

APPENDIX 7

NEW CHAPTER 16 (COMPETITION)

CHAPTER 16 COMPETITION

ARTICLE 1 Definitions

For purposes of this Chapter:

- (a) **anticompetitive business conduct** means business conduct or transactions that adversely affect competition in the territory of a Party, such as:
 - (i) 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;
 - (ii) 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
 - (iii) 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; and

- (b) **competition laws** means:
 - (i) for China:
 - (A) the Antimonopoly Law and its implementing regulations and amendments; and
 - (ii) for Singapore:
 - (A) the Competition Act (Chapter 50B) and its implementing regulations and amendments;
 - (B) Part VII “Competition” of the Electricity Act (Chapter 89A), and its amendments;
 - (C) Part IX “Competition” of the Gas Act (Chapter 116A), and its amendments;
 - (D) the Airport Competition Code pursuant to the Civil Aviation Authority of Singapore Act (Chapter 41), and its amendments;

- (E) the Code of Practice for Market Conduct pursuant to the Media Development Authority of Singapore Act (Chapter 172), and its amendments; and
- (F) the Code of Practice for Competition in the Provision of Telecommunications Services pursuant to the Telecommunications Act (Chapter 323), and its amendments.

Where any of the competition laws of either Party as stated above is subsequently superseded by a new law, the new law shall be considered a “competition law” for the purposes of this Chapter.

ARTICLE 2 Objectives

The Parties understand that proscribing anticompetitive business conduct, implementing competition policies and cooperating on competition issues contribute to preventing the benefits of trade liberalisation from being undermined and to promoting economic efficiency and consumer welfare.

ARTICLE 3 Competition Laws and Authorities

1. Each Party shall maintain competition laws that promote and protect the competitive process in its market by proscribing anticompetitive business practices.
2. Each Party shall maintain an authority or authorities responsible for the enforcement of its competition laws.

ARTICLE 4 Principles in Law Enforcement

1. Each Party shall be consistent with the principles of transparency, non-discrimination and procedural fairness in competition law enforcement.
2. Each Party shall apply its competition laws to all entities engaged in commercial activities, subject to exclusions or exemptions provided for under its laws. Such exclusions or exemptions should be transparent and be based on public policy or public interest grounds.
3. Each Party shall apply and enforce its competition laws in a manner, which does not, in like circumstances, discriminate on the basis of nationality.
4. Each Party shall ensure that before it imposes a sanction, or additional restrictive condition or any other remedy, whichever is applicable under the Party’s

domestic laws, against any person for violating its competition laws, it affords that person a reasonable opportunity to present opinion or evidence in its defence.

5. Each Party shall provide any person that is subject to the imposition of a sanction, or additional restrictive condition or any other remedy, whichever is applicable under the Party's domestic laws, for violation of its competition laws, with the opportunity to seek review of the sanction, or additional restrictive condition or any other remedy under that Party's laws.

ARTICLE 5 Transparency

1. Each Party shall make public its competition laws, including procedural rules for investigation.

2. Each Party shall ensure that a final decision by a competition authority finding a violation of its competition laws is in writing, and sets out relevant findings of fact and the legal basis for the decision.

3. Each Party shall make public the grounds for any final decision or order to impose a sanction, or additional restrictive condition or any other remedy, whichever is applicable under the Party's domestic laws, and any appeal therefrom, subject to that Party's:

- (a) (i) domestic laws and regulations;
- (ii) need to safeguard confidential information; or
- (iii) need to safeguard information on grounds of public policy or public interest; and
- (b) redactions of the final decision or order on the grounds in (a)(i) to (iii) above.

ARTICLE 6 Cooperation in Law Enforcement

1. The Parties recognise the importance of cooperation and coordination between the respective competition authorities to promote effective competition law enforcement. Accordingly, each Party shall, on a best endeavour basis, cooperate through notification, consultation, exchange of information and technical cooperation.

2. The Parties agree to cooperate in a manner compatible with their respective laws, regulations and important interests, and within their reasonably available resources.

ARTICLE 7
Consultation

In order 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 (the “requesting Party”), enter into consultations with the requesting Party. In its request, the requesting 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 requesting Party.

ARTICLE 8
Technical Cooperation

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

ARTICLE 9
Independence of Competition Law Enforcement

1. Each Party shall ensure independence in decision-making by its authority or authorities in relation to enforcement of competition laws.
2. The obligations under this Chapter shall not prejudice the independence of each Party in enforcing its respective competition laws.

ARTICLE 10
Non-Application of Dispute Settlement

Neither Party shall have recourse to Chapter 12 (Dispute Settlement) for any matter arising under this Chapter.