

U. S. - GERMANY ANTITRUST ACCORD

Subject to ratification by both countries, the United States and West Germany agreed to the following on June 23, 1976.

*Agreement
Between the
Government of the United States of America
and the Government of the
Federal Republic of Germany
Relating to Mutual Cooperation Regarding
Restrictive Business Practices*

[In full text]

The Government of the United States of America and the Government of the Federal Republic of Germany, considering that restrictive business practices affecting their domestic or international trade are prejudicial to the economic and commercial interests of their countries,

Convinced that action against these practices can be made more effective by the regularization of cooperation between their antitrust authorities, and

Having regard, in this respect, to their Treaty of Friendship, Commerce, and Navigation and to the Recommendations of the Council of the Organization for Economic Cooperation and Development Concerning Cooperation Between Member Countries on Restrictive Business Practices Affecting International Trade adopted on October 5, 1967, and on July 3, 1973,

Have agreed as follows:

Article 1

For the purpose of this Agreement, the following terms shall have the meanings indicated:

- (a) "Antitrust laws" shall mean, in the United States of America, the Sherman Act (15 U.S.C. §§ 1-11), the Clayton Act (15 U.S.C. § 12 *et seq.*), and the Federal Trade Commission Act (15 U.S.C. § 41 *et seq.*), and in the Federal Republic of Germany, the Act Against Restraints on Competition ("Gesetz gegen Wettbewerbsbeschränkungen") (BGB1. I 1974, 869) as those Acts have been and may from time to time be amended.

(b) "Antitrust authorities" shall mean, in the United States of America, the Antitrust Division of the United States Department of Justice and the Federal Trade Commission, and, in the Federal Republic of Germany, the Federal Minister of Economics ("Bundesminister für Wirtschaft") and the Federal Cartel Office ("Bundeskartellamt") and successors in each country.

(c) "Information" shall include reports, documents, memoranda, expert opinions, legal briefs and pleadings, decisions of administrative or judicial bodies, and other written or computerized records.

(d) "Restrictive business practices" shall include all practices which may violate, or are regulated under, the antitrust laws of either party.

(e) "Antitrust investigation or proceeding" shall mean any investigation or proceeding related to restrictive business practices and conducted by an antitrust authority under its antitrust laws.

Article 2

(1) Each party agrees that its antitrust authorities will cooperate and render assistance to the antitrust authorities of the other party, to the extent set forth in this Agreement, in connection with:

- (a) antitrust investigations or proceedings,
- (b) studies related to competition policy and possible changes in antitrust laws, and
- (c) activities related to the restrictive business practice work of international organizations of which both parties are members.

(2) Each party agrees that it will provide the other party with any significant information which comes to the attention of its antitrust authorities and which involves restrictive business practices which, regardless of origin, have a substantial effect on the domestic or international trade of such other party.

(3) Each party agrees that, upon request of the other party, its antitrust authorities will obtain for and furnish such other party with such information as such other party may request in connection with a matter referred to in Article 2, paragraph 1, and will otherwise provide advice

and assistance in connection therewith. Such advice and assistance shall include, but not necessarily be limited to, the exchange of information and a summary of experience relating to particular practices where either of the antitrust authorities of the requested party has dealt with or has information relating to a practice involved in the request. Such assistance shall also include the attendance of public officials of the requested party to give information, views or testimony in regard to any antitrust investigation or proceeding, legislation or policy, and the transmittal or the making available of documents and legal briefs and pleadings of the antitrust authorities of the requested party (or duly authenticated or certified copies thereof).

(4) An antitrust authority of a party, in seeking to obtain information or interviews on a voluntary basis from a person or enterprise within the jurisdiction of the other party, may request such other party to transmit a communication seeking such information or interviews to such person or enterprise. In that event, the other party will transmit such communication and, if so requested, will (if such is the case) notify such person or enterprise that the requested party has no objection to voluntary compliance with the request.

