



# ASEAN EXPERTS GROUP ON COMPETITION

ANNUAL REPORT 2018



ASEAN REGIONAL  
FRAMEWORK FOR  
COMPETITION

ASEAN  
COMPETITION  
ENFORCERS NETWORK

ASEAN VIRTUAL  
RESEARCH CENTRE  
ON COMPETITION

# TABLE OF CONTENTS

I. Introduction	1
II. AEGC@11	2
III. AEGC Work Programme 2018	4
IV. Technical Assistance	8
V. Country Reports	11
VI. Competition Cases	27

# I. INTRODUCTION

Cooperation on competition policy and law in ASEAN has progressed rapidly since the ASEAN Experts Group on Competition (AEGC) was first established in 2007. This is in the context of the increasing number of cross-border business transactions, and the emerging issues related to e-Commerce such as the multi-sided platforms, price monitoring tools and price setting algorithms, as well as the 4th industrial revolution. This has encouraged competition authorities to strengthen cooperation and better coordinate their enforcement efforts.

This year, to strengthen cooperation the AEGC has developed a Regional Framework for Competition that sets out a menu of options in which ASEAN Member States (AMS) can consider when exploring cooperation on competition matters at the national, bilateral and regional levels. It has also established the ASEAN Competition Enforcers Network (ACEN) which comprises of competition enforcers and will serve as a platform to exchange information and endeavor to integrate enforcement actions whenever possible.

The AEGC has also stepped up its advocacy efforts to businesses and competition practitioners by developing the ASEAN Competition Compliance Toolkit for Businesses, and launching the ASEAN Virtual Research Centre on Competition.

This Report will highlight the major achievements of the AEGC in particular its key deliverables in 2018, and outlines the progress in implementing the ACAP 2025, cooperation with development partners, as well as the progress of competition law development in individual ASEAN Member States (AMS).



## II. AEGC@11

The AEGC has been established to act as a forum to conduct dialogue and discourse on competition policies and issues towards constructing an integrated and cohesive economy with a view to enhance competitiveness in the region. Since 2007, the AEGC has discussed and coordinated regional competition policy in order to promote a healthy and competitive environment in ASEAN, in line with initiative B.1 on Effective Competition Policy under the ASEAN Economic Community Blueprint 2025, and the ASEAN Competition Action Plan (ACAP) 2016-2025.

At the national level, AMS continue their commitment to establish effective competition regimes by strengthening their respective legislative frameworks and competition authorities.

Viet Nam recently amended its competition law which will take effect in July 2019, whereas Cambodia is in the process of finalizing its draft competition law. The Myanmar Competition Commission has recently been established, while Lao PDR is in the process of establishing its authority. The Singapore competition authority has taken the function of administering the Consumer Protection Act and has been renamed to the Competition and Consumer Commission of Singapore (CCCS). Indonesia, Malaysia and Thailand have appointed new Commissioners and/ or Chairman to lead its respective Commissions, whereas Brunei Darussalam and the Philippines continue to implement robust competition advocacy program and undertake socialization efforts of its competition laws.

### 2018

This year, the AEGC focused much of its effort in completing among others, its two key deliverables for 2018, namely the development of; i) the ASEAN Competition Compliance Toolkit for Businesses; and ii) the Regional Cooperation Framework for Competition. The ASEAN Virtual Research Centre on Competition was launched which comprised of a research repository containing research articles on competition policy and law in ASEAN, and a database of the researchers and academics specialized in competition policy and law. The portal also provides information on funding or collaboration opportunities for researchers to conduct research on competition issues in ASEAN.



As part of its effort to strengthen regional cooperation on competition policy and law, the ASEAN Member States has embarked to strengthen the role of the AEGC by reviewing its Terms of Reference (TOR). In addition, the ASEAN Competition Enforcers Network (ACEN) has been established and held its first Meeting in October 2018. The ACEN consists of dedicated case handlers, litigators and merger analysts that exchange best practices and experiences in competition cases and will assist the AEGC in developing a Study on Recommended Procedures for Joint Investigation and Decision on Cross-Border Cases in ASEAN.

In addition, with eight competition authorities in place, AMS are increasingly expected to demonstrate their credibility to enforce the law and thus, capacity building activities remain at the forefront of the AEGC work. In 2018, 26 capacity building activities have been conducted consisting of tailored workshops both at the regional and national level, secondments, expert placements, trainings and staff exchanges. To further sustain the capacity building initiative, three online e-learning courses have been developed. These courses are accessible to ASEAN competition officials as a basic introductory course on competition policy law.

Finally, the 4th Industrial Revolution has brought about unprecedented change in the way of doing business, driven by new technologies such as Artificial Intelligence (AI), the Internet of Things (IoT), and Big Data. The digital platforms form new business models that utilizes algorithms which collects and assess data, in which decisions are then made. As ASEAN recognizes that the Fourth Industrial Revolution is inevitable and would continue to shape its future, and in light of the sector-specific investigations that are conducted in the digital markets to identify possible anti-trust concerns by national competition authorities, heightened discussions are being held amongst the AMS on the implications of the digital markets to competition. A Sub-Regional Workshop on Big Data and Competition Law was held in Singapore, and case-related exchanges have been held at the ACEN level in-light of the alleged anti-competitive agreements and practices in the online sphere.

In-light of these developments, and as ASEAN strive towards developing a competitive, innovative and dynamic ASEAN with an effective and progressive competition policy, the AEGC will continue to work with other stakeholders which includes sector-regulators and businesses.

# III. AEGC WORK PROGRAMME 2018

In respect of the work of the AEGC in implementing the ACAP 2025, the following highlights the on-going progress of initiatives and activities held in 2018:

## **Strategic Goal 1: Effective competition regimes are established in all ASEAN Member States**

The ACAP 2025 calls for the establishment of effective competition regimes in all AMS. Viet Nam has recently amended its competition law to include a broader scope of application on offshore activities and transactions. The law will take into effect from 1 July 2019, and the Viet Nam Competition and Consumer Authority (VCCA) will be restructured into a single authority that is empowered to investigate and take decisions. While Indonesia continues its effort to revamp the law, Cambodia resumes its effort to enact the competition law following the convening of the national election.

In preparation for the undertaking of the peer review process, the AEGC continues to undertake self-assessment of its competition regimes using the ASEAN Self-Assessment Toolkit for Competition Enforcement and Advocacy. Brunei Darussalam, the Philippines, Thailand and Viet Nam reported on the outcomes of its self-assessment exercise. The results of these exercises is to be reported at the 8th ASEAN Competition Conference to be held in 2019.

Following the development of the ASEAN Self-Assessment Toolkit, a Guidance Document to conduct Peer Review Exercises will be developed in 2019 to facilitate the convening of at least five peer reviews by 2025.

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

For the past three years, the number of competition authorities in the region has increased from five to eight in 2018 with the establishment of competition authorities in Brunei Darussalam, Myanmar, and the Philippines. To ensure that the competition authorities have the necessary skills to enforce the law in-light of the new and emerging competition issues that arises, capacity building activities have been tailored to the needs of the authorities.

In 2018, approximately 26 capacity building activities have been undertaken based on the ASEAN Regional Capacity Building Roadmap 2017-2020 at the national, at the regional, sub-regional and national level. The topic cover economics of competition, techniques on cartel investigation, negotiating the competition chapter in Free Trade Agreements, evidence handling and interviewing skills, cartel investigations, developing guidelines and a workshop on business compliance. As shown in **Table A**, these capacity building activities takes the form of workshops, secondments, expert placements, and trainings.

