

## **CHAPTER 14 COMPETITION**

### **Article 14.1: Definitions**

For the purpose of this Chapter:

**competition laws** includes:

- (a) for Chile, Decree Law N° 211 of 1973 and Law N° 19.610 of 1999 and their implementing regulations or amendments;
- (b) for Korea, the Monopoly Regulation and Fair Trade Act (Law no. 3320, 1980) and its implementing regulations and amendments; and
- (c) any changes that the legislations in subparagraphs (a) and (b) may undergo after the conclusion of this Agreement;

**competition authority** means:

- (a) for Chile, the "Fiscalia Nacional Economica"; and
- (b) for Korea, the Fair Trade Commission; and

**enforcement activity** means any application of competition laws by way of investigation or proceeding conducted by the competition authority of a Party, which may result in the imposition of penalties or remedies.

### **Article 14.2: Objectives**

1. The Parties undertake to apply their respective competition laws in a manner consistent with this Chapter so as to avoid that the benefits of the liberalization process in goods and services may be diminished or cancelled out by anti-competitive business conduct. To this end, the Parties agree to cooperate and coordinate between their competition authorities under the provisions of this Chapter.

2. With a view to preventing distortions or restrictions on competition which may affect trade in goods or services between them, the Parties shall give particular attention to anti-competitive agreements, concerted practices and abusive behavior resulting from single or joint dominant positions.

3. The Parties agree to cooperate and coordinate between themselves for the implementation of competition laws. This cooperation includes notification, consultation, exchange of non-confidential information and technical assistance. The Parties acknowledge the importance of embracing principles on competition that would be accepted by both Parties in multilateral fora, including the WTO.

### **Article 14.3: Notifications**

1. Each competition authority shall notify the competition authority of the other Party of an enforcement activity if it:

- (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 anti-competitive 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, notification shall be given at an early stage of the procedure. The opinions received may be taken into consideration by the other competition authority when taking decisions.

3. The notifications given under paragraph 1 should be detailed enough to permit an evaluation in the light of the interests of the other Party.

4. The Parties undertake to exert their best efforts to ensure that notifications are made in the circumstances set out above, taking into account the administrative resources available to them.

#### **Article 14.4: Coordination of Enforcement Activities**

The competition authority of a Party may notify the other Party's competition authority of its intention to coordinate enforcement activities with respect to a specific case. This coordination shall not prevent the Parties from taking autonomous decisions.

#### **Article 14.5: Consultations when the Important Interests of a Party are Adversely Affected in the Territory of the Other Party**

1. Each Party shall, in accordance with its laws, take into consideration, as necessary, the important interests of the other Party in the course of its enforcement activities. 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 such a Party's important interests, it may transmit its views on the matter to, or request consultation with, the other competition authority. Without prejudice to the continuation of any action under its competition laws and to its full freedom of ultimate decision, the competition authority so addressed should give full and sympathetic consideration to the views expressed by the requesting competition authority.

2. The competition authority of a Party that considers that its interests are being substantially and adversely affected by anti-competitive practices of whatever origin that are or have been engaged in by one or more enterprises located in the other Party may request consultations with the competition authority of that Party. Such consultations are without prejudice to the full freedom of ultimate decision of the competition authority concerned. A competition authority so consulted may take whatever corrective measures under its competition laws, which it deems appropriate, consistent with its own domestic law, and without prejudice to its full enforcement discretion.

#### **Article 14.6: Exchange of Information and Confidentiality**

1. With a view to facilitating the effective application of their respective competition laws, the competition authorities may exchange non-confidential information.

2. For the purpose of improving transparency, and without prejudice to the rules and standards of confidentiality applicable in each Party, the Parties hereby undertake to exchange information regarding sanctions and remedies applied in the cases that, according to the competition authority concerned, are significantly affecting important interests of the other Party and to provide the grounds on which those actions were taken, when requested by the competition authority of the other Party.

3. All exchange of information shall be subject to the standards of confidentiality applicable in each Party. Confidential information whose dissemination is expressly prohibited or which, if disseminated, could adversely affect the interest of the Parties, shall not be provided without the express consent of the source of the information.

4. Each competition authority shall maintain the confidentiality of any information provided to it in confidence by the other competition authority, and shall not disclose such information to any entity that is not authorised by the competition authority that supplied the information.

5. Notwithstanding the above provisions of this Article, where the laws of the Parties so provides, confidential information may be provided to their respective courts of justice, provided that confidentiality is maintained by the courts.

#### **Article 14.7: Technical Assistance**

The Parties may provide each other with technical assistance in order to take advantage of their respective experiences and to strengthen the implementation of their competition laws and policies.

#### **Article 14.8: Public Enterprises and Enterprises Entrusted with Special or Exclusive Rights, including Designated Monopolies**

1. Nothing in this Chapter prevents the Parties 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, including designated monopolies, the Commission shall ensure that, following the date of entry into force of this Agreement, 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 14.9: Dispute Settlement**

Neither Party may have recourse to dispute settlement procedures under Chapter 19 for any matter arising under this Chapter.