

CHAPTER FOURTEEN

COMPETITION POLICY, MONOPOLIES AND STATE ENTERPRISES

Article 14.01: Definitions

For purposes of this Chapter:

covered investment means “covered investment” as defined in Article 9.01 (Investment – Definitions);

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 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 an enterprise owned or controlled through ownership interests by a Party, except as set out in Annex 14.04.

Article 14.02: Competition Policy

1. Each Party shall adopt or maintain measures to proscribe anti-competitive business conduct and take appropriate action regarding that conduct, recognizing that those measures will enhance the fulfilment of the objectives of this Agreement. To this end the Parties shall discuss from time to time the effectiveness of measures undertaken by each Party. The measures each Party adopts or maintains to proscribe anti-competitive business conduct and the enforcement actions it takes pursuant to those measures shall be consistent with principles of transparency, non-discrimination and procedural fairness. Exclusions from these measures shall be transparent.

2. Each Party shall maintain its independence in developing and enforcing its competition law.

3. Each Party recognizes the importance of cooperation and coordination between their competition authorities to further effective competition law enforcement in the free trade area. The Parties shall cooperate on matters relating to the enforcement of competition laws and policies in the free trade area. In this regard, the Parties, through their respective competition authorities, shall negotiate a cooperation instrument that may address, among other matters, notification, consultation, positive and negative comity, technical assistance and exchange of information.

4. To promote understanding between the Parties, or to address specific matters that arise under this Chapter, a Party shall enter into discussions on request of the other Party. The requesting Party shall indicate in its request how the matter affects trade or investment between the Parties. The other Party shall give full and sympathetic consideration to the concerns of the requesting Party.

Article 14.03: Designated Monopolies

1. This Agreement does not prevent a Party from designating a monopoly.

2. Where 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, wherever 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 not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises a 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) 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, except to comply with a term of its designation that is not inconsistent with subparagraphs (c) or (d);
 - (c) provides non-discriminatory treatment to covered investments, to goods of the other Party, and to service suppliers of the other Party in its purchase or sale of 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, its subsidiaries or other enterprises with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affect a covered investment.

4. Paragraph 3 does not apply to procurement by a government of a good or service for governmental purposes as long as the good or service is not intended for:
 - (a) commercial sale or resale; or
 - (b) use in the production or supply of a good or service for commercial sale or resale.

Article 14.04: 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 Nine (Investment) and Twelve (Financial Services) whenever that enterprise exercises a 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 covered investments.

Article 14.05: Dispute Settlement

1. A Party may not have recourse to dispute settlement under Chapter Twenty-Two (Dispute Settlement) for a matter arising under this Chapter except for those matters arising under Articles 14.03 and 14.04.
2. An investor may not have recourse to investor-state dispute settlement under Article 9.20 (Investment – Claim by an Investor of a Party on Its Own Behalf) or Article 9.21 (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 14.03(3)(a) or Article 14.04(2).

Annex 14.04

Country-Specific Definitions of State Enterprises

For purposes of Article 14.04(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 equivalent entity that is incorporated under other applicable provincial law.