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European Union

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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	28 June 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2016) 421 final ANNEX 1
Subject:	ANNEX to the Proposal for a Council Decision on the signing, on behalf of the European Union, of the Agreement between the European Union and the Government of Canada regarding the application of their competition laws

Delegations will find attached document COM(2016) 421 final ANNEX 1.

Encl.: COM(2016) 421 final ANNEX 1



EUROPEAN
COMMISSION

Brussels, 27.6.2016
COM(2016) 421 final

ANNEX 1

ANNEX

to the

Proposal for a Council Decision

on the signing, on behalf of the European Union, of the Agreement between the European Union and the Government of Canada regarding the application of their competition laws

ANNEX

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Proposal for a Council Decision

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

THE EUROPEAN UNION of the one part and THE GOVERNMENT OF CANADA (Canada) of the other part (the Parties):

Considering the close economic relations between them;

Recognising 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 cooperation and, in appropriate cases, coordination between them in the application of those laws;

Noting that coordination 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 Organisation for Economic Cooperation and Development Concerning Cooperation Between Member Countries on Restrictive Business Practices Affecting International Trade, adopted on 27 and 28 July 1995, and

Having regard to the Economic Cooperation 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;

Recognising that increased exchange of information, including the communication of information that has been obtained by investigative process of the Parties, will improve

cooperation and will contribute to the sound and effective enforcement of the competition law of each Party;

Recognising that the Parties share common values with respect to the protection of personal data, as reflected in their respective law, and that oversight will be addressed by an independent public authority and, by Canada, insofar as persons not present in Canada are concerned, by an authority created by administrative means;

HAVE AGREED AS FOLLOWS:

I. Purpose and definitions

1. The purpose of this Agreement is to promote cooperation and coordination 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,

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

(b) "competent authority of a Member State" shall mean that authority of a Member State set out in Annex A. Annex A may be added to or modified at any time by the European Union. Canada will be notified in writing of such additions or modifications before any information is communicated to a newly listed authority;

(c) "competition authority" and "competition authorities" shall mean:

(i) for Canada, the Commissioner of Competition appointed under the Competition Act, R.S.C. 1985, c. C-34, (hereinafter referred to as "Competition Act") and

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

(d) "competition law or laws" shall mean:

(i) for Canada, the Competition Act, excluding sections 52 to 62 and Part VII.1 of the Act, and regulations thereunder, and

(ii) for the European Union, Articles 101, 102, and 105 of the Treaty on the Functioning of the European Union, Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ EU L 24, 29.1.2004, p. 1) (hereinafter referred to as "Regulation (EC) No 139/2004"), and Articles 53 and 54 of the Agreement on the European Economic Area (OJ EU L 1, 3.1.1994, p. 3) (hereinafter referred to as the "EEA Agreement") when used in conjunction with Articles 101 and 102 of the Treaty on the Functioning of the European Union, and their implementing Regulations,

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;

(e) "enforcement activity(ies)" shall mean any application of competition law by way of investigation or proceeding conducted by the competition authority of a Party;

(f) “information obtained by investigative process” shall mean:

(i) for Canada, information obtained under sections 11, 15, 16 and 114 of the Competition Act; and

(ii) for the European Union, information obtained through requests for information under Article 18 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82¹ of the Treaty (OJ EU L 1, 4.1.2003, p. 1) (hereinafter referred to as “Regulation (EC) No 1/2003”), oral statements under Article 19 of Council Regulation (EC) No 1/2003, and inspections conducted by the Commission or on behalf of the Commission under Articles 20, 21 or 22 of Council Regulation (EC) No 1/2003 and information obtained as a result of the application of Council Regulation (EC) No 139/2004;

(g) “information obtained under an application for immunity or leniency” shall mean:

(i) for Canada, information provided by an applicant to the competition authority in consideration for either a grant of immunity from criminal prosecution or a recommendation of leniency in sentencing by the Director of Public Prosecutions during a criminal proceeding; and

(ii) for the European Union, information obtained pursuant to the Commission Notice on Immunity from fines and reduction of fines in cartel cases, (OJ EU C 298, 8.12.2006, p.17).

(h) “information obtained under the settlement procedure” shall mean, for the European Union, information obtained under Article 10a of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82² of the EC Treaty (OJ EU L 123, 27.4.2004, p. 18);

(i) “personal data” shall mean any information relating to an identified or identifiable natural person in any recorded form.

