

Agreement between the Government of the United States of America and the Government of the State of Israel Regarding the Application of Their Competition Laws

The Government of the United States of America and the Government of the State of Israel (hereinafter referred to as "Parties");

Desiring to promote mutual relations and further the historic friendship between them;

Determined to strengthen and develop the economic relations between them for their mutual benefit;

Having regard to their close economic relations and cooperation within the framework of the Agreement on the Establishment of a Free Trade Area Between the Government of the United States of America and the Government of the State of Israel;

Noting that the sound and effective enforcement of their competition laws is a matter of importance to the efficient operation of markets within the free trade area and to the economic welfare of the Parties' citizens;

Recognizing that coordination of enforcement activities may, in appropriate cases, result in a more effective resolution of the Parties' respective concerns than would be attained through independent action;

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

Noting further their commitment to give careful consideration to each other's important interests in the application of their competition laws; and

Wishing to promote cooperation in areas which are of mutual interest.

Have agreed as follows:

Article I

PURPOSE AND DEFINITIONS

1. The purpose of this Agreement is to promote cooperation and coordination between the competition authorities of the Parties, to avoid conflicts arising from the application of the Parties' competition laws and to minimize the impact of differences on their respective important interests.

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

(a) "Anticompetitive activity(ies)" means any conduct or transaction that may be subject to penalties or other relief under the competition laws of a Party;

(b) "Competition authority(ies)" means

(i) for Israel, the Controller of Restrictive Trade Practices;

(ii) for the United States of America, the United States Department of Justice and the Federal Trade Commission;

(c) "Competition law(s)" means

(i) for Israel, the Restrictive Trade Practices Law 5748-1988;

(ii) for the United States of America, the Sherman Act (15 U.S.C. §§ 1-7), the Clayton Act (15 U.S.C. §§ 12-27), the Wilson Tariff Act (15 U.S.C. §§ 8-11) and the Federal Trade Commission Act (15 U.S.C. §§ 41-58), to the extent that it applies to unfair methods of competition,

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

(d) "Enforcement activity(ies)" means any investigation or proceeding conducted by a Party in relation to its competition laws.

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 provision thereof. Each Party shall promptly notify the other of any amendments to its competition laws.

Article II

NOTIFICATION

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

2. Enforcement activities to be notified pursuant to this Article are those that:

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

(b) involve anticompetitive practices, other than mergers or acquisitions, carried out in whole or in substantial part in the other State;

(c) involve mergers or acquisitions in which one or more of the parties to the transaction, or a company controlling one or more of the parties to a transaction, is a company incorporated or organized under the laws of the other Party or of one of its states;

(d) involve conduct believed to have been required, encouraged, or approved by the other Party;

(e) involve remedies that expressly require or prohibit conduct in the other State or are otherwise directed at such conduct; or

(f) involve the seeking of information located in the other State.

3. Notification pursuant to this Article shall ordinarily be given as soon as a Party's competition authorities become aware that notifiable circumstances are present, and in any event in sufficient time to permit the views of the other Party to be taken into account.

4. When the competition authorities of a Party request that a person provide information, documents or other records located in the notified State, or request oral testimony in a proceeding or participation in a personal interview by a person located in the notified State, notification shall be given:

(a) if compliance with a request for written information, documents or other records is voluntary, at or before the time that the request is made;

(b) if compliance with a request for written information, documents or other records is compulsory, at least seven (7) days prior to the request, (or, when seven (7) days' notice cannot be given, as promptly as circumstances permit); and

(c) in the case of oral testimony or personal interviews, at or before the time arrangements for the interview or testimony are made.

Notification that would otherwise be required by this Article is not required with respect to telephone contacts with a person where (i) that person is not the subject of an investigation, (ii) the contact seeks only an oral response on a voluntary basis (although the availability and possible voluntary provision of documents may be discussed) and (iii) the other Party's important interests do not appear to be otherwise implicated, unless the other Party requests otherwise in relation to a particular matter.

Notification is not required for each subsequent request for information in relation to the same matter unless the Party seeking information becomes aware of new issues bearing on the important interests of the other Party, or the other Party requests such notification in relation to a particular matter.

5. The Parties acknowledge that officials of either Party may visit the other State in the course of conducting investigations pursuant to their respective competition laws. Such visits shall be subject to notification pursuant to this Article and the consent of the notified Party.

6. Notifications shall be sufficiently detailed to enable the notified Party to make an initial evaluation of the effect of the enforcement activity on its own important interests, and shall include the nature of the activities under investigation and the legal provisions concerned. Where possible, notifications shall include the names and locations of the persons involved.

