

Competition co-operation and enforcement

INVENTORY OF CO-OPERATION AGREEMENTS



PROVISIONS ON DEFINITIONS

This document contains the text of the provisions on definitions taken from the 2021 Inventory of Co-operation Agreements prepared by the OECD Competition Committee. This document includes:

- A short description of the provision which clarifies similarities and differences between agreements, as well as any innovative or unique features in a particular agreement.
- Relevant language from the 2014 OECD Recommendation concerning International Co-operation on Competition Investigations and Proceedings.
- A list of the relevant provisions in co-operation agreements. The agreements are listed in reverse chronological order, so that readers can see if wording has changed between agreements.

The full inventory, the OECD Recommendation and accompanying documents can be found online at www.oecd.org/competition/inventory-competition-agreements.htm.

Co-operation agreements usually provide a set of definitions of key terms and concepts for the purpose of the agreement. Terms and concepts most typically defined are:

- “competition laws” and “competition authorities”: These definitions usually include legal references to competition laws and/or the names of the competition authorities in the respective jurisdictions. The co-operation agreement may give different rights and obligations to the governments, on the one hand, and the competition authorities, on the other.
- “enforcement activities” and “anticompetitive activities”. These are typically defined according to the parties’ domestic competition laws, respectively as “any investigation or proceeding conducted by a party in relation to its competition law” and “any conduct or transaction that may be subject to penalties or other reliefs under competition laws of each party”.

Other terms and concepts defined in a few agreements include “national” [Canada-Japan (2005)], “territory” [EU-Japan (2003)], “mergers” and “acquisitions” [Nordic Co-operation Agreement (2001)] and “information” [Germany-US(1976)]. Second generation agreements may additionally define the scope and range of the permitted exchange of confidential information.

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

I. AGREES that, for the purpose of the present Recommendation, the following definitions are used:

- [...]
- “Anticompetitive practice” refers to business conduct that restricts competition, as defined in the competition law and practice of an Adherent;
- “Competition authority” means an Adherent’s government entity, other than a court, charged with primary responsibility for the enforcement of the Adherent’s competition law;
- “Confidential information” refers to information the disclosure of which is either prohibited or subject to restrictions under the laws, regulations, or policies of an Adherent, e.g., non-public business information the disclosure of which could prejudice the legitimate commercial interests of an enterprise;
- “Co-operation” includes a broad range of practices, from informal discussions to more formal co-operation activities based on legal instruments at the national or international level, employed by competition authorities of Adherents to ensure efficient and effective reviews of anticompetitive practices and mergers with anticompetitive effects affecting one or more Adherents. It may also include more general discussions relating to competition policy and enforcement practices;
- “Investigation or proceeding” means any official factual inquiry or enforcement action authorised or undertaken by a competition authority of an Adherent pursuant to the competition laws of the Adherent;
- “Merger” means merger, acquisition, joint venture or any other form of business amalgamation that falls within the scope and definitions of the competition laws of an Adherent governing business concentrations or combinations;
- “Merger with anticompetitive effects” means a merger that restricts or is likely to restrict competition, as defined in the competition law and practice of an Adherent and, for the purpose of this Recommendation, may include a merger that is under review by the competition authority of an Adherent according to its merger laws with a view to establishing if it has anticompetitive effects;
- “Waiver” or “confidentiality waiver” means permission granted by a party subject to an investigation or proceeding, or by a third party, that enables competition authorities to discuss and/or exchange information, otherwise protected by confidentiality rules of the Adherent(s) involved, which has been obtained from the party in question.

Relevant provisions in co-operation agreements

EU-Korea (2009)

Article 1 Purpose and Definitions

2. For the purpose of this Agreement, the following terms shall have the following definitions:

(a) the term ‘anticompetitive activities’ means any activities that may be subject to sanctions or other relief measures by competition authorities under the competition laws of one of the Parties or both Parties;

(b) the terms ‘competition authority’ and ‘competition authorities’ mean:

(i) for the European Community, the Commission of the European Communities, as to its responsibilities pursuant to the competition laws of the European Community; and

(ii) for the Republic of Korea, the Korea Fair Trade Commission;

(c) the term ‘competent authority of a Member State’ means one authority for each Member State of the European Community for the application of competition laws. Upon signature of this Agreement a list of such authorities will be notified by the Commission of the European Communities to the Government of the Republic of Korea. The Commission will notify to the Government of the Republic of Korea an updated list each time this becomes necessary;

(d) the term ‘competition laws’ means:

(i) for the European Community, Articles 81, 82, and 85 of the Treaty establishing the European Community, Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, and their implementing Regulations as well as any amendments thereto; and

(ii) for the Republic of Korea, the Monopoly Regulation and Fair Trade Act, and its implementing regulations as well as any amendments thereto;

(e) the term ‘enforcement activities’ means any application of competition laws by way of investigation or proceedings conducted by the competition authority of a Party.

