

**Disclaimer:** the negotiations between EU and Japan on Economic Partnership Agreement are not concluded yet, therefore the published texts should be considered provisional and not final. In particular, the provisions which appear in brackets are still under negotiations. However, in view of the growing public interest in the negotiations, the texts are published at this stage of the negotiations. The texts are published for information purposes only and are without prejudice to the final outcome of the agreement between the EU and Japan. Any such texts become binding upon the Parties under international law only after completion by each Party of its internal legal procedures necessary for the entry into force of the Agreement, and after the final texts are submitted and approved by the legislators.

## **CHAPTER XX ANTITRUST AND MERGERS**

### **Article 1 Principles**

The Parties recognise the importance of fair and free competition in their trade and investment relations. The Parties acknowledge that anticompetitive practices have the potential to distort the proper functioning of markets and undermine the benefits of liberalisation of trade and investment.

### **Article 2 Anticompetitive Practices**

Each Party shall, in accordance with its laws and regulations, take measures which it considers appropriate against anticompetitive practices, in order to fulfill the principles of the Agreement.

### **Article 3 Legislative Framework**

1. Each Party shall maintain competition law that applies to all enterprises in all sectors of the economy and which addresses all of the anticompetitive practices listed below in an effective manner.

For Japan, such anticompetitive practices will include:

- a) Private monopolization;
- b) Unreasonable restraint of trade;
- c) Unfair trade practices; and
- d) Mergers or acquisitions which would substantially restrain competition in a particular field of trade.

For the EU, such anticompetitive practices will include:

- a) Agreements between enterprises, decisions by associations of enterprises and concerted practices which have as their object or effect the prevention, restriction or distortion of competition;
- b) Abuses by one or more enterprises of a dominant position; and
- c) Mergers/concentrations between enterprises which would significantly impede effective competition.

2. Each Party shall apply its competition law to all enterprises, private or public, engaged in economic activities. This shall not prevent a Party from providing for exemptions from its competition law, provided that such exemptions are transparent and are limited to those necessary for securing public interest. Exemptions to the competition law must not go beyond what is strictly necessary to achieve the public interest objectives that have been defined in that Party.

3. For the purposes of this Chapter, the term "economic activities" pertains to the offering of goods and services in a market.

#### **Article 4 Operational independence**

Each Party shall maintain an operationally independent authority which is responsible and competent for the effective enforcement of competition law.

#### **Article 5 Non-discrimination**

When applying its competition laws, each Party shall respect the principle of non-discrimination for all enterprises, irrespective of the nationality and type of ownership of the enterprises concerned.

#### **Article 6 Procedural Fairness**

Each Party shall respect the principle of procedural fairness for all enterprises, irrespective of the nationality and type of ownership of the enterprises concerned.

#### **Article 7 Transparency**

Each Party shall apply its competition laws in a transparent manner. Each Party shall promote transparency in its competition policy.

**Article 8**  
**Enforcement Cooperation**

1. To fulfil the objectives of this Agreement and to contribute to the effective enforcement of the competition laws of each Party, the Parties acknowledge that it is in their common interest to cooperate and coordinate between the competition authorities with regard to developments in competition policy and enforcement activities, within the framework of the Agreement between the European Community and the Government of Japan concerning cooperation on anti-competitive activities.

2. To facilitate the cooperation referred to in paragraph 1 above, the authority responsible for enforcing the competition laws of each Party may exchange and communicate information, within the framework of the Agreement between European Community and the Government of Japan concerning cooperation on anti-competitive activities.

**ARTICLE 9**  
**Dispute Settlement**

The provisions on dispute settlement in Chapter/Section [XX] of this agreement shall not apply to this Chapter.