

Chapter VIII

Competition Policy, Monopolies and State Enterprises

Article 8-01: Definitions

For purposes of this Chapter:

competition law means “competition law”, as defined in Annex 8-01;

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;

monopoly means an entity, including a consortium or government agency, that in any 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 granted an exclusive intellectual property right solely by reason of such grant; and

state enterprise means an enterprise owned or controlled through ownership interests by a Party.

Article 8-02: Competition Policy

1. The Parties undertake to enforce their respective competition laws in order to avoid anticompetitive business conduct recognizing that such conduct may have adverse effects on their bilateral trade, affecting the objectives of this Agreement. To this end the Parties shall consult from time to time about the effectiveness of measures taken by each Party.

2. In the enforcement of its competition laws, each Party shall accord suppliers of goods and services originating in the other Party treatment no less favorable than that accorded to domestic suppliers or to suppliers of any other country, in respect of all the suppliers' rights and obligations under its competition laws.

3. No Party may have recourse to dispute settlement under this Agreement for any matter arising under this Article where judicial challenge procedures are provided by the other Party under its legislation.

Article 8-03: Cooperation

Each Party recognizes the importance of cooperation and coordination between their competition authorities to further effective competition law enforcement in order to enhance the fulfillment of the objectives of this Agreement. The Parties declare their willingness to cooperate on issues of competition law enforcement, including notification, consultation and exchange of information related to the enforcement of competition laws on matters that may affect their bilateral trade.

Article 8-04: Restrictive Arrangements

1. Nothing in this Agreement shall be interpreted to prevent a Party from approving a restrictive arrangement as established in their competition law.
2. Where a Party approves a restrictive arrangement that may affect the interests of the other Party, the Party shall:
 - (a) wherever possible, provide prior written notification to the other Party or publish the approval; and
 - (b) endeavor to introduce at the time of the approval such conditions on the arrangement as to minimize any adverse effect on competition.

Article 8-05: Monopolies

1. Nothing in this Agreement shall be construed to prevent a Party from designating a monopoly.
2. Where a Party intends to designate a monopoly and the designation may affect the interests of the other Party, the Party shall:
 - (a) wherever possible, provide prior written notification to the other Party; and
 - (b) endeavor to introduce at the time of the designation such conditions on the operation of the monopoly as to minimize or eliminate any nullification or impairment of benefits.
3. Each Party shall ensure through regulatory control, administrative supervision or the application of measures, that any privately-owned monopoly it designates and any government monopoly 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 any regulatory, administrative or other governmental authority that the Party 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 any terms of its designation that are not inconsistent with subparagraph (c), 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 or purchase or sale; and
 - (c) does not use its monopoly position to engage, either directly or indirectly including through its dealings with its parent, its subsidiary or other enterprise with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affect the other Party, including through the discriminatory provision of the monopoly good or service, cross-subsidization or predatory conduct.

4. Paragraph 3 does not apply to procurement by governmental agencies of goods and services for governmental purposes and not with a view to commercial resale or with a view to use the production of goods or the provision of services for commercial sale.

5. For purposes of this Article “maintain” means designate prior to the date of entry into force of this Agreement and existing on the date of the entry into force of this Agreement in accordance with Article 12-03.

Article 8-06: State Enterprises

1 Nothing in this Agreement shall be construed to prevent a Party from maintaining or establishing a state enterprise.

2 Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any state enterprise that it maintains or establishes acts in a manner that is not inconsistent with the Party’s obligations wherever such enterprise exercises any 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 any state enterprise it maintains or establishes accords non-discriminatory treatment in the sale of its goods.