Article III

ENFORCEMENT COOPERATION

1. The Parties acknowledge that it is in their common interest to cooperate in the detection of anticompetitive activities and the enforcement of their competition laws to the extent compatible with their respective laws and important interests, and within their reasonably available resources. The Parties further acknowledge that it is in their common interest to share information which will facilitate the effective application of their competition laws and promote better understanding of each other's enforcement policies and activities.

2. The Parties will consider adopting such further arrangements as may be feasible and desirable to enhance cooperation in the enforcement of their competition laws.

3. Each Party's competition authorities will, to the extent compatible with that Party's laws, enforcement policies and other important interests,

(a) assist the other Party's competition authorities, upon request, in locating and securing evidence and witnesses, and in securing voluntary compliance with requests for information, in the requested State;

(b) inform the other Party's competition authorities with respect to enforcement activities involving conduct that may also have an adverse effect on competition within the other State;

(c) provide to the other Party's competition authorities, upon request, such information within its possession as the requesting Party's competition authorities may specify that is relevant to the requesting Party's enforcement activities; and

(d) provide the other Party's competition authorities with any significant information that comes to their attention about anticompetitive activities that may be relevant to, or may warrant, enforcement activity by the other Party's competition authorities.

4. Nothing in this Agreement shall prevent the Parties from seeking or providing assistance to one another pursuant to other agreements, treaties, arrangements or practices between them.

Article IV

COORDINATION WITH REGARD TO RELATED MATTERS

1. Where both Parties' competition authorities are pursuing enforcement activities with regard to related matters, they will consider coordination of their enforcement activities. In such matters, the Parties may invoke such mutual assistance arrangements as may be in force from time to time.

2. In considering whether particular enforcement activities should be coordinated, either in whole or in part, the Parties' competition authorities shall take into account the following factors, among others:

(a) the effect of such coordination on the ability of both Parties to achieve their respective enforcement objectives;

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

(c) the extent to which either Party's competition authorities can secure effective relief against the anticompetitive activities involved;

(d) the possible reduction of costs to the Parties and to the persons subject to enforcement activities; and

(e) the potential advantage of coordinated remedies to the Parties and to the persons subject to the enforcement activities.

3. In any coordination arrangement, each Party's competition authorities shall seek to conduct their enforcement activities consistently with the enforcement objectives of the other Party's competition authorities.

4. In the case of concurrent or coordinated enforcement activities, the competition authorities of each Party shall consider, upon request by the competition authorities of the other Party and where consistent with the requested Party's enforcement interests, ascertaining whether persons that have provided confidential information in connection with those enforcement activities will consent to the sharing of such information between the Parties' competition authorities.

5. Either Party's competition authorities may at any time notify the other Party's competition authorities that they intend to limit or terminate coordinated enforcement and pursue their enforcement activities independently and subject to the other provisions of this Agreement.

Article V

POSITIVE COMITY

1. The Parties note that anticompetitive activities may occur within one State that, in addition to violating that State's competition laws, adversely affect important interests of the other Party. The Parties agree that it is in their common interest, consistent with the principle of positive comity, to seek relief against anticompetitive activities of this nature.

2. A Party may request that the other Party's competition authorities initiate enforcement activities against anticompetitive activities carried out in the requested State, if the requesting Party believes that such activities adversely affect its important interests. 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 authorities are able to provide.

3. The requested Party's competition authorities shall carefully consider whether to initiate enforcement activities with respect to the anticompetitive activities identified in the request. The requested Party's competition authorities shall promptly inform the requesting Party of its decision. If enforcement activities are initiated, the requested Party's competition authorities shall advise the requesting Party of their outcome and, to the extent possible, of significant interim developments.

4. Nothing in this Article limits the discretion of the requested Party's competition authorities under its competition laws and enforcement policies as to whether to undertake enforcement activities with respect to the anticompetitive activities identified in a request, or precludes the requesting Party's competition authorities from undertaking enforcement activities with respect to such anticompetitive activities.

Article VI

AVOIDANCE OF CONFLICTS

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 its 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. When a Party informs the other that a specific enforcement activity may affect the first Party's important interests, the second Party shall provide timely notice of developments of significance to those interests.

3. While an important interest of a Party may exist in the absence of official involvement by the Party with the activity in question, it is recognized that such interest would normally be reflected in antecedent laws, decisions or statements of policy by its competent authorities.

