

## CHAPTER FIFTEEN

### COMPETITION POLICY, MONOPOLIES AND STATE ENTERPRISES

#### Article 15.1: Definitions

For the purposes of this Chapter:

**designate** means to establish, authorize, or to expand the scope of a monopoly to cover an additional good or service after the date of entry into force of this Agreement;

**government monopoly** means a monopoly that is owned or controlled through ownership interests by the national government of a Party or by another such monopoly;

**in accordance with commercial considerations** means consistent with normal business practices of privately held enterprises in the relevant business sector or industry;

**market** means the geographic and commercial market for a good or service;

**monopoly** means an entity, including a consortium or government agency, that in a relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant;

**non-discriminatory treatment** means the better of national treatment or most-favoured-nation treatment, as set out in the relevant provisions of this Agreement; and

**state enterprise** means, except as set out in Annex 15.4, a state enterprise as defined in Article 2.1 (General Definitions – Definitions of General Application).

## **Article 15.2: Competition Policy**

1. The Parties recognize the importance of competition law and policy for the efficient functioning of markets within the free trade area and for contributing to the fulfilment of the objectives of this Agreement.
2. Each Party shall adopt or maintain measures to proscribe anti-competitive business conduct and take appropriate action with respect to that conduct.
3. Each Party shall maintain its independence in developing and enforcing its competition laws and regulations.
4. Each Party shall ensure that the measures it adopts or maintains to protect or promote competition in its own market by proscribing anti-competitive business conduct are consistent with the principles of transparency, non-discrimination and procedural fairness.

## **Article 15.3: Monopolies**

1. This Agreement does not prevent a Party from designating or maintaining a monopoly.
2. If a Party intends to designate a monopoly and the designation may affect the interests of a person of the other Party, the designating Party shall, whenever possible, provide prior written notification of the designation to the other Party.
3. Each Party shall ensure that a privately owned monopoly that it designates or a government monopoly that it maintains or designates:
  - (a) acts in a manner that is consistent with the Party's obligations under this Agreement whenever that monopoly exercises regulatory, administrative, or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions, or impose quotas, fees or other charges;

- (b) except to comply with a term of its designation that is consistent with subparagraph (c) or (d), acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, including with regard to price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale;
- (c) provides non-discriminatory treatment to investments of investors of the other Party, to goods of the other Party, and to service providers of the other Party when it purchases or sells the monopoly good or service in the relevant market; and
- (d) does not use its monopoly position to engage, directly or indirectly, including through its dealings with its parent, subsidiaries, or other enterprises with common ownership, in anti-competitive practices in a non-monopolized market in its territory that adversely affect an investment of an investor of the other Party.

4. Paragraph 3 does not apply to procurement by governmental agencies of a good or service for governmental purposes as long as the good or service is not intended for:

- (a) commercial resale; or
- (b) use in the production of a good or the provision of a service for commercial sale.

#### **Article 15.4: State Enterprises**

1. This Agreement does not prevent a Party from establishing or maintaining a state enterprise.

2. Each Party shall ensure that a state enterprise that it establishes or maintains acts in a manner that is consistent with the Party's obligations under Chapters Ten (Investment) and Thirteen (Financial Services), whenever that enterprise exercises regulatory, administrative, or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges.

3. Each Party shall ensure that a state enterprise that it establishes or maintains accords non-discriminatory treatment in the sale of its goods or services to investments in the Party's territory of investors of the other Party.

#### **Article 15.5: Interpretation and Application**

The Parties shall endeavour to come to a mutual understanding on the interpretation and application of this Chapter, and shall make every attempt through cooperation and discussions to resolve, to their mutual satisfaction, a matter that might affect the operation of this Chapter.

#### **Article 15.6: Dispute Settlement**

An investor may not have recourse to investor-state dispute settlement under Article 10.19 (Investment – Claim by an Investor of a Party on Its Own Behalf) or Article 10.20 (Investment – Claim by an Investor of a Party on Behalf of an Enterprise) for a matter arising under this Chapter, except for a matter arising under Article 15.3(3)(a) or Article 15.4(2).

## **Annex 15.4**

### **Country-Specific Definitions of State Enterprise**

For the purposes of Article 15.4(3) “state enterprise” means, with respect to Canada, a “Crown corporation” within the meaning of the *Financial Administration Act*, R.S.C. 1985, c. F-11, a Crown corporation within the meaning of any comparable provincial law, or an equivalent entity that is incorporated under other applicable provincial law.