

Annex 7

Annex on Competition Policy and Consumer Protection

Under Article 23(3) of the Agreement

Article 1

1. The Tripartite Member States recognise the importance of fair competition in promoting trade, supporting industrialisation and promoting consumer welfare and note that fair competition creates a level playing field by all players, large and small, and therefore promotes a good working environment for companies and businesses particularly the micro, small and medium scale enterprises in this way promoting investment in the region.
2. The Tripartite Member States therefore shall, in their trade relations, work together in tackling anti-competitive practices, regulating mergers and acquisitions, and protecting consumers from unfair trade practices.

Article 2

Prohibition of Anti-competitive Business Behaviour

1. Tripartite Member States shall prohibit all agreements between undertakings, decisions by associations of undertakings and concerted practices which:
 - (a) may affect trade between Tripartite Member States; and
 - (b) have as their object or effect the prevention, restriction or distortion of competition within the Tripartite Region.
2. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:
 - (a) any agreement or category thereof between undertakings,
 - (b) any decision by associations of undertakings, and
 - (c) any concerted practice or category thereofwhich contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
 - (i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
 - (ii) afford such undertakings the possibility of eliminating competition in respect of a substantial market for the goods or services in question.

Article 3

Determination of a Dominant Position

For the purposes of this Agreement:

- (a) an undertaking holds a dominant position in a market if by itself or together with an interconnected company, it occupies such a position of economic

strength as will enable it to operate in the market without effective constraints from its competitors or potential competitors;

- (b) any two companies shall be treated as interconnected companies if one of them is a subsidiary or associate of the other, or both of them are subsidiaries of the same parent company; and
- (c) a “dominant position” means an ability to influence unilaterally price or output in the Tripartite Region or any part of it.

Article 4

Abuse of a Dominant Position

1. Any abuse by one or more undertakings of a dominant position within the Tripartite Member States or in a substantial part of it shall be prohibited as incompatible with the Tripartite Region in so far as it may affect trade between Tripartite Member States, if it:
 - (a) restricts, or is likely to restrict, the entry of any undertaking into a market;
 - (b) prevents or deters, or is likely to prevent or deter, any undertaking from engaging in competition in a market;
 - (c) eliminates or removes, or is likely to eliminate or remove, any undertaking from a market;
 - (d) directly or indirectly imposes unfair purchase or selling prices or other restrictive practices;
 - (e) limits the production of goods or services for a market to the prejudice of consumers;
 - (f) as a party to an agreement makes the conclusion of such agreement subject to acceptance by another party of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the agreement; or
 - (g) engages in any business activity that results in the exploitation of its customers or suppliers, so as to frustrate the benefits expected from the establishment of the Tripartite Free Trade Area.

2. In determining whether an undertaking is in a dominant position, consideration shall be given to the:
 - (a) relevant market defined in terms of the product and the geographic context;
 - (b) level of actual or potential competition in terms of number of competitors, production capacity and product demand;
 - (c) barriers to entry of competitors; and
 - (d) history of competition and rivalry between competitors in the sector of activity.

Article 5
Prohibited Practices

1. It shall be an offence for undertakings engaged in the market in rival or potentially rival activities to engage in the practices appearing in paragraph 3 of this Article:

Provided that this paragraph shall not apply where undertakings are dealing with each other in the context of a common entity wherein they are under common control or where they are otherwise not able to act independently of each other.

2. This Article applies to formal, informal, written and unwritten agreements, arrangements and understandings.
3. For the purpose of paragraph 1, the following are prohibited:
 - (a) agreements fixing prices, which agreements hinder or prevent the sale or supply or purchase of goods or services between persons, or limit or restrict the terms and conditions of sale or supply or purchase between persons, or limit or restrict the terms and conditions of sale or supply or purchase between persons engaged in the sale of purchased goods or services;
 - (b) collusive tendering and bid-rigging;
 - (c) market or customer allocation agreements;
 - (d) allocation by quota as to sales and production;
 - (e) collective action to enforce arrangements;
 - (f) concerted refusals to supply goods or services to a potential purchaser, or to purchase goods or services from a potential supplier; or
 - (g) collective denials of access to an arrangement or association which is crucial to competition.

