

SECTION III: STATE OWNED ENTERPRISES, ENTERPRISES GRANTED SPECIAL RIGHTS OR PRIVILEGES AND MONOPOLIES

Article 1 **Definitions**

For the purposes of this Section, the following definitions shall apply:

- (a) "State-owned enterprise" means an enterprise, including any subsidiary, in which a Party, directly or indirectly:
 - (a) owns more than 50% of the enterprise's subscribed capital or the votes attached to the shares issued by the enterprise; or
 - (b) can appoint more than half of the members of the enterprise's board of directors or an equivalent body; or
 - (c) can exercise control over the strategic decisions of the enterprise.
- (b) "Enterprise granted special rights or privileges" means any enterprise, including any subsidiary, public or private that has been granted by a Party, in law or in fact, special rights or privileges.
- (c) A "designated monopoly" means an entity engaged in a commercial activity, including a group of entities or a government agency, and any subsidiary thereof, that in a relevant market in the territory of a Party is designated as the sole supplier 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 such grant.
- (d) "Special rights or privileges" means rights or privileges granted by a Party to a limited number of enterprises, or any subsidiaries thereof, within a given geographical area or a product market the effect of which is to substantially limit the ability of any other enterprise to carry out its activity in the same geographical area or a product market in like circumstances. The granting of a license or a permit to a limited number of enterprises in allocating a scarce resource through objective, proportional and non-discriminatory criteria is not in and of itself a special right or privilege.
- (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, and are undertaken with an orientation towards profit-making¹.
- (f) "commercial considerations" means price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale; or other factors

¹ For greater certainty, activities undertaken by an enterprise which operates on a not-for-profit basis or on a cost-recovery basis are not activities undertaken with an orientation toward profit-making

that would normally be taken into account in the commercial decisions of an enterprise operating according to market economy principles in the relevant business or industry.

- (g) "Designate" means to establish or authorize a monopoly, or to expand the scope of a monopoly to cover an additional good or service

Article 2

Scope of application

1. The Parties confirm their rights and obligations under Article XVII, paragraphs 1 through 3, of GATT 1994, the Understanding on the Interpretation of Article XVII of GATT 1994, as well as under Article VIII of GATS, paragraphs 1, 2 and 5, which are hereby incorporated into and made part of this Agreement and shall apply.

2. This Section applies to all enterprises defined in Article 1 engaged in a commercial activity. Where an enterprise combines commercial and non-commercial activities², only the commercial activities of that enterprise are covered by this Section.

3. This Section shall not apply to enterprises defined in Article 1 for which a Party has taken measures on a temporary basis in response to a national or global economic emergency.

3. This Section shall not apply to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies if in any one of the three previous consecutive years the annual revenue derived from the commercial activities of that enterprise was less than 200 million Special Drawing Rights³. This threshold shall apply to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies at sub-central levels of government after 5 years from the entry into force of this Agreement.

4. This Section shall not apply to covered procurement by a Party or its procuring entities within the meaning of Article II of (Chapter XX - Public procurement).

5. This Section shall not apply to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies owned or controlled by a governmental authority of a Party in charge of national defense, public order or public security, except if these are engaged exclusively in commercial activities unrelated to national defense, public order or public security

6. Article 4 does not apply to the sectors set out in Article.x and Article.y [*reference to services and investment Chapters (Scope)*].

² such as carrying out a public service obligation

³ The calculation of the revenue shall include the relevant revenue of all enterprises as defined in Article 1, including the revenue of the subsidiaries engaged in commercial activities on the same or related markets.

7. Article 4 applies to commercial activities of enterprises as defined in Article 1, if the same activity would affect trade in services and investment with respect to which a Party has undertaken a commitment under Article XXX (NT) or YYY (MFN), subject to conditions or qualifications set out in its schedule pursuant to Articles XXXX and YYYYY. For greater certainty, in case of conflict between Paragraph 4 and conditions or qualifications set out in its schedule pursuant to Articles XXXX and YYYYY, the latter will prevail.

