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Competition Law and Policy in the ASEAN Region

Origins, Objectives and Opportunities

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1.1 Introduction

Competition policy plays a central role in making markets operate more efficiently – prohibiting or eliminating conduct that might impede effective competition, thereby making markets more dynamic and improving consumer welfare. If the competition framework is implemented on a larger scale, expanding from a single jurisdiction to a regional level, the economic benefits generated are correspondingly more significant if the regional competition policy is used to complement regional trade policies that seek to establish common markets or free trade areas across multiple states. Competition law scholars support the view that regionalising competition policy can advance economic development objectives, facilitating regional market integration between developing countries.[1] The member states of the Association of South East Asian Nations (ASEAN) have recognised the nexus between competition policy and the establishment of a regional common market – the ASEAN Economic Community – and have chosen to adopt a regional competition policy as an instrument to advance their collective economic interests. This chapter will provide a structured overview of the main actors and instruments connected to the regionalisation of competition policy within these countries, analysing the objectives underlying these efforts while proposing the direction future developments in this area might take.

Section 1.2 will introduce the ASEAN region, while Section 1.3 critically examines the original ASEAN Blueprint and the various implementing instruments that spawned from it, including the regional competition

[1] See Drexl, J. "Economic integration and competition law in developing countries", Chapter 11 in Drexl, Bakhoum, Fox, Gal and Gerber (eds.), *Competition Policy and Regional Integration in Developing Countries* (Cheltenham: Edward Elgar, 2011).

policy guidelines developed to facilitate the introduction of national competition law frameworks in the ASEAN member states. Section 1.4 looks at the ASEAN Blueprint 2025, which was published after the ASEAN Economic Community was established in 2015, along with the regional action plan for developing competition policy in ASEAN over the course of the next decade. Section 1.5 provides a summary of how the different issues arising from the regionalisation of competition policy in the ASEAN region will be specifically addressed in each of the other chapters of this book.

1.2 The Association of South East Asian Nations

Established in 1967, ASEAN has grown into an important regional economic grouping of ten countries in South East Asia – Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam – whose initial aims focused upon the acceleration of "economic growth … in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of Southeast Asian Nations".[2] The ASEAN member states (AMSs) are organised around a series of cooperative principles which preserves each member state's freedom to independently pursue their own legislative and regulatory agendas. The "fundamental principles" that govern the relations between AMSs are set out in Article 2 of the *ASEAN Treaty of Amity and Cooperation*:[3]

(a) Mutual respect for the independence, sovereignty, equality and territorial integrity and national identity of all nations;
(b) The right of every State to lead its national existence free from external interference, subversion or coercion;
(c) Non-interference in the internal affairs of one another;
(d) Settlement of differences or disputes by peaceful means;
(e) Renunciation of the threat of use of force; and
(f) Effective cooperation among themselves.

The member states of ASEAN have incredibly diverse political, geographical and socio-economic landscapes. The spectrum of political systems

[2] The ASEAN Declaration (Bangkok Declaration), 8 August 1967. Retrieved from: http://asean.org/the-asean-declaration-bangkok-declaration-bangkok-8-august-1967.

[3] Treaty of Amity and Cooperation in Southeast Asia (Indonesia), 24 February 1976. Retrieved from: http://asean.org/treaty-amity-cooperation-southeast-asia-indonesia-24-february-1976.

Table 1.1 *Key geographical and socio-economic indicators of the ten ASEAN member states*

World development indicators (2015)	Surface area (sq km)	Population size (million)	Gross national income ($US) – per capita	Agriculture (% GDP)	Exports (% GDP)
Brunei Darussalam	5,770	0.423	38,010	1.1	52.2
Cambodia	181,040	15.6	1,070	28.2	61.7
Indonesia	1,910,931	257.6	10,690	13.5	21.1
Lao PDR	236,800	6.8	1,740	27.4	36.0
Malaysia	330,800	30.3	10,570	8.5	70.9
Myanmar	676,590	53.9	1,160	26.7	20.8
Philippines	300,000	100.7	3,550	10.3	28.2
Singapore	719	5.5	52,090	0.0	176.5
Thailand	513,120	67.9	5,720	9.1	69.1
Vietnam	330,967	91.7	1,990	18.9	89.8

Source: The World Bank (World Development Indicators, data.worldbank.org).

within the ASEAN region includes an Islamic monarchy, socialist states, a constitutional monarchy under military rule, transitional economies and several distinct parliamentary democracies with diverse political values. Table 1.1 captures the land and population size of these countries, as well as various indicators of their respective economic profiles.

Between 2007 and 2015, ASEAN has enjoyed an average of 5.3 percent GDP growth per annum, with the aggregation of the ten AMSs' GDPs amounting to USD 2.6 trillion by 2016. With a combined consumer base of 625 million people, a majority of whom are under the age of 30, the ASEAN region attracted USD 120 billion of foreign direct investment (FDI) in 2015, or 7 percent of global FDI.[4] The regional market that ASEAN is working to establish would qualify as the world's seventh largest economy.[5] As a result of implementing the initiatives laid out in the ASEAN Free Trade Area and the ASEAN Economic Community Blueprint (2008–15) (see

[4] ASEAN Expert Group on Competition (AEGC) Inaugural Annual Report 2016, ASEAN Secretariat, May 2017, at p. 2.

[5] Welcome Address by Mr Lim Hng Kiang, Minister for Trade and Industry (Singapore), at the International Competition Network Annual Conference 2016, 27 April 2016, at [7]. Retrieved from: www.ccs.gov.sg/media-and-publications/speeches.

below), extensive trade liberalisation measures[6] have been implemented by the AMSs to achieve duty-free internal tariffs for 96 percent of tariff lines, more liberal market access in more than 100 services sectors, improved customs clearance and other business-friendly regulatory frameworks.[7] These cooperative arrangements between the AMSs have resulted in a more integrated and liberalised regional market, leading to the formal establishment of the ASEAN Economic Community in 2015, the sixth largest economy in the world. The overall economic strategy pursued by ASEAN towards economic integration has been described as an approach based on "open regionalism",[8] where both intra-regional and extra-regional liberalisation of trade and investment are simultaneously pursued by the AMSs, acting individually in some instances and acting collectively in others.

1.3 The ASEAN Economic Community Blueprint (2008–2015)

The ASEAN member states (AMSs) proposed the idea of an ASEAN Economic Community (AEC) in 2007 when they conceptualised the AEC Blueprint, setting out the many reforms that the AMSs had to carry out to establish the AEC by 2015 in order to "transform ASEAN into a region with free movement of goods, services, investment, skilled labour and freer flow of capital".[9] In the Blueprint, the heads of the AMSs articulated four key inter-related and mutually reinforcing characteristics for the AEC: (a) an ASEAN single market and production base; (b) a highly competitive economic region; (c) a region of equitable economic development; and (d) a region fully integrated into the global economy. Individual chapters in the Blueprint are dedicated to each of these goals, with each chapter setting out specific areas of policy-making and more detailed action plans for the AMSs to pursue.

