CHAPTER 10

COMPETITION

Article 10.1: Definitions

For the purposes of this Agreement:

anti-competitive practices means any conduct or transaction that may be subject to penalties or relief under the competition laws and regulations of the Parties.

Article 10.2: Objectives

The objective of this Chapter is to contribute to the fulfilment of the objectives of this Agreement through the promotion of fair competition and the curtailment of anti-competitive practices within the free trade area.

Article 10.3: Competition Laws and Authorities

1. Each Party shall adopt or maintain national competition laws that address anti-competitive practices and promote economic efficiency and consumer welfare, and shall take appropriate action with respect to such practices. The Parties shall make publicly available their laws addressing anti-competitive practices.

2. Each Party shall adopt or maintain an authority or authorities responsible for the enforcement of its competition laws. The measures that each Party adopts or maintains to proscribe anti-competitive practices, and the enforcement actions taken pursuant to those measures, shall be consistent with the principles of transparency, timeliness, non-discrimination, comprehensiveness and procedural fairness.

3. Each Party shall maintain its autonomy in developing and enforcing its competition laws.

Article 10.4: Application of Competition Laws

1. The Parties shall ensure that all entities involved in commercial activities are subject to their national competition laws.

2. Notwithstanding paragraph 1, each Party may provide for certain exemptions from the application of its national competition laws provided that such exemptions are transparent and based on the grounds of public policy or public interest.

Article 10.5: Notification

1. The competition authority of a Party shall endeavour to notify the competition authority of the other Party, administrative resources allowing, with respect to the enforcement activities of competition laws that the notifying competition authority considers may affect important interests of that other Party.

2. The notification pursuant to paragraph 1 shall be made in a timely manner and to the extent that this does not violate the law, regulations, or important interest of the Party making the notification or affect any investigation underway.

Article 10.6: Cooperation and Exchange of Information

1. The Parties shall endeavour to cooperate through their competition authorities in matters related to the implementation of competition laws.

2. The competition authority of a Party may request cooperation from the competition authority of the other Party regarding enforcement activities. This cooperation shall not prevent the Parties concerned from taking independent decisions.

3. The competition authorities may exchange information in order to facilitate the effective application of their respective competition laws.

4. Whenever competition authorities exchange information pursuant to this Article, they shall take into account the restrictions imposed by their respective legislations. Any confidential information which is provided shall not be revealed without formal authorisation from the Party providing the information.

5. If a Party considers that an anti-competitive practice carried out within the territory of the other Party has an adverse effect within the territory of both Parties or on trade relations between the Parties, that Party may request that such other Party initiate the enforcement activities established under its legislation. Nothing in this Article limits the discretion of the competition authority of the requested Party, under its competition laws and enforcement policies, as to whether or not to undertake enforcement activities with respect to the anti-competitive practices identified in the request, or precludes the competition authority of the requesting Party from withdrawing its request.

6. The competition authorities may further strengthen cooperation by appropriate means or instruments in accordance with their interests and capacities.

Article 10.7: Technical Cooperation

1. The Parties agree that it is in their common interest for their competition authorities to work together on technical cooperation activities related to the implementation of competition laws and policy.

2. The technical cooperation activities between the competition authorities of the Parties are subject to reasonably available resources and may include:

(a) exchange of personnel for training purposes;

(b) participation of personnel as lecturers or consultants at training courses of competition law and policy co-organised and co-sponsored by the competition authorities of the Parties; and

(c) any other form of technical assistance as mutually decided by the competition authorities of the Parties.

Article 10.8: Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 15 (Dispute Settlement) for any matter arising under this Chapter.

Article 10.9: General Provision

Nothing in this Chapter shall be construed to alter any rights or obligations of the Parties under any other Chapter of this Agreement.