

Competition co-operation and enforcement

INVENTORY OF INTERNATIONAL CO-OPERATION MOUs BETWEEN COMPETITION AGENCIES



PROVISIONS ON CONSULTATION

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

- a description of provisions on consultation found in these MoUs
- a selection of typical and atypical relevant provisions
- relevant language from the 2014 OECD Recommendation concerning International Co-operation on Competition Investigations and Proceedings.

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

Competition authorities frequently consult each other, but consultations are mostly done informally. Formal consultations are less frequent.

Approximately half of the reviewed MoUs do not include detailed provisions on consultations. Some MoUs include a general provision that consultations may be requested by either party regarding any matter relating to the agreements, without setting forth formal duties of the parties in relation to the requests for consultation, and the responses.

Relevant provisions in the 2014 OECD Recommendation on International Co-operation

Consultation and Comity

III. RECOMMENDS that an Adherent that considers that an investigation or proceeding being conducted by another Adherent under its competition laws may affect its important interests should transmit its views on the matter to, or request consultation with, the other Adherent.

1. To this end, without prejudice to the continuation of its action under its competition law and to its full freedom of ultimate decision, the Adherent so addressed should give full and sympathetic consideration to the views expressed by the requesting Adherent, and in particular to any suggestions as to alternative means of fulfilling the needs or objectives of the competition investigation or proceeding.

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 MoUs:

(i) examples of simple provisions

Australia-Japan (2015)

Paragraph [*09] Consultations

9.1. The competition authorities will consult with each other, upon request of either competition authority, on any matter which may arise in connection with this Arrangement.

Japan-Korea (2014)

Paragraph 12 Miscellaneous

12.3 The Sides will consult any questions concerning this Memorandum.

(ii) examples of detailed provisions

Korea-US (2015)

Section III Communications

3. Each competition authority may request consultations with the other country's competition authority or authorities regarding any matter relating to this Memorandum. A request for consultations should indicate the reasons for the request and whether any procedural time limits or other constraints require that consultations be expedited. Each competition authority intends to consult promptly when so requested, with a view to reaching a conclusion that is consistent with the purpose of this Memorandum.

Austria-Russia (2011)

Article 5. Consultations

1. During the investigation of actions of the economic entities that affect or could affect competition on the territory of the Parties' states, each Party shall have the right to request another Party for holding consultations on any matters related to the investigation.

2. The Party interested in holding consultations shall submit the written request on holding the consultations with attachment of the necessary documents as well as with the grounds and conditions for holding such consultations.

3. The Parties shall hold the consultation not later than three months after receipt of the request unless otherwise agreed by the Parties.

France-Chinese Taipei (2014)

Article 3. Consultations

The Parties may consult each other when the activities conducted by one of the Parties may be of interest to the other Party.

Should a Party inform the other Party that activities conducted by the latter may be of interest to the former in its application of competition law, it may request the informed Party to hold consultations in connection with these activities.

Should a Party express its interest in holding such consultations, the other Party will make its best effort to arrange for these.

Hungary-Romania (2005)

Article 6. Consultations

1. If requested the Parties shall hold consultations on matters covered by the present agreement in order to avoid conflicting decisions in the case of the same infringement.

2. Request on holding the consultation should contain grounds of its necessity.

3. The Parties shall hold the consultation in the terms not later than three months after the receipt of the request unless otherwise agreed.

4. In the case of disagreement the result of the consultations does not preclude the Parties to adopt final decisions.

Korea-Mexico (2004)

Paragraph VIII Consultations

1. Either Agency may request consultations regarding any matter relating to this Arrangement. The request for consultations will indicate the reasons for the request and whether any procedural time limits or other constraints require that consultations be expedited. Each Agency will consult promptly when so requested with the view of reaching a conclusion that is consistent with the principles set forth in this Arrangement.

2. Consultations under this Paragraph will take place at the appropriate level as determined by each Agency.

3. During consultations under this Paragraph, each Agency will provide to the other as much information as it is able in order to facilitate the broadest possible discussion regarding the relevant aspects of the matter that is the subject of consultations. Each Agency will carefully consider the representations of the other Agency in light of the principles set out in this Arrangement and will be prepared to explain the specific results of its application of those principles to the matter that is the subject of consultations.