## CHAPTER 13

## COMPETITION AND CONSUMER PROTECTION

## Article 13.1

## Objectives

The objectives of this Chapter are to promote competition, and enhance economic efficiency and consumer welfare, through the adoption and maintenance of laws and regulations that proscribe anti‑competitive behaviour and protect consumers.

## Article 13.2

## Scope

1. The Parties affirm their rights and obligations under Article XVII ofthe GATT 1994, and the *Understanding on the Interpretation of Article XVII of the GATT 1994.*

2. The Parties recognise the sovereign rights of each Party to develop, administer, and enforce its competition and consumer protection laws, regulations and policies.

3. Nothing in this Chapter shall apply with respect to a state-owned enterprise owned or controlled by a central, regional or local level of government, except as prescribed by a Party’s laws and regulations.[[1]](#footnote-2)

4. Nothing in this Chapter shall prevent a Party from establishing or maintaining state-owned enterprises, or granting enterprises special rights or privileges.

5. This Chapter shall not apply to government procurement.

## Article 13.3

## Anti-Competitive Behaviour

1. Each Party shall maintain competition laws and regulations which:

 (a) proscribe anti-competitive restrictive agreements, which have as their object or effect the prevention, restriction or distortion of competition;

 (b) proscribe abuse of a dominant position; and

 (c) address mergers with substantial anti-competitive effects, as specified in the respective competition laws and regulations of the Parties.

2. Acknowledging each Party’s rights under this Chapter, in particular paragraph 3 of Article 13.2 (Scope), each Party shall apply its national competition and consumer laws and regulations to all commercial activities in its territory. This does not preclude a Party from applying its national competition laws and regulations to commercial activities outside its territory that may have anti-competitive effects within its territory.

3. Each Party shall pursue to ensure its national competition and consumer protection authorities’ decision making process for the enforcement of its national competition and consumer laws and regulations is as independent as possible.

## Article 13.4

## Consumer Protection

1. The Parties recognise the importance of consumer protection policy and law enforcement to enhancing consumer welfare.

2. Each Party shall maintain consumer protection laws and regulations that prohibit false, misleading and deceptive practices.

3. Each Party shall maintain laws and regulations that provide consumers with statutory rights in relation to goods and services supplied to them, which allow for remedies when:

(a) goods are of unacceptable quality or are defective;

(b) goods are not as described;

(c) goods are not fit for their represented purpose; and

(d) services are not performed with appropriate care or skill.

4. The Parties further recognise the importance of improving awareness of, and providing access to, consumer redress mechanisms, including the resolution of disputes.

## Article 13.5

## Non-Discrimination

1. Each Party shall enforce its national competition and consumer protection laws and regulations in a manner that does not discriminate on the basis of nationality and recognises the value of non-discrimination on the basis of the characteristics of the company.

2. Each Party shall ensure that if it establishes or maintains an administrative body to exercise regulatory activities with respect to its competition and consumer protection laws and regulations, it does so in an impartial manner.

## Article 13.6

## Transparency

1. The Parties recognise the value of making their competition and consumer protection laws and regulations as transparent as possible.

2. On request of a Party, the other Party shall make available to the requesting Party, information publicly available concerning its national competition and consumer protection law.

3. Each Party shall ensure, to the extent permissible under its competition laws and regulations, that a final decision pursuant to its competition laws and regulations is made in writing and sets out findings of fact and the reasoning, including legal and, if applicable, economic analysis, on which the decision is based.

4. Each Party may make a final decision referred to in paragraph 3 and any order implementing that decision available to the public, if it is permissible under its competition laws and regulations. Each Party shall ensure that the version of the decision or order that is made available to the public does not include confidential information that is protected from public disclosure by its laws and regulations.

## Article 13.7

## Procedural Fairness

1. Each Party shall ensure that before it imposes a sanction or remedy against a person pursuant to its national competition and consumer protection laws and regulations, it affords that person:

 (a) information about the national competition or consumer authority’s concerns;

 (b) a reasonable opportunity to be legally represented; and

 (c) a reasonable opportunity to be heard and present evidence in its defence, except that a Party may provide for the person to be heard and present evidence within a reasonable time after it imposes such an interim sanction or remedy.

2. Each Party shall endeavour to maintain written procedures pursuant to which its national competition and consumer protection law investigations are conducted. If these investigations are not subject to definitive deadlines, each Party’s national competition or consumer protection authorities shall endeavour to conduct their investigations within a reasonable time frame.

3. Each Party shall endeavour to maintain rules of procedure that apply to proceedings conducted pursuant to its national competition and consumer protection laws and regulations.

4. Each Party shall provide a person that is subject to the imposition of a sanction or remedy pursuant to that Party’s national competition and consumer protection laws and regulations with the opportunity to seek review of the sanction or remedy in an administrative proceeding, court or other independent tribunal established under that Party’s law.

