

CHAPTER 10 COMPETITION

ARTICLE 10.1 PURPOSE AND DEFINITIONS

1. The purpose of this Chapter is to contribute to the fulfilment of the objectives of this Agreement through the promotion of fair competition and the curtailment of anti-competitive practices.
2. For the purposes of this Chapter, anti-competitive practices means business conduct or transactions that adversely affect competition, such as:
 - (a) abuse of market power;
 - (b) anti-competitive mergers and acquisitions; and
 - (c) anti-competitive horizontal arrangements between competitors.

ARTICLE 10.2 COOPERATION

1. The Parties recognise the importance of cooperation and coordination to further effective competition law and policy development and agree to cooperate on these matters in accordance with the provisions of this Chapter.
2. The Parties will seek to enhance a better understanding, communication and cooperation between their competition authorities responsible for the enforcement of their generic competition laws in relation to the issues to which this Chapter refers.

ARTICLE 10.3 NOTIFICATIONS

1. Each Party shall notify the other Party of an enforcement activity regarding an anti-competitive practice if it:
 - (a) considers that the enforcement activity is liable to substantially affect the other Party's trade interests;
 - (b) relates to restrictions on competition which are liable to have a direct and substantial effect in the territory of the other Party; or
 - (c) concerns anti-competitive acts taking place principally in the territory of the other Party.
2. Notification shall take place at an early stage of the procedure, provided that this is not contrary to the Parties' competition laws and does not affect any investigation being carried out.

ARTICLE 10.4 TRANSPARENCY AND INFORMATION REQUESTS

1. The Parties recognise the value of transparency of their competition policies.
2. Each Party, at the request of the other Party, shall make available public information concerning the enforcement of its measures proscribing anti-competitive business conduct.
3. On request, each Party shall make available to the other Party public information concerning exemptions provided under its competition laws. Such a request shall specify the particular goods and markets of interest, and indicate whether the exemption restricts trade or investment between the Parties.
4. Information or documents exchanged between the Parties in relation to any consultation conducted pursuant to the provisions of this Chapter shall be kept confidential. No Party shall, except to comply with its domestic legal requirements, release or disclose such information or documents to any person without the written consent of the Party that provided such information or documents. Where the disclosure of such information or documents is necessary to comply with the domestic legal requirements of a Party, that Party shall notify the other Party before such disclosure is made. The Parties may agree to the public release of information that they do not consider confidential.

ARTICLE 10.5 CONSULTATIONS

To foster understanding between the Parties, or to address specific matters that arise under this Chapter, each Party shall, at the request of the other Party, enter into consultations regarding representations made by the other Party. In its request, the Party shall indicate, if relevant, how the matter affects trade or investment between the Parties. The Party addressed shall accord full and sympathetic consideration to the concerns of the other Party.

ARTICLE 10.6 PUBLIC ENTERPRISES AND DESIGNATED MONOPOLIES

1. Nothing in this Chapter prevents a Party from designating or maintaining public or private monopolies according to its respective laws.
2. With regard to public enterprises and enterprises to which special or exclusive rights have been granted, the Parties shall ensure that, following the date of entry into force of this Agreement, no measure is adopted or maintained that distorts trade in goods or services among the Parties, which is contrary to this Agreement and contrary to the Parties' interests, and that such enterprises shall be subject to the rules of competition insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

ARTICLE 10.7 DISPUTE SETTLEMENT

1. Nothing in this Chapter permits a Party to challenge any decision made by a competition authority of the other Party in enforcing the applicable competition laws and regulations.
2. No Party shall have recourse to any dispute settlement procedures under this Agreement for any issue arising from or relating to this Chapter.