

CHAPTER SIX COMPETITION

Article 6.1: Definitions

For purposes of this Chapter:

Competition authority means:

- (a) for Korea, the Korea Fair Trade Commission, or its successor;
and
- (b) for the Philippines, the Philippine Competition Commission, or its successor.

Competition laws means:

- (a) for Korea, *the Monopoly Regulation and Fair Trade Act* and its implementing regulations, and any amendments thereto; and
- (b) for the Philippines, *the Philippine Competition Act* and its implementing regulations, and any amendments thereto;

Consumer protection law means:

- (a) for Korea, *the Framework Act on Consumer, the Fair Labelling and Advertising Act* and their implementing regulations, and any amendments thereto; and
- (b) for the Philippines, the *Consumer Act of the Philippines* and its implementing regulations, and any amendments thereto.

Article 6.2: Objectives

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

Article 6.3: 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 recognize:
 - (a) the sovereign rights of each Party to develop, set, administer and enforce its own competition laws and competition policies; and
 - (b) the significant differences that exist between the Parties in capacity and level of development in the area of competition law and competition policy.

Article 6.4: Appropriate Measures against Anti-competitive Activities

1. Each Party shall maintain competition laws to proscribe anti-competitive activities¹, and shall enforce those competition laws accordingly.
2. Each Party shall maintain an authority or authorities to effectively implement its competition laws.
3. Each Party shall ensure independence in decision-making by its authority or authorities in relation to the enforcement of its competition laws.
4. Each Party shall apply and enforce its competition laws in a manner which does not discriminate on the basis of nationality.
5. Each Party shall apply its competition laws to all persons or entities engaged in commercial activities. Any exclusions or exemptions from the application of each Party's competition laws shall be transparent and based on grounds of public policy or public interest.
6. Each Party shall make publicly available its competition laws, and any guidelines issued in relation to the administration of competition laws, excluding internal operating procedures.

¹ Examples of such activities may include: a) anti-competitive agreements; b) abuses of dominant position; and c) anti-competitive mergers and acquisitions.

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 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 based on any of the grounds in subparagraphs (a)(i) through (iii) above.

8. Each Party shall ensure that before a sanction or remedy is imposed on any person or entity for the violation of its competition laws, such person or entity is given the reasons in writing, where possible, for the allegations that its competition laws have been violated, 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 available to the person or entity subject to that sanction or remedy.

10. Each Party shall ensure that any person or entity subject to the imposition of a sanction or remedy under its competition laws has access to an independent review of or appeal against that sanction or remedy.

11. Each Party recognizes the importance of timeliness in the handling of competition cases.

Article 6.5: Cooperation

The Parties recognize the importance of cooperation between 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 competition authorities, in a manner compatible with their respective laws, regulations, and important interests, and within their available resources. Such cooperation includes:

- (a) notification by a Party to the other Party of its competition law enforcement activities that it considers may substantially affect the important interests of the other Party, as promptly and reasonably as possible;

- (b) upon request, discussion between the Parties to address any matter relating to competition law enforcement that substantially affects the important interests of the requesting Party;
- (c) upon request, exchange of information between the Parties to foster understanding or to facilitate effective competition law enforcement; and
- (d) upon request, coordination in enforcement actions between the Parties in relation to the same or related anti-competitive activities.

Article 6.6: 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; and
 - (b) the intended use of the requested information.
3. The sharing of confidential information between the Parties and the use of such information shall be based on mutually agreed terms and conditions between the Parties.
4. If information shared under this Chapter is shared on a confidential basis, then, the Party receiving that information shall:
 - (a) maintain the confidentiality of the information received;
 - (b) use it only for the purpose disclosed at the time of the request, unless otherwise authorized by the Party providing the information;
 - (c) not use it as evidence in criminal proceedings carried out by a court or a judge unless, upon request of the Party receiving the information, such information was provided for such use in criminal proceedings through the diplomatic channel or other channel established in accordance with the laws of both Parties;

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

Article 6.7: Technical Cooperation and Capacity Building

The Parties agree that it is in their common interest to work together 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 development and implementation of competition law and competition policy;
- (b) exchange of consultants and experts on competition law and policy;
- (c) 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 6.8: Non-Application of Dispute Settlement

Chapter Nine (Dispute Settlement) shall not apply to matters arising under this Chapter.

Article 6.9: Consultations

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

Article 6.10: Consumer Protection

1. The Parties recognize the importance of consumer protection laws and enforcement of such laws as well as cooperation between the Parties on matters related to consumer protection, in order to achieve the objectives set out in Article 6.2.
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 recognizes 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 each Party's laws and regulations and within their available resources.

Article 6.11: State Enterprises

1. Nothing in this Chapter shall be construed to prevent a Party from establishing or maintaining a State enterprise, entrusting enterprises with special or exclusive rights, or maintaining such rights.
2. With respect to State enterprises and enterprises entrusted with special rights² or exclusive rights:
 - (a) Neither Party shall adopt or maintain any measure contrary to the

² Special rights are granted by a Party when it designates or limits to two or more the number of enterprises authorized to provide goods or services, other than according to objective, proportional and non-discriminatory criteria, or confers on enterprises legal or regulatory advantages which substantially affect the ability of any other enterprise to provide the same goods or services.

principles contained in Article 6.4^{3,4}; and

- (b) The Parties shall ensure that such enterprises, specifically in relation to their commercial activities, are subject to their respective competition laws,

insofar as the application of these principles and competition laws does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

³ Notwithstanding this paragraph, each Party understands that Article 6.4.4 shall only apply to laws and policies which are adopted after the date of entry into force of this Agreement.

⁴ For greater certainty, Articles 6.4.4 and 6.11.2(a) shall not be construed to prevent the Parties from adopting laws and policies regarding State enterprises in order to achieve legitimate public policy or public interest.