

Competition co-operation and enforcement

INVENTORY OF INTERNATIONAL CO-OPERATION MOUS BETWEEN COMPETITION AGENCIES



PROVISIONS ON PURPOSE

The OECD has put together an inventory of provisions of international co-operation MoUs (Memoranda of Understanding) between competition agencies. This document includes:

- a description of provisions on purpose found in these MoUs
- a selection of typical and atypical relevant provisions
- relevant language from the 2014 OECD Recommendation concerning International Co-operation on Competition Investigations and Proceedings.

The full inventory, the OECD Recommendation and relevant OECD work can be found online at www.oecd.org/competition/inventory-competition-agency-mous.htm.

The large majority of inter-agency MoUs [e.g. China-EU (2012), Brazil-Korea (2014), Chinese Taipei-France (2014), Brazil-EU (2009), and China-Hungary (2006)] state as their purpose the enhancement of co-operation between the parties and the promotion of competition awareness in general, rather than co-ordination of enforcement in specific cases.

Some MoUs [e.g. Australia-China (MOFCOM) (2014), Canada-India (2014), Australia-India (2013), Australia-China (SAIC) (2012), and China-US (2011)] expressly mention that they aim to support communication as a means to strengthen the relationship between parties in the field of competition law and policy.

Relevant provisions in MoUs:

(i) those similar to the co-operation agreements at the government level, stating two broad purposes, namely to (1) contribute to the effective enforcement of each party's competition laws through co-operation and co-ordination and (2) avoid, lessen or minimise the risk of conflicts in the application of the each party's competition laws

Korea-Mexico (2004)

Article 1 Purpose and Definitions

1. The purposes of this Arrangement are to promote co-operation, including both enforcement and technical co-operation, and coordination between the Agencies, to avoid conflicts arising from the application of their competition laws, and to minimize the impact on their respective important interests of any differences that may arise.

(ii) those focusing on enhancing co-operation and mutual understanding

France-Chinese Taipei (2014)

Article 1 Purpose of the Memorandum of Understanding and Definitions

The purpose of the present Memorandum of Understanding (“the Memorandum”) is to promote co-operation and mutual understanding between the Parties in the field of competition law enforcement and competition advocacy.

EU-India (2009)

Article 1 Purpose

(1) The purpose of this Memorandum of Understanding (“MoU”) is to promote and strengthen co-operation and coordination between the two Sides, to increase their understanding and awareness of current and forthcoming policy approaches in their respective jurisdictions in the area of competition policy, legislation and enforcement.

(iii) those focusing on establishing a framework for co-operation

Australia-China (SIAC) (2012)

Article 1 Purpose

The purpose of this Memorandum is to set up an institutional partnership between the Participants by establishing a general framework for bilateral co-operation.

(iv) those simply stipulating co-operation

EU-India (2013)

Article 1 Purpose

1. The purpose of the present Memorandum of Understanding is to further strengthen co-operation between the two Sides in the area of competition law enforcement and applicable domestic laws of the Sides.

(v) those relatively unique

Australia-Fiji (2002)

Article 1.0 Purpose

1.1 The purpose of the Memorandum is to:

- (i) promote co-operation and coordination between the Parties, recognising that such co-operation and coordination of enforcement, training and technical assistance activities may result in more effective resolution of the Parties’ respective competition and consumer law issues than would otherwise be attained through independent action;
- (ii) achieve a more efficient use of the Parties’ scarce resources; and
- (iii) create benefits for the economies of both Australia and the Fiji Islands.

(vi) an example requiring signatories to promote competition

Australia-Philippines (2014)

II. Anti-competitive Activities

The competition authorities will promote competition by addressing anti-competitive activities in accordance with the laws and regulations of their respective countries, in order to facilitate the efficient functioning of the markets of their respective countries. The competition authorities express their intention to take appropriate measures for such purposes in conformity with the principles of transparency, non-discrimination and procedural fairness.

Russia-South Africa (2016)

Purpose:

1. The present Memorandum of Understanding (hereinafter referred to as “the Memorandum”) is based on the principles of equality and mutual benefit.
2. The Memorandum aims at developing and strengthening cooperation between the Parties in the field of competition law enforcement, competition policy development, as well as in respect of the promotion of competition within socially sensitive markets of common interest.
3. The parties will jointly identify socially sensitive markets of common interest as priority directions for their cooperation.

(vii) an example stipulating principles of equality and mutual benefit in its provision on purposes

EU-South Africa (2016)

I. Purpose

1. The purpose of the present Memorandum of Understanding is to further strengthen cooperation between the two Sides in the area of competition law enforcement.
2. The present Memorandum of Understanding is based on the understanding of equality and mutual benefit.

Relevant provisions in the 2014 OECD Recommendation on International Co-operation

Commitment to Effective International Co-operation

II. RECOMMENDS that Adherents commit to effective international co-operation and take appropriate steps to minimise direct or indirect obstacles or restrictions to effective enforcement co-operation between competition authorities.

To this end, Adherents should aim inter alia to:

1. Minimise the impact of legislation and regulations that might have the effect of restricting co-operation between competition authorities or hindering an investigation or proceeding of other Adherents, such as legislation and regulations prohibiting domestic enterprises or individuals from co-operating in an investigation or proceeding conducted by competition authorities of other Adherents;
2. Make publicly available sufficient information on their substantive and procedural rules, including those relating to confidentiality, by appropriate means with a view to facilitating mutual understanding of how national enforcement systems operate; and
3. Minimise inconsistencies between their leniency or amnesty programmes that adversely affect co-operation.