Article 6
Mergers and Acquisitions

1. A person intending to execute a merger or an acquisition shall notify the competent authorities of such merger or acquisition.
2. The notification shall be made promptly upon the conclusion of the agreement in respect of the merger or acquisition.
3. The notification shall be made by the undertaking acquiring control through the merger or acquisition.
4. A merger or acquisition referred to in paragraph 1 shall not come into effect before the competent authorities have given approval of the proposed merger or acquisition.
5. The competent authorities shall notify the person concerned under paragraph 1 of its decision within forty five days.
6. If the competent authority has not communicated its decision within the period the period of forty five days, the merger or acquisition may be implemented.

7. Any transaction carried out in contravention of this paragraph shall be void.
8. Any person who contravenes sub-paragraph (a) of this paragraph commits an offence.
9. A merger or acquisition shall not be approved by the competent authority if that merger or acquisition leads to the creation, or strengthening of an already subsisting dominant position, and thereby substantially lessening competition in the relevant market.
10. In determining whether a merger or acquisition may lead to the creation or the strengthening of a dominant position in the relevant market and thereby substantially lessening competition in the relevant market, the competent authority shall take into account all relevant competitive factors, and in particular it shall consider:
 - (a) the competitive structure of all markets affected by the merger or acquisition, including the potential competition from both inside and outside the Tripartite Region in light of legal or other barriers to entry;
 - (b) the undertakings in the markets affected, their control of essential facilities, their integration in upstream and downstream markets, and their financial resources;
 - (c) the competitors and the alternatives available to suppliers and consumers; and
 - (d) any pro-competitive effects of the merger or acquisition which may outweigh the harmful effects on competition.
11. Where the competent authority objects to a merger or an acquisition the Tripartite Council may, upon appeal by the undertaking or undertakings concerned, approve the merger or acquisition.
12. The Tripartite Council may approve a merger or acquisition only if the Tripartite Council is satisfied that the merger or acquisition is to fulfil an overriding public interest.

Article 7

Consumer Protection

1. It shall be prohibited for any one, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services, to:
 - (a) falsely represent that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use;
 - (b) falsely represent that services are of a particular standard, quality, value or grade;
 - (c) falsely represent that goods are new;
 - (d) falsely represent that a particular person or entity has agreed to acquire goods or services;

- (e) falsely represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have;
 - (f) represent that the supplier has a sponsorship, approval or affiliation it does not have;
 - (g) make a false or misleading representation with respect to the price of goods or services;
 - (h) make a false or misleading representation concerning the availability of facilities for the repair of goods or of spare parts for goods;
 - (i) make a false or misleading representation concerning the place of origin of goods;
 - (j) make a false or misleading representation concerning the need for any goods or services; or
 - (k) make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.
2. It shall be prohibited for any one, in the supply of goods that are intended to be used, or are of a kind likely to be used, by a consumer if the goods are of a kind:
- (a) in respect of which there is a prescribed consumer product safety standard and which do not comply with that standard;
 - (b) in respect of which there is in force a notice under a law in a Tripartite Member State declaring the goods to be unsafe goods; or
 - (c) in respect of which there is in force a notice under a law in a Tripartite Member State imposing a permanent ban on the goods.
3. The person shall be deemed for the purposes of this Agreement to have suffered the loss or damage by the supplying of the goods where:
- (a) the supplying of goods by any one constitutes a contravention of this paragraph by reason that the goods do not comply with a prescribed consumer product safety standard;
 - (b) a person suffers loss or damage by reason of a defect in, or a dangerous characteristic of, the goods or by reason of not having particular information in relation to the goods;

