

CHAPTER SIXTEEN

COMPETITION-RELATED MATTERS

ARTICLE 16.1: COMPETITION LAW AND ANTICOMPETITIVE BUSINESS CONDUCT

1. Each Party shall maintain or adopt competition laws that promote and protect the competitive process in its market by proscribing anticompetitive business conduct. Each Party shall take appropriate action with respect to anticompetitive business conduct 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 national competition laws. The enforcement policy of each Party's authorities responsible for the enforcement of such laws is to treat persons who are not persons of the Party no less favorably than persons of the Party in like circumstances, and each Party's authorities intend to maintain this policy.
3. Each Party shall ensure that a respondent in an administrative hearing convened to determine whether conduct violates its competition laws or what administrative sanctions or remedies should be ordered for violation of such laws is afforded the opportunity to present evidence in its defense and to be heard in the hearing. In particular, each Party shall ensure that the respondent has a reasonable opportunity to cross-examine any witnesses or other persons who testify in the hearing and to review and rebut the evidence and any other collected information on which the determination may be based.
4. Each Party shall provide persons 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 in a court of that Party.
5. Each Party shall provide its authorities responsible for the enforcement of its national competition laws with the authority to resolve their administrative or civil enforcement actions by mutual agreement with the subject of the enforcement action. A Party may provide for such agreements to be subject to judicial approval.
6. Each Party shall publish rules of procedure for administrative hearings convened to determine whether conduct violates its competition laws or what administrative sanctions or remedies should be ordered for violation of such laws. These rules shall include procedures for introducing evidence in such proceedings, which shall apply equally to all parties to the proceeding.
7. The Parties recognize the importance of cooperation and coordination between their respective authorities to promote effective competition law enforcement. Accordingly, the Parties shall cooperate in relation to their enforcement policies and in the enforcement of their respective competition laws, including through mutual assistance, notification, consultation, and exchange of information.

ARTICLE 16.2: DESIGNATED MONOPOLIES

1. Each Party shall ensure that any privately-owned monopoly that it designates after the date this Agreement enters into force and any government monopoly that it designates

or has designated:

- (a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions, or impose quotas, fees, or other charges;
- (b) acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market,¹ including with regard to price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, except to comply with any terms of its designation² that are not inconsistent with subparagraph (c) or (d);³
- (c) provides non-discriminatory treatment to covered investments, to goods of the other Party, and to service suppliers of the other Party in its purchase or sale of the monopoly good or service in the relevant market; and
- (d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, subsidiaries, or other enterprises with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affect covered investments.

2. Nothing in this Chapter shall be construed to prevent a Party from designating a monopoly or maintaining a designated monopoly.

3. This Article does not apply to government procurement.

ARTICLE 16.3: STATE ENTERPRISES

1. Each Party shall ensure that any state enterprise that it establishes or maintains:

- (a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such enterprise exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve

¹ For greater certainty, "purchase or sale of the monopoly good or service in the relevant market" in Article 16.2 refers to the sale of the designated monopoly good or service in the case of a designated monopoly supplier and to the purchase of the designated monopoly good or service in the case of a designated monopoly buyer.

² For greater certainty, nothing in this Chapter shall be construed to prevent a Party from amending the terms of a monopoly's designation.

³ Subparagraph (b) shall not be construed to prevent a designated monopoly from supplying the monopoly good or service in accordance with specific rates approved, or other terms or conditions established, by a regulatory authority of a Party, provided that those rates or other terms or conditions are not inconsistent with subparagraph (c) or (d).

commercial transactions, or impose quotas, fees, or other charges; and

- (b) accords non-discriminatory treatment in the sale of its goods or services to covered investments.

2. Nothing in this Chapter shall be construed to prevent a Party from establishing or maintaining a state enterprise.

ARTICLE 16.4: DIFFERENCES IN PRICING

Articles 16.2 and 16.3 shall not be construed to prevent a monopoly or state enterprise from charging different prices in different markets, or within the same market, where such differences are based on normal commercial considerations, such as taking account of supply and demand conditions.

