

CHAPTER 15

COMPETITION POLICY

Article 15.1: Definitions

For the purposes of this Chapter:

enforcement proceedings means judicial or administrative proceedings following an investigation into the alleged violation of competition laws.

Article 15.2: Objectives

Recognising that anticompetitive business conduct and misleading or deceptive conduct have the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation, the Parties seek to take appropriate measures to proscribe that conduct, implement policies promoting competition and cooperate on matters covered by this Chapter to help secure the benefits of this Agreement.

Article 15.3: Competition Laws and Authorities and Anticompetitive Business Conduct

1. Each Party shall adopt or maintain competition laws that proscribe anticompetitive business conduct, with the objective of encouraging competition in order to promote economic efficiency and consumer welfare and shall take appropriate action with respect to that conduct.
2. Each Party shall ensure that the measures it adopts or maintains to proscribe anticompetitive business conduct and the enforcement actions it takes pursuant to those measures are consistent with principles of transparency, non-discrimination and due process.
3. Each Party shall apply its competition laws to all commercial activities in its territory. This does not prevent a Party from applying its competition laws to commercial activities outside its borders that have anticompetitive effects within its jurisdiction.
4. Each Party may provide for certain exemptions or exclusions from the application of its competition laws provided that those exemptions or exclusions are transparent and in accordance with the laws and regulations of a Party and based on public policy grounds or public interest grounds.
5. Each Party shall maintain an authority or authorities responsible for the enforcement of its competition laws (“competition authorities”).
6. Each Party shall ensure that its authority or authorities enforce its competition laws in

accordance with the objectives set out in this Chapter and do not discriminate on the basis of nationality.

7. Each Party shall ensure independence in decision-making by its authority or authorities in relation to the enforcement of its competition laws.

Article 15.4: Procedural Fairness in Competition Law Enforcement

1. Each Party shall adopt or maintain written procedures or guidelines pursuant to which its competition law investigations are conducted. If these investigations are not subject to definitive deadlines, each Party's competition authorities shall endeavour to conduct their investigations within a reasonable timeframe.

2. Each Party shall ensure that before it imposes a sanction or remedy against a person for violating its competition laws, it affords that person information about the competition authority's competition concerns, including identification of the specific competition laws alleged to have been violated and the associated maximum potential penalties, if not publicly available, and a reasonable opportunity to be represented by counsel.

3. Each Party shall ensure that before it imposes a sanction or remedy against a person for violating its competition laws, it affords the person a reasonable opportunity to be heard and to present evidence, except that it may provide for the person to be heard and present evidence within a reasonable time after it imposes an interim sanction or remedy.

4. Each Party shall provide a person that is subject to the imposition of a sanction or remedy for violation of its competition laws with the opportunity to seek review of the sanction or remedy in a court or other independent tribunal established under that Party's laws and regulations.

5. Each Party shall adopt or maintain rules of procedure and evidence that apply to enforcement proceedings concerning alleged violations of its competition laws and the determination of sanctions and remedies thereunder. These rules shall include procedures for introducing evidence, including expert evidence if applicable, and shall apply equally to all persons in a proceeding.

6. Each Party shall ensure that its competition authorities do not state or imply in any public notice confirming or revealing the existence of a pending or ongoing investigation against a particular person that this person has in fact violated the Party's competition laws.

7. If a Party's competition authority alleges a violation of its competition laws, that authority shall be responsible for establishing the legal and factual basis for the alleged violation in an enforcement proceeding.¹

¹ Nothing in this paragraph shall prevent a Party from requiring that a person against whom such an allegation is made be responsible for establishing certain elements in defence of the allegation.

8. Each Party shall provide for the protection of confidential information obtained by its competition authorities during the investigative process. If a Party's competition authority uses or intends to use that information in an enforcement proceeding, the Party shall, if it is permissible under its laws and regulations as appropriate, allow the person under investigation or its legal counsel timely access to information that is necessary to prepare an adequate defence to the competition authority's allegations.

9. Each Party shall ensure that its competition authorities afford a person under investigation for an alleged violation of its competition laws reasonable opportunity to be heard by those competition authorities with respect to significant legal, factual, procedural or, if any, economic issues that arise during the investigation.

