

# REGIONAL COOPERATION BUILDING BLOCKS

**PRESENTATION**

AT

7<sup>th</sup> ASEAN COMPETITION CONFERENCE

Phung Van Thanh

Vietnam Competition Authority

8 – 9 March 2017, Malaysia

# OUTLINES

- ASEAN COMPETITION POLICY AND LAW
- CHARACTERISTICS OF COMPETITION LAW AND ENFORCEMENT
- HARMONIZATION OF COMPETITION LAW
- COOPERATION (NATIONAL LEVEL AND AGENCY LEVEL)

# **ASEAN COMPETITION LAW AND POLICY**

## **ASEAN EXPERTS GROUP ON COMPETITION**

In August 2007, the ASEAN Economic Ministers endorsed the establishment of the AEGC as a regional forum to discuss and cooperate on Competition Law and Policy

**ASEAN Experts Group  
on Competition**

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graph TD; A[ASEAN Experts Group on Competition] --> B[WG on Website]; A --> C[WG on Regional Competition Advocacy]
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**WG on Website**

**WG on Regional  
Competition  
Advocacy**

# **ASEAN COMPETITION LAW AND POLICY**

## **4 AREAS OF WORK UNDER THE COMPETITION**

### **ACTION PLAN (2011-2015)**

#### **(1) Strengthening regulatory environment in ASEAN**

Development of competition laws

Capacity building on the design and formulation of competition law

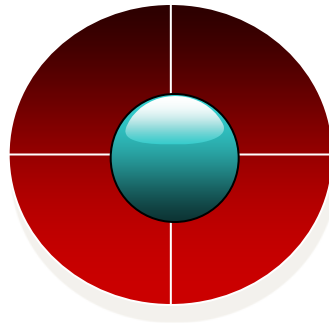
Guidelines on sector studies

#### **(2) Strategy and tools for regional competition advocacy**

Workshops

Publications

ASEAN competition web portal



#### **(4) Cross-cutting regional initiatives**

Best Practices for Regional Cooperation

Regional Guidelines

Competition Conferences

#### **(3) Institutional-building and enforcement of Competition Law and Policy**

Capacity buildings on Institutional core competencies, investigation, case handlings

Exchange of experts

Study visit

# CHARACTERISTICS

- Nine of ten Member States already have competition laws (Cambodia having published the latest version of draft of competition law in March 2016)
- Actively enforcing members: Indonesia, Malaysia, Singapore and Vietnam
- Differences in laws:
  - Scope of laws (cartels, abuse, M&A – unfair competitive practices)
  - Subjects of application (Vietnam – only enterprises)
  - Cartel regulations (Vietnam – not per se illegal treatment in some hardcore cartels, market share threshold for prohibition)
  - Abuse regulations (Vietnam – using market share threshold to define dominance position)
  - M&A regulations (Vietnam – using market share threshold to do the merger control)
  - Exemptions (block exemptions/ case-by-case approaches)
  - Confidentiality

# CHARACTERISTICS

- Differences in law (conti.)

- Investigation procedure (Vietnam – preliminary / official investigation, time limitation for investigation)
- Decision making / Commitment / Settlement
- Leniency program
- Financial penalties – Criminal penalties
- Private action

- Differences in enforcing authorities

- Model of enforcing agency (Vietnam – two agencies)
- Enforcing only competition law or more (Vietnam for example) ?
- Enforcing regulations (cartels, abuse, M&A)
- Dependence / Independence Authorities – Enforcement power?
- Power of enforcing agencies (dawn raid / interview / sanctions against parties not comply with the competition agency's order)
- Decision for penalties (money / administrative penalties – criminal penalties)

# KEY FEATHURES

## Anti Competitive Agreements

- Brunei
- Indonesia
- Malaysia
- Myanmar
- Philippines
- Singapore
- Thailand
- Viet Nam
- Lao
- Cambodia

## Abuse of Dominant Position

- Brunei
- Indonesia
- Malaysia
- Myanmar
- Philippines
- Singapore
- Thailand
- Viet Nam
- Lao
- Cambodia

## Anti-Competitive Mergers

- Brunei
- Indonesia
- Myanmar
- Philippines
- Singapore
- Thailand
- Viet Nam
- Lao
- Cambodia

## Scope

- BN-ALL
- ID- ALL
- MY - energy, TEL, finance
- MM- ALL
- PH - ALL
- CCS – civil aviation, transport, energy and TEL
- TH - TEL
- VN- electricity, TEL

## Competition Authority

- BN – Competition Comission of Brunei
- ID - KPPU
- MY- MyCC
- MM – Myanmar Competition Comission
- PH – OFC/ PCC
- SG- CCS
- TH - OTCC
- VN - VCA/ VCC

