of (1) a general statement on co-ordination, (2) factors to be considered when deciding whether to co-ordinate their actions, (3) how they co-ordinate each other and (4) a termination clause.

### 2.7.1. General statement on co-ordination

61. All co-ordination provisions have a general statement at the beginning which encourages the authorities engaging in parallel investigations to co-ordinate their enforcement actions. It typically states “(w)here the competition authorities of both Parties are pursuing enforcement activities with regard to related matters, they shall/will consider co-ordination of their enforcement activities.”

### 2.7.2. Factors to be considered when deciding whether to co-ordinate their actions

62. In addition to general provisions encouraging co-ordination, most agreements (11 out of the 13 agreements which have co-ordination provisions) list factors which competition authorities may consider when deciding whether to co-ordinate particular enforcement actions. Those factors include:

- the effect of such co-ordination on the ability of the competition authorities of both parties to achieve the objective of their enforcement activities (11 agreements);
- the relative ability of the competition authorities of the parties to obtain information necessary to conduct the enforcement activities (11 agreements);
- the possible reduction of cost (to the parties and) to the persons subject to the enforcement activities. With respect to the factor, two recent agreements [EU-Switzerland (2013), EU-Korea (2009)] use an expression “the possibility of avoiding conflicting obligations and unnecessary burdens for the undertakings/persons subject to the enforcement activities” (11 agreements);

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<sup>45</sup> Article VI of the Recommendation

- the extent to which the competition authority of either party can secure effective relief (or penalties) against the anticompetitive activities involved (8 agreements);
- the potential advantages of co-ordinated relief/remedies to the parties and to the persons subject to the enforcement activities (7 agreements); and
- the opportunity to make more efficient use of their resources (5 agreements).

### 2.7.3. *How they co-ordinate*

63. Co-ordination provisions usually do not list specific types of co-ordination arrangements. Rather, those provisions generally state how the competition authorities co-ordinate in parallel investigations; they require the competition authority of each party to seek to conduct its enforcement activities with careful consideration to the objectives of the enforcement activities by the competition authority of the other Party when they undertake any co-ordinated enforcement activities. Among them, the Canada-EU (1999) agreement has a stronger language in this respect, requiring both parties to “seek to maximize the likelihood that the other party’s enforcement objectives will also be achieved.”

64. Nine out of the thirteen agreements have a provision encouraging the competition authorities to ask for confidentiality waivers from the source of information to promote the discussion between the authorities and to accelerate co-ordination. The typical language used for the purpose is “(w)here the competition authorities of both Parties are pursuing enforcement activities with regard to related matters, the competition authority of each Party shall consider, upon request by the competition authority of the other Party and where consistent with the important interests of the requested Party, inquiring/ascertaining whether companies/persons who have provided confidential information in connection with those enforcement activities will consent to the sharing of such information with the competition authority of the other Party.” Although this language is often included in the co-ordination provisions, it might be more appropriate to include a section on information sharing if there is a separate dedicated section.

65. Very few agreements mention specific types of co-ordination arrangement. The few who do so refer to agreeing on the timing of the activities [Canada-EU (1999)] or on the timing of inspections [EU-Switzerland (2013)]. As pointed out before, the co-ordination section in the 2014 OECD Recommendation on international co-operation lists a number of possible co-ordination arrangements for the authorities’ consideration.

### 2.7.4. *Termination clause*

66. Finally, most agreements (11 out of the 13) have a limitation or termination clause which allows one party to limit or terminate the co-ordination arrangement and pursue their enforcement activities independently. EU-Korea (2009) and EU-Swiss (2013) do not mention the possibility of the termination of the co-ordination arrangement.

## 2.8. Provisions on “negative comity” (Annex 9)

### 2.8.1. Comity

67. 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. For over 100 years, public international law has acknowledged comity as a means for tempering the effects of the unilateral assertion of extraterritorial jurisdiction. Comity is therefore a horizontal, sovereign state-to-sovereign state concept, as laid down by the United States Supreme Court in *Hilton v Guyot* in 1895.<sup>46</sup> It is not the abdication of jurisdiction; instead, it is the exercise of jurisdiction with an accompanying understanding of the impact that the exercise of jurisdiction may have on the law enforcement activities of other countries. Jurisdictions apply international comity principles in many substantive areas of law (e.g., tax, insolvency, anti-bribery, environmental regulation) to ensure that complex cross-border enforcement problems are resolved in a manner that balances the policy and enforcement concerns of the states involved.

68. To avoid the risk of possible conflicts that may arise from unilateral enforcement activities and to respect mutual interests, many co-operation agreements include so-called “comity” provisions. There are two types of comity, namely “positive” and “negative” comity. Positive comity provisions will be discussed separately in Section 2.9.

### 2.8.2. Negative comity provisions

69. Negative comity is also called “traditional comity” and involves a country’s consideration of how to prevent its laws and its law enforcement actions from harming another country’s important interests. The principle is based on the recognition that a particular enforcement activity by one jurisdiction may adversely affect important interests of the other jurisdiction and may produce conflicts between jurisdictions. For example, competition authorities may arrive at conflicting remedies/outcomes after independent investigations/proceedings that may undermine the remedial objective of at least one of the authorities involved. Negative comity principle requires parties to consider the important interests of their counterparts when they enforce competition laws in order to avoid conflicts that might otherwise arise between jurisdictions. Such consideration may include informing the other party of the progress of such enforcement activities, aligning remedies and timing of the enforcement actions with the other, taking alternative enforcement actions which would achieve the same enforcement objective without harming the important interests of the other, or abstaining from taking its enforcement actions where it considers appropriate. However, negative comity consideration is voluntary and within the discretion of the party considering the other’s interest. It does not require parties to accommodate their enforcement actions when they have an adverse effect on the important interests of the other party.

70. Negative comity principle is included in co-operation agreements as a mechanism for “avoidance of conflicts” and fourteen out of the fifteen co-operation agreements reviewed have negative comity provisions. Those provisions have some variations, but usually consist of (1) a general principle of negative comity requiring a party to consider the important interests of the other party, (2) obligations of a party taking the enforcement activity which may affect important interests of the other party, and (3) factors which a party should consider in assessing appropriate measures to address the conflict. In addition to those, some agreements may mention (4) where an important interest of a party is reflected and (5) how a party’s important interests may be affected.

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<sup>46</sup> 159 U.S. 113 (1895)

### 2.8.3. *General principle of negative comity*

71. Negative comity provisions usually start with a general principle requiring a party (the competition authority of a party to the agreement) to take into account (or give careful consideration to) the important interests of the other party throughout all phases of its enforcement activities (12 of the 14 agreements with negative comity provisions have such a general statement). More specifically, a party is required to do so, especially in (1) decisions regarding the initiation of enforcement activities, (2) the scope of enforcement activities and (3) the nature of sanctions or other relief sought in each case.

### 2.8.4. *Duties of a party taking the enforcement activity which may affect important interests of the other party*

72. Where a specific enforcement activity by one party may affect the important interests of the other party, nine out of the fourteen agreements with negative comity provisions provide that the party taking the enforcement activity shall endeavour to provide timely notice of significant developments of such enforcement activities. Among these nine agreements, two recent agreements [EU-Korea (2009) and EU-Switzerland (2013)] provide two additional duties; (1) to require the first party to give the other party an opportunity to provide comments and (2) to take into consideration the comments of the other party.

### 2.8.5. *Factors which a party should consider in assessing appropriate measures to address the conflict*

73. Where it is considered that enforcement activities by one party may adversely affect important interests of the other party, negative comity provisions often require to “seek an appropriate accommodation,” but do not specify concrete measures to address the competing interests as comity is not the abdication of jurisdiction, but one way to exercise jurisdiction by a party with consideration of the influence that the exercise of jurisdiction may have on the important interests of the other party.

74. Negative comity provisions often list a number of relevant factors in considering possible measures to accommodate the competing interests while fully respecting the independence of the competition authority of either party to make its decision. Those factors include, but are not limited to:

(1) the relative significance to the anticompetitive activities of conduct or transactions occurring within the territory of a party as compared to conduct or transactions occurring within the territory of the other party (11 agreements),

(2) the relative significance (and foreseeability) of the (actual or potential) effects of the anti-competitive activities on the enforcing party's important interests as compared to the effects on the other party's important interests (11 agreements),

(3) the extent to which enforcement activities by the other party with respect to the same person (either natural or legal) (including judgments or undertakings resulting from such activities) would be affected (11 agreements),

(4) the extent to which private persons, either natural or legal, will be placed under conflicting requirements by both parties (10 agreements),

(5) the presence or absence of evidence of an intention on the part of those engaged in the anticompetitive activities to affect consumers, suppliers or competitors within the territory of the country of the party conducting the enforcement activities (9 agreements),

(6) the degree of conflict or consistency between the enforcement activities of a party (including remedies) and the laws (and regulations of the other party or the policies or important interests) of the other party (9 agreements),

(7) the location of relevant assets (8 agreements. Among them, Canada-Japan (2005), EU-Japan (2003) and Japan-US (1999) add the location of parties to the transactions),

(8) the degree to which a remedy, in order to be effective, must be carried out within the other party's territory (8 agreements). With respect to this item, some agreements (Canada-Japan [2005], EU-Japan (2003) and Japan-US (1999)] use an expression “the degree to which effective penalties (sanctions) or relief can be secured by the enforcement activities of the Party against the anticompetitive activities”.

(9) the existence or absence of reasonable expectations that would be furthered or defeated by the enforcement activities (6 agreements)

(10) the extent to which the anticompetitive activities substantially lessen competition in the market of each country (3 agreements); and

(11) the need to minimise the negative effects on the other Party's important interests, in particular when implementing remedies to address anti-competitive effects within the party's territory [1 agreement, Canada-EU (1999)].

2.8.6. *Where an important interest of a party is reflected and how a party's important interests may be affected*

75. Five out of the fourteen co-operation agreements describe where an important interest of a party normally exists and how such important interest may be affected. According to those provisions, an important interest of a party normally exists “in antecedent laws, decisions or statements of policy by the competent authority” and such important interests “may be affected at any stage of enforcement activity by the other party” but it is also recognized that “typically, the potential for adverse impact on important interests by enforcement activity by the other party is less at the investigative stage and greater at the stage at which conduct is prohibited or penalized, or at which other forms of remedial orders are imposed.”

**2.9. Provisions on “positive comity” (Annex 10)**

76. “Positive comity” allows one party to request the other party to initiate and take appropriate enforcement actions with respect to anti-competitive activities occurring in the territory of the requested party that adversely affect the interests of the requesting party. It is aimed at more effective allocation of enforcement resources by allowing the better-placed party to deal with the problem (e.g. it avoids difficulties of obtaining evidence in a foreign jurisdiction) and at minimising unnecessary conflicts between jurisdictions that may be caused by one party’s directly taking an enforcement action against activities occurring in the other jurisdiction.

77. Positive Comity is rarely invoked formally. There is an old case, the Sabre/Amadeus case in 1999, where a formal referral was made based on the positive comity provision of the EU-US co-operation agreement (1991). In the case, the US authorities referred the European Commission to investigate a discriminatory conduct related to computerised reservation systems for air transport services owned by airline companies including some European airline companies, and the European Commission initiated an investigation against one of the airline companies based on the request made by the US. Although it is not officially invoked so often, the idea of positive comity has been employed informally in some referral cases. For example, a competition authority may allow another competition authority to lead the investigation because most of the conduct in question takes place in the jurisdiction of the latter competition authority. Also, it is known that competition authorities sometimes rely on remedies employed by other competition authorities and do not to seek their own remedies in merger investigations when they conclude that their concern is properly addressed by the foreign remedies. Those cases may also be

considered as examples of application of positive comity principles although they do not involve any referral of cases.

78. Twelve out of the fifteen co-operation agreements reviewed include a positive comity provision, according to which a party can request the other party for its enforcement actions when the anticompetitive activities are carried out in the latter party's territory and affect its important interests. The anticompetitive activities at issue need to be illegal under the competition laws of the requested party as they would be investigated or remedied by the competition laws of the requested party. Upon request, the requested party will consider whether or not to initiate/expand its enforcement actions. If it decides to respond to the request positively, it has to inform the requesting party of the outcome as well as significant interim developments. However, the response to a positive comity request is voluntary and within the discretion of the requested party. The requesting party is not prevented from taking enforcement actions under its own laws.

79. The text of positive comity provisions are very similar to one another and usually consists of (1) a general principle on positive comity, (2) the request for enforcement action, (3) how the requested party responds to the request, and (4) the voluntary nature of positive comity activities.

#### 2.9.1. *General principle on positive comity*

80. All positive comity provisions have a general statement empowering a party to make a positive comity request to the other party. The typical language used here is "(i)f the competition authority of a Party believes that anticompetitive activities carried out in the territory of the other Party may adversely affect the important interests of the former Party, it may, taking into account the importance of avoiding conflicts regarding jurisdiction and taking into account that the competition authority of the other Party may be in a position to conduct more effective enforcement activities with regard to such anticompetitive activities, request that the competition authority of the other Party initiate (or expand) appropriate enforcement activities" or more shortly "(i)f a Party believes that anticompetitive activities carried out in the territory of the other Party adversely affect its important interests, the first Party may request that the other Party's competition authority initiate appropriate enforcement activities."

81. In addition, some co-operation agreements (7 of the 12 agreements with positive comity provisions) have a provision to confirm that anticompetitive activities in one party's territory may also have adverse effect in the other's territory and that it is in both parties' interest to seek relief against anticompetitive activities of this nature.

#### 2.9.2. *Request for enforcement action*

82. All agreements which have positive comity provisions provide a similar framework with a respect to request for enforcement action: "(t)he request shall be as specific as possible about the nature of the anticompetitive activities and their actual or potential effect on the important interests of the Party whose competition authority has made the request, and shall include an offer of such further information and other co-operation as the requesting competition authority is able to provide."

2.9.3. *How the requested party responds to the request*

83. As to how the requested party responds to the request, those provisions typically provide that “(t)he requested competition authority shall carefully consider whether to initiate enforcement activities, or whether to expand ongoing enforcement activities, with respect to the anticompetitive activities identified in the request” and “(t)he requested competition authority shall inform the requesting competition authority of its decision as soon as practically possible. If enforcement activities are initiated (or expanded), the requested competition authority shall inform the requesting competition authority of their outcome and, to the extent possible, of significant interim developments.” Only the Canada-EU (1999) agreement requires that the requested party inform the requesting party not only of its decision but also of the reasons for its decision.

2.9.4. *Voluntary nature of positive comity*

84. Whether/how to respond to the request is left to the requested party’s discretion. The requested party is not obliged to initiate/expand its enforcement action even if it receives such request from the other party. Similarly, the requesting party is not prevented from withdrawing its request or from taking enforcement activities by itself.

85. Ten out of the twelve co-operation agreements stipulate “(n)othing in this Article limits the discretion of the requested competition authority under its competition laws and enforcement policies as to whether or not to undertake enforcement activities with respect to the anticompetitive activities identified in the request or precludes the requesting competition authority from withdrawing its request/ from undertaking enforcement activities with respect to such anticompetitive activities.”

2.9.5. *Special agreements on positive comity*

86. In addition to comity provisions in normal co-operation agreements, some jurisdictions have concluded special agreements dedicated to positive comity. The EU-US on positive comity (1998) and Canada-US on positive comity (2004) are examples of such special agreements. These agreements further clarify and deepen the positive comity principle. For example, they clarify that positive comity requests under these agreements may be made even if the activities at issue do not violate the requesting party’s competition laws and regardless of whether the competition authorities of the requesting party have commenced or contemplate taking enforcement action. In particular, they identify the types of cases that one party will normally refer to the other and set out the obligations that the competition authorities undertake in handling these cases. They also establish the conditions under which the requesting party will normally “defer” or “suspend” its enforcement activities with respect to activities under the request during the other party’s enforcement activities. Those conditions include:

- (i) when the activities at issue do not have a direct, substantial and reasonably foreseeable impact on consumers in the requesting party’s territory (i.e. harm the requesting party’s exporters but not its consumers), or occur principally in and are directed principally towards the other party’s territory; and
- (ii) when the adverse effects can be and are likely to be fully and adequately investigated and eliminated or adequately remedied by the requested party’s enforcement.

87. However, even if the conditions for deferral or suspension are met, separate enforcement activities may be pursued where the anticompetitive activities justify the imposition of penalties within both jurisdictions.

88. EU-US on positive comity (1998) does not apply to merger investigations and Canada-US on positive comity (2004) does not apply to merger or cartel investigations<sup>47</sup>. Application of those agreements to merger investigations is excluded because merger reviews need to meet strict statutory deadlines that would not fit with suspensions or deferral of investigations.

2.10. *Provisions on “consultation” (Annex 11)*

89. Competition authorities frequently consult each other, but consultations are mostly done informally. It seems that competition authorities are less likely to engage in formal consultation.<sup>48</sup> Even though formal consultations are rarely invoked, most co-operation agreements (13 out of the 15 agreements) have consultation provisions. They normally presume that consultations may be requested by either party regarding any matter relating to the agreements (12 out of the 13 agreement with consultation provisions have such provisions). Among them, three agreements use more specific expressions, namely “any matter which may arise in the implementation (or operation) of the agreement.” Eight out of the thirteen agreements provide specific formality of requests for consultation and require “the request for consultations shall indicate the reasons for the request and whether any procedural time limits or other constraints require that consultations be expedited.”

90. With respect to the duties of the parties in relation to consultations, eight out of the thirteen agreements confirm duty of the parties to respond to the request by typically stating “(e)ach Party shall consult promptly when so requested with the view to reaching a conclusion that is consistent with the principles set forth in this Agreement.” Furthermore, five agreements clarify the duty to provide relevant information during consultations and provide “(d)uring consultations under this Article, each Party shall 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.” Six agreements provide for a duty to consider the representations of the other party in light of the principle of the agreements and to be prepared to explain the specific results of its application of those principles.

91. Five agreements further mention that consultations shall take place at the appropriate level. In this regard, the EU-US (1991) agreement specifically mentions the possibility to have consultations between the heads of the competition authorities.

92. The EU-Switzerland (2013) agreement has a unique provision in this respect, which provides that the parties shall consider reviewing the operation of the agreement and examine the possibility of further developing their co-operation. Furthermore, three agreements [Japan-US (1999), EU-Japan (2003) and Canada-Japan (2005)] provide for an additional consultation process which may take place through the diplomatic channel.

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<sup>47</sup> United State Federal Trade Commission “United States and European Communities Sign Agreement on “Positive Comity” in Antitrust Enforcement” on 4 June 1998, available at <https://www.ftc.gov/news-events/press-releases/1998/06/united-states-and-european-communities-sign-agreement-positive>. United States Federal Trade Commission “U.S. and Canada Sign Agreement to Provide For Enhanced International Antitrust Co-operation” on 5 October 2004, available at <https://www.ftc.gov/news-events/press-releases/2004/10/us-and-canada-sign-agreement-provide-enhanced-international>.

<sup>48</sup> Although it is not experience with co-operation agreements, the OECD/ICN report on international co-operation analysed the experience with the previous OECD Recommendation on International Co-operation (1995) and found that consultation provisions are less invoked compared to provisions on notifications, exchange of information and co-ordination of actions. (p.147)

2.11. *Provisions on “regular meetings” (Annex 12)*

93. In addition to adhoc consultations between competition authorities, many co-operation agreements call for periodic meetings between the competition authorities of the parties to promote discussion and mutual understanding between the parties (12 out of the 15 agreements).

94. While five agreements do not provide for a specific frequency, six agreements provide for the frequency of the meeting which ranges from “every two years” to “twice a year.” Moreover, all co-operation agreements providing regular meetings except Brazil-US (1999) list the following four purposes of the meetings; (i) to exchange information on their current enforcement activities and priorities, (ii) to exchange information on economic sectors of common interest, (iii) to discuss possible laws/policy changes, and (vi) to address other matters of mutual interests. The Canada-Japan (2005) agreement lists another purpose: “to discuss developments relating to bilateral or multilateral fora involving the Parties that may be relevant to the cooperative relationship between the competition authorities of the Parties.”

95. The 2007 agreement between the ACCC and the NZCC provides not only for annual meetings between the officials of the two agencies, but also annual meetings at Commissioners level (Article 8.0).

2.12. *Provisions on “confidentiality” (Annex 13)*

96. While it is commonly recognised that the ability to exchange information is crucial for co-operation between competition authorities, competition authorities are also mindful of the need to protect the confidentiality of information. Adequate protection of information is the key to the success of agencies’ investigation as their investigations heavily rely on information submitted by private parties and inadequate protection of sensitive information may undermine the incentive of firms to co-operate with the agency in the first place as well as affect the integrity and credibility of the investigations.

97. To keep a careful balance between the need to promote information exchange between competition authorities and to maintain the confidentiality of information, many co-operation agreements have confidentiality provisions and impose on the parties obligations to maintain the confidentiality of the information exchanged, the sending party’s discretion to limit the communication and/or to set terms and conditions on its use, limitations on the use and disclosure of the information and others.

98. Second generation agreements allow the competition authorities to exchange confidential information and those agreements may have additional safeguards to give the confidential information exchanged stronger protection.

2.12.1. *Confidentiality provisions in first generation agreements*

99. Although first generation agreements do not require competition authorities to disclose information if the information is protected by the laws and regulations of the sending party, competition authorities may exchange confidential information if the source of the information waives the right of confidentiality or if its domestic laws allow such an exchange. Moreover, even if the communication between competition authorities does not contain any information protected by respective domestic laws and regulations, they may include sensitive information which might not be appropriate to be disclosed to a third party. Therefore, all first generation agreements have confidentiality provisions to protect the information communicated and the communication itself.

*No obligation to communicate confidential information*

100. First generation co-operation agreements do not include provisions on the exchange of confidential information. Eleven agreements have provisions to confirm this principle and state that communication of information is not required if such communication is (1) prohibited by the laws and regulations and (2) incompatible with its important interests. The language typically used here is “(n)otwithstanding any other provision of this Agreement, neither Party is required to communicate information to the other Party if such communication is prohibited by the laws and regulations of the Party possessing the information or if such communication would be incompatible with its important interests.”

101. The EU-Korea (2009) agreement further includes provisions of the competition laws of each party which define a range of confidential information which is not required to communicate.

*Confidentiality clauses*

102. Twelve first generation co-operation agreements include confidentiality clauses which require the parties to maintain the confidentiality of the information communicated (regardless of whether the information communicated has a confidential nature or not) between competition authorities, consistent with their laws and regulations. As for the range of information which must be protected, the majority of agreements (9 agreements) require the protection of “information communicated in confidence” by a party under the agreements and two agreements [EU-Korea (2009) and Canada-Japan (2005)] use the word “confidential information.” The EU-Korea (2009) agreement does not define confidential information. In the Canada-Japan (2005) agreement, “confidential information” is “all information communicated pursuant to this Agreement except information that has been made available to the public.” The range of the information protected by those two types seems similar.

*Discretion of the sending party to communicate information*

103. Under the first generation co-operation agreements, the decision of a party to transmit information to the other is voluntary. The 2014 OECD Recommendation on international co-operation also states that the transmitting party retains full discretion when deciding whether to transmit information. Based on the principle, several agreements allow the sending party to limit the information it communicates to the other party and/or to specify terms and conditions on its use when it discloses information.

104. Seven agreements state that the sending party may limit the information depending on the assurance it has from the receiving party. According to those provisions, each party may limit the information it communicates to the other Party when the latter Party is unable to give assurance (1) with respect to confidentiality, (2) with respect to the limitations of purposes for which the information will be used, and/or (3) with respect to the terms and conditions it specifies (if the agreement allows the sending party to set such terms and conditions).

105. Four agreements explicitly establish the sending party’s right to specify terms and conditions with which the receiving party has to comply.

*Limitation on the use and/or the further disclosure of the communicated information*

106. Many agreements place limitations on the use of the information concerned in order to avoid its improper use contrary to the purpose of the agreements. Also, they may limit further disclosure of the information to a third party. Some agreements may provide exceptions to these rules: (1) further communication to other law enforcement authorities or officials for the purpose of competition law enforcement and (2) the use or disclosure of the information pursuant to an obligation under the law and regulations.

107. Nine agreements provide limitations on the use of the information. They usually require that the communicated information be used by the receiving party only for the purpose of competition law enforcements or for the purpose of the agreements. The Canada-Japan (2005) and Japan-US (1999) agreements put limitations on the use of the communicated information in criminal proceedings. The agreement between Australia-US (1982) includes provisions on the use of the information in judicial and administrative proceedings and on the return of information at the conclusion of the investigation or proceeding.

108. Seven agreements include provisions which limit the disclosure of the communicated information to a third party without the consent of the sending agency. With respect to applications by a third party or other authorities for disclosure of the information, 10 agreements require each party either to “use all available measures under the applicable laws and regulations to maintain the confidentiality of the information concerned” or “oppose any application by a third party.”

109. Four agreements [Canada-Japan (2005), Japan-US (1999), Israel-US (1999) and Canada-US (1995)] permit further communication to other relevant law enforcement authorities/ officials, but solely for the purpose of competition law enforcement.

110. Four agreements permit the use or disclosure of the communicated information if there is an obligation to do so under the law and regulations of the receiving party. Those provisions may also provide that the receiving party (1) shall not take any action which may result in a legal obligation to make available to a third party or other authorities information provided in confidence, (2) give advance notice of such use or disclosure to the sending party, (3) consult with the other party and give due consideration to its important interests.

*2.12.2 Confidentiality provisions in the second generation agreements*

111. As second generation agreements enable the exchange of confidential information between competition authorities, they tend to have additional requirements to better protect the information transmitted. On the other hand, the language of the confidentiality provisions varies to a significant extent across the four second generation agreements reviewed. Some key features of confidentiality provisions in second generation agreements were discussed in “7. Exchange of Information” section.

112. One particularly unique feature worth discussing here is that the Australia-US agreement on mutual antitrust enforcement assistance (1999) provides the list of the laws and procedures of each party regarding confidentiality and sanctions in case of breaches of confidentiality rules in an Annex to the agreement. When making requests for assistance under the agreement, the requesting party must assure in writing that there have been no significant modifications to the confidentiality laws and procedures described in the Annex (Article III C.) and both parties are also required to provide notice of any significant modification of their antitrust laws, or of the confidentiality laws and procedures listed in the Annex (Article VIII).

### 2.13. Provisions on “existing law” (Annex 14)

113. Thirteen out of the fifteen agreements reviewed have provisions on the relationship between the agreement and existing law. Most of those provisions confirm (1) that the agreement does not require any action inconsistent to the laws and regulations in each jurisdiction, and (2) that the agreement does not require any change in the laws of the parties. Recent agreements may alternatively state that (1) (t)he agreement shall be implemented within the respective laws and regulations of the Parties and (2) (n)othing in this agreement shall be construed to prejudice the policy or legal jurisdiction of either party regarding any issues related to jurisdiction.

114. The EU-Switzerland (2013) agreement, a second generation agreement allowing for the exchange of confidential information, uses different wordings and states “(n)othing in this Agreement shall be construed to prejudice the formulation or enforcement of *the competition laws* of either Party.”

115. Four agreements [EU-Korea (2009), Canada-Japan (2005), EU-Japan (2003) and Japan-US (1999)] have additional confirmations that the agreement does not prejudice the policy or legal position of the parties and that the agreement does not affect rights or obligations under other international agreements.

### 2.14. Provisions on “communication” (Annex 15)

116. Many agreements have provisions on communication between the parties and they favour communications to be carried out directly between the competition authorities of the parties (11 agreements) which is considered a more efficient and faster communication. With respect to communication regarding notifications, eleven agreements require that certain notifications and requests (e.g. positive comity requests, consultation requests) should be confirmed in writing through diplomatic channels. This framework allows the competition authorities to make notifications/requests to the other party in a timely manner while ensuring that notifications have been made by diplomatic channels.<sup>49</sup>

117. Some agreements specify which methods of communication should be used (Nordic Co-operation Agreement (2001), Canada-EU (1999) and EU-US (1991)). Those methods vary across agreements, and include direct oral, telephonic, written, facsimile communication or electronic mail.

118. The EU-Switzerland (2013) agreement has a unique framework which requires the competition authority of each party to designate a contact point to facilitate communication. Designation of contact points is often seen in MoUs/interagency agreements or best practices/ protocol on merger review.

119. MoUs prefer informal, but timely communication between competition authorities. For example, they often allow communication by electronic means and provide designating a contact point of each party for effective communication.

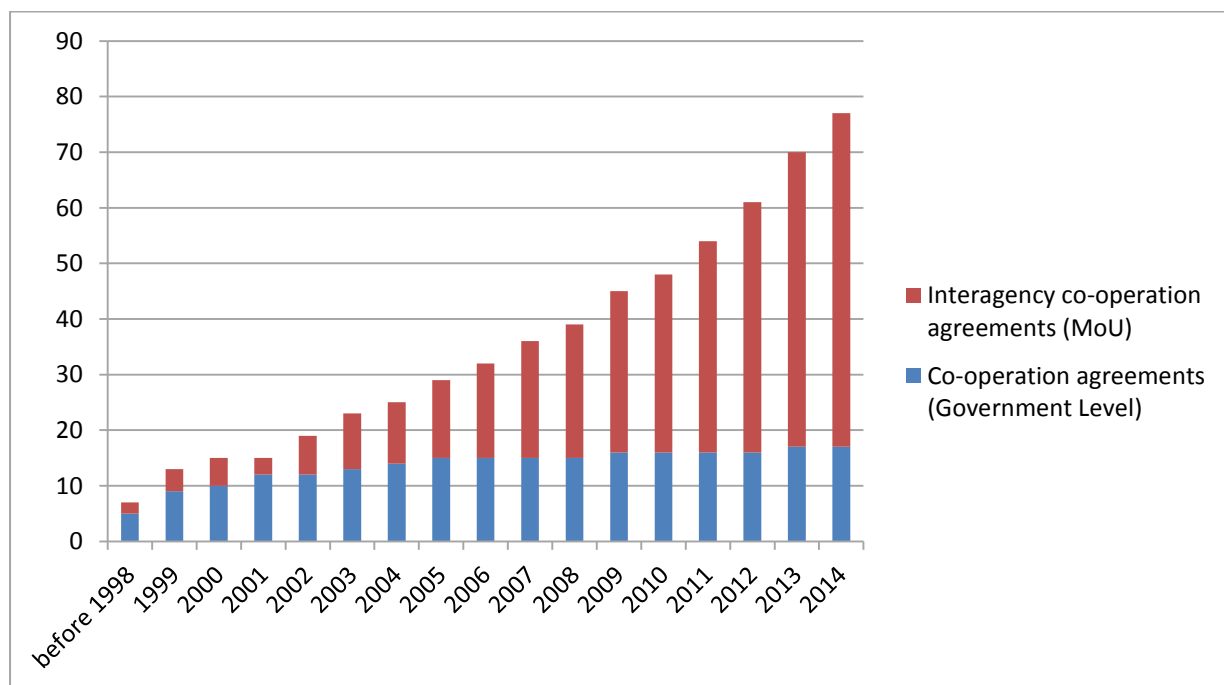
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<sup>49</sup> Only Australia-US (1982) states that notifications should be made through diplomatic channels without requiring prior direct communication between competition authorities.

### 3. Memoranda of Understanding (MoUs)/ interagency agreements

120. Instead of government-to-government co-operation agreements, more competition authorities enter into agency-to-agency agreements, or MoUs, to strengthen the relationship with international counterparts. This trend has increased especially after 2000 (Graph 1). To the knowledge of the Secretariat, there are around 60 MoUs where at least one of the signatories is an OECD Member Country (Annex 16) and they are named in various ways, such as “Memorandum of Understanding (MoU),” “Agreement on Co-operation,” “Cooperation Arrangement.” These MoUs are not legally binding and do not create any formal commitment. Competition authorities often choose to enter into MoUs due to the flexibility of these instruments: they are easier to conclude or amend because their negotiation does not require the authorisation of legislative bodies and/or involvement of other governmental bodies, such as foreign ministries. In other words, MoUs may be concluded at the initiative of competition authorities in a timely manner based on the needs of the competition authorities.

Graph 1. Development of co-operation agreements \*



\* FTAs or EPAs are not covered in the graph.

121. In general, MoUs are modelled on the co-operation agreements at the government level, so they often share the basic framework. However, provisions of MoUs are generally less detailed and less formal than those of co-operation agreements at the government level. There is a significant difference in the degree of elaboration of their provisions. Some MoUs contain all basic elements of comprehensive co-operation agreements, such as notifications, enforcement co-operation, co-ordination, negative and positive comity and have as much elaborate provisions as government-to-government agreements do. Examples of detailed MoUs include Japan-Korea (2014) and Brazil-Japan (2014). Other MoUs focus more on establishing a basic framework to ensure a dialogue between the two competition authorities. These agreements have detailed provisions on transparency, communication and/or technical co-operation, but do not provide specific means of enforcement co-operation, such as investigative assistance, co-ordination of concurrent investigations, comity. The MoU between Australia-China (2014) and Turkey-Ukraine (2013) may be classified in this category. Finally, other MoUs include some/all of the basic elements of co-

operation agreements, but each provision is simplified or less elaborate compared to the one of government-to-government agreements.

122. Some MoUs are second generation agreements. For example, New Zealand-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), an authority to provide compulsorily-acquired information and investigative assistance to the Australian Competition and Consumer Commission (ACCC). The Australia-Japan (2015) agreement, concluded as an implementing agreement pursuant to a provision of their Economic Partnership Agreement, is also a second generation agreement as it allows for the exchange of confidential information based on the information gateway provisions in their respective competition laws.