**Table A: Number of Capacity Building Activities Convened (2018)**

No.	Capacity Building Activities	Number of Activities Convened
1.	Workshops and Trainings	13
2.	Secondment of Officials	5
3.	Expert Placements	6
4.	Staff Exchanges among AMS	2

The first batch of ASEAN officials participated in the two weeks Summer School at the College of Europe which was held in July 2018 in Bruges, Belgium. The Summer School covered lectures on the fundamental anti-trust provisions under the Treaty of the Functioning of the European Union (TFEU) and its implementing regulations, and included a visit to the European Union Commission.

As part of the initiative to develop a set of in-house training tools under the ACAP 2025, the Trainers Guide to Market Studies will be developed in 2019.

To further sustain capacity building efforts, four online e-learning courses have been developed covering the following topics: (i) Basic Introduction to CPL; (ii) Introduction to Economics, (iii) Investigations, and (iv) Investigation Planning. The modules which are accessible online, cater to newly recruited competition officials in ASEAN to build their capacity by introducing concepts relating to competition policy. More online modules will be developed in the coming years.

Four Primers for ASEAN Judges have been developed to cover the following topics:

1. Economics for Judges in the Competition Law Context;
2. Abuse of Dominant Position: What is it and how it is assessed;
3. Expert Evidence in the context of competition law cases; and
4. Circumstantial Evidence in the Context of Competition Law.

The Primers which was launched at the 8th Annual OECD/KPC Competition Law Workshop for Asia Pacific Judges are developed to provide practical, and informative guide for judges focusing on the challenges and issues judges will face in evaluating complex economic evidence in the course of making (and reviewing) decisions

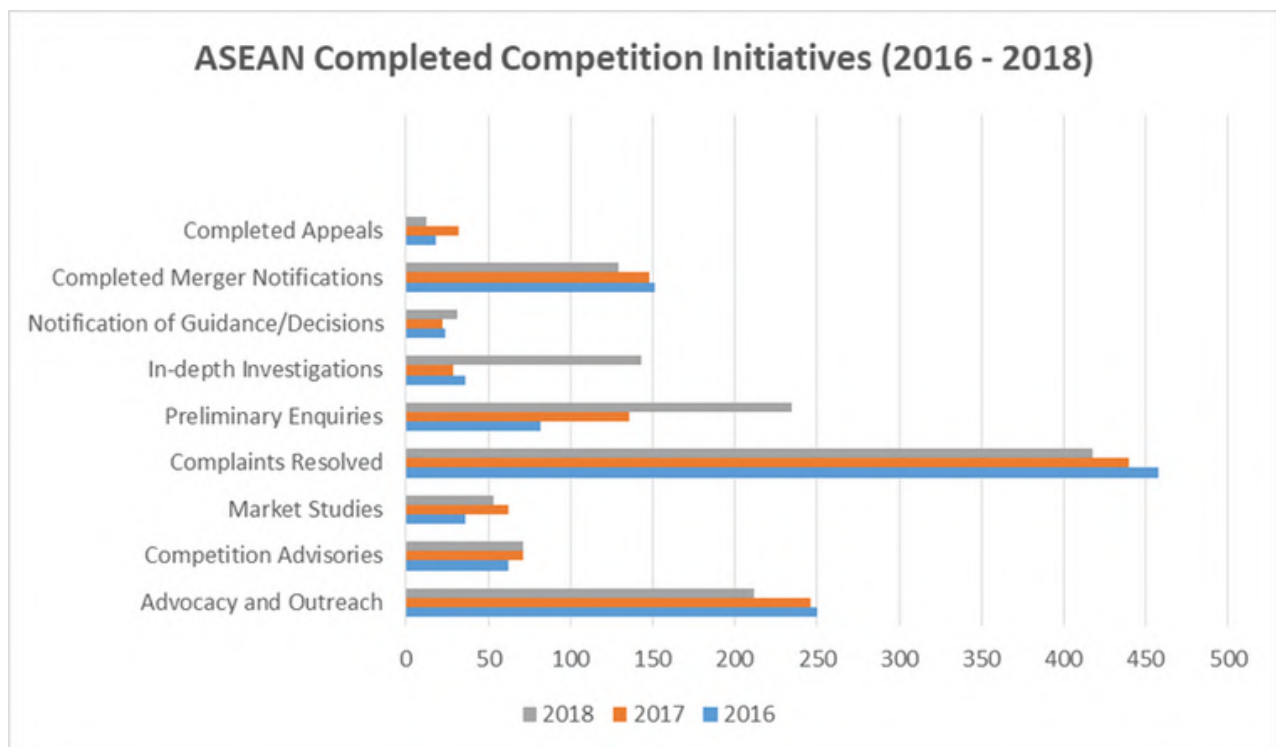
under their respective competition laws. These Primers which were developed with the support from the Federal Court of Australia and the OECD, will be translated and disseminated to the judiciaries of each AMS.

The Virtual ASEAN Competition Research Centre (V-ACRC) has been launched as a platform to encourage research on competition policy and law in ASEAN. Apart from research work, the Centre contains a list of researchers with interest on competition policy and law in ASEAN, as well as information on research funds and opportunities. The establishment of the V-ACRC serves as a step towards the establishment of the ASEAN Competition Research Centre (ACRC). To look into the feasibility of setting-up the ACRC, a Feasibility Study Report for the Development of the ASEAN Competition Research Centre for (ACRC) was developed. The AEGC will continue to look into international models of such a Centre, and agreed to continue the discussions in the future. The V-ACRC can be accessed through the following link: <https://asean-competition.org/research/>.

In terms of enforcement, **Table B** below shows the list of competition initiatives in each AMS in 2018. The table reflects the number of enforcement activities undertaken by each AMS, including advocacy activities, competition advisories, investigations and the number of completed merger notifications and appeals. It can be seen from **Graph 1**, compared to the past two years, ASEAN Member States are intensifying the number of preliminary enquiries and investigations undertaken, but are also increasing the number of notifications on guidance or decisions in 2018 the past five years.

**Table B: ASEAN Completed Competition Initiatives (2018)**

AMS	Advocacy and Outreach Events	Competition Advisories	Market Studies	Complaints Resolved	Preliminary Enquiries	In-depth Investigations	Notification of Guidance/Decisions	Completed Merger Notifications	Completed Appeals
BN	9	1	-	-	1	-	1	-	-
CA	8	4	3	-	-	1	-	-	-
ID	24	12	38	94	75	67	14	72	11
LA	3	-	1	-	-	-	-	-	-
MY	31	3	0	63	138	58	1	-	1
MM	12	1	1	-	1	-	-	-	-
PH	18	13	5	2	6	5	-	42	-
SGP	24	23	2	258	7	5	2	11	0
TH	67	9	-	1	3	6	13	-	-
VN	16	5	3	-	4	1	-	4	-
<b>Total 2018</b>	<b>212</b>	<b>71</b>	<b>53</b>	<b>418</b>	<b>235</b>	<b>143</b>	<b>31</b>	<b>129</b>	<b>12</b>

**Graph 1: ASEAN Completed Competition Initiatives (2016 - 2018)**



### **Strategic Goal 3: Regional Cooperation Arrangements on CPL are in Place**

The ASEAN Regional Cooperation Framework (ARCF) has been developed and endorsed at the 50th ASEAN Economic Ministers Meeting. The ARCF provides for a compilation of cooperation, namely; sharing general agency information, case-related information, enforcement cooperation and merger cooperation. The AEGC agreed to continue compiling cooperation arrangements within the region, as a step towards better understanding of the cooperation activities towards an eventual regional cooperation agreement.

