



**Asia-Pacific
Economic Cooperation**

2020/CTI-EC/DIA/003

Comparative Research on Competition Policy: Challenges and Obstacles

Submitted by: CMX Partnerships



**Free Trade Area of the Asia-Pacific Policy
Dialogue on Competition Related Provisions
from a Business Perspective
17-18 September 2020**

Comparative research on competition policy: challenges and obstacles

By Juan Navarro

Policy Dialogue on Competition Related Provisions
from a Business Perspective | September 2020

The author is the director and principal researcher at CMX Partnerships
and associate faculty at Royal Roads University

TABLE OF CONTENTS

- I. Why competition policy should be considered as a strategic component in the Asia-Pacific agenda
- II. Importance of competition policy provisions within Free Trade Agreements
- III. Building a comprehensive FTAAP
- IV. The FTAAP Competition Policy report
- V. Challenges and obstacles on competition policy
- VI. Comparison of Competition policy Chapters of the CPTPP, USMCA and EUSFTA
- VII. Concluding recommendations

I. WHY SHOULD COMPETITION POLICY BE CONSIDERED AS A STRATEGIC COMPONENT IN THE ASIA-PACIFIC AGENDA?

- **Competition policy can play a significant role in the response** from APEC economies to the economic crisis caused by COVID-19.
- **Competition policy is fundamental** to the development of markets by boosting **productivity, innovation, and efficiency**.
- **Effective competition policy rules** can contribute to facilitate entry of businesses to **new markets**, ensure that all enterprises compete on **a level playing field**, and penalize **anticompetitive behavior**.
- **Formal adoption of a comprehensive competition policy** as a shared strategy in the Asia Pacific would send a **clear signal in favour of an improved rule-based trading system**.

II. IMPORTANCE OF COMPETITION POLICY PROVISIONS WITHIN FREE TRADE AGREEMENTS

- **FTAs can be extraordinary links to improve solutions for competition-policy issues** inside and beyond the borders of one economy, ensuring competition neutrality, facilitating the use of FTAs by businesses, and creating increased economic benefits for all.
- **Competition policy provisions in FTAs** can play an important role at both the domestic and regional level, **supporting authorities related to competition policy** to meet their ultimate mandates.
- **Recent FTAs have acknowledged** the need for economies to encourage **domestic competition rules** in order to achieve the benefits of trade liberalization.

III. BUILDING A COMPREHENSIVE FTAAP

- **The FTAAP**, the powerful instrument to advance the economic integration, needs to incorporate **achieving a level-playing-field** for all market participants, **incorporating constant evolution of business model** and **ever-changing international business environment** as one of the high-quality solutions to Next Generation Trade & Investment Issues (NGeTi).
- However, **the potentially positive impact** that competition policy might have in the region **will only occur if implemented properly locally and regionally**. High-standard provisions on related competition policy chapters in FTAs need to converge to eventual comprehensive FTAAP which guarantees a level-playing-field for all the business in the region.

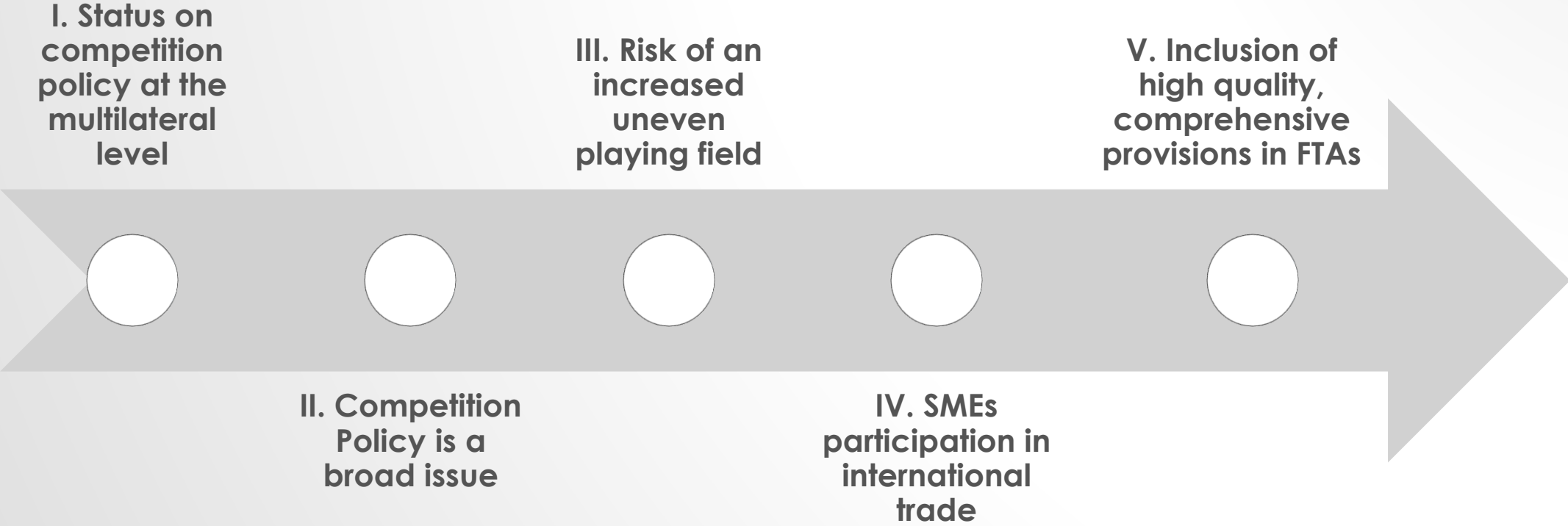
IV. THE FTAAP COMPETITION POLICY REPORT

The report presents a comparative analysis on three main areas that are closely related to competition policy in six FTAs in which Asia-Pacific economies actively participate and that are considered next generation agreements.

Trade Agreement	Competition	Investment	SMEs
The Comprehensive and Progressive Agreement for Trans Pacific Partnership (CPTPP)	Ch. 16. Competition Policy and Ch. 17 State-Owned Enterprises and Designated Monopolies	Ch. 9 Investment	Ch. 24 Small and Medium-Sized Enterprises and Ch. 22 Competitiveness and Business Facilitation
The United States-Mexico-Canada Agreement (USMCA)	Ch. 21 Competition Policy and Ch. 22 Owned Enterprises and Designated Monopolies	Ch. 14 Investment	Ch. 25 Small and Medium-Sized Enterprises and Ch. 26 Competitiveness
The European Union-Singapore Free Trade Agreement (EUSFTA)	Ch. 11 Competition and Related Matters	-	-
The Canada-European Union Comprehensive Economic and Trade Agreement (CETA)	-	Ch. 8 Investment	-
The European Union-Japan FTA (the Economic Partnership Agreement - EPA)	-	-	Ch. 20 Small and Medium-Sized Enterprises
the European Union-Vietnam FTA (EVFTA)	Ch. 11 State-Owned Enterprises, Enterprises Granted Special Rights or Privileges, and Designated Monopolies	-	-

The full report can be consulted [here](#)

V. CHALLENGES AND OBSTACLES ON COMPETITION POLICY



CHALLENGES AND OBSTACLES ON COMPETITION POLICY: *STATUS ON COMPETITION POLICY AT THE MULTILATERAL LEVEL*

- **Companies doing business every day face major obstacles without a multilateral framework** that fully protects them against anti-competitive business conducts not only for trade in goods but also trade in service and investment.
- In fairness, some WTO agreements have competition policy-related provisions, and these can be found in GATT, GATS, TRIMs, TRIPS and ASCM. These **WTO agreements**, however, **are not enough to cover the broad range of issues that competition policy should regulate.**

