

AGREEMENT

BETWEEN

THE GOVERNMENT OF CANADA

AND

THE GOVERNMENT OF JAPAN

CONCERNING COOPERATION ON ANTICOMPETITIVE ACTIVITIES

THE GOVERNMENT OF CANADA and **THE GOVERNMENT OF JAPAN**
(hereinafter referred to as “the Parties”):

RECOGNIZING that the world’s economies, including the economies of Canada and Japan, are becoming increasingly interrelated;

NOTING that the sound and effective enforcement of the competition law of each country is a matter of importance to the efficient functioning of the markets of each country and to trade between them;

NOTING that the sound and effective enforcement of the competition law of each country would be enhanced by cooperation and, where appropriate, coordination between the Parties in the application of those laws;

NOTING that from time to time differences may arise between the Parties concerning the application of the competition law of each country;

NOTING further the commitment of the Parties to give careful consideration to the important interests of each Party in the application of the competition law of each country; and

HAVING REGARD TO the growing cooperation between the Parties in matters relating to competition law, to the Recommendation of the Council of the Organisation for Economic Co-operation and Development Concerning Cooperation Between Member Countries on Anticompetitive Practices Affecting International Trade, as revised July 27 and 28, 1995, and to the Recommendation of the Council of the Organisation for Economic Co-operation and Development Concerning Effective Action Against Hard Core Cartels adopted on March 25, 1998;

HAVE AGREED as follows:

ARTICLE I

1. The purpose of this Agreement is to contribute to the effective enforcement of the competition law of each country through the development of cooperative relationships between the competition authorities of the Parties and to avoid or minimize the possibility of conflicts between the Parties arising from the application of the competition law of each country.
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;
3. The competition authority of each Party shall give prompt notice to the competition authority of the other Party of any amendment to the competition law of its country excluding amendments to the implementing regulations which do not pertain to or affect the implementation or operation of this Agreement.

ARTICLE II

1. The competition authority of each Party shall, in accordance with the provisions of this Agreement, notify the competition authority of the other Party with respect to the enforcement activities of the Party of the notifying competition authority that the notifying competition authority considers may affect the important interests of the other Party.
2. Enforcement activities that may affect the important interests of the other Party include those that:
 - (a) are relevant to enforcement activities of the other Party;
 - (b) are against a national or nationals of the country of the other Party;
 - (c) involve anticompetitive activities, other than mergers or acquisitions, carried out in any substantial part in the territory of the country of the other Party;
 - (d) involve mergers or acquisitions in which
 - (i) one or more of the parties to the transaction, or
 - (ii) a company controlling one or more of the parties to the transaction, is a national of the country of the other Party;
 - (e) involve conduct considered by the notifying competition authority to have been required, encouraged or approved by the other Party; or
 - (f) involve penalties or relief that require or prohibit conduct in the territory of the country of the other Party.
3. Where notification is required pursuant to paragraph 1 of this Article with respect to mergers or acquisitions, the notification shall be given not later than:
 - (a) in the case of the competition authority of Canada, the time it issues a written request for information under oath or affirmation, or obtains an order for oral examination, production of records or written return, with respect to the transaction; and
 - (b) in the case of the competition authority of Japan, the time it seeks production of documents, reports or other information concerning the proposed transaction pursuant to the Antimonopoly Law.
4. Where notification is required pursuant to paragraph 1 of this Article, the notification shall be given as far in advance of the following actions as is practically possible:
 - (a) in the case of the Government of Canada, the filing of an application with the Competition Tribunal; an application for an order for the prevention of restraint of trade by use of intellectual property rights, an interim injunction, or a prohibition order in a criminal matter; the initiation of criminal proceedings; the settlement of a matter by way of an undertaking; or the registration of a consent agreement done before the filing of an application with the Competition Tribunal; and

- (b) in the case of the Government of Japan, the filing of a criminal accusation, the filing of a complaint seeking an urgent injunction, the issuance of a recommendation or the decision to initiate a hearing, or the issuance of a surcharge payment order when no prior recommendation with respect to the payer has been issued.
- 5. The competition authority of each Party shall notify the competition authority of the other Party whenever the notifying competition authority publicly participates, in connection with competition laws or policy issues, in an administrative, regulatory or judicial proceeding in its country that is not initiated by the competition authority, if the notifying competition authority considers that the issue addressed may affect the important interests of the other Party. Such notification shall be made at the time of the participation or as soon thereafter as possible.
- 6. Notifications shall be sufficiently detailed to enable the notified competition authority to make an initial evaluation of the effect on the important interests of its Party and shall include the nature of the activities under investigation and the legal provisions concerned. Where possible, notifications shall include the names and locations of the persons involved.