To further intensify cooperation amongst AMS, the ACEN held its first Meeting in 2018 and finalized its Terms of Reference (TOR). Among its work will be to undertake a Study on Recommended Procedures for Joint Investigations and Decisions on Cross-Border Cases which is scheduled to run from July to September 2020.

In addition to these developments, the AEGC has reviewed its TOR which comprised an expanded scope based on the ACAP 2025 as well as a section on the subsidiary bodies and membership provisions.

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

Two Interface Workshops have been held in 2018 namely; i) the Telecommunications and Competition Regulation Workshop, and ii) the Interface Workshop: Construction Sector. The Workshops enabled the participants to enhance understanding of the challenges faced by both the competition agencies and the sector regulators and agreed on the need to strengthen cooperation between the authorities by conducting staff exchange programmes and developing formal cooperation mechanisms to forge and retain a longer-term inter-authorities working relationships.

In addition, the AEGC has developed the Competition Compliance Toolkit for Businesses.

### **Strategic Goal 5: Moving Towards Greater Harmonisation of Competition Policy and Law in ASEAN**

The AEGC is in the process of preparing to conduct a Study on the Commonalities and Differences across Competition Legislations in ASEAN which is in-line with initiative 5.1 under the ACAP 2025. The Study provides a comprehensive overview of the commonalities and differences of the competition laws of AMS and identifies possible areas to be prioritised for convergence. In addition, the AEGC is preparing to update the Regional Guidelines on Competition Policy which was initially developed in 2010.

# IV. TECHNICAL ASSISTANCE

As part of its cooperation effort with dialogue partners, the AEGC has received technical assistance from countries such as Australia/New Zealand, Germany and Japan, which are demand-driven, to assist in the creation of a competition culture within the region. Such assistance compliments legislative and institutional progress made in each AMS, and assist the AEGC in achieving the goals set under the ACAP 2025.

This section highlights the assistance provided by the main technical assistance providers to support the work on competition policy:

## Competition Law Implementation Programme (CLIP) Phase III



The CLIP Phase III programme was approved on 15 February 2018, and supports capacity building activities for AMS for the period from July 2018 to December 2019. Throughout 2018, various capacity building activities have been supported under the programme which includes the launch of the CLIP Academy which is a learning management system for ASEAN competition officials. The learning platform currently contains four modules on topics such as introduction to economics and investigation planning.

In addition, with the assistance from the Federal Court of Australia and the Organisation for Economic Co-operation and Development (OECD), four competition primers for ASEAN Judges have been developed and launched on 10 October 2018 in Jakarta, Indonesia.

Furthermore, the programme continues to support various capacity building activities including secondments, sub-regional and regional workshops on multiple issues and topics, expert placements, and peer-to-peer mentoring programme which have benefited AMS, in particular those countries with new competition regimes.

To support the initiative of strengthening the interface between competition and other relevant sectors, the programme supported the convening of two important interface workshops which were the ASEAN Telecommunications and Competition Regulation Workshop, held from 25-26 April 2018 in Kuala Lumpur, Malaysia, and the Interface Workshop with the construction sector, held from 30-31 October 2018 in Bandar Seri Begawan, Brunei Darussalam. The programme also supported the development of one of the AEGC key deliverables for 2018, which was the ASEAN Regional Cooperation Framework (ARCF) for Competition.

Last but not least, an AANZFTA Heads of Agency Roundtable was held on 28 August 2018 in Sydney, Australia which served as a forum for heads of agencies to exchange on important competition issues facing the region and explore next steps to strengthen cooperation.

## ASEAN-German Competition Policy and Law in ASEAN Programme



Under the ASEAN-German Competition Policy and Law (CPL) Project Phase II, GIZ continued to support several initiatives under the AEC Blueprint and the ACAP 2025, including one of the AEGC key deliverables for 2018, which is the ASEAN Competition Compliance Toolkit for Business, endorsed at the 50th ASEAN Economic Minister Meeting (AEM).

The programme supported the development of the feasibility study report for the development of the ASEAN Competition Research Centre, which served as the basis to launch the Virtual ASEAN Competition Research Centre (Virtual Centre).

In addition, the project supported the development of the Guidance Document for the ASEAN Competition Business Perception Index (ACBPI) which provides a step-by-step process for the AEGC to gauge the level of awareness and perceptions of business actors on the competition regimes in ASEAN, as well as provide a snapshot on the improvements of business compliance overtime. The first ACBPI regional survey is expected to be carried out in 2019.

To continue to support national efforts to build capacity in AMS, in particular for Cambodia, Lao PDR, Myanmar and Viet Nam, a new ASEAN-Germany cooperation project entitled the Promotion of Competitiveness within the Framework of the Initiative for ASEAN Integration (COMPETE) will commence in 2019.

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



The project entitled 'Technical Assistance for ASEAN Competition Authorities to Strengthen Competition Law Enforcement in ASEAN' which is funded by the Japan-ASEAN Integration Fund (JAIF) supported capacity building efforts of the AEGC by holding three workshops, as well as staff exchanges between Indonesia, the Philippines and Cambodia competition authorities.

A follow-on Phase II project is expected to commence in January 2019, and will support not only capacity building activities, but also the development of the ASEAN Competition Law and Policy Peer Review Guidance Document and one pilot peer review exercise, a study on the recommended procedures for joint investigations and decisions on cross-border cases, as well as the undertaking of the ASEAN Competition Business Perception Index (ACBPI).



## EU Competition Collaboration Project



The EU Competition Collaboration Project supports three capacity building measures for a period of five years from 2018-2022, namely the ASEAN-EU Competition Week, the Summer School, and the Visitor's Programme. 13 competition officials participated in the EU Summer School which was held at the College of Europe in Bruges, Belgium. The Summer School comprised of lectures on the fundamental anti-trust provisions under the Treaty of the Functioning of the European Union (TFEU) and its implementing regulations, and includes a visit to the European Union Commission.

In addition, one competition official from the Philippines Competition Commission has participated in the visitors programme to the EU Commission. Another two competition officials from ASEAN will participate in the programme early next year and will be placed at the EU Commission and the Competition and Consumer Protection Commission (CCPC) of Ireland as early as Quarter 1 (Q1) of 2019.

## Others

The OECD-Korea Policy Center Training for Judges was convened in October 2018 in Bali, Indonesia with the participation of judges from AMS. Four Primers for ASEAN Judges were also launched at the sidelines. In addition, the OECD will be supporting the AEGC in conducting two Studies on the Competition Assessment for the Logistics Sector, and the Competition Assessment for State-Owned Enterprises (SOEs) in the logistic sector. The Study is scheduled to be completed in Q1 2019.

The United Nations Conference on Trade and Development (UNCTAD) continues to actively support ASEAN in its competition policy agenda, by contributing its expertise in the activities held by the AEGC. In addition, the ASEAN Member States continues to participate in the annual Inter-governmental Group of Experts on Competition Law and Policy.



# V. COUNTRY REPORTS

# BRUNEI DARUSSALAM



Construction and Competition Regulation Workshop, 30-31 October 2018, Bandar Seri Begawan, Brunei Darussalam

Since the establishment of the Competition Commission of Brunei Darussalam and the Department of Competition and Consumer Affairs in the Department Economic Planning and Development on 1 August 2017, several key aspects of competition law had been rolled out in preparing for the enforcement of the Order such as advocacy and socialization, institutional and capacity building, drafting work procedures and processes, and identification of priorities.

In reaching out and socializing the benefits and the key prohibitions of the Order to encourage self-compliance, a segmented-approach advocacy strategy has been adopted since 2017 targeting different relevant stakeholders including government agencies, statutory bodies, business communities and associations. To date, 28 advocacy sessions have been conducted covering more than 50 institutions. 2 high-level policy dialogue sessions with sector regulators have been undertaken.

Advocacy materials such as Frequently Asked Questions (FAQs) and Competition Guidelines for Businesses have been published to complement the advocacy efforts in helping all relevant stakeholders understand the objectives and key prohibitions of the Order in simple and plain language. The Department has also issued 2 written advisories to ensure policy coherence to the objectives of the Order.

Through the advocacy sessions and policy dialogues, more than 100 questions have been compiled and largely categorized into issues related to policies and procurement procedures. As such, priority work has been identified to focus on enhancing efficiency and competitiveness in public procurement which can potentially lead to government savings and opportunities in SMEs' growth.

In 2018, Brunei Darussalam has the privilege of hosting two regional capacity building workshops under the support of the ASEAN Experts Group on Competition (AEGC)'s development partners, focusing on the selection and prioritization of market study, and the interface between competition and construction regulators respectively. This capacity building is a contributing factor towards an effective implementation of the Brunei Competition Order.

To ensure the orderly enforcement of the Competition Order, other preparatory works such as finalizing competition regulations and developing guidelines are being undertaken. Before the Order come into force, a grace period will be introduced to give time for all relevant stakeholders to prepare and adjust accordingly to comply with the law. The date of the enforcement will be announced beforehand to ensure transparency and business certainty.

# CAMBODIA

The draft competition law is currently being reviewed by the Council of Ministers (COM). The draft law is expected to be submitted to the National Assembly for endorsement by Mid-2019. The draft law applies to all persons conducting business activities, or any actions supporting business activities, which significantly prevent, restrict or distort competition in the market regardless of whether the activities take place inside or outside the territory of the Kingdom of Cambodia.



Joint Consultation Workshop between Competition Officials from ACCC, Cambodia, and GIZ, 6 June 2018, Phnom Penh, Cambodia

A Commission will be established to promote a competitive market economy for Cambodia and to enforce the provisions of the law. The competition agency will be the Cambodian Competition Commission "CCC" (hereinafter, "the Commission"), and the Cambodia Import Export Inspection and Fraud Repression Directorate General "CAMCONTROL" (hereinafter, "the Directorate") will be the Secretariat of the Commission.

In June 2018, the Competition Department of Cambodia hosted a secondee from the Australian Competition and Consumer Protection Commission (ACCC). The secondee worked close-

ly with the Cambodian Working Group on Drafting Competition Law to further improve the draft law. The secondee also participated in the convening of the National Consultation Workshop on the Draft Competition Law of Cambodia which promoted the understanding of competition law to various stakeholders including inter-ministries and the private sector.

In August 2018, the Competition Department of CAMCONTROL Directorate-General of Cambodia and the Indonesian Competition Commission (ICC) conducted a staff exchange program between the two agencies, with the objective (i) to discuss and review the draft law based on international best practices and Cambodian legal context, (ii) to provide trainings for the Working Group on Drafting Competition Law by sharing experiences with hypothetical competition-related cases, (iii) to provide in-depth explanation on substantial provisions of the draft law to all officials of Competition Department and Legal Affairs Department of the Ministry of Commerce, and (iv) to facilitate the drafting team to write explanatory notes on each article of the draft competition law so as to further enhance its understanding on CPL as well as strengthen its confidence to defend the law at the National Assembly.



ICC Secondement in Cambodia, 2 - 30 August 2018, Phnom Penh, Cambodia

# INDONESIA

2018 is a year of transition for the Indonesian Competition Commission (ICC), following the inauguration of nine new ICC Commissioners by the President of the Republic of Indonesia, His Excellency Joko Widodo, on 2nd May 2018, for the period of 2018 - 2022.

The newly appointed Chairman, Mr. Kurnia Toha and Vice Chairman, Mr. Ukay Karyadi, stated that under the new leadership, ICC is committed to focus on improving its relations with the business community, revising its case handling procedures, and its merger review mechanism.



**2018: THE INAUGURATION OF 9 NEW COMMISSIONERS**

In addition, the ICC will focus its effort on strengthening its enforcement actions and advocacy activities for the next five years in the following sectors:

1. Monitoring the public interest in the food, health, education, housing, digital economy, and automotive sector;
2. Supporting national economic efficiency in the logistic, transportation, and ICT sector;
3. Assisting the development of finance and banking sector, and also the energy and natural resource sector, to be sound and resilient; and
4. Supervising partnership as stated in the Law Number 20 Year 2008 in the food and beverages industry, retail, and MSME in order to be aligned with the equal business opportunity framework.

This year, the ICC receives a total of 132 complaints and issued 14 (fourteen) case decisions. One of the recently concluded enforcement work is a recent case on an SOE which was found to be abusing its monopoly power by over-charging cargo and postal services, creating inefficiency within the market. During the hearing, the ICC requested the reported party to decrease the tariff of outgoing cargo and postal services by taking into account the reduction of services once the items are taken over by the Regulated Agents.

On litigation of decision, the ICC won its three major cases in the Supreme Court. The first case is the Car Tire Cartel, which involves six tire manufacturers, including international affiliated manufacturer. The second case is the garlic

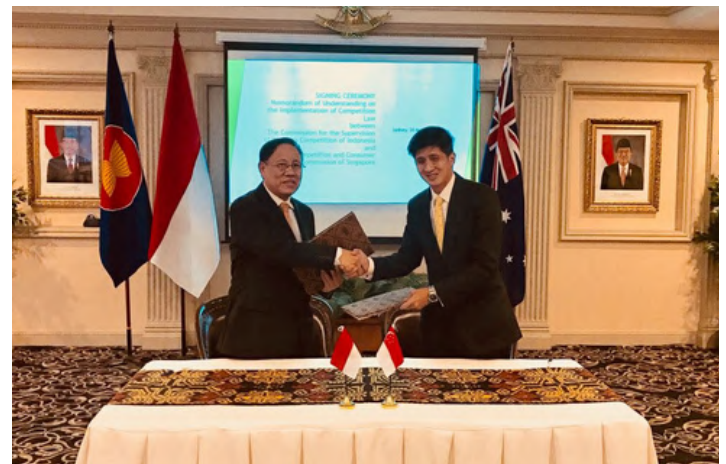


importation cartel, which involves 22 reported parties. The third case is beef cartel, which involves 32 Indonesian cattle importer and beef feedlot companies with a combined IDR 107 billion (approx. USD \$8.1 million) in fines.

On merger review, the ICC received 74 notifications of merger and acquisition transactions. Most of these notifications are shared acquisition transactions (97.3%). The rest are merger transactions (business entity merger). There is no consolidation submitted to the Commission this year. Most of the notified transactions are carried out between domestic companies (67.70%). The rest are carried out by foreign companies (18.45%) and/ or involving foreign companies take-over of domestic companies (13.85%). Three countries, namely Japan, Singapore, and United States are countries that have the most reported transactions in mergers and acquisitions in Indonesia this year. In addition, most of the notified mergers and acquisitions occur in the manufacturing industry (35.4%). The rest are from the energy sector (17%) and property (14%).

The value of notified transactions filed to the Commission last year exceeds IDR 1,000 trillion, which includes mega transactions such as PT Inalum’s acquisition of PT Freeport Indonesia, Monsanto’s acquisition by Kwa Investment Co. (Bayer Group), the acquisition of PT Bank Danamon Tbk by MUFG Bank Ltd, and the acquisition of TMF Orange Holding BV by Sapphire Bidco BV.

To enhance enforcement cooperation, the ICC and the Competition and Consumer Commission (CCCS) of Singapore signed a Memorandum of Understanding (MoU) on 30 August in Sydney, Australia. The signing of this MoU constitutes a historic moment for it was the first MoU signed by competition authorities in the ASEAN region and also the first MoU signed by Dr. Kurnia Toha since his appointment as the Chairman of the ICC.



KPPU-CCCS signing of MoU, 30 August 2018

To enhance enforcement cooperation in ASEAN, the ICC lead the development of the Term of Reference of the ACEN, which held its first meeting at the sideline of 22nd AEGC Meeting in Singapore.

To build the capacity of competition officials, the ICC assisted in organizing the 2nd East Asia Academic Network on Competition Policy and Law (EANCP) Conference by UNSW Centre for Law Markets and Regulation (CLMR) on 29 August 2018 in Sydney, Australia, which was attended by around 25 members of academics, and the general competition community.

# LAO PDR



The Internal Trade Department under the Ministry of Industry and Commerce of Lao PDR has been working in coordination with line agencies to set-up a Competition Commission. Following the Prime Minister’s Decision No. 67/PM, dated 04 October 2019, the Lao Competition Commission (LCC) has been successfully established with the Deputy Minister of Industry and Commerce as the Chairman.

The LCC is comprises of 10 Director-Generals and Deputy Director-Generals from different agencies, including the Ministry of Industry and Commerce, the Ministry of Finance, the Ministry of Planning and Investment, the Ministry of Agriculture and Forestry, the Ministry of Justice, the National Economic Research Institute, the Bank of Lao PDR, the Ministry of Post Telecom and Communication, the Lao Bar Association and the Lao National Chamber of Commerce and Industry.

To accompany the enactment of the law, implementation guidelines and regulations are being developed by the Internal Trade Department which is the core agency in enforcing the law. In addition, the first market survey on the telecommunication sector was initiated.



Competition Advocacy Workshop, August 2018

In order to ensure the public’s awareness of the law, several advocacy activities have been undertaken. The Internal Trade Department organized two main advocacy events, namely the Advocacy Workshop on Competition Policy and Law in August 2018, in Vientiane which was participated by 150 people from the public and private sectors, and the Workshop for the LCC on 17th December 2019.

# MALAYSIA



Telecommunication and Competition Regulatory Workshop, 25-26 April 2018, Kuala Lumpur, Malaysia

The year 2018 has seen a smooth change of leadership at Malaysia Competition Commission (MyCC) as it celebrated the appointments of its new Chairman, Dato' Seri Mohd Hishamudin Md Yunus and new Chief Executive Officer, Mr. Iskandar Ismail.

The year 2018 has also been a very active year for MyCC's enforcement activities. Numerous investigations have been carried out on several important sectors and industries that resulted in a few significant outcomes including the issuance of proposed decision against Dagang Net Technologies Sdn. Bhd. for infringing Section 10(1) and Section 10(2)(c) of the Competition Act 2010 by allegedly abusing its dominant position, as well as the issuance of the final decision of infringement made by Daycare and Tuition Centres in the state of Selangor for engaging in price fixing activities. The other notable enforcement activities include the investigation on the effects of post-merger between Grab and Uber in the e-hailing services market and the investigation on the egg producers for the sudden price hikes all over Malaysia.

Some of the major advocacy programmes that have been carried out this year include the celebration of MyCC's 7th Anniversary, the Conference on the Challenges in Enforcing Competition Law in Malaysia (Co-organised with The Malaysian Bar) and the Forum on the Bid Rigging in Public Procurement. Other noteworthy programmes are the signing of Memorandum of Understanding (MoU) with the Universiti Utara Malaysia (Northern University of Malaysia) and the National Economic Outlook Conference 2018 (Co-organised with the Malaysia Institute of Economic Research).

As part of its continuous effort to engage other relevant sector regulators, MyCC hosted a Special Committee Meeting on Competition in December 2018 to discuss issues pertaining to competition policy and law with other seven regulators of water, multimedia and communication, financial, aviation, land transport, security and energy.

MyCC has also initiated the market review on food sector in September 2018, while "The Guidelines on Intellectual Property Rights and Competition Law" has been finalised.

# MYANMAR

The establishment of the Myanmar Competition Commission (MmCC) on 31st October 2018, marks a significant progress in the competition policy and law development in Myanmar. The MmCC is comprised of (11) members in which the Minister takes the role of the Chairman of the Commission and members comprised of representatives from the Union Attorney General’s Office, the Ministry of Commerce, the Ministry of Home Affairs, the Ministry of Transport and Communications, the the Ministry of Planning, Finance and Industry, the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI), as well as professionals comprising of economist and lawyers.

The first meeting of the MmCC was held on 19 November 2018 and deliberated on the means to ensure effective enforcement of the law, the means to enhance the qualification of the MmCC’s staff, and capacity building activities. The MmCC received the first official complaint on unfair practices in December, 2018.



1st Meeting of MmCC, 19 November 2018

The MmCC has received several request seeking competition guidance from various entities such as law firms, businesses as well as university students. In addition, the MmCC has provided legal advice on several competition cases.

The MmCC undertook market assessments on prioritized sectors, namely agriculture, retail, wholesale and border trade, multinational corporation and state-owned enterprises, and are expected to be completed in September 2019.

Together with the Directorate of Investment and Company Administration, the Department of Civil Aviation, the Union Attorney General’s Office and the Union Supreme Court, the MmCC organised several advocacy activities for businesses and relevant stakeholders. The activities were supported by the ACCC, enabling participants to share their knowledge and experience on competition law enforcement as well as strengthening cooperation amongst the authorities.

In addition, competition pamphlets were published and disseminated to businesses and all relevant stakeholders. Cartoon booklets were also published to enhance stakeholders’ understanding on competition law.



MmCC advocacy activities

# THE PHILIPPINES

Considering the lag that normally happens between policy issuance and firm uptake, the Philippine Competition Commission (PCC) deems 2018 as the first full year of the new regime of competition law and policy in the Philippines. The year also saw the country facing several headwinds, with the economy beset by rising prices, especially of necessities such as food and fuel.

Against this backdrop, the Commission made headway by modifying its merger control regime. It raised the value of the Size of Party threshold from PHP 1 billion to PHP 5 billion, and the value of the Size of Transaction threshold from PHP 1 billion to PHP 2 billion, to more effectively filter notified transactions. New guidelines were also issued to improve the ease of doing business for the merging parties and, at the same time, focus on the essential elements of a holistic merger control regime.

In 2018, the Commission received 40 merger and acquisition transactions worth PHP 490.84 billion, 33 of which were approved. It reviewed voluntary commitments and imposed remedies on transactions deemed problematic from a competition point of view. Moreover, the PCC bared its teeth and imposed stiff fines and penalties on entities found to violate merger rules. It exacted fines totaling PHP 47.74 million for various cases involving violations of the compulsory notification requirement and noncompliance with its interim measure orders.

The Commission ramped up its enforcement activities in 2018. To date, the PCC has opened 11 preliminary inquiries: 4 based on verified complaints and 7 initiated motu proprio. Nine of these inquiries led to full administrative investigations. Recognizing that price increases in basic goods disproportionately harm the poor, the Enforcement Office continues to investigate the rice, energy, and fuel markets, in addition to the other sectors already under our enforcement radar. In December, it published the rules of its Leniency Program.

The PCC's pool of economists continue to develop issues papers in the following sectors: manufacturing, rice, pharmaceuticals, air and land transport, logistics, e-commerce, retail/supermarkets, telecommunications, agricultural credit, poultry and livestock, baked products, milk products, and fertilizers.

On competition advocacy, the Commission submitted critical inputs to the Executive and Legislative branches to advocate for pro-competitive government policies. It has also heightened its engagement with the academe, through a Call for Collaboration with law schools, and the Judiciary through seminars and high-level dialogues.

The Commission pledges to steadfastly serve as a disruptive force that works to correct the many distortions in the market, which disproportionately affect the poor. The PCC looks forward to expanding its portfolio of cases and advocacy efforts this 2019, firmly believing that disrupting unfair market competition leads to improvements in consumer welfare and a fairer distribution of incomes and opportunities.



Understanding Markets Workshop, 7-9 Mei 2018, Bali, Indonesia



The Japan-ASEAN Integration Fund Program For Sub Regional Workshop on Big Data and Competition Law 6-7 August 2018, Singapore

# SINGAPORE

In 2018, CCCS closed a number of cases which had a significant impact on Singapore’s economy. This helped greatly in raising public awareness on anti-competitive practices in Singapore. An infringement decision was issued against two ride-hailing firms, Grab and Uber, with directions imposed to restore market contestability and financial penalties totaling S\$13 million based on the harm done to the market through an irreversible merger. Grab’s 80% post-merger market share, together with its exclusivities, created barriers to entry for potential competitors who cannot scale up to compete effectively against the firm. Potential new entrants also indicated that without CCCS’s intervention to level the playing field, it is hard to compete effectively against Grab. While Uber has appealed against CCCS’s decision

primarily on the imposition of the financial penalties, Grab has since paid the financial penalties and will adhere to CCCS’s directions.

Another case involved CCCS’s highest financial penalties levied to date. 13 fresh chicken distributors were penalised for coordinating the amount and timing of price increases, and agreeing not to compete for each other’s customers in the market for the supply of fresh chicken products in Singapore. The cartel conduct had been carried out over seven years, during which the distributors had control of over 90% of the market and a total turnover

amounting to approximately half a billion Singapore dollars annually. Their price-fixing conduct was especially harmful considering that chicken is the most consumed meat in Singapore, with more than 30 kg of chicken consumed per person annually. CCCS found that the suppliers had discussed and coordinated price increases ranging from S\$0.10 to S\$0.30 per kg on at least seven occasions, over the course of nearly seven years. Aside from financial penalties close to S\$27 million, the distributors were directed to provide a written undertaking to refrain from using any other industry association as a platform for anti-competitive activities.

In addition, the owners/operators of four hotels were taken to task by CCCS for exchanging commercially sensitive information in connection with the provision of hotel room accommodation in Singapore to corporate customers. The exchange of such information amongst competitors, harms competition by reducing uncertainty and pressure to compete among them. This can result in customers having less competitive prices and options. The investigation was triggered by CCCS's own detection efforts, and it is the first time that CCCS took action in the hotel industry, sending a signals to all industry players that CCCS will not hesitate to take enforcement action to deter anti-competitive conduct in any industry.

Over the year, CCCS reviewed ten merger notifications across different industries, including financial services, paper products, hearing aids and food and beverage establishments. In a Phase 2 merger review involving maritime products, CCCS issued a provisional decision to block the proposed transaction for potential substantial lessening of competition should it proceed. The proposed transaction was subsequently abandoned by the parties when, separately, the US federal court granted a preliminary injunction to block it. In-depth reviews of two other mergers were initiated – one between eyewear wholesale distributors, and another between private clinical laboratories.

On 16 May 2018, the Competition (Amendment) Act came into effect. Amongst the main changes to the Act are: (a) empowering CCCS to accept legally binding and enforceable commitments for anti-competitive conduct relating to sections 34 and 47 so as to address and resolve the competition concerns arising from the conduct; (b) streamlining and simplifying the

interview process by allowing CCCS to conduct general interviews during inspections and searches under section 64 and section 65 of the Act; (c) providing more certainty to businesses and stakeholders by providing for confidential advice for anticipated mergers under the Act.

In 2018, CCCS set up an advocacy and outreach unit to centrally manage and sharpen its outreach efforts. This was in response to the 2017 Stakeholder Perception Survey that found a decrease in businesses' perception of the effectiveness of CCCS's outreach efforts. Amongst others, the unit will oversee development and implementation of plans and strategies to promote awareness of CCCS and understanding of the Competition Act and the CPFTA among businesses, consumers and the general public.

CCCS issued a guidance note to provide airlines with more clarity on the competition assessment of airline alliance agreements. CCCS took into account public feedback, which included a roundtable discussion with competition law and economics practitioners, industry stakeholders, as well as relevant government agencies. Greater clarity and streamlining of CCCS's review process and criteria will facilitate easier self-assessment of airline alliance agreements, and a timeline is provided for review when a notification is made to CCCS.

CCCS co-organised a seminar on Navigating Intellectual Property and Competition Law Issues with the IP Academy, the training arm of the Intellectual Property Office of Singapore. The seminar focused on the interface between IP and Competition Law, in particular on the development of FRAND (fair, reasonable, and non-discriminatory) licenses and commitments, recent decisions involving FRAND, as well as the interface between IP and consumer protection laws.

To enhance the reach and effectiveness of CCCS’s collaterals, CCCS revamped its e-newsletter “In the Act” with a new design that features simple lines, forms and colours to create impact with bold imagery and eye-catching titles. CCCS also produced two corporate videos - one encouraging businesses to make the right choice when coerced to join a price-fixing cartel and two, urging businesses to stay ahead of the competition in the right way. To promote discussion on the topic of “Nexus between competition and consumer protection policies”, CCCS launched its third Essay Competition, co-organised with the Economics Society of Singapore, where a total of 56 entries were received from the ‘Open’ and ‘Pre-university’ categories. CCCS also initiated a revamp of its corporate website, which was completed and launched in 2019.

Apart from consumers and businesses, CCCS continued to advocate the importance of competition to other government agencies. In an advisory to the Housing and Development Board, which is the government agency in

charge of planning and developing public housing in Singapore, CCCS proposed ways to improve competition, including suggesting good practices to mitigate the risk of collusion among potential suppliers during procurement. In another advisory to the Singapore Tourism Board in the context of improving the publication of information relating to the hotel industry, CCCS advised the Singapore Tourism Board that while exchange and publication of information can increase market transparency, encourage competition and assist efficient resource allocation, there may be risks to competition if commercially sensitive information is exchanged or published.

As part of CCCS’s ongoing efforts to engage government agencies to raise awareness of balancing policy objectives and competition, senior management from various government agencies come together annually through the Community of Practice for Competition and Economic Regulations to exchange insights on the latest developments relating to regulatory and competition matters.



EU Competition Summer School, 9 - 20 July 2018, Bruges, Belgium



As chair of the ASEAN Experts Group on Competition in 2018, CCCS led various initiatives to strengthen enforcement of competition law in ASEAN and to increase awareness of competition policy and law in the region. These include developing the ASEAN Regional Cooperation Framework for Competition and establishing the ASEAN Competition Enforcers' Network to facilitate cooperation on competition cases in the region and to serve as a platform to handle cross-border cases. CCCS also led the development of an ASEAN Competition Compliance Toolkit to provide guidance to ASEAN Member States on promoting business compliance with competition law.

