

## CHAPTER 11

### COMPETITION POLICY

#### ARTICLE 11.1

##### Principles

The Parties recognise the importance of fair and free competition in their trade and investment relations. The Parties acknowledge that anticompetitive practices have the potential to distort the proper functioning of markets and undermine the benefits of liberalisation of trade and investment.

#### ARTICLE 11.2

##### Anticompetitive practices

Each Party shall, in accordance with its laws and regulations, take measures which it considers appropriate against anticompetitive practices, in order to achieve the objectives of this Agreement.

#### ARTICLE 11.3

##### Legislative and regulatory framework

1. Each Party shall maintain its competition law that applies to all enterprises in all sectors of

the economy and which addresses, in an effective manner, the following anticompetitive practices:

(a) for the European Union:

- (i) 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;
- (ii) abuse by one or more enterprises of a dominant position; and
- (iii) mergers or concentrations between enterprises which would significantly impede effective competition; and

(b) for Japan:

- (i) private monopolisation;
- (ii) unreasonable restraint of trade;
- (iii) unfair trade practices; and
- (iv) mergers or acquisitions which would substantially restrain competition in a particular field of trade.

2. Each Party shall apply its competition law to all enterprises, private or public, engaged in economic activities. This shall not prevent a Party from providing for exemptions from its competition law, provided that such exemptions are transparent and are limited to those necessary

for securing public interest. Such exemptions shall not go beyond what is strictly necessary to achieve the public interest objectives that have been defined by that Party.

3. For the purposes of this Chapter, "economic activities" means those activities pertaining to the offering of goods and services in a market.

#### ARTICLE 11.4

##### Operational independence

Each Party shall maintain an operationally independent authority which is responsible and competent for the effective enforcement of its competition law.

#### ARTICLE 11.5

##### Non-discrimination

When applying its competition law, each Party shall respect the principle of non-discrimination for all enterprises, irrespective of the nationality and type of ownership of the enterprises.

#### ARTICLE 11.6

##### Procedural fairness

When applying its competition law, each Party shall respect the principle of procedural fairness for all enterprises, irrespective of the nationality and type of ownership of the enterprises.

#### ARTICLE 11.7

##### Transparency

Each Party shall apply its competition law in a transparent manner. Each Party shall promote transparency in its competition policy.

#### ARTICLE 11.8

##### Enforcement cooperation

1. To achieve the objectives of this Agreement and to contribute to the effective enforcement of the competition law of each Party, the Parties acknowledge that it is in their common interest to promote cooperation and coordination between the competition authorities with regard to developments in competition policy and enforcement activities, within the framework of the Agreement between the European Community and the Government of Japan concerning cooperation on anticompetitive activities, done at Brussels on 10 July 2003 (hereinafter referred to in this Chapter as "Agreement concerning cooperation on anticompetitive activities").
2. To facilitate the cooperation and coordination referred to in paragraph 1, the competition authorities of the Parties may exchange or otherwise communicate information, within the framework of the Agreement concerning cooperation on anticompetitive activities.

## ARTICLE 11.9

### Dispute settlement

The provisions of this Chapter shall not be subject to dispute settlement under Chapter 21.