

The Competition Provisions in RTAs
Workshop co-hosted by TRALAC and UNCTAD
in coordination with IDRC
Cape Town, 4 October 2006

**National Implications of Competition Related
Provisions (CRPs) in Regional Trade
Agreements (RTAs)**

Bahri Özgür Kayalı
Yeditepe Üniversitesi and the University of Manchester

Purpose of the research

- Part of the project on trade and competition issues at the regional level
- It is thought that countries face implementation problems at national level that needs to be tackled

The research question

- Proliferation of bilateral and regional trade agreements (RTAs) containing competition related provisions (CRPs)
- Implementation problems due to the absorptive capacity of the counties
- The main problems of the signatory countries and possible solutions?

The objective

- To identify the main problems in the implementation of CRPs in RTAs
- To provide for possible solutions in overcoming such problems.
- Main components in the analysis:
 - The political and socio-economic situation
 - The legal framework
 - The institutional structure

The methodology and hypothesis

- An interdisciplinary approach (legal, political and economic)
- Problems in implementation due to a number of interlinked factors, therefore, different sets of questions regarding various factors

The content

The draft content:

- Political and socio-economic situation
- The legal framework provided by the CRPs
- The origins and nature of the agreement
- The scope of the CRPs
- The case studies

The origins and nature of the agreement

- Are the CRPs a chapter of an agreement that is essentially a trade or a broader agreement?
- How did the agreement's existence or negotiation affect the political economy of competition law enactment and enforcement?
- Does the law have policy objectives other than protecting the established goals of CRPs, i.e. competitive process/ consumer welfare/ economic efficiency, such as social objectives (such as employment and reduction of poverty), promotion of SMEs?
- Does the agreement contain any provisions which could directly or indirectly affect the ability to give effect to these aims?

The origins and nature of the agreement (cont)

- What is the existing relationship between competition rules and the regulatory regime?
- Does the agreement exempt certain sectors from the substantive competition provisions?
- What are the exempted sectors and are the reasons given for their exemption?

The scope of the CRPs

- Which areas of competition law are covered in the law, i.e., private anti-competitive practices such as horizontal agreements and abuse of dominance and/or governmental restrictions to competition such as state aids?
- Does the agreement regulate state aid or require the signatory parties to abide by transparent, non-discriminatory and fair rules on public procurement (overlap with trade)?
- What is the position taken with regard to vertical restraints? Are they treated differently by the jurisdictions and is there any effort to harmonise?
- Are there any enforcement mechanisms provided for in the CRPs of the RTA or is it left to the implementing country to decide on?

The case studies

- Political and socio-economic situation
- The legal framework provided by the national system
- The institutional structure provided by the national system

The legal framework provided by the national system

- Are there any deviations in the national legal system from the CRPs of the relevant RTA with regard to the objectives and terms?
- Is implementation hindered by the relative novelty of the national law? In what ways, if at all, have competition provisions strengthened the deterrent effect of national laws?
- Which enforcement mechanisms are provided for in the law, i.e. public enforcement (investigative powers, cease and desist orders, periodic fines, fines etc.), private enforcement (civil actions, damages etc.)?
- How well are the provisions implemented in the country, specific cases?

The institutional structure provided by the national system

- Is implementation inhibited by the novelty of the relevant authority? To what extent have bilateral and regional trade agreements been used to strengthen the powers, budget and resources of competition agencies?
- Is there sufficient political support in the relevant legal system to the competition authority?
- What kind of powers is provided or the authority in charge?
- Are they provided with adequate resources?

The institutional structure provided by the national system (cont.)

- Is the authority politically and financially independent?
- Is there a developed competition culture in the country?
- What is the position of the competition authority with regard to other regulation and supervision authorities?
- Is the authority in question respected and trusted by its government/academic and business groups/larger society?