To stimulate research on competition in ASEAN and East Asia, CCCS led the establishment of the Virtual ASEAN Competition Research Centre (Virtual Centre). The Virtual Centre aims to promote research collaboration on competition in ASEAN and hosts a repository of research articles on regional competition policy and law as well as profiles of researchers / academics with an interest on competition policy and law in the region.



ASEAN Australia New Zealand Free Trade Area (AANZFTA) Heads of Agency Roundtable, 28 August 2018, Sydney, Australia

To strengthen the capabilities of ASEAN competition authorities on responding to antitrust challenges arising from big data and algorithms, CCCS jointly organized a workshop on Big Data and Competition with Indonesia's Commission for the Supervision of Business Competition (KPPU).

Currently, CCCS is a member of the International Competition Network (ICN) Steering Group and a co-chair of the ICN advocacy working group (AWG). As a co-chair of the AWG, CCCS is leading the Advocacy and Digital Markets Project which focuses on collating agencies' experience in conducting competition advocacy in relation to digital markets. In Oct 2018, CCCS also partnered ICN to host a workshop for ASEAN Competition Officials on Business Compliance. The workshop helped younger competition authorities in ASEAN better understand the issues in business compliance, and better equipped them to encourage greater competition law compliance and increase awareness of competition policy and law in their respective countries.

At the bilateral level, CCCS signed a memorandum of understanding (MOU) with the KPPU to enhance cooperation on competition enforcement between both agencies. This is the first MOU that CCCS has entered into with an ASEAN competition authority.

# THAILAND

Following the enactment of Thailand's Trade Competition Act B.E. 2560 (AD 2017) (TCA) on 5th October 2017, the Office of Trade Competition Commission (OTCC) has been established as an independent state agency to enforce the law. The law enables businesses to compete fairly and freely.

The following three significant changes to the law are as follows:

1. SOEs are subjected to the law. However, exemptions are given to maintain state securities, public interests, and public benefits;
2. In addition to establishing the OTCC, the independence of the commission is strengthened with the nomination of seven commissioners, each having a four-year term and full-time duty; and
3. Strengthening the effectiveness of the law by aligning it with international best practices and national conditions and trends.

The Commissioners were appointed in December 2018 and new staff will be recruited in January 2019. Appointment of the new Secretary General of OTCC is to take place in early May 2019.

The OTCC took significant steps forward in the implementation of the Trade Competition Act B.E. 2017 by issuing a number of implementing regulations. These regulations provide specific definitions and criteria on the key terms under the TCA 2017. Such implementing regulations include:

- Rules for Consideration in Assets or Shares Purchase to Control Policy on Business Administration, Management or Supervision over Business merging;



Evidence and Interviewing Skills Workshop, 31 July - 2 August 2018, Jakarta, Indonesia

- Rules, Procedures and Conditions for Notification of Business Merging Results;
- Criteria, Procedures and Conditions in requesting for the permission and the permission for business merging;
- Rules for a business operator with power over the market;
- Guidelines for considering the market definition and market share;
- Guidelines for considering the prohibition of business operators who are authorized to be market domination;
- Guidelines for considering joint actions of business operators which is a monopoly or reduce competition or restrict competition in the market;
- Guidelines for considering actions that are damaging to other business operators;
- Criteria, Procedures, and Conditions for Applications and Granting Permission of Mergers;
- Criteria, Methods, and Conditions in regulating the amount of fine that will be compared;
- Criteria for collecting or taking products as samples;



Evidence and Interviewing Skills Workshop, 26-28 June 2018, Manila, Philippines

- Criteria and Methods for requesting pre-diagnosis by the Committee of Trade Competition Commission Office; and
- Criteria for considering entrepreneurs who are relevant in Policies or Authorities.

As for enforcement activities, there are 10 on-going cases in which the OTCC are now conducting six formal investigations (four dominant/unfair trade cases and two hardcore cartel cases) and for four in-depth investigation (one dominant/unfair trade case, two hardcore cartel cases, and one unfair trade case).

Recently, there are two cases which have passed the formal investigation process. On one of the cases, it is being considered by the public prosecutor, and as for the other case, the OTCC has decided not to prosecute the case. Another case has passed in-depth investigation and will be further processed under a formal investigation.

The OTCC has endeavored to raise public awareness on competition law and policy through the following measures:

1. **International Cooperation:** the OTCC has been working with international competition authorities and international organization, such as the AEGC, ACCC, OECD, World Bank, UN agencies, to assist in strengthening the enforcement of the law;
2. **Media:** the OTCC has a Facebook page called 'Competition Friend'. In addition, the Commissioners helps to promote competition by way of holding media interviews, seminars, and public forums;
3. **Seminars:** the OTCC has engaged the public, businesses, and other sector regulators by way of convening or participating in seminars and workshops; and
4. **Education:** Businesses and consumers are the key stakeholders of the OTCC's competition advocacy programs. The OTCC has also worked with colleges and universities in Thailand to set-up training courses on competition policy and law.

## VIETNAM

The new Competition Law 2018, will take effect on 1 July 2019, providing several key changes to the law which includes changes to the scope of the law, the application of the law which now includes foreign agencies, organizations and individuals, new approaches to assess abuse of dominance, restrictive agreements and merger control, and the restructuring of the competition authority. It is expected to be broader in scope and more progressive in nature, with flexible substantive provisions and a more coherent institutional structure, to facilitate future implementation. Currently, the VCCA is drafting sub-law decrees, guidelines and handbooks to guide the implementation of the new Competition Law 2018. Internal trainings are also being conducted to familiarize officers with the new provisions under the law.

With regards to enforcement of the current Law, in 2018 the VCCA is conducting investigation on the Grab/Uber merger case. The VCCA conducted an initial preliminary investigation from 16 April - 15 May 2018 and a formal investigation from 18 May - 30 November 2018. On January 2019, the Case Handling Council was formed and an investigation dossier for further investigation was issued by the Council on 1 February 2019. The VCCA concluded that the merger leads to a potential infringement for violating the compulsory obligation to notify and prohibited economic concentration. The market share after the merger was forecasted at 30 - 50% for Hanoi and more than 50% in Ho Chi Minh City.



