

CHAPTER 15

COMPETITION

ARTICLE 15.1

Definitions

For the purposes of this Chapter, the following definitions apply:

- (a) "anti-competitive practices" means any conduct or act defined under the competition law of a Party which is subject to the imposition of penalties;
- (b) "competition authority" means:
 - (i) for the European Union, the European Commission; and
 - (ii) for MERCOSUR, the competent authorities of each of the Signatory MERCOSUR States;
- (c) "competition law" means:
 - (i) for the European Union, Articles 101, 102 and 106 of the Treaty on the Functioning of the European Union, Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings¹ and the implementing regulations² concerning those Articles and that Regulation; and

¹ OJ EU L 24, 29.1.2004, p. 1.

² For greater certainty, competition law in the European Union applies to the agricultural sector in accordance with Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ EU L 347, 20.12.2013, p. 671).

- (ii) for MERCOSUR, the competition law of each of the Signatory MERCOSUR States and the respective implementing regulations;
- (d) "concentrations between undertakings" means any transaction or act as defined under the competition law of a Party; and
- (e) "enforcement activities" means any application of competition law by way of investigation or proceedings conducted by the competition authorities of a Party.

ARTICLE 15.2

Principles

1. The Parties recognise the importance of free and undistorted competition in their trade relations. The Parties acknowledge that anti-competitive practices and concentrations between undertakings which significantly impede effective competition have the potential to affect the proper functioning of markets and the benefits of trade liberalisation.

2. The following are incompatible with this Agreement, in so far as they may affect trade between the Parties:

- (a) agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition³ as defined under the respective competition law of each Party;
- (b) any abuse by one or more undertakings of a dominant position as defined under

³ For greater certainty, this point shall not be construed as limiting the scope of the analysis to be carried out in the case of agreements between undertakings, decisions by associations of undertaking and concerted practices between undertakings under the respective competition law of each Party.

the respective competition law of each Party; and

- (c) concentrations between undertakings, which significantly impede effective competition, as defined under the respective competition law of each Party.³

The Parties recognise the importance of applying competition law in a transparent, timely and non-discriminatory manner, respecting the principles of procedural fairness towards all interested parties including the rights of defence of the parties under investigation.

ARTICLE 15.3

Implementation

1. Each Party shall adopt or maintain in force comprehensive competition law which effectively addresses the anti-competitive practices and concentrations between undertakings referred to in Article 15.2(2) and respects the principles set out in Article 15.2(3). Each Party shall establish or maintain competition authorities designated and appropriately equipped for the transparent and effective implementation of their competition law.

2. The competition authorities of each Party shall designate a focal point and inform each other thereof. The focal points may communicate and exchange information with regard to the implementation of Articles 15.5, 15.6 and 15.7.

ARTICLE 15.4

State-owned enterprises and enterprises granted exclusive or special privileges

1. Nothing in this Chapter prevents a Party from designating or maintaining state-owned enterprises, enterprises granted exclusive or special privileges or monopolies according to their respective law.
2. The entities referred to in paragraph 1 shall be subject to competition law provided that the application of such law does not obstruct the performance, in law or in fact, of the particular tasks of public interest assigned to them by a Party.

ARTICLE 15.5

Exchange of non-confidential information and enforcement cooperation

1. With a view to facilitating the effective application of the competition law of each Party, the competition authorities may exchange non-confidential information.
2. The competition authority of one Party may request the other Party's competition authority to cooperate with respect to enforcement activities. Such cooperation shall not prevent the Parties from taking autonomous decisions.

3. A Party shall not be required to communicate information to the other Party pursuant to this Article. Notwithstanding the previous sentence, if a Party provides information to the other Party pursuant to this Article, it may require that such information is used subject to the terms and conditions it specifies.

ARTICLE 15.6

Consultations

1. A competition authority of a Party may request consultations with a competition authority of the other Party if it considers that its interests are being substantially and adversely affected by:

- (a) anti-competitive practices that are or have been engaged in by one or more undertakings situated in the territory of the other Party;
- (b) concentrations between undertakings as referred to in point (c) of Article 15.2(2);
or
- (c) the enforcement activities of the competition authority of the other Party.

2. Entering into the consultations referred to in paragraph 1 is without prejudice to any action by a competition authority of a Party under its competition law or to the autonomy of its decision-making.

3. A competition authority consulted pursuant to paragraph 1 may take whatever corrective measures it deems appropriate, consistent with its laws and regulations, and without prejudice to its discretion to enforce competition law.

ARTICLE 15.7

Non-application of dispute settlement

No Party shall have recourse to dispute settlement under Chapter 21 for any matter arising under this Chapter.