

**CHAPTER FIFTEEN**

**COMPETITION POLICY,**

**MONOPOLIES AND STATE ENTERPRISES**

**Article 15.1: Competition Law and Policy**

1. Each Party shall adopt or maintain measures to proscribe anti-competitive business conduct and take appropriate action with respect thereto, recognising that such measures will enhance the fulfilment of the objectives of this Agreement. To this end, the Parties shall consult from time to time on the effectiveness of measures undertaken by each Party.
2. Each Party recognises that the measures it adopts or maintains to proscribe anti-competitive business conduct and the enforcement actions it takes pursuant to those measures shall be consistent with the principles of transparency, non-discrimination, and procedural fairness. Exclusions from these measures shall be transparent. Each Party should periodically assess its own exclusions to determine whether they are necessary to achieve its overriding policy objectives.
3. The Parties recognise the importance of cooperation and coordination among their authorities to further effective competition law enforcement in the free trade area. The Parties shall cooperate on issues of competition law enforcement policy, including mutual legal assistance, notification, consultation, and exchange of information relating to the enforcement of competition laws and policies in the free trade area.
4. No recourse may be had to any form of dispute settlement under this Agreement for any matter arising under this Article.

## Article 15.2: Monopolies<sup>1</sup>

1. This Agreement is not to be construed to prevent a Party from maintaining or designating 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 notification, in writing, of the designation to the other Party.
3. Each Party shall ensure, through regulatory control, administrative supervision, or the application of other measures, 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 whenever such a monopoly exercises any 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;

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<sup>1</sup> For the purposes of this Article and Article 15.3, "maintain" means designated prior to the date of entry into force of this Agreement and existing on that date.

- (b) except to comply with terms of its designation<sup>2</sup> that are not inconsistent 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<sup>3</sup>, including with regard to price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale<sup>4</sup>;
  - (c) provides non-discriminatory treatment to covered investments, 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<sup>5</sup>; 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 anticompetitive practices in a non-monopolised market in its territory, if such practices adversely affect a covered investment.
4. Paragraph 3 does not apply to government procurement.

### **Article 15.3: State Enterprises**

1. This Agreement is not to be construed to prevent a Party from maintaining or establishing a state enterprise.

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<sup>2</sup> For greater certainty, terms of designation may be amended.

<sup>3</sup> For greater certainty, this provision applies to the sale of the designated monopoly good or service in the case of a designated monopoly supplier and to the purchase of the designated monopoly good or service in the case of a designated monopoly buyer.

<sup>4</sup> This provision is not to be construed to prevent a designated monopoly from supplying the monopoly good or service in accordance with specified rates approved, or other terms or conditions established, by a regulatory authority of a Party, provided that such rates or other terms or conditions are not inconsistent with subparagraph (c) or (d).

<sup>5</sup> For greater certainty, this provision applies to the sale of the monopoly good or service in the case of a designated monopoly supplier and to the purchase of the monopoly good or service in the case of a designated monopoly buyer.

2. Each Party shall ensure, through regulatory control, administrative supervision, or the application of other measures, that a state enterprise that it maintains or establishes acts in a manner that is not inconsistent with the Party's obligations under this Agreement whenever such 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 maintains or establishes accords non-discriminatory treatment in the sale of its goods or services to covered investments.

#### **Article 15.4: Differences in Pricing**

Articles 15.2 and 15.3 are not to be construed to prevent a monopoly or state enterprise from charging different prices in different markets, or within the same market, if such differences are based on normal commercial considerations, such as taking account of supply and demand conditions.

#### **Article 15.5: Definitions**

For the purposes of this Chapter:

**delegated** means transferring to the monopoly or state enterprise, or authorising the exercise by the monopoly or state enterprise of, governmental authority through a legislative grant, a government order, a directive, or other act;

**designate** means to establish, designate or authorise, 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 procurement** means procurement by governmental agencies of goods or services, or a combination thereof, for governmental purposes and not with a view to commercial sale or resale or with a view to use in the production of goods or the provision of services for commercial sale or resale;

**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, including the terms and conditions set out in the relevant Annexes thereto; and

**state enterprise** means, except as set out in Annex 15-A, an enterprise owned or controlled through ownership interests, by a Party.

## Annex 15-A

### Country-Specific Definitions of State Enterprise

For the purposes of Article 15.3.3, “state enterprise” means:

- (a) for Canada, a Crown corporation within the meaning of the *Financial Administration Act*, a Crown corporation within the meaning of any comparable provincial law, or an equivalent entity that is incorporated under other applicable provincial law; and
- (b) for Korea, a public corporation and a quasi-governmental entity within the meaning of the *Act on the Management of Non-Departmental Public Entities*.