

*This **TEXTUAL PROPOSAL** is the European Union's initial proposal for legal text on "Competition" in TTIP. It was tabled for discussion with the US in the negotiating round of 10-14 March 2014 and made public on 7 January 2015. The actual text in the final agreement will be a result of negotiations between the EU and US.*

TEXTUAL PROPOSAL

POSSIBLE PROVISIONS ON COMPETITION

In line with the proposed content developed in the Initial Position Paper proposed by the EU on "Anti-Trust, Government Influence and Subsidies", this paper provides further details on some of the elements that the EU proposes to be included in the Antitrust & Mergers part of the Competition Chapter.

In addition to these core elements, the EU would like to prompt reflection on possible additional elements, including language on best practices and consultations. There could also be a reflection of the desirability of consultation provisions, such as currently covered in the bilateral cooperation agreements on competition.

The proposed language is without prejudice to any other elements that the EU may propose for inclusion in the TTIP competition text at a later stage. The choice of wording could be further elaborated upon during the next round of discussions.

X.1 General Principles

The Parties recognise the importance of free and undistorted competition in their trade and investment relations. Effective competition enforcement contributes to making markets work better by ensuring that all companies compete on their merits. This benefits consumers, businesses and the economy as a whole.

The Parties acknowledge that anti-competitive business practices and State interventions have the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation.

X.2 Legislative framework

- (1) To promote free and undistorted competition in their respective territories, each Party shall maintain antitrust and merger competition legislation which addresses all of the following practices in an effective manner:
 - (a) horizontal and vertical 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,
 - (c) concentrations between enterprises which significantly impede effective

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competition, in particular as a result of the creation or strengthening of a dominant position.

X.3 Implementation

- (1) The Parties each shall maintain an operationally independent authority responsible for and appropriately equipped for the effective enforcement of the competition legislation referred to above in X.2.
- (2) The Parties shall apply their respective competition legislation in a transparent and non-discriminatory manner, respecting the principles of procedural fairness and the rights of defence of the enterprises concerned, irrespective of their nationality or ownership status.

X.4 State enterprises and enterprises granted special or exclusive rights or privileges

- (1) In the case of state enterprises and enterprises granted special or exclusive rights or privileges the Parties shall neither enact nor maintain in force any measure contrary to the competition legislation referred to above in X.2 and X.3(2).
- (2) Enterprises entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the competition legislation referred to above in X.2 and X.3(2) in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to the enterprises in question. Trade and investment must not be affected to such an extent as would be contrary to the objectives of this Agreement.

X.5 Cooperation

- (1) In order to fulfill the objectives of this Agreement and to enhance effective competition enforcement, the Parties acknowledge that it is in their common interest to strengthen cooperation with regard to competition policy development and the investigation of antitrust and merger cases, to the extent compatible with the assisting Party's laws and important interests, and within reasonably available resources.
- (2) In order to facilitate the cooperation referred to in paragraph (1) above, the Parties' competition authorities may exchange information, subject to the confidentiality provisions laid down in X.6.
- (3) The above cooperation will be developed in accordance with the existing EU-USA Cooperation Agreements¹.

¹ Agreement between the European Communities and the Government of the United States of America on the application of positive comity principles in the enforcement of their competition laws (OJ L 173,

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X.6 Confidentiality

- (1) When exchanging information under this Chapter the Parties shall take into account the limitations imposed by their respective legislations concerning professional and business secrecy and shall ensure the protection of business secrets and other confidential information.
- (2) When a Party communicates information in confidence under this Agreement, the receiving Party shall, consistent with its laws and regulations, maintain the confidentiality of the communicated information.

X.7 Review clause

The Parties shall keep under constant review the matters to which reference is made in this Chapter. Each Party may refer such matters to the [*appropriate body established by the Agreement*]. The Parties agree to review progress in implementing this Chapter every five years after the entry into force of this Agreement, unless both Parties agree otherwise.

X.8 Dispute settlement

The provisions on the dispute settlement mechanism in Chapter/Section [xx] of this agreement shall not apply to this section.

18.06.1998); Agreement between the Government of the United States of America and the Commission of the European Communities regarding the application of their competition laws (OJ L 95, 27.4.1995)