

CHAPTER 9 COMPETITION

ARTICLE 9.1: OBJECTIVES

Each Party understands that proscribing anticompetitive business conduct, implementing competition policies and cooperating on competition issues contribute to preventing the cross border trade and investments from being deterred through artificial barriers to entry and to prohibiting economic efficiency and consumer welfare.

ARTICLE 9.2: COMPETITION LAWS AND AUTHORITIES

1. Each Party shall maintain or adopt competition laws that promote and protect the competitive process in its market by proscribing anticompetitive business conduct.
2. Each Party shall maintain an authority or authorities responsible for the enforcement of its national competition laws.

ARTICLE 9.3: PRINCIPLES IN LAW ENFORCEMENT

1. Each Party shall be consistent with the principles of transparency, non-discrimination, and procedural fairness in the competition law enforcement field.
2. Each Party shall treat persons who are not persons of the Party no less favorably than persons of the Party in like circumstances in the competition law enforcement field.
3. Each Party shall ensure that before it imposes administrative punishment or restrictive conditions against a person for violating its national competition laws, it affords that person a reasonable opportunity to present opinion or evidence in its defense.
4. Each Party shall provide a person that is subject to the imposition of administrative punishment or restrictive conditions for violation of its national competition laws with an opportunity to apply for administrative reconsideration and/or to initiate a litigation following an administrative decision under that Party's laws.

ARTICLE 9.4: TRANSPARENCY

1. Each Party shall make public its competition laws and regulations, 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 the relevant findings of fact and the 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 and regulations. Each Party shall ensure that the version of the decision or the order that is made available to the public does not include business confidential information protected from public disclosure by its national law.

ARTICLE 9.5: COOPERATION IN LAW ENFORCEMENT

1. The Parties recognize the importance of cooperation and coordination in the competition field, to promote effective competition law enforcement in the free trade area. Accordingly, each Party shall cooperate through notification, consultation, exchange of information and experience, and technical cooperation.
2. The Parties agree to cooperate in a manner compatible with their respective laws, regulations and important interests, and within their reasonably available resource.

ARTICLE 9.6: TECHNICAL COOPERATION

The Parties may promote technical cooperation, including 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.

ARTICLE 9.7: INDEPENDENCE OF COMPETITION LAW ENFORCEMENT

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

ARTICLE 9.8: DISPUTE SETTLEMENT

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

ARTICLE 9.9: DEFINITIONS

For the purposes of this Chapter:

anticompetitive business conduct means a business conduct or transaction that adversely affects competition in the territory of a Party, such as:

(a) agreements between enterprises, decisions by associations of enterprises and concerted practices, which have as their object or effect of 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; or

(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; and

competition laws mean:

(a) for China, the Antimonopoly Law and its implementing regulations and amendments; and

(b) for Mauritius, the Competition Act and its implementing regulations, rules of procedure and amendments.