Canada-Japan (2005)

Article I

2. For the purposes of this Agreement,

(a) the term “anticompetitive activities” means any conduct or transaction that may be subject to penalties or relief under the competition law of either country;

(b) the term “competition authority(ies)” means:

(i) for Canada, the Commissioner of Competition; and

(ii) for Japan, the Fair Trade Commission;

(c) the term “competition law(s)” means:

(i) for Canada, the *Competition Act*, R.S.C. 1985, c. C-34, except sections 52 through 60 and Part VII.1, and its implementing regulations, as amended; and

(ii) for Japan, *the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade* (Law No. 54, 1947) (hereinafter referred to as “the Antimonopoly Law”) and its implementing regulations, as amended.

(d) the term “enforcement activity (ies)” means any investigation or proceeding conducted by a Party in relation to the competition law of its country. However, (i) the review of business conduct or routine filings in advance of a formal or informal determination that a matter may be anticompetitive and (ii) research, studies or surveys with the objective of examining the general economic situation or general conditions in specific industries are not included; and

(e) the term “national(s)” means with respect to a country, all natural persons possessing the nationality of that country in accordance with the laws and regulations of that country; all legal persons created or organized under the laws and regulations of that country; and all entities without legal personality to which the competition law of that country applies;

EU-Japan (2003)

Article 1

2. For the purposes of this Agreement:

(a) the term ‘anti-competitive activities’ means any conduct or transaction that may be subject to sanctions or other relief under the competition laws of the European Community or Japan;

(b) the term ‘competent authority of a Member State’ means one authority for each Member State mentioned in Article 299(1) of the Treaty establishing the European Community competent for the application of competition laws. Upon signature of this Agreement a list of such authorities will be notified by the Commission of the European Communities to the Government of Japan. The Commission will notify to the Government of Japan an updated list each time this becomes necessary. No information pursuant to Article 9(6) of this Agreement shall be sent to a competent authority of a Member State before this authority is included in the list notified by the Commission to the Government of Japan;

(c) the terms ‘competition authority’ and ‘competition authorities’ mean:

(i) for the European Community, the Commission of the European Communities, as to its responsibilities pursuant to the competition laws of the European Community; and

(ii) for Japan, the Fair Trade Commission;

(d) the term ‘competition laws’ means:

(i) for the European Community, Articles 81, 82, and 85 of the Treaty establishing the European Community, Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings, and their implementing Regulations pursuant to the said Treaty, as well as any amendments thereto; and

(ii) for Japan, the Law concerning prohibition of private monopoly and maintenance of fair trade (Law No 54, 1947) (hereinafter referred to as “the Antimonopoly Law”) and its implementing regulations as well as any amendments thereto;

(e) the term ‘enforcement activities’ means any application of competition laws by way of investigation or proceeding conducted by the competition authority of a Party. However, research, studies or surveys with the objective of examining the general economic situation or general conditions in specific industries are not included. Such research, studies or surveys shall not be construed so as to include any investigation with regard to suspected violation of competition laws;

(f) the term ‘the territory of a Party’, ‘the territory of the Party’ and ‘the territory of the other Party’ means the territory to which the Treaty establishing the European Community applies or the territory of Japan, as the context requires;

(g) the term ‘the laws and regulations of a Party’, ‘the laws and regulations of the Party’ and ‘the laws and regulations of the other Party’ means the laws and regulations of the European Community or the laws and regulations of Japan, as the context requires.

