

CHAPTER []
COMPETITION

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[EU: Article X.1: General Principles]

[EU: The Parties recognize the importance of free undistorted competition in their trade and investment relations. Effective competition enforcement contributes to making markets work better by ensuring that all companies compete their merits. This benefits consumers, businesses, and the economy as a whole.]

[EU: The Parties acknowledge that anti-competitive business practices and State interventions have the potential to distort the proper functioning of markets and undermine the benefits of trade liberalization.]

Article X.2 [EU: Legislative Framework] [US: Anti-competitive Business Conduct]

[EU: 1. To promote free and undistorted competition in their respective territories,] each Party shall maintain antitrust and merger competition legislation which addresses all of the following practices in an effective manner:

- (a) horizontal and vertical 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,
- (b) abuse by one or more enterprises of a dominant position,
- (c) concentrations between enterprises which significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position.]

[US: 1. Each party shall maintain competition law¹ that proscribes anti-competitive business conduct, with the objective of promoting economic efficiency and consumer welfare, and shall take appropriate action with respect to such conduct.]

[EU: Article X.3: Implementation]

[EU: 1. The Parties shall each maintain an operationally independent authority responsible for and appropriately equipped for the effective enforcement of the competition legislation referred to above in X.2.]

[US: 1. Each Party shall maintain an authority or authorities responsible for the enforcement of its competition law.]

[EU: 2. The Parties shall apply their respective competition legislation in a transparent and non-discriminatory manner, respecting the principles of procedural fairness and the rights of defense of the enterprises concerned, irrespective of their nationality or ownership status.]

[US: 2. The enforcement policy of each Party's authorities responsible for the enforcement of such laws is to treat persons who are not persons of the Party no less favorably than persons of the Party

¹ [US: For the United States, competition law means the Sherman Antitrust Act of 1890 (15 U.S.C.A. §§ 1 et seq.), the Clayton Act of 1914 (15 U.S.C. §§ 12-27), and the Federal Trade Commission Act of 1914 (15 U.S.C. §§ 41-58), as amended, and regulations promulgated pursuant to these acts.]

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in like circumstances.]

[US: Article X.2: Procedural Fairness in Competition Law

1. Each Party shall ensure, that before it imposes a sanction or remedy against any person for violating its competition laws, it shall afford such person: information about the competition authority's competition concerns; a reasonable opportunity to be represented by counsel; and a reasonable opportunity to be heard and present evidence in its defense, 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. In particular, each Party shall afford such person a reasonable opportunity to offer evidence or testimony in its defense, including, where applicable, to offer the analysis of a properly qualified expert, to cross-examine any testifying witness; and to review and rebut the evidence introduced in the enforcement proceeding², subject to the confidentiality provisions of this [Chapter]. Each Party's competition authorities shall normally afford persons under investigation for possible violation of its competition laws reasonable opportunities to consult with such competition authorities with respect to significant legal, factual or procedural issues that arise during the course of investigation.

2. Each Party's authorities shall maintain procedures pursuant to which its competition law investigations are conducted. Where such investigations are not subject to definitive deadlines, each Party's competition authorities shall strive to conduct their investigations within a reasonable time frame.

3. Each Party shall publish or otherwise make publicly available written rules of procedure and evidence that apply to enforcement proceedings concerning alleged violations of competition laws and the determination of sanctions and remedies thereunder. These rules shall include procedures for introducing evidence, including expert evidence where applicable, and shall apply equally to all parties to the proceeding.

4. Each Party shall provide any person subject to imposition of a sanction or remedy for violation of its competition laws with the opportunity to seek review of the sanction or remedy, including review of alleged substantive or procedural errors, in a court or other independent tribunal established under that Party's laws.

5. Each party shall, in non-criminal matters, authorize its competition authorities to resolve alleged violations 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 judicial approval or a public comment period before becoming final.

6. Where a Party's competition authority formally alleges a violation of its competition laws, such authority shall be responsible for establishing the legal and factual basis for such alleged violation in an enforcement proceeding.^{3]}

2 [US: For the purposes of this article, enforcement proceedings means judicial or administrative proceedings following an investigation into alleged violation of the competition laws.]

3 [US: Nothing in paragraph 6 shall prevent a Party from requiring that a person against whom such an allegation is made be responsible for establishing certain elements in a defense to the allegation.]

