COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a
COUNCIL AND COMMISSION DECISION
concluding the Agreement between the European Communities and the Government of Canada regarding the application of their competition laws

(presented by the Commission)

EXPLANATORY MEMORANDUM

I. Introduction

Globalization

The background against which competition rules must be applied is continuously changing in today's rapidly moving economic environment. The impact of new technology has increased the globalization of many sectors. The quickening pace of technological advance, the opening of markets and the rapid development of global competition in a large number of sectors are a challenge to competition policy, whether pursued by the European Commission or by other antitrust law enforcement agencies elsewhere in the world.

The fact that today, many companies are operating world-wide or are concluding strategic alliances with international partners provides additional challenges to competition authorities. The economic effects of mergers, restrictive practices or abuses of dominant positions are often felt in countries other than those in which the firms concerned are incorporated or based.

Obstacles to enforcement of competition laws

Although International Law allows the Commission a certain autonomy to apply its competition rules to foreign firms, practical problems are often encountered. For example, difficulties can arise in obtaining information and evidence located outside the European Communities. In addition, competition rules which are aimed at the maintenance of effective competition on the home market may be less effective in dealing with anti-competitive conduct at the global level.

As more countries adopt their own competition rules, and as more competition authorities assert jurisdiction over foreign undertakings because of harm by them to domestic markets, the possibilities for conflicting or diverging decisions inevitably increase.

Co-operation

Experience has shown that the most effective method of dealing with anticompetitive behaviour affecting more than one jurisdiction is through co-operation. Where competition authorities are aware of the actions of their counterparts around the world and are familiar with the reasoning behind their actions the likelihood of conflicts in particular cases is reduced. A report by the Group of Experts on Competition Policy in the New Trade Order[1] recommended that the European Union extend its network of bilateral agreements on co-operation in the field of competition laws.

To this end, on the basis of the mandate granted to the Commission by the Council on the 23rd of January 1995 to negotiate a bilateral agreement with the Canadian authorities, the Commission has finalised negotiations with Canada on a Draft Agreement on the

[1] Competition Policy in the New Trade Order: Strengthening International Cooperation and Rules - Report of the Group of Experts, July 1995.

application of competition rules. The Draft Agreement is very similar to the Agreement entered into with the Government of the United States in 1991[2].

II. The Agreement between the European Communities and the Government of Canada on the application of their Competition Laws

The Draft Agreement provides for the notification of cases under investigation which may affect the important interests of the other Party. This notification procedure will ensure that each competition authority is aware of the activities of the other authority, allowing cases of common concern to be easily identified. Once a case has been identified as raising significant issues for both sides, it will be possible for the Parties to activate the co-operation or co-ordination provisions of the Agreement.

The Parties may agree to co-ordinate their enforcement activities and/or provide each other with assistance, thus increasing the likelihood that anticompetitive behaviour will be brought to an end as effectively as possible. Co-ordination by the competition authorities may also be beneficial for companies as it will reduce the likelihood of conflicting decisions being made. Such co-ordination and assistance may only take place where it is consistent with the laws and important interests of the Parties.

Like the 1991 EC/US Agreement the proposed EC/Canada Agreement contains provisions on both positive and negative or traditional comity. Positive comity provides that one Party may request the other Party to take enforcement action. Traditional or negative comity provides that a Party will consider all relevant factors where its enforcement activities may affect the important interests of the other Party. By taking each others interests into account in the enforcement of anticompetitive laws the likelihood of conflict is reduced.

Article VII of the Draft Agreement provides for the exchange of information between the Parties. This clause is quite limited as Article XI of the Agreement makes it clear that existing laws remain unaltered. The Parties may not exchange information where it is contrary to either existing law or to their important interests. At present the Commission is under a strict obligation of confidentiality with regard to information which it collects from companies in the application of competition laws. However the Agreement encourages the Parties to seek the consent of the companies concerned in order to allow the Parties to exchange information normally considered confidential. The confidentiality of information exchanged under the Agreement must be maintained by the Parties.

The Annex to this Explanatory Memorandum gives a detailed description of the provisions of the Draft Agreement.

III. Legal Basis

In so far as the Draft Agreement relates to the competition rules of the EC Treaty, the legal basis for the Council to conclude the Agreement is Articles 87 and 235 of the EC Treaty in conjunction with the first subparagraph of Article 228 paragraph 3 thereof. The

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[2] Agreement between the European Communities and the Government of the United States of America regarding the application of their competition laws, OJ L 95, 27.4.95, pp. 47 - 52 as corrected by OJ L 131, 15.6.95, pp. 38-39.

European Parliament must be consulted before the Council can conclude the Agreement. To the extent that the Agreement applies to ECSC products, Articles 65 and 66 of the ECSC Treaty form the legal basis for the Commission to conclude the Draft Agreement.

IV. Conclusion

The Draft Agreement if entered into will increase the ability of the Commission and the Canadian competition authority to co-operate with each other. By providing a framework for co-operation the Draft Agreement should increase the effectiveness of antitrust enforcement and reduce the number of cases in which the competition authorities make conflicting or incompatible decisions. The Draft Agreement will also lead to a much closer relationship between the Commission and the Canadian competition authority and to a greater understanding of each others competition policy.

The Commission therefore proposes that the Council jointly with the Commission adopt a decision to conclude the attached Draft Agreement. To this end, a proposal for a Council and Commission Decision concluding the Agreement between the European Communities and the Government of Canada regarding the application of their competition laws is attached.

The Agreement between the European Communities and the Government of Canada regarding the Application of their Competition Laws

Description of the Agreement

Objective

The main objective of the Draft Agreement is to establish a system of co-operation and co-ordination between the European Commission and the Canadian competition authority in order to increase the effectiveness of antitrust enforcement and reduce the likelihood of conflicting or overlapping decisions.

Article I - Purpose and definitions

Article I.1 indicates the purpose of the Agreement, which is, to promote co-operation and co-ordination and prevent conflicts between the relevant competition authorities.

Article I.2 defines terms used in the Agreement. As far as the Community is concerned, the scope of the agreement covers, Articles 85, 86 and 90 of EC Treaty, Regulation No 4064/89 on the control of concentrations between undertakings, Articles 65 and 66 of the ECSC Treaty and the implementing regulations adopted on the basis of those provisions. As far as Canada is concerned, the Agreement covers the Competition Act and regulations thereunder. An extension of the definition of competition laws is provided to take into account the possibility that further laws or implementing regulations may be adopted in the future. The need for both parties to consent in writing to any extension of the definition of competition laws ensures that there is no danger of the definition being extended beyond its intended scope.

Article II - Notification

Article II.1 provides that the other competition authority is to be notified if any of its "important interests" are affected. Under Article II.2 some situations are described in which this test is satisfied. Article II.3 defines the point at which notification is required. Paragraphs 4 through 7 of this Article go more into detail on when notification shall be given. The general approach here is that notification is to take place at a stage in the proceedings early enough to allow account still to be taken of the other Party's opinion. Paragraph 7 requires notification whenever its competition authority participates in a regulatory or judicial proceeding. Article II.8 states that notifications shall be sufficiently detailed to permit an initial evaluation by the notified Party of the effects of the enforcement activity on its interests. Article II.9 is to be read in conjunction with Article IX, which will be discussed below.

Article III - Consultation

Article III provides for either Party to request consultations. The requested Party will undertake to consult promptly.

Article IV - Co-ordination of enforcement activities

Article IV states that the Parties agree to assist one another whenever their laws and their important interests allow. Paragraph 2 deals with the situation where the Parties agree that it is in both their interest to co-ordinate their enforcement activities with regard to related situations. This refers to circumstances in which anti-competitive conduct on the market of one Party may be associated with identical conduct on the market of the other. In such circumstances, the competition authorities of the two Parties can profitably co-ordinate their activities and provide each other with assistance, always to the extent compatible with their respective laws and important interests.

Paragraph 3 states that co-ordinated enforcement activity is subject to compliance with the Parties' own laws and important interests. Such co-ordination may result in enforcement action by one or both Parties' competition authorities.

According to paragraph 3 (c), either of the Parties can at any time notify the other of its intention to limit or terminate the co-ordination and pursue its enforcement activities independently.

Article V - Co-operation regarding anti-competitive activities in the territory of one party that adversely affect the interests of the other party

Article V is also known as the "positive comity" clause, which allows a Party whose interests are adversely affected by activities within the other Party's jurisdiction to bring the matter to the other Party's attention. The latter Party might have been unaware of the problem or might not have considered it a priority. Once it is aware of the situation and of the fact that it affects the important interests of the other Party, the requested Party may, at its own discretion and having due regard to this problem, undertake enforcement of the rules.

If enforcement activities are initiated, the requested Party's competition authority shall advise the requesting Party of significant developments and the outcome of the activities, see Article V (3).

Paragraph 4 provides that the Requested Party's competition authority has full discretion in its decision whether or not to undertake enforcement activities with respect to the anti-competitive activities identified in the request and that nothing in this article can preclude the Requesting Party from undertaking such enforcement activities.

Article VI - Avoidance of conflict

Article VI is otherwise known as the "negative" or "traditional comity" clause. The first paragraph provides that each Party shall give careful consideration to the other Party's important interests throughout all phases of competition enforcement activities.

Article VI.2 sets out several factors that the Parties will consider whenever their enforcement activities may adversely affect the important interests of the other Party.

The concept of "important interests" must be understood in terms of the purpose of the Agreement, which is the establishment of effective co-operation in the competition sphere. The interests referred to must therefore be important by reference to that objective. However, paragraph 2 (iv) also mentions the possibility of conflict with the other Party's "articulated economic policies". This is intended to ensure that enforcement

of the competition rules, whether territorial or extraterritorial, does not run counter to a clearly stated objective of the other Party.

Article VII - Exchange of information

This Article does not change the rules on the exchange of confidential information.

Article VII. 1 provides that the Parties agree to share information which will facilitate the effective application of their respective competition laws and promote a better understanding of each other's enforcement policies and activities.

Article VII.2 states that one Party can request the other for information that is relevant to an enforcement activity that is being contemplated or conducted by the requesting Party's competition authority.

Article VII.3 provides that, in case of concurrent action by both Parties' competition authorities, each Party shall ascertain whether the natural or legal persons concerned will consent to the sharing of confidential information between the Parties' competition authorities.

Article VII.4 points out that during consultations pursuant to Article III, the Parties will provide each other with as much information they are able to, in order to facilitate the broadest possible discussion regarding the relevant aspects of a particular transaction.

Article VIII - Semi-annual meetings

Article VIII.1 provides for semi-annual meetings between the competition authorities to discuss matters of common interest in co-operation and co-ordination in relation to their enforcement activities.

Article VIII.2 requires a report on these semi-annual meetings to be made available to the Joint Co-operation Committee under the Framework Agreement for Commercial and Economic Co-operation between the European Communities and Canada.

Article IX - Communications under this Agreement

Article IX provides that communications pursuant to the Agreement would normally take place directly between the competition authorities, by direct oral, telephonic or facsimile communication between the competition authorities. This informal method of communication should facilitate co-operation. Notifications, requests for consultation and "positive comity" requests should be confirmed in writing through diplomatic channels.

Article X - Confidentiality and use of information

Article X.1 provides that neither Party is required to communicate information to the other where its communication is prohibited by its laws or incompatible with its interests.

Article X.2 states that information communicated in confidence between the Parties or their competition authorities must be protected to the fullest extent possible. Any application by a third party for disclosure of such information should be denied, to the fullest extent possible.

Article X.3 ensures that any Member State whose important interests are affected are kept informed of all notifications received under the Agreement. The competent authority of the Member State will also be informed of any co-operation and co-ordination of enforcement activities. In this regard, a request from the Canadian competition authority not to disclose confidential information should be respected.

Article X.4 states that the Parties' competition authorities shall consult one another before taking any action which may result in a legal obligation to make information provided under this Agreement available to a third party.

Article X.5 states that information received by a Party under this Agreement, shall only be used for the purpose of enforcing that Party's competition laws. The information received under Article II (notification), shall only be used for the purpose of this Agreement.

Article X.6 provides that a Party may specify the terms and conditions under which the information furnished shall be used. The receiving Party needs the other Party's consent to use such information in a manner contrary to such terms and conditions.

Article XI - Existing laws

Article XI provides that neither Party is required to act in a manner inconsistent with its existing laws, nor be required to amend those laws by the Agreement.

Article XII - Entry into force and termination

Article XII states that the Agreement will enter into force upon signature. The Agreement may be terminated by either Party upon giving 60 days notice of that intention. The Agreement requires a review on the operation of the Agreement within 24 months from the date of its entry into force, which enables them to identify additional areas in which they could usefully co-operate and identify other ways to improve the Agreement. This review includes an analysis of actual or potential cases in order to decide whether the Parties' interests could be better served through closer co-operation.

Attached to the Agreement are three letters exchanged between the Parties. These letters form an integral part of this Agreement. In a draft interpretative letter attached to the Agreement, the European Community and the European Coal and Steel Community set out two interpretative statements. The first states that the information exchanged under the Agreement may not include information that is covered by the provisions of Article 20 of Council Regulation 17/62 or equivalent provisions in other regulations in the field of competition. Such information may only be communicated to the Canadian competition authority with the express consent of the source concerned.

The second states that each Party assures the confidentiality of all information provided in confidence by the other Party. The receiving Party should oppose any request for disclosure to a third party, unless the supplying Party has given its authorisation or when it is required by the law of the receiving Party. A Party should notify the other if

information has accidentally been used or disclosed in a manner contrary to the provisions of Article X.

A letter by Canada confirms that the above interpretative letter is consistent with their understanding of the Agreement. Their letter goes on to reiterate that existing law remains unchanged and illustrates this by stating that Canada can not exchange any information where such exchange is prohibited by existing law. Canada's letter is consequently confirmed as raising no difficulties by the European Commission.

Proposal for a Council and Commission Decision

concluding the Agreement between the European Communities and the Government of Canada regarding the application of their competition laws

THE COUNCIL OF THE EUROPEAN UNION,

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Articles 87 and 235, in conjunction with the first subparagraph of Article 228(3) thereof,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Articles 65 and 66 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament;

Whereas Article 235 of the Treaty establishing the European Community must be invoked owing to the inclusion in the text of the Agreement of mergers and acquisitions which are covered by Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings[1], which is essentially based on Article 235;

Whereas, given the increasingly pronounced international dimension to competition problems, international co-operation in this field should be strengthened;

Whereas, to this end, the Commission has negotiated an Agreement with the Government of Canada on the application of the competition rules of the European Communities and of Canada;

Whereas the Agreement, including the exchange of letters, should be approved.

HAVE DECIDED AS FOLLOWS.

Article 1

The Agreement between the European Communities and the Government of Canada regarding the application of their competition laws, including the exchange of letters, is hereby approved on behalf of the European Community and the European Coal and Steel Community.

The text of the Agreement and of the exchange of letters, drawn up in the Danish, German, English, Spanish, Finnish, French, Greek, Italian, Dutch, Portuguese and Swedish languages are attached to this Decision.

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[1] OJ No L 395 of 30.12.1989, p. 1 (corrected version : OJ No L 257, 21.9.1990, p. 13).

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the European Community;

The President of the Commission is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the European Coal and Steel Community.

Done at Brussels,

For the Council
The President

For the Commission
The President

DRAFT AGREEMENT BETWEEN THE EUROPEAN COMMUNITIES AND THE GOVERNMENT OF CANADA REGARDING THE APPLICATION OF THEIR COMPETITION LAWS

The European Community and the European Coal and Steel Community ("the European Communities") of the one part and the Government of Canada ("Canada") of the other part ("the Parties") :

Considering the close economic relations between them;

Recognizing that the world's economies, including those of the Parties, are becoming increasingly interrelated;

Noting that the Parties 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;

Acknowledging their commitment to enhancing the sound and effective enforcement of their competition laws through co-operation and, in appropriate cases, co-ordination between them in the application of those laws;

Noting that co-ordination of their enforcement activities may, in certain cases, result in a more effective resolution of the Parties' respective competition concerns than would be attained through independent enforcement action by the Parties;

Acknowledging the Parties' commitment to giving careful consideration to each other's important interests in the application of their competition laws and to using their best efforts to arrive at an accommodation of those interests;

Having regard to the Recommendation of the Organization for Economic Co-operation and Development Concerning Co-operation Between Member Countries on Restrictive Business Practices Affecting International Trade, adopted on 27 and 28 July 1995; and

Having regard to the Economic Co-operation Agreement between Canada and the European Communities adopted on 6 July 1976, to the Declaration on European Community - Canada Relations adopted on 22 November 1990 and to the Joint Political Declaration on Canada-EU Relations and its accompanying Action Plan adopted on December 17, 1996;

Have agreed as follows :

I. PURPOSE AND DEFINITIONS

1. The purpose of this Agreement is to promote co-operation and co-ordination between the competition authorities of the Parties and to lessen the possibility or impact of differences between the Parties in the application of their competition laws.

2. In this Agreement,

"anti-competitive activities" shall mean any conduct or transaction that may be subject to penalties or other relief under the competition laws of a Party;

"competent authority of a Member State" shall mean that authority of a Member State set out in Schedule A. Schedule A may be added to or modified at any time by the European Communities. Canada will be notified in writing of such additions or modifications before any information is sent to a newly listed authority".