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 successive 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.

¹ In accordance with Article 5 of the Treaty of Lisbon, Articles 81 and 82 of the Treaty establishing the European Community were renumbered as Articles 101 and 102 of the Treaty on the Functioning of the European Union.

² In accordance with Article 5 of the Treaty of Lisbon, Articles 81 and 82 of the Treaty establishing the European Community were renumbered as Articles 101 and 102 of the Treaty on the Functioning of the European Union.

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

- (i) that are relevant to enforcement activities of the other Party;
- (ii) that involve anticompetitive activities, other than mergers or acquisitions, carried out wholly or in part in the territory of the other Party;
- (iii) that involve conduct believed to have been required, encouraged or approved by the other Party or one of its provinces or Member States;
- (iv) that 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 organised under the laws of the other Party or one of its provinces or Member States,

(v) that 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) that 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 Union, when a notice is published in the Official Journal, pursuant to Article 4(3) of Regulation (EC) No 139/2004, 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 Union,

(i) when its competition authority decides to initiate proceedings with respect to the concentration, pursuant to Article 6(1)(c) of Regulation (EC) No 139/2004;

(ii) in cases other than mergers and acquisitions, the issue 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, subject to domestic legal requirements, 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:

(a) 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, and

(b) provide the other competition authority with as much information as it is legally able to do in order to facilitate the broadest possible discussion regarding the relevant aspects of a particular transaction.

IV. Coordination 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 coordinate their enforcement activities. In considering whether particular enforcement activities should be coordinated, 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 coordination 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 anticompetitive 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 coordinate their enforcement activities by agreeing on the timing of those activities in a particular matter, while respecting fully their own laws and important interests. Such coordination 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 coordinated 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

coordination and pursue its enforcement activities independently and subject to the other provisions of this Agreement.

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 has reason to believe that anticompetitive 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 anticompetitive activities and their effects on the interests of the requesting Party, and shall include an offer of such further information and other cooperation 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 anticompetitive 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 anticompetitive activities identified in the request, or precludes the requesting Party's competition authority from undertaking enforcement activities with respect to such anticompetitive 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 anticompetitive 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 anticompetitive 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 anticompetitive 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 minimise 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 judgments or undertakings resulting from such activities, would be affected.

VII. Discussion and transmission of information

1. In furtherance of the principles of this Agreement as set out in Article I, the Parties agree that it is in their common interest to share views, and to discuss and transmit information, as provided for under this Article and Articles VIII and XI, in order to facilitate the effective application of their respective competition laws and promote better understanding of each others enforcement policies and activities.
2. The competition authorities may, as necessary, share views and discuss information in their possession, including information obtained by investigative process to carry out the cooperation and coordination provided for under this Agreement.
3. The competition authorities may transmit information in their possession to each other when the individual or undertaking that provided the information has given its express consent in writing. If information in the possession of a competition authority contains personal data, that data may only be transferred if both competition authorities are investigating the same or related conduct or transaction.
4. Unless the consent referred to in paragraph 3 has been given, a competition authority may, upon request by the other competition authority, transmit information obtained by

investigative process to the requesting competition authority only if:

(a) the information is already in its possession; and

(b) the information pertains to the investigation, by both competition authorities, of the same or related conduct or transaction.

5. A request under paragraph 4 shall be made in writing and include a general description of the subject matter, the nature of the enforcement activity to which the request relates, and the legal provisions that may be involved.

6. The competition authority receiving a request under paragraph 4 shall determine, in consultation with the requesting competition authority, which information in its possession is relevant and may be transmitted.

7. Notwithstanding paragraphs 2, 3 and 4 of this Article, the competition authority of a Party shall not share views on, discuss or transmit information obtained by investigative process if the use of this information would be prohibited in its enforcement activities under the procedural rights and privileges guaranteed under the laws of that Party, including:

(a) the right against self-incrimination; and

(b)

(i) for Canada, solicitor-client privilege; and

(ii) for the European Union, the legal professional privilege.

8. Neither competition authority is required to communicate information to the other competition authority, in particular if such communication would be incompatible with a Party's important interests or if sufficient resources are unavailable at the time of the request.

9. A competition authority shall not share views on, discuss or transmit information obtained under an application for immunity or leniency or, in the case of the European Union, information obtained under the settlement procedure, unless the individual or undertaking providing the information to the competition authority expressly consents in writing to the communication.

10. If a competition authority becomes aware that a document transmitted under this Article contains incorrect information, it shall inform the other competition authority as soon as reasonably practicable, and that competition authority shall take corrective measures.

11. Any information provided or exchanged under this Agreement may be transmitted directly between the competition authorities.

12. In the event of a conflict with an agreement or arrangement relating to the provision or exchange of classified information established pursuant to the Agreement between Canada and the European Union on Security Procedures for Exchanging and Protecting Classified Information, the provisions of this Agreement prevail.

VIII. Confidentiality and use of information

1. Unless otherwise agreed by the Parties, each Party shall, to the fullest extent possible under its law, maintain the confidentiality of any information communicated to it in confidence by the other Party under this Agreement, including the fact that a request for information has been communicated or received.

2. Each Party's competition authority shall, in particular, oppose, to the fullest extent possible under its law, any application by a third party for disclosure of any information referred to in paragraph 1 other than for the purposes of enforcement activity by that competition authority under this Agreement, unless such disclosure is:

(a) made to individuals or undertakings that are subject to an enforcement activity under the competition law of the Party whose competition authority has received the information, and against whom the information may be used, if such disclosure is required by the law of that Party;

(b) made to courts in the course of a judicial review proceeding, as necessary, or

(c) indispensable for the exercise of a fundamental right of access to documents under the Party's law.

3. When disclosing information referred to in paragraph 1, the competition authority that receives the information shall ensure that business secrets remain protected to the fullest extent possible under the applicable laws of that party.

4. When compelled by law to disclose information referred to in paragraph 1 transmitted by the other competition authority under this Agreement, the competition authority that received the information shall inform the other competition authority of such disclosure within a reasonable time.

5. Where personal data is transferred, the principles set out in Annex C shall apply.

6. Information discussed with or transmitted to a Party's competition authority under this Agreement, apart from information transmitted under Article II, shall be used only for the purpose of enforcing that Party's competition laws. Information transmitted under Article II shall only be used for the purposes of this Agreement.

7. Information obtained by investigative process and discussed with or transmitted to the other competition authority under this Agreement shall only be used by the requesting competition authority for the enforcement of the competition laws enforced by that competition authority with respect to the same or related conduct or transaction.

8. Information transmitted under Article VII paragraph 4 shall only be used by the requesting competition authority for the purposes specified in the request under Article VII paragraph 4.

9. No information transmitted under this Agreement shall be used to impose custodial sanctions on individuals.

10. A competition authority may require that information that it transmits under this Agreement be used subject to the terms and conditions that it may specify. The receiving competition authority shall not use such information in a manner contrary to such terms and conditions without the prior consent of the transmitting competition authority.

11. If one competition authority becomes aware that, despite its best efforts, information has accidentally been used or disclosed in a manner contrary to this Article, that competition authority shall notify the other competition authority forthwith. The competition authorities shall promptly consult on steps to minimize any harm resulting from such use or disclosure and to prevent such a situation from recurring.

IX. Communication to the Competition authorities of the European Union Member States and the EFTA Surveillance Authority

1. The European Commission

(a) will, after notice to the Canadian competition authority, inform the competent authorities of a Member State whose important interests are affected by the notifications sent to the European Commission by the Canadian competition authority under Article II;

(b) will, after consultation with the Canadian competition authority, inform the competent authorities of a Member State whose important interests are affected by the existence of any cooperation and coordination of enforcement activities under Articles IV and V of any such cooperation or coordination;

(c) may only disclose information transmitted by the Canadian competition authority pursuant to Article VII:

(i) to the competent authorities of Member States, in order to fulfill its obligations under Articles 11 and 14 of Regulation (EC) No 1/2003 and under Article 19 of Regulation (EC) No 139/2004; and

(ii) to the EFTA Surveillance Authority in order to fulfill its obligations under Articles 6 and 7 of Protocol 23 to the EEA Agreement concerning the cooperation between the surveillance authorities.

2. The European Commission shall ensure that information, other than publicly available information, communicated to the competent authorities of a Member State or to the EFTA Surveillance Authority under paragraph 1 of this Article is not used for any purpose other than enforcement of the European Union's competition laws by the European Commission, and is not disclosed to any other party without the express written consent of the Canadian competition authority.

