

Chapter 9: Competition Policy – Text of the 2023 Canada – Ukraine Free Trade Agreement

Article 9.1: Objectives

1. The Parties recognize that anti-competitive business conduct and transactions may distort the proper functioning of markets and offset the benefits of trade liberalization.
2. The Parties shall endeavour to take appropriate measures to proscribe anti-competitive business conduct and transactions, to implement policies promoting competition, and to cooperate on matters covered by this Chapter to help secure the benefits of this Agreement.
3. The Parties agree that anti-competitive business conduct and transactions outlined in their competition laws, including abuse of a dominant position, are incompatible with this Agreement, insofar as they may affect trade and investment between the Parties.

Article 9.2: Competition Laws and Authorities

- 1. Each Party shall maintain competition laws that proscribe anti-competitive business conduct and transactions, with the objective of promoting economic efficiency and consumer-welfare, and shall take appropriate action with respect to anti-competitive business conduct and transactions.*
- 2. Each Party shall endeavour to apply its competition laws to all commercial activities in its territory. This does not prevent a Party from applying its competition laws to a commercial activity outside its territory that has an appropriate nexus to its jurisdiction.*
- 3. Each Party may provide for an exemption from the application of its competition laws provided that the exemption is transparent, established in its law, and based on legitimate public policy objectives.*
- 4. Each Party shall maintain an authority responsible for the enforcement of its competition laws ("competition authority").*
- 5. Each Party shall ensure and maintain independence in decision-making by its competition authority or in relation to the enforcement of its competition laws.*

6. Each Party shall ensure that its competition authority enforces its competition laws in accordance with the objectives set out in Article 9.1, and does not discriminate on the basis of nationality.

Article 9.3: Procedural Fairness

1. For the purposes of this Chapter, "enforcement proceeding" means a judicial or administrative proceeding following an investigation into the alleged contravention of a Party's competition laws.[Footnote 1](#)

2. Each Party shall ensure that, before it imposes a final sanction or remedy against a person for contravening its competition laws, it affords that person a reasonable opportunity, in accordance with its law, to have non-privileged information about the competition authority's reason for investigation, including identification of the specific competition laws alleged to have been contravened.

3. Each Party shall, in accordance with its law, provide a person subject to a contested enforcement proceeding with reasonable access to non-privileged information that is necessary to prepare an adequate defence.

4. Each Party shall, in accordance with its law, provide a person subject to a contested enforcement proceeding with a reasonable

opportunity to be heard and to present, respond to, and challenge evidence.

5. Each Party shall, in accordance with its law, provide a person with a reasonable opportunity to contest an allegation that the person has contravened competition laws before an independent and impartial judicial or administrative body, including the review of an alleged substantive or procedural error.

6. Each Party shall ensure that its competition authority affords a person a reasonable opportunity to be represented by legal counsel.

7. Each Party shall ensure that its competition authority recognizes a privilege, as acknowledged by its law, if not waived, for lawful communications between the counsel and the person if the communications concern the soliciting or rendering of legal advice.

8. Each Party shall endeavor to conclude its investigations and aspects of enforcement proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

9. Each Party shall adopt or maintain rules of procedure and evidence for conducting its enforcement proceedings and determining sanctions and remedies under these proceedings.

10. Each Party shall, in accordance with its law, provide for the protection of confidential information obtained by its competition authority during the investigation.

11. Each Party shall, if appropriate and legally permissible, ensure that its competition authority informs a person that is the subject of an investigation as soon as practicable. This information must include the legal basis for the investigation and the alleged conduct or transaction under investigation. In determining the timing for informing a person of an investigation, a Party's competition authority may consider the status and specific needs of the investigation, such as the need to keep the investigation covert or to take immediate action to mitigate further harm.

12. Each Party shall endeavour to, if appropriate and legally permissible, provide a person subject to an investigation that has been informed of the investigation, or that has notified a merger or other transaction or conduct, with a reasonable opportunity for meaningful and timely engagement on the relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the investigation.

Article 9.4: Transparency

1. The Parties recognize the value of making their competition enforcement guidelines and advocacy policies as transparent as possible.
2. Each Party shall ensure that its competition laws are publicly available.
3. For greater certainty, this Article does not require a Party to disclose confidential information, privileged information, or information otherwise protected on the grounds of legitimate public policy objectives, including a Party's competition authority's internal operating procedures.
4. On request of a Party, the other Party shall make available to the requesting Party public information concerning:
 - (a) its competition law enforcement guidelines and practices;
and
 - (b) exemptions to its competition laws.
5. Each Party shall ensure that a final decision from an enforcement proceeding finding a contravention of its competition laws sets out findings of fact and the reasoning^{Footnote2}, including legal and, if applicable, economic analysis, on which the decision is based.

6. Each Party shall ensure that a final decision referred to in paragraph 5 and any order implementing that decision are published, or if publication is not practicable, are made publicly available in a manner that enables an interested person or the other Party to become acquainted with them.

7. Each Party shall ensure that a decision or an order that is published or made publicly available is redacted to the extent necessary to be consistent with that Party's law regarding confidentiality, privilege, and any other applicable exceptions, including the need to safeguard information on the grounds of legitimate public policy objectives.

Article 9.5: Confidentiality

1. Each Party shall have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information that comes into the possession of the competition authority.

2. Each Party shall ensure that its competition authority, to the fullest extent possible, limits access to confidential information protected under its Party's laws, and, where the public seeks to obtain access to confidential information in the possession of the competition

authority, the competition authority shall generally oppose such a request.

Article 9.6: Cooperation

1. The Parties recognize that anti-competitive business conduct and transactions increasingly transcend borders, and that cooperation and coordination between the Parties to foster effective competition law enforcement is important and in the public interest.

2. Each Party's competition authority shall endeavour to cooperate:

- (a) in any area of competition policy by exchanging information on the development of competition policy; and
- (b) on any issue of competition law enforcement, including the exchange of information, investigative and enforcement assistance, and consultation and coordination on any cross-border investigation.

3. A Party's competition authority may consider entering into a cooperation arrangement or agreement with the competition authority of another Party that sets out decided terms of cooperation.

4. Recognizing that the Parties can benefit by sharing their diverse experience in developing, administering, and enforcing their

competition laws and policies, the Parties may undertake technical cooperation activities, including:

- (a) providing advice or training on any relevant issue, including through the exchange of officials;
- (b) exchanging information and experience on competition advocacy, including ways to promote a culture of competition; and
- (c) assisting a Party as it implements a new competition law.

5. The Parties shall cooperate under this Article in a manner compatible with their respective laws, policies, and mutual interests, and within their reasonably available resources. Information shared pursuant to this Article may be subject to additional requirements, including confidentiality requirements or restrictions on the purposes for which the information is used.

Article 9.7: Consultations

1. In order to foster understanding between the Parties, or to address a specific matter that arises under this Chapter, on written request of the other Party, a Party shall enter into consultations with the requesting Party. The requesting Party shall indicate, if relevant, how the matter affects trade or investment between the Parties.

2. The responding Party addressed shall accord full and sympathetic consideration to the concerns of the requesting Party.

3. To facilitate the discussion regarding the matter of consultations, each Party shall endeavour to provide relevant non-confidential, non-privileged information to the other Party.

Article 9.8: Non-Application of Dispute

Settlement

A Party shall not have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for a matter arising under this Chapter.

Footnotes

Footnote 1

For Canada, this does not include the consensual resolution of an issue between the competition authority and a person alleged to have contravened competition laws, if the allegation made by the competition authority is not contested.

[Return to footnote1referrer](#)

Footnote 2

This does not apply to jury trials in Canada.

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