#### **Australia-Japan (2015)**

The Australia-Japan (2015) agreement was the latest second generation interagency agreement concluded between the ACCC and the Japan Fair Trade Commission (JFTC). It was concluded as an implementing agreement pursuant to the Article 15.5 of the Agreement between Australia and Japan for an Economic Partnership (EPA).

It provides for a range of co-operations means, including notification of enforcement activities of each party, co-operation and information exchange in enforcement activities, co-ordination of enforcement activities, positive and negative comity, transparency and consultation. It is characterised by its provisions for investigative assistance and for the exchange of confidential information. The provisions on investigative assistance are peculiar as they state that the investigative assistance may include supporting the other party to apply for approval of another governmental body in the country of the assisting party.

The agreement also includes a provision for the exchange of confidential information. Since the agreement is an interagency agreement and does not intend to create a new legal commitment, the provision confirms the two competition authorities may exchange confidential information within the limitations in the respective domestic laws and regulations. Since both Australia and Japan have information gateway provisions in their respective competition laws (Section 155AAA of the Competition and Consumer Act 2010 for Australia and Article 43-2 of the Antimonopoly Act for Japan<sup>50</sup>), the exchange of confidential information between the two authorities will be governed by these information gateway provisions as well as the relevant provisions in the EPA and in this interagency agreement.

123. Although it is difficult to generalise, there are some unique features in MoUs. First, some of them include a provision requiring the promotion of competition by addressing anti-competitive activities with their respective competition laws and regulations.<sup>51</sup> Such provisions are often included in FTAs or EPAs, but are normally not found in government-to-government co-operation agreements.

<sup>50</sup> Article 43-2 of the Antimonopoly Act is the equivalence of “information gateways” in Japan. This article stipulates that the JFTC may provide any foreign competition authority with information obtained during investigation, which is deemed helpful and necessary for the execution performance of the foreign competition authority’s duty, without prior consent from source of information.

<sup>51</sup> For example, Article 2.1 of Australia and 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 proposes in conformity with the principles of transparency, non-discrimination and procedural fairness.

Also, Article 2 of Japan and Korea (2014):

124. Second, they often contain a provision on technical co-operation related to competition laws.<sup>52</sup> Some of them also list types of technical co-operation activities covered by the agreement, including, for example, conducting or participating in conferences, seminars, workshops or training courses, exchange of personnel or study trips, providing assistance in advocacy activities. They often provide that participant competition authorities develop a work plan of co-operative activities which may be revised regularly.

125. Third, they may include provisions on timely communication between the parties, and preference is given to informal communication between competition authorities. For example, these agreements often designate a contact point of each party for the purpose of effective communication. As for notifications, contrary to the formal and less flexible requirements for notifications under government-to-government agreements, many MoUs allow informal notifications, such as notifications by electronic methods. Generally, they do not provide detailed procedures for consultations. This preference for informal communication was also taken into consideration when competition delegates discussed the revision of the 2014 OECD Recommendation on International Co-operation. For example, the Recommendation states its adherents should favour notifications between competition authorities and allows notifications by emails in a reflection of their preference for informal and flexible communication.

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Paragraph 2 Anti-competitive Activities

2. The Sides 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.

<sup>52</sup> Three government-to-government agreements also have a provision for technical assistance (Brazil-US (1999) Article VII, Mexico-US (2000) Article 7 and Canada-Mexico (2001) Article 7), but it is not common among government-to-government co-operation agreement.

#### 4. Regional co-operation

126. Competition authorities may co-operate not only through bilateral co-operation agreements, but also in regional networks/framework. According to the OECD/ICN Survey, 38 competition authorities (representing 69% of the respondents of the survey) identified themselves as belonging to a regional organisation or network. Regional networks/frameworks may provide unique instruments that bilateral co-operation agreements do not have.<sup>53</sup> This chapter will introduce some of those unique features and their legal bases.

##### 4.1. *European Competition Network (ECN)*

127. In Europe, the notable regional platform is the European Competition Network (ECN), established among member countries of the European Union (EU) with the adoption of Regulation 1/2003.<sup>54</sup> It consists of the competition authorities of the EU Member States and the European Commission and its members apply the same competition rules, namely Article 101 and 102 of the Treaty for the Functioning of the European Union (TFEU). The ECN is designed to serve as a platform for close co-operation of European competition authorities in cases where Article 101 and 102 of TFEU are applied.

128. The ECN includes several innovative mechanisms of enforcement co-operation, such as informing each member of the network of new cases and envisaged enforcement decisions, exchanging evidence and other information, helping each other with investigations, and flexible work sharing. These mechanisms are provided in Regulation 1/2003 and the joint statement of the Council and the Commission on the functioning of the European Competition Network. A European Commission Notice on cooperation within the Network of Competition Authorities (Network Notice)<sup>55</sup> includes further details.

**129. *Notification of new cases and of envisaged enforcement decisions.*** Regulation 1/2003 lays down an obligation for national competition authorities (NCAs) to inform each other of all cases that they investigate under Article 101 or Article 102 of TFEU at an early stage of the investigations. This allows the members of the network to detect multiple procedures and start co-operating at an early stage. They inform each other of cases by means of a standard form containing limited details of the case, such as the authority dealing with the case, the product, territories and parties concerned, the alleged infringement, the suspected duration of the infringement and the origin of the case<sup>56</sup>. NCAs are obliged to inform the European Commission of an envisaged enforcement decision at least 30 days before adopting it and the information may be shared with other members of the network.

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<sup>53</sup> Competition delegations discussed possible new and different forms of co-operation among agencies, such as the recognition of foreign cartel decisions, voluntary “lead agency” and one-stop shop models, in the Roundtable on Enhanced Enforcement Co-operation. The information about the roundtable is available at: <http://www.oecd.org/daf/competition/enhanced-enforcement-cooperation.htm>.

<sup>54</sup> Council Regulation 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101] and [102] of the Treaty (Official Journal L 1, 04.01.2003, p.1-25).

<sup>55</sup> Commission Notice on cooperation with the Network of Competition Authorities (Official Journal C 101, 27.04.2004, p.43-53).

<sup>56</sup> Network Notice Article 17.

**Regulation 1/2003**

**CHAPTER IV COOPERATION**

***Article 11 Cooperation between the Commission and the competition authorities of the Member States***

3. The competition authorities of the Member States shall, when acting under Article [101] or Article [102] of the Treaty, inform the Commission in writing before or without delay after commencing the first formal investigative measure. This information may also be made available to the competition authorities of the other Member States.

4. No later than 30 days before the adoption of a decision requiring that an infringement be brought to an end, accepting commitments or withdrawing the benefit of a block exemption Regulation, the competition authorities of the Member States shall inform the Commission. To that effect, they shall provide the Commission with a summary of the case, the envisaged decision or, in the absence thereof, any other document indicating the proposed course of action. This information may also be made available to the competition authorities of the other Member States. At the request of the Commission, the acting competition authority shall make available to the Commission other documents it holds which are necessary for the assessment of the case. The information supplied to the Commission may be made available to the competition authorities of the other Member States. National competition authorities may also exchange between themselves information necessary for the assessment of a case that they are dealing with under Article [101] or Article [102] of the Treaty.

**130. Exchange of information.** Regulation 1/2003 gives all competition authorities the power to exchange and use confidential information, including documents, statements and digital information, for efficient and effective co-operation.

**Regulation 1/2003**

**CHAPTER IV COOPERATION**

***Article 12 Exchange of information***

1. For the purpose of applying Articles [101] and [102] of the Treaty the Commission and the competition authorities of the Member States shall have the power to provide one another with and use in evidence any matter of fact or of law, including confidential information.

2. Information exchanged shall only be used in evidence for the purpose of applying Article [101] or Article [102] of the Treaty and in respect of the subject-matter for which it was collected by the transmitting authority. However, where national competition law is applied in the same case and in parallel to Community competition law and does not lead to a different outcome, information exchanged under this Article may also be used for the application of national competition law.

3. Information exchanged pursuant to paragraph 1 can only be used in evidence to impose sanctions on natural persons where:

- the law of the transmitting authority foresees sanctions of a similar kind in relation to an infringement of Article [101] or Article [102] of the Treaty or, in the absence thereof,
- the information has been collected in a way which respects the same level of protection of the rights of defence of natural persons as provided for under the national rules of the receiving authority. However, in this case, the information exchanged cannot be used by the receiving authority to impose custodial sanctions.

131. **Investigative Assistance.** Regulation 1/2003 also provides that an NCA may ask another NCA to carry out any inspection or other fact finding measures to collect information on its behalf. Similarly, the European Commission can ask an NCA to carry out an inspection on its behalf.

#### Regulation 1/2003

#### CHAPTER V POWERS OF INVESTIGATION

##### **Article 22 Investigations by competition authorities of Member States**

1. The competition authority of a Member State may in its own territory carry out any inspection or other fact-finding measure under its national law on behalf and for the account of the competition authority of another Member State in order to establish whether there has been an infringement of Article [101] or Article [102] of the Treaty. Any exchange and use of the information collected shall be carried out in accordance with Article 12.

2. At the request of the Commission, the competition authorities of the Member States shall undertake the inspections which the Commission considers to be necessary under Article 20(1) or which it has ordered by decision pursuant to Article 20(4). The officials of the competition authorities of the Member States who are responsible for conducting these inspections as well as those authorised or appointed by them shall exercise their powers in accordance with their national law.

If so requested by the Commission or by the competition authority of the Member State in whose territory the inspection is to be conducted, officials and other accompanying persons authorised by the Commission may assist the officials of the authority concerned.

132. **Work-sharing mechanisms and “well-placed” agency.** The ECN is based on a system of parallel competences and establishes flexible work sharing rules to let a “well-placed” agency handle a case. These principles are indicative and non-binding and provided in the Network Notice. According to the Network Notice, a case may be re-allocated to a well-placed agency where the authority receiving a complaint considers that it was not well-placed or where other authorities also considered themselves well placed. When re-allocation takes place, re-allocation to a single competition authority is preferred. The Network notice sets out criteria and examples to choose a well-placed agency. The criteria focus on whether a material link between the infringement and the territory of a Member State exists.

#### Network Notice

#### **2. Division of Work**

##### **2.1. Principles of allocation**

5. The Council Regulation is based on a system of parallel competences in which all competition authorities have the power to apply Articles [101] or [102] of the Treaty and are responsible for an efficient division of work with respect to those cases where an investigation is deemed to be necessary. At the same time each network member retains full discretion in deciding whether or not to investigate a case. Under this system of parallel competences, cases will be dealt with by:

- a single NCA, possibly with the assistance of NCAs of other Member States; or
- several NCAs acting in parallel; or
- the Commission.

6. In most instances the authority that receives a complaint or starts an ex-officio procedure will remain in charge of the case. Re-allocation of a case would only be envisaged at the outset of a procedure (see paragraph 18 below) where either that authority considered that it was not well placed to act or where other authorities also considered themselves well placed to act (see paragraphs 8 to 15 below).

7. Where re-allocation is found to be necessary for an effective protection of competition and of the Community interest, network members will endeavour to re-allocate cases to a single well placed competition authority as often as possible. In any event, re-allocation should be a quick and efficient process and not hold up ongoing investigations.

8. An authority can be considered to be well placed to deal with a case if the following three cumulative conditions are met:

1. the agreement or practice has substantial direct actual or foreseeable effects on competition within its territory, is implemented within or originates from its territory;
2. the authority is able to effectively bring to an end the entire infringement, i.e. it can adopt a cease-and-desist order the effect of which will be sufficient to bring an end to the infringement and it can, where appropriate, sanction the infringement adequately;
3. it can gather, possibly with the assistance of other authorities, the evidence required to prove the infringement.

9. The above criteria indicate that a material link between the infringement and the territory of a Member State must exist in order for that Member State's competition authority to be considered well placed. It can be expected that in most cases the authorities of those Member States where competition is substantially affected by an infringement will be well placed provided they are capable of effectively bringing the infringement to an end through either single or parallel action unless the Commission is better placed to act (see below paragraphs 14 and 15).

10. It follows that a single NCA is usually well placed to deal with agreements or practices that substantially affect competition mainly within its territory.

Example 1: Undertakings situated in Member State A are involved in a price fixing cartel on products that are mainly sold in Member State A.

The NCA in A is well placed to deal with the case.

11. Furthermore single action of an NCA might also be appropriate where, although more than one NCA can be regarded as well placed, the action of a single NCA is sufficient to bring the entire infringement to an end.

Example 2: Two undertakings have set up a joint venture in Member State A. The joint venture provides services in Member States A and B and gives rise to a competition problem. A cease-and-desist order is considered to be sufficient to deal with the case effectively because it can bring an end to the entire infringement. Evidence is located mainly at the offices of the joint venture in Member State A.

The NCAs in A and B are both well placed to deal with the case but single action by the NCA in A would be sufficient and more efficient than single action by NCA in B or parallel action by both NCAs.

12. Parallel action by two or three NCAs may be appropriate where an agreement or practice has substantial effects on competition mainly in their respective territories and the action of only one NCA would not be sufficient to bring the entire infringement to an end and/or to sanction it adequately.

Example 3: Two undertakings agree on a market sharing agreement, restricting the activity of the company located in Member State A to Member State A and the activity of the company located in Member State B to Member State B.

The NCAs in A and B are well placed to deal with the case in parallel, each one for its respective territory.

13. The authorities dealing with a case in parallel action will endeavour to coordinate their action to the extent possible. To that effect, they may find it useful to designate one of them as a lead authority and to delegate tasks to the lead authority such as for example the co-ordination of investigative measures, while each authority remains responsible for conducting its own proceedings.

14. The Commission is particularly well placed if one or several agreement(s) or practice(s), including networks of similar agreements or practices, have effects on competition in more than three Member States (cross-border markets covering more than three Member States or several national markets).

Example 4: Two undertakings agree to share markets or fix prices for the whole territory of the Community. The Commission is well placed to deal with the case.

Example 5: An undertaking, dominant in four different national markets, abuses its position by imposing fidelity rebates on its distributors in all these markets. The Commission is well placed to deal with the case. It could also deal with one national market so as to create a "leading" case and other national markets could be dealt with by NCAs, particularly if each national market requires a separate assessment.

15. Moreover, the Commission is particularly well placed to deal with a case if it is closely linked to other Community provisions which may be exclusively or more effectively applied by the Commission, if the Community interest requires the adoption of a Commission decision to develop Community competition policy when a new competition issue arises or to ensure effective enforcement.

## **2.2. Mechanisms of cooperation for the purpose of case allocation and assistance**

### 2.2.1. Information at the beginning of the procedure (Article 11 of the Council Regulation)

16. In order to detect multiple procedures and to ensure that cases are dealt with by a well placed competition authority, the members of the network have to be informed at an early stage of the cases pending before the various competition authorities. If a case is to be re-allocated, it is indeed in the best interest both of the network and of the undertakings concerned that the re-allocation takes place quickly.

17. The Council Regulation creates a mechanism for the competition authorities to inform each other in order to ensure an efficient and quick re-allocation of cases. Article 11(3) of the Council Regulation lays down an obligation for NCAs to inform the Commission when acting under Article [101] or [102] of the Treaty before or without delay after commencing the first formal investigative measure. It also states that the information may be made available to other NCAs. The rationale of Article 11(3) of the Council Regulation is to allow the network to detect multiple procedures and address possible case re-allocation issues as soon as an authority starts investigating a case. Information should therefore be provided to NCAs and the Commission before or just after any step similar to the measures of investigation that can be undertaken by the Commission under Articles 18 to 21 of the Council Regulation. The Commission has accepted an equivalent obligation to inform NCAs under Article 11(2) of the Council Regulation. Network members will inform each other of pending cases by means of a standard form containing limited details of the case, such as the authority dealing with the case, the product, territories and parties concerned, the alleged infringement, the suspected duration of the infringement and the origin of the case. They will also provide each other with updates when a relevant change occurs.

18. Where case re-allocation issues arise, they should be resolved swiftly, normally within a period of two months, starting from the date of the first information sent to the network pursuant to Article 11 of the Council Regulation. During this period, competition authorities will endeavour to reach an agreement on a possible re-allocation and, where relevant, on the modalities for parallel action.

19. In general, the competition authority or authorities that is/are dealing with a case at the end of the re-allocation period should continue to deal with the case until the completion of the proceedings. Re-allocation of a case after the initial allocation period of two months should only occur where the facts known about the case change materially during the course of the proceedings.

#### 4.2. *Trans-Tasman Economic Co-operation*

133. Australia and New Zealand have developed a close Trans-Tasman economic co-operation based on the close geographical and economic relationship between the two jurisdictions. The effort has culminated in various economic co-operation agreements concluded between the two jurisdictions, such as Australia-New Zealand Closer Economic Relations Trade Agreement in 1983, Memorandum of Understanding on the Harmonisation of Business Law between Australia and New Zealand in 1998.

134. Although the economic co-operation is not competition-specific, this extensive relationship involves some unique and innovative co-operation instruments related to competition law enforcement, such as cross-appointments of commissioners between the competition authorities of the two jurisdictions and recognition and enforcement of civil court judgements across Tasman.

135. ***Cross-appointments of commissioners.*** Cross-appointments between the Australian Competition and Consumer Commission (ACCC) and the New Zealand Commerce Commission (NZCC) is committed in the Trans-Tasman Single Economic Market Outcomes Framework with an aim to further enhance co-operation between the two regulators and improve the alignment in administration of competition law between the two countries. The Framework itself was agreed between the Prime Ministers of Australia and New Zealand on 20 August 2009 to support the single economic market agenda and accelerate regulatory harmonisation and alignment. The range of shared outcome covers not only competition policy but also other economic laws and policies, such as insolvency law, financial services policy and corporations law. The cross-appointment system is one of the three policy outcomes proposed under the competition stream of the Framework.<sup>57</sup>

136. Based on the framework, ACCC and NZCC started cross-appointments of commissioners in December 2010. Under the cross-appointments, they routinely consider merger applications received on both sides of the Tasman and cross-appointed commissioners are given a full access to confidential information. They also consider the revision of relevant guidelines.

137. ***Recognition and enforcement of civil judgements.*** Between Australia and New Zealand, a special arrangement for recognition and enforcement of foreign judgments has been put in place. Its legal basis is the Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement on 24 July 2008, but it came into effect in October 2013 when the necessary enabling regulations were introduced in both jurisdictions.<sup>58</sup> Once a judgment of a court of one jurisdiction is registered in a court of the other country, the judgment has the same effect, and may be enforced, as if the judgment had been issued by the court in which the judgment is registered. This applies to a wide range of judgments, including a final and conclusive judgment given in a civil proceeding, certain criminal judgments, and interim relief in support of civil proceedings in the other jurisdiction. In competition law enforcement, for example, this allows the competition authority in one jurisdiction to enforce its decisions in civil penalty and criminal cartel cases in the other jurisdiction.

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<sup>57</sup> The three competition policy outcomes in the Framework are (1) firms operating in both markets are faced with the same consequences for the same anti-competitive conduct, (2) competition and consumer law regulators in both jurisdictions are able to share confidential information for enforcement purposes and (3) cross-membership between the ACCC and the New Zealand Commerce Commission at associate member level.

<sup>58</sup> The relevant domestic implementing legislation is the Australian Trans-Tasman Proceedings Act 2010 (ss 65-66), and the New Zealand Trans-Tasman Proceedings Act 2010 (ss 52-54, 74-77).

**Agreement between the Government of Australia and the Government of New Zealand on  
Trans-Tasman Court Proceedings and Regulatory Enforcement (2008)**

**Part 2 Service of Process and Recognition and Enforcement of Judgments in Civil Proceedings**

**Article 3 Application**

1. This Part shall apply to civil proceedings before courts within the territory of either Party, except civil proceedings in relation to the following matters:

- a) dissolution of marriage;
- b) enforcement of maintenance obligations; and
- c) enforcement of child support obligations.

2. The Parties may, by mutual arrangement, exclude statutory cooperative arrangements and matters covered by existing or proposed bilateral or multilateral arrangements and agreements from the operation of this Part.

3. [...]

4. The following judgement shall be capable of recognition and enforcement under Article 5:

- a) final money judgments, and
- b) final non-money judgments, except for the following:
  - i) orders about probate, letters of administration or the administration of an estate;
  - ii) orders about the guardianship or management of property of someone who is incapable of managing their personal affairs or property;
  - iii) orders about the care, control or welfare of a child; and
  - iv) orders that, if not complied with, may lead to conviction for an offence in the place where the order was made.

5. The Parties may, by mutual arrangement, exclude other non-money judgments from recognition and enforcement under Article 5.

6. A judgment shall be deemed to be final even though an appeal may be pending against it, or it may still be subject to appeal.

**Article 5 Recognition and Enforcement of Judgments**

1. On application by the plaintiff, a judgment to which this Article applies issued by a court within the territory of one Party shall be registered by a court within the territory of the other Party (hereinafter "the registering court).

2. A judgment registered under this Article shall have the same force and effect, and may be enforced, as if the judgment had been issued by the registering court.

3. The defendant shall receive notice where a judgment is registered under this Article.

4. Subject to paragraph 6 and 8 of this Article, a judgment registered under this Article shall only be varied or set aside by the court in which it was issued, and shall only be the subject of appeal before the court within the territory of the Party in which it was issued.

5. The registering court may grant a stay of enforcement proceedings in order for an application for variation or setting aside to be made in the court in which the judgment was issued, or in order for an appeal against the judgment to be lodged in the courts within the territory of the Party in which the judgement was issued.

6. The registration of a judgment pursuant to this Article may only be set aside in the registering court, and the judgment refused recognition and enforcement in the country of registration, if registration of the judgment would be contrary to the public policy of that country.

7. Judgments registered under this Article shall not be refused recognition and enforcement on the grounds that to do so would involve the direct or indirect enforcement of a foreign public or revenue law.

8. Registration of the following judgments may be set aside in the registering court on the basis that the property in question was not, at the time of the proceedings before the court which issued the judgment, situated within the territory of the Party in which the court which issued the judgment is located:

- a) judgments given in an action where the subject matter is immovable property; and
- b) judgments in an action in rem where the subject matter is movable property.

9. For the purposes of this Article, registering court means:

a) in the case of Australia:

- i) the Federal Court of Australia;
- ii) the Family Court of Australia; or
- iii) the Supreme Court of a State or Territory.

b) in the case of New Zealand:

- i) the High Court.

c) in addition, any other court within the territory of either Party that could have granted the relief contained in the judgment.

**Article 7 Interim relief in support of proceedings in the territory of the other Party**

1. Each Party shall nominate courts within its territory to grant interim relief in support of proceedings commenced in the courts within the territory of the other Party.

2. Courts nominated under paragraph 1 shall have the ability to grant the same types of interim relief in support of proceedings initiated in the courts within the territory of the other Party as they are able to grant in domestic proceedings.

**4.3. Other regional co-operation networks**

138. There are several other enforcement co-operation networks in the world. Competition authorities from Nordic countries have formed *the Nordic Alliance* and some of the participating countries concluded the Nordic Co-operation Agreement (2001), which allows for the exchange of confidential information between the competition authorities of the participating jurisdictions. The structure of the agreement is similar to other bilateral co-operation agreements concluded at the government level and its provisions were discussed in the previous sections.

139. In addition to that, the competition authorities of the participating countries of the South-East European Cooperation Process (SEEC) concluded the memorandum on “the Mechanism of the Exchange of Information among Competition Authorities of SEEC” on 25 May 2010. It gives each party the right to send a request for information concerning competition law and policy and the requested information will be provided in three months after the request. However, the requested party may refuse the request on the grounds of confidentiality of the requested information.

**The mechanism for the exchange of information among Competition Authorities of the SEECP (2010)**

1. In the course of consideration of actions affecting competition, each Party shall have the right to send a request for information concerning competition law and policy to the other Parties.
2. The requesting Party shall state the purpose of its request and/or the basic circumstances of the case.
3. The requested information shall be provided not later than three months after receipts of the request.
4. Information received as a result of application of this document shall not be disclosed unless the Parties agree otherwise.
5. The Parties may refuse to provide the information within the framework of this document on the grounds of their state's interests concerning the safeguarding of commercial and other secrets according to national law, or on the grounds of confidentiality of the requested information.
6. The transfer of information shall be made in English language by mail/e-mail through designated general contact points or on the occasion of Parties' representative meetings.
7. This document shall not infringe or otherwise affect the rights and obligations of the Parties related to other international agreements which they are signatories to.
8. The Parties commit themselves to intensify and deepen the cooperation in the field of competition.

## ANNEX 1. THE LIST OF CO-OPERATION AGREEMENTS COVERED IN THE INVENTORY

**Table 1. The list of the fifteen comprehensive co-operation agreements covered in the inventory**

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[EU-Switzerland (2013)] Agreement between the European Union and the Swiss Confederation concerning cooperation on the application of their competition laws (17 May 2013)
[EU-Korea (2009)] Agreement between the European Community and the Government of the Republic of Korea concerning cooperation on anti-competitive activities (23 May 2009)
[Canada-Japan (2005)] Agreement between the Government of Canada and the Government of Japan concerning Cooperation on Anticompetitive Activities (6 September 2005)
[EU-Japan (2003)] Agreement between the European Community and the Government of Japan concerning cooperation on anti-competitive activities (10 July 2003)
[Nordic Co-operation Agreement (2001)] Agreement between Denmark, Iceland, Norway and Sweden concerning cooperation in matters of competition (16 March 2001)
[Canada-Mexico (2001)] Agreement between the Government of Canada and the Government of the United Mexican States regarding the Application of their Competition Laws (15 November 2001)
[Mexico-US (2000)] Agreement between the Government of the United Mexican States and the Government of the United States of America regarding the Application of their Competition Laws (11 July, 2000)
[Japan-US (1999)] Agreement between the Government of Japan and the Government of the United States of America concerning Cooperation on Anticompetitive Activities (7 October 1999)
[Brazil-US (1999)] Agreement between the Government of the Federative Republic of Brazil and the Government of the United States of America regarding Cooperation between their Competition Authorities in the Enforcement of their Competition Laws (26 October, 1999)
[Canada-EU (1999)] Agreement between the Government of Canada and the European Communities regarding the application of their competition laws (17 June, 1999)
[Israel-US (1999)] Agreement between the Government of the United States of America and the Government of the State of Israel Regarding the Application of Their Competition Laws (15 March, 1999)
[Canada-US (1995)] Agreement between the Government of Canada and the Government of the United States of America Regarding the Application of Their Competition and Deceptive Marketing Practices Laws (August 1995)
[EU-US (1991)] Agreement between the Government of the United States of America and the Commission of the European Communities regarding the Application of their Competition Laws (23 September 1991)
[Australia-US (1982)] Agreement between the Government of Australia and the Government of the United States of America relating to Cooperation on Antitrust Matters (Washington 29 June 1982)
[Germany-US (1976)] Agreement between the Government of the United States of America and the Government of the Federal Republic of Germany Relating to Mutual Cooperation Regarding Restrictive Business Practices (23 June, 1976)

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**Table 2. Special co-operation agreements dedicated to positive comity covered in the inventory**

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[Canada-US on positive comity (2004)]

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

[EU-US on positive comity (1998)]

Agreement between the Government of the United States of America and the European Communities on the Application of Positive Comity Principles in the Enforcement of their Competition Laws (4 June, 1998)

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**Table 3. Second generation co-operation agreements**

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[Australia-Japan (2015)]

Cooperation Arrangement between the Australian Competition and Consumer Commission and the Fair Trade Commission of Japan (29 April 2015)

[EU-Switzerland (2013)]

Agreement between the European Union and the Swiss Confederation concerning cooperation on the application of their competition laws (17 May 2013)

[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 (April 2013)

[Nordic Co-operation Agreement (2001)]

Agreement between Denmark, Iceland, Norway and Sweden concerning cooperation in matters of competition (16 March 2001)

[Australia-US on mutual antitrust enforcement assistance (1999)]

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

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## ANNEX 2. PROVISIONS ON “PURPOSE”

### *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.

### *Relevant provisions in co-operation agreements*

#### **EU-Switzerland (2013)**

##### **Article 1 Purpose**

1. The purpose of this Agreement is to contribute to the effective enforcement of the competition laws of each Party through cooperation and coordination, including the exchange of information, between the competition authorities of the Parties and to avoid or lessen the possibility of conflicts between the Parties in all matters concerning the application of the competition laws of each Party.

#### **EU-Korea (2009)**

##### **Article 1 Purpose and Definitions**

1. The purpose of this Agreement is to contribute to the effective enforcement of the competition laws of each Party through promoting cooperation and coordination between the competition authorities of the Parties and to avoid or lessen the possibility of conflicts between the Parties in all matters pertaining to the application of the competition laws of each Party.

#### **Canada-Japan (2005)**

##### **Article I**

1. The purpose of this Agreement is to contribute to the effective enforcement of the competition law of each country through the development of cooperative relationships between the competition authorities of the Parties and to avoid or minimize the possibility of conflicts between the Parties arising from the application of the competition law of each country.

**EU-Japan (2003)**

**Article 1**

1. The purpose of this Agreement is to contribute to the effective enforcement of the competition laws of each Party through promoting cooperation and coordination between the competition authorities of the Parties and to avoid or lessen the possibility of conflicts between the Parties in all matters pertaining to the application of the competition laws of each Party.

**Canada-Mexico (2001)**

**Article I Purpose and definitions**

1. The purposes of this Agreement are to promote cooperation, including both enforcement activities and technical assistance initiatives, to promote coordination between the competition authorities of the Parties, to avoid conflicts arising from the application of the Parties' competition laws and to minimize the impact of differences on their respective important interests.

**Mexico-US (2000)**

**Article I Purpose and Definitions**

1. The purposes of this Agreement are to promote cooperation, including both enforcement and technical cooperation, and coordination between the competition authorities of the Parties, to avoid conflicts arising from the application of the Parties' competition laws, and to minimize the impact on their respective important interests of any differences that may arise.

**Japan-US (1999)**

**Article I**

1. The purpose of this Agreement is to contribute to the effective enforcement of the competition laws of each country through the development of cooperative relationships between the competition authorities of each Party. The competition authorities of the Parties shall, in accordance with the provisions of this Agreement, cooperate with and provide assistance to each other in their enforcement activities, to the extent compatible with their respective Party's important interests.

**Brazil-US (1999)**

**Article I Purpose and Definitions**

1. The purpose of this Agreement is to promote cooperation, including both enforcement and technical cooperation, between the competition authorities of the Parties, and to ensure that the Parties give careful consideration to each other's important interests in the application of their competition laws.

**Canada-EU (1999)**

**I. Purpose and definitions**

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

**Israel-US (1999)**

**Article I Purpose and Definitions**

1. The purpose of this Agreement is to promote cooperation and coordination between the competition authorities of the Parties, to avoid conflicts arising from the application of the Parties' competition laws and to minimize the impact of differences on their respective important interests.

**Canada-US (1995)**

**Article I Purpose and definitions**

1. The purpose of this Agreement is to promote cooperation and coordination between the competition authorities of the Parties, to avoid conflicts arising from the application of the Parties' competition laws and to minimize the impact of differences on their respective important interests, and, in addition, to establish a framework for cooperation and coordination with respect to enforcement of deceptive marketing practices laws.

**EU-US (1991)**

**Article I Purpose and Definitions**

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

**ANNEX 3. PROVISIONS ON “DEFINITIONS”***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.

*Relevant provisions in co-operation agreements*

**EU-Korea (2009)**

**Article 1 Purpose and Definitions**

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

(a) the term 'anticompetitive activities' means any activities that may be subject to sanctions or other relief measures by competition authorities under the competition laws of one of the Parties or both Parties;

(b) the terms 'competition authority' and 'competition authorities' mean:

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

(ii) for the Republic of Korea, the Korea Fair Trade Commission;

(c) the term 'competent authority of a Member State' means one authority for each Member State of the European Community for the application of competition laws. Upon signature of this Agreement a list of such authorities will be notified by the Commission of the European Communities to the Government of the Republic of Korea. The Commission will notify to the Government of the Republic of Korea an updated list each time this becomes necessary;

(d) the term 'competition laws' means:

(i) for the European Community, Articles 81, 82, and 85 of the Treaty establishing the European Community, Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, and their implementing Regulations as well as any amendments thereto; and

(ii) for the Republic of Korea, the Monopoly Regulation and Fair Trade Act, and its implementing regulations as well as any amendments thereto;

(e) the term 'enforcement activities' means any application of competition laws by way of investigation or proceedings conducted by the competition authority of a Party.

**Canada-Japan (2005)**

**Article I**

2. For the purposes of this Agreement,

(a) the term "anticompetitive activities" means any conduct or transaction that may be subject to penalties or relief under the competition law of either country;

(b) the term "competition authority(ies)" means:

(i) for Canada, the Commissioner of Competition; and

(ii) for Japan, the Fair Trade Commission;

(c) the term "competition law(s)" means:

(i) for Canada, the *Competition Act*, R.S.C. 1985, c. C-34, except sections 52 through 60 and Part VII.1, and its implementing regulations, as amended; and

(ii) for Japan, the *Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade* (Law No. 54, 1947) (hereinafter referred to as “the Antimonopoly Law”) and its implementing regulations, as amended.

