



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
Japan concerning cooperation on anticompetitive activities**

(presented by the Commission)

EXPLANATORY MEMORANDUM

I. INTRODUCTION

The gradual lowering and, in some cases, removal of tariff and non-tariff barriers to trade since the 1960s, together with other liberalisation measures such as those concerning capital movements, have led to an enormous expansion in international trade. This has important consequences for the application of the competition rules. Increasingly, non-Community firms are acting in an anti-competitive manner which affects European markets. Generally speaking, anti-competitive practices within the Community are often linked to similar practices on other markets, while anti-competitive practices on other markets produce effects within the common market. Similarly, as far as structural changes are concerned, a merger that exceeds the thresholds laid down in the Merger Control Regulation¹ often has effects outside the common market. More and more often, practices in other countries can have repercussions within the Community, and it may be difficult to deal with them on the basis of Community rules.

In Community law, one of the criteria governing the application of Articles 81 and 82 of the EC Treaty is that the anti-competitive conduct in question should "affect trade between Member States". In its Wood pulp judgement, (Joined Cases 89/85, 104/85, 114/85, 116/85, 117/85 and 125/85 to 129/85, Åhlström and Others v Commission, of 27.09.1988, [1988] ECR 5193), the Court of Justice accepted that the Community competition rules could apply to undertakings based outside the Community where the conduct in question took place within the Community. Further, in its Gencor judgement (case T-102/96, Gencor Ltd. V. Commission, of 25.3.1999, [1999] ECR II-0753), the Court of First Instance stated that the application of EU merger control rules to concentrations between firms based outside the EU "is justified under public international law when it is foreseeable that [the] proposed concentration will have an immediate and substantial effect in the Community."

However, this approach does not allow effective action and sanctions to be taken against all restrictive conduct originating abroad. Furthermore, the problems encountered by firms operating at international level (multinationals) often have a global dimension, and the agreements which they conclude may be examined by different competition authorities. Conflicts between the activities of the various competition authorities are therefore highly probable, and it is useful to have a minimum level of communication between authorities in the application of their rules.

So as to deal with such increasingly international situations, cooperation arrangements must be (and have been) established between competition authorities that permit improved coordination where the same cases are handled by a number of authorities and will allow action to be taken against conduct originating in one country and having repercussions in another.

This approach allows an effective solution to be found to the problems encountered, while at the same time avoiding the conflicts that may arise from a unilateral reaction based on extraterritoriality. It is for this reason that the Commission considers that cooperation agreements must be concluded between competition authorities.

¹ OJ No L 395 of 30.12.1989, p. 1 (corrected version: OJ No L 257, 21.9.1990, p. 13), as amended by Council Regulation (EC) No 1310/97 of 30.06.1997, OJ L 180, 09.07.1997.

II. THE AGREEMENTS WITH THE US AND CANADA

In 1991² and 1998³ the European Communities concluded cooperation agreements with the US Government. In 1999⁴ a similar agreement was concluded with the Government of Canada. The aim of these agreements is to strengthen cooperation between competition authorities by encouraging the exchange of information, and to promote dialogue between authorities in accordance with an OECD recommendation on cooperation in competition matters.

However, these agreements go further than the OECD recommendation, for example by incorporating a number of principles established by US case-law in order to restrict excesses in the extraterritorial application of US competition rules (negative comity) and by developing the concept of positive comity, whereby a Party adversely affected by anti-competitive behaviour occurring in whole or in part in the territory of another Party may request that other Party to take action.

III. THE AGREEMENT BETWEEN THE EUROPEAN COMMUNITIES AND THE GOVERNMENT OF JAPAN CONCERNING COOPERATION ON ANTICOMPETITIVE ACTIVITIES

The reasons for concluding the cooperation agreements with the US and Canada also apply to the conclusion of similar agreements with other third countries. It is important that cooperation arrangements be established with our main trading partners. In this respect, Japan is a partner to be taken into consideration especially as it has a well-developed body of competition law and an established antitrust authority. Further, firms based in Japan are active in the European market and European firms interested in developing their activities in the Japanese markets could benefit from a possibility offered to the European Commission under a future agreement to request Japanese competition authorities to apply their domestic competition rules in order to eliminate private anti-competitive practices hindering access of foreign firms to the Japanese market.

