



The Benefits of Competition Policy for Businesses and the Economy

“ Competition is not only the basis of protection to the consumer, but is the incentive to progress. ” *Herbert Hoover, 31st President of the United States of America*

Competition creates a level playing field for business. By setting limits to market power, competition policy ensures the fair participation of companies.

Competition drives innovation. It forces companies to enhance their operations through more effective resource allocation and to provide better products or services than their competitors.

Competition fosters economic growth in the long run. The competitiveness of an economy increases due to stronger domestic companies and becoming an attractive investment destination.



BENEFITS OF EFFECTIVE COMPETITION POLICY

For the private sector:

- ✓ Levelling the playing field.

For consumers:

- ✓ Increasing consumer choice and welfare.

For the government and overall economy:

- ✓ Enhancing economic efficiency, innovation and competitiveness.

CASE : Liberalization of the air transport sector and advent of low-cost carriers

Due to the new entrants in the market, consumers have largely benefitted from lower fares and increased options for air travel.

The new entrants have also been instrumental in expanding networks, particularly within domestic markets. At the same time, competitors were prompted to deploy more fuel-efficient aircrafts, reduce turnaround times and diversify business models.

This contributed to the overall competitiveness of the industry.



one vision
one identity
one community



The Benefits of Competition Policy for Consumers

“ Competition is not only the basis of protection to the consumer, but is the incentive to progress. ” *Herbert Hoover, 31st President of the United States of America*

Competition policy leads to greater consumer sovereignty and welfare.

Companies are under constant pressure to respond to consumer preferences and to offer the best possible quality at reasonable or reduced prices.

As a result of competition, consumers have a wider range of goods and services to choose from.

In other words: With fair business competition, the consumer is king!



The lower-income population are often beneficiaries of government-funded services or infrastructure. With the **elimination of bid-rigging** in public procurement, as one of the core instruments of competition policy:

- ✓ Governments are able to get the best value for money.
- ✓ Economically disadvantaged groups can gain access to affordable electricity, water, financial services etc.

CASE : Mobile phone tariffs in Indonesia

In 2008, the Commission for the Supervision of Business Competition (KPPU) sanctioned a price fixing cartel among six mobile telecommunications operators related to off-net SMS tariffs.

Despite new entrants into the market, the rates had remained excessive, thus limiting the choice for consumers. The KPPU found evidence of an agreement between the operators.

The estimated consumer loss due to the cartel amounted to approx. 2.8 trillion IDR.

Source: ASEAN Handbook on CPL for Business (2013)



one vision
one identity
one community



ASEAN Regional Cooperation on CPL

“ Agencies need to cooperate with each other on cross-border cases in order to reduce the risk of sub-optimal enforcement and inconsistent outcomes. ”

International Competition Network (ICN), *Recommended Practices for Merger Analysis*

Overview of Competition Laws in ASEAN



Competition policy is crucial in the context of regional economic integration.

A single or bigger market provides opportunities for companies to expand and realize economies of scale.

But there is also a higher risk of them engaging in **anti-competitive practices across borders**, such as international cartels and anti-competitive mergers of multi-national companies.

With no single regional enforcement authority in place in ASEAN, this constitutes a major challenge that calls for the **concerted efforts of governments to cooperate on competition policy**.

The ASEAN Experts Group on Competition (AEGC) was established in 2007 to promote the following:

- (i) Endeavor to introduce competition policy in all Member States 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 programs / activities for Member States in developing national competition policy; and
- (iv) Develop a regional guideline on competition policy by 2010, based on country experiences and international practices

ASEAN Economic Community Blueprint 2009-2015

SELECTED ACHIEVEMENTS



- ASEAN Regional Guidelines on Competition Policy (2010)
- Guidelines on Developing Core Competencies in Competition Policy and Law in ASEAN (2012)
- AEGC Web Portal (2013): www.aseancompetition.org
- Handbook on Competition Policy and Law in ASEAN for Business (2010, updated in 2013)
- ASEAN Competition Conferences (since 2011)
- More than 700 professionals trained

www.asean.org



one vision
one identity
one community



The ASEAN Post-2015 Agenda on Competition Policy

“ 2015 represents a significant milestone that helps make each of our Member States stronger and better prepared for future challenges than they would have standing alone. ”

H.E. Le Luong Minh, Secretary General of ASEAN

The ASEAN Economic Community (AEC) is set to be realized at the end of 2015, but the initiatives towards deeper integration will continue beyond that.