[6] Investment liberalisation policies introduced by AMSs were introduced with the view of permitting market entry into previously state-controlled sectors and enhancing the contestability of such markets. Competition policy complements the removal of these internal barriers by preventing anti-competitive conduct from replacing these obstacles to market entry. See Lawan Thanadsillapakul, "The Harmonisation of ASEAN: Competition Laws and Policy from an Economic Integration Perspective" in Gugler and Chaisse (eds.), *Competitiveness of the ASEAN Countries: Corporate and Regulatory Drivers* (Cheltenham, UK: Edward Elgar Publishing 2010), at p. 130.

[7] See n. 4 above, p. 3.

[8] See Lawan Thanadsillapakul, "The harmonization of ASEAN: competition laws and policy from an economic integration perspective" in Drexl et al. (eds.) (n. 1) above at pp. 13–14.

[9] ASEAN Economic Community Blueprint, ASEAN Secretariat, Jakarta, January 2008, at [4]. Retrieved from: http://asean.org/wp-content/uploads/archive/5187-10.pdf ("AEC Blueprint").

In relation to (a), the Blueprint focuses on measures required to ensure the free flow of goods, services and investment between the AMSs. The goal was to "facilitate the development of production networks in the region and enhance ASEAN's capacity to serve as a global production centre or as part of the global supply chain", building upon the creation of the ASEAN Free Trade Area in order to eliminate non-tariff barriers to trade and attract sustained inflows of foreign direct investment.[10]

In relation to (b), a "competitive" ASEAN region was envisioned as one where every AMSs had its own competition law and policy framework, consumer protection measures and intellectual property frameworks to "develop a culture of learning and innovation supported by a friendlier IP profile to businesses, investors and creators in ASEAN".[11] The Blueprint also exhorts cooperation between the AMSs in the areas of infrastructure development (multimodal transportation, information and communications technology, energy generation, mining and project finance), taxation reform and e-commerce.

In relation to (c), the Blueprint makes reference to The ASEAN Policy Blueprint for SME Development (APBSD) 2004–2014, calling upon AMSs to implement the APBSD's objectives of accelerating the development of small and medium enterprises, enhancing their competitiveness and dynamism, strengthening their resilience to better withstand the challenges of a more liberalised trading environment, as well as increasing the contribution of SMEs to the growth and development of the ASEAN region.[12]

In relation to (d), the Blueprint reaffirms the outward-looking nature of the AEC and the importance placed by the AMSs on making the region a more dynamic and stronger segment of the global supply chain, such that "it is crucial for ASEAN to look beyond the borders of AEC [and that] (e)xternal rules and regulations must increasingly be taken into account when developing policies related to AEC".[13] Furthermore, AMSs committed themselves towards maintaining "ASEAN Centrality" in ASEAN's external economic relations, particularly in relation to its free trade agreements and comprehensive economic partnership agreements.[14]

[10] AEC Blueprint, [10]–[23].
[11] Ibid., [41]–[45].
[12] Ibid., [60].
[13] Ibid., [64].
[14] Ibid., [65]. Examples of these ASEAN-led trade agreements are the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA) and the Regional Comprehensive Economic Partnership (RCEP) between ASEAN, China and various other FTA partners. See www.asean-competition.org/about-aegc-free-trade-agreements.

As far as developing a regional competition policy for the AEC is concerned, the AEC Blueprint advanced a "soft law" approach to give AMSs maximum flexibility to take into account their respective socio-economic and political landscapes in the process of introducing competition law frameworks to their respective jurisdictions, an approach entirely consistent with the "ASEAN Way".[15]

1.3.1 Competition Policy within the AEC Blueprint (2008–2015)

It is noteworthy that the competition policy section is located in the "Competitive Economic Region" chapter of the AEC Blueprint, bundled together with sections dealing with foreign-investment-linked issues such as Intellectual Property Rights and Infrastructure Development. Placing the competition policy section alongside these other economic development priorities, rather than within the "Single Market and Production Base" chapter, is telling. Competition policy is probably regarded by the AMSs as something that will attract foreign direct investment to the ASEAN region,[16] as would have an effective system for protecting intellectual property or a mature intra-ASEAN transportation network. Developing competition law frameworks within ASEAN would make the region more attractive to foreign investors concerned about the economic risk of entering markets occupied by state-owned enterprises, particularly if the AMSs adopt laws that are based upon competition policy foundations that are similar to the laws that these foreign investors are familiar with.

The Blueprint itself is silent on the extent of the role that competition law should play in facilitating the market integration goals set out in the "Single Market and Production Base" chapter. The common market which

[15] Luu Huong Ly, "Regional Harmonisation of Competition Law and Policy: An ASEAN Approach" (2012), *Asian Journal of International Law* 291. The "ASEAN Way," an approach that is centred on the principle of non-interference in the domestic affairs of each AMS, is analysed in depth in Rodolfo C. Severino, *South East Asia in Search of an ASEAN Community* (Singapore: Institute of Southeast Asian Studies, 2008).

[16] On the supportive role that a regional Competition policy can have on the foreign direct investment regimes and regulations of the AMSs, ensuring that the liberalisation of the ASEAN market is not "frustrated" by anti-competitive practices that produce market entry barriers, see Thanadsillapakul (n. 8) above at pp. 17–19. Intriguingly, Thanadsillapakul goes further to argue that "[c]ompetition laws may replace the current restrictive investment laws and regulations, incorporating principles based on non-discrimination in the control of restrictive business practices among firms regardless of their origin or nationality".

the AMSs envisage within the ASEAN region is fundamentally different from that found in the European Union, where a supranational competition law framework plays a central role to ensure that markets are not divided along national lines and that private conduct does not impede trade between member states. The AEC Blueprint does not expect competition policy to perform such an onerous task because the AMSs have only committed themselves, to date, towards a much lower level of integration between their respective economies. In the absence of a supranational institutional and legal framework within the ASEAN region, the competition policy agenda articulated in the Blueprint must have been intended by the AMSs to focus primarily on their respective national jurisdictions.

The competition policy section of the AEC Blueprint states that the "main objective of competition policy is to foster a culture of fair competition"[17] and identifies the following actions to be pursued by the AMSs in this regard:

i. Endeavour to introduce competition policy in all ASEAN Member Countries by 2015;
ii. Establish a network of authorities or agencies responsible for competition policy to serve as a forum for discussing and coordinating competition policies;
iii. Encourage capacity building programmes/activities for ASEAN Member Countries in developing national competition policy; and
iv. Develop a regional guideline on competition policy by 2010, based on country experiences and international best practices with the view to creating a fair competition[18] environment.

Action (i) has been substantially achieved, with all the AMSs, except for Cambodia, having enacted national competition law frameworks by 2016. Action (ii) was achieved with the establishment of the ASEAN Experts Group on Competition (AEGC), a regional forum for discussing and coordinating competition policies within ASEAN that comprises representatives from the respective national competition authorities of the AMSs. Action (iii) is pursued through the capacity-building efforts of the AEGC, together with its economic development partners, while Action (iv) was achieved with the publication of the ASEAN Regional Guidelines

[17] AEC Blueprint, [41].
[18] The implications of the term "fair competition" will be explored below in the section dealing with the Regional Guidelines.

on Competition Policy in 2010 ("Regional Guidelines"),[19] followed thereafter by the Guidelines on Developing Core Competencies in Competition Policy and Law for ASEAN in 2013 ("Regional Core Competencies – RCC – Guidelines").[20] Both these Guidelines articulate broad non-binding principles to assist the AMSs, particularly those with less experience with competition law, in developing their respective national legal frameworks. The Regional Guidelines provide AMSs with a framework guide to the core legal and economic principles underlying competition law regimes, while the RCC Guidelines introduce national competition authorities to useful international best-practices that are relevant to the development of their respective competition law agencies, enforcement systems and advocacy programmes. The production of both Guidelines was funded with technical and economic assistance from the German Federal Foreign Office, implemented through the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ).

1.3.2 The ASEAN Experts Group on Competition (AEGC)

Economic Ministers from the AMSs endorsed the establishment of the AEGC in 2007 as an official ASEAN body, comprising country representatives from national competition authorities and government departments responsible for their respective national competition policies. The AEGC is the central network through which the action plans relating to ASEAN competition policy are carried out, providing a focal point for undertaking the cooperative activities necessary to implement capacity building and institutional development goals set out in the Blueprint. At the time the AEGC was set up, only four of the ten AMSs had national competition law regimes – Indonesia and Thailand introduced their own comprehensive competition laws in 1999, while Singapore and Vietnam enacted their laws in 2004. The work done by the AEGC facilitated the introduction of competition laws to Malaysia (in 2010), as well as to Brunei Darussalam, Lao PDR, Myanmar and the Philippines (all in 2015). The AEGC also played a central role in the development of the 2010 Regional Guidelines and the 2012 RCC Guidelines (see

[19] Retrieved from: www.asean-competition.org/read-publication-asean-regional-guidelines-on-competition-policy.

[20] Retrieved from: www.asean-competition.org/read-publication-guidelines-on-developing-core-competencies-in-competition-policy-and-law-for-asean.

below), organising an annual ASEAN Competition Conference Series to promote the importance of competition law and policy to the AMSs. The AEGC launched its website (www.asean-competition.org) in 2013 to serve as a virtual platform for building public awareness of competition law and policy issues within the region, as well as to provide updates on the latest developments in the field from the AMSs. Ahead of its 10-year anniversary, the AEGC published its inaugural 2016 Annual AEGC Report, the first in a series of annual reports, to provide summaries of the achievements made by national competition authorities in the AMSs each year. In its 2016 Annual Report, the AEGC declared that it is "committed to focus its work on establishing enforceable competition rules, putting in place effective institutional mechanisms to support the implementation of competition law, creating a competition-aware region that supports fair competition, strengthening regional cooperation on CPL, and ensuring the gradual alignment of competition rules under the new AEC Blueprint 2025".[21] The AEC Blueprint 2025 (see below) provides the broad directions for further economic integration between the AMSs and sets out a list of strategic measures to guide the future work of the AEGC, which has since produced The ASEAN Competition Action Plan 2025 (see below).

1.3.3 The ASEAN Regional Guidelines on Competition Policy (2010)

The 2010 Regional Guidelines serve as a non-binding reference guide for AMSs on the various policy and institutional options that may be used to shape their respective national competition law and policy frameworks. These Guidelines are based on country experiences and international best practices, with ten chapters and forty-four pages of proposals for how competition policy might be implemented by the AMSs in their respective jurisdictions. The key features of the Regional Guidelines will be summarised in Table 1.2, along with brief comments on their significance towards understanding the AEGC's perspective on various competition policy issues.

[21] See n. 4 above at p. 6.

Table 1.2 *The 2010 ASEAN Regional Guidelines on competition policy – a summary*

Chapter	Highlights	Commentary
1: Objectives of regional guidelines	The Regional Guidelines "serve as a general framework guide for the AMSs as they endeavour to introduce, implement and develop competition policy in accordance with the specific legal and economic context of each AMS" [1.2.1]. The Regional Guidelines "endeavour to help in the process of building stronger economic integration in the region … [and] only serve as a reference and are not binding on the AMSs" [1.2.2]. The Regional Guidelines "take into account the varying development stages of competition policy in the AMS … [and] set out different measures that an AMS can adopt or maintain to proscribe anti-competitive business conduct, depending on its own stage of competition policy development" [1.3.1].	The objectives of the Regional Guidelines emphasise a few key underlying principles: 1. They contain non-binding recommendations for the AMSs; 2. They may be implemented differently in each AMSs and tailored according to local circumstances; and 3. They are intended to facilitate the economic integration process between the AMSs. It is worth noting that the objectives of the Regional Guidelines do *not*: Propose the adoption of competition rules as a means to establish a single market across the ASEAN region; Contemplate the existence of any supranational legal framework or enforcement agencies; or Require any harmonisation of the AMSs' national competition law regimes.[1]

2: Objectives and benefits of competition policy	Competition policy identifies "the promotion and the protection of the competitive process" as the "most commonly stated objective of competition policy" [2.2.1]. Competition policy is regarded as introducing "a 'level-playing field' for all market players", while competition law provides the market with a set of "rules of the game" that "protects the competition process itself, rather than competitors in the market" [2.2.1]. The pursuit of "fair or effective competition" can contribute to improvements in (i) economic efficiency; (ii) economic growth and development; and (iii) consumer welfare [2.2.1.1–3]. Competition policy is regarded as "beneficial to developing countries" where market deregulation, privatisation and liberalisation enable these countries to ensure that former public monopolies are not replaced by private monopolies [2.2.2]. Competition policy can accommodate other economic and social policies – regional market integration, promotion or protection of small businesses, advancement of technology and innovation, industrial diversification, environmental protection, etc. [2.2.3].	The AEC Blueprint[2] and Regional Guidelines envisage competition policy to be used to create a "fair competition environment in ASEAN".[3] While this might be construed as supporting the view that the competition rules of the AMSs should also be concerned with differentiating between "fair" and "unfair" methods of competition (which is what some jurisdictions have done, by integrating their competition laws with laws prohibiting acts of unfair competition), the contents of this chapter might suggest otherwise. The paragraphs in this chapter discuss the objectives and benefits of competition policy in conventional terms that are consistent with contemporary approaches to competition law adopted in mature jurisdictions – placing the focus on protecting the competitive process rather than specific competitors, promoting efficiency, consumer welfare and economic development. "Fair competition" as an objective should thus be interpreted narrowly by limiting its meaning to the notion of trying to provide a "level-playing field" for all market players – in other words, ensuring that markets are contestable and promote freedom of competition.[4]

(*cont.*)

Table 1.2 (*cont.*)

