

CHAPTER 15

COMPETITION POLICY

ARTICLE 15.1

Competition principles

The Parties recognise the importance of free and undistorted competition in their trade and investment relations. The Parties acknowledge that anticompetitive business practices and state interventions have the potential to distort the proper functioning of markets and undermine the benefits of liberalisation of trade and investment.

ARTICLE 15.2

Competitive neutrality

This Chapter applies to all enterprises, public or private.

ARTICLE 15.3

Economic activity

This Chapter applies to enterprises only to the extent that the enterprises perform an economic activity. For the purposes of this Chapter, the term "economic activity" pertains to the offering of goods or services on a market.

ARTICLE 15.4

Legislative framework

1. Each Party shall adopt or maintain competition law that:
 - (a) applies to all enterprises;
 - (b) applies in all sectors of the economy;¹ and

¹ For greater certainty, pursuant to Article 42 TFEU, Union rules on competition apply to the agricultural sector in accordance with Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ EU L 347, 20.12.2013, p. 671).

- (c) addresses, in an effective manner, all of the following practices:
 - (i) horizontal and vertical agreements between enterprises, decisions by associations of enterprises, and informal cooperation between enterprises that substitutes for the risks of competition, which have as their object or effect the prevention, restriction or distortion of competition;
 - (ii) abuses by one or more enterprises of a dominant position; and
 - (iii) concentrations between enterprises that would significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position.

2. The Parties shall ensure that enterprises entrusted with the operation of tasks of public interest shall be subject to the rules of this Chapter, in so far as the application of such rules does not, in law or in fact, obstruct the performance of particular tasks of public interest that are assigned to such enterprises. Assigned tasks of public interest shall be transparent and any limitation to or deviation from the application of the rules of this Chapter shall not go beyond what is strictly necessary to achieve the assigned tasks.

ARTICLE 15.5

Implementation

1. Each Party shall maintain an operationally independent authority that is responsible for, and appropriately equipped with the powers and resources necessary to ensure, the full application, and the effective enforcement, of the competition law referred to in Article 15.4(1) (Legislative framework).
2. Each Party shall apply its competition law in a transparent manner, respecting the principles of procedural fairness, including the rights of defence of the enterprises concerned, in particular the right to be heard and the right to judicial review.
3. Each Party shall make publicly available its competition laws and regulations, and any guidelines used in relation to their enforcement with the exception of internal operating procedures.
4. Each Party shall ensure that its competition laws and regulations are applied and enforced in a manner that does not discriminate on the basis of nationality.
5. Each Party shall ensure that, before a sanction or remedy is imposed in an enforcement proceeding, the respondent is afforded the opportunity to be heard and provide evidence in its defence. In particular, each Party shall ensure that the respondent has a reasonable opportunity to review and contest the evidence on which the imposition of the sanction or the remedy is based.

6. Subject to any redactions necessary to safeguard confidential information, each Party shall ensure that the grounds for any sanction imposed or remedy applied for violation of its competition law are made available to the defendant in a proceeding enforcing its competition laws or regulations.

7. Each Party shall ensure that the addressees of a decision imposing a sanction or a remedy for violation of its competition law are given the opportunity to seek judicial review of such a decision.

ARTICLE 15.6

Private right of action

1. For the purposes of this Article, the term "private right of action" means the right of a person to seek redress, including injunctive, monetary or other remedies, through a court or other independent tribunal for harm to that person's business or property caused by a violation of a Party's competition law, either independently or following a finding of violation by the Party's competition authority or authorities.

2. Recognising that a private right of action is an important supplement to the public enforcement of a Party's competition law, each Party shall adopt or maintain laws or other measures that provide independent private right of action.

ARTICLE 15.7

Cooperation

1. The Parties acknowledge that it is in their common interest to promote cooperation with regard to competition policy and enforcement of competition law.
2. To facilitate the cooperation referred to in paragraph 1, the competition authorities of the Parties may exchange information, subject to the confidentiality rules in the law of each Party.
3. The competition authorities of the Parties shall endeavour to coordinate, where possible and appropriate, their enforcement activities concerning the same or related conduct or cases.

ARTICLE 15.8

Non-application of dispute settlement

Chapter 26 (Dispute settlement) does not apply to this Chapter.