



COMMISSION OF THE EUROPEAN COMMUNITIES

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**REPORT FROM THE COMMISSION TO
THE COUNCIL AND THE EUROPEAN PARLIAMENT
ON THE APPLICATION OF THE**

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

17 June 1999 to 31 December 1999

1. INTRODUCTION

On 17 June 1999 the European Commission concluded an Agreement with the Government of Canada regarding the application of their competition laws¹ ("the Agreement"), the aim of which is to promote cooperation between the competition authorities. By a joint decision of the Council and the Commission of 29 April 1999² the Agreement was approved. The Agreement was applicable from the date it was signed. The exchange of letters referred to in the Agreement was deemed to have taken place implicitly with the act of signature since they form an integral part of the Agreement.

The period covered by this first report is relatively short and therefore in many instances it has not been possible to identify significant trends or to draw definite conclusions.

Many of the cases notified during the period under review are still open, particularly matters falling under Articles 81 and 82 of the EC Treaty and, therefore, it is not possible to discuss them in detail or to mention them by name, save where they have already been the subject of a Commission statement or notice.

At the same time, merger cases, which gave rise to notifications and cooperation under the Agreement, are now mostly closed because of the strict deadlines applied under the Merger Regulation³ and these can therefore be discussed in this report.

In addition, the confidentiality surrounding Canadian procedures, and the obligation of confidentiality to which the European Communities are subject by virtue of Article X of the Agreement, has meant that even where the European Commission has completed its investigation and closed cases, references to specific cases which are still being pursued by the Canadian authorities, or are otherwise covered by confidentiality requirements, have had to be limited.

Despite these limitations, it is intended that this report will give some sense of the nature and degree of cooperation between the Commission and the Canadian Competition Bureau.

2. THE AGREEMENT

As a brief reminder, the main provisions of the Agreement include:

- notification of cases handled by the competition authorities of one Party, when these cases concern the important interests of the other Party (Article II), and exchange of information on general matters relating to the implementation of the competition rules (Article III);

¹ Agreement between the European Communities and the Government of Canada regarding the application of their competition laws, OJ L 175 of 10.07.1999, pp. 50-60.

² Council and Commission Decision of 29 April 1999, OJ L 175 of 10.07.1999, p. 49.

³ Council Regulation (EEC) No. 4064/89 of 21 December 1989 on the control of concentrations between undertakings, OJ L 395, 30.12.1989, p. 1; as corrected in OJ L 257, 21.9.1990, p. 13 and as amended by Council Regulation (EC) No 1310/97 of June 1997.

- cooperation and coordination of the actions of both Parties' competition authorities (Article IV) ;
- a "traditional comity" procedure by virtue of which each Party undertakes to take into account the important interests of the other Party when it takes measures to enforce its competition rules (Article VI);
- a "positive comity" procedure by virtue of which either Party can invite the other Party to take, on the basis of the latter's legislation, appropriate measures regarding anticompetitive behaviour implemented on its territory and which affects the important interests of the requesting Party (Article V).

In addition, the Agreement makes clear that none of its provisions may be interpreted in a manner which is inconsistent with the legislation in force in the European Communities and Canada (Article XI). In particular, the competition authorities remain bound by their internal rules regarding the protection of the confidentiality of information gathered by them during their respective investigations (Article X).

3. NOTIFICATIONS

3.1. Number of cases notified⁴: 4 (EU); 3 (Canada)

Notifications were made by the Commission in four cases during the period between 17 June 1999 and 31 December 1999. During the same period, the Commission received notifications from the Canadian Competition Bureau in three cases. Even though the number of notifications might not appear very high, considering the short time of existence of the Agreement and the quality of issues, the notifications have laid an important basis for cooperation. In tendency, notifications by the Commission concerning merger cases are increasing more rapidly than for other non-merger antitrust cases.

3.2. Practical steps

During the period under review, the Commission took some practical steps to ensure that it fulfills its obligations under the newly-concluded agreement, and in particular to ensure that cases meeting the criteria for notification are duly notified.

To keep trace of notifications under the Agreement, the database of notifications was modified to record the details, in line with DG Competition's policy of computerising its work, wherever this brings efficiencies. This allows case handlers in the operational units to feed into the database the information necessary to make a notification. The notifications database does not, however, contain any of the confidential information collected by DG Competition during the investigation of the case, as this is contained in a file to which access is restricted.

⁴ The figures given represent the number of cases in which notifications were made under Article II of the Agreement. Notifications are made at a number of specified stages of the investigations and formal procedure in a case. Therefore, the number of notifications can be higher.

3.3. Notifications to the Member States

All notifications received by the Canadian Competition Bureau are copied to the Member State or Member States whose interests might be affected, at the same time as they are forwarded to the relevant units of DG Competition. Equally, at the same time that DG Competition makes notifications to the Canadian Competition Bureau, copies are sent to the Member State(s) whose interests are affected.

4. COOPERATION

The Commission's experience of cooperation with its Canadian counterparts in individual cases since June 17, 1999 has been very positive. However, as stated above, many of the cases where there have been contacts are still under investigation, on one side or the other, and so cannot be discussed.

The nature of cooperation depends on the individual case, and can relate to such matters as simple enquiries regarding the timing of procedures or to coordination of the proposed remedy in a case.

Moreover, the Canadian Competition Bureau and DG Competition of the Commission held the first bilateral meeting under the Agreement on September 30, 1999. These bilateral meetings are an important implementing activity pursuant to Article VIII of the Agreement. The meeting took place in a friendly atmosphere and has confirmed the good basis for developing further mutual cooperation. Its agenda included the implementation activities undertaken by each Party after entry into force of the Agreement. The first notifications and the ensuing cooperation were also the subject of a short appraisal. There were also detailed discussions on important competition policy issues of common concern. With respect to furthering cooperation activities, some ideas were presented by each side and it was agreed that these would be developed pragmatically on the basis of the experience with the Agreement.

5. SOME CASES

The first notification received from Canada on June 30, 1999 concerned an investigation on the market for vitamins and related products. By the time of the first bilateral meeting, the Canadian Competition Bureau had announced that the former Vice President – Sales of the Chinook Group Ltd. of Toronto was sentenced to nine months imprisonment for his participation in an extended international conspiracy to fix prices and allocate or share markets for choline chloride.

An issue which had received considerable attention in Canada was the announced merger of Onex/ Canada Airlines/ Air Canada that had also been notified to the Commission under the merger regulation. The Commission itself notified the case to the Canadian Competition Bureau on September 23, 1999. Pursuant to this the Canadian Competition Authority has lodged a request for cooperation. At the time of the request, the Canadian Competition Bureau had no jurisdiction over the case since the application of its competition law had been suspended. Apart from that, discussions took place with a view to providing competition policy advice on how to best promote competition in Canada's airline industry. The

notification of the merger to the Commission was ultimately withdrawn, at the moment it became clear that the transaction would not go ahead.

6. CONCLUSION

The Agreement has had a successful start. It was up and running only a fortnight after its signature and entry into force. Each of the cases on which cooperation has taken place have proven to be of important interest to at least one of the Parties.