

CHAPTER 16

COMPETITION

Article 16.1: Definitions

For the purposes of this Chapter,

competition laws means:

- (i) for Australia, the *Competition and Consumer Act 2010* (Cth), and any regulations relating to Parts IV and XI A; and provisions of other Parts in so far as they relate to Part IV, but not including Part X, including their amendments and replacements; and
- (ii) for Indonesia, *Undang-undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat (Law No. 5 Year 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition)*, and its related regulations, including their amendments and replacements.

Article 16.2: Objectives

The objectives of this Chapter are to promote fair competition in markets and enhance economic efficiency and consumer welfare, through the adoption and maintenance of laws to proscribe anti-competitive practices, to help secure the benefits of this Agreement and promote cooperation between the Parties on competition law enforcement.

Article 16.3: Basic Principles

Acknowledging each Party's rights and obligations under this Chapter, the Parties recognise the sovereign rights of each Party to develop, set, administer and enforce its own competition laws and regulations, and the differences in legal systems, capacity, and level of development in the area of competition policy and law.

Article 16.4: Application of Competition Laws and Regulations¹

1. Each Party shall adopt or maintain competition laws and regulations that proscribe anti-competitive practices and shall enforce them accordingly.²

¹ For greater certainty, this article applies to all entities engaged in commercial activities regardless of their ownership.

² Anticompetitive practices may include:

2. Each Party shall maintain authorities responsible for the enforcement of its competition laws and regulations.
3. Each Party shall ensure independence in decision-making by its authorities in relation to enforcement of competition laws and regulations.
4. Each Party shall apply and enforce its competition laws and regulations in a manner which does not discriminate on the basis of nationality.
5. Each Party shall apply its competition laws and regulations to all economic sectors and all entities engaged in commercial activities,³ subject to exclusions and exemptions as provided for under its competition laws and regulations. Such exclusions and exemptions shall be transparent and undertaken on the grounds of public policy or public interests.

Article 16.5: Cooperation

The Parties agree to cooperate in a manner compatible with their respective laws, regulations, important interests, and available resources. Such cooperation may include:

- (a) assistance in providing information related to competition law enforcement that involves one or both Parties, including to foster understanding or to facilitate effective competition law enforcement;
- (b) discussion between the Parties on enforcement activities of interest to both Parties, or related anti-competitive activities;
- (c) assistance in enforcement and litigation activities of interest to both Parties;
- (d) facilitation of regular dialogue between competition authorities to foster effective implementation of respective competition laws and policies;
- (e) consultation on any matter relating to competition law that substantially affects the interests of the other Party. Such consultation shall not affect the ability of each Party to independently administer or enforce its competition law; and
- (f) relevant matters of mutual interest related to consumer protection.

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1. horizontal arrangements;
 2. vertical restraints;
 3. abuse of dominant position or market power; and
 4. mergers and acquisitions that would substantially lessen competition.

³ For greater certainty, nothing in paragraph 5 shall be construed to preclude a Party from applying its competition laws to commercial activities outside its borders that have anticompetitive effects within its jurisdiction.

Article 16.6: Notifications

Each Party shall, as promptly as reasonably possible, notify the competition authority of the other Party of competition enforcement activities that may affect the interests of the other Party.

Article 16.7: Transparency

1. The Parties recognise the value of making their competition law enforcement policies as transparent as possible. Each Party shall endeavour to maintain and update its information in competition law enforcement policies, including regulations, guidelines, and practices through their website.

2. On request of a Party, the other Party shall make available to the requesting Party public information on exclusions and exemptions provided by its competition laws and regulations, provided that the request specifies the particular good, service, or market of concern and includes information explaining how the exclusions or exemptions may hinder economic relations between the Parties.

Article 16.8: Procedural Fairness

1. In applying competition law, each Party shall implement administrative and judicial procedures in a transparent and fair manner.

2. Each Party shall ensure that before sanction or remedy is imposed on any person or entity for breaching its competition law, that person or entity is provided the reasons for the allegations and a fair opportunity to be heard and to present evidence.

3. Each Party shall ensure that any person or entity subject to the imposition of a sanction or a remedy under its competition law has access to an independent review or appeal of that sanction or remedy.

4. Each Party shall endeavour to handle competition cases in a timely manner.

Article 16.9: Confidentiality of Information

1. This Chapter shall not require the sharing of information by a Party, which is contrary to the Party's laws, regulations or important interests.

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

- (a) the purpose of the request;

- (b) 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 providing Party.
3. If information shared under this Chapter is shared on a confidential basis then, except to comply with laws and regulations, the Party receiving that information shall:
- (a) maintain the confidentiality of the information received;
 - (b) use it only for the purpose disclosed at the time of the request, unless otherwise authorised by the Party providing the information;
 - (c) not disclose it to any other authority, entity or person that is not authorised by the Party providing the information; and
 - (d) comply with any other conditions required by the Party providing the information.

Article 16.10: Consumer Protection

1. Each Party recognises the importance of consumer protection laws and enforcement as well as cooperation between the Parties on matters related to consumer protection, in order to achieve the objectives set out in Article 16.2.
2. Each Party shall adopt or maintain laws and regulations to proscribe the use in trade of misleading practices, or false or misleading descriptions.
3. Each Party also recognises the importance of improving awareness of, and access to, consumer redress mechanisms.

Article 16.11: Review

Unless the Parties otherwise agree, the Parties shall review this Chapter as part of the General Review under Article 21.5 (General Review of the Agreement) of Chapter 21 (Final Provisions), with a view to improving the provisions in relation to all entities regardless of their ownership. The Parties shall consult each other on the need to modify this Chapter as necessary through the Joint Committee established under Chapter 18 (Institutional Provisions).

Article 16.12: Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 20 (Consultations and Dispute Settlement) for any matter arising under this Chapter.