

No. 50134

**European Communities
and
United States of America**

Agreement between the Government of the United States of America and the Commission of the European Communities regarding the application of their competition laws (with exchange of letters and corrigendum). Washington, 23 September 1991

Entry into force: *23 September 1991 by signature, in accordance with article XI*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *Council of the European Union, 10 October 2012*

**Communautés européennes
et
États-Unis d'Amérique**

Accord entre le Gouvernement des États-Unis d'Amérique et la Commission des Communautés européennes relatif à l'application de leur droit de la concurrence (avec échange de lettres et rectificatif). Washington, 23 septembre 1991

Entrée en vigueur : *23 septembre 1991 par signature, conformément à l'article XI*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat de l'Organisation des Nations Unies : *Conseil de l'Union européenne, 10 octobre 2012*

[ENGLISH TEXT – TEXTE ANGLAIS]

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE COMMISSION OF THE EUROPEAN COMMUNITIES REGARDING THE APPLICATION OF THEIR COMPETITION LAWS

The Government of the United States of America and the Commission of the European communities,

Recognizing that the world's economies are becoming increasingly interrelated, and in particular that this is true of the economies of the United States of America and the European Communities,

Noting that the Government of the United States of America and the Commission of the European Communities share the view that the sound and effective enforcement of competition law is a matter of importance to the efficient operation of their respective markets and to trade between them,

Noting that the sound and effective enforcement of the Parties' competition laws would be enhanced by cooperation and, in appropriate cases, coordination between them in the application of those laws,

Noting further that from time to time differences may arise between the Parties concerning the application of their competition laws to conduct or transactions that implicate significant interests of both Parties,

Having regard to the Recommendation of the Council of the Organization for Economic Cooperation and Development Concerning Cooperation Between Member Countries on Restrictive Business Practices Affecting International Trade, adopted on June 5, 1986, and

Having regard to the Declaration on US-EC Relations adopted on November 23, 1990,

Have agreed as follows:

Article I. Purpose and definitions

1. The purpose of this Agreement is to promote cooperation and coordination and lessen the possibility or impact of differences between the Parties in the application of their competition laws.

2. For the purpose of this Agreement, the following terms shall have the following definitions:

A. 'Competition law(s)' shall mean

- (i) For the European Communities, Articles 85, 86, 89 and 90 of the Treaty establishing the European Economic Community, Regulation (EEC) No 4064/89 on the control of concentrations between undertakings, Articles 65 and 66 of the Treaty establishing the European Coal and Steel Community (ECSC), and their implementing Regulations including High Authority Decision No 24-54, and
- (ii) For the United States of America, the Sherman Act (15 USC §§ 1-7), the Clayton Act (15 USC §§ 12-27), the Wilson Tariff Act (15 USC §§ 8-11), and the Federal Trade Commission Act (15 USC §§ 41-68, except as these sections relate to consumer

protection functions), as well as such other laws or regulations as the Parties shall jointly agree in writing to be a 'competition law' for purposes of this Agreement;

B. 'Competition authorities' shall mean (i) for the European Communities, the Commission of the European Communities, as to its responsibilities pursuant to the competition laws of the European Communities, and (ii) for the United States, the Antitrust Division of the United States Department of Justice and the Federal Trade Commission;

C. 'Enforcement activities' shall mean any application of competition law by way of investigation or proceeding conducted by the competition authorities of a Party; and

D. 'Anticompetitive activities' shall mean any conduct or transaction that is impermissible under the competition laws of a Party.

Article II. Notification

1. Each Party shall notify the other whenever its competition authorities become aware that their enforcement activities may affect important interests of the other Party.

2. Enforcement activities as to which notification ordinarily will be appropriate include those that:

- (a) Are relevant to enforcement activities of the other Party;
- (b) Involve anticompetitive activities (other than a merger or acquisition) carried out in significant part in the other Party's territory;
- (c) Involve a merger or acquisition 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 or one of its States or Member States;
- (d) Involve conduct believed to have been required, encouraged or approved by the other Party; or
- (e) Involve remedies that would, in significant respects, require or prohibit conduct in the other Party's territory.

