

EURO-MEDITERRANEAN AGREEMENT ESTABLISHING AN ASSOCIATION BETWEEN THE EUROPEAN COMMUNITY AND ITS MEMBER STATES, OF THE ONE PART, AND THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA, OF THE OTHER PART¹²⁴

[...]

**CHAPTER II
COMPETITION AND OTHER ECONOMIC MATTERS**

Article 41

1. The following are incompatible with the proper functioning of the Agreement, insofar as they may affect trade between the Community and Algeria:

(a) all 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 competition;

(b) abuse by one or more undertakings of a dominant position in:
– the whole of the territory of the Community or in a substantial part thereof;
– the whole of the territory of Algeria or in a substantial part thereof.

2. The Parties shall ensure administrative cooperation in the implementation of their respective competition legislations and exchange information taking into account the limitations imposed by the requirements of professional and business secrecy in accordance with the procedures laid down in Annex 5 to this Agreement.

3. If the Community or Algeria considers that a particular practice is incompatible with the terms of paragraph 1, and if such practice causes or threatens to cause serious prejudice to the interest of the other Party, it may take appropriate measures after consultation within the Association Committee or after 30 working days following referral for such consultation.

Article 42

The Member States and Algeria shall progressively adjust, without prejudice to their commitments to the GATT, any State monopolies of a commercial character, so as to ensure that, by the end of the fifth year following the entry into force of this Agreement, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States and Algeria. The Association Committee will be informed about the measures adopted to implement this objective.

Article 43

With regard to public enterprises and enterprises which have been granted special or exclusive rights, the Association Council shall ensure, from the fifth year following the entry into force of this Agreement, that no measure which disturbs trade between the Community and Algeria in a manner which runs counter to the interests of the Parties is adopted or maintained. This provision should not obstruct the performance in law or in fact of the particular tasks assigned to these enterprises.

ANNEX 5 IMPLEMENTING RULES FOR ARTICLE 41

CHAPTER I GENERAL PROVISIONS

1. Objectives

Cases relating to practices contrary to Article 41(1)(a) or (b) of this Agreement shall be dealt with by applying the appropriate legislation, in order to avoid adverse effects on trade and economic development and the possible negative impact that such practices may have on the other Party's important interests.

The competence of the Parties' competition authorities to deal with these cases shall flow from the existing rules of their respective competition laws, including where these rules are applied to undertakings located outside their territory, but whose activities affect that territory.

The purpose of these rules is to promote cooperation and coordination between the Parties in the application of their competition laws in order to ensure that restrictions on competition do not block or cancel out the benefits which should be ensured following the progressive liberalisation of trade between the European Community and Algeria.

2. Definitions

For the purposes of these rules:

- (a) "competition law" shall mean:
 - (i) for the European Community ("the Community"), Articles 81 and 82 of the EC Treaty, Council Regulation (EEC) No 4064/89 and related secondary legislation adopted by the Community;
 - (ii) For Algeria, Competition Decree No 95-06 of 23 Sha'ban 1415 corresponding to 25 January 1995, and its implementing provisions;
 - (iii) and any amendments to or repeal of those laws.
- (b) "competition authority" shall mean:
 - (i) for the Community: the Commission of the European Community as to its responsibilities pursuant to the competition law of the Community;
 - (ii) for Algeria: the *Conseil de la Concurrence* (Competition Board).
- (c) "enforcement activity" shall mean any application of competition law by way of investigation or proceeding conducted by the competition authority of a Party, which may result in penalties or remedies;
- (d) "anti-competitive activity" and "conduct and practices which restrict competition" shall mean any conduct or transaction that is impermissible under the competition laws of a Party and may be subject to penalties or remedies.

CHAPTER II COOPERATION AND COORDINATION

3. Notification

3.1. Each Party's competition authority shall notify the other of its enforcement activities where:

- (a) the notifying Party considers them relevant to enforcement activities of the other Party;
- (b) they may significantly affect important interests of the other Party;
- (c) they relate to restrictions on competition which may directly and substantially affect the territory of the other Party;
- (d) they involve anti-competitive activities carried out mainly in the territory of the other Party;

and

- (e) they condition or prohibit action in the territory of the other Party.

3.2. To the extent possible, and provided that this is not contrary to the Parties' competition laws and does not adversely affect any investigation being carried out, notification shall take place during the initial phase of the procedure, to enable the notified competition authority to express its opinion. The notified authority shall give due consideration to the opinions received when taking decisions.

3.3. The notifications provided for in Article 3.1 of this Chapter shall be detailed enough to permit an evaluation in the light of the interests of the other Party.

3.4. The Parties undertake to give the above notification wherever possible, depending on available administrative resources.

4. Exchange of information and confidentiality

4.1. The Parties shall exchange information which will facilitate the effective application of their respective competition laws and promote a better understanding of their respective legal frameworks.

4.2. The exchange of information shall be subject to the standards of confidentiality applicable under the law of each Party. Confidential information whose dissemination is expressly prohibited or which, if disseminated, could adversely affect the Parties, shall not be provided without the express consent of the source of the information. Each competition authority shall maintain, to the fullest extent possible, the confidentiality of any information provided to it in confidence by the other competition authority under the rules and shall oppose, to the fullest extent possible, any application for disclosure of such information by a third party that is not authorised by the competition authority that supplied the information.

5. Coordination of enforcement activities

5.1. Each competition authority may notify the other of its willingness to coordinate enforcement activities with respect to a specific case. This coordination shall not prevent the competition authorities from taking autonomous decisions.

5.2. In determining the extent of coordination, the competition authorities shall consider:

- (a) the results which coordination could produce;
- (b) the additional information to be obtained;
- (c) the reduction in costs for the competition authorities and the economic agents involved, and
- (d) the applicable deadlines under their respective legislations.

6. Consultation when important interests of one Party are adversely affected in the territory of the other Party

6.1. A competition authority which considers that one or more undertakings situated in one Party's territory are or have been engaged in anti-competitive activities of whatever origin that are substantially and adversely affecting the interests of the Party it represents may request consultations with the other competition authority, recognising that entering into such consultations is without prejudice to any action under its competition laws and to the full freedom of ultimate decision of the competition authority concerned. The requested competition authority may take the appropriate remedial action, in the light of the legislation in force.

6.2. Each Party shall, wherever possible and in accordance with its own legislation, take into consideration the important interests of the other Party in the course of its enforcement activities. A competition authority which considers that an enforcement activity being conducted by the competition authority of the other Party under its competition law may affect the important interests of the Party it represents should transmit its views on the matter to or request consultations with the other competition authority. Without prejudice to the continuation of its action under its competition laws or 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, and in particular to any suggestions as to alternative means of fulfilling the needs and objectives of the enforcement activity.

7. Technical cooperation

7.1. The Parties shall be open to technical cooperation in order to enable them to take advantage of their respective experience and to strengthen the implementation of their competition law and policies.

Provisions on international relations in EU competition policy

7.2. Cooperation shall include the following activities:

- (a) training for officials, to enable them to gain practical experience;
- (b) seminars, in particular for civil servants; and
- (c) studies of competition law and policies, with a view to supporting their development.

8. Modification and update of the rules

The Association Committee may amend these rules.