

**AGREEMENT ESTABLISHING AN ASSOCIATION BETWEEN THE EUROPEAN COMMUNITY AND ITS MEMBER STATES, OF THE ONE PART, AND THE REPUBLIC OF CHILE, OF THE OTHER PART<sup>126</sup>**

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**TITLE VII—COMPETITION**

**Article 172—Objectives**

1. The Parties undertake to apply their respective competition laws in a manner consistent with this Part of the Agreement so as to avoid the benefits of the liberalisation process in goods and services being diminished or cancelled out by anti-competitive business conduct. To this end, the Parties agree to cooperate and coordinate among their competition authorities under the provisions of this Title.
2. With a view to preventing distortions or restrictions of competition which may affect trade in goods or services between them, the Parties shall give particular attention to anti-competitive agreements, concerted practices and abusive behaviour resulting from single or joint dominant positions.
3. The Parties agree to cooperate and coordinate among themselves for the implementation of competition laws. This cooperation includes notification, consultation, exchange of non-confidential information and technical assistance. The Parties acknowledge the importance of embracing principles on competition that would be accepted by both Parties in multilateral fora, including the WTO.

**Article 173—Definitions**

For the purpose of this Title:

1. ‘competition laws’ includes:
  - (a) for the Community, Articles 81, 82 and 86 of the Treaty establishing the European Community, Regulation (EEC) No 4064/89 and their implementing regulations or amendments;
  - (b) for Chile, Decreto Ley No 211 of 1973 and Ley No 19.610 of 1999 and their implementing regulations or amendments; and
  - (c) any changes that the abovementioned legislation may undergo after the entry into force of this Agreement.
2. ‘competition authority’ means:
  - (a) for the Community, the Commission of the European Communities; and
  - (b) for Chile, the Fiscalía Nacional Económica and the Comisión Resolutiva.

3. 'enforcement activity' means any application of competition laws by way of investigation or proceeding conducted by the competition authority of a Party, which may result in the imposition of penalties or remedies.

#### **Article 174–Notifications**

1. Each competition authority shall notify the competition authority of the other Party of an enforcement activity if it:

- (a) is liable to substantially affect the other Party's important interests;
- (b) relates to restrictions on competition which are liable to have a direct and substantial effect in the territory of the other Party; or
- (c) concerns anti-competitive acts taking place principally in the territory of the other Party.

2. Provided that this is not contrary to the Parties' competition laws and does not affect any investigation being carried out, notification shall take place at an early stage of the procedure. The opinions received may be taken into consideration by the other competition authority when taking decisions.

3. The notifications provided for in paragraph 1 should be detailed enough to permit an evaluation in the light of the interests of the other Party.

4. The Parties undertake to use their best efforts to ensure that notifications are made in the circumstances set out above, taking into account the administrative resources available to them.

#### **Article 175–Coordination of enforcement activities**

The competition authority of one Party may notify the other Party's competition authority of its willingness to coordinate enforcement activities with respect to a specific case. This coordination shall not prevent the Parties from taking autonomous decisions.

#### **Article 176–Consultations when the important interests of one Party are adversely affected in the territory of the other Party**

1. Each Party shall, in accordance with its laws, take into consideration, as necessary, the important interests of the other Party in the course of its enforcement activities. If the competition authority of a Party considers that an investigation or proceeding being conducted by the competition authority of the other Party may adversely affect such Party's important interests it may transmit its views on the matter to, or request consultation with, the other competition authority. Without prejudice to the continuation of any action under its competition laws and to its full freedom of ultimate decision, the competition authority so addressed should give full and sympathetic consideration to the views expressed by the requesting competition authority.

2. The competition authority of a Party which considers that the interests of that Party are being substantially and adversely affected by anti-competitive practices of whatever origin that are or have been engaged in by one or more enterprises situated in the other Party may request consultations with the competition authority of that Party. Such consultations shall be without prejudice to the full freedom of ultimate decision of the competition authority concerned. A competition authority so consulted may take whatever corrective measures under its competition laws it deems appropriate, consistent with its own domestic law, and without prejudice to its full enforcement discretion.

### ***Article 177–Exchange of information and confidentiality***

1. With a view to facilitating the effective application of their respective competition laws, the competition authorities may exchange non-confidential information.

2. For the purpose of improving transparency, and without prejudice to the rules and standards of confidentiality applicable in each Party, the Parties hereby undertake to exchange information regarding sanctions and remedies applied in the cases that, according to the competition authority concerned, are significantly affecting important interests of the other Party and to provide the grounds on which those actions were taken, when requested by the competition authority of the other Party.

3. Each Party shall provide the other Party with information on state aid on an annual basis, including the overall amount of aid and, if possible, the segregation by sector. Each Party may request information on individual cases affecting trade between the Parties. The requested Party will use its best efforts to provide non-confidential information.

4. All exchange of information shall be subject to the standards of confidentiality applicable in each Party. Confidential information whose dissemination is expressly prohibited or which, if disseminated, could adversely affect the interest of the Parties, shall not be provided without the express consent of the source of the information.

5. Each competition authority shall maintain the confidentiality of any information provided to it in confidence by the other competition authority, and oppose any application for disclosure of such information by a third party that is not authorised by the competition authority that supplied the information.

6. In particular, where the laws of a Party so provides, confidential information may be provided to their respective courts of justice, subject to maintaining its confidentiality by the respective courts.

### ***Article 178–Technical assistance***

The Parties may provide each other technical assistance in order to take advantage of their respective experience and to strengthen the implementation of their competition laws and policies.

***Article 179–Public enterprises and enterprises entrusted with special or exclusive rights, including designated monopolies***

1. Nothing in this Title prevents a Party from designating or maintaining public or private monopolies according to their respective laws.

2. With regard to public enterprises and enterprises to which special or exclusive rights have been granted, the Association Committee shall ensure that, following the date of entry into force of this Agreement, there is neither enacted nor maintained any measure distorting trade in goods or services between the Parties to an extent contrary to the Parties' interests and that such enterprises shall be subject to the rules of competition insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

***Article 180–Dispute settlement***

Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Title.