- (c) the person would not have suffered the loss or damage if the goods had complied with that standard;
 - (d) the supplying of goods by a person constitutes a contravention of this Agreement by reason that there is in force a notice under this Article declaring the goods to be unsafe goods or imposing a permanent ban on the goods; and
 - (e) a person suffers loss or damage by reason of a defect in, or a dangerous characteristic of the goods or by reason of not having particular information as to a characteristic of the goods.
4. It is prohibited for anyone to supply goods that are intended to be used, or are of a kind likely to be used, by a consumer, being goods of a kind in respect of which a consumer product information standard has been prescribed, unless the person has complied with that information standard in relation to those goods.
5. Tripartite Member States' Standards, Metrology Conformity Assessment and Accreditation (SMCA) structures shall, in respect of goods of a particular kind, prescribe a consumer product information standard consisting of such requirements as to:
- (a) the disclosure of information relating to the performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods; and
 - (b) the form and manner in which that information is to be disclosed on or with the goods
- as are reasonably necessary to give persons using the goods information as to the quantity, quality, nature or value of the goods.
6. Paragraph 5 does not apply to goods that are intended to be used outside the Tripartite Member States.
7. If there is applied to goods:
- (a) a statement that the goods are for export only; or
 - (b) a statement indicating by the use of words that the goods are intended to be used outside the Tripartite Region;
- it shall be presumed for the purposes of this paragraph, unless the contrary is established, that the goods are intended to be so used.
8. For the purposes of paragraph 7, a statement shall be deemed to be applied to goods if:
- (a) the statement is woven in, impressed on, worked into or annexed or affixed to the goods; or
 - (b) the statement is applied to a covering, label, reel or thing in or with which the goods are supplied.
9. A reference in paragraph 8 to a covering includes a reference to a stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper and a reference in that paragraph to a label includes a reference to a band or ticket.

10. The person shall be deemed, for the purposes of this Agreement, to have suffered loss or damage by the supplying of the goods where:
 - (a) the supplying of goods by a person constitutes a contravention of this paragraph by reason that the person has not complied with a prescribed consumer product information standard in relation to the goods;
 - (b) a person suffers loss or damage by reason of not having particular information in relation to the goods; and
 - (c) the person would not have suffered the loss or damage if the person had complied with that standard in relation to the goods.

Article 8 Sanctions

1. Any breach of the provisions of this agreement relating to competition policy and consumer protection shall be reported to the relevant national or regional competition policy or consumer protection law enforcement authority by the Tripartite Secretariat.
2. Sanctions for such breach shall be imposed by the respective competition policy or consumer protection law enforcement to which the breach has been reported.

Article 9 Implementation

1. The Tripartite Member States shall ensure that they have national and regional laws in force addressing restrictions on competition and consumer welfare within their jurisdiction, and a body designated for the implementation of such laws.
2. Upon entry into force of this Agreement, Tripartite Member States that will not have adopted such laws, nor designated a body for their implementation shall do so within a period of five years.

Article 10 Co-operation and Exchange of Information

1. The competition authority of one Tripartite Member State may inform the other Member's competition authority of its willingness to co-operate with respect to enforcement activity. This co-operation shall not prevent the Tripartite Member States from taking autonomous decisions.
2. With a view to facilitating the effective application of their respective competition laws, the competition authorities may exchange non-confidential information. All exchange of information shall be subject to the standards of confidentiality applicable in the Tripartite Member States affected.

Article 11 Tripartite Competition Policy and Consumer Protection Forum

1. The Tripartite Member States hereby establish a Competition Policy and Consumer Protection Forum.

2. The Forum shall serve as a platform for sharing information, exchange of experience and expertise. The Forum shall be a platform for undertaking peer review and monitoring the implementation of competition policy and consumer protection laws across the region.
3. Membership shall be voluntary and shall be open to all national and regional competition authorities in the Tripartite Region.
4. The Forum shall establish its own rules of procedures.

Article 12

Co-operation between National and Regional Authorities for Competition

Tripartite Member States shall adopt a framework for closer co-operation between Tripartite Member States and between the regional and national authorities in the form of notification, exchange of information, co-ordination of actions, and consultation among the Tripartite Member States.