

**APPENDIX 9**

**NEW CHAPTER 19 (COMPETITION)**

## CHAPTER 19

### COMPETITION

#### Article 19.1: Definitions

For the purposes of this Chapter:

**conducts against competition** means business conducts or transactions that adversely affect competition in the territory of a Party, such as:

- (a) agreements between enterprises, decisions by associations of enterprises and concerted practices, which have as their object or effect the prevention, restriction or distortion of competition in the territory of either Party as a whole or in a substantial part thereof, as specified in the Parties' respective competition laws;
- (b) any abuse by one or more enterprises of a dominant position in the territory of either Party as a whole or in a substantial part thereof, as specified in the Parties' respective competition laws;
- (c) concentrations between enterprises, which significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position in the territory of either Party as a whole or in a substantial part thereof in accordance with the Parties' respective competition laws; or
- (d) unfair competition acts, including that in its production or distribution activities, a business disrupts the order of market competition and cause damage to the lawful rights and interests of the other businesses or consumers, which is objectively contrary to the requirements of corporate good faith that should guide competition, in any form in which such actions are adopted or the means in which they are carried out, in accordance with the Parties' respective unfair competition laws.

**competition laws** means:

- (a) for China, the *Antimonopoly Law* and *Anti-unfair Competition Law* their implementing regulations and amendments; and
- (b) for Peru, the *Repression of Anticompetitive Conducts Law*, the *Antimonopoly and Antioligopoly Law of the Electricity Sector*, the *Merger and Acquisition Control Law*, and *Law on Suppression of Unfair Competition*; and their implementing regulations and amendments.

**consumer protection laws** means:

- (a) for China, *Law on the Protection of Consumer Rights and Interests* and its implementing regulations and amendments; and
- (b) for Peru, the *Consumer Protection Code* and its implementing regulations and amendments.

### **Article 19.2: Objectives**

Each Party understands that proscribing conducts against competition, implementing competition policies and cooperating on competition issues contribute to preventing the cross-border trade and investments from being deterred through artificial barriers to entry and prohibiting economic efficiency and consumer welfare.

### **Article 19.3: Competition Laws, Authorities and Policies**

1. Each Party shall maintain or adopt competition laws that promote and protect the competitive process in its market by proscribing business conducts against competition.
2. Each Party shall maintain an authority or authorities responsible for the enforcement of its national competition laws.
3. Each Party shall maintain its autonomy to establish, develop and implement their respective competition policies.

### **Article 19.4: Principles in Law Enforcement**

1. Each Party shall be consistent with the principles of transparency, non-discrimination, and procedural fairness in the competition law enforcement field.
2. Each Party shall treat persons who are not persons of the Party no less favourably than persons of the Party in like circumstances in the competition law enforcement field.
3. Each Party shall ensure that before it imposes administrative punishment or restrictive conditions against a person for violation its national competition laws, it affords that person the reasonable opportunity to present opinion or evidence in its defence.
4. Each Party shall provide a person that is subject to the imposition of administrative punishment or restrictive conditions for violation of its national competition laws with the opportunity to apply for administrative reconsideration or initiate a litigation following an administrative decision under the laws of that Party.

### **Article 19.5: Transparency**

1. Each Party shall make public its competition laws and regulations, including procedural rules for the investigation.
2. Each Party shall ensure that a final administrative decision finding a violation of its national competition laws are in writing and sets out the relevant findings of fact and the legal basis on which the decision is based.
3. Each Party shall make public a final decision and any order implementing the decision in accordance with its national competition laws and regulations. Each Party shall ensure that the version of the decision or order that is made available to the public does not include confidential information that is protected from public disclosure by its national law.

### **Article 19.6: Cooperation in Law Enforcement**

1. The Parties recognise the importance of cooperation and coordination in the competition field, to promote effective competition law enforcement in the free trade area. Accordingly, each Party shall cooperate through notification, consultation, exchange of information and experience, and technical cooperation.
2. The Parties agree to cooperate in a manner compatible with their respective laws, regulations and important interests, and subject to their reasonably available resource.

### **Article 19.7: Technical Cooperation**

The Parties may promote technical cooperation, including exchange of experiences, capacity building through training programs, workshops and research collaborations for the purpose of enhancing the capacity of each Party related to competition policy and law enforcement.

### **Article 19.8: Consumer Protection**

1. The Parties recognise the importance of consumer protection policy and enforcement to creating efficient and competitive markets and enhancing consumer welfare in the free trade area.
2. For the purposes of this Article, fraudulent and deceptive commercial activities refer to those fraudulent and deceptive commercial practices that cause actual harm to consumers, or that pose an imminent threat of such harm if not prevented, for example:
  - (a) a practice of making misrepresentations of material fact, including implied

factual misrepresentations, that cause significant detriment to the economic interests or personal and property safety of misled consumers;

- (b) a practice of failing to deliver products or provide services to consumers after the consumers are charged; or
- (c) a practice of charging or debiting consumers' financial, telephone or other accounts without authorisation.

3. Each Party shall adopt or maintain consumer protection laws or other laws or regulations that proscribe fraudulent and deceptive commercial activities. The laws or regulations a Party adopts or maintains to proscribe these activities can be civil, criminal or administrative in nature.

4. The Parties recognise that fraudulent and deceptive commercial activities increasingly transcend national borders. Accordingly, the Parties shall promote, as appropriate, cooperation and coordination on matters of mutual interest related to fraudulent and deceptive commercial activities, including in the enforcement of their consumer protection laws.

5. The Parties shall cooperate and coordinate on the matters set out in this Article through the relevant national public bodies or officials responsible for consumer protection policy, laws or enforcement, as determined by each Party and compatible with their respective laws, regulations and important interests and within their reasonably available resources.

#### **Article 19.9: Consultations**

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

2. The Parties shall report the outcome of the consultations to the Free Trade Commission.

#### **Article 19.10: Independence of Competition Law Enforcement**

This Chapter should not intervene with the independence of each Party in enforcing its respective competition laws.

### **Article 19.11: Dispute Settlement**

Neither Party shall have recourse to dispute settlement under this Agreement for any matters arising under this Chapter.

### **Article 19.12: Future Negotiations**

1. The Parties recognise the importance of competition policy for trade liberalization and market integration.
2. The Parties shall review this Chapter every two years in order to evaluate the possibility to incorporate additional commitments with the aim of foster competition and ensure consumer protection.