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Article X.5: Cooperation

[EU: 1. In order to fulfill the objectives of this Agreement and to enhance effective competition enforcement, the Parties acknowledge that it is in their common interest to strengthen cooperation with regard to competition policy development and the investigation of antitrust and merger cases, to the extent compatible with the assisting Party's laws and important interests, and within reasonably available resources.]

[US: 1. The Parties cooperate regarding their enforcement policies and in the enforcement of their respective competition laws, including by seeking to coordinate investigations that raise common concerns in competition law enforcement, based on the Agreement between the European Communities and the Government of the United States of America regarding the application of their competition laws, 23 September 1991. The US-EU Merger Working Group Best Practices in Merger Investigations illustrate the agencies' commitment to bilateral cooperation.]

[EU: 2. In order to facilitate the cooperation referred to in paragraph (1) above, the Parties' competition authorities may exchange information, subject to the confidentiality provisions laid down in X.6.]

[US: 2. The Parties commit to maintaining a high level of international cooperation and coordination. The Parties acknowledge the importance of cooperation and coordination internationally and the work of multilateral organizations in this area, including the International Competition Network and the Competition Committee of the Organization for Economic Cooperation and Development.]

[EU: 3. The above cooperation will be developed in accordance with the existing EU-USA Cooperation Agreements⁴.]

Article X.6 Confidentiality

[EU: 1. When exchanging information under this Chapter the Parties shall take into account the limitations imposed by their respective legislations concerning professional and business secrecy and shall ensure protection of business secrets and other confidential information.]

[EU: 2. When a Party communicates information in confidence under this Agreement, the receiving Party shall, consistent with its laws and regulations, maintain the confidentiality of the communicated information.]

[US: 1. Each Party shall protect from disclosure confidential business information, as well as other information treated as confidential under its laws, that competition authorities obtain during the investigation. Where a Party's competition authority uses or intends to use such information in an enforcement proceeding, the Party shall, as permissible under its laws and as appropriate, provide procedures for allowing respondents or defendants timely access to such information as is necessary to prepare an adequate defense to the competition authority's allegations.]

⁴ [EU: Agreement between the European Communities and the Government of the United States of America on the application of positive comity principles in the enforcement of their competition laws (OJ L 173, 18.06.1998); Agreement between the Government of the United States of America and the Commission of the European Communities regarding the application of their competition laws (OJ L 95, 27.4.1995).]

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[US: Article X.3: Transparency

1. The Parties recognize the value of transparent competition enforcement policies.
2. On the request of the other Party, a Party shall make available to the requesting Party public information concerning its:
 - (a) competition laws enforcement policies and practices;
 - (b) exemptions and immunities to its competition law, provided that the request specifies the particular goods or services and markets of concern, and includes information explaining how the exemption or immunity may hinder trade or investment between the Parties.
3. Each Party shall ensure that all final decisions finding a violation of its competition law are in writing and, in non-criminal matters, set out findings of fact and the reasoning, including legal and, if applicable, economic analysis, on which the decision is based. Each Party shall further ensure that any such decisions and any orders implementing them are published, or where publication is not practicable, otherwise made available to the public in such a manner as to enable interested persons to become acquainted with them. The version of the decisions or orders that the Party makes available to the public shall omit confidential business information, as well as information that is treated as confidential under its laws.]

Article X.7 [EU: Review Clause] [US: Consultations]

[EU: 1. The Parties shall keep under constant review the matters to which reference is made in this Chapter. Each Party may refer such matters to the (*appropriate body established by the Agreement*). The Parties agree to review progress in implementing this Chapter every five years after the entry into force of this Agreement, unless both Parties agree otherwise.]

[US: 1. To foster understanding between the Parties, or to address specific matters that arise under this Chapter, each Party shall, on request of the other Party, enter into consultations within a reasonable period of time regarding any matter arising under this Chapter. In its request, the Party shall specify the matter on which it seeks to consult and indicate how the matter affects trade or investment among Parties.]

[US: 2. The Party to which a request for consultations has been addressed shall accord full and sympathetic consideration to the concerns raised.]

Article X.8: Dispute Settlement

[EU: 1. The provisions on the dispute settlement mechanism in Chapter/Section (xx) of this Agreement shall not apply to this section.]

[US: 1. No Party shall have recourse to dispute settlement under this Agreement for any matter arising under this Chapter.]