

CHAPTER 13

COMPETITION POLICIES

Article 13.1: Objectives and principles

1. The Parties understand that proscribing anti-competitive business practices, implementing competition policies, and cooperating on competition issues contribute to enhancing trade liberalization and promoting economic efficiency and consumer welfare.

2. The Parties therefore agree anti-competitive business practices means business conduct or transactions that adversely affect competition in the territory of a Party, such as:

- (a) agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition;
- (b) any abuse of a dominant position by one or more undertakings in the territory of any of the Parties as a whole or in a substantial part thereof;
- (c) concentrations between undertakings that significantly impede effective competition; or
- (d) acts of unfair competition;

as specified in their respective competition laws.

Article 13.2: Competition Laws and Authorities

1. The Parties shall maintain or enforce competition laws⁴⁷ that promote and protect the competitive process in their markets by proscribing conduct or transactions referred to in Article 13.1.

2. The Parties shall maintain an authority or authorities responsible for the enforcement of their national competition laws.

⁴⁷ Parties understand that the term includes all domestic regulations.

Article 13.3: Implementation of Competition Laws

1. The Parties shall be consistent with the principles of transparency, non-discrimination, and procedural fairness in their competition law enforcement.
2. The Parties shall treat persons who are not persons of that Party no less favourably than persons of that Party in like circumstances in the competition law enforcement.
3. The Parties shall ensure that before they impose administrative punishment or restrictive conditions against a person for violation of their national competition laws, they afford that person the reasonable opportunity to present opinion or evidence in its defence in accordance with the legislation of each party.
4. The Parties shall ensure that all final administrative decisions finding a violation of their national competition laws are in written form and set out any relevant findings of fact and legal basis on which the decision is based.

Article 13.4: Transparency

1. The Parties shall make public their competition laws and regulations.
2. The Parties shall make public the decisions and any orders implementing them in accordance with their national competition laws and regulations. The Parties shall ensure that the version of the decisions or orders that the Parties make available to the public do not include business confidential information that is protected from public disclosure or other information that is not suitable for disclosure by their national laws.

Article 13.5: Cooperation in Law Enforcement

1. The Parties recognise the importance of cooperation and coordination between their respective competition authorities, to promote effective competition law enforcement in the free trade area. Accordingly, each Party shall cooperate through

exchange of non-confidential information and experience, consultations and technical assistance, in accordance with the legislation of each Party.

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

Article 13.6: Information Exchange and Confidentiality ⁴⁸

The competition authority of a Party shall, upon request of the competition authority of the other Party, endeavor to provide non-confidential information to facilitate the effective enforcement of its respective competition laws, provided that such information does not affect an ongoing investigation and is consistent with the laws of each Party.

Article 13.7: Technical Cooperation

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

Article 13.8: Consultations

1. To foster understanding between the Parties, or to address specific matters that arise under this Chapter, each Party shall, on request of the other Party, enter into consultations without prejudice to the autonomy of each developing Party, to maintain and implement its competition legislation.

2. The Party to which a request for consultations has been addressed shall give full and sympathetic consideration to the concerns of the other Party.

Article 13.9: Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement for any issue arising from or relating to this Chapter.

⁴⁸ For each Party, the term confidential information, includes any information defined as 'confidential' according to its law.

Article 13.10: Definitions

For purposes of this Chapter:

competition authority means:

(a) for China, the State Administration for Market Regulation or its successor;
and

(b) for Nicaragua, the National Institute of Promotion to the Competition (*Instituto Nacional de Promoción de la Competencia (ProCompetencia)*) or its successor; and,

competition laws means:

(a) for China, the *Anti-monopoly Law* of the People's Republic of China, the *Anti-Unfair Competition Law of the People's Republic of China*; and

(b) for Nicaragua, the *Law on the Promotion of Competition (Ley de Promoción de la Competencia)*, approved by Law No. 601 of September 28, 2006, and

its implementing regulations and amendments.