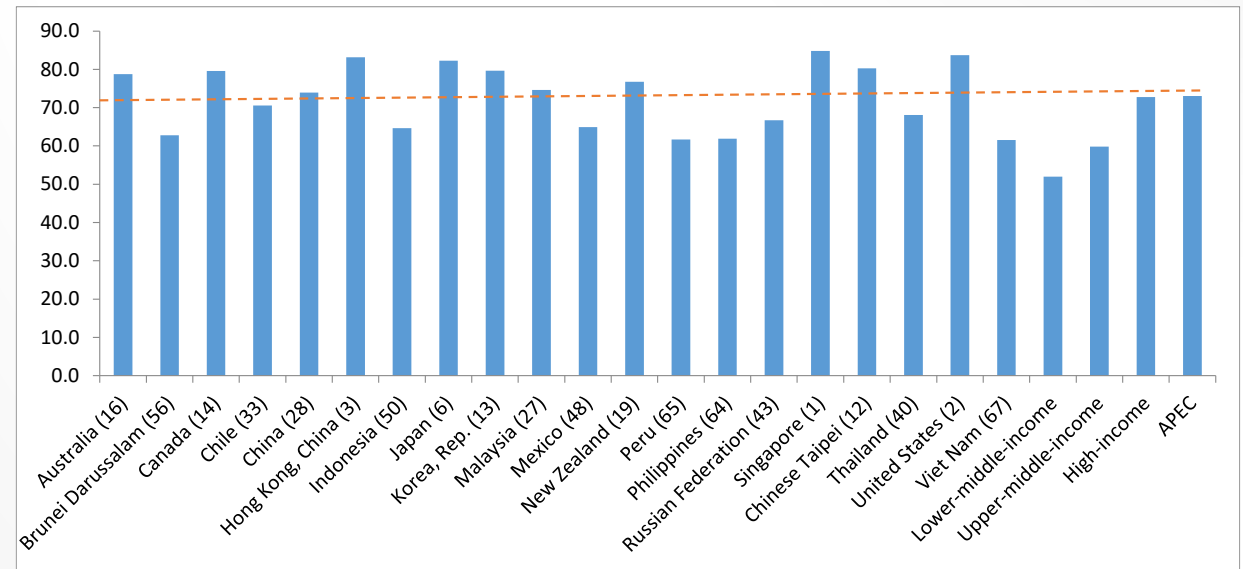
CHALLENGES AND OBSTACLES ON COMPETITION POLICY: *COMPETITION POLICY IS A BROAD ISSUE*

- **Competition policy involves several areas** that makes it challenging for authorities and governments to manage and legislate. Thus, **how to address such a broad issue? How can economies manage and promote such a complex issue?**
- **Competition policy has an inherent presence in such areas** as investments, intellectual property rights, SMEs, anti-competitive behaviour, innovation and technology transfer. **Its scope and impact are even more extensive** due to the effects of **globalization** and the **digital economy**.

CHALLENGES AND OBSTACLES ON COMPETITION POLICY: RISK OF AN INCREASED UNEVEN PLAYING FIELD

- **Private and public enterprises** across the region **could face an increased uneven playing field** due to anti-competitive business practices or abuse of market power.
- Asia Pacific economies have to consider many critical elements to promote fair competition. **All companies, whether public or private, have the same rights, but also the same obligations** when engaged in commercial activities.

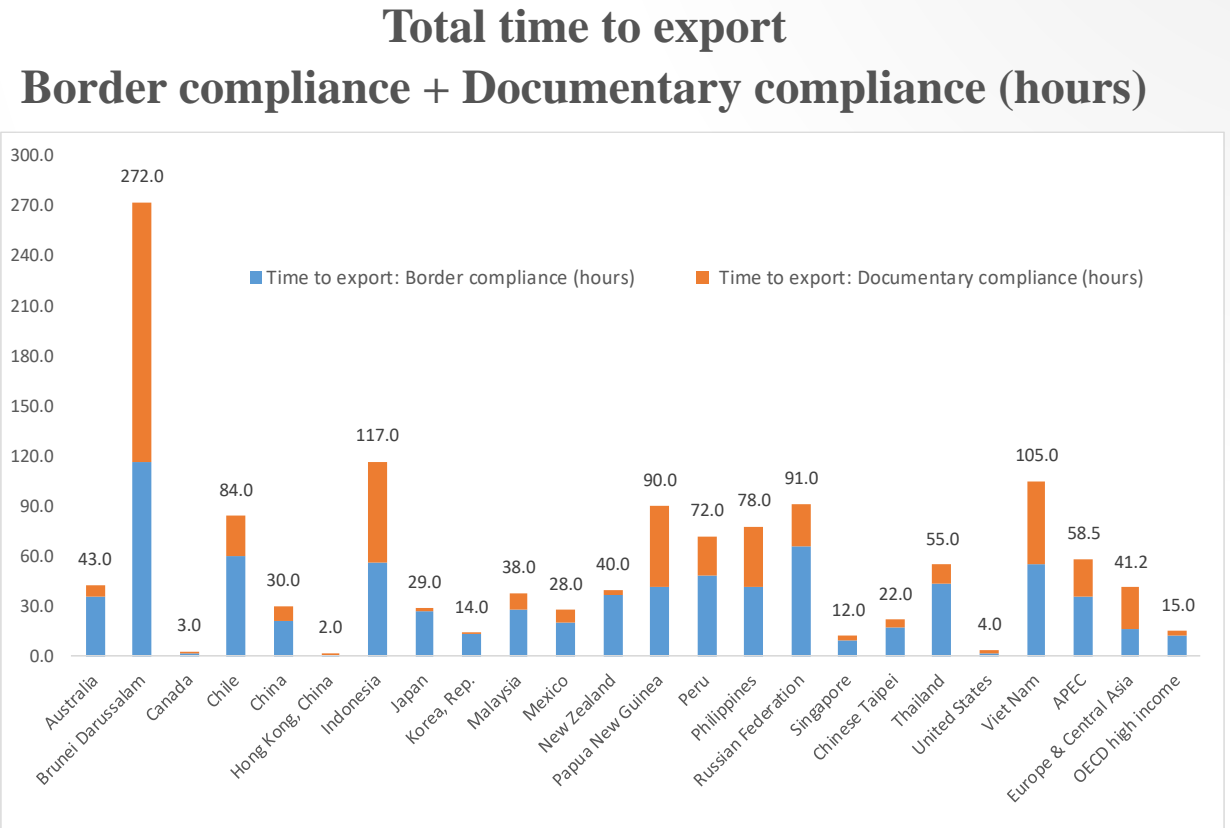
The Global Competitiveness Report 2019
ranking and index