Chapter	Highlights	Commentary
	Competition policy complements trade policy, industrial policy and regulatory reform, such that it "can be an important factor in enhancing the attractiveness of an economy to foreign direct investment, and maximizing the benefits of foreign investment" [2.2.4]. Individual AMSs are allowed to "decide which of the objectives it wishes to pursue, taking into account its own national competition policy needs" [2.2.5].	The discussion in this chapter about the various ways in which competition policy can accommodate other socio-economic objectives, as well as the possible intersections between competition policy and other potentially competing government policies, is very concise, merely alluding to the complexities of fitting competition policy as a single piece of a bigger jigsaw puzzle into the broader policy landscape of each AMSs. Competition policy is presented as a complementary tool that can be used with other government policies – to advance the objectives of those other policies – without explicitly articulating the real possibility of conflict.[5] It would probably have been helpful (particularly to the AMSs which were still in the process of drafting their national competition laws at the time the Regional Guidelines were published) if there was a more thoughtful analysis of the common types of situations where competition policy collides with other government policies, with suggestions as to how such policy tensions might be resolved. The non-prescriptive nature of the Regional Guidelines, which give the AMSs a "buffet" of possible objectives[6] and benefits that they may use to design their national competition laws, creates the risk that their respective legal regimes are underpinned by divergent policy foundations.[7] This will make it more difficult for the AEGC to facilitate convergence between the competition law frameworks of the AMSs, which is one of strategic measures articulated in [27(v)] of the AEC Blueprint 2025.

3: Scope of competition policy and law	Sets out the general substantive principles of competition law – the prohibition of anti-competitive agreements (horizontal and vertical), abuse of a dominant position (market power), anti-competitive mergers and other restrictive trade practices [3.1]. Summarises key legal principles drawn from European competition law: "undertakings"; what it means to "prevent", "distort" or "restrict" competition; "hardcore restrictions" vs "rule of reason" analysis; "dominant position" and "abuse"; "substantial lessening of competition" and mergers; mandatory and voluntary notifications; "block exemptions", etc. [3.2–5]. Emphasises the importance of having general competition laws that apply uniformly to all parties engaged in commercial economic activities, such that all business "engaged in the same or similar lines of activity should be subject to the same legal principles and standards to ensure fairness, equality, transparency, consistency and non-discriminatory treatment under the law" [3.1.2 and 3.1.3].	The Euro-centric nature of the discussion on the foundational principles underlying the three major types of competition law prohibitions can be attributed to the technical assistance given to the AEGC by European sponsors in drafting the Regional Guidelines. Interestingly, the only AMSs that have modelled their national competition law regimes closely after the European model are Singapore, Malaysia and Brunei Darussalam. It remains to be seen whether the other AMSs' legal frameworks will move closer to the European model as the work of the AEGC progresses. The emphasis placed on equality and uniformity in the application of the competition law prohibitions to all entities engaged in economic activities is significant, given the prevalence of state-owned enterprises, as well as many large enterprises that were formerly state-run entities, in all the AMSs. In [3.1.2], "State-owned enterprises" are specifically mentioned as appropriate candidates to whom competition laws should be applied, "unless exempted by law". Interestingly, in the ten specific examples of the categories of exemptions that the AMSs are asked to consider in their competition legislation (discussed in [3.5]), there is no mention of whether State-owned enterprises should be exempted from the scope of the competition law regime.

(*cont.*)

Table 1.2 (*cont.*)

Chapter	Highlights	Commentary
4: Role and Responsibilities of Competition Regulatory Body / Institutional Structure / Sector Regulators	Sets out the roles that the national competition authority can play in each AMSs, from issuing regulations to enforcement, advocacy, providing advice on competition policy to other branches of government and capacity building [4.1]. Recommends that enforcement agencies should adopt prioritisation criteria "to make the best use of available resources" [4.2]. Offers alternative models of institutional structure that national competition authorities might adopt, including the option of a "standalone independent authority responsible for competition policy and enforcement", "different statutory authorities respectively responsible for competition policy administration and enforcement within specific sectors" and in-house competition regulatory functions carried out "within the relevant Government department of Ministry", giving AMSs latitude to determine appellate organs, while emphasising the need for the competition regulatory body to "avoid political influence" [4.3]. Recognises the role of balancing competition policy against national sectoral regulation, and the need for AMSs to decide if they should exempt industries subject to sectoral regulation from the general competition law and rely "entirely on sector-specific regulation to meet competition policy objectives in regulated sectors", or if they should use "concurrent regulation, with the national competition policy … providing the overarching template for pro-competitive regulation" [4.4].	Drawing from the experiences of the more mature competition law jurisdictions in developed countries, the recommendations in this chapter on what a national competition authority needs to do, and how it should go about fulfilling these functions, are systematically laid out and grounded in common sense. Newer competition regimes established among the AMSs should find the guidance provided useful in identifying the issues that need to be considered in setting up their respective enforcement agencies. However, by presenting a range of different institutional structures that might be utilised in national competition law regimes, without taking a normative position on which model is most advantageous, the Regional Guidelines make it less likely for convergence to take place between the AMSs on this front. Consequently, the national competition authorities in some countries vary from standalone authorities with quasi-judicial powers to impose penalties (Indonesia), those that are housed within government departments or ministries (Singapore, Vietnam, Thailand) to prosecutorial agencies that enforce competition law infringements through judicial proceedings (Philippines).

5: Legislation and Guidelines / Transitional Provisions	Recommends that the AMSs introduce basic legislation "containing key broad provisions" along with secondary legislation "to implement and clarify the more operational aspects … and provide guidance on how the competition regulatory body will interpret the law" [5.1.1]. Outlines the key legal provisions that need to be found in national competition laws, including "Extra-territorial application of competition law", and "Cooperation between the competition regulatory body and other local or overseas regulatory authorities" [5.1.3.2 and 5.1.3.19]. Recognises that AMSs may need to review existing laws (including laws relating to intellectual property, fair trading, sectoral regulation and consumer protection) to ensure compatibility or consistency with competition policy. AMSs should also consider a phased approach to the implementation of their competition laws, providing for transitional provisions to give undertakings enough time to adjust their conduct [5.2–4].	The Regional Guidelines identify twenty-one types of statutory provisions which the AMSs ought to include within their competition legislation, addressing the whole spectrum of competition law issues ranging from substantive liability to procedural and administrative matters. In the context of developing competition policy norms within ASEAN on a regional basis, the two areas which stand out are the "Extra-territorial application of competition law" and "Cooperation between the competition regulatory body and other local or overseas regulatory authorities". In the absence of a supranational competition law and a supranational enforcement agency, intra-ASEAN cross-border conduct that is anti-competitive can only be effectively addressed by national competition authorities from the relevant AMSs. This necessitates the existence of clear laws which define the legitimate scope of a national competition authority's jurisdiction over the extra-territorial aspects of the anti-competitive conduct, along with appropriate procedural frameworks that permit cooperation between enforcement agencies to facilitate investigative activities in their respective jurisdictions.

