

CHAPTER [#]
COMPETITION

Article 1
Objectives

1. ~~[ASEAN/AU/CN/IN/KR/NZ: The objectives of this Chapter is/are to promote competition in markets, and enhance economic efficiency and consumer welfare through the adoption and maintenance of laws and regulations to proscribe anti-competitive activities, and through regional cooperation on competition law—the development and implementation of competition laws and regulations amongst Parties.] [ASEAN/AU/NZ: The pursuit of these objectives will his/would help to secure the benefits of this agreement, including facilitating trade and investment amongst Parties. [AU/NZ: and prevent the benefit of trade liberalisation from being undermined].~~

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Article 2
Basic Principles

1. ~~Each Party shall implement this Chapter in a manner consistent with the objectives [in compliance with the obligations set out in] of this Chapter.~~
- 1.2 ~~In pursuing the objectives of this Chapter, [each Party] [AU/NZ: the Parties] recognise¹:~~
- (a) ~~[respects] the [ASEAN/AU/CN/IN/KR/NZ: sovereign] rights of each Party to develop, set, administer and enforce its own competition laws, regulations and policies;~~
 - (b) ~~[complies with the obligations of the Parties set out in this Chapter]; and~~

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¹ ~~[AU/NZ: For greater certainty, this paragraph is without prejudice to a Party's rights and obligations under the provisions of this Chapter].~~

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(c) [recognizes] that significant differences exist among Parties in capacity and level of development in the area of competition policy and law.

Article 3
Appropriate Measures against Anticompetitive Activities²

1. Each Party shall adopt or maintain competition laws and regulations to proscribe anti-competitive activities³, and shall enforce those laws and regulations accordingly.
2. Each Party shall establish or maintain an authority or authorities to effectively implement its competition laws and regulations.
3. Each Party shall ensure independence in decision-making by its authority or 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 entities engaged in commercial activities. Any exclusions or exemptions from the application of each

² [ASEAN/AU/CN/IN/KR/NZ—This Article is subject to Annex [X]-A (Application of Article 3 and Article 4 to Cambodia), Annex [X]-B (Application of Article 3 and Article 4 to Brunei Darussalam), Annex [X]-C (Application of Article 3 and Article 4 to Lao PDR), and Annex [X]-D (Application of Article 3 and Article 4 to Myanmar).]

³ Examples of such practices may include: a) anti-competitive agreements; b) abuse of dominant position; and c) anti-competitive mergers and acquisitions.

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party's competition laws and regulations shall be transparent and ~~{NZ: necessary for} [ASEAN/AU/CN/JP/IN/KR: based on grounds of] public policy or public interest, [NZ: objectives] [NZ: that do not of themselves undermine the objectives of this Chapter] [NZ: and no broader than necessary to achieve those objectives.]~~

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

7. ~~Alternative 1: [ASEAN/AU/CN/IN/NZ: Each Party shall make public the grounds for any final decision or order to impose a sanction or remedy under its competition law and regulations, and any appeal therefrom, subject to:~~

- (a) (i) its domestic laws and regulations;
- (ii) its need to safeguard confidential information; or
- (iii) its need to safeguard information on the grounds of public policy or public interest; and

(b) redactions from the final decision or order on the grounds in any of (a)(i) to (iii) above.]

~~Alternative 2 [JP/KR: Each Party shall, in accordance with its domestic laws and regulations and, subject to the need to protect confidential information, make public the grounds for any final decision or order to impose a sanction or remedy under its competition law and regulations, and any appeal therefrom.]~~

8. Each Party shall ensure that before a sanction or remedy is imposed on any person or entity for breaching its competition laws or regulations, that person or entity is given the reasons, which wherever possible should be in writing, for the allegations

that its competition laws or regulations have been breached, and a fair opportunity to be heard and to present evidence.

