

CHAPTER18 COMPETITION

ARTICLE 18.1: OBJECTIVES

Considering the importance of free competition in their trade relations, the Parties recognize that proscribing anti-competitive practices, implementing competition policies, and cooperating on matters covered by this Chapter will help prevent the benefits of the trade liberalization from being undermined and promote economic efficiency and consumer welfare.

ARTICLE 18.2: COMPETITION LAW AND AUTHORITIES

1. Each Party shall maintain competition laws that promote and protect the competitive process in its market by proscribing anti-competitive practices. Each Party shall take appropriate actions with respect to anti-competitive practices with the objective of promoting economic efficiency and consumer welfare.
2. Each Party shall maintain an authority or authorities responsible for the enforcement of its competition laws.
3. Each Party shall ensure that any exclusions or exemptions to its competition laws and regulations shall be transparent and undertaken on the grounds of public policy or public interest.
4. Each Party shall ensure independence in decision-making by its authority or authorities in relation to enforcement of competition laws and regulations.

ARTICLE 18.3: IMPLEMENTATION

The enforcement policy of the Parties' competition authorities shall be consistent with the principles of transparency, timeliness, non-discrimination and procedural fairness as specified below:

1. Each Party shall make publicly available its competition laws and regulations. Each Party shall ensure that all final decisions finding a violation of its competition laws are provided in written form and set out any relevant findings of fact and legal basis on which the decision is based.
2. Each Party recognizes the importance of timeliness in handling of competition cases. Each Party shall ensure that its competition authority endeavors to complete its investigations within a reasonable timeframe when there is no timeframe set for such investigations under their respective competition laws, regulations, guidelines or procedure.

3. Each Party shall apply and enforce its competition laws and regulations in a manner which does not discriminate on the basis of nationality.

4. Each Party shall ensure that before a sanction or remedy is imposed on any person or entity for violating its competition laws or regulations, that person or entity is given the reasons in writing for the allegations that its competition laws or regulations have been breached, and a fair opportunity to be heard and to present evidence.

5. Each Party shall ensure 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 or appeal of that sanction or remedy in a court of that Party.

ARTICLE 18.4: COOPERATION

1. The Parties recognize the importance of cooperation and coordination between their respective competition authorities to promote the effective enforcement of their competition laws and to fulfill the objectives of this Agreement. Accordingly, the Parties shall cooperate in relation to the enforcement of their respective competition laws and policies, including through notification, consultation, exchange of information and coordination as specified in this Article.

Notifications

2. Each Party, through its competition authority, shall notify in English to the competition authority of the other Party of an enforcement activity regarding an anti-competitive practice if it considers that such enforcement activity may substantially affect important interests of the other Party.

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

Consultations

4. To foster mutual understanding between the Parties, or to address specific matters that arise under this Chapter, each Party shall, upon request of the other Party, enter into consultations on issues raised by the other Party.

5. The Party to which a request for consultations has been addressed shall give full and sympathetic consideration to the concerns of the other Party.

Exchange of Information and Confidentiality

6. The competition authority of a Party shall, upon request of the competition authority of the other Party, endeavor to provide information to facilitate effective enforcement of their respective competition laws provided that it does not affect any ongoing investigation and is

compatible with the rules and standards of confidentiality of each Party.

7. The competition authority of each Party shall maintain the confidentiality of any information provided in confidence by the competition authority of the other Party and shall not disclose such information to any entity that is not authorized by the competition authority providing the information.

ARTICLE 18.5: STATE ENTERPRISES AND DESIGNATED MONOPOLIES

1. The Parties shall ensure that state enterprises and designated monopolies are subject to their respective competition laws, insofar as the application of this provision does not obstruct the performance, in law or in fact, of the particular public tasks assigned to them.

2. Nothing in this Chapter shall be construed to prevent a Party from establishing or maintaining state enterprises or designated monopolies.

ARTICLE 18.6: DISPUTE SETTLEMENT

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

ARTICLE 18.7: DEFINITIONS

For the purposes of this Chapter:

anti-competitive practice means:

- (a) agreements between enterprises and decisions by associations of enterprises which have the purpose or effect to impede, restrict, or distort competition;
- (b) any abuse of a dominant position by one or more enterprises; or
- (c) mergers or other structural combinations of enterprises which significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position;

competition authority means:

- (a) for Korea, the Korea Fair Trade Commission, or its successors; and
- (b) for Israel, the Israel Antitrust Authority, or its successors; and

competition law means:

- (a) for Korea, the *Monopoly Regulation and Fair Trade Act*; and
- (b) for Israel, the *Restrictive Trade Practices Law, 5748-1988*.