

CHAPTER 11: COMPETITION POLICY

ARTICLE 11.1

Objectives and Definitions

1. The aim of this Chapter is to contribute to the fulfilment of the objectives of this Agreement through the promotion of:

- (a) fair competition;
- (b) the APEC principles of non-discrimination, comprehensiveness, transparency and accountability as contained in the 1999 APEC Economic Leaders Declaration (the APEC Principles); and
- (c) the curtailment of anti-competitive practices.

2. For the purposes of this Chapter, “anti-competitive practices” means business conduct or transactions that adversely affect competition, such as:

- (a) anti-competitive horizontal arrangements between competitors;
- (b) misuse of market power, including predatory pricing;
- (c) anti-competitive vertical arrangements; and
- (d) anti-competitive mergers and acquisitions.

ARTICLE 11.2

Competition Principles

The Parties recognise the strategic importance of creating and maintaining open and competitive markets which promote economic efficiency and consumer welfare, and reaffirm their desire to promote competition and to implement the APEC Principles having regard to the different economic circumstances of the Parties. This is with a view to protecting the competitive process rather than competitors and minimising distortions to competition.

ARTICLE 11.3

Promotion of Competition

Each Party shall promote competition by:

- (a) addressing anti-competitive practices in its territory and by adopting and enforcing such means or measures as it deems appropriate and effective to counter such practices;

- (b) using its best efforts to reduce transaction costs and compliance costs for business;
- (c) applying the APEC Principles to all forms of commercial activity in a manner that does not discriminate between or among economic entities in like circumstances; and
- (d) promoting effective coordination on competition policy and law between the Parties.

ARTICLE 11.4

Application of Competition Laws

1. The Parties shall ensure that all commercial activities are subject to such generic or relevant sectoral competition laws as may be in force in their respective territories.
2. Any measures taken by a Party to proscribe anti-competitive practices, and the enforcement actions taken pursuant to those measures, shall be consistent with the principles of transparency, timeliness, non-discrimination, comprehensiveness and procedural fairness.

ARTICLE 11.5

Exemptions

Either Party may exempt specific measures or sectors from the application of their general competition law provided that such exemptions are transparent and undertaken on the grounds of public policy or public interest.

ARTICLE 11.6

Cooperation and Exchange of Information

The Parties recognise the importance of cooperation and coordination in achieving effective enforcement outcomes under their respective competition laws. The Parties also recognise the importance of confidentiality in respect of these arrangements. Accordingly, the Parties shall cooperate, where appropriate, on issues of competition law enforcement, including through the exchange of information, notification, consultation, and coordination of enforcement matters that are cross-border in nature.

ARTICLE 11.7

Technical Cooperation

1. The Parties agree that it is in their common interest for their competition authorities to work together on technical cooperation activities related to the implementation of competition law and policy.
2. The technical cooperation activities between their competition authorities are subject to reasonably available resources and may include:
 - (a) exchange of personnel for training purposes;
 - (b) participation of personnel as lecturers or consultants at training courses of competition law and policy co-organised and co-sponsored by the competition authorities of the Parties; and
 - (c) any other form of technical assistance as mutually decided by the competition authorities of the Parties.

ARTICLE 11.8

Consultation

1. At the request of either Party, the Parties shall consult on particular anti-competitive practices and other competition issues adversely affecting trade or investment between the Parties, consistent with the aims of this Chapter.
2. Any information or documents exchanged between the Parties in relation to any mutual consultation conducted 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 that 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 before such disclosure is made.

ARTICLE 11.9

Transparency

The Parties shall publish or otherwise make publicly available their laws promoting fair competition and their laws addressing anti-competitive practices.

ARTICLE 11.10

General

1. Chapter 17 shall not apply to the provisions of this Chapter.
2. In the event of any inconsistency or conflict between any provision in this Chapter and any provision contained in any other Chapter of this Agreement, the latter shall prevail to the extent of such inconsistency or conflict.