

CHAPTER 20

COMPETITION POLICY

ARTICLE 20.1: OBJECTIVE AND PRINCIPLES

1. The objective of this Chapter is to prevent that the benefits of trade liberalization from being undermined by conducts or transactions that may restrict or distort competition in the markets of the Parties, by ensuring implementation of competition policies, and promoting cooperation and coordination between their competition authorities on matters covered by this Chapter.

2. The Parties therefore agree that the following are incompatible with this Agreement, in so far as they may affect trade between the Parties:

- (a) agreements between enterprises, decisions by associations of enterprises and concerted practices, which have as their object or effect the prevention, restriction or distortion of competition;
- (b) any abuse by one or more enterprises of a dominant position or a substantial market power or notable market participation; and
- (c) concentrations between enterprises, which significantly impede effective competition,

as specified in their respective competition laws.

ARTICLE 20.2: COMPETITION LAW AND AUTHORITIES

1. Each Party shall adopt or maintain competition laws that promote and protect the competitive process in its markets by proscribing conducts or transactions referred to in Article 20.1.2. Each Party shall take appropriate actions with respect to those conducts or transactions with the objective of promoting an efficient functioning of the markets and consumer welfare.

2. Each Party shall establish or maintain an authority or authorities responsible for the enforcement of its competition laws.

3. Each Party shall ensure that any exemptions to the competition laws shall be stipulated in its legislation and implemented transparently.

ARTICLE 20.3: IMPLEMENTATION

1. The enforcement of competition policies by the competition authority, shall be consistent with the principles of transparency, timeliness, non-discrimination and procedural fairness.

2. Each Party shall provide persons subject to the imposition of a sanction or remedy under its competition legislation with reasonable opportunity to present evidence, to be heard and to seek judicial review of the sanction or remedy, according to the legislation of each Party.

3. Each Party shall make publicly available its competition legislation.

4. Each Party shall ensure that all final decisions finding a violation of its competition laws are provided in written form and set out any relevant factual findings and legal basis on which the decision is based, according to the legislation of each Party.

ARTICLE 20.4: COOPERATION

1. The Parties recognize the importance of cooperation and coordination between their respective competition authorities to promote the effective enforcement of their competition legislation and to fulfill the objectives of this Agreement.

2. Accordingly, the Parties shall cooperate in relation to the enforcement of their respective competition legislation and policies, through mechanisms such as notification, consultation, exchange of information, and technical assistance, according to the legislation of each Party.

3. This cooperation shall not prevent the Parties from taking autonomous decisions.

ARTICLE 20.5: NOTIFICATIONS

1. Each Party, through its competition authority, shall notify to the competition authority of the other Party of an enforcement activity regarding conducts or transactions referred to in Article 20.1.2, if it considers that such enforcement activity may substantially affect important interests of the other Party.

2. Provided that it is not contrary to the Party's competition legislation and does not affect any investigation being carried out, the notification shall take place at an early stage of the enforcement activity.

ARTICLE 20.6: CONSULTATIONS

1. To foster mutual understanding, or to address specific matters that arise under this Chapter, a Party should enter into consultation upon request of the other Party without

prejudice to the autonomy of each Party to develop, maintain and enforce its competition legislation.

2. The Party to which a request for consultations has been addressed shall give full and sympathetic consideration to the concerns of the other Party.

ARTICLE 20.7: EXCHANGE OF INFORMATION AND CONFIDENTIALITY

The competition authority of a Party, upon request of the competition authority of the other Party, shall endeavor to provide non-confidential information to facilitate effective enforcement of their respective competition legislation, provided that it does not affect any ongoing investigation and is compatible with the legislation of each Party.

ARTICLE 20.8: TECHNICAL ASSISTANCE

1. The Parties may provide each other with technical assistance, within the available resources, in any areas they consider appropriate, including exchange of experiences, capacity building for the implementation of their competition legislation and policies, and promotion of competition culture.

2. On the date of entry into force of this Agreement, the Parties shall notify the contact point in the competition authority to whom any request of technical assistance shall be submitted.

ARTICLE 20.9: STATE ENTERPRISES AND DESIGNATED MONOPOLIES

1. Nothing in this Chapter shall be construed to prevent a Party from establishing or maintaining state enterprises and/or designated monopolies.

2. The Parties shall ensure that state enterprises and designated monopolies are subject to their respective competition legislation and do not adopt or maintain any conducts or transactions referred to in Article 20.1.2, that affect trade between the Parties, insofar as the application of this provision does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

ARTICLE 20.10: DISPUTE SETTLEMENT

Neither Party shall have recourse to Chapter 22 (Dispute Settlement) for any matter arising under this Chapter.

ARTICLE 20.11: TRANSITIONAL ARRANGEMENTS

If, at the date of entry into force of this Agreement, a Party has not yet adopted a competition law or established a competition authority, the Party shall do so within a period of two years.

ARTICLE 20.12: DEFINITIONS

For the purposes of this Chapter:

competition authority means:

- (a) for Korea, the Korea Fair Trade Commission;
- (b) for Costa Rica, the Commission for the Promotion of Competition (*Comisión para Promover la Competencia*) and Superintendence of Telecommunications (*Superintendencia de Telecomunicaciones*);
- (c) for El Salvador, the Superintendence of Competition (*Superintendencia de Competencia*);
- (d) for Honduras, the Commission for the Defense and Promotion of Competition (*Comisión para la Defensa y Promoción de la Competencia*);
- (e) for Nicaragua, the National Institute for the Promotion of Competition (*Instituto Nacional de Promoción de la Competencia*); and
- (f) for Panama, the Authority for Consumer Protection, and Competition Defense (*Autoridad de Protección al Consumidor y Defensa de la Competencia*),

or their successors.

competition law means:

- (a) for Korea, the Monopoly Regulation and Fair Trade Act;
- (b) for Costa Rica, the Law for the Promotion of Competition and Effective Consumer Protection (*Ley para la Promoción de la Competencia y Defensa Efectiva del Consumidor*), Law No. 7472 of December 20th, 1994; and General Telecommunications Law (*Ley General de Telecomunicaciones*), Law No. 8642 of June 30th, 2008;
- (c) for El Salvador, the Competition Law (*Ley de Competencia*), approved by Legislative Decree No. 528 of November 26th, 2004;

- (d) for Honduras, the Law for the Defense and Promotion of Competition (*Ley para la Defensa y Promoción de la Competencia*), approved by Decree No. 357-2005 of February 4th, 2006;
- (e) for Nicaragua, the Law for the Promotion of Competition (*Ley de Promoción de la Competencia*), approved by Law No. 601 of September 28th, 2006; and
- (f) for Panama, the Law that Establishes Standards for Consumers Protection and Competition Defense (*Ley que Dicta Normas de Protección al Consumidor y Defensa de la Competencia*), approved by the Law No. 45 of October 31th, 2007,

and their implementing regulations and amendments.