

ASEAN Regional Capacity Building Roadmap For Competition (2017-2020)

1. Introduction

This Report updates ASEAN's 2012 Regional Capacity Building Roadmap (ARCBR), in accordance with Initiative 2.1 of the ASEAN Competition Action Plan 2025 (ACAP), and is prepared with support from the Competition Law Implementation Programme (CLIP) Phase II of the AANZFTA Economic Cooperation Work Programme (ECWP).

ASEAN is keen to ensure that capacity building needs for competition law enforcement are reviewed to take into account the many significant and recent developments related to competition policy and law in the region.

By comprehensively reviewing the region's capacity building needs and providing options and paths forward to address gaps in the ARCBR, the Roadmap aims to assist ASEAN Member States (AMS) in effectively and efficiently introducing, implementing, collaborating and coordinating on competition policy and law. This requires a holistic approach towards enforcement, advocacy and capacity building.

2. Methodology

The methodology for developing the ARCBR involved assessment of the individual capacity building requirements of each of the AMS before consolidation into a regional Roadmap. The capacity building needs of each AMS were assessed individually using responses to a checklist of questions, findings from fact-finding missions and additional extensive desktop research. In developing the ARCBR, substantial recourse has also been had to the Guidelines on Developing Core Competencies in Competition Policy and Law for ASEAN (RCC). The Report describes the findings of the Project in the context of the ACAP, and annexes the Roadmap.

Individual country reports were also prepared. These set out the background and context of the relevant legal system, as well as the state of the economy, and were reviewed by each jurisdiction. The country reports assess individual competition laws, reviewing their objects, scope of application, exemptions, prohibitions, investigation powers and enforcement mechanisms and practice. Institutional design of competition authorities (CAs) and the relationship between competition laws and sector regulation were examined. Each country report concludes with specific recommendations for capacity building within the individual jurisdiction.

Comments on the political economy, individual laws, and institutional design of individual CAs are part of the overall analysis of the workings of competition and competition law in each jurisdiction. The express views of individual CAs were important in determining the recommendations of the country reports. The country reports do not in themselves form part of the ARCBR, but are intended to provide context and analysis on each jurisdiction for assessing needs and enabling a more comprehensive ASEAN Roadmap. It is hoped that the country

reports will prove useful to individual CAs and lawmakers in the individual jurisdictions in developing approaches to specific competition law and policy issues going forward.

3. Developing the ARCBR

The ARCBR sets out to establish the gaps in capacity which exist across the ASEAN region. Individual country reports were assessed for common gaps and capacity building (CB) needs, and the results of this overall assessment for the region are included in this Report, and in the ARCBR itself.

In summary, it is found that the gaps in capacity within and across the various jurisdictions were in similar areas, notably in the area of economic focus and skills.

In developing the ARCBR it is recognised that individual jurisdictions have made different progress in implementing their competition laws. Some jurisdictions, such as Lao PDR and Myanmar, have only recently enacted competition laws. Cambodia is still in the process of enacting a law. The Philippines has more recently enacted a new competition law but has had experience with previous competition-type provisions in other laws. Thailand has recently amended its competition law, which had been in operation for some time with minimal enforcement for mainly technical reasons. Finally, Indonesia, Malaysia and Vietnam have longer established laws and an enforcement history. As noted above, the needs analysis for individual jurisdictions determined relatively common priority areas of need for CB activities. CB activities in the ARCBR are thus pitched at ‘elementary’, ‘intermediate’ and ‘advanced’ levels to accommodate those different stages of competition law and policy development. Jurisdictions at an early stage of development may require more elementary activities, although they may have staff members who would also benefit from engagement with intermediate or advanced activities. Experienced regulators would be more likely to benefit from intermediate or advanced activities but may still have staff that would benefit from elementary activities.

Those areas which were fundamental to the implementation or application of competition law in a jurisdiction, along with those which had the capacity to most readily effect substantial change in the skill level of a CA, were prioritised in developing the ARCBR itself.

The Roadmap is divided into five Key Result Areas (see **ANNEX A**). These five areas reflect the analysis following the research and responses obtained in the fact finding missions to each jurisdiction. Key Result Areas have been judged as being equally important. Within each Key Result Area, activities are set out by year of commencement, building on earlier activities in the same area or addressing additional issues as time progresses. **ANNEX B** provides some priorities for CB going forward for the 2020-2025 period.

CB activities include in-country options as well as multi-jurisdictional and all-ASEAN solutions. It is also assumed that as skills continue to develop across the region, there will be more involvement between individual ASEAN jurisdictions to draw on areas of strength and to share ideas about useful approaches to problems solving and workshopping of ideas. In a number of areas of the ARCBR joint initiatives are suggested.

The details of the ARCBR are as below.

4. Key Result Areas

Key Result Area One: Support introduction and amendment of competition law in ASEAN Member States (ACAP Strategic Goals 1.1, 1.2)

The role of competition law is to create a level playing field for competition:

“The primary objective of competition law over time has been the improvement of allocative efficiency by undermining practices restrictive of competition – this remains the predominant objective of competition law in most jurisdictions”.¹

Competition law supports rivalry between firms “on their merits”. Competition is not, however, an end in itself, but as is stated in other areas of the Report, it drives efficiency in the economy to improve welfare to the benefit of consumers and businesses.

Laws should be clear so that regulators can enforce them and market participants can understand their rights and obligations. A number of difficult issues in relation to clarity or enforcement of the provisions of individual laws are identified in the country reports. None of the regional activities proposed by the authors specifically address these individual issues, but it is hoped that the questions raised are helpful to governments and CAs when they are considering possible amendments to their competition laws. It is also hoped that the comments might assist CAs identify areas of potential uncertainty which may then be addressed when they are drafting guidelines and other information for business and others within the jurisdiction.

Guidance

A number of the jurisdictions have new or amended competition laws, or are proposing to amend laws. Each of these jurisdictions would benefit from technical assistance in implementing the drafting of essential documents such as sub-decrees, rules, regulations, or guidelines, as relevant to the particular jurisdiction, to assist with the implementation of these laws. Different terminology is used in each jurisdiction to describe these essential documents. This is the case for new laws, but also for those jurisdictions where amendments to the competition laws are currently underway or are proposed. Differences in working language also mean that some of these documents need to be very carefully drafted in the local language to ensure that competition law and economic terms largely unknown there on a practical level are accurately captured.

In addition, all jurisdictions require supporting documentation such as guidelines for use in explaining the law and the approach of the regulator. Some jurisdictions have guidelines that have not been reviewed for some time.

¹ UNCTAD, Ways and Means to strengthen competition law enforcement and advocacy” TD/RBP/CONF. 8.5 27 April 2015, 5

The ACAP requires “complet[ion] of the legal framework on competition policy and law”, and “strengthen[ing] the legislative framework to meet changing market dynamics and in accordance with international best practice”²

In this context the ARCBR provides for individual expert placements, and regional training workshops, to assist with drafting implementing documents and regulations, and guidelines, etc. These activities should be targeted to the jurisdictions requesting them and their particular circumstances. In addition, from 2019 the ARCBR provides for workshops assisting annually with rolling reviews of all guidelines more than two years old. These workshops should focus particularly on enforcement, leniency and merger guidelines, which will likely exist in all jurisdictions.

Two other points should be made about clarity of competition laws in the context of country reports:

- A number of the competition laws are unclear about whether state-owned enterprises (SOEs) are caught at all; or if they are, the extent to which they are caught. In addition, some laws have EU-type exclusions for certain monopoly conduct which potentially involves SOEs or the private sector. Under the ACAP, a study on SOEs provisions is provided for. Post-study, some additional dialogues or workshops on the relationship between the competition law and SOEs should be held and to facilitate understanding of the issue towards drawing up guidelines, which should explain the way any mandated exclusions are intended to apply.
- Issues in relation to the interface between competition law and sector regulation arise in many jurisdictions and have the capacity to create uncertainty and conflict of views. Even where a CA has clear authority over competition law enforcement in all areas within a jurisdiction, there may be room for input by sector regulators to inform the ultimate competition regulator’s decision. There is room for supporting engagement of CAs in building sustained relationship with sector regulators and competition advocacy.
- An emerging issue is the structural shift towards the digital economy in respect of new market entrants using electronic platforms and the sharing economy that alter traditional business models and may have impact on regulation and competition policy. Better understanding of such market dynamics and how competition laws and policies are impacted could be facilitated.

Key Result Area Two: Develop effective competition enforcement institutions (ACAP Strategic Goal 2)

A regulator (CA) requires certain attributes and competencies to effectively enforce competition law. These include independence and accountability; fairness and respect for due

² ACAP Strategic Goal 1.1, 1.2.

process; transparency and confidentiality; effective powers and influence; and adequate financial and human resources. Effectiveness of enforcement needs better-resourced and more independent CAs, otherwise CAs will have diminished capacity to carry out duties effectively.

Overall, most CAs in the region appear to be under-resourced financially. This impacts human resources. Some regulators appear to lack the resources to carry out their obligations under the competition law or to take competition forward in the jurisdiction. In many jurisdictions employees trained in competition law and competition economics are scarce. This arises for a number of reasons, including the history of the jurisdiction, which might have traditionally lacked a competitive environment; recent adoption of a competition law; and lack of training at local universities in the areas of competition law and competition economics because competition law is not yet well established. Finally, in some jurisdictions where competition economists are trained, regulators have difficulty competing with the private sector for the small number of appropriate people due to the ability of the private sector to offer more attractive employment conditions.

The ARCBR contains initiatives to address these issues. It requires the organisation of staff exchanges of officials from competition agencies every year and these are included in the ARCBR. Initiatives for developing economic approaches to enforcement and training of economists are also further discussed below.

In terms of developing institutional capacity, many jurisdictions requested assistance with developing or improving investigation techniques and both elementary and intermediate workshops are included to address this. Individual placements of experts to assist with drafting simple and succinct explanations of the principles of competition law were also high on the agenda of a number of jurisdictions and these are also included, with the proviso that drafting should be carefully formulated to take account of the difficulties of local language to provide useful translations of some economic terms. This means that particular care needs to be taken in choosing appropriate experts for particular jurisdictions. Strategic planning is a key skill for a CA and the ARCBR also provides intermediate and advanced workshops to assist CAs in developing the skills to formulate a strategic plan, and assessing those plans, and to establish useful document management systems. The advanced strategic planning workshops include sharing of case studies. Sharing positive and negative experiences with planning and implementation should provide additional alternatives to individual CAs.

Key Result Area Three: Enhance CA capacity to undertake economic analysis and Market studies (ACAP Strategic Goal 2)

The core focus areas for a CA in implementing the law should be competition economics and competition law, and capacity in competition law and economics was said to be a major issue by both CAs and by others in each of the jurisdictions. As noted above, experienced competition economists are relatively scarce in many CAs, particularly the newer agencies. Information useful for assessing markets and the impact of conduct is often difficult to find and was said to be unavailable or unreliable in a number of jurisdictions. The ARCBR focuses on capacity building in competition economics and related skills for all CAs.

Elementary and intermediate in-country training on competition law and basic competition economics training are proposed, using competent local individuals or visiting experts and also possibly using the International Competition Network (ICN) Training on Demand modules which are available free of charge on the ICN website. 13 modules range from basic information to more complex issues.

In the context of CB in competition economics, the use of an Embedded Economic Expert (Expert Economist) has been recommended in the ARCBR. This is an extremely important element of the recommendations given the crucial foundational role that competition economics plays in the rationale for competition law and its place in effective enforcement.

This process involves the appointment of an economic expert knowledgeable in competition economics who would work with a whole team, including staff at various levels of seniority, in a particular jurisdiction. The methodology might vary according to whether there is already a Chief Economist, in which case the Expert Economist would work in conjunction with that Chief Economist. Where there is no Chief Economist, the Expert Economist could work alongside a team economist, or in parallel to that economist in another team.

The Expert Economist would be an experienced economist trained in competition economics, from another government body involved in economic planning or other areas of economic or industry review, or, alternatively, from an economic consultancy preferably working in the jurisdiction.

It is noted that many jurisdictions were keen to embark on market (sector) studies in light of jurisdictional difficulties with obtaining appropriate information.

The Expert Economist approach could be adopted in relation to carrying out a market study, or could be adopted in relation to work with an investigation team or enforcement team, depending upon which approach was more useful to the CA. However, the major focus of the Expert Economist is to train others within a CA on economic methodology in a practical sense. The Embedded Economic Expert could provide “on the job support” in the following way:

- The aim of the Expert Economist exercise would be to identify in conjunction with the team a suitable market study, or area of investigation or enforcement involving economic analysis, to train an internal team.
- Issues to be addressed would include: What is the theory of harm? Does the evidence support it? What data do you need to support it? How should the data be analysed? Defining relevant markets? Identifying competitive constraints; assessing competitive effects of the conduct at issue.
- At the end of the exercise, team members would have learned the methodology for such an exercise and would know how to approach a similar issue again. They could assist other staff in later investigations and present seminars to new staff on these issues.

- An experienced competition economist could be seconded to the CA to assist with 1-2 market studies or investigations/ cases per year. This could be used as part of an on-going training exercise. The economist could work in-house with a team at the CA for a chosen period - say two months - to identify competition issues in a problematic market, and direct and assist the staff in developing a detailed market study. Ultimately the experience could be used as an on-going training tool to assist other employees at various levels during future similar exercises and also in internal training.
- This study could also be used to assess problematic conduct, develop a theory of harm and seek evidence to conduct a case in those circumstances or in a market the subject of the study. It is envisaged that the project would continue after the first two months with regular (say, weekly) scheduled meetings between the economist and the team, either in person or by electronic means, to discuss progress and advise on further development of the project. The CA could, for example, schedule a session every second week for an hour by phone with the Embedded Economic Expert and the team, with documents to be exchanged in advance and questions/ comments from both participants and the Expert Economist.
- The Economic Expert could also run a “hot line” which would allow the team leader to seek urgent advice on problem issues during the course of the investigation.
- To increase the beneficial impact of the exercise, it could be made conditional on a session by the Expert Economist and the team with the Commissioners and senior staff explaining the process/outcome/findings once the project was completed as an additional educative tool.
- The exercise/s could be used later internally for briefing new staff on the methodology of conducting a market study or assembling a case by one of the original team participants, and also for upgrading skills of staff generally. This would be done using members of the team involved in the original exercise to train. Each time the methodology was implemented it could be used as a training tool in this way.
- If the methodology was carefully planned in conjunction with the Expert Economist and used, say, twice per year with different internal teams as discussed above, it should substantially improve the skills of staff at various levels in the CA.

This methodology is an important feature of the ARCBR.

Recognition of the importance of competition economics to the successful implementation of a competition law also grounds ARCBR initiatives to conduct advanced workshops on competition economics for more senior staff of CAs, government bodies and Ministries and particularly judges. Such workshops should be conducted by appropriate experts such as international judge training organisations for judges twice per year.

An understanding of competition law, its goals and practice, in the particular national context, is crucial to the skills of a regulator. Consideration of foreign experience, and particularly inter-ASEAN experience, will be useful for new regulators, and also exchange of ideas about treatment of particular conduct/ industries/ situations assists regulators. The ARCBR itself addresses regional training, and the planning of training, on the assumption that internal training will also occur within CAs. It also seeks to assist CA with their training planning.

Finally, individual country reports suggest methodology for educating economists in competition economics in individual jurisdictions.

Key Result Area 4: Create capability development plans for effective enforcement and staff retention (ACAP Strategic Goal 2)

Enforcing the competition law is perhaps the most important function of the regulator. As has been stated:

“Good law enforcement depends on three elements: Good laws, efficient and fair prosecution by a law enforcement agency, and a fair and competent trial or judicial review.”³

The ARCBR contains CB elements to improve enforcement which have been addressed under earlier Key Result Areas, such as improving economic analysis, investigation and decision-making around commencing enforcement actions. Investigation training should improve the quality of evidence and promote due process. Technical assistance on drafting guidelines in areas of enforcement should clarify issues, such as in relation to sanctions and leniency.

In relation to this specific Key Result Area, activities around developing training schedules for CAs to train staff, commissioners and judges as relevant are included in the ARCBR. Methodologies such as circulation of individual draft schedules, and workshops targeting improvements, are included. Other activities include development and assessment of national enforcement strategies. Through consideration of new training topics should take place in the last year of the ARCBR.

Key Result Area 5: Enhance CA capacity to advocate and engage in support of competition (ACAP Strategic Goal 4)

Competition advocacy is crucial to successful implementation of competition law, and this is important from a number of perspectives:

“...competition law and advocacy have a critical and mutually reinforcing role in building and sustaining a competition regime, supported by a high level of institutional trust and ideally imbedded in a set of complementary policies.”⁴

Government support for the CA is particularly important. Commitment by government may be demonstrated in a number of ways: by commitment to a culture of competition in policy

³ Ibid, 4.

⁴ Ibid, 3.

decisions, other laws, regulations and actions; and by provision of sufficient resources to allow CAs to fulfil their obligations under the competition law, including by appointing well qualified staff.

CAs in new or under-resourced jurisdictions must give high priority to competition advocacy directed to government, other ministries and at opinion leaders within the jurisdiction, to bolster government support for competition law and policy. Effective advocacy must focus on the tangible benefits of successful competition law and policy. This includes demonstrating that creating a level playing field for competition fosters efficient and productive delivery of goods and services to businesses and consumers, and also benefits businesses who abide by the competition law.

The ARCBR addresses competition advocacy planning, and mechanisms for advocating across a range of targets. The ASEAN Expert Group on Competition (AEGC) Advocacy Toolkit is a useful reference in this area. The importance of advocacy in relation to government has already been addressed. In respect of the individual Country Reports, the commentary on individual laws and structure of regulators in particular might be the focus of advocacy by CAs to government or when amendments are proposed. The Competition Commission of Singapore is an established CA which has been particularly effective in its advocacy and could potentially provide support to other CAs in this context.

The ARCBR contains initiatives to develop effective advocacy planning directed at multiple targets such as government, business and consumers. A conference of CAs using multiple international experts followed by workshops within the region based on experience led by experts is included. Follow-up expert review of draft plans and further liaison should develop feasible plans for each CA. Workshops at all levels and on-going review should deliver the best outcomes.

5. Suggested Regional Capacity Building Priorities 2020-2025

Regional Capacity Building Priorities for 2020-2025 are appended to the ARCBR for 2017-2020 as **ANNEX B**. Determining detailed priorities several years in advance would be inappropriate given that needs change, and the success of current initiatives needs to be assessed fully before detailed decisions on capacity building going forward can be made.

ANNEX B lists various initiatives against existing Key Deliverables. Some elements of the 2017-2020 ARCBR priorities are reinforced. Other areas are developed, such as the policy coordination between competition law and policy and sectoral regulations. Implementation of meaningful peer review processes is included. Peer review will likely be more meaningful once all agencies have clarified and enforced their competition laws, so these processes should be included in the post-2020 Roadmap.

Finally, it is clear that continued development and strengthening of CAs is essential to deliver effective competition law and policy in the ASEAN region. The initiatives thus outline several basic areas which were not the subject of focus in the 2017-2020 ARCBR as suggested areas for the next stage of development. They also reinforce some areas which are always of prime

importance. Other areas could be added, areas deleted and areas substituted depending upon developments over 2017-2020.

6. Conclusion

Implementation of the initiatives contained in the ARCBR 2017-2020 will ensure that the capacity of CAs in the region continues to be strengthened in a collaborative environment. Supported by the AEGC, CAs will gain or increase essential skills, and, in addition, further develop relationships with other CAs which will assist further collaboration in joint investigations and enforcement. These relationships will be essential for moving towards greater harmonisation of competition policy and law in the ASEAN region, as envisaged by ACAP Strategic Goal 5, with its Key Performance Indicator of a Declaration on the ASEAN Set of Agreed Principles by 2025.

REGIONAL CAPACITY BUILDING ROADMAP 2017-2020

The Roadmap sets out capacity building initiatives in support of competition law and policy implementation in the ASEAN region in the period 2017-2020. The initiatives are the product of analysis based on desk research and in-country interviews by a team of experts.

In 2016, ASEAN adopted the ten-year competition law and policy action plan, the ASEAN Competition Action Plan (ACAP) 2025. Capacity building priorities contained in this Roadmap are primarily targeted to address ACAP Strategic Goals 1 & 2, which focus on the institutional arrangements for enforcing competition law.

(The ACAP can be found on line at [http://www.asean-competition.org/file/post_image/ACAP%20\(Website\)%2023%20December%202016.pdf](http://www.asean-competition.org/file/post_image/ACAP%20(Website)%2023%20December%202016.pdf)).

Note: in the table, CA refers to “Competition Authority”.

Key Result Area (1) –

Support introduction & amendment of competition law in ASEAN Member States

Capacity Building Priority:			
1.1 Advice for drafting implementation regulations and other supporting documents			
“Complete the legal framework on competition policy and law” (ACAP Initiative 1.1)			
Competency	Modes of Delivery	Timing	Notes
Understanding and drafting competition law	<ul style="list-style-type: none"> ▪ Placement of experts in jurisdictions with outstanding needs due to recent enactment of, or amendment to, the competition law 	<ul style="list-style-type: none"> ▪ To commence once legislative proposals are certain <ul style="list-style-type: none"> ▪ from 2017 for relevant AMS 	<ul style="list-style-type: none"> ▪ CAs could look to experts within their jurisdiction or seek specific expertise from individuals/ organisations located in other jurisdictions

Understanding and drafting competition law	<ul style="list-style-type: none"> Regional training workshop on drafting regulations and guidelines at intermediate level, as required, taking into account need for better understanding of new business models and e-commerce considerations 	<ul style="list-style-type: none"> from 2017 for all AMS 	<ul style="list-style-type: none"> Targeted beneficiaries/ participants include officials from the policy and legal departments of CAs or relevant ministries; in short, those assigned or potentially assigned with the task of drafting implementation regulations and other supporting documents such as explanatory memoranda and guidelines
Understanding and drafting competition law	<ul style="list-style-type: none"> Placements of experts in individual jurisdictions as requested <ul style="list-style-type: none"> assistance could include support for drafting and/or reviewing essential guidelines, directories, etc 	<ul style="list-style-type: none"> To commence once: <ul style="list-style-type: none"> legislative proposals are certain; assessments of guidelines and other essential documents have been completed from 2018 for relevant AMS 	<ul style="list-style-type: none"> This approach would assist CAs with limited resources or where there are significant language issues Careful selection of experts should assist agencies to deal with language issues Guidelines should be assessed on the basis of usefulness and appropriateness. For example, is guidance needed to update stakeholders on developments since the introduction of, or amendment to, laws/regulations. Particular focus should be on providing accurate and up-to-date: <ul style="list-style-type: none"> enforcement guidelines; leniency guidelines; and merger guidelines Targeted participants are those who are drafting or likely to draft guidelines in each jurisdiction

