

# Competition co-operation and enforcement

## INVENTORY OF CO-OPERATION AGREEMENTS



### PROVISIONS ON POSITIVE COMITY

This document contains the text of the provisions on positive comity 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](http://www.oecd.org/competition/inventory-competition-agreements.htm).

“Positive comity” allows one party (requesting) to request the other party (requested) to take appropriate enforcement actions with respect to anti-competitive activities occurring in the territory of the requested party that adversely affect important interests of the requesting party. It is aimed at effective allocation of enforcement resources by allowing the better-placed party to deal with the problem (for example, it avoids difficulties of obtaining evidence in a foreign jurisdiction) and minimises conflicts between jurisdictions that may be caused by enforcement actions against activities occurring in another jurisdiction.

Most of the co-operation agreements reviewed include a positive comity provision. The anticompetitive activities affecting the interests of the requesting party need to be illegal under the competition laws of the requested party, as they would be investigated and remedied in its territory. If the requested party decides to respond to the request positively, it has to inform the requesting party of the outcome and significant interim developments. However, the response to a positive comity request is voluntary and at the discretion of the requested party. The requesting party is not prevented from taking enforcement actions under its own laws.

Positive comity provisions are very similar to one another and usually consist of:

- A general principle on positive comity;
- The request for enforcement action;
- How the requested party responds to the request; and
- The voluntary nature of positive comity activities.

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

### Consultation and Comity

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.

2. Any Adherent so addressed should give full and sympathetic consideration to such views and factual materials as may be provided by the requesting Adherent and, in particular, to the nature of the alleged anticompetitive practices or mergers with anticompetitive effects in question, the enterprises or individuals involved and the alleged harmful effects on the interests of the requesting Adherent.

3. If the Adherent so addressed agrees that enterprises or individuals situated in its territory are engaged in anticompetitive practices or in mergers with anticompetitive effects harmful to the interests of the requesting Adherent, it should take whatever remedial action it considers appropriate, including actions under its competition law, on a voluntary basis and considering its legitimate interests.

4. In requesting consultations, Adherents should explain the national interests affected in sufficient detail to enable their full and sympathetic consideration.

5. Without prejudice to any of their rights, the Adherents involved in consultations should endeavour to find a mutually acceptable solution in light of the respective interests involved.

## Relevant provisions in co-operation agreements

### EU-Switzerland (2013)

#### Article 6 Positive comity

1. If the competition authority of a Party believes that anticompetitive activities carried out in the territory of the other Party may adversely affect the important interests of the former Party, it may, taking into account the importance of avoiding conflicts regarding jurisdiction and taking into account that the competition authority of the other Party may be in a position to conduct more effective enforcement activities with regard to such anticompetitive activities, request that the competition authority of the other Party initiate or expand appropriate enforcement activities.

2. The request shall be as specific as possible about the nature of the anticompetitive activities and their actual or potential effect on the important interests of the Party whose competition authority has made the request, and shall include an offer of such further information and other cooperation as the requesting competition authority is able to provide.

3. 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. If enforcement activities are initiated or expanded, the requested competition authority shall inform the requesting competition authority of their outcome and, to the extent possible, of significant interim developments.

4. Nothing in this Article limits the discretion of the requested competition authority under its competition laws and enforcement policies as to whether or not to undertake enforcement activities with respect to the anticompetitive activities identified in the request, or precludes the requesting competition authority from withdrawing its request.

## EU-Korea (2009)

### Article 6 Positive comity

1. If the competition authority of a Party believes that anti-competitive activities carried out in the territory of the other Party adversely affect the important interests of the former Party, such competition authority, taking into account the importance of avoiding conflicts regarding jurisdiction and taking into account that the competition authority of the other Party may be in a position to conduct more effective enforcement activities with regard to such anti-competitive activities, may request that the competition authority of the other Party initiate appropriate enforcement activities.

2. The request shall be as specific as possible about the nature of the anti-competitive activities and their effect on the important interests of the Party of the requesting competition authority, and shall include an offer of such further information and other cooperation as the requesting competition authority is able to provide.

3. The requested competition authority shall carefully consider whether to initiate enforcement activities, or whether to expand ongoing enforcement activities, with respect to the anti-competitive activities identified in the request. The requested competition authority shall inform the requesting competition authority of its decision as soon as practically possible. If 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.

