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The texts are published in view of the public interest in the negotiations for information purposes only and they may undergo further modifications, including as a result of the process of legal revision. These texts are without prejudice to the final outcome of the Agreement between the EU and New Zealand.

The texts will be final upon signature. The Agreement will become binding on the Parties under international law only after completion by each Party of its internal legal procedures necessary for the entry into force of the Agreement.

CHAPTER XX

ANTICOMPETITIVE CONDUCT AND MERGER CONTROL

ARTICLE X.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 trade and investment liberalisation.

ARTICLE X.2

Competitive neutrality

The Parties shall apply the rules referred to in this Chapter to all enterprises, public or private.

ARTICLE X.3

Economic activities

1. This Chapter shall only apply to enterprises in so far as the enterprises perform economic activities. For the purposes of this Chapter, the term "economic activities" pertains to the offering of goods or services on a market.

ARTICLE X.4

Legislative framework

1. Each Party shall adopt or maintain competition law which applies to all enterprises in all sectors of the economy¹ and addresses, in an effective manner, all of the following practices:

- (a) 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;
- (b) abuses by one or more enterprises of a dominant position; and
- (c) concentrations between enterprises which 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 referred to in this Section, in so far as the application of such rules does not obstruct the performance, in law or in fact, of particular tasks of public interest that are assigned to these enterprises. Assigned tasks of public interest shall be transparent and any

¹ For greater certainty, pursuant to Article 42 of the Treaty on the Functioning of the European Union, competition rules in the EU apply to the agricultural sector in accordance with Regulation (EU) No 1308/2013 of the European Parliament and Council establishing a common organisation of the markets in agricultural products and its subsequent amendments or replacements, if any (Official Journal L347/2013).

limitation to or deviation from the application of the rules in this Section shall not go beyond what is strictly necessary to achieve the assigned tasks.

ARTICLE X.5

Implementation

1. Each Party shall maintain an operationally independent authority which 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 X.3.
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 the enforcement of such laws and regulations, excluding internal operating procedures.
4. Each Party shall apply and enforce its competition laws and regulations in a manner which 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 defense. In particular, each Party shall ensure that the respondent has a reasonable opportunity to review and contest the evidence on which the determination may be based.
6. Each Party shall, subject to any redactions necessary to safeguard confidential information, make the grounds for any sanction or remedy, available to the addressees subject to that sanction or remedy.

7. Each Party shall guarantee that the addressees of a decision imposing a sanction or a remedy for violation of their respective competition laws are given the opportunity to seek judicial review of such decision.

ARTICLE X.6

Private rights of action

1. For the purposes of this Article, “private right of action” means the right of a person to seek redress, including injunctive, monetary or other remedies, from a court or other independent tribunal for injury to that person’s business or property caused by a violation of the Party’s competition laws, 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 competition laws, each Party shall adopt or maintain laws or other measures that provide an independent private right of action.

ARTICLE X.7

Cooperation

1. The Parties acknowledge that it is in their common interest to promote cooperation with regard to competition policy and enforcement.

2. To facilitate such cooperation, the Parties’ competition authorities may exchange information, subject to the confidentiality rules as foreseen in the Parties' respective laws and regulations.

3. The competition authorities of the Parties shall endeavour to coordinate, where possible and appropriate, their enforcement activities relating to the same or related conduct or cases.

ARTICLE X.8

Non-application of dispute settlement

The provisions of this Section shall not be subject to dispute settlement under Chapter X.