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## **STATE-OWNED ENTERPRISES, ENTERPRISES GRANTED SPECIAL RIGHTS OR PRIVILEGES AND DESIGNATED MONOPOLIES**

### **Article 1 Delegated Authority**

**Unless otherwise specified in this Agreement, each Party shall ensure that any person including a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly that has been delegated regulatory, administrative or other governmental authority by a Party acts in accordance with the Party's obligations as set out under this Agreement in the exercise of that authority.**

### **Article 2**

#### **Definitions**

**For the purposes of this Chapter, the following definitions shall apply:**

- (a) "State-owned enterprise" is an enterprise owned or controlled by a Party when engaged in commercial activities<sup>1</sup>.**
- (b) "Enterprise granted special rights or privileges" means any enterprise, public or private, including any subsidiary, that has been granted by a Party, in law or in fact, special rights or privileges. Special rights or privileges arise if a Party designates or limits the number of enterprises authorized to provide a good or a service according to criteria which is not objective, proportional and non-discriminatory, thereby substantially affecting the ability of any other enterprise to supply the same good or service in the same geographical area under substantially equivalent conditions.**
- (c) A "designated monopoly" means an entity, private or public, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of the grant.<sup>2</sup>**

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<sup>1</sup> For the establishment of ownership or control, all relevant legal and factual elements shall to be examined on a case by case basis.

<sup>2</sup> For greater certainty, natural monopolies are not covered under this Chapter unless they are designated within the meaning of Article 1(d).

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- (d) Designate means to establish or authorize a monopoly, or to expand the scope of a monopoly to cover an additional good or service.**
- (e) “Commercial activities” means activities, the end result of which is the production of a good or supply of a service, which will be sold in the relevant market in quantities and at prices determined by the enterprise through supply and demand conditions, and are undertaken with an orientation towards profit-making<sup>3</sup>.**
- (f) “Commercial considerations” means price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale; or other factors that would normally be taken into account in the commercial decisions of a private enterprise operating according to market economy principles in the relevant business or industry.**
- (g) “A service supplied in the exercise of governmental authority” has the same meaning as in the GATS, including the meaning in the Annex on Financial Services where applicable.**
- (h) “Arrangement” means the Arrangement on Officially Supported Export Credits, developed within the framework of the Organization for Economic Co-operation and Development (OECD) or a successor undertaking, whether developed within or outside of the OECD framework, that has been adopted by at least 12 original WTO Members that were Participants to the Arrangement as of 1 January 1979.**
- (i) “Financial institution” and “financial service”, have the same meaning as in Chapter XX. Financial Services.**

### **Article 3 Scope of application**

[EU: 1. The Parties confirm their rights and obligations under paragraphs 1 through 3 of Article XVII of the GATT 1994, the Understanding on the Interpretation of Article XVII of the GATT 1994, as well as under paragraphs 1, 2 and 5 of Article VIII of the GATS.]

**1. This Chapter applies to all enterprises defined in Article 1 engaged in a commercial activity. Where an enterprise combines commercial and non-commercial activities<sup>4</sup>, only the commercial activities of that enterprise are covered by this Chapter.**

**2. This Chapter shall not apply to state-owned enterprises, enterprises granted special rights or privileges or designated monopolies when acting as procuring entities covered under each Party’s respective annexes to Appendix [X] (“Public Procurement”)**

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<sup>3</sup>For greater certainty, this excludes activities undertaken by an enterprise: (a) which operates on a not-for-profit basis; or (b) which operates on cost recovery basis.

<sup>4</sup>Such as carrying out a legitimate public service mandate.

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**to this Agreement for governmental purposes and not with a view to commercial resale, or with a view to use in the production of goods or supply of services for commercial sale.**

**3. This Chapter shall not apply to any service supplied in the exercise of governmental authority.<sup>5</sup>**

**4. This Chapter shall not apply with respect to activities carried out by:**

- a) a financial institution, or other legal entity, owned or controlled by a Party that is established or operated temporarily solely for resolution purposes<sup>6</sup>;**
- b) a public entity or public trust that, pursuant solely to its public service mandate which aims at contributing to the balanced and steady development of the Party, by supplying financial services for the account or with the guarantee or using the financial resources of the Party; and**
- c) a public entity pursuant to a public service mandate relating to a statutory system of social security or public retirement plans.**

**5. This Chapter shall not apply to enterprises defined in Article 1 if in any one of the three previous consecutive fiscal years the annual revenue derived from the commercial activities of the enterprise was less than 200 million SDR.**

**6. Article 4 (Non-Discrimination and Commercial Considerations) shall not apply with respect to the supply of financial services by a state-owned enterprise pursuant to a government mandate if that supply of financial services:**

**(a) supports exports or imports, provided that these services:**

**(i) are not intended to displace commercial financing, or**

**(ii) are offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market<sup>7</sup>; or**

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<sup>5</sup> For greater certainty, services supplied in the exercise of a governmental authority include services supplied by a central bank or monetary authority or a financial regulatory body or a resolution authority of a Party.