4. A Party's important interests may be affected at any stage of enforcement activity by the other Party. The Parties recognize the desirability of minimizing any adverse effects of their enforcement activities on each other's important interests, particularly in the choice of remedies. Typically the potential for adverse impact on one Party's important interests arising from enforcement activity by the other Party is less at the investigative stage and greater at the stage at which conduct is prohibited or penalized, or at which other forms of remedial orders are imposed.

5. Where it appears that one Party's enforcement activities may adversely affect the important interests of the other Party, each Party shall, in assessing what measures it will take, consider all appropriate factors, which may include but are not limited to:

- (a) the relative significance to the anticompetitive activities involved of conduct occurring within one State as compared to conduct occurring within that of the other;
- (b) 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;
- (c) 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 State;
- (d) the degree of conflict or consistency between the first Party's enforcement activities (including remedies) and the other Party's laws or other important interests;
- (e) whether private persons, either natural or legal, will be placed under conflicting requirements by both Parties;
- (f) the existence or absence of reasonable expectations that would be furthered or defeated by the enforcement activities;

(g) the location of relevant assets;

(h) the degree to which a remedy, in order to be effective, must be carried out within the other State; and

(i) 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.

Article VII

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 shall consult promptly when so requested with the view to reaching a conclusion that is consistent with the principles set forth in this Agreement.

2. Consultations under this Article shall take place at the appropriate level as determined by each Party.

3. During consultations under this Article, each Party shall provide to the other as much information as it is able in order to facilitate the broadest possible discussion regarding the relevant aspects of the matter that is the subject of consultations. Each 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 the specific results of its application of those principles to the matter that is the subject of consultations.

Article VIII

INTERAGENCY MEETINGS

Officials of the Parties' competition authorities shall meet periodically, in the United States and Israel, to:

(a) exchange information on their current enforcement efforts and priorities in relation to their competition laws;

(b) exchange information on economic sectors of common interest;

(c) discuss policy changes that they are considering; and

(d) discuss other matters of mutual interest relating to the application of their competition laws and the operation of this Agreement.

Article IX

CONFIDENTIALITY OF INFORMATION

1. Notwithstanding any other provision of this Agreement, neither Party is required to communicate information to the other Party if such communication 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 consistent with that Party's laws, any application by a third party for disclosure of such confidential information.
3. The degree to which either Party communicates information to the other pursuant to this Agreement may be subject to and dependent upon the acceptability of the assurances given by the other Party with respect to confidentiality and with respect to the purposes for which the information will be used.
4. Notifications and consultations pursuant to Articles II and VII of this Agreement and other communications between the Parties in relation thereto shall be deemed to be confidential. The notified Party may, after the notifying Party's competition authorities have advised a person who is the subject of a notification of the enforcement activities referred to in the notification, communicate the fact of the notification to, and consult with that person concerning the subject of the notification. The notifying Party shall, upon request, promptly inform the notified Party of the time at which the person has, or will be, advised of the enforcement activities in question.
5. Subject to paragraph 2, information communicated in confidence by a Party's competition authorities to the competition authorities of the other Party in the context of enforcement cooperation or coordination pursuant to Articles III, IV or V of this Agreement shall not be communicated to third parties or to other agencies of the receiving competition authorities' government, without the consent of the competition authorities that provided the information. A Party's competition authorities may, however, communicate such information to the Party's law enforcement officials for the purpose of competition law enforcement.
6. Information communicated in confidence by a Party's competition authorities to the competition authorities of the other Party in the context of enforcement cooperation or coordination pursuant to Articles III, IV or V of this Agreement shall not be used for purposes other than competition law enforcement, without the consent of the competition authorities that provided the information.

Article X

EXISTING LAWS

Nothing in this Agreement shall require a Party to take any action or to refrain from any action, if to do so would be inconsistent with its existing laws, or require any change in the laws of the Parties or, in the case of the United States, of its states.

Article XI

COMMUNICATIONS UNDER THIS AGREEMENT

Communications under this Agreement may be carried out by direct communication between the competition authorities of the Parties. Notifications under Article II and requests under Articles V(2) and VII(1) shall, however, be confirmed promptly in writing through customary diplomatic channels and shall refer to the initial communication between the competition authorities and repeat the information supplied therein.

Article XII

ENTRY INTO FORCE AND TERMINATION

1. This Agreement shall enter into force on the date of the latter notification confirming the fulfillment by the Parties of their relevant internal procedures for the entry into force of this Agreement.
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.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Washington, in duplicate, this 15th day of March, 1999, corresponding to the 27th day of Adar, 5759, in the English and Hebrew languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE
STATE OF ISRAEL:

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA: