

CHAPTER 17

COMPETITION POLICY AND CONSUMER PROTECTION

Article 17.1

Competition Law and Authorities

1. Each Party shall maintain national competition laws in their respective territories which:
 - (a) proscribe anti-competitive agreements;
 - (b) proscribe anti-competitive practices by entities that have substantial market power; and
 - (c) address mergers with substantial anti-competitive effects.
2. Each Party shall apply its national competition laws to all commercial activities in its territory regardless of nationality or governmental ownership. This does not preclude a Party from applying its national competition laws to commercial activities outside its borders that may have anti-competitive effects within its jurisdiction.
3. Each Party may provide for certain exemptions from the application of its national competition laws, provided that those exemptions are transparent and are based on public policy grounds.
4. Each Party shall maintain an operationally independent national competition authority responsible for the enforcement of its national competition laws.
5. Each Party shall enforce its national competition laws in a manner that does not discriminate on the basis of nationality or governmental ownership.

Article 17.2

Procedural Fairness in Competition Law Enforcement

1. Each Party shall ensure that before it imposes a sanction or remedy against a person pursuant to its national competition law, it affords that person:
 - (a) information about the national competition authority's competition concerns;
 - (b) a reasonable opportunity to be legally represented; and
 - (c) a reasonable opportunity to be heard and present evidence in its defence, except that a Party may provide for the person to be heard

and present evidence within a reasonable time after it imposes an interim sanction or remedy.

2. Each Party shall maintain written procedures pursuant to which its national competition law investigations are conducted. If these investigations are not subject to definitive deadlines, each Party's national competition authorities shall endeavour to conduct their investigations within a reasonable time frame.
3. Each Party shall maintain rules of procedure and evidence that apply to proceedings conducted pursuant to its national competition law and to the determination of sanctions and remedies thereunder.
4. Each Party shall provide a person that is subject to the imposition of a sanction or remedy pursuant to that Party's national competition law with the opportunity to seek review of the sanction or remedy in a court or other independent tribunal established under that Party's law.
5. Each Party may authorise its national competition authorities to resolve civil or administrative matters voluntarily by consent of the authority and the person subject to the enforcement action. A Party may provide for such voluntary resolution to be subject to review by a court or independent tribunal or a public comment period before becoming final.
6. If a Party's national competition authority issues a public notice that reveals the existence of a pending or ongoing investigation, that authority shall not state and shall avoid implying in that notice that the person referred to in that notice has engaged in the alleged conduct or violated the Party's national competition law.¹
7. Each Party shall provide for the protection of business confidential information, and other information treated as confidential under its law, obtained by its national competition authorities during the investigative process. If a Party's national competition authority uses or intends to use that information in a proceeding, the Party shall, if it is permissible under its law and as appropriate, provide a procedure to allow the person under investigation timely access to information that is necessary to prepare an adequate response.
8. Each Party shall ensure that its national competition authorities afford a person under investigation conducted pursuant to the national competition law of that Party reasonable opportunity to consult with those national competition authorities with respect to significant legal, factual or procedural issues that arise during the investigation.

¹ For the UK, this does not preclude the issuing of provisional, reasoned objections by a national competition authority.

Article 17.3
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 national competition law.
2. Recognising that a private right of action is an important supplement to the public enforcement of national competition law, each Party shall maintain 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 17.4
Transparency

1. The Parties recognise the value of making their competition enforcement policies as transparent as possible.
2. On request of a Party, the other Party shall make available to the requesting Party public information concerning:
 - (a) its national competition law enforcement policies and practices; and
 - (b) exemptions and immunities to its national competition laws.
3. Each Party shall ensure that a final decision pursuant to its national competition law is made in writing and sets out, in non-criminal matters, findings of fact and the reasoning, including legal and, if applicable, economic analysis, on which the decision is based.
4. Each Party shall further ensure that a final decision referred to in paragraph 3 and any order implementing that decision are published, or if publication is not practicable, are otherwise made available to the public. Each Party shall ensure that the version of the decision or order that is made available to the public does not include confidential information that is protected from public disclosure by its law.

Article 17.5
Consumer Protection

1. The Parties recognise the importance of consumer protection policy and enforcement to enhancing consumer welfare in the territories of the Parties.
2. Each Party shall maintain consumer protection laws and regulations that proscribe:
 - (a) misleading, deceptive and fraudulent commercial practices; and
 - (b) unconscionable conduct or unfair commercial practices,that cause harm, or potential harm, to consumers.
3. Each Party shall maintain laws and regulations that provide consumers with statutory rights in relation to goods and services supplied to them, which at a minimum allow for remedies when:
 - (a) goods are of unacceptable quality or are defective;
 - (b) goods are not as described;
 - (c) goods are not fit for their represented purpose; and
 - (d) services are not performed with appropriate care or skill.
4. The Parties further recognise the importance of improving awareness of and providing access to consumer redress mechanisms, including for consumers of a Party transacting with suppliers of the other Party.
5. The Parties recognise the benefits of dispute resolution mechanisms in facilitating the resolution of disputes between consumers and suppliers, including alternative dispute resolution mechanisms.

Article 17.6
Cooperation on Competition Policy and Consumer Protection

1. The Parties recognise the importance of cooperation and coordination between their respective competition and consumer protection authorities to foster effective competition and consumer protection law enforcement in the territories of the Parties. To this end, the Parties may cooperate, through their competition and consumer protection authorities, on issues relating to the enforcement of competition and consumer protection law. Such cooperation may include:
 - (a) notification by a Party to the other Party of its activities relating to enforcement of competition and consumer protection law that it

- considers may substantially affect the important interests of the other Party, as promptly as reasonably possible;
- (b) exchange of information, including confidential information, between the Parties to foster understanding or to facilitate effective enforcement of competition and consumer protection law; and
 - (c) coordination of investigations that raise the same or related concerns relating to the enforcement of competition and consumer protection law.
2. The Parties recognise that it is in their common interest to work together on technical cooperation activities to strengthen competition and consumer protection policy development and the enforcement of competition and consumer protection law. Technical cooperation activities may include:
- (a) the exchange of information on the development and implementation of competition and consumer protection policy and law;
 - (b) the sharing of studies, reviews and research relating to competition and consumer protection law and policy; and
 - (c) the exchange of officials of policy agencies or competition and consumer protection authorities to deepen cooperation and knowledge sharing.
3. The Parties acknowledge the importance of cooperation and coordination internationally and the work of multilateral organisations in this area, including the Competition and Consumer Policy committees of the Organisation for Economic Co-operation and Development, the International Competition Network and the International Consumer Protection and Enforcement Network.
4. Any cooperation and coordination under paragraphs 1 and 2 shall be undertaken only to the extent that it is compatible with each Party's law and important interests and within the Parties' available resources.
5. To implement the objectives of this Article, the Parties may enter into separate commitments or arrangements on cooperation and coordination which may provide for, among other things, enhanced information sharing including confidential information, and mutual assistance in competition and consumer law enforcement.

Article 17.7 Consultation

To foster understanding between the Parties, or to address specific matters that arise under this Chapter, a Party shall, on request of the other Party, enter into consultations with the requesting Party. In its request, the

requesting Party shall indicate, if relevant, how the matter affects trade or investment between the Parties. The Party addressed shall promptly acknowledge any such request and accord full and sympathetic consideration to the concerns of the requesting Party.

Article 17.8
Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 30 (Dispute Settlement) for any matter arising under this Chapter.