

**AGREEMENT¹ BETWEEN
THE GOVERNMENT OF CANADA
AND THE GOVERNMENT OF COUNTRY X
REGARDING MUTUAL LEGAL ASSISTANCE IN
NON-CRIMINAL COMPETITION MATTERS**

The Governments of Canada and Country X (individually a “Party” or collectively the “Parties”), desiring to improve the effectiveness of the enforcement of the competition laws of both countries through mutual legal assistance, hereby agree as follows:

**ARTICLE I
DEFINITIONS**

“central authority” means

- (i) for Canada, the Minister of Justice (or a person designated by the Minister of Justice);
- (ii) for Country X, _____.

“competent authority” means

- (i) for Canada, the Commissioner of Competition;
- (ii) for Country X, _____.

“evidence” means evidence gathered to investigate conduct.

“competition law” means

- (i) for Canada, Part VII.1 and VIII of the *Competition Act*, R.S.C. 1985, c. C-34, as amended
- (ii) for Country X, _____.

“conduct” means

- (i) for Canada, conduct reviewable under the competition law of Canada

¹This Model Treaty has been prepared on the basis of provisions contained in Bill C-23, *An Act to amend the Competition Act and the Competition Tribunal Act*, which is currently before Parliament. It is not law and should not be interpreted as necessarily reflecting the views of the Government of Canada. It is for illustrative purposes only.

(ii) for Country X, _____.

**ARTICLE II
OBJECT AND SCOPE OF ASSISTANCE**

- A. The Parties shall assist one another on a reciprocal basis in gathering evidence of conduct that is addressed under the requesting Party's competition law.
- B. Assistance contemplated by this Agreement shall include assisting to obtain or gather evidence pursuant to an evidence gathering order, a search and seizure order, an order for a video link or an order for the lending of exhibits.
- C. Assistance may be provided whether or not the conduct underlying a request could constitute a contravention of the competition law of the requested Party.
- D. Nothing in this Agreement shall prevent the provision of assistance pursuant to other agreements, treaties or arrangements between the Parties.
- E. This Agreement shall be used solely for the purpose of mutual legal assistance between the Parties.
- F. The provisions of this Agreement shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request made pursuant to this Agreement.
- G. Nothing in this Agreement compels a person to provide any evidence in violation of any legally applicable right or privilege.
- H. Nothing in this Agreement affects the right of a central authority of one Party to seek evidence on a voluntary basis from a person located in the territory of the other Party, nor does anything in this Agreement preclude any such person from voluntarily providing evidence to a central authority.

**ARTICLE III
REQUESTS FOR ASSISTANCE**

A. A Party seeking to obtain evidence that may be gathered in another territory shall request assistance pursuant to the provisions of this treaty. Such requests shall be made in writing and directed to the central authority of the requested Party.

B. Requests shall include:

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1. A general description of the conduct under investigation to which the request relates, including identification of the persons subject to the investigation or proceeding and citations to the specific competition law involved giving rise to the investigation or proceeding; such description shall include information sufficient to explain how the conduct cited in the request concerns a possible contravention of the competition law in question;
2. The purpose for which the evidence is sought and its relevance to the investigation or proceeding to which the request relates. The requesting Party shall state that the request is not made for the purpose of any criminal proceeding;
3. A description of the evidence sought, including, where applicable and to the extent necessary and possible:
 - (a) the identity and location of any person from whom evidence is sought, and a description of that person's relationship to the investigation or proceeding which is the subject of the request;
 - (b) the subject-matter to be addressed in the examination of a witness;
 - (c) a description of documentary evidence requested; and
 - (d) with respect to searches and seizures, a description of the premises to be searched and the evidence to be seized and information which could justify the making of the order for such search and seizure under the laws of the requested Party, including reasons why an evidence gathering order is not appropriate under the circumstances;
4. Where an order for a video link is sought, any information which could justify the making of the order under the laws of the requested Party;
5. Where a loan order is sought to have sent to the requesting Party evidence which was admitted into evidence in a court or judicial body of the requested Party, any information which could justify the making of the order under the laws of the requested Party;

6. Where applicable, a description of procedural or evidentiary requirements bearing on the manner in which the requesting Party desires the request to be executed, which may include requirements relating to:

- (a) the manner in which any testimony or statement is to be taken or recorded;
- (b) the participation of counsel;
- (c) the administration of oaths;
- (d) any legal privileges that may be invoked under the law of the requesting Party that the requesting Party wishes the competent authority to respect in executing the request, together with an explanation of the desired method of taking the testimony or provision of evidence to which such privileges may apply; and
- (e) the authentication of records;

7. The desired time period for execution of the request; and

8. Any other information that may facilitate review by the central authority or execution by the competent authority of a request.