9. ~~ASEAN/AU/CN~~ Each Party shall, subject to any redactions necessary to safeguard confidential information, in accordance with its domestic laws and regulations and subject to any redactions necessary to safeguard confidential information, make the grounds for any final decision or order, to impose a sanction or remedy under its competition law and regulations, ~~ASEAN/AU/CN/JP/KR/NZ~~⁴, and any appeal therefrom, available to the person or entity subject to that imposition of the sanction or remedy.]

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10. Each party shall ensure any person or entity subject to the imposition of a sanction or remedy under its competition laws and regulations has access to an independent review or appeal of that sanction or remedy.

11. Each Party recognises the importance of timeliness in handling of competition cases.

Article 4 Cooperation⁵

1. The Parties recognize the importance of cooperation between or among their respective competition authorities to promote effective competition law enforcement. To this end, the Parties may cooperate on issues relating to competition law enforcement, through their competition authorities, in a manner compatible with

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⁴ [AU: This paragraph shall not apply in relation to a jury verdict in a criminal trial, only apply to Australia for non-criminal matters]

⁵ This Article is subject to Annex [X]-A (Application of Article 3 and Article 4 to Cambodia), Annex [X]-B (Application of Article 3 and Article 4 to Brunei Darussalam), Annex [X]-C (Application of Article 3 and Article 4 to Lao PDR), and Annex [X]-D (Application of Article 3 and Article 4 to Myanmar).

their respective laws, regulations, and important interests, and within their available resources. Such cooperation includes:

(a) notification by a Party to another Party of its competition law enforcement activities that it considers may substantially affect the important interests of the other Party, as promptly as reasonably possible. [JP: ⁶]

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~~(f) [JP: The notification pursuant to sub-paragraph (a) shall be confirmed in writing through the diplomatic channel. Such confirmation shall be made as promptly as practically possible after the communication concerned among the competition authorities of the Parties.]~~

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(b) upon request, discussion between or among Parties to address any matter relating to competition law enforcement that substantially affects the important interest of the requesting Party.

(c) upon request, exchange of information between or among Parties to foster understanding or to facilitate effective competition law enforcement.

(d) upon request, coordination in enforcement actions between or among Parties in relation to the same or related anti-competitive activities.

Article 5 Confidentiality of Information

~~⁶ In the case of notification to Japan pursuant to this sub-paragraph (a), [JP: the notification should be confirmed in writing through the diplomatic channel. Such confirmation should be made as promptly as practically possible after the communication concerned among the competition authorities of the Parties.]~~

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1. This Chapter shall not require the sharing of information by a Party, which is contrary to the Party's laws, regulations and important interests.⁷
2. Where a Party requests for confidential information under this Chapter, the requesting Party shall notify the providing Party with: i) the purpose of the request, ii) use of the requested information, and iii) any domestic 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. The sharing of confidential information between two Parties and the use of such information, ~~[JP: including for use in criminal proceedings,]~~ shall be based on mutually agreed terms and conditions between the Parties.
4. If information shared under this Chapter is shared on a confidential basis, then, except to comply with domestic 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 authorized by the Party providing the information;
 - (b)(c) [ASEAN/AU/CN/IN/JP/NZ: not use it for evidence in criminal proceedings carried out by a court or a judge unless, upon request of the Party receiving the information, such information was provided for such use in criminal proceedings through the diplomatic channel or other channel established in accordance with the laws of both Parties.]

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⁷ ~~[JP: For greater clarity, a Party receiving information shall not use it as evidence for presentation in criminal proceedings carried out by court or a judge. However, this shall not prejudice the rights of the Parties to provide information for use in criminal proceedings carried out by court or a judge, through diplomatic channels or other channels established under the laws or treaties of both Parties or where it is mutually agreed by both Parties.]~~

(e)(d) 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.