It should be noted that (in October 1999) Japan concluded a bilateral competition cooperation agreement with the US, which is quite similar to the agreements between the EC and the US in 1991 and between the EC and Canada in 1999. These texts provided a solid foundation for the negotiation of a bilateral competition cooperation agreement between the EC and Japan. Pursuant to the negotiating directives adopted by the Council on 8.6.2000, the Commission and the Government of Japan drafted the proposed Cooperation Agreement which must now be concluded and signed under the procedures in force in the European Communities and in Japan. A draft text for a Cooperation Agreement between the European Communities and the Government of Japan against anticompetitive activities is annexed to the proposed Council and Commission Decision.

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.

³ Agreement between the European Communities and the Government of the United States of America on the application of positive comity principles in the enforcement of their competition laws, OJ L 173, 18.06.1998.

⁴ Agreement between the European Communities and the Government of Canada regarding the application of their competition laws, OJ L 175, 10.07.1999.

IV. LEGAL BASIS

In so far as the proposed Agreement relates to the competition rules of the EC Treaty, the legal basis for the Council to conclude the Agreement is Articles 83 and 308 of the EC Treaty in conjunction with the first subparagraph of Article 300 paragraph 3 thereof. The 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 proposed Agreement.

V. DESCRIPTION OF THE PROVISIONS OF THE DRAFT AGREEMENT

Article I- Purpose and definitions

According to Article I.1 the envisaged agreement has the following objectives :

- to establish a system of cooperation and coordination between the European Communities, on the one hand, and the Japanese competition authority on the other hand,
- to promote the effectiveness of antitrust enforcement on each side and
- to reduce the likelihood of conflicting or overlapping decisions.

Article I.2 provides definitions for the following terms used in the Agreement :

- "anticompetitive activities",
- "competent authority of a Member State" (because of Article IX.6),
- "competition authority(ies)",
- "competition law(s)", and
- "enforcement activities". It should be noted here that market research, studies and surveys are outside the scope of this term, if – and for so long as - they are not linked to a suspected infringement of competition rules.

As far as the Community is concerned, the scope of the agreement covers, Articles 81, 82 and 85 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. Future amendments of these provisions are also covered.

Article II - Notifications

Article II.1 provides that the competition authority of either Party is to be notified if any of its “important interests” are affected.

Under Article II.2 some situations are described in which it is considered that, in principle, the "important interests" of a Party are affected.

Article II.3 defines, as regards merger cases, the events which trigger the need for a notification and the point in time at which the notification should be carried out.

Article II.4 defines, as regards non-merger cases, the events which trigger the need for a notification and the point in time at which the notification should be carried out.

The general approach here is that notification is to take place at a stage in the proceedings early enough to allow the Party receiving the notification to react to it and the Party handling the case to take account of the other Party’s opinion.

Article II.5 states that notifications shall be sufficiently detailed to permit an initial evaluation by the Party receiving the notification of the effects of the enforcement activities carried out by the other Party on its important interests.

Article III – Provide assistance and information

Article III.1 states that the Parties agree to assist one another whenever their laws and their important interests allow them to do so.

Article III.2 provides that when the law allows this and if this is in the interest of a Party, it will inform the other of certain enforcement activities it undertakes :

- that involve infringements affecting competition in the other Party;
- provide information that will assist the other side to launch enforcement activities;
- provide it with relevant information relevant to the enforcement activities launched by the other side.

Article IV – Coordination of enforcement activities

Article IV.1 refers to related proceedings on both sides and the need to consider coordinating these activities. This will be the case where 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 coordinate their activities, including their respective investigations and provide each other with assistance, always to the extent compatible with their respective laws and important interests.

Article IV.2 lists the factors to be taken into account in order to decide whether coordination should be envisaged on a specific case.

Article IV.3 states that each competition authority will give careful consideration to the objectives pursued by the other Party in its enforcement activities.

Article IV.4 provides that – upon request – a Party may seek a waiver from a person that has provided confidential information, in order to share this information with the other side.

According to Article IV.5 either side may at any time notify the other of its intention to limit or terminate the coordination and pursue its enforcement activities independently.

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

Article V.1 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 full discretion, take any appropriate measure to enforce its competition rules.

Article V.2 stipulates the contents of the "positive comity" request.

Article V.3 states that the obligations of the Party receiving a "positive comity" request is to consider it carefully and to inform the requesting Party of its decision as soon as practically possible. However, if the requested Party decides to initiate enforcement activities, the requested Party’s competition authority shall inform the requesting Party of significant developments and the outcome of the activities.

