

**CHAPTER 16**  
**COMPETITION POLICY**

**Article 16.1: Competition Law and Authorities and Anticompetitive Business Conduct<sup>1</sup>**

1. Each Party shall adopt or maintain national competition laws that proscribe anticompetitive business conduct, with the objective of promoting economic efficiency and consumer welfare, and shall take appropriate action with respect to that conduct. These laws should take into account the *APEC Principles to Enhance Competition and Regulatory Reform*, done at Auckland, September 13, 1999.

2. Each Party shall endeavour to apply its national competition laws to all commercial activities in its territory.<sup>2</sup> However, each Party may provide for certain exemptions from the application of its national competition laws provided that those exemptions are transparent and are based on public policy grounds or public interest grounds.

3. Each Party shall maintain an authority or authorities responsible for the enforcement of its national competition laws (national competition authorities). Each Party shall provide that it is the enforcement policy of that authority or authorities to act in accordance with the objectives set out in paragraph 1 and not to discriminate on the basis of nationality.

**Article 16.2: Procedural Fairness in Competition Law Enforcement<sup>3</sup>**

1. Each Party shall ensure that before it imposes a sanction or remedy against a person for violating its national competition laws, it affords that person:

- (a) information about the national competition authority's competition concerns;

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<sup>1</sup> This Article is subject to Annex 16-A (Application of Article 16.2, Article 16.3 and Article 16.4 to Brunei Darussalam).

<sup>2</sup> For greater certainty, nothing in paragraph 2 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.

<sup>3</sup> This Article is subject to Annex 16-A (Application of Article 16.2, Article 16.3 and Article 16.4 to Brunei Darussalam).

## 第 16 章

### 竞争政策

#### 第 16.1 条 竞争法和主管机关与限制竞争商业行为<sup>1</sup>

1. 每一缔约方应采用或维持禁止限制竞争商业行为的国家竞争法，以提高经济效率和消费者福利，并应针对该行为采取适当行动。这些法律应考虑 1999 年 9 月 13 日订于奥克兰的《APEC 关于加强竞争与监管改革的原则》。
2. 每一缔约方应努力将国家竞争法适用于其领土内的所有商业活动。<sup>2</sup>然而，每一缔约方可规定某些免于适用其国家竞争法的情况，只要这些免于适用情况是透明的且基于公共政策理由或公共利益理由。
3. 每一缔约方应设立一个或多个负责执行其国家竞争法的主管机关(国家竞争主管机关)。每一缔约方应规定，其一个或多个主管机关的执行政策依照第 1 款中所列目标行事且不因国籍不同而有所歧视。

#### 第 16.2 条 竞争法执行中的程序公正<sup>3</sup>

1. 每一缔约方应保证在对一人因违反其国家竞争法而实施处罚或救济之前，向其提供：
  - (a) 关于国家竞争主管机关的竞争关注的信息；

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<sup>1</sup> 本条遵守合附件 16-A(第 16.2 条、第 16.3 条和第 16.4 条对文莱达鲁萨兰国的适用)。

<sup>2</sup> 为进一步明确，第 2 款中任何内容不得理解为阻止一缔约方将其竞争法适用于在其管辖范围内产生限制竞争影响的境外商业活动。

<sup>3</sup> 本条需符合附件 16-A(第 16.2 条、第 16.3 条和第 16.4 条对文莱达鲁萨兰国的适用)。

- (b) a reasonable opportunity to be represented by counsel; 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 an interim sanction or remedy.

In particular, each Party shall afford that person a reasonable opportunity to present evidence or testimony in its defence, including: if applicable, to offer the analysis of a properly qualified expert, to cross-examine any testifying witness; and to review and rebut the evidence introduced in the enforcement proceeding<sup>4</sup>.

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

3. Each Party shall adopt or maintain rules of procedure and evidence that apply to enforcement proceedings concerning alleged violations of its national competition laws and the determination of sanctions and remedies thereunder. These rules shall include procedures for introducing evidence, including expert evidence if applicable, and shall apply equally to all parties to a proceeding.

4. Each Party shall provide a person that is subject to the imposition of a sanction or remedy for violation of its national competition laws with the opportunity to seek review of the sanction or remedy, including review of alleged substantive or procedural errors, in a court or other independent tribunal established under that Party's laws.

5. Each Party shall authorise its national competition authorities to resolve alleged violations 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 judicial or independent tribunal approval or a public comment period before becoming final.

