

CHAPTER 7

COMPETITION POLICY

Article 7.1: Anti-competitive Business Conduct

1. Each Party shall endeavour to adopt or maintain competition laws to proscribe anti-competitive business conduct, with the objective of promoting economic efficiency and consumer welfare, and shall take appropriate action with respect to such conduct. The Parties recognize that undertaking these obligations will enhance the fulfilment of the objectives of this Agreement. Anti-competitive business conduct includes, but is not limited to:

- (a) anti-competitive horizontal arrangements between competitors;
- (b) misuse of market power, including predatory pricing by businesses;
- (c) anti-competitive vertical arrangements between businesses; and
- (d) anti-competitive mergers and acquisitions.

2. Each Party shall maintain an authority responsible for the enforcement of its national competition laws. The enforcement policy of each Party's national competition authority is not to discriminate on the basis of the nationality of the subjects of their proceedings. Each Party shall ensure that:

- (a) before it imposes a sanction or remedy against any person for violating its competition law, it affords the person the opportunity to be heard and to present evidence, within a reasonable time; and
- (b) a domestic court or tribunal, at the person's request, reviews any such sanction or remedy.

3. Nothing in this Chapter shall be construed to infringe each Party's autonomy in developing its competition policies or in deciding how to enforce its competition laws.

4. The Parties shall ensure the application of the principles of non-discrimination, transparency and due process to the competition measures adopted or maintained according to paragraph 1 and to each Party's laws and their enforcement.

Article 7.2: Confidentiality

1. Nothing in this Chapter shall require the provision of information that is:

- (a) classified as confidential by a Party or its competition authority;
or
- (b) contrary to a Party's laws or policies.

2. Each Party shall, subject to its laws or policies, maintain the confidentiality of any information communicated to it in confidence by the other Party and oppose any application for disclosure of such information. Any information communicated shall only be used for the purpose of the enforcement action for which it was communicated.

Article 7.3: Cooperation

The Parties agree to cooperate in the area of competition law and policy development by establishing consultation mechanisms and exchanging information. The Parties recognise the importance of cooperation and coordination in order to further effective competition law and policy development in the free trade area, in a manner consistent with their domestic laws, by establishing consultation mechanisms and exchanging information.

Article 7.4: Transparency and Information Requests

1. The Parties recognize the value of transparency in government competition policies.
2. On request, each Party shall make available to the other Party, public information concerning its competition law enforcement activities.
3. On request, each Party shall make available to the other Party public information concerning exemptions provided under its competition laws. Requests shall specify the particular goods and markets of interest and include an indication whether or not the exemption restricts trade or investment between the Parties.

Article 7.5: Consultations

To foster understanding between the Parties, or to address specific matters that arise under this Chapter, a Party shall, on request of the other Party, enter into consultations. In its request, the requesting Party shall indicate, if relevant, how the matter affects trade or investment between the Parties. The requested Party shall accord full and sympathetic consideration to the concerns of the other Party.

Article 7.6: Disputes

No Party may have recourse to the provisions for Dispute Settlement under Chapter 15 (*Dispute Settlement*) of this Agreement for any matter related to this Chapter.