

ANNEX XV

(referred to in Article 39)

CHAPTER I

GENERAL PROVISIONS

Article 1

Objectives

1. The Parties undertake to apply their respective competition laws so as to avoid that the benefits of this Decision may be diminished or cancelled out by anti-competitive activities.
2. The objectives of this mechanism are:
 - (a) to promote cooperation and coordination between the Parties regarding the application of their competition laws in their respective territories and to provide mutual assistance in any fields of competition they consider necessary;
 - (b) to eliminate anticompetitive activities by applying the appropriate legislation, in order to avoid adverse effects on trade and economic development, as well as the possible negative impact that such activities may have on the other Party's interests; and
 - (c) to promote cooperation in order to clarify any differences in the application of their respective competition laws.
3. The Parties shall give the following aspects particular attention in implementing the present mechanism, with a view to preventing distortions or restrictions on competition which may affect trade conducted between the Community and Mexico:
 - (a) for the Community: the agreements between companies, decisions to form an association between companies and concerted practices between companies, the abuse of a dominant position and mergers; and
 - (b) for Mexico the absolute or relative monopolistic practices and mergers.

Article 2

Definitions

For the purpose of this Annex:

- (a) 'competition laws' include:
 - (i) for the Community, Articles 81, 82, 85 and 86 of the Treaty establishing the European Community, Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings, Articles 65 and 66 of the Treaty establishing the European Coal and Steel Community (ECSC), and their implementing Regulations, including High Authority Decision No 24/54;
 - (ii) for Mexico, the Ley Federal de Competencia of December 24, 1992, Reglamento Interior de la Comisión Federal de Competencia of August 28, 1998 and the Reglamento de la Ley Federal de Competencia of March 4, 1998; and
 - (iii) any amendments that the above mentioned legislation may undergo; and
 - (iv) it may also include additional legislation to the extent it may have implications to competition in terms of this mechanism;
- (b) 'competition authority' means:
 - (i) for the Community, the Commission of the European Communities, and
 - (ii) for Mexico, Comisión Federal de Competencia;

- (c) 'enforcement activities' means any application of competition law by way of investigation or proceeding conducted by the competition authorities of a Party, which may result in penalties or remedies;
- (d) 'anticompetitive activities' and 'conduct and practices which restrict competition' mean any conduct, transaction or act as defined under the competition laws of a Party, which is subject to penalties or remedies.

CHAPTER II

COOPERATION AND COORDINATION

Article 3

Notification

1. Each competition authority shall notify the competition authority of the other Party an enforcement activity if:
 - (a) it is relevant to enforcement activities of the other Party;
 - (b) it may affect the other Party's important interests;
 - (c) it relates to restrictions on competition which may affect the territory of the other Party; and
 - (d) decisions may be adopted conditioning or prohibiting action in the territory of the other Party.
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 opinions received may be taken into consideration by the other competition authority when taking decisions.
3. The notifications provided for in paragraph 1 shall be detailed enough to permit an evaluation in the light of the interests of the other Party. Notifications shall include, *inter alia* the following information:
 - (a) a description of the restrictive effects of the transaction on competition and the applicable legal basis;
 - (b) the relevant market for the product or service and its geographical scope, the characteristics of the economic sector concerned and data on the economic agents involved in the transaction; and
 - (c) the estimated deadlines for resolution, in cases in which the procedure has been initiated, and to the extent possible an indication of its probable outcome, and of the measures which may be taken or provided for.
4. Each competition authority shall notify the competition authority of the other Party as soon as possible of the existence of measures, other than enforcement activities, which could affect that other Party important interests, bearing in mind the provision laid down in paragraph 1. In particular they shall do so in the following cases:
 - (a) administrative or judicial proceedings; and
 - (b) measures taken by other governmental agencies, including current or future regulatory bodies, which may have an impact to enhance competition in specific-regulated sectors.