(d) the term “enforcement activity (ies)” means any investigation or proceeding conducted by a Party in relation to the competition law of its country. However, (i) the review of business conduct or routine filings in advance of a formal or informal determination that a matter may be anticompetitive and (ii) research, studies or surveys with the objective of examining the general economic situation or general conditions in specific industries are not included; and

(e) the term “national(s)” means with respect to a country, all natural persons possessing the nationality of that country in accordance with the laws and regulations of that country; all legal persons created or organized under the laws and regulations of that country; and all entities without legal personality to which the competition law of that country applies;

## EU-Japan (2003)

### Article 1

2. For the purposes of this Agreement:

(a) the term ‘anti-competitive activities’ means any conduct or transaction that may be subject to sanctions or other relief under the competition laws of the European Community or Japan;

(b) the term ‘competent authority of a Member State’ means one authority for each Member State mentioned in Article 299(1) of the Treaty establishing the European Community competent for the application of competition laws. Upon signature of this Agreement a list of such authorities will be notified by the Commission of the European Communities to the Government of Japan. The Commission will notify to the Government of Japan an updated list each time this becomes necessary. No information pursuant to Article 9(6) of this Agreement shall be sent to a competent authority of a Member State before this authority is included in the list notified by the Commission to the Government of Japan;

(c) the terms ‘competition authority’ and ‘competition authorities’ mean:

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

(ii) for Japan, the Fair Trade Commission;

(d) the term ‘competition laws’ means:

(i) for the European Community, Articles 81, 82, and 85 of the Treaty establishing the European Community, Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings, and their implementing Regulations pursuant to the said Treaty, as well as any amendments thereto; and

(ii) for Japan, the Law concerning prohibition of private monopoly and maintenance of fair trade (Law No 54, 1947) (hereinafter referred to as “the Antimonopoly Law”) and its implementing regulations as well as any amendments thereto;

(e) the term ‘enforcement activities’ means any application of competition laws by way of investigation or proceeding conducted by the competition authority of a Party. However, research, studies or surveys with the objective of examining the general economic situation or general conditions in specific industries are not included. Such research, studies or surveys shall not be construed so as to include any investigation with regard to suspected violation of competition laws;

(f) the term 'the territory of a Party', 'the territory of the Party' and 'the territory of the other Party' means the territory to which the Treaty establishing the European Community applies or the territory of Japan, as the context requires;

(g) the term 'the laws and regulations of a Party', 'the laws and regulations of the Party' and 'the laws and regulations of the other Party' means the laws and regulations of the European Community or the laws and regulations of Japan, as the context requires.

### Canada-Mexico (2001)

#### Article I Purpose and definitions

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

(a) "Anticompetitive activity(ies)" means any conduct or transaction that may be subject to penalties or other relief under the competition laws of a Party;

(b) "Competition authority(ies)" means

(i) for Canada, the Commissioner of Competition;

(ii) for the United Mexican States, the Federal Competition Commission;

(c) "Competition law(s)" means

(i) for Canada, *the Competition Act*, R.S.C. 1985, c. C-34, except sections 52 through 60 and sections 74.01 through 74.19;

(ii) for the United Mexican States, the Federal Law of Economic Competition of December 24, 1992, except for Articles 14 and 15, and the Regulations of the Federal Law of Economic Competition of March 4, 1998, except for Article 8;

as well as any amendments thereto, and such other laws or regulations as the Parties may from time to time agree in writing to be a "competition law" for the purposes of this Agreement; and

(d) "Enforcement activity(ies)" means any investigation or proceeding conducted by a Party in relation to its competition laws.

### Mexico-US (2000)

#### Article I Purpose and Definitions

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

a. "Anticompetitive activity(ies)" means any conduct or transaction that may be subject to penalties or relief under the competition laws of a Party;

b. "Competition authority(ies)" means

i. for the United Mexican States, the Federal Competition Commission;

ii. for the United States of America, the United States Department of Justice and the Federal Trade Commission;

c. "Competition law(s)" means

i. for the United Mexican States, the Federal Law of Economic Competition of December 24, 1992, except for Articles 14 and 15, and the Regulations of the Federal Law of Economic Competition of March 4, 1998, except for article 8;

ii. for the United States of America, the Sherman Act (15 U.S.C. §§ 1-7), the Clayton Act (15 U.S.C. §§ 12-27), the Wilson Tariff Act (15 U.S.C. §§ 8-11) and the Federal Trade Commission Act (15 U.S.C. §§ 41-58), to the extent that it applies to unfair methods of competition,

as well as any amendments thereto, and such other laws or regulations as the Parties may from time to time agree in writing to be a "competition law" for the purposes of this Agreement; and

d. "Enforcement activity(ies)" means any investigation or proceeding conducted by a Party in relation to its competition laws.

**Japan-US (1999)**

**Article I**

2. For the purposes of this Agreement,

(a) the term "anticompetitive activity(ies)" means any conduct or transaction that may be subject to penalties or relief under the competition laws of either country;

(b) the term "competition authority(ies)" means:

(i) for the United States of America, the United States Department of Justice and the Federal Trade Commission; and

(ii) for Japan, the Fair Trade Commission;

(c) the term "competition law(s)" means:

(i) for the United States of America, the Sherman Act (15 U.S.C. 1-7), the Clayton Act (15 U.S.C. 12-27), the Wilson Tariff Act (15 U.S.C. 8-11), and the Federal Trade Commission Act (15 U.S.C. 41-58) to the extent that it applies to unfair methods of competition, and their implementing regulations; and

(ii) for Japan, the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Law No. 54 of April 14, 1947) (hereinafter referred to as "the Antimonopoly Law") and its implementing regulations.

(d) the term "enforcement activity(ies)" means any investigation or proceeding conducted by a Party in relation to the competition laws of its country. However, (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 industries are not included.

**Brazil-US (1999)**

**Article I 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 of a Party;

b. "Competition authority(ies)" means

i. for Brazil, the Administrative Council for Economic Defense (CADE) and the Secretariat for Economic Law Enforcement (SDE) in the Ministry of Justice; the Secretariat for Economic Monitoring (SEAE) in the Ministry of Finance;

ii. for the United States of America, the United States Department of Justice and the Federal Trade Commission;

c. "Competition law(s)" means

i. for Brazil, Federal Laws 8884/94 and 9021/95; and Provisional Measure 1.567/97;

ii. for the United States of America, the Sherman Act (15 U.S.C. §§ 1-7), the Clayton Act (15 U.S.C. §§ 12-27), the Wilson Tariff Act (15 U.S.C. §§ 8-11), and the Federal Trade Commission Act (15 U.S.C. §§ 41-58), to the extent that it applies to unfair methods of competition,

as well as any amendments thereto;

d. "Enforcement activity(ies)" means any investigation or proceeding conducted by a Party in relation to its competition laws;

**Canada-EU (1999)**

**I. Purpose and definitions**

2. In this Agreement,

"anti-competitive activities" shall mean any conduct or transaction that may be subject to penalties or other relief under the competition laws of a Party;

"competent authority of a Member State" shall mean that authority of a Member State set out in Annex A. Annex A may be added to or modified at any time by the European Communities. Canada will be notified in writing of such additions or modifications before any information is sent to a newly listed authority.

"competition authority" and "competition authorities" shall mean:

(i) for Canada, the Commissioner of Competition appointed under the Competition Act, and

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

"competition law or laws" shall mean:

(i) for Canada, the Competition Act and regulations thereunder, and

(ii) for the European Communities, Articles 85, 86, and 89 of the Treaty establishing the European Community, Council Regulation (EEC No 4064/89 on the control of concentrations between undertakings, Articles 65 and 66 of the Treaty establishing the European Coal and Steel Community (ECSC), and their implementing Regulations pursuant to the said Treaties including High Authority Decision No 24-54,

as well as any amendments thereto and such other laws or regulations as the parties may jointly agree in writing to be a "competition law" for the purposes of this Agreement;

and

"enforcement activity" shall mean any application of competition law by way of investigation or proceeding conducted by the competition authority of a Party.

3. Any reference in this Agreement to a specific provision in either Party's competition law shall be interpreted as referring to that provision as amended from time to time and to any successor provisions.

### Israel-US (1999)

#### Article I Purpose and Definitions

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

a. "Anticompetitive activity(ies)" means any conduct or transaction that may be subject to penalties or other relief under the competition laws of a Party;

b. "Competition authority(ies)" means

i. for Israel, the Controller of Restrictive Trade Practices;

ii. for the United States of America, the United States Department of Justice and the Federal Trade Commission;

c. "Competition law(s)" means

i. for Israel, the Restrictive Trade Practices Law 5748-1988;

ii. for the United States of America, the Sherman Act (15 U.S.C. §§ 1-7), the Clayton Act (15 U.S.C. §§ 12-27), the Wilson Tariff Act (15 U.S.C. §§ 8-11) and the Federal Trade Commission Act (15 U.S.C. §§ 41-58), to the extent that it applies to unfair methods of competition, as well as any amendments thereto, and such other laws or regulations as the Parties may from time to time agree in writing to be a "competition law" for the purposes of this Agreement; and

d. "Enforcement activity(ies)" means any investigation or proceeding conducted by a Party in relation to its competition laws.

**Canada-US (1995)**

**Article I Purpose and definitions**

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

a. "Anticompetitive activity(ies)" means any conduct or transaction that may be subject to penalties or other relief under the competition laws of a Party;

b. "Competition authority(ies)" means

i. for Canada, the Director of Investigation and Research;

ii. for the United States of America, the United States Department of Justice and the Federal Trade Commission;

c. "Competition law(s)" means

i. for Canada, the Competition Act, R.S.C. 1985, c. C-34, except sections 52 through 60 of that Act;

ii. for the United States of America, the Sherman Act (15 U.S.C. .. 1-7), the Clayton Act (15 U.S.C. .. 12-27), the Wilson Tariff Act (15 U.S.C... 8-11) and the Federal Trade Commission Act (15 U.S.C. .. 41-58), to the extent that it applies to unfair methods of competition,

as well as any amendments thereto, and such other laws or regulations as the Parties may from time to time agree in writing to be a "competition law" for the purposes of this Agreement; and

d. "Enforcement activity(ies)" means any investigation or proceeding conducted by a Party in relation to its competition laws.

**EU-US (1991)**

**Article I Purpose and Definitions**

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

a) "Competition law(s)" shall mean

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

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

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

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

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

**Germany-US (1976)**

**Article 1**

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

a. "Antitrust laws" shall mean, in the United States of America, the Sherman Act (15 U.S.C. §§ 1-11), the Clayton Act (15 U.S.C. § 12 et seq.), and the Federal Trade Commission Act (15 U.S.C. § 41 et seq.), and in the Federal Republic of Germany, the Act Against Restraints on Competition ("Gesetz gegen Wettbewerbsbeschränkungen") (BGB1. I 1974, 869) as those Acts have been and may from time to time be amended.

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

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

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

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

*Relevant provisions in co-operation agreements (second generation)*

**Australia-Japan (2015)**

**Paragraph [\*02] Definitions**

For the purposes of this Arrangement:

(a) the terms used in this Arrangement that are also used in Chapter 15 of the Agreement will have the same meanings as in Chapter 15 of the Agreement,

(b) the term "enforcement activities" means any investigation or proceeding conducted by a competition authority 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,

(c) the term "enterprise" means any private or public entity subject to the competition law of its country regardless of its legal or organisational form.

**EU-Switzerland (2013)**

**Article 2 Definitions**

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

(1) “competition authority” and “competition authorities” of the Parties mean:

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

(b) for Switzerland: the Competition Commission, including its Secretariat;

(2) “competent authority of a Member State” means the authority of each Member State of the Union competent for the application of competition laws. Upon signature of this Agreement a list of such authorities will be notified by the Union to Switzerland. The European Commission will notify to the competition authority of Switzerland an updated list each time a change occurs;

(3) “competition laws” means:

(a) for the Union, Articles 101, 102, and 105 of the Treaty on the Functioning of the European Union, Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (hereinafter referred to as “Regulation (EC) No 139/2004”), Articles 53 and 54 of the Agreement on the European Economic Area (hereinafter referred to as the “EEA Agreement”) when used in conjunction with Articles 101 and 102 of the Treaty on the Functioning of the European Union, and their implementing regulations as well as any amendments thereto; and

(b) for Switzerland, the Federal Act on Cartels and Other Restraints of Competition of 6 October 1995 (hereinafter referred to as “Acart”) and its implementing regulations as well as any amendments thereto;

(4) “anticompetitive activities” means any activities that may be subject to a prohibition, sanctions or other relief measures by competition authorities under the competition laws of one of the Parties or of both Parties;

(5) “enforcement activities” means any application of competition laws by way of investigation or proceedings conducted by the competition authority of a Party;

(6) “information obtained by investigative process” means any information obtained by a Party using its formal investigative rights or submitted to a Party pursuant to a legal obligation.

(a) For the Union, this means information obtained through requests for information according to Article 18 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (hereinafter referred to as “Regulation (EC) No 1/2003”), oral statements according to Article 19 of Regulation (EC) No 1/2003 and inspections conducted by the European Commission or on behalf of the European Commission according to Articles 20, 21 or 22 of Regulation (EC) No 1/2003 or information acquired as a result of the application of Regulation (EC) No 139/2004.

(b) For Switzerland, this means information obtained through requests for information according to Article 40 Acart, oral statements according to paragraph 1 of Article 42 Acart and inspections conducted by the competition authority according to paragraph 2 of Article 42 Acart, or information acquired as a result of the application of the Ordinance on the Control of Concentrations of Undertakings of 17 June 1996;

(7) “information obtained under the leniency procedure” means:

(a) for the Union, information obtained pursuant to the Commission notice on immunity from fines and reduction of fines in cartel cases; and

(b) for Switzerland, information obtained pursuant to paragraph 2 of Article 49a Acart and Articles 8 to 14 of the Ordinance on Sanctions Imposed for Unlawful Restraints of Competition of 12 March 2004;

(8) “information obtained under the settlement procedure” means:

- (a) for the Union, information obtained pursuant to Article 10a of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (hereinafter referred to as "Regulation (EC) No 773/2004"); and
- (b) for Switzerland, information obtained pursuant to Article 29 Acart.

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

**Definitions**

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

8.1 "competition and consumer law(s)" means:

8.1.1 for the ACCC, the Competition and Consumer Act; and

8.1.2. for the NZCC, the Commerce Act, the Fair Trading Act, the Credit Contract and Consumer Finance Act, and the Telecommunication Act;

and includes amendments to and regulations made under these statutes;

8.2 "compulsorily-acquired information" means 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;

8.3 "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;

8.4 "protected information" has the same meaning as in section 155AAA of the CCA, and includes information that was given in confidence to the ACCC by a foreign government body, and relates to a matter arising under a provision of a law of a foreign country or of a party of foreign country;

8.5 "request" means a request from the ACCC to the NZCC for the NZCC to provide compulsorily-acquired information or investigative assistance;

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

8.6.1 sections 98, 98A and 98H of the Commerce Act (including as applied to the Credit Contracts and Consumer Finance Act and the Telecommunications Act); and

8.6.2 sections 47 and 47G of the Fair Trading Act.

## Nordic Co-operation Agreement (2001)

### Article I Definitions

In this Agreement the following expressions and concepts are defined and understood as stated below:

(a) "Competition legislation" is the legislation which exists at any given time, which at the present time consists:

(i) In the case of Denmark, act No. 384 of 17 June 1997, with its subsequent amendments, and consolidate act [lovbekendtgørelse] No. 687 of 12 July 2000, together with the executive orders [bekendtgørelser] issued in accordance therewith, respectively,

(ii) In the case of Iceland, act No. 8 of 25 February 1993, the Competition Act, with its subsequent amendments,

(iii) In the case of Norway, act No. 65 of 11 June 1993 relating to competition in commercial activities, and act No. 66 of 11 June 1993 on price initiatives, with its subsequent amendments.

(iv) In the case of Sweden, the Competition Act (1993:20), with its subsequent amendments.

"Competition authority (competition authorities)", "authority (authorities)" or "party (parties)" means:

(i) In the case of Denmark: Konkurrencestyrelsen,

(ii) In the case of Iceland: Samkeppnisstofnun,

(iii) In the case of Norway: Konkurransetilsynet.

(iv) In the case of Sweden, Konkurrensverket

"Enforcement measures" means:

(i) The use of competition legislation in connection with investigations, supervision, decisions and procedures of one or more of the Authorities.

(b) "Activities or behaviour in restraint of competition" depend on the competition legislation of the respective parties and may, for example, consist in

(i) Fixing purchase prices or sale prices or other business conditions,

(ii) Restricting or controlling production, marketing, technical development or investments,

(iii) Dividing markets or sources of supply,

(iv) Applying different conditions for performances of the same value with respect to trading partners,

(v) Requiring as a condition for entering into an agreement that the other contracting entity must approve additional performances which, by their nature or on the basis of commercial practice, are not related to the subject of the agreement, or

(vi) Abusing a dominant or collectively dominant position.

(c) "Mergers", 'acquisitions' and 'mergers' are defined:

(i) In the case of Denmark: in act No. 416, article 12 a, of 31 May 2000,

(ii) In the case of Iceland: in act No. 8, articles 4 and 18, of 25 February 1993 or in act No. 107 of 25 May 2000,

(iii) In the case of Norway: in act No. 65, articles 3 to 11, of 11 June 1993 concerning competition in commercial activities.

(iv) In the case of Sweden: Competition Act (1993:20), article 34

**Australia-US on mutual antitrust enforcement assistance (1999)****Article I Definitions**

*Antitrust Authority* - refers, in the case of the United States, to the United States Department of Justice or the United States Federal Trade Commission. In the case of Australia, the term refers to the Australian Competition and Consumer Commission.

*Antitrust Evidence* - refers to information, testimony, statements, documents or copies thereof, or other things that are obtained, in anticipation of, or during the course of, an investigation or proceeding under the Parties' respective antitrust laws, or pursuant to the Parties' Mutual Assistance Legislation.

*Antitrust Laws* - refers, in the case of the United States, to the laws enumerated in subsection (a) of the first section of the Clayton Act, 15 U.S.C. 12(a), and to Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, to the extent that such Section 5 applies to unfair methods of competition. In the case of Australia, the term refers to Part IV of the Trade Practices Act 1974; other provisions of that Act except Part X in so far as they relate to Part IV; Regulations made under that Act in so far as they relate to Part IV, except Regulations to the extent that they relate to Part X; and the Competition Code of the Australian States and Territories.

*Central Authority* - refers, in the case of the United States, to the Attorney General (or a person designated by the Attorney General), in consultation with the U.S. Federal Trade Commission. In the case of Australia, the term refers to the Australian Competition and Consumer Commission, in consultation with the Attorney General's Department.

*Executing Authority* - refers, in the case of the United States, to the Antitrust Authority designated to execute a particular request on behalf of a Party. In the case of Australia, the term includes the Australian Competition and Consumer Commission and the Attorney General's Department.

*Mutual Assistance Legislation* - refers, in the case of the United States, to the International Antitrust Enforcement Assistance Act of 1994, 15 U.S.C. 6201-6212, Public Law No. 103-438, 108 Stat. 4597. In the case of Australia, the term refers to the Mutual Assistance in Business Regulation Act 1992 and the Mutual Assistance in Criminal Matters Act 1987, and Regulations made pursuant to those Acts.

*Person or Persons* - refers to any natural person or legal entity, including corporations, unincorporated associations, partnerships, or bodies corporate existing under or authorized by the laws of either the United States, its States, or its Territories, the laws of Australia, its States, or its Territories, or the laws of other sovereign states.

*Request* - refers to a request for assistance under this Agreement.

*Requested Party* - refers to the Party from which assistance is sought under this Agreement, or which has provided such assistance.

*Requesting Party* - refers to the Party seeking or receiving assistance under this Agreement.

## ANNEX 4. PROVISIONS ON “TRANSPARENCY”

### *Relevant provisions in the 2014 OECD Recommendation on international co-operation*

#### **Relevant provisions of 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; and

### *Relevant provisions in co-operation agreements*

#### **EU-Switzerland (2013)**

##### **Article 11 Consultations**

2. The Parties shall as soon as possible inform each other of any amendment to their competition laws, as well as of any amendment to other laws and regulations and of any change in the enforcement practice of their competition authorities that may affect the operation of this Agreement. Upon request of either Party, the Parties shall hold consultations in order to assess the specific implications of such amendment or change for this Agreement, and in particular to determine whether this Agreement should be amended pursuant to paragraph 2 of Article 14.

#### **Canada-Japan (2005)**

##### **Article I**

3. The competition authority of each Party shall give prompt notice to the competition authority of the other Party of any amendment to the competition law of its country excluding amendments to the implementing regulations which do not pertain to or affect the implementation or operation of this Agreement.

#### **Nordic Co-operation Agreement (2001)**

##### **Article V Formal requirements and the like**

The parties shall inform one another in writing concerning the amendments that are made after the conclusion of this Agreement to their competition legislation or other legislation that may be relevant to the Agreement.

**Canada-Mexico (2001)**

**Article I Purpose and definitions**

3. Any reference in this Agreement to a specific provision in either Party's competition law shall be interpreted as referring to that provision as amended from time to time and to any successor provision thereof. Each Party shall promptly notify the other of any amendments to its competition laws.

**Mexico-US (2000)**

**Article I Purpose and Definitions**

3. Any reference in this Agreement to a specific provision in either Party's competition law shall be interpreted as referring to that provision as amended from time to time and to any successor provision thereof. Each Party shall promptly notify the other of any amendments to its competition laws.

**Japan-US (1999)**

**Article II**

10.

(a) The competition authority of each Party shall promptly notify the competition authority of the other Party of any amendment to the competition laws of its country.

(b) The competition authority of each Party shall provide the competition authority of the other Party with copies of its publicly-released guidelines, regulations or policy statements that it issues in relation to the competition laws of its country.

(c) The competition authority of each Party shall provide the competition authority of the other Party with copies of its proposed guidelines, regulations or policy statements in relation to the competition laws of its country that are made generally available to the public, and, when it provides the general public with opportunities to submit comments on such guidelines, regulations or policy statements, receive and pay due consideration to the comments submitted by the other Party prior to finalizing such guidelines, regulations or policy statements.

**Brazil-US (1999)**

**Article I Purpose and Definitions**

3. Each Party shall promptly notify the other of any amendments to its competition laws and of such other new laws or regulations that the Party considers to be part of its competition legislation.

**Israel-US (1999)**

**Article I Purpose and Definitions**

3. Any reference in this Agreement to a specific provision in either Party's competition law shall be interpreted as referring to that provision as amended from time to time and to any successor provision thereof. Each Party shall promptly notify the other of any amendments to its competition laws.

**Canada-US (1995)**

**Article I Purpose and definitions**

3. Any reference in this Agreement to a specific provision in either Party's competition law shall be interpreted as referring to that provision as amended from time to time and to any successor provision thereof. Each Party shall promptly notify the other of any amendments to its competition laws.

## ANNEX 5. PROVISIONS ON “NOTIFICATIONS”

### *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.

### *Relevant provisions in co-operation agreements*

#### **EU-Switzerland (2013)**

##### **Article 3 Notifications**

1. The competition authority of a Party shall notify in writing the competition authority of the other Party with respect to enforcement activities that the notifying competition authority considers may affect important interests of the other Party. Notifications pursuant to this Article may be made by electronic means.

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

(a) enforcement activities concerning anticompetitive activities other than concentrations against an undertaking incorporated or organised under the laws and regulations applicable in the territory of the other Party;

(b) enforcement activities which involve conduct believed to have been encouraged, required or approved by the other Party;

(c) enforcement activities which involve a concentration in which one or more parties to the transaction is an undertaking incorporated or organised under the laws and regulations applicable in the territory of the other Party;

(d) enforcement activities which involve a concentration in which an undertaking controlling one or more of the parties to the transaction is incorporated or organised under the laws and regulations applicable in the territory of the other Party;

(e) enforcement activities against anticompetitive activities other than concentrations which also take place or took place to a significant extent in the territory of the other Party; and

(f) enforcement activities which involve remedies that expressly require or prohibit conduct in the territory of the other Party or contain binding obligations for the undertakings in that territory.

3. Notifications pursuant to paragraph 1 with respect to concentrations shall be given:

(a) in the case of the Union, when initiating proceedings pursuant to point c of Article 6(1) of Regulation (EC) No 139/2004; and

(b) in the case of Switzerland, when initiating proceedings pursuant to Article 33 Acart.

4. Notifications pursuant to paragraph 1 with respect to matters other than concentrations shall be given:

(a) in the case of the Union, when initiating proceedings referred to in Article 2 of Regulation (EC) No 773/2004; and

(b) in the case of Switzerland, when initiating proceedings pursuant to Article 27 Acart.

5. Notifications shall include in particular the names of the parties to the investigation, the activities under examination and the markets they relate to, the relevant legal provisions and the date of the enforcement activities.

## **EU-Korea (2009)**

### **Article 2 Notifications**

1. The competition authority of each Party shall notify the competition authority of the other Party with respect to the enforcement activities that the notifying competition authority considers may affect the important interests of the other Party.

2. Enforcement activities that may affect the important interests of the other Party and are relevant to enforcement activities of the other Party include inter alia:

(a) enforcement activities against a national or nationals of the other Party (in the case of the European Community a national or nationals of the Member States of the European Community), or against a company or companies incorporated or organised under the applicable laws and regulations within the territory of the other Party;

(b) enforcement activities against anticompetitive activities other than concentrations which also take place or took place in significant part within the other Party's territory;

(c) enforcement activities which involve a concentration in which one or more parties to the transaction is a company incorporated or organised under the applicable laws and regulations of the territory of the other Party;

(d) enforcement activities which involve a concentration in which a company controlling one or more of the parties to the transaction is a company incorporated or organised under the applicable laws and regulations of the territory of the other Party;

(e) enforcement activities which involve conduct believed to have been encouraged, required or approved by the other Party; and

(f) enforcement activities which involve remedies that expressly require or prohibit conduct in the other Party's territory or contain binding obligations for the undertakings in that territory.

3. Notifications with respect to concentrations pursuant to paragraph 1 of this Article shall be given:

(a) in the case of the European Community:

- (i) when initiating proceedings pursuant to Article 6(1)c of Council Regulation (EC) No 139/2004;
- (ii) when issuing a Statement of Objections;

(b) in the case of the Republic of Korea:

- (i) not later than the time when the competition authority produces a written request either to extend the period of review or to ask for submission of additional materials concerning concentrations with potential anti-competitive effects; and
- (ii) when issuing the examination report.

4. Where notification is required pursuant to paragraph 1 of this Article with respect to matters other than concentrations, notification shall be given:

(a) in the case of the European Community:

- (i) when issuing a Statement of Objections;
- (ii) when adopting a decision or a settlement;

(b) in the case of the Republic of Korea:

- (i) when issuing the examination report;
- (ii) when filing a criminal accusation;
- (iii) when adopting a decision.

5. Notifications shall include in particular the names of the parties to the investigation, the activities under examination and the markets they relate to, the relevant legal provisions and the date of the enforcement activities.

### Canada-Japan (2005)

#### Article II

1. The competition authority of each Party shall, in accordance with the provisions of this Agreement, notify the competition authority of the other Party with respect to the enforcement activities of the Party of the notifying competition authority that the notifying competition authority considers may affect the important interests of the other Party.

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

- (a) are relevant to enforcement activities of the other Party;
- (b) are against a national or nationals of the country of the other Party;
- (c) involve anticompetitive activities, other than mergers or acquisitions, carried out in any substantial part in the territory of the country of the other Party;
- (d) involve mergers or acquisitions in which
  - (i) one or more of the parties to the transaction, or
  - (ii) a company controlling one or more of the parties to the transaction, is a national of the country of the other Party;

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

(f) involve penalties or relief that require or prohibit conduct in the territory of the country of the other Party.

3. Where notification is required pursuant to paragraph 1 of this Article with respect to mergers or acquisitions, the notification shall be given not later than:

(a) in the case of the competition authority of Canada, the time it issues a written request for information under oath or affirmation, or obtains an order for oral examination, production of records or written return, with respect to the transaction; and

(b) in the case of the competition authority of Japan, the time it seeks production of documents, reports or other information concerning the proposed transaction pursuant to the Antimonopoly Law.

4. Where notification is required pursuant to paragraph 1 of this Article, the notification shall be given as far in advance of the following actions as is practically possible:

(a) in the case of the Government of Canada, the filing of an application with the Competition Tribunal; an application for an order for the prevention of restraint of trade by use of intellectual property rights, an interim injunction, or a prohibition order in a criminal matter; the initiation of criminal proceedings; the settlement of a matter by way of an undertaking; or the registration of a consent agreement done before the filing of an application with the Competition Tribunal; and

(b) in the case of the Government of Japan, the filing of a criminal accusation, the filing of a complaint seeking an urgent injunction, the issuance of a recommendation or the decision to initiate a hearing, or the issuance of a surcharge payment order when no prior recommendation with respect to the payer has been issued.

5. The competition authority of each Party shall notify the competition authority of the other Party whenever the notifying competition authority publicly participates, in connection with competition laws or policy issues, in an administrative, regulatory or judicial proceeding in its country that is not initiated by the competition authority, if the notifying competition authority considers that the issue addressed may affect the important interests of the other Party. Such notification shall be made at the time of the participation or as soon thereafter as possible.

6. Notifications shall be sufficiently detailed to enable the notified competition authority to make an initial evaluation of the effect on the important interests of its Party and shall include the nature of the activities under investigation and the legal provisions concerned. Where possible, notifications shall include the names and locations of the persons involved.

## EU-Japan (2003)

### Article 2

1. The competition authority of each Party shall notify the competition authority of the other Party with respect to the enforcement activities that the notifying competition authority considers may affect the important interests of the other Party.

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

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

(b) are against a national or nationals of the other Party (in the case of the European Community a national or nationals of the Member States of the European Community), or against a company or companies incorporated or organised under the applicable laws and regulations within the territory of the other Party;

(c) involve anti-competitive activities, other than mergers or acquisitions, carried out in any substantial part within the territory of the other Party;

(d) involve a merger or acquisition in which:

- (i) one or more of the parties to the transaction; or
- (ii) a company controlling one or more of the parties to the transaction,

is a company incorporated or organised under the applicable laws and regulations within the territory of the other Party;

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

(f) involve the imposition of, or application for, sanctions or other relief by a competition authority that would require or prohibit conduct within the territory of the other Party.

3. Where notification is required pursuant to paragraph 1 of this Article with respect to mergers or acquisitions, such notification shall be given not later than:

(a) in the case of the European Community:

- (i) the Decision to initiate proceedings with respect to the concentration, pursuant to Article 6(1)(c) of Council Regulation (EEC) No 4064/89; and
- (ii) the issuance of a Statement of Objections;

(b) in the case of Japan:

- (i) the issuance of request to submit documents, reports or other information concerning the proposed transaction pursuant to the Antimonopoly Law; and
- (ii) the issuance of a recommendation or the decision to initiate a hearing.

4. Where notification is required pursuant to paragraph 1 of this Article with respect to matters other than mergers or acquisitions, notification shall be given as far in advance of the following actions as is practically possible:

(a) in the case of the European Community:

- (i) the issuance of a Statement of Objections; and
- (ii) the adoption of a decision or settlement;

(b) in the case of Japan:

- (i) the filing of a criminal accusation;
- (ii) the filing of a complaint seeking an urgent injunction;
- (iii) the issuance of a recommendation or the decision to initiate a hearing; and
- (iv) the issuance of a surcharge payment order when no prior recommendation with respect to the payer has been issued.

5. Notifications shall be sufficiently detailed to enable the notified Party to make an initial evaluation of the effects of the enforcement activities on its own important interests.

**Nordic Co-operation Agreement (2001)**

**Article II Notification**

1. The Danish, Icelandic, Norwegian and Swedish competition authorities shall provide each other with information concerning the situations in which one authority becomes aware that its enforcement measures may affect important competition-law interests that are subject to another authority's competence.

The enforcement measures concerning which it will normally be appropriate to provide information shall include measures that:

- (a) Are relevant to the enforcement measures of one or more competition authorities,
- (b) Relate to activities in restraint of competition that largely originate or take place in the territory of one or more authorities,
- (c) Relate to a merger, an acquisition or merger in which one or more of the participants in the transaction is an enterprise that is registered in, established under the legislation of, or resident in Denmark, Iceland, Norway or Sweden or in several of the countries,
- (d) Relates to behaviour in restraint of competition which it is assumed that one of the countries concluding the Agreement has called for, promoted or approved,
- (e) Relates to decisions of a vital nature that will require or promote a specific behaviour in restraint of competition in the territory of another of the countries concluding the Agreement.

2. In the case of acquisition or mergers that may affect important competition-law interests which are subject to the competence of another authority and which, in accordance with the legislation, must be reported to the competition authorities and/or which the authorities become aware of and/or themselves take up for consideration, notice shall, in pursuance of this article, be sent:

- (a) In the case of Denmark: to Konkurrencestyrelsen,
- (b) In the case of Iceland: to Samkeppnisstofnun,
- (c) In the case of Norway: to Konkurransetilsynet.
- (d) In the case of Sweden: to Konkurrensverket

3. The Danish, Icelandic, Norwegian and Swedish competition authorities shall also provide each other with information concerning all those cases in which the competition authorities intervene or participate in any other way in an administrative or judicial procedure that is not followed by enforcement measures, if the questions that are taken up in the course of the intervention or participation may affect important competition-law interests in one of the other Parties to the Agreement.

**Canada-Mexico (2001)**

**Article II Notification**

1. Each Party shall, subject to Article X(1), notify the other Party in the manner provided by this Article and Article XII with respect to its enforcement activities that may affect important interests of the other Party.

2. Enforcement activities that may affect the important interests of the other Party and therefore ordinarily require notification include those that:

- (a) are relevant to enforcement activities of the other Party;
- (b) involve anticompetitive activities, other than mergers or acquisitions, carried out in whole or in substantial part in the territory of the other Party;

(c) involve mergers or acquisitions in which

- one or more of the parties to the transaction, or
- a company controlling one or more of the parties to the transaction,

is a company incorporated or organized under the laws of the other Party or of one of its provinces or states;

(d) involve conduct believed to have been required, encouraged or approved by the other Party;

(e) involve remedies that expressly require or prohibit conduct in the territory of the other Party or are otherwise directed at conduct in the territory of the other Party; or

(f) involve the seeking of information located in the territory of the other Party.

