

PART FIVE

Competition Policy

Chapter 16

Competition Policy

Article 16.01 Objectives

1. The purposes of this Chapter are to endeavor that the benefits of trade liberalization are not undermined by anticompetitive activities and to promote cooperation and coordination between the competent authorities of the Parties.
2. The Parties recognize the importance of cooperation and coordination in enforcing compliance mechanisms, including notification, consultation and exchange of information related to the competition policies in the context of the norms established in the national legislation of each Part's competition laws and policies, provided that these do not contravene the legal obligations concerning confidentiality.
3. Furthermore, the Parties shall endeavor to establish mechanisms that facilitate and promote the development of a competition policy and ensure the implementation of free competition standards between and within the Parties, for the purpose of preventing the negative effects of anticompetitive practices in the free trade area.
4. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Article.

Article 16.02 Free Competition Committee

The Free Competition Committee is hereby created and shall be made up of one member from each Party. The Committee's main function shall be to search for the most appropriate means to implement the provisions set forth in paragraphs 1, 2 and 3 of the previous article, as well as any other task assigned it by the Committee. This Committee will meet at least once a year.

Article 16.03 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 persons of the other Party, the Party shall:
 - (a) wherever possible, provide prior written notification to the other Party of the designation; and

- (b) endeavor to introduce at the time of the designation such conditions on the operation of the monopoly as will minimize or eliminate any nullification or impairment of benefits.
3. Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any privately-owned monopoly that it designates and any 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 any regulatory, administrative or other governmental authority that the Party has delegated to it in connection with the monopolized good and services, 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 and services in the relevant market, including with regard to price, quality, availability, marketability, transportation and other terms and conditions of 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 affects the other Party, including through the discriminatory provision of the monopoly good and services, cross-subsidization or predatory conduct.

Article 16.04 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 that it maintains or establishes accords non-discriminatory treatment in the sale of its goods.

Article 16.5 Definitions

For purposes of this Chapter:

designate means to establish, designate or 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 that has been 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.