Canada-Mexico (2001)

Article I Purpose and definitions

2. For the purposes of this Agreement, the following terms shall have the following definitions:

(a) "Anticompetitive activity(ies)" means any conduct or transaction that may be subject to penalties or other relief under the competition laws of a Party;

(b) "Competition authority(ies)" means

(i) for Canada, the Commissioner of Competition;

(ii) for the United Mexican States, the Federal Competition Commission;

(c) "Competition law(s)" means

(i) for Canada, *the Competition Act*, R.S.C. 1985, c. C-34, except sections 52 through 60 and sections 74.01 through 74.19;

(ii) for the United Mexican States, the Federal Law of Economic Competition of December 24, 1992, except for Articles 14 and 15, and the Regulations of the Federal Law of Economic Competition of March 4, 1998, except for Article 8;

as well as any amendments thereto, and such other laws or regulations as the Parties may from time to time agree in writing to be a "competition law" for the purposes of this Agreement; and

(d) "Enforcement activity(ies)" means any investigation or proceeding conducted by a Party in relation to its competition laws.

Mexico-US (2000)

Article I Purpose and Definitions

2. For the purposes of this Agreement, the following terms shall have the following definitions:

a. "Anticompetitive activity(ies)" means any conduct or transaction that may be subject to penalties or relief under the competition laws of a Party;

b. "Competition authority(ies)" means

i. for the United Mexican States, the Federal Competition Commission;

ii. for the United States of America, the United States Department of Justice and the Federal Trade Commission;

c. "Competition law(s)" means

i. for the United Mexican States, the Federal Law of Economic Competition of December 24, 1992, except for Articles 14 and 15, and the Regulations of the Federal Law of Economic Competition of March 4, 1998, except for article 8;

ii. for the United States of America, the Sherman Act (15 U.S.C. §§ 1-7), the Clayton Act (15 U.S.C. §§ 12-27), the Wilson Tariff Act (15 U.S.C. §§ 8-11) and the Federal Trade Commission Act (15 U.S.C. §§ 41-58), to the extent that it applies to unfair methods of competition,

as well as any amendments thereto, and such other laws or regulations as the Parties may from time to time agree in writing to be a "competition law" for the purposes of this Agreement; and

d. "Enforcement activity(ies)" means any investigation or proceeding conducted by a Party in relation to its competition laws.

Japan-US (1999)

Article I

2. For the purposes of this Agreement,

(a) the term "anticompetitive activity(ies)" means any conduct or transaction that may be subject to penalties or relief under the competition laws of either country;

(b) the term "competition authority(ies)" means:

(i) for the United States of America, the United States Department of Justice and the Federal Trade Commission; and

(ii) for Japan, the Fair Trade Commission;

(c) the term "competition law(s)" means:

(i) for the United States of America, the Sherman Act (15 U.S.C. 1-7), the Clayton Act (15 U.S.C. 12-27), the Wilson Tariff Act (15 U.S.C. 8-11), and the Federal Trade Commission Act (15 U.S.C. 41-58) to the extent that it applies to unfair methods of competition, and their implementing regulations; and

(ii) for Japan, the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Law No. 54 of April 14, 1947) (hereinafter referred to as "the Antimonopoly Law") and its implementing regulations.

(d) the term "enforcement activity(ies)" means any investigation or proceeding conducted by a Party in relation to the competition laws of its country. However, (i) the review of business conduct or routine filings and (ii) research, studies or surveys with the objective of examining the general economic situation or general conditions in specific industries are not included.

Brazil-US (1999)

Article I Purpose and Definitions

2. For the purposes of this Agreement, the following terms shall have the following definitions:

a. "Anticompetitive practice(s)" means any conduct or transaction that may be subject to penalties or other relief under the competition laws of a Party;

b. "Competition authority(ies)" means

i. for Brazil, the Administrative Council for Economic Defense (CADE) and the Secretariat for Economic Law Enforcement (SDE) in the Ministry of Justice; the Secretariat for Economic Monitoring (SEAE) in the Ministry of Finance;

ii. for the United States of America, the United States Department of Justice and the Federal Trade Commission;

c. "Competition law(s)" means

i. for Brazil, Federal Laws 8884/94 and 9021/95; and Provisional Measure 1.567/97;

ii. for the United States of America, the Sherman Act (15 U.S.C. §§ 1-7), the Clayton Act (15 U.S.C. §§ 12-27), the Wilson Tariff Act (15 U.S.C. §§ 8-11), and the Federal Trade Commission Act (15 U.S.C. §§ 41-58), to the extent that it applies to unfair methods of competition,

as well as any amendments thereto;

d. "Enforcement activity(ies)" means any investigation or proceeding conducted by a Party in relation to its competition laws;

Canada-EU (1999)

I. Purpose and definitions

2. In this Agreement,

"anti-competitive activities" shall mean any conduct or transaction that may be subject to penalties or other relief under the competition laws of a Party;

"competent authority of a Member State" shall mean that authority of a Member State set out in Annex A. Annex A may be added to or modified at any time by the European Communities. Canada will be notified in writing of such additions or modifications before any information is sent to a newly listed authority.