6. If a Party's national competition authority issues a public notice that reveals the existence of a pending or ongoing investigation, that authority 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 laws.

7. If a Party's national competition authority alleges a violation of its national competition laws, that authority shall be responsible for establishing the

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<sup>4</sup> For the purposes of this Article, "enforcement proceedings" means judicial or administrative proceedings following an investigation into the alleged violation of the competition laws.

- (b) 由律师代理的合理机会；以及
- (c) 听取意见和提交证据抗辩的合理机会，但是一缔约方可规定在其实实施临时处罚或救济后的一合理时间内听取该人的意见并允许其提交证据。

特别是，每一缔约方应向该人提供提交证据或证词进行抗辩的合理机会，包括：如适用，提供合格专家的分析意见，盘问任何作证证人，以及审阅和反驳在执行程序<sup>4</sup>中引入的证据。

2. 每一缔约方应采取或设立书面程序，据以开展国家竞争法调查。如未对这些调查规定最终期限，则每一缔约方国家竞争主管机关应努力在一合理时限内开展调查。

3. 每一缔约方应采取或设立程序和证据规则，适用于对涉嫌违反其国家竞争法行为的执行程序及据此作出的处罚和救济决定。这些规则应包括证据引入程序，如适用，应包括专家证据，并应平等适用于程序中的所有当事方。

4. 每一缔约方应向因违反其国家竞争法而被施以处罚或救济的人提供寻求对处罚或救济进行审查的机会，包括在法院或根据该缔约方法律设立的其他独立法庭中对所主张的实体或程序错误进行审查。

5. 每一缔约方应授权其国家竞争主管机关，经该机关和执法行动相对人同意，自愿解决涉嫌违法行为。一缔约方可规定此类自愿解决需获得法院或独立法庭批准，或在最终解决前设置公众评论期。

6. 如一缔约方的国家竞争主管机关发布公告，披露一项未决或正在进行的调查，则该机关应避免在公告中暗示公告中所指之人已经从事涉嫌行为或已经违反该缔约方的国家竞争法。

7. 如一缔约方的国家竞争主管机关指控存在违反其国家竞争法的行为，则该机关应在执法程序中负责就其指控的违法行为确

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<sup>4</sup> 就本条而言，“执行程序”指在对涉嫌违反竞争法的行为进行调查后的司法审查或行政复议程序。

legal and factual basis for the alleged violation in an enforcement proceeding.<sup>5</sup>

8. Each Party shall provide for the protection of business confidential information, and other information treated as confidential under its law, obtained by its national competition authorities during the investigative process. If a Party's national competition authority uses or intends to use that information in an enforcement proceeding, the Party shall, if it is permissible under its law and as appropriate, provide a procedure to allow the person under investigation timely access to information that is necessary to prepare an adequate defence to the national competition authority's allegations.

9. Each Party shall ensure that its national competition authorities afford a person under investigation for possible violation of the national competition laws of that Party reasonable opportunity to consult with those competition authorities with respect to significant legal, factual or procedural issues that arise during the investigation.

### **Article 16.3: Private Rights of Action<sup>6</sup>**

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 laws, either independently or following a finding of violation by a national competition authority.

2. Recognising that a private right of action is an important supplement to the public enforcement of national competition laws, each Party should adopt or maintain laws or other measures that provide an independent private right of action.

3. If a Party does not adopt or maintain laws or other measures that provide an independent private right of action, the Party shall adopt or maintain laws or other measures that provide a right that allows a person:

- (a) to request that the national competition authority initiate an investigation into an alleged violation of national competition laws; and
- (b) to seek redress from a court or other independent tribunal following a finding of violation by the national competition

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<sup>5</sup> Nothing in this paragraph shall prevent a Party from requiring that a person against whom such an allegation is made be responsible for establishing certain elements in defence of the allegation.

<sup>6</sup> This Article is subject to Annex 16-A (Application of Article 16.2, Article 16.3 and Article 16.4 to Brunei Darussalam).

