

CHAPTER 8
COMPETITION AND CONSUMER PROTECTION

Section A
General Provisions

Article 8.1: Definitions

For the purposes of this Chapter:

- (a) **anti-competitive activities** means any conduct or transaction that adversely affects competition in the relevant market of the territory of a Party. The activities may be subject to penalties or relief under the respective competition laws of the Parties and may include the following:
 - (i) agreements between businesses and concerted practices, which have as their object or effect the prevention, restriction, or distortion of competition;
 - (ii) abuse by one or more businesses of a dominant position; or
 - (iii) mergers and acquisitions which significantly impede effective competition;
- (b) **competition law** means:
 - (i) **for China**, Anti-Monopoly Law of the People's Republic of China and its implementing regulations, and amendments thereof; and
 - (ii) **for ASEAN**, a national law, or sectoral regulation if applicable, including its implementing regulations, and amendments thereof, that promote or maintain competition in a market by proscribing anti-competitive activities;
- (c) **competition law enforcement** means any inquiry, investigation, or proceeding conducted by a competition authority or regulator in relation to the application of the competition law of the respective Parties to proscribe anti-competitive activities;

- (d) **confidential information** means any information, which by nature, the sharing of it, is contrary to that Party's laws or regulations, and important interests;
- (e) **consumers** means individuals who purchase, receive, use, rent, or obtain goods or services, that are not for commercial purposes;
- (f) **consumer protection laws** means laws or regulations that govern consumer rights and the obligations of businesses with regards to protecting consumers from unfair business practices, and the enforcement thereof;
- (g) **consumer rights** include the right to the satisfaction of consumers' basic needs, to safety, to be informed, to choose, to be heard, to redress, to be educated, to have personal data protected, and any other rights for a healthy environment and consumption according to the respective applicable laws or regulations of the Parties; and
- (h) **unfair business practices**¹ means fraudulent, deceptive, false, or misleading commercial practices or acts that cause harm to the rights and interests of consumers or are in imminent danger of doing so. For clarity, these may include:
 - (i) making misrepresentations or false claims of material fact, including implied factual misrepresentations, that cause significant detriment to the economic interests of the misled consumers;
 - (ii) advertising or offering of goods or services without intention to supply;
 - (iii) failing to deliver products or provide services to consumers after the consumers are charged; or
 - (iv) charging or debiting consumers' financial, telephone, or other accounts without authorisation.

¹ For greater clarity, the term "Unfair Business Practices" applies to consumer protection related provisions in this Chapter.

Article 8.2: Objectives

The objectives of this Chapter are:

- (a) to promote competition in markets and protect consumers, through the adoption and maintenance of relevant laws or regulations in proscribing anti-competitive practices and unfair business practices, thereby enhancing economic efficiency and consumer welfare;
- (b) to promote regional cooperation on the development and implementation of competition and consumer protection laws, regulations, or policies;
- (c) to enhance the capacity of the Parties on the development and implementation of competition and consumer protection laws, regulations, or policies; and
- (d) to enhance business and consumer trust and confidence through the promotion of transparent and effective advocacy and enforcement in the area of competition and consumer protection.

The pursuit of these objectives will help the Parties to secure the benefits of this Agreement, including facilitating trade and investment among the Parties.

Article 8.3: Basic Principles

1. Each Party shall implement this Chapter in a manner consistent with the objectives of this Chapter.
2. Each Party shall recognise the sovereign rights of each Party to develop, set, administer, and enforce its competition and consumer protection laws, regulations, and policies, and the significant differences that exist among the Parties in capacity and level of development in the area of competition and consumer protection.
3. Each Party shall recognise the importance of the implementation of competition and consumer protection laws or regulations, and cooperation among the Parties to achieve the objectives of this Chapter.

4. Each Party shall abide by fair, transparent, and non-discriminatory principles in the implementation of their competition and consumer protection laws or regulations.

Article 8.4: Capacity Building and Technical Cooperation

1. Each Party shall recognise the importance of building the necessary capacities to strengthen and promote the development and enforcement of competition and consumer protection laws or regulations within its reasonably available resources.
2. The Parties shall undertake the following mutually agreed technical cooperation activities:
 - (a) sharing of relevant experience and non-confidential information on the development and implementation of competition and consumer protection laws, regulations, or policies;
 - (b) training of officials of competition and consumer protection authorities;
 - (c) exchange of consultants and experts on competition and consumer protection laws, regulations, or policies;
 - (d) participation of officials of competition and consumer protection authorities in advocacy programmes;
 - (e) joint effort to increase awareness of competition and consumer protection laws, regulations, or policies among businesses; and
 - (f) any other form of technical cooperation as agreed upon by the Parties.

Article 8.5: 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 requested Party shall enter into consultations with the requesting Party.

2. In its request, the requesting Party shall indicate, if relevant, how the matter affects its important interests, including trade or investment between the Parties concerned.
3. The requested Party shall accord full and sympathetic consideration to the concerns of the requesting Party and shall reply promptly to the request of the requesting Party.
4. The requested Party shall facilitate discussion and endeavour to achieve amicable resolutions of the matter that is the subject of the consultations.

Article 8.6: Confidentiality of Information

1. This Chapter shall not require the sharing of confidential information by a Party.
2. Where a Party requests confidential information under this Chapter, the requesting Party shall notify the requested Party of:
 - (a) the purpose of the request;
 - (b) the intended use of the requested information; and
 - (c) any laws or regulations of the requesting Party that may affect the confidentiality of information or require the use of the information for purposes not agreed upon by the requested Party.
3. The sharing of confidential information between any of the Parties and the use of such information shall be based on terms and conditions agreed by the Parties concerned.
4. If information shared under this Chapter is shared on a confidential basis, then, except to comply with its laws or regulations, the Party receiving the information shall:
 - (a) maintain the confidentiality of the information received;
 - (b) use the information received only for the purpose disclosed at the time of the request, unless otherwise authorised by the Party providing the information;
 - (c) not use the information received as evidence in criminal proceedings carried out by a court or a judge unless, on

request of the Party receiving the information, such information was provided for such use in criminal proceedings through diplomatic channels or other channels established in accordance with the laws or regulations of the Parties concerned;

- (d) not disclose the information received to any other authority, entity, or person not authorised by the Party providing the information; and
- (e) comply with any other conditions required by the Party providing the information.

Article 8.7: Committee

The Parties may establish a committee consisting of competition authorities and consumer protection authorities for the implementation of this Chapter, including to undertake liaison and coordination functions.

Article 8.8: Non-Application of Dispute Settlement

The Agreement on Dispute Settlement Mechanism, as reaffirmed in Chapter 14 (Dispute Settlement), shall not apply to any matter arising under this Chapter.

Article 8.9: General Exceptions

Article XX of GATT 1994 and Article XIV of GATS are incorporated into and made part of this Chapter, *mutatis mutandis*.^{2, 3}

Article 8.10: Security Exceptions

² The Parties understand that the measures referred to in subparagraph (b) of Article XX of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that subparagraph (g) of Article XX of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

³ The Parties understand that the measures referred to in subparagraph (b) of Article XIV of GATS include environmental measures necessary to protect human, animal or plant life or health.

Nothing in this Chapter shall be construed:

- (a) to require any Party to furnish any information the disclosure of which it considers contrary to its essential security interests;
- (b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests, including but not limited to:
 - (i) action relating to fissionable materials or the materials from which they are derived;
 - (ii) action relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
 - (iii) action taken so as to protect critical communications infrastructure from deliberate attempts intended to disable or degrade such infrastructure;
 - (iv) action taken in time of war or other emergency in domestic or international relations; or
- (c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Section B Competition

Article 8.11: Appropriate Measures against Anti-Competitive Activities

1. Each Party shall adopt or maintain competition laws or regulations to prohibit anti-competitive activities, and shall enforce those laws or regulations accordingly.
2. Each Party shall establish or maintain an authority or authorities with adequate resources to effectively implement its competition laws or regulations.

3. Each Party shall ensure independence in decision making by its authority or authorities in relation to the enforcement of its competition laws or regulations.
4. Each Party shall apply and enforce its competition laws or regulations to all entities engaged in commercial activities, and in a non-discriminatory manner, regardless of their ownership and nationality.
5. Each Party shall ensure that any exclusion or exemption from the application of each Party's competition laws or regulations, is transparent and based on grounds of public policy or public interest.

Article 8.12: Due Process

1. Each Party shall make public the grounds for any final decision or order to impose a sanction or remedy under its competition laws or regulations, and any appeal therefrom, subject to:
 - (a) its laws or regulations, the need to safeguard confidential information, or the need to safeguard information on grounds of public policy or public interest; and
 - (b) redactions from the final decision or order on any of the grounds referred to in subparagraph (a).
2. Each Party shall ensure that any person or entity alleged for breaching its competition laws or regulations is given the reasons for the allegations, in writing where possible, and is given a fair opportunity to be heard and to present evidence.
3. Each Party shall, subject to any redactions necessary to safeguard confidential information, make the grounds for any final decision or order to impose a sanction or remedy under its competition laws or regulations, and any appeal therefrom, available to the person or entity subject to that sanction or remedy.
4. Each Party shall ensure that any person or entity subject to the imposition of a sanction or remedy under its competition laws or regulations has access to an independent review of or appeal against that sanction or remedy.
5. Each Party shall endeavour to handle competition cases in a timely manner.

6. Each Party shall ensure that any person or entity who has allegedly contravened or is allegedly contravening a Party's competition laws or regulations has a reasonable opportunity to be represented by legal counsel in accordance with each Party's laws or regulations.

Article 8.13: Transparency

1. Each Party shall endeavour to ensure the transparency of their competition enforcement and advocacy policies, in accordance with each Party's laws or regulations, and important interests.
2. Each Party shall endeavour to make public or require the following to be made public within its reasonably available resources, including on an official website:
 - (a) its competition laws or regulations;
 - (b) exemptions and immunities to its competition laws or regulations;
 - (c) guidelines issued in relation to the administration and enforcement of its competition laws or regulations;
 - (d) final decision which resulted from enforcement activities;
 - (e) report of market studies; and
 - (f) annual report of the implementation of competition laws, regulations, or policies.
3. Each Party shall endeavour to provide public information which may be an interest of the other Party, in English, to promote cooperation among the Parties.

