

Chapter 14
Competition Policy

第14章 竞争政策

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;

第14.1条：定义

本章的目的如下：

- (a) 竞争机构是指：
 - (i) 对于澳大利亚， 澳大利亚竞争与消费者委员会（ACCC）或其继任者；以及 (ii) 对于智利， 智利国民经济检察院或其继任者；
- (b) 竞争法是指：
 - (i) 对于澳大利亚， 指1974年贸易行为法（不包括第X部分）以及根据该法制定的任何法规， 以及对该法的任何修正； 以及 (ii) 对于智利， 指 1973年第211号法令以及任何实施性法规， 以及对该法的任何修正；
- (c) 反竞争行为是指对竞争产生不利影响的公共或私人商业行为或交易， 例如：
 - (i) 竞争者之间的反竞争横向协议； (ii) 反竞争单方面行为； (iii) 反竞争纵向协议； 以及 (iv) 反竞争并购；
- (d) 执法活动是指一方通过调查或程序进行的竞争法适用， 但不应包括旨在审查一般经济状况或特定行业一般条件的研究、研究或调查。此类研究、研究或调查不得解释为包括任何关于涉嫌违反竞争法的调查；
- (e) 具有特殊或专有权利的企业是指一方在其涉及进口或出口的采购或销售中授予其特殊或专有权利的企业；

- (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

(f) 指定是指无论正式或实际上，建立、指定或授权垄断，或扩大垄断的范围以涵盖额外的商品或服务；(g) 垄断是指一个实体，包括联合体或政府机构，在一方领土内的任何相关市场中被指定为某商品或服务的唯一提供者或购买者，但不包括仅因该授予而获得专有知识产权的实体；(h) 非歧视待遇是指本协议相关条款中规定的较优的国民待遇和最惠国待遇；以及(i) 根据商业考虑是指与相关行业中私营企业的正常商业惯例一致

或行业。s

第14.2条：目标

- 1. 认识到反竞争行为有可能限制双边贸易和投资，缔约方认为，禁止反竞争活动并实施促进经济效率和消费者福利的政策将有助于实现本协议的益处。
- 2. 为了防止可能影响其之间货物或服务贸易的竞争扭曲或限制，缔约方应特别关注反竞争活动。
- 3. 缔约方在其现有的国内法律框架内同意就竞争法的实施进行协调。这包括通知、磋商和非保密信息的交换。
- 4. 各缔约方承认，在多边和区域贸易协定等全球及诸边论坛中，为竞争政策领域的最佳实践发展做出贡献的重要性。

第14.3条：竞争法与反竞争行为

- 1. 每一方应根据其国内法维持或采取禁止反竞争行为的措施，并就此类行为采取适当行动，认识到此类措施将有助于实现本协议的目标。每一方应确保，受制裁或补救措施约束的个人有权获得听证机会、提供证据，并在该方的法院或独立仲裁庭中寻求对该制裁或补救措施的审查。
- 2. 每一方应确保其领土内所有企业均受其竞争法约束。缔约方可以免除企业或行业的

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

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. 每一方应维持一个或多个负责执行其国家竞争法的机构。在执行其竞争法时，每一方的竞争机构将对另一方的国民不低于其对待本国国民的待遇。

4. 缔约方承认在自由贸易区内有效执行竞争法的重要性。为此，缔约方应根据相互商定的条件合作执行竞争法。

第14.4条：具有特殊或专有权利的企业，包括指定垄断

1. 本章任何规定均不得解释为禁止一方根据其国内法向企业授予特殊或专有权利或指定垄断。

2. 认识到具有特殊或专有权利的企业，包括指定垄断，不应以创造贸易和投资障碍的方式运营，每一方应确保任何具有特殊或专有权利的企业，包括任何私有的或公有的指定垄断：

- (a) 在行使特殊或专有权利时，完全根据商业考虑行事，包括在相关市场购买或销售垄断商品或服务，涉及价格、质量、供应、市场性、运输以及其他购买或销售条款和条件，但需遵守其授予或指定条款中与第(b)或(c)段不一致的任何条款；
- (b) 对受保护的投资提供非歧视待遇，在其行使特殊或专有权利时，包括在相关市场购买或销售垄断商品或服务，对另一方的货物和服务供应商提供非歧视待遇；
- (c) 未使用其特殊或专有权利，包括在适用情况下在其领土内非垄断市场中，不利用其特殊或专有权利（包括在相关市场购买或销售垄断商品或服务时），直接或间接地参与反竞争行为，包括通过与其母公司、子公司或其他具有共同所有权的企业交易，且此类行为对受保护的投资产生不利影响；和
- (d) 以与一方的义务不一致的方式行事根据此协议，无论何处涉及具有特殊或

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.