Article V.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 withdrawing its request.

Article VI - Avoidance of conflict

Article VI.1 is otherwise known as the "negative" or "traditional comity" clause. It provides that each Party shall give careful consideration to the other Party's important interests throughout all phases of competition enforcement activities.

According to Article VI.2, once a case has been earmarked for traditional comity, each Party shall endeavour to provide timely notice of significant developments in its enforcement activities.

Article VI.3 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 cooperation in the competition sphere. The interests referred to must therefore be important by reference to that objective.

Article VII – Consultations

Article VII.1 is a general clause which provides for the possibility for each Party to request consultations via the diplomatic channel.

Article VII.2 prescribes the form of these consultations.

Article VIII - Annual meetings

Article VIII.1 deals with exchanges of views and contacts between the two sides when this is necessary for the purpose of applying the agreement.

Article VIII.2 provides for annual meetings between the competition authorities to discuss matters of common interest in cooperation and coordination in relation to their enforcement activities:

- enforcement efforts and priorities,
- policy changes under consideration,
- other matters.

Article IX – Exchange, use and protection of confidential information

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

Article IX.2a states that information exchanged may be used only for the purposes of the Agreement.

Article IX.2b states that information communicated in confidence between the Parties or their competition authorities must be maintained confidential.

Article IX.3 provides that information exchanged under the agreement must be used in accordance with the terms and conditions specified by the Party providing the information.

Article IX.4 provides that when uncertain on the capacity of the other side to provide all necessary guarantees and protections requested, a Party may limit the information it communicates.

Article IX.5 provides for certain exceptions from the above rules of absolute protection of information exchanged under the agreement. This is the case when :

- (a) the Party using the information has obtained the prior consent of the Party providing the information,
- (b) under certain conditions, when the receiving Party has a legal obligation to grant access to the information. In such case, i) the Parties' competition authorities shall not take any action which may result in a legal obligation to make information provided under this Agreement available to a third party, without the prior consent of the providing Party, ii) when possible give advance notice to the providing Party, upon request consult with it, and give due consideration to its important interests, and iii) use all available measures under its applicable laws and regulations to maintain the confidentiality of information as regards applications by a third party or other authorities for disclosure of the information concerned.

Article IX.6 ensures that any EC Member State concerned by the enforcement activities of the Japanese competition authority is kept informed of all notifications received under the agreement. The competent authorities of the EC Member States concerned will also be informed of any cooperation and coordination of enforcement activities. In this regard, a request from the Japanese competition authority not to disclose confidential information should be respected.

Article X - Existing laws

Article X.1 provides that neither Party is required to act in a manner inconsistent with its existing laws, nor when its resources and priorities do not allow for such action.

Article X.2 stipulates that more detailed arrangements necessary to implement this agreement may be made between the competition authorities of the Parties.

Article X.3 refers to the possibility for either Party to seek or provide assistance to one another pursuant to other bilateral or multilateral agreements or arrangements between them.

Article X.4 provides that nothing in this Agreement will prejudice the policy or legal position of either Party regarding any issue related to jurisdiction.

Article X.5 states that rights or obligations of each side under other international agreements are not affected by this agreement.

Article XI – Communications via the diplomatic channel

According to Article XI communications under this Agreement may be directly carried out between the competition authorities of the Parties, with the exception of notifications under paragraph 2b of Article I, Article II and requests under paragraph 1 of Article V of the agreement, which should be confirmed – promptly - in writing through the diplomatic channel.

Article XII - Entry into force and termination

Article XII.1 states that the Agreement will enter into force thirty days from its signature. This period will be used to publicise the agreement and inform the business communities of

its existence, as well as for putting in place the mechanisms necessary for the exchange of secure notifications.

According to Article XII.2 the Agreement may be terminated by either Party upon giving 60 days notice of that intention.

Article XII.3 provides for a review not later than 5 years from entry into force.

Linguistic regime

The agreement will be adopted in English, French, Danish, German, Greek, Spanish, Italian, Dutch, Portuguese, Finnish, Swedish and Japanese.

VI. CONCLUSION

In conclusion, the Commission proposes that the Council, after consultation of the European Parliament, approves the text of the draft Agreement and adopts the proposed Council and Commission Decision.

