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**Impacts of High-Quality and Comprehensive
Competition Provisions in Free Trade Agreements
and Economic Partnership Agreements on the
Economic Circumstances**

Submitted by: Chile



**Free Trade Area of Asia-Pacific Capacity
Building Workshop on Competition Policy:
Sharing Good Examples of Free Trade
Agreements and Economic Partnership
Agreements
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Impacts of high-quality and comprehensive Competition Provisions in FTAs/EPAs on the economic circumstances

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APEC FTAAP Capacity Building Workshop on Competition Policy:
Sharing good examples of FTAs/EPAs

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1. Introduction

- There is “no one size fits all
- As far as I know, there is no quantitative study of the effects of competition policy-related provisions

Competition policy provisions in RTA/PTAs serve two main purposes:

1. to ensure that market access preferences and liberalization granted is not undermined
2. to guarantee that cross-border competition policy issues are dealt with adequately through cooperation.

Competition Policy is *“deeply intertwined with trade, foreign investment, free movement of goods, services and capital, the law of intellectual property, sectorial regulation, and the wide variety of proposed and actual industrial policies”* (Fox 2015).

2. High quality and comprehensive Competition Policy provisions could improve coordination mechanisms already in place

- International trade and investment have increased enormously
- And so has the number of competition authorities
- The number of competition cases with an international dimension
- Multiple authorities investigate the same matter.

Spreading of competition law represents improvement

But, cooperation between Competition Authorities has become more complex, risking

- Inconsistent decisions with a negative impact on trade and investment flows
- Unchallenged illegal conducts.

Need to improve techniques and tools of cooperation

2. High quality and comprehensive Competition Policy provisions could improve coordination mechanisms already in place

Merger Control

Numerous competition authorities around the world investigate the same operations

Problems

Competition authorities may reach different conclusions with respect to the same operation:

- The authorities and/or the laws may have different objectives
- Conditions of competition are different
- Competition authorities may simply come to different conclusions

Risks has been significantly reduced by the increasing convergence

But, numerous competition authorities assessing the same operation increases risk of inconsistency, even if they have similar laws and procedures

2. High quality and comprehensive Competition Policy provisions could improve coordination mechanisms already in place

Merger Control (cont.)

From businesses perspective, inconsistent decisions are not only the risk

- ✓ Expenses to comply with multiple parallel notifications and investigations
- ✓ Different competition authorities may address different competition concerns
- ✓ Different competition authorities having different opinions or requirements
- ✓ Different deadlines that have to be met successfully complete the operation
- ✓ Questions of timing
- ✓ Gun jumping

Though extensive cooperation exists, its level is far from enough, which in turn imposes large costs on companies and the public sector alike.

2. High quality and comprehensive Competition Policy provisions could improve coordination mechanisms already in place

Merger Control (cont.)

Need to improve international cooperation, otherwise, as complexity increases:

- ✓ Higher costs to authorities
- ✓ Higher costs to businesses
- ✓ More global mergers blocked
- ✓ Chilling effect on legitimate business activity.

High quality/comprehensive Competition related provisions in PTAs/RTAs

- Developing international standards for formal comity
- Allowing authorities to choose to recognise the decisions of other competition authorities
- Agreement to give non-binding deference to one 'lead authority'

2. High quality and comprehensive Competition Policy provisions could improve coordination mechanisms already in place

International Cartels

Lack of effective cooperation may result in unpunished harmful cartel activity, additional costs imposed on the global economy and harm to the competitive process and consumers

Some international cartels may be beyond the reach of the law of the countries where they have worst effects

Ineffective cooperation in cartel cases

- Multiple jurisdictions may repeat the same investigative steps
- Extra costs for business and competition authorities from unnecessary duplication
- Competition agency may be unable to get information or evidence from foreign jurisdictions

2. High quality and comprehensive Competition Policy provisions could improve coordination mechanisms already in place

International Cartels (cont.)

Substantial scope for deeper cooperation between competition authorities agreed in the context of RTAs PTAs:

- Agreement to give non-binding deference to one 'lead authority'
- Purely voluntary system, between a pair or group of competition authorities, with Deferring authority retaining right to conduct its own investigation
- 'Work sharing' - ICPAC report (2000)

3. High quality and comprehensive Competition Policy provisions in RTA/PTAs could help addressing the issue of Export Cartels

- **Export cartels** benefit from special treatment
- If implemented abroad, considered legal
- Toleration is mostly implicit. Not covered by domestic competition laws unless they produce effects in domestic markets
- Some export agreements could, in specific circumstances, serve as legitimate marketing mechanism
- However, tolerance, encouragement and immunity granted to Export Cartels is not a beneficial policy
- Export Cartels are often harmful to global welfare. They represent a non-tariff barrier to trade.

3. High quality and comprehensive Competition Policy provisions in RTA/PTAs could help addressing the issue of Export Cartels

There several arguments in favour of export cartels:

- they have an 'enabling role'.
- They may produce efficiencies
- The "defence argument".

Besides the traditional anti-cartel arguments, domestic markets are not immune from the effect of export cartels.

