

## **CHAPTER THIRTEEN**

### **COMPETITION POLICY, MONOPOLIES AND STATE ENTERPRISES**

#### **Article 1301: Objectives**

Recognizing that conduct subject to this Chapter has the potential to restrict bilateral trade and investment, the Parties believe that proscribing such conduct, implementing economically sound competition policies and cooperating in matters covered by this Chapter will help secure the benefits of this Agreement.

#### **Article 1302: Competition Law and Policy**

1. Each Party shall maintain its independence in developing and enforcing its competition law.
2. Each Party shall adopt or maintain measures to proscribe anti-competitive business conduct and take appropriate action with respect to such conduct.
3. Each Party shall ensure that the measures it adopts or maintains to proscribe anti-competitive business conduct and the enforcement actions it takes pursuant to those measures are consistent with principles of transparency, non-discrimination and procedural fairness. Exclusions from these measures shall be transparent. Each Party shall make available to the other Party public information concerning exclusions provided under its competition laws.
4. Each Party should periodically assess its own exclusions to determine whether they are necessary to achieve its overriding policy objectives.
5. Colombia may implement its obligations under this Article through the Andean Community competition laws or an Andean Community enforcement authority.

### **Article 1303: Consultations**

Subject to the independence of each Party to develop, maintain and enforce its competition policy and legislation, the Parties, on request of a Party, shall enter into consultations to foster understanding between them, or to address a specific matter under this Chapter. The requesting Party shall indicate in its request how the matter affects trade or investment between the Parties. The other Party shall give full and sympathetic consideration to the concerns of the requesting Party.

### **Article 1304: Cooperation**

Each Party recognizes the importance of cooperation and coordination between their authorities to further effective competition law enforcement in the free trade area. In this regard, the Parties, through their respective competition authorities, shall negotiate a cooperation instrument that may address, among other matters, notification, consultation, positive and negative comity, technical assistance and exchange of information.

### **Article 1305: Designated 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 designating Party shall, whenever possible, provide prior written notification to the other Party of the designation.

3. Each Party shall ensure that any privately-owned monopoly that it designates following the entry into force of this Agreement and any government monopoly that it designates, or has designated prior to the date of entry into force of this Agreement:

- (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 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) 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 of purchase or sale, except to comply with any terms of its designation that are not inconsistent with subparagraph (c) or (d) ;
- (c) provides non-discriminatory treatment to covered investments, to goods of the other Party, and to service suppliers of the other Party in its purchase or sale of the monopoly good or service in the relevant market; and
- (d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, its subsidiaries or other enterprises with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affect covered investments.

4. Paragraph 3 does not apply to procurement by government of goods or services or any combination thereof, for governmental purposes and not with a view to commercial sale or resale, or use in the production or supply of goods or services for commercial sale or resale.

### **Article 1306: State Enterprises**

1. Nothing in this Agreement shall be construed to prevent a Party from establishing or maintaining a state enterprise.
2. Each Party shall ensure that any state enterprise that it establishes or maintains, acts in a manner that is not inconsistent with the Party's obligations under Chapters Eight (Investment) and Eleven (Financial Services) 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 or services to covered investments.

### **Article 1307: Dispute Settlement**

1. No Party may have recourse to dispute settlement under Chapter Twenty-One (Dispute Settlement) for any matter arising under this Chapter except for those matters arising under Articles 1305 and 1306.
2. For the purposes of this Chapter, an investor may have recourse to investor-state dispute settlement pursuant to subparagraph 1(b) of Article 819 (Investment - Claim by an Investor of a Party on Its Own Behalf) or subparagraph 1(b) of Article 820 (Investment - Claim by an Investor of a Party on Behalf of an Enterprise) only for matters arising under subparagraph 3(a) of Article 1305 or paragraph 2 of Article 1306.

## **Article 1308: Definitions**

For purposes of this Chapter:

**covered investment** means “covered investment” as defined in Article 847 (Investment – Definitions);

**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;

**designated 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;

**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 (private) enterprises in the relevant business or industry;

**market** means the geographic and commercial market for a good or service;

**non-discriminatory treatment** means the better of national treatment and most-favoured-nation treatment, as set out in the relevant provisions of this Agreement; and

**state enterprise** means, except as set out in Annex 1308, an enterprise owned, or controlled through ownership interests, by a Party.

## Annex 1308

### Country-Specific Definitions of State Enterprises

1. For purposes of paragraph 3 of Article 1306 "state enterprise" means, with respect to Canada, a Crown Corporation within the meaning of the *Financial Administration Act* (Canada), a Crown Corporation within the meaning of any comparable provincial law or equivalent entity that is incorporated under other applicable provincial law.
2. For the purposes of paragraphs 2 and 3 of Article 1306 "state enterprise", with respect to Colombia, means an enterprise that is owned, or controlled through ownership interests, by a Party, except the "*Monopolios Rentísticos*" of the level "*departamental*" referred to in Article 336 of the Colombian Constitution.