4. Nothing in this Article limits the discretion of the requested Party's competition authority under its competition laws and enforcement policies as to whether or not to undertake enforcement activities with respect to the anti-competitive activities identified in the request, or precludes the requesting Party's competition authority from withdrawing its request.

## Canada-Japan (2005)

### 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.

## EU-Japan (2003)

### Article 5

1. If the competition authority of a Party believes that anti-competitive activities carried out in the territory of the other Party adversely affect the important interests of the former Party, such competition authority, taking into account the importance of avoiding conflicts regarding jurisdiction and taking into account that the competition authority of the other Party may be in a position to conduct more effective enforcement activities with regard to such anti-competitive activities, may request that the competition authority of the other Party initiate appropriate enforcement activities.

2. The request shall be as specific as possible about the nature of the anti-competitive activities and their effect on the important interests of the Party of the requesting competition authority, and shall include an offer of such further information and other cooperation as the requesting competition authority is able to provide.

3. The requested competition authority shall carefully consider whether to initiate enforcement activities, or whether to expand ongoing enforcement activities, with respect to the anti-competitive activities identified in the request. The requested competition authority shall inform the requesting competition authority of its decision as soon as practically possible. If 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.

4. Nothing in this Article limits the discretion of the requested Party's competition authority under its competition laws and enforcement policies as to whether or not to undertake enforcement activities with respect to the anti-competitive activities identified in the request, or precludes the requesting Party's competition authority from withdrawing its request.

## Canada-Mexico (2001)

### Article V Positive comity

1. The Parties note that anticompetitive activities may occur within the territory of one Party that, in addition to violating that Party's competition laws, adversely affect important interests of the other Party. The Parties agree that it is in their common interest to seek relief against anticompetitive activities of this nature.

2. If a Party believes that anticompetitive activities carried out in the territory of the other Party adversely affect its important interests, the first Party may request that the other Party's competition authority initiate appropriate enforcement activities. The request shall be as specific as possible about the nature of the anticompetitive activities and their effects on the interests of the Party, and shall include an offer of such further information and other cooperation as the requesting Party's competition authority is able to provide.

3. The requested Party's competition authority shall carefully consider whether to initiate enforcement activities or to expand ongoing enforcement activities, with respect to the anticompetitive activities identified in the request. The requested Party's competition authority shall promptly inform the requesting Party of its decision. If enforcement activities are initiated, the requested Party's competition authority shall advise the requesting Party of their outcome and, to the extent possible, of significant interim developments.

4. Nothing in this Article limits the discretion of the requested Party's competition authority under its competition laws and enforcement policies as to whether to undertake enforcement activities with respect to the anticompetitive activities identified in a request, or precludes the requesting Party's competition authority from undertaking enforcement activities with respect to such anticompetitive activities.

## Mexico-US (2000)

### Article V Cooperation Regarding Anticompetitive Activities in the Territory of one Party that Adversely Affect the Interests of the other Party

1. The Parties note that anticompetitive activities may occur within the territory of one Party that, in addition to violating that Party's competition laws, adversely affect important interests of the other Party. The Parties agree that it is in their common interest to seek relief against anticompetitive activities of this nature.

2. If a Party believes that anticompetitive activities carried out in the territory of the other Party adversely affect its important interests, the first Party may request that the other Party's competition authorities initiate appropriate enforcement activities. The request shall be as specific as possible about the nature of the anticompetitive activities and their effects on the interests of the Party, and shall include an offer of such further information and other cooperation as the requesting Party's competition authorities are able to provide.

3. The requested Party's competition authorities shall carefully consider whether to initiate enforcement activities, or to expand ongoing enforcement activities, with respect to the anticompetitive activities identified in the request. The requested Party's competition authorities shall promptly inform the requesting Party of its decision. If enforcement activities are initiated, the requested Party's competition authorities shall advise the requesting Party of their outcome and, to the extent possible, of significant interim developments.

4. Nothing in this Article limits the discretion of the requested Party's competition authorities under its competition laws and enforcement policies as to whether to undertake enforcement activities with respect to the anticompetitive activities identified in a request, or precludes the requesting Party's competition authorities from undertaking enforcement activities with respect to such anticompetitive activities.

