

Agreement on Cooperation in Competition Cases

The Government of the Kingdom of Denmark, the Government of the Republic of Finland, the Government of the Republic of Iceland, the Government of the Kingdom of Norway, and the Government of the Kingdom of Sweden, hereinafter referred to as “the Parties”.

Having regard to the current agreement between Denmark, Iceland, Norway and Sweden on cooperation in competition cases of 16 March 2001 and 9 April 2003,

Having regard to the Recommendation of the OECD Council concerning International Co-operation on Competition Investigations and Proceedings of 16 September 2014,

Whereas:

In order to strengthen and formalize the cooperation between their national competition authorities and to ensure an effective enforcement of their national competition acts the Parties are adhering to the following:

- To commit to effective cooperation and take appropriate steps to minimize direct or indirect obstacles to effective enforcement cooperation between the Parties' competition authorities.
- Normally a Party should notify another Party when its investigation or proceeding can be expected to affect the other Party's important interests.
- Where two or more Parties investigate or proceed against the same or related anticompetitive practice or merger, they should endeavor to co-ordinate their investigations or proceedings where their competition authorities agree that it would be in their interest to do so.
- In cooperation with other Parties, where appropriate and practicable, the Parties should provide each other with relevant information that enables their competition authorities to investigate and take appropriate and effective actions with respect to anticompetitive practices and mergers.
- Regardless of whether two or more Parties proceed against the same or related anticompetitive practice or merger, if competition authorities of the Parties deem it appropriate they should support each other in their enforcement activities by providing each other with investigative assistance as appropriate and practicable, taking into account available resources and priorities.

HAVE ADOPTED THIS AGREEMENT:

ARTICLE 1

Definitions

For the purpose of this agreement the following definitions are used:

"Competition authority" means a Party's entity responsible for enforcing a Party's competition rules and merger control rules;

"Competition rules" refer to Articles 101 or 102 TFEU and/or Articles 53 or 54 EEA and/or equivalent national competition rules as indicated by each Party in a list, enclosed to this agreement, to be established and periodically updated by the competition authorities of the Parties;

"Confidential information" refers to information, the disclosure of which is either prohibited or subject to restrictions under the laws, regulations, or policies of a Party, e.g., non-public business information the disclosure of which could prejudice the legitimate commercial interests of an enterprise;

"Merger control rules" refer to rules in the competition acts of a Party, governing mergers, acquisitions, joint ventures or any other form of business amalgamations that falls within the scope and the definitions of the competition acts of a Party. Each Party shall establish and periodically update a list, enclosed to this agreement, with reference to rules in the competition acts of a Party governing mergers;

ARTICLE 2

Notifications of competition investigations, proceedings and mergers

The competition authority of a Party shall have the power to notify the competition authority of another Party when its investigation or proceeding can be expected to affect the other Party's important interests. Circumstances that may justify a notification include, but are not limited to;

- a) Formally seeking non-public information located in the territory of another Party;
- b) The investigation of an enterprise located in or incorporated or organized under the laws of another Party;
- c) The investigation of a practice occurring in whole or in part in the territory of another party, or required, encouraged or approved by the government of another Party;
- d) The consideration of remedies that would require or prohibit conduct in the territory of another Party;
- e) A merger that belongs under the jurisdiction of another Party; or
- f) A merger where one or more of the participants in the transaction are enterprises located in, incorporated or organized under the laws of another Party.

The notifying competition authority, while retaining full freedom of the ultimate decision, should take account of the views that the competition authority of the other Party may wish to express.

ARTICLE 3

Exchange of information

For the purpose of applying competition rules and merger control rules the competition authorities of the Parties shall have the power to provide one another with and use in evidence any matter of fact or of law, including confidential information.

Information exchanged shall only be used in evidence and in respect of the subject matter for which it was collected by the transmitting authority.

ARTICLE 4

Requests for information

The competition authority of a Party may in its own territory carry out any requests for information under its national law on behalf and for the account of the competition authority of another Party in order for the requesting authority to apply competition rules or merger control rules. Any exchange or use of the information collected shall be carried out in accordance with Article 3.

ARTICLE 5

Inspections

The competition authority of a Party may in its own territory carry out any inspection or other fact-finding measure under its national law on behalf of and for the account of the competition authority of another Party in order to establish whether there has been an infringement of competition rules governed by the requesting Party. Any exchange or use of the information collected shall be carried out in accordance with Article 3.

The officials of the competition authority who are responsible for conducting the inspection as well as those authorized or appointed by them shall exercise their powers in accordance with their national law.

If so requested by the competition authority in whose territory the inspection is to be conducted, officials and other accompanying persons authorized by the competition authority requesting the inspection may assist the officials of the authority concerned.

ARTICLE 6

Formal requirements

The Parties shall inform each other in writing about changes in their competition acts or other legislation adopted after the conclusion of this agreement, which may affect the agreement.

ARTICLE 7

Entry into force

This agreement shall be subject to ratification, acceptance or approval by the Parties in accordance with their respective constitutional requirements. The agreement shall enter into force on the thirtieth day following the date on which two instruments of ratification, acceptance or approval have been deposited by the Parties. For each Party ratifying, accepting or approving the Agreement after the deposit of the second instrument of ratification, acceptance or approval, the Agreement shall enter into force on the thirtieth day after deposit by such Party of its instrument of ratification, acceptance or approval.

