

CHAPTER 8

COMPETITION

Article 1

Objectives

The Parties recognise the strategic importance of promoting open and competitive markets through the effective application of competition policies for the purposes of enhancing trade and investment, economic efficiency and consumer welfare.

Article 2

Promotion of Competition

1. The Parties endorse the APEC Principles to Enhance Competition and Regulatory Reform. The Parties agree to promote competition and will seek to ensure that the design of trade and competition policies and the implementation of domestic laws give due weight to their effects on competition. Accordingly, the Parties will:
 - (a) provide for transparency in policies, laws and rules, and their implementation;
 - (b) apply competition policies to economic activities, including public and private business activities, in a manner that does not discriminate between or among economic entities in like circumstances;

- (c) maintain a high-level government commitment to promote competition and enhance economic efficiency, including through assessments of regulatory impacts or other appropriate means;
 - (d) set out clear responsibilities within their respective administrations for promoting and identifying the competition and efficiency dimensions in the development of policies and rules, and their implementation;
 - (e) promote coherent and effective implementation of trade and competition policies within their respective jurisdictions; and
 - (f) foster appropriate cooperation between trade and competition officials.
2. The Parties recognise that the implementation of paragraph 1 may be subject to the different circumstances of the Parties and the different policy approaches that arise from these circumstances.

Article 3

Competition Law and Authorities

1. Recognising the objectives in Article 1 and principles in Article 2, the Parties shall adopt or maintain competition laws that proscribe anticompetitive business conduct, with the objective of facilitating economic efficiency and consumer welfare, and shall take appropriate action with respect to such conduct.
2. At the time of entry into force of this Agreement this obligation is fulfilled by:

(a) For New Zealand, the Commerce Act 1986.

(b) For Chinese Taipei, the Fair Trade Act.

3. Each Party shall maintain an authority or authorities responsible for the enforcement of its competition laws.
4. Each Party shall endeavour to apply its competition laws to all commercial activities in its jurisdiction and shall not discriminate on the basis of nationality when enforcing these laws.

Article 4

Exemptions and Exceptions

The Parties recognise that certain exemptions and exceptions from their respective competition regimes may be necessary to achieve other legitimate policy objectives. The Parties shall endeavour to identify and review these exemptions and exceptions to ensure that each is no broader than necessary to achieve a legitimate policy objective, and implemented in a transparent way that minimises distortions to fair and free competition.

Article 5

Private Rights of Action

1. For the purposes of this Article, “private right of action” means the right of a person to independently seek redress (including injunctive, monetary or other remedies) from a court or independent tribunal for

injury to its business or property caused by a violation of a Party's competition laws.

2. Recognising that a private right of action is an important supplement to the public enforcement of a Party's competition laws, each Party should adopt or maintain laws or other measures that provide a private right of action.
3. A Party shall ensure that a right provided pursuant to paragraph 2 is available to persons of the other Party on terms that are no less favourable than those available to its own persons.

Article 6

Consumer Protection

1. The Parties recognise the importance of consumer protection policy and enforcement in achieving the objectives set out in Article 1 and promoting a trading environment in which consumers and businesses can participate confidently and fairly. Accordingly, the Parties affirm their commitment to provide protection from misleading and deceptive conduct that causes harm, or is likely to cause harm, to consumers.
2. Each Party shall adopt or maintain laws that proscribe misleading and deceptive conduct that causes harm, or is likely to cause harm, to consumers.
3. For the purposes of this Chapter, "misleading and deceptive conduct" refers to fraudulent commercial activities that cause actual harm to consumers, or that pose an imminent threat of such harm if not prevented, such as:

- (a) making misrepresentations or false claims as to the material qualities, price, suitability for purpose, quantity or any other characteristic of goods or services; or
 - (b) advertising goods or services for supply without intention to supply; or
 - (c) failing to deliver products or provide services to consumers after the consumers have been charged; or
 - (d) charging or debiting consumers' financial, telephone or other accounts without authorisation.
4. The Parties recognise that misleading and deceptive conduct that harms, or is likely to harm, consumers, increasingly transcends national borders. Such conduct includes international scams, the trade of goods with misleading or deceptive packaging or associated advertising and the making of false or misleading claims through the media or internet. In such circumstances cooperation and coordination between the relevant consumer protection agencies of the Parties is desirable to effectively address these activities.
5. Accordingly, the Parties shall promote, as appropriate, cooperation and coordination on matters of mutual interest.

Article 7
Cooperation and Exchange of Information

1. The Parties agree to cooperate and coordinate in the area of competition policy by exchanging information on the development of competition policy.
2. The Parties shall encourage their respective competition authorities to cooperate in the area of competition law, including through technical assistance as appropriate, consultation and exchanges of information, as permitted by the domestic law and overall policy of each Party and within the scope of the responsibilities of each competition authority.

Article 8
Consultations

At the request of either Party, the Parties shall consult on particular anti-competitive practices adversely affecting trade or investment between the Parties, consistent with the objectives of this Chapter. Consultations may be appropriate where a Party:

- (a) considers that the enforcement activity 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 other Party; or
- (c) concerns anti-competitive acts taking place principally in the other Party.

Article 9

Non-Application of Dispute Settlement

Neither Party shall have recourse to Chapter 21 (Dispute Settlement) in respect of any issue arising from or relating to this Chapter.