

## **CHAPTER FIFTEEN COMPETITION POLICY**

### **ARTICLE 15.1: OBJECTIVES**

Recognizing the importance of free competition in trade relations, the Parties understand that proscribing anti-competitive business conducts, implementing competition policies, and cooperating on matters covered by this Chapter will help avoid undermining the benefits of trade liberalization.

### **ARTICLE 15.2: IMPLEMENTATION**

1. Each Party shall maintain competition laws that promote and protect the competitive process in its market by proscribing anti-competitive business conducts. Each Party shall take appropriate action with respect to anti-competitive business conducts 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. The enforcement policy of the Parties' competition authorities shall be consistent with the principles of transparency, timeliness, non-discrimination, and procedural fairness. Particularly, regarding transparency, each Party shall make available to the other Party information on exemptions provided for in its competition laws.

### **ARTICLE 15.3: COOPERATION**

1. The Parties recognize the importance of cooperation and coordination between their respective competition authorities to promote effective competition law enforcement and to fulfill the objectives of this Agreement.
2. Accordingly, the Parties shall cooperate on issues of competition law enforcement and policy implementation, including through notification, consultation, technical assistance, and exchange of non-confidential information.
3. The Parties' competition authorities shall endeavor to identify ways to further strengthen cooperation on competition matters of mutual interest.

### **ARTICLE 15.4: NOTIFICATIONS**

1. Each Party, through its competition authority, shall notify in English the competition authority of the other Party of an enforcement activity regarding an anti-competitive business conduct if it considers that such enforcement activity may affect important interests of the other Party.

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

3. Without prejudice to any action under its competition laws and to its full freedom of ultimate decision, the competition authority administering the enforcement activity shall take into consideration the views expressed by the other Party.

#### ARTICLE 15.5: CONSULTATIONS

1. To foster mutual understanding between the Parties or to address specific matters arising under this Chapter, and without prejudice to the autonomy of each Party to develop, maintain, and enforce its competition laws and policies, each Party shall, upon request of the other Party, enter into consultations on issues raised by the other Party.

2. 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 15.6: CONFIDENTIALITY

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 the Party providing information.

2. The competition authority of a Party shall maintain the confidentiality of any information provided as confidential by the competition authority of the other Party and shall not disclose such information to any entity that is not authorized by the Party providing information.

#### ARTICLE 15.7: TECHNICAL ASSISTANCE

The Parties may provide each other with technical assistance including exchange of experiences and capacity building for the implementation of their competition laws and policies, and for the promotion of competition culture.

#### ARTICLE 15.8: CROSS-BORDER CONSUMER PROTECTION

1. The Parties recognize the importance of cooperation and coordination on matters related to their consumer protection laws in order to enhance consumer welfare. Accordingly, the Parties shall cooperate, through their competent authorities, in appropriate cases of mutual concern, including through consultation, technical assistance, and exchange of information related to the enforcement of their consumer protection laws.

2. Nothing in this Article shall limit the discretion of the competent authority of a Party to decide whether to take action in response to a request by the competent authority of the other Party, nor shall it preclude any of these authorities from taking action with respect to any particular matter.

3. Each Party shall endeavor to identify, in areas of mutual concern and consistent with its own important interests, obstacles to effective cooperation with the other Party in the enforcement of its consumer protection laws.

#### 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 or designated monopolies.

2. The Parties shall ensure that state enterprises and designated monopolies are subject to their respective competition laws and do not adopt or maintain any anti-competitive practices that affect trade between the Parties, insofar as the application of this provision does not obstruct the performance, in law or in fact, of the particular public tasks assigned to them.

#### ARTICLE 15.10: DISPUTE SETTLEMENT

Neither Party may have recourse to Chapter Twenty-Three (Dispute Settlement) for any matter arising under this Chapter.

#### ARTICLE 15.11: DEFINITIONS

For purposes of this Chapter:

**anti-competitive business conducts** means:

- (a) agreements between enterprises and decisions by associations of enterprises, which have the purpose or effect of impeding, restricting, or distorting competition, as specified in the Parties' respective competition laws;
- (b) abuse of a dominant position, as specified in the Parties' respective competition laws; or
- (c) concentrations of enterprises which significantly impede effective competition, as specified in the Parties' respective competition laws;

**competition authority** means:

- (a) for Korea, the *Korea Fair Trade Commission*, or its successor; and

- (b) for Peru, the *National Institute for the Defense of Competition and Protection of Intellectual Property* and the *Supervisory Body for Private Investment in Telecommunications*, or their successors;

**competition laws** means:

- (a) for Korea, the *Monopoly Regulation and Fair Trade Act* and its implementing regulations; and
- (b) for Peru, the *Repression of Anticompetitive Conducts Law* and the *Antimonopoly and Antioligopoly Law of the Electricity Sector* and their implementing regulations; and

**consumer protection laws** means:

- (a) for Korea, the *Framework Act on Consumers* and the *Fair Labeling and Advertising Act* and their implementing regulations; and
- (b) for Peru, the *Consumer Protection Code* and the *Repression of Unfair Competition Law* and their implementing regulations.