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**ANNUAL REPORT**

**ASEAN Experts Group on  
Competition (AEGC)**



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## 1. INTRODUCTION



Photo: ASEAN Secretariat Building

ASEAN commemorated its 50<sup>th</sup> anniversary in 2017. ASEAN@50 stands out in terms of the accomplishments achieved in the past 50 years, with strong economic growth and transformation, attributed to the open nature of its economies and strengthening regional integration, coupled with rising investment by the private and public sectors and improvements in its human capital formation. If regarded as a single entity, ASEAN will be ranked as the world's third largest market with a population close to 650 million people and the fourth largest exporter in the world. Competition policy remains an integral part of the evolving pathways supporting regional economic growth by protecting the processes of competition and meeting consumer welfare goals.

Another important anniversary was commemorated in 2017, the 10<sup>th</sup> anniversary of the ASEAN Experts Group on Competition (AEGC) which was established in 2007. Over the course of the 10 years, the AEGC has facilitated the enactment and enforcement of competition laws in nine ASEAN Member States (AMS), strengthened the institutional capacity of its competition authorities through regular capacity building activities, and built competition awareness through joint advocacy activities and materials.

This Report highlights the major achievements of the AEGC in 2017 as it celebrates its 10<sup>th</sup> anniversary, in particular; the 2017 AEGC key priorities, outlines the progress in implementing the ACAP 2025, cooperation with development partners, as well as competition law developments in individual ASEAN Member States (AMS).

## 2. AEGC@10



Photo: The AEGC Logo

Just over 10 years ago, competition policy and law in many AMS was not even in the sights of most policy makers in AMS. When the AEGC was established in 2007, only four AMS had competition laws in place, namely Indonesia, Singapore, Thailand, and Viet Nam. In the first ASEAN Economic Community (AEC) Blueprint 2015, one of the measures stipulated was that all AMS should endeavour to introduce competition policy and law. When the Blueprint period ended in 2015, another five AMS, had enacted their competition laws, i.e., Malaysia (2010) and Brunei Darussalam, Lao PDR, Myanmar, and the Philippines (2015), bringing to a total of nine AMS with competition laws in place. Cambodia is expected to enact its draft competition law in the near term.

With the passing of these laws, the concerned AMS have set up or are in the process of setting up the related institutional mechanisms to enforce their competition laws. The Malaysian Competition Commission (MyCC) was established on 1 April 2011, the Philippines Competition Commission (PCC) on 1 February 2016 and the Competition Commission of Brunei Darussalam (CCBD) on 1 August 2017. Both Lao PDR and Myanmar are in the process of setting up their respective Competition Committee/Commission. Thailand's new competition law of 2017 (replacing the 1999 law) was enacted on 5 October 2017 and included a restructuring of the Office of Trade Competition

Commission (OTCC). Viet Nam's Competition Authority (VCA) was also restructured and became the Viet Nam Competition and Consumer Authority (VCCA) in August 2017. Both Indonesia and Thailand are also in the process of amending their laws to improve relevant provisions and making them more effective and enforceable.

Concomitant with the building of competition legal frameworks as well as the formation of new competition agencies, the AEGC has gained in importance as a key platform for the exchange of views and experiences among ASEAN competition experts and for implementing the AEC Blueprints' competition strategic measures. It also became the conduit to undertake regional capacity building programmes on competition in which the AEGC had a pivotal role in leading the design and implementation of capacity building programmes. The AEGC was able to coalesce support for AMS capacity building through the multi-year ASEAN-German Competition Law Programme (Phases I-II), the ASEAN-Australia New Zealand FTA Competition Law Implementation Programme (CLIP 1 and 2) as well as the ASEAN-Japan Technical Assistance for ASEAN Competition Authorities to Strengthen Competition Law Enforcement in ASEAN, in which substantial resources were made available to support ASEAN's continuing regulatory improvements and building of institutional capacity for enforcement.

Moving forward, the focus of the AEGC remains on the implementation of the initiatives under the ASEAN Competition Action Plan (ACAP) 2025, which is expected to facilitate further the strengthening of AMS' competition regimes and institutional capacity building, whilst bringing ASEAN closer to convergence through building competition awareness, strengthening cooperation

amongst competition agencies and consideration of a more harmonized legal framework. In addition, the AEGC will also facilitate efforts to ensure that competition authorities continues to build capacities to respond to emerging issues and developments arising from disruptive technologies, big data, and multi-sided markets which have generated innovations and efficiency gains, but at the same time may give rise to the need to review competition law enforcement tools and practices.

### 3. AEGC WORK PROGRAMME 2017

In respect of the work of the AEGC in implementing the ACAP 2025, the following highlights the on-going progress of initiatives and activities held in 2017:

- i) Strategic Goal 1: Effective competition regimes are established in all ASEAN Member States

The development of strong and enforceable competition laws in AMS remains an important goal under the ACAP 2025. In this context, ASEAN welcomed the progress made by Cambodia in 2017 in progressing the enactment of its competition law.<sup>1</sup> ASEAN also welcomed the enactment of Thailand's new Trade Competition Act in October 2017, replacing the previous 1999 law. Under its new Act, there are several new changes, including the inclusion of State-owned Enterprises (SOEs) in the application of the law, the introduction of administrative sanctions, and the Office of Trade Competition Commission (OTCC) becoming an independent government agency, with a concurrent independent Commission. Indonesia and Viet Nam also took steps in 2017 to revise their competition laws towards enhancing competition enforcement. Both sets of amendments are expected to be finalized in 2018.

With nine out of the ten AMS having competition laws in place, it was an opportune time for ASEAN to produce the ASEAN Compendium of English Translations of National Competition Laws. This initiative is also part of Outcome 1.2.1 of the ACAP 2025. The

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<sup>1</sup> Further details of the development of CPL in each AMS can be found in section 5, Country Reports, p.15

Compendium is a useful compilation that will provide a single point of reference of AMS competition laws. It also includes the English translation of the recent Thai law on competition. The Compendium is annexed to the ASEAN Handbook on CPL for Business 2017<sup>2</sup>.



Photo: ASEAN Day, 8 August 2017

In supporting the goal of strengthened competition regimes, the AEGC completed the ASEAN Self-Assessment Toolkit on Competition Enforcement and Advocacy in March 2017. The Toolkit aims to assist AMS in measuring and evaluating agency effectiveness with the view to further strengthening their strong competition regimes. The self-assessment is conducted in four areas of legal framework and enforcement; institutional and cooperative arrangements; advocacy; and resources and capacity development. (see Box Article 1).

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<sup>2</sup> The updated Handbook can be downloaded from the AEGC website ([www.asean-competition.org](http://www.asean-competition.org)).



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## BOX ARTICLE 1

### ASEAN SELF-ASSESSMENT TOOLKIT FOR ADVOCACY AND ENFORCEMENT

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The ASEAN Competition Action Plan's Goal 1 calls for effective competition regimes to be established in all AMS. In this context, the measurement of effectiveness is an important corollary to facilitate better understanding and progress over time of competition regimes. Effectiveness can be seen from different perspectives, either from how well the process of competition is being protected or the extent to which consumer welfare has been enhanced. However, given the extremely difficult process of isolating the impact of competition enforcement and advocacy from other factors that influence welfare and economic growth as well as the early stage of most of AMS competition regimes, the ASEAN Self-Assessment Toolkit for Advocacy and Enforcement (Toolkit) was developed primarily as a tool to measure agency effectiveness. Institutional assessment is seen to be an effective alternative as the design and operations of agencies can determine how efficiently the competition regime is functioning.

The Toolkit covers four categories:

- a. legal framework and enforcement;
- b. institutional and cooperative arrangements;
- c. advocacy; and
- d. resources and capacity development.

Each of these categories addresses various aspects which can determine whether and how the competition agencies could fulfil its mandate effectively. Each category has a set of questions and exercises that, through subsequent deliberations and discussions, which would enable AMS check where they might want to focus their attention, efforts and resources in order to improve performance vis-à-vis their peers in the region or from each cycle of self-assessment to the next. The Toolkit thus looks at the kinds of authority and tools available with the competition agency for the enforcement of the laws; whether the relevant stakeholders are made properly aware of the provisions of the law and their implications and are supportive of the agency's interventions; and how efficiently the agency has been managing its resources and building up its capacity.

In this context, four AMS (Lao PDR, Myanmar, the Philippines and Singapore) volunteered for the self-assessment and reported the outcomes of their self-assessment to the AEGC in 2017. The self-assessment is expected to be a regular exercise and the process is expected to be further improved when the outcomes of all the assessments are compiled and the AMS are able to better assess the gaps and learn from the experiences of each other.



ii) Strategic Goal 2: The Capacities of Competition-related Agencies in AMS are Strengthened to Effectively Implement CPL

With a relatively large number young competition agencies in ASEAN, capacity building remains an integral component of the AEGC work on CPL in ASEAN. Work on the *ASEAN Regional Capacity Building Roadmap (ARCBR) 2017-2020* which began in 2016 was completed in 2017. The Roadmap comprised a regional report as well as country reports. The Roadmap identified five Key Result Areas (KRA), which are the key components of capacity building. These are seen to be fundamental to the implementation or application of competition law can most readily effect substantial change in the skill level of a CA. Within each KRA are specific capacity building activities that are undertaken either at the national or regional level. The delivery of the activities includes in-country options, multi-jurisdictional and all-ASEAN approaches.

The KRAs are as follows:

- i) Support the introduction and amendment of competition law in ASEAN Member States;
- ii) Develop effective competition enforcement institutions;
- iii) Enhance CA capacity to undertake economic analysis and Market studies;
- iv) Create capability development plans for effective enforcement and staff retention; and
- v) Enhance CA capacity to advocate and engage in support of competition.<sup>3</sup>

<sup>3</sup> The report can be downloaded from the AEGC website ([www.asean-competition.org](http://www.asean-competition.org)).

In the individual country reports, there are specific recommendations for capacity building tailored to the needs of the individual members. Recommendations ranged from providing advice for drafting regulations and guidelines, and staff exchanges, expert placements and convening of workshops to support the development of investigation capacity. These key recommendations from the Roadmap will be incorporated into regional capacity building programmes being planned.

26 capacity building activities have been undertaken in AMS in 2017, at the regional, sub-regional and national level. The activities cover techniques to fight bid rigging cartels, upholding due process, competition analysis in e-Commerce, market studies, leniency program, evidence and interviewing skills as well as investigation skills. **Table B** outlines the number of capacity building activities convened in 2017.

**Table B: Number of Capacity Building Activities Convened (2017)**

No.	Capacity Building Activities	Number of Activities Convened
1	Workshops and Trainings	13
2	Secondment of Officials	7
3	Expert Placements	3
4	Peer-to-peer Monitoring Programme	1
5	Staff exchanges	2

In tandem with institutional capacity building, under outcome 2.3.1 of ACAP 2025, a feasibility study is in progress on the scope and operations of a possible ASEAN Research Center for Competition (ARCC). A Brainstorming Meeting was held with the participation of competition officials and academicians, to take stock of

the existing initiatives and research facilities in AMS and to identify the issues to be studied in the feasibility study. The Feasibility Study will provide recommendations on the function and structure of the Center, including the roles of each party concerned. It is envisioned that once established, the ARCC will assist the work of the AEGC in undertaking more research work on CPL issues facing the region, undertake market studies as well as carry out capacity building activities moving forward.



Photo: 20<sup>th</sup> AEGC Meeting, 20-24 November 2017, Bagan, Myanmar

As part of the monitoring of the effectiveness of capacity building activities, one of the Key Performance Indicators (KPI) of ACAP 2025, is that capacities of competition-related agencies in AMS are strengthened to effectively implement CPL. In this context, ASEAN data on the number of completed competition initiatives in each AMS were compile in 2016, while **Table A** shows a breakdown of the completed competition initiatives in each AMS in 2017, with the corresponding 2016 data.

**Table A: Data on Completed Competition Initiatives (2017)**

<b>AMS</b>	<b>Advocacy and Outreach Events</b>	<b>Competition Advisories</b>	<b>Market Studies</b>	<b>Complaints Resolved</b>	<b>Preliminary Enquiries</b>	<b>In-depth Investigations</b>	<b>Notification of Guidance/ Decisions</b>	<b>Completed Merger Notifications</b>	<b>Completed Appeals</b>
<b>BN</b>	11	1	-	-	-	-	-	-	-
<b>CA</b>	16	5	3	-	-	-	-	-	-
<b>ID</b>	88	19	41	184	33	11	17	85	30
<b>LA</b>	-	-	-	-	-	-	-	-	-
<b>MY</b>	27	6	2	51	80	6	2	-	1
<b>MM</b>	10	2	-	-	-	-	1	-	-
<b>PH</b>	18	-	9	2	5	4	-	53	-
<b>SGP</b>	34	33	3	196	11	3	1	6	1
<b>TH</b>	27	-	-	7	3	5	1	-	-
<b>VN</b>	15	5	4	-	4	-	-	4	-
<b>Total 2017</b>	246	71	62	440	136	29	22	148	32
<b>Total 2016</b>	250	62	36	458	84	36	24	151	18

iii) Strategic Goal 3: Regional Cooperation Arrangements on CPL are in Place

Globalisation has led to shifts in the market paradigm, new commercial practices, and redistribution of competitive forces in markets. International cooperation between competition authorities has become an indispensable tool to deal with these emerging challenges. ASEAN recognizes that regional cooperation on cross-border mergers and cartels including in areas such as investigations, harmonised decisions and coordination on remedies, where appropriate, is an increasingly important issue that needs to be addressed. Initiative 3.1 of the ACAP 2025 thus addresses the need to identify the common elements of a regional cooperation agreement on competition by 2018, with a view to

developing a Regional Cooperation Agreement by 2020.

As a step towards developing the RCA, a Brainstorming Meeting on the Essential Elements of the Regional Cooperation Framework (RCF) on Competition was convened from 28-30 August 2017 in Manila, the Philippines. The RCF will be a non-binding framework for cooperation that sets out the general objectives, principles, scope, and areas of cooperation among the AMS that may be achieved on a bilateral, multilateral or sub-regional basis. It identifies five areas of cooperation; i) sharing resources, ii) exchange of information, iii) technical assistance and capacity building, iv) enforcement cooperation, and v) cooperation in merger investigations, that will serve as the basis for future discussions to strengthened regional cooperation amongst AMS on

CPL in the years that follow. The RCF is expected to be finalized in 2018.

#### iv) Strategic Goal 4: Fostering a Competition-aware ASEAN Region

As competition policy issues are cross-sectoral in nature, efforts to strengthen the interface between competition policy issues and other economic areas have been on the AEGC agenda to better develop a competition culture across a wider community.



Photo: 19<sup>th</sup> AEGC Meeting, 3-6 April 2017, Yangon, Myanmar

The flagship advocacy event of the AEGC is the ASEAN Competition Conference. The 7<sup>th</sup> ASEAN Competition Conference with the theme “ASEAN@50 – Managing Change in a Competitive ASEAN” was held from 8-9 March 2017 in Selangor, Malaysia. The 7<sup>th</sup> ACC was special as it was also the occasion to mark the 10<sup>th</sup> anniversary of the AEGC in which the AEGC Commemorative video and the AEGC Commemorative logo were showcased. The Conference covered topics such as institutional set-up, competition and MSMEs, public services and innovation, regional cooperation as well as merger controls. Approximately 200 participants attended the Conference ranging from private law firms, businesses, academicians and government officials.

As part of ongoing advocacy efforts to build the wider competition community, an updated Handbook on Competition

Policy and Law (Handbook) 2017 was published with the aim of providing information on CPL developments in AMS since the Handbook was last published in 2013. The current edition has comprehensive information on the laws of an additional four AMS (Brunei Darussalam, Lao PDR, Myanmar and the Philippines) as well as Thailand’s new 2017 law which replaced its 1999 law. The Handbook also contains a matrix of CPL that provides at-a-glance comparative review on competition regimes, a Glossary of Competition Law Terminologies to enhance the understanding of commonly used terms in CPL, and the Compendium of English Translations of National Competition Laws in ASEAN.



Photo: 7<sup>th</sup> AANZFTA Competition Committee Meeting, 23 November 2017, Bagan, Myanmar

Apart from participating in regular exchanges with the ASEAN Committee on Consumer Protection (ACCP), the AEGC convened the ASEAN Aviation and Competition Regulation Workshop on 23-24 November 2017 in Bagan, Myanmar. The Workshop was participated by the ASEAN Transport Working Group officials and several Myanmar airline companies. The Workshop examined competition law and policy developments in the aviation sector and the complementarity of competition and regulatory instruments. There were also case studies and practical examples which provided opportunities for networking between both sets of regulators to establish

and strengthen the relationships between them.

In addition, the ASEAN Competition Business Perception Index (ACBPI) is currently being developed as a tool to gauge business awareness and confidence in the competition system. Effective competition regime will require extensive business compliance and the public understands on the principles and benefits of competition. A Brainstorming Meeting was held from 19-20 July 2017 in Bali, Indonesia to deliberate on the methodology of the ACBPI. A Guidance Document containing the approach, objectives, dimensions, methodology and other operational issues for the ACBPI is expected to be delivered in 2018.

v) Strategic Goal 5: Moving Towards  
Greater Harmonisation of  
Competition Policy and Law in  
ASEAN

Regional harmonization of competition policy and law is seen to be the next step after all AMS have established competition regimes. Convergence is an important future goal towards enhancing the region's competitiveness and providing the regional context to the work on competition. As a first step, a comparative table highlighting key provisions of the laws of AMS has been drawn up and has been annexed to the ASEAN Handbook on Competition Policy and Law (CPL) 2017. These comparisons are expected to be the basis for a more in-depth study on commonalities and differences of competition legislations.

## 4. TECHNICAL ASSISTANCE

The AEGC continues to benefit from the capacity building support extended from development partners, primarily Australia/New Zealand, Germany and Japan. It has also developed close cooperation with different multilateral organisations such as the OECD and UNCTAD, in its efforts to establish a strong CPL regime in the region.

This section highlights the assistance provided by the main technical assistance providers, towards supporting the work on competition policy:

**a) *AANZFTA Economic Cooperation Support Programme - Competition Law Implementation Programme***

The CLIP Phase II continues to support the AEGC through the delivery of 16 capacity building activities in 2017. These technical assistance are focused on building expertise of AMS agencies, and are wide ranging, tailored to the needs of AMS.



Photo: CLIP Workshop

Among the activities are the provision of expert advice on competition regulations, the provision of resident advisors on competition enforcements matters, secondments to the Australian Competition and Consumer Protection Commission (ACCC) and the New Zealand Competition Commission

(NZCC), convening of workshops on investigation as well as evidence and interviewing skills and leniency. The capacity building activities are convened to ensure that ASEAN competition authorities, many of which are at the infant stage, are able to effectively prosecute anti-competitive conducts and maintain a level-playing field for all market players.

In 2017, support was also provided to complete the development of the ASEAN Regional Capacity Building Roadmap 2017 – 2020, as well as the ASEAN Regional Cooperation Framework for Competition.<sup>4</sup>

In addition, the AECSP continues to support the convening of the 7<sup>th</sup> ASEAN Competition Conference, in partnership with the ASEAN-German Competition Policy and Law (CPL II) project.

**b) *ASEAN-German Competition Policy and Law in ASEAN Programme***

Through the ASEAN-Germany cooperation project entitled ‘Competition Policy and Law in ASEAN’ (CPL) phase II, the programme as implemented by GIZ, has supported the AEGC’s work in completing the development of the Assessment Toolkit on Competition Enforcement and Advocacy, and the ASEAN Handbook on Competition Policy and Law (CPL) for Business 2017 which forms part of the AEGC key deliverables in 2017.

The programme also supports the on-going development of the Feasibility Study for the development of the ASEAN Regional Center on Competition, the ASEAN

<sup>4</sup> More information on CLIP including the quarterly published reports which highlights the activities convened in brief can be found from this link: <https://www.accc.gov.au/about-us/international-relations/competition-law-implementation-program-clip>

Competition Compliance Toolkit for Business and the ASEAN Competition Business Perception Index.

Additionally, AMS exposure to international developments in CPL have been supported through the convening of regular workshops on various facets of competition law such as due process, study visits and participation of AMS in various regional and international fora such as the International Competition Network (ICN) Conferences and the UNCTAD's Intergovernmental Group of Experts on Competition Law and Policy. The project will conclude in June 2018.



Photo: 11<sup>th</sup> PSC Meeting, 23 November 2017, Bagan, Myanmar

**c) *Technical Assistance for ASEAN Competition Authorities to Strengthen Competition Law Enforcement in ASEAN – Japan ASEAN Integration Fund (JAIF)***

The project entitled 'Technical Assistance for ASEAN Competition Authorities to Strengthen Competition Law Enforcement in ASEAN' is funded by the Japan-ASEAN Integration Fund (JAIF). The project supports capacity building activities in the form of regional trainings, workshops on market studies, regional enforcement cooperation, and implications of e-Commerce on competition. A special feature of this project is the support for staff exchanges amongst ASEAN competition authorities such as the KPPU, the Competition Commission of Singapore

(CCS) and the Malaysia Competition Commission (MyCC).



**d) *Others***

An important element of the ACAP 2025 in building institutional capacity is also the engagement with the judiciary. AEGC has an on-going informal arrangement with the OECD-Korea Policy Center to involve AMS competition judges in their training activities. A Training for Judges Workshop was convened from 5-7 April 2017 in Manila, the Philippines with the participation of judges from AMS.

In addition, the United Nations Conference on Trade and Development (UNCTAD) continues to actively support ASEAN in its competition policy agenda, by contributing its expertise in the activities held by the AEGC and concrete outputs delivered as envisioned under the ACAP 2025.

## 5. COUNTRY REPORTS

### i. Brunei Darussalam

The Brunei Competition Order 2015, was passed and gazetted in 2015 with the objective to promote market efficiency and consumer welfare towards economic development in Brunei Darussalam. The implementation of the Order and the enforcement of the key prohibitions under the Order will commence in phases to provide relevant stakeholders sufficient time to prepare for the enforcement of the new competition law in an orderly fashion.

On 1 August 2017, the Competition Commission of Brunei Darussalam was established as an independent body that is mandated to promote business competition in Brunei economic landscape through the enforcement of the Competition Order 2015. The Competition Commission consists of a Chairman and six members. The Competition Commission is expected to oversee competition matters in the country through performing the duties entrusted under the Order. This includes adjudicating work on anti-competitive cases and imposing penalties on companies found to infringe the Competition Order 2015.



Photo: 7<sup>th</sup> ASEAN Competition Conference, 8-9 March 2017 in Selangor, Malaysia

The Department of Competition and Consumer Affairs was also established on 1 August 2017 under the Department of

Economic Planning and Development, to serve the Competition Commission as the investigative and administrative arms. The Department is responsible in carrying out Commission's functions such as advocacy, receiving complaints and conducting market reviews.

In the same year, the Department has undertaken several advocacy work such as engagement sessions involving government agencies, statutory bodies, as well as business and members of the Legislative Council. The Department has also developed several advocacy materials such as Frequently Asked Questions (FAQs) and bid rigging leaflets.

Other preparatory works towards the enforcement of the Order has also been carried out. This includes developing competition regulations, guidelines, and internal work processes and procedures.

### ii. Cambodia

The drafting process of Cambodia's Competition Law by the Working Group on Drafting Competition Law and Senior Officials of the Ministry of Commerce has been completed. The Working Group has incorporated and finalized the comments and inputs received from the competition expert as well as during the consultative workshops with relevant stakeholders. The Ministry of Commerce is then expected to officially submit the final draft law to the Council of Ministers and then to the National Assembly for the next enactment process. The drafting process has been delayed for a short period since Cambodia attempted to incorporate the advice from various international experts, inputs from related stakeholders during the consultation process, and observed experience of other AMS to ensure that both Cambodian legal/economic context and international context are properly addressed.



As stipulated in the draft law, Cambodian Competition Commission “CCC” shall be established to enforce this law while additional roles and functions shall be conferred to the Directorate General of CAMCONTROL, which is currently under the Ministry of Commerce, to act as the Secretariat of the Commission “CCC” in charge of investigating any contravention of this law. The Chairman of the Commission shall be the Minister of Commerce, while the members shall be composed of the representatives from the relevant line ministries, former judges, and experts with legal and economic backgrounds. In addition, the draft law will cover three key unlawful practices such as (i) anti-competitive conduct, (ii) abuse of dominant position, and (iii) business combination.

In the meantime, to speed up the drafting process, the Department of Competition was formed in July 2016 under the Directorate General of CAMCONTROL to work closely with Legal Affairs Department in finalizing the current draft law.

### iii. Indonesia

The Commission for the Supervision of Business Competition of the Republic of Indonesia or the KPPU has successfully convened the 13<sup>th</sup> East Asia Top Level Officials Meeting on Competition Law and Policy (EATOP), the 10<sup>th</sup> East Asia Conference (EAC) and the 1<sup>st</sup> Academic Network Seminar. These events, which took place with the support of the Japan Fair Trade Commission and the Asian Development Bank Institute, had brought better collaboration between competition authorities, academicians and competition experts in East Asia.



Photo: 13<sup>th</sup> East Asia Top Official’s (EATOP) Meeting on Competition Policy, 6 – 7 September 2017, Bali, Indonesia

At the national level, the KPPU also held the second Jakarta International Competition Forum (2JICF), which was participated by a number of international competition experts. A total of 650 people participants attended the Forum ranging from the business community, legal practitioners, regulators and government representatives.



Photo: 2<sup>nd</sup> Jakarta International Competition Forum (2JICF), 25 October 2018, Jakarta, Indonesia

This year, the KPPU has 2 (two) highlighted cases on exclusive agreement and market control in bottled water, and a cartel case in the sales of scooter-matic by two multinational companies. With its vigorous law enforcement activities, this year the KPPU has contributed USD 8,318 million to Indonesia’s State Treasury.

## BOX ARTICLE 2

# AQUA CASE - AN EXCLUSIVE AGREEMENT AND MARKET CONTROL



Article 15.(3)(b) stipulates that business actors are prohibited from entering into agreements concerning prices or certain discounts on goods and or services, containing the requirement that business actors receiving goods and/or services from a supplier's business agent will not purchase the same or similar goods or services from other business actors who become competitors from supplier business actors. While articles 19(a) and 19(b) stipulates that business actors are prohibited from performing one or several activities, either alone or together with other business actors, which may result in monopolistic practices and or unfair business competition in the form of (a) refusing and/or hindering business actors to conduct the same business activity in the relevant market; and (b) deter customers or competitors from entering into business relationships with their competitors.

The investigation of this case was initiated from the complaint of the retailer and retail merchants to the KPPU Head Office in September 2016. The retailer claimed to be blocked by PT Tirta Investama to sell Le Minerale products produced by PT Tirta Fresindo Jaya (Mayora Group). One of the clauses of the retail agreement says, if the merchant sells Le Minerale product, then the status will be derived from Star Outlet (SO) to Wholesaler (retail). For this action, PT Tirta Fresindo Jaya issued an open publication against PT Tirta Investama in the newspaper on October 1, 2017.

The action by TIV deterred other business actors in the market of bottled water. Moreover, the degradation causes, the retailer to receive an increase of 3 percent on the price. For example, for Star Outlet, the price charged is IDR37.000 per carton for the size of 600 milliliters, while for the Whole Seller is charged IDR39.350 per carton.

In the process, KPPU finds strong evidence to support the violation. One of the evidence found by investigators was the trail of e-mail communications. Investigator found a two-way communication between the TIV and BAP, which were sent to each other by e-mail address of the office. E-mail subject to "Star Outlet Degradation (SO) Being a Wholesaler." contained sanctions applied by BAP to SO retailer. In fact, BAP was said to have executed the sanction to one of the Star Outlets. AQUA products controlled the market share of up to 46.7 percent in the market of bottled water, and followed by Club 4 percent (Indofood), 2 Tang (PT Tang Mas) 2.8 percent, Oasis (PT Santa Rosa Indonesia) 1.8 percent, Super O2 (Garuda Food) 1.7 percent, and Prima (Sosro) 1.4 percent.

## BOX ARTICLE 3

# CARTEL IN SCOOTER MATIC BY TWO MULTINATIONAL COMPANIES

The KPPU passed a Decision on price fixing cartel for ScooterMatic class 110-125cc under case register No. 04/KPPU-I/2016. The reported parties (PT. Yamaha Indonesia Motor Manufacturing/YIMM and PT. Astra Honda Motor/AHM) breached Article 5(1) on price fixing and imposed a financial penalty amounting IDR 25 billion to YIMM and IDR 22.5 billion to AHM.