C. Requests shall include requirements, if any, for confidential treatment of the request or its contents.

D. Requests shall be accompanied by written assurances of the central authority that there have been no significant modifications to the confidentiality laws and procedures described in Annex A hereto.

E. A central authority may modify or supplement a request prior to its execution if the requested Party agrees.

ARTICLE IV LIMITATIONS ON ASSISTANCE

A. The requested Party may deny assistance in whole or in part if that Party's central authority determines that:

1. a request is not made in accordance with the provisions of this Agreement;
 2. execution of a request would exceed the requested Party's reasonably available resources;
 3. execution of a request would not be authorized by the laws of the requested Party;
or
 4. execution of a request would be contrary to the public interest of the requested Party.
- B. Before denying a request, the central authority of the requested Party shall consult with the central authority of the requesting Party to determine whether assistance may be given in whole or in part, subject to specified terms and conditions.
- C. If a request is denied in whole or in part, the central authority of the requested Party shall promptly inform the central authority of the requesting Party that made the request and provide an explanation of the basis for denial.

ARTICLE V EXECUTION OF REQUESTS

- A. After receiving a request, the central authority shall promptly provide the requesting Party with an initial response.
- B. The central authority of the requested Party may request additional information concerning the request or may determine that the request will be executed only subject to specified terms and conditions. Without limitation, such terms and conditions may relate to (1) the manner or timing of the execution of the request, or (2) the use or disclosure of any evidence provided. If the requesting Party accepts assistance subject to such terms and conditions, it shall comply with them.
- C. A request shall be executed in accordance with the laws of the requested Party.
- D. The central authority shall notify the requesting Party in advance about the date and place of the taking of testimony or the production of evidence pursuant to this Agreement.

- E. The central authority shall, to the extent permitted by the laws of the requested Party, comply with any instructions of the requesting Party with respect to any claims of legal privilege or immunity under the laws of the requesting Party.
- F. The central authority and competent authority shall, to the extent permitted by the laws and other important interests of the requested Party, facilitate the participation in the execution of a request of such officials of the requesting Party as are specified in the request.
- G. The central authority shall, to the extent permitted by the laws of the requested Party, permit a person whose testimony is to be taken pursuant to this Article to have counsel present during the testimony.
- H. A person requested to testify and produce documents, records, or other articles pursuant to this Agreement may be compelled to appear and testify and produce such documents, records, and other articles, in accordance with the requirements of the laws of the requested Party. Every person whose attendance is required for the purpose of giving testimony pursuant to this Agreement is entitled to such fees and allowances as may be provided for by the laws of the requested Party.
- I. Evidence consisting of testimony or documentary evidence provided by the requested Party pursuant to this Agreement shall be authenticated in accordance with the requirements of the laws of the requesting Party, in so far as such requirements would not violate the laws of the requested Party.
- J. Upon request, every official of a requested Party who has custody of evidence seized pursuant to this Agreement shall certify the continuity of custody, the identity of the evidence, and the integrity of its condition; the requested Party shall furnish such certifications in the form specified by the requesting Party.

ARTICLE VI CONFIDENTIALITY

- A. Except as otherwise provided by this paragraph and Article VII, each Party shall, to the fullest extent possible consistent with that Party's laws, maintain the confidentiality of any request and of any information communicated to it by the other Party under this Agreement. In particular:
1. The requesting Party may ask that assistance be provided in a manner that maintains the confidentiality of a request and/or its contents. If a request cannot be

executed in that manner, the requested Party shall so inform the requesting Party, which shall then determine the extent to which it wishes the request to be executed; and

2. Evidence obtained pursuant to this Agreement shall be kept confidential by both the requesting Party and the requested Party, except as provided in paragraph D of this Article and Article VII.

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.

B. By entering into this Agreement, each Party confirms that the confidentiality of evidence obtained under this Agreement is ensured by its laws and procedures pertaining to the confidential treatment of such evidence and are sufficient to provide protection that is adequate to maintain securely the confidentiality of evidence provided under this Agreement.

