

## **CHAPTER 14**

### **COMPETITION POLICY**

#### **ARTICLE 14.1: OBJECTIVES**

The Parties recognise the importance of implementing policies that promote competition, economic efficiency and consumer welfare, cooperating on matters covered by this Chapter, and curtailing anticompetitive practices which have the potential to restrict bilateral trade and investment.

#### **ARTICLE 14.2: PROMOTION OF COMPETITION**

1. Each Party shall promote competition by addressing anticompetitive practices in its territory, including by maintaining competition laws, and adopting and enforcing such measures as it deems appropriate and effective to counter such practices.
2. Each Party shall maintain an authority or authorities responsible for the enforcement of its competition laws. The enforcement policy of each competition authority shall include treating persons of the other Party no less favourably than persons of the Party in like circumstances.

#### **ARTICLE 14.3: APPLICATION OF COMPETITION LAWS**

1. Any measures taken by a Party to proscribe anticompetitive 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.
2. Each Party shall ensure that all businesses are subject to competition laws in force in its respective territory.
3. Notwithstanding paragraph 2, a Party may exempt specific businesses or sectors from the application of competition laws, provided that such exemptions are transparent and are undertaken on the grounds of public policy or public interest.

#### **ARTICLE 14.4: COMPETITIVE NEUTRALITY**

The Parties recognise the importance of ensuring that governments at all levels in their territories do not provide any competitive advantage to any state enterprise in its business activities as a result of it being a state enterprise. This Article shall apply to the business activities of state enterprises and not to their non-business, non-commercial activities. The application of this Article shall not obstruct the performance of the particular public tasks assigned to them.

#### **ARTICLE 14.5: COOPERATION**

1. The Parties recognise the importance of cooperation and coordination to further the promotion of competition and the curtailment of anticompetitive practices.

2. The Parties may cooperate and coordinate, as appropriate, in developing and enforcing competition laws and policies, including through the exchange of information, notification, technical cooperation and coordination on cross-border enforcement matters, utilising their existing mechanisms for cooperation including the Cooperation Arrangement between the Fair Trade Commission of the Republic of Korea and the Australian Competition and Consumer Commission Regarding the Application of Their Competition and Consumer Protection Laws.

#### ARTICLE 14.6: NOTIFICATIONS

1. Each Party shall, through its competition authority, notify the competition authority of the other Party of an enforcement activity if it considers that such enforcement activity may substantially affect important interests of the other Party.

2. The notification shall take place at an early stage of the enforcement activity, provided that it is not contrary to the laws of the Parties and does not affect any investigation being carried out.

#### ARTICLE 14.7: CONSULTATIONS

1. On request of a Party, the Parties shall consult with a view to curtailing particular anticompetitive practices that affect trade or investment between the Parties.

2. Nothing in this Article shall limit the discretion of the competition authority of a Party to decide whether to take action following consultations.

#### ARTICLE 14.8: CROSS-BORDER CONSUMER PROTECTION

The Parties shall promote cooperation and coordination on matters related to consumer protection, including in the enforcement of their consumer protection laws.

#### ARTICLE 14.9: DISPUTE SETTLEMENT

Neither Party shall have recourse to dispute settlement under this Agreement for any matter arising under this Chapter.

#### ARTICLE 14.10: DEFINITIONS

For the purposes of this Chapter:

**anticompetitive practices** means business conduct or transactions that adversely affect competition, such as:

- (a) anticompetitive agreements or arrangements between enterprises;
- (b) abuse of dominance; and
- (c) anticompetitive mergers and acquisitions or other anticompetitive structural combinations of enterprises;

**competition laws** means:

- (a) for Korea, the *Monopoly Regulation and Fair Trade Act* and its implementing regulations, including their amendments and replacements; and
- (b) for Australia, the *Competition and Consumer Act 2010*, and any regulations relating to Parts IV and XIA; and provisions of other Parts in so far as they relate to Part IV, but not including Part X, including their amendments and replacements; and

**consumer protection laws** means:

- (a) for Korea, the *Framework Act on Consumers*, the *Fair Labelling and Advertising Act* and their implementing regulations, including their amendments and replacements; and
- (b) for Australia, the Australian Consumer Law, and any regulations relating to the Australian Consumer Law, in the *Competition and Consumer Act 2010*, including their amendments and replacements.