"competition authority" and "competition authorities" shall mean:

(i) for Canada, the Director of Investigation and Research appointed under the Competition Act, and

(ii) for the European Communities, the Commission of the European Communities, as to its responsibilities pursuant to the competition laws of the European Communities;

"competition law or laws" shall mean:

(i) for Canada, the Competition Act and regulations thereunder, and

(ii) for the European Communities, Articles 85, 86, and 89 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 pursuant to the said Treaties including High Authority Decision No 24-54,

as well as any amendments thereto and such other laws or regulations as the parties may jointly agree in writing to be a "competition law" for the purposes of this Agreement; and

"enforcement activity" shall mean any application of competition law by way of investigation or proceeding conducted by the competition authority of a Party.

3. Any reference in this Agreement to a specific provision in either Party's competition law shall be interpreted as referring to that provision as amended from time to time and to any successor provisions.

II. NOTIFICATION

1. Each Party shall notify the other Party in the manner provided by this Article and Article IX with respect to its enforcement activities that may affect important interests of the other Party.

2. Enforcement activities that may affect the important interests of the other Party and therefore ordinarily give rise to notifiable circumstances include those that:

   (i) are relevant to enforcement activities of the other Party;

   (ii) involve anti-competitive activities, other than mergers or acquisitions, carried out wholly or in part in the territory of the other Party;

   (iii) involve conduct believed to have been required, encouraged or approved by the other Party or one of its provinces or Member States;

   (iv) 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 provinces or Member States;

   (v) involve the imposition of, or application for, remedies by a competition authority that would require or prohibit conduct in the territory of the other Party; or

   (vi) involve one of the Parties seeking information located in the territory of the other Party.

3. Notification pursuant to this Article shall ordinarily be given as soon as a competition authority becomes aware that notifiable circumstances are present, and in any event, in accordance with paragraphs 4 through 7 of this Article.

4. Where notifiable circumstances are present with respect to mergers or acquisitions, notification shall be given;

   (a) in the case of the European Communities, when a notice 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; and

   (b) in the case of Canada, not later than when its competition authority issues a written request for information under oath or affirmation, or obtains an order under section 11 of the *Competition Act*, with respect to the transaction.

5. (a) When the competition authority of a Party requests that a person provide information, documents or other records located in the territory of the other Party, or requests oral testimony in a proceeding or participation in a

personal interview by a person located in the territory of the other Party, notification shall be given at or before the time that the request is made.

(b) Notification pursuant to subparagraph (a) of this paragraph is required notwithstanding that the enforcement activity in relation to which the said information is sought has previously been notified pursuant to Article II, paragraphs 1 to 3. However, separate notification is not required for each subsequent request for information from the same person made in the course of such enforcement activity unless the notified Party indicates otherwise or unless the Party seeking information becomes aware of new issues bearing upon the important interests of the notified Party.

6. Where notifiable circumstances are present, notification shall also be given far enough in advance of each of the following events to enable the other Party's views to be considered:

(a) in the case of the European Communities,

(i) when its competition authority decides to initiate proceedings with respect to the concentration, pursuant to Article 6(1)(c) of Council Regulation (EEC) No. 4064/89;

(ii) in cases other than mergers and acquisitions, the issuance of a statement of objections; or

(iii) the adoption of a decision or settlement,

(b) in the case of Canada,

(i) the filing of an application with the Competition Tribunal;

(ii) the initiation of criminal proceedings; or

(iii) the settlement of a matter by way of undertaking or consent order.

7. (a) Each Party shall also notify the other whenever its competition authority intervenes or otherwise participates in a regulatory or judicial proceeding, 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:

(i) regulatory or judicial proceedings that are public; and

(ii) intervention or participation that is public and pursuant to formal procedures.

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

8. Notifications shall be sufficiently detailed to enable the notified Party to make an initial evaluation of the effects of the enforcement activity on its own important interests. Notifications shall include the names and addresses of the natural and legal persons involved, the nature of the activities under investigation and the legal provisions concerned.

9. Notifications made pursuant to this Article shall be communicated in accordance with Article IX.

III. CONSULTATIONS

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

2. During consultations under paragraph 1, the competition authority of each Party shall carefully consider the representations of the other Party in light of the principles set out in this Agreement and shall be prepared to explain to the other Party the specific results of its application of those principles to the matter under discussion.

IV. CO-ORDINATION OF ENFORCEMENT ACTIVITIES

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 compatible with the assisting Party's laws and important interests.

2. In cases where both Parties' competition authorities have an interest in pursuing enforcement activities with regard to related situations, they may agree that it is in their mutual interest to co-ordinate their enforcement activities. In considering whether particular enforcement activities should be co-ordinated, either in whole or in part, each Party's competition authority shall take into account the following factors, among others:

   (i) the effect of such co-ordination on the ability of each Party's competition authority to achieve the objectives of its enforcement activities;

   (ii) the relative ability of each Party's competition authority to obtain information necessary to conduct the enforcement activities;

   (iii) the extent to which either Party's competition authority can secure effective preliminary or permanent relief against the anti-competitive activities involved;

   (iv) the opportunity to make more efficient use of resources; and

   (v) the possible reduction of cost to persons subject to enforcement activities.