3. With respect to mergers or acquisitions required by law to be reported to the competition authorities, notification under this Article shall be made:

- (a) In the case of the Government of the United States of America,
 - (i) Not later than the time its competition authorities request, pursuant to 15 USC § 18 a (e), additional information or documentary material concerning the proposed transaction,
 - (ii) When its competition authorities decide to file a complaint challenging the transaction, and
 - (iii) Where this is possible, far enough in advance of the entry of a consent decree to enable the other Party's views to be taken into account; and
- (b) In the case of the Commission of the European Communities,
 - (i) When notice of the transaction is published in the Official Journal, pursuant to Article 4 (3) of Council Regulation (EEC) No 4064/89, or when notice of the

transaction is received under Article 66 of the ECSC Treaty and a prior authorization from the Commission is required under that provision,

- (ii) When its competition authorities decide to initiate proceedings with respect to the proposed transaction, pursuant to Article 6 (1) (c) of Council Regulation (EEC) No 4064/89, and
- (iii) Far enough in advance of the adoption of a decision in the case to enable the other Party's views to be taken into account.

4. With respect to other matters, notification shall ordinarily be provided at the stage in an investigation when it becomes evident that notifiable circumstances are present, and in any event far enough in advance of:

(a) The issuance of a statement of objections in the case of the Commission of the European Communities, or a complaint or indictment in the case of the Government of the United States of America; and

(b) The adoption of a decision or settlement in the case of the Commission of the European Communities, or the entry of a consent decree in the case of the Government of the United States of America;

to enable the other Party's views to be taken into account.

5. Each Party shall also notify the other whenever its competition authorities intervene or otherwise participate in a regulatory or judicial proceeding that does not arise from its enforcement activities, if the issues addressed in the intervention or participation may affect the other Party's important interests. Notification under this paragraph shall apply only to:

(a) Regulatory or judicial proceedings that are public;

(b) Intervention or participation that is public and pursuant to formal procedures; and

(c) In the case of regulatory proceedings in the United States, only proceedings before federal agencies.

Notification shall be made at the time of the intervention or participation or as soon thereafter as possible.

6. Notifications under this Article shall include sufficient information to permit an initial evaluation by the recipient Party of any effects on its interests.

Article III. Exchange of information

1. The Parties agree that it is in their common interest to share information that will (a) facilitate effective application of their respective competition laws, or (b) promote better understanding by them of economic conditions and theories relevant to their competition authorities' enforcement activities and interventions or participation of the kind described in Article II (5).

2. In furtherance of this common interest, appropriate officials from the competition authorities of each Party shall meet at least twice each year, unless otherwise agreed, to (a) exchange information on their current enforcement activities and priorities, (b) exchange information on economic sectors of common interest, (c) discuss policy changes which they are considering, and (d) discuss other matters of mutual interest relating to the application of competition laws.

3. Each Party will provide the other Party with any significant information that comes to the attention of its competition authorities about anticompetitive activities that its competition authorities believe is relevant to, or may warrant, enforcement activity by the other Party's competition authorities.

4. Upon receiving a request from the other Party, and within the limits of Articles VIII and IX, a Party will provide to the requesting Party such information within its possession as the requesting Party may describe that is relevant to an enforcement activity being considered or conducted by the requesting Party's competition authorities.

Article IV. Cooperation and coordination in enforcement activities

1. The competition authorities of each Party will render assistance to the competition authorities of the other Party in their enforcement activities, to the extent compatible with the assisting Party's laws and important interests, and within its reasonably available resources.

2. In cases where both Parties have an interest in pursuing enforcement activities with regard to related situations, they may agree that it is in their mutual interest to coordinate their enforcement activities. In considering whether particular enforcement activities should be coordinated, the Parties shall take account of the following factors, among others:

(a) The opportunity to make more efficient use of their resources devoted to the enforcement activities;

(b) The relative abilities of the Parties' competition authorities to obtain information necessary to conduct the enforcement activities;

(c) The effect of such coordination on the ability of both Parties to achieve the objectives of their enforcement activities; and

(d) The possibility of reducing costs incurred by persons subject to the enforcement activities.

3. In any coordination arrangement, each Party shall conduct its enforcement activities expeditiously and, insofar as possible, consistently with the enforcement objectives of the other Party.

4. Subject to appropriate notice to the other Party, the competition authorities of either Party may limit or terminate their participation in a coordination arrangement and pursue their enforcement activities independently.

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