

MEMORANDUM OF UNDERSTANDING BETWEEN THE TAIPEI ECONOMIC AND CULTURAL OFFICE IN CANADA AND THE CANADIAN TRADE OFFICE IN TAIPEI REGARDING THE APPLICATION OF COMPETITION LAWS

THE TAIPEI ECONOMIC AND CULTURAL OFFICE IN CANADA (“TECO”) and THE CANADIAN TRADE OFFICE IN TAIPEI (“CTOT”), hereinafter referred to as the “Participants”,

HAVE COME to the following understanding:

1. COMPETITION AUTHORITIES

- (a) TECO designates the Fair Trade Commission, Executive Yuan (“FTC”) to carry out this Memorandum of Understanding (“this MOU”) on its behalf.
- (b) CTOT designates the Commissioner of Competition, Competition Bureau Canada (“Commissioner of Competition”) to carry out this MOU on its behalf.

THE FTC and THE COMMISSIONER OF COMPETITION hereinafter referred to as the “competition authorities”,

HAVING REGARD to the importance of cooperation and coordination between the competition authorities to further effective competition law enforcement in both territories;

RECOGNIZING that cooperation in enforcement activities and the coordination of such activities may, in certain cases, result in a more effective resolution of the competition authorities' respective competition law concerns than would be attained through independent action; and

CONSIDERING the important work being done at the Organisation for Economic Co-operation and Development and the International Competition Network and the close working relationship between the competition authorities in these forums;

UNDERSTAND as follows:

2. PURPOSE AND DEFINITIONS

- (a) The purpose of this MOU is to promote cooperation and coordination between the competition authorities.
- (b) In this MOU, these terms will have the following definitions:
 - (i) “competition law(s)” means:
 - (A) The statutory and regulatory provisions that address competition law, the administration and enforcement of which are charged to the competition authorities, as well as any amendments thereto, and such other statutory or regulatory provisions as the competition authorities may from time to time accept in writing to be “competition law(s)” for the purpose of this MOU.

- (B) For purposes of subparagraph (b) (i) (A), the statutory and regulatory provisions charged to the Commissioner of Competition are listed in Annex A to this MOU, while the statutory and regulatory provisions charged to the FTC are listed in Annex B to this MOU.
- (ii) “enforcement activity(ies)” means any investigation or proceeding conducted by a competition authority in relation to the competition laws it administers and enforces; and
- (iii) “territory” means the territory in which a competition authority has jurisdiction.
- (c) Each competition authority will notify the other as soon as practicable of any amendments to its competition law.

3. NOTIFICATION

- (a) Subject to Paragraph 7, each competition authority will notify the other competition authority with respect to its enforcement activities which may affect the other competition authority’s interests in the application of its competition law, including those that:
 - (i) are relevant to the enforcement activities of the other competition authority;
 - (ii) involve any conduct or transaction, other than mergers or acquisitions, carried out in whole or in part in the other competition authority’s territory, that may be subject to penalties or other relief under the competition law administered and enforced by the other competition authority, except where such conduct or transaction is insubstantial;
 - (iii) involve mergers or acquisitions in which one or more of the parties to the transaction carries out a business activity in the other competition authority’s territory, or is under control of a body which is incorporated or organized under the laws of the other competition authority’s territory;
 - (iv) involve penalties or other relief that expressly require or prohibit conduct in the other competition authority’s territory or are otherwise directed at conduct in that territory; and
 - (v) involve the seeking of information located in the other competition authority’s territory, whether by personal visit by officials of a competition authority or otherwise, except with respect to telephone contacts with a person in the other competition authority’s territory where that person is not the subject of investigation and the contact seeks only an oral response on a voluntary basis. Such visits will be subject to the consent of the notified competition authority.
- (b) Notification will ordinarily be given as soon as it becomes evident

that notifiable circumstances are present.

- (c) Subsequent notifications on a matter need not be made unless the notifying competition authority becomes aware of new issues bearing on the interests of the other competition authority in the application of its competition law, or unless the notified competition authority requests otherwise.
- (d) Notifications will include the nature of the activities under investigation and the competition law provisions concerned and will be sufficiently detailed to enable the notified competition authority to make an initial evaluation of the effect of the activities on its interests in the application of its competition law.