3. (a) The Parties competition authorities may co-ordinate their enforcement activities by agreeing upon the timing of those activities in a particular matter, while respecting fully their own laws and important interests. Such co-ordination may, as agreed by the Parties' competition authorities, result in enforcement action by one or both Parties' competition authorities, as is best suited to attain their objectives.

(b) When carrying out co-ordinated enforcement activity, each Party's competition authority shall seek to maximise the likelihood that the other Party's enforcement objectives will also be achieved.

(c) Either Party may at any time notify the other Party that it intends to limit or terminate the co-ordination and pursue its enforcement activities independently and subject to the other provisions of this Agreement.

V. CO-OPERATION REGARDING ANTI-COMPETITIVE ACTIVITIES IN THE TERRITORY OF ONE PARTY THAT ADVERSELY AFFECT THE INTERESTS OF THE OTHER PARTY

1. The Parties note that anti-competitive 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 anti-competitive activities of this nature.

2. If a Party has reason to believe that anti-competitive 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 anti-competitive activities and their effects on the interests of the requesting Party, and shall include an offer of such further information and other co-operation 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 anti-competitive 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 anti-competitive activities identified in the request, or precludes the requesting Party's competition authority from undertaking enforcement activities with respect to such anti-competitive activities.

VI. AVOIDANCE OF CONFLICT

1. Within the framework of its own laws and to the extent compatible with its important interests, each Party shall, having regard to the purpose of this Agreement as set out in Article I, give careful consideration to the other Party's important interests throughout all phases of competition enforcement activities, including decisions regarding the initiation of an investigation or proceeding, the scope of an

investigation or proceeding and the nature of the remedies or penalties sought in each case.

2. Where it appears that one Party's enforcement activities may adversely affect the important interests of the other Party, each Party shall, consistent with the general principles set out above, use its best efforts to arrive at an appropriate accommodation of the Parties' competing interests and in doing so each Party shall consider all relevant factors, including:

(i) the relative significance to the anti-competitive activities involved of conduct occurring within one Party's territory as compared to conduct occurring within that of the other;

(ii) the relative significance and foreseeability of the effects of the anti-competitive activities on one Party's important interests as compared to the effects on the other Party's important interests;

(iii) the presence or absence of a purpose on the part of those engaged in the anti-competitive activities to affect consumers, suppliers or competitors within the enforcing Party's territory;

(iv) the degree of conflict or consistency between the enforcement activities and the other Party's laws or articulated economic policies including those expressed in the application of, or decisions under, their respective competition laws;

(v) whether private persons, either natural or legal, will be placed under conflicting requirements by both Parties;

(vi) the existence or absence of reasonable expectations that would be furthered or defeated by the enforcement activities;

(vii) the location of relevant assets;

(viii) the degree to which a remedy, in order to be effective, must be carried out within the other Party's territory;

(ix) the need to minimize the negative effects on the other Party's important interests, in particular when implementing remedies to address anti-competitive effects within the Party's territory; and

(x) the extent to which enforcement activities of the other Party with respect to the same persons, including judgements or undertakings resulting from such activities, would be affected.

VII. EXCHANGE OF INFORMATION

1. In furtherance of the principles set forth in this Agreement, the Parties agree that it is in their common interest to share information which will facilitate the effective application of their respective competition laws and promote better understanding of each other's enforcement policies and activities.

2. Each Party agrees to provide to the other Party upon request such information within its possession as the requesting Party may describe that is relevant to an enforcement activity that is being contemplated or conducted by the requesting Party's competition authority.

3. In the case of concurrent action by the competition authorities of both Parties with a view to the application of their competition law, the competition authority of each Party shall, upon request by the competition authority of the other Party, ascertain whether the natural or legal persons concerned will consent to the sharing of confidential information related thereto between the Parties' competition authorities.

4. During consultations pursuant to Article III, each Party shall provide the other with as much information as it is able in order to facilitate the broadest possible discussion regarding the relevant aspects of a particular transaction.

VIII. SEMI-ANNUAL MEETINGS

1. In furtherance of their common interest in co-operation and co-ordination in relation to their enforcement activities, appropriate officials of the Parties' competition authorities shall meet twice a year, or otherwise as agreed between the competition authorities of the Parties, 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.

