

CHAPTER 8

COMPETITION POLICY

ARTICLE 8.1

Objectives

1. The Parties recognise that anti-competitive practices have the potential to undermine the benefits of liberalisation arising from this Agreement. These practices are incompatible with the proper functioning of this Agreement, in so far as they may affect trade between Peru and an EFTA State.
2. The Parties undertake to apply their respective competition laws with a view to proscribing such practices and to co-operate in matters covered by this Chapter. This co-operation includes notification, exchange of information, technical assistance and consultation.

ARTICLE 8.2

Anti-competitive Practices

1. For the purposes of this Chapter, “anti-competitive practices” refer to:
 - (a) horizontal or vertical agreements between enterprises, concerted practices between enterprises, or decisions by associations of enterprises which have as their object or effect the prevention, restriction or distortion of competition; and
 - (b) the abuse of a dominant position in a market.
2. The enforcement policy of the Parties’ national authorities shall be consistent with the principles of transparency, non-discrimination and procedural fairness.
3. When applicable, Peru may implement its obligations under this Article through the Andean Community competition laws and the competent authority of the Andean Community. Rights and obligations under this Chapter will only apply between Peru and the EFTA States.

ARTICLE 8.3

Co-operation

1. The Parties shall make best efforts to co-operate, subject to their national laws and through their competent authorities, on issues concerning competition law enforcement.
2. Each Party shall notify another Party of competition enforcement activities that may affect important interests of that Party. Notifications shall be sufficiently detailed to enable the notified Party to make an initial evaluation of the effect of the competition enforcement activity within its territory.
3. Each Party should, in accordance with its laws, take into consideration the important interests of the other Parties in the course of its enforcement activities on anti-competitive practices. If a Party considers that an anti-competitive practice may adversely affect such Party's important interests, it may transmit its views on the matter to the other Party through its competent authority. Without prejudice to any action under its competition laws and to its full freedom of ultimate decision, the Party so addressed should give appropriate consideration to the views expressed by the requesting Party.
4. If a Party considers that an anti-competitive practice carried out within the territory of another Party has a substantially adverse effect within its territory or on trade relations between the Parties, it may request that the other Party initiate appropriate enforcement activities. The request shall be as specific as possible about the nature and the effect of the anti-competitive practice. The requested Party shall consider whether to initiate an enforcement activity with respect to the anti-competitive practice identified in the request, and shall advise the requesting Party of its decision and of the outcome of such activity.
5. The Parties are encouraged to exchange information, including information that is not publicly available, provided that this does not affect any ongoing investigation. Any exchange of information shall be subject to the rules and standards of confidentiality applicable in the territory of each Party. No Party shall be required to provide information when this is contrary to its laws regarding disclosure of information. Each Party shall maintain the confidentiality of any information provided to it subject to the limitations that the submitting Party requests for the use of such information.
6. To further strengthen co-operation, the Parties may sign co-operation agreements.

ARTICLE 8.4

Consultations

To foster understanding between the Parties, or to address any matter arising under this Chapter and without prejudice to the autonomy of each Party to develop, maintain and enforce its competition policy and legislation, a Party may request consultations within the Joint Committee. This request shall indicate the reasons for the consultations. Consultations shall be held promptly with a view to reaching a conclusion consistent with the objectives set forth in this Chapter. The Parties concerned shall give to the Joint Committee all the support and information needed, subject to the criteria and standards set out in paragraph 5 of Article 8.3 (Co-operation).

ARTICLE 8.5

State Enterprises and Designated Monopolies

1. Nothing in this Chapter shall be construed to prevent a Party from establishing or maintaining a state enterprise or designated monopolies.
2. The Parties shall ensure that state enterprises and designated monopolies do not adopt or maintain anti-competitive practices affecting 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.
3. This Article does not apply to government procurement.

ARTICLE 8.6

Dispute Settlement

No Party may have recourse to dispute settlement under Chapter 12 (Dispute Settlement) for any matter arising under this Chapter.