

AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL
REGARDING COOPERATION BETWEEN THEIR COMPETITION AUTHORITIES IN
THE ENFORCEMENT OF THEIR COMPETITION LAWS

The Government of the United States of America and the Government of the Federative Republic of Brazil (hereinafter referred to as "Parties"),

Desiring to enhance the effective enforcement of their competition laws through cooperation between their competition authorities;

Having regard to their close economic relations and noting that the sound and effective enforcement of their competition laws is a matter of crucial importance to the efficient operation of markets and to the economic welfare of the citizens of their respective countries;

Recognizing that cooperation and coordination in competition law enforcement activities may result in a more effective resolution of the Parties' respective concerns than would be attained through independent action;

Further recognizing that technical cooperation between the Parties' competition authorities will contribute to improving and strengthening their relationship; and

Noting the Parties' commitment to give careful consideration to each other's important interests in the application of their competition laws,

Have agreed as follows:

ARTICLE I
PURPOSE AND DEFINITIONS

1. The purpose of this Agreement is to promote cooperation, including both enforcement and technical cooperation, between the competition authorities of the Parties, and to ensure that the Parties give careful consideration to each other's important interests in the application of their competition laws.

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

- (a) "Anticompetitive practice(s)" 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 Brazil, the Administrative Council for Economic Defense (CADE) and the Secretariat for Economic Law Enforcement (SDE) in the Ministry of Justice; the Secretariat for Economic Monitoring (SEAE) in the Ministry of Finance;
 - (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 Brazil, Federal Laws 8884/94 and 9021/95; and Provisional Measure 1.567/97;
 - (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;
- (d) "Enforcement activity(ies)" means any investigation or proceeding conducted by a Party in relation to its competition laws;

3. Each Party shall promptly notify the other of any amendments to its competition laws and of such other new laws or regulations that the Party considers to be part of its competition legislation.

ARTICLE II NOTIFICATION

1. Each Party shall, subject to Article IX, notify the other party in the manner provided by this Article and Article XI with respect to enforcement activities specified in this Article. Notifications shall identify the nature of the practices under investigation and the legal provisions concerned, and shall ordinarily be given as promptly as possible after a Party's competition authorities become aware that notifiable circumstances are present.

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 territory of the other Party; (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 territory of the other Party or are otherwise directed at conduct in the territory of the other Party; or (f) involve the seeking of information located in the territory of the other Party.

3. The Parties acknowledge that officials of either Party may visit the territory of the other Party 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.

ARTICLE III ENFORCEMENT COOPERATION

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

2. 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 COOPERATION REGARDING ANTICOMPETITIVE PRACTICES IN THE TERRITORY OF ONE PARTY THAT MAY ADVERSELY AFFECT THE INTERESTS OF THE OTHER PARTY

1. The Parties agree that it is in their common interest to secure the efficient operation of their markets by enforcing their respective competition laws in order to protect their markets from anticompetitive practices. The Parties further agree that it is in their common interest to seek relief against anticompetitive practices that may occur in the territory of one Party that, in addition to violating that Party's competition laws, adversely affect the interest of the other Party in securing the efficient operation of the other Party's markets.

2. If a Party believes that anticompetitive practices carried out in the territory of the other Party adversely affect its important interests, the first Party may, after prior consultation with the other Party, request that the other Party's competition authorities initiate appropriate enforcement activities. The request shall be as specific as possible about the nature of the anticompetitive practices and their effects on the important 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 or to expand enforcement activities with respect to the anticompetitive practices identified in the request, and shall promptly inform the requesting Party of its decision. If enforcement activities are initiated or expanded, 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 practices identified in a request, nor precludes the requesting Party's competition authorities from undertaking enforcement activities with respect to such anticompetitive practices.

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

ARTICLE VI AVOIDANCE OF CONFLICTS; CONSULTATIONS

1. Each Party shall, within the framework of its own laws and to the extent compatible with its important interests, 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. 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 a view to reaching a conclusion that is consistent with the purpose of this Agreement.

ARTICLE VII TECHNICAL COOPERATION ACTIVITIES

The Parties agree that it is in their common interest for their competition authorities to work together in technical cooperation activities related to competition law enforcement and policy. These activities will include, within their competition agencies' reasonably available resources: exchanges of information pursuant to Article III of this Agreement; exchanges of competition agency personnel for training purposes at each other's competition agencies; participation of competition agency personnel as lecturers or consultants at training courses on competition law and policy organized or sponsored by each other's competition authorities; and such other forms of technical cooperation as the Parties' competition authorities agree are appropriate for purposes of this Agreement.

ARTICLE VIII MEETINGS OF COMPETITION AUTHORITIES

Officials of the Parties' competition authorities shall meet periodically to exchange information on their current enforcement efforts and priorities in relation to their competition laws.

ARTICLE IX CONFIDENTIALITY

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.

ARTICLE X EXISTING LAWS

Nothing in this Agreement shall require a Party to take any action, or to refrain from acting, in a manner that is inconsistent with its existing laws, or require any change in the laws of the Parties or of their respective 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 IV.2 and VI.2 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 on which the Parties exchange diplomatic notes informing each other that they have completed all applicable requirements for its entry into force.
2. This Agreement may be amended by the mutual agreement of the Parties. An amendment shall enter into force in the manner set forth in paragraph 1 for entry into force of this Agreement.
3. This Agreement shall remain in force for an indefinite period of time, unless one Party notifies the other Party in writing that it wishes to terminate the Agreement. In that case, the Agreement shall terminate 60 days after such written notice is given.

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

DONE at Washington, DC, this 26th day of October, 1999, in the English and Portuguese languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE
FEDERATIVE REPUBLIC OF BRAZIL: