

CHAPTER 18

COMPETITION

Article 18.1 **Objectives**

The objectives of this Chapter are to promote economic efficiency and consumer welfare through the maintenance and enforcement of law to address anti-competitive activities and promote competition, and through cooperating on matters covered by this Chapter. The pursuit of these objectives will help to secure the benefits of this Agreement, including facilitating bilateral trade and investment between the Parties.

Article 18.2 **Competition Law and Authorities**

1. Each Party shall maintain competition law in their respective territories which:
 - (a) proscribes anti-competitive agreements between enterprises, including cartel agreements;
 - (b) proscribes anti-competitive practices by enterprises that have substantial market power; and
 - (c) effectively addresses mergers with substantial anti-competitive effects.
2. Subject to paragraph 3, each Party shall ensure its competition law applies to all commercial activities in its territory regardless of an enterprise's nationality or ownership. This does not preclude a Party from applying its competition law to commercial activities outside its borders that have the object, or which have or may have the effect of, restricting competition within its jurisdiction.
3. Each Party may provide for certain exemptions from the application of its competition law provided that those exemptions are transparent, established in its law, and based on public policy grounds.
4. Each Party shall maintain an authority or authorities responsible and competent for the effective application and enforcement of its competition law ("national competition authorities"). Each Party's national competition authorities shall be operationally independent.

5. Each Party shall enforce its competition law in a manner which does not discriminate on the basis of nationality or ownership.

Article 18.3

Procedural Fairness

1. Each Party shall ensure that its national competition authorities provide transparency, including in writing, regarding the applicable competition laws, regulations, and procedural rules pursuant to which competition law investigations are conducted and pursuant to which any sanction or remedy¹ is imposed.
2. Each Party's national competition authorities shall endeavour to conduct their investigations subject to definitive deadlines or within a reasonable timeframe, if the investigations are not subject to definitive deadlines.
3. Each Party shall ensure that any public notice confirming or revealing the existence of a pending or ongoing investigation avoids any statement or implication that a person has in fact violated the Party's competition law. This does not preclude the issuing of provisional, reasoned objections by a Party's national competition authorities.
4. Each Party shall afford to a person a reasonable opportunity to be legally represented and shall respect legal privilege, if not waived or lost, for lawful confidential communications between the legal representative and the person (and where relevant, a third party) if the communications concern the soliciting or rendering of legal advice.
5. Each Party shall ensure that, where information which is protected as confidential or privileged by its law is obtained by its national competition authorities during investigations, that information is not disclosed, subject to applicable legal exceptions.
6. Each Party shall ensure that before it imposes a sanction or remedy against a person pursuant to its competition law, it affords that person a reasonable opportunity to:
 - (a) be provided with information and evidence regarding the national competition authority's concerns, including identification of the relevant specific competition law engaged;
 - (b) engage with the relevant national competition authority at key points on significant legal, factual, and procedural issues;

¹ For the purposes of this Article, "remedy" includes decisions to decline to clear a merger or clear a merger subject to undertakings or conditions.

- (c) be heard and to present evidence before the relevant body (or as relevant, the applicable staff of that body) responsible for the imposition of the sanction or remedy including, if applicable, offering the analysis of a properly qualified expert, which may be in writing; and
- (d) where applicable, cross-examine any witness testifying before any court or independent tribunal,

except that a Party may provide for these opportunities within a reasonable time after it imposes an interim sanction or remedy.

- 7. Each Party may authorise its national competition authorities to resolve any civil or administrative matters that may give rise to a person being subject to a sanction or remedy by consent of that person and the national competition authorities. Each Party may provide for such voluntary resolutions to be subject to review by a court or independent tribunal for approval or a public comment period before becoming final.
- 8. Each Party shall ensure that all final decisions in civil or administrative matters made pursuant to its competition law are in writing and that those decisions set out the findings of fact and conclusions of law on which they are based. Each Party shall make public those final decisions, with the exception of any confidential material contained therein.
- 9. Each Party shall provide a person that is subject to the imposition of a sanction or remedy made pursuant to its competition law with the opportunity to seek review of the sanction or remedy by a court or independent tribunal (subject to the applicable rules of that court or tribunal), save that the Parties shall not be required to provide that opportunity where the person voluntarily agreed to the imposition of the sanction or remedy.
- 10. Each Party's national competition authorities shall maintain measures to preserve evidence which they have identified as being relevant, including exculpatory evidence, that they collected as part of an investigation until the investigation is complete and any review by a court or independent tribunal of any sanction or remedy imposed is exhausted.

Article 18.4 **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 competition law.

2. Recognising that a private right of action is an important supplement to the public enforcement of competition law, each Party shall maintain laws or other measures that provide a private right of action, both independently and following a finding of violation by a national competition authority.
3. Each Party shall ensure that a right provided pursuant to paragraph 2 is available to persons of the other Party on terms that are no less favourable than those available to its own persons.
4. A Party may establish reasonable criteria for the exercise of any rights it creates or maintains in accordance with this Article.

Article 18.5 **Cooperation**

1. The Parties recognise the importance of cooperation between their respective national competition authorities to promote effective application and enforcement of competition law. To this end, the Parties may cooperate, through their national competition authorities, on issues relating to the application and enforcement of competition law. That cooperation may include:
 - (a) notification by a Party to the other Party of its activities relating to application and enforcement of competition law that it considers may substantially affect the important interests of the other Party, as promptly as reasonably possible;
 - (b) exchange of information between the Parties to foster understanding or to facilitate effective application and enforcement of competition law; and
 - (c) coordination of investigations that raise the same or related concerns relating to the application or enforcement of competition law.
2. The Parties agree that it is in their common interest to work together on technical cooperation activities to strengthen competition policy development and the application and enforcement of competition law. Technical cooperation activities may include:
 - (a) the exchange of information on the development and implementation of competition policy and law, including in relation to competition issues in digital markets;
 - (b) the sharing of competition-related studies, reviews, and research, including in relation to competition issues in digital markets; and

- (c) the exchange of officials of policy agencies or national competition authorities to deepen cooperation and knowledge sharing.
- 3. Any cooperation under paragraphs 1 and 2 shall be compatible with each Party's law and important interests and within the Parties' available resources.
- 4. To implement the objectives of this Article, the Parties may enter into a separate agreement on cooperation and coordination which may provide for, among other things, enhanced information sharing and mutual legal assistance in non-criminal law enforcement.

Article 18.6

Transparency

- 1. The Parties recognise the value of making competition enforcement and advocacy policies as transparent as possible.
- 2. Each Party shall make public or require the following to be made public, including on an official website:
 - (a) its competition laws and regulations;
 - (b) exemptions and immunities to its competition law; and
 - (c) guidelines and any rules issued in relation to the administration and enforcement of its competition law,but shall not be required to make public its internal operating procedures.

Article 18.7

Consultation

- 1. In order to foster understanding between the Parties or to address specific matters that arise under this Chapter, a Party shall enter into consultations upon request by the other Party. In its request, the requesting Party shall indicate, if relevant, how the matter affects trade or investment between the Parties.
- 2. The Party addressed shall accord full and sympathetic consideration to the concerns of the requesting Party and shall reply promptly to the request.
- 3. To facilitate discussion of the matter that is the subject of the consultations, each Party shall endeavour to provide relevant non-confidential, non-privileged information to the other Party.

Article 18.8
Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 31 (Dispute Settlement) for a matter arising under this Chapter.