APPENDIX I

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA AS TO NOTIFICATION, CONSULTATION AND COOPERATION WITH RESPECT TO THE APPLICATION OF NATIONAL ANTITRUST LAWS

The Government of Canada and the Government of the United States of America:

Recognizing that the close links between the economies of the two countries may lead to situations in which the application of the antitrust laws of one Party conflicts with the interests of the other Party;

Reaffirming the importance that each Party attaches to the effective enforcement of its own antitrust laws;

Acknowledging that there are differences between the Parties on the appropriate application of national antitrust laws to conduct occuring wholly of partly outside the territory of the applying Party, and on the appropriate use of investigative measures to obtain documents or information from the territory of the other Party, including differences on the application or applicability of principles of international law in these situations; and that the Parties reserve their respective positions in this regard;

Noting that the application of United States antitrust laws in the past occasionally has conflicted with Canadian policies and has raised jurisdictional issues in Canada;

Noting the OECD Recommendation of 1979 concerning cooperation in the control of restrictive business practices, the 1959 bilateral Understanding announced by Minister of Justice Fulton and Attorney General Rogers and its renewal and expansion in 1969 by Minister of Consumer, and Corporate Affairs Basford and Attorney General Mitchell, and the principles of guidance to officials agreed to in 1977 by the Canadian Secretary of State for External Affairs and Ministers of Justice and Consumer and Corporate Affairs and by the United States Attorney General;

Have decided to act in accordance with the following Understanding.

1. Purpose

This Memorandum of Understanding outlines arrangements for notification and consultation between the Parties with respect to the application of their respective antitrust laws, with the purpose of avoiding or

moderating conflicts of interests and policies. The Understanding also establishes procedures for closer cooperation in order to enhance the substantial benefits which both derive from mutual assistance in the enforcement of their antitrust laws.

2. Notification in General

(1) The Parties will notify each other whenever they become aware that their antitrust investigations or proceedings, or actions relating to antitrust investigations or proceedings of the other Party, involve national interests of the other or require the seeking of information located in the territory of the other.

(2) Situations requiring notification will include those in which:

(i) An antitrust investigation is likely to inquire into activity carried out wholly or in part in the territory of the other Party;

(ii) An antitrust investigation is likely to inquire into any activity carried out wholly or in part outside the territory of the investigating Party, and there is reason to believe that the activity is required, encouraged or approved by the other Party;

(iii) It is expected that information to be sought is located in the territory of the other Party;

(iv) Information is sought to be gathered by the personal visit of antitrust officials to the territory of the other Party;

(v) An investigation, whether or not previously notified, may reasonably be expected to lead to a prosecution or other enforcement action likely to affect a national interest of the other Party.

(3) After an initial notification of an investigation, subsequent notification is not required of each request for information or personal visit made in the course of such investigation unless new issues bearing upon national interests are raised or unless the recipient Party indicates otherwise.

(4) Notification will be given by delivery in writing by the Embassy of the notifying Party in the capital of the recipient Party. Notification by the United States will be given to the Department of External Affairs. Notification by Canada will be given to the Department of State. Where time is of the essence, initial notification may be provided by telephone communication between the Parties' antitrust authorities, with confirmation made promptly thereafter in writing by the above-stated channels. The

information conveyed in the notification will be provided concurrently to the concerned antitrust authorities of the Party by the investigating agency of the notifying Party.

(5) Notification will be given at least ten business days prior to the initiation of the relevant action. When ten business days notice cannot be given, it will be provided as promptly as circumstances permit.

(6) The content of the notification will be sufficiently detailed to permit evaluation by the recipient Party of any effects on its national interests.

(7) In the case of mergers or acquisitions routinely reported to antitrust authorities, notification, if required by paragraphy 2(1), will only be provided to the other Party at the time the antitrust authorities decide to request additional information and in any event in advance of enforcement action.

3. Notification of Business Reviews, Advisory Opinions and Compliance Procedures

When an antitrust authority receives a request to state current enforcement intentions as to proposed action, and such statements will ultimately be published, notification will be made to the other Party if the proposed response contemplates enforcement action that may affect a national interest of the other or if, in analysing such a request, it is expected that information located in the territory of the other may be required. Where possible, notification will be given ten business days prior to the issuance of the response to the request.

4. Consultation

Either Party may request consultations when it believes that an antitrust investigation, proceeding (including for the purposes of this paragraph a private suit pursuant to the antitrust laws of either Party), business review, advisory opinion or compliance procedure, or action relating to an antitrust investigation or proceeding, is likely to affect its significant national interests or require the seeking of information from its territory. Such requests will be made and honoured promptly.

5. Notification and Consultation where One Party Expects to Take Action to Limit the Other Party's Access to Information

If one Party seeks to obtain information located within the territory of the other in furtherance of an antitrust investigation or inquiry, the other Party will not normally discourage a response. If a Party finds that access to information within its territory by the investigating Party is contrary to a significant national interest, any decision of consequential action relating to access by the investigating Party to such information will normally be made

only after notification and consultations within the framework of, and after taking account of the purposes of this Understanding. Where, because of an exceptional circumstance, immediate action must be taken, an opportunity for consultation will be provided immediately thereafter.

6. Consideration of the Other Party's Significant Interest

Each Party will give careful consideration to the significant national interests of the other at all stages of an antitrust investigation, inquiry or prosecution. The significant national interests of a Party may be general or specific in nature depending on the activity in question and and may vary in significance according to importance of the goals of the relevant government policies and the extent to which achievement of those goals may be impaired by acceding to the expressed interests of the other Party. While a significant national interest may exist even in the absence of any governmental connection with the activity in question, it is recognized that such interests would normally be reflected in antecedent laws, decisions or statements of policy by the competent authorities.

