



U. S. Department of Justice

Antitrust Division

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May 25, 1999



Mr. Randolph Tritell  
Assistant Director for International Antitrust  
Bureau of Competition  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Dear Randy:

I'm attaching a copy of the procedural arrangement that has been worked out between the Antitrust Division and the FTC to handle matters that come up under the agreement we signed last month with Australia pursuant to the International Antitrust Enforcement Assistance Act of 1994. This letter will serve as confirmation of our intention to operate under these procedures.

With best regards,

Sincerely yours,

Charles S. Stark  
Chief  
Foreign Commerce Section

Attachment

## **DOJ-FTC PROTOCOL FOR IMPLEMENTATION OF THE US-AUSTRALIA IAEAA AGREEMENT**

### **General Principles**

- The Department of Justice (DOJ) and the Federal Trade Commission (FTC) (collectively, the agencies) will work to achieve consistency in the interpretation and implementation of the International Antitrust Enforcement Assistance Act of 1994 (IAEAA) and the Australian antitrust mutual assistance agreement (Agreement).
  
- Each agency will inform the other of
  - its intention to seek assistance from Australia pursuant to the Agreement,
  
  - its intended response to a request for assistance from Australia pursuant to the Agreement, and
  
  - all developments relating to an incoming or outgoing request that bear on the interpretation or operation of the Agreement or the IAEAA program,

in accordance with the procedures set out below and in any event in time to allow for appropriate consultation between the agencies if requested. If the other agency believes the contemplated request, response or execution of a request raises issues that require further analysis or the advice of other U.S. government agencies, it may request the first agency to defer acting. In that event, the first agency will defer its request, response or execution of a request for ten days, unless DOJ and FTC agree on a different period. All communications under this protocol shall be made in a manner consistent with grand jury secrecy rules and any other applicable confidentiality requirements.

- Although this protocol governs only cooperation under the Agreement, the agencies intend it as the model to govern their interaction under future similar agreements, unless the terms of an agreement require a different approach in any respect. This protocol may be modified at any time by mutual agreement of the agencies.

### **Outgoing Requests**

- Either agency may initiate a request for assistance to Australia, and may communicate the request directly to the Australian Central Authority.
  
- (1) Before conveying a request to the Australian Central Authority, the requesting agency will inform the other agency in enough detail to permit the other agency to assess any implications the request may have for the interpretation or operation of the Agreement or

for the IAEAA program, and to allow consultations between the agencies as appropriate. At the time of notification, the requesting agency will provide a copy or summary of the proposed request, and will promptly provide copies or summaries of any modifications to the request, to the other agency.

(2) The requesting agency will provide this information to the other agency at least five working days before conveying the request to the Australian Central Authority unless Hart-Scott-Rodino deadlines preclude giving five days notice, in which case the requesting agency will give as much advance notice as possible, and in no event less than a full working day.

- An agency that contemplates making a request may engage in informal discussions with appropriate Australian officials before making the request and before notifying the other agency, as long as no commitments or undertakings are made that could not be altered as a result of consultations between the U.S. agencies.
- The requesting agency will promptly inform the other agency of the Australians' determination regarding the request and of all significant developments relating to the request that bear on the interpretation or operation of the Agreement or the IAEAA program, and allow for consultation with the other agency as may be necessary and appropriate.

### **Incoming Requests**

- *Central Authority.* All incoming requests will go to DOJ, which will act as a Central Authority to the extent contemplated by the IAEAA, the Agreement, or this protocol. DOJ will upon receipt send a copy of each request to the FTC.
- *Requests calling for information or documents in the possession of one of the agencies (IAEAA §2).*

(1) To the extent that a request is for confidential information or documents already in the hands of one of the agencies, that agency will be the Executing Authority. If a request is for confidential information or documents in the hands of both agencies, then each agency will be Executing Authority with respect to its own documents, and will cooperate with the other in responding to the request.

(2) An Executing Authority will inform the other agency of its intended response to an Australian request, and of the materials it intends to provide, at least five working days before the response is made or materials provided.

- *Requests requiring the use of one of the agencies' investigative powers (IAEAA §3).*

(1) DOJ will consult with FTC before making any determination pursuant to IAEAA §3(a) to deny assistance in whole or in part.

(2) To the extent that DOJ does not interpose foreign relations objections to a request, or after any such objections have been resolved, DOJ and FTC will consult to determine which agency will be the Executing Authority for the request. These requests will be allocated as nearly as possible in accordance with the clearance criteria and procedures applicable to new investigations.

(3) The Executing Authority will inform the other agency of its intended response to an Australian request, and of the way in which it intends to execute the request, at least five working days before the response is made or the request executed.

- *Assistance under IAEAA §4.* DOJ will be the Executing Authority for assistance under this provision of the IAEAA, which may be provided in conjunction with assistance by either agency pursuant to §§2 and 3 of the IAEAA. DOJ will inform the FTC of its intended response to an Australian request, and of the way in which it intends to execute the request, at least five working days before the response is made or the request executed.
- *Requests requiring more than one type of assistance.* If the above procedures would result in DOJ executing part of the request and FTC executing another part, the agencies will consult to determine the most appropriate and efficient way of handling the matter. Alternatives may include (without limitation) designating both as Executing Authorities with one agency taking a lead or coordinating role. In any such arrangement, the agencies will cooperate as fully as possible with one another.

#### **Agency Procedures**

- Each agency will establish internal procedures to assure that requests for assistance, and the execution of requests for assistance, are centrally coordinated and approved within the respective agencies. Decisions whether to provide assistance in response to a request under the Agreement will be made at least at the level of Deputy Assistant Attorney General in the case of DOJ, and the level of the Director of the Bureau of Competition in the case of the FTC.
- The communications called for by this Protocol normally will be between the DOJ Antitrust Division's Foreign Commerce Section and the FTC Bureau of Competition's International Division, unless otherwise specified or called for in the circumstances.