

Chapter 11 Competition

Article 11.1 Objectives

Each Party understands that proscribing anti-competitive business conduct, implementing competition policies and cooperating on competition issues contribute to preventing the benefits of trade and investment liberalization from being undermined and to promoting economic efficiency and consumer welfare.

Article 11.2 Competition Laws and Authorities

1. Each Party shall maintain or adopt competition laws⁵ that promote and protect the competitive process in its market by proscribing at least the anti-competitive business practices listed in Article 11.13 (Definitions).

2. Each Party shall maintain an authority or authorities responsible for the enforcement of its national competition laws.

3. Each Party shall also take appropriate actions, according to each Party's relevant laws with respect to anti-competitive business practices, which will prevent the benefits of trade liberalization from being undermined.

Article 11.3 Principles in Law Enforcement

1. Each Party shall be consistent with the principles of rule of law, transparency, non-discrimination, and procedural fairness in competition law enforcement.

2. Each Party shall treat persons of the other Party no less favorably than persons of the Party in like circumstances in competition law enforcement.

3. Each Party shall ensure that before it imposes a sanction or remedy against a person for an alleged violation of its national competition laws, it affords that person a reasonable opportunity to present an opinion or evidence in its defense.

⁵ The Parties understand that the term "Law" includes all domestic regulations.

4. Each party shall provide a person that is subject to the imposition of a sanction or remedy for violation of its national competition laws with the opportunity to seek review of the sanction or remedy through administrative reconsideration and/or before an independent judicial authority of that Party in accordance with its laws.

Article 11.4 Transparency

1. Each Party shall make public its competition laws, including procedural rules for the investigation.

2. Each Party shall ensure that a final administrative decision finding a violation of its national competition laws is in writing and sets out relevant findings of fact and legal basis on which the decision is based.

3. Each Party shall make public a final decision and any order implementing the decision in accordance with its national competition laws. Each Party shall ensure that the version of the decision or order that is made available to the public does not include business confidential information⁶ that is protected from public disclosure by its national laws.

Article 11.5 Cooperation in Law Enforcement

1. The Parties recognize the importance of cooperation and coordination in the field of competition, between their respective national competition authorities to promote effective competition law enforcement in the free trade area. Accordingly, each Party shall cooperate through notification, consultation, exchange of information, and technical cooperation.

2. The Parties agree to cooperate in a manner compatible with their respective laws and important interests and within their reasonably available resources.

Article 11.6 Notification

1. Each Party, through its competition authority or authorities, shall endeavor to notify the other Party of an enforcement activity if it considers that such enforcement

⁶ For each Party, the term confidential information includes reserved information or any other information defined as “confidential” according to its laws.

activity may substantially affect the other Party's important interests.

2. Provided that it is not contrary to the Parties' competition laws and does not affect any investigation being carried out, the Parties shall endeavor to notify at an early stage and in a detailed manner which is enough to permit an evaluation in the light of the interests of the other Party.

Article 11.7 Consultation

1. In order to foster understanding between the Parties, or to address specific matters that arise under this Chapter, upon the request of the other Party, a Party shall enter into consultations with the requesting Party, provided that it is not contrary to the Parties' laws and does not affect any investigation being carried out.

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

3. To facilitate discussion of the subject matter of the consultations, the national competition authorities of each Party shall endeavor to provide relevant non-confidential and non-privileged information to the other Party.

Article 11.8 Exchange of Information

1. Each Party shall endeavor to, upon request of the other Party, provide information to facilitate effective enforcement of their respective competition laws, provided that it does not affect any ongoing investigation and is compatible with the laws and regulations governing the competition authorities possessing the information.

2. Each Party shall maintain the confidentiality of any information provided as confidential by the competition authority of the other Party and shall not disclose such information to any entity that is not authorized by the Party providing the information.

Article 11.9 Technical Cooperation

1. The Parties may promote technical cooperation, including the exchange of experiences, capacity building through training programs, workshops and research collaborations, for the purpose of enhancing each Party's capacity related to competition

policy and law enforcement.

2. The Parties agree to cooperate in a manner compatible with their respective laws, and within their reasonably available resources.

Article 11.10 Consumer Protection

1. Each Party shall adopt or maintain national consumer protection or other laws, recognizing that compliance with such laws is in the public interest. The laws that a Party adopts or maintains to prohibit such activities may be of administrative, civil or criminal nature.

2. The Parties may cooperate on matters of mutual interest related to consumer protection. Such cooperation shall be carried out in a manner compatible with the Parties' respective laws and within their available resources.

3. Each Party also recognizes the importance of improving awareness of, and access to, consumer redress mechanisms.

Article 11.11 Independence of Competition Law Enforcement

This chapter should not intervene with each Party's independence in enforcing its respective competition laws.

Article 11.12 Dispute Settlement

Neither Party shall have recourse to dispute settlement under this Agreement for any matters arising under this Chapter.

Article 11.13 Definitions

For purposes of this Chapter:

anti-competitive business conduct means business conduct or transactions that adversely affect competition in the territory of a Party, such as:

(a) agreements between enterprises, decisions by associations of enterprises and

concerted practices, that have as their object or effect the prevention, restriction or distortion of competition in the territory of either Party as a whole or in a substantial part thereof;

(b) any abuse by one or more enterprises of a dominant position in the territory of either Party as a whole or in a substantial part thereof;

(c) concentrations between enterprises, which significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position in the territory of either Party as a whole or in a substantial part thereof; or

(d) acts of unfair competition.

competition laws means:

(a) for China, the Anti-monopoly Law, the Anti-unfair Competition Law and the implementing regulations and amendments; and

(b) for Ecuador, the Law of Regulation and Control of Market Power, Regulation to the Organic Law of Regulation and Control of Market Power and the implementing regulations and amendments.