## Japan-US (1999)

### Article V

1. If the competition authority of a Party believes that anticompetitive activities carried out in the territory of the other country adversely affect the important interests of the former Party, such competition authority, taking into account the importance of avoiding conflicts regarding jurisdiction and taking into account that the competition authority of the other 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 other 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 Party of the requesting competition authority, 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. If 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.

## **Brazil-US (1999)**

### **Article IV Cooperation Regarding Anticompetitive Practices in the Territory of one Party that may Adversely Affect the Interests of the other Party**

1. The Parties agree that it is in their common interest to secure the efficient operation of their markets by enforcing their respective competition laws in order to protect their markets from anticompetitive practices. The Parties further agree that it is in their common interest to seek relief against anticompetitive practices that may occur in the territory of one Party that, in addition to violating that Party's competition laws, adversely affect the interest of the other Party in securing the efficient operation of the other Party's markets.

2. If a Party believes that anticompetitive practices carried out in the territory of the other Party adversely affect its important interests, the first Party may, after prior consultation with the other Party, request that the other Party's competition authorities initiate appropriate enforcement activities. The request shall be as specific as possible about the nature of the anticompetitive practices and their effects on the important interests of the requesting Party, and shall include an offer of such further information and other cooperation as the requesting Party's competition authorities are able to provide.

3. The requested Party's competition authorities shall carefully consider whether to initiate or to expand enforcement activities with respect to the anticompetitive practices identified in the request, and shall promptly inform the requesting Party of its decision. If enforcement activities are initiated or expanded, the requested Party's competition authorities shall advise the requesting Party of their outcome and, to the extent possible, of significant interim developments.

4. Nothing in this Article limits the discretion of the requested Party's competition authorities under its competition laws and enforcement policies as to whether to undertake enforcement activities with respect to the anticompetitive practices identified in a request, nor precludes the requesting Party's competition authorities from undertaking enforcement activities with respect to such anticompetitive practices.

## **Canada-EU (1999)**

### **V. Cooperation regarding anticompetitive activities in the territory of one party that adversely affect the interests of the other party**

1. The Parties note that anticompetitive activities may occur within the territory of one Party that, in addition to violating that Party's competition laws, adversely affect important interests of the other Party. The Parties agree that it is in both their interests to address anticompetitive activities of this nature.

2. If a Party has reason to believe that anticompetitive activities carried out in the territory of the other Party are adversely affecting, or may adversely affect the first Party's important interests, the first Party may request that the other Party's competition authority initiate appropriate enforcement activities. The request shall be as specific as possible about the nature of the anticompetitive activities and their effects on the interests of the requesting Party, and shall include an offer of such further information and other cooperation as the requesting Party's competition authority is able to provide.

3. The requested Party shall consult with the requesting Party and the requested Party's competition authority shall accord full and sympathetic consideration to the request in deciding whether or not to initiate, or expand, enforcement activities with respect to the anticompetitive activities identified in the request. The requested Party's competition authority shall promptly inform the other Party of its decision and the reasons for that decision. If enforcement activities are initiated, the requested Party's competition authority shall advise the requesting Party of significant developments and the outcome of the enforcement activities.

4. Nothing in this Article limits the discretion of the requested Party's competition authority under its competition laws and enforcement policies as to whether or not to undertake enforcement activities with respect to the anticompetitive activities identified in the request, or precludes the requesting Party's competition authority from undertaking enforcement activities with respect to such anticompetitive activities.

## Israel-US (1999)

### Article V Positive Comity

1. The Parties note that anticompetitive activities may occur within one State that, in addition to violating that State's competition laws, adversely affect important interests of the other Party. The Parties agree that it is in their common interest, consistent with the principle of positive comity, to seek relief against anticompetitive activities of this nature.

2. A Party may request that the other Party's competition authorities initiate enforcement activities against anticompetitive activities carried out in the requested State, if the requesting Party believes that such activities adversely affect its important interests. The request shall be as specific as possible about the nature of the anticompetitive activities and their effects on the interests of the requesting Party, and shall include an offer of such further information and other cooperation as the requesting Party's competition authorities are able to provide.

3. The requested Party's competition authorities shall carefully consider whether to initiate enforcement activities with respect to the anticompetitive activities identified in the request. The requested Party's competition authorities shall promptly inform the requesting Party of its decision. If enforcement activities are initiated, the requested Party's competition authorities shall advise the requesting Party of their outcome and, to the extent possible, of significant interim developments.

