

CHAPTER 14

COMPETITION POLICY

ARTICLE 14.1

Definitions

For the purposes of this Chapter:

- (a) "Competition Advocacy" means non-enforcement actions by the competition authorities to promote competition; where applicable, such non-enforcement actions may be defined under the competition laws of a State Party;
- (b) "Competition Authority" means any authority responsible for the enforcement of each State Party's respective competition laws;
- (c) "Competition Laws" means laws and regulations of a State Party governing anticompetitive business conduct;
- (d) "Enforcement Proceedings" means judicial or administrative proceedings following an investigation into an alleged violation of the Competition Laws.

ARTICLE 14.2

Objectives

1. The State Parties recognise that anticompetitive business conduct has the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation. The State Parties seek to take appropriate measures to proscribe such conduct, implement policies to promote competition and cooperate on matters covered by this Chapter to help secure the benefits of this Agreement.

2. The State Parties agree that the following anticompetitive business conduct, which is subject to the imposition of sanctions or other penalties in accordance with their respective Competition Laws, is incompatible with this Agreement, in so far as such conduct may affect trade between the State Parties:

- (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;
- (b) any abuse by one or more enterprises of a dominant position or a substantial market power; and
- (c) concentrations between enterprises, which significantly impede effective competition, as specified in the respective Competition Laws of the State Parties.

ARTICLE 14.3

Competition Laws and Competition Authorities

1. Each State Party shall adopt or maintain Competition Laws that proscribe anticompetitive business conduct, with the objective of encouraging competition in order to promote economic efficiency, and shall take appropriate action with respect to such conduct.
2. Each State Party shall apply its Competition Laws to all commercial activities within its territory. This paragraph does not prevent a State Party from applying its Competition Laws to commercial activities outside its territory that have anticompetitive effects within its jurisdiction.
3. Each State Party may provide for certain exclusions or exemptions from the application of its Competition Laws provided that those exclusions or exemptions are transparent, are in accordance with its Competition Laws, and are based on public policy grounds or public interest grounds.
4. Each State Party shall maintain a Competition Authority that enforces its Competition Laws in accordance with the objectives of this Chapter, and shall ensure that its Competition Authority does not discriminate on the basis of nationality.

5. Each State Party shall ensure independence in decision-making by its Competition Authority in relation to the enforcement of its Competition Laws.

ARTICLE 14.4

Due Process in Enforcement of Competition Laws

1. The State Parties recognise the importance of enforcing their respective Competition Laws in a transparent, timely, and non-discriminatory manner, respecting the principles of procedural fairness and rights of defence of the persons under investigation for possible violation of Competition Laws.

2. Each State Party shall ensure that its Competition Authority affords a person under investigation for possible violation of the Competition Laws of that State Party reasonable opportunity to be heard by that Competition Authority with respect to significant legal, factual or procedural issues that arise during the investigation.

3. Each State Party shall ensure that before it imposes a sanction or remedy against a person for violating its Competition Laws, it affords that person:

- (a) information about its Competition Authority's competition concerns, including the identification of the specific Competition Laws alleged to have been violated and the associated maximum potential penalties, if not publicly available;
- (b) a reasonable opportunity to have access to information within the Competition Authority's possession that is necessary to prepare an adequate defence to the Competition Authority's allegations, in a manner that is consistent with each State Party's laws and regulations;
- (c) a reasonable opportunity to be represented by legal counsel; and
- (d) a reasonable opportunity to be heard and present evidence or testimony in that person's defence.

4. Each State 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 review of the sanction or remedy, including review of alleged substantive or procedural errors, in a court or other independent tribunal established under that State Party's laws and regulations.

5. Each State Party may authorise its Competition Authority to resolve alleged violations voluntarily by consent of the Competition Authority and the person subject to the investigation. A State Party may provide for this voluntary resolution to be subject to approval in accordance with each State Party's laws and regulations.

6. Each State Party shall provide for the protection of confidential information obtained by its Competition Authority during the investigative process. If a State Party's Competition Authority uses or intends to use that information in an enforcement proceeding, the State Party shall, if it is permissible under its law and as appropriate, allow the person under investigation or the person's legal counsel timely access to information that is necessary to prepare an adequate defence to the Competition Authority's allegations.