定法律和事实基础。<sup>5</sup>

8. 每一缔约方应规定保护国家竞争主管机关在调查过程中获得的商业机密信息和根据其法律按机密信息处理的其他信息。如一缔约方的国家竞争主管机关在执法程序中使用或有意使用该信息，则在其法律允许且适当的情况下，该缔约方应规定一程序，允许被调查人可及时获得针对国家竞争主管机关的指控准备充分抗辩的必要信息。

9. 每一缔约方应保证其国家竞争主管机关向可能违反该缔约方国家竞争法的被调查人提供合理机会，就调查过程中产生的重大法律、事实或程序问题咨询竞争主管机关。

### 第 16.3 条 私人诉权<sup>6</sup>

1. 就本条而言，“私人诉权”指一人独立或在国家竞争主管机关作出违法认定后，向法院或其他独立法庭寻求就因违反国家竞争法的行为对其造成的损害进行赔偿的权利，包括禁令、金钱救济或其他救济。

2. 认识到私人诉权是对国家竞争法公共执法的重要补充，每一缔约方应采用或维持规定独立的私人诉权的法律或其他措施。

3. 如一缔约方未采用或维持规定独立的私人诉权的法律或其他措施，则该缔约方应采用或维持法律或其他措施，赋予一人采取下列行动的权利：

(a) 请求国家竞争主管机关对涉嫌违反国家竞争法的行为发起调查；及

(b) 在国内竞争主管机关作出违法行为认定后向法院或

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<sup>5</sup> 本款中任何内容不阻止一缔约方要求被指控的人在对抗辩时负责证明特定要件。

<sup>6</sup> 本条需遵守附件 16-A(第 16.2 条、第 16.3 条和第 16.4 条对文莱达鲁萨兰国的适用)。

authority.

4. Each Party shall ensure that a right provided pursuant to paragraph 2 or 3 is available to persons of another Party on terms that are no less favourable than those available to its own persons.

5. A Party may establish reasonable criteria for the exercise of any rights it creates or maintains in accordance with this Article.

#### **Article 16.4: Cooperation**

1. The Parties recognise the importance of cooperation and coordination between their respective national competition authorities to foster effective competition law enforcement in the free trade area. Accordingly, each Party shall:

- (a) cooperate in the area of competition policy by exchanging information on the development of competition policy; and
- (b) cooperate, as appropriate, on issues of competition law enforcement, including through notification, consultation and the exchange of information.

2. A Party's national competition authorities may consider entering into a cooperation arrangement or agreement with the competition authorities of another Party that sets out mutually agreed terms of cooperation.

3. The Parties agree to cooperate in a manner compatible with their respective laws, regulations and important interests, and within their reasonably available resources.

#### **Article 16.5: Technical Cooperation**

Recognising that the Parties can benefit by sharing their diverse experience in developing, applying and enforcing competition law and in developing and implementing competition policies, the Parties shall consider undertaking mutually agreed technical cooperation activities, subject to available resources, including:

- (a) providing advice or training on relevant issues, including through the exchange of officials;
- (b) exchanging information and experiences on competition advocacy, including ways to promote a culture of competition; and
- (c) assisting a Party as it implements a new national competition law.

其他独立法庭寻求赔偿。

4. 每一缔约方应保证根据第 2 款或第 3 款规定的权利应以不低于该缔约方本国人获得该权利的条件使另一缔约方的人获得。
5. 缔约方可制订合理标准，以行使依照本条所产生或维持的任何权利。

### 第 16.4 条 合作

1. 缔约方认识到各自国家竞争主管机关之间的合作和协调对在本自由贸易区内促进竞争法有效执行的重要性。为此，每一缔约方应：
  - (a) 通过交流关于制定竞争政策的信息在竞争政策领域进行合作；及
  - (b) 酌情就竞争法执行问题进行合作，包括通知、磋商和信息交流。
2. 一缔约方的国家竞争主管机关可考虑与另一缔约方的竞争主管机关订立列出双方议定的合作条款的合作安排或协议。
3. 缔约方同意以与各自法律、法规和重要利益相一致的方式并在各自可合理获得的资源范围内开展合作。

### 第 16.5 条 技术合作

认识到缔约方可从分享各自在制定、适用和执行竞争法及制定和实施竞争政策过程中所积累的不同经验中获益，缔约方应考虑在可获得的资源范围内开展相互同意的技术合作活动，包括：

- (a) 就相关问题提供建议或培训，包括通过官员交流；
- (b) 交流关于竞争宣传的信息和经验，包括促进竞争文化的途径；以及
- (c) 在一缔约方实施其新的国家竞争法时提供援助。



**Article 16.6: Consumer Protection**

1. The Parties recognise the importance of consumer protection policy and enforcement to creating efficient and competitive markets and enhancing consumer welfare in the free trade area.

