AGREEMENT

BETWEEN

THE GOVERNMENT OF CANADA

AND

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

ON THE APPLICATION OF POSITIVE COMITY PRINCIPLES

TO THE ENFORCEMENT OF THEIR COMPETITION LAWS

THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA (hereinafter "the Parties"):

HAVING REGARD to the August 1995 Agreement between the Government of Canada and the Government of the United States of America Regarding the Application of Their Competition and Deceptive Marketing Practices Laws (hereinafter "the 1995 Agreement");

RECOGNIZING that the 1995 Agreement has contributed to coordination, cooperation and avoidance of conflicts in competition law enforcement;

NOTING in particular Article V of the 1995 Agreement, commonly referred to as the "Positive Comity" article, which calls for cooperation regarding anticompetitive activities occurring in the territory of one Party that adversely affect the important interests of the other Party;

BELIEVING that further elaboration of the principles of positive comity and of the implementation of those principles would enhance the 1995 Agreement's effectiveness in relation to such anticompetitive activities; and

NOTING that nothing in this Agreement or its implementation shall be construed as prejudicing either Party's position on issues of competition law jurisdiction in the international context,

HAVE AGREED as follows:

ARTICLE I

Scope and Purposes of this Agreement

1. This Agreement applies where the competition authorities of a Party satisfy the competition authorities of the other Party that there is reason to believe that the following

circumstances are present:

(a) Anticompetitive activities are occurring in whole or in substantial part in the territory of one of the Parties and are adversely affecting the important interests of the other Party; and

(b) The activities in question may be subject to penalties or other relief under the competition laws of the Party in whose territory the activities are occurring.

2. The purposes of this Agreement are to:

(a) Help ensure that trade and investment flows between the Parties and competition and consumer welfare within the territories of the Parties are not impeded by anticompetitive activities for which the competition laws of one or both Parties can provide a remedy, and

(b) Establish cooperative procedures to achieve the most effective and efficient enforcement of competition law, whereby the competition authorities of each Party will normally avoid allocating enforcement resources to dealing with anticompetitive activities that occur principally in and are directed principally towards the other Party's territory, where the competition authorities of the other Party are able and prepared to examine and take effective sanctions under their law to deal with those activities.

ARTICLE II

Definitions

As used in this Agreement:

1. "Adverse effects" and "adversely affected" mean harm caused by anticompetitive activities to:

(a) the ability of persons, either natural or legal, in the territory of a Party to export to, invest in, or otherwise compete in the territory of the other Party, or

(b) competition in a Party's domestic or import markets.

2. "Anticompetitive activities" means any conduct or transaction that may be subject to penalties or other relief under the competition laws of a Party.

3. "Competition authorities" means:

(a) for Canada, the Commissioner of Competition (referred to as the Director of Investigation and Research in the 1995 Agreement), and

(b) for the United States of America, the Antitrust Division of the United States Department of Justice and the Federal Trade Commission.

4. “Competition law(s)” means:

(a) for Canada, the *Competition Act*, R.S.C. 1985, c. C-34, as amended, except sections 52 through 60, 74.01 through 74.19, 91 through 103, and 108 through 124 of that Act, and

(b) for the United States of America, the Sherman Act (15 U.S.C. §§1-7), the Clayton Act (15 U.S.C. §§12-27, except as it relates to investigations pursuant to Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. §18a), the Wilson Tariff Act (15 U.S.C. §§8-11), and the Federal Trade Commission Act (15 U.S.C. §§41-58, 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 the purposes of this Agreement.

5. “Enforcement activities” means any investigation or proceeding conducted by the competition authorities of a Party in relation to its competition laws.

6. “Requested Party” means a Party in the territory of which anticompetitive activities appear to be occurring.

7. “Requesting Party” means a Party that is adversely affected by anticompetitive activities that appear to be occurring in whole or in substantial part in the territory of the other Party.

ARTICLE III

Positive Comity

The competition authorities of a Requesting Party may request the competition authorities of a Requested Party to investigate and, if warranted, to remedy anticompetitive activities in accordance with the Requested Party's competition laws. Such a request may be made regardless of whether the activities also violate the Requesting Party's competition laws, and regardless of whether the competition authorities of the Requesting Party have commenced or contemplate taking enforcement activities under their own competition laws.