<sup>6</sup> For greater certainty: i) the term “Resolution” shall be interpreted in accordance with the law of the Party in which the financial institution or legal entity is established, ii) the financial institution or legal entity does not engage in any commercial activity which is not directly related to its resolution purposes.

<sup>7</sup> In circumstances where no comparable financial services are offered in the commercial market: (a) for the purposes of paragraphs 2 (a)(ii), 2(b)(ii), 3(a)(ii) and 3(b)(ii), the state owned-enterprise may rely as necessary on available evidence to establish a benchmark of the terms on which such services would be offered in the commercial market; and (b) for the purposes of paragraphs 2(a)(i), 2(b)(i), 3(a)(i) and 3(b)(i), the supply of the financial services shall be deemed not to be intended to displace commercial financing.

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**(b) supports private investment outside the territory of the Party, provided that these services are:**

**(i) not intended to displace commercial financing, or**

**(ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market.**

**(a) is offered on terms consistent with the Arrangement, provided it falls within the scope of the Arrangement.**

**7. Article 4 does not apply to the sectors which are outside the scope of this Agreement.**

**8. Article 4 shall not apply to the extent that a Party's state-owned enterprises, enterprises granted special rights or privileges and designated monopolies make purchases and sales of goods or services pursuant to:**

**(a) any existing non-conforming measure in accordance with Article x (Non-Conforming Measures) of Chapter X (Cross-Border Trade in Services), Article y (Non-Conforming Measures) of Chapter Y (Investment) or Article x (Non-Conforming Measures) of Chapter Z (Financial Services) that the Party maintains, continues, renews or amends in Annex XI, and Annex (Financial Services); or**

**(b) any non-conforming measure that the Party adopts or maintains with respect to sectors, subsectors, or activities in accordance with Article y (Non-Conforming Measures) of Chapter X (Cross-Border Trade in Services), Article Y (Non-Conforming Measures) of Chapter Y (Investment) or Article Z (Non-Conforming Measures) of Chapter Z (Financial Services) as set out in its Schedule in Annex XII, and Annex (Financial Services).**

**9. The Parties understand that a measure adopted or maintained under Article 4 (Mexico's Schedule), or excluded from the scope of Chapter XX (State Owned Enterprises), may be maintained, provided that such measure, to the extent that it is covered under the WTO Agreement, is applied in accordance with the rights and obligations of the Party taking such measure under the WTO Agreement.<sup>8</sup>**

## **Article 4**

### **Party-Specific Annexes**

**1. Article 6 (Non-discriminatory Treatment and Commercial Considerations) shall not apply with respect to the non-conforming activities of state-owned enterprises or**

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<sup>8</sup> For greater certainty, the only forum to challenge whether a measure of a Party is applied in accordance with its rights and obligations under the WTO Agreement shall be the WTO Dispute Settlement Mechanism.

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**designated monopolies that a Party lists in its Schedule to Annex X (Mexico's schedule) in accordance with the terms of the Party's Schedule.**

## **Article 5 General provisions**

**1. Without prejudice to the Parties' rights and obligations under this Chapter, nothing in this Chapter shall be construed to prevent a Party from establishing or maintaining state-owned enterprises or designating or maintaining monopolies or from granting enterprises special rights or privileges.**

**2. Where an enterprise falls within the scope of application of this Chapter, the Parties shall not require or encourage such an enterprise to act in a manner inconsistent with this Chapter.**

## **Article 6 Non-Discriminatory Treatment and Commercial Considerations**

**1. Each Party shall ensure that its state-owned enterprises, enterprises granted special rights or privileges and designated monopolies, when engaging in commercial activities:**

