

**MEMORANDUM OF UNDERSTANDING BETWEEN THE COMMISSIONER OF
COMPETITION (CANADA) AND THE FISCAL NACIONAL ECONOMICO (CHILE)
REGARDING THE APPLICATION OF THEIR COMPETITION LAWS**

The Commissioner of Competition, Competition Bureau, of the Government of Canada, and the Fiscal Nacional Economico, of the Government of the Republic of Chile (hereinafter referred to as the "Parties");

Having regard to Chapter J of the Canada-Chile Free Trade Agreement and the importance of cooperation and coordination among competition authorities to further effective competition law enforcement in the free trade area; and

Recognizing that cooperation in enforcement activities and the coordination of such activities may, in certain cases, result in a more effective resolution of the Parties' respective competition law concerns than would be attained through independent action;

Understand as follows:

I. PURPOSE AND DEFINITIONS

1. The purpose of this Memorandum is to promote cooperation and coordination between the Parties and to reduce the effect of potential differences in the application of competition law in Canada and Chile;
2. In this Memorandum, these terms will 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 law administered and enforced by the Parties;
 - (b) "Competition law(s)" means
 - (i) for the Commissioner of Competition, the *Competition Act*, R.S.C. 1985, c. C-34, except sections 52 through 60 and Part VII.1;
 - (ii) for Fiscal Nacional Economico, Decree Law-211 of 1973;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 Memorandum; and
 - (c) "Enforcement activity(ies)" means any investigation or proceeding conducted by a Party in relation to the competition law it administers and enforces; and

- (d) "Territory" means the territory in which a Party has jurisdiction.
3. Each Party will promptly notify the other of any amendments to its competition law.

II NOTIFICATION

1. Subject to Article VI, each Party will notify the other Party with respect to its enforcement activities which may affect the other Party's interests in the application of its competition law, including those that:
 - a. are relevant to the enforcement activities of the other Party;
 - b. involve anticompetitive activities, other than mergers or acquisitions, carried out in whole or in part in the other Party's territory, except where those activities are insubstantial;
 - c. involve mergers or acquisitions in which one or more of the parties to the transaction, or a company controlling one or more of the parties to the transaction, is a company incorporated or organized under the laws of the other Party's territory;
 - d. involve remedies that expressly require or prohibit conduct in the other Party's territory or are otherwise directed at conduct in that territory;
 - e. involve the seeking of information located in the other Party's territory, whether by personal visit by officials of a Party or otherwise, except with respect to telephone contacts with a person in the other Party's territory where that person is not the subject of investigation and the contact seeks only an oral response on a voluntary basis.
2. Notification will ordinarily be given as soon as it becomes evident that notifiable circumstances are present.
3. Once a particular matter has been notified, subsequent notifications on that matter need not be made unless the notifying Party becomes aware of new issues bearing on the interests of the other Party in the application of its competition law, or unless the notified Party requests otherwise.
4. Notifications will include the nature of the anticompetitive activities under investigation and the competition law provisions concerned and will be sufficiently detailed to enable the notified Party to make an initial evaluation of the effect of the enforcement activities on its interests in the application of its competition law.

III. COOPERATION AND COORDINATION

1. It is in the Parties' common interest to cooperate and share information where appropriate and practicable.
2. Where both Parties are pursuing enforcement activities with regard to the same or related matters, they will endeavour to coordinate their enforcement activities where appropriate and practicable.

IV. AVOIDANCE OF CONFLICTS

1. It is in the Parties' common interest to minimize any potentially adverse effects of one Party's enforcement activities on the other Party's interests in the application of its competition law.
2. Where one Party informs the other that a specific enforcement activity by the second Party may affect the first Party's interests in the application of its competition law, the second Party will endeavour to provide timely notice of significant developments relating to those interests and an opportunity to provide input regarding any proposed penalty or remedy.
3. Any questions arising out of this Memorandum will be addressed in as timely and practicable a manner as circumstances permit.

V. MEETINGS

Officials of the Parties will meet periodically, as necessary, to:

- a. exchange information on their enforcement efforts and priorities in relation to competition law;
- b. exchange information on economic sectors of common interest;
- c. discuss competition policy changes under consideration;
- d. discuss other matters of mutual interest relating to the application of their competition laws or the operation of this Memorandum; and
- e. discuss the possibility of negotiating an agreement between Canada and Chile regarding the application of their competition laws.

VI. EXISTING LAWS AND CONFIDENTIALITY OF INFORMATION

1. Nothing in this Memorandum will require a Party to take any action, or to refrain from acting, in a manner inconsistent with existing law, or will require any change in the law of Canada or Chile.
2. Notwithstanding any other provision in this Memorandum, neither Party is required to communicate information to the other Party if such communication would be incompatible with the first Party's interests in the application of its competition law. No information will be exchanged pursuant to this Memorandum which could not have been exchanged in the absence of this Memorandum.
3. The degree to which either Party communicates information to the other pursuant to this Memorandum may be subject to, and dependent upon, the acceptability of the assurances given by the other Party with respect to confidentiality and with respect to the purposes for which the information will be used.
4. Unless otherwise agreed by the Parties, each Party will, to the fullest extent possible, maintain the confidentiality of any information communicated to it in confidence by the other Party. Each Party will oppose, to the fullest extent possible, any request by a third party for communication of such confidential information, unless the Party providing the confidential information consents in writing to its communication.

VII. COMMUNICATIONS UNDER THIS MEMORANDUM

Communications under this Memorandum will be carried out by direct communication between the Parties. Each Party may designate a communications authority, as notified in writing to the other Party.

VIII. ENTRY INTO FORCE AND TERMINATION

1. This Memorandum shall enter into force upon signature of the Parties.
2. This Memorandum will remain in force until 60 days after the date on which either Party notifies the other in writing that it wishes to terminate, or until the time of the entry into force of an agreement between Canada and Chile regarding the application of their competition laws.

IN WITNESS WHEREOF, the undersigned, have signed this Memorandum.

DONE at Santiago, in duplicate, this 17th day of December, 2001, in the English, French and Spanish languages, each text being equally authentic.

For the Commissioner of Competition, Competition Bureau, of the Government of Canada	For the Fiscal Nacional Economico, of the Government of the Republic of Chile
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