"competition authority" and "competition authorities" shall mean:

- (i) for Canada, the Commissioner of Competition appointed under the Competition Act, and
- (ii) for the European Communities, the Commission of the European Communities, as to its responsibilities pursuant to the competition laws of the European Communities;

"competition law or laws" shall mean:

- (i) for Canada, the Competition Act and regulations thereunder, and
- (ii) for the European Communities, Articles 85, 86, and 89 of the Treaty establishing the European Community, Council Regulation (EEC No 4064/89 on the control of concentrations between undertakings, Articles 65 and 66 of the Treaty establishing the European Coal and Steel Community (ECSC), and their implementing Regulations pursuant to the said Treaties including High Authority Decision No 24-54,

as well as any amendments thereto and such other laws or regulations as the parties may jointly agree in writing to be a "competition law" for the purposes of this Agreement;

and

"enforcement activity" shall mean any application of competition law by way of investigation or proceeding conducted by the competition authority of a Party.

3. Any reference in this Agreement to a specific provision in either Party's competition law shall be interpreted as referring to that provision as amended from time to time and to any successor provisions.

Israel-US (1999)

Article I Purpose and Definitions

2. For the purposes of this Agreement, the following terms shall have the following definitions:

- a. "Anticompetitive activity(ies)" means any conduct or transaction that may be subject to penalties or other relief under the competition laws of a Party;
- b. "Competition authority(ies)" means
 - i. for Israel, the Controller of Restrictive Trade Practices;
 - ii. for the United States of America, the United States Department of Justice and the Federal Trade Commission;
- c. "Competition law(s)" means
 - i. for Israel, the Restrictive Trade Practices Law 5748-1988;
 - ii. for the United States of America, the Sherman Act (15 U.S.C. §§ 1-7), the Clayton Act (15 U.S.C. §§ 12-27), the Wilson Tariff Act (15 U.S.C. §§ 8-11) and the Federal Trade Commission Act (15 U.S.C. §§ 41-58), to the extent that it applies to unfair methods of competition, as well as any amendments thereto, and such other laws or regulations as the Parties may from time to time agree in writing to be a "competition law" for the purposes of this Agreement; and
- d. "Enforcement activity(ies)" means any investigation or proceeding conducted by a Party in relation to its competition laws.

Canada-US (1995)

Article I Purpose and definitions

2. For the purposes of this Agreement, the following terms shall have the following definitions:

- a. "Anticompetitive activity(ies)" means any conduct or transaction that may be subject to penalties or other relief under the competition laws of a Party;
- b. "Competition authority(ies)" means
 - i. for Canada, the Director of Investigation and Research;
 - ii. for the United States of America, the United States Department of Justice and the Federal Trade Commission;
- c. "Competition law(s)" means
 - i. for Canada, the Competition Act, R.S.C. 1985, c. C-34, except sections 52 through 60 of that Act;
 - ii. for the United States of America, the Sherman Act (15 U.S.C. .. 1-7), the Clayton Act (15 U.S.C. .. 12-27), the Wilson Tariff Act (15 U.S.C... 8-11) and the Federal Trade Commission Act (15 U.S.C. .. 41-58), to the extent that it applies to unfair methods of competition,
as well as any amendments thereto, and such other laws or regulations as the Parties may from time to time agree in writing to be a "competition law" for the purposes of this Agreement; and
- d. "Enforcement activity(ies)" means any investigation or proceeding conducted by a Party in relation to its competition laws.

EU-US (1991)

Article I Purpose and Definitions

2. For the purposes of this Agreement, the following terms shall have the following definitions:

a) "Competition law(s)" shall mean

(i) for the European Communities, Articles 85, 86, 89 and 90 of the Treaty establishing the European Economic Community, Regulation (EEC) no. 4064/89 on the control of concentrations between undertakings, Articles 65 and 66 of the Treaty establishing the European Coal and Steel Community (ECSC), and their implementing Regulations including High Authority Decision no. 24-54, and

(ii) for the United States of America, the Sherman Act (15 U.S.C. §§1-7), the Clayton Act (15 U.S.C. §§12-27), the Wilson Tariff Act (15 U.S.C. §§8-11), and the Federal Trade Commission Act (15 U.S.C. §§41-68, except as these sections relate to consumer protection functions), as well as such other laws or regulations as the Parties shall jointly agree in writing to be a "competition law" for purposes of this Agreement;

b) "Competition authorities" shall mean (i) for the European Communities, the Commission of the European Communities, as to its responsibilities pursuant to the competition laws of the European Communities, and (ii) for the United States, the Antitrust Division of the United States Department of Justice and the Federal Trade Commission;

c) "Enforcement activities" shall mean any application of competition law by way of investigation or proceeding conducted by the competition authorities of a Party; and

d) "Anticompetitive activities" shall mean any conduct or transaction that is impermissible under the competition laws of a Party.

Germany-US (1976)

Article 1

For the purpose of this Agreement, the following terms shall have the meanings indicated:

a. "Antitrust laws" shall mean, in the United States of America, the Sherman Act (15 U.S.C. §§ 1-11), the Clayton Act (15 U.S.C. § 12 et seq.), and the Federal Trade Commission Act (15 U.S.C. § 41 et seq.), and in the Federal Republic of Germany, the Act Against Restraints on Competition ("Gesetz gegen Wettbewerbsbeschränkungen") (BGB1. I 1974, 869) as those Acts have been and may from time to time be amended.

b. "Antitrust authorities" shall mean, in the United States of America, the Antitrust Division of the United States Department of Justice and the Federal Trade Commission, and, in the Federal Republic of Germany, the Federal Minister of Economics ("Bundesminister für Wirtschaft") and the Federal Cartel Office ("Bundeskartellamt") and successors in each country.

c. "Information" shall include reports, documents, memoranda, expert opinions, legal briefs and pleadings, decisions of administrative or judicial bodies, and other written or computerized records.

d. "Restrictive business practices" shall include all practices which may violate, or are regulated under, the antitrust laws of either party.

e. "Antitrust investigation or proceeding" shall mean any investigation or proceeding related to restrictive business practices and conducted by an antitrust authority under its antitrust laws.

Relevant provisions in co-operation agreements (second generation)

Nordic Co-operation Agreement (2017)

Article 1 Definitions

For the purpose of this agreement the following definitions are used:

"Competition authority" means a Party's entity responsible for enforcing a Party's competition rules and merger control rules;

"Competition rules" refer to Articles 101 or 102 TFEU and/or Articles 53 or 54 EEA and/or equivalent national competition rules as indicated by each Party in a list, enclosed to this agreement, to be established and periodically updated by the competition authorities of the Parties;

"Confidential information" refers to information, the disclosure of which is either prohibited or subject to restrictions under the laws, regulations, or policies of a Party, e.g., non-public business information the disclosure of which could prejudice the legitimate commercial interests of an enterprise;

"Merger control rules" refer to rules in the competition acts of a Party, governing mergers, acquisitions, joint ventures or any other form of business amalgamations that falls within the scope and the definitions of the competition acts of a Party. Each Party shall establish and periodically update a list, enclosed to this agreement, with reference to rules in the competition acts of a Party governing mergers;

Australia-Japan (2015)

Paragraph [*02] Definitions

For the purposes of this Arrangement:

(a) the terms used in this Arrangement that are also used in Chapter 15 of the Agreement will have the same meanings as in Chapter 15 of the Agreement,

(b) the term "enforcement activities" means any investigation or proceeding conducted by a competition authority in relation to the application of the competition law of its country, but will not include:

(i) the review of business conduct or routine filings; and

(ii) research, studies or surveys with the objective of examining the general economic situation or general conditions in specific sectors,

(c) the term "enterprise" means any private or public entity subject to the competition law of its country regardless of its legal or organisational form.

