

Competition co-operation and enforcement

INVENTORY OF INTERNATIONAL CO-OPERATION MOUs BETWEEN COMPETITION AGENCIES



MISCELLANEOUS PROVISIONS

The OECD has put together an inventory of provisions of international co-operation MoUs (Memoranda of Understanding) between competition agencies. This document includes a selection of miscellaneous provisions.

The full inventory, the OECD Recommendation and relevant OECD work can be found online at www.oecd.org/competition/inventory-competition-agency-mous.htm.

There are several miscellaneous provisions found in MoUs, such as provisions on the non-binding nature of MoUs, duration and termination of MoUs, provisions on survival of certain articles in MoUs, provisions on 'entire agreement' and 'succession'.

(i) provisions on the non-binding nature of MoUs

Canada-Colombia (2017)

Legal status

16. This MOU is not legally binding.

Australia-Japan (2015)

Paragraph [*11] Miscellaneous

11.2. Nothing in this Arrangement is intended to create legally binding rights or obligations on the competition authorities or their respective governments.

Canada-Korea (2006)

VIII. Final provisions

3. This Arrangement is not intended to be legally binding at international law.

Czech-Russia (2007)

6. The present Memorandum shall not be considered as an international treaty and does not establish any rights or obligations for the Parties, which are regulated by international law.

Indonesia-Korea (2013)

Article 10 Non-binding Effect

This Arrangement, signed for the purpose of reinforced cooperation of the Parties, will not incur any legally binding or obligations nor be interpreted to have any influence over each Party's rights or obligations pursuant to international agreements and domestic law.

(ii) provisions on dispute resolution

Korea-China (SAMR) (2019)

Paragraph 7

Wherever possible, the Participants will settle amicably any discrepancies or disputes arising from the cooperation under this Memorandum to the maximum extent possible.

Australia-Korea (2002)

Paragraph 10 Settlement of dispute

Where there are any instances where the other's interests may be impinged, urgent and immediate consultation should take place.

Australia-China (SAIC) (2012)

Article 7 Resolution of Disputes

The Participants will resolve any discrepancies or disputes arising out of the interpretation or application of this Memorandum through consultations.

Indonesia-Korea (2013)

Article 9 Resolution of Disputes

Wherever possible, the Parties will amicably settle any discrepancies or disputes arising from the cooperation under this Arrangement to the maximum extent possible.

(iii) provisions on commencement, duration, renewal, and termination of MoUs

Canada-Chile (2001)

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.

Australia-Japan (2015)

Paragraph [*12] Commencement, Review, Modification and Termination

12.1. The cooperation under this Arrangement will commence on the date of signature.

12.2. Either competition authority may terminate the cooperation under this Arrangement with 30 days' written notice to the other competition authority.

Colombia-US (2014)

Article X Entry into force and termination

1. This Agreement shall enter into force upon signature.

2. This Agreement shall remain in force for an indefinite period of time, unless one Party notifies the other Party in writing that it wishes to terminate the Agreement. In that case, the Agreement shall terminate 60 days after such written notice is given.

France-Chinese Taipei (2014)

Article 6- Final provisions

The Memorandum shall enter into force upon the date of the signature for a period of one year and will be tacitly renewed for consecutive one-year periods thereafter.

The Memorandum is subject to termination by either Party upon one-month prior written notification.

China (NDRC)-Japan (2015)

VII. Others

1. The cooperation under this Memorandum will commence on the date of signature and will continue for an initial term of two years. If both Sides decide it is of continued benefit it can be extended for a period of time with mutual consent of the Sides.
2. Either Side may terminate the cooperation under this Memorandum upon thirty (30) days written notice to the other Side.

(iv) provisions on 'survival' and similar provisions in case of termination

Canada-New Zealand (2016)

Commencement, amendment and termination

18. All understandings created under the section entitled "Protection and use of information" will remain in effect despite any termination of this Arrangement.

Australia-New Zealand (2007)

11.0 Entry into force and termination

- 11.4 Confidential information will continue to be protected, as outlined in clauses 4.1- 4.5, notwithstanding the termination of this Agreement.

France-Chinese Taipei (2014)

Article 6- Final provisions

- Obligations of the Parties regarding the confidentiality of information received in the framework of the Memorandum shall continue to be binding after its termination.

Korea-Turkey (2005)

9. Such termination will not affect any cooperative programs and projects under this Memorandum of Understanding that are in progress and not yet completed at the time of termination.

Mongolia-Chinese Taipei (2007)

Article 6 Modification and Termination of the MOU

2. Either Party may terminate this Memorandum of Understanding by giving six months' prior written notice to the other Party. However, the termination of this Memorandum of Understanding will not affect the development and conclusion of ongoing cooperative activities.

EU-India (2013)

VIII. Final provisions

20. Termination of the present Memorandum of Understanding is not intended to affect the implementation of projects that are already in process under the present Memorandum of Understanding.

(v) provisions on 'entire agreement' in cases where there is a previous bilateral arrangement between the parties

Australia-New Zealand (2007)

11.0 Entry into force and termination

11.1 This Agreement will come into effect on the date of signature and will replace the Co-operation and Co-ordination Agreement between the Australian Trade Practices Commission and the New Zealand Commerce Commission dated July 1994.

