

Chapter 14

Competition Policy

Article 14.1: Definitions

For the purposes of this Chapter:

- (a) **competition authority** means:
 - (i) for Australia, the Australian Competition and Consumer Commission (ACCC) or its successor; and
 - (ii) for Chile, the Fiscalía Nacional Económica or its successor;
- (b) **competition law** means:
 - (i) for Australia, the *Trade Practices Act 1974* (excluding Part X) and any regulations, made under that Act, as well as any amendments thereto; and
 - (ii) for Chile, Decree Law No. 211 of 1973 and any implementing regulations, as well as any amendments thereto;
- (c) **anticompetitive activity** means public or private business conduct or transactions that adversely affect competition, such as:
 - (i) anticompetitive horizontal arrangements between competitors;
 - (ii) anticompetitive unilateral conduct;
 - (iii) anticompetitive vertical arrangements; and
 - (iv) anticompetitive mergers and acquisitions;
- (d) **enforcement activity** means any application of competition law by way of investigation or proceeding conducted by a Party, but shall not include research, studies or surveys with the objective of examining the general economic situation or general conditions in specific industries. Such research, studies or surveys shall not be construed so as to include any investigation with regard to suspected violation of competition law;
- (e) **enterprise with special or exclusive rights** means an enterprise to which a Party has granted special or exclusive rights in its purchases or sales involving either imports or exports;

- (f) **designate** means, whether formally or in effect, to establish, designate, or authorise a monopoly or to expand the scope of a monopoly to cover an additional good or service;
- (g) **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;
- (h) **non-discriminatory treatment** means the better of national treatment and most-favoured-nation treatment, as set out in the relevant provisions of this Agreement; and
- (i) **in accordance with commercial considerations** means consistent with normal business practices of privately-held enterprises in the relevant business or industry.

Article 14.2: Objectives

1. Recognising that anticompetitive practices have the potential to restrict bilateral trade and investment, the Parties believe that proscribing anticompetitive activities and implementing policies that promote economic efficiency and consumer welfare will help secure the benefits of this Agreement.
2. With a view to preventing distortions or restrictions of competition which may affect trade in goods or services between them, the Parties shall give particular attention to anticompetitive activities.
3. The Parties agree, within their existing domestic legal frameworks, to coordinate on the implementation of competition laws. This will include notification, consultation and exchange of non-confidential information.
4. The Parties acknowledge the importance of contributing to the development of best practice in the area of competition policy in global and plurilateral fora.

Article 14.3: Competition Law and Anticompetitive Activities

1. Each Party shall maintain or adopt measures consistent with its domestic law to proscribe anticompetitive activities and take appropriate action with respect thereto, recognising that such measures will help realise the objectives of this Agreement. Each Party shall ensure that a person subject to the imposition of a sanction or remedy for violation of such measures is provided with the opportunity to be heard and to present evidence, and to seek review of such sanction or remedy in a court or independent tribunal of that Party.
2. Each Party shall ensure that all businesses operating in its territory are subject to its competition laws. Parties may exempt businesses or sectors from the

application of competition laws, provided that such exemptions are transparent and are undertaken on the grounds of public policy or public interest. Where a Party considers such an exemption might adversely affect its interests, it may seek consultations pursuant to Article 14.7.

3. Each Party shall maintain an authority or authorities responsible for the enforcement of its national competition laws. In enforcing its competition laws, each Party's competition authority will treat nationals of the other Party no less favourably than it treats its own nationals in like circumstances.

4. The Parties recognise the importance of effective competition law enforcement in the free trade area. To this end, the Parties shall cooperate, on mutually agreed terms, on the enforcement of competition laws.

Article 14.4: Enterprises with Special or Exclusive Rights, including Designated Monopolies

1. Nothing in this Chapter shall be construed to prevent a Party from granting to an enterprise special or exclusive rights or designating a monopoly provided that this is done in accordance with the Party's domestic law.

2. Recognising that enterprises with special or exclusive rights, including designated monopolies, should not operate in a manner that creates obstacles to trade and investment, each Party shall ensure that any enterprise with special or exclusive rights, including any privately or publicly designated monopoly:

- (a) acts solely in accordance with commercial considerations in its exercise of special or exclusive rights including, where applicable, the purchase or sale of the monopoly good or service in the relevant market, 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 grant or designation that are not inconsistent with subparagraph (b) or (c);
- (b) provides non-discriminatory treatment to covered investments, to goods of the other Party, and to service suppliers of the other Party in its exercise of special or exclusive rights including, where applicable, the purchase or sale of the monopoly good or service in the relevant market;
- (c) does not use its special or exclusive rights including, where applicable, 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-monopolised market in its territory, where such practices adversely affect covered investments; and
- (d) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such an enterprise with special or

exclusive rights or designated monopoly exercises any regulatory, administrative or other governmental authority that the Party has delegated to it in connection with the exercise of special or exclusive rights including, where applicable, the monopoly good or service, such as the power to grant import or export licences, approve commercial transactions, or impose quotas, fees or other charges.