5. Each Party may authorise its national competition and consumer protection authorities to resolve civil or administrative matters voluntarily by consent of the authority and the person subject to the enforcement action. A Party may provide for such voluntary resolution to be subject to review by a court or independent tribunal or a public comment period before becoming final.

6. If a Party’s national competition or consumer protection authorities issues a public notice that reveals the existence of a pending or ongoing investigation, that authority shall not state, and shall avoid implying, in that notice that the person referred to in that notice has engaged in the alleged conduct or violated the Party’s national competition and consumer laws.

## Article 13.8

## Private Rights of Action

1. For the purposes of this Article, “private right of action” means the right of a person to seek redress, including injunctive, monetary or other remedies, from a court or other independent tribunal for injury to that person’s business or property caused by a violation of national competition or consumer protection laws and regulations.

2. Each Party shall ensure that a right provided pursuant to paragraph 1 is available to persons of the other Party on terms that are no less favourable than those available to its own persons, pursuant to each Party’s laws and regulations.

## Article 13.9

## Cooperation

1. The Parties recognise the importance of cooperation between their respective competition and consumer protection authorities.

2. Subject to reasonably available resources, areas of cooperation may include, as mutually agreed by the Parties, but are not limited to:

 (a) exchanging information;

 (b) sharing best practices and experiences, including through training and the exchange of officials; and

 (c) technical cooperation in any other form as agreed by the Parties.

3. The Parties acknowledge the importance of cooperation and coordination internationally in the work of multilateral organisations in this area, including, *inter alia*, the International Consumer Protection and Enforcement Network.

4. The Parties recognise the importance of cooperation between their respective national consumer protection authorities, subject to reasonably available resources and where possible and appropriate, on activities related to cross-border electronic commerce in order to enhance consumer welfare.

5. Subject to each Party’s reasonably available resources, the Parties may cooperate, if practicable and appropriate, and in accordance with their respective laws and regulations, on sharing their experiences and the exchange of information, if applicable, in addressing the challenges that may arise from the digital economy.

6. The Parties may, if appropriate and subject to reasonably available resources and as mutually agreed by the Parties, engage in mutually agreed technical cooperation activities, including:

 (a) cooperating in international fora on matters related to competition;

 (b) cooperating in improving corporate governance of privately owned enterprises; and

 (c) sharing best practices on competition policy approaches, including policies related to competitive neutrality.

7. Nothing in this Chapter shall prevent the Parties entering into separate commitments or arrangements on cooperation.

## Article 13.10

## Confidential Information

1. This Chapter shall not require the sharing of information by a Party which is contrary to that Party’s laws and regulations or national interest.

2. Where a Party requests confidential information under this Chapter, the requesting Party shall notify the requested Party of:

 (a) the purpose of the request;

 (b) the intended use of the requested information; and

 (c) any laws or regulations of the requesting Party that may affect the confidentiality of information or require the use of the information for purposes not agreed upon by the requested Party.

3. If the requested Party agrees to share information on a confidential basis with the requesting Party, then, except to comply with its laws and regulations or as otherwise agreed between the Parties, the Party receiving the information shall:

 (a) maintain the confidentiality of the information received;

 (b) use the information received only for the purpose disclosed at the time of the request, unless otherwise authorised by the Party providing the information;

 (c) not use the information received as evidence in criminal proceedings carried out by a court or a judge unless, on request of the Party receiving the information, such information was provided for such use in criminal proceedings through diplomatic channels or other channels established in accordance with the laws and regulations of the Parties concerned;

 (d) not disclose the information received to any other authority, entity, or person not authorised by the Party providing the information; and

 (e) comply with any other conditions required by the Party providing the information.

## Article 13.11

## Consultation

To foster understanding between the Parties or to facilitate dialogue on matters under the scope of this Chapter, on request of a Party, the other Party may enter into consultations with the requesting Party, subject to reasonably available resources. In its request, the requesting Party shall indicate the substance of its request.

## Article 13.12

## Contact Point

Within 90 days of the date of entry into force of this Agreement, each Party shall designate a contact point to facilitate communication and the exchange of information on matters arising under this Chapter.

## Article 13.13

## Exemptions and exclusions

1. Each Party may provide for certain exemptions and exclusions from the application of its national competition and consumer protection laws and regulations, as prescribed in its laws and regulations.

2. On request of a Party, the other Party may make available to the requesting Party publicly available information concerning exemptions, exclusions and immunities to its national competition and consumer protection laws and regulations.

## Article 13.14

## Exceptions

Nothing in this Chapter shall be construed to prevent the adoption or enforcement by any Party of measures to respond temporarily to a national or global economic emergency.

## Article 13.15

## Non-Application of Dispute Settlement

The Parties shall not have recourse to dispute settlement under Chapter 25 (Dispute Settlement) for any matter arising under this Chapter.

1. For greater certainty, nothing in this Chapter shall apply to state-owned enterprises engaged in non-commercial activities. [↑](#footnote-ref-2)