2. For the purposes of this Article, fraudulent and deceptive commercial activities refers to those fraudulent and deceptive commercial practices that cause actual harm to consumers, or that pose an imminent threat of such harm if not prevented, for example:

- (a) a practice of making misrepresentations of material fact, including implied factual misrepresentations, that cause significant detriment to the economic interests of misled consumers;
- (b) a practice of failing to deliver products or provide services to consumers after the consumers are charged; or
- (c) a practice of charging or debiting consumers' financial, telephone or other accounts without authorisation.

3. Each Party shall adopt or maintain consumer protection laws or other laws or regulations that proscribe fraudulent and deceptive commercial activities.<sup>7</sup>

4. The Parties recognise that fraudulent and deceptive commercial activities increasingly transcend national borders and that cooperation and coordination between the Parties is desirable to effectively address these activities.

5. Accordingly, the Parties shall promote, as appropriate, cooperation and coordination on matters of mutual interest related to fraudulent and deceptive commercial activities, including in the enforcement of their consumer protection laws.

6. The Parties shall endeavour to cooperate and coordinate on the matters set out in this Article through the relevant national public bodies or officials responsible for consumer protection policy, laws or enforcement, as determined by each Party and compatible with their respective laws, regulations and important interests and within their reasonably available resources.

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<sup>7</sup> For greater certainty, the laws or regulations a Party adopts or maintains to proscribe these activities can be civil or criminal in nature.

## 第 16.6 条 消费者保护

1. 缔约方认识到消费者保护政策和执法对在本自由贸易区内建设高效率和竞争性市场及提高消费者福利的重要性。
2. 就本条而言，欺诈和欺骗性商业活动指对消费者造成实际损害或如不加制止即会造成此种损害的迫近威胁的欺诈和欺骗性商业做法，例如：
  - (a) 导致被误导的消费者的经济利益明显受损的对重要事实进行虚假陈述的做法，包括暗示性事实虚假陈述；
  - (b) 在收取消费者费用后未向消费者交付产品或服务的做法；或
  - (c) 未经授权而对消费者财务、电话或其他账户收费或借记的做法。
3. 每一缔约方均应采取或维持消费者保护法或其他法律或法规，以禁止欺诈或欺骗性商业行为。<sup>7</sup>
4. 缔约方认识到跨越国境的欺诈和欺骗性商业行为不断增加，宜通过缔约方之间的合作和协调有效应对这些活动。
5. 因此，缔约方应酌情推动就涉及欺诈和欺骗性商业行为的具有共同利益的问题开展合作和协调，包括在各自消费者保护法的执行方面。
6. 缔约方应努力通过其确定的负责消费者保护政策、法律或执行的相关国家公共机构或官员，在与各自法律、法规和重要利益相一致的前提下，在各自合理可获得的资源范围内，就本条所列事项开展合作和协调。

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<sup>7</sup> 为进一步明确，一缔约方采用或维持的禁止这些活动的法律或法规可以属民事或刑事性质。

**Article 16.7: Transparency**

1. The Parties recognise the value of making their competition enforcement policies as transparent as possible.
2. Recognising the value of the *APEC Competition Law and Policy Database* in enhancing the transparency of national competition laws, policies and enforcement activities, each Party shall endeavour to maintain and update its information on that database.
3. On request of another Party, a Party shall make available to the requesting Party public information concerning:
  - (a) its competition law enforcement policies and practices; and
  - (b) exemptions and immunities to its national competition laws, provided that the request specifies the particular good or service and market of concern and includes information explaining how the exemption or immunity may hinder trade or investment between the Parties.
4. Each Party shall ensure that a final decision finding a violation of its national competition laws is made in writing and sets out, in non-criminal matters, findings of fact and the reasoning, including legal and, if applicable, economic analysis, on which the decision is based.
5. Each Party shall further ensure that a final decision referred to in paragraph 4 and any order implementing that decision are published, or if publication is not practicable, are otherwise made available to the public in a manner that enables interested persons and other Parties to become acquainted with them. 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 law.

**Article 16.8: Consultations**

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 trade or investment between the Parties. The Party addressed shall accord full and sympathetic consideration to the concerns of the requesting Party.