- (a) act in accordance with commercial considerations in their purchases or sales of goods or services, except to fulfil a public service mandate that are not inconsistent with paragraph 1(b) or 1(c); and**
- (b) in its purchase of a good or service:
  - (i) accords to a good or service supplied by an enterprise of the other Party treatment no less favourable than it accords to a like good or a like service supplied by enterprises of the Party; and**
  - (ii) accords to a good or service supplied by an enterprise that is a covered investment in the Party's territory treatment no less favourable than it accords to a like good or a like service supplied by enterprises in the relevant market in the Party's territory that are investments of investors of the Party; and****
- (c) in its sale of a good or service:
  - (i) accords to an enterprise of the other Party treatment no less favourable than it accords to enterprises of the Party; and****

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**(ii) accords to an enterprise that is a covered investment in the Party's territory treatment no less favourable than it accords to enterprises in the relevant market in the Party's territory that are investments of investors of the Party<sup>9</sup>.**

**2. Paragraph 1 does not preclude state-owned enterprises, enterprises granted special rights or privileges or designated monopolies from**

**(a) purchasing or supplying goods or services on different terms or conditions, including those relating to price; or**

**(b) refusing to purchase or supply goods or services,**

**provided that such different terms or conditions or refusal is undertaken in accordance with commercial considerations.**

## **Article 7 Regulatory framework**

**1. The Parties shall endeavor to respect and make best use of relevant international standards including, the OECD Guidelines on Corporate Governance of State-Owned Enterprises.**

**2. Each Party shall ensure that any regulatory body or competent authorities exercising a regulatory function that it establishes or maintains:**

**(a) is independent from and not accountable to any of the enterprises that it regulates in order to ensure the effectiveness of the regulatory function, and**

**(b) acts impartially<sup>10</sup> in like circumstances with respect to all enterprises that it regulates, including enterprises defined in Article 1.<sup>11</sup>**

**3. Each Party shall ensure the enforcement of laws and regulations in a consistent and non-discriminatory manner, including on enterprises defined in Article 1.**

## **Article 8 Transparency**

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<sup>9</sup> Article X.X (Non-discriminatory Treatment and Commercial Considerations) shall not apply with respect to the purchase or sale of shares, stock or other forms of equity by a state-owned enterprise as a means of its equity participation in another enterprise.

<sup>10</sup> For greater certainty, the impartiality with which the regulatory body exercises its regulatory functions is to be assessed by reference to a general pattern or practice of that regulatory body.

<sup>11</sup> For greater certainty, for those sectors in which the Parties have agreed to specific obligations relating to the regulatory body in other Chapters, the relevant provision in the other Chapters as set out in this Agreement shall prevail.

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**1. On the written request of another Party, a Party shall promptly provide the following information concerning a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly, provided that the request includes an explanation of how the activities of the entity may be affecting its interests under this Chapter.**

- (a) the percentage of shares that the Party, its state-owned enterprises, enterprises granted special rights or privileges or designated monopolies cumulatively own, and percentage of votes that they cumulatively hold, in the entity;**
- (b) a description of any special shares or special voting or other rights that the Party, its state-owned enterprises, enterprises granted special rights or privileges or designated monopolies hold, to the extent the rights are different than the rights attached to the general common shares of such entity;**
- (c) the organisational structure of the enterprise, the composition of its board of directors or of an equivalent body, the government titles of any government official serving as an officer or member of the entity's board of directors or of an equivalent body;**
- (d) a description of which government departments or public bodies regulate and/or monitor the state-owned enterprises, enterprises granted special rights or privileges or designated monopolies, a description of the reporting requirements imposed on such entities by these departments or public bodies if practicable, and the rights and practices<sup>12</sup> of the government or any public bodies in the appointment, dismissal or remuneration of senior executives and members of the board of directors or any other equivalent body;**
- (e) the entity's annual revenue and total assets over the most recent three-year period for which information is available;**
- (f) any exemptions and immunities from which the entity benefits under the Party's law; and**
- (g) any additional information regarding the entity that is publicly available, including annual financial reports and third-party audits, and that is sought in the written request.**

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<sup>12</sup> For greater certainty, the term "practices" does not include the reasons for a designation for an appointment, dismissal or remuneration of senior executives and members of the board of directors or any other equivalent body.

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**2. If the requested information is not available to the Party, that Party shall provide the reasons for this in writing to the other Party who requested the information.**

**3. When a Party provides written information pursuant to a request under this Article and informs the requesting Party that it considers the information to be confidential, the requesting Party shall not disclose the information without the prior consent of the Party providing the information.**