Article 15.5: Cooperation

1. The Parties recognise the importance of cooperation and coordination between their respective competition authorities to foster effective competition law enforcement in the free trade area. Accordingly, each Party shall cooperate, as appropriate:

- (a) in the area of competition policy by exchanging information on the development of competition policy; and
- (b) on issues of competition law enforcement, including through notification, exchange of information, investigative and enforcement assistance, and consultation and coordination on investigations of a cross-border dimension.

2. A Party's competition authorities may consider entering into a cooperation arrangement or agreement with the competition authorities of the other Party that sets out mutually agreed terms of cooperation.

3. The Parties agree to cooperate in a manner compatible with their respective laws and regulations, important and mutual interests, and within their reasonably available resources.

Article 15.6: Technical Cooperation

1. Recognising that the Parties can benefit from sharing their diverse experience in developing, applying and enforcing their competition laws and policies, the Parties shall consider undertaking mutually agreed technical cooperation activities, subject to available resources, including:

- (a) providing advice or training on relevant issues, including through the exchange of officials;
- (b) exchanging information and experiences on competition advocacy, including ways to promote a culture of competition; and

- (c) assisting a Party as it implements a new competition law.

Article 15.7: Consumer Protection

1. The Parties recognise the importance of consumer protection policy and enforcement to creating efficient and competitive markets and enhancing consumer welfare in the free trade area.
2. Each Party shall adopt or maintain consumer protection law or other laws or regulations that proscribe misleading or deceptive commercial activities which cause harm or potential harm to consumers, including:
 - (a) misrepresentations or omissions of material fact, including implied factual misrepresentations;
 - (b) misleading representations or deceptive marketing practices in promoting the supply or use of a product or service; and
 - (c) misleading representations regarding the price of a product or service.
3. The laws or regulations a Party adopts or maintains to proscribe these activities can be civil, criminal or administrative in nature.
4. The Parties recognise that misleading or deceptive commercial activities increasingly transcend national borders and that cooperation and coordination between the Parties is desirable to effectively address these activities.
5. The Parties shall promote, as appropriate, cooperation and coordination on matters of mutual interest related to misleading or deceptive commercial activities, including in the enforcement of their consumer protection laws.
6. The Parties shall endeavour to cooperate and coordinate on the matters set out in this Article through the relevant authorities in a manner compatible with their laws and regulations, important and mutual interests, and within their reasonably available resources.

Article 15.8: Transparency

1. The Parties recognise the value of making their competition enforcement policies and public advocacy activities transparent.
2. Each Party shall ensure that its competition laws and enforcement guidelines are made publicly available, including on an official website. This excludes internal operating procedures unless disclosure is required under its laws and regulations.

3. On request of a Party, the requested Party shall make available to the requesting Party public information concerning:

- (a) its competition law enforcement policies and practices; and
- (b) exemptions and exclusions to its competition laws, provided that the request specifies the particular good or service and market of concern and includes information explaining how the exemption or exclusion may hinder or restrict trade or investment between the Parties.

4. Each Party shall ensure that a final decision finding a violation of its competition laws is made available in writing and sets out, in non-criminal matters, findings of fact and the reasoning, including legal and, if applicable, economic analysis, on which the decision is based.

5. Each Party shall further ensure that a final decision referred to in paragraph 4 and any order implementing that decision are published, or if publication is not practicable, are otherwise made publicly available in a manner that enables interested persons and the other Party to become acquainted with them. Each Party shall ensure that the version of the decision or order that is published or made publicly available is redacted to the extent necessary in order to be consistent with each Party's:

- (a) laws and regulations regarding confidentiality and privilege; and
- (b) need to safeguard information on the grounds of public policy or public interest.

6. The competition authority shall not disclose information that is protected in accordance with its laws and regulations.

Article 15.9: Consultations

1. In order to foster understanding between the Parties, or to address specific matters that arise under this Chapter, on request of a Party, the requested Party shall enter into consultations with the requesting Party. In its request, the requesting Party shall indicate, if relevant, how the matter affects trade or investment between itself and the requested Party. The Party addressed shall accord full and sympathetic consideration to the concerns of the requesting Party.

2. To facilitate the discussion regarding the matter of consultations, a Party shall endeavour to provide relevant non-confidential or non-privileged information to the requesting Party referred to in paragraph 1.

Article 15.10: Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 23 (Dispute Settlement) for any matter arising under this Chapter.