Source: Navarro, J. (Author) based on the Global Competitiveness Report 2019

CHALLENGES AND OBSTACLES ON COMPETITION POLICY: SMEs PARTICIPATION IN INTERNATIONAL TRADE

- **One of the most important challenges** of a comprehensive competition policy is **incorporating SMEs successfully** in global value chains, electronic commerce and overall in international trade.
- **SMEs face different challenges compared to multinational companies** when using FTAs and participating in international markets.

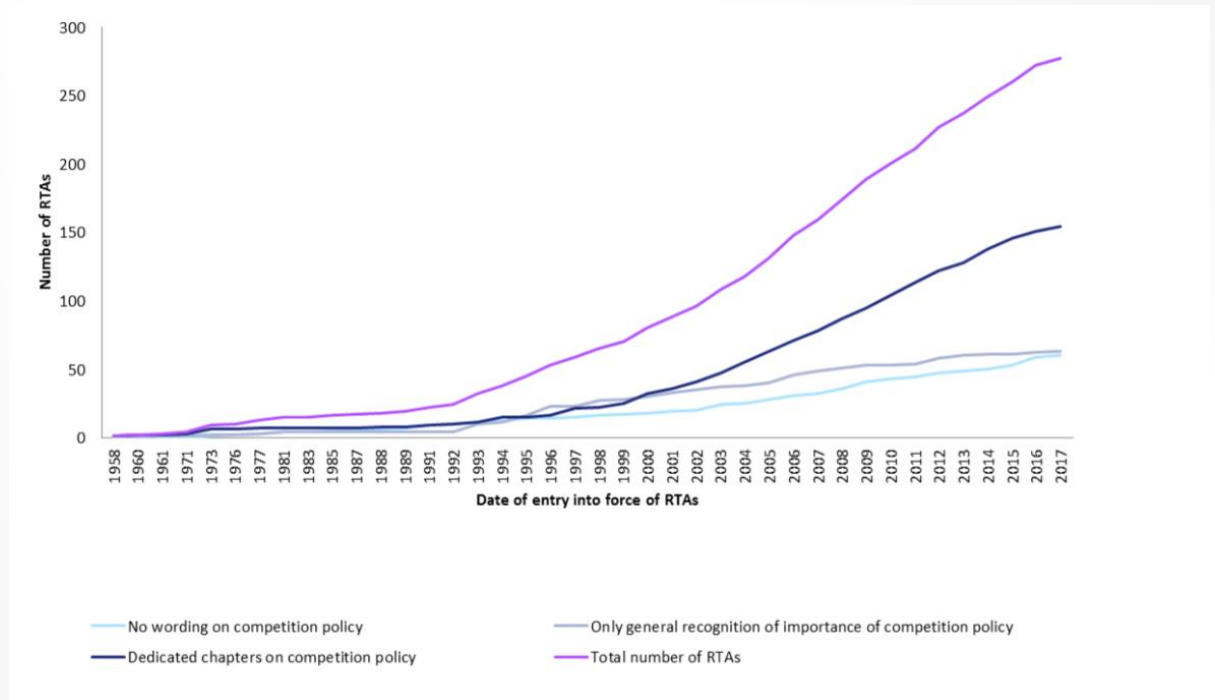


Source: Navarro, J. (Author) based on Doing Business Report 2020, the World Bank

CHALLENGES AND OBSTACLES ON COMPETITION POLICY: INCLUSION OF HIGH-QUALITY COMPREHENSIVE PROVISIONS IN FTAS

- **Even though a substantial majority of FTAs addresses competition** related issues in one form or another; **there are differences in the level of commitments** assumed by economies on competition provisions.
- **Lack of harmonization** on competition rules between trading parties, **disrupts collective efforts to support business**, strengthen their role in GVCs and promote economic integration and a level playing field in the region.