2. A report on these semi-annual meetings shall be made available to the Joint Co-operation Committee under the Framework Agreement for Commercial and Economic Co-operation between the European Communities and Canada.

IX. COMMUNICATIONS UNDER THIS AGREEMENT

Communications under this Agreement, including notifications under Article II and requests under Articles III and V, may be carried out by direct oral, telephonic or facsimile communication between the competition authorities of the Parties. Notifications under Article II and requests under Articles III and V, however, shall be confirmed promptly in writing through normal diplomatic channels.

X. CONFIDENTIALITY AND USE OF INFORMATION

1. Notwithstanding any other provision of this Agreement, neither Party is required to disclose information to the other Party where such disclosure is prohibited by the laws of the Party possessing the information or would be incompatible with that Party's important interests.

2. Unless otherwise agreed by the Parties, each Party shall, to the fullest extent possible, maintain the confidentiality of any information communicated to it in confidence by the other Party under this Agreement. Each Party shall oppose, to the fullest extent possible, any application by a third party for disclosure of such information.

3. (a) The competition authority of the European Communities, after notice to the Canadian competition authority, will inform the competent authorities of the Member State or Member States whose important interests are affected of the notifications sent to it by the Canadian competition authority.

(b) The competition authority of the European Communities, after consultation with the Canadian competition authority, will inform the competent authorities of such Member State or Member States of any co-operation and co-ordination of enforcement activities. However, as regards such activities, the competition authority of the European Communities will respect the Canadian competition authority's request not to disclose the information which it provides when necessary to ensure confidentiality.

4. Before taking any action which may result in a legal obligation to make available to a third party information provided in confidence under this Agreement, the Parties' competition authorities shall consult one another and give due consideration to their respective important interests.

5. Information received by a Party under this Agreement, apart from information received under Article II, shall only be used for the purpose of enforcing that Party's competition laws. Information received under Article II shall only be used for the purpose of this Agreement.

6. A Party may require that information furnished pursuant to this Agreement be used subject to the terms and conditions it may specify. The receiving Party shall not use such information in a manner contrary to such terms and conditions without the prior consent of the other Party.

XI. EXISTING LAW

Nothing in this Agreement shall require a Party to take any action that is inconsistent with its existing laws, or require any change in the laws of the Parties or of their respective provinces or Member States.

XII. ENTRY INTO FORCE AND TERMINATION

1. This Agreement shall enter into force upon signature.

2. This Agreement shall remain in force until 60 days after the date on which either Party notifies the other Party in writing that it wishes to terminate the Agreement.

3. The Parties shall review the operation of this Agreement not more than 24 months from the date of its entry into force, with a view to assessing their co-operative activities, identifying additional areas in which they could usefully co-operate and identifying any other ways in which the Agreement could be improved. The Parties agree that this review will include, among other things, an analysis of actual or potential cases to determine whether their interests could be better served through closer co-operation.

Attached to this Agreement are three letters exchanged between the Parties. These letters form an integral part of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Agreement.

DONE at , in duplicate, this day of , in the English, French, Danish, German, Greek, Spanish, Italian, Dutch, Portuguese, Finnish and Swedish languages, each text being equally authentic.

For the European Community and for the European Coal and Steel Community

For the Government of Canada

SCHEDULE A

AUSTRIA
Bundesministerium für wirtschaftliche Angelegenheiten
Abteilung X/A/6 (Wettbewerbsangelegenheiten)

BELGIUM
Ministerie van Economische Zaken - Ministère des Affaires Economiques
Algemene Inspectie van de Prijzen en de Mededinging - Inspection Générale des Prix et de la Concurrence

DENMARK
Konkurrenceradet

FINLAND
Office of Free Competition

FRANCE
Ministère de l'Economie et des Finances
Direction Générale de la Concurrence, de la Consommation et des Fraudes

GERMANY
Bundeskartellamt

GREECE
Commission de Concurrence

IRELAND
Competition Authority

ITALY
Autorità Garante della Concorrenza e del Mercato

LUXEMBOURG
Ministère de l'Economie

NETHERLANDS
Ministerie van Economische Zaken

PORTUGAL
Ministerio da Economia
Direcção Geral do Comércio e Concorrência

SPAIN
Direccion General Politica Economica y Defensa de la Competencia

SWEDEN
Konkurrensverket

UNITED KINGDOM
Office of Fair Trading

Statement by the Commission
(regarding the information to be provided to the Member States)

In accordance with the principles which govern the relationship between the Commission and the Member States in the application of the Competition rules as enshrined, for example, in Council Regulation No. 17/62, and in accordance with Article X.3 of the Agreement between the European Communities and Canada regarding the application of their competition laws,

- the Commission shall forward to the Member State or Member States whose important interests are affected the notification sent by the Commission or received from the Canadian competition authority. Member States shall be notified as soon as is reasonably possible and in the language of the exchange. Where the Commission sends information to the Canadian authorities, Member States shall be informed at the same time.