4. COOPERATION AND COORDINATION

- (a) The competition authorities acknowledge that it is in their common interest to cooperate and share information where appropriate and practicable.
- (b) Where the competition authorities are pursuing enforcement activities with regard to the same or related matters, they will endeavour to coordinate their enforcement activities where appropriate and practicable, and will respect the independence of each competition authority to make its own decisions.
- (c) The competition authorities accept that it is in their common interest to work together in technical assistance initiatives related to competition law enforcement and policy. Subject to the competition authorities' reasonably available resources, these initiatives may include such forms of technical cooperation as the competition authorities decide are appropriate for purposes of this MOU.

5. AVOIDANCE OF CONFLICTS

- (a) The competition authorities acknowledge that it is in their common interest to minimize any potentially adverse effects of one competition authority's enforcement activities on the other competition authority's interests in the application of their respective competition law.
- (b) Where one competition authority informs the other that a specific enforcement activity by the second competition authority may affect the informing competition authority's interests in the application of its competition law, the second competition authority will endeavour to provide timely notice of significant developments relating to those interests and an opportunity to provide input regarding any proposed penalty or remedy.
- (c) Any questions arising out of this MOU, including questions on the interpretation or the application of this MOU, will be addressed in as timely and practicable a manner as circumstances permit.

6. MEETINGS

Officials of the competition authorities will meet periodically, as necessary, to:

- (a) exchange information on their enforcement efforts and priorities in relation to their competition laws;
- (b) exchange information on economic sectors of common interest;
- (c) discuss changes which may be under consideration with respect to competition law; and
- (d) discuss other matters of mutual interest relating to the application of their competition law or the operation of this MOU.

7. EXISTING LAWS AND CONFIDENTIALITY OF INFORMATION

- (a) Nothing in this MOU will require a competition authority to take any action, or to refrain from acting, in a manner inconsistent with existing laws, or will require any change in the law of the territories of the competition authorities.
- (b) Notwithstanding any other provision in this MOU, neither competition authority is required to communicate information to the other competition authority if such communication is prohibited by the laws of the competition authority possessing the information or would be incompatible with the interests of that competition authority in the application of its competition law.
- (c) The degree to which one competition authority communicates information to the other pursuant to this MOU may be subject to, and dependent upon, the acceptability of the assurances given by the other competition authority with respect to confidentiality and with respect to the purposes for which the information will be used.
- (d) Unless otherwise decided by the competition authorities, each competition authority will, to the fullest extent possible, maintain the confidentiality of any information communicated to it in confidence by the other competition authority. Each competition authority will oppose, to the fullest extent possible, any request by a third party for communication of such confidential information, unless the competition authority providing the confidential information consents in writing to its communication.

8. COMMUNICATIONS UNDER THIS MOU

Communications under this MOU will be carried out directly between the competition authorities. Each competition authority may designate a contact point, as notified in writing to the other competition authority.

9. FINAL PROVISIONS

- (a) This MOU will come into effect on the date of the final signature.
- (b) This MOU may be amended upon the mutual written consent of the Participants.

- (c) This MOU will remain in effect until sixty (60) days after the date on which either Participant notifies the other in writing that it wishes to terminate the MOU.

SIGNED at Taipei, this 22nd day of June, 2009, and at Gatineau, this 14th day of July, 2009, in duplicate, in the Chinese, English and French languages, each text being equally valid.

SIGNATORY:

**TAIPEI ECONOMIC AND CULTURAL
OFFICE IN CANADA**

SIGNATORY:

CANADIAN TRADE OFFICE IN TAIPEI

**DAVID TAWEI LEE
REPRESENTATIVE**

**RON MACINTOSH
EXECUTIVE DIRECTOR**

WITNESS:

**FAIR TRADE COMMISSION, EXECUTIVE
YUAN**

WITNESS:

COMPETITION BUREAU CANADA

**JINN-CHUAN TANG
CHAIRMAN**

**MELANIE AITKEN
INTERIM COMMISSIONER OF
COMPETITION**

ANNEX A

"Competition laws" charged to the Commissioner of Competition:

- (a) *Competition Act, R.S.C. 1985, c. C-34*, except for sections 52 to 60 and Part VII.1.

ANNEX B

“Competition laws” charged to the FTC:

- (a) *Fair Trade Law (2002)*, except for Articles 20 to 24.