7. Elimination or Minimization of Conflicts

(1) Each Party will normally refrain from initiating or continuing particular elements of any investigative or enforcement procedures, to the extent they affect a national interest or require the seeking of information from the territory of the other Party, until either (i) a reasonable period has elapsed after notification without receipt of a response requesting consultations, or (ii) it has in good faith provided the other Party with an opportunity for requested consultations and has given serious consideration to any information and views provided in the course of the consultations. Where, because of an exceptional circumstance, immediate action must be taken, an opportunity for consultatioin will be provided as soon as feasible thereafter.

(2) The Party which believes its signficant national interests are likely to be affected by the proposed actions of the other Party will, consistent with paragraph 10 below and its national laws and interests, explain in sufficient detail its signficant national interests and its role, if any, in the activity in question to enable the other Party to give serious consideration to them.

(3) The good faith consideratioin that is to be accorded to the national interest of the other Party during consultations may lead to the avoidance or minimization of a conflict of national interests. If each Party asserts that its own national interest is predominant and it is unable to defer to the expressed national interest of the other, they will nonetheless seek to reduce, by accommodation and compromise, the scope and intensity of the conflict and its effects.

8. Information from Private Persons

(1) Either Party may utilize whatever means it considers necesary to obtain for antitrust investigations and proceedings relevant information located in its own territory, whether or not an entity from which information is sought has a parent or subsidiary in the territory of the other.

(2) Where, in the opinion of the investigating Party, information is adequately available from sources within its territory, that Party will, in the first instance, attempt to obtain such information from those sources before seeking it from the territory of the other Party.

(3) If a Party intends to seek information located in the territory of the other Party, it will attempt to obtain the information by voluntary means in the first instance, unless it concludes that in the specific circumstances compulsory process should be used. Examples of such circumstances include, but are not limited to, concern that evidence might otherwise be destroyed or removed or that voluntary compliance would not be forthcoming. If the Party in whose territory the information is located requests consultations, the process normally will not be issued until there has been a reasonable opportunity for consultation. If exceptional circumstances require that the process be issued before there has been an opportunity for requested consultation, the Party that issued the process will not seek to enforce compliance until a reasonable period for consultation, if requested, has elapsed.

(4) When requests for information located in the territory of the other are made, they will be framed as narrowly and specifically as possible in order to minimize the financial and administrative burden on the recipient.

(5) After notification and consultation or waiver thereof, and subject to paragraph 5, voluntary in-person interviews with private persons may generally be conducted in the territory of the other Party. Such Party retains the right to attach any conditions to the conduct of an interview that it deems appropriate, including the attendance of its officials at such interviews.

9. Exchange of Information between Governments

In furtherance of principles of international comity, the Parties will cooperate with and assist each other in the enforcement of their respective antitrust laws through the exchange of information. This exchange will be subject to compliance with national laws, considerations of national interest and the establishment of adequate safeguards respecting confidentiality referred to in paragraph 10 below.

10. Confidentiality of Intergovernmental Communications

(1) The issues of confidentiality that arise in exchanges of information between the Parties are acknowledged to be matters of

importance, and each Party will use its best efforts to assure confidentiality to the extent consistent with its national law. The parties agree that the degree to which either Party discloses information to the other pursuant to this Understanding may be subject to and dependent upon the acceptability of the assurances given by the other with respect to confidentiality and with respect to the purposes for which the information will be used. Each Party will oppose, to the extent possible under its law, any application for disclosure not authorized by the other. In addition, the Parties recognize that there may be limitations imposed by their laws on the disclosure by one Party to the other of certain classes of information each posesses.

(2) The Parties agree that notifications and consultations pursuant to this Understanding will, unless otherwise indicated, be deemed exchanges of confidential information between the Parties, and that their occurrance or substance will not be disclosed unless the providing Party consents to disclosure and disclosure is compelled by law. However, after an individual or business entity has been advised by the investigating party of an investigation or inquiry, the notified Party may communicate the fact of notification to that individual or entity and may communicate with the individual or entity regarding such information as the investigating Party has disclosed to that individual or entity. The investigating Party will, at the request of the other Party, inform the other Party of the time and manner in which any request for information from the territory of the other Party will be made. The investigating Party will provide such information as promptly as possible.

11. Private Antitrust Suits

(1) When a private antitrust suit has been commenced in a court of one of the Parties relating to conduct which has been the subject of notification and consultations under this Understanding, the Party in whose court the suit is pending will, if so requested by the other Party, inform the court of the substance and outcome of the consultations.

(2) When the conduct dealt with in a private antitrust suit has not been the subject of notification and consultation under this Understanding, the Party in whose court the suit is pending may, at the request of the other Party or on its own initiative, inform the court of how the national interest of the other party may be implicated by the suit or may offer to the court such other facts or views as it considers appropriate in the circumstances.

12 Status of Earlier Understandings

This Understanding, which does not constitute an international agreement, supersedes the bilateral Understanding announced in 1959 by Minister of Justice Fulton and Attorney General Rogers, and the renewal and expansion of that Understanding in 1969 by Minister of Consumer and Corporate Affairs Basford and Attorney General Mitchell. This Understanding also supersedes existing cooperative arrangements between the Department of

Consumer and Corporate Affairs and the Federal Trade Commision with respect to restrictive business practices or antitrust matters.

This 9th day of March, 1984.

FOR THE GOVERNMENT OF CANADA

(Judy Erola)

Minister of Consumer and Corporate Affairs

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

(William French Smith)

Attorney General

By direction of the
Federal Trade Commission

(James C. Miller)

Chairman

CANADIAN COMPETITION POLICY RECORD

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