EU-Switzerland (2013)

Article 2 Definitions

For the purpose of this Agreement, the following terms shall have the following definitions:

(1) “competition authority” and “competition authorities” of the Parties mean:

(a) for the Union: the European Commission, as to its responsibilities pursuant to the competition laws of the Union; and

(b) for Switzerland: the Competition Commission, including its Secretariat;

(2) “competent authority of a Member State” means the authority of each Member State of the Union competent for the application of competition laws. Upon signature of this Agreement a list of such authorities will be notified by the Union to Switzerland. The European Commission will notify to the competition authority of Switzerland an updated list each time a change occurs;

(3) “competition laws” means:

(a) for the Union, Articles 101, 102, and 105 of the Treaty on the Functioning of the European Union, Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (hereinafter referred to as “Regulation (EC) No 139/2004”), Articles 53 and 54 of the Agreement on the European Economic Area (hereinafter referred to as the “EEA Agreement”) when used in conjunction with Articles 101 and 102 of the Treaty on the Functioning of the European Union, and their implementing regulations as well as any amendments thereto; and

(b) for Switzerland, the Federal Act on Cartels and Other Restraints of Competition of 6 October 1995 (hereinafter referred to as “Acart”) and its implementing regulations as well as any amendments thereto;

(4) “anticompetitive activities” means any activities that may be subject to a prohibition, sanctions or other relief measures by competition authorities under the competition laws of one of the Parties or of both Parties;

(5) “enforcement activities” means any application of competition laws by way of investigation or proceedings conducted by the competition authority of a Party;

(6) “information obtained by investigative process” means any information obtained by a Party using its formal investigative rights or submitted to a Party pursuant to a legal obligation.

(a) For the Union, this means information obtained through requests for information according to Article 18 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (hereinafter referred to as “Regulation (EC) No 1/2003”), oral statements according to Article 19 of Regulation (EC) No 1/2003 and inspections conducted by the European Commission or on behalf of the European Commission according to Articles 20, 21 or 22 of Regulation (EC) No 1/2003 or information acquired as a result of the application of Regulation (EC) No 139/2004.

(b) For Switzerland, this means information obtained through requests for information according to Article 40 Acart, oral statements according to paragraph 1 of Article 42 Acart and inspections conducted by the competition authority according to paragraph 2 of Article 42 Acart, or information acquired as a result of the application of the Ordinance on the Control of Concentrations of Undertakings of 17 June 1996;

(7) “information obtained under the leniency procedure” means:

(a) for the Union, information obtained pursuant to the Commission notice on immunity from fines and reduction of fines in cartel cases; and

(b) for Switzerland, information obtained pursuant to paragraph 2 of Article 49a Acart and Articles 8 to 14 of the Ordinance on Sanctions Imposed for Unlawful Restraints of Competition of 12 March 2004;

(8) “information obtained under the settlement procedure” means:

(a) for the Union, information obtained pursuant to Article 10a of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (hereinafter referred to as “Regulation (EC) No 773/2004”); and

(b) for Switzerland, information obtained pursuant to Article 29 Acart.

New Zealand-Australia on compulsorily-acquired information and investigative assistance (2013) (interagency agreement)

Definitions

8. In this Arrangement, these terms will have the following definitions:

8.1 “competition and consumer law(s)” means:

8.1.1 for the ACCC, the Competition and Consumer Act; and

8.1.2. for the NZCC, the Commerce Act, the Fair Trading Act, the Credit Contract and Consumer Finance Act, and the Telecommunication Act;

and includes amendments to and regulations made under these statutes;

8.2 “compulsorily-acquired information” means information that is not in the public domain, and which has been compulsorily acquired by the NZCC as a result of or in relation to the exercise by the NZCC of its search and notice powers under its competition and consumer laws and any power incidental to those powers;

8.3 “investigative assistance” includes the provision of assistance by way of the NZCC exercising any of its search and notice powers under or in relation to its competition and consumer law and any power express or implied that is incidental to those powers;

8.4 “protected information” has the same meaning as in section 155AAA of the CCA, and includes information that was given in confidence to the ACCC by a foreign government body, and relates to a matter arising under a provision of a law of a foreign country or of a party of foreign country;

8.5 “request” means a request from the ACCC to the NZCC for the NZCC to provide compulsorily-acquired information or investigative assistance;

8.6 “search and notice powers” means any of the NZCC’s powers under:

8.6.1 sections 98, 98A and 98H of the Commerce Act (including as applied to the Credit Contracts and Consumer Finance Act and the Telecommunications Act); and

8.6.2 sections 47 and 47G of the Fair Trading Act.

Nordic Co-operation Agreement (2001)

Article I Definitions

In this Agreement the following expressions and concepts are defined and understood as stated below:

(a) "Competition legislation" is the legislation which exists at any given time, which at the present time consists:

(i) In the case of Denmark, act No. 384 of 17 June 1997, with its subsequent amendments, and consolidate act [lovbekendtgørelse] No. 687 of 12 July 2000, together with the executive orders [bekendtgørelser] issued in accordance therewith, respectively,

(ii) In the case of Iceland, act No. 8 of 25 February 1993, the Competition Act, with its subsequent amendments,

(iii) In the case of Norway, act No. 65 of 11 June 1993 relating to competition in commercial activities, and act No. 66 of 11 June 1993 on price initiatives, with its subsequent amendments.

