The last decade has witnessed the introduction of competition law legislation in several nations of the Association of Southeast Asian Nations (ASEAN). The introduction of a nation-wide competition policy and law by 2015 is a prerequisite for the ASEAN Member States in fulfilment of the goals of the 2007 ASEAN Economic Blueprint, to incubate a culture of fair business competition for enhanced regional economic performance. This article aims to give a broad overview of the competition law landscape in the ASEAN region.

ASEAN trade and investment

ASEAN is an economic group that comprises of the 10 countries of Southeast Asia. ASEAN was established in 1967 and is one of the developing world’s most dynamic regional associations. ASEAN has been among the fastest growing regions of the world and accounts for approximately 6% of all world trade. ASEAN plays a significant role given its geostrategic importance due to the strategic location of its member countries, the large share of global trade that pass through the region and its dynamic growing population. Foreign direct investment into the ASEAN has been progressively rising and has created a single market of more than 600 million people, making it the world’s ninth largest economy. A more liberalised trade and investment regime in ASEAN will enhance their free economies and create a favorable trade and investment climate in the region. Competition laws and policies are considered vital to the process of ASEAN liberalisation, to ensure that the ASEAN markets are kept open to new entrants and that anti-competitive behaviour does not distort fair competition. It is with this view that the ASEAN member states are endeavouring to introduce a nation-wide competition policy and law by 2015.

Competition law in ASEAN

The ASEAN economies are diverse in terms of their economic development as well as their institutional and commercial policy environments. Nevertheless most of the ASEAN economies have liberalised and deregulated their economies in order for their economies to be attractive to foreign investment. Despite the variations in the economic, political and legal climate ASEAN nations have welcomed the introduction of competition laws in an attempt to promote cross border co-operation and openness in their economies.

Another factor responsible for the introduction of competition law in ASEAN include the bilateral and regional trade agreements signed that are consistent with the WTO policies which attempt to limit anti-competitive practices. Competition law is also viewed as a means to reduce administrative and regulatory barriers and introduce regulatory predictability, which increase competitiveness in economies and promote economic growth.
The ASEAN economic community

The ASEAN Member States (AMS) have committed in the ASEAN Economic Blueprint to introduce nation-wide competition policy and law by 2015. The objective is to ensure that a level-playing-field and a culture of fair business competition are fostered for enhanced regional and economic performance in the years to come. The 10 nation members of ASEAN have committed to implement an ASEAN Economic Community (AEC) by 2015. The AEC comprises of the following key characteristics:-

- (1) a single market and production base;
- (2) a highly competitive economic region;
- (3) a region of equitable economic development; and
- (4) a region fully integrated into the global economy.

One of the objectives of the AEC is to create a competitive economic region which fosters a culture of fair competition. In 2007, to give furtherance to this objective, the ASEAN Economic Ministers endorsed the establishment of the ASEAN Experts Group on Competition (AEGC) as a regional forum to discuss and co-operate on competition law and policy. The AEGC has made several efforts in the introduction of competition policy and law, through conducting programs for capacity building and enforcing outreach priorities of the newly established competition authorities.

Some of the actions that the AMS have agreed to are:-

- (1) endeavor to introduce a competition policy in all ASEAN Member countries by 2015;
- (2) establish a network of authorities or agencies responsible for competition policy to serve as a forum for discussing and coordinating competition policies;
- (3) encourage capacity building programs/activities for ASEAN Member Countries in developing national competition policy; and
- (4) develop a regional guideline on competition policy by 2010, based on country experiences and international best practices with the view of creating fair competition environment.

Recently at the Global Competition Review Law Leaders Asia-Pacific Conference held in March in Singapore Mr Va Bá Phu, the deputy general director of Vietnam’s Competition Authority suggested that the 10 AMS consider adopting an European Union (EU) style, collective competition policy to police mergers and cartels that cross its members’ borders. Mr Phu also mentioned that his vision for ASEAN also includes a director general for competition much like the EU has established within the European Commission. Although Mr Phu admitted that his vision was purely speculative and could not be implemented before 2015, he has raised his suggestion with the other AMS and believes that such a body could assist with the handling of
both competition and trade remedies issues throughout the region. While the competition law enforcers within several AMS have stressed the importance of improved co-operation on cases and policy, Mr Phu is the first to suggest a regional competition enforcer, which theoretically could investigate and prosecute cross-border mergers and cartels.

Snapshot of competition laws in ASEAN

Only five AMS have generic competition law legislation, namely Singapore, Indonesia, Thailand, Vietnam and Malaysia.

> Malaysia

The Competition Act 2010 (Malaysian Competition Act) was passed by the Malaysian Parliament in April 2010 and came into force in January 2012. It prohibits anti-competitive activities and abuses of dominance. The Malaysian Competition Act however does not govern mergers and acquisitions. The Malaysian Competition Act applies to any commercial activity, both within Malaysia and transacted outside Malaysia, that has an effect on competition in any market in Malaysia. Commercial activity regulated under the Communications and Multimedia Act 1998 and the Energy Commission Act 2001 are however, is not subject to the Malaysian Competition Act.

> Thailand

The Trade Competition Act 1999 (Thai Competition Act) is the principal legislation that governs anti-competitive agreements, abuse of dominance, mergers and other unfair trade practices in Thailand. The Thai Competition Act co-exists with several sectoral laws that regulate competition in certain industries. The Trade Competition Commission (TCC), which is a part of the Ministry of Commerce is the main regulator responsible for enforcing the Thai Competition Act. The TCC and the sectoral regulatory authorities may have concurrent or overlapping powers regarding anti-competitive conduct, mergers and monopolies. The relevant statutes or regulations are not always clear as to which authority will be the enforcing authority in case of an overlap. From a transactional perspective, it is necessary to review the powers of the relevant sectoral authorities and the TCC in order to determine which regulator has the power to regulate an action, conduct or agreement in a particular industry.

> Vietnam

The Law of Competition (no 27-2-4-QH11) (Vietnam Competition Act) is the main legislation that governs competition law in Vietnam. The two regulators in charge of regulating competition are the Vietnam Competition Administration Department (VCAD) which falls under the Ministry of Industry and Trade, and the Vietnam Competition Council (VCC). The Vietnam Competition Act co-exists with a number of sectoral laws that regulate competition in certain industries. Thus in addition to the VCC and VCAD, the designated sectoral regulators also have concurrent jurisdiction in regulating certain sectors.
Indonesia

Law No. 5 of 1999 on the Prohibition of Monopoly and Unfair Business Competition Practices (Indonesian Competition Act) was introduced in March 1999 and entered into force in the year 2000. The national competition agency known as Komisi Pengawas Persaingan Usaha (KPPU) regulates competition law in Indonesia. The Indonesian Competition Act applies to any individual or entity engaging in business or commercial activities.

Singapore

The Competition Act (Singapore Competition Act) is the main Act that regulates competition law in Singapore. The Act prohibits anti-competitive agreements, decisions and practices, the abuse of dominant position and mergers and acquisitions that substantially lessen competition. The Competition Commission of Singapore (CCS) is the main competition law regulator in Singapore and is a statutory board under the Ministry of Trade and Industry. CCS has also released 13 sets of guidelines which provide useful explanations as to how CCS interprets, administers and enforces the Singapore Competition Act. It is useful to note that although CCS is the only regulator which administers and enforces the Singapore Competition Act, the sectoral laws are administered and enforced by sectoral regulators.

CCS as a young competition agency has been active in its advocacy efforts to provide a robust and enlightened competition regime in Singapore. The Center for European Law and Economics recently conducted a survey to evaluate and compare the merger control systems in various jurisdictions existing worldwide. The Merger Control Index 2012 is based on the annual survey obtained from leading merger control experts. This survey also ranks CCS under various categories as a part of the review process. Singapore has obtained consistently high rankings throughout the various categories, despite being a young competition law regulator in comparison with some other jurisdictions.