Article 8.14: Cooperation

1. Each Party recognise the importance of cooperation between or among their respective competition authorities to promote the effective enforcement of competition laws or regulations.
2. The Parties may cooperate on issues relating to competition law enforcement, through their respective competition authorities, in

accordance with their respective laws or regulations, and important interests, and within their reasonably available resources.

3. The form of such cooperation may include, upon request:
 - (a) discussion between or among Parties to address any matter relating to competition law enforcement that substantially affects the important interests of the requesting Party;
 - (b) exchange of information between or among Parties to foster understanding or to facilitate effective competition law enforcement; and
 - (c) coordination in enforcement actions between or among Parties in relation to the same or related anti-competitive activities.

Section C Consumer Protection

Article 8.15: Consumer Protection Law

1. Each Party shall adopt or maintain laws or regulations to prohibit unfair business practices. Laws prohibiting these practices may be civil, criminal, or administrative.
2. Each Party shall ensure their consumer protection laws or regulations contain the following measures:
 - (a) prohibition of unfair business practices that harm consumers;
 - (b) obligations for businesses to meet safety and quality standards set by relevant laws and to comply with its claims regarding characteristics, attributes, or performance of the goods or services; and
 - (c) rights of consumers to seek and obtain redress from businesses, including the redress mechanisms provided by the authorities concerned.
3. Each Party shall establish or maintain a government agency or other relevant agencies with the necessary authorities,

resources, and capabilities to effectively implement its consumer protection laws or regulations, including cooperation with other authorities on consumer protection matters, if applicable.

4. Each Party shall apply its consumer protection laws or regulations, in a non-discriminatory manner to all consumers in their jurisdiction, regardless of their nationality.

Article 8.16: Transparency

1. Each Party shall ensure that information relating to consumer protection laws or regulations are publicly available for consumers to seek redress and for businesses to comply with their obligation towards consumers.
2. Each Party shall encourage businesses to publish their consumer protection policies, including redress mechanism.

Article 8.17: Online Consumer Protection

1. The Parties shall provide protection to consumers engaged in electronic commerce no less than that provided to consumers engaged in other forms of commerce under consumer protection law or any other relevant laws or regulations.
2. Each Party recognises the importance of safeguarding consumers' right to information necessary for them to make well informed decisions and providing consumers with the necessary information in a timely, accurate, and complete manner in selling and advertising of goods and services online by businesses.
3. Each Party recognises the importance of consumers' right to return purchased goods in electronic commerce within a certain period in accordance with respective applicable laws or regulations, and may actively share best practices on the right to regret⁴ for consumers.
4. The Parties recognise the benefits of alternative dispute resolution to facilitate the resolution of claims over electronic commerce transactions. To this end, the Parties shall

⁴ For greater clarity, the "right to regret" is an evolving global practice where consumers unilaterally can return certain goods purchased in electronic commerce without reason within a certain period.

endeavour to, where appropriate, share best practices and cooperate on alternative dispute resolution.

Article 8.18: Protection for Foreign Consumers

Each Party shall endeavour to assist foreign consumers in seeking redress locally by promoting appropriate redress channels and improving their access to necessary information in a manner compatible with its respective laws or regulations and within its reasonably available resources.

Article 8.19: Consumer Dispute Resolution

1. Each Party recognises the importance of robust, effective, and accessible consumer redress mechanisms in protecting consumers.
2. Each Party shall identify and consider appropriate measures to enhance the ability of consumers to seek and obtain timely and effective redress from businesses, and to ensure that businesses provide accessible and adequate redress mechanisms for consumers.
3. Each Party shall establish and maintain the appropriate channels for consumers to lodge complaints.

Article 8.20: Settlement of Unfair Business Practices

1. Recognising that unfair business practices significantly harm the legitimate rights and interests of consumers, the Parties agree that preventing such practices is key to safeguarding the rights and interests of consumers, thus promoting fair transaction between consumers and businesses.
2. Each Party shall endeavour to actively explore ways and exchange best practices to strengthen the prevention and prohibition of unfair business practices in accordance with their laws or regulations, including improving consumer protection and related legislations, carrying out proactive market monitoring or surveillance for consumer protection, and enhancing the administrative enforcement of consumer protection law.

Article 8.21: Cooperation

1. The Parties may cooperate and coordinate on matters of mutual interest related to consumer protection, including the enforcement of consumer protection laws or regulations. Such cooperation and coordination shall be carried out in a manner compatible with the Parties' respective laws or regulations and within their reasonably available resources.
2. The Parties shall endeavour to share best practices and cooperate on promoting or enhancing the role of domestic consumer associations in empowering and protecting consumers, including the promotion of cooperation between domestic consumer association.
3. The Parties shall endeavour to share best practices and cooperate in strengthening the capacity of businesses to comply with consumer protection laws or regulations.
4. The Parties shall endeavour to share best practices and cooperate on promoting sustainable consumption and encouraging businesses to disclose sustainable consumption information on a voluntary basis.