ARTICLE III

- 1. The competition authority of each Party shall render assistance to the competition authority of the other Party in its enforcement activities to the extent consistent with the laws and regulations of the country of the assisting competition authority and the important interests of the Party of the assisting competition authority, and within its reasonably available resources.
- 2. The competition authority of each Party shall, to the extent consistent with the laws and regulations of its country and the important interests of that Party,
 - (a) inform the competition authority of the other Party with respect to its enforcement activities involving anticompetitive activities that the informing competition authority considers may also have an adverse effect on competition within the territory of the country of the other Party;
 - (b) provide the competition authority of the other Party with any significant information, within its possession and that comes to its attention, about anticompetitive activities that the providing competition authority considers may be relevant to, or may warrant, enforcement activities by the competition authority of the other Party; and
 - (c) provide the competition authority of the other Party, upon request and in accordance with the provisions of this Agreement, with information within its possession that is relevant to the enforcement activities of the competition authority of the other Party.

ARTICLE IV

- 1. Where the competition authorities of the Parties are pursuing enforcement activities with regard to related matters, they will consider coordination of their enforcement activities.

2. In considering whether particular enforcement activities should be coordinated, the competition authorities of the Parties shall take into account the following factors, among others:
 - (a) the effect of such coordination on their ability to achieve the objectives of their enforcement activities;
 - (b) the relative abilities of the competition authorities of the Parties to obtain information necessary to conduct the enforcement activities;
 - (c) the extent to which the competition authority of either Party can secure effective penalties or relief against the anticompetitive activities involved;
 - (d) the possible reduction of cost to the Parties and to the persons subject to the enforcement activities; and
 - (e) the potential advantages of coordinated relief to the Parties and to the persons subject to the enforcement activities.
3. In any coordinated enforcement activity, the competition authority of each Party shall seek to conduct its enforcement activities with careful consideration to the objectives of the enforcement activities by the competition authority of the other Party.
4. Where the competition authorities of the Parties are pursuing enforcement activities with regard to related matters, the competition authority of each Party shall inquire, upon request by the competition authority of the other Party and where consistent with the important interests of the Party of the requested competition authority, where appropriate, whether persons who have provided information, other than information made available to the public, in connection with those enforcement activities will consent to the sharing of such information with the competition authority of the other Party.
5. Subject to appropriate notice to the competition authority of the other Party, the competition authority of either Party may, at any time, limit or terminate the coordination of enforcement activities and pursue its enforcement activities independently.

ARTICLE V

1. Where the competition authority of a Party believes that anticompetitive activities carried out in the territory of the country of the other Party adversely affect the important interests of the former Party, that competition authority, taking into account the importance of avoiding conflicts regarding jurisdiction and taking into account that the competition authority of the latter Party may be in a position to conduct more effective enforcement activities with regard to such anticompetitive activities, may request that the competition authority of the latter Party initiate appropriate enforcement activities. The request shall be as specific as possible about the nature of the anticompetitive activities and their effect on the important interests of the former Party, and shall include an offer of such further information and other cooperation as the requesting competition authority is able to provide.

2. The requested competition authority shall carefully consider whether to initiate enforcement activities, or whether to expand ongoing enforcement activities, with respect to the anticompetitive activities identified in the request. The requested competition authority shall inform the requesting competition authority of its decision as soon as practically possible. Where enforcement activities are initiated, the requested competition authority shall inform the requesting competition authority of their outcome and, to the extent possible, of significant interim developments.