Proposal for a

COUNCIL AND COMMISSION DECISION

concluding the Agreement between the European Communities and the Government of Japan concerning cooperation on anticompetitive activities

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 83 and 308, in conjunction with the first subparagraph of Article 300 paragraph 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, given the increasingly pronounced international dimension to competition problems, international co-operation in this field should be strengthened;

Whereas the sound and effective enforcement of competition laws is a matter of importance to the efficient operation of the markets and to international trade;

Whereas elaboration of the principles of positive comity in international law and implementation of those principles in the enforcement of the competition laws of the European Communities and Japan are likely to increase the effectiveness in their application;

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

Whereas Article 308 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 undertakings⁵, which in turn is essentially based on Article 308;

Whereas the Agreement should be approved.

⁵ OJ No L 395 of 30.12.1989, p. 1 (corrected version: OJ No L 257, 21.9.1990, p. 13), as amended by Council Regulation (EC) No 1310/97 of 30.06.1997, OJ L 180, 09.07.1997.

HAVE DECIDED AS FOLLOWS

Article 1

The Agreement between the European Communities and the Government of Japan concerning cooperation on anticompetitive activities is hereby approved on behalf of the European Community and the European Coal and Steel Community.

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

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

ANNEX

AGREEMENT BETWEEN THE EUROPEAN COMMUNITIES AND THE GOVERNMENT OF JAPAN CONCERNING COOPERATION ON ANTICOMPETITIVE ACTIVITIES

The European Community and the European Coal and Steel Community (hereinafter referred to as "the European Communities"), on the one part, and the Government of Japan, on the other part (hereinafter referred to as "the Parties"):

Recognising that the world's economies, including those of the European Communities and Japan, are becoming increasingly interrelated;

Noting that the sound and effective enforcement of competition laws of the European Communities and Japan respectively is a matter of importance to the efficient functioning of their respective markets and to trade between them;

Noting that the sound and effective enforcement of competition laws of the European Communities and Japan respectively would be enhanced by cooperation and, where appropriate, coordination between the Parties in the application of those laws;

Noting that from time to time differences may arise between the Parties concerning the application of the competition laws of the European Communities and Japan respectively;

Noting their commitment to give careful consideration to the important interests of each Party in the application of the competition laws of the European Communities and Japan respectively (hereinafter referred to as the "competition laws of each Party"); and

Having regard to the Recommendation of the Council of the Organization for Economic Co-operation and Development Concerning Cooperation Between Member Countries on Anticompetitive Practices Affecting International Trade, as revised July 27 and 28, 1995, and to the Recommendation of the Council of the Organization for Economic Co-operation and Development Concerning Effective Action Against Hard Core Cartels adopted on March 25, 1998;

Have agreed as follows:

Article I

1. The purpose of this Agreement is to contribute to the effective enforcement of the competition laws of each Party through promoting cooperation and coordination between the competition authorities of the Parties and to avoid or lessen the possibility of conflicts between the Parties in all matters pertaining to the application of the competition laws of each Party.

2. For the purposes of this Agreement,

(a) the term "anticompetitive activities" means any conduct or transaction that may be subject to sanctions or other relief under the competition laws of Japan or the European Communities.

(b) the term "competent authority of a Member State" means one authority for each Member State mentioned in Article 299(1) of the Treaty establishing the

European Community competent for the application of competition laws. Upon signature of this Agreement a list of such authorities will be notified by the Commission of the European Communities to the Government of Japan. The Commission will notify to the Government of Japan an updated list each time this becomes necessary. No information pursuant to paragraph 6 of Article IX shall be sent to a competent authority of a Member State before this authority is included in the list notified by the Commission to the Government of Japan.

- (c) the terms "competition authority" and "competition authorities" mean:
 - (i) for the European Communities, the Commission of the European Communities, as to its responsibilities pursuant to the competition laws of the European Communities; and
 - (ii) for Japan, the Fair Trade Commission.
- (d) the term "competition laws" means:
 - (i) for the European Communities, Articles 81, 82, and 85 of the Treaty establishing the European Community, Council 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
 - (ii) for Japan, the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Law No. 54, 1947) (hereinafter referred to as "the Antimonopoly Law") and its implementing regulations as well as any amendments thereto.
- (e) the term "enforcement activities" means any application of competition laws by way of investigation or proceeding conducted by the competition authority of a Party. However, research, studies or surveys with the objective of examining the general economic situation or general conditions in specific industries are not included. Such research, studies or surveys shall not be construed so as to include any investigation with regard to suspected violation of competition laws.
- (f) the term "the territory of a Party", "the territory of the Party" and "the territory of the other Party" means the territory of Japan or the territory to which the Treaty establishing the European Community and the Treaty establishing the European Coal and Steel Community apply, as the context requires.
- (g) the term "the laws and regulations of a Party", "the laws and regulations of the Party" and "the laws and regulations of the other Party" means the laws and regulations of Japan or the laws and regulations of the European Communities, as the context requires.