~~5. [JP: Pursuant to Article 5(4), where the use or disclosure of such information is necessary to comply with the domestic laws and regulations of the receiving Party, but will result in any of Articles 5(4)(a-d) of this Chapter not being met, that Party shall notify the other Party providing those information wherever possible before such use or disclosure is made.]~~

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~~6. [JP: Notwithstanding Article 5(4), a Party receiving information from another Party shall not use it for criminal proceedings, carried out by a court or a judge, unless, upon request of the Party such information was provided for use in such criminal proceedings⁸ through the diplomatic channel or other channel established pursuant to any mutual legal assistance treaty in criminal matters between Parties in accordance with the laws of both Parties].~~

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Article 6 Technical Cooperation and Capacity Building

1. The Parties agree that it is in their common interest to work together, multilaterally or bilaterally, on technical cooperation activities to build necessary capacities to

⁸ For greater certainty, this paragraph does not prevent the Party receiving such information from disclosing it to the accused in its criminal proceedings to ensure the accused's right to a fair trial in accordance with its domestic laws and regulations.

strengthen competition policy development and competition law enforcement, taking into account the availability of resources of the Parties. Technical cooperation activities may include:

- (a) sharing of relevant experiences and non-confidential information on development and implementation of competition policy and law;
- (b) exchange of consultants and experts on competition law and policy;
- (c) exchange of officials of competition authorities for training purposes;
- (d) participation of officials of competition authorities in advocacy programmes;
- and
- (e) other activities as agreed by the Parties.

Article 7
Non-Application of Dispute Settlement

1. The Chapter (Dispute Settlement) shall not apply to matters arising under this Chapter.

Article 8
Consultations

1. In order to foster understanding between the Parties, or to address specific matters that arise under this Chapter, on request of another Party, a Party shall enter into consultations with the requesting Party. In its request, the requesting Party shall indicate, if relevant, how the matter affects its important interests, including trade or investment between the Parties. The Party addressed shall accord full and sympathetic consideration to the concerns of the requesting Party.

[Article 9

Review]

1. [The provisions of this Chapter may be reviewed by the Parties at an appropriate time after this agreement having come into effect.]

**Article 10
Consumer Protection**

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1. ~~[ASEAN/AU/CN/IN/KR/NZ]~~ The Parties recognize the importance of consumer protection laws and enforcement as well as cooperation between the Parties on matters related to consumer protection, ~~[AU including consumer product safety]~~ in order to achieve the objectives set out in Article 1 (Objectives).
2. Each Party shall adopt or maintain domestic laws or 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.
4. The Parties may cooperate on matters of mutual interest related to consumer protection. Such cooperation shall be in a manner compatible with the parties' respective laws and regulations and within their available resources.]

**[ASEAN/AU/CN/JP/KR: Article 11
Committee on Competition]**

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1. ~~[ASEAN/AU/CN/JP/KR]~~ ~~[ASEAN/AU]~~ To facilitate the achievement of the objectives of this Chapter, the Parties hereby establish a Committee on Competition (Competition Committee).

2. The functions of the Competition Committee⁹ shall include:

- (a) monitoring the implementation of this Chapter;
- (b) reporting as required to the RCEP Joint Committee on the implementation of this Chapter and competition-related developments and activities of the Parties pursuant to this Chapter, including measures to fulfil obligations pursuant to transitional arrangements;
- ~~(c) fostering effective and efficient cooperation and dialogue among RCEP parties on competition-related issues of pursuant to this Chapter;~~
- ~~(c)(d) fostering cooperation among RCEP Parties on including technical assistance assistance and capacity building activities pursuant to Article 6 of this Chapter]; and~~
- ~~(d) [ASEAN: referring any matters pursuant to this Chapter to the RCEP Joint Committee for advice;]~~
- ~~(e) [AU: reviewing this Chapter as directed by the RCEP Joint Committee]; and~~
- ~~(f)(e) [ASEAN/AU: other functions as identified by the Parties, or as directed or approved by the RCEP Joint Committee, including reviewing of the Chapter.]~~

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3. In carrying out the functions outlined in Article 11 (Committee on Competition) paragraph 2, the Competition Committee shall take into consideration the availability of resources of Parties.

4. [ASEAN/AU: The Competition Committee shall be constituted as a subsidiary body and meet in a manner determined by the RCEP Joint Committee].]

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⁹ For the avoidance of doubt, this Committee shall not be used as a mechanism to settle disputes for any matters arising from this Chapter.

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