Article 5 of the agreement shall only enter into force with respect to Iceland 30 days after the Government of Iceland has informed the Ministry of Foreign Affairs of Denmark hereof. The Ministry of Foreign Affairs of Denmark shall inform the Parties of receipt of this message and of the date Article 5 shall enter into force with respect to Iceland.

The agreement shall only enter into force with respect to the Faroe Islands 30 days after the Government of Denmark has informed the Ministry of Foreign Affairs of Denmark hereof. The Ministry of Foreign Affairs of Denmark shall inform the Parties of receipt of this message and of the date the agreement shall enter into force with respect to the Faroe Islands.

Articles 4-5 of the agreement shall only enter into force with respect to Greenland 30 days after the Government of Denmark has informed the Ministry of Foreign Affairs of Denmark hereof. The Ministry of Foreign Affairs of Denmark shall inform the Parties of receipt of this message and of the date Articles 4-5 shall enter into force with respect to Greenland.

This agreement replaces the Nordic cooperation in competition cases agreement of 16 March 2001 and of 9 April 2003.

ARTICLE 8

Revision and termination

The agreement may be revised at any time.

Any Party may at any time withdraw from this Agreement by sending written notification thereof to the depositary through diplomatic channels at least six months in advance, specifying the effective date of its withdrawal. Withdrawal from this Agreement shall not affect its application among the remaining Parties.

ARTICLE 9

Depositary

The instruments of ratification, acceptance or approval shall be deposited with the Government of Denmark which shall be the Depositary of the Agreement and forward the Parties a certified copy of the text.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed the present Agreement.

Done in Helsinki this 8 September 2017 in one original in the English, Danish, Finnish, Icelandic, Norwegian and Swedish language which shall be deposited with the Depositary, who shall forward the Parties a certified copy of the texts.

In case of a conflict between the English text of this Agreement and the Danish, Finnish, Icelandic, Norwegian and Swedish text(s) of this Agreement, the English text shall prevail.

Attachment to agreement on cooperation in competition cases

National competition rules:

Denmark:

- Article 101 TFEU/53 EEA: Konkurrencelovens §§ 6-10
- Article 102 TFEU/54 EEA: Konkurrenceloven § 11
- Merger control rules: Konkurrenceloven §§ 12- 12h

Faroe Islands:

- Article 101 TFEU/53 EEA: Løgtingslóg nr. 35 frá 3. mai 2007 um kapping, sum broytt við løgtingslóg nr. 35 frá 27. apríl 2012 (Kappingarlógin), §§ 6-10
- Article 102 TFEU/54 EEA: Løgtingslóg nr. 35 frá 3. mai 2007 um kapping, sum broytt við løgtingslóg nr. 35 frá 27. apríl 2012 (Kappingarlógin), § 11
- Merger control rules: Løgtingslóg nr. 35 frá 3. mai 2007 um kapping, sum broytt við løgtingslóg nr. 35 frá 27. apríl 2012 (Kappingarlógin), §§ 13 – 18b

Greenland:

- Article 101 TFEU/53 EEA: Unammilleqatigiinneq pillugu Inatsisartut inatsisaat nr. 1, 15. maj 2014-imeersoq (unammilleqatigiinnermut inatsit) §§ 6-10 | Inatsisartutlov nr. 1 af 15. maj 2014 om konkurrence (konkurrenceloven) §§ 6-10
- Article 102 TFEU/54 EEA: Unammilleqatigiinneq pillugu Inatsisartut inatsisaat nr. 1, 15. maj 2014-imeersoq (unammilleqatigiinnermut inatsit) § 11 | Inatsisartutlov nr. 1 af 15. maj 2014 om konkurrence (konkurrenceloven) § 11
- Merger control rules: Unammilleqatigiinneq pillugu Inatsisartut inatsisaat nr. 1, 15. maj 2014-imeersoq (unammilleqatigiinnermut inatsit) §§ 15-23 | Inatsisartutlov nr. 1 af 15. maj 2014 om konkurrence (konkurrenceloven) §§ 15-23

Finland:

- Article 101 TFEU/53 EEA: Kilpailulain 5 §, 12.8.2011/948
- Article 102 TFEU/54 EEA: Kilpailulain 7 §, 12.8.2011/948
- Merger control rules: Kilpailulain 4 luku, 12.8.2011/948

Iceland:

- Article 101 TFEU/53 EEA: 10. gr. samkeppnislaga nr. 44/2005.
- Article 102 TFEU/54 EEA: 11. gr. samkeppnislaga nr. 44/2005.
- Merger control rules: 17. gr. og 17. gr. a – 17. gr. e samkeppnislaga nr. 44/2005

Norway:

- Article 101 TFEU/53 EEA: Konkurranseloven av 5. mars 2004 nr. 12 § 10
- Article 102 TFEU/54 EEA: Konkurranseloven av 5. mars 2004 nr. 12 § 11
- Merger control rules: Konkurranseloven av 5. mars 2004 nr. 12 §§ 16 og 16a

Sweden:

- Article 101 TFEU/53 EEA: 2 kap. 1 § konkurrenslagen (2008:579)
- Article 102 TFEU/54 EEA: 2 kap. 7 § konkurrenslagen (2008:579)
- Merger control rules: 4 kap. 1 § konkurrenslagen (2008:579)

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