Article II

1. The competition authority of each Party shall notify the competition authority of the other Party with respect to the enforcement activities that the notifying competition authority considers may affect the important interests of the other Party.

2. Enforcement activities that may affect the important interests of the other Party include those that:

- (a) are relevant to enforcement activities of the other Party;
- (b) are against a national or nationals of the other Party (in the case of the European Communities a national or nationals of the Member States of the European Communities), or against a company or companies incorporated or organised under the applicable laws and regulations within the territory of the other Party;
- (c) involve anticompetitive activities, other than mergers or acquisitions, carried out in any substantial part within the territory of the other Party;
- (d) involve a merger or acquisition in which:
 - (i) one or more of the parties to the transaction; or
 - (ii) a company controlling one or more of the parties to the transaction,

is a company incorporated or organised under the applicable laws and regulations within the territory of the other Party;
- (e) involve conduct considered by the notifying competition authority to have been required, encouraged or approved by the other Party; or
- (f) involve the imposition of, or application for, sanctions or other relief by a competition authority that would require or prohibit conduct within the territory of the other Party.

3. Where notification is required pursuant to paragraph 1 of this Article with respect to mergers or acquisitions, such notification shall be given not later than:

- (a) in the case of the European Communities,
 - (i) the Decision to initiate proceedings with respect to the concentration, pursuant to Article 6(1)(c) of Council Regulation (EEC) No. 4064/89; and
 - (ii) the issuance of a Statement of Objections.
- (b) in the case of Japan,
 - (i) the issuance of request to submit documents, reports or other information concerning the proposed transaction pursuant to the Antimonopoly Law; and
 - (ii) the issuance of a Recommendation or the Decision to initiate a hearing.

4. Where notification is required pursuant to paragraph 1 of this Article with respect to matters other than mergers or acquisitions, notification shall be given as far in advance of the following actions as is practically possible:

- (a) in the case of the European Communities,
 - (i) the issuance of a Statement of Objections; and

- (ii) the adoption of a Decision or settlement.
 - (b) in the case of Japan,
 - (i) the filing of a criminal accusation;
 - (ii) the filing of a complaint seeking an urgent injunction;
 - (iii) the issuance of a Recommendation or the Decision to initiate a hearing; and
 - (iv) the issuance of a surcharge payment order when no prior recommendation with respect to the payer has been issued.
5. Notifications shall be sufficiently detailed to enable the notified Party to make an initial evaluation of the effects of the enforcement activities on its own important interests.

Article III

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 consistent with the laws and regulations of the Party rendering the assistance and the important interests of that Party, and within its reasonably available resources.
2. The competition authority of each Party shall, to the extent consistent with the laws and regulations of the Party, and the important interests of that Party:
 - (a) inform the competition authority of the other Party with respect to its enforcement activities involving anticompetitive activities that the informing competition authority considers may also have an adverse effect on competition within the territory of the other Party;
 - (b) provide the competition authority of the other Party with any significant information, within its possession and that comes to its attention, about anticompetitive activities that the providing competition authority considers may be relevant to, or may warrant, enforcement activities by the competition authority of the other Party; and
 - (c) provide the competition authority of the other Party, upon request and in accordance with the provisions of this Agreement, with information within its possession that is relevant to the enforcement activities of the competition authority of the other Party.

Article IV

1. Where the competition authorities of both Parties are pursuing enforcement activities with regard to related matters, they shall consider coordination of their enforcement activities.
2. In considering whether particular enforcement activities should be coordinated, the competition authorities of the Parties should take into account the following factors, among others:
 - (a) the effect of such coordination on their ability to achieve the objectives of their enforcement activities;

- (b) the relative abilities of the competition authorities of the Parties to obtain information necessary to conduct the enforcement activities;
- (c) the extent to which the competition authority of either Party can secure effective relief against the anticompetitive activities involved;
- (d) the opportunity to make more efficient use of resources;
- (e) the possible reduction of cost to the persons subject to the enforcement activities; and
- (f) the potential advantages of coordinated relief to the Parties and to the persons subject to the enforcement activities.

