

## CHAPTER 11

### COMPETITION AND CONSUMER PROTECTION

#### Article 11.1: Objectives

The objectives of this Chapter are to promote competition in markets, to enhance economic efficiency, and to bolster consumer protection through the adoption, maintenance and enforcement of laws and regulations to curtail anti-competitive activities. The Parties shall endeavour to implement this Chapter in a manner consistent with the *APEC Principles to Enhance Competition and Regulatory Reform*, adopted in Auckland on 13 September 1999.

#### Article 11.2: Basic Principles

1. Each Party shall implement this Chapter in a manner consistent with the objectives of this Chapter.
2. The Parties recognise the sovereign rights of each Party to develop, set, administer, and enforce its own competition laws, regulations and policies.
3. Each Party shall apply its competition laws and regulations to all entities engaged in commercial activities. Any exclusions or exemptions from the application of each Party's competition laws and regulations must be:
  - (a) transparent;
  - (b) on the grounds of achieving public policy or public interest objectives; and
  - (c) no broader than necessary to achieve such objectives.
4. Each Party shall apply and enforce its competition laws and regulations in a manner which does not discriminate on the basis of nationality.
5. Each Party shall make publicly available its competition laws and regulations, and any guidelines issued in relation to the enforcement of such laws and regulations, excluding internal operating procedures.
6. Each Party shall make public the grounds for any final decision or order to impose a sanction or remedy under its competition laws and regulations, and any appeal therefrom, subject to:
  - (a)
    - (i) its domestic 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 on the grounds in any of subparagraphs (a)(i) to (iii).
7. Each Party recognises the importance of timeliness in the handling of competition cases.

### **Article 11.3: Appropriate Measures against Anticompetitive Activities**

1. Each Party shall adopt or maintain competition laws and regulations to proscribe anti-competitive activities, and shall ensure that those laws and regulations are enforced effectively.
2. Each Party shall establish or maintain an authority or authorities to effectively enforce its competition laws and regulations.
3. Each Party shall ensure independence in decision making by its authority or authorities in relation to the enforcement of its competition laws and regulations.

### **Article 11.4: Procedural Rights for Persons or Entities Subject to Sanction**

1. Each Party shall ensure that before a sanction or remedy is imposed on any person or entity for breaching its competition laws or regulations, that person or entity is given the reasons, which should be in writing where possible, for the allegations that the Party's competition laws or regulations have been breached, and a fair opportunity to be heard and present evidence.
2. 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 and regulations,<sup>1</sup> and any appeal therefrom, available to the person or entity subject to that sanction or remedy.
3. Each Party shall ensure that 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 of, or appeal against, that sanction or remedy.

### **Article 11.5: Cooperation**

The Parties recognise the importance of cooperation between their respective competition authorities to promote effective competition law enforcement. To this end, the

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<sup>1</sup> This paragraph shall not apply in relation to a jury verdict in a criminal trial.

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 another Party of its competition law enforcement activities that it considers may substantially affect the important interests of the other Party, as promptly as reasonably possible;
- (b) upon request, discussion between the Parties to address any matter relating to competition law enforcement that substantially affects the important interest 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 11.6: Confidentiality of Information**

1. For greater certainty, nothing in this Chapter shall be construed to require either Party to furnish or allow access to information the disclosure of which would:

- (a) be contrary to the public interest as determined by its domestic law;
- (b) be contrary to any of its legislation, including those protecting personal privacy;
- (c) impede law enforcement; or
- (d) prejudice legitimate commercial interests of particular enterprises, public or private.

2. Where a Party requests confidential information under this Chapter, the requesting Party shall notify the providing Party of:

- (a) the purpose of the request;
- (b) the intended use of the requested information; and
- (c) any domestic laws or regulations of the requesting Party that may affect the confidentiality of information or require the use of the information for purposes not agreed upon by the providing Party.

3. The sharing of confidential information between the Parties shall be on a voluntary basis 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, except to comply with domestic laws and regulations, 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, entity or person not authorised by the Party providing the information; and
- (e) comply with any other conditions required by the Party providing the information.

#### **Article 11.7: 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) the sharing of relevant experiences and non-confidential information on the development and implementation of competition policy and law;
- (b) the exchange of consultants and experts on competition policy and law;
- (c) the exchange of officials of competition authorities for training purposes;
- (d) the participation of officials of competition authorities in advocacy programmes; and
- (e) other activities as agreed by the Parties.

#### **Article 11.8: Consultations**

To address specific matters that arise under this Chapter, on request of one Party, the other Party shall enter into consultations with the requesting Party. 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 Party addressed shall accord full and sympathetic consideration to the concerns of the requesting Party.

### **Article 11.9: Consumer Protection**

1. The Parties recognise the importance of consumer protection laws and the enforcement of such laws, as well as cooperation between the Parties on matters related to consumer protection, in achieving the objectives set out in Article 11.1.

2. Each Party shall adopt or maintain laws or regulations against misleading and deceptive conduct that causes harm, or is likely to cause harm, to consumers. Such laws may include general contract or negligence laws and may be civil or criminal in nature.

**Misleading and deceptive conduct** includes:

- (a) making misrepresentations or false claims as to material qualities, price, suitability for purpose, quantity or origin of goods or services;
- (b) advertising goods or services for supply without intention to supply;
- (c) failing to deliver products or provide services to consumers after the consumers have been charged; or
- (d) charging or debiting consumers' financial, telephone or other accounts without authorisation.

3. Each Party shall adopt or maintain laws or regulations that:

- (a) require, at the time of delivery, goods and services provided to be of reasonable and satisfactory quality, consistent with the supplier's claims regarding the quality of the goods and services; and
- (b) provide consumers with appropriate redress when they are not.

4. Each Party recognises the importance of improving awareness of, and access to, consumer redress mechanisms, including for consumers from one Party transacting with suppliers from the other Party.

5. The Parties may cooperate on matters of mutual interest related to consumer protection. Such cooperation shall be in a manner compatible with the Parties' respective laws and regulations and within their available resources.

### **Article 11.10: Non-Application of Dispute Settlement**

No Party shall have recourse to dispute settlement under Chapter 14 (Dispute Settlement) for any matter arising under this Chapter.