

## **CHAPTER 11 COMPETITION**

### **Article 11.1 : Objectives**

The Parties recognize the importance of undistorted competition in their trade relations. The Parties understand that proscribing anti-competitive practices of enterprises, implementing competition laws<sup>1</sup> and policies, and cooperating on competition issues contribute to preventing the benefits of trade liberalization from being undermined and to promoting economic efficiency and consumer welfare.

### **Article 11.2 : Principles in Law Enforcement**

1. Each Party shall adopt or maintain comprehensive competition laws that promote competition in its market by proscribing anti-competitive practices, and shall take appropriate actions with respect to anticompetitive 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. The enforcement of a Party's competition laws shall be consistent with the principles of transparency, timeliness, non-discrimination and procedural fairness.

### **Article 11.3 : Implementation**

1. The Parties recognize the value of making the enforcement of their competition laws as transparent as possible and shall endeavor to publish or otherwise make publicly available their laws and regulations addressing fair competition, including information on any exemption provided under such laws and regulations.
2. Each Party shall ensure that any exemption provided under its competition laws shall be transparent and undertaken on the grounds of public policy or public interest.

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<sup>1</sup> For greater clarity, the respective competition laws shall effectively address:

- (a) agreements between enterprises, decisions by associations of enterprises and concerted practices which have as their object or effect the prevention of new entry into the market, restriction or distortion of competition;
- (b) abuses by one or more enterprises of a dominant or monopoly position; and
- (c) economic concentrations which are conduct of enterprises comprising merger of enterprises, consolidation of enterprises, acquisition of an enterprise, joint venture between enterprises, and other forms of concentration of enterprises.

3. Each Party shall ensure that all official decisions by its competition authorities 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 decisions are based. Each Party shall further ensure that the decisions are notified to the persons concerned. The version of the decisions may omit business confidential information that is protected by its domestic laws and regulations from public disclosure.

4. Upon request of the other Party, a Party shall make available to the requesting Party public information concerning the enforcement policies and practices of its competition laws.

5. Each Party shall ensure that a person subject to investigation is afforded the opportunity to be heard and to present evidence in a hearing. Each Party shall also provide a person subject to the imposition of a sanction or remedy for violation of its competition laws with the opportunity to raise complaint about the sanction or remedy through administrative and judicial review in accordance with its competition laws.

#### **Article 11.4 : Application of Competition Laws**

1. All enterprises engaged in economic activities, regardless of their ownership, whether state or private, shall be subject to the competition legislation referred to in Article 11.2, in so far as the application of such rules does not obstruct the performance, in law and in fact, of the particular public tasks assigned to them.

2. Each Party shall ensure that enterprises operating in the state-monopolized sectors and domains do not adopt or maintain any anti-competitive practices based on its competition laws.

#### **Article 11.5 : Cooperation**

1. The Parties recognize the importance of cooperation and coordination between their respective competition authorities to promote the effective enforcement of their respective competition laws and to fulfill the objectives of this Agreement. The Parties agree to cooperate in a manner compatible with their respective laws, regulations and important interests, and within their reasonably available resources.

2. Each Party, through its competition authority, shall notify the competition authority of the other Party of an enforcement activity regarding anti-competitive practices in due course when the competition authority of a Party becomes aware that the important interests of the other Party are likely to be affected, provided that it is not contrary to each Party's competition laws and does not affect any investigations being carried out.

3. The competition authority of a Party may request coordination from the competition authority of the other Party with respect to a specific case, when important interests of the requesting Party are substantially affected. Such request is without prejudice to the full freedom of the final decision of the competition authority concerned. The other Party may accord sympathetic considerations to such request, as appropriate and in accordance with its competition laws.

### **Article 11.6 : Exchange of Information**

The competition authority of a Party shall, upon request of the competition authority of the other Party, endeavor to provide available information to facilitate effective enforcement of its competition laws provided that it is not confidential information.

### **Article 11.7 : Confidentiality**

1. Each Party shall maintain the confidentiality of any information provided in confidence by the competition authority of the other Party.
2. The competition authority of a Party shall not disclose such information to any entity that is not authorized by the competition authority providing the information.

### **Article 11.8 : Consultation**

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

### **Article 11.9 : Technical Assistance**

The Parties may engage in technical assistance activities subject to their reasonably available resources in the field of competition, including:

- (a) exchange of experience regarding the promotion and enforcement of competition laws and policies;
- (b) exchange of publicly available information about competition laws and policies;
- (c) exchange of officials for training purposes;
- (d) exchange of consultants and experts on competition laws and policies;
- (e) participation of officials as lecturers, consultants, or participants at training courses on competition laws and policies;

- (f) participation of officials in advocacy programs;
- (g) exchange of information and experiences on activities related to competition advocacy and the promotion of competition culture; and
- (h) any other form of technical cooperation as agreed by the Parties.

#### **Article 11.10 : Dispute Settlement**

The provisions of Chapter 15 (Dispute Settlement) shall not apply to any matter arising under this Chapter.

#### **Article 11.11 : Definitions**

For the purposes of this Chapter:

**competition authority** means:

- (a) for Korea, the Korea Fair Trade Commission; and
  - (b) for Viet Nam, Vietnam Competition Authority and Vietnam Competition Council;
- or their respective successors; and

**competition laws** means:

- (a) for Korea, the *Monopoly Regulation and Fair Trade Act* and its implementing regulations;
- (b) for Viet Nam, *Competition Law of Viet Nam* and its implementing regulations; and
- (c) any change that the above-mentioned legislation may undergo after the entry into force of this Agreement.