Article 4

Exchange of information

1. With a view to facilitating the effective application of their respective competition laws and promoting a better understanding of their respective legal frameworks, the competition authorities shall exchange the following types of information:
 - (a) to the extent practicable, texts on legal theory, case-law or market studies in the public domain, or in the absence of such documents, non-confidential data or summaries;

- (b) information related to the application of competition legislation provided that it does not adversely affect the person providing such information, and for the sole purpose of helping to resolve the procedure; and
 - (c) information concerning any known anticompetitive activities and any innovations introduced into the respective legal systems in order to improve the application of their respective competition laws.
2. The competition authorities shall help each other to collect other types of information in their respective territories, if circumstances so require.
3. Representatives of each Party's competition authorities shall meet in order to promote knowledge on both sides of their respective competition laws and policies, and to evaluate the results of the cooperation mechanism. They may meet informally, as well as at institutional meetings in a multilateral context, when circumstances allow.

Article 5

Coordination of enforcement activities

1. A competition Authority may notify its willingness to coordinate enforcement activities with respect to a specific case. This coordination shall not prevent the Parties from taking autonomous decisions.
2. In determining the extent of coordination, the Parties shall consider:
- (a) the effective 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 legislation.

Article 6

Consultations when important interests of one Party are adversely affected in the territory of the other Party

1. A competition authority which considers that an investigation or proceeding being conducted by the competition authority of the other Party may affect such Party's important interests should 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 law 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, and in particular, to any suggestions as to alternative means of fulfilling the needs or objectives of the competition investigation or proceeding.
2. The competition authority of a Party, which considers that the interests of that Party are being substantially and adversely affected by anticompetitive practices of whatever origin that are or have been engaged in by one or more enterprises situated in the other Party may request consultation with the other competition authority, recognising 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. A competition authority so addressed should give full and sympathetic consideration to such views and factual materials as may be provided by the requesting competition authority and, in particular, to the nature of the anticompetitive practices in question, the enterprises involved and the alleged harmful effects on the interests of the requesting competition authority.

Article 7

Avoidance of conflicts

1. 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.
2. If adverse effects for one Party result, even if the above considerations are respected, the competition authorities shall seek a mutually acceptable solution. In this context, the following may be considered:

- (a) the importance of the measure and the impact which it has on the interests of one Party, by comparing the benefits to be obtained by the other Party;
- (b) the presence or absence, in the actions of the economic agents concerned, of the intention to affect consumers, suppliers or competitors;
- (c) the degree of any inconsistencies between the legislation of one Party and the measures to be applied by the other Party;
- (d) whether the economic agents involved will be subject to incompatible requests by both Parties;
- (e) the initiation of the procedure or the imposition of penalties or remedies;
- (f) the location of the assets of the economic agents involved; and
- (g) the importance of the penalty to be imposed in the territory of the other Party.

Article 8

Confidentiality

The 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 Parties, shall not be provided without the express consent of the source of the information. Each competition authority shall maintain the confidentiality of any information provided to it in confidence by the other competition authority under this mechanism, 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.

Article 9

Technical cooperation

1. The Parties shall 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.
2. The cooperation shall include the following activities:
 - (a) training of officials of both Parties' competition authorities, to enable them to gain practical experience; and
 - (b) seminars, in particular for civil servants.
3. The Parties may carry out joint studies of competition or competition laws and policies, with a view to supporting their development.
4. The Parties acknowledge that developments in communication and computer systems are relevant to the activities they wish to develop and that they should be used to promote communication and facilitate access to information on competition policies as far as possible. To this end they shall seek to:
 - (a) extend their respective home pages so as to provide information on developments in their activities;
 - (b) promote the dissemination of subjects relating to competition studies through publications such as the *Boletín Latinoamericano de Competencia*, the *Competition Policy Newsletter* of the Directorate General for Competition of the European Community, and the annual reports and the *Gaceta de Competencia Económica* published by the Comisión Federal de Competencia of Mexico; and
 - (c) develop an electronic archive of case-law pertaining to the cases investigated, which would enable the identification of individual cases, the nature of the practice or conduct analysed, its legal framework and the outcomes and dates of resolution.

Article 10

Amendments

The Joint Committee may amend this Annex.