ARTICLE VI

1. Each Party shall give careful consideration to the important interests of the other Party throughout all phases of its enforcement activities, including decisions regarding the initiation of enforcement activities, the scope of enforcement activities and the nature of penalties or relief sought in each case.
2. When one Party informs the other Party that a specific enforcement activity by the latter Party may affect the important interests of the former Party, the latter Party shall endeavour to provide timely notice of significant developments of such enforcement activities.
3. Where either Party considers that enforcement activities by a Party may adversely affect the important interests of the other Party, the Parties should consider the following factors, in addition to any other factor that may be relevant in the circumstances, in seeking an appropriate accommodation of the competing interests:
 - (a) the relative significance to the anticompetitive activities of conduct or transactions occurring within the territory of the country of the Party conducting the enforcement activities as compared to conduct or transactions occurring within the territory of the other country;
 - (b) the relative impact of the anticompetitive activities on the important interests of the respective Parties;
 - (c) the presence or absence of evidence of an intention on the part of those engaged in the anticompetitive activities to affect consumers, suppliers or competitors within the territory of the country of the Party conducting the enforcement activities;
 - (d) the extent to which the anticompetitive activities substantially lessen competition in the market of each country;
 - (e) the degree of conflict or consistency between the enforcement activities of a Party and the laws and regulations of the country of the other Party or the policies or important interests of the other Party;
 - (f) whether private persons, either natural or legal, will be placed under conflicting requirements by the Parties;
 - (g) the location of relevant assets and parties to the transaction;
 - (h) the degree to which effective penalties or relief can be secured by the enforcement activities of the Party against the anticompetitive activities; and

- (i) the extent to which enforcement activities of the other Party with respect to the same persons, either natural or legal, would be affected.

ARTICLE VII

1. The Parties shall consult with each other, upon request of either Party, through the diplomatic channel on any matter which may arise in connection with this Agreement.
2. The competition authorities of the Parties shall consult with each other, upon request of the competition authority of either Party, on any matter which may arise from the implementation or operation of this Agreement.
3. Any request for consultations under this Article shall be made in writing and indicate the reasons for the request.
4. Each Party or the competition authority of each Party, as the case may be, shall consult as promptly as practically possible when so requested.

ARTICLE VIII

Unless otherwise decided by the competition authorities of the Parties, they shall meet at least every two years to:

- (a) exchange information on their current enforcement efforts and priorities in relation to the competition law of each country;
- (b) exchange information on economic sectors of common interest;
- (c) discuss policy changes that they are considering;
- (d) discuss other matters of mutual interest relating to the application of the competition law of each country; and
- (e) discuss developments relating to bilateral or multilateral fora involving the Parties that may be relevant to the cooperative relationship between the competition authorities of the Parties.

ARTICLE IX

1. Notwithstanding any other provision of this Agreement, neither Party is required to communicate information to the other Party if such communication is prohibited by the laws or regulations of the country of the Party possessing the information or such communication would be incompatible with the important interests of that Party.
2. For the purposes of this Article, “confidential information” means all information communicated pursuant to this Agreement except information that has been made available to the public.
3. Each Party shall, to the fullest extent possible consistent with the laws and regulations of its country, maintain the confidentiality of confidential information

unless the Party communicating the confidential information consents to its disclosure.