3. Notification pursuant to this Article shall ordinarily be given as soon as a Party's competition authority becomes aware that notifiable circumstances are present, and in any event in accordance with paragraphs 4 through 8 of this Article.

4. When the competition authority of a Party requests that a person provide information, documents or other records located in the territory of the notified Party, or requests oral testimony in a proceeding or participation in a personal interview by a person located in the territory of the notified Party, notification shall be given:

(a) in the case of either voluntary or compulsory compliance with a request for written information, documents or other records, at or before the time that the request is made; and

(b) in the case of oral testimony or personal interviews, at or before the time arrangements for the interview or testimony are made.

5. Notification that would otherwise be required by this Article is not required with respect to telephone contacts with a person where:

(a) that person is not the subject of an investigation;

(b) the contact seeks only an oral response on a voluntary basis (although the availability and possible voluntary provision of documents may be discussed); and

(c) the other Party's important interests do not appear to be otherwise implicated, unless the other Party requests such notification in relation to a particular matter.

6. Notification is not required for each subsequent request for information in relation to the same matter unless the Party seeking information becomes aware of new issues bearing on the important interests of the other Party, or the other Party requests otherwise in relation to a particular matter.

7. The Parties acknowledge that officials of either Party may visit the territory of the other Party in the course of conducting investigations pursuant to their respective competition laws. Such visits shall be subject to notification pursuant to this Article and the consent of the notified Party.

8. Each Party shall notify the other whenever its competition authority intervenes or otherwise publicly participates in a regulatory or judicial proceeding that is not initiated by the competition authority if the issue addressed in the intervention or participation may affect the other Party's important interests. Such notification shall be made at the time of the intervention or participation or as soon thereafter as possible.

9. Notifications shall be sufficiently detailed to enable the notified Party to make an initial evaluation of the effect of the enforcement activity on its own important interests, and shall include the nature of the activities under investigation and the legal provisions concerned. Where possible, notifications shall include the names and locations of the persons involved. Notifications concerning a proposed undertaking, conditioned approval or consent order shall either include, or as soon as practicable be followed by, copies of the proposed undertaking, conditioned approval or consent order and any competitive impact statement or agreed statement of facts relating to the matter.

**Mexico-US (2000)**

**Article II Notification**

1. Each Party shall, subject to Article X(1), notify the other Party in the manner provided by this Article and Article XII with respect to its enforcement activities that may affect important interests of the other Party.

2. Enforcement activities that may affect the important interests of the other Party and therefore ordinarily require notification include those that:

- a. are relevant to enforcement activities of the other Party;
- b. involve anticompetitive activities, other than mergers or acquisitions, carried out in whole or in substantial part in the territory of the other Party;
- c. involve mergers or acquisitions in which
  - one or more of the parties to the transaction, or
  - a company controlling one or more of the parties to the transaction, is a company incorporated or organized under the laws of the other Party or of one of its States;
- d. involve conduct believed to have been required, encouraged or approved by the other Party;
- e. involve remedies that expressly require or prohibit conduct in the territory of the other Party or are otherwise directed at conduct in the territory of the other Party; or
- f. involve the seeking of information located in the territory of the other Party.

3. Notification pursuant to this Article shall ordinarily be given as soon as a Party's competition authorities become aware that notifiable circumstances are present, and in any event in sufficient time to permit the views of the other Party to be taken into account.

4. When the competition authorities of a Party request that a person provide information, documents or other records located in the territory of the notified Party, or request oral testimony in a proceeding or participation in a personal interview by a person located in the territory of the notified Party, notification shall be given:

- a. if compliance with a request for written information, documents or other records is voluntary, at or before the time that the request is made;
- b. if compliance with a request for written information, documents or other records is compulsory, at least seven (7) days prior to the request, (or, when seven (7) days' notice cannot be given, as promptly as circumstances permit); and
- c. in the case of oral testimony or personal interviews, at or before the time arrangements for the interview or testimony are made.

5. Notification that would otherwise be required by this Article is not required with respect to telephone contacts with a person where:

- a. that person is not the subject of an investigation,
- b. the contact seeks only an oral response on a voluntary basis (although the availability and possible voluntary provision of documents may be discussed), and
- c. the other Party's important interests do not appear to be otherwise implicated, unless the other Party requests such notification in relation to a particular matter.

6. Notification is not required for each subsequent request for information in relation to the same matter unless the Party seeking information becomes aware of new issues bearing on the important interests of the other Party, or the other Party requests otherwise in relation to a particular matter.

7. The Parties acknowledge that officials of either Party may visit the territory of the other Party in the course of conducting investigations pursuant to their respective competition laws. Such visits shall be subject to notification pursuant to this Article and the consent of the notified Party.

8. Notifications shall be sufficiently detailed to enable the notified Party to make an initial evaluation of the effect of the enforcement activity on its own important interests, and shall include the nature of the activities under investigation and the legal provisions concerned. Where possible, notifications shall include the names and locations of the persons involved. Notifications concerning a proposed conditioned approval, consent order or decree shall either include or, as soon as practicable be followed by, copies of the proposed conditioned approval, order or decree and any competitive impact statement relating to the matter.

9. Each Party shall also notify the other whenever its competition authorities intervene or otherwise publicly participate in a regulatory or judicial proceeding that is not an enforcement activity if the issue addressed in the intervention or participation may affect the other Party's important interests. Such notification shall be made at the time of the intervention or participation or as soon thereafter as possible.

## Japan-US (1999)

### Article II

1. The competition authority of each Party shall notify the competition authority of the other Party with respect to the enforcement activities of the notifying Party that the notifying competition authority considers may affect the important interests of the other Party.

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

- (a) are relevant to enforcement activities of the other Party;
- (b) are against a national or nationals of the other country, or against a company or companies incorporated or organized under the applicable laws and regulations within the territory of the other country;
- (c) involve anticompetitive activities, other than mergers or acquisitions, carried out in any substantial part in the territory of the other country;
- (d) involve mergers or acquisitions in which
  - one or more of the parties to the transaction, or
  - a company controlling one or more of the parties to the transaction,
 is a company incorporated or organized under the applicable laws and regulations within the territory of the other country;
- (e) involve conduct considered by the notifying competition authority to have been required, encouraged or approved by the other Party; or
- (f) involve relief that requires or prohibits conduct in the territory of the other country.

3. Notification pursuant to paragraph 1 of this Article shall be given as promptly as possible when the competition authority of a Party becomes aware that enforcement activities of its Party may affect the important interests of the other Party, and in any event in accordance with paragraphs 4 and 5 of this Article.

4. Where notification is required pursuant to paragraph 1 of this Article with respect to mergers or acquisitions, such notification shall be given not later than:

(a) for the competition authorities of the United States of America, the time either one seeks information or documentary material concerning the proposed transaction pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 [15 U.S.C. 18a(e)], the Federal Trade Commission Act (15 U.S.C. 49, 57b-1) or the Antitrust Civil Process Act (15 U.S.C. 1312).

(b) for the competition authority of Japan, the earlier of

(i) the time it seeks production of documents, reports or other information concerning the proposed transaction pursuant to the Antimonopoly Law; or

(ii) the time it advises a party to the transaction that the transaction as originally proposed raises serious questions under the Antimonopoly Law; provided, however, that if at the time of such advice the transaction has not been publicly disclosed by a party to the transaction, notification shall be made as soon as possible after the time at which the transaction or proposed transaction is publicly disclosed by a party to the transaction.

5. Where notification is required pursuant to paragraph 1 of this Article with respect to matters other than mergers or acquisitions, notification shall be given as far in advance of the following actions as is practically possible:

(a) for the Government of the United States of America,

(i) the initiation of criminal proceedings;

(ii) the initiation of a civil or administrative action, including the seeking of a temporary restraining order or preliminary injunction;

(iii) the entry of a proposed consent decree or a proposed cease and desist order; and

(iv) the issuance of a business review or advisory opinion that will ultimately be made public by the competition authority.

(b) for the Government of Japan,

(i) the filing of a criminal accusation;

(ii) the filing of a complaint seeking an urgent injunction;

(iii) the issuance of a recommendation or the decision to initiate a hearing;

(iv) the issuance of a surcharge payment order when no prior recommendation with respect to the payer has been issued;

(v) the issuance of a reply to a prior consultation that will ultimately be made public by the competition authority; and

(vi) the issuance of a warning.

6. The competition authority of each Party shall also notify the competition authority of the other Party if it initiates a survey which the notifying competition authority considers may affect the important interests of the other Party.

7. The competition authority of each Party shall also notify the competition authority of the other Party whenever the notifying competition authority publicly participates, in connection with the competition laws or policy issues, in an administrative, regulatory or judicial proceeding in its country that is not initiated by the competition authority, if the notifying competition authority considers that the issue addressed may affect the important interests of the other Party. Such notification shall be made at the time of the participation or as soon thereafter as possible.

8. Each Party shall notify the other Party if it initiates a civil action in the courts of the other country against a private party for monetary damages or other relief based on a violation of the competition laws of the other country.

9. Notifications shall be sufficiently detailed to enable the notified competition authority to make an initial evaluation of the effect on its Party's important interests.

10.

(a) The competition authority of each Party shall promptly notify the competition authority of the other Party of any amendment to the competition laws of its country.

(b) The competition authority of each Party shall provide the competition authority of the other Party with copies of its publicly-released guidelines, regulations or policy statements that it issues in relation to the competition laws of its country.

(c) The competition authority of each Party shall provide the competition authority of the other Party with copies of its proposed guidelines, regulations or policy statements in relation to the competition laws of its country that are made generally available to the public, and, when it provides the general public with opportunities to submit comments on such guidelines, regulations or policy statements, receive and pay due consideration to the comments submitted by the other Party prior to finalizing such guidelines, regulations or policy statements.

### **Brazil-US (1999)**

#### **Article II Notification**

1. Each Party shall, subject to Article IX, notify the other party in the manner provided by this Article and Article XI with respect to enforcement activities specified in this Article. Notifications shall identify the nature of the practices under investigation and the legal provisions concerned, and shall ordinarily be given as promptly as possible after a Party's competition authorities become aware that notifiable circumstances are present.

2. Enforcement activities to be notified pursuant to this Article are those that: (a) to enforcement activities of the other Party; (b) involve anticompetitive practices, other than mergers or acquisitions, carried out in whole or in substantial part in the territory of the other Party; (c) involve mergers or acquisitions in which one or more of the parties to the transaction, or a company controlling one or more of the parties to a transaction, is a company incorporated or organized under the laws of the other Party or of one of its states; (d) involve conduct believed to have been required, encouraged, or approved by the other Party; (e) involve remedies that expressly require or prohibit conduct in the territory of the other Party or are otherwise directed at conduct in the territory of the other Party; or (f) involve the seeking of information located in the territory of the other Party.

3. The Parties acknowledge that officials of either Party may visit the territory of the other Party in the course of conducting investigations pursuant to their respective competition laws. Such visits shall be subject to notification pursuant to this Article and the consent of the notified Party.

### **Canada-EU (1999)**

#### **II. Notification**

1. Each Party shall notify the other Party in the manner provided by this Article and Article IX with respect to its enforcement activities that may affect important interests of the other Party.

2. Enforcement activities that may affect the important interests of the other Party and therefore ordinarily give rise to notifiable circumstances include those:

- (i) that are relevant to enforcement activities of the other Party;
- (ii) that involve anticompetitive activities, other than mergers or acquisitions, carried out wholly or in part in the territory of the other Party;
- (iii) that involve conduct believed to have been required, encouraged or approved by the other Party or one of its provinces or Member States;
- (iv) that involve a merger or acquisition in which:

- one or more of the parties to the transaction; or
- a company controlling one or more of the parties to the transaction;

is a company incorporated or organised under the laws of the other Party or one of its provinces or Member States;

(v) that involve the imposition of, or application for, remedies by a competition authority that would require or prohibit conduct in the territory of the other Party; or

(vi) that involve one of the Parties seeking information located in the territory of the other Party.

3. Notification pursuant to this Article shall ordinarily be given as soon as a competition authority becomes aware that notifiable circumstances are present, and in any event, in accordance with paragraphs 4 through 7 of this Article.

4. Where notifiable circumstances are present with respect to mergers or acquisitions, notification shall be given;

(a) in the case of the European Communities, when a notice is published in the Official Journal, pursuant to Article 4(3) of Council Regulation (EEC) No 4064/89, or when notice of the transaction is received under Article 66 of the ECSC Treaty and a prior authorisation from the Commission is required under that provision; and

(b) in the case of Canada, not later than when its competition authority issues a written request for information under oath or affirmation, or obtains an order under section 11 of the Competition Act, with respect to the transaction.

5. (a) When the competition authority of a Party requests that a person provide information, documents or other records located in the territory of the other Party, or requests oral testimony in a proceeding or participation in a personal interview by a person located in the territory of the other Party, notification shall be given at or before the time that the request is made.

(b) Notification pursuant to subparagraph (a) of this paragraph is required notwithstanding that the enforcement activity in relation to which the said information is sought has previously been notified pursuant to Article II, paragraphs 1 to 3. However, separate notification is not required for each subsequent request for information from the same person made in the course of such enforcement activity unless the notified Party indicates otherwise or unless the Party seeking information becomes aware of new issues bearing upon the important interests of the notified Party.

6. Where notifiable circumstances are present, notification shall also be given far enough in advance of each of the following events to enable the other Party's views to be considered:

(a) in the case of the European Communities,

(i) when its competition authority decides to initiate proceedings with respect to the concentration, pursuant to Article 6(1)(c) of Council Regulation (EEC) No 4064/89;

(ii) in cases other than mergers and acquisitions, the issuance of a statement of objections; or

(iii) the adoption of a decision or settlement,

(b) in the case of Canada,

(i) the filing of an application with the Competition Tribunal;

(ii) the initiation of criminal proceedings; or

(iii) the settlement of a matter by way of undertaking or consent order.

7. (a) Each Party shall also notify the other whenever its competition authority intervenes or otherwise participates in a regulatory or judicial proceeding, if the issues addressed in the intervention or participation may affect the other Party's important interests. Notification under this paragraph shall apply only to:

(i) regulatory or judicial proceedings that are public; and

(ii) intervention or participation that is public and pursuant to formal procedures.

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

8. Notifications shall be sufficiently detailed to enable the notified Party to make an initial evaluation of the effects of the enforcement activity on its own important interests. Notifications shall include the names and addresses of the natural and legal persons involved, the nature of the activities under investigation and the legal provisions concerned.

9. Notifications made pursuant to this Article shall be communicated in accordance with Article IX.

## Israel-US (1999)

### Article II Notification

1. Each Party shall, subject to Article IX(1), notify the other Party in the manner provided by this Article and Article XI with respect to its enforcement activities that may affect important interests of the other Party.

2. Enforcement activities to be notified pursuant to this Article are those that:

- a. are relevant to enforcement activities of the other Party;
- b. involve anticompetitive practices, other than mergers or acquisitions, carried out in whole or in substantial part in the other State;
- c. involve mergers or acquisitions in which one or more of the parties to the transaction, or a company controlling one or more of the parties to a transaction, is a company incorporated or organized under the laws of the other Party or of one of its states;
- d. involve conduct believed to have been required, encouraged, or approved by the other Party;
- e. involve remedies that expressly require or prohibit conduct in the other State or are otherwise directed at such conduct; or
- f. involve the seeking of information located in the other State.

3. Notification pursuant to this Article shall ordinarily be given as soon as a Party's competition authorities become aware that notifiable circumstances are present, and in any event in sufficient time to permit the views of the other Party to be taken into account.

4. When the competition authorities of a Party request that a person provide information, documents or other records located in the notified State, or request oral testimony in a proceeding or participation in a personal interview by a person located in the notified State, notification shall be given:

- a. if compliance with a request for written information, documents or other records is voluntary, at or before the time that the request is made;
- b. if compliance with a request for written information, documents or other records is compulsory, at least seven (7) days prior to the request, (or, when seven (7) days' notice cannot be given, as promptly as circumstances permit); and
- c. in the case of oral testimony or personal interviews, at or before the time arrangements for the interview or testimony are made.

Notification that would otherwise be required by this Article is not required with respect to telephone contacts with a person where (i) that person is not the subject of an investigation, (ii) the contact seeks only an oral response on a voluntary basis (although the availability and possible voluntary provision of documents may be discussed) and (iii) the other Party's important interests do not appear to be otherwise implicated, unless the other Party requests otherwise in relation to a particular matter.

Notification is not required for each subsequent request for information in relation to the same matter unless the Party seeking information becomes aware of new issues bearing on the important interests of the other Party, or the other Party requests such notification in relation to a particular matter.

5. The Parties acknowledge that officials of either Party may visit the other State in the course of conducting investigations pursuant to their respective competition laws. Such visits shall be subject to notification pursuant to this Article and the consent of the notified Party.

6. Notifications shall be sufficiently detailed to enable the notified Party to make an initial evaluation of the effect of the enforcement activity on its own important interests, and shall include the nature of the activities under investigation and the legal provisions concerned. Where possible, notifications shall include the names and locations of the persons involved.

## Canada-US (1995)

### Article II Notification

1. Each Party shall, subject to Article X(1), notify the other Party in the manner provided by this Article and Article XII with respect to its enforcement activities that may affect important interests of the other Party.

2. Enforcement activities that may affect the important interests of the other Party and therefore ordinarily require notification include those that:

- a. are relevant to enforcement activities of the other Party;
- b. involve anticompetitive activities, other than mergers or acquisitions, carried out in whole or in part in the territory of the other Party, except where the activities occurring in the territory of the other Party are insubstantial;
- c. involve mergers or acquisitions in which
  - i. one or more of the parties to the transaction, or
  - ii. a company controlling one or more of the parties to the transaction,is a company incorporated or organized under the laws of the other Party or of one of its provinces or states;
- d. involve conduct believed to have been required, encouraged or approved by the other Party;
- e. involve remedies that expressly require or prohibit conduct in the territory of the other Party or are otherwise directed at conduct in the territory of the other Party; or
- f. involve the seeking of information located in the territory of the other Party, whether by personal visit by officials of a Party to the territory of the other Party or otherwise.

3. Notification pursuant to this Article shall ordinarily be given as soon as a Party's competition authorities become aware that notifiable circumstances are present, and in any event in accordance with paragraphs 4 through 7 of this Article.

4. Where notifiable circumstances are present with respect to mergers or acquisitions, notification shall be given not later than

- a. in the case of the United States of America, the time its competition authorities seek information or documentary material concerning the proposed transaction pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 [15 U.S.C. 18a(e)], the Federal Trade Commission Act (15 U.S.C. 49, 57b-1) or the Antitrust Civil Process Act (15 U.S.C. 1312); and
- b. in the case of Canada, the time its competition authorities issue a written request for information under oath or affirmation, or obtain an order under section 11 of the Competition Act, with respect to the transaction.

5. When the competition authorities of a Party request that a person provide information, documents or other records located in the territory of the other Party, or request oral testimony in a proceeding or participation in a personal interview by a person located in the territory of the other Party, notification shall be given:

- a. if compliance with a request for written information, documents or other records is voluntary, at or before the time that the request is made;
- b. if compliance with a request for written information, documents or other records is compulsory, at least seven (7) days prior to the request, (or, when seven (7) days' notice cannot be given, as promptly as circumstances permit); and
- c. in the case of oral testimony or personal interviews, at or before the time arrangements for the interview or testimony are made.

Notification is not required with respect to telephone contacts with a person in the territory of the other Party where (i) that person is not the subject of an investigation, (ii) the contact seeks only an oral response on a voluntary basis (although the availability and possible voluntary provision of documents may be discussed) and (iii) the other Party's important interests do not appear to be otherwise implicated, unless the other Party requests otherwise in relation to a particular matter.

Notification is not required for each subsequent request for information in relation to the same matter unless the Party seeking information becomes aware of new issues bearing on the important interests of the other Party, or the other Party requests otherwise in relation to a particular matter.

6. The Parties acknowledge that officials of either Party may visit the territory of the other Party in the course of conducting investigations pursuant to their respective competition laws. Such visits shall be subject to notification pursuant to this Article and the consent of the notified Party.

7. Notification shall also be given at least seven (7) days in advance of each of the following where notifiable circumstances are present:

- a.
  - i. in the case of the United States of America, the issuance of a complaint, the filing of a civil action seeking a temporary restraining order or preliminary injunction or the initiation of criminal proceedings;
  - ii. in the case of Canada, the filing of an application with the Competition Tribunal, an application under Part IV of the Competition Act or the initiation of criminal proceedings;
- b. the settlement of a matter by way of an undertaking, an application for a consent order or the filing or issuance of a proposed consent order or decree; and
- c. the issuance of a business review or advisory opinion that will ultimately be made public by the competition authorities.

When seven (7) days' notice cannot be given, notice shall be given as promptly as circumstances permit.

8. Each Party shall also notify the other whenever its competition authorities intervene or otherwise publicly participate in a regulatory or judicial proceeding that is not initiated by the competition authorities if the issue addressed in the intervention or participation may affect the other Party's important interests. Such notification shall be made at the time of the intervention or participation or as soon thereafter as possible.

9. Notifications shall be sufficiently detailed to enable the notified Party to make an initial evaluation of the effect of the enforcement activity on its own important interests, and shall include the nature of the activities under investigation and the legal provisions concerned. Where possible, notifications shall include the names and locations of the persons involved.

Notifications concerning a proposed undertaking, consent order or decree shall either include or, as soon as practicable be followed by, copies of the proposed undertaking, order or decree and any competitive impact statement or agreed statement of facts relating to the matter.

**EU-US (1991)**

**Article II Notification**

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

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

- a) Are relevant to enforcement activities of the other Party;
- b) Involve anticompetitive activities (other than a merger or acquisition) carried out in significant part in the other Party's territory;
- c) Involve a merger or acquisition in which one or more of the parties to the transaction, or a company controlling one or more of the parties to the transaction, is a company incorporated or organized under the laws of the other Party or one of its states or member states;
- d) Involve conduct believed to have been required, encouraged or approved by the other Party; or
- e) Involve remedies that would, in significant respects, require or prohibit conduct in the other Party's territory.

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

- a) In the case of the Government of the United States of America,
  - (i) not later than the time its competition authorities request, pursuant to 15 U.S.C. §18a(e), additional information or documentary material concerning the proposed transaction,
  - (ii) when its competition authorities decide to file a complaint challenging the transaction, and
  - (iii) where this is possible, far enough in advance of the entry of a consent decree to enable the other Party's views to be taken into account; and
- b) In the case of the Commission of the European Communities,
  - (i) when notice of the transaction is published in the Official Journal, pursuant to Article 4(3) of Council Regulation no. 4064/89, or when notice of the transaction is received under Article 66 of the ECSC Treaty and a prior authorization from the Commission is required under that provision,
  - (ii) when its competition authorities decide to initiate proceedings with respect to the proposed transaction, pursuant to Article 6(1)(c) of Council Regulation no. 4064/89, and
  - (iii) far enough in advance of the adoption of a decision in the case to enable the other Party's views to be taken into account.

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

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

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

- a) regulatory or judicial proceedings that are public,
- b) intervention or participation that is public and pursuant to formal procedures, and

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

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

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

#### **Australia-US (1982)**

##### **Article 1 Notification**

1. When the Government of Australia has adopted a policy that it considers may have antitrust implications for the United States, the Government of Australia may notify the Government of the United States of that policy. If practicable, such a notification shall be given before implementation of the policy by persons or enterprises.

2. When the Department of Justice or Federal Trade Commission of the United States decides to undertake an antitrust investigation that may have implications for Australian laws, policies or national interests, the Government of the United States shall notify the Government of Australia of the investigation.

3. A notification under paragraph 2 of this Article shall be effected promptly and, to the fullest extent possible under the circumstances of the particular case, prior to the convening of a grand jury or issuance of any civil investigative demand, subpoena or other compulsory process.

4. The content of a notification made pursuant to paragraph 1 or 2 of this Article shall be sufficiently detailed to permit the notified Government to determine whether the matter may have implications for its laws, policies or national interests.

5. Notifications undertaken in accordance with paragraphs 1 and 2 of this Article shall be transmitted through diplomatic channels.

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

*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.

*Relevant provisions in co-operation agreements***EU-Korea (2009)****Article 3 Enforcement Cooperation**

1. The competition authority of each Party shall render assistance to the competition authority of the other Party in its enforcement activities to the extent consistent with the laws and regulations of the Party rendering the assistance and the important interests of that Party, and within its reasonably available resources.

2. The competition authority of each Party shall, to the extent consistent with the laws and regulations of the Party, and the important interests of that Party:

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

(b) provide the competition authority of the other Party 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 by the competition authority of the other Party; and

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

**Canada-Japan (2005)****Article III**

1. The competition authority of each Party shall render assistance to the competition authority of the other Party 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 Party of the assisting competition authority, and within its reasonably available resources.

2. The competition authority of each Party shall, to the extent consistent with the laws and regulations of its country and the important interests of that Party,

(a) inform the competition authority of the other Party with respect to its enforcement activities involving anticompetitive activities that the informing competition authority considers may also have an adverse effect on competition within the territory of the country of the other Party;

(b) provide the competition authority of the other Party 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 by the competition authority of the other Party; and

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

**EU-Japan (2003)**

**Article 3**

1. The competition authority of each Party shall render assistance to the competition authority of the other Party in its enforcement activities to the extent consistent with the laws and regulations of the Party rendering the assistance and the important interests of that Party, and within its reasonably available resources.

2. The competition authority of each Party shall, to the extent consistent with the laws and regulations of the Party, and the important interests of that Party:

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

(b) provide the competition authority of the other Party 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 by the competition authority of the other Party; and

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

**Canada-Mexico (2001)**

**Article III Enforcement cooperation**

1.

(a) The Parties acknowledge that it is in their common interest to cooperate in the detection of anticompetitive activities and the enforcement of their competition laws to the extent compatible with their respective laws and important interests, and according to their reasonably available resources.

(b) The Parties further acknowledge that it is in their common interest to share information which will facilitate the effective application of their competition laws and promote better understanding of each other's enforcement policies and activities.

2. The Parties will consider adopting further arrangements as may be feasible and desirable to enhance cooperation in the enforcement of their competition laws.

3. Each Party's competition authority will, to the extent compatible with that Party's laws, enforcement policies and other important interests,

(a) assist the other Party's competition authority, upon request, in locating and obtaining evidence and witnesses, and in obtaining voluntary compliance with requests for information, in the requested Party's territory;

(b) inform the other Party's competition authority with respect to enforcement activities involving conduct that may also have an adverse effect on competition within the territory of the other Party;

(c) provide to the other Party's competition authority, upon request, such information within its possession as the requesting Party's competition authority may specify that is relevant to the requesting Party's enforcement activities; and

(d) provide the other Party's competition authority with any significant information that comes to its attention about anticompetitive activities that may be relevant to, or may warrant, enforcement activity by the other Party's competition authority.

4. Nothing in this Agreement shall prevent the Parties from seeking or providing assistance to one another pursuant to other agreements, treaties, arrangements or practices between them.

**Mexico-US (2000)**

**Article III Enforcement Cooperation**

1.

a. The Parties acknowledge that it is in their common interest to cooperate in the detection of anticompetitive activities and the enforcement of their competition laws to the extent compatible with their respective laws and important interests, and within their reasonably available resources.

b. The Parties further acknowledge that it is in their common interest to share information which will facilitate the effective application of their competition laws and promote better understanding of each other's enforcement policies and activities.

2. The Parties will consider adopting such further arrangements as may be feasible and desirable to enhance cooperation in the enforcement of their competition laws.

3. Each Party's competition authorities will, to the extent compatible with that Party's laws, enforcement policies and other important interests:

a. assist the other Party's competition authorities, upon request, in locating and obtaining evidence and witnesses, and in obtaining voluntary compliance with requests for information, in the requested Party's territory;

b. inform the other Party's competition authorities with respect to enforcement activities involving conduct that may also have an adverse effect on competition within the territory of the other Party;

c. provide to the other Party's competition authorities, upon request, such information within its possession as the requesting Party's competition authorities may specify that is relevant to the requesting Party's enforcement activities; and

d. provide the other Party's competition authorities with any significant information that comes to their attention about anticompetitive activities that may be relevant to, or may warrant, enforcement activity by the other Party's competition authorities.

4. Nothing in this Agreement shall prevent the Parties from seeking or providing assistance to one another pursuant to other agreements, treaties, arrangements or practices between them.

**Japan-US (1999)**

**Article III**

1. The competition authority of each Party shall render assistance to the competition authority of the other Party in its enforcement activities to the extent consistent with the laws and regulations of the country of the assisting Party and the important interests of the assisting Party, and within its reasonably available resources.

2. The competition authority of each Party shall, to the extent consistent with the laws and regulations of its country and the important interests of its Party:

(a) inform the competition authority of the other Party with respect to its enforcement activities involving anticompetitive activities that the informing competition authority considers may also have an adverse effect on competition within the territory of the other country;

(b) provide the competition authority of the other Party 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 by the competition authority of the other Party; and

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

#### **Brazil-US (1999)**

##### **Article III Enforcement Cooperation**

1. The Parties 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 Parties from seeking or providing assistance to one another pursuant to other agreements, treaties, arrangements or practices between them.

#### **Canada-EU (1999)**

##### **IV. Coordination of enforcement activities**

1. The competition authority of each Party shall render assistance to the competition authority of the other Party in its enforcement activities to the extent compatible with the assisting Party's laws and important interests.

#### **Israel-US (1999)**

##### **Article III Enforcement Cooperation**

1. The Parties acknowledge that it is in their common interest to cooperate in the detection of anticompetitive activities and the enforcement of their competition laws to the extent compatible with their respective laws and important interests, and within their reasonably available resources. The Parties further acknowledge that it is in their common interest to share information which will facilitate the effective application of their competition laws and promote better understanding of each other's enforcement policies and activities.

2. The Parties will consider adopting such further arrangements as may be feasible and desirable to enhance cooperation in the enforcement of their competition laws.

3. Each Party's competition authorities will, to the extent compatible with that Party's laws, enforcement policies and other important interests,

- a. assist the other Party's competition authorities, upon request, in locating and securing evidence and witnesses, and in securing voluntary compliance with requests for information, in the requested State;
- b. inform the other Party's competition authorities with respect to enforcement activities involving conduct that may also have an adverse effect on competition within the other State;
- c. provide to the other Party's competition authorities, upon request, such information within its possession as the requesting Party's competition authorities may specify that is relevant to the requesting Party's enforcement activities; and

d. provide the other Party's competition authorities with any significant information that comes to their attention about anticompetitive activities that may be relevant to, or may warrant, enforcement activity by the other Party's competition authorities.

4. Nothing in this Agreement shall prevent the Parties from seeking or providing assistance to one another pursuant to other agreements, treaties, arrangements or practices between them.

### **Canada-US (1995)**

#### **Article III Enforcement cooperation**

1.

a. The Parties acknowledge that it is in their common interest to cooperate in the detection of anticompetitive activities and the enforcement of their competition laws to the extent compatible with their respective laws and important interests, and within their reasonably available resources.

b. The Parties further acknowledge that it is in their common interest to share information which will facilitate the effective application of their competition laws and promote better understanding of each other's enforcement policies and activities.

2. The Parties will consider adopting such further arrangements as may be feasible and desirable to enhance cooperation in the enforcement of their competition laws.

3. Each Party's competition authorities will, to the extent compatible with that Party's laws, enforcement policies and other important interests,

a. assist the other Party's competition authorities, upon request, in locating and securing evidence and witnesses, and in securing voluntary compliance with requests for information, in the requested Party's territory;

b. inform the other Party's competition authorities with respect to enforcement activities involving conduct that may also have an adverse effect on competition within the territory of the other Party;

c. provide to the other Party's competition authorities, upon request, such information within its possession as the requesting Party's competition authorities may specify that is relevant to the requesting Party's enforcement activities; and

d. provide the other Party's competition authorities with any significant information that comes to their attention about anticompetitive activities that may be relevant to, or may warrant, enforcement activity by the other Party's competition authorities.

4. Nothing in this Agreement shall prevent the Parties from seeking or providing assistance to one another pursuant to other agreements, treaties, arrangements or practices between them.

### **EU-US (1991)**

#### **Article IV Cooperation and Coordination in Enforcement Activities**

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

**Australia-US (1982)**

**Article 5 Cooperation in Antitrust Enforcement**

1. When a proposed investigation or enforcement action under the antitrust laws of one nation does not adversely affect the laws, policies or national interests of the other, each Party shall cooperate with the other in regard to that investigation or action, including through the provision of information and administrative and judicial assistance to the extent permitted by applicable national law.

2. The mere seeking by legal process of information or documents located in its territory shall not in itself be regarded by either Party as affecting adversely its significant national interests, or as constituting a basis for applying measures to prohibit the transmission of such information or documents to the authorities of the other Party, provided that in the case of United States legal process prior notice has been given of its issuance. Each Party shall, to the fullest extent possible under the circumstances of the particular case, provide notice to the other before taking action to prevent compliance with such legal process.

**Germany-US (1976)**

**Article 2**

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

- a. antitrust investigations or proceedings,
- b. studies related to competition policy and possible changes in antitrust laws, and
- c. activities related to the restrictive business practice work of international organizations of which both parties are members.

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

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

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

**Article 3**

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

- a. compliance would be prohibited by legal protections of confidentiality or by other domestic law of the complying party; or
- b. compliance would be inconsistent with its security, public policy or other important national interests;
- c. the requesting party is unable or unwilling to comply with terms or conditions established by the complying party, including conditions designed to protect the confidentiality of information requested; or
- d. the requesting party would not be obligated to comply with such request, by reason of any grounds set forth in items (a), (b) or (c) above, if such request had been made by the requested party.