ARTICLE IV

Deferral or Suspension of Investigations in Reliance on Enforcement Activity by the Requested Party

1. The competition authorities of the Parties may agree that the competition authorities of the Requesting Party will defer or suspend pending or contemplated enforcement activities during the pendency of enforcement activities of the Requested Party.

2. The competition authorities of a Requesting Party will normally defer or suspend their own enforcement activities in favor of enforcement activities by the competition authorities of the Requested Party when the following conditions are satisfied:

(a) The anticompetitive activities at issue:

(i) do not have a direct, substantial and reasonably foreseeable impact on consumers in the Requesting Party's territory, or

(ii) where the anticompetitive activities do have such an impact on the Requesting Party's consumers, they occur principally in and are directed principally towards the other Party's territory;

(b) The adverse effects on the important interests of the Requesting Party can be and are likely to be fully and adequately investigated and, as appropriate, eliminated or adequately remedied pursuant to the laws, procedures and available remedies of the Requested Party. The Parties recognize that it may be appropriate to pursue separate enforcement activities where anticompetitive activities affecting both territories justify the imposition of penalties within both jurisdictions; and

(c) The competition authorities of the Requested Party agree that in conducting their own enforcement activities, they will:

(i) devote adequate resources to investigate the anticompetitive activities and, where appropriate, promptly pursue adequate enforcement activities;

(ii) use their best efforts to pursue all reasonably available sources of information, including such sources of information as may be suggested by the competition authorities of the Requesting Party;

(iii) inform the competition authorities of the Requesting Party at reasonable intervals which normally shall not exceed six weeks, or on request, of the status of their enforcement activities and intentions, and where appropriate provide to the competition authorities of the Requesting Party relevant confidential information. The use and disclosure of such information shall be governed by Article V;

(iv) promptly notify the competition authorities of the Requesting Party of any change in their intentions with respect to investigation or enforcement;

(v) use their best efforts to complete their investigation and to obtain a remedy or initiate proceedings within a specified period to which the competition authorities of the Parties shall agree, which shall be as short a period as is reasonably feasible. The competition authorities of the Parties shall agree on such time period within three months of the time at which a request under Article III of this agreement is made;

(vi) fully inform the competition authorities of the Requesting Party of the results of their investigation, and take into account the views of the competition authorities of the Requesting Party, prior to any settlement, initiation of proceedings, adoption of remedies, or termination of the investigation; and

(vii) comply with any reasonable request that may be made by the competition authorities of the Requesting Party.

When the above conditions are satisfied, a Requesting Party which chooses not to defer or suspend its enforcement activities shall inform the competition authorities of the Requested Party of its reasons.

3. The competition authorities of the Requesting Party may defer or suspend their own enforcement activities if fewer than all of the conditions set out in paragraph 2 are satisfied.

4. Nothing in this Agreement precludes the competition authorities of a Requesting Party that choose to defer or suspend independent enforcement activities from later initiating or re-instituting such activities. In such circumstances, the competition authorities of the Requesting Party will promptly inform the competition authorities of the Requested Party of their intentions and reasons. If the competition authorities of the Requested Party continue with their own investigation, the competition authorities of the two Parties shall consider coordination of their respective investigations under the criteria and procedures of Article IV of the 1995 Agreement.

ARTICLE V

Confidentiality and Use of Information

Where pursuant to this Agreement the competition authorities of one Party provide information to the competition authorities of the other Party for the purpose of implementing this Agreement, that information shall be used by the latter competition authorities only for that purpose. However, the competition authorities that provided the information may consent to another use, on condition that where confidential information has been provided pursuant to Article IV.2 (c) (iii) on the basis of the consent of the source concerned, that source also agrees to the other use. Disclosure of such information shall be governed by the provisions of Article X of the 1995 Agreement.

ARTICLE VI

Relationship to the 1995 Agreement

This Agreement shall supplement and be interpreted consistently with the 1995 Agreement, which remains fully in force.

ARTICLE VII

Existing Law

Nothing in this Agreement shall be interpreted in a manner inconsistent with the existing laws, or as requiring any change in the laws, of the Parties or of their respective Provinces or States.

ARTICLE VIII

Entry Into Force and Termination

1. This Agreement shall enter into force upon signature.

2. This Agreement shall remain in force until 60 days after the date on which either Party notifies the other Party in writing that it wishes to terminate the Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Agreement.

DONE in duplicate at , on this day of 2004, in the English and French languages, each text being equally authentic.

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FOR THE GOVERNMENT OF CANADA

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA