

Competition co-operation and enforcement

INVENTORY OF CO-OPERATION AGREEMENTS



PROVISIONS ON COMMUNICATION

This document contains the text of the provisions on communication taken from the 2015 Inventory of Co-operation Agreements prepared by the OECD Competition Committee. This document includes:

- A short description of the provision which clarifies similarities and differences between agreements, as well as any innovative or unique features in a particular agreement.
- Relevant language from the 2014 OECD Recommendation concerning International Co-operation on Competition Investigations and Proceedings.
- A list of the relevant provisions in co-operation agreements. The agreements are listed in reverse chronological order, so that readers can see if wording has changed between agreements.

The full inventory, the OECD Recommendation and accompanying documents can be found online at www.oecd.org/competition/inventory-competition-agreements.htm.

Many co-operation agreements have provisions on communication between the parties favouring communications directly between the competition authorities of the parties, as they are likely to be faster and more efficient. 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.

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 interagency memoranda of understanding or protocols and best practices on merger review.

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.