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

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

#### **Article 6**

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

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

- a. the antitrust authority or authorities to whom the request is directed;
- b. the antitrust authority or authorities making the request;
- c. the nature of the antitrust investigation or proceeding, study or other activity involved;
- d. the object of and reason for the request; and
- e. the names and addresses of relevant persons or enterprises, if known.

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

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

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

#### **Article 7**

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

*Relevant provisions in special co-operation agreements providing enhanced investigative assistance*

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

**Purpose of this Arrangement**

4. The Participants agree that the mutual sharing of information and investigative assistance will increase the efficiency of their respective investigations and facilitate effective outcomes.

6. Amendments made in 2012 to New Zealand's Commerce Act, Fair Trading Act, Credit Contracts and Consumer Finance Act and Telecommunications Act allow the NZCC to provide compulsorily-acquired information and investigative assistance to overseas regulators with whom a co-operation arrangement is in place (subject to the safeguards set out in those statutes). This Arrangement is intended to give effect to those amendments in relation to the provision of compulsory acquired information and/or investigative assistance to the ACCC.

Request for information and/or assistance

9. The ACCC may make a request under this Arrangement by notice in writing sent by post to the following address:

- The Chair
- Commerce Commission
- PO Box 2351 Wellington 6140
- New Zealand

or by email sent directly to the current Chair.

10. Any request under clause 9 will be accompanied by a statement:

10.1 confirming that the ACCC considers that the provision of the compulsorily-acquired information and/or investigative assistance will assist, or will be likely to assist, the ACCC in performing its functions or exercising its powers in relation to its competition and consumer laws; and

10.2 explaining why the ACCC considers that it could not more conveniently obtain the information or assistance from another source.

Responding to requests

11. The NZCC will respond to any request in accordance with sections 99B to 99P of the Commerce Act or sections 48B to 48O of the Fair Trading Act (as appropriate) and with any policies, guidelines or practices promulgated by the NZCC in relation to the provision of compulsorily-acquired information and/or investigative assistance.

12. In responding to a request, the NZCC may impose conditions on the provision of such information or assistance, including as to:

- 12.1 the confidentiality of information;
- 12.2 the stage, use of, or access to anything provided;
- 12.3 the copying, returning, or disposal of copies of anything provided; and
- 12.4 the payment of costs reasonably incurred by the NZCC.

13. The NZCC will not provide any communication which:

- 13.1 was intended to be confidential; and
- 13.2 was made in connection with an attempt to settle or mandate a dispute between the parties to the communication; and

13.3 is protected by a "without prejudice" form of privilege, without the consent of every other party who holds that privilege.

14. 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 ACCC gives a written undertaking:

14.1 that it will not use such 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

14.2 that to the extent possible, the ACCC will ensure that such statements are not used by any other person, authority or agency as evidence in such proceedings.

Protection and use of information

15. Where the NZCC provide 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 request 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.

**Australia-US on mutual antitrust enforcement assistance (1999)**

**Article II Object and Scope of Assistance**

A. The Parties intend to assist one another and to cooperate on a reciprocal basis in providing or obtaining antitrust evidence that may assist in determining whether a person has violated, or is about to violate, their respective antitrust laws, or in facilitating the administration or enforcement of such antitrust laws.

B. Each Party's Antitrust Authorities shall, to the extent compatible with that Party's laws, enforcement policies, and other important interests, inform the other Party's Antitrust Authorities about activities that appear to be anticompetitive and that may be relevant to, or may warrant, enforcement activity by the other Party's Antitrust Authorities.

C. Each Party's Antitrust Authorities shall, to the extent compatible with that Party's laws, enforcement policies, and other important interests, inform the other Party's Antitrust Authorities about investigative or enforcement activities taken pursuant to assistance provided under this Agreement that may affect the important interests of the other Party.

D. Nothing in this Agreement shall require the Parties or their respective Antitrust Authorities to take any action inconsistent with their respective Mutual Assistance Legislation.

E. Assistance contemplated by this Agreement includes but is not limited to:

1. disclosing, providing, exchanging, or discussing antitrust evidence in the possession of an Antitrust Authority;
2. obtaining antitrust evidence at the request of an Antitrust Authority of the other Party, including

- (a) taking the testimony or statements of persons or otherwise obtaining information from persons,
  - (b) obtaining documents, records, or other forms of documentary evidence,
  - (c) locating or identifying persons or things, and
  - (d) executing searches and seizures,
- and disclosing, providing, exchanging, or discussing such evidence; and

3. providing copies of publicly available records, including documents or information in any form, in the possession of government departments and agencies of the national government of the Requested Party.

F. Assistance may be provided whether or not the conduct underlying a request would constitute a violation of the antitrust laws of the Requested Party.

G. Nothing in this Agreement shall prevent a Party from seeking assistance from or providing assistance to the other pursuant to other agreements, treaties, arrangements, or practices, including the Agreement Between the Government of Australia and the Government of the United States of America Relating to Cooperation on Antitrust Matters of June 29, 1982, either in place of or in conjunction with assistance provided pursuant to this Agreement.

H. Except as provided by paragraphs C and D of Article VII, this Agreement shall be used solely for the purpose of mutual antitrust enforcement assistance between the Parties. The provisions of this Agreement shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request made pursuant to this Agreement.

I. Nothing in this Agreement compels a person to provide antitrust evidence in violation of any legally applicable right or privilege.

J. Nothing in this Agreement affects the right of an Antitrust Authority of one Party to seek antitrust evidence on a voluntary basis from a person located in the territory of the other Party, nor does anything in this Agreement preclude any such person from voluntarily providing antitrust evidence to an Antitrust Authority.

### **Article III Requests for Assistance**

A. Requests for assistance under this Agreement shall be made by an Antitrust Authority of the Requesting Party. Such requests shall be made in writing and directed to the Central Authority of the Requested Party. With respect to the United States, the Attorney General, acting as the Central Authority, will upon receipt forward a copy of each request to the Federal Trade Commission.

B. Requests shall include, without limitation:

1. A general description of the subject matter and nature of the investigation or proceeding to which the request relates, including identification of the persons subject to the investigation or proceeding and citations to the specific antitrust laws involved giving rise to the investigation or proceeding; such description shall include information sufficient to explain how the subject matter of the request concerns a possible violation of the antitrust laws in question;
2. The purpose for which the antitrust evidence, information, or other assistance is sought and its relevance to the investigation or proceeding to which the request relates. A request by the United States shall state either that the request is not made for the purpose of any criminal proceedings or that the request is made for a purpose that includes possible criminal proceedings. In the former case, the request shall contain a written assurance that antitrust evidence obtained pursuant to the request shall not be used for the purposes of criminal proceedings, unless such use is subsequently authorized pursuant to Article VII. In the latter case, the request shall indicate the relevant provisions of law under which criminal proceedings may be brought;
3. A description of the antitrust evidence, information, or other assistance sought, including, where applicable and to the extent necessary and possible:
  - (a) the identity and location of any person from whom evidence is sought, and a description of that person's relationship to the investigation or proceeding which is the subject of the request;
  - (b) a list of questions to be asked of a witness;
  - (c) a description of documentary evidence requested; and

(d) with respect to searches and seizures, a precise description of the place or person to be searched and of the antitrust evidence to be seized, and information justifying such search and seizure under the laws of the Requested Party;

4. Where applicable, a description of procedural or evidentiary requirements bearing on the manner in which the Requesting Party desires the request to be executed, which may include requirements relating to:

(a) the manner in which any testimony or statement is to be taken or recorded, including the participation of counsel;

(b) the administration of oaths;

(c) any legal privileges that may be invoked under the law of the Requesting Party that the Requesting Party wishes the Executing Authority to respect in executing the request, together with an explanation of the desired method of taking the testimony or provision of evidence to which such privileges may apply; and

(d) the authentication of public records;

5. The desired time period for a response to the request;

6. Requirements, if any, for confidential treatment of the request or its contents; and

7. A statement disclosing whether the Requesting Party holds any proprietary interest that could benefit or otherwise be affected by assistance provided in response to the request; and

8. Any other information that may facilitate review or execution of a request.

C. Requests shall be accompanied by written assurances of the relevant Antitrust Authority that there have been no significant modifications to the confidentiality laws and procedures described in Annex A hereto.

D. An Antitrust Authority may modify or supplement a request prior to its execution if the Requested Party agrees.

#### **Article IV Limitations on Assistance**

A. The Requested Party may deny assistance in whole or in part if that Party's Central Authority or Executing Authority, as appropriate, determine that:

1. a request is not made in accordance with the provisions of this Agreement;

2. execution of a request would exceed the Executing Authority's reasonably available resources;

3. execution of a request would not be authorized by the domestic law of the Requested Party;

4. execution of a request would be contrary to the public interest of the Requested Party.

B. Before denying a request, the Central Authority or the Executing Authority of the Requested Party, as appropriate, shall consult with the Central Authority of the Requesting Party and the Antitrust Authority that made the request to determine whether assistance may be given in whole or in part, subject to specified terms and conditions.

C. If a request is denied in whole or in part, the Central Authority or the Executing Authority of the Requested Party, as appropriate, shall promptly inform the Central Authority of the Requesting Party and the Antitrust Authority that made the request and provide an explanation of the basis for denial.

#### **Article V Execution of Requests**

A. After receiving a request, the Central Authority shall promptly provide the Requesting Party an initial response that includes, when applicable, an identification of the Executing Authority (Authorities) for the Request.

B. The Central Authority of the United States, the Attorney General of Australia, or, once designated, the Executing Authority of either Party may request additional information concerning the request or may determine that the request will be executed only subject to specified terms and conditions. Without limitation, such terms and conditions may relate to (1) the manner or timing of the execution of the request, or (2) the use or disclosure of any antitrust evidence provided. If the Requesting Party accepts assistance subject to such terms and conditions, it shall comply with them.

C. A request shall be executed in accordance with the laws of the Requested Party. The method of execution specified in the request shall be followed, unless it is prohibited by the law of the Requested Party or unless the Executing Authority otherwise concludes, after consultation with the Authority that made the request, that a different method of execution is appropriate.

D. The Executing Authority shall, to the extent permitted by the laws and other important interests of the Requested Party, facilitate the participation in the execution of a request of such officials of the Requesting Party as are specified in the request.

#### **Article VI Confidentiality**

A. Except as otherwise provided by this paragraph and Article VII, each Party shall, to the fullest extent possible consistent with that Party's laws, maintain the confidentiality of any request and of any information communicated to it in confidence by the other Party under this Agreement. In particular:

Each Party shall oppose, to the fullest extent possible consistent with that Party's laws, any application by a third party for disclosure of such confidential information.

B. By entering into this Agreement, each Party confirms that:

C. Unauthorized or illegal disclosure or use of information communicated in confidence to a Party pursuant to this Agreement shall be reported immediately to the Central Authority and the Executing Authority of the Party that provided the information; the Central Authorities of both Parties, together with the Executing Authority that provided the information, shall promptly consult on steps to minimize any harm resulting from the disclosure and to ensure that unauthorized or illegal disclosure or use of confidential information does not recur. The Executing Authority that provided the information shall give notice of such unauthorized or illegal disclosure or use to the person, if any, that provided such information to the Executing Authority.

D. Unauthorized or illegal disclosure or use of information communicated in confidence under this Agreement is a ground for termination of the Agreement by the affected Party, in accordance with the procedures set out in Article XIII.C.

E. Nothing in this Agreement shall prevent disclosure, in an action or proceeding brought by an Antitrust Authority of the Requesting Party for a violation of the antitrust laws of the Requesting Party, of antitrust evidence provided hereunder to a defendant or respondent in that action or proceeding, if such disclosure is required by the law of the Requesting Party. The Requesting Party shall notify the Central Authority of the Requested Party and the Executing Authority that provided the information at least ten days in advance of any such proposed disclosure, or, if such notice cannot be given because of a court order, then as promptly as possible.

#### **Article VII Limitations on Use**

A. Except as provided in paragraphs C and D of this Article, antitrust evidence obtained pursuant to this Agreement shall be used or disclosed by the Requesting Party solely for the purpose of administering or enforcing the antitrust laws of the Requesting Party.

B. Antitrust evidence obtained pursuant to this Agreement may be used or disclosed by a Requesting Party to administer or enforce its antitrust laws only (1) in the investigation or proceeding specified in the request in question and (2) for the purpose stated in the request, unless the Executing Authority that provided such antitrust evidence has given its prior written consent to a different use or disclosure; when the Requested Party is Australia, such consent shall not be given until the Executing Authority has obtained any necessary approval from the Attorney General.

C. Antitrust evidence obtained pursuant to this Agreement may be used or disclosed by a Requesting Party with respect to the administration or enforcement of laws other than its antitrust laws only if (1) such use or disclosure is essential to a significant law enforcement objective and (2) the Executing Authority that provided such antitrust evidence has given its prior written consent to the proposed use or disclosure. In the case of the United States, the Executing Authority shall provide such consent only after it has made the determinations required for such consent by its mutual assistance legislation.

D. Antitrust evidence obtained pursuant to this Agreement that has been made public consistently with the terms of this Article may thereafter be used by the Requesting Party for any purpose consistent with the Parties' mutual assistance legislation.

#### **Article VIII Changes in Applicable Law**

A. The Parties shall provide to each other prompt written notice of actions within their respective States having the effect of significantly modifying their antitrust laws or the confidentiality laws and procedures set out in Annex A to this Agreement.

B. In the event of a significant modification to a Party's antitrust laws or confidentiality laws and procedures set out in Annex A to this Agreement, the Parties shall promptly consult to determine whether this Agreement or Annex A to this Agreement should be amended.

#### **Article IX Taking of Testimony and Production of Documents**

A. A person requested to testify and produce documents, records, or other articles pursuant to this Agreement may be compelled to appear and testify and produce such documents, records, and other articles, in accordance with the requirements of the laws of the Requested Party. Every person whose attendance is required for the purpose of giving testimony pursuant to this Agreement is entitled to such fees and allowances as may be provided for by the law of the Requested Party.

B. Upon request by the Requesting Party, the Executing Authority shall furnish information in advance about the date and place of the taking of testimony or the production of evidence pursuant to this Agreement.

C. The Executing Authority shall, to the extent permitted by the laws and other important interests of the Requested Party, permit the presence during the execution of the request of persons specified in the request, and shall, to the extent permitted by the laws and other important interests of the Requested Party, allow such persons to question the person giving the testimony or providing the evidence.

D. The Executing Authority shall, to the extent permitted by the laws of the Requested Party, comply with any instructions of the Requesting Party with respect to any claims of legal privilege, immunity, or incapacity under the laws of the Requesting Party.

E. The Executing Authority shall, to the extent permitted by the laws of the Requested Party, permit a person whose testimony is to be taken pursuant to this Article to have counsel present during the testimony.

F. A Requesting Party may ask the Requested Party to facilitate the appearance in the Requesting Party's territory of a person located in the territory of the Requested Party, for the purpose of being interviewed or giving testimony. The Requesting Party shall indicate the extent to which the person's expenses will be paid. Upon receiving such a request, the Executing Authority shall invite the person to appear before the appropriate authority in the territory of the Requesting Party. The Executing Authority shall promptly inform the Requesting Party of the person's response.

G. Antitrust evidence consisting of testimony or documentary evidence provided by the Requested Party pursuant to this Agreement shall be authenticated in accordance with the requirements of the law of the Requesting Party, in so far as such requirements would not violate the laws of the Requested Party.

#### **Article X Search and Seizure**

A. Where a request is to be executed by means of the search and seizure of antitrust evidence, the request shall include such information as is necessary to justify such action under the laws of the Requested Party. The Central Authorities shall confer, as needed, on alternative, equally effective procedures for compelling or obtaining the antitrust evidence that is the subject of a request.

B. Upon request, every official of a Requested Party who has custody of antitrust evidence seized pursuant to this Agreement shall certify the continuity of custody, the identity of the antitrust evidence, and the integrity of its condition; the Requested Party shall furnish such certifications in the form specified by the Requesting Party.

**Article XI Return of Antitrust Evidence**

At the conclusion of the investigation or proceeding specified in a request, the Central Authority or the Antitrust Authority of the Requesting Party shall return to the Central Authority or the Antitrust Authority of the Requested Party from which it obtained antitrust evidence all such evidence obtained pursuant to the execution of a request under this Agreement, along with all copies thereof, in the possession or control of the Central Authority or Antitrust Authority of the Requesting Party; provided, however, that antitrust evidence that has become evidence in the course of judicial or administrative proceedings or that has properly entered the public domain is not subject to this requirement.

**Article XII Costs**

Unless otherwise agreed, the Requested Party shall pay all costs of executing a request, except for the fees of expert witnesses, the costs of translation, interpretation, and transcription, and the allowances and expenses related to travel to the territory of the Requested Party, pursuant to Articles IX and X, by officials of the Requesting Party.

## ANNEX 7. PROVISIONS ON “EXCHANGE OF INFORMATION”

*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.

*Relevant provisions in co-operation agreements*

**Nordic Co-operation Agreement (2001)**

**Article III Exchange of unclassified information**

The parties agree that it is in their common interest to exchange unclassified information which

- (a) Makes possible a more effective application of their respective competition legislation, or
- (b) Improves their understanding of the juridical and economic conditions and theories that are relevant to the parties' enforcement measures and the like or the conditions referred to in article II, paragraph 3.

**Canada-EU (1999)**

**VII. Exchange of information**

1. In furtherance of the principles set forth in this Agreement, the Parties agree that it is in their common interest to share information which will facilitate the effective application of their respective competition laws and promote better understanding of each other's enforcement policies and activities.

2. Each Party agrees to provide to the other Party upon request such information within its possession as the requesting Party may describe that is relevant to an enforcement activity that is being contemplated or conducted by the requesting Party's competition authority.

**EU-US (1991)**

**Article III Exchange of Information**

1. The Parties agree that it is in their common interest to share information that will (a) facilitate effective application of their respective competition laws, or (b) promote better understanding by them of economic conditions and theories relevant to their competition authorities' enforcement activities and interventions or participation of the kind described in Article II, paragraph 5.

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

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

*Relevant provisions in co-operation agreements (second generation)*

**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.

**EU-Switzerland (2013)****Article 7 Exchange of Information**

1. In order to achieve the purpose of this Agreement as set out in Article 1, the competition authorities of the Parties may share views and exchange information related to the application of their respective competition laws as provided for in this Article and in Articles 8, 9 and 10.

2. The competition authorities of the Parties may discuss any information, including information obtained by investigative process, as necessary to carry out the cooperation and coordination provided for under this Agreement.

3. The competition authorities of the Parties may transmit information in their possession to each other when the undertaking which provided the information has given its express consent in writing. When such information contains personal data, those personal data may only be transmitted when the competition authorities of the Parties are investigating the same or related conduct or transaction. Paragraph 3 of Article 9 otherwise applies.

4. In the absence of a consent as referred to in paragraph 3, the competition authority of a Party may, upon request, transmit for use as evidence information obtained by investigative process that is already in its possession to the competition authority of the other Party, subject to the following conditions:

(a) information obtained by investigative process may only be transmitted where both competition authorities are investigating the same or related conduct or transaction;

(b) the request for such information shall be made in writing and shall include a general description of the subject matter and the nature of the investigation or proceedings to which the request relates and the specific legal provisions involved. It shall also identify the undertakings subject to the investigation or procedure whose identity is available at the time of the request; and

(c) the requested competition authority shall determine, in consultation with the requesting competition authority what information in its possession is relevant and may be transmitted.

5. Neither competition authority is required to discuss or transmit information obtained by investigative process to the other competition authority, in particular if it would be incompatible with its important interests or unduly burdensome.

6. The competition authorities of the Parties shall not discuss or transmit to each other information obtained under the Parties' leniency or settlement procedures, unless the undertaking which provided the information has given its express consent in writing.

7. The competition authorities of the Parties shall not discuss, request or transmit information obtained by investigative process if using such information would be prohibited under the procedural rights and privileges guaranteed under the respective laws of the Parties and applicable to their enforcement activities, including the right against self-incrimination and the legal professional privilege.

8. If the competition authority of a Party becomes aware that any document transmitted under this Article contains incorrect information, it shall immediately inform the competition authority of the other Party which shall correct it or remove it.

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

**Purpose of this Arrangement**

4. The Participants agree that the mutual sharing of information and investigative assistance will increase the efficiency of their respective investigations and facilitate effective outcomes.

5. The provision of protected information from the ACCC to the NZCC is permitted subject to the provisions of section 155AAA of the CCA. The ACCC has provided protected information to the NZCC from time to time prior to this Arrangement coming into force. This Arrangement allows for the ACCC to continue to provide such protected information in accordance with section 155AAA.

6. Amendments made in 2012 to New Zealand's Commerce Act, Fair Trading Act, Credit Contracts and Consumer Finance Act and Telecommunications Act allow the NZCC to provide compulsorily-acquired information and investigative assistance to overseas regulators with whom a co-operation arrangement is in place (subject to the safeguards set out in those statutes). This Arrangement is intended to give effect to those amendments in relation to the provision of compulsorily acquired information and/or investigative assistance to the ACCC.

**Request for information and/or assistance**

9. The ACCC may make a request under this Arrangement by notice in writing sent by post to the following address:

The Chair  
Commerce Commission  
PO Box 2351 Wellington 6140  
New Zealand

or by email sent directly to the current Chair.

10. Any request under clause 9 will be accompanied by a statement:

10.1 confirming that the ACCC considers that the provision of the compulsorily-acquired information and/or investigative assistance will assist, or will be likely to assist, the ACCC in performing its functions or exercising its powers in relation to its competition and consumer laws; and

10.2 explaining why the ACCC considers that it could not more conveniently obtain the information or assistance from another source.

**Responding to requests**

11. The NZCC will respond to any request in accordance with sections 99B to 99P of the Commerce Act or sections 48B to 48O of the Fair Trading Act (as appropriate) and with any policies, guidelines or practices promulgated by the NZCC in relation to the provision of compulsorily-acquired information and/or investigative assistance.

12. In responding to a request, the NZCC may impose conditions on the provision of such information or assistance, including as to:

12.1 the confidentiality of information;

12.2 the storage, use of, or access to anything provided;

12.3 the copying, returning, or disposal of copies of anything provided; and

12.4 the payment of costs reasonably incurred by the NZCC.

**Nordic Co-operation Agreement (2001)**

**Article IV Exchange of classified information**

1. The parties agree that it is in their common interest to exchange classified information. A requirement for a competition authority's provision of classified information shall be that the information:

- (a) Must be subject at the competition authority that receives the information to a confidentiality obligation that is at least equivalent to that which prevails at the competition authority that provides the classified information, and
- (b) May be used solely for those purposes which are established in this Agreement, and
- (c) May be further transmitted by the competition authority that receives the information only if it has first obtained the explicit consent of the competition authority that provided the information and shall be used only for the purposes referred to in that consent.

**Australia-US on mutual antitrust enforcement assistance (1999)**

**Article II Object and Scope of Assistance**

E. Assistance contemplated by this Agreement includes but is not limited to:

- 1. disclosing, providing, exchanging, or discussing antitrust evidence in the possession of an Antitrust Authority;
- 2. obtaining antitrust evidence at the request of an Antitrust Authority of the other Party, including
  - (a) taking the testimony or statements of persons or otherwise obtaining information from persons,
  - (b) obtaining documents, records, or other forms of documentary evidence,
  - (c) locating or identifying persons or things, and
  - (d) executing searches and seizures,
 and disclosing, providing, exchanging, or discussing such evidence; and
- 3. providing copies of publicly available records, including documents or information in any form, in the possession of government departments and agencies of the national government of the Requested Party.

F. Assistance may be provided whether or not the conduct underlying a request would constitute a violation of the antitrust laws of the Requested Party.

G. Nothing in this Agreement shall prevent a Party from seeking assistance from or providing assistance to the other pursuant to other agreements, treaties, arrangements, or practices, including the Agreement Between the Government of Australia and the Government of the United States of America Relating to Cooperation on Antitrust Matters of June 29, 1982, either in place of or in conjunction with assistance provided pursuant to this Agreement.

H. Except as provided by paragraphs C and D of Article VII, this Agreement shall be used solely for the purpose of mutual antitrust enforcement assistance between the Parties. The provisions of this Agreement shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request made pursuant to this Agreement.

I. Nothing in this Agreement compels a person to provide antitrust evidence in violation of any legally applicable right or privilege.

J. Nothing in this Agreement affects the right of an Antitrust Authority of one Party to seek antitrust evidence on a voluntary basis from a person located in the territory of the other Party, nor does anything in this Agreement preclude any such person from voluntarily providing antitrust evidence to an Antitrust Authority.

### **Article III Requests for Assistance**

A. Requests for assistance under this Agreement shall be made by an Antitrust Authority of the Requesting Party. Such requests shall be made in writing and directed to the Central Authority of the Requested Party. With respect to the United States, the Attorney General, acting as the Central Authority, will upon receipt forward a copy of each request to the Federal Trade Commission.

B. Requests shall include, without limitation:

1. A general description of the subject matter and nature of the investigation or proceeding to which the request relates, including identification of the persons subject to the investigation or proceeding and citations to the specific antitrust laws involved giving rise to the investigation or proceeding; such description shall include information sufficient to explain how the subject matter of the request concerns a possible violation of the antitrust laws in question;

2. The purpose for which the antitrust evidence, information, or other assistance is sought and its relevance to the investigation or proceeding to which the request relates. A request by the United States shall state either that the request is not made for the purpose of any criminal proceedings or that the request is made for a purpose that includes possible criminal proceedings. In the former case, the request shall contain a written assurance that antitrust evidence obtained pursuant to the request shall not be used for the purposes of criminal proceedings, unless such use is subsequently authorized pursuant to Article VII. In the latter case, the request shall indicate the relevant provisions of law under which criminal proceedings may be brought;

3. A description of the antitrust evidence, information, or other assistance sought, including, where applicable and to the extent necessary and possible:

(a) the identity and location of any person from whom evidence is sought, and a description of that person's relationship to the investigation or proceeding which is the subject of the request;

(b) a list of questions to be asked of a witness;

(c) a description of documentary evidence requested; and

(d) with respect to searches and seizures, a precise description of the place or person to be searched and of the antitrust evidence to be seized, and information justifying such search and seizure under the laws of the Requested Party;

4. Where applicable, a description of procedural or evidentiary requirements bearing on the manner in which the Requesting Party desires the request to be executed, which may include requirements relating to:

(a) the manner in which any testimony or statement is to be taken or recorded, including the participation of counsel;

(b) the administration of oaths;

(c) any legal privileges that may be invoked under the law of the Requesting Party that the Requesting Party wishes the Executing Authority to respect in executing the request, together with an explanation of the desired method of taking the testimony or provision of evidence to which such privileges may apply; and

(d) the authentication of public records;

5. The desired time period for a response to the request;

6. Requirements, if any, for confidential treatment of the request or its contents; and

7. A statement disclosing whether the Requesting Party holds any proprietary interest that could benefit or otherwise be affected by assistance provided in response to the request; and

8. Any other information that may facilitate review or execution of a request.

C. Requests shall be accompanied by written assurances of the relevant Antitrust Authority that there have been no significant modifications to the confidentiality laws and procedures described in Annex A hereto.

D. An Antitrust Authority may modify or supplement a request prior to its execution if the Requested Party agrees.

#### **Article IV Limitations on Assistance**

A. The Requested Party may deny assistance in whole or in part if that Party's Central Authority or Executing Authority, as appropriate, determine that:

1. a request is not made in accordance with the provisions of this Agreement;
2. execution of a request would exceed the Executing Authority's reasonably available resources;
3. execution of a request would not be authorized by the domestic law of the Requested Party;
4. execution of a request would be contrary to the public interest of the Requested Party.

B. Before denying a request, the Central Authority or the Executing Authority of the Requested Party, as appropriate, shall consult with the Central Authority of the Requesting Party and the Antitrust Authority that made the request to determine whether assistance may be given in whole or in part, subject to specified terms and conditions.

C. If a request is denied in whole or in part, the Central Authority or the Executing Authority of the Requested Party, as appropriate, shall promptly inform the Central Authority of the Requesting Party and the Antitrust Authority that made the request and provide an explanation of the basis for denial.

#### **Article V Execution of Requests**

A. After receiving a request, the Central Authority shall promptly provide the Requesting Party an initial response that includes, when applicable, an identification of the Executing Authority (Authorities) for the Request.

B. The Central Authority of the United States, the Attorney General of Australia, or, once designated, the Executing Authority of either Party may request additional information concerning the request or may determine that the request will be executed only subject to specified terms and conditions. Without limitation, such terms and conditions may relate to (1) the manner or timing of the execution of the request, or (2) the use or disclosure of any antitrust evidence provided. If the Requesting Party accepts assistance subject to such terms and conditions, it shall comply with them.

C. A request shall be executed in accordance with the laws of the Requested Party. The method of execution specified in the request shall be followed, unless it is prohibited by the law of the Requested Party or unless the Executing Authority otherwise concludes, after consultation with the Authority that made the request, that a different method of execution is appropriate.

D. The Executing Authority shall, to the extent permitted by the laws and other important interests of the Requested Party, facilitate the participation in the execution of a request of such officials of the Requesting Party as are specified in the request.

#### **Article VI Confidentiality**

A. Except as otherwise provided by this paragraph and Article VII, each Party shall, to the fullest extent possible consistent with that Party's laws, maintain the confidentiality of any request and of any information communicated to it in confidence by the other Party under this Agreement. In particular:

Each Party shall oppose, to the fullest extent possible consistent with that Party's laws, any application by a third party for disclosure of such confidential information.

B. By entering into this Agreement, each Party confirms that:

C. Unauthorized or illegal disclosure or use of information communicated in confidence to a Party pursuant to this Agreement shall be reported immediately to the Central Authority and the Executing Authority of the Party that provided the information; the Central Authorities of both Parties, together with the Executing Authority that provided the information, shall promptly consult on steps to minimize any harm resulting from the disclosure and to ensure that unauthorized or illegal disclosure or use of confidential information does not recur. The Executing Authority that provided the information shall give notice of such unauthorized or illegal disclosure or use to the person, if any, that provided such information to the Executing Authority.

D. Unauthorized or illegal disclosure or use of information communicated in confidence under this Agreement is a ground for termination of the Agreement by the affected Party, in accordance with the procedures set out in Article XIII.C.

E. Nothing in this Agreement shall prevent disclosure, in an action or proceeding brought by an Antitrust Authority of the Requesting Party for a violation of the antitrust laws of the Requesting Party, of antitrust evidence provided hereunder to a defendant or respondent in that action or proceeding, if such disclosure is required by the law of the Requesting Party. The Requesting Party shall notify the Central Authority of the Requested Party and the Executing Authority that provided the information at least ten days in advance of any such proposed disclosure, or, if such notice cannot be given because of a court order, then as promptly as possible.

#### **Article VII Limitations on Use**

A. Except as provided in paragraphs C and D of this Article, antitrust evidence obtained pursuant to this Agreement shall be used or disclosed by the Requesting Party solely for the purpose of administering or enforcing the antitrust laws of the Requesting Party.

B. Antitrust evidence obtained pursuant to this Agreement may be used or disclosed by a Requesting Party to administer or enforce its antitrust laws only (1) in the investigation or proceeding specified in the request in question and (2) for the purpose stated in the request, unless the Executing Authority that provided such antitrust evidence has given its prior written consent to a different use or disclosure; when the Requested Party is Australia, such consent shall not be given until the Executing Authority has obtained any necessary approval from the Attorney General.

C. Antitrust evidence obtained pursuant to this Agreement may be used or disclosed by a Requesting Party with respect to the administration or enforcement of laws other than its antitrust laws only if (1) such use or disclosure is essential to a significant law enforcement objective and (2) the Executing Authority that provided such antitrust evidence has given its prior written consent to the proposed use or disclosure. In the case of the United States, the Executing Authority shall provide such consent only after it has made the determinations required for such consent by its mutual assistance legislation.

D. Antitrust evidence obtained pursuant to this Agreement that has been made public consistently with the terms of this Article may thereafter be used by the Requesting Party for any purpose consistent with the Parties' mutual assistance legislation.

#### **Article VIII Changes in Applicable Law**

A. The Parties shall provide to each other prompt written notice of actions within their respective States having the effect of significantly modifying their antitrust laws or the confidentiality laws and procedures set out in Annex A to this Agreement.

B. In the event of a significant modification to a Party's antitrust laws or confidentiality laws and procedures set out in Annex A to this Agreement, the Parties shall promptly consult to determine whether this Agreement or Annex A to this Agreement should be amended.

#### **ARTICLE XI Return of Antitrust Evidence**

At the conclusion of the investigation or proceeding specified in a request, the Central Authority or the Antitrust Authority of the Requesting Party shall return to the Central Authority or the Antitrust Authority of the Requested Party from which it obtained antitrust evidence all such evidence obtained pursuant to the execution of a request under this Agreement, along with all copies thereof, in the possession or control of the Central Authority or Antitrust Authority of the Requesting Party; provided, however, that antitrust evidence that has become evidence in the course of judicial or administrative proceedings or that has properly entered the public domain is not subject to this requirement.

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

*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.

*Relevant provisions in co-operation agreements*

**EU-Switzerland (2013)**

**Article 4 Coordination of enforcement activities**

1. Where the competition authorities of both Parties are pursuing enforcement activities with regard to related matters, they may coordinate their enforcement activities. They may in particular coordinate the timing of their inspections.

