

CHAPTER 12

COMPETITION

Article 1

Definitions

For the purposes of this Chapter:

- (a) **anti-competitive business practices** means business activities or transactions that are incompatible with the proper functioning of this Agreement in so far as they may affect trade between the Parties, such as:
 - (i) 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 Area of either Party as a whole or in a substantial part thereof;
 - (ii) any abuse by one or more enterprises of a dominant position which prevents, restricts or distorts competition in the Area of either Party as a whole or in a substantial part thereof;
 - (iii) concentrations between enterprises, which significantly reduce competition, in particular as a result of the creation or strengthening of a dominant position in the Area of either Party as a whole or in a substantial part thereof; and
- (b) **competition laws** mean:
 - (i) for Hong Kong, China, the Competition Ordinance (Laws of Hong Kong, Chapter 619) and its

subsidiary legislation; and

- (ii) for Georgia, the Georgian law on Competition, its implementing regulations and amendments and legislation of regulated sectors of the economy.

Article 2

Objectives

Each Party understands that proscribing anti-competitive business practices, implementing competition policies and cooperating on competition issues contribute to enhancing trade liberalization and promoting economic efficiency and consumer welfare.

Article 3

Competition Laws and Authorities

1. Each Party shall maintain or adopt competition laws that promote and protect the competitive process in its market by proscribing anti-competitive business practices.
2. Each Party shall maintain an authority or authorities responsible for the enforcement of its competition laws.

Article 4

Principles of Law Enforcement

1. Each Party shall ensure consistency with the principles of transparency, non-discrimination, and procedural fairness in its competition law enforcement.
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 its competition law enforcement.

3. Each Party shall ensure that during an investigation to determine whether a person's conduct violates its competition laws, or before it imposes a sanction or remedy against a person for violating its competition laws, it affords that person a reasonable opportunity to present opinion or evidence in its defence.

4. Each Party shall provide a person that is subject to the imposition of a sanction or remedy for violation of its competition laws with the opportunity to seek review of the sanction or remedy in accordance with the laws and regulations of the Party.

Article 5

Transparency

1. Each Party shall make public its competition laws, and regulations, guidelines and any rules issued in relation to the administration of such laws, excluding internal operating procedures.

2. Each Party shall ensure that a final decision finding a violation of its competition laws is in written form and sets out relevant findings of fact and the legal basis on which the decision is based.

3. Each Party shall endeavour to make public the decisions and any orders implementing them in accordance with its laws and regulations, excluding any business confidential information or other information that is protected by its laws and regulations from public disclosure.

Article 6

Cooperation

1. The Parties recognise the importance of cooperation and coordination in the field of competition to promote fair

competition.

2. The Parties shall cooperate through notification, consultation, and the exchange of information upon request.

3. The Parties agree that cooperation under this Article shall be conducted in a manner compatible with their respective laws and regulations, and within their respective competence and reasonably available administrative resources. For greater certainty, in the case of Hong Kong, China, its competence refers to such powers and functions that it may lawfully exercise on its own.

Article 7

Confidentiality of Information

1. This Chapter shall not require the sharing of information by the competition authority or authorities of each Party, which is contrary to the Party's laws, regulations or important interests or paragraph 3 of Article 5 (Transparency).

2. The Parties shall maintain the confidentiality of any information provided as confidential by the other Party. The Party receiving such information:

- (a) shall use it only for the purpose disclosed at the time of request unless specific permission is granted by the Party providing the information;
- (b) shall not disclose it to any other authority, entity or person that is not authorised by the competition authority of the Party providing the information; and
- (c) shall comply with any other conditions required by the competition authority of the Party providing the information.

Article 8

Technical Cooperation

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

Article 9

Independence of Competition Authorities

Nothing in this Chapter shall be construed to affect the independence of each Party in enforcing its competition laws.

Article 10

Non-Application of Dispute Settlement

Neither Party shall have recourse to the dispute settlement mechanism under Chapter 16 (Dispute Settlement) for any matters arising under this Chapter. Any difference or dispute between the Parties concerning the application, interpretation or implementation of the provisions of this Chapter shall be settled amicably through consultations between the Parties pursuant to Article 11 (Consultations).

Article 11

Consultations

To foster understanding between the Parties, or to address specific matters that arise under this Chapter, each Party shall, on request of the other Party, enter into consultations with the other Party. In its request, the requesting Party shall indicate, if relevant, how the matter affects trade or investment between the Parties.