

TITLE VIII

COMPETITION

ARTICLE 258

Definitions

1. For the purposes of this Title:

– "competition laws" means:

- (a) for the EU Party, 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 undertakings (the EC Merger Regulation), and their implementing regulations and amendments;
- (b) for Colombia and Peru, the following, as appropriate:
 - (i) domestic laws related to competition adopted or maintained in compliance with Article 260, and their implementing regulations and amendments; and/or

(ii) Andean Community legislation applying in Colombia or Peru and its implementing regulations and amendments;

– "competition authority" and "competition authorities" mean:

(a) for the EU Party, the European Commission; and,

(b) for Colombia and Peru, their respective national competition authorities.

2. Nothing in this Article shall affect competences assigned by the Parties to their respective regional and national authorities for the effective and coherent implementation of their respective competition laws.

ARTICLE 259

Objectives and Principles

1. Acknowledging the importance of free competition and that anti-competitive practices have the potential of distorting the proper operation of markets, affecting economic and social development, economic efficiency and consumer welfare, and undermining the benefits arising from the implementation of this Agreement, the Parties shall apply their respective competition policies and laws.

2. The Parties agree that the following practices are inconsistent with this Agreement to the extent that such practices may affect trade and investment between the Parties:

- (a) any agreement, decision, recommendation or concerted practice, which has the purpose or effect of impeding, restricting, or distorting competition in accordance with their respective competition laws;
- (b) the abuse of a dominant position in accordance with their respective competition laws; and
- (c) concentrations of companies which significantly impedes effective competition, particularly as a result of the creation or strengthening of a dominant position in accordance with their respective competition laws.

3. The Parties recognise the importance of cooperation and coordination of their respective competition authorities to further effective competition policy and law enforcement, including notifications under Article 262, consultations, exchange of information, technical assistance and promotion of competition.

4. The Parties shall support and promote measures to strengthen competition in their respective jurisdictions in accordance with the objectives of this Agreement.

ARTICLE 260

Competition Laws, Authorities and Policies

1. Each Party shall maintain competition laws that address the practices referred to in Article 259 paragraph 2, and adopt appropriate actions with respect to such practices.
2. Each Party shall establish or maintain competition authorities responsible and appropriately equipped for the effective enforcement of their respective competition laws.
3. The Parties recognise the importance of applying their respective competition laws in a transparent, timely and non-discriminatory manner, respecting the principle of due process and the rights of defence.
4. Each Party shall maintain its autonomy to establish, develop and implement their respective competition policies.

ARTICLE 261

Cooperation and Exchange of Information

1. The Parties shall make their best efforts to cooperate through their competition authorities in matters related to the implementation of competition laws.
2. The competition authority of a Party may request cooperation from the competition authority of another Party regarding enforcement activities. This cooperation shall not prevent the Parties concerned from taking independent decisions.
3. The competition authorities may exchange information in order to facilitate the effective application of their respective competition laws.
4. Whenever competition authorities exchange information pursuant to this Article, they shall take into account the restrictions imposed by their respective legislation.
5. If a Party considers that an anticompetitive practice as defined in Article 259 paragraph 2 carried out within the territory of another Party has an adverse effect within the territory of both Parties or on trade relations between those Parties, that Party may request that such other Party initiate the enforcement activities established under its legislation.

6. The competition authorities may further strengthen cooperation by appropriate means or instruments in accordance with their interests and capacities.

ARTICLE 262

Notification

1. The competition authority of a Party shall notify the competition authority of another Party, administrative resources allowing, with respect to the enforcement activities of competition laws that the notifying competition authority considers may affect important interests¹ of that other Party.
2. The notification pursuant to paragraph 1 shall be made as soon as possible, to the extent that this does not violate the competition law of the Party making the notification or affect any investigation underway.

ARTICLE 263

Designated Monopolies and State Enterprises

1. Nothing in this Agreement shall prevent a Party from establishing or maintaining public or private monopolies and state enterprises according to its legislation².

¹ In particular, when the notification could contribute to achieve the objectives of the enforcement activities of the notified competition authority.

² For greater certainty, the Parties understand that "monopolios rentísticos" established in accordance with Article 336 of the Political Constitution of Colombia are included in the category of designated monopolies and state enterprises.

2. Each Party shall ensure that state enterprises and designated monopolies are subject to its competition laws in so far as the application of such laws does not obstruct the performance, in law or in fact, of the particular public tasks assigned to them.

3. With regard to state enterprises and designated monopolies, no Party shall adopt or maintain any measure contrary to the provisions of this Title which distorts trade and investment between the Parties.

ARTICLE 264

Technical Assistance

1. In order to achieve the objectives set out in this Title, the Parties acknowledge the importance of technical assistance and shall promote initiatives with a view to developing a competition culture.

2. Initiatives pursuant to paragraph 1 shall focus, among others, on strengthening the technical and institutional capacities as regards the implementation of competition policy and enforcement of competition laws, training of human resources and exchange of experiences.

ARTICLE 265

Consultations

1. For the purposes of fostering understanding between the Parties or addressing any specific issues arising under this Title, a Party, upon request of another Party, shall accept the initiation of consultations, without prejudice to pursuing any action in accordance with its competition laws and while maintaining its full autonomy as regards the final decision on the issues subject to consultations.
2. The Party requesting consultations pursuant to paragraph 1 shall indicate how the issue affects the proper operation of markets, as well as consumers and trade and investment between the Parties. The requested Party shall accord the fullest consideration to the concerns of the requesting Party.

ARTICLE 266

Dispute Settlement

No Party may have recourse to dispute settlement under Title XII (Dispute Settlement) with respect to any issue arising under this Title.