(*cont.*)

Table 1.2 (*cont.*)

Chapter	Highlights	Commentary
6: Enforcement Powers	Recognises that the AMSs may choose different enforcement regimes, based on whether competition law infringements are regarded as "civil, administrative or criminal" wrongdoings, which would determine which organs of state should impose sanctions on infringing parties [6.1]. Provides a summary of the various enforcement-related issues to be considered in the design of a national competition law regime: the type of investigation powers the competition authority should have, procedural safeguards, protection of confidential information, powers to accept behavioural or structural commitments, interim measures and injunctions, types of sanctions, principles governing the calculation of fines, leniency schemes to encourage whistle-blowing, settlement procedures and private enforcement of competition law infringements [6.2–11].	This chapter of the Regional Guidelines provides a comprehensive discussion of the important procedural matters encountered in competition law enforcement. The wide range of practical issues which national competition authorities have to deal with, and the legal powers that they need to be given under their national competition law frameworks in order to do their jobs effectively, are introduced clearly and systematically. The neutral position taken in the Regional Guidelines on whether competition law infringements – particularly cartelistic conduct – should be regarded as criminal wrongdoings is potentially problematic. AMSs that criminalise price-fixing conduct (for instance, the Philippines) may face challenges in implementing leniency programmes that are closely aligned to jurisdictions which only regard such conduct as administrative wrongdoings (such as Singapore, Malaysia and Brunei Darussalam). Procedural safeguards (including considerations of due process, dealt with in the next chapter of the Regional Guidelines) necessary to protect the rights of accused persons in criminal proceedings may, for example, make it practically difficult for a national competition authority to cooperate closely with their counterparts in the other AMSs.

7: Due Process	Sets out the importance of having procedural frameworks that promote the credibility of the competition law enforcement process, giving the judiciary a role in reviewing enforcement decisions and designing institutional frameworks and processes that are consistent with various guiding principles: 1. Accountability of the competition regulatory body; 2. Availability of administrative review of the competition regulatory body's decisions when circumstances have changed or ceased to exist; 3. Confidentiality of information obtained by the competition regulatory body; 4. Independence of the competition regulatory body; 5. Adherence to the rules of Natural Justice; 6. Transparency and consistency in the competition regulatory body's policies, practices and procedures; 7. Timeliness in the competition authority's case-handling; 8. Incorporation of checks and balances to permit aggrieved parties to appeal against decisions made by the competition regulatory body [7.1 and 7.2].	The "wish-list" of due process considerations discussed in this chapter are drawn from contemporary models of liberal democracy, mirroring the procedural frameworks that have emerged from the competition law regimes of Europe and developed countries. Whether or not they are directly translatable into the legal systems of the AMSs will depend on whether these jurisdictions share the same political values. Some AMSs have more mature democracies than others, which may be undergoing major transformations from single-party Socialist or military-rule states into market economies. It is unrealistic to expect transition economies which do not share the same view on the rule of law, or which lack the necessary institutional infrastructure, to assimilate all the guiding principles set out in this chapter into their national laws. It should be noted, however, that there is an economic incentive for AMSs to embrace these principles in the development of their competition law regimes. These are things which matter to multinationals and foreign investors when they evaluate the risks of doing business in the ASEAN region. It is also in the reputational interest of ASEAN national competition authorities to adopt such principles in order to inspire confidence in the integrity of their respective regulatory systems.

(*cont.*)

Table 1.2 (*cont.*)

Chapter	Highlights	Commentary
8: Technical Assistance and Capacity Building	Explains the role of technical assistance and capacity building (along with various guiding principles) in the development of sustainable competition policy frameworks necessary for effective competition policy administration, enforcement, advocacy and the development of competition regulatory bodies [8.1 and 8.2]. Recommends that AMSs improve the capacity of government officers to engage in competition advocacy and public education, build legal and economic skills necessary for the establishment and implementation of national competition policy and develop sound institution frameworks and due processes for competition regulatory bodies [8.3].	The contents of this chapter do not *direct* the AEGC to seek technical assistance from "other competition regulatory bodies, donor agencies and international organisations" [8.1.1]. However, such assistance, in relation to both technical assistance and capacity building, was clearly contemplated at the time the Regional Guidelines were published. The guiding principles set out here – especially "adherence to country-specific needs" – provide useful reminders to external donor agencies that any programmes organised for the benefit of national competition authorities in the AMSs should be tailored to suit local circumstances. The development of competition policy in the ASEAN region in the last decade has been driven by the AEGC's many technical assistance cooperation programmes with Australia and New Zealand (AANZFTA Economic Cooperation Support Programme – Competition Law Implementation Programme), Germany (ASEAN-German Competition Policy and Law in ASEAN Programme) and Japan (Technical Assistance for ASEAN Competition Authorities to Strengthen Competition Law Enforcement in ASEAN – Japan ASEAN Integration Fund (JAIF)).[8]

9: Advocacy / Outreach	Explains the role of advocacy and outreach measures in achieving the objectives of competition policy, the need for competition regulatory bodies to allocate resources in support of their public outreach efforts and how businesses should be encouraged to establish competition compliance programmes [9.1–3].	A regional platform for building public awareness of the benefits of competition policy across ASEAN was established in 2013 with the launch of the AEGC website (www.asean-competition.org). This website serves as a portal to the websites of the AMSs' national competition authorities, providing country updates and press releases from the AMSs relating to national and regional developments in the area of competition law and policy.
10: International Cooperation / Common Competition Related Provisions in Free Trade Agreements	Identifies the "overarching or long term objectives of a cooperative competition policy arrangement for the AMSs" as "the promotion of market integration in the lead up to the establishment of a common market in 2015" and "the promotion of economic efficiency and growth at the regional level" [10.1.1]. Lists the benefits of cooperation between competition regulatory bodies, which include "promoting a culture of competition in the ASEAN region" and "facilitating co-operation or at least a high degree of consistency in the implementation of competition policy in the ASEAN region" [10.2.1.1–2].	It is difficult to evaluate the exact significance of the cooperative competition policy arrangements of the AMSs towards the establishment of the AEC at the end of 2015. That national competition law regimes were successfully in place in nine of the ten AMSs by that time was certainly an achievement insofar as it resulted in an element of commonality between these jurisdictions, in that they all have laws that prohibit private conduct that is harmful to efficient functioning of markets. However, many of the differences in their developmental and political landscapes, as well as their institutional capabilities, continue to exist even after the establishment of the AEC.[9]

(*cont.*)

Table 1.2 (*cont.*)

Chapter	Highlights	Commentary
	Explains the role that the AEGC is to play in facilitating cooperation between the competition regulatory bodies from each of the AMSs – a "regional platform [that] will allow [them] to exchange their experiences, identify best practices and endeavour to implement cooperative competition policy and competition regulatory arrangements that provide for harmonisation" [10.3.1–10.3.3]. Caveats that the regional platform for cooperation facilitated by the AEGC "shall not exercise any rule-making function and no voting rules should be in place … as the cooperation is based on consensus building" [10.3.5]. Recognises that some AMSs enter into various different Free Trade Agreements (FTAs) with non-ASEAN countries that contain common competition-related provisions, which should be "taken into consideration" by all the AMSs, who should have "the flexibility to make proper judgment on the best approach for developing provisions in a competition chapter" of each FTA "that is in line with the developmental goals of their economy and which is not in contradiction to any provisions/approaches already agreed for within the regional level" [10.4].	Developing a "culture of competition in ASEAN" will be a challenging role for the AEGC because it will have to change the mindsets of undertakings in many business communities, particularly among SMEs, which traditionally may have had close collaborative relationships in their business dealings that are now regarded as unlawful anti-competitive agreements under the competition laws introduced by the AMSs. This is clearly an uphill task that will require eradicating ingrained attitudes that favour cooperation over competition which have been steeped into the laissez faire business cultures of the AMSs for many generations. Endeavouring to move towards "harmonisation" in the national competition policy landscapes of the AMSs will be tricky because, given the non-binding nature of the Regional Guidelines, each AMSs has been given carte blanch to design their own individualised competition regime, creating a situation where significant differences between these national competition laws exist from the outset. Given that it is not allowed to impose any rules on the national competition authorities of the AMSs, the AEGC will only succeed in achieving convergence between the competition regimes if a consensus is reached – a Herculean task given the myriad differences between the political and socio-economic circumstances in each AMSs.