ARTICLE 14.5

Transparency

1. The State Parties recognise the value of making their competition enforcement policies as transparent as possible.

2. Each State Party shall ensure that its Competition Laws are publicly available.

3. On request of another State Party, a State Party shall make available to the requesting State Party public information concerning:

(a) its competition law enforcement policies and practices;¹ and

¹ For greater certainty, disclosure of competition enforcement policies and practices would not necessarily involve the provision of internal operating procedures and documents.

- (b) exclusions or exemptions under its Competition Laws, provided that the request specifies the particular good or service and market of concern and includes information explaining how the exclusions or exemptions may hinder trade or investment between the State Parties.
4. Each State Party shall ensure that a final decision by its Competition Authority finding a violation of its Competition Laws is made available in writing and sets out findings of fact and the reasoning, including legal and, if applicable, economic analysis, on which the decision is based.
 5. Each State Party shall further ensure that a final decision referred to in paragraph 4 and any order implementing that decision are published, or , if publication is not practicable, are otherwise made available to the public in a manner that enables interested persons and other Parties to become acquainted with them.
 6. Each State Party shall ensure that the version of the decision or order that is published or otherwise made available to the public is redacted to the extent necessary to be consistent with that State Party's laws and regulations regarding confidentiality and privilege and the need to safeguard information on the grounds of public policy or public interest. A State Party's Competition Authority will oppose, to the fullest extent possible, the disclosure of confidential information protected under that State Party's Competition Laws.

ARTICLE 14.6

Cooperation

1. The State Parties recognise that anticompetitive business conduct transcends national borders and that cooperation and coordination between the State Parties to foster effective competition law enforcement is important and in the public interest.
2. The State Parties shall cooperate pursuant to this Article in a manner compatible with their respective laws, regulations and mutual interests, and within their reasonably available resources.
3. Each State Party shall cooperate, as appropriate:
 - (a) in the areas of competition policy by exchanging information on the development of those

policies;

- (b) on issues of competition law enforcement, including through notification, exchange of non-confidential information, investigative and enforcement assistance, and consultation and coordination on investigations of a cross-border dimension²; and
- (c) in exceptional circumstances, the competition authorities may exchange confidential information after careful examination, on a case-by-case basis, and only either under specific written waiver from the person providing such confidential information or as authorised by each State Party's laws and regulations.

4. A State Party's Competition Authority may consider entering into a cooperation arrangement or agreement with the respective authorities of another State Party that sets out mutually agreed terms of cooperation.

5. Recognising that the State Parties can benefit by sharing their diverse experience in developing, administering and enforcing their competition laws and policies, the State Parties' Competition Authority shall consider undertaking mutually agreed technical cooperation activities to strengthen and improve effective enforcement and advocacy of Competition Laws in their respective jurisdictions, including:

- (a) providing advice or training on relevant issues, including through the exchange of officials;
- (b) exchanging information and experiences on Competition Advocacy, including ways to promote a culture of competition; and
- (c) assisting a State Party as it implements a new competition law.

ARTICLE 14.7

Consultations

² For greater certainty, cooperation under this Article shall not prevent the State Party's Competition Authority from making independent decisions.

1. Each State Party shall designate a contact point to facilitate consultations under this Article.
2. In order to foster understanding between the State Parties, or to address specific matters that arise under this Chapter, on request of another State Party, a State Party may enter into consultations with the requesting State Party. In its request, the requesting State Party shall indicate, if relevant, how the matter affects trade or investment between the State Parties. The State Party addressed may accord full and sympathetic consideration to the concerns of the requesting State Party.
3. To facilitate the discussion regarding the matter of consultations, each State Party shall endeavour to provide relevant non-confidential or non-privileged information to the State Party requesting consultations.
4. It is recognised that entering into such consultations is without prejudice to any action under each State Party's Competition Laws and to the full freedom of ultimate decision of the Party concerned.

ARTICLE 14.8

Non-application of dispute settlement

The Parties shall not have recourse to dispute settlement under Chapter 18 (Dispute Settlement) for any matter arising under this Chapter.