AGREEMENT

BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF CANADA

ON THE APPLICATION OF POSITIVE COMITY PRINCIPLES

TO THE ENFORCEMENT OF THEIR COMPETITION LAWS

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF CANADA (hereinafter "the Parties"):

HAVING REGARD to the August 1995 Agreement between the Government of the United States of America and the Government of Canada Regarding the Application of Their Competition and Deceptive Marketing Practices Laws (hereinafter "the 1995 Agreement");

RECOGNIZING that the 1995 Agreement has contributed to coordination, cooperation and avoidance of conflicts in competition law enforcement;

NOTING in particular Article V of the 1995 Agreement, commonly referred to as the "Positive Comity" article, which calls for cooperation regarding anticompetitive activities occurring in the territory of one Party that adversely affect the important interests of the other Party;

BELIEVING that further elaboration of the principles of positive comity and of the implementation of those principles would enhance the 1995 Agreement's effectiveness in

(b) The activities in question may be subject to penalties or other relief under the competition laws of the Party in whose territory the activities are occurring.

2. The purposes of this Agreement are to:

(a) Help ensure that trade and investment flows between the Parties and competition and consumer welfare within the territories of the Parties are not impeded by anticompetitive activities for which the competition laws of one or both Parties can provide a remedy, and

(b) Establish cooperative procedures to achieve the most effective nd efficient enforcement of competition law, whereby the competition authorities of each Party will normally avoid allocating enforcement resources to dealing with anticompetitive activities that occur principally in and are directed principally towards the other Party's territory, where the competition authorities of the ty are able and prepared to examine and take effective sanctions under their law to deal with those activities.

ARTICLE II

Definitions

As used in this Agreement:

1. "Adverse effects" and " Tc-l oc-1Ceient

4. “Competition law(s)” means:

(a) for Canada, the *Competition Act*, R.S.C. 1985, c. C-34, as amended, except sections 52 through 60, 74.01 through 74.19, 91 through 103, and 108 through 124 of that Act, and

(b) for the United States of America, the Sherman Act (15 U.S.C. §§1-7), the Clayton Act (15 U.S.C. §§12-27, except as it relates to investigations pursuant to Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. §18a), the Wilson Tariff Act (15 U.S.C. §§8-11), and the Federal Trade Commission Act (15 U.S.C. §§41-58, except as these sections relate to consumer protection functions),

as well as such other laws or regulations as the Parties shall jointly agree in writing to be a “competition law” for the purposes of this Agreement.

2. The competition authorities of a Requesting Party will normally defer or suspend their own enforcement activities in favor of enforcement activities by the competition authorities of the Requested Party when the following conditions are satisfied:

(a) The anticompetitive activities at issue:

(i) do not have a direct, substantial and reasonably foreseeable impact on consumers in the Requesting Party's territory, or

(ii) where the anticompetitive activities do have such an impact on the Requesting Party's consumers, they occur principally in and are directed principally towards the other Party's territory;

(b) The adverse effects on the important interests of the Requesting Party can be and are likely to be fully and adequately investigated and, as appropriate, eliminated or adequately remedied pursuant to the laws, procedures and available remedies of the Requested Party. The Parties recognize that it may be appropriate to pursue separate enforcement activities where anticompetitive activities affecting both territories justify the imposition of penalties within both jurisdictions; and

(c) The competition authorities of the Requested Party agree that in conducting their own enforcement activities, they will:

(i) devote adequate resources to investigate the anticompetitive activities and, where appropriate, promptly pursue adequate enforcement activities;

(ii) use their best efforts to pursue all reasonably available sources of information, including such sources of information as may be suggested by the competition authorities of the Requesting Party;

(iii) inform the competition authorities of the Requesting Party at reasonable intervals which normally shall not exceed six weeks, or on request, of the status of their enforcement activities and intentions, and where appropriate provide to the competition authorities of the Requesting Party relevant confidential information. The use and disclosure of such information shall be governed by Article V;

(iv) promptly notify the competition authorities of the Requesting Party of any change in their intentions with respect to investigation or enforcement;

(v) use their best efforts to complete their investigation and to obtain a remedy or initiate proceedings within a specified period to which the competition authorities of the Parties shall agree, which shall be as short a period as is reasonably feasible. The competition authorities of the Parties shall agree on such time period within three months of the time at which a request under Article III of this agreement is made;

(vi) fully inform the competition authorities of the Requesting Party of the results of their investigation, and take into account the views of the competition authorities of the Requesting Party, prior to any settlement, initiation of proceedings, adoption of remedies, or termination of the investigation; and

(vii) comply with any reasonable request that may be made by the competition authorities of the Requesting Party.

When the above conditions are satisfied, a Requesting Party which chooses not to defer or suspend its enforcement activities shall inform the competition authorities of the Requested Party of its reasons.

3. The competition authorities of the Requesting Party may defer or suspend their own enforcement activities if fewer than all of the conditions set out in paragraph 2 are satisfied.

4. Nothing in this Agreement precludes the competition authorities of a Requesting Party that choose to defer or suspend independent enforcement activities from later initiating or reinstituting such activities. In such circumstances, the competition authorities of the Requesting Party will promptly inform the competition authorities of the Requested Party of their intentions and reasons. If the competition authorities of the Requested Party continue with their own investigation, the competition authorities of the two Parties shall consider coordination of their respective investigations under the criteria and procedures of Article IV of the 1995 Agreement.

ARTICLE VIII

Entry Into Force and Termination

1. This Agreement shall enter into force upon signature.

2. This Agreement shall remain in force until 60 days after the date on which either Party notifies the other Party in writing that it wishes to terminate the Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Agreement.

DONE in duplicate at Washington, on this fifth day of October, 2004, in the English and French languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF CANADA: