

# Competition co-operation and enforcement

## INVENTORY OF CO-OPERATION AGREEMENTS



### PROVISIONS ON EXCHANGE OF INFORMATION

This document contains the text of the provisions on exchange of information law 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](http://www.oecd.org/competition/inventory-competition-agreements.htm).

The ability to exchange information has been the central area of the competition authorities' discussion on enforcement co-operation, as it can substantially contribute to more effective co-operation and competition law enforcement.

Information exchange can be divided into exchange of confidential versus non-confidential information. Exchange of confidential information may take place according either to confidentiality waivers or to so-called "information gateway" provisions, i.e. provisions allowing for the exchange of confidential information between competition authorities without the need for prior consent from the source of the information.

Most co-operation agreements which have been concluded to date are first generation agreements which allow only the exchange of non-confidential information. Second generation agreements contain information gateway provisions, which 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.

## 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 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 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.