3. This Article does not apply to government procurement.
4. Where a Party grants to an enterprise special or exclusive rights or designates a monopoly and it determines that the grant or designation may affect the interests of the other Party, the Party shall endeavour to:
 - (a) at the time of the grant or designation introduce such conditions on the exercise of special or exclusive rights including, where applicable, the operation of the monopoly so as to minimise any adverse affect on the other Party, as communicated by that Party, under Article 14.7; and
 - (b) provide written notification, in advance wherever possible, to the other Party of the grant or designation.

Article 14.5: State Enterprises

1. Nothing in this Chapter shall be construed to prevent a Party from establishing or maintaining a state enterprise, provided that this is done in accordance with the Party's domestic law.
2. Each Party shall ensure that any state enterprise that it establishes or maintains 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 licences, approve commercial transactions, or impose quotas, fees or other charges.
3. Each Party shall ensure that any state enterprise that it establishes or maintains accords non-discriminatory treatment in the sale of its goods or services.
4. Each Party shall take reasonable measures to ensure it does not provide any competitive advantage to any government-owned business simply because it is government owned. This Article applies to the business activities of government-owned businesses and not to their non-business, non-commercial activities.

Article 14.6: Notifications

1. Each Party, through its competition authority, but subject to its laws and regulations, shall notify the competition authority of the other Party of an enforcement activity where it determines that the enforcement activity:

- (a) is liable to substantially affect the other Party's important interests;
- (b) relates to restrictions on competition which are liable to have a direct and substantial effect in the territory of the other Party; or
- (c) concerns anticompetitive acts taking place principally in the territory 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, notifications shall take place at an early stage of the procedure.

3. The notifications provided for in paragraph 1 should include sufficient detail to permit the other Party to evaluate its interests.

4. The Parties undertake to ensure that notifications are made in the circumstances set out above, taking into account the administrative resources available to them.

Article 14.7: Consultations

1. If the competition authority of a Party considers that an investigation or proceeding being conducted by the competition authority of the other Party may adversely affect its important interests it may transmit its views on the matter to the other Party's competition authority.

2. A Party, through its competition authority, may request consultations regarding the issues addressed in paragraph 1 as well as any other matter covered by this Chapter. The requesting Party shall indicate the reasons for the request and whether any procedural time limit or other constraints require that consultations be expedited. Such consultations shall be without prejudice to the right of a Party so consulted to take any measure under its competition laws it deems appropriate.

Article 14.8: Exchange of Information, Transparency and Confidentiality

1. With a view to facilitating the effective application of their respective competition laws, the competition authorities may exchange information.

2. With the objective of making their competition policies as transparent as possible, each Party shall ensure that its laws, regulations and procedures addressing competition shall be in writing and shall be published or otherwise made publicly available.

3. On the request of a Party, the other Party shall endeavour to make available public information concerning:

- (a) the enforcement of its measures proscribing anticompetitive activities;
- (b) its state enterprises, and enterprises with special or exclusive rights, including designated monopolies, provided that requests for such information shall indicate the entities involved, specify the particular goods and/or services and markets concerned, and include indicia that these entities may be engaging in practices that may hinder trade or investment between the Parties; and
- (c) exemptions to its measures proscribing anticompetitive activities, provided that requests for such information shall specify the particular goods and/or services and markets to which the request relates.

4. Any information or documents exchanged between the Parties on a confidential basis pursuant to the provisions of this Chapter shall be kept confidential. Neither Party shall, except to comply with its domestic legal requirements, release or disclose such information or documents to any person without the written consent of the Party which provided such information or documents. Where the disclosure of such information or documents is necessary to comply with the domestic legal requirements of a Party, that Party shall notify the other Party where possible before such disclosure is made or otherwise at the earliest practicable time.

5. The Party providing such confidential information shall furnish non-confidential summaries thereof if requested by the other Party. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. When a Party indicates that such confidential information is not susceptible to a public summary and where such information is submitted to a judicial authority, it shall be at the discretion of that judicial authority whether to consider such information.

Article 14.9: Dispute Settlement

1. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Chapter.

2. In the event that a breach of this Chapter by an enterprise exercising any regulatory, administrative or other governmental authority that the Party has delegated to it also constitutes a breach of another Chapter of this Agreement, this Article shall not preclude recourse by a Party to dispute settlement for the breach of the other Chapter by such an enterprise.

Article 14.10: Technical Assistance

The Parties may provide each other technical assistance in order to take advantage of their respective experience and to strengthen the implementation of their competition laws and policies.