- They can influence domestic supplies and prices by their export decisions
- Expansion of export cartel operations to the domestic market

3. High quality and comprehensive Competition Policy provisions in RTA/PTAs could help addressing the issue of Export Cartels

- There is no common position among different economies at the Multilateral level
- Currently, there are no international rules or mechanisms addressing export cartels
- In this scenario, the only way to handle export cartels formally is to act unilaterally. However, this enforcement may prove highly inefficient
- “enforcement asymmetry” , ‘enforcement lacuna’ *‘practical disenfranchisement of victim jurisdictions that lack resources and are vulnerable’ (Fox)*

3. A. The “practical disenfranchisement” of private companies that compete with State-Sponsored Export Cartels in international markets

➤ Government-related export cartels

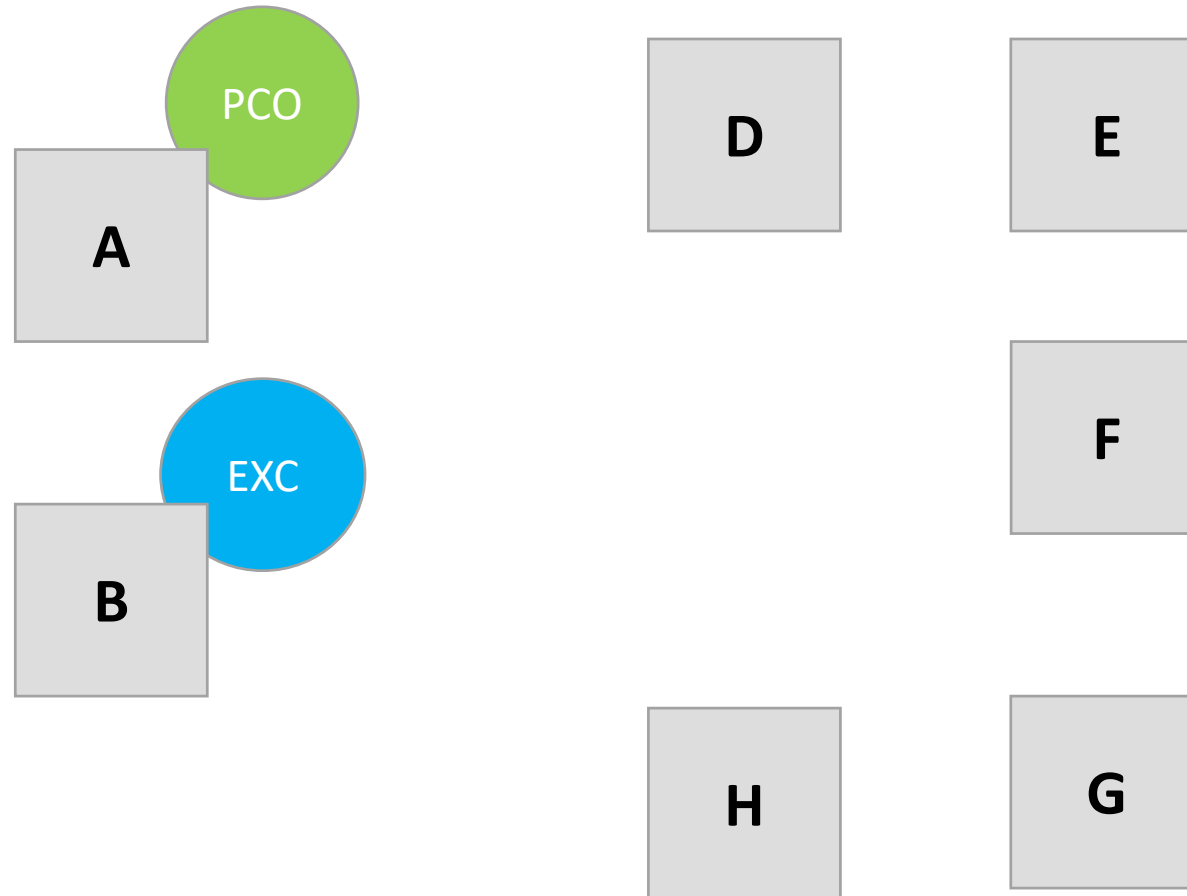
A cartel among a group of firms within a single country which is mandated, sponsored or supported by the government.

How do Private companies or exporters that do not have a “regulatory subsidy”, face the operation in international markets of powerful government-supported export cartels that have been granted unfair advantages?

3.A. The “practical disenfranchisement” of private companies that compete with State-Sponsored Export Cartels in international markets

Possibilities of PCO

- WTO
- Single Competition Authority
- Several Competition Authorities denouncing abuses



3. High quality and comprehensive Competition Policy provisions in RTA/PTAs could help addressing the issue of Export Cartels

- The most promising way to advance this issue is precisely through the inclusion of high-quality and comprehensive provisions in PTAs/RTAs
- RTAs/PTAs Provisions on export cartel conducts in bilateral or regional trade agreements could work better, since agreement between fewer nations with potentially similar economic structures could be easier to reach.
- It is difficult to advance a valid argument that is consistent with the position of competition authorities with respect to domestic and international cartels and, at the same time, capable of justifying a more lenient treatment of private or government export cartels
- Considering global welfare, the assumptions regarding the adverse effects of cartel conducts are valid irrespective of where the effects occur.

Thanks!

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