

## **Chapter Sixteen**

### **Competition Policy, Designated Monopolies, and State Enterprises**

#### **Article 16.1: Anticompetitive Business Conduct**

1. Each Party shall adopt or maintain competition laws that proscribe anticompetitive business conduct, with the objective of promoting economic efficiency and consumer welfare, and shall take appropriate action with respect to such conduct.
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 authorities 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 right to be heard and to present evidence, except that it may provide for the person to be heard and present evidence within a reasonable time after it imposes an interim sanction or remedy; and
  - (b) an independent court or tribunal imposes or, 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.

#### **Article 16.2: Cooperation**

The Parties agree to cooperate in the area of competition policy. The Parties recognize the importance of cooperation and coordination between their respective authorities to further effective competition law enforcement in the free trade area. Accordingly, the Parties shall cooperate on issues of competition law enforcement, including notification, consultation, and exchange of information relating to the enforcement of the Parties' competition laws and policies.

#### **Article 16.3: Designated Monopolies**

1. Nothing in this Chapter shall be construed to prevent a Party from designating a monopoly.

2. Where a Party designates a monopoly and the designation may affect the interests of persons of the other Party, the Party shall:

- (a) at the time of the designation endeavor to introduce such conditions on the operation of the monopoly as will minimize or eliminate any nullification or impairment of benefits in the sense of Annex 22.2 (Nullification or Impairment); and
- (b) provide written notification, in advance wherever possible, to the other Party of the designation and any such conditions.

3. Each Party shall ensure that any privately-owned monopoly that it designates after the date of entry into force of this Agreement and any government monopoly that it designates or has designated:

- (a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions, or impose quotas, fees, or other charges;
- (b) acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, including with regard to price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, except to comply with any terms of its designation that are not inconsistent with subparagraph (c) or (d);
- (c) provides non-discriminatory treatment to covered investments, to goods of the other Party, and to service suppliers of the other Party in its purchase or sale of the monopoly good or service in the relevant market; and
- (d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, subsidiaries, or other enterprises with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affect covered investments.

4. This Article does not apply to procurement.

#### **Article 16.4: State Enterprises**

1. Nothing in this Agreement shall be construed to prevent a Party from establishing or maintaining a state enterprise.
2. Each Party shall ensure that any state enterprise that it establishes or maintains acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such enterprise exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges.
3. Each Party shall ensure that any state enterprise that it establishes or maintains accords non-discriminatory treatment in the sale of its goods or services to covered investments.

#### **Article 16.5: Differences in Pricing**

The charging of different prices in different markets, or within the same market, where such differences are based on normal commercial considerations, such as taking account of supply and demand conditions, is not in itself inconsistent with Articles 16.3 and 16.4.

#### **Article 16.6: Transparency and Information Requests**

1. The Parties recognize the value of transparency of government competition policies.
2. On request, each Party shall make available to the other Party public information concerning its:
  - (a) competition law enforcement activities; and
  - (b) state enterprises and designated monopolies, public or private, at any level of government.

Requests under subparagraph (b) shall indicate the entities or localities involved, specify the particular products and markets concerned, and include indicia of practices that may restrict trade or investment between the Parties.

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 indicia that the exemption may restrict trade or investment between the Parties.

### **Article 16.7: Consultations**

To foster understanding between the Parties, or to address specific matters that arise under this Chapter, each Party shall, on 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 16.8: Disputes**

Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under Article 16.1, 16.2, or 16.7.

### **Article 16.9: Definitions**

For purposes of this Chapter:

a **delegation** includes a legislative grant, and a government order, directive, or other act, transferring to the monopoly or state enterprise, or authorizing the exercise by the monopoly or state enterprise of, governmental authority;

**designate** means to establish, designate, or authorize, formally or in effect, a monopoly or to expand the scope of a monopoly to cover an additional good or service;

**government monopoly** means a monopoly that is owned, or controlled through ownership interests, by the national government of a Party or by another such monopoly;

**in accordance with commercial considerations** means consistent with normal business practices of privately-held enterprises in the relevant business or industry;

**market** means the geographic and commercial market for a good or service;

**monopoly** means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant; and

**non-discriminatory treatment** means the better of national treatment and most-favored-nation treatment, as set out in the relevant provisions of this Agreement.