Capacity Building Priority:			
1.2 Review and amendment of all guidelines, directories, etc. more than two years old and on a rolling basis			
“Strengthen the legislative framework to meet changing market dynamics in accordance with best practice” ACAP Initiative 1.2			
Competency	Modes of Delivery	Timing	Notes
Evaluation and review	<ul style="list-style-type: none"> Regional workshop for all ASEAN jurisdictions, pairing newer agencies with more experienced agencies. Format could include: 	<ul style="list-style-type: none"> To commence once guidelines and other essential 	<ul style="list-style-type: none"> Targeted participants are those who are drafting or likely to draft guidelines in each jurisdiction; this is aimed at all AMS which should review all guidelines in a systematic fashion

	<ul style="list-style-type: none"> ▪ one large group workshop; or ▪ two smaller workshops using case examples of the successes and shortcomings of existing guidelines 	<p>documents are over two years old</p> <ul style="list-style-type: none"> ▪ likely from 2019 ▪ Review and amendment should be undertaken on a rolling basis and continue over the life of the guidelines 	
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Key Result Area (2) –

Develop effective competition enforcement institutions

Capacity Building Priority:			
2.1 Staff exchanges among AMS			
ACAP Initiative 2.2, Outcome 2.5			
<i>Competency</i>	<i>Modes of Delivery</i>	<i>Timing</i>	<i>Notes</i>
Understanding of competition law and economics, enforcement, management, advocacy	<ul style="list-style-type: none"> ▪ Internship, secondment, study visit, attachment of experts 	<ul style="list-style-type: none"> ▪ Commence in 2017 and continue throughout the Roadmap period 	<ul style="list-style-type: none"> ▪ Undertaken at least by two individual AMS. Participants may be mid-level or more senior staff

Capacity Building Priority:

**2.2 Support development of investigation capability
ACAP Initiative 2.2, Outcome 2.3**

<i>Competency</i>	<i>Modes of Delivery</i>	<i>Timing</i>	<i>Notes</i>
Interview skills	<ul style="list-style-type: none"> Elementary workshop on investigation techniques 	<ul style="list-style-type: none"> Commence in 2017 	<ul style="list-style-type: none"> Introductory training to develop interview skills
Investigation skills	<ul style="list-style-type: none"> Intermediate workshop with experienced regulators using hypotheticals, scenarios 	<ul style="list-style-type: none"> Commence in 2017 for established CAs 	<ul style="list-style-type: none"> Build on internal training already occurring with law enforcement officers in some jurisdictions. Topics to be covered could include: <ul style="list-style-type: none"> Initial interviews; Obtaining documents and data; Formal interviews of witnesses
Understanding of procedural fairness	<ul style="list-style-type: none"> Intermediate workshop/s on the importance of procedural fairness in investigations 	<ul style="list-style-type: none"> To commence following delivery of elementary workshops <ul style="list-style-type: none"> likely from 2018 	<ul style="list-style-type: none"> Workshop to pair different CAs with the purpose being to train additional personnel on techniques (train-the-trainer) Topics to include: <ul style="list-style-type: none"> Initial interviews; Obtaining documents and data; Formal interviews of witnesses; Confidentiality

Capacity Building Priority:

**2.3 Drafting of simple and succinct explanations of principles of competition law and economics for staff
“A set of in-house training tools for competition agency staff” ACAP Initiative 2.2, Outcome 2.4**

<i>Competency</i>	<i>Modes of Delivery</i>	<i>Timing</i>	<i>Notes</i>
Understanding of competition law and economics	<ul style="list-style-type: none"> Individual expert placements in ASEAN CAs 	<ul style="list-style-type: none"> To commence in 2017 	<ul style="list-style-type: none"> Experts to be either local or foreign, from more experienced CAs or with specific expertise to assist

			<ul style="list-style-type: none"> ▪ Experts should use case studies from other jurisdictions in Asia or other areas to complement introductory training within or external to the CA ▪ Local language requirements should be considered for relevant AMS
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Capacity Building Priority:			
2.4 Support strategic planning			
ACAP Initiative 2.2			
Competency	Modes of Delivery	Timing	Notes
Strategic planning	<ul style="list-style-type: none"> ▪ Intermediate workshop setting out elements for formulating strategic plans; exchanging comparative experiences in priority setting and use of resources 	<ul style="list-style-type: none"> ▪ To commence in 2018 	<ul style="list-style-type: none"> ▪ Workshop to include issues such as preparing guidance documents for formulating strategic plans and setting priorities; guidance for recruiting staff and developing their skills and retention; developing national enforcement strategies
Strategic planning	<ul style="list-style-type: none"> ▪ Advanced regional workshop to review strategic planning processes 	<ul style="list-style-type: none"> ▪ For those CAs with strategic plans in place <ul style="list-style-type: none"> ▪ to commence in 2018 	<ul style="list-style-type: none"> ▪ Workshop would focus on ASEAN CAs sharing positive and negative experiences with planning and implementation of strategic plans, including by reviewing case studies and assessing progress in individual AMS

Capacity Building Priority:			
2.5 Setting-up/improving document management processes			
ACAP Initiative 2.2			
Competency	Modes of Delivery	Timing	Notes
Document management	<ul style="list-style-type: none"> Intermediate ASEAN workshop on “Knowledge Management” with foreign expert(s) showing contrasting models of document organisation and management 	<ul style="list-style-type: none"> Appropriate for established CAs <ul style="list-style-type: none"> likely from 2018 	<ul style="list-style-type: none"> The workshop should address document management and, in particular, the ability to re-use essential industry and skills-based information for investigations. The workshop should provide for interactions between participants and representatives of experienced jurisdictions who can present on particular problems experienced and offer options to the group or groups of CAs Targeted participants are both senior and mid-level staff
Document management	<ul style="list-style-type: none"> Optional regional workshop to review document management processes 	<ul style="list-style-type: none"> Appropriate for established CAs <ul style="list-style-type: none"> from 2020 	<ul style="list-style-type: none"> Workshop to be undertaken with experienced regulator, or foreign experts to revisit this important issue Workshop may be useful for new agencies and also more established agencies which need to reassess the utility of their systems in light of expert comments

Capacity Building Priority:			
2.6 Guidance on appropriately structuring a CA			
ACAP Initiative 2.2			
Competency	Modes of Delivery	Timing	Notes
Management and business administration skills	<ul style="list-style-type: none"> Optional ASEAN regional workshop with experienced regulator, or foreign experts 	<ul style="list-style-type: none"> For new CAs which have begun to enforce competition law, but with a relatively small number of cases <ul style="list-style-type: none"> likely from 2019 	<ul style="list-style-type: none"> This workshop would allow CAs to consider a number of issues before workloads increase, such as: <ul style="list-style-type: none"> whether to work in teams with an economist; to have a chief economist overseeing all economic issues; how people are divided into teams, e.g. enforcement, mergers, etc.; how oversight of individual matters is organised

Key Result Area (3) –

Enhance CA capacity to undertake economic analysis and market studies

Capacity Building Priority:			
3.1 Develop understanding of role of competition law and basic competition law and economics concepts			
ACAP Initiative 2.2			
Competency	Modes of Delivery	Timing	Notes
Understanding of competition law and economics	<ul style="list-style-type: none"> Individual in-country training by competent local individuals or visiting experts; possible use of International Competition Network (ICN) Training on Demand and/or use of materials developed internally 	<ul style="list-style-type: none"> Elementary level training for all CAs To be conducted twice in starting year <ul style="list-style-type: none"> likely from 2017 	<ul style="list-style-type: none"> This training would be at an introductory level to instill basic concepts Topics could include: <ul style="list-style-type: none"> definition of relevant market; economic and legal assessment of market power; assessment of pro- or anti-competitive effects; detection of bid rigging; design of remedies ICN Training on Demand is available free of charge on the ICN website, with more than 13 modules ranging from basic information to more complicated issues
Understanding of competition economics	<ul style="list-style-type: none"> Intermediate training on how to define and analyse a market and/or conduct a market study to identify competition issues 	<ul style="list-style-type: none"> For more established CAs and for more senior staff of new CAs To be conducted a total of two times in each jurisdiction in 2017 	<ul style="list-style-type: none"> Training to be delivered by invited experts either individually or in seminars/workshops with two or more participant jurisdictions. Use of local government economists, if possible, could strengthen links to the CA The advantage of this approach is that the CA team leader/ members could subsequently lead in-house training by presenting a case study on how to conduct such a project. This could be delivered more than once. It is suggested that the training be made conditional on a detailed presentation to CA Commissioners upon completion

Understanding of competition economics	<ul style="list-style-type: none"> ▪ Seminars in each jurisdiction at intermediate and advanced levels conducted by international experts 	<ul style="list-style-type: none"> ▪ For more established CAs <ul style="list-style-type: none"> ▪ likely from 2018 	<ul style="list-style-type: none"> ▪ Training to be targeted at: <ul style="list-style-type: none"> ▪ CA staff with an understanding of the concepts of competition law and competition economics; ▪ Government bodies and specific Ministries; ▪ Judges
Understanding of competition economics	<ul style="list-style-type: none"> ▪ Seminars in each jurisdiction at advanced level for senior CA staff conducted by international experts 	<ul style="list-style-type: none"> ▪ For more established CAs <ul style="list-style-type: none"> ▪ At least once per year following commencement <ul style="list-style-type: none"> ▪ likely from 2018 	<ul style="list-style-type: none"> ▪ Training to be targeted at senior CA staff ▪ Training should be held in conjunction with use of more sophisticated ICN training modules
Understanding of competition economics	<ul style="list-style-type: none"> ▪ Seminars in each jurisdiction at intermediate and advanced levels conducted by internal experts 	<ul style="list-style-type: none"> ▪ For more established CAs <ul style="list-style-type: none"> ▪ likely from 2019 	<ul style="list-style-type: none"> ▪ Training to be targeted at: <ul style="list-style-type: none"> ▪ CA staff with an understanding of the concepts of competition law and competition economics; ▪ Government bodies and specific Ministries; ▪ Judges ▪ Training should be held in conjunction with use of more sophisticated ICN training modules
Understanding of competition economics	<ul style="list-style-type: none"> ▪ Multi-jurisdictional seminars/workshops for judges by international judge training organisations 	<ul style="list-style-type: none"> ▪ At least twice per year following commencement year <ul style="list-style-type: none"> ▪ likely from 2019 	<ul style="list-style-type: none"> ▪ Training to be multi-jurisdictional but with a mix of participant experience in each seminar/workshop ▪ Some jurisdictions need to train many judges; others have fewer to train. These initiatives are in addition to existing training options

Capacity Building Priority:

**3.2 Analysing markets and developing theories of harm
ACAP Initiative 2.2**

Competency	Modes of Delivery	Timing	Notes
Understanding of competition economics	<ul style="list-style-type: none"> ▪ Intermediate training on how to define and analyse a market and/or conduct a market study to identify competition issues 	<ul style="list-style-type: none"> ▪ For more established CAs ▪ To be conducted a total of two times in each jurisdiction in the commencement year 	<ul style="list-style-type: none"> ▪ Training to be delivered by invited experts either individually or in seminars/workshops with two or more participant jurisdictions. Use of local government economists, if possible, could strengthen links to the CA ▪ The advantage of this approach is that the CA team leader/members could subsequently lead in-house training by presenting a case study on how to conduct such a project. This could be delivered more than once. It is suggested that the training be made conditional on a detailed presentation to CA Commissioners upon completion
Understanding of competition economics and its practical application	<ul style="list-style-type: none"> ▪ Embedded Economic Expert (see Report) from jurisdiction if suitable (possibly from university, economic consultancy, government planning body or body conducting market studies) ▪ Embedded Economic Expert to train staff on how to: <ul style="list-style-type: none"> ▪ develop a case theory, including a theory of harm; and ▪ apply economic thinking for gathering, use and analysis of evidence 	<ul style="list-style-type: none"> ▪ from 2017, if possible. Aim is twice per year for new CAs; once per year for more established CAs, continuing for the term of the Roadmap (or on perceived success and levels of demand 	<ul style="list-style-type: none"> ▪ Expert would be placed in CA for a relatively extended period of time to assist a team to conduct an investigation or a market study, giving detailed instructions to the team ▪ After the initial period (say, one to three months) the expert would leave the on-going study but return for meetings (say every two weeks) to check progress, supervise ongoing work and answer queries. Between visits the expert would be available for emergency questions via a hotline accessed by the CA team leader ▪ The advantage of this approach is that the CA team leader/members could subsequently lead in-house training as a case study on how to conduct such a project, and this could be done more than once. It is suggested that this be made conditional on a detailed presentation to CA Commissioners upon completion. Use of local government economists, if possible, would also strengthen links to the CA.

			<ul style="list-style-type: none"> See Report for <i>Embedded Economic Expert Methodology</i> for further detail
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Capacity Building Priority:			
3.3 Development of internal experts in competition law and competition economics			
ACAP Initiative 2.2			
Competency	Modes of Delivery	Timing	Notes
Understanding of competition law and competition economics	<ul style="list-style-type: none"> Staff to undertake further study at the graduate level 	<ul style="list-style-type: none"> One to two scholarships per year as available <ul style="list-style-type: none"> from 2017 if possible 	<ul style="list-style-type: none"> Development of internal experts in competition law and competition economics by encouraging further study (degrees) in those areas AEGC to assist in identifying appropriate courses and potential scholarship donors; potentially one to two per annum (e.g. one funded by the government or the AMS, and one funded by scholarship) Possible courses may be offered within some jurisdictions; others potentially include Kings College London or University of Melbourne, which have on-line options. Issues of tying recipients to an agency for a reasonable period of time following completion of the course need to be addressed

Capacity Building Priority:			
3.4 Development and use of competition economists			
ACAP Initiative 2.2			
Competency	Modes of Delivery	Timing	Notes
Management and resource allocation	<ul style="list-style-type: none"> Intermediate workshop for all CAs on optimal use of economic consultants 	<ul style="list-style-type: none"> For more established CAs <ul style="list-style-type: none"> likely from 2018 	<ul style="list-style-type: none"> CAs need to know when to use economic experts and also how to get best value for money from this process with limited budgets

			<ul style="list-style-type: none"> ▪ Workshop to be presented by economic experts from two different consulting firms and two experienced regulators to explain how to obtain maximum impact from use of economic experts for funds invested ▪ The two economic experts could explain the options for engagement of experts, while the two regulators could outline experiences of success and pitfalls in such engagements
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Capacity Building Priority:			
3.5 Understanding mergers			
Competency	Modes of Delivery	Timing	Notes
Understanding of merger assessment and review	<ul style="list-style-type: none"> ▪ Seminars to be held in each ASEAN jurisdiction 	<ul style="list-style-type: none"> ▪ For CAs considering introducing merger review or that have existing merger responsibilities <ul style="list-style-type: none"> ▪ likely from 2020 	<ul style="list-style-type: none"> ▪ Training should be held in conjunction with use of more sophisticated ICN training modules

Key Result Area (4) –

Create capability development plans for effective enforcement and staff retention

Capacity Building Priority:			
4.1 Development and refinement of training schedules			
ACAP Initiative 2.2; Initiative 2.5, Outcome 2.12			
Competency	Modes of Delivery	Timing	Notes
Human resource development	<ul style="list-style-type: none"> Individual AMS to prepare two-year training schedules for CAs that include training of: <ul style="list-style-type: none"> Staff; Commissioners; Judges 	<ul style="list-style-type: none"> To commence in 2017 	<ul style="list-style-type: none"> Two-year training schedules should be developed and circulated for discussion with at least one other agency/expert for review Training schedule should be achievable based on expected resources. Schedules should encompass introductory training and more advanced training, including from local sources, and factor in ASEAN-related opportunities
Human resource development	<ul style="list-style-type: none"> Workshops to assess effectiveness of training schedules and methodologies 	<ul style="list-style-type: none"> As necessary throughout the Roadmap period <ul style="list-style-type: none"> likely from 2018 	<ul style="list-style-type: none"> Workshops to discuss schedules/outputs/achievements with international experts and identify options for their amendment and development as necessary
Human resource development	<ul style="list-style-type: none"> Internal work to identify and refocus on new training topics 	<ul style="list-style-type: none"> As necessary throughout the Roadmap period <ul style="list-style-type: none"> likely from 2018 	<ul style="list-style-type: none"> To draw on internal consultations with staff and peer-to-peer learning with ASEAN and other jurisdictions
Human resource development	<ul style="list-style-type: none"> Workshops discussing priorities and plans; assessment of success/shortcomings of existing plans 	<ul style="list-style-type: none"> Likely from 2020 	<ul style="list-style-type: none"> Workshops to discuss ongoing priorities and needs with plans to be developed to amend and review as appropriate

Capacity Building Priority:			
4.2 Development of national enforcement strategies			
Competency	Modes of Delivery	Timing	Notes
Strategic planning and review	<ul style="list-style-type: none"> Workshop to develop and assess national enforcement strategies 	<ul style="list-style-type: none"> For more established CAs 	<ul style="list-style-type: none"> Workshops to discuss priorities and future plans; assess success/shortcomings of existing plans

Key Result Area (5) –

Enhance CA capacity to advocate and engage in support of competition

Capacity Building Priority:			
5.1 Development of three-year advocacy plans			
Strategic Goal 4			
Competency	Modes of Delivery	Timing	Notes
Advocacy	<ul style="list-style-type: none"> Conference of ASEAN CAs The conference could be split between speakers from experienced regulators/foreign experts and experts leading practical exercises on development of effective advocacy plans 	<ul style="list-style-type: none"> To commence in 2018 	<ul style="list-style-type: none"> Advocacy plans should clearly state targets, detailed methodology and timeframes over a three-year period Newer CAs should focus particularly on advocacy to government to gain support for a competitive environment and active competition law enforcement by focusing on the tangible benefits of competition to the economy and to consumers. Substantial emphasis should also be placed on case selection as a crucial advocacy tool Use of ICN advocacy guidelines to suit AMS circumstances should be considered; also refer AEGC Advocacy Toolkit

Capacity Building Priority:			
5.2 Review of completed advocacy plans			
Strategic Goal 4			
Competency	Modes of Delivery	Timing	Notes
Advocacy	<ul style="list-style-type: none"> ▪ Review of advocacy plans by experienced regulators/foreign experts ▪ Peer review process to assess progress on implementing advocacy plans, identify future initiatives and amend the plan as necessary 	<ul style="list-style-type: none"> ▪ To commence following implementation of an advocacy plan ▪ To commence following implementation of an advocacy plan 	<ul style="list-style-type: none"> ▪ The reviewers should consider using email, phone hook-ups or Skype to undertake the review, in addition to further liaison with earlier reviewers by email, phone hook-up or Skype ▪ Careful attention should be paid to engaging appropriate peer reviewers
Capacity Building Priority:			
5.3 Increased understanding of advocacy			
Competency	Modes of Delivery	Timing	Notes
Advocacy	<ul style="list-style-type: none"> ▪ Workshops on advocacy essentials 	<ul style="list-style-type: none"> ▪ To commence in 2017 	<ul style="list-style-type: none"> ▪ To include introductory, intermediate and advanced workshops with the focus to depend on CA needs ▪ Some workshops could be conducted by more experienced CAs; others conducted by experienced foreign agencies
Advocacy	<ul style="list-style-type: none"> ▪ Intermediate/advanced conference/workshops targeting more advanced or specific advocacy issues 	<ul style="list-style-type: none"> ▪ For more established CAs 	<ul style="list-style-type: none"> ▪ Workshops to consider such issues as: <ul style="list-style-type: none"> ▪ how to develop links with local press; ▪ overcoming geographic dispersal; ▪ getting business on-side
Advocacy	<ul style="list-style-type: none"> ▪ Several workshops on 'advocacy essentials revisited' from two CAs with more advanced or specific advocacy issues/ experience 	<ul style="list-style-type: none"> ▪ To commence following self-assessment of action against priorities 	<ul style="list-style-type: none"> ▪ Workshops to consider difficult advocacy issues in greater detail

REGIONAL CAPACITY BUILDING PRIORITIES 2020-2025

Suggested Key Deliverables post 2020-2025	Capacity Building Priorities	Notes/Explanations
<p>1. Supporting competition law in all AMSs, including appropriate on-going amendments as relevant</p>	<p>1.1. Developing and amending guidelines on law</p> <p>1.2. Addressing policy coordination between CAs and sectoral regulations (including mechanism for cooperation between CAs and sectoral regulators)</p> <p>1.3. Assistance towards competition law assessment (via a regional peer review process <i>inter alia</i>)</p>	<ul style="list-style-type: none"> ▪ This is an on-going issue for countries with new laws or amendments ▪ It is expected that policy coordination between CAs and sectoral regulators, and sectoral laws and regulations will be on-going issues. These should continue to be addressed as necessary
<p>2. Competition policy institutions to be strengthened in all AMSs</p>	<p>2.1. Prioritising enforcement (including prioritisation of cases and phased approach to competition policy and law implementation)</p> <p>2.2. Strategic planning (including organisational performance evaluation of CAs)</p> <p>2.3. Capacity building for the judiciary, including development of a template university syllabus on competition policy and law for law schools (for building capacity of future judges and practitioners)</p>	<ul style="list-style-type: none"> ▪ Strategic planning skills, including evaluation of CAs, will be an area for growing consideration over 2020-2025. The nature of achievable strategic planning will clearly depend upon the level of maturity and activity of the CA ▪ Capacity building of judges will continue to be an area for attention, both as to advocacy (convincing judges of the relevance and importance of the law) and skill development in competition law and economics. This should continue to be addressed

<i>Suggested Key Deliverables post 2020-2025</i>	<i>Capacity Building Priorities</i>	<i>Notes/Explanations</i>
<p>3. Core competencies of CAs in AMS should continue to be strengthened</p>	<p>3.1. Developing and implementing effective remedies</p> <p>3.2. Developing effective leniency programs</p> <p>3.3. Improved economic analysis and approach to case management</p> <p>3.4. Developing stakeholder engagement skills by CAs</p> <p>3.5. Learning about best practices on advocacy strategy in other jurisdictions (countries, regions)</p> <p>3.6. Focusing on case selection as an advocacy tool</p> <p>3.7. Advocacy with small and medium-sized enterprises and state-owned enterprises</p>	<ul style="list-style-type: none"> ▪ All AMS need to improve their competencies on enforcement and design of remedies ▪ In terms of enforcement, capacity building priorities should gradually move from traditional areas such as investigative skills and case-handling skills to more advanced areas such as designing and applying appropriate remedies, developing leniency programs, applying economic analysis and approaches to case management ▪ This essential element of competition law should always be the subject of focus ▪ Advocacy will continue to be critical to CAs. Particularly for new and less active CAs, advocacy addressed to government, other ministries, and judges will be crucial to raising the level of importance of competition policy and law in a jurisdiction. Government impacts substantially on funding and other government support ▪ Advocacy must be continued, strengthened and improved, regardless of the maturity of the CA ▪ How to conduct specific advocacy activities with small and medium-sized enterprises and state-owned enterprises will continue to be important