The case was initiated from the results of a market study which was followed by an investigation on article 5(1) of Indonesian competition law, the Law No. 5/1999, suspected to be done by two multinational companies, YIMM and AHM, on the marketing of Scooter-Matic class 110-125cc.

Before the decision was concluded, the Council considered several behaviours by the reported parties from several sources, namely (i) a meeting at the golf course; (ii) an email dated 28 April 2014; and (iii) an email dated 10 January 2015. From the three sources, the Council was in the position that based on the facts gathered from the hearing, an email dated 10 January 2015 was an email sent by the witness (Mr. Yutaka Terada) who served as the Marketing Director of YIMM which was sent to Mr. Dyonisius Bekti, Vice President Director of YIMM. The Council considered that this e-mail between high-level entity to collude is an official communication done between top level managements of YIMM.

The relevant market to this case is the marketing of ScooterMatic class 110cc – 125cc in Indonesia. The Council declared that the designation of 110cc – 125cc was in line with the concept of product definition in the applicable anti-trust theory, where a product shall be defined as narrow as it can be, and by considering product characteristics, marketing reach, and behaviour of the reported parties in question.

In addition to price fixing, the Council also concluded that YIMM has intentionally and systematically served misleading facts to build perception which favour YIMM's interest. They have provided data which fraudulently showed the following price decline:

- Time series of Xeon and Xeon RC product in 2013;
- Price comparison of Yamaha Mio product with Honda Beat product in 2013 and 2014;
- Price of scooter with 125cc in 2013; and
- Price of scooter with 110cc in 2014.

Based on the facts gathered from the Hearing, the Council decided that the YIMM and AHM have breached article 5(1) of the Law No. 5/1999, and thus, imposed maximum financial penalties amounting to IDR 25 billion to YIMM, and lower financial penalties amounting IDR 22.5 billion to AHM for their cooperative behaviour during the process.

#### iv. Lao PDR

Upon the enactment of the Lao Competition Law on 2015 – 2016, the Department of Internal Trade, Ministry of Industry and Commerce has been working on the enforcement of the Law, which focused on the establishment of the Lao Competition Commission (LCC) in accordance with Articles 48 – 51 of the Law. The Commissioners of the LCC will consist of representatives from relevant agencies as stipulated under Article 49 of the Law.



Photo: 7<sup>th</sup> ASEAN Competition Conference, 8-9 March 2017 in Selangor, Malaysia

In 2017, the Implementing Guidelines/Regulations to support the implementation of the Laos Competition Law is being developed. In addition, some advocacy activities on competition law for the public and private sectors as part of the competition enforcement have been conducted.

#### v. Malaysia

Several enforcement activities have been undertaken by the Malaysia Competition Commission (MyCC) including a proposed decision against the General Insurance Association of Malaysia (PIAM) for price fixing on repair schemes amongst national car makers, acceptance of undertaking by sand operators in Kelantan on price fixing conduct and judicial review of Malaysian Airline System Berhad, AirAsia Berhad and AirAsia X Sdn. Bhd case.



Photo: 7<sup>th</sup> ASEAN Competition Conference, 8-9 March 2017 in Selangor, Malaysia

Some of the major advocacy programmes that have been carried out this year including the convening of the 7<sup>th</sup> ASEAN Competition Conference (ACC) and the Malaysia Competition Conference 2017, Seminar on Better Business with Competition Compliance for SMEs, the 2nd Moot Court Competition on Competition Law, and a Seminar against Bid Rigging and Abuse of Dominant Position in the Government Procurement.

The MyCC has also concluded its development of the e-Learning on Competition Compliance Program (CCP) for SMEs that can be used by industries, especially the Small and Medium Enterprises (SMEs) to better understand and comply with the Competition Act 2010. The system has been up-and-running since June 2017.

The MyCC hosted a Special Committee Meeting on Competition with other eight sector regulators twice in the year 2017 to discuss issues pertaining to competition policy and law. The MyCC also welcomed a new Chairman and eight other new Members of the Commission (MOC).

The MyCC has completed its market reviews on the pharmaceutical sector and building materials. The draft Guidelines on Intellectual Property Rights and Competition Law has also been developed and will be finalised in early 2018.

#### vi. Myanmar

Myanmar took the role of the Chairmanship of the ASEAN Experts Group on Competition (AEGC) and successfully hosted the 19<sup>th</sup> and 20<sup>th</sup> ASEAN Experts Group on Competition and Related Meetings in Yangon and Bagan respectively.

In addition, the ASEAN Aviation and Competition Regulation Workshop was successfully held back-to-back with the 20<sup>th</sup> AEGC Meeting in November 2017.

Since the enactment of the Competition Law 2015, Competition Rules were drafted with the assistance of international and local experts including all related line ministries and stakeholders. The Ministry of Commerce of Myanmar has issued the Competition Rules on 9<sup>th</sup> October 2017 which has been passed by the Parliament.

The Ministry of Commerce is currently working to establish the Myanmar Competition Commission. The Ministry is working to come-up with a list of proposed members of the Commission from relevant Ministries, Non-Governmental Organizations and individual legal and economic experts to be nominated by the Government for the Commission.



Photo: 19<sup>th</sup> AEGC Meeting, 3-6 April 2017, Yangon, Myanmar

In November and December 2017, competition cartoon booklets were prepared to enhance the understanding of all stakeholders. The Booklets will be published in early 2018.



*Box Article 4*

# SETTING-UP THE MYANMAR COMPETITION COMMISSION

Myanmar Competition Law was enacted as Law No. 9 on 24th February 2015, and came into force on 24th February 2017. Similarly, the Competition Rules have been issued by the Ministry of Commerce on 9th October 2017. In-line with Section 5 of the Law, the Myanmar Competition Commission shall be set up by the Government to implement the competition matters.