4. Nothing in this Article limits the discretion of the requested Party's competition authorities under its competition laws and enforcement policies as to whether to undertake enforcement activities with respect to the anticompetitive activities identified in a request, or precludes the requesting Party's competition authorities from undertaking enforcement activities with respect to such anticompetitive activities.

## Canada-US (1995)

### Article V Cooperation regarding anticompetitive activities in the territory of one party that adversely affect the interests of the other party

1. The Parties note that anticompetitive activities may occur within the territory of one Party that, in addition to violating that Party's competition laws, adversely affect important interests of the other Party. The Parties agree that it is in their common interest to seek relief against anticompetitive activities of this nature.

2. If a Party believes that anticompetitive activities carried out in the territory of the other Party adversely affect its important interests, the first Party may request that the other Party's competition authorities initiate appropriate enforcement activities. The request shall be as specific as possible about the nature of the anticompetitive activities and their effects on the interests of the Party, and shall include an offer of such further information and other cooperation as the requesting Party's competition authorities are able to provide.

3. The requested Party's competition authorities shall carefully consider whether to initiate enforcement activities, or to expand ongoing enforcement activities, with respect to the anticompetitive activities identified in the request. The requested Party's competition authorities shall promptly inform the requesting Party of its decision. If enforcement activities are initiated, the requested Party's competition authorities shall advise the requesting Party of their outcome and, to the extent possible, of significant interim developments.

4. Nothing in this Article limits the discretion of the requested Party's competition authorities under its competition laws and enforcement policies as to whether to undertake enforcement activities with respect to the anticompetitive activities identified in a request, or precludes the requesting Party's competition authorities from undertaking enforcement activities with respect to such anticompetitive activities.

## EU-US (1991)

### Article V Cooperation Regarding Anticompetitive Activities in the Territory of one Party that Adversely Affect the Interests of the other Party

1. The Parties note that anticompetitive activities may occur within the territory of one Party that, in addition to violating that Party's competition laws, adversely affect important interests of the other Party. The Parties agree that it is in both their interests to address anticompetitive activities of this nature.

2. If a Party believes that anticompetitive activities carried out on the territory of the other Party are adversely affecting its important interests, the first Party may notify the other Party and may request that the other Party's competition authorities initiate appropriate enforcement activities. The notification shall be as specific as possible about the nature of the anticompetitive activities and their effects on the interests of the notifying Party, and shall include an offer of such further information and other cooperation as the notifying Party is able to provide.

3. Upon receipt of a notification under paragraph 2, and after such other discussion between the Parties as may be appropriate and useful in the circumstances, the competition authorities of the notified Party will consider whether or not to initiate enforcement activities, or to expand ongoing enforcement activities, with respect to the anticompetitive activities identified in the notification. The notified Party will advise the notifying Party of its decision. If enforcement activities are initiated, the notified Party will advise the notifying Party of their outcome and, to the extent possible, of significant interim developments.

4. Nothing in this Article limits the discretion of the notified Party under its competition laws and enforcement policies as to whether or not to undertake enforcement activities with respect to the notified anticompetitive activities, or precludes the notifying Party from undertaking enforcement activities with respect to such anticompetitive activities.

## Relevant provisions in special agreements on positive comity

### Canada-US on positive comity (2004)

#### 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 reinstating 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.

## **EU-US on positive comity (1998)**

### **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 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, on request or at reasonable intervals, of the status of their enforcement activities and intentions, and where appropriate provide to the competition authorities of the Requesting Party relevant confidential information if consent has been obtained from the source concerned. 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 six months, or such other time as agreed to by the competition authorities of the Parties, of the deferral or suspension of enforcement activities by the competition authorities of the Requesting Party;

(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 reinstating 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, where appropriate, coordinate their respective investigations under the criteria and procedures of Article IV of the 1991 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 VIII of the 1991 Agreement and the exchange of interpretative letters dated May 31 and July 31, 1995.

#### **ARTICLE VI Relationship to the 1991 Agreement**

This Agreement shall supplement and be interpreted consistently with the 1991 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 United States of America or the European Communities or of their respective states or Member States.