2. In considering whether particular enforcement activities may be coordinated, the competition authorities of the Parties shall take into account in particular the following factors:

- (a) the effect of such coordination on the ability of the competition authorities of the Parties to achieve the objectives of their enforcement activities;
- (b) the relative abilities of the competition authorities of the Parties to obtain information necessary to conduct the enforcement activities;
- (c) the possibility of avoiding conflicting obligations and unnecessary burdens for the undertakings subject to the enforcement activities; and
- (d) the opportunity to make more efficient use of their resources.

3. Subject to appropriate notice to the competition authority of the other Party, the competition authority of either Party may, at any time, limit the coordination of enforcement activities and proceed independently on a specific enforcement activity.

#### **EU-Korea (2009)**

##### **Article 4 Coordination of enforcement activities**

1. Where the competition authorities of both Parties are pursuing enforcement activities with regard to related matters, they shall consider coordination of their enforcement activities to the extent compatible with their respective laws and regulations.

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

- (a) the effect of such coordination on the ability of the competition authorities of both Parties to achieve the objectives of their enforcement activities;
- (b) the relative abilities of the competition authorities of the Parties to obtain information necessary to conduct the enforcement activities;
- (c) the possibility of avoiding conflicting obligations and unnecessary burdens for the persons subject to the enforcement activities;
- (d) the opportunity to make more efficient use of their resources through coordination.

3. In any coordinated enforcement activities, the competition authority of each Party shall seek to conduct its enforcement activities with careful consideration to the objectives of the enforcement activities by the competition authority of the other Party.

4. Where the competition authorities of both Parties are pursuing enforcement activities with regard to related matters, the competition authority of each Party shall consider, upon request by the competition authority of the other Party and where consistent with the important interests of the requested Party, inquiring whether companies/persons who have provided confidential information in connection with those enforcement activities will consent to the sharing of such information with the competition authority of the other Party (waiver of confidentiality).

5. Subject to appropriate notification to the competition authority of the other Party, the competition authority of either Party may, at any time, limit the coordination of enforcement activities and proceed independently on a specific enforcement activity.

#### **Canada-Japan (2005)**

##### **Article IV**

1. Where the competition authorities of the Parties 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, the competition authorities of the Parties shall 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 of the Parties to obtain information necessary to conduct the enforcement activities;

(c) the extent to which the competition authority of either Party can secure effective penalties or relief against the anticompetitive activities involved;

(d) the possible reduction of cost to the Parties and to the persons subject to the enforcement activities; and

(e) the potential advantages of coordinated relief to the Parties and to the persons subject to the enforcement activities.

3. In any coordinated enforcement activity, the competition authority of each Party shall seek to conduct its enforcement activities with careful consideration to the objectives of the enforcement activities by the competition authority of the other Party.

4. Where the competition authorities of the Parties are pursuing enforcement activities with regard to related matters, the competition authority of each Party shall inquire, upon request by the competition authority of the other Party and where consistent with the important interests of the Party of the requested competition authority, where appropriate, whether persons who have provided information, other than information made available to the public, in connection with those enforcement activities will consent to the sharing of such information with the competition authority of the other Party.

5. Subject to appropriate notice to the competition authority of the other Party, the competition authority of either Party may, at any time, limit or terminate the coordination of enforcement activities and pursue its enforcement activities independently.

#### EU-Japan (2003)

##### Article 4

1. Where the competition authorities of both Parties are pursuing enforcement activities with regard to related matters, they shall consider coordination of their enforcement activities.

2. In considering whether particular enforcement activities should be coordinated, the competition authorities of the Parties should 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 of the Parties to obtain information necessary to conduct the enforcement activities;

(c) the extent to which the competition authority of either Party can secure effective relief against the anti-competitive activities involved;

(d) the opportunity to make more efficient use of resources;

(e) the possible reduction of cost to the persons subject to the enforcement activities; and

(f) the potential advantages of coordinated relief to the Parties and to the persons subject to the enforcement activities.

3. In any coordinated enforcement activities, the competition authority of each Party shall seek to conduct its enforcement activities with careful consideration to the objectives of the enforcement activities by the competition authority of the other Party.

4. Where the competition authorities of both Parties are pursuing enforcement activities with regard to related matters, the competition authority of each Party shall consider, upon request by the competition authority of the other Party and where consistent with the important interests of the requested Party, inquiring whether persons who have provided confidential information in connection with those enforcement activities will consent to the sharing of such information with the competition authority of the other Party.

5. Subject to appropriate notification to the competition authority of the other Party, the competition authority of either Party may, at any time, limit or terminate the coordination of enforcement activities and pursue their enforcement activities independently.

#### **Canada-Mexico (2001)**

##### **Article IV Coordination with regard to related matters**

1. Where both Parties' competition authorities are pursuing enforcement activities with regard to related matters, they will consider coordination of their enforcement activities. In such matters, the Parties may invoke such mutual assistance arrangements as may be in force from time to time.

2. In considering whether particular enforcement activities should be coordinated, either in whole or in part, the Parties' competition authorities shall take into account the following factors, among others:

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

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

4. In the case of concurrent or coordinated enforcement activities, the competition authority of each Party shall consider, upon request by the competition authority of the other Party and where consistent with the requested Party's enforcement interests, ascertaining whether persons that have provided confidential information in connection with those enforcement activities will consent to the sharing of such information between the Parties' competition authorities.

5. Either Party's competition authority may at any time notify the other Party's competition authority that it intends to limit or terminate coordinated enforcement and pursue its enforcement activities independently and subject to the other provisions of this Agreement.

**Mexico-US (2000)**

**Article IV Coordination with Regard to Related Matters**

1. Where both Parties' competition authorities are pursuing enforcement activities with regard to related matters, they will consider coordination of their enforcement activities. In such matters, the Parties may invoke such mutual assistance arrangements as may be in force from time to time.

2. In considering whether particular enforcement activities should be coordinated, either in whole or in part, the Parties' competition authorities shall take into account the following factors, among others:

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

3. In any coordination arrangement, each Party's competition authorities shall seek to conduct their enforcement activities consistently with the enforcement objectives of the other Party's competition authorities.

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

5. Either Party's competition authorities may at any time notify the other Party's competition authorities that they intend to limit or terminate coordinated enforcement and pursue their enforcement activities independently and subject to the other provisions of this Agreement.

**Japan-US (1999)**

**Article IV**

1. Where the competition authorities of both Parties are pursuing enforcement activities with regard to related matters, they shall consider coordination of their enforcement activities.

2. In considering whether particular enforcement activities should be coordinated, the competition authorities of the Parties should 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 of the Parties to obtain information necessary to conduct the enforcement activities;
- (c) the extent to which the competition authority of either Party can secure effective relief against the anticompetitive activities involved;
- (d) the possible reduction of cost to the Parties and to the persons subject to the enforcement activities; and

(e) the potential advantages of coordinated relief to the Parties and to the persons subject to the enforcement activities.

3. In any coordinated enforcement activity, the competition authority of each Party shall seek to conduct its enforcement activities with careful consideration to the objectives of the enforcement activities by the competition authority of the other Party.

4. Where the competition authorities of both Parties are pursuing enforcement activities with regard to related matters, the competition authority of each Party shall consider, upon request by the competition authority of the other Party and where consistent with the important interests of the requested Party, inquiring whether persons who have provided confidential information in connection with those enforcement activities will consent to the sharing of such information with the competition authority of the other Party.

5. Subject to appropriate notification to the competition authority of the other Party, the competition authority of either Party may, at any time, limit or terminate the coordination of enforcement activities and pursue their enforcement activities independently.

#### **Brazil-US (1999)**

##### **Article V Coordination with Regard to Related Matters**

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

2. In any coordination arrangement, each Party's competition authorities will seek to conduct their enforcement activities consistently with the enforcement objectives of the other Party's competition authorities.

#### **Canada-EU (1999)**

##### **IV. Coordination of enforcement activities**

2. In cases where both Parties competition authorities have an interest in pursuing enforcement activities with regard to related situations, they may agree that it is in their mutual interest to coordinate their enforcement activities. In considering whether particular enforcement activities should be coordinated, either in whole or in part, each Party's competition authority shall take into account the following factors, among others:

(i) the effect of such coordination on the ability of each Party's competition authority to achieve the objectives of its enforcement activities;

(ii) the relative ability of each Party's competition authority to obtain information necessary to conduct the enforcement activities;

(iii) the extent to which either Party's competition authority can secure effective preliminary or permanent relief against the anti-competitive activities involved;

(iv) the opportunity to make more efficient use of resources; and

(v) the possible reduction of cost to persons subject to enforcement activities.

3. (a) The Parties competition authorities may coordinate their enforcement activities by agreeing upon the timing of those activities in a particular matter, while respecting fully their own laws and important interests. Such coordination may, as agreed by the Parties competition authorities, result in enforcement action by one or both Parties competition authorities, as is best suited to attain their objectives.

(b) When carrying out coordinated enforcement activity, each Party's competition authority shall seek to maximise the likelihood that the other Party's enforcement objectives will also be achieved.

(c) Either Party may at any time notify the other Party that it intends to limit or terminate the coordination and pursue its enforcement activities independently and subject to the other provisions of this Agreement.

#### **VII. Exchange of information**

3. In the case of concurrent action by the competition authorities of both Parties with a view to the application of their competition law, the competition authority of each Party shall, upon request by the competition authority of the other Party, ascertain whether the natural or legal persons concerned will consent to the sharing of confidential information related thereto between the Parties competition authorities.

### **Israel-US (1999)**

#### **Article IV Coordination with Regard to Related Matters**

1. Where both Parties' competition authorities are pursuing enforcement activities with regard to related matters, they will consider coordination of their enforcement activities. In such matters, the Parties may invoke such mutual assistance arrangements as may be in force from time to time.

2. In considering whether particular enforcement activities should be coordinated, either in whole or in part, the Parties' competition authorities shall take into account the following factors, among others:

- a. the effect of such coordination on the ability of both Parties to achieve their respective enforcement objectives;
- b. the relative abilities of the Parties' competition authorities to obtain information necessary to conduct the enforcement activities;
- c. the extent to which either Party's competition authorities can secure effective relief against the anticompetitive activities involved;
- d. the possible reduction of costs to the Parties and to the persons subject to enforcement activities; and
- e. the potential advantage of coordinated remedies to the Parties and to the persons subject to the enforcement activities.

3. In any coordination arrangement, each Party's competition authorities shall seek to conduct their enforcement activities consistently with the enforcement objectives of the other Party's competition authorities.

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

5. Either Party's competition authorities may at any time notify the other Party's competition authorities that they intend to limit or terminate coordinated enforcement and pursue their enforcement activities independently and subject to the other provisions of this Agreement.

**Canada-US (1995)**

**ARTICLE IV Coordination with regard to related matters**

1. Where both Parties' competition authorities are pursuing enforcement activities with regard to related matters, they will consider coordination of their enforcement activities. In such matters, the Parties may invoke such mutual assistance arrangements as may be in force from time to time.

2. In considering whether particular enforcement activities should be coordinated, either in whole or in part, the Parties' competition authorities shall take into account the following factors, among others:

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

3. In any coordination arrangement, each Party's competition authorities shall seek to conduct their enforcement activities consistently with the enforcement objectives of the other Party's competition authorities.

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

5. Either Party's competition authorities may at any time notify the other Party's competition authorities that they intend to limit or terminate coordinated enforcement and pursue their enforcement activities independently and subject to the other provisions of this Agreement.

**EU-US (1991)**

**Article IV Cooperation and Coordination in Enforcement Activities**

2. In cases where both Parties have an interest in pursuing enforcement activities with regard to related situations, they may agree that it is in their mutual interest to coordinate their enforcement activities. In considering whether particular enforcement activities should be coordinated, the Parties shall take account of the following factors, among others:

- a) the opportunity to make more efficient use of their resources devoted to the enforcement activities;
- b) the relative abilities of the Parties' competition authorities to obtain information necessary to conduct the enforcement activities;
- c) the effect of such coordination on the ability of both Parties to achieve the objectives of their enforcement activities; and
- d) the possibility of reducing costs incurred by persons subject to the enforcement activities.

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

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

**Germany-US (1976)**

**Article 2**

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

## ANNEX 9. PROVISIONS ON “NEGATIVE COMITY”

### *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.

### *Relevant provisions in co-operation agreements*

#### **EU-Switzerland (2013)**

##### **Article 5 Conflict avoidance (Negative comity)**

1. The competition authority of a Party shall give careful consideration to the important interests of the other Party throughout all phases of its enforcement activities, including decisions regarding the initiation of enforcement activities, the scope of enforcement activities and the nature of sanctions or other relief measures sought in each case.

2. If a specific enforcement activity envisaged by the competition authority of a Party may affect important interests of the other Party, the former, without prejudice to its full discretion, shall use its best endeavours:

- (a) to provide to the competition authority of the other Party timely notice of significant developments relating to the interests of that Party;
- (b) to give the competition authority of the other Party an opportunity to provide comments; and
- (c) to take into consideration the comments of the competition authority of the other Party, while fully respecting the independence of the competition authority of either Party to make its own decision.

The application of this paragraph is without prejudice to the obligations of the competition authorities of the Parties under paragraphs 3 and 4 of Article 3.

3. Where the competition authority of a Party considers that its enforcement activities may adversely affect important interests of the other Party, it shall use its best endeavours to seek an appropriate accommodation of the respective interests. In seeking such accommodation, the competition authority of the Party concerned should consider the following factors, in addition to any other factor that may be relevant in the circumstances:

- (a) the relative significance of the actual or potential effects of the anticompetitive activities on the enforcing Party’s important interests as compared to the effects on the other Party’s important interests;

- (b) the relative significance to the anticompetitive activities of conduct or transactions occurring within the territory of a Party as compared to conduct or transactions occurring within the territory of the other Party;
- (c) the extent to which enforcement activities by the other Party with respect to the same undertakings would be affected; and
- (d) the extent to which undertakings will be placed under conflicting requirements by both Parties.

#### **EU-Korea (2009)**

##### **Article 5 Conflict avoidance (Negative Comity)**

1. The competition authority of each Party shall give careful consideration to the important interests of the other Party throughout all phases of its enforcement activities, including decisions regarding the initiation of enforcement activities, the scope of enforcement activities and the nature of sanctions or other relief sought in each case.

2. If a specific enforcement activity envisaged by a competition authority of one Party may affect the important interests of the other Party, the former, without prejudice to its full discretion, shall use its best endeavours:

- (a) to provide to the other Party timely notice of significant developments relating to the interests of the latter;
- (b) to give the other Party an opportunity to provide comments; and
- (c) to take into consideration the comments of the other Party, while fully respecting the independence of each Party to make its own decision.

The application of paragraph 2 of this Article is without prejudice to the obligations of the Parties under paragraphs 3 and 4 of Article 2.

3. Where either Party considers that enforcement activities by its competition authority may adversely affect the important interests of the other Party, the Parties should 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 of the effects of the anticompetitive activities on the enforcing Party's important interests as compared to the effects on the other Party's important interests;
- (b) the relative significance to the anti-competitive activities of conduct or transactions occurring within the territory of one Party as compared to conduct or transactions occurring within the territory of the other Party;
- (c) the extent to which enforcement activities by the other Party with respect to the same persons, either natural or legal, would be affected;
- (d) the extent to which private persons, either natural or legal, will be placed under conflicting requirements by both Parties.

**Canada-Japan (2005)**

**Article VI**

1. Each Party shall give careful consideration to the important interests of the other Party 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.

2. When one Party informs the other Party that a specific enforcement activity by the latter Party may affect the important interests of the former Party, the latter Party shall endeavour to provide timely notice of significant developments of such enforcement activities.

3. Where either Party considers that enforcement activities by a Party may adversely affect the important interests of the other Party, the Parties should 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 anticompetitive activities of conduct or transactions occurring within the territory of the country of the Party conducting the enforcement activities as compared to conduct or transactions occurring within the territory of the other country;

(b) the relative impact of the anticompetitive activities on the important interests of the respective Parties;

(c) the presence or absence of evidence of an intention on the part of those engaged in the anticompetitive activities to affect consumers, suppliers or competitors within the territory of the country of the Party conducting the enforcement activities;

(d) the extent to which the anticompetitive activities substantially lessen competition in the market of each country;

(e) the degree of conflict or consistency between the enforcement activities of a Party and the laws and regulations of the country of the other Party or the policies or important interests of the other Party;

(f) whether private persons, either natural or legal, will be placed under conflicting requirements by the Parties;

(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 Party against the anticompetitive activities; and

(i) the extent to which enforcement activities of the other Party with respect to the same persons, either natural or legal, would be affected.

**EU-Japan (2003)**

**Article 6**

1. The competition authority of each Party shall give careful consideration to the important interests of the other Party throughout all phases of its enforcement activities, including decisions regarding the initiation of enforcement activities, the scope of enforcement activities and the nature of sanctions or other relief sought in each case.

2. When either Party informs the other Party that specific enforcement activities by the latter Party may affect the former's important interests, the latter Party shall endeavour to provide timely notice of significant developments of such enforcement activities.

3. Where either Party considers that enforcement activities by a Party may adversely affect the important interests of the other Party, the Parties should 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 within the territory of a Party as compared to conduct or transactions occurring within the territory of the other Party;
- (b) the relative impact of the anti-competitive activities on the important interests of the respective Parties;
- (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 within the territory of the Party conducting the enforcement activities;
- (d) the extent to which the anti-competitive activities substantially lessen competition in the market of the European Community and Japan respectively;
- (e) the degree of conflict or consistency between the enforcement activities by a Party and the laws and regulations of the other Party, or the policies or important interests of that other Party;
- (f) whether private persons, either natural or legal, will be placed under conflicting requirements by both Parties;
- (g) the location of relevant assets and parties to the transaction;
- (h) the degree to which effective sanctions or other relief can be secured by the enforcement activities of the Party against the anti-competitive activities; and
- (i) the extent to which enforcement activities by the other Party with respect to the same persons, either natural or legal, would be affected.

#### **Canada-Mexico (2001)**

##### **Article VI Avoidance of conflicts**

1. Within the framework of its own laws and to the extent compatible with its important interests, each Party shall, having regard to the purposes of this Agreement as set out in Article I, give careful consideration to the other Party's important interests throughout all phases of its 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.

2. When a Party informs the other that a specific enforcement activity may affect the first Party's important interests, the second Party shall provide timely notice of developments of significance to those interests.

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

4. A Party's important interests may be affected at any stage of enforcement activity by the other Party. The Parties recognize the desirability of minimizing any adverse effects of their enforcement activities on each other's important interests, particularly in the choice of remedies. Typically, the potential for adverse impact on one Party's important interests arising from enforcement activity by the other Party is less at the investigative stage and greater at the stage at which conduct is prohibited or penalized, or at which other forms of remedial orders are imposed.

5. Where it appears that one Party's enforcement activities may adversely affect the important interests of the other Party, each Party shall, in assessing what measures it will take, consider all appropriate factors, which may include but are not limited to

- (a) the relative significance to the anticompetitive activities involved of conduct occurring within one Party's territory as compared to conduct occurring within that of the other;
- (b) the relative significance and foreseeability of the effects of the anticompetitive activities on one Party's important interests as compared to the effects on the other Party's important interests;
- (c) the presence or absence of a purpose on the part of those engaged in the anticompetitive activities to affect consumers, suppliers or competitors within the enforcing Party's territory;

- (d) the degree of conflict or consistency between the first Party's enforcement activities (including remedies) and the other Party's laws or other important interests;
- (e) whether private persons, either natural or legal, will be placed under conflicting requirements by both Parties;
- (f) the existence or absence of reasonable expectations that would be furthered or defeated by the enforcement activities;
- (g) the location of relevant assets;
- (h) the degree to which a remedy, in order to be effective, must be carried out within the other Party's territory; and
- (i) the extent to which enforcement activities of the other Party with respect to the same persons, including judgments, undertakings, conditioned approvals or consent orders resulting from such activities, would be affected.

### **Mexico-US (2000)**

#### **Article VI Avoidance of Conflicts**

1. Within the framework of its own laws and to the extent compatible with its important interests, each Party shall, having regard to the purpose of this Agreement as set out in Article I, give careful consideration to the other Party's important interests throughout all phases of its 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.

2. When a Party informs the other that a specific enforcement activity may affect the first Party's important interests, the second Party shall provide timely notice of developments of significance to those interests.

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

4. A Party's important interests may be affected at any stage of enforcement activity by the other Party. The Parties recognize the desirability of minimizing any adverse effects of their enforcement activities on each other's important interests, particularly in the choice of remedies. Typically, the potential for adverse impact on one Party's important interests arising from enforcement activity by the other Party is less at the investigative stage and greater at the stage at which conduct is prohibited or penalized, or at which other forms of remedial orders are imposed.

5. Where it appears that one Party's enforcement activities may adversely affect the important interests of the other Party, each Party shall, in assessing what measures it will take, consider all appropriate factors, which may include but are not limited to:

- a. the relative significance to the anticompetitive activities involved of conduct occurring within one Party's territory as compared to conduct occurring within that of the other;
- b. the relative significance and foreseeability of the effects of the anticompetitive activities on one Party's important interests as compared to the effects on the other Party's important interests;
- c. the presence or absence of a purpose on the part of those engaged in the anticompetitive activities to affect consumers, suppliers or competitors within the enforcing Party's territory;
- d. the degree of conflict or consistency between the first Party's enforcement activities (including remedies) and the other Party's laws or other important interests;
- e. whether private persons, either natural or legal, will be placed under conflicting requirements by both Parties;

- f. the existence or absence of reasonable expectations that would be furthered or defeated by the enforcement activities;
- g. the location of relevant assets;
- h. the degree to which a remedy, in order to be effective, must be carried out within the other Party's territory; and
- i. the extent to which enforcement activities of the other Party with respect to the same persons, including judgments or conditioned approvals resulting from such activities, would be affected.

**Japan-US (1999)**

**Article VI**

1. Each Party shall give careful consideration to the important interests of the other Party 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.

2. When either Party informs the other Party that specific enforcement activities by the latter Party may affect the former's important interests, the latter Party shall endeavor to provide timely notice of significant developments of such enforcement activities.

3. Where either Party considers that enforcement activities by a Party may adversely affect the important interests of the other Party, the Parties should 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 anticompetitive activities of conduct or transactions occurring within the territory of the country of the enforcing Party as compared to conduct or transactions occurring within the territory of the other country;
- (b) the relative impact of the anticompetitive activities on the important interests of the respective Parties;
- (c) the presence or absence of evidence of an intention on the part of those engaged in the anticompetitive activities to affect consumers, suppliers, or competitors within the territory of the country of the Party conducting the enforcement activities;
- (d) the extent to which the anticompetitive activities substantially lessen competition in the market of each country;
- (e) the degree of conflict or consistency between the enforcement activities by a Party and the laws of the other country, or the policies or important interests of the other Party;
- (f) whether private persons, either natural or legal, will be placed under conflicting requirements by both Parties;
- (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 Party against the anticompetitive activities; and
- (i) the extent to which enforcement activities by the other Party with respect to the same persons, either natural or legal, would be affected.

**Brazil-US (1999)**

**Article VI Avoidance of Conflicts; Consultations**

1. Each Party shall, within the framework of its own laws and to the extent compatible with its important interests, give careful consideration to the other Party's important interests throughout all phases of its 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-EU (1999)****VI. Avoidance of conflict**

1. Within the framework of its own laws and to the extent compatible with its important interests, each Party shall, having regard to the purpose of this Agreement as set out in Article I, give careful consideration to the other Party's important interests throughout all phases of competition 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.

2. Where it appears that one Party's enforcement activities may adversely affect the important interests of the other Party, each Party shall, consistent with the general principles set out above, use its best efforts to arrive at an appropriate accommodation of the Parties competing interests and in doing so each Party shall consider all relevant factors, including:

- (i) the relative significance to the anticompetitive activities involved of conduct occurring within one Party's territory as compared to conduct occurring within that of the other;
- (ii) the relative significance and foreseeability of the effects of the anticompetitive activities on one Party's important interests as compared to the effects on the other Party's important interests;
- (iii) the presence or absence of a purpose on the part of those engaged in the anticompetitive activities to affect consumers, suppliers or competitors within the enforcing Party's territory;
- (iv) the degree of conflict or consistency between the enforcement activities and the other Party's laws or articulated economic policies including those expressed in the application of, or decisions under, their respective competition laws;
- (v) whether private persons, either natural or legal, will be placed under conflicting requirements by both Parties;
- (vi) the existence or absence of reasonable expectations that would be furthered or defeated by the enforcement activities;
- (vii) the location of relevant assets;
- (viii) the degree to which a remedy, in order to be effective, must be carried out within the other Party's territory;
- (ix) the need to minimise the negative effects on the other Party's important interests, in particular when implementing remedies to address anti-competitive effects within the Party's territory; and
- (x) the extent to which enforcement activities of the other Party with respect to the same persons, including judgments or undertakings resulting from such activities, would be affected.

**Israel-US (1999)****Article VI Avoidance of Conflicts**

1. Within the framework of its own laws and to the extent compatible with its important interests, each Party shall, having regard to the purpose of this Agreement as set out in Article I, give careful consideration to the other Party's important interests throughout all phases of its 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.

2. When a Party informs the other that a specific enforcement activity may affect the first Party's important interests, the second Party shall provide timely notice of developments of significance to those interests.

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

4. A Party's important interests may be affected at any stage of enforcement activity by the other Party. The Parties recognize the desirability of minimizing any adverse effects of their enforcement activities on each other's important interests, particularly in the choice of remedies. Typically the potential for adverse impact on one Party's important interests arising from enforcement activity by the other Party is less at the investigative stage and greater at the stage at which conduct is prohibited or penalized, or at which other forms of remedial orders are imposed.

5. Where it appears that one Party's enforcement activities may adversely affect the important interests of the other Party, each Party shall, in assessing what measures it will take, consider all appropriate factors, which may include but are not limited to:

- a. the relative significance to the anticompetitive activities involved of conduct occurring within one State as compared to conduct occurring within that of the other;
- b. the relative significance and foreseeability of the effects of the anticompetitive activities on one Party's important interests as compared to the effects on the other Party's important interests;
- c. the presence or absence of a purpose on the part of those engaged in the anticompetitive activities to affect consumers, suppliers or competitors within the enforcing State;
- d. the degree of conflict or consistency between the first Party's enforcement activities (including remedies) and the other Party's laws or other important interests;
- e. whether private persons, either natural or legal, will be placed under conflicting requirements by both Parties;
- f. the existence or absence of reasonable expectations that would be furthered or defeated by the enforcement activities;
- g. the location of relevant assets;
- h. the degree to which a remedy, in order to be effective, must be carried out within the other State; and
- i. the extent to which enforcement activities of the other Party with respect to the same persons, including judgments or undertakings resulting from such activities, would be affected.

#### Canada-US (1995)

##### Article VI Avoidance of conflicts

1. Within the framework of its own laws and to the extent compatible with its important interests, each Party shall, having regard to the purpose of this Agreement as set out in Article I, give careful consideration to the other Party's important interests throughout all phases of its 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.

2. When a Party informs the other that a specific enforcement activity may affect the first Party's important interests, the second Party shall provide timely notice of developments of significance to those interests.

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

4. A Party's important interests may be affected at any stage of enforcement activity by the other Party. The Parties recognize the desirability of minimizing any adverse effects of their enforcement activities on each other's important interests, particularly in the choice of remedies. Typically, the potential for adverse impact on one Party's important interests arising from enforcement activity by the other Party is less at the investigative stage and greater at the stage at which conduct is prohibited or penalized, or at which other forms of remedial orders are imposed.

5. Where it appears that one Party's enforcement activities may adversely affect the important interests of the other Party, each Party shall, in assessing what measures it will take, consider all appropriate factors, which may include but are not limited to:

- i. the relative significance to the anticompetitive activities involved of conduct occurring within one Party's territory as compared to conduct occurring within that of the other;
- ii. the relative significance and foreseeability of the effects of the anticompetitive activities on one Party's important interests as compared to the effects on the other Party's important interests;
- iii. the presence or absence of a purpose on the part of those engaged in the anticompetitive activities to affect consumers, suppliers or competitors within the enforcing Party's territory;
- iv. the degree of conflict or consistency between the first Party's enforcement activities (including remedies) and the other Party's laws or other important interests;
- v. whether private persons, either natural or legal, will be placed under conflicting requirements by both Parties;
- vi. the existence or absence of reasonable expectations that would be furthered or defeated by the enforcement activities;
- vii. the location of relevant assets;
- viii. the degree to which a remedy, in order to be effective, must be carried out within the other Party's territory; and
- ix. the extent to which enforcement activities of the other Party with respect to the same persons, including judgments or undertakings resulting from such activities, would be affected.

## EU-US (1991)

### Article VI Avoidance of Conflicts over Enforcement Activities

Within the framework of its own laws and to the extent compatible with its important interests, each Party will seek, at all stages in its enforcement activities, to take into account the important interests of the other Party. Each Party shall consider important interests of the other Party in decisions as to whether or not to initiate an investigation or proceeding, the scope of an investigation or proceeding, the nature of the remedies or penalties sought, and in other ways, as appropriate. In considering one another's important interests in the course of their enforcement activities, the Parties will take account of, but will not be limited to, the following principles:

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

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

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

- a) the relative significance to the anticompetitive activities involved of conduct within the enforcing Party's territory as compared to conduct within the other Party's territory;
- b) the presence or absence of a purpose on the part of those engaged in the anticompetitive activities to affect consumers, suppliers, or competitors within the enforcing Party's territory;

- c) the relative significance of the effects of the anticompetitive activities on the enforcing Party's interests as compared to the effects on the other Party's interests;
- d) the existence or absence of reasonable expectations that would be furthered or defeated by the enforcement activities;
- e) the degree of conflict or consistency between the enforcement activities and the other Party's laws or articulated economic policies; and
- f) the extent to which enforcement activities of the other Party with respect to the same persons, including judgments or undertakings resulting from such activities, may be affected.

### **Australia-US (1982)**

#### **Article 2 Consultations**

5. Both Parties during consultations shall seek earnestly to avoid a possible conflict between their respective laws, policies and national interests and for that purpose to give due regard to each other's sovereignty and to considerations of comity.

6. In particular, in seeking to avoid conflict:

(a) the Government of Australia shall give the fullest consideration to modifying any aspect of the policy which has or might have implications for the United States in relation to the enforcement of its antitrust laws. In this regard, consideration shall be given to any harm that may be caused by the implementation or continuation of the Australian policy to the interests protected by the United States antitrust laws; and

(b) The Department of Justice or the Federal Trade Commission of the United States, as the case may be, shall give the fullest consideration to modifying or discontinuing its existing antitrust investigation or proceedings, or to modifying or refraining from contemplated antitrust investigations or proceedings. In this regard, consideration shall be given to the interests of Australia with respect to the conduct to which the proceedings, or contemplated proceedings, relate, or would relate, including, without limitation, Australia's interests in circumstances where that conduct:

(1) was undertaken for the purpose of obtaining a permission or approval required under Australian law for the exportation from Australia of Australian natural resources of goods manufactured or produced in Australia;

(2) was undertaken by an Australian authority, being an authority established by law in Australia, in the discharge of its functions in relation to the exportation from Australia of Australian natural resources or goods manufactured or produced in Australia;

(3) related exclusively to the exportation from Australia to countries other than the United States, and otherwise than for the purpose of re-exportation to the United States, of Australian natural resources or goods manufactured or produced in Australia; or

(4) consisted of representations to, or discussions with, the Government of Australia or an Australian authority in relation to the formulation or implementation of a policy of the Government of Australia with respect to the exportation from Australia of Australian natural resources or goods manufactured or produced in Australia.

### **Germany-US (1976)**

#### **Article 4**

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

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

## ANNEX 10. PROVISIONS ON “POSITIVE COMITY”

### *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.

### *Relevant provisions in co-operation agreements*

#### **EU-Switzerland (2013)**

##### **Article 6 Positive comity**

1. If the competition authority of a Party believes that anticompetitive activities carried out in the territory of the other Party may adversely affect the important interests of the former Party, it may, taking into account the importance of avoiding conflicts regarding jurisdiction and taking into account that the competition authority of the other Party may be in a position to conduct more effective enforcement activities with regard to such anticompetitive activities, request that the competition authority of the other Party initiate or expand appropriate enforcement activities.

2. The request shall be as specific as possible about the nature of the anticompetitive activities and their actual or potential effect on the important interests of the Party whose competition authority has made the request, and shall include an offer of such further information and other cooperation as the requesting competition authority is able to provide.

3. The requested competition authority shall carefully consider whether to initiate enforcement activities, or whether to expand ongoing enforcement activities, with respect to the anticompetitive activities identified in the request. The requested competition authority shall inform the requesting competition authority of its decision as soon as practically possible. If enforcement activities are initiated or expanded, the requested competition authority shall inform the requesting competition authority of their outcome and, to the extent possible, of significant interim developments.

4. Nothing in this Article limits the discretion of the requested competition authority under its competition laws and enforcement policies as to whether or not to undertake enforcement activities with respect to the anticompetitive activities identified in the request, or precludes the requesting competition authority from withdrawing its request.

#### **EU-Korea (2009)**

##### **Article 6 Positive comity**

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

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

3. The requested competition authority shall 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. The requested competition authority shall inform the requesting competition authority of its decision as soon as practically possible. If enforcement activities are initiated, the requested competition authority shall inform the requesting competition authority of their outcome and, to the extent possible, of significant interim developments.

4. Nothing in this Article limits the discretion of the requested Party's competition authority under its competition laws and 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 Party's competition authority from withdrawing its request.

