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COMPETITION COMMITTEE****Global Forum on Competition****COMPETITION PROVISIONS IN TRADE AGREEMENTS – Contribution  
from Turkey****- Session II -****5 December 2019**

This contribution is submitted by Turkey 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 Turkey –

1. To this date, Turkey has signed 37 Free Trade Agreements (FTA) with other countries. 11 of them were cancelled due to those countries' becoming a member of the European Union, 1 of them is suspended by the Turkish Grand National Assembly (Syria), 1 of them has ended (Jordan) and 4 of them are still pending ratification in the jurisdictions of the Parties' (Lebanon, Sudan, Venezuela and Qatar), Therefore, we can state that Turkey currently has 20 FTAs in effect with these countries/free trade areas: EFTA, Israel, North Macedonia, Bosnia and Herzegovina, Palestine, Tunisia, Morocco, Egypt, Albania, Georgia, Montenegro, Serbia, Chile, Mauritius, South Korea, Malaysia, Moldova, Faroe Island, Singapore and Kosovo<sup>1</sup>.

2. When we take a closer look at these FTAs, we can see that most of the FTAs (18) contain a reference to "Competition" in their article on "Objectives"<sup>2</sup>. This reference was generally given by stating that one of the objectives of the FTA was to "*to provide fair conditions of competition in trade between the Parties*" or "*to promote competition in their economies, particularly as it relates to the economic relations between the Parties*"<sup>3</sup>.

3. However, a more detailed article on competition is not included in every FTA. Only 13 FTAs contain a separate article on competition. The FTAs that contain a separate article on "Competition" also differ in their coverage of the anti-competitive practices. As we all know, the generally accepted anti-competitive practices are "*agreements that have as their object or effect the prevention, restriction or distortion of competition*" (which cover both vertical and horizontal restrictions), "*abuse of dominant position*" and "*concentrations*" (*mergers and acquisitions*). While all of these FTAs cover, "*abuse of dominant position*" 12 of them covers both vertical and horizontal agreements<sup>4</sup> and only 4 of them cover concentrations<sup>5</sup>.

4. The definition about the anti-competitive practices in these FTAs are generally stated as;

*"agreements and concerted practices between undertakings, decisions and practices by associations of undertakings, which have as their object or effect the prevention, restriction or distortion of competition in the territory of either Party",*

*"any abuse by one or more undertakings of a dominant position in the territory of either Party"*

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<sup>1</sup> More information can be found at this link (in Turkish): <https://www.ticaret.gov.tr/dis-iliskiler/serbest-ticaret-anlasmalari/yururlukte-bulunan-stalar> and at this link (in English): <https://www.trade.gov.tr/free-trade-agreements>

<sup>2</sup> Malaysia and Singapore FTAs do not refer to competition in their article on objectives..

<sup>3</sup> EFTA and South Korea FTAs contain this wording.

<sup>4</sup> Singapore FTA only covers horizontal agreements.

<sup>5</sup> EFTA, Montenegro, South Korea and Singapore FTAs cover concentrations.

*“concentrations between undertakings, which significantly lessen competition, in particular as a result of the creation or strengthening of a dominant position in the territory of either Party”.*

5. Another important feature of the FTAs which has a separate article on competition, is that they differ from each other in terms of their coverage. For example only in some of these FTAs provisions regarding “State Aid” are also included in the article for Competition and rules on exchange of information, cooperation, consultations are explicitly stated and in most of these FTAs there isn’t a recourse to dispute settlement.
6. One last thing to point here is that the only FTA containing an exclusion provision for a sector on competition is the FTA signed with the Bosnia and Herzegovina. In this FTA, provisions regarding competition does not cover agricultural products.
7. More information about these agreements can be found in the table below:

Table 1.

No	Name of the Other Party	Entered into force	Competition Chapter	Reference to Competition	Coverage
1	EFTA	1.4.1992  (Revised on 25.6.2018, ratification ongoing)	Yes	Article 2.g (Objectives)  Article 16 (Competition)	All anti-competitive Agreements
2	Israel	1.5.1997	Yes	Article 1.b (Objectives)  Article 25 (Competition)	Anti-competitive Agreements (except concentrations)  Includes State-Aid
3	North Macedonia	24.7.2000	No	Article 1.2.d (Objectives)	Anti-competitive Agreements (except concentrations)
4	Bosnia and Herzegovina	1.7.2003  (Amended in 24.08.2010) (Revised on 2.5.2019, ratification ongoing)	Yes	Article 1.2.b. (Objectives)  Article 17 (Competition)	Anti-competitive Agreements (except agriculture)
5	Palestine	1.6.2005	Yes	Article 1.2.d (Objectives)  Article 24 (Competition)	Anti-competitive Agreements (except concentrations)  Includes State-Aid
6	Tunisia	1.7.2005	Yes	Article 1.d (Objectives)  Article 25 (Competition)	Anti-competitive Agreements (except concentrations)
7	Morocco	1.1.2006	Yes	Article 1.2.b. (Objectives)  Article 25 (Competition)	Anti-competitive Agreements (except concentrations)  Includes State-Aid
8	Egypt	1.3.2007	Yes	Article 1.2.d (Objectives)  Article 22 (Competition)	Anti-competitive Agreements (except concentrations)  Includes State-Aid
9	Albania	1.5.2008	Yes	Article 1.2.d. (Objectives)  Article 24 (Competition)	Anti-competitive Agreements (except concentrations)  Includes State-Aid
10	Georgia	1.10.2008	Yes	Article 1.2.d (Objectives)  Article 20 (Competition)	Anti-competitive Agreements (except concentrations)  Includes State-Aid
11	Montenegro	1.3.2010  (Protocols on agriculture and services signed on 17.07.2019, ratification ongoing)	Yes	Article 1.2.d (Objectives)  Article 24 (Competition)	Anti-competitive Agreements

12	Serbia	1.9.2010	Yes	Article 2.d (Objectives) Article 25 (Competition)	Anti-competitive Agreements (except concentrations) Includes State-Aid
	(Protocols on agriculture and services in force as of 1.6.2019)				
13	Chile	1.3.2011	No	Article 2.e (Objectives)	
14	Mauritius	9.9.2011	No	Article 2.e (Objectives)	
15	South Korea	1.5.2013	Yes	Article 1.2.c (Objectives) Chapter 3 - Competition	All anti-competitive Agreements
16	Malaysia	1.8.2015	No	No reference to competition	
17	Moldova	1.10.2016	No	Article 2.e (Objectives)	
18	Faroe Islands	1.9.2017	No	Article 1.2.1.e (Objectives)	
19	Singapore	1.9.2017	Yes	No reference to competition in Objectives Article Chapter 14 (Competition)	All anti-competitive Agreements (Only covers horizontal agreements)
20	Kosovo	1.9.2019	No	Article 1.2.1.e (Objectives)	

8. When we look at the table above, we can see that there is a trend not to include competition provisions as a separate chapter in the FTAs signed by Turkey. This is apparent from the fact that for the last 8 years only 2 FTAs (South Korea and Singapore) contain a separate chapter on competition. Turkish Competition Authority (TCA) expects this trend to continue because a separate chapter on competition is present in only one of the FTAs that is still pending ratification in the jurisdictions of the Parties’.

9. Turkish Competition Authority (TCA) has always been involved in the preparation and negotiation process of the articles on competition. In this regard, representatives of the TCA have attended the negotiations of the FTAs, prepared the draft versions of the articles on competition and engaged with the responsible ministry in the preparation of the counter proposals for these articles. TCA is always open to sending its experts to these negotiations as these FTAs increase the entry (and as a result competition) into the markets of the Parties. TCA is also happy to be present in these negotiations as the experts on both sides get the chance to meet with each other and improve their understanding of other Parties’ competition laws. This, in turn, creates a unique opportunity to improve the dialogue between the two competition authorities.

10. As a result of these FTAs, TCA has obtained a legally binding tool to improve its communication with the other competition authorities. Even though TCA has not extensively used this option to improve its competition enforcement efforts, the inclusion of provisions on competition has led to an increase in the interaction of TCA with other competition authorities.