8. This Section shall not apply to any service supplied in the exercise of governmental authority⁴.

9. This Section shall not apply to measures or activities of enterprises that Vietnam lists in its Annex.

Article 3

General provisions

1. Nothing in this Section shall prejudice the laws and regulations of a Party governing its systems of state ownership.

2. Without prejudice to the Parties' rights and obligations under this Section, nothing in this Section prevents the Parties from establishing or maintaining state-owned enterprises or designating or maintaining monopolies or from granting enterprises special rights or privileges.

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

Article 4

Non-discrimination and commercial considerations

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

- (a) act in accordance with commercial considerations in their purchases or sales of goods or services, except to fulfil any terms of their public mandate that are not inconsistent with paragraph 1(b); and
- (b) accord to enterprises of the other Party, enterprises that are investments of investors of the other Party, goods of the other Party, and services of the other Party, treatment no less favourable than they accord to, respectively, enterprises of the Party which are in like situations, like goods of the Party, and like services of the

⁴ “a service supplied in the exercise of governmental authority” has the same meaning as in the WTO General Agreement in Trade in Services.

Party, with respect to their purchases or sales of goods or services in the relevant market.

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 5 **Neutral regulation**

1. The Parties shall endeavour to ensure that enterprises defined in Article 1 observe internationally recognised standards of corporate governance.

2. Each Party shall ensure that any regulatory body or function that it establishes or maintains is not accountable to any of the enterprises that it regulates in order to ensure the effectiveness of the regulatory function and acts impartially⁵ in like circumstances with respect to all enterprises that it regulates, including state-owned enterprises, enterprises granted special rights or privileges and designated monopolies.⁶

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 6 **Transparency**

1. A Party which has reasonable reason to believe that its interests under this Section are being adversely affected by the commercial activities of an enterprise or enterprises defined in Article 1 of the other Party and subject to the scope of this Section as defined in Article 2 may request in written form that Party to supply information about the operations of that enterprise related to the carrying out of the provisions of this Section. Requests for such information shall indicate the enterprise, the products/services and markets concerned, and include indications that the enterprise is engaging in practices that hinder trade or investment between the Parties. For the EU, the provisions of Paragraph 1(a) to (e) do not apply to enterprises which qualify as small or medium-sized enterprises as defined in the European Union law.

⁵ 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.

⁶ 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.

This information includes the following:

- (a) the ownership and the voting structure of the enterprise, indicating the percentage of shares and the percentage of voting rights that a Party and/or an enterprise defined in Article 1 cumulatively own;
- (b) a description of any special shares or special voting or other rights that a Party and/or an enterprise defined in Article 1 hold, where such rights differ from 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 exercising direct or indirect control in such an enterprise; and cross-holdings and other links with different enterprises or groups of enterprises, as defined in Article 1;
- (d) a description of which government departments or public bodies regulate and/or monitor the enterprise, a description of the reporting lines⁷, and the rights and practices of the government or any public bodies in the appointment, dismissal or remuneration of managers;
- (e) annual revenue or total assets, or both;
- (f) exemptions, non-conforming measures, immunities and any other measures, including more favourable treatment, applicable in the territory of the requested Party to any enterprise defined in Article 1.

2. A Party has the right to ask the other Party additional information regarding the calculations on the revenue threshold in Article 2(4).

3. The provisions of paragraphs 1 and 2 shall not require any Party to disclose confidential information which would be inconsistent with its laws and regulations, impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises.

Article 7 **Technical Cooperation**

Recognizing the importance of promoting effective legal and regulatory frameworks for state-owned enterprises, the Parties shall engage in mutually agreed technical cooperation activities with a view to promoting efficiency and transparency of state-owned enterprises, subject to the availability of funding under the Party's cooperation instruments and programmes.

⁷ For greater certainty, a Party is not obliged to divulge reports or the contents of any reports.