#### **Canada-Japan (2005)**

##### **ARTICLE V**

1. Where the competition authority of a Party believes that anticompetitive activities carried out in the territory of the country of the other Party adversely affect the important interests of the former Party, that competition authority, taking into account the importance of avoiding conflicts regarding jurisdiction and taking into account that the competition authority of the latter Party may be in a position to conduct more effective enforcement activities with regard to such anticompetitive activities, may request that the competition authority of the latter Party initiate appropriate enforcement activities. The request shall be as specific as possible about the nature of the anticompetitive activities and their effect on the important interests of the former Party, and shall include an offer of such further information and other cooperation as the requesting competition authority is able to provide.

2. The requested competition authority shall carefully consider whether to initiate enforcement activities, or whether to expand ongoing enforcement activities, with respect to the anticompetitive activities identified in the request. The requested competition authority shall inform the requesting competition authority of its decision as soon as practically possible. Where enforcement activities are initiated, the requested competition authority shall inform the requesting competition authority of their outcome and, to the extent possible, of significant interim developments.

**EU-Japan (2003)****Article 5**

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

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

3. The requested competition authority shall 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. The requested competition authority shall inform the requesting competition authority of its decision as soon as practically possible. If enforcement activities are initiated, the requested competition authority shall inform the requesting competition authority of their outcome and, to the extent possible, of significant interim developments.

4. Nothing in this Article limits the discretion of the requested Party's competition authority under its competition laws and 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 Party's competition authority from withdrawing its request.

**Canada-Mexico (2001)****Article V Positive comity**

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

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

3. The requested Party's competition authority shall carefully consider whether to initiate enforcement activities or to expand ongoing enforcement activities, with respect to the anticompetitive activities identified in the request. The requested Party's competition authority shall promptly inform the requesting Party of its decision. If enforcement activities are initiated, the requested Party's competition authority shall advise the requesting Party of their outcome and, to the extent possible, of significant interim developments.

4. Nothing in this Article limits the discretion of the requested Party's competition authority under its competition laws and enforcement policies as to whether to undertake enforcement activities with respect to the anticompetitive activities identified in a request, or precludes the requesting Party's competition authority from undertaking enforcement activities with respect to such anticompetitive activities.

**Mexico-US (2000)**

**Article V Cooperation Regarding Anticompetitive Activities in the Territory of one Party that Adversely Affect the Interests of the other Party**

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

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

3. The requested Party's competition authorities shall carefully consider whether to initiate enforcement activities, or to expand ongoing enforcement activities, with respect to the anticompetitive activities identified in the request. The requested Party's competition authorities shall promptly inform the requesting Party of its decision. If enforcement activities are initiated, the requested Party's competition authorities shall advise the requesting Party of their outcome and, to the extent possible, of significant interim developments.

4. Nothing in this Article limits the discretion of the requested Party's competition authorities under its competition laws and enforcement policies as to whether to undertake enforcement activities with respect to the anticompetitive activities identified in a request, or precludes the requesting Party's competition authorities from undertaking enforcement activities with respect to such anticompetitive activities.

**Japan-US (1999)**

**Article V**

1. If the competition authority of a Party believes that anticompetitive activities carried out in the territory of the other country adversely affect the important interests of the former Party, such competition authority, taking into account the importance of avoiding conflicts regarding jurisdiction and taking into account that the competition authority of the other Party may be in a position to conduct more effective enforcement activities with regard to such anticompetitive activities, may request that the competition authority of the other Party initiate appropriate enforcement activities. The request shall be as specific as possible about the nature of the anticompetitive activities and their effect on the important interests of the Party of the requesting competition authority, and shall include an offer of such further information and other cooperation as the requesting competition authority is able to provide.

2. The requested competition authority shall carefully consider whether to initiate enforcement activities, or whether to expand ongoing enforcement activities, with respect to the anticompetitive activities identified in the request. The requested competition authority shall inform the requesting competition authority of its decision as soon as practically possible. If enforcement activities are initiated, the requested competition authority shall inform the requesting competition authority of their outcome and, to the extent possible, of significant interim developments.

**Brazil-US (1999)****Article IV Cooperation Regarding Anticompetitive Practices in the Territory of one Party that may Adversely Affect the Interests of the other Party**

1. The Parties agree that it is in their common interest to secure the efficient operation of their markets by enforcing their respective competition laws in order to protect their markets from anticompetitive practices. The Parties further agree that it is in their common interest to seek relief against anticompetitive practices that may occur in the territory of one Party that, in addition to violating that Party's competition laws, adversely affect the interest of the other Party in securing the efficient operation of the other Party's markets.

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

3. The requested Party's competition authorities shall carefully consider whether to initiate or to expand enforcement activities with respect to the anticompetitive practices identified in the request, and shall promptly inform the requesting Party of its decision. If enforcement activities are initiated or expanded, the requested Party's competition authorities shall advise the requesting Party of their outcome and, to the extent possible, of significant interim developments.

4. Nothing in this Article limits the discretion of the requested Party's competition authorities under its competition laws and enforcement policies as to whether to undertake enforcement activities with respect to the anticompetitive practices identified in a request, nor precludes the requesting Party's competition authorities from undertaking enforcement activities with respect to such anticompetitive practices.

**Canada-EU (1999)****V. Cooperation regarding anticompetitive activities in the territory of one party that adversely affect the interests of the other party**

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

2. If a Party has reason to believe that anticompetitive activities carried out in the territory of the other Party are adversely affecting, or may adversely affect the first Party's important interests, the first Party may request that the other Party's competition authority initiate appropriate enforcement activities. The request shall be as specific as possible about the nature of the anticompetitive activities and their effects on the interests of the requesting Party, and shall include an offer of such further information and other cooperation as the requesting Party's competition authority is able to provide.

3. The requested Party shall consult with the requesting Party and the requested Party's competition authority shall accord full and sympathetic consideration to the request in deciding whether or not to initiate, or expand, enforcement activities with respect to the anticompetitive activities identified in the request. The requested Party's competition authority shall promptly inform the other Party of its decision and the reasons for that decision. If enforcement activities are initiated, the requested Party's competition authority shall advise the requesting Party of significant developments and the outcome of the enforcement activities.

4. Nothing in this Article limits the discretion of the requested Party's competition authority under its competition laws and enforcement policies as to whether or not to undertake enforcement activities with respect to the anticompetitive activities identified in the request, or precludes the requesting Party's competition authority from undertaking enforcement activities with respect to such anticompetitive activities.

**Israel-US (1999)**

**Article V Positive Comity**

1. The Parties note that anticompetitive activities may occur within one State that, in addition to violating that State's competition laws, adversely affect important interests of the other Party. The Parties agree that it is in their common interest, consistent with the principle of positive comity, to seek relief against anticompetitive activities of this nature.

2. A Party may request that the other Party's competition authorities initiate enforcement activities against anticompetitive activities carried out in the requested State, if the requesting Party believes that such activities adversely affect its important interests. The request shall be as specific as possible about the nature of the anticompetitive activities and their effects on the interests of the requesting Party, and shall include an offer of such further information and other cooperation as the requesting Party's competition authorities are able to provide.

3. The requested Party's competition authorities shall carefully consider whether to initiate enforcement activities with respect to the anticompetitive activities identified in the request. The requested Party's competition authorities shall promptly inform the requesting Party of its decision. If enforcement activities are initiated, the requested Party's competition authorities shall advise the requesting Party of their outcome and, to the extent possible, of significant interim developments.

4. Nothing in this Article limits the discretion of the requested Party's competition authorities under its competition laws and enforcement policies as to whether to undertake enforcement activities with respect to the anticompetitive activities identified in a request, or precludes the requesting Party's competition authorities from undertaking enforcement activities with respect to such anticompetitive activities.

**Canada-US (1995)**

**Article V Cooperation regarding anticompetitive activities in the territory of one party that adversely affect the interests of the other party**

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

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

3. The requested Party's competition authorities shall carefully consider whether to initiate enforcement activities, or to expand ongoing enforcement activities, with respect to the anticompetitive activities identified in the request. The requested Party's competition authorities shall promptly inform the requesting Party of its decision. If enforcement activities are initiated, the requested Party's competition authorities shall advise the requesting Party of their outcome and, to the extent possible, of significant interim developments.

4. Nothing in this Article limits the discretion of the requested Party's competition authorities under its competition laws and enforcement policies as to whether to undertake enforcement activities with respect to the anticompetitive activities identified in a request, or precludes the requesting Party's competition authorities from undertaking enforcement activities with respect to such anticompetitive activities.

**EU-US (1991)****Article V Cooperation Regarding Anticompetitive Activities in the Territory of one Party that Adversely Affect the Interests of the other Party**

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

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

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

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

*Relevant provisions in special agreements on positive comity***Canada-US on positive comity (2004)****Article III Positive Comity**

The competition authorities of a Requesting Party may request the competition authorities of a Requested Party to investigate and, if warranted, to remedy anticompetitive activities in accordance with the Requested Party's competition laws. Such a request may be made regardless of whether the activities also violate the Requesting Party's competition laws, and regardless of whether the competition authorities of the Requesting Party have commenced or contemplate taking enforcement activities under their own competition laws.

**Article IV Deferral or Suspension of Investigations in Reliance on Enforcement Activity by the Requested Party**

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

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

- a. The anticompetitive activities at issue:
  - i. do not have a direct, substantial and reasonably foreseeable impact on consumers in the Requesting Party's territory, or
  - ii. where the anticompetitive activities do have such an impact on the Requesting Party's consumers, they occur principally in and are directed principally towards the other Party's territory;

b. The adverse effects on the important interests of the Requesting Party can be and are likely to be fully and adequately investigated and, as appropriate, eliminated or adequately remedied pursuant to the laws, procedures and available remedies of the Requested Party. The Parties recognize that it may be appropriate to pursue separate enforcement activities where anticompetitive activities affecting both territories justify the imposition of penalties within both jurisdictions; and

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

- i. devote adequate resources to investigate the anticompetitive activities and, where appropriate, promptly pursue adequate enforcement activities;
- ii. use their best efforts to pursue all reasonably available sources of information, including such sources of information as may be suggested by the competition authorities of the Requesting Party;
- iii. inform the competition authorities of the Requesting Party at reasonable intervals which normally shall not exceed six weeks, or on request, of the status of their enforcement activities and intentions, and where appropriate provide to the competition authorities of the Requesting Party relevant confidential information. The use and disclosure of such information shall be governed by Article V;
- iv. promptly notify the competition authorities of the Requesting Party of any change in their intentions with respect to investigation or enforcement;
- v. use their best efforts to complete their investigation and to obtain a remedy or initiate proceedings within a specified period to which the competition authorities of the Parties shall agree, which shall be as short a period as is reasonably feasible. The competition authorities of the Parties shall agree on such time period within three months of the time at which a request under Article III of this agreement is made;
- vi. fully inform the competition authorities of the Requesting Party of the results of their investigation, and take into account the views of the competition authorities of the Requesting Party, prior to any settlement, initiation of proceedings, adoption of remedies, or termination of the investigation; and
- vii. comply with any reasonable request that may be made by the competition authorities of the Requesting Party.

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

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

4. Nothing in this Agreement precludes the competition authorities of a Requesting Party that choose to defer or suspend independent enforcement activities from later initiating or reinstating such activities. In such circumstances, the competition authorities of the Requesting Party will promptly inform the competition authorities of the Requested Party of their intentions and reasons. If the competition authorities of the Requested Party continue with their own investigation, the competition authorities of the two Parties shall consider coordination of their respective investigations under the criteria and procedures of Article IV of the 1995 Agreement.

#### **Article V Confidentiality and Use of Information**

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

#### **Article VI Relationship to the 1995 Agreement**

This Agreement shall supplement and be interpreted consistently with the 1995 Agreement, which remains fully in force.

#### **Article VII Existing Law**

Nothing in this Agreement shall be interpreted in a manner inconsistent with the existing laws, or as requiring any change in the laws, of the Parties or of their respective Provinces or States.

**EU-US on positive comity (1998)****ARTICLE III Positive Comity**

The competition authorities of a Requesting Party may request the competition authorities of a Requested Party to investigate and, if warranted, to remedy anticompetitive activities in accordance with the Requested Party's competition laws. Such a request may be made regardless of whether the activities also violate the Requesting Party's competition laws, and regardless of whether the competition authorities of the Requesting Party have commenced or contemplate taking enforcement activities under their own competition laws.

**ARTICLE IV Deferral or Suspension of Investigations in Reliance on Enforcement Activity by the Requested Party**

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

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

(a) The anticompetitive activities at issue:

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

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

(b) The adverse effects on the interests of the Requesting Party can be and are likely to be fully and adequately investigated and, as appropriate, eliminated or adequately remedied pursuant to the laws, procedures, and available remedies of the Requested Party. The Parties recognize that it may be appropriate to pursue separate enforcement activities where anticompetitive activities affecting both territories justify the imposition of penalties within both jurisdictions; and

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

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

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

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

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

(v) use their best efforts to complete their investigation and to obtain a remedy or initiate proceedings within six months, or such other time as agreed to by the competition authorities of the Parties, of the deferral or suspension of enforcement activities by the competition authorities of the Requesting Party;

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

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

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

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

4. Nothing in this Agreement precludes the competition authorities of a Requesting Party that choose to defer or suspend independent enforcement activities from later initiating or reinstating such activities. In such circumstances, the competition authorities of the Requesting Party will promptly inform the competition authorities of the Requested Party of their intentions and reasons. If the competition authorities of the Requested Party continue with their own investigation, the competition authorities of the two Parties shall, where appropriate, coordinate their respective investigations under the criteria and procedures of Article IV of the 1991 Agreement.

#### **ARTICLE V Confidentiality and Use of Information**

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

#### **ARTICLE VI Relationship to the 1991 Agreement**

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

#### **ARTICLE VII Existing Law**

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

**ANNEX 11. PROVISIONS ON “CONSULTATION”**

*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.

*Relevant provisions in co-operation agreements*

**EU-Switzerland (2013)**

**Article 11 Consultations**

1. The Parties shall consult with each other, upon request of either Party, on any matter which may arise in the implementation of this Agreement. Upon request of either Party, the Parties shall consider reviewing the operation of this Agreement and examine the possibility of further developing their cooperation.

2. The Parties shall as soon as possible inform each other of any amendment to their competition laws, as well as of any amendment to other laws and regulations and of any change in the enforcement practice of their competition authorities that may affect the operation of this Agreement. Upon request of either Party, the Parties shall hold consultations in order to assess the specific implications of such amendment or change for this Agreement, and in particular to determine whether this Agreement should be amended pursuant to paragraph 2 of Article 14.

**EU-Korea (2009)**

**Article 8 Consultation**

1. The Parties shall consult with each other, upon request of either Party, on any matter which may arise in the implementation of this Agreement.

**Canada-Japan (2005)**

**ARTICLE VII**

1. The Parties shall consult with each other, upon request of either Party, through the diplomatic channel on any matter which may arise in connection with this Agreement.

2. The competition authorities of the Parties shall consult with each other, upon request of the competition authority of either Party, on any matter which may arise from the implementation or operation of this Agreement.

3. Any request for consultations under this Article shall be made in writing and indicate the reasons for the request.

4. Each Party or the competition authority of each Party, as the case may be, shall consult as promptly as practically possible when so requested.

**EU-Japan (2003)**

**Article 7**

1. The Parties may hold, as necessary, consultations through the diplomatic channel on any matter which may arise in connection with this Agreement.

2. A request for consultations under this Article shall be communicated through the diplomatic channel.

**Article 8**

1. The competition authorities of the Parties shall consult with each other, upon request of either Party's competition authority, on any matter which may arise in the implementation of this Agreement.

**Canada-Mexico (2001)**

**ARTICLE VIII Consultations**

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

2. Consultations under this Article shall take place at the appropriate level as determined by each Party.

3. During consultations under this Article, each Party shall 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 Party shall carefully consider the representations of the other Party in light of the principles set out in this Agreement and shall be prepared to explain the specific results of its application of those principles to the matter that is the subject of consultations.

**Mexico-US (2000)**

**Article VIII Consultations**

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

2. Consultations under this Article shall take place at the appropriate level as determined by each Party.

3. During consultations under this Article, each Party shall 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 Party shall carefully consider the representations of the other Party in light of the principles set out in this Agreement and shall be prepared to explain the specific results of its application of those principles to the matter that is the subject of consultations.

**Japan-US (1999)**

**Article VII**

1. The Parties may hold, as necessary, consultations through the diplomatic channel on any matter which may arise in the implementation of this Agreement.

2. A request for consultations under this Article shall be communicated through the diplomatic channel.

**Article VIII**

1. The competition authorities of the Parties shall consult with each other, upon request of either Party's competition authority, on any matter which may arise in connection with this Agreement.

**Brazil-US (1999)**

**Article VI Avoidance of Conflicts; Consultations**

2. Either Party may request consultations regarding any matter relating to this Agreement. The request for consultations shall indicate the reasons for the request and whether any procedural time limits or other constraints require that consultations be expedited. Each Party shall consult promptly when so requested with a view to reaching a conclusion that is consistent with the purpose of this Agreement.

**Canada-EU (1999)**

**III. Consultations**

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

2. During consultations under paragraph 1, the competition authority of each Party shall carefully consider the representations of the other Party in light of the principles set out in this Agreement and shall be prepared to explain to the other Party the specific results of its application of those principles to the matter under discussion.

**VII. Exchange of information**

4. During consultations pursuant to Article III, each Party shall provide the other with as much information as it is able in order to facilitate the broadest possible discussion regarding the relevant aspects of a particular transaction.

**Israel-US (1999)**

**Article VII CONSULTATIONS**

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

2. Consultations under this Article shall take place at the appropriate level as determined by each Party.

3. During consultations under this Article, each Party shall 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 Party shall carefully consider the representations of the other Party in light of the principles set out in this Agreement and shall be prepared to explain the specific results of its application of those principles to the matter that is the subject of consultations.

**Canada-US (1995)**

**Article VIII Consultations**

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

2. Consultations under this Article shall take place at the appropriate level as determined by each Party.

3. During consultations under this Article, each Party shall 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 Party shall carefully consider the representations of the other Party in light of the principles set out in this Agreement and shall be prepared to explain the specific results of its application of those principles to the matter that is the subject of consultations.

**EU-US (1991)**

**Article VII Consultation**

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

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

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

**Australia-US (1982)**

**Article 2 Consultations**

1. When it appears to the Government of Australia through notification pursuant to paragraph 2 of Article 1 that the Department of Justice or Federal Trade Commission of the United States has commenced, or is likely to commence, an antitrust investigation or legal proceeding that may have implications for Australian laws, policies or national interests, the Government of Australia shall communicate its concerns and may request consultations with the Government of the United States. The Government of the United States shall participate in such consultations.

2. When it appears to the Government of the United States through notification pursuant to paragraph 1 of Article 1 that a policy of the Government of Australia may have significant antitrust implications under United States law, the Government of the United States shall communicate its concerns and may request consultations with the Government of Australia. The Government of Australia shall participate in such consultations.

3. Either Party may seek consultations with respect to potential conflicts which come to its attention other than by notification.

4. Both Parties during consultations shall seek to identify any respect in which;

(a) implementation of the Australian policy has or might have implications for the United States in relation to the enforcement of its antitrust laws; and

(b) the antitrust enforcement action by the Department of Justice or the Federal Trade Commission of the United States has or might have implications for Australian laws, policies or national interests.

5. Both Parties during consultations shall seek earnestly to avoid a possible conflict between their respective laws, policies and national interests and for that purpose to give due regard to each other's sovereignty and to considerations of comity.

6. In particular, in seeking to avoid conflict:

(a) the Government of Australia shall give the fullest consideration to modifying any aspect of the policy which has or might have implications for the United States in relation to the enforcement of its antitrust laws. In this regard, consideration shall be given to any harm that may be caused by the implementation or continuation of the Australian policy to the interests protected by the United States antitrust laws; and

(b) the Department of Justice or the Federal Trade Commission of the United States, as the case may be, shall give the fullest consideration to modifying or discontinuing its existing antitrust investigation or proceedings, or to modifying or refraining from contemplated antitrust investigations or proceedings. In this regard, consideration shall be given to the interests of Australia with respect to the conduct to which the proceedings, or contemplated proceedings, relate, or would relate, including, without limitation, Australia's interests in circumstances where that conduct:

(1) was undertaken for the purpose of obtaining a permission or approval required under Australian law for the exportation from Australia of Australian natural resources of goods manufactured or produced in Australia;

(2) was undertaken by an Australian authority, being an authority established by law in Australia, in the discharge of its functions in relation to the exportation from Australia of Australian natural resources or goods manufactured or produced in Australia;

(3) related exclusively to the exportation from Australia to countries other than the United States, and otherwise than for the purpose of re-exportation to the United States, of Australian natural resources or goods manufactured or produced in Australia; or

(4) consisted of representations to, or discussions with, the Government of Australia or an Australian authority in relation to the formulation or implementation of a policy of the Government of Australia with respect to the exportation from Australia of Australian natural resources or goods manufactured or produced in Australia.

7. Each Party during consultations shall provide as detailed an account as possible, under the particular circumstances, of the basis and nature of its antitrust investigation or proceeding, or its national policy and its implementation, as the case may be.

**Article 4 Procedure after consultations**

1. When consultations have been held with respect to an Australian policy notified pursuant to paragraph I of Article I, and the Department of Justice or the Federal Trade Commission of the United States, as the case may be, concludes that the implementation of that policy should not be a basis for action under United States antitrust laws, the Government of Australia may request a written memorialization of such conclusion and the basis for it. The Government of the United States shall, in the absence of circumstances making it inappropriate, provide such a written memorialization. Where a written memorialization has been provided, the Government of the United States shall expeditiously consider requests by persons or enterprises for a statement of enforcement intentions with respect to proposed private conduct in implementation of the Australian policy, in accordance with the Department of Justice's Business Review Procedure or the Federal Trade Commission's Advisory Opinion Procedure, as may be appropriate in the case.

2. If, through consultations pursuant to this Agreement, no means for avoiding a conflict between the laws, policies or national interests of the two Parties has been developed, each Party shall be free to protect its interests as it deems necessary.

## ANNEX 12. PROVISIONS ON “REGULAR MEETINGS”

### *Relevant provisions in co-operation agreements*

#### **EU-Switzerland (2013)**

##### **Article 11 Consultations**

3. The competition authorities of the Parties shall meet at the appropriate level, at the request of either competition authority. At these meetings, they may:

- (a) inform each other on their current enforcement efforts and priorities in relation to the competition laws of each Party;
- (b) exchange views on economic sectors of common interest;
- (c) discuss policy issues of mutual interest; and
- (d) discuss other matters of mutual interest relating to the application of the competition laws of each Party.

#### **Canada-Japan (2005)**

##### **Article VIII**

Unless otherwise decided by the competition authorities of the Parties, they shall meet at least every two years to:

- (a) exchange information on their current enforcement efforts and priorities in relation to the competition law of each country;
- (b) exchange information on economic sectors of common interest;
- (c) discuss policy changes that they are considering;
- (d) discuss other matters of mutual interest relating to the application of the competition law of each country; and
- (e) discuss developments relating to bilateral or multilateral fora involving the Parties that may be relevant to the cooperative relationship between the competition authorities of the Parties.

#### **EU-Japan (2003)**

##### **Article 8**

2. The competition authorities of the Parties shall meet at least once a year to:

- (a) exchange information on their current enforcement efforts and priorities in relation to the competition laws of each Party;

- (b) exchange information on economic sectors of common interest;
- (c) discuss policy changes that they are considering; and
- (d) discuss other matters of mutual interest relating to the application of the competition laws of each Party.

#### **Canada-Mexico (2001)**

##### **Article IX Periodic meetings**

Officials of the Parties' competition authorities shall meet periodically to:

- (a) exchange information on their current enforcement efforts and priorities in relation to their competition laws;
- (b) exchange information on economic sectors of common interest;
- (c) discuss policy changes that they are considering; and
- (d) discuss other matters of mutual interest relating to the application of their competition laws and the operation of this Agreement.

#### **Mexico-US (2000)**

##### **Article IX Periodic Meetings**

Officials of the Parties' competition authorities shall meet periodically to:

- a. exchange information on their current enforcement efforts and priorities in relation to their competition laws;
- b. exchange information on economic sectors of common interest;
- c. discuss policy changes that they are considering; and
- d. discuss other matters of mutual interest relating to the application of their competition laws and the operation of this Agreement.

#### **Japan-US (1999)**

##### **Article VIII**

2. The competition authorities of the Parties shall meet at least once a year to:

- (a) exchange information on their current enforcement efforts and priorities in relation to the competition laws of each country;
- (b) exchange information on economic sectors of common interest;
- (c) discuss policy changes that they are considering; and
- (d) discuss other matters of mutual interest relating to the application of the competition laws of each country.

**Brazil-US (1999)**

**Article VIII Meetings of Competition Authorities**

Officials of the Parties' competition authorities shall meet periodically to exchange information on their current enforcement efforts and priorities in relation to their competition laws.

**Canada-EU (1999)**

**VIII. Semiannual meetings**

1. In furtherance of their common interest in cooperation and coordination in relation to their enforcement activities, appropriate officials of the Parties competition authorities shall meet twice a year, or otherwise as agreed between the competition authorities of the Parties, to: (a) exchange information on their current enforcement activities and priorities, (b) exchange information on economic sectors of common interest, (c) discuss policy changes which they are considering, and (d) discuss other matters of mutual interest relating to the application of competition laws.

2. A report on these semiannual meetings shall be made available to the Joint Cooperation Committee under the Framework Agreement for Commercial and Economic Cooperation between the European Communities and Canada.

**Israel-US (1999)**

**Article VIII Interagency Meetings**

Officials of the Parties' competition authorities shall meet periodically, in the United States and Israel, to:

- a. exchange information on their current enforcement efforts and priorities in relation to their competition laws;
- b. exchange information on economic sectors of common interest;
- c. discuss policy changes that they are considering; and
- d. discuss other matters of mutual interest relating to the application of their competition laws and the operation of this Agreement.

**Canada-US (1995)**

**Article IX Semi-annual meetings**

Officials of the Parties' competition authorities shall meet at least twice a year to:

- a. exchange information on their current enforcement efforts and priorities in relation to their competition and deceptive marketing practices laws;
- b. exchange information on economic sectors of common interest;
- c. discuss policy changes that they are considering; and
- d. discuss other matters of mutual interest relating to the application of their competition and deceptive marketing practices laws and the operation of this Agreement.

**EU-US (1991)**

**Article III Exchange of Information**

2. In furtherance of this common interest, appropriate officials from the competition authorities of each Party shall meet at least twice each year, unless otherwise agreed, to (a) exchange information on their current enforcement activities and priorities, (b) exchange information on economic sectors of common interest, (c) discuss policy changes which they are considering, and (d) discuss other matters of mutual interest relating to the application of competition laws.

*Relevant provisions in MoUs*

**Co-operation Agreement between the Australian Competition and Consumer Commission  
and the New Zealand Commerce Commission (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 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.

#### *Relevant provisions in co-operation agreements (first generation)*

##### **EU-Korea (2009)**

#### **Article 7 Confidentiality**

1. Notwithstanding any other provision of this Agreement, neither Party is required to communicate information to the other Party if such communication is prohibited by the laws and regulations of the Party possessing the information or if such communication would be incompatible with its important interests.

2. (a) The European Community is not required to communicate to the Republic of Korea under the Agreement confidential information covered by Article 28 of Council Regulation (EC) No 1/2003, and Article 17 of Council Regulation (EC) No 139/2004, except for the information communicated in accordance with the provisions of Article 4(4) of this Agreement.

(b) The Government of the Republic of Korea is not required to communicate to the European Community under the Agreement confidential information covered by Article 62 of the Monopoly Regulation and Fair Trade Act and Article 9 of the Disclosure of Information by Public Agencies Act, except for the information communicated in accordance with the provisions of Article 4(4) of this Agreement.

3. (a) Information, other than publicly available information, communicated by a Party to the other Party pursuant to this Agreement shall be used by the receiving Party solely for the purpose of investigating anti-competitive activities under its competition laws in connection with the matter specified in the request.

(b) When a Party communicates confidential information under this Agreement, the receiving Party shall, consistent with its laws and regulations, maintain the confidentiality of the communicated information.

4. A Party may require that information communicated pursuant to this Agreement be used subject to the terms and conditions it may specify. The receiving Party shall not use such information in a manner contrary to such terms and conditions without the prior written consent of the other Party.

5. Each Party may limit the information it communicates to the other Party when the latter Party is unable to give the assurance requested by it with respect to confidentiality, with respect to the terms and conditions it specifies, or with respect to the limitations of purposes for which the information will be used.

6. This Article shall not preclude the use or disclosure of information, other than publicly available information, by the receiving Party to the extent that:

(a) the Party providing the information has given its prior written consent to such use or disclosure; or

(b) there is an obligation to do so under the laws and regulations of the Party receiving the information. In such case, the receiving Party:

(i) shall not take any action which may result in a legal obligation to make available to a third party or other authorities information provided in confidence pursuant to this Agreement without the prior written consent of the Party providing the information;

(ii) shall, wherever possible, give advance notice of any such use or disclosure to the Party which provided the information and, upon request, consult with the other Party and give due consideration to its important interests; and

(iii) shall, unless otherwise agreed by the Party which provided the information, use all available measures under the applicable laws and regulations to maintain the confidentiality of information as regards applications by a third party or other authorities for disclosure of the information concerned.

7. The competition authority of the European Community:

(a) will inform the competent authorities of the Member State or Member States whose important interests are affected of the notifications sent to it by the Korean competition authority;

(b) will inform the competent authorities of such Member State or Member States of any cooperation and coordination of enforcement activities; and

(c) shall ensure that information, other than publicly available information, communicated to the competent authorities of the Member State or Member States pursuant to subparagraphs (a) and (b) above shall not be used for any purpose other than the one specified in Article 1(1) of this Agreement, as well as that such information shall not be disclosed.

### Canada-Japan (2005)

#### Article IX

1. Notwithstanding any other provision of this Agreement, neither Party is required to communicate information to the other Party if such communication is prohibited by the laws or regulations of the country of the Party possessing the information or such communication would be incompatible with the important interests of that Party.

2. For the purposes of this Article, "confidential information" means all information communicated pursuant to this Agreement except information that has been made available to the public.

3. Each Party shall, to the fullest extent possible consistent with the laws and regulations of its country, maintain the confidentiality of confidential information unless the Party communicating the confidential information consents to its disclosure.

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

5. (a) Confidential information communicated pursuant to this Agreement shall not be used by the receiving Party or the receiving competition authority for purposes other than the enforcement of the competition law of its country unless:

(i) in the case of confidential information communicated by the Government of Japan, the Government of Japan gives consent to use for such a purpose;

(ii) in the case of confidential information communicated by the competition authority of the Government of Japan, the competition authority of the Government of Japan gives consent to use for such a purpose; and

(iii) in the case of confidential information communicated by the Government of Canada or by the competition authority of the Government of Canada, the competition authority of the Government of Canada gives consent to use for such a purpose.

(b)

(i) confidential information communicated pursuant to this Agreement by a Party to the other Party shall not be communicated to a third party, including other authorities of the receiving Party other than the competition authority of the receiving Party, unless:

(A) in the case of confidential information communicated by the Government of Japan, the Government of Japan gives consent to communicate to a third party; and

(B) in the case of confidential information communicated by the Government of Canada, the competition authority of the Government of Canada gives consent to communicate to a third party; and

(ii) confidential information communicated pursuant to this Agreement by the competition authority of a Party shall not, without the consent of that competition authority, be communicated to a third party, including other authorities of the receiving Party.

(c) Notwithstanding sub-paragraph (b) above, confidential information may be communicated to a law enforcement authority of the receiving Party solely for the purposes of the enforcement of the competition law of its country, in which case the confidential information may be used subject to paragraph 7 of this Article, unless:

(i) in the case of confidential information communicated by the Government of Japan, the Government of Japan gives notice to the contrary;

(ii) in the case of confidential information communicated by the competition authority of the Government of Japan, the competition authority of the Government of Japan gives notice to the contrary; and

(iii) in the case of confidential information communicated by the Government of Canada or by the competition authority of the Government of Canada, the competition authority of the Government of Canada gives notice to the contrary.

6. (a) This Article shall not preclude the use or disclosure of confidential information to the extent that there is an obligation to do so under the laws and regulations of the country of the receiving Party. Such Party shall, wherever possible, give advance notice of any such use or disclosure to the Party that communicated the confidential information.

(b) Where a third party, including authorities of the receiving Party other than the authority receiving the information, applies for the use or disclosure of confidential information communicated pursuant to this Agreement, each Party shall, until a final determination is made, to the fullest extent possible consistent with the laws and regulations of its country, use all available measures to maintain the confidentiality of that confidential information.

7. (a) Confidential information communicated by a Party or the competition authority of a Party to the other Party or the competition authority of the other Party pursuant to this Agreement shall not be presented to a court or judge in criminal proceedings of the country of the latter Party.

(b) Where confidential information communicated by a Party or the competition authority of a Party to the other Party or the competition authority of the other Party pursuant to this Agreement is needed for presentation to a court or judge in criminal proceedings of the country of the latter Party, the latter Party shall submit a request to present such information to the former Party through the diplomatic channel or other channel established in accordance with the law of the former Party. The former Party will make, upon request, its best efforts to respond promptly to meet the legitimate deadlines indicated by the latter Party.

## EU-Japan (2003)

### Article 9

1. Notwithstanding any other provision of this Agreement, neither Party is required to communicate information to the other Party if such communication is prohibited by the laws and regulations of the Party possessing the information or such communication would be incompatible with its important interests.

2.

(a) Information, other than publicly available information, communicated by a Party to the other Party pursuant to this Agreement shall only be used by the receiving Party for the purpose specified in Article 1(1) of this Agreement.

(b) When a Party communicates information in confidence under this Agreement, the receiving Party shall, consistent with the laws and regulations, maintain its confidentiality.