C. Unauthorized or illegal disclosure or use of information communicated in confidence to a Party pursuant to this Agreement shall be reported immediately to the central authority of the Party that provided the information; the central authorities of both Parties, together with the competent authority that provided the information, shall promptly consult on steps to minimize any harm resulting from the disclosure and to ensure that unauthorized or illegal disclosure or use of confidential information does not recur.

D. When, in an action or proceeding brought by the competent authority of the requesting Party, disclosure of evidence is required by the laws of the requesting Party, the requesting Party shall notify the central authority of the requested Party at least 10 days in advance of any such disclosure. If such notice cannot be given within that time period, then the requesting Party shall notify the central authority of the requested Party as promptly as possible.

ARTICLE VII LIMITATIONS ON USE

A. Evidence obtained pursuant to this Agreement may be used by a requesting Party to administer or enforce its competition law only (1) in the investigation or proceeding specified in the request in question and (2) for the purpose stated in the request.

B. The requested Party may attach terms or conditions including conditions respecting applicable rights or privileges under the requested Party's laws. The requesting Party agrees to use the evidence subject to those terms or conditions upon which the evidence was provided.

C. The Parties are not bound by the confidentiality requirements of this Agreement with respect to evidence which has properly been made public.

**ARTICLE VIII
CHANGES IN APPLICABLE LAW**

A. The Parties shall provide to each other prompt written notice of actions within their respective jurisdictions having the effect of modifying their competition law or the confidentiality laws.

B. In the event a notified Party considers a modification to the other Party's competition law or confidentiality laws to be significant, the Parties shall promptly consult to determine whether this Agreement should be amended.

**ARTICLE IX
RETURN OF EVIDENCE**

At the conclusion of the investigation or proceeding which is the subject of a request, the central authority of the requesting Party shall return to the central authority of the requested Party from which it obtained evidence all such evidence obtained pursuant to the execution of a request under this Agreement, along with all copies thereof, in the possession or control of the central authority or competent authority of the requesting Party. Copies may be destroyed instead of being returned with the approval of the central authority of the requested Party. Evidence that has been made public in the course of judicial or administrative proceedings or that has otherwise properly entered the public domain need not be returned.

**ARTICLE X
COSTS**

Unless otherwise agreed, the requested Party shall pay all costs of executing a request, except for the fees of expert witnesses, the costs of translation, interpretation, and transcription, and the allowances and expenses related to travel to the territory of the requested Party, pursuant to Article V, by officials of the requesting Party.

**ARTICLE XI
ENTRY INTO FORCE AND TERMINATION**

A. This Agreement shall enter into force upon notification by each Party to the other through diplomatic channels that it has completed its necessary internal procedures.

B. Assistance under this Agreement shall be available in investigations or proceedings under the Parties' competition law concerning conduct occurring before as well as after this Agreement enters into force.

C. A Party may unilaterally elect to terminate this Agreement upon the unauthorized or illegal disclosure or use of confidential evidence provided hereunder; provided, however, that neither Party shall make such an election until after it has consulted with the other Party, pursuant to Article VI.C, regarding steps to minimize any harm resulting from the unauthorized or illegal disclosure or use of information communicated in confidence under this Agreement, and steps to ensure that such disclosure or use does not recur. Termination shall take effect immediately upon notice or at such future date as may be determined by the terminating Party.

D. On termination of this Agreement, the Parties agree, subject to Article VI.D and Article VII, to maintain the confidentiality of any request and information communicated to them in confidence by the other Party under this Agreement prior to its termination; and to return, in accordance with the terms of Article IX, any evidence obtained from the other Party under this Agreement; provided, however, that any such request or information that has become public in the course of public judicial or administrative proceedings is not subject to this requirement.

E. In addition to the procedure set forth in paragraph C of this Article, either Party may terminate this Agreement by means of written notice through diplomatic channels. Termination shall take effect ____ days after the date of receipt of such notification.

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

DONE at _____, this ____ day of _____, _____, in duplicate, in the English and French languages.

FOR THE GOVERNMENT OF
CANADA:

FOR THE GOVERNMENT OF
COUNTRY X:

Date: /S/

Date: /S/

Date: /S/

Date: /S/

(This annex will describe the confidentiality laws and procedures of Canada and Country X.)

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