

CHAPTER SEVENTEEN

Competition policy

Article 17.1

Definitions

For the purposes of this Chapter:

anti-competitive business conduct means anti-competitive agreements, concerted practices or arrangements by competitors, anti-competitive practices by an enterprise that is dominant in a market, and mergers with substantial anti-competitive effects; and,

service of general economic interest means, for the European Union, a service that cannot be provided satisfactorily and under conditions, such as price, objective quality characteristics, continuity, and access to the service, consistent with the public interest, by an undertaking operating under normal market conditions. The operation of a service of general economic interest must be entrusted to one or more undertakings by the state by way of a public service assignment that defines the obligations of the undertakings in question and of the state.

Article 17.2

Competition policy

1. The Parties recognise the importance of free and undistorted competition in their trade relations. The Parties acknowledge that anti-competitive business conduct has the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation.
2. The Parties shall take appropriate measures to proscribe anti-competitive business conduct, recognising that such measures will enhance the fulfilment of the objectives of this Agreement.
3. The Parties shall cooperate on matters relating to the proscription of anti-competitive business conduct in the free trade area in accordance with the *Agreement between the European Communities and the Government of Canada Regarding the Application of their Competition Laws*, done at Bonn on 17 June 1999.
4. The measures referred to in paragraph 2 shall be consistent with the principles of transparency, non-discrimination, and procedural fairness. Exclusions from the application of competition law shall be transparent. A Party shall make available to the other Party public information concerning such exclusions provided under its competition law.

Article 17.3

Application of competition policy to enterprises

1. A Party shall ensure that the measures referred to in Article 17.2.2 apply to the Parties to the extent required by its law.
2. For greater certainty:
 - (a) in Canada, the *Competition Act*, R.S.C. 1985, c. C-34 is binding on and applies to an agent of Her Majesty in right of Canada, or of a province, that is a corporation, in respect of commercial activities engaged in by the corporation in competition, whether actual or potential, with other persons to the extent that it would apply if the agent were not an agent of Her Majesty. Such an agent may include state enterprises, monopolies, and enterprises granted special or exclusive rights or privileges; and
 - (b) in the European Union, state enterprises, monopolies, and enterprises granted special rights or privileges are subject to the European Union's rules on competition. However, enterprises entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly are subject to these rules, in so far as the application of these rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

*Article 17.4***Dispute settlement**

Nothing in this Chapter shall be subject to any form of dispute settlement pursuant to this Agreement.

*CHAPTER EIGHTEEN****State enterprises, monopolies, and enterprises granted special rights or privileges****Article 18.1***Definitions**

For the purposes of this Chapter:

covered entity means:

- (a) a monopoly;
- (b) a supplier of a good or service, if it is one of a small number of goods or services suppliers authorised or established by a Party, formally or in effect, and the Party substantially prevents competition among those suppliers in its territory;
- (c) any entity to which a Party has granted, formally or in effect, special rights or privileges to supply a good or service, substantially affecting the ability of any other enterprise to supply the same good or service in the same geographical area under substantially equivalent conditions, and allowing the entity to escape, in whole or in part, competitive pressures or market constraints ⁽¹⁾; or
- (d) a state enterprise;

designate means to establish or authorise a monopoly, or to expand the scope of a monopoly to cover an additional good or service;

in accordance with commercial considerations means consistent with customary business practices of a privately held enterprise in the relevant business or industry; and

non-discriminatory treatment means the better of national treatment and most-favoured-nation treatment as set out in this Agreement.

*Article 18.2***Scope**

1. The Parties confirm their rights and obligations under Articles XVII:1 through XVII:3 of the GATT 1994, the *Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994*, and Articles VIII:1 and VIII:2 of GATS, all of which are hereby incorporated into and made part of this Agreement.

2. This Chapter does not apply to the procurement by a Party of a good or service purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of a good or service for commercial sale, whether or not that procurement is a 'covered procurement' within the meaning of Article 19.2 (Scope and coverage).

⁽¹⁾ For greater certainty, the granting of a licence to a limited number of enterprises in allocating a scarce resource through objective, proportional and non-discriminatory criteria is not in and of itself a special right.