

## **CHAPTER 13**

### **COMPETITION**

#### **Article 13.1: Objectives**

The objectives of this Chapter are to promote competition in markets, and enhance economic efficiency and consumer welfare, through the adoption and maintenance of laws and regulations to proscribe anti-competitive activities, and through regional cooperation on the development and implementation of competition laws and regulations among the Parties. The pursuit of these objectives will help the Parties to secure the benefits of this Agreement, including facilitating trade and investment among the Parties.

#### **Article 13.2: Basic Principles**

1. Each Party shall implement this Chapter in a manner consistent with the objectives of this Chapter.
2. Acknowledging each Party's rights and obligations under this Chapter, the Parties recognise:
  - (a) the sovereign rights of each Party to develop, set, administer, and enforce its competition laws, regulations, and policies; and
  - (b) the significant differences that exist among the Parties in capacity and level of development in the area of competition law and policy.

### **Article 13.3: Appropriate Measures against Anti-Competitive Activities<sup>1</sup>**

1. Each Party shall adopt or maintain competition laws and regulations to proscribe anti-competitive activities<sup>2</sup>, and shall enforce those laws and regulations accordingly.
2. Each Party shall establish or maintain an authority or authorities to effectively implement its competition laws and regulations.
3. Each Party shall ensure independence in decision making by its authority or authorities in relation to the enforcement of its competition laws and regulations.
4. Each Party shall apply and enforce its competition laws and regulations in a manner that does not discriminate on the basis of nationality.
5. Each Party shall apply its competition laws and regulations to all entities engaged in commercial activities, regardless of their ownership. Any exclusion or exemption from the application of each Party's competition laws and regulations, shall be transparent and based on grounds of public policy or public interest.
6. Each Party shall make publicly available its competition laws and regulations, and any guidelines issued in relation to the

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<sup>1</sup> This Article is subject to:

- (a) Annex 13A (Application of Article 13.3 (Appropriate Measures against Anti-Competitive Activities) and Article 13.4 (Cooperation) to Brunei Darussalam);
- (b) Annex 13B (Application of Article 13.3 (Appropriate Measures against Anti-Competitive Activities) and Article 13.4 (Cooperation) to Cambodia);
- (c) Annex 13C (Application of Article 13.3 (Appropriate Measures against Anti-Competitive Activities) and Article 13.4 (Cooperation) to Lao PDR); and
- (d) Annex 13D (Application of Article 13.3 (Appropriate Measures against Anti-Competitive Activities) and Article 13.4 (Cooperation) to Myanmar).

<sup>2</sup> Examples may include anti-competitive agreements, abuses of a dominant position, and anti-competitive mergers and acquisitions.

administration of such laws and regulations, except for internal operating procedures.

7. Each Party shall make public the grounds for any final decision or order to impose a sanction or remedy under its competition laws and regulations, and any appeal therefrom, subject to:
  - (a)
    - (i) its laws and regulations;
    - (ii) its need to safeguard confidential information; or
    - (iii) its need to safeguard information on grounds of public policy or public interest; and
  - (b) redactions from the final decision or order on any of the grounds referred to in subparagraphs (a)(i) through (iii).
8. Each Party shall ensure that before a sanction or remedy is imposed on any person or entity for breaching its competition laws or regulations, such person or entity is given the reasons, which should be in writing where possible, for the allegations that the Party's competition laws or regulations have been breached, and a fair opportunity to be heard and to present evidence.
9. Each Party shall, subject to any redactions necessary to safeguard confidential information, make the grounds for any final decision or order to impose a sanction or remedy under its competition laws and regulations, and any appeal therefrom, available to the person or entity subject to that sanction or remedy.<sup>3</sup>
10. Each Party shall ensure that any person or entity subject to the imposition of a sanction or remedy under its competition laws and regulations has access to an independent review of or appeal against that sanction or remedy.
11. Each Party recognises the importance of timeliness in the handling of competition cases.

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<sup>3</sup> This paragraph shall not apply to a jury verdict in a criminal trial.

