



**Asia-Pacific  
Economic Cooperation**

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## **Essential Elements of Competition Chapter in Free Trade Agreements**

Submitted by: Singapore



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Competition Chapter in Free Trade  
Agreements and Economic  
Partnership Agreements  
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# Essential Elements of Competition Chapter in FTAs

# Benefits of Competition Chapter in FTAs

- Address 'beyond- the-border'/'Non-Tariff' barriers
  - » Facilitate trade and investment flows
  - » Promote economic integration
  - » Make regional markets more competitive vis-à-vis others
- Ensure consistent application of competition law
  - » Provide greater certainty
  - » Reduce regulatory burden/transaction costs
  - » Reduce 'regulatory arbitrage'
  - » Promote effective enforcement of cross-border cases
  - » Strengthen competition cooperation



# Singapore FTAs

An extensive network of over 22 implemented agreements



## Bilaterals

*(Signed between SG and a single trading partner)*

- CSFTA
- India-Singapore CECA
- JSEPA
- KFTA
- ANZSCEP
- PSFTA
- PeSFTA
- SAFTA
- SCRFTA
- SJFTA
- SLSFTA
- TRSFTA
- USSFTA

## Regional FTAs

*(Signed between Singapore and a group of trading partner)*

- ASEAN-China FTA
- ASEAN-India FTA
- ASEAN-Japan CEP
- ASEAN-Korea AKFTA
- ASEAN FTA
- EFTA-Singapore FTA
- GCC-Singapore FTA
- Trans-Pacific SEP



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## ← CONCLUDED/SIGNED, BUT NOT READY FOR USE →

### Regional FTAs

*(Signed between Singapore and a group of trading partner)*

- EUSFTA
- CPTPP

## ← UNDER NEGOTIATION →

### Regional FTAs

*(Signed between Singapore and a group of trading partner)*

- ASEAN-India (Services & Investment)
- ASEAN-Japan (Services & Investment)
- EAEU-Singapore FTA
- PA-Singapore FTA
- RCEP

# Typical Structure of Competition Chapter in FTAs

## Essential

- » Objectives
- » Basic Principles
- » Measures to proscribe anti-competitive conduct
- » Procedural Fairness
- » Transparency
- » Private Rights of Action
- » Confidentiality of Information
- » Enforcement Cooperation
- » Technical Assistance/Capacity Building
- » Consultations
- » Dispute Settlement

# Typical Structure of Competition Chapter in FTAs

## Optional

- » Public Enterprises & State Monopolies (e.g. EUSFTA, USSFTA)
- » State Aids & Subsidies (e.g. EUSFTA)
- » Consumer Protection (e.g. CPTPP, RCEP)
- » Review Mechanism







# Procedural Fairness

Before a sanction or remedy is imposed, the entity concerned is given the **necessary information/grounds for the alleged violation and a reasonable opportunity to be heard and present evidence**

- » Authority shall establish the legal and factual basis, including economic reasoning where applicable, for the alleged violation
- » Allow entity under investigation timely access to information necessary to prepare an adequate defense against the allegation
- » Reasonable opportunity to present evidence or testimony, including call of qualified experts to offer analysis, cross-examine testifying witness or review or rebut evidence introduced
- » Reasonable opportunity to consult with the relevant authority with respect to significant legal, substantive or procedural issues that arise during the investigation
- » Opportunity for the entity to be represented by a qualified counsel and offer necessary protection of privileged communication





# Procedural Fairness

- Affords the entity that is subject to the imposition of a sanction or remedy with the **opportunity to seek independent review of the decision**, including review of the sanction or remedy, as well as any substantive or procedural matters
  - » Final decision or order made is in writing, setting out the grounds of decision including the findings of fact, legal grounds, and economic findings/assessment where applicable
  - » Review by an independent, impartial adjudicative body (e.g. court, tribunal or appellate body)



# Procedural Fairness

- Adopt or maintain **written procedural rules that apply to investigations and enforcement proceedings**
- **Inform entity concerned about an investigation**, including the legal basis for investigation and the conduct/action involved under investigation
- Observe **timeliness of investigations** and enforcement procedures
- **Conflict of interest** (must not have material personal or financial conflicts of interest in the investigation or enforcement proceedings)
- **Allow for voluntary resolutions** (commitments/settlement), can be subject public consultation and/or approval by judicial or independent tribunal



# Transparency

Promotes consistency/predictability in application of competition law and compliance with the law

- Publish or make available the following:
  - » **competition law and regulations**, including any exclusions or exemptions to its law
  - » **guidelines** on how the law will be applied and enforced
  - » **procedural rules** applicable to investigations and enforcement proceedings
  - » **final decision of a violation**, including findings of fact, legal and if applicable, economic analysis, on which the decision is based



# Private Rights of Action

Supplements public enforcement and makes it easier for affected victims to seek redress and recover losses, thereby promoting a robust and effective competition regime

- Provide for the rights of an entity who suffers a loss or damage caused by a violation of competition law **to seek redress, including injunction, monetary or other relief, from a court or other independent tribunal, either independently or following a finding of violation by the authority**
- Provide for **Class or Group Action**: two or more injured parties to bring a joint action for damage before the appropriate judicial authority



# Confidentiality of Information

- Requesting party should notify providing party **the purpose and intended use of information received** and **any domestic laws or regulations** of the requesting that may impact the use of information received
- Requesting party shall **safeguard confidentiality of information** received, **use it only for the purpose it has disclosed**, and **not used it as evidence in criminal proceedings unless the information is obtained through diplomatic channel or other channels established under the laws of both parties**
- Party shall not be required to give information to the other Party if it is prohibited by the laws or regulations of the providing party or if the providing party considers it to be incompatible with its important interests

# Challenges

- **Diverse differences among partners**

- No 'one-size-fits-all' approach or text

- » Differences in competitive law regimes, including the substantive and procedural frameworks
    - » At economy / country-level, countries differ in terms of socio-economic developments, political and governance systems, legal and economic frameworks and institutions, as well as exposure to and reliance on international trade and investments
    - » Different or even conflicting domestic / national objectives and interests



# Challenges

- **Striking the right balance ambition and commitments**

- » Commitment level (e.g. may, shall, shall on best endeavour basis)
- » Ambition level – determines the scope, what and how much to include
- » Prescriptive level – the amount of details; need to consider flexibility, certainty and costs

- **Lack of trust and understanding**

- **Dealing with ‘beggar-thy-neighbour’ mentality**

- » Pushing for offensives while refusing to trade defensives





# Key takeaways...



- **Negotiation is both** a science and art
  - » Be well-prepared; Requires good understanding of the various competition regimes; know parties' offensives and defenses well
  - » A good negotiator should have a high emotional intelligence and cultural intelligence (aim to connect with negotiating partners cognitively, emotionally and culturally)
  - » Mutual respect and trust is important (treat all negotiating partners as equals)
  - » Think 'win-win'
  - » Build shared understanding/find common denominator/Go for 'low-hanging fruits' first



# Thank You