

CHAPTER 11

COMPETITION POLICY

ARTICLE 11.1

Principles

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

ARTICLE 11.2

Anticompetitive practices

Each Party shall, in accordance with its laws and regulations, take measures which it considers appropriate against anticompetitive practices, in order to achieve the objectives of this Agreement.

ARTICLE 11.3

Legislative and regulatory framework

1. Each Party shall maintain its competition law that applies to all enterprises in all sectors of the economy and which addresses, in an effective manner, the following anticompetitive practices:

(a) for the United Kingdom:

- (i) agreements between enterprises, decisions by associations of enterprises and concerted practices which have as their object or effect the prevention, restriction or distortion of competition;

(ii) abuse by one or more enterprises of a dominant position; and

(iii) mergers between enterprises which may substantially lessen competition; and

(b) for Japan:

(i) private monopolisation;

(ii) unreasonable restraint of trade;

(iii) unfair trade practices; and

(iv) mergers or acquisitions which would substantially restrain competition in a particular field of trade.

2. Each Party shall apply its competition law to all enterprises, private or public, engaged in economic activities. However, each Party may provide for certain exemptions from the application of its competition law provided that those exemptions are transparent and are based on public policy grounds or public interest grounds.

3. For the purposes of this Chapter, "economic activities" means those activities pertaining to the offering of goods and services in a market.

ARTICLE 11.4

Operational independence

Each Party shall maintain an operationally independent authority which is responsible and competent for the effective enforcement of its competition law.

ARTICLE 11.5

Non-discrimination

When applying its competition law, each Party shall respect the principle of non-discrimination for all enterprises, irrespective of the nationality and type of ownership of the enterprises.

ARTICLE 11.6

Procedural fairness

When applying its competition law, each Party shall respect the principle of procedural fairness for all enterprises, irrespective of the nationality and type of ownership of the enterprises.

ARTICLE 11.7

Consumer protection

1. Each Party recognises the importance of consumer protection policy and enforcement to creating efficient and competitive markets and enhancing consumer welfare.
2. For the purposes of this Article, fraudulent and deceptive commercial activities refers to those fraudulent and deceptive commercial practices that cause actual harm to consumers, or that pose an imminent threat of such harm if not prevented, for example:
 - (a) a practice of making misrepresentations of material fact, including implied factual misrepresentations, that causes significant detriment to the economic interests of misled consumers;
 - (b) a practice of failing to deliver products or provide services to consumers after the consumers are charged; or

(c) a practice of charging or debiting consumers' financial, telephone or other accounts without authorisation.

3. Each Party shall adopt or maintain consumer protection laws or other laws or regulations that proscribe fraudulent and deceptive commercial activities.¹

4. Each Party recognises that fraudulent and deceptive commercial activities increasingly transcend national borders and that cooperation between the Parties is desirable to effectively address these activities.

5. Accordingly, each Party shall promote, as appropriate, cooperation on matters of mutual interest related to fraudulent and deceptive commercial activities, including in the enforcement of their consumer protection laws.

6. Each Party shall endeavour to cooperate on the matters set out in this Article through the relevant national public bodies or officials responsible for consumer protection policy, laws or enforcement, as determined by each Party and compatible with their respective laws, regulations and important interests and within their reasonably available resources.

ARTICLE 11.8

Transparency

Each Party shall apply its competition law in a transparent manner. Each Party shall promote transparency in its competition policy.

¹ For greater certainty, the laws or regulations a Party adopts or maintains to proscribe these activities can be civil or criminal in nature.

ARTICLE 11.9

Enforcement cooperation

1. To achieve the objectives of this Agreement and to contribute to the effective enforcement of the competition law of each Party, the Parties acknowledge that it is in their common interest to promote cooperation and coordination between the competition authorities with regard to developments in competition policy and enforcement activities.
2. To facilitate the cooperation and coordination referred to in paragraph 1, the competition authorities of the Parties may exchange or otherwise communicate information in accordance with the respective laws and regulations of the Parties.
3. Detailed cooperation arrangements to implement this Article may be made between the competition authorities of the Parties.

ARTICLE 11.10

Dispute settlement

The provisions of this Chapter shall not be subject to dispute settlement under Chapter 22.