#### **Article 13.4: Cooperation<sup>4</sup>**

The Parties recognise the importance of cooperation between or among their respective competition authorities to promote effective competition law enforcement. To this end, the Parties may cooperate on issues relating to competition law enforcement, through their respective competition authorities, in a manner compatible with their respective laws, regulations, and important interests, and within their respective available resources. The form of such cooperation may include:

- (a) notification by a Party to another Party of its competition law enforcement activities that it considers may substantially affect the important interests of the other Party, as promptly as reasonably possible;<sup>5</sup>
- (b) upon request, discussion between or among Parties to address any matter relating to competition law enforcement that substantially affects the important interest of the requesting Party;
- (c) upon request, exchange of information between or among Parties to foster understanding or to facilitate effective competition law enforcement; and

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<sup>4</sup> This Article is subject to:

- (a) Annex 13A (Application of Article 13.3 (Appropriate Measures against Anti-Competitive Activities) and Article 13.4 (Cooperation) to Brunei Darussalam);
- (b) Annex 13B (Application of Article 13.3 (Appropriate Measures against Anti-Competitive Activities) and Article 13.4 (Cooperation) to Cambodia);
- (c) Annex 13C (Application of Article 13.3 (Appropriate Measures against Anti-Competitive Activities) and Article 13.4 (Cooperation) to Lao PDR); and
- (d) Annex 13D (Application of Article 13.3 (Appropriate Measures against Anti-Competitive Activities) and Article 13.4 (Cooperation) to Myanmar).

<sup>5</sup> In the case of notification to the competition authority of Japan pursuant to this subparagraph, the notification should be confirmed in writing through the diplomatic channel. Such confirmation should be made as promptly as possible after the communication concerned among the competition authorities of the Parties concerned.

- (d) upon request, coordination in enforcement actions between or among Parties in relation to the same or related anti-competitive activities.

#### **Article 13.5: Confidentiality of Information**

1. This Chapter shall not require the sharing of information by a Party, which is contrary to that Party's laws, regulations, and important interests.
2. Where a Party requests confidential information under this Chapter, the requesting Party shall notify the requested Party of:
  - (a) the purpose of the request;
  - (b) the intended use of the requested information; and
  - (c) any laws or regulations of the requesting Party that may affect the confidentiality of information or require the use of the information for purposes not agreed upon by the requested Party.
3. The sharing of confidential information between any of the Parties and the use of such information shall be based on terms and conditions agreed by the Parties concerned.
4. If information shared under this Chapter is shared on a confidential basis, then, except to comply with its laws and regulations, the Party receiving the information shall:
  - (a) maintain the confidentiality of the information received;
  - (b) use the information received only for the purpose disclosed at the time of the request, unless otherwise authorised by the Party providing the information;
  - (c) not use the information received as evidence in criminal proceedings carried out by a court or a judge unless, on request of the Party receiving the information, such information was provided for such use in criminal proceedings through diplomatic channels or other channels established in accordance with the laws and regulations of the Parties concerned;

- (d) not disclose the information received to any other authority, entity, or person not authorised by the Party providing the information; and
- (e) comply with any other conditions required by the Party providing the information.

### **Article 13.6: Technical Cooperation and Capacity Building**

The Parties agree that it is in their common interest to work together, multilaterally or bilaterally, on technical cooperation activities to build necessary capacities to strengthen competition policy development and competition law enforcement, taking into account the availability of resources of the Parties. Technical cooperation activities may include:

- (a) sharing of relevant experiences and non-confidential information on the development and implementation of competition law and policy;
- (b) the exchange of consultants and experts on competition law and policy;
- (c) the exchange of officials of competition authorities for training purposes;
- (d) participation of officials of competition authorities in advocacy programmes; and
- (e) other activities as agreed by the Parties.

### **Article 13.7 Consumer Protection**

1. The Parties recognise the importance of consumer protection law and the enforcement of such law as well as cooperation among the Parties on matters related to consumer protection in order to achieve the objectives of this Chapter.
2. Each Party shall adopt or maintain laws or regulations to proscribe the use in trade of misleading practices, or false or misleading descriptions.
3. Each Party also recognises the importance of improving awareness of, and access to, consumer redress mechanisms.

4. The Parties may cooperate on matters of mutual interest related to consumer protection. Such cooperation shall be carried out in a manner compatible with the Parties' respective laws and regulations and within their available resources.

#### **Article 13.8: Consultations**

In order to foster understanding between the Parties, or to address specific matters that arise under this Chapter, on request of a Party, the requested Party shall enter into consultations with the requesting Party. In its request, the requesting Party shall indicate, if relevant, how the matter affects its important interests, including trade or investment between the Parties concerned. The requested Party shall accord full and sympathetic consideration to the concerns of the requesting Party.

#### **Article 13.9: Non-Application of Dispute Settlement**

No Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any matter arising under this Chapter.