

## **CHAPTER FIFTHTEEN COMPETITION POLICY**

### **Article 15.1: Objectives**

Recognizing the importance of free competition in their trade relations, the Parties believe that proscribing anti-competitive practices, implementing competition policies, and cooperating on matters covered by this Chapter will help prevent the benefits of the trade liberalization from being undermined.

### **Article 15.2: Competition Law and Authorities**

1. Each Party shall maintain competition laws that promote and protect the competitive process in its market by proscribing anti-competitive practices. Each Party shall take appropriate actions with respect to anti-competitive practices with the objective of promoting economic efficiency and consumer welfare.

2. Each Party shall maintain an authority or authorities responsible for the enforcement of its competition laws.

3. Each Party shall ensure any exemptions to the competition laws and regulations shall be, *inter alia*, transparent and undertaken on the grounds of public policy or public interest. Each Party shall maintain its autonomy to establish, develop and implement their respective competition policies, laws and regulations.

### **Article 15.3: Implementation**

1. The enforcement policy of the Parties' competition authorities shall be consistent with the principles of transparency, timeliness, non-discrimination and procedural fairness.

2. Each Party shall provide persons subject to the imposition of a sanction or remedy under its competition laws or regulations with reasonable opportunity to present evidence, to be heard, and to seek review of the sanction or remedy through administrative reconsideration or before an independent judicial authority of that Party in accordance with its laws.

3. Each Party shall make publicly available its competition laws and regulations. Each Party shall ensure that all final decisions finding a violation of its competition laws are provided in written form and set out any relevant findings of fact and legal basis on which the decision is based.

#### **Article 15.4: Cooperation**

1. The Parties recognize the importance of cooperation and coordination between their respective competition authorities to promote the effective enforcement of their competition laws and to fulfill the objectives of this Agreement.

2. Accordingly, the Parties shall cooperate in relation to the enforcement of their respective competition laws and policies, including through notification, consultation, exchange of information, coordination and technical assistance in a manner consistent with its laws and regulations.

#### **Article 15.5: Notifications**

1. Each Party, through its competition authority, shall notify to the competition authority of the other Party of an enforcement activity regarding anticompetitive practices if it considers that such enforcement activity may substantially affect important interests of the other Party.

2. Provided that it is not contrary to the Parties' laws and does not affect any investigation being carried out, the notification shall take place at an early stage of the enforcement activity.

#### **Article 15.6: Consultations**

1. To foster mutual understanding between the Parties, or to address specific matters that arise under this Chapter, each Party shall, upon request of the other Party, enter into consultations on issues raised by the other Party, provided that it is not contrary to the Parties' laws and does not affect any investigation being carried out.

2. The Party requesting consultations pursuant to paragraph 1 shall indicate how the issue affects the proper operation of markets, consumers, trade or investment between the Parties. The Party to which a request for consultations

has been addressed shall give full and sympathetic consideration to the concerns of the other Party.

#### **Article 15.7: Exchange of Information and Confidentiality<sup>1</sup>**

1. The competition authority of a Party shall, upon request of the competition authority of the other Party, endeavor to 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 rules and standards of confidentiality of each Party.

2. The competition authority of each Party shall maintain the confidentiality of any information provided in confidence by the competition authority of the other Party and shall not disclose such information to any entity that is not authorized by the competition authority providing the information. Furthermore, the requesting Party shall afford at least the same level of protection and confidentiality as is provided for in the domestic law and legal system of the requesting Party.

#### **Article 15.8: Technical Assistance**

1. The Parties may provide each other with technical assistance in any areas they consider appropriate, including exchange of experiences, capacity building, strengthening the technical and institutional capacities for the implementation of their competition laws and policies, and promotion of competition culture.

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

#### **Article 15.9: State Enterprises and Designated Monopolies**

1. Nothing in this Chapter shall be construed to prevent a Party from establishing or maintaining state enterprises and designated monopolies.

2. The Parties shall ensure that state enterprises and designated monopolies are subject to their respective competition laws in so far as the application of

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<sup>1</sup> For Ecuador, any information provided in confidence includes reserved information according to its law.

such laws does not obstruct the performance, in law or in fact, of the particular public tasks assigned to them.

3. With regard to state enterprises and designated monopolies, no Party shall adopt or maintain any measure contrary to the provisions of this Chapter which affect trade between the Parties.

### **Article 15.10: Dispute Settlement**

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

### **Article 15.11: Definitions**

For the purposes of this Chapter:

**anti-competitive practice** means:

- (a) agreements between enterprises and decisions by associations of enterprises, which have the purpose or effect to impede, restrict, or distort competition;
- (b) any abuse of a dominant position by one or more enterprises;
- (c) mergers or other structural combinations of enterprises which significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position, in accordance with their respective competition laws;

**competition authority** means:

- (a) for the Republic of Korea, the Korea Fair Trade Commission or its successor; and
- (b) for Ecuador, Superintendency for the Control of Market Power or its successor;

**competition law** means:

- (a) for the Republic of Korea, the Monopoly Regulation and Fair Trade Act and its implementing regulations and amendments;
- (b) for Ecuador, the Organic Law for Regulation and Market Power Control and its implementing regulations and amendments; and
- (c) any changes that the above-mentioned instruments may undergo after the entry into force of this Agreement.

Nothing in this Article shall affect competence assigned by the Parties to their respective regional and national authorities for the effective and coherent implementation of their respective competition laws and regulations.