France-Chinese Taipei (2014)

Article 6 – Final Provisions

The Memorandum is to replace and supersede the “Cooperation Arrangement between the Taiwanese Fair Trade Commission and the French Competition Council Regarding the Application of their Competition Rules” (“the Arrangement”) signed on 5 January 2004. Accordingly, the Arrangement will be terminated on the date that the Memorandum comes into effect.

(vi) provisions on 'succession'

Canada-Hong Kong, China (2016)

29. Unless otherwise terminated, this MOU will apply to any successor of either Participant.

(vii) provisions on amendment and review of MoUs

Australia-New Zealand (2007)

12.0 Review of agreement

12.1. Officials of the Parties shall review the terms and operation of the Agreement from time to time as agreed by the Parties.

12.2. This Agreement may be amended by a written arrangement of the Parties.

Australia-Japan (2015)

Paragraph [*12] Commencement, Review, Modification and Termination

12.3. This Arrangement may be modified by the mutual written consent of the competition authorities.

12.4. The competition authorities will review the operation of the cooperation under this Arrangement from time to time, as consented to by the competition authorities.

France-Chinese Taipei (2014)

Article 6 Final Provisions

Any amendment to the Memorandum shall be made by mutual agreement of the Parties in the written form, executed as a protocol and signed by both Parties.

Japan-Korea (2014)

Paragraph 13 Commencement, Termination and Modification

13.3 This Memorandum may be modified with mutual written consent of the Sides.

China (NDRC and SAIC)-EU (2012)

5 Final provisions

The Sides will review the operation of this Memorandum of Understanding not more than three years from the date of signature.

(viii) provisions on co-operation and agencies' discretion

Russia-US (2009)

The U.S. antitrust agencies and FAS Russia reserve their full discretion in implementing the Memorandum.

Brazil-EU (2009)

VII. Final provisions

(19) The two Sides will apply the provisions of this MoU on a voluntary basis.

(ix) provisions on costs associated with MoUs

Japan-China (SAMR) (2019)

IX, Others

5. For meetings and visits, the host Side will provide venues and bear the relevant expenses, including those of the interpreters. The visiting Side will be responsible for its expenses incurred for international travel, local transportation, accommodation, meal and subsistence costs. Costs for telephone/video conferences will be borne by the Side incurring such costs. All commitments made in this Memorandum are subject to the availability of funds and each Participant's budget priorities. This Memorandum is not meant to oblige the expenditure of funds.

Australia-Canada-New Zealand-UK-US (2020)

Multilateral Mutual Assistance and Cooperation Framework for Competition Authorities Annexure A: Model Agreement

8. Costs

8.1. The Parties shall mutually decide on a case-by-case basis who will pay the costs associated with executing a request, including costs associated with staff time and any disbursements.

8.2. If during the execution of a request it becomes apparent that expenses of an amount substantially more than anticipated in Sub-section 8.1 above are required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the request may be executed.

8.3. The Parties shall decide on practical measures on a case-by-case basis for the management and payment of costs in conformity with this Section.

Australia-China (SAIC) (2012)

Article 4 Resources

All commitments made in this Memorandum are subject to the availability of funds and each Participant's budget priorities. This Memorandum is not meant to oblige the expenditure of funds.

Austria-Russia (2011)

Article 9. Financial conditions

All the expenses related to travel, accommodation and meals of the Parties' representatives in the territory of the receiving Party's state within the frameworks of their participation in different events and meetings shall be covered by the sending Party.

Hungary-Chinese Taipei (2007)

Article 10 Concluding provisions

1. Unless special funds are dedicated to it or otherwise are agreed by the Parties, the co-operation under this Agreement shall be financed by the requesting Party.

Brazil-Japan (2014)

Paragraph 11 Miscellaneous

11.4. This Memorandum does not require any kind of transfer of financial resources between the competition authorities.

Canada-China (MOFCOM) (2015)

Article 5 Cooperation resources

This MOU does not oblige the Participants to commit resources in terms of funds, time, staff or other administrative resources.

For meetings and visits, the host Participant will provide venues and bear the relevant expenses. The visiting Participants will be responsible for its expenses incurred for international travel, local transportation, accommodation and meal and subsistence costs. Costs for telephone/video conferences will be borne by the Participant incurring such costs.

Wherever possible, visit requests from Participants' regional or local offices will be channeled through each Participant to ensure coordination.

(x) provisions on future possible multilateral co-operation

Canada-UK (2003)

VIII. Final provisions

2. On entry into operation, this Arrangement will be open to the participation of other competition or consumer protection authorities, in addition to the Participants. Such Participation shall be based on agreement between the Participants and the new participant.

Australia-New Zealand-Chinese Taipei (2002)

Paragraph X Entry into effect, termination and other participants

5. Other competition authorities may join this Arrangement on terms to be decided between it and the Participants to the Arrangement at the time of the application to join. The Participants may develop, as they consider appropriate, procedures to deal with such new Participants.

(xi) provisions on relationship with other MoUs and co-operation with other competition authorities

Australia-Japan (2015)

Paragraph [*11] Miscellaneous

11.4. Nothing in this Arrangement will prevent a competition authority from seeking assistance from or providing assistance to the other competition authority pursuant to other agreements, treaties, arrangements, or legislation.