ARTICLE 16.5: TRANSPARENCY

1. The Parties recognize the value of transparency in their competition enforcement policies.

2. On request of a Party, each Party shall make available to the other Party public information concerning its:

- (a) competition law enforcement activities;
- (b) state enterprises and designated monopolies, public or private, at any level of government, provided that the request indicates the entities involved, specifies the particular goods or services and markets concerned, and includes some indicia that these entities may be engaging in practices that may hinder trade or investment between the Parties; and
- (c) exemptions and immunities to its competition laws, provided that the request specifies the particular goods or services and markets of concern, and includes indicia that the exemption or immunity may hinder trade or investment between the Parties.

3. Each Party shall ensure that all final administrative decisions finding a violation of its competition laws are in writing and set out any relevant findings of fact and the reasoning and legal analysis on which the decision is based. Each Party shall further ensure that the decisions and any orders implementing them are published or, where publication is not practicable, otherwise made available to the public in such a manner as to enable interested persons and the other Party to become acquainted with them. The version of the decisions or orders that the Party makes available to the public may omit business confidential information or other information that is protected by its law from public disclosure.

ARTICLE 16.6: CROSS-BORDER CONSUMER PROTECTION

1. The Parties recognize the importance of cooperation on matters related to their consumer protection laws in order to enhance the welfare of their consumers. Accordingly, the Parties shall cooperate, in appropriate cases of mutual concern, in the

enforcement of their consumer protection laws.

2. The Parties shall endeavor to strengthen cooperation between the United States Federal Trade Commission, on the one hand, and the Ministry of Finance and Economy of Korea and the Korea Fair Trade Commission, on the other, in areas of mutual concern relating to their respective consumer protection laws, including by:

- (a) consulting on consumer protection policies and exchanging information related to the enactment and administration of their consumer protection laws;
- (b) strengthening cooperation in detecting and preventing fraudulent and deceptive commercial practices against consumers;
- (c) consulting on ways to reduce consumer protection law violations that have significant cross-border dimensions; and
- (d) supporting implementation of the *OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders* (2003).

3. Nothing in this Article shall limit the discretion of an agency referred to in paragraph 2 to decide whether to take action in response to a request by a counterpart agency of the other Party, nor shall it preclude any of those agencies from taking action with respect to any particular matter.

4. 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, and shall consider modifying its domestic legal framework to reduce such obstacles.

ARTICLE 16.7: CONSULTATIONS

1. To foster understanding between the Parties, or to address specific matters that arise under this Chapter, each Party shall, on request of the other Party, enter into consultations regarding representations made by the other Party. In its request, the Party shall indicate, if relevant, how the matter affects trade or investment between the Parties.

2. The Party to which a request for consultations has been addressed shall accord full and sympathetic consideration to the concerns raised by the other Party.

3. To facilitate discussion of the matter that is the subject of the consultations, each Party shall endeavor to provide relevant non-confidential information to the other Party.

ARTICLE 16.8: DISPUTE SETTLEMENT

Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under Article 16.1, 16.6, or 16.7.

ARTICLE 16.9: DEFINITIONS

For purposes of this Chapter:

consumer protection laws means:

- (a) in the case of Korea, Chapters III, IV.3, IX, and X of the *Framework Act on Consumer*, and the *Fair Labeling and Advertising Act* and its implementing regulations; and
- (b) in the case of the United States, laws and regulations prohibiting “unfair or deceptive acts or practices” within the meaning of Section 5 of the *Federal Trade Commission Act*;

a **delegation** includes a legislative grant, and a government order, directive, or other act, transferring to the monopoly or state enterprise, or authorizing the exercise by the monopoly or state enterprise of, governmental authority;

designate means, whether formally or in effect, to establish, designate, or authorize a monopoly or to expand the scope of a monopoly to cover an additional good or service;

government monopoly means a monopoly that is owned, or controlled through ownership interests, by the central government of a Party;⁴

in accordance with commercial considerations means consistent with normal business practices of privately-held enterprises in the relevant business or industry;

market means the geographical and commercial market for a good or service;

monopoly means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant; and

non-discriminatory treatment means national treatment and most-favored-nation treatment, as set out in the relevant provisions of this Agreement, including the terms and conditions set out in the relevant Annexes thereto.

⁴ For greater certainty, ownership, or control through ownership interests, may be direct or indirect.