The Regional Guidelines acknowledge the prevalence of AMSs entering into FTAs, individually and collectively,[10] with their trading partners – creating obligations to implement competition regimes in accordance with the competition chapters of such FTAs. This creates a potential source of divergence between the national competition laws of the AMSs if the contents of these competition chapters vary across the FTAs. AMSs are thus encouraged by the Regional Guidelines to approach the development of their national competition regimes in a manner that does not contradict any competition policy matters that they have agreed to at the regional level.

[1]Though "greater harmonization" between the competition laws of AMSs was subsequently identified in the ASEAN Blueprint 2025 as a policy objective. See discussion below.
[2]AEC Blueprint, [41]. See n. 17 and n. 18 above.
[3]Regional Guidelines, p. i (Foreword), p. ii (Preface) and [3.6.1] (Scope of Competition Policy and Law – Providing Guidance to Businesses).
[4]See discussion in relation to the RCC Guidelines in n. 32 below.
[5]For example, in Malaysia, the tensions caused between the national competition law regime and industrial policy have been flagged. See Wilson Tay Tze Vern, "Competition Law in Malaysia: Renaissance and the Road Ahead" (2013), *Malayan Law Journal* 2 xxiiii.
[6]For instance, one commentator has called for competition policy to promote the growth of SMEs and "indigenous enterprises", as a counterbalance to an "open door" foreign investment policy regime. See Thanadsillapakul (n. 8) above at pp. 38–9.
[7]See discussion in relation to the RCC Guidelines below in the text accompanying n. 33.
[8]AEGC Inaugural Annual Report 2016, n. 4 above at pp. 14–16.
[9]"ASEAN launches economic bloc, but analysts skeptical", AFP, 31 December 2015.
[10]See n. 14 above for an example of an ASEAN-wide FTA.

1.3.4 The Guidelines on Developing Core Competencies in Competition Law and Policy for ASEAN (2012)

The 2012 RCC Guidelines are based on the practical experiences of competition authorities from the AMSs and internationally recommended best practices, providing the staff members of competition-related agencies guidance on how to develop the important core competencies of a national competition authority – institutional building, enforcement and advocacy. Unlike the Regional Guidelines, which focus on the *substance* of competition policy and how it should be implemented in each AMS, the RCC Guidelines focus on the *process* of developing a competition enforcement system at the national level. This hefty 76-page document outlines the attributes and core competencies that a national competition authority must possess in order to operate a workable competition enforcement system.

The RCC Guidelines augment the discussion in the Regional Guidelines on the goals and objectives of competition law in the AMSs. In relation to the underlying objectives and economic implications of national competition regimes, the RCC Guidelines make a number of recommendations, three of which deserve special attention. Firstly, recognising that many AMSs are at different stages of market liberalisation, the RCC Guidelines emphasise that "competition law plays a fundamental role in protecting fair and efficient competition, by allowing market-oriented reforms to produce their expected benefits".[22] This emphasises the important nexus between competition law and economic development through the opening up of national markets previously occupied by public monopolies. Secondly, the RCC Guidelines encourage the AMSs to adopt "pure" national competition law regimes that focus on competition policy objectives, rather than "adding additional objectives … [that] can cause inconsistencies in [their] application".[23] However, it is apparent that several

[22] See n. 20 above at p. 8. [1.1.1] of the RCC Guidelines go on declare that "[i]t is not recommended opening up national markets without introducing, for all market players, a 'level-playing field' ensuring effective competition contributes to economic efficiency, development, growth and increased consumer welfare". This adds an important gloss on the meaning of "fair" competition, suggesting that competition law should be concerned specifically with prohibiting conduct that prevents a market from having a "level-playing field" for all competitors, rather than looking at the general "fairness" of how a competitor has behaved.

[23] See n. 14 above at p. 9, where the RCC Guidelines go on to declare that "[i]n most cases, further legitimate objectives are better pursued through distinct legal and policy instruments".

of the AMSs (Indonesia, Vietnam, Myanmar and Lao PDR) have ignored this recommendation, choosing instead to implement "mixed" legal regimes where both competition law and unfair competition law (including unfair trade practices) are enforced by the same national agency. Thirdly, the RCC Guidelines examine the relationship between competition policy and industrial policy in more detail than the Regional Guidelines, particularly in relation to availability of exemptions or exceptions from the application of competition law to "national champions" or situations of "infant industry" protection, leaving it to individual AMSs to decide for themselves how to strike "the correct balance between industrial and competition policies".[24] Even as the RCC Guidelines warn that the use of exemptions or exclusions for particular market players, on the grounds of industrial policy, must be weighed against their impact "on the overall effectiveness of the new competition law framework", the non-binding nature of these Guidelines means that the AMSs are entirely at liberty to exclude their state-owned enterprises from the scope of their competition law regimes. The Thai competition legislation, for instance, has explicitly chosen to go down this route.

1.4 The ASEAN Economic Community Blueprint 2025

Just before the ASEAN Economic Community was launched at the end of 2015, the ASEAN Economic Blueprint 2025 ("AEC Blueprint 2025") was adopted by the leaders of the AMSs.[25] The AEC Blueprint 2025, which succeeded the AEC Blueprint (2008–15), sets out the strategic measures necessary to develop the AEC into a region with the following characteristics: (i) A Highly Integrated and Cohesive Economy; (ii) A Competitive, Innovative and Dynamic ASEAN; (iii) Enhanced Connectivity and Sectoral Cooperation; (iv) A Resilient, Inclusive, People-Centred ASEAN; and (v) A Global ASEAN. The AEC Blueprint 2025 expands upon the

[24] See n. 14 above at p. 13, where the RCC Guidelines explain how competition policy may, or may not, conflict with industrial policy.

