CHAPTER 12

COMPETITION

ARTICLE 12.1 Objective

The Parties recognise the importance of creating and maintaining competitive markets that promote economic efficiency and consumer welfare.

ARTICLE 12.2 Competition Authorities

For the purposes of this chapter, Competition Authority means:

- (a) for New Zealand, the New Zealand Commerce Commission or its successor.
- (b) for United Arab Emirates, the Ministry of Economy, or its successor.

ARTICLE 12.3 General Provisions

1. The Parties recognise the sovereign rights of each party to develop, administer, and enforce its competition laws, regulations and policies.

2. Each Party shall maintain its autonomy in developing and enforcing its competition law and regulations.

ARTICLE 12.4 Competition Laws and Authorities

1. The Parties shall promote competition by maintaining national competition laws that proscribe anticompetitive practices.

2. Each Party's national competition laws, and their application, shall give due regard to the principles of transparency, comprehensiveness, non-discrimination on the basis of nationality, and procedural fairness.

3. Each Party shall endeavour to apply its national competition laws to all commercial activities in its territory in accordance with domestic laws and policies. However, each Party may provide for certain exemptions and exclusions from the application of its national competition laws.

4. Each Party shall maintain a competition authority responsible for the enforcement of its national competition laws. Each party shall enforce its national competition laws with due regard to the principles set out in paragraph 2.

5. If a Party's competition authority alleges a violation of its national competition laws, that authority shall establish the legal and factual basis for the alleged violation in accordance with each Party's national competition laws.

ARTICLE 12.5 Procedural Fairness

1. Each Party shall ensure that, before a sanction or remedy is imposed against a person relating to a violation of the Party's competition laws, that person is afforded the opportunity to:

- (a) be provided with information and evidence regarding the national competition authority's concerns, including identification of the relevant specific competition law engaged;
- (b) engage with the relevant competition authority at key points on significant legal, factual, and procedural issues; and
- (c) submit their views and provide evidence in their defence,

except that a Party may provide for these opportunities within a reasonable time after it imposes an interim sanction or remedy.

2. Each Party shall ensure that where information that is protected as confidential, or privileged by its law, is obtained by its competition authority during investigations that information is not disclosed, except to the extent provided for under the law of each Party.

3. Each Party shall ensure that findings of violation of its competition laws establish the facts and conclusions of law on which the decisions are based and are communicated to the recipient found to be in violation, in accordance with each Party's competition law.

4. Each Party shall ensure that the recipient of a decision to impose a sanction or a remedy for violation of its competition law is given the opportunity to seek judicial review of such a decision.

ARTICLE 12.6 Cooperation

The Parties may cooperate to foster effective competition law enforcement, subject to their laws, regulations, reasonably available resources, and important interests.

ARTICLE 12.7 Disclosure of Information

Nothing in this Chapter shall require a Party to provide information when this information is confidential or the disclosure of such information may be unreasonably burdensome, contrary to its important interests, or contrary to its laws or regulations, including laws and regulations regarding legal privilege, disclosure of information, confidentiality, or business secrecy.

ARTICLE 12.8 Consultation

The Parties recognise the importance of respecting the sovereign right of each competition authority to enforce their competition laws. The Parties shall endeavour to accord full and sympathetic consideration to a request for consultations to foster understanding between the Parties or to address a specific matter which may arise under this chapter. The request for consultations shall indicate the reasons therefore.

ARTICLE 12.9 Dispute Settlement

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