Some of the important observations regarding Singapore include:-

(1) Leading position in peer group comparison: Singapore enjoys the first position in the peer group comparison among the non Organisation for Economic Co-operation and Development (“OECD”) nations.

(2) Dynamically complete: Singapore also ranks well among those countries that take into account dynamic factors such as entry and innovation in the review of the proposed merger.

(3) Absence of bias: Singapore ranks amongst those countries that do not have a national bias, i.e. those agencies that are not more lenient toward companies of domestic origin in the merger control assessment.
(4) Reliable: Singapore has been well ranked among those jurisdictions where the margin for making an error is almost negligible in clearing mergers.

(5) Constantly improving: The CCS has been regarded as a merger control agency that has made significant improvements with regards to institutional efficiency.

Among the other AMS, Cambodia and Lao People’s Democratic Republic (Lao PDR) plan to introduce their competition legislation soon, whereas Myanmar, Philippines and Brunei Darussalam are yet to enact a generic competition law, as they tend to rely on sector specific regulations to achieve competition policy objectives in their domestic markets.

> Cambodia

There is no generic competition law in force in Cambodia. The telecommunications sector and the banking industry are regulated by the National Information Communications Technology Development Authority and the National Bank of Cambodia.

> Lao PDR

Lao PDR does not have a generic competition law but competition law is regulated by Decree 15/PMO on Trade Competition (Lao Decree). The Lao Decree generally applies to the sale of goods and services in business activities by business persons or business entities. It is important to note that the Lao Decree does not make a distinction between national and foreign business persons. The Lao Decree prohibits specific restrictive business practices such as mergers and acquisition leading to monopolisation, elimination of other business entities, collusion and arrangements and cartels with foreign business persons. The Trade Competition Commission (TCC) within the Ministry of Industry and Commerce will be responsible for the enforcement of competition law. The TCC has however not yet been established.

> Myanmar

There is no generic competition law in Myanmar.

> Philippines

The Philippines does not have a generic competition law, however the main sources of competition-related provisions in the Philippines are:-

(1) article XII of the 1987 Constitution;

(2) article 186 of the Revised Penal Code (Act No. 3815);

(3) article 28 of the the New Civil Code (R.A. No 386); and

(4) the Act to Prohibit Monopolies and Combinations in Restraint of Trade (Act No 3247).
Since competition law is currently implemented at the sectoral level, enforcement of competition law/statutes is vested with different government agencies. Some of the enforcement agencies are industry-specific.

> Brunei Darussalam

Brunei Darussalam does not have generic legislation which regulates competition law but implements its competition policy on a sectoral basis. Competition-related provisions have been implemented in the telecommunications sector under the Authority for Information and Communications Technology Industry of Brunei Darussalam Order 2001 (the AITI Order) and the Telecommunications Order 2001. Both the AITI Order and the Telecommunications Order apply to all commercial entities that have obtained a licence to operate as a service or infrastructure provider in the telecommunications industry.

Looking forward

The existing generic competition laws in the first five ASEAN nations reflect their respective approaches to competition law and policy to meet anti-competitive practices in their domestic markets. Even among these nations, competition law regulation is continuously evolving, and constantly fine-tuned with improvements and reforms. In an increasingly globalised world, cooperation and information sharing among the ASEAN competition law regulators will assist such nations to better understand regulatory issues and best practices. The ASEAN platform thus provides its member countries with a compelling and conducive basis for cooperating in capacity building and activities in the regulation of competition law and policy.

The coming years will see further regional efforts in building competition-related policy capabilities and best practices within the ASEAN community. The AEC is the natural progression for the ASEAN nations to create a cohesive ASEAN market, and to work towards the transformation of ASEAN into a single market that is highly competitive and fully integrated with the global community by 2015. Competition law and policy, being one of the important priorities in the implementation of the AEC Blueprint, will see the remaining ASEAN nations strive towards meeting the goals of the 2015 goal post. Companies active in the ASEAN region would do well to consider the dynamic competition law environment within and among the ASEAN nations, and ensure that their business practices are compliant with the respective different national competition and sectoral laws.

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