[25] The AEC Blueprint 2025 was adopted by the AMSs at the 27th ASEAN Summit on 22 November 2015 in Kuala Lumpur, Malaysia. Together with the ASEAN Community Vision 2025, the ASEAN Political-Security Community (APSC) Blueprint 2025 and the ASEAN Socio-Cultural Community (ASCC) Blueprint 2025, the AEC Blueprint 2025 forms part of a broader framework – ASEAN 2025: Forging Ahead Together. The AEC Blueprint 2025 was retrieved from: www.asean.org/wp-content/uploads/images/2015/November/aec-page/AEC-Blueprint-2025-FINAL.pdf.

themes found in the earlier AEC Blueprint, setting out more detailed targets for the members of the Economic Community to achieve by 2025. The competition policy section of the AEC Blueprint 2025 is significantly more comprehensive than its counterpart in the earlier Blueprint. These strategic measures are set out in Box 1:

BOX 1: EFFECTIVE COMPETITION POLICY

For ASEAN to be a competitive region with well-functioning markets, rules on competition will need to be operational and effective. The fundamental goal of competition policy and law is to provide a level playing field for all firms, regardless of ownership. Enforceable competition rules that proscribe anti-competitive activities are an important way to facilitate liberalisation and a unified market and production base, as well as to support the formation of a more competitive and innovative region.

Strategic measures include the following:

i. Establish effective competition regimes by putting in place competition laws for all remaining ASEAN member states that do not have them, and effectively implement national competition laws in all ASEAN member states based on international best practices and agreed-upon ASEAN guidelines;
ii. Strengthen capacities of competition-related agencies in ASEAN member states by establishing and implementing institutional mechanisms necessary for effective enforcement of national competition laws, including comprehensive technical assistance and capacity building;
iii. Foster a "competition-aware" region that supports fair competition, by establishing platforms for regular exchange and engagement, encouraging competition compliance and enhanced access to information for businesses, reaching out to relevant stakeholders through an enhanced regional web portal for competition policy and law, outreach and advocacy to businesses and government bodies, and sector-studies on industry structures and practices that affect competition;
iv. Establish Regional Cooperation Arrangements on competition policy and law by establishing competition enforcement cooperation agreements to effectively deal with cross-border commercial transactions;
v. Achieve greater harmonisation of competition policy and law in ASEAN by developing a regional strategy on convergence;
vi. Ensure alignment of competition policy chapters that are negotiated by ASEAN under the various FTAs with Dialogue Partners and other trading nations with competition policy and law in ASEAN to maintain consistency on the approach to competition policy and law in the region; and
vii. Continue to enhance competition policy and law in ASEAN taking into consideration international best practices.

These strategic measures in the AEC Blueprint 2025 are a more detailed expansion of the Competition Policy section of the original AEC Blueprint and the Guidelines discussed above. Noteworthy additions here include the desire for the AMSs to have "effective" competition regimes, a greater emphasis on the role of technical assistance and capacity building and clearer objectives for developing an ASEAN regional framework for competition policy and law.[26] Measures (iv) and (v) are particularly significant because they require the AMSs to take steps to alter or adapt their respective national competition regimes to deal with cross-border instances of anti-competitive behaviour, as well as to work towards convergence – a goal that will not be easily achieved in the light of the many divergences in the AMSs' national competition regimes that were explicitly sanctioned by the Regional Guidelines and RCC Guidelines.

More importantly, it should be emphasised that the AEC Blueprint 2025 has clearly maintained silence on the emergence of supranational laws or institutions. This supports the view that the competition policy measures articulated in the AEC Blueprint 2025 were meant to be, and can only be, pursued at the national level[27] and will require the AEGC to obtain sufficient consensus from all the AMSs before progress can be made. It is therefore important for the AEGC to identify "low hanging fruit" – areas of competition law reform that can be achieved by each of the AMSs with relatively less effort – that can enable national competition authorities to effectively deal with cross-border anti-competitive conduct. This could include a pan-ASEAN strategic framework for jointly investigating and prosecuting cross-border cartels that operate in more than one AMS, a commonly adopted leniency programme for whistleblowers to protect themselves in multiple AMSs through the submission of one leniency application or even a streamlined merger regulation process that allows

[26] The role to ASEAN's regional competition policy, as a strategic component of the AEC, remains modest under the AEC Blueprint 2025. Others have called for ASEAN competition policy to take on a more central role in the development of the AEC, with objectives that include the promotion of "liberalization of trade and investment in ASEAN" and "a proper competitive balance between intra- and extra-ASEAN business enterprises". See Thanadsillapakul at n. 8 above at pp. 36–7.

[27] However, at least one government leader (from Singapore) has called for the ASEAN region to have "a systematic set of competition rules at the regional level" beyond the AMSs putting in place their own national competition regimes, in order to "provide effective protection against possible restrictive anti-competitive practices of transnational business entities." See Opening Speech by Minister Lim Hng Kiang at the 3rd ASEAN Competition Conference (4 July 2013), at [13]. Retrieved from: www.ccs.gov.sg/media-and-publications/speeches?page=3.

applicants to secure merger clearance from all the AMSs by filing a single notification with one of the national competition regulators.

Convergence and harmonisation between the national competition law regimes of the AMSs will probably be much harder to achieve as long as their economic and political landscapes remain divergent.[28] However, this is still an important goal to work towards because it is the only way (short of the very remote prospect of adopting a supranational competition law framework) that the AMSs can create a common market of consistent competition rules for the benefit of undertakings and foreign investors who wish to operate seamlessly across the national boundaries of these countries.

1.4.2 The ASEAN Competition Action Plan 2025

Produced by the AEGC, the ASEAN Competition Plan 2025 (ACAP 2025) translates the strategic measures found in the AEC Blueprint 2025 into more detailed initiatives, setting out AEC's goals in the field of competition policy and law (CPL) for the period between 2016 and 2025. ACAP 2025 is organised around five strategic goals condensed from the AEC Blueprint 2025:[29]

I. Effective competition regimes are established in all ASEAN member states (AMSs);
II. The capacities of competition-related agencies in AMS are strengthened to effectively implement CPL;
III. Regional cooperation arrangements on CPL are in place;
IV. Fostering a competition-aware ASEAN region; and
V. Moving towards greater harmonisation of competition policy and law in ASEAN.

These strategic goals are further broken down into twenty initiatives and forty-one desired principles, including improved Regional Guidelines on competition policy by 2020 and a Declaration on a set of Agreed Principles for ASEAN to provide a model competition law framework. Clearly, the

[28] Given that the AMSs are at significantly different stages of economic development, commentators have argued strongly against a "uniform, one-size fits all" competition policy for the entire ASEAN region. See Anthony Amunategui Abad, "Competition law and policy in the framework of ASEAN" in Drexl et al. (eds.), n. 1 above at p. 41.

[29] An ASEAN Competition Action Plan (2016–25). Retrieved from: www.asean-competition.org/read-publication-asean-competition-action-plan-acap-2016-2025.

AEGC has a lot to do before 2025, but it is encouraging that a systematic workplan has been published, thereby demonstrating that the AMSs remain committed and interested, at the very least, in continuing their journey to develop a regional competition framework for the ASEAN region. However, without each and every AMS articulating a clear set of objectives underlying its national competition law regime, it will be difficult for the work of the AEGC to produce a coherent ASEAN competition policy for the benefit of the AEC.

The future of competition policy and law in the ASEAN region will thus be driven by the strategic efforts of the AEGC and how much political will the governments of the AMSs are prepared to invest in developing the AEC to its full potential. Developments in the internal political landscapes of the AMSs, the state of the global economy and the impact of competition for foreign direct investments from other regions in Asia (such as China and India, in particular) will continue to have an impact on the willingness of these countries to implement competition rules that will help the AEC to function more effectively as an integrated common market. Without supranational legal or institutional frameworks to implement such competition rules, the AEGC will have to devise innovative national-level initiatives that enhance the level of market integration within the AEC, such as transnational co-operative arrangements between national competition authorities to address cross-border competition issues within the ASEAN region. A region which aspires to "create a deeply integrated and highly cohesive … economy … as well as to establish a more unified market for its firms and consumers"[30] must recognise the importance of having a well-developed regional competition framework in place, to ensure that the collective efforts exerted by AMSs to liberalise their trade and investment regimes are not be stymied by private anti-competitive conduct that undermines the efficient functioning of markets within and across the AEC.

1.5 Chapter Summaries

In Chapter 2, Wan Khatina Nawawi examines the motivations for establishing a regional competition regime in ASEAN underlying the AEC Blueprint 2025, the instruments and modalities for establishing this regime and how the AMSs are likely to proceed in future. Written by an experienced Malaysian policy maker and economic analyst, this chapter

[30] AEC Blueprint 2025, n. 35 above, at [6i] and [7].

provides insights into the nuances behind "the ASEAN Way" of doing things and how this might shape the development of the soft-law and hard-law features of the regional competition regime. This chapter also discusses the need for the AMSs to develop and strengthen the institutional infrastructure responsible for implementing the competition policy objectives of the AEC Blueprint 2025.

In Chapter 3, Corinne Chew introduces the competition law frameworks enacted in nine of the ten AMSs from a legal practitioner's perspective, exploring the practical implications of the selected areas of divergence between these national competition regimes relating to their: (a) leniency programmes for whistle-blowers in cartels; (b) notification systems for potentially anti-competitive agreements or conduct, including mergers; (c) scope of application, whether competition policy objectives are pursued alongside other goals (such as consumer protection and fair trade policies); (d) treatment of vertical restraints; and (e) settlement procedures.

In Chapter 4, Pornchai Wisuttisak and Cheong May Fong consider the applicability (or non-applicability) of selected national competition law frameworks (Thailand, Malaysia and Singapore) to state-owned enterprises (SOEs) operating in the ASEAN region, as well as the challenges posed by the conduct of SOEs to market integration within the AEC. The authors also explain the historical and socio-political significance of SOEs and other government-linked companies in these AMSs, which helps explain the divergent approaches adopted by their respective competition law regimes. Given that many SOEs operate in markets concurrently subject to sector-specific legislation (energy, telecommunications, airlines, etc.), this chapter also discusses different approaches taken by these jurisdictions towards navigating the intersection between competition law and sectoral regulation.

In Chapter 5, Eleanor M. Fox addresses a fundamental question facing the AMSs regarding the relationship between the market integration goals of the AEC Blueprint 2025 and the ASEAN regional competition policy model which does not contemplate the existence of supranational competition law: can an effective single market be established in the AEC if there are no supranational competition rules? This chapter critiques the problems associated with such a model of national-only competition laws – "a network without a centre" – in realising the full benefits of regionalisation within the AEC, while offering suggestions for how the national competition authorities from the AMSs might cooperate in ways that "mimic a competition law at the centre".

In Chapter 6, G. Deniz Both surveys the different models of regional cooperation in competition law and policy that ASEAN might emulate, drawing from the experiences of a range of regional blocs of developing countries from around the world – including COMESA (Common Market for Eastern and Southern Africa), CARICOM (Caribbean Community) and MERCOSUR (Common Market in South America). The author analyses the challenges associated with the development of an effective regional competition policy, using the experiences of these other regional blocs to illustrate lessons that the national competition authorities of the AMSs might learn – including the "sovereignty" costs that have to be incurred if ASEAN wishes to achieve deeper levels of integration and regional cooperation.

In Chapter 7, Josef Drexl explores the extent to which the AMSs can use European competition law as a "guidepost, a role model or even a template" for developing a regional competition framework for the ASEAN region. Using a theory of "legal transplants" to evaluate whether the EU model of supranational competition laws might be suitably replicated in the AEC, the author argues that "contextualisation" needs to take place when analysing the transferability of this model, given that the "single market" objective in the ASEAN Blueprint 2025 is not the same as the EU's "internal market" objective. Whether or not competition law in the ASEAN region moves from a "convergence and network approach" to a supranational system depends on whether the latter is regarded as necessary to achieve the many possible goals of ASEAN competition policy – economic growth, market integration, attracting foreign direct investment, political unification and so forth.

In Chapter 8, Barry J. Rodger and Mary Catherine Lucey investigate the interface between supranational and national competition laws in the European context, focusing on EU, UK and Irish competition laws, identifying matters of interest to AMSs, contemplating whether, and how, to establish a regional competition regime with supranational elements. Focusing on the enforcement practices and substantive rules of the UK and Irish competition regimes, this chapter examines the extent to which divergence in these areas is permitted under EU competition law (Regulation 1/2003). The UK and Irish competition regimes are also analysed in terms of their contrasting mechanisms for facilitating compliance between national and supranational competition law, as well as to illustrate the challenges arising from the decentralised enforcement of supranational competition rules.

In Chapter 9, Alison Jones evaluates the implications of the AMSs having national competition laws that take divergent views on the legality of vertical agreements, raising the question of whether a coherent policy on vertical agreements might be needed to achieve the market integration objectives of the AEC. Drawing from the experiences of the EU and US competition regimes with analysing vertical agreements, the chapter considers how a consensus might be built between all the AMSs to adopt a common set of rules or standards to assess vertical agreements consistently in each jurisdiction. It also explores whether, through cooperation and coordination between national competition authorities, substantive convergence can be achieved through the national competition frameworks in the absence of a supranational regime.

In Chapter 10, Andrea Gideon turns the spotlight to whether competition laws in ASEAN ought to be applied to providers of public services, an issue that has become increasingly significant within the EU competition law regime, upon which the national competition laws of several AMSs is based. The chapter navigates the competition law landscapes of the AMSs to highlight the broad exemptions and exclusions given to state-owned enterprises and other public service providers, identifying "regulatory tendencies in ASEAN" which differentiate it from the EU and Western competition law traditions as a result of different cultural, historical and political circumstances. With increasing cross-border activity in liberalised public service markets, a common position adopted by the AMSs – perhaps achieved via a "soft law" approach – could advance the market integration goals of the AEC.

In Chapter 11, John Townsend looks at the development of a regional competition policy in the context of the telecommunications sector, the perspective of a legal practitioner in the ASEAN telecoms industry, providing an overview of how market integration between territories is facilitated in this particular sector via frameworks of *ex ante* competition rules that bind telecoms operators. Drawing reference to the EU Common Regulatory Framework for electronic communications and the UK institutional framework of concurrent competition law enforcement powers in communications markets, the chapter explores the telecommunications regulation landscape in Singapore and ASEAN, explaining how regional frameworks which facilitate interconnection and roaming can also promote competition, consumer welfare and regionalisation.