

**APPENDIX 8**

**NEW CHAPTER 21 (COMPETITION POLICY)**

## CHAPTER 21

### COMPETITION POLICY

#### Article 1                      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<sup>16</sup>, 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;
- (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;

**person** means natural person or enterprise.

#### Article 2                      Objectives

The objectives of this Chapter are to:

- (a) proscribe anti-competition business practices;
- (b) implement competition policies;
- (c) cooperation on competition issues that contribute to enhancing trade liberalization; and
- (d) promote economic efficiency and consumer welfare.

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<sup>16</sup> Anti-competitive business practice in New Zealand does not include concerted practice until New Zealand laws and regulations include concerted practice as an anti-competitive business practice.

### **Article 3                    Competition Laws and Authorities**

1. Each Party shall adopt or maintain domestic competition laws and regulations that proscribe anti-competitive business practices.
2. At the time of entry into force of this Agreement, the obligation in paragraph 1 is fulfilled by:
  - (a) For China, the Anti-Monopoly Law and its implementing regulations and amendments; and
  - (b) For New Zealand, the Commerce Act 1986 and its implementing regulations and amendments, and relevant case law.
3. Each Party shall apply its competition laws to all persons engaged in commercial activities. Any exemptions from the application of a Party's competition laws shall be transparent and based on public policy or public interest grounds.
4. Each Party shall maintain an authority or authorities responsible for the enforcement of its competition laws.

### **Article 4                    Principles of Law Enforcement**

1. Each Party shall act consistently with the principles of transparency, non-discrimination and procedural fairness in the enforcement of its competition laws.
2. Each Party shall apply and enforce its competition laws in a manner that does not discriminate on the basis of nationality. Each Party shall treat persons who are not persons of the Party no less favourably than persons of the Party in like circumstances in the competition law enforcement.
3. Each Party shall ensure that during an investigation to determine whether any conduct violates its competition laws, or before it imposes a sanction or remedy against a person for violating its competition laws, it provides that person with:
  - (a) the reasons, in a prompt manner and set out in writing where possible, for the allegations that the Party's domestic competition laws have been breached;
  - (b) a reasonable opportunity to be represented by legal counsel; and
  - (c) a reasonable opportunity to be heard and to present opinion or evidence in its defence.
4. Each Party shall provide a person that is subject to the imposition of a sanction or remedy for violation of its competition laws with the opportunity to seek a

review of or appeal against that sanction or remedy in accordance with its domestic laws, including in a court.

## **Article 5                    Transparency**

1. Each Party shall make public, including on an official website:
  - (a) its domestic competition law and regulations, including the penalties for any breach of those laws and regulations;
  - (b) rules concerning exemptions from its domestic competition laws and regulations; and
  - (c) guidelines and any rules issued in relation to the administration of such laws and regulations,

but shall not be required to make public its internal operating procedures.

2. Each Party shall ensure that final administrative decisions where a violation of its competition laws and regulations have been found are in writing, and set out the relevant findings of fact and the legal basis upon which the decision is based.

3. Each Party shall endeavour to make public the decisions and any orders implementing them in accordance with its own laws and regulations, excluding any business' confidential information or other information that is protected by its domestic law from public disclosure pursuant to Article 206.

## **Article 6                    Cooperation**

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

2. The Parties may promote technical cooperation, including the exchange of experiences, training programs, workshops and research collaborations for the purpose of enhancing the competent authorities' capacity related to competition policy and law enforcement.

3. The Parties agree to cooperate in a manner compatible with its domestic laws, regulations and mutual interests, and within its reasonably available administrative resources.

## **Article 7                      Confidentiality of Information**

1. Pursuant to Articles 206 and 210, this Chapter shall not require the sharing of information by the competition authority of each Party, which is contrary to the Party's laws, regulations and inconsistent with the Party's rights under this Agreement.
2. Pursuant to Article 210, a Party shall maintain confidentiality of any information provided as confidential by the other Party. The Party receiving such information shall:
  - (a) use it only for the purpose disclosed at the time of request unless specific permission is granted by the Party providing the information;
  - (b) not disclose it to any other authority, entity or person that is not authorized by the competition authority of the Party providing the information; and
  - (c) comply with any other conditions required by the competition authority of the Party providing the information.

## **Article 8                      Independence of Competition Authorities**

1. The Parties recognize the independence of each Party in enforcing its respective competition laws.
2. Each Party shall ensure independence in decision-making by its authority or authorities in relation to the enforcement of its competition laws.

## **Article 9                      Consumer Protection**

1. The Parties recognize the importance of consumer protection laws and regulations and enforcement thereof as well as cooperation between the Parties on matters related to consumer protection in order to achieve the objectives set out in Article 2.
2. Each Party shall adopt or maintain consumer protection laws, including to proscribe the use of misleading or deceptive practices and false or misleading descriptions in the trade of goods or services. Each Party shall provide for rights of redress against suppliers and manufacturers if their goods or services are not of acceptable quality, including where they are not fit for their intended purpose or where they do not match their description.
3. The Parties recognize the importance of improving awareness of and access to consumer redress mechanisms.

4. The Parties may cooperate on matters of mutual interest related to consumer protection. Such cooperation shall be carried out in a manner compatible with the Parties' respective laws and within their available resources.

#### **Article 10 Consultations**

1. In order to foster understanding between the Parties, or to address specific matters that arise under this Chapter, on request of a Party, the Parties shall enter into consultations regarding representations made by the requested Party. In its request, the requesting 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 matters raised by the other Party.

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

#### **Article 11 Non-Application of Dispute Settlement**

Neither Party shall have recourse to dispute settlement under Chapter 16 (Dispute Settlement) for any matter arising under this Chapter.