在本协议中，无论具有特殊或专有权利的企业或指定垄断行使何种监管、行政或其他政府权力，该企业均应行使本协议授予其与行使特殊或专有权利相关的权力，包括，在适用情况下，授予进出口许可证、批准商业交易或实施配额、费用或其他收费的权力。

- 3. 本条不适用于政府采购。
- 4. 当一方授予企业特殊或专有权利或指定垄断，并认定授予或指定可能影响另一方的利益时，该方应当努力做到：
 - (a) 在授予或指定时，引入关于行使特殊或专有权利的条件，包括在适用的情况下垄断的运营，以最小化对另一方可能产生的不利影响，如该方根据第14.7条所沟通的；以及 (b) 在可能的情况下提前以书面形式通知另一方该授予或指定。

第14.5条：国有企业

- 1. 本章的任何规定均不得解释为阻止一方根据其国内法建立或维持国有企业。
- 2. 每一方应确保其设立或维持的任何国有企业，在行使该方授予其的任何监管、行政或其他政府权力时，例如征收权、授予许可证权、批准商业交易权或实施配额、费用或其他收费权，其行为均不与该方在本协议项下的义务相冲突。
- 3. 每一方应确保其设立或维持的任何国有企业，在销售其商品或提供服务时给予非歧视待遇。
- 4. 每一方应当采取合理措施，确保其不会因为某业务是国有业务而向该国有业务提供任何竞争优势。本条适用于国有业务的业务活动，而不适用于其非业务、非商业活动。

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.

第14.6条：通知

1. 每一方应当通过其竞争机构，但在其法律和法规的约束下，在确定其执法活动时，通知另一方的竞争机构该执法活动：
- (a) 可能对另一方的重要利益产生重大影响；(b) 涉及可能对另一方的领土产生直接和重大影响的竞争限制；或(c) 涉及主要发生在另一方领土内的反竞争行为。
2. 在不违反缔约方竞争法且不影响任何正在进行的调查的情况下，通知应在程序的早期阶段进行。
3. 第1段规定的通知应包括足够的详细信息，以便另一方能够评估其利益。
4. 缔约方承诺在上述情况下进行通知，并考虑到其可用的行政资源。

第14.7条：磋商

1. 如果一方竞争机构认为另一方竞争机构正在进行的调查或程序可能对其重要利益产生不利影响，它可以将其对该问题的意见传达给另一方的竞争机构。
2. 一方可以通过其竞争机构请求关于第1段所述问题以及本章涵盖的任何其他事项的磋商。请求方应说明请求的理由，并说明是否任何程序性时限或其他限制要求加速磋商。此类磋商不应损害被磋商方根据其竞争法认为适当的任何措施的权力。

第14.8条：信息交换、透明度和保密性

1. 为了促进其各自竞争法的有效适用，竞争机构可以交换信息。
2. 为了使其竞争政策尽可能透明，每一方应确保其涉及竞争的法律、法规和程序为书面形式，并予以公布或以其他方式向公众提供。

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.

3. 应一方的请求，另一方应努力提供有关以下方面的公共信息：

- (a) 对禁止反竞争活动的措施的执行；(b) 其国有企业、具有特殊或专有权利的企业，包括指定垄断，但要求此类信息的请求应标明相关实体，具体说明所涉货物和/或服务及市场，并包括表明这些实体可能从事可能阻碍缔约方之间贸易或投资行为的迹象；以及 (c) 对禁止反竞争活动的措施的豁免，但要求此类信息的请求应具体说明与请求相关的货物和/或服务及市场。

4. 根据本章规定，缔约方之间以保密基础交换的任何信息或文件应予以保密。任何一方未经提供该信息或文件的另一方书面同意，不得向任何个人释放或披露此类信息或文件，除非为遵守其国内法律要求。如披露此类信息或文件是遵守一方国内法律要求所必需的，该方应在披露前尽可能通知另一方，或至少在最早可行时通知。

5. 提供此类保密信息的一方，如另一方要求，应提供非保密的摘要。这些摘要应包含足够详细的信息，以便合理解所提交的保密信息的实质。当一方表示此类保密信息不适合进行公开摘要，并且此类信息提交给司法机构时，是否考虑此类信息应由该司法机构自行决定。

第14.9条：争端解决

1. 任何一方均不得根据本协议就本章产生的任何事项寻求争端解决。

2. 如果行使由一方委托给企业的任何监管、行政或其他政府权力而违反本章的企业，同时也构成对协议另一章节的违反，本条不应阻止一方就该企业对协议另一章节的违反提起争端解决。

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.

第14.10条：技术援助

缔约方可以相互提供技术援助，以利用各自的经验，并加强其竞争法及政策的实施。