3. In any coordinated enforcement activities, the competition authority of each Party shall seek to conduct its enforcement activities with careful consideration to the objectives of the enforcement activities by the competition authority of the other Party.

4. Where the competition authorities of both Parties are pursuing enforcement activities with regard to related matters, the competition authority of each Party shall consider, upon request by the competition authority of the other Party and where consistent with the important interests of the requested Party, inquiring whether persons who have provided confidential information in connection with those enforcement activities will consent to the sharing of such information with the competition authority of the other Party.

5. Subject to appropriate notification to the competition authority of the other Party, the competition authority of either Party may, at any time, limit or terminate the coordination of enforcement activities and pursue their enforcement activities independently.

Article V

1. If the competition authority of a Party believes that anticompetitive activities carried out in the territory of the other Party adversely affect the important interests of the former Party, such competition authority, taking into account the importance of avoiding conflicts regarding jurisdiction and taking into account that the competition authority of the other Party may be in a position to conduct more effective enforcement activities with regard to such anticompetitive activities, may request that the competition authority of the other Party initiate appropriate enforcement activities.

2. The request shall be as specific as possible about the nature of the anticompetitive activities and their effect on the important interests of the Party of the requesting competition authority, and shall include an offer of such further information and other cooperation as the requesting competition authority is able to provide.

3. The requested competition authority shall carefully consider whether to initiate enforcement activities, or whether to expand ongoing enforcement activities, with respect to the anticompetitive activities identified in the request. The requested competition authority shall inform the requesting competition authority of its decision as soon as practically possible. If enforcement activities are initiated, the requested competition authority shall inform the requesting competition authority 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 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 withdrawing its request.

Article VI

1. The competition authority of each Party shall give careful consideration to the important interests of the other Party throughout all phases of its enforcement activities, including decisions regarding the initiation of enforcement activities, the scope of enforcement activities and the nature of sanctions or other relief sought in each case.

2. When either Party informs the other Party that specific enforcement activities by the latter Party may affect the former's important interests, the latter Party shall endeavour to provide timely notice of significant developments of such enforcement activities.

3. Where either Party considers that enforcement activities by a Party may adversely affect the important interests of the other Party, the Parties should consider the following factors, in addition to any other factor that may be relevant in the circumstances in seeking an appropriate accommodation of the competing interests:

- (a) the relative significance to the anticompetitive activities of conduct or transactions occurring within the territory of a Party as compared to conduct or transactions occurring within the territory of the other Party;
- (b) the relative impact of the anticompetitive activities on the important interests of the respective Parties;
- (c) the presence or absence of evidence of an intention on the part of those engaged in the anticompetitive activities to affect consumers, suppliers, or competitors within the territory of the Party conducting the enforcement activities;
- (d) the extent to which the anticompetitive activities substantially lessen competition in the market of Japan and the European Communities respectively;
- (e) the degree of conflict or consistency between the enforcement activities by a Party and the laws and regulations of the other Party, or the policies or important interests of that other Party;
- (f) whether private persons, either natural or legal, will be placed under conflicting requirements by both Parties;
- (g) the location of relevant assets and parties to the transaction;
- (h) the degree to which effective sanctions or other relief can be secured by the enforcement activities of the Party against the anticompetitive activities; and
- (i) the extent to which enforcement activities by the other Party with respect to the same persons, either natural or legal, would be affected.

Article VII

1. The Parties may hold, as necessary, consultations through the diplomatic channel on any matter which may arise in connection with this Agreement.
2. A request for consultations under this Article shall be communicated through the diplomatic channel.

Article VIII

1. The competition authorities of the Parties shall consult with each other, upon request of either Party's competition authority, on any matter which may arise in the implementation of this Agreement.
2. The competition authorities of the Parties shall meet at least once a year to:
 - (a) exchange information on their current enforcement efforts and priorities in relation to the competition laws of each Party;
 - (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 the competition laws of each Party.

