

**Unclassified****English - Or. English****17 October 2019****DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE****Global Forum on Competition****COMPETITION PROVISIONS IN TRADE AGREEMENTS – Contribution  
from Hong Kong, China****- Session II -****5 December 2019**

This contribution is submitted by Hong Kong, China under Session II of the Global Forum on Competition to be held on 5-6 December 2019.

More documentation related to this discussion can be found at: [oe.cd/cpta](http://oe.cd/cpta).

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## *Competition Provisions in Trade Agreements*

### **- Contribution from Hong Kong, China\* -**

#### **1. Competition provisions in trade agreements**

1. The Hong Kong Competition Commission (HKCC) provides its written contribution in response to each of the questions set out in Annex 1 of “Call for Country Contributions” in relation to Competition Provisions in Trade Agreements. The paragraph numbers in each section below relate to the question numbers used in Annex 1.

##### **1.1. Response to questions in the “background” section**

2. Hong Kong, China (HKC) currently has six Free Trade Agreements (FTAs)<sup>1</sup> notified to the World Trade Organization. Among the six FTAs, all have competition provisions and four have competition-specific chapters.

3. The objective which is consistent across all of the FTAs is the promotion of competition. This is often expressed in general terms. All but one of the FTAs also have the objective of enhancing co-operation and co-ordination between competition authorities in each jurisdiction<sup>2</sup>. Two FTAs have an additional objective related to procedural fairness in competition law enforcement activities.<sup>3</sup> Finally, in so far as control of state aid is considered a competition related objective, all the FTAs included provisions related to it.

4. During the establishment of the competition law framework in HKC, the presence of trade agreements was not mentioned in consultation or public briefing papers. Internal papers noted that it was common for competition authorities to enter into administrative arrangements to promote cooperation in competition matters at a bilateral or multilateral level in a manner that is consistent with the parties’ competition law. These could include a formal bilateral agreement between governments as a part of a trade agreement.

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\* Contribution from the Hong Kong Competition Commission.

<sup>1</sup> These are:

- Mainland China and HKC Closer Economic Partnership Arrangement;
- HKC - New Zealand Closer Economic Partnership Agreement (HKC-NZ CEPA);
- FTA between HKC and the Member States of the European Free Trade Association (HKC-EFTA FTA);
- HKC - Chile FTA;
- HKC and Macao Closer Economic Partnership Arrangement (HK-Macao CEPA);
- HKC - Georgia FTA.

See also the HKC – Australia FTA which was signed on 26 March 2019, and will enter into force after Hong Kong and Australia have completed their respective internal procedures.

<sup>2</sup> The fact that the HKC-Macao CEPA does not include this objective is not surprising as Macao does not have a competition law regime at the moment.

<sup>3</sup> These are the HKC-Georgia FTA and the HKC-NZ CEPA.

5. Competition law is provided for in HKC in the Competition Ordinance (Cap. 619) (the Ordinance). The Ordinance has not been subject to amendment and there is no suggestion that it might need to be amended to reflect any current FTA or any potential trade agreement. The HKCC has provided several guidelines and other publications to add clarity to how the Ordinance is enforced. The Competition Tribunal, the judiciary body which hears competition cases in Hong Kong, has handed down two competition case judgements. None of these have been modified due to any provision of an FTA. We similarly do not see any impact of the FTAs on any of Hong Kong's competition related case law. In this respect, the Ordinance and the common law of HKC provide strong procedural protections and we would not expect any trade agreement to require procedural standards that go further than those already provided.

## **1.2. Response to questions in the “impact of competition provisions” section**

6. As noted in paragraph 5 above, the HKCC has not identified any incidences of changes or other impacts on the competition law regime that arise from any of the FTAs.

7. Therefore, the HKCC cannot provide any specific examples of provisions of FTA which have had an impact on the competition law regime in HKC.

8. Consistent with Laprevote's article, in all of the FTAs with a competition-specific chapter, the contents of the competition-specific chapters are excluded from the general dispute settlement mechanism. Neither the dispute settlement mechanism nor any other alternative mechanisms have been applied in relation to a competition related matter.

9. The HKCC is not aware of any interpretation problems in implementing the competition provisions of the FTAs.

10. The HKCC does not believe there are any inconsistent clauses on competition matters between different FTAs or between any of the FTAs and the Ordinance. As noted above, the Ordinance alongside Hong Kong's common law provide robust procedural safeguards.

11. HKC has set up a mechanism to monitor the effect of the FTAs by establishing either a joint committee or a working group to review the agreement within a certain timeframe. This includes a review of the competition provisions in the trade agreements.

12. The HKCC is satisfied with the competition provisions contained in the FTAs. The HKCC has a good relationship with officials working on trade agreements and would expect to be consulted in relation to trade provisions in future trade agreements.

## **1.3. Response to questions in the “role of competition authority” section**

13. The HKCC has been established relatively recently and could not, of course, participate in the negotiations of trade agreements that predated its establishment. The HKCC was invited by the Government to contribute in the drafting of the Hong Kong, China – Australia FTA<sup>4</sup>, engaging in discussions with the negotiators to provide competition-related knowledge and legal expertise during the process.

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<sup>4</sup> HKC – Australia FTA was signed on 26 March 2019, and will enter into force after Hong Kong and Australia have completed their respective internal procedures.

14. To date, the HKCC has not issued any opinion on draft legislation implementing competition clauses related to trade agreements. The Ordinance provides the HKCC a function to advise the Government on competition matters in and outside HKC. In general the HKCC would expect to work with the Government and raise concerns in confidence in relation to the implementation of provisions of trade agreements that relate to competition.

15. Currently, there are no discussions about changing the role of the HKCC in the development and negotiation of trade agreements. The HKCC does not consider there to be any need for such discussion.