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This document contains the consolidated text as it stands at the end of the XXXIInd round of negotiations (21 February – 2 March 2018) on Competition in the Trade Part of the EU-Mercosur Association Agreement. This is without prejudice to the final outcome of negotiations. Both sides reserve the right to make subsequent modifications to their proposals.

Title VII
COMPETITION

Articles are numbered from 1 for ease of reading. Final numbering will be revised once the Titles are integrated into the Agreement.

Article 1

Definitions

For the purpose of this Chapter:

- (a) "Competition Laws" include:
- (i) for the EU, Articles 101, 102 and 106 of the Treaty on the Functioning of the European Union, Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, and their implementing regulations or amendments¹;
 - (ii) for MERCOSUR, the national legislation on competition of the Parties States of MERCOSUR and its implementing regulations or amendments;
 - (iii) any amendments that the above mentioned legislation may undergo.
- (b) "Competition authority" means:
- (i) for the EU, the European Commission, and
 - (ii) for MERCOSUR, the national application authorities, which shall designate and inform a focal point periodically.

¹ For greater certainty, competition rules in the EU apply to the agricultural sector in accordance with Regulation 1308/2013 of the European Parliament and Council establishing a common organisation of the markets in agricultural products and its subsequent amendments or replacements, if any (Official Journal L347/2013).

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- (c) "enforcement activities" means any application of competition law by way of investigation or proceeding conducted by the competition authorities of a Party.
- (d) "anticompetitive practices" mean any conduct or act as defined under the competition laws of a Party, which is subject to the imposition of penalties.
- (e) "Concentrations between undertakings" means any transaction or act as defined under the Competition Laws of a Party.

Article 2

Principles

1. The Parties recognise the importance of free and undistorted competition in their trade relations. The Parties acknowledge that anti-competitive practices and concentrations between undertakings which significantly impede effective competition have the potential to affect the proper functioning of markets and the benefits of trade liberalisation.
2. The Parties therefore agree that the following are incompatible with this Agreement, in so far as they may affect trade between the Parties:
 - (a) 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 competition² as specified in their respective competition laws;
 - (b) any abuse by one or more undertakings of a dominant position or a substantial market power or notable market participation, as specified in their respective Competition Laws;
 - (c) concentrations between undertakings, which significantly impede effective competition, as specified in 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 principles of procedural fairness towards all interested parties and rights of defense of the parties under investigation.

² For greater certainty, this paragraph shall not be construed as limiting the scope of the analysis to be carried out in the cases of application of agreements between undertakings, decision by associations of undertaking and concerted practices between undertakings as established in the national competition laws of the Parties.

Article 3

Implementation

The Parties shall adopt or maintain in force comprehensive Competition Laws which effectively address the anti-competitive practices and concentrations between undertakings which significantly impede effective competition referred to in Article 2 (2) (a) to (c) and respect the principles set out in Article 2 (3). The Parties shall establish or maintain Competition Authorities designated and appropriately equipped for the transparent and effective implementation of the Competition Laws.

Article 4

Public enterprises and enterprises entrusted with special or exclusive rights including designated monopolies

1. Nothing in this Chapter prevents a [signatory State] from designating or maintaining public enterprises, enterprises entrusted with special or exclusive rights or monopolies according to their respective national laws.
2. The entities mentioned in paragraph 1 above shall be subject to the Competition Laws insofar as the application of the Competition Laws does not obstruct the performance, in law or in fact, of the particular tasks of public interest assigned to them by a [signatory state].

Article 5

Exchange of non confidential information and enforcement cooperation

1. With a view to facilitating the effective application of their respective competition laws, the competition authorities may exchange non-confidential information.
2. The Competition Authority of one Party may request cooperation to the other Party's competition authority with respect to enforcement activities. This co-operation shall not prevent the Parties from taking autonomous decisions.
3. Neither Party is required to communicate information to the other Party. A Party may require that information communicated pursuant to this Article be used subject to the terms and conditions it may specify.

Article 6

Consultations

1. A competition authority of a Party may request consultations with the competition authority of the other Party should it consider that the interests of that Party are being substantially and adversely affected by

(a) anticompetitive practices that are or have been engaged in by one or more enterprises situated in the territory of the other Party or

(b) concentrations between undertakings which significantly impede effective competition as referred to in Article 2 (2) (a) to (c) or

(c) the enforcement activities of the competition authority of the other Party.

(d) The EU Competition Authority shall endeavor to assist the Competition Authorities from the Members countries of MERCOSUR, in their contacts with the Competition Authorities from the EU Member States in relation to anticompetitive practices, concentrations between undertakings and the enforcement of competition activities, without implications at Community level.

It is recognised that entering into such consultations is without prejudice to any action under its competition law and to the full freedom of ultimate decision of the competition authority concerned.

2. A competition authority so consulted may take whatever corrective measures it deems appropriate, consistent with its laws, and without prejudice to its full enforcement discretion.

Article 7

Technical assistance

The Parties will engage in capacity building activities in the area of competition policy subject to the availability of funding for such activities under the Parties' cooperation instruments and programmes. This cooperation is addressed in Article X of Chapter XX of this Agreement.

For the Cooperation Chapter of this Agreement

The Parties will engage in capacity building activities in the area of competition policy subject to the availability of funding for such activities under the Parties' cooperation instruments and programmes.

Technical assistance shall focus on institutional capacity building and training of human resources of the competition authorities, to support them in the establishment of their

respective competition regimes and effective enforcement. The aim shall be to strengthen and effectively enforce competition laws in the areas of antitrust and concentrations between undertakings, including competition advocacy.

Article 8

Transparency

The provisions of Title [X] (Transparency) shall apply to matters covered by this Title. For the purposes of the application of Article [5 of that Title] to matters covered by this Title, "interested persons that are directly affected by a proceeding" shall mean the potential addressees of a decision by a competition authority. [placement to be decided]

Article 9

Dispute Settlement

Neither Party shall call upon a dispute settlement procedure under this Agreement for any matter arising from this Chapter.