Article IX

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 and regulations of the Party possessing the information or such communication would be incompatible with its important interests.
2.
 - (a) Information, other than publicly available information, communicated by a Party to the other Party pursuant to this Agreement shall only be used by the receiving Party for the purpose specified in paragraph 1 of Article I of this Agreement.
 - (b) When a Party communicates information in confidence under this Agreement, the receiving Party shall, consistent with the laws and regulations, maintain its confidentiality.
3. A Party may require that information communicated 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.
4. Each Party may limit the information it communicates to the other Party when the latter Party is unable to give the assurance requested by it with respect to confidentiality, with respect to the terms and conditions it specifies, or with respect to the limitations of purposes for which the information will be used.
5. This Article shall not preclude the use or disclosure of information, other than publicly available information, by the receiving Party to the extent that:

- (a) the Party providing the information has given its prior consent to such use or disclosure, or
 - (b) there is an obligation to do so under the laws and regulations of the Party receiving the information. In such case, the receiving Party:
 - (i) shall not take any action which may result in a legal obligation to make available to a third party or other authorities information provided in confidence pursuant to this Agreement without the prior consent of the Party providing the information;
 - (ii) shall, wherever possible, give advance notice of any such use or disclosure to the Party which provided the information and, upon request, consult with the other Party and give due consideration to its important interests; and
 - (iii) shall, unless otherwise agreed by the Party which provided the information, use all available measures under the applicable laws and regulations to maintain the confidentiality of information as regards applications by a third party or other authorities for disclosure of the information concerned.
6. The competition authority of the European Communities,
- (a) after notice to the Japanese 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 Japanese competition authority;
 - (b) after consultation with the Japanese competition authority, will inform the competent authorities of such Member State or Member States of any cooperation and coordination of enforcement activities; and
 - (c) shall ensure that information, other than publicly available information, communicated to the competent authorities of the Member State or Member States pursuant to sub-paragraphs (a) and (b) above shall not be used for any purpose other than the one specified in paragraph 1 of Article I of this Agreement, as well as that such information shall not be disclosed.

Article X

1. This Agreement shall be implemented by the Parties in accordance with the laws and regulations in force in Japan and the European Communities respectively and within the available resources of their respective competition authorities.
2. Detailed arrangements to implement this Agreement may be made between the competition authorities of the Parties.
3. Nothing in this Agreement shall prevent the Parties from seeking or providing assistance to one another pursuant to other bilateral or multilateral agreements or arrangements between the Parties.
4. Nothing in this Agreement shall be construed to prejudice the policy or legal position of either Party regarding any issue related to jurisdiction.

5. Nothing in this agreement shall be construed to affect the rights and obligations of either Party under other international agreements or under the laws of Japan or the European Communities.

Article XI

Unless otherwise provided in this Agreement, communications under this Agreement may be directly carried out between the competition authorities of the Parties. Notifications under paragraph 2(b) of Article I, Article II and requests under paragraph 1 of Article V of this Agreement, however, shall be confirmed in writing through the diplomatic channel. The confirmation shall be made as promptly as practically possible after the communication concerned between the competition authorities of the Parties.

Article XII

- 1. This Agreement shall enter into force on the thirtieth day after the date of signature.
- 2. This Agreement shall remain in force until 60 days after the date on which either Party notifies the other Party in writing through the diplomatic channel that it wishes to terminate the Agreement.
- 3. The Parties shall review the operation of this Agreement not more than five years from the date of its entry into force.

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

DONE at....., in duplicate, on this.....day of....., in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Japanese, Portuguese, Spanish and Swedish languages. In case of divergence the English and Japanese texts shall prevail over the other language texts.

FOR THE EUROPEAN COMMUNITY:

FOR THE EUROPEAN COAL AND STEEL COMMUNITY:

FOR THE GOVERNMENT OF JAPAN:

AGREED MINUTES

The undersigned wish to record the following understanding which they have reached during the negotiation of the Agreement between the European Communities and the Government of Japan concerning cooperation on anticompetitive activities (hereinafter referred to as the "Agreement") signed today:

Both Parties confirm their understanding that:

(1) the Government of Japan is not required to communicate to the European Communities under the Agreement "trade secrets of entrepreneurs" covered by the provisions of Article 39 of the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Law No. 54, 1947), except for those communicated with the consent of the entrepreneurs concerned and in accordance with the provisions of paragraph 4 of Article IV of the Agreement; and

(2) the European Communities are not required to communicate to the Government of Japan under the Agreement confidential information covered by Article 20 of Regulation 17/1962, except for the information communicated in accordance with the provisions of paragraph 4 of Article IV of the Agreement.

FOR THE EUROPEAN COMMUNITY:

FOR THE EUROPEAN COAL AND STEEL COMMUNITY:

FOR THE GOVERNMENT OF JAPAN: