



**Asia-Pacific  
Economic Cooperation**

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Agenda Item: 8

## **Competition Policy and Free Trade Agreements**

Purpose: Information  
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# COMPETITION POLICY AND FREE TRADE AGREEMENTS CHILE



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## Outline

1. Chilean Competition System: A brief overview
  - a. Objectives
  - b. General principles
2. Competition Policy in Free Trade Agreements
  - a. Why
  - b. Who
3. Provisions in Competition Policy Chapters
  - a. Main provisions
  - b. Characteristics

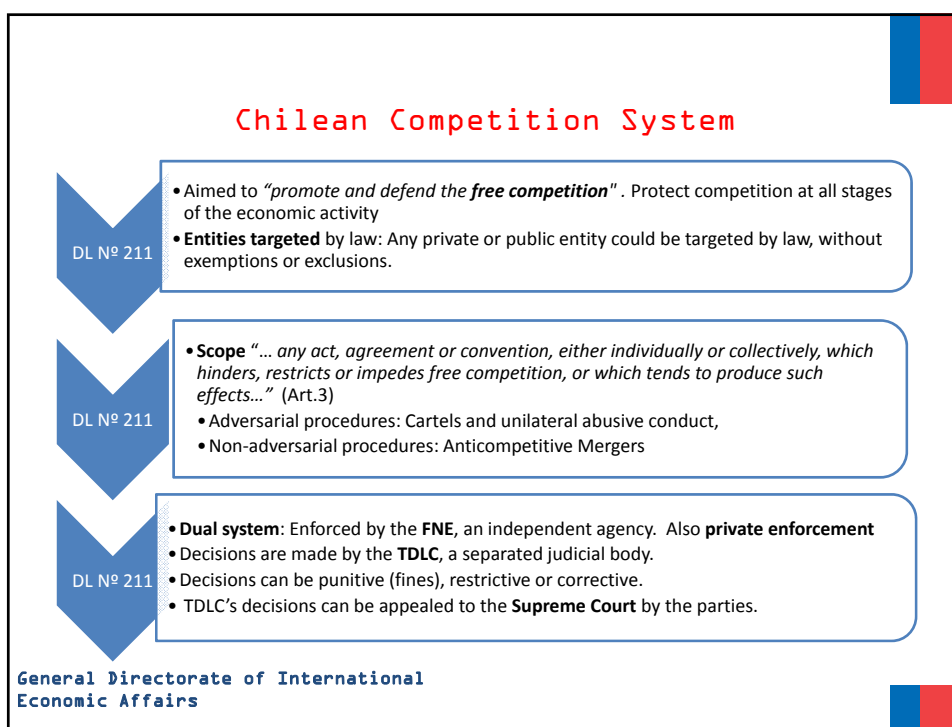
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**Chilean Competition System**

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**Chilean Competition System**

**DL N° 211**

- Aimed to “*promote and defend the free competition*”. Protect competition at all stages of the economic activity
- **Entities targeted** by law: Any private or public entity could be targeted by law, without exemptions or exclusions.

**DL N° 211**

- **Scope** “... any act, agreement or convention, either individually or collectively, which hinders, restricts or impedes free competition, or which tends to produce such effects...” (Art.3)
- Adversarial procedures: Cartels and unilateral abusive conduct,
- Non-adversarial procedures: Anticompetitive Mergers

**DL N° 211**

- **Dual system**: Enforced by the **FNE**, an independent agency. Also **private enforcement**
- Decisions are made by the **TDLC**, a separated judicial body.
- Decisions can be punitive (fines), restrictive or corrective.
- TDLC’s decisions can be appealed to the **Supreme Court** by the parties.

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## General Principles

- ❖ Maximize Economic Welfare and Economic Efficiency
- ❖ No discrimination between domestic producers (or consumers) and foreign producers (or consumers), neither between market segments. Its main objective is to protect competition itself
- ❖ Competition Policy must be applied not only to goods but also to services

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## Competition Policy in Free Trade Agreements

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## Why Competition Policy is important Chapters in FTAs

### Main Objectives

- to prevent that anti-competitive practices undermine the benefits of a Treaty or to help obtain its objectives

### Main Objectives

- to promote cooperation and coordination

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## Competition Policy in Free Trade Agreements

✓ Competition Chapters are an important element in ensuring that the potential benefits of a Free Trade Agreement can be fully realized

✓ Competition Provisions help to ensure that the benefits likely to flow from the reduction of barriers to trade are not unduly undermined by anticompetitive conduct

✓ Cooperation among competition authorities is a fundamental piece in the Free Trade Agreements

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## Competition Policy in Free Trade Agreements

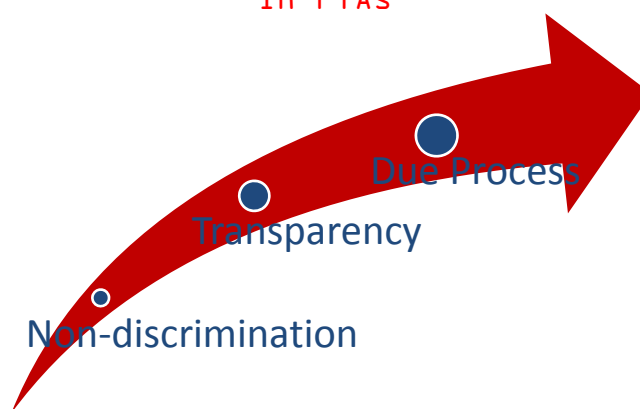
✓ Competition policy is a critical tool for governing the market. Used effectively it ensures that consumers and producers get a 'fair' price, and it can be an important tool for nurturing and supporting new industries, particularly small and medium-size enterprises

✓ Designing competition policies which are appropriate to developing economy conditions is critical for development gains. The current model of competition policy envisioned by Chile in its Free Trade Agreements (FTAs) take the local conditions and policy objectives, and at the same time allow flexibility in its provisions

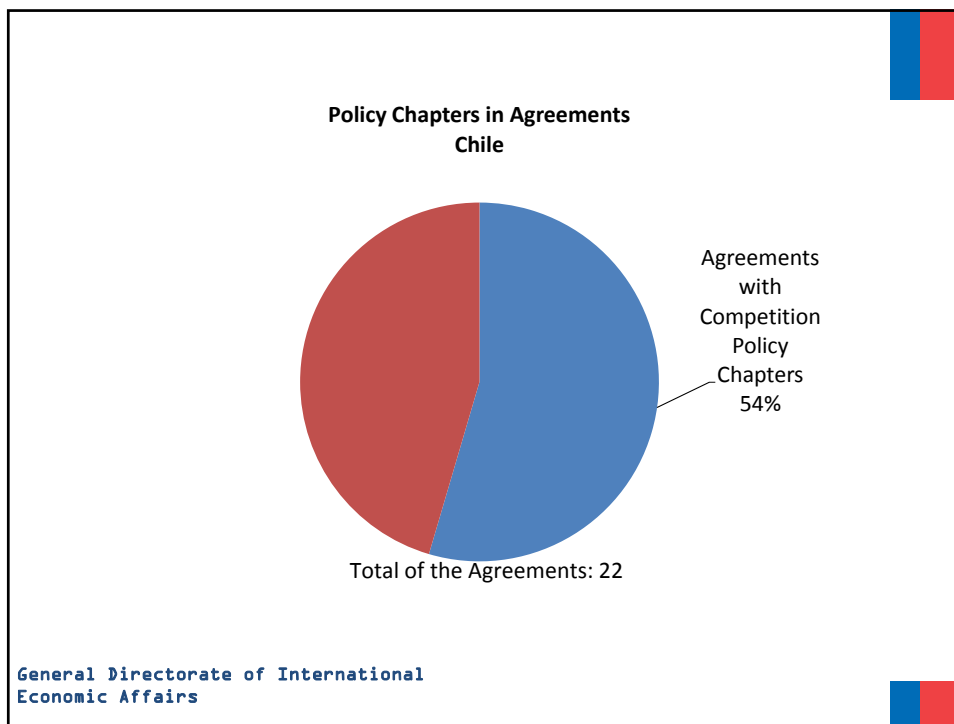
✓ Chile has signed Competition Policy chapters in most of the trade agreements it has negotiated.

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## Principles in Competition Policy Chapters in FTAs



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## Provisions in Competition Policy Chapters

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Chile has signed FTAs containing chapters on  
Competition Policy with:

1. MERCOSUR
2. Canada
3. Mexico
4. Central America
5. European Union
6. United States
7. EFTA
8. Korea
9. P4 (New Zealand, Singapore, Brunei)
10. Japan
11. Australia
12. Peru

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Generally the provisions contained within the  
chapters dealing with competition can be  
organized around the following topics:

1. Objectives
2. Principles and Institutions
3. State enterprises and Designated Monopolies
4. Notifications
5. Consultations
6. Information Exchange, confidentiality
7. Dispute settlement
8. Technical Assistance
9. Cooperation and coordination
10. Due Process
11. Non-Discrimination

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## Some Characteristics of the Competition Chapters in FTAs

- ✓Rules regarding Monopolies and State Enterprises
- ✓Almost all of them contain references to the notification of enforcement activities
- ✓The mechanism for consultations is included in a large number of FTAs
- ✓The majority of the FTAs point out that the chapter on competition or the policies or laws on competition will not be subject to the dispute settlement mechanism of the Agreement

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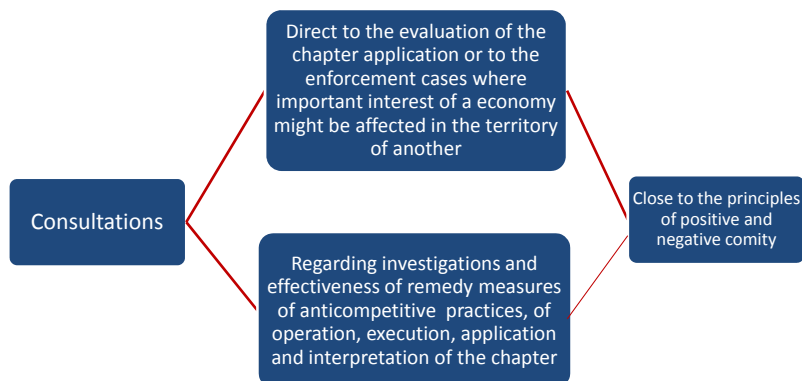
## Some Characteristics of the Competition Chapters in FTAs..cont

- ✓There is diversity regarding the detail or level of commitment on cooperation and coordination. Among the main elements are:
  - ✓Exchange of information
  - ✓Consultations
  - ✓Mutual technical cooperation

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## Some Characteristics of the Competition Chapters in FTAs..cont

The mechanism for consultations is included in a large number of FTAs:



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## Some Characteristics of the Competition Chapters in FTAs..cont

✓**Chile-MERCOSUR (ACE)**: Is it made explicit the need to search for efficiency and consumer welfare. Establish rules regarding consumer defense.

✓**Chile-P4**: Annex with exemptions

✓**Chile-Japan**: Establish two different articles (due process and non-discrimination)

✓**Chile-UE, Chile-EFTA, Chile-Korea**: Coordination in the application of the law for specific cases.

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## Some Characteristics of the Competition Chapters in FTAs..cont

✓Chile-USA: Establish prerequisites for autonomy or impartiality for maintaining competition authorities

✓Chile-Perú; Chile-P4: Large number of provisions

✓Chile-Korea; Chile-USA; Chile-EU; Chile-EFTA; Chile- P4; Chile-Japan; Chile-Australia; Chile-Peru: Contain Dispute Settlement Article.

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## Summary

	Canada	Central America	Korea	Mexico	USA	Mercosur	EU	EFTA	P4	Japan	Australia	Peru
Objectives			x				x	x	X		x	X
Competition Law and authorities (Institutions)	x			X	X	x			X	X	x	X
State Enterprises and Designated Monopolies	x	x	x	x	X		x	X	X		x	X
Notifications			x				x	X	X		x	X
Consultations			x		X		x	X	X		X	X
Information interchange, confidentiality			X		X		x	X	X	x	x	X
Dispute Settlement			x		X		x	x	X	x	x	X
Technical Assistance			X				x				x	X
Cooperation and coordination		x	x		x	x	x	x	X	x		X
Exemptions and exclusions									x			
Due process										x		
Non-discrimination										x		

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