



**Asia-Pacific
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Good Practice of Addressing Anti-Competitive Activities in Competition Policy Chapters

Submitted by: Japan



**Free Trade Area of Asia-Pacific Capacity
Building Workshop on Competition Policy:
Sharing Good Examples of Free Trade
Agreements and Economic Partnership
Agreements
Puerto Varas, Chile
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Good practice of “addressing anti-competitive activities” in competition policy chapters

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24 August 2019 – Sharing good examples of FTAs/EPAs

APEC FTAAP Capacity Building Workshop on Competition Policy

Puerto Varas, Chile

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Overview

- ▶ Why address anti-competitive activities?
- ▶ Then and Now – Historical perspective
- ▶ Specific Provisions:
 - ▶ Competition Laws
 - ▶ Application of laws
 - ▶ Competition Authorities
 - ▶ Key principles
- ▶ Added perspectives

Why Address Anti-Competitive Activities

- ▶ Why does this matter for trade?
- ▶ Market access vs. rules
- ▶ Rules are the foundation for market access

Then and Now

Historical Perspectives from the last 25 years

NAFTA 1994 – Competition policy provisions

▶ **Article 1501: Competition Law**

- ▶ 1. Each Party shall **adopt or maintain measures to proscribe anticompetitive business conduct** and take appropriate action with respect thereto, recognizing that such measures will enhance the fulfillment of the objectives of this Agreement. To this end the Parties shall **consult** from time to time about the effectiveness of measures undertaken by each Party.
- ▶ 2. Each Party recognizes the importance of **cooperation and coordination** among their authorities to further effective competition law enforcement in the free trade area. The Parties shall cooperate on issues of competition law enforcement policy, including mutual legal assistance, notification, consultation and exchange of information relating to the enforcement of competition laws and policies in the free trade area.
- ▶ 3. No Party may have recourse to **dispute settlement** under this Agreement for any matter arising under this Article.

▶ **Article 1504: Working Group on Trade and Competition**

- ▶ The Commission shall establish a **Working Group on Trade and Competition**, comprising representatives of each Party, to report, and to make recommendations on further work as appropriate, to the Commission within five years of the date of entry into force of this Agreement on relevant issues concerning the relationship between competition laws and policies and trade in the free trade area.

Canada-United States-Mexico Agreement

Chapter 21 – Competition Policy

- ▶ Article 21.1: Competition Law and Authorities
- ▶ Article 21.2: Procedural Fairness in Competition Law Enforcement
- ▶ Article 21.3: Cooperation
- ▶ Article 21.4: Consumer Protection
- ▶ Article 21.5: Transparency
- ▶ Article 21.6: Consultations
- ▶ Article 21.7: Non-Application of Dispute Settlement

Specific Provisions

Examples from today's FTAs/EPAs

Competition laws

- ▶ Different approaches to requiring competition laws.
 - ▶ CUSMA approach – requirement to maintain competition laws that proscribe anticompetitive business conduct – without getting into specifics
 - ▶ Mercosur-EU approach - Provides a list of types of conduct that are incompatible with the trade agreement.

Application of laws

- ▶ Competition laws should apply to almost all commercial activities in the territory.
- ▶ But (CUSMA example)
 - ▶ Exceptions are okay, as long as they are:
 - ▶ Transparent;
 - ▶ Established in the law; and
 - ▶ Based on public interest or public policy grounds

Competition authorities

- ▶ Competition authorities are a key
- ▶ Important to include a requirement to maintain a competition authority to administer and enforce the law.
- ▶ Ideally an independent authority that has sufficient resources
 - ▶ EU Mercosur – “appropriately equipped [...] for the effective implementation of the Competition Laws”

Key principles

- ▶ Non-discrimination
- ▶ Procedural Fairness
- ▶ Transparency

Added Perspectives


Related areas of the FTA/EPA

Consumer Protection

- ▶ Consumer angle has not been a focus
- ▶ Some high level provisions:
 - ▶ Recognizing that consumer protection is important
 - ▶ Requiring Parties to have consumer protection laws covering fraudulent and deceptive commercial activities

Competition Policy does not stand alone

- ▶ Government Procurement – Bid-rigging
- ▶ Digital Trade – Consumer protection
- ▶ Intersection between IP and competition – remedies
- ▶ Anti-corruption – cartels and bid-rigging
- ▶ Goods regulatory practices – avoiding unnecessary restrictions on competition
- ▶ Exceptions – disclosure of information/confidentiality concerns.



FTAs and EPAs are about reducing barriers between markets.

Competition law and policy is about reducing barriers in the market.



Thank you!

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