

CHAPTER 12

COMPETITION POLICY

ARTICLE 1201

Objective and Definitions

1. The aim of this Chapter is to contribute to the fulfilment of the objectives of this Agreement through the promotion of fair competition and the curtailment of anti-competitive practices.
2. For the purposes of this Chapter, “anti-competitive practices” means business conduct or transactions that adversely affect competition, such as:
 - (a) anti-competitive horizontal arrangements between competitors;
 - (b) misuse of market power, including predatory pricing;
 - (c) anti-competitive vertical arrangements; and
 - (d) anti-competitive mergers and acquisitions.

ARTICLE 1202

Promotion of Competition

Each Party shall promote competition by addressing anti-competitive practices in its territory, and by adopting and enforcing such means or measures as it deems appropriate and effective to counter such practices.

ARTICLE 1203

Application of Competition Laws

1. The Parties shall ensure that all businesses are subject to such generic or relevant sectoral competition laws as may be in force in their respective territories.
2. Any measures taken by a Party to proscribe anti-competitive practices, and the enforcement actions taken pursuant to those measures, shall be consistent with the principles of transparency, timeliness, non-discrimination, comprehensiveness and procedural fairness.

ARTICLE 1204

Exemptions

Either Party may exempt specific measures or sectors from this Chapter, provided that such exemptions are transparent and are undertaken on the grounds of public policy or public interest.

ARTICLE 1205

Cooperation and Exchange of Information

The Parties recognise the importance of cooperation and coordination in achieving effective enforcement outcomes under their respective competition laws. The Parties also recognise the importance of confidentiality in respect of these arrangements. Accordingly, the Parties shall cooperate, where appropriate, on issues of competition law enforcement, including through the exchange of information, notification, consultation, and coordination of enforcement matters that are cross-border in nature.

ARTICLE 1206

Consultations and Review

1. At the request of either Party, the Parties shall consult with a view to eliminating particular anti-competitive practices that affect trade or investment between the Parties.
2. Within three years of the entry into force of this Agreement, the Parties shall consult in order to review the scope and operation of this Chapter with a view to negotiating amendments to this Chapter that may be necessary to ensure the comprehensive protection in their respective territories of the legitimate commercial interests of businesses of the other Party.
3. In undertaking any consultations in accordance with Paragraph 2, the Parties shall also discuss the desirability of concluding arrangements for cooperation and mutual assistance in competition policy and enforcement, either as amendments to this Chapter or as separate arrangements between their respective competition authorities.
4. Any information or documents exchanged between the Parties in relation to any mutual consultation or review conducted 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 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 Party before such disclosure is made.

ARTICLE 1207

Transparency

The Parties shall publish or otherwise make publicly available their laws promoting fair competition and their laws addressing anti-competitive practices.

ARTICLE 1208

General

1. Chapter 18 shall not apply to the provisions of this Chapter.
2. In the event of any inconsistency or conflict between any provision in this Chapter and any provision contained in any other Chapter of this Agreement, the latter shall prevail to the extent of such inconsistency or conflict.