



# **Cooperation Agreement between the European Union and Switzerland**

**UNCTAD 13<sup>th</sup> Intergovernmental Group of Experts on  
Competition Law and Policy  
Round Table on "International Cooperation"  
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# Question 1 - Rationale of a cooperation agreement between the EU and Switzerland

- Structure the process of cooperation
- Better and more efficient enforcement on both sides
- Avoid contradictory or uninformed outcome
- Implementation is facilitated by already existing convergence



## Question 2 – Strengthening and development of cooperation

- **EU Background : Cooperation agreements with US (1991), Canada (1995), Japan (2003) and Korea (2009)**
  - ▶ **Content:**
    - Notification of important enforcement actions
    - Coordination of enforcement activities
    - Negative and positive comity
    - Consultations and meeting at appropriate level
  - ▶ **Main limitation:**

No possibility to exchange information obtained in the investigative process without waivers



## Question 2 (cont'd)

### ■ Solution:

**Conclusion of Cooperation Agreements including provisions allowing the exchange of information**

- ▶ For the EU: Direct applicability and superiority of international agreement: no need to amend Art. 28 Reg. 1/2003 or Art. 18 of Merger Regulation



## Question 2 (cont'd)

- **Challenge: To develop a balanced system:**
  - ▶ that is useful and workable for case-teams
  - ▶ that provides adequate safeguards (protection of confidential info, personal data, ...)
  
- **Starting point: Cooperation in cases/transactions investigated by both sides**
  - ▶ Info exchange only when both sides are investigating “same or related conduct or transaction”
  - ▶ Exchanges of information already in the file (No MLAT)



## Question 3 – Exchange of case specific information and expectations

### ■ Scope:

- ▶ Discussion of all information in the file (*subject to some limitations, see below*)
- ▶ Transmission of information

### ■ The agreement provides for:

- ▶ Discussion and transmission of info covered by waivers
- ▶ Discussion and transmission of info not covered by waivers subject to certain conditions & limitations



## Question 3 (cont'd) - Info exchange

- **Limits on discussion and transmission of info:**
  - ▶ No exchange of leniency/settlement info without waivers
  - ▶ No exchange of info protected under rights and privileges guaranteed under respective Parties' laws (e.g. Legal privilege)
- **Transmission of info upon motivated request, which must:**
  - ▶ Specify the nature of conduct or transaction concerned;
  - ▶ Specify the legal nature of case/participants
  - ▶ Identify the documents to be transmitted (no "fishing expedition")
- **CA receiving the request has discretionary power in deciding whether or not to transmit info**



## Question 3 (cont'd) - Info exchange

- **Limits on use of information exchanged/transmitted:**
  - ▶ Info exchanged can be used only for application of competition laws by the respective CAs of the Parties to the same or related conduct/transaction
  - ▶ Info exchanged can not be used to impose sanctions on individuals!





## Question 3 (cont'd) - Info exchange

- **Protection of business secrets:**
  - ▶ Principle: Identification and protection of business secrets by receiving authority is acceptable only to the extent that Parties' rules are similar
  - ▶ Swiss and EU rules are very similar in this area



## Question 3 (cont'd) - Info exchange

### ■ Protection of personal data:

- ▶ Info exchanged may contain personal data
- ▶ Agreement must therefore be in line with rules on the protection of personal data
- ▶ EU: Commission has taken “adequacy decision” declaring the Swiss system of personal data protection to “adequate”



European  
Commission

**THANK YOU!**

*Competition*