## KEY FEATURES OF COMPETITION LAWS IN ASEAN MEMBER STATES

	Is competition law enforced (or when is enforcement expected to begin)?	Merger control?	Mandatory notification?	Type of threshold	Maximum financial penalties	Leniency policy for cartels?	Criminal penalties for cartels?	Are private actions permitted?
<b>Brunei Darussalam</b>	Legislation passed in January 2015. Effective date expected to be no earlier than late-2016, with provisions introduced in four phases.	Forthcoming	No	-	10% of annual turnover in Brunei, up to 3 years	Required by legislation, but not yet in place	No	Follow-on only
<b>Cambodia</b>	No existing competition legislation. Comments in this table marked [ ] are based on March 2016 draft	[Yes]	[Yes]	[TBA]	[10% of turnover in Cambodia during period of breach]	[Allowed for in legislation]	[No]	[Authority can order compensation]
<b>Indonesia</b>	Yes. Revisions to legislation currently being considered by Parliament; no timetable as yet for passage.	Yes	Yes: currently post-completion, although proposed to be pre-completion	Domestic assets and turnover	Approx. US\$7.6m (proposal for increase in legislative revisions)	Under consideration as part of legislative revisions	Yes (though no instances of enforcement to date)	Yes (via authority)
<b>Lao PDR</b>	Legislation passed in July 2015, and came into effect in December 2015. Regulations yet to be published.	Forthcoming	Yes	Domestic assets, turnover and employees	To be prescribed in future regulations	Allowed for in legislation	Forthcoming	Yes, for compensation
<b>Malaysia</b>	Yes	No	-	-	10% of worldwide turnover for period of breach	Yes	No	Yes
<b>Myanmar</b>	Legislation passed in February 2015. Effective date 24 February 2017.	Forthcoming	Yes	Market shares	Approx. US\$12,200	Allowed for in legislation	Forthcoming	Follow-on only
<b>Philippines</b>	Legislation passed July 2015, and took effect 8 August 2015. Two-year transitional period, except for mergers.	Yes (temporary procedure)	Yes	Domestic turnover and assets	Approx. US\$5.35m (on criminal prosecution)	Required by legislation, but not yet in place	Forthcoming	Yes, but Commission must investigate first
<b>Singapore</b>	Yes	Yes	No	-	10% of annual turnover in Singapore, up to 3 years	Yes	No	Follow-on only
<b>Thailand</b>	Act has existed since 1999; no instances of enforcement to date. Revisions to Act are expected to be announced by end-2016.	Yes, but currently unenforced	Yes (although no thresholds in place)	-	Currently US\$170,000; new penalties under consideration as part of proposed revisions	Under consideration as part of proposed revisions to Act	No (under proposed revisions to Act)	Yes, for compensation
<b>Vietnam</b>	Yes	Yes	Yes	Market shares	10% of annual turnover	Under consideration	Yes (from July 2016)	Authority can order compensation



# HARMONIZATION OF COMPETITION LAW

- Minimizing conflicts between competition laws
- Reducing legal transaction costs
- Possible methods of harmonization
  - Regional law/International treaties
  - Harmonization can be achieved through the fulfillment of obligations under legally binding agreements that are instituted in ASEAN (hard law)
  - Harmonization can be achieved by the establishment of non-binding recommendations/guidelines encouraging countries to adopt harmonization measures voluntarily (soft law).
  - Harmonization by countries on their own initiative, based on mutual consultations or policy coordination
- Possibility of harmonization of competition law in ASEAN?
- EU Model - ASEAN Model?
  - Bilateral approach (Informal/formal cooperation )
  - Multilateral approach (regional level – legally binding agreements or non-binding recommendations guidelines)

# COOPERATION

## (NATIONAL LEVEL AND AGENCY LEVEL)

- Benefits of cooperation
  - Design of competition law through comparing best practices
  - Detection (especially cartels)
  - Collection of more/better evidence at reduced cost
  - High quality decision making
  - Subject to differences in law or facts, convergence of outcome
  - Capacity building
  - Less experienced agencies can learn from others
  - Provide access to the best available information to investigate, sanction and fine cartel participants
  - Ensure the full scope of conduct is known to the competition agency
  - Assist in focussing investigations early so they can be completed in a timely way

# COOPERATION

(NATIONAL LEVEL AND AGENCY LEVEL)

- Features affecting cooperation in ASEAN
  - No supra-national enforcement agency
  - Differences in competition law
  - Different legal systems and enforcement models
  - Diverse languages / wealth
  - Different levels of experience and resourcing amongst agencies
  - Different investigatory powers and laws on confidentiality
  - Different institutional structures (independent agencies or not)
- Supporting elements for cooperation
  - Building mutual trust (level of commitment/ involvement) and relationships
  - Building confidence in enforcement
  - Objectives and priorities sharing
  - Clearly written agreement/MOU
  - Effective communication

# COOPERATION

## (NATIONAL LEVEL AND AGENCY LEVEL)

- Cooperation methods
  - MOU between agencies
  - Bilateral agreement
  - Multilateral agreement
- Cooperation issues
  - Exchange of Information
  - Notification of enforcement activities
  - Discussion on the issues of competition policy and law
  - Exchange of experts and staffs
  - Capacity building (workshops, seminars, training courses)
  - Others

# THANK YOU



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