(iv) In the case of Sweden, the Competition Act (1993:20), with its subsequent amendments.

"Competition authority (competition authorities)", "authority (authorities)" or "party (parties)" means:

(i) In the case of Denmark: Konkurrencestyrelsen,

(ii) In the case of Iceland: Samkeppnisstofnun,

(iii) In the case of Norway: Konkurransetilsynet.

(iv) In the case of Sweden, Konkurrensverket.

"Enforcement measures" means:

(i) The use of competition legislation in connection with investigations, supervision, decisions and procedures of one or more of the Authorities.

(b) "Activities or behaviour in restraint of competition" depend on the competition legislation of the respective parties and may, for example, consist in

(i) Fixing purchase prices or sale prices or other business conditions,

(ii) Restricting or controlling production, marketing, technical development or investments,

(iii) Dividing markets or sources of supply,

(iv) Applying different conditions for performances of the same value with respect to trading partners,

(v) Requiring as a condition for entering into an agreement that the other contracting entity must approve additional performances which, by their nature or on the basis of commercial practice, are not related to the subject of the agreement, or

(vi) Abusing a dominant or collectively dominant position.

(c) "Mergers", 'acquisitions' and 'mergers' are defined:

(i) In the case of Denmark: in act No. 416, article 12 a, of 31 May 2000,

(ii) In the case of Iceland: in act No. 8, articles 4 and 18, of 25 February 1993 or in act No. 107 of 25 May 2000,

(iii) In the case of Norway: in act No. 65, articles 3 to 11, of 11 June 1993 concerning competition in commercial activities.

(iv) In the case of Sweden: Competition Act (1993:20), article 34.

Australia-US on mutual antitrust enforcement assistance (1999)

Article I Definitions

Antitrust Authority - refers, in the case of the United States, to the United States Department of Justice or the United States Federal Trade Commission. In the case of Australia, the term refers to the Australian Competition and Consumer Commission.

Antitrust Evidence - refers to information, testimony, statements, documents or copies thereof, or other things that are obtained, in anticipation of, or during the course of, an investigation or proceeding under the Parties' respective antitrust laws, or pursuant to the Parties' Mutual Assistance Legislation.

Antitrust Laws - refers, in the case of the United States, to the laws enumerated in subsection (a) of the first section of the Clayton Act, 15 U.S.C. 12(a), and to Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, to the extent that such Section 5 applies to unfair methods of competition. In the case of Australia, the term refers to Part IV of the Trade Practices Act 1974; other provisions of that Act except Part X in so far as they relate to Part IV; Regulations made under that Act in so far as they relate to Part IV, except Regulations to the extent that they relate to Part X; and the Competition Code of the Australian States and Territories.

Central Authority - refers, in the case of the United States, to the Attorney General (or a person designated by the Attorney General), in consultation with the U.S. Federal Trade Commission. In the case of Australia, the term refers to the Australian Competition and Consumer Commission, in consultation with the Attorney General's Department.

Executing Authority - refers, in the case of the United States, to the Antitrust Authority designated to execute a particular request on behalf of a Party. In the case of Australia, the term includes the Australian Competition and Consumer Commission and the Attorney General's Department.

Mutual Assistance Legislation - refers, in the case of the United States, to the International Antitrust Enforcement Assistance Act of 1994, 15 U.S.C. 6201-6212, Public Law No. 103-438, 108 Stat. 4597. In the case of Australia, the term refers to the Mutual Assistance in Business Regulation Act 1992 and the Mutual Assistance in Criminal Matters Act 1987, and Regulations made pursuant to those Acts.

Person or Persons - refers to any natural person or legal entity, including corporations, unincorporated associations, partnerships, or bodies corporate existing under or authorized by the laws of either the United States, its States, or its Territories, the laws of Australia, its States, or its Territories, or the laws of other sovereign states.

Request - refers to a request for assistance under this Agreement.

Requested Party - refers to the Party from which assistance is sought under this Agreement, or which has provided such assistance.

Requesting Party - refers to the Party seeking or receiving assistance under this Agreement.