

CHAPTER 9

COMPETITION POLICY

Article 9.1: Objectives

1. The Parties recognise the strategic importance of creating and maintaining open and competitive markets that promote economic efficiency and consumer welfare.
2. To this end each Party is committed to reducing and removing impediments to trade and investment including through:
 - (a) application of competition statutes to all forms of commercial activity, including both private and public business activities; and
 - (b) application of competition statutes in a manner that does not discriminate between or among economic entities, nor between origin and destination of the production.
3. The Parties recognise that anti-competitive business conduct may frustrate the benefits arising from this Agreement. The Parties undertake to apply their respective competition laws in a manner consistent with this Chapter so as to avoid the benefits of this Agreement in terms of the liberalisation process in goods and services being diminished or cancelled out by anti-competitive business conduct.

Article 9.2: Competition Law and Enforcement

1. Each Party shall adopt or maintain competition laws that proscribe anti-competitive business conduct with the objective of promoting economic efficiency and consumer welfare.
2. With a view to preventing distortions or restrictions on competition the Parties will give particular attention to anti-competitive agreements, concerted practices or arrangements by competitors and abusive behaviour resulting from single or joint dominant positions in a market. These practices refer to goods and services and may be carried out by any enterprise irrespective of the ownership of that enterprise.
3. Competition law shall apply to all commercial activities. However, each 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. Exemptions of the Parties as at the date of entry into force of this Agreement are set out in Annex 9.A.

Those exemptions shall not have the objective of negatively affecting trade among the Parties. Should any Party be considering additions to its list of exemptions that it considers may affect trade with another Party, it will inform that Party, which may request consultations under Article 9.5. The Commission shall implement any additions to or removals from the list of exemptions through an Implementing Arrangement.

4. Each Party shall establish or maintain a competition authority responsible for the enforcement of its measures to proscribe anti-competitive business conduct. The enforcement policy of each Party's competition authority shall not discriminate on the basis of the nationality of the subjects of their proceedings to the extent that they carry on a business within the territory of that Party.

5. Each Party shall ensure that a person subject to the imposition of a sanction or remedy for violation of competition laws is provided with the opportunity to be heard and present evidence, and to seek review of such a sanction or remedy in a domestic court or independent tribunal.

Article 9.3: Cooperation

1. The Parties agree to cooperate and coordinate in the area of competition policy by exchanging information on the development of competition policy. The Parties also recognise the importance of cooperation and coordination between their respective competition authorities to further effective competition law enforcement in their respective jurisdictions. Accordingly, the Parties shall cooperate on issues of competition law enforcement, including notification, consultation and exchanges of information.

2. The Parties through their respective competition authorities will seek a cooperation agreement after the date of the entry into force of this Agreement.

Article 9.4: Notifications

1. Each Party shall notify the other Parties of an enforcement activity regarding an anti-competitive business conduct if it:

- (a) considers that the enforcement activity is liable to substantially affect another Party's important interests;
- (b) relates to restrictions on competition which are liable to have a direct and substantial effect in the territory of another Party; or
- (c) concerns anti-competitive acts taking place principally in the territory of another Party.

2. Notification shall take place at an early stage of the procedure, provided that this is not contrary to the Parties' competition laws and does not affect any investigation being carried out.

Article 9.5: Consultations and Exchange of Information

1. At the request of any Party, the Parties shall consult on any issue adversely affecting the competitive interests for trade or investment among them within the objectives of this Chapter.

2. Information or documents exchanged between the Parties in relation to any consultation conducted pursuant to the provisions of this Chapter shall be kept confidential. No 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 Parties before such disclosure is made. The Parties may agree to the public release of information that they do not consider confidential.

Article 9.6: Public enterprises and enterprises entrusted with special or exclusive rights, including designated monopolies

1. Nothing in this Chapter prevents a Party from designating or maintaining public or private monopolies according to their respective laws.

2. With regard to public enterprises and enterprises to which special or exclusive rights have been granted, the Parties shall ensure that, following the date of entry into force of this Agreement, no measure is adopted or maintained that distorts trade in goods or services among the Parties, which is contrary to this Agreement and contrary to the Parties' interests, and that such enterprises shall be subject to the rules of competition insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

Article 9.7: Dispute Settlement

1. Nothing in this Chapter permits a Party to challenge any decision made by a competition authority of another Party in enforcing the applicable competition laws and regulations.

2. No Party shall have recourse to any dispute settlement procedures under this Agreement for any issue arising from or relating to this Chapter.

Annex 9.A

This Annex lists exemptions from the application of competition law to all commercial activities in accordance with Article 9.2 and which may affect the benefits arising from this Agreement. It does not include exemptions from the application of competition law that are within the scope of other Chapters of this Agreement.

New Zealand

Specific exemptions from New Zealand Commerce Act

Pharmaceuticals subsidies by Pharmac (Section 53 of *New Zealand Public Health and Disability Act 2000*) – The Act exempts certain agreements relating to the purchase and subsidising of pharmaceuticals from Part II of the Commerce Act (restrictive trade practices).

Export arrangements (Section 44(1)(g)) - "Export arrangements" that relate exclusively to the export of goods from New Zealand or exclusively to the supply of services wholly outside New Zealand are exempt from the Commerce Act (Part II on restrictive trade practices), under conditions of due notification to the Commerce Commission.

Agricultural Producer Boards – Limited exemptions from Part II of the Commerce Act (restrictive trade practices) are contained in the *Meat Board Act 2004* and the *Pork Industry Board Act 1997*. These exemptions relate to arrangements for setting levies by the Boards for the purpose of funding their industry-good activities (e.g. market promotion and research). In the case of the Meat Board, the exemption extends to the Board's administration of export tariff quota arrangements.

Singapore

1. Provision of ordinary letter and postcard services by licensed and regulated entities.
2. Supply of piped potable water.
3. Supply of wastewater management services, including the collection, treatment and disposal of wastewater.
4. Public Transport:

- a. Supply of scheduled bus services by any person licensed and regulated under the Public Transport Council Act (Cap. 259B);
 - b. Supply of rail services by any person licensed and regulated under the Rapid Transit Systems Act (Cap. 263A).
- 5. Cargo terminal operations by a person licensed and regulated under the Maritime and Port Authority of Singapore Act (Cap. 170A).
- 6. Clearing and exchanging of articles undertaken by the Automated Clearing House (ACH) established under the Banking (Clearing House) Regulations (Cap. 19, Rg 1), and activities of the Singapore Clearing Houses Association (SCHA) in relation to its activities regarding the ACH.
- 7. Mergers and acquisitions (M&As) approved under any written law or any code of practice issued under any written law relating to competition, and M&As relating to any of the above activities/sectors.