

CHAPTER 12 COMPETITION AND CONSUMER POLICY

Article 12.1 : Objectives

1. The Parties recognise the strategic importance of creating and maintaining open and competitive markets that promote economic efficiency and consumer welfare.
2. To this end each Party is committed to reducing and removing impediments to trade and investment including through:
 - (a) application of competition statutes to all forms of business activity, including both private and public business activities; and
 - (b) application of competition statutes in a manner that does not discriminate between or among economic entities, nor between origin and destination of the production.
3. The Parties recognise that anti-competitive business conduct may frustrate the benefits arising from this Agreement. The Parties undertake to apply their respective competition laws in a manner consistent with this Chapter so as to avoid the benefits of this Agreement in terms of the liberalisation process in goods and services being diminished or cancelled out by anti-competitive business conduct.

Article 12.2 : Definitions

For the purposes of this Chapter:

anti-competitive business conduct means activities that restrict or distort competition in the territory of a Party as a whole or in a substantial part thereof, such as:

- (a) anti-competitive agreements, concerted practices or arrangements between enterprises and decisions by associations of enterprises as specified in the Parties' respective competition laws;
- (b) any abuse of market power by one or more enterprises of a dominant position; and
- (c) mergers or other structural combinations of enterprises which significantly impede effective competition, particularly as a result of the creation or reinforcement of a dominant position in the territory.

These activities may relate to goods and services and may be carried out by any enterprise irrespective of the ownership of that enterprise;

competition authority means:

- (a) for Korea, the Korea Fair Trade Commission or its successor; and
- (b) for New Zealand, the New Zealand Commerce Commission or its successor;

competition laws means:

- (a) for Korea, the *Monopoly Regulation and Fair Trade Act* and its implementing regulations and amendments;
- (b) for New Zealand, the *Commerce Act 1986* and its implementing regulations and amendments; and
- (c) any changes that the above mentioned instruments may undergo after the entry into force of this Agreement; and

consumer protection laws means:

- (a) for Korea, the *Framework Act on Consumer*, the *Fair Labeling and Advertising Act*, the *Consumer Protection in Electronic Commerce, Etc. Act* and their implementing regulations and amendments;
- (b) for New Zealand, the *Fair Trading Act 1986* and its implementing regulations and amendments; and
- (c) any changes that the above mentioned instruments may undergo after the entry into force of this Agreement.

Article 12.3 : Implementation

1. Each Party shall maintain competition laws that proscribe anti-competitive business conduct with the objective of promoting economic efficiency and consumer welfare. These laws and their enforcement shall be consistent with the principles of transparency, comprehensiveness, non-discrimination and procedural fairness.
2. Each Party shall maintain an authority or authorities responsible for the enforcement of its competition laws.
3. Each Party shall provide any person subject to the imposition of a sanction or remedy for violation of its competition laws with the opportunity to be heard and to present evidence, and to seek review of the sanction or remedy in a court of that Party.
4. With regard to transparency, each Party shall make available to the other Party information concerning exemptions provided under its competition laws. Any such exemptions shall be transparent and undertaken on the grounds of public policy or public interest.

Article 12.4 : Co-operation

1. The Parties recognise the importance of co-operation and co-ordination between their respective authorities to promote effective enforcement of competition laws and to fulfil the objectives of this Agreement.
2. Accordingly, the Parties shall co-operate in relation to the enforcement of their respective competition laws and policy, including through technical co-operation, notification, consultation, and exchange of information.

Article 12.5 : Notification

1. Each Party, through its contact points referred to in Article 12.8, shall notify the competition authority of the other Party of an enforcement activity regarding anti-competitive conduct 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 conduct taking place principally in the territory of the other Party.
2. Provided that it is not contrary to the competition laws of the Party and does not affect any investigation being carried out, notification shall be given at an early stage of the enforcement activity.

Article 12.6 : Consultations and Exchange of Information

1. To foster mutual understanding or to address specific matters that arise under this Chapter, the Parties shall, on the request of either Party, enter into consultations on any competition-related issue adversely affecting trade or investment between Parties.
2. Without prejudice to its full freedom of ultimate decision, the Party to which a request for consultations has been addressed shall endeavour to give full and sympathetic consideration to the concerns expressed by the requesting Party.
3. Each Party shall, on the request of the other Party, endeavour to provide information to the other Party to facilitate effective enforcement of their respective competition laws, provided that it is subject to the standards of confidentiality applicable in each Party.
4. No 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. The Parties may agree to the public release of information that they do not consider confidential.

Article 12.7 : Technical Co-operation

The Parties may, subject to resources, provide each other with technical co-operation related to the implementation of competition laws and policy. Such technical co-operation activities may include:

- (a) exchange of personnel for training purposes;
- (b) participation of personnel as lecturers or consultants at training courses on competition laws and policies organised by the competition authorities of the Parties; and
- (c) any other form of technical co-operation as mutually decided by the competition authorities of the Parties.

Article 12.8 : Contact Points

Each Party shall designate one or more contact points for the purposes of this Chapter and shall provide details of such contact points to the other Party. The Parties shall notify each other promptly of any changes to the details of their contact points.

Article 12.9 : Cross-Border Consumer Protection

1. The Parties recognise the importance of co-operation and co-ordination on matters related to their consumer protection laws in order to enhance consumer welfare. Accordingly, the Parties shall co-operate, in appropriate cases of mutual concern, in the enforcement of their consumer protection laws, including in such areas as the monitoring of international scams.
2. Nothing in this Article shall limit the discretion of the competition authority of a Party to decide whether to take action in response to a request by an authority of the other Party, nor shall it preclude any of these authorities from taking action with respect to any particular matter.
3. The Parties affirm their commitment to provide protection in their territories from deceptive practices or the use of false or misleading descriptions in trade.
4. Each Party shall provide the legal means under its domestic laws to prevent false, deceptive or misleading labelling of products within its territory.

Article 12.10 : Dispute Settlement

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