

Competition co-operation and enforcement

INVENTORY OF INTERNATIONAL CO-OPERATION MOUs BETWEEN COMPETITION AGENCIES



PROVISIONS ON TRANSPARENCY

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 transparency 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.

Differences in legal standards and enforcement systems (criminal vs. civil/administrative) are the most important limitations on international co-operation. In order for competition authorities with different enforcement systems to co-operate effectively and efficiently, it is imperative that the co-operating parties have a good knowledge of the respective substantive and procedural rules, including confidentiality and disclosure rules, and understand the differences in their legal systems and any existing limitations or constraints.

Most inter-agency MoUs have provisions on transparency to enable the parties to share information on competition law, policy, and enforcement. Some MoUs just require the parties to make publicly available sufficient information on their competition regimes by appropriate means. Other MoUs require the parties to actively inform each other of any substantive changes in their national legislative and enforcement systems.

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:

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;

Relevant provisions in MoUs:

(i) those requiring the parties to make publicly sufficient information on their competition law regimes by appropriate means

France-Chinese Taipei (2014)

Article 2- Cooperation on general matters

As regards cooperation on general issues of competition policy, the Parties' initiatives shall be mutually agreed between them and shall, inter alia, and subject to their reasonably available resources, comprise the following:

4. making available to each other information related to legislation, decisions, case law, procedural notices, annual reports, and other publicly available relevant material;

Korea-US (2015)

Section III Communications

1. The U.S. antitrust agencies and the KFTC intend to keep each other informed of significant competition policy and enforcement developments in their respective jurisdictions, including policy changes proposed by each competition authority and significant legislative proposals.

(ii) those requiring the parties to inform each other of changes in their legislative and enforcement systems

Australia-Canada-New Zealand-UK-US (2020)

Multilateral Mutual Assistance and Cooperation Framework for Competition Authorities Annexure A: Model Agreement

14. Changes in Applicable Law

14.1 The Parties shall provide to each other prompt written notice of any significant modifications to their relevant Competition Laws or relevant confidentiality laws and procedures.

EU-Russia (2009)

VII. Communications under the present Memorandum of Understanding

17. The Sides will intend to notify each other promptly of all changes in their authorities with regard to competition law and competition enforcement.

Canada-Chile (2001)

I. Purpose and definitions

3. Each Party will promptly notify the other of any amendments to its competition law.

(iii) those relatively unique

Australia-New Zealand (2007)

Article 6.0 Changes in Applicable Functions

6.1 The Parties should use their best efforts to provide to each other prompt written notice of any changes to the Party's competition, consumer and regulatory functions.

6.2 In the event of a significant modification to a Party's competition, consumer and regulatory functions, the Parties should use their best efforts to consult promptly to determine whether this Agreement or subsidiary Protocols should be amended.

Panama-Chinese Taipei (2013)

Article 3. General Principles

2. Each Party shall ensure that the application procedures of the competition law are carried out in compliance with non-discrimination, transparency, and principles and guarantees that ensure due process.

Article 6. Transparency and Exchange of Information

1. The Parties recognize the value of transparency in competition policies.