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Thank you very much for inviting us to this hearing and also for all the efforts you are putting into this consent and discussion in a timely manner at the EU Parliament.

In this introductory statement, I would like to have a few words on our general policy of cooperation and then focus more specifically on the agreement with Switzerland.

Cooperation has become a day to day business for competition authorities. In the last two decades, we have seen a proliferation of competition regimes around the world.

Today, more than one hundred jurisdictions have a competition law regime and very often transnational business practices have to be assessed by more than one and sometimes several of these competition authorities.

When we look at global cartels, when we look at mergers between multinational companies, several authorities are investigating the same practice.

Therefore it is unavoidable that we cooperate in order to ensure feasibility of our investigation.

We should ensure that investigations of cartels are launched at the same time to avoid that evidence disappears.

We need to ensure, for instance when we look at global mergers, that we talk about the possible harms and solutions to avoid contradictory outcomes in different jurisdictions. That is why over the years we have established a number of bilateral cooperation agreements that facilitate this cooperation and provide a good legal framework for it. The European Union, as you well said, has now agreements with a number of advanced competition authorities, the US, Canada, Japan and South Korea. We also have administrative arrangements with some of the emerging authorities in Russia, China and Brazil. In addition, we have a much more developed framework of cooperation with national competition authorities in the European Union, but that I wouldn’t qualify as international cooperation. That fits more with the application of the EU law in the European Competition Network. As you see, we don’t have a “one size fits all”-policy. We try to target our agreements to the specificities of jurisdictions with whom we want to cooperate. Precisely because of the specificities of the Swiss authority and the Swiss competition regime and our intense cooperation with them, we are proposing now an agreement that goes a bit beyond of what we had so far.

First, the Swiss competition regime is quite similar to the European system, in terms of substantive provisions, but also in terms of procedures and in particular safeguards for the rights of the parties.

Second, for the geographical location of Switzerland, the cases where both authorities are involved are substantial. If I look for instance at the cartel cases
the EU Commission has been examining in the last five years, there have been 38 cartel decisions, at least in 31 of which the affected market was at least EEA wide and therefore covered also Switzerland. If I look at merger cases, in 183 of the mergers that we examined in the last 10 years, at least one company was active or located in Switzerland.

That already gives you the dimension of the potential cooperation with Switzerland. This agreement that we present includes first the traditional provisions that you would find in other cooperation agreements. I will not go into the details. I can develop them later.

Let me simply mention that there will be notification of enforcement activities that affect the interest of the other party, there will be provisions on the coordination of enforcement actions, negative and positive Committee obligations and consultations among the two parties at different levels.

But what is particularly interesting and new in the agreement with Switzerland is the possibility of exchange of information and in particular the possibility to exchange confidential information.

Already today this information can be exchanged with the consent of the parties, when the parties provide waivers to the competition authorities. But this agreement goes beyond, because it will also allow the exchange of information in some other settings.

Let me clarify the conditions in which the exchange will take place:

First of all, we should be in a situation where both authorities are investigating the same or a related conduct or transaction. That is, we are discussing the exchange of information that is already on the file of each of the competition authorities. This is an agreement that creates a framework for cooperation when the two authorities are investigating the same or a related conduct or transaction.

I have to stress that it creates a framework for cooperation, however it does not impose any obligation to cooperate.

Each authority has the right to decide what type of information it wants to exchange and whether it wants to exchange information or not.

The agreement will allow the authorities to discuss information but also in some cases to transmit documents to the other party.

In this case, the authority that would like to obtain the information has to submit a request in written form and motivated.

There are important safeguards in the agreement with regards to this exchange:

First, when we are talking about the information the authority has received from a leniency or a settlement applicant, this information will only be exchanged if the applicant accepts it. This is an important provision not to create disincentives for parties to be part of our leniency and our immunity programs that are a very successful tool to deal with cartels.
Second, the agreement prevents us from exchanging information that is protected under the rights and privileges guaranteed under the respective parties law. That is for instance, if one document is legally privileged, let’s say if it is a document provided by an external council. This document will not be exchangeable under the agreement. In addition, the two parties will provide their normal protections for business secrets and personal data. But the safeguards are not only about what type of information can be exchanged but also about the use that each authority can do on with this information.

There are very important limitations on the use of the information in Article 8 of the agreement:

First, the information can only be used for the application of competition laws to the same or a related conduct, not for the application of any other laws.

Second, the information can not be used to impose sanctions on individuals.

At this stage, neither the EU law nor the Swiss law foresees this type of sanctions, but this is an important safeguard that we want to introduce in this type of agreements.

Then overall we have an agreement that includes important safeguards with regard to the parties and at the same time makes it a workable and operative agreement that will allow the two authorities to coordinate their inspections and investigations and at the end to provide a more effective competition enforcement.