4. A Party may limit the confidential information it communicates to the other Party when the latter Party is unable to give the assurance requested by the former Party with respect to confidentiality or with respect to the limitations of purposes for which the information will be used.
5. (a) Confidential information communicated pursuant to this Agreement shall not be used by the receiving Party or the receiving competition authority for purposes other than the enforcement of the competition law of its country unless:
 - (i) in the case of confidential information communicated by the Government of Japan, the Government of Japan gives consent to use for such a purpose;
 - (ii) in the case of confidential information communicated by the competition authority of the Government of Japan, the competition authority of the Government of Japan gives consent to use for such a purpose; and
 - (iii) in the case of confidential information communicated by the Government of Canada or by the competition authority of the Government of Canada, the competition authority of the Government of Canada gives consent to use for such a purpose.
- (b) (i) Confidential information communicated pursuant to this Agreement by a Party to the other Party shall not be communicated to a third party, including other authorities of the receiving Party other than the competition authority of the receiving Party, unless:
 - (A) in the case of confidential information communicated by the Government of Japan, the Government of Japan gives consent to communicate to a third party; and
 - (B) in the case of confidential information communicated by the Government of Canada, the competition authority of the Government of Canada gives consent to communicate to a third party; and
- (ii) confidential information communicated pursuant to this Agreement by the competition authority of a Party shall not, without the consent of that competition authority, be communicated to a third party, including other authorities of the receiving Party.
- (c) Notwithstanding sub-paragraph (b) above, confidential information may be communicated to a law enforcement authority of the receiving Party solely for the purposes of the enforcement of the competition law of its country, in which case the confidential information may be used subject to paragraph 7 of this Article, unless:
 - (i) in the case of confidential information communicated by the Government of Japan, the Government of Japan gives notice to the contrary;

- (ii) in the case of confidential information communicated by the competition authority of the Government of Japan, the competition authority of the Government of Japan gives notice to the contrary; and
 - (iii) in the case of confidential information communicated by the Government of Canada or by the competition authority of the Government of Canada, the competition authority of the Government of Canada gives notice to the contrary.
- 6.
 - (a) This Article shall not preclude the use or disclosure of confidential information to the extent that there is an obligation to do so under the laws and regulations of the country of the receiving Party. Such Party shall, wherever possible, give advance notice of any such use or disclosure to the Party that communicated the confidential information.
 - (b) Where a third party, including authorities of the receiving Party other than the authority receiving the information, applies for the use or disclosure of confidential information communicated pursuant to this Agreement, each Party shall, until a final determination is made, to the fullest extent possible consistent with the laws and regulations of its country, use all available measures to maintain the confidentiality of that confidential information.
- 7.
 - (a) Confidential information communicated by a Party or the competition authority of a Party to the other Party or the competition authority of the other Party pursuant to this Agreement shall not be presented to a court or judge in criminal proceedings of the country of the latter Party.
 - (b) Where confidential information communicated by a Party or the competition authority of a Party to the other Party or the competition authority of the other Party pursuant to this Agreement is needed for presentation to a court or judge in criminal proceedings of the country of the latter Party, the latter Party shall submit a request to present such information to the former Party through the diplomatic channel or other channel established in accordance with the law of the former Party. The former Party will make, upon request, its best efforts to respond promptly to meet the legitimate deadlines indicated by the latter Party.

ARTICLE X

1. This Agreement shall be implemented by the Parties in accordance with the laws and regulations in force in each country and within the available resources of their respective competition authorities.
2. Detailed arrangements relating to the implementation or operation of this Agreement may be made between the competition authorities of the Parties.
3. Nothing in this Agreement shall be construed to affect the rights and obligations of either Party under its laws or under other international agreements.
4. Nothing in this Agreement shall prevent the Parties from seeking or providing assistance to one another pursuant to other bilateral or multilateral agreements or arrangements between the Parties.

5. Nothing in this Agreement shall be construed to prejudice the policy or legal position of either Party regarding any issue related to jurisdiction.

ARTICLE XI

Unless otherwise provided in this Agreement, communications under this Agreement may be directly carried out between the competition authorities of the Parties. Notifications under Article II and requests under Article V, paragraph 1 of this Agreement, however, shall be confirmed in writing through the diplomatic channel. The confirmation shall be made as promptly as practically possible after the communication concerned between the competition authorities of the Parties.

ARTICLE XII

1. This Agreement shall enter into force on the 30th day after the date of signature.
2. This Agreement may be amended by agreement of the Parties.
3. Either Party may terminate this Agreement by giving two months written notice to the other Party through the diplomatic channel.
4. The Parties shall review the operation of this Agreement not more than five years from the date of its entry into force.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Ottawa, in duplicate, on this sixth day of September 2005, in the English, French and Japanese languages, each text being equally authentic.

**FOR THE
GOVERNMENT OF CANADA**

**FOR THE
GOVERNMENT OF JAPAN**