Currently, the Ministry of Commerce is starting the internal recruitment process by submitting a list of professionals and their names to the Government by compiling the suitable professionals from relevant Union Ministries, Government Departments, Government organizations and Non-governmental organizations or by selecting respective experts to propose to be members of the Commission.

## vii. The Philippines

2017 was a fruitful year for the Philippine Competition Commission (PCC). Just a little over two years since the landmark enactment of the Philippine Competition Act (PCA) in 2015, significant headway has been made in mainstreaming competition policy in the Philippines. For the first time in the country's socioeconomic planning history, a dedicated chapter on competition was adopted in the Philippine Development Plan for 2017-2022, which serves as the country's blueprint for development in the medium term. With this game-changing development, the enforcement of competition policy became part and parcel of the country's development strategy for sustained, inclusive growth.

In August 2017, full enforcement of the PCA started with the end of the two-year transitory period that provided affected parties time to renegotiate agreements or restructure businesses to comply with the competition law. In line with the full implementation of the PCA, the PCC issued in 2017 its Rules of Procedure,

Merger Review Guidelines, and Rules on Merger Procedure, providing clear guidelines on the merger review process and rules that apply to investigations, hearings, and proceedings of the PCC in competition enforcement.

Recognizing the important role of advocacy in the successful implementation of competition law, the PCC also embarked on a stronger advocacy mission in 2017 to build partnerships and linkages with its stakeholders and development partners.



Photo: Brainstorming Meeting on the ASEAN Research Centre for Competition (ARCC), 26-27 September 2017, Manila, the Philippines

# ADOPTION OF COMPETITION CHAPTER IN THE PHILIPPINE DEVELOPMENT PLAN (PDP) FOR 2017-2022 INCLUDING PRIORITY SECTORS FOR ENFORCEMENT

"The Promotion and enhancement of market competition is a national priority."

Working towards the goal of achieving a more inclusive economic growth, the PDP 2017-2022 sends a clear signal that the promotion and enhancement of market competition is a national priority. The pursuit of fair market competition will be achieved by ensuring that businesses and consumers are protected from anti-competitive practices, enabling ease of doing business, especially for new players, and advocating collaboration among key government agencies, sector regulators, and development partners.

The PDP chapter on competition identifies high-impact priority sectors for review and investigation. These include agriculture, manufacturing, and services such as telecommunications, transportation, power generation, and electricity distribution. A comprehensive analysis of these industries will involve assessing various competition issues such as limits to entrepreneurship and probing for possible existence of anti-competitive practices like abuse of dominant position and collusion with other competitors.

In agriculture, a review of staple food industries will be prioritized. Through the conduct of issues papers, the government will be able to identify whether there are anticompetitive practices along the supply chain, including laws and regulations that potentially hurt competition.

Results of issues papers will aid policymakers in drafting legislations and encourage all stakeholders to understand and support the objectives and benefits of competition. A wider understanding and deeper appreciation — at all levels of decision-making in government, in the business sector, and by consumers — of the benefits of fair market competition are indispensable to creating and maintaining a culture of competition in the Philippines.



## END OF TRANSITORY PERIOD AND FULL IMPLEMENTATION OF THE PCA



*Ensuring businesses compete and consumers benefit*

The Philippine Competition Act (PCA) applies to all industries and all businesses, whether dominant or small-scale players. As the country’s antitrust body, the Philippine Competition Commission (PCC) endeavors to hold cartels and abusive monopolies liable and penalize firms which are found guilty of committing anti-competitive practices.

Following the end of the two-year transitory period, violations of the PCA are subject to full administrative, civil, and criminal penalties prescribed by the law if violations are not cured or are continuing. While the PCC can mete out administrative fines, the Commission is working with the Department of Justice’s Office for Competition (DOJ-OFC) in prosecuting criminal cases. In line with this, the DOJ–OFC has signed a Declaration of Commitment to develop a collaborative and harmonized approach in enforcing the provisions of the PCA.

The PCC also issued procedural guidelines in relation to enforcement and review of mergers and is currently drafting other necessary rules, such as notification threshold guidelines. The said threshold guidelines aim to guide businesses in determining whether they meet the notification thresholds under the Implementing Rules and Regulations of the PCA.

Apart from being an arbitrator in all competition-related issues, the PCC also serves as an advocate of building a culture of healthy competition in the Philippines. To this end, the agency launched the “Comply. Compete. Commit. Learn the Act of Real Competition” campaign, which enjoins businesses to always be mindful of compliance with the law, as with the need to compete in the market.

In addition, the Commission also forged partnerships with various regulatory bodies and other government agencies, such as the Commission on Audit, Bangko Sentral ng Pilipinas, and the Philippine Statistics Authority, in building a solid campaign against bid-rigging, price fixing, and cartels in all sectors.

## viii. Singapore

In 2017, CCS issued an infringement decision against three companies for their involvement in bid-rigging in electrical services and asset tagging tenders. A proposed infringement decision was issued against five capacitor manufacturers who were found to have exchanged confidential business information, and who discussed and agreed on sales prices and price increases. CCS also reviewed merger notifications spanning different industries, including vehicle manufacturing, container liner shipping services and semiconductors. In addition, CCS carried out market studies on car parts, retail petrol, and infant formula milk to better understand the markets concerned and the effects of the market features on competition.

In June 2017, with the aim of strengthening CCS's capacity to deal with more complex cross-border cases, CCS signed its first MOU with an overseas competition authority, the Japan Fair Trade Commission, to facilitate enforcement cooperation and deepen information exchange between the two authorities.



Photo: ICN AEWG ASEAN Senior Competition Officials Workshop on Due Process, 18 September 2017, Singapore

In December 2017, CCS initiated a public consultation to seek feedback on proposed changes to the Competition Act. The proposed amendments seek to provide more certainty to businesses and stakeholders by providing confidential advice for anticipated mergers under the Act and allowing businesses under investigation to provide legally binding commitments for anti-competitive conduct relating to sections 34 and 47 so as to address and resolve the competition concerns arising from the conduct. The streamlining and simplification of the interview process during an inspection will allow CCS to conduct its inspections in a more efficient manner, minimising any potential disruption to businesses.

BOX ARTICLE 7

## **SYMPOSIUM ON E-COMMERCE, ASEAN ECONOMIC INTEGRATION AND COMPETITION POLICY AND LAW**

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In March 2017, CCS and the ISEAS-Yusof Ishak Institute jointly held a symposium on e-Commerce, ASEAN economic integration and competition policy and law, which provided insights into the role of e-Commerce in ASEAN, and its impact on competition policy and law in ASEAN countries. CCS also co-organised the fifth Competition Law Conference “New Approaches for A New Economy” with the Singapore Academy of Law in August 2017 to reach out to the competition community in Singapore. Attended by over 200 practitioners, academics, business professionals and government officials, the Conference also shared the findings of a research paper on the data landscape in Singapore, undertaken by CCS in collaboration with the Personal Data Protection Commission and the Intellectual Property Office of Singapore.

BOX ARTICLE 8

## **ICN WORKSHOP ON DUE PROCESS**

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In August 2017, CCS jointly hosted a Workshop on due process with the ICN Agency Effectiveness Working Group, as well as a roundtable discussion to discuss the challenges faced and potential areas of future cooperation for E-Commerce related cases. With participation from ASEAN competition agencies, CCS also developed the Handbook on E-Commerce and Competition in ASEAN to provide a reference for competition authorities when assessing anti-competitive conduct related to e-Commerce.

BOX ARTICLE 9

## **STAFF EXCHANGES BY THE COMPETITION COMMISSION OF SINGAPORE**

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As part of its on-going efforts to facilitate knowledge exchange and capacity building in ASEAN, CCS hosted two staff from the Philippines Competition Commission (PCC), as well as carried out a two-way staff exchange between Indonesia’s Commission for Supervision of Business Competition (KPPU) and CCS.

## ix. Thailand

On 5 October 2017, Thailand's Trade Competition Act B.E. 2560 (2017) came into force. This new law replaced the competition regulatory framework previously in place under the Trade Competition Act B.E. 2542 (1999).

The fundamental revisions to the law included the inclusion of state-owned enterprises in the application of the law, a principle for consideration of businesses as a single economic entity, the introduction of administrative sanctions, and the establishment of the Office of Trade Competition Commission (OTCC) as an independent government agency with its own budget, personnel, and operation. The 2017 Act has been unofficially translated into English and is available on the OTCC and the AEGC websites.



Photo: CLIP Module 1 Workshop, Bangkok, Thailand, 25-25 July 2017

Enforcement work under the new Act is currently undertaken by the OTCC under the supervision of acting commissioners (commissioners under the 1999 Act), and an acting Secretary-General (the Director-General of the Internal Trade Department).

The 2017 Act requires that an independent Trade Competition Commission (TCC) consisting of 7 commissioners is established within 270 days following the enactment of the law which fell on 1 July 2017. A Secretary-General shall be appointed by the new Commission within

180 days after the Commission's appointment, which will be before the end of 2018.

Currently, the OTCC is preparing the administrative and the implementing regulations for the consideration of the TCC. The Administrative Regulation covers all aspects of running an independent organization, i.e. personnel and budgetary rules, etc. Around 100 officers are expected to be hired in support of the work of the newly established Office. The first round of recruitment is expected to be undertaken in April 2018.

The Implementing Regulations cover, for example, guidelines on how to determine the "dominant position in a market," a "single economic entity," merger control rules, and are required by the Law to be completed by 5 October 2018. In the meantime, the regulations issued under the 1999 Act apply as far as they do not conflict with the provisions of the 2017 Act.

Different advocacy activities to raise awareness of the new law within the business community, educational institutes, law firms, sector regulators, as well as the public, have been conducted since 2017 and are expected to continue in 2018.

## x. Viet Nam

In 2017, the Vietnam Competition Authority (VCA) underwent a significant restructuring process. Its functions related to trade remedies and safeguard measures were shifted to a specialized body, in accordance with the new policy directions of the Government of Vietnam (GOV), enabling the VCA, now formally renamed as the Vietnam Competition and Consumer Authority (VCCA), to focus solely on its core competences of implementing the relevant statutes and regulations on competition and consumer protection of

Vietnam. The reform goes in line with the current socio-economic context of the country and keeps up with prevailing international trends and best practices. More importantly, the new leadership of the VCCA brings forward a promising future of advanced mindset and innovative direction, to ensure more effective law enforcement, policy advocacy, and better business compliance in Vietnam, which ultimately would contribute to building a healthy competition culture and increasing consumer welfare.

Also in 2017, the VCCA has successfully completed all ground works for the amendment of the Vietnam Competition Law 2004. The amended law will be passed by the National Assembly in May 2018. It is expected to be broader in scope and more progressive in nature, with flexible substantive provisions and a more coherent institutional structure, to facilitate future implementation.

With regards to enforcement of the current law, in 2017, the VCCA has completed the official investigation process for two notable cases. For the first time, the VCCA dealt with an exemption application lodged by Vietnam Airlines and Air France. The two parties are exempted with conditions from the purview of Vietnam Competition Law (2004) to engage in a joint venture contract, which enables them to develop a joint network for air passenger transportation. The VCCA also endorsed the acquisition of the largest beer producer in Vietnam – a joint stock company (more than 90% State-owned) by a Thai beverage company. Beyond the competition perspective, this deal highlighted the government’s commitment to continued privatization and efforts to further level the playing field for business development.



Photo: Agency Design Workshop, Siem Reap, Cambodia 18-20 October 2017