Treatment of competition policy in RTAs (1958 – 2017)



Source: Robert D. Anderson, William E. Kovacic, Anna Caroline Müller and Nadezhda Sporysheva, Competition Policy, Trade and the Global Economy: Existing WTO Elements, RTA Commitments, Current Challenges and Issues for Reflection, WTO Working Paper, ERSD-2018-12

VI. COMPARISON OF COMPETITION POLICY CHAPTERS OF THE CPTPP, USMCA AND EUSFTA

- The CPTPP, USMCA and EUSFTA are three excellent examples of agreements that are contributing to overcoming the challenges and obstacles on competition policy.

Topic	CPTPP (Ch. 16)	USMCA (Ch. 21)	EUSFTA (Ch. 11)
Objectives	Art. 16.1	Art. 21.1	Art. 11.1
Principles	Art. 16.1	-	Art. 11.1
Anti-competitive Activities	Art- 16.1	Art. 21.1	Art. 11.1
Non-discrimination	Art. 16.1	-	Art. 11.2
Transparency	Art. 16.1 & Art. 16.6	Art. 21.1, 21.2 & 21.5	Art. 11.2
Procedural Fairness	Art. 16.3	Art. 21.2	Art. 11.2
Technical Cooperation	Art. 16.5	Art. 21.3	-
Private Rights of Action	Art. 16.3	-	-
Notification	Art. 16.4	-	Art. 21.3
Cooperation in Enforcement Activities	Art. 16.4	Art. 21.3	Art. 11.11
Coordination of Enforcement Activities	Art. 16.4	Art. 21.3	Art. 11.11
Confidentiality of Information	Art. 16.2 & Art. 16.7		Art. 11.12
Consultation between Competition Authority	Art. 16.8	Art. 21.6	Art. 11.13
Dispute Settlement	Article 16.9 Non-Application of Dispute Settlement	Art. 21.7 Non-Application of Dispute Settlement	Art. 11.14 Non-application of Dispute Settlement except for Article 11.7 (Prohibited Subsidies)
State Owned Enterprises (SOEs)	separated chapter	separated chapter	Art. 11.4
State Aids & Subsidies	Included in SOEs chapter	Included in SOEs chapter	Art. 11.5, 11.6, 11.7, 11.8, 11.9 and 11.10
Consumer Protection	Art. 16.6	Art. 21.4	-
Review Mechanism	-	-	Art. 11.10

VII. CONCLUDING RECOMMENDATIONS

- I. A general agreement on competition policy in the framework of the international trading system is needed; but, unfortunately, it does not exist yet. Thus, **a viable route to advance this agenda is dealing with competition policy issues from trade agreements that incorporate advanced solutions.**
- II. Even though competition policy is a broad topic, **considerable knowledge** have been accumulated **in the APEC region that might help any economy implement improvements** in this discipline, despite the complexity of the issues involved. **Competition Policy should not be seen as simply a domestic matter, but as a regional matter** that needs to be addressed in collaboration with like-minded economies.
- III. Competition discipline must provide that all the Parties have **high standards on their domestic competition** laws and ensure **these are fully enforceable with no discrimination.**
- IV. To promote equal footing, **SMEs must be included in every analysis** due to their current and potential presence in a broad variety of competitive sectors worldwide. The issue is that regulations and enforcement of **competition policy must warrant fair competition** and articulate a set of rules that promotes efficiency, productivity and innovation among private and public enterprises.
- V. In these times of uncertainty and rapid change, **high standards on competition policy could strengthen resilience in markets and support the economic recovery from COVID-19.** Likewise, high-standard provisions on competition policy in FTAs could contribute to achieve **a comprehensive FTAAP which guarantees a level-playing-field for all the business in the region.**

THANK YOU

Presentation of comparative research on
competition policy: challenges and obstacles

Mr. Juan Navarro
juan.Navarro@cmxpartnerships.com

September 2020