

# Competition co-operation and enforcement

## INVENTORY OF CO-OPERATION AGREEMENTS



### PROVISIONS ON NOTIFICATIONS

This document contains the text of the provisions on notifications 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).

Notifications of competition investigations and proceedings can be important for establishing effective co-operation among competition authorities. Notifications make the notified party aware of the notifying party's enforcement activity and trigger subsequent co-operation activities, such as co-ordination or consultations. In practice, notifications on enforcement activities are made, for example, when a competition authority initiates an investigation of international cartels or makes important progress in the investigation, or when a competition authority issues request for information in cross-border merger investigations.

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

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

### Notifications of Competition Investigations or Proceedings

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

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

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

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

## Relevant provisions in co-operation agreements

### EU-Switzerland (2013)

#### Article 3 Notifications

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## EU-Korea (2009)

### Article 2 Notifications

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

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

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

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

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

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

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

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

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

(a) in the case of the European Community:

(i) when initiating proceedings pursuant to Article 6(1)c of Council Regulation (EC) No 139/2004;

(ii) when issuing a Statement of Objections;

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

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

(ii) when issuing the examination report.

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

(a) in the case of the European Community:

(i) when issuing a Statement of Objections;

(ii) when adopting a decision or a settlement;

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

(i) when issuing the examination report;

(ii) when filing a criminal accusation;

(iii) when adopting a decision.

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

## Canada-Japan (2005)

### Article II

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

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

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

(b) are against a national or nationals of the country of the other Party;

(c) involve anticompetitive activities, other than mergers or acquisitions, carried out in any substantial part in the territory of the country of the other Party;

(d) involve mergers or acquisitions in which

(i) one or more of the parties to the transaction, or

(ii) a company controlling one or more of the parties to the transaction, is a national of the country of the other Party;

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

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

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

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

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

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

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

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

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

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

## EU-Japan (2003)

### Article 2

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

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

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

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

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

(d) involve a merger or acquisition in which:

(i) one or more of the parties to the transaction; or

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

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

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

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

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

(a) in the case of the European Community:

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

(ii) the issuance of a Statement of Objections;

(b) in the case of Japan:

(i) the issuance of request to submit documents, reports or other information concerning the proposed transaction pursuant to the Antimonopoly Law; and

(ii) the issuance of a recommendation or the decision to initiate a hearing.

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

(a) in the case of the European Community:

(i) the issuance of a Statement of Objections; and

(ii) the adoption of a decision or settlement;

(b) in the case of Japan:

(i) the filing of a criminal accusation;

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

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

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

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

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

### **Article II Notification**

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

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

(a) Are relevant to the enforcement measures of one or more competition authorities,

(b) Relate to activities in restraint of competition that largely originate or take place in the territory of one or more authorities,

(c) Relate to a merger, an acquisition or merger in which one or more of the participants in the transaction is an enterprise that is registered in, established under the legislation of, or resident in Denmark, Iceland, Norway or Sweden or in several of the countries,

(d) Relates to behaviour in restraint of competition which it is assumed that one of the countries concluding the Agreement has called for, promoted or approved,

(e) Relates to decisions of a vital nature that will require or promote a specific behaviour in restraint of competition in the territory of another of the countries concluding the Agreement.

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

(a) In the case of Denmark: to Konkurrencestyrelsen,

(b) In the case of Iceland: to Samkeppnisstofnun,

(c) In the case of Norway: to Konkurransetilsynet.

(d) In the case of Sweden: to Konkursverket

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

## Canada-Mexico (2001)

### Article II Notification

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

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

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

(b) involve anticompetitive activities, other than mergers or acquisitions, carried out in whole or in substantial part in the territory of the other Party;

(c) involve mergers or acquisitions in which

— one or more of the parties to the transaction, or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Mexico-US (2000)

### Article II Notification

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

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

a. are relevant to enforcement activities of the other Party;

b. involve anticompetitive activities, other than mergers or acquisitions, carried out in whole or in substantial part in the territory of the other Party;



c. involve mergers or acquisitions in which

- one or more of the parties to the transaction, or
  - a company controlling one or more of the parties to the transaction,
- is a company incorporated or organized under the laws of the other Party or of one of its States;

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

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

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

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

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

a. if compliance with a request for written information, documents or other records is voluntary, at or before the time that the request is made;

b. if compliance with a request for written information, documents or other records is compulsory, at least seven (7) days prior to the request, (or, when seven (7) days' notice cannot be given, as promptly as circumstances permit); and

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

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

a. that person is not the subject of an investigation,

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

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

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

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

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

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

## Japan-US (1999)

### Article II

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

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

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

(b) are against a national or nationals of the other country, or against a company or companies incorporated or organized under the applicable laws and regulations within the territory of the other country;

(c) involve anticompetitive activities, other than mergers or acquisitions, carried out in any substantial part in the territory of the other country;

(d) involve mergers or acquisitions in which

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

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

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

(f) involve relief that requires or prohibits conduct in the territory of the other country.

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

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

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

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

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

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

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

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

(i) the initiation of criminal proceedings;

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

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

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

(b) for the Government of Japan,

(i) the filing of a criminal accusation;

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

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

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

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

(vi) the issuance of a warning.

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

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

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

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

10.

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

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

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

## Brazil-US (1999)

### Article II Notification

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

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

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

## Canada-EU (1999)

### II. Notification

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

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

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

(ii) that involve anticompetitive activities, other than mergers or acquisitions, carried out wholly or in part in the territory of the other Party;

(iii) that involve conduct believed to have been required, encouraged or approved by the other Party or one of its provinces or Member States;

(iv) that involve a merger or acquisition in which:

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

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

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

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

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

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

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

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

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

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

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

(a) in the case of the European Communities,

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

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

(iii) the adoption of a decision or settlement,

(b) in the case of Canada,

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

(ii) the initiation of criminal proceedings; or

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

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

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

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

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

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

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

## Israel-US (1999)

### Article II Notification

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

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

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

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

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

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

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

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

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

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

## Canada-US (1995)

### Article II Notification

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## EU-US (1991)

### Article II Notification

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

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

- a) Are relevant to enforcement activities of the other Party;
- b) Involve anticompetitive activities (other than a merger or acquisition) carried out in significant part in the other Party's territory;
- c) Involve a merger or acquisition in which one or more of the parties to the transaction, or a company controlling one or more of the parties to the transaction, is a company incorporated or organized under the laws of the other Party or one of its states or member states;



- d) Involve conduct believed to have been required, encouraged or approved by the other Party; or
- e) Involve remedies that would, in significant respects, require or prohibit conduct in the other Party's territory.

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

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

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

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

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

- a) regulatory or judicial proceedings that are public,
- b) intervention or participation that is public and pursuant to formal procedures, and
- c) in the case of regulatory proceedings in the United States, only proceedings before federal agencies.

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

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

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

### **Article 1 Notification**

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

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

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

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

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