

Competition co-operation and enforcement

INVENTORY OF INTERNATIONAL CO-OPERATION MOUs BETWEEN COMPETITION AGENCIES



PROVISIONS ON EXISTING LAW

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 existing law 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.

Most MoUs are not legally binding and therefore do not create any legally enforceable right or duty.

Regardless of this, approximately half of the reviewed MoUs have provisions on existing law, stating for example that (1) a competition authority need not take any action that is inconsistent with the laws and regulations in each jurisdiction, and (2) no change in the laws of the parties will be required as a result of the application of the agreement.

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

IV. RECOMMENDS that an Adherent that considers that one or more enterprises or individuals situated in one or more other Adherents are or have been engaged in anticompetitive practices or mergers with anticompetitive effects that substantially and adversely affect its important interests, may request consultations with such other Adherent or Adherents.

1. Entering into such consultations is without prejudice to any action under the competition law and to the full freedom of ultimate decision of the Adherents concerned.

VI. RECOMMENDS that where two or more Adherents investigate or proceed against the same or related anticompetitive practice or merger with anticompetitive effects, they should endeavour to co-ordinate their investigations or proceedings where their competition authorities agree that it would be in their interest to do so.

To this end, co-ordination between Adherents:

2. should not affect Adherents' right to make decisions independently, based on their own investigation or proceeding.

Relevant provisions in MoUs:

Canada-Colombia (2017)

Existing laws and confidentiality of information

12. Nothing in this MOU will require a Participant to take any action, or to refrain from acting, in a manner inconsistent with existing laws, or will require any change in the laws of Canada or the Republic of Colombia.

US-Korea (Korean Prosecution Service) (2020)

SECTION IV GENERAL PROVISIONS

2. This Memorandum is intended to set forth a framework for cooperation. DOJ and KPS reserve their full discretion in implementing this Memorandum, and nothing in it is intended to change existing laws, agreements, or treaties, or to create rights or obligations under international law or the domestic laws of the United States of America or the Republic of Korea.

Australia-Japan (2015)

Paragraph [*11] Miscellaneous

11.3. All cooperation under this Arrangement between the competition authorities will be conducted subject to laws and regulations in force in their respective countries and within the reasonably available resources of each competition authority.

Brazil-Canada (2008)

VI. Existing laws and confidentiality of information

1. Nothing in this Arrangement will require a Participant to take any action, or to refrain from acting, in a manner inconsistent with existing laws, or will require any change in the laws of Canada or the Federative Republic of Brazil.

Korea-Mexico (2004)

Paragraph XI Existing Laws

Nothing in this Arrangement will require an Agency to take any action, or to refrain from acting, in a manner that is inconsistent with the existing laws, or require any change in the country's laws.

Chile-US (2011)

Article VIII Existing laws

Nothing in this Agreement shall require a competition authority to take any action, or to refrain from acting, in a manner that is inconsistent with the existing laws, or require any change in the laws it enforces.

EU-India (2013)

VI. Existing legislation and confidentiality of information

15. Nothing in the present Memorandum of Understanding will require any Side to take any actions or to refrain from acting in a manner inconsistent with the existing legislation of the Sides or will require any change to that legislation.