## 第 16.7 条 透明度

1. 缔约方认识到使其竞争执法政策尽可能透明的重要性。
2. 认识到 APEC 竞争法律与政策数据库在提高各国国家竞争法、政策和执法活动透明度方面的价值，每一缔约方应努力维护和更新该数据库的信息。
3. 应另一缔约方请求，一缔约方应向该提出请求的缔约方提供有关下列内容的公开信息：
  - (a) 其竞争法的执法政策和实践；及
  - (b) 对其国家竞争法的免于适用和责任豁免，只要该请求列明特定货物或服务 and 关注的市场并包括说明该免于适用或责任豁免如何阻碍缔约方之间的贸易或投资的信息。
4. 每一缔约方应保证，认定违反其国家竞争法的最终决定以书面形式作出，对于非刑事案件，列出事实认定和论证过程，包括作出决定所根据的法律分析，且如适用，包括经济分析。
5. 每一缔约方应进一步保证，公布第 4 款中所指的最终决定及执行该决定的任何命令，或在公布不可行的情况下，以使利害关系人和其他缔约方知晓的其他方式向公众提供。每一缔约方应保证，向公众提供的决定或命令的版本不包括受其法律保护不得公开披露的机密信息。

## 第 16.8 条 磋商

为促进缔约方之间的相互了解，或为处理本章中的具体事项，应另一缔约方请求，一缔约方应与提出请求的缔约方进行磋商。在请求中，提出请求的缔约方应表明，如相关，该事项如何影响缔约方之间的贸易或投资。被请求的缔约方应对提出请求的缔约方的关注给予充分和积极考虑。

**Article 16.9: Non-Application of Dispute Settlement**

No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for any matter arising under this Chapter.

### 第 16.9 条 争端解决的不适用

缔约方不得对本章下产生的任何事项援用第 28 章(争端解决)下的争端解决。

**ANNEX 16-A:****APPLICATION OF ARTICLE 16.2 (PROCEDURAL FAIRNESS IN COMPETITION LAW ENFORCEMENT), ARTICLE 16.3 (PRIVATE RIGHTS OF ACTION) AND ARTICLE 16.4 (COOPERATION) TO BRUNEI DARUSSALAM**

1. If as of the date of entry into force of this Agreement, Brunei Darussalam does not have a national competition law which is in force and has not established a national competition authority, Article 16.2 (Procedural Fairness in Competition Law Enforcement), Article 16.3 (Private Rights of Action) and Article 16.4 (Cooperation) shall not apply to Brunei Darussalam for a period of no longer than 10 years after that date.
2. If Brunei Darussalam establishes a national competition authority or authorities before the end of the 10-year period, Article 16.2 (Procedural Fairness in Competition Law Enforcement), Article 16.3 (Private Rights of Action) and Article 16.4 (Cooperation) shall apply to Brunei Darussalam from the date of establishment.
3. During the 10 year period, Brunei Darussalam shall take such steps as may be necessary to ensure that it is in compliance with Article 16.2 (Procedural Fairness in Competition Law Enforcement), Article 16.3 (Private Rights of Action) and Article 16.4 (Cooperation) at the end of the 10-year period and shall endeavour to comply with these obligations before the end of such period. Upon request of a Party, Brunei Darussalam shall inform the Parties of its progress since entry into force of the Agreement in developing and implementing an appropriate national competition law and establishing a national competition authority or authorities.

## 附件 16-A

### 第 16.2 条(竞争法执行中的程序公正)、第 16.3 条(私人诉权)和第 16.4 条(合作)对文莱达鲁萨兰国的适用

1. 如截至本协定生效之日，文莱达鲁萨兰国尚未实施国家竞争法且未设立国家竞争主管机关，则第 16.2 条(竞争法执行中的程序公正)、16.3 条(私人诉权)和第 16.4 条(合作)在该日期后不超过 10 年的期限内不得适用于文莱达鲁萨兰国。
2. 如文莱达鲁萨兰国在 10 年期期满前设立国家竞争主管机关，则第 16.2 条(竞争法执行中的程序公正)、第 16.3 条(私人诉权)和 16.4 条(合作)应自该设立之日起适用于文莱达鲁萨兰国。
3. 在 10 年期限内，文莱达鲁萨兰国应采取必要步骤，以保证其在 10 年期期满时即可遵守第 16.2 条(竞争法执行中的程序公正)、第 16.3 条(私人诉权)和第 16.4 条(合作)，并应努力在该期限期满前遵守这些义务。应一缔约方请求，文莱达鲁萨兰国应告知缔约方其自协定生效起，在制定和实施适当的国家竞争法和设立一个或多个国家竞争主管机关方面的进展。