Therefore, efforts are currently underway to formulate a post-2015 vision and strategic action plans towards 2025.

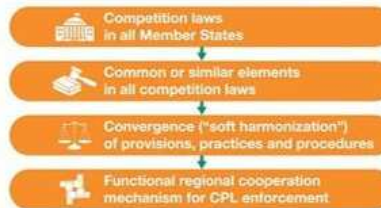
In the area of Competition Policy and Law (CPL), this entails devising enforceable competition rules that effectively protect against anti-competitive practices and promote consumer welfare, as well as pursuing enhanced regional cooperation on competition policy.

THE POST-2015 COMPETITION LANDSCAPE IN ASEAN

- Even larger commercial opportunities for businesses in ASEAN and increased cross-border transactions within the region.
- Greater potential for multi-national companies (MNCs) to engage in anti-competitive business practices.

Effective CPL adds to the certainty of doing business and reinforces the confidence of domestic, regional and foreign investors alike.

Regional CPL : Long-Term Directions



ELEMENTS OF THE POST-2015 ASEAN COMPETITION ACTION PLAN (ACAP)

- Effective competition regimes are established in all ASEAN Member States.
- The capacities of competition-related agencies in the ASEAN Member States are strengthened to effectively implement CPL.
- Regional cooperation arrangements on CPL are in place.
- Fostering a competition-aware ASEAN region.
- Moving towards greater regional cooperation on CPL in ASEAN.



one vision
one identity
one community

www.asean.org



Anti-Competitive Agreements

“ ASEAN Member States should consider prohibiting horizontal and vertical agreements between undertakings that prevent, distort or restrict competition in their territory. ”

ASEAN Regional Guidelines on Competition Policy, adopted from Article 3.2.1

The prohibition of anti-competitive agreements is one of the three core areas of a competition law.

Hard core cartels are considered the most serious violation, and their prosecution is an enforcement priority in many jurisdictions.

As cartels are difficult to detect, competition agencies have successfully initiated leniency programs to encourage cartel members to come forward with information and thus aid enforcement efforts.

NEGATIVE EFFECTS OF CARTELS

- Artificial inflation of costs, resulting in higher prices for consumers and governments (on average 10-20%).
- Hampering innovation by protecting inefficient companies.
- Discouraging investment by denying market access to other companies.

CASE : Alleged garlic cartel in the Philippines

In 2014, an excessive price hike for garlic prompted the Office for Competition (OFC) to launch an investigation into the importation system of these two commodities. By the time the garlic arrived in markets and groceries, consumers had to pay more than 100% of the usual market price.

The OFC found that imports are mainly controlled by at least four individuals and allied interests. Further action is being taken by the authorities against the alleged members of the cartel.

Source: ASEAN Handbook on CFI, for Business (2013)

EXAMPLES OF ANTI-COMPETITIVE AGREEMENTS

□ Price Fixing

Competitors agree on a pricing structure for selling or purchases rather than compete with each other.

□ Bid Rigging (Collusive Tendering)

Suppliers communicate before lodging their bids and agree among themselves who will win the contract.

□ Market Sharing

Competitors agree to divide a market by choosing which customers or geographic areas they will supply or preventing competitors from entering the market.



one vision
one identity
one community



Abuse of Dominance

“ Dominant companies have a special responsibility to ensure that the way they do business does not prevent competition ... and does not harm consumers and innovation. ”

Mario Monti, former European Commissioner for Competition

The prohibition of abuse of dominance is one of the three core areas of a competition law.

Detecting and determining an abuse of dominance can be both complex and controversial, due to varying standards (concerning market shares, terms used etc.) in different jurisdictions.

It is important to note that monopolistic power does not in itself constitute a violation of competition laws.