- the Commission shall also notify the Member State or Member States whose important interests are affected of any co-operation or co-ordination of enforcement activities, as soon as is reasonably possible.

For the purposes of this statement, it is considered that the important interests of a Member State are affected where the enforcement activities in question:

(i) are relevant to enforcement activities of the Member State;

(ii) involve anti-competitive activities, other than mergers or acquisitions, carried out wholly or in part in the territory of the Member State;

(iii) involve conduct believed to have been required, encouraged or approved by the Member State;

(iv) 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 Member State;

(v) involve the imposition of, or application for, remedies that would require or prohibit conduct in the territory of the Member State; or

(vi) involve the Canadian competition authority seeking information located in the territory of the Member State.

In addition, at least twice a year at meetings of government competition specialists, the Commission will inform all the Member States about the implementation of the Agreement, and particularly about the contacts which have taken place with the Canadian competition authority as regards the forwarding to the Member States of information received by the Commission under the Agreement.

Draft letter to the Government of Canada.

Dear [Name],

On [date], the Council and the Commission of the European Communities concluded the *Agreement between the European Communities and the Government of Canada regarding the application of their competition laws.*

In order to ensure a clear understanding of the European Communities' interpretation of the Agreement, we set out below two interpretative statements.

1. In the light of Article XI of the Agreement, Article X(1) should be understood to mean that the information covered by the provisions of Article 20 of Council Regulation 17/62 or by equivalent provisions in other regulations in the field of competition may not under any circumstances be communicated to the Canadian competition authority, save with the express agreement of the source concerned.

   Similarly, the information referred to in Articles II(8) and VII of the Agreement may not include information covered by Article 20 of Regulation 17/62 nor by equivalent provisions in other regulations in the field of competition, save with the express agreement of the source concerned.

2. In the light of Article X(2) of the Agreement, all information provided in confidence by either of the Parties in accordance with the Agreement will be considered as confidential by the receiving Party which should oppose any request for disclosure to a third party unless such disclosure is a) authorised by the Party supplying the information or b) required under the law of the receiving Party.

   This is understood to mean that

   - each Party assures the confidentiality of all information provided in confidence by the other Party in accordance with the receiving Party's applicable rules, including those rules intended to assure the confidentiality of information gathered during a Party's own enforcement activities,

   - each Party shall use all the legal means at its disposal to oppose the disclosure of this information.

We also wish to confirm that, should a Party become aware that, notwithstanding its best efforts, information has accidentally been used or disclosed in a manner contrary to the provisions of Article X, that Party shall notify the other Party forthwith.

Would you kindly confirm by return letter whether this interpretation raises any difficulties with the Canadian Government.

Yours sincerely,

For the European Community and for the European Coal and Steel Community

Draft Reply from the Government of Canada

Legal Services, Industry Canada
Place du Portage, Phase 1
50 Victoria Street
Hull, Quebec (K1A 0C9)

Telephone : (819) 997 3325
Facsimile : (819) 953 9267

Date :

Mr Karel Van Miert
Member of the European Commission
200 rue de la Loi
1049 Brussels
Belgium

Dear Commissioner Van Miert:

Thank you for your letter dated (.....). We are very pleased that the Agreement between the European Communities and the Government of Canada regarding the application of our respective competition laws has now been completed. The interpretative and other statements included in your letter are consistent with our understanding of the Agreement.

I would also like to confirm that, with respect to the application of Article XI, and for greater certainty, no information may be exchanged by Canada pursuant to this agreement which could not have been exchanged in the absence of this agreement. I would ask that you confirm your understanding to this effect by return letter.

We look forward to continuing and furthering our relationship of competition law co-operation as reflected in the Agreement and in our mutual conduct to date.

Sincerely

Konrad von Finckenstein
Director of Investigation and Research

Draft reply to Canada

Dear [Name]

Thank you very much for your letter dated [ ]. We confirm that your letter does not give rise to any difficulties for the European Communities.

We are extremely pleased that the Agreement between the European Communities and Canada has been completed and look forward to close co-operation in the future.

Yours sincerely,

For the European Community and for the European Coal and Steel Community

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