

Unclassified**English - Or. English****17 November 2019****DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Global Forum on Competition****COMPETITION PROVISIONS IN TRADE AGREEMENTS – Contribution
from the Eurasian Economic Commission****- Session II -****5 December 2019**

This contribution is submitted by the Eurasian Economic Commission 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.

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Competition Provisions in Trade Agreements

The overview of competition provisions in the Eurasian Economic Union's Trade Agreements

- Contribution from the Eurasian Economic Commission –

1. Background

1. The Eurasian Economic Union (EAEU) was established on January 1, 2015; currently the following countries are the EAEU Member States: Armenia, Belarus, Kazakhstan, Kyrgyzstan and the Russia.
2. For the moment a separate chapter on competition has been included into Free Trade Agreement with Viet Nam (entered into force in 2016) and Singapore (at the stage of ratification) and non- preferential Agreement on Trade and Economic cooperation with China (will enter into force in October, 2019). Moreover the draft texts of the FTAs with Egypt and Israel also contain the relevant chapters, but they are still in the process of negotiations.
3. The main objectives of competition provisions in the abovementioned agreements are:
 - to ensure that the benefits of trade liberalization are not undermined by anticompetitive practices on the territory of another Party;
 - to promote proper functioning of their markets and economic efficiency;
 - to guarantee procedural fairness and transparency in the sphere of competition;
 - to develop cooperation between relevant authorities.
4. As the EEC is now in the process of establishing the Union's competition framework as a whole being quite a new institutional body, we try not to include those provisions which will lead to substantial modification of existing legislation. Our current goal is to maintain and develop cooperation between competent authorities and to propose various types of such cooperation. At the same time we see positive effects of including transparency provisions in our trade agreements in terms of information published on the EAEU Member States web sites.
5. See above. None of the FTAs led to modification of existing legislation, case law or decision practice.
6. According to the Classification of competition provisions in trade agreements (Laprévotte et al., 2015) EAEU FTAs normally include the following types of competition provisions:
 - Promote competition (e.g. in general terms, addressing anti-competitive practices in their territories);

- Set forth competition enforcement principles (e.g. procedural fairness, transparency, institutional design);
 - Co-operation and co-ordination mechanisms between the signatory jurisdictions.
7. There is a “basic range” of competition provisions in the EAEU FTAs that includes at least 4 key issues:
8. The first one is the enumeration of anticompetitive practices which are prohibited in the markets of the Parties and the commitment to apply effective measures against such practices (*the anticompetitive practices include anticompetitive agreements and concerted actions of the economic entities, the abuse of the dominant position on the market and unfair competition*).
9. The second one – principles related to competition law enforcement activities, in other words the guarantees that Parties’ competition law enforcement procedures are applied in a transparent and non-discrimination manner (*guarantees that before a final decision is imposed against any person for violating competition laws and regulations, this person is provided with the grounds for the alleged violation and an opportunity to present its opinion/ evidence in its defense and the possibility to appeal such decision*).
10. Then goes transparency provisions in which the Parties agree to make public in the Internet their legislation in the sphere of competition and information on decisions of competent authorities. Moreover in a number of our agreements we also enumerate the list of web sites on which any interested person may find this information easily.
11. And the last group of provisions in our competition chapters is devoted to the development of cooperation with competent bodies of the partner. Apart from such forms of cooperation as exchange of information and experience, organization of consultations on issues related to competition or participation in various forums we also try to work out some mechanism of cooperation which may have some practical effect for competition law enforcement. *For example, our competition chapters contain the possibility to make requests to our partners to initiate investigations if we consider that our interests are substantially affected in the territory of the partner by anticompetitive practices.*

2. Impact of competition provisions

12. Taking into account the fact that at the moment only one agreement with Viet Nam has entered into force (in 2016) it is rather difficult to assess the impact so far. For the moment none of them led to a stronger cooperation in comparison to the previously realized interaction.
13. No tangible impact so far.
14. Dispute resolution clause in EAEU trade agreements normally does not apply to competition provisions. At the same time we try to include in FTAs the possibility to hold consultations in order to foster mutual understanding between the Parties, or to address specific matters that arise under the relevant Chapter. We also suppose that another useful tool is the possibility to request consultations at the Joint Committee established under the Agreement with a view to facilitating a mutually satisfactory resolution of a matter.
15. We are not aware of any interpretation problems so far.

16. As the provisions are of very general character, the possibility of inconsistency or other issues is quite low. When drafting the agreements the parties normally try to avoid ambiguities, or provisions that may contradict or just absent in domestic legislations.

17. For the moment such kind of supervision is conducted at the meetings of the Joint Committee.

18. It could be valuable to prescribe some steps of case-specific cooperation, when handling investigations or market researches. Such provisions can foster cooperation between competition authorities of the parties.

3. Role of competition authority

19. The regulation of competition related issues in the EAEU is carried out at two levels: national and supranational. At the national level the competition regulation is conducted by competition authorities subject to national legislation. At the supranational level competition on cross-border markets is regulated by the Eurasian Economic Commission in accordance with the EAEU Treaty. Both the representatives of national competition bodies and Eurasian Economic Commission participate in the process of elaboration of competition provisions of trade agreements.

20. It should be noted that all drafts of competition clauses of FTAs shall be firstly approved by the national competition authorities of the EAEU Member States and the Commission. So in our case the negotiation process involves the stage of internal consultations between the Commission and the EAEU Member States competent authorities, followed by negotiations with third countries.

21. Having received the draft the EEC competition branch may give its opinion on the text.

22. The EEC competition branch would like to initiate the discussion of a greater involvement in the process of negotiation of trade agreements.