

## **CHAPTER 14 COMPETITION**

### **Article 14.1: Objectives**

Each Party understands that proscribing anti-competitive business practices of enterprises, implementing competition policies and cooperating on competition issues contribute to preventing the benefits of trade liberalization from being undermined and to promoting economic efficiency and consumer welfare.

### **Article 14.2: Competition Laws and Authorities**

1. Each Party shall maintain or adopt competition laws that promote and protect the competitive process in its market by proscribing anti-competitive business practices. Each Party shall maintain an authority or authorities responsible for the enforcement of its national competition laws.
2. Each Party shall also take appropriate actions, according to each Party's relevant laws and regulations with respect to anti-competitive business practices, which will prevent the benefits of trade liberalization from being undermined.

### **Article 14.3: Principles in Law Enforcement**

1. Each Party shall be consistent with the principles of transparency, non-discrimination, and procedural fairness in the competition law enforcement.
2. Each Party shall treat persons who are not persons of the Party no less favorably than persons of the Party in like circumstances in the competition law enforcement.
3. Each Party shall ensure that:
  - (a) a person subject to an investigation to determine whether conduct violates its competition laws or what administrative sanctions or remedies should be ordered for violation of such laws is afforded the opportunity to present opinion or evidence in its defense in the investigation process.
  - (b) persons subject to the imposition of a sanction or remedy for violation of its competition laws should be given the opportunity to seek review of the sanction or remedy through administrative reconsideration and/or administrative lawsuit in accordance with each Party's laws.

#### **Article 14.4: Transparency**

1. Each Party shall make public, including on the Internet, its laws and regulations concerning competition policy, including procedural rules for an investigation.
2. Each Party shall ensure that all final administrative decisions finding a violation of its competition laws are in written form and set out any relevant findings of fact and legal basis on which the decision is based.
3. Each Party shall endeavor to make public the decisions and any orders implementing them in accordance with its own laws and regulations. The version of the decisions or orders that the Party makes available to the public shall not contain business confidential information or other information that is protected by its law from public disclosure.

#### **Article 14.5: Application of Competition Laws**

1. This Chapter applies to all undertakings of each Party.
2. Nothing in this Chapter shall be construed to prevent a Party from establishing or maintaining a public enterprise, entrusting enterprises with special or exclusive rights or maintaining such rights.
3. With respect to public enterprises and enterprises entrusted with special rights<sup>1</sup> or exclusive rights:
  - (a) neither Party shall adopt or maintain any measure contrary to the principles contained in Article 14.2; and
  - (b) the Parties shall ensure that such enterprises are subject to the competition laws set out in Article 14.13,

in so far as the application of these principles and competition laws does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

#### **Article 14.6: Cooperation in Law Enforcement**

1. The Parties recognize the importance of cooperation and coordination in competition field, to promote effective competition law enforcement. Accordingly, the Parties shall cooperate through notification, consultation, exchange of information, and technical cooperation.

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<sup>1</sup> Special rights are granted by a Party when it designates or limits to two or more the number of enterprises authorized to provide goods or services, other than according to objective, proportional and non-discriminatory criteria, or confers on enterprises legal or regulatory advantages which substantially affect the ability of any other enterprise to provide the same goods or services.

2. The Parties recognize the importance of cooperation on matters related to their consumer protection laws. Accordingly, the Parties may exchange and communicate consumer protection information for the purpose of better protecting consumer's rights and interests.

#### **Article 14.7: Notification**

1. Each Party, through its competition authority or authorities, shall notify the other Party of an enforcement activity if it considers that such enforcement activity may substantially affect the other Party's important interests.

2. Provided that it is not contrary to the Parties' competition laws and does not affect any investigation being carried out, the Parties shall endeavor to notify at an early stage and in a detailed manner which is enough to permit an evaluation in the light of the interests of the other Party.

3. The Parties undertake to exert their best efforts to ensure that notifications are made in the circumstances set out above, taking into account the administrative resources available to them.

#### **Article 14.8: Consultation**

1. 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.

2. The Party to which a request for consultations has been addressed, shall accord full and sympathetic consideration to the concerns raised by the other Party.

3. To facilitate discussion of the matter that is the subject of the consultations, each Party shall endeavor to provide relevant non-confidential information to the other Party.

#### **Article 14.9: Exchange of Information**

1. Each Party shall endeavor to, upon request of the other Party, provide information to facilitate effective enforcement of their respective competition laws, provided that it does not affect any ongoing investigation and is compatible with the laws and regulations governing the agencies possessing the information.

2. Each Party shall maintain the confidentiality of any information provided as

confidential by the competition authority of the other Party and shall not disclose such information to any entity that is not authorized by the Party providing information.

3. On request of a Party, each Party shall make available to the other Party public information concerning its exemptions and immunities to its competition laws, provided that the request specifies the particular goods or services and markets of concern, and includes indicia that the exemption or immunity may hinder trade liberalization between the Parties.

#### **Article 14.10: Technical Cooperation**

The Parties may promote technical cooperation, including exchange of experiences, capacity building through training programs, workshops and research collaborations for the purpose of enhancing each Party's capacity related to competition policy and law enforcement.

#### **Article 14.11: Independence of Competition Law Enforcement**

This Chapter should not intervene with the independence of each Party in enforcing its respective competition laws.

#### **Article 14.12: Dispute Settlement**

1. If a Party considers that a given practice continues to affect trade in the sense of this Chapter, it may request consultation to the other Party in the Joint Commission with a view to facilitating a resolution of the matter.

2. Neither Party shall have recourse to Chapter 20 (Dispute Settlement) for any matters arising under this Chapter.

#### **Article 14.13: Definitions**

For the purposes of this Chapter:

**anti-competitive business practices** means business conduct or transactions that adversely affect competition in the territory of a Party, such as:

- (a) 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 in the territory of either Party as a whole or in a substantial part thereof;
- (b) any abuse by one or more enterprises of a dominant position in the territory

of either Party as a whole or in a substantial part thereof; or

- (c) concentrations between enterprises, which significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position in the territory of either Party as a whole or in a substantial part thereof;

**competition laws** means:

- (a) for China, *Anti-monopoly Law* and its implementing regulations and amendments; and
- (b) for Korea, the *Monopoly Regulation and Fair Trade Act* and its implementing regulations and amendments;

**consumer protection laws** means:

- (a) for China, *Consumer Protection Law* and its implementing regulations and amendments; and
- (b) for Korea, Chapters III, IV.3, IX, and X of the *Framework Act on Consumer* and its implementing regulations and amendments;

**undertakings** means natural persons, legal persons and any other organizations that are in engagement of commodities production, operation or service provision.