X. Semiannual meetings

1. In furtherance of their common interest in cooperation and coordination 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 semiannual meetings shall be made available to the Joint Cooperation Committee under the Framework Agreement for Commercial and Economic Cooperation between the European Communities and Canada.

XI. 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 fax communication between the competition authorities of the Parties, unless otherwise provided under this Agreement. Notifications under Article II and requests under Articles III and V, however, shall be confirmed promptly in writing through normal diplomatic channels.

XII. Territorial Scope

This Agreement shall apply, on the one hand, to the territories in which the Treaty on European Union and the Treaty on the Functioning of the European Union are applied and under the conditions laid down in those Treaties and, on the other hand, to the territory of Canada.

XIII. Existing law

This Agreement does not require a Party to take any action that is inconsistent with its existing laws, nor require any change in the laws of the Parties or of their respective provinces or Member States, apart from articles VII and VIII as they apply to the European Union. For greater clarity, no part of this Agreement shall require a Party to take any action that is inconsistent with its personal data laws.

XIV. Final Provisions

1. The Parties shall approve this Agreement in accordance with their own procedures. The Parties shall notify each other of the completion of the respective procedures. This Agreement shall enter into force on the first day of the second month following the date of the last notification of approval.

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 may agree on any amendment to this Agreement. When so agreed, and approved in accordance with the applicable legal procedures of each Party, an amendment shall constitute an integral part of this Agreement.

4. The Parties shall consult with a view to amending the Agreement if changes in the existing laws of either Party will affect cooperation between them

5. This agreement supersedes and replaces the Agreement between the European Communities and the Government of Canada regarding the application of their competition laws signed on 17 June 1999 in Bonn.

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

Done at, in duplicate, on the day ofin the year in the English, French, Bulgarian, Croatian, Czech, Danish, Estonian, German, Greek, Hungarian, Latvian, Lithuanian, Maltese, Polish, Spanish, Italian, Dutch, Portuguese, Finnish, Romanian, Slovakian, Slovenian and Swedish languages, each text being equally authentic.

ANNEX A

AUSTRIA

Bundeswettbewerbsbehörde (Federal Competition Authority)

BELGIUM

Autorité belge de la concurrence/ Belgische Mededingingsautoriteit (Belgian Competition Authority)

BULGARIA

Комисията за защита на конкуренцията (Commission for the Protection of Competition)

CROATIA

Agencija za zaštitu tržišnog natjecanja (Croatian Competition Agency)

CYPRUS

Επιτροπή Προστασίας του Ανταγωνισμού -ΕΠΑ (Commission for the Protection of Competition-CPC)

CZECH REPUBLIC

Úřad pro ochranu hospodářské soutěže (Office for the Protection of Competition)

DENMARK

Konkurrence- og Forbrugerstyrelsen (The Danish Competition and Consumer Authority)

ESTONIA

Konkurentsiamet (Estonian Competition Board)

FINLAND

Kilpailu- ja kuluttajavirasto (Finnish Competition and Consumer Authority - KKV)

FRANCE

Autorité de la concurrence (French Competition Authority)

GERMANY

Bundeskartellamt (Federal Cartel Office)

GREECE

Επιτροπή ανταγωνισμού (Hellenic Competition Commission)

HUNGARY

Gazdasági Versenyhivatal (GVH - Hungarian Competition Authority)

IRELAND

The Competition Authority

ITALY

Autorità Garante della Concorrenza e del Mercato

LATVIA

Konkurences padome (Competition Council Republic of Latvia)

LITHUANIA

Lietuvos Respublikos konkurencijos taryba (Competition Council of the Republic of Lithuania)

LUXEMBOURG

Conseil de la concurrence

MALTA

Malta Competition and Consumer Affairs Authority / L-Awtorità ta' Malta għall-Kompetizzjoni u għall-Affarijiet tal-Konsumatur

NETHERLANDS

Autoriteit Consument & Markt (ACM)

POLAND

Urząd Ochrony Konkurencji i Konsumentów (Office for Competition and Consumer Protection)

PORTUGAL

Autoridade da Concorrência

ROMANIA

Consiliul Concurenței (Competition Council)

SLOVAKIA

Protimonopolný úrad Slovenskej republiky (AMO - Antimonopoly Office of the Slovak Republic)

SLOVENIA

Javna Agencija Republike Slovenije za varstvo konkurence (Slovenian Competition Protection Agency)

SPAIN

Comisión Nacional de la Competencia (CNMC)

SWEDEN

UNITED KINGDOM

Competition and Markets Authority

ANNEX B

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 Regulation No 1/2003 and in Regulation (EC) No 139/2004, and in accordance with Article IX of the Agreement between the European Union 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 cooperation or coordination 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 anticompetitive 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 organised 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.

ANNEX C

Protection Principles Applying to Personal Data Transferred Under the Agreement

Oversight

1. The safeguards for the processing of personal data transferred under this Agreement will be subject to oversight by an independent public authority, or by an authority created by administrative means that exercises its functions in an impartial manner and that has a proven record of autonomy. The authority shall have effective powers to investigate compliance with the applicable rules related to the collection, use, disclosure, retention, or disposal of personal data transferred under this Agreement. It may conduct compliance reviews and investigations, may report findings and make recommendations to the appropriate competition authority. The overseeing authority has the power to refer violations of law related to this Agreement for prosecution or disciplinary action, if appropriate.
2. The relevant authority shall ensure that complaints relating to non-compliance with the handling of personal data under this Agreement are received, investigated, responded to, and appropriately redressed.

Transparency

3. The competition authorities shall make the following available on their websites:
 - (a) a list of their legislation authorising the collection of personal data under this Agreement;
 - (b) the reasons for the collection of personal data;
 - (c) the manner of protecting the personal data;
 - (d) the manner and extent to which the personal data may be disclosed;
 - (e) information regarding access, correction, notation and redress,
 - (f) contact information for inquiries, and
 - (g) information about administrative and judicial redress.

Access for individuals

4. The competition authorities shall ensure that any individual may access their personal data transferred under this Agreement, and in particular shall:

- (a) provide the individual with a copy of their personal data if the individual makes a written request;
- (b) reply in writing to any request;
- (c) provide the individual with access to recorded information confirming that the individual's personal data has been disclosed, if the individual requests that confirmation;
- (d) set out the legal or factual reasons for any refusal to allow access to the individual's personal data;
- (e) inform the individual if the personal data does not exist;
- (f) inform the individual that they may make a complaint and of the complaint procedure.

Correction or notation for individuals

5. The competition authorities shall ensure that any individual may request the correction of their personal data transferred under this Agreement.

6. The competition authorities shall consider all written requests for correction and shall, within a reasonable time:

- (a) correct the personal data and notify the individual that the correction has been made; or
- (b) refuse all or part of the correction and:

(i) attach a notation to the personal data reflecting any correction requested that was refused;

(ii) notify the individual that:

(A) the request for correction is refused, and set out the legal or factual reasons for the refusal; and

(B) the notation under sub-paragraph (i) is attached to the personal data; and

(c) inform the individual that they may make a complaint and of the complaint procedure.

Restrictions to access, correction and notation

7. The competition authorities may make the provisions set out in paragraphs 4 - 6 subject to restrictions if provided by law when necessary to safeguard:

(a) the integrity of an ongoing official investigation by the competent authorities referred to in this Agreement,

(b) the prevention, investigation, detection and prosecution of criminal offences and civil infractions, related to activities covered by this Agreement; or

(c) the monitoring, inspection or regulatory function connected, even occasionally, with the exercise of official authority within the scope of this Agreement.

Administrative and judicial redress

8. Each party shall ensure that the applicable authority referred to in paragraph 1 will receive, investigate and respond to complaints lodged by an individual concerning their request for access, correction or notation of their personal data transferred under this Agreement. The relevant authority shall notify the complainant of the means of seeking the judicial redress set out in paragraph 9.

9. Each party shall ensure that any individual who is of the view that their rights have been infringed by a decision or action in relation to their personal data transferred under this Agreement may seek effective judicial redress in accordance with the applicable Party's law by way of judicial review, or such other remedy which may include compensation.

Retention of personal data

10. Personal data obtained under this agreement must not be kept longer than necessary for the specific purposes for which it was transferred under this Agreement.

Definition

11. In this Annex, "independent public authority" means:

(a) for Canada, the Privacy Commissioner appointed under section 53 of the *Privacy Act*, R.S.C., 1985, c. P-21, as well as any amendments thereto; and

(b) for the European Union, the European Data Protection Supervisor, appointed under Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1), as well as any amendments thereto.