Unlike hard core cartels, which are *per se* illegal, investigating abuses of dominance requires a **rule of reason approach**.

EXAMPLES OF ABUSIVE PRACTICES

- ❑ Predatory pricing (or dumping)
- ❑ Tying and bundling
- ❑ Refusal to deal (or exclusive dealing)
- ❑ Loyalty or retroactive rebates
- ❑ Excessive pricing

A crucial prerequisite for assessing dominance is defining the relevant market, comprising:

- **Product market** in terms of demand or supply-side substitution, and potential competition.
- **Geographic market** where the conditions of competition applying to a product are the same for all traders.

CASE : Ticketing services in Singapore

In 2010, the Competition Commission of Singapore (CCS) issued a decision against the ticketing company SISTIC for a series of exclusive agreements that limited the choices of venue operators and event promoters. Moreover, booking fees also increased for ticket buyers.

Following the decision of CCS, the ticketing industry in Singapore has become more competitive, due to a new entrant in the market and more innovative services.

Consumers have benefited from more choices and greater convenience when purchasing tickets.

Source: ASEAN Handbook on CPL for Business (2013)



one vision
one identity
one community

www.asean.org

MERGER AHEAD

Anti-Competitive Mergers and Acquisitions (M&A)

“ The purpose of competition law merger analysis is to identify and prevent or remedy only those mergers that are likely to harm competition significantly. ”

International Competition Network (ICN), *Recommended Practices for Merger Analysis*

The prohibition of anti-competitive mergers and acquisitions (M&A) is one of the three core areas of a competition law.

Mergers are not *per se* illegal and can increase competitiveness through more cost-efficient development and distribution of products and services.

It is, however, important to carefully examine whether a merger will have anti-competitive effects, e.g. if the new entity becomes a dominant player and significantly lessens competition in the market.

Therefore, the mandate of many competition agencies extends to merger control with **mandatory pre-merger notification** deemed as most effective.

EXAMPLES OF MERGERS

- ❑ **Horizontal mergers:** at the same level of production or distribution.
- ❑ **Vertical mergers:** at different, but complimentary levels of the supply chain.
- ❑ **Conglomerate mergers:** in different product markets.

ANTI-COMPETITIVE EFFECTS OF MERGERS

Unilateral effects:

- Merged entity likely to unilaterally exercise market power.

Coordinated effects:

- Merger parties and their competitors likely to act in a coordinated and anti-competitive manner.

CASE : Economic concentration in newsprint manufacturing in Viet Nam

In 2008, the consolidation of Tan Mai Paper and Dong Nai Paper in a new enterprise, Tan Mai, was notified to the Viet Nam Competition Authority (VCA).

The VCA approved the merger as only one of the merging parties was previously active in the market for newsprint manufacturing and the combined market share of the combined entity would not exceed 44%. Moreover, Bai Bang Paper would have entered the market in 2009 as a competitor.

Source: ASEAN Handbook on CPL for Business (2013)



one vision
one identity
one community



Competition Advocacy and Compliance

“ In principle, advocacy has a wider scope than awareness raising. It actively promotes a competitive environment through activities aimed at influencing public and private behavior. ”

ASEAN Guidelines on Developing Core Competencies in CPL, 2013

Competition enforcement and advocacy are complementary and need to be appropriately balanced.

Bringing together the state and private sector, academia, media and public is vital in order to build a competition community and broad-based “competition culture”.

ASEAN is strongly committed to fostering a competition-aware region.



A Holistic Approach:
Multi-Stakeholder Engagement



ADVOCACY VIS-À-VIS GOVERNMENT

- Improving policy coherence and cooperation with line ministries, sector regulators, judges etc.

ADVOCACY VIS-À-VIS BUSINESS

- Facilitating corporate compliance and leniency programs, as well as private enforcement.

ADVOCACY VIS-À-VIS CIVIL SOCIETY

- Encouraging academic research on key sectors and emerging CPL issues.
- Empowering consumer organizations and the media as watchdogs, advocates and educators for fair competition.



one vision
one identity
one community

www.asean.org