(5) Each party agrees that, upon the request of an antitrust authority of the other party, its antitrust authorities will consult with the requesting party concerning possible coordination of concurrent antitrust investigations or proceedings in the two countries which are related or affect each other.

Article 3

(1) Either party may decline, in whole or in part, to render assistance under Article 2 of this Agreement, or may comply with any request for such assistance subject to such terms and conditions as the complying party may establish, if such party determines that:

(a) compliance would be prohibited by legal protections of confidentiality or by other domestic law of the complying party; or

(b) compliance would be inconsistent with its security, public policy or other important national interests;

(c) the requesting party is unable or unwilling to comply with terms or conditions established by the complying party, including conditions designed to protect the confidentiality of information requested; or

- (d) the requesting party would not be obligated to comply with such request, by reason of any grounds set forth in items (a), (b) or (c) above, if such request had been made by the requested party.
- (2) Neither party shall be obligated to employ compulsory powers in order to obtain information for, or otherwise provide advice and assistance to, the other party pursuant to this Agreement.
- (3) Neither party shall be obligated to undertake efforts in connection with this Agreement which are likely to require such substantial utilization of personnel or resources as to burden unreasonably its own enforcement duties.

Article 4

- (1) Each party agrees that it will act, to the extent compatible with its domestic law, security, public policy or other important national interests, so as not to inhibit or interfere with any antitrust investigation or proceeding of the other party.
- (2) Where the application of the antitrust laws of one party, including antitrust investigations or proceedings, will be likely to affect important interests of the other party, such party will notify such other party and will consult and coordinate with such other party to the extent appropriate under the circumstances.

Article 5

The confidentiality of information transmitted shall be maintained in accordance with the law of the party receiving such information, subject to such terms and conditions as may be established by the complying party furnishing such information. Each party agrees that it will use information received under this Agreement only for purposes of its antitrust authorities as set forth in Article 2, paragraph 1.

Article 6

- (1) The terms of this Agreement shall be implemented, and obligations under this Agreement shall be discharged, in accordance with the laws of the respective parties, by their respective

antitrust authorities which shall develop appropriate procedures in connection therewith.

(2) Requests for assistance pursuant to this Agreement shall be made or confirmed in writing, shall be reasonably specific and shall include the following information as appropriate:

- (a) the antitrust authority or authorities to whom the request is directed;
- (b) the antitrust authority or authorities making the request;
- (c) the nature of the antitrust investigation or proceeding, study or other activity involved;
- (d) the object of and reason for the request; and
- (e) the names and addresses of relevant persons or enterprises, if known.

Such requests may specify that particular procedures be followed or that a representative of the requesting party be present at requested proceedings or in connection with other requested actions.

(3) The requesting party shall be advised, to the extent feasible, of the time, place and type of action to be taken by the requested party in response to any request for assistance under this Agreement.

(4) If any such request cannot be fully complied with, the requested party shall promptly notify the requesting party of its refusal or inability to so comply, stating the grounds for such refusal, any terms or conditions which it may establish in connection therewith and any other information which it considers relevant to the subject of the request.

Article 7

All direct expenses incurred by the requested party in complying with a request for assistance under this Agreement shall, upon request, be paid or reimbursed by the requesting party. Such direct expenses may include fees of experts, costs of interpreters, travel and maintenance expenses of experts, interpreters and employees of antitrust authorities, transcript

and reproduction costs, and other incidental expenses, but shall not include any part of the salaries of employees of antitrust authorities.

Article 8

This Agreement shall also apply to Land Berlin provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the United States of America within three months of the date of entry into force of this Agreement.

Article 9

(1) This Agreement shall enter into force one month from the date on which the parties shall have informed each other in an exchange of diplomatic notes that all the domestic legal requirements for such entry into force have been fulfilled.

(2) This Agreement shall remain in force until terminated upon six months' notice given in writing by one of the parties to the other.

Done at Bonn, in duplicate, in the English and German languages, both texts being equally authentic, this twenty-third day of June, 1976.