3. A Party may require that information communicated pursuant to this Agreement be used subject to the terms and conditions it may specify. The receiving Party shall not use such information in a manner contrary to such terms and conditions without the prior consent of the other Party.

4. Each Party may limit the information it communicates to the other Party when the latter Party is unable to give the assurance requested by it with respect to confidentiality, with respect to the terms and conditions it specifies, or with respect to the limitations of purposes for which the information will be used.

5. This Article shall not preclude the use or disclosure of information, other than publicly available information, by the receiving Party to the extent that:

(a) the Party providing the information has given its prior consent to such use or disclosure, or

(b) there is an obligation to do so under the laws and regulations of the Party receiving the information. In such case, the receiving Party:

(i) shall not take any action which may result in a legal obligation to make available to a third party or other authorities information provided in confidence pursuant to this Agreement without the prior consent of the Party providing the information;

(ii) shall, wherever possible, give advance notice of any such use or disclosure to the Party which provided the information and, upon request, consult with the other Party and give due consideration to its important interests; and

(iii) shall, unless otherwise agreed by the Party which provided the information, use all available measures under the applicable laws and regulations to maintain the confidentiality of information as regards applications by a third party or other authorities for disclosure of the information concerned.

6. The competition authority of the European Community,

(a) after notice to the Japanese competition authority, will inform the competent authorities of the Member State or Member States whose important interests are affected of the notifications sent to it by the Japanese competition authority;

(b) after consultation with the Japanese competition authority, will inform the competent authorities of such Member State or Member States of any cooperation and coordination of enforcement activities; and

(c) shall ensure that information, other than publicly available information, communicated to the competent authorities of the Member State or Member States pursuant to subparagraphs (a) and (b) above shall not be used for any purpose other than the one specified in Article 1(1) of this Agreement, as well as that such information shall not be disclosed.

**Canada-Mexico (2001)**

**ARTICLE X Confidentiality of information**

1. Notwithstanding any other provision of this Agreement, neither Party is required to communicate information to the other Party if such communication is prohibited by the laws of the Party possessing the information or would be incompatible with that Party's important interests.

2. Unless otherwise agreed by the Parties, each Party shall, to the fullest extent possible consistent with that Party's laws, maintain the confidentiality of any information communicated to it in confidence by the other Party under this Agreement. Each Party shall oppose any application by a third party for disclosure of such confidential information.

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

4.

(a) Notifications and consultations under Articles II and VIII of this Agreement and other communications between the Parties in relation thereto shall be deemed confidential.

(b) A notified Party may not, without the consent of the other Party, communicate to its state or provincial authorities information received from the other Party pursuant to notifications or consultations under this Agreement.

5. Subject to paragraph 2, information communicated in confidence by a Party's competition authority to the competition authority of the other Party pursuant to Articles III, IV or V of this Agreement shall not be communicated to third parties without the consent of the competition authority that provided the information.

6. Information communicated in confidence by a Party's competition authority to the competition authority of the other Party pursuant to Articles III, IV or V of this Agreement shall not be used for purposes other than competition law enforcement without consent of the competition authority that provided the information.

**Mexico-US (2000)**

**Article X Confidentiality of Information**

1. Notwithstanding any other provision of this Agreement, neither Party is required to communicate information to the other Party if such communication is prohibited by the laws of the Party possessing the information or would be incompatible with that Party's important interests.

2. Unless otherwise agreed by the Parties, each Party shall, to the fullest extent possible consistent with that Party's laws, (i) maintain the confidentiality of any information communicated to it in confidence by the other Party under this Agreement, and (ii) oppose any application by a third party for disclosure of such confidential information.

**Japan-US (1999)**

**Article IX**

1.

(a) Information, other than publicly available information, communicated by a Party to the other Party pursuant to this Agreement shall only be used by the receiving Party for the purpose specified in Article 1, paragraph 1 of this Agreement, unless the Party providing the information has approved otherwise.

(b) Information, other than publicly available information, provided by a competition authority or a relevant law enforcement authority pursuant to this Agreement shall not be communicated to a third party or other authorities, unless the competition authority or the relevant law enforcement authority providing the information has approved otherwise.

2. Notwithstanding paragraph 1(b) of this Article, unless otherwise notified by the competition authority providing the information, the competition authority receiving the information communicated pursuant to this Agreement may provide the information to its Party's relevant law enforcement authorities, for the purpose of competition law enforcement, which may use such information under the conditions stipulated in Article X of this Agreement.

3. Each Party shall, consistent with the laws and regulations of its country, maintain the confidentiality of any information communicated to it in confidence by the other Party pursuant to this Agreement, unless the latter Party consents to the disclosure of such information.

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

5. Notwithstanding any other provision of this Agreement, neither Party is required to communicate information to the other Party if such communication is prohibited by the laws or regulations of the country of the Party possessing the information or such communication would be incompatible with its important interests.

6. This Article shall not preclude the use or disclosure of information to the extent that there is an obligation to do so under the laws and regulations of the country of the Party receiving the information. Such Party shall, wherever possible, give advance notice of any such use or disclosure to the Party which provided the information.

**Article X**

1. Information communicated by a Party to the other Party pursuant to this Agreement, except publicly available information, shall not be presented to a grand jury or to a court or a judge in criminal proceedings.

2. In the event that information communicated by a Party to the other Party pursuant to this Agreement, except publicly available information, is needed for presentation to a grand jury or to a court or a judge in criminal proceedings, that Party shall submit a request for such information to the other Party through the diplomatic channel or other channel established in accordance with the law of the requested Party. The requested Party will make, upon request, its best efforts to respond promptly to meet any legitimate deadlines indicated by the requesting Party.

**Brazil-US (1999)**

**Article IX Confidentiality**

1. Notwithstanding any other provision of this Agreement, neither Party is required to communicate information to the other Party if such communication is prohibited by the laws of the Party possessing the information or would be incompatible with that Party's important interests.

2. Unless otherwise agreed by the Parties, each Party shall, to the fullest extent possible, maintain the confidentiality of any information communicated to it in confidence by the other Party under this Agreement. Each Party shall oppose, to the fullest extent possible consistent with that Party's laws, any application by a third party for disclosure of such confidential information.

**Canada-EU (1999)**

**X. Confidentiality and use of information**

1. Notwithstanding any other provision of this Agreement, neither Party is required to disclose information to the other Party where such disclosure is prohibited by the laws of the Party possessing the information or would be incompatible with that Party's important interests.

2. Unless otherwise agreed by the Parties, each Party shall, to the fullest extent possible, maintain the confidentiality of any information communicated to it in confidence by the other Party under this Agreement. Each Party shall oppose, to the fullest extent possible, any application by a third party for disclosure of such information.

3.(a) The competition authority of the European Communities, after notice to the Canadian competition authority, will inform the competent authorities of the Member State or Member States whose important interests are affected of the notifications sent to it by the Canadian competition authority.

(b) The competition authority of the European Communities, after consultation with the Canadian competition authority, will inform the competent authorities of such Member State or Member States of any cooperation and coordination of enforcement activities. However, as regards such activities, the competition authority of the European Communities will respect the Canadian competition authority's request not to disclose the information which it provides when necessary to ensure confidentiality.

4. Before taking any action which may result in a legal obligation to make available to a third party information provided in confidence under this Agreement, the Parties competition authorities shall consult one another and give due consideration to their respective important interests.

5. Information received by a Party under this Agreement, apart from information received under Article II, shall only be used for the purpose of enforcing that Party's competition laws. Information received under Article II shall only be used for the purpose of this Agreement.

6. A Party may require that information furnished pursuant to this Agreement be used subject to the terms and conditions it may specify. The receiving Party shall not use such information in a manner contrary to such terms and conditions without the prior consent of the other Party.

**Israel-US (1999)**

**Article IX Confidentiality of Information**

1. Notwithstanding any other provision of this Agreement, neither Party is required to communicate information to the other Party if such communication is prohibited by the laws of the Party possessing the information or would be incompatible with that Party's important interests.

2. Unless otherwise agreed by the Parties, each Party shall, to the fullest extent possible, maintain the confidentiality of any information communicated to it in confidence by the other Party under this Agreement. Each Party shall oppose, to the fullest extent possible consistent with that Party's laws, any application by a third party for disclosure of such confidential information.

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

4. Notifications and consultations pursuant to Articles II and VII of this Agreement and other communications between the Parties in relation thereto shall be deemed to be confidential. The notified Party may, after the notifying Party's competition authorities have advised a person who is the subject of a notification of the enforcement activities referred to in the notification, communicate the fact of the notification to, and consult with that person concerning the subject of the notification. The notifying Party shall, upon request, promptly inform the notified Party of the time at which the person has, or will be, advised of the enforcement activities in question.

5. Subject to paragraph 2, information communicated in confidence by a Party's competition authorities to the competition authorities of the other Party in the context of enforcement cooperation or coordination pursuant to Articles III, IV or V of this Agreement shall not be communicated to third parties or to other agencies of the receiving competition authorities' government, without the consent of the competition authorities that provided the information. A Party's competition authorities may, however, communicate such information to the Party's law enforcement officials for the purpose of competition law enforcement.

6. Information communicated in confidence by a Party's competition authorities to the competition authorities of the other Party in the context of enforcement cooperation or coordination pursuant to Articles III, IV or V of this Agreement shall not be used for purposes other than competition law enforcement, without the consent of the competition authorities that provided the information.

**Canada-US (1995)**

**Article X Confidentiality of information**

1. Notwithstanding any other provision of this Agreement, neither Party is required to communicate information to the other Party if such communication is prohibited by the laws of the Party possessing the information or would be incompatible with that Party's important interests.

2. Unless otherwise agreed by the Parties, each Party shall, to the fullest extent possible, maintain the confidentiality of any information communicated to it in confidence by the other Party under this Agreement. Each Party shall oppose, to the fullest extent possible consistent with that Party's laws, any application by a third party for disclosure of such confidential information.

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

4.

a. Notifications and consultations pursuant to Articles II and VIII of this Agreement and other communications between the Parties in relation thereto shall be deemed to be confidential.

b. Party may not, without the consent of the other Party, communicate to its state or provincial authorities information received from the other Party pursuant to notifications or consultations under this Agreement. The Party providing the information shall consider requests for consent sympathetically, taking into account the other Party's reasons for seeking disclosure, the risk, if any, that disclosure would pose for its enforcement activities, and any other relevant considerations.

c. The notified Party may, after the notifying Party's competition authorities have advised a person who is the subject of a notification of the enforcement activities referred to in the notification, communicate the fact of the notification to, and consult with that person concerning the subject of the notification. The notifying Party shall, upon request, promptly inform the notified Party of the time at which the person has, or will be, advised of the enforcement activities in question.

5. Subject to paragraph 2, information communicated in confidence by a Party's competition authorities to the competition authorities of the other Party in the context of enforcement cooperation or coordination pursuant to Articles III, IV or V of this Agreement shall not be communicated to third parties or to other agencies of the receiving competition authorities' government, without the consent of the competition authorities that provided the information. A Party's competition authorities may, however, communicate such information to the Party's law enforcement officials for the purpose of competition law enforcement.

6. Information communicated in confidence by a Party's competition authorities to the competition authorities of the other Party in the context of enforcement cooperation or coordination pursuant to Articles III, IV or V of this Agreement shall not be used for purposes other than competition law enforcement, without the consent of the competition authorities that provided the information.

#### **EU-US (1991)**

##### **Article VIII Confidentiality of Information**

1. Notwithstanding any other provision of this Agreement, neither Party is required to provide information to the other Party if disclosure of that information to the requesting Party (a) is prohibited by the law of the Party possessing the information, or (b) would be incompatible with important interests of the Party possessing the information.

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

#### **Australia-US (1982)**

##### **Article 3 Confidentiality**

Documents and information provided by either Party in the course of notification or consultations under this Agreement shall be treated confidentially by the receiving Party unless the providing Party consents to disclosure or disclosure is compelled by law. The Government of the United States shall not, without the consent of the Government of Australia, use information or documents provided by the Government of Australia in the course of notification or consultations under this Agreement as evidence in any judicial or administrative proceeding under United States antitrust laws. The Government of the United States shall not, however, be foreclosed from pursuing an investigation of any conduct which is the subject of notification or consultations, or from initiating a proceeding based on evidence obtained from sources other than the Government of Australia.

**Germany-US (1976)**

**Article 5**

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

*Relevant provisions in co-operation agreements (second generation)*

**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.

**EU-Switzerland (2013)**

**Article 8 Use of information**

1. Information that the competition authority of a Party discusses with or transmits to the competition authority of the other Party under this Agreement shall be used only for the purpose of enforcing that Party's competition laws by its competition authority.

2. Information obtained by investigative process and discussed with or transmitted to the competition authority of the other Party under this Agreement shall only be used by the receiving competition authority for the enforcement of its competition laws with regard to the same or related conduct or transaction.

3. Information transmitted under paragraph 4 of Article 7 shall only be used by the receiving competition authority for the purpose defined in the request.

4. No information discussed or transmitted under this Agreement shall be used to impose sanctions on natural persons.

5. The competition authority of a Party may require that information transmitted pursuant to this Agreement shall be used subject to the terms and conditions it specifies. The receiving competition authority shall not use such information in a manner contrary to such terms and conditions without the prior consent of the transmitting competition authority.

#### **Article 9 Protection and confidentiality of information**

1. The competition authorities of the Parties shall treat the fact that a request has been made or received as confidential. Information obtained pursuant to this Agreement shall be kept confidential by the receiving competition authority according to its respective legislation. Both competition authorities shall in particular oppose any application of a third party or another authority for disclosure of information received. This does not prevent disclosure of such information for the purpose of:

- (a) obtaining a court order in relation to the public enforcement of the competition laws of a Party;
- (b) disclosure to undertakings which are subject to an investigation or a procedure under the competition laws of the Parties and against whom the information may be used, if such disclosure is required by the law of the Party receiving the information;
- (c) disclosure to courts in appeal procedures;
- (d) disclosure if and in so far as it is indispensable for the exercise of the right of access to documents under the laws of a Party.

In such cases, the receiving competition authority shall ensure that the protection of business secrets remains fully guaranteed.

2. If the competition authority of a Party becomes aware that, despite its best efforts, information has accidentally been used or disclosed in a manner contrary to the provisions of this Article, it shall notify the competition authority of the other Party forthwith. The Parties shall promptly consult on steps to minimise any harm resulting from such use or disclosure and to ensure that such situation does not recur.

3. The Parties shall ensure the protection of personal data in accordance with their respective legislations.

#### **New Zealand-Australia on compulsorily-acquired information and investigative assistance (2013) (interagency agreement)**

##### **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.

**Nordic Co-operation Agreement (2001)**

**Article IV Exchange of classified information**

1. The parties agree that it is in their common interest to exchange classified information. A requirement for a competition authority's provision of classified information shall be that the information:

- (a) Must be subject at the competition authority that receives the information to a confidentiality obligation that is at least equivalent to that which prevails at the competition authority that provides the classified information, and
- (b) May be used solely for those purposes which are established in this Agreement, and
- (c) May be further transmitted by the competition authority that receives the information only if it has first obtained the explicit consent of the competition authority that provided the information and shall be used only for the purposes referred to in that consent.

**Australia-US on mutual antitrust enforcement assistance (1999)**

**Article VI Confidentiality**

A. Except as otherwise provided by this paragraph and Article VII, each Party shall, to the fullest extent possible consistent with that Party's laws, maintain the confidentiality of any request and of any information communicated to it in confidence by the other Party under this Agreement. In particular:

Each Party shall oppose, to the fullest extent possible consistent with that Party's laws, any application by a third party for disclosure of such confidential information.

B. By entering into this Agreement, each Party confirms that:

- 1. The confidentiality of antitrust evidence obtained under this Agreement is ensured by its national laws and procedures pertaining to the confidential treatment of such evidence, and that such laws and procedures as are set forth in Annex A to this Agreement are sufficient to provide protection that is adequate to maintain securely the confidentiality of antitrust evidence provided under this Agreement; and
- 2. The Antitrust Authorities designated herein are themselves subject to the confidentiality restrictions imposed by such laws and procedures.

C. Unauthorized or illegal disclosure or use of information communicated in confidence to a Party pursuant to this Agreement shall be reported immediately to the Central Authority and the Executing Authority of the Party that provided the information; the Central Authorities of both Parties, together with the Executing Authority that provided the information, shall promptly consult on steps to minimize any harm resulting from the disclosure and to ensure that unauthorized or illegal disclosure or use of confidential information does not recur. The Executing Authority that provided the information shall give notice of such unauthorized or illegal disclosure or use to the person, if any, that provided such information to the Executing Authority.

D. Unauthorized or illegal disclosure or use of information communicated in confidence under this Agreement is a ground for termination of the Agreement by the affected Party, in accordance with the procedures set out in Article XIII.C.

E. Nothing in this Agreement shall prevent disclosure, in an action or proceeding brought by an Antitrust Authority of the Requesting Party for a violation of the antitrust laws of the Requesting Party, of antitrust evidence provided hereunder to a defendant or respondent in that action or proceeding, if such disclosure is required by the law of the Requesting Party. The Requesting Party shall notify the Central Authority of the Requested Party and the Executing Authority that provided the information at least ten days in advance of any such proposed disclosure, or, if such notice cannot be given because of a court order, then as promptly as possible.

**Article VII Limitations on Use**

A. Except as provided in paragraphs C and D of this Article, antitrust evidence obtained pursuant to this Agreement shall be used or disclosed by the Requesting Party solely for the purpose of administering or enforcing the antitrust laws of the Requesting Party.

B. Antitrust evidence obtained pursuant to this Agreement may be used or disclosed by a Requesting Party to administer or enforce its antitrust laws only (1) in the investigation or proceeding specified in the request in question and (2) for the purpose stated in the request, unless the Executing Authority that provided such antitrust evidence has given its prior written consent to a different use or disclosure; when the Requested Party is Australia, such consent shall not be given until the Executing Authority has obtained any necessary approval from the Attorney General.

C. Antitrust evidence obtained pursuant to this Agreement may be used or disclosed by a Requesting Party with respect to the administration or enforcement of laws other than its antitrust laws only if (1) such use or disclosure is essential to a significant law enforcement objective and (2) the Executing Authority that provided such antitrust evidence has given its prior written consent to the proposed use or disclosure. In the case of the United States, the Executing Authority shall provide such consent only after it has made the determinations required for such consent by its mutual assistance legislation.

D. Antitrust evidence obtained pursuant to this Agreement that has been made public consistently with the terms of this Article may thereafter be used by the Requesting Party for any purpose consistent with the Parties' mutual assistance legislation.

**Article VIII Changes in Applicable Law**

A. The Parties shall provide to each other prompt written notice of actions within their respective States having the effect of significantly modifying their antitrust laws or the confidentiality laws and procedures set out in Annex A to this Agreement.

B. In the event of a significant modification to a Party's antitrust laws or confidentiality laws and procedures set out in Annex A to this Agreement, the Parties shall promptly consult to determine whether this Agreement or Annex A to this Agreement should be amended.

**Article XI Return of Antitrust Evidence**

At the conclusion of the investigation or proceeding specified in a request, the Central Authority or the Antitrust Authority of the Requesting Party shall return to the Central Authority or the Antitrust Authority of the Requested Party from which it obtained antitrust evidence all such evidence obtained pursuant to the execution of a request under this Agreement, along with all copies thereof, in the possession or control of the Central Authority or Antitrust Authority of the Requesting Party; provided, however, that antitrust evidence that has become evidence in the course of judicial or administrative proceedings or that has properly entered the public domain is not subject to this requirement.

## ANNEX 14. PROVISIONS ON “EXISTING LAW”

### *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.

### *Relevant provisions in co-operation agreements*

#### **EU-Switzerland (2013)**

##### **Article 13 Existing Law**

Nothing in this Agreement shall be construed to prejudice the formulation or enforcement of the competition laws of either Party.

#### **EU-Korea (2009)**

##### **Article 10 Existing law**

1. This Agreement shall be implemented within the respective laws and regulations of the Parties.

2. Nothing in this Agreement shall be construed to prejudice the policy or legal jurisdiction of either party regarding any issues related to jurisdiction.

3. Nothing in this Agreement shall be construed to affect the rights or obligations of either Party under other international agreements or under the laws of the Republic of Korea and the European Community.

**Canada-Japan (2005)**

**Article X**

1. This Agreement shall be implemented by the Parties in accordance with the laws and regulations in force in each country and within the available resources of their respective competition authorities.

2. Detailed arrangements relating to the implementation or operation of this Agreement may be made between the competition authorities of the Parties.

3. Nothing in this Agreement shall be construed to affect the rights and obligations of either Party under its laws or under other international agreements.

4. Nothing in this Agreement shall prevent the Parties from seeking or providing assistance to one another pursuant to other bilateral or multilateral agreements or arrangements between the Parties.

5. Nothing in this Agreement shall be construed to prejudice the policy or legal position of either Party regarding any issue related to jurisdiction.

**EU-Japan (2003)**

**Article 10**

1. This Agreement shall be implemented by the Parties in accordance with the laws and regulations in force in the European Community and Japan respectively and within the available resources of their respective competition authorities.

2. Detailed arrangements to implement this Agreement may be made between the competition authorities of the Parties.

3. Nothing in this Agreement shall prevent the Parties from seeking or providing assistance to one another pursuant to other bilateral or multilateral agreements or arrangements between the Parties.

4. Nothing in this Agreement shall be construed to prejudice the policy or legal position of either Party regarding any issue related to jurisdiction.

5. Nothing in this Agreement shall be construed to affect the rights and obligations of either Party under other international agreements or under the laws of the European Community or Japan.

**Canada-Mexico (2001)**

**Article XI Existing laws**

Nothing in this Agreement shall require a Party to take any action, or to refrain from acting, in a manner that is inconsistent with its existing laws, or require any change in the laws of the Parties or of their respective provinces or states.

**Mexico-US (2000)**

**Article XI Existing Laws**

Nothing in this Agreement shall require a Party to take any action, or to refrain from acting, in a manner that is inconsistent with its existing laws, or require any change in the laws of the Parties or of their respective States.

**Japan-US (1999)**

**Article XI**

1. This Agreement shall be implemented by the Parties in accordance with the laws and regulations in force in each country and within the available resources of their respective competition authorities.

2. Detailed arrangements to implement this Agreement may be made between the competition authorities of the Parties.

3. Nothing in this Agreement shall prevent the Parties from seeking or providing assistance to one another pursuant to other bilateral or multilateral agreements or arrangements between the Parties.

4. Nothing in this Agreement shall be construed to prejudice the policy or legal position of either Party regarding any issue related to jurisdiction.

5. Nothing in this Agreement shall be construed to affect the rights and obligations of either Party under other international agreements or under its laws.

**Brazil-US (1999)**

**Article X Existing Laws**

Nothing in this Agreement shall require a Party to take any action, or to refrain from acting, in a manner that is inconsistent with its existing laws, or require any change in the laws of the Parties or of their respective states.

**Canada-EU (1999)**

**XI. Existing law**

Nothing in this Agreement shall require a Party to take any action that is inconsistent with its existing laws, or require any change in the laws of the Parties or of their respective provinces or Member States.

**Israel-US (1999)**

**Article X EXISTING LAWS**

Nothing in this Agreement shall require a Party to take any action or to refrain from any action, if to do so would be inconsistent with its existing laws, or require any change in the laws of the Parties or, in the case of the United States, of its states.

**Canada-US (1995)**

**ARTICLE XI Existing laws**

Nothing in this Agreement shall require a Party to take any action, or to refrain from acting, in a manner that is inconsistent with its existing laws, or require any change in the laws of the Parties or of their respective provinces or states.

**EU-US (1991)**

**Article IX EXISTING LAW**

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

## ANNEX 15. PROVISIONS ON “COMMUNICATION”

### *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.

### *Relevant provisions in co-operation agreements*

#### **EU-Switzerland (2013)**

##### **Article 12 Communications**

1. Unless otherwise agreed between the Parties or their competition authorities, communications under this Agreement shall be made in the English language.

2. The competition authority of each Party shall designate a contact point to facilitate communications between the Parties on any matter relating to the implementation of this Agreement.

#### **EU-Korea (2009)**

##### **Article 9 Communications under the Agreement**

Communications under this Agreement may be carried out directly between the competition authorities of the Parties. Notifications under Article 2(3) and requests under Article 6(1) shall, however, be confirmed promptly in writing through diplomatic channels and shall contain the information initially exchanged between the competition authorities.

**Canada-Japan (2005)**

**Article XI**

Unless otherwise provided in this Agreement, communications under this Agreement may be directly carried out between the competition authorities of the Parties. Notifications under Article II and requests under Article V, paragraph 1 of this Agreement, however, shall be confirmed in writing through the diplomatic channel. The confirmation shall be made as promptly as practically possible after the communication concerned between the competition authorities of the Parties.

**EU-Japan (2003)**

**Article 11**

Unless otherwise provided in this Agreement, communications under this Agreement may be directly carried out between the competition authorities of the Parties. Notifications under Article 1(2)(b), Article 2 and requests under Article 5(1) of this Agreement, however, shall be confirmed in writing through the diplomatic channel. The confirmation shall be made as promptly as practically possible after the communication concerned between the competition authorities of the Parties.

**Nordic Co-operation Agreement (2001)**

**Article V Formal requirements and the like**

Information from one competition authority to another competition authority in accordance with article II of this Agreement shall be provided in writing (including fax and electronic mail). Other communications may be made orally or in writing.

**Canada-Mexico (2001)**

**Article XII Communications under this agreement**

Communications under this Agreement may be carried out directly between the competition authorities of the Parties. Notifications under Article II and requests under Articles V(2) and VIII(1) shall, however, be confirmed promptly in writing through customary diplomatic channels.

**Mexico-US (2000)**

**Article XII Communications under this Agreement**

Communications under this Agreement may be carried out directly between the competition authorities of the Parties. Requests under Articles V(2) and VIII(1) shall, however, be confirmed in writing through customary diplomatic channels.

**Japan-US (1999)**

**Article XII**

Unless otherwise provided in this Agreement, communications under this Agreement may be directly carried out between the competition authorities of the Parties. Notifications under Article II (except paragraph 8) and requests under Article V, paragraph 1 of this Agreement, however, shall be confirmed in writing through the diplomatic channel. The confirmation shall be made as promptly as practically possible after the communication concerned between the competition authorities of the Parties.

**Brazil-US (1999)**

**Article XI Communications under this Agreement**

Communications under this Agreement may be carried out by direct communication between the competition authorities of the Parties. Notifications under Article II and requests under Articles IV.2 and VI.2 shall, however, be confirmed promptly in writing through customary diplomatic channels and shall refer to the initial communication between the competition authorities and repeat the information supplied therein.

**Canada-EU (1999)**

**IX. Communications under this agreement**

Communications under this Agreement, including notifications under Article II and requests under Articles III and V, may be carried out by direct oral, telephonic or facsimile communication between the competition authorities of the Parties. Notifications under Article II and requests under Articles III and V, however, shall be confirmed promptly in writing through normal diplomatic channels.

**Israel-US (1999)**

**Article XI Communications under this Agreement**

Communications under this Agreement may be carried out by direct communication between the competition authorities of the Parties. Notifications under Article II and requests under Articles V(2) and VII(1) shall, however, be confirmed promptly in writing through customary diplomatic channels and shall refer to the initial communication between the competition authorities and repeat the information supplied therein.

**Canada-US (1995)**

**Article XII Communications under this agreement**

Communications under this Agreement may be carried out by direct communication between the competition authorities of the Parties. Notifications under Article II and requests under Articles V(2) and VIII(1) shall, however, be confirmed promptly in writing through customary diplomatic channels and shall refer to the initial communication between the competition authorities and repeat the information supplied therein.

**EU-US (1991)**

**Article X Communications under this Agreement**

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

**Australia-US (1982)**

**Article 1 Notification**

5. Notifications undertaken in accordance with paragraphs 1 and 2 of this Article shall be transmitted through diplomatic channels.

## ANNEX 16. THE LIST OF MOUs/INTERAGENCY AGREEMENTS ON CO-OPERATION

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[Canada-India (2014)]

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

[Colombia-US (2014)]

Agreement on Antitrust Cooperation 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 Columbia, of the Other Part (16 September 2014)

[Australia-Philippines (2014)]

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

[Japan-Korea (2014)]

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

[Australia-China (2014)]

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

[Brazil-Korea (2014)]

Memorandum of Understanding on Cooperation in the Competition Field Between the Fair Trade Commission of the Republic of Korea and the Administrative Council for Economic Defense of the Federative Republic of Brazil (24 April 2014)

[Brazil-Japan (2014)]

Memorandum of Cooperation Between the Fair Trade Commission of Japan and the Administrative Council for Economic Defense of the Federative Republic of Brazil (24 April 2014)

[Indonesia-Korea (2013)]

Cooperation 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)

[EU-India (2013)]

Memorandum of Understanding between the Directorate-General for Competition of the European Commission and the Competition Commission of India on cooperation in the field of competition laws (21 November 2013)

[Turkey-Ukraine (2013)]

Memorandum for Cooperation in the Field of Competition Policy Between the Turkish Competition Authority and the Antimonopoly Committee of Ukraine (9 October 2013)

[Japan-Viet Nam (2013)]

Cooperation Arrangement between the Fair Trade Commission of Japan and the Competition Authority of the Socialist Republic of Viet Nam (28 August 2013)

[Japan-Philippines (2013)]

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

[Australia-India (2013)]

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

[Kazakhstan-Turkey (2013)]

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

[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 (April 2013)

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[Egypt-Turkey (2012)]

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

[India-US (2012)]

Memorandum of Understanding on Antitrust Cooperation 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)

[China-EU (2012)]

Memorandum of Understanding on Cooperation 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)

[Australia-China (2012)]

Memorandum of Understanding on Cooperation 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)

[China (NDRC)-Korea (2012)]

Memorandum of Understanding on Antimonopoly and Antitrust Cooperation 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)

[China (SIAC)-Korea (2012)]

Memorandum of Understanding on Competition Cooperation 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)

[China (MOFCOM)-Korea (2012)]

Memorandum of Understanding on Antimonopoly Cooperation 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)

[Austria-Turkey (2011)]

Memorandum of Understanding on Bilateral Cooperation in the Field of Competition Law and Policy between the Turkish Competition Authority and the Austrian Federal Competition Authority (December 2011)

[China-US (2011)]

Memorandum of Understanding on Antitrust and Antimonopoly Cooperation 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)

[EU-Russia (2011)]

Memorandum of Understanding on Cooperation (10 March 2011)

[Chili-US (2011)]

Agreement on Antitrust Cooperation 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)

[Croatia-Turkey (2011)]

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

[Russia-Turkey (2011)]

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

[Chinese Taipei-Hungary (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)

[Mongolia-Turkey (2010)]

Memorandum of Understanding on Cooperation between the Authority for Fair Competition and Consumer Protection of Mongolia and Turkish Competition Authority (28 April 2010)

[Bosnia and Herzegovina-Turkey (2010)]

Memorandum of Understanding on Cooperation between the Council of Competition of Bosnia and Herzegovina and the Turkish Competition Authority (28 April 2010)

[Russia-US (2009)]

Memorandum of Understanding on Antitrust Cooperation 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)

[Brazil-EU (2009)]

Memorandum of Understanding on Cooperation between, on the one side, the Directorate-General for Competition of the European Commission (DG Competition), and, on the other side, the Council for Economic Defense (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)

[Hungary-Poland (2009)]

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

[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)

[Albania-Hungary (2009)]

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

[Portugal-Turkey (2008)]

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

[Croatia-Hungary (2008)]

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

[Brazil-Canada (2008)]

Cooperation Arrangement Between the Commissioner of Competition, Competition Bureau of the Government of Canada, and the Council for Economic Defense, the Secretariat of Economic Law of the Ministry of Justice, and the Secretariat for Economic Monitoring of the Ministry of Finance of the Government of the Federative Republic of Brazil Regarding the Application of their Competition Laws (May 2008)

[Bulgaria-Turkey (2007)]

Memorandum of Understanding on Cooperation Between the Turkish Competition Authority and the Bulgarian Commission on Protection of Competition (1 December 2007)

[Hungary-Moldova (2007)]

Agreement on Cooperation 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)

[Australia-New Zealand (2007)]

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

[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)

[China-Hungary (2006)]

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

[Canada-Korea (2006)]

Cooperation 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)

[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)

[Romania-Turkey (2005)]

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

[Korea-Turkey (2005)]

Memorandum of Understanding on Cooperation between the Fair Trade Commission of the Republic of Korea and the Competition Authority of the Republic of Turkey (17 November 2005)

[Hungary-Romania (2005)]

Agreement on Cooperation on Competition Policy between Competition Council of Romania and the Hungarian Competition Authority (27 September 2005)

[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)

[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)

[Australia-New Zealand-UK (2003)]

Cooperation Arrangement between the Australian Competition and Consumer Commission, the Commerce Commission in New Zealand 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 (16 October 2003)

[Korea-Latvia-Romania-CIS countries (2003)]

Memorandum Regarding Cooperation 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)

[Australia-Korea (2002)]

Cooperation Arrangement between the Australian Competition and Consumer Commission and the Fair Trade Commission of the Republic of Korea Regarding the Application of Their Competition and Consumer Protection Laws (29 September 2002)

[Korea-Romania (2002)]

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

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

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

[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)

[Canada-Chile (2001)]

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

[Australia-Canada-New Zealand (2000)]

Cooperation 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)

[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)

[Australia-Papa 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)

[Australia-Chinese Taipei (1996)]

Cooperation 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)

[Australia-New Zealand (1994)]

Co-operation and Co-ordination Agreement between the Australian Trade Practices Commission and New Zealand Commerce Commission (July 1994)

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