

Competition co-operation and enforcement

INVENTORY OF CO-OPERATION AGREEMENTS



PROVISIONS ON CONFIDENTIALITY

This document contains the text of the provisions on confidentiality taken from the 2021 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.

Adequate protection of information is key to the success of investigations, as disclosure of sensitive information may undermine the incentive of private parties to co-operate with the agency and may affect the integrity and credibility of the investigations.

To keep a careful balance between the needs to, on the one hand, promote information exchange between competition authorities and, on the other, maintain the confidentiality of information, many co-operation agreements impose on the parties the obligation to keep the exchanged information confidential and contain provisions on sending party's discretion to limit and/or to set conditions on the use and disclosure of exchanged 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.

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.