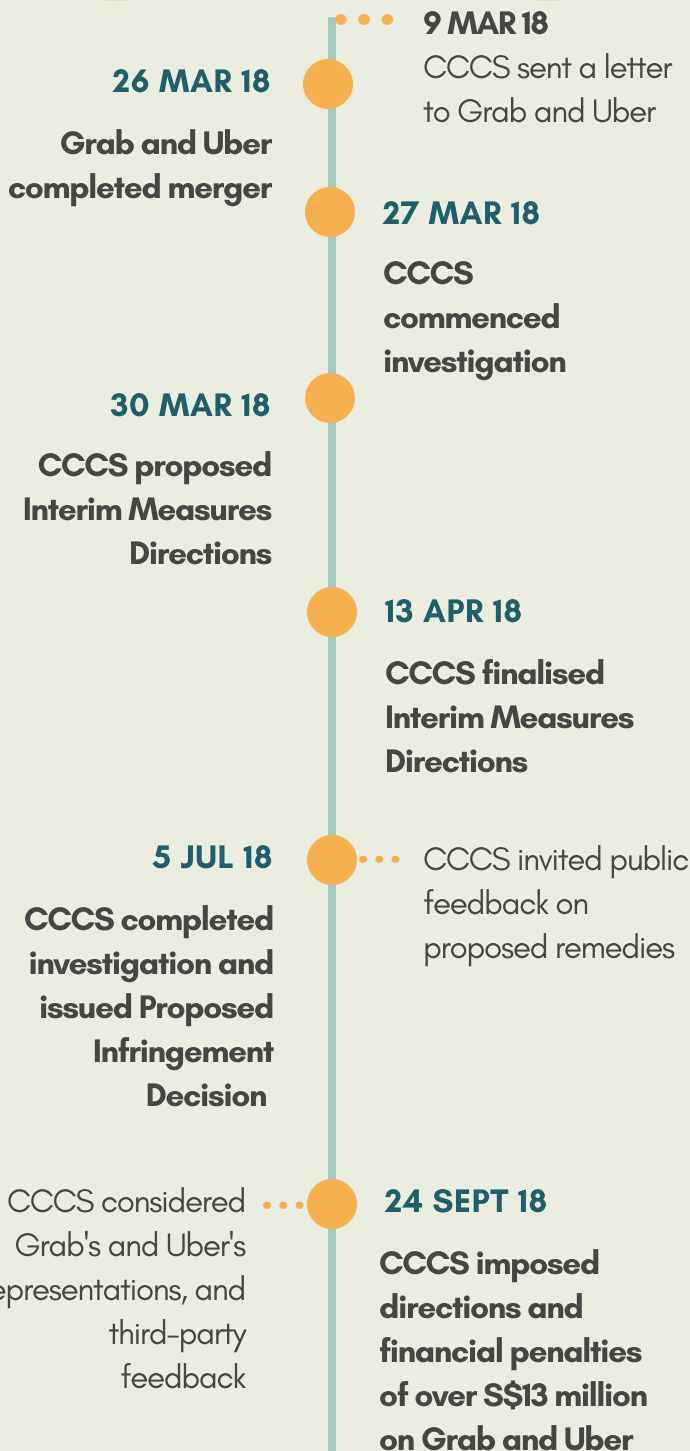
Investigating Abuse of Dominance Workshop,  
6 - 8 November 2018, Ha Noi, Viet Nam




# VI. COMPETITION CASES

# GRAB-UBER Merger

## Timeline



 Mergers that substantially lessen competition are prohibited.

CCCS has taken action against this merger because it **removed Grab's closest rival to the detriment of Singapore drivers and riders.**



Companies can continue to innovate in this market, through means other than anti-competitive mergers.



Interim measures directions lessen the detrimental impact of the completed merger on drivers and riders.



CCCS's final decision and directions **open up the market and level the playing field.**



Financial penalties deter the completion of irreversible mergers that harm competition.



# GRAB-UBER Merger



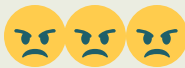
## CCCS's Findings



Grab increased effective fares\* between **10% - 15%** after removal of its closest competitor



CCCS received numerous complaints from drivers and riders

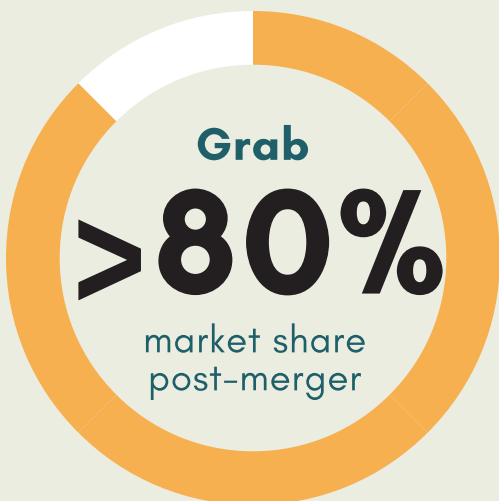


July 2018 - Grab announced changes to GrabReward Scheme: reduced points earned by riders per dollar spent on Grab's trips; increased points required for redemptions



\*Trip fares net of rider promotions

## Ride-hailing platform market



Recent entry by several small players but their market shares remain insignificant



Grab's exclusivities block access to drivers and vehicles necessary for potential competitors to expand



Feedback from potential new entrants: **without CCCS's intervention to level the playing field, hard to compete effectively against Grab**



# HIGHLIGHTS OF GRAB-UBER MERGER – SINGAPORE

## COMPETITION AND CONSUMER COMMISSION OF SINGAPORE (CCCS)

On 24 September 2018, the CCCS issued an Infringement Decision (“ID”) against Grab and Uber (each a “Party”, and collectively the “Parties”) in relation to the sale of Uber’s Southeast Asian business to Grab for a 27.5% stake in Grab in return (“Transaction”).

The Transaction was completed on 26 March 2018. On 27 March 2018, CCCS commenced an investigation on the basis that the Transaction may have infringed the Competition Act as an anti-competitive merger. CCCS proposed Interim Measures Directions on 30 March 2018 and finalised them on 13 April 2018<sup>[1]</sup> to lessen the impact of the Transaction on drivers and riders, while continuing with the investigation.

On 5 July 2018, CCCS completed its investigation and issued a Proposed Infringement De-

cision (“PID”) against the Parties and invited public feedback on the possible remedies to address the harm to competition resulting from the Transaction. In reaching its final decision, CCCS has carefully considered the written and oral representations from the Parties, feedback from industry players, stakeholders and the public, as well as all available information and evidence.

### CCCS’s Findings

*Grab increased prices after removal of its closest competitor*

CCCS has examined internal documents of the Parties, and found that Uber would not have left the Singapore market by simply terminating its business if the Transaction had not taken place. Instead, Uber would have continued its operations in Singapore, while explo-

ring other strategic commercial options, such as collaboration with another market player, or a sale to an alternative buyer. The Transaction has removed Grab’s closest competitor in ride-hailing platform services, namely Uber.

CCCS has received numerous complaints from both riders and drivers on the increase in effective fares and commissions by Grab post-Transaction (e.g. via a decrease in the amount and frequency of rider promotions and driver incentives). For example, Grab announced changes to its GrabRewards Scheme in July 2018 which generally reduced the number of points earned by riders per dollar spent on Grab’s trips, and increased the number of points required for redemptions. Indeed, CCCS has found that effective fares have increased between 10% and 15% post-Transaction.



*Potential competitors are hampered by ex-clusivities and cannot scale to compete effectively against Grab*

CCCS finds that Grab currently holds around 80% market share. Despite recent entry by several small players, their market shares remain insignificant. CCCS's investigation found that strong network effects make it difficult for potential competitors to scale and expand in the market, particularly given that Grab had imposed exclusivity obligations on taxi companies, car rental partners, and some of its drivers. Grab's exclusivities hamper the ability of potential competitors to access drivers and vehicles that are necessary for expansion in the market.

CCCS's assessment is confirmed by feedback from potential new entrants which indicated that without any intervention from CCCS, it would be difficult for them to attain a sufficient network of drivers and riders to provide a satisfactory product and experience to both drivers and riders so as to compete effectively against Grab.

At the conclusion of its investigation, CCCS has found that the Transaction is anti-competitive, having been carried into effect, and has infringed section 54 of the Competition Act by substantially lessening competition in the ride-hailing platform market in Singapore.

## CCCS's directions

### *Remedies*

CCCS has issued directions to the Parties to lessen the impact of the Transaction on drivers and riders, and to open up the market and level the playing field for new players. These include:

- Ensuring Grab drivers are free to use any ride-hailing platform and are not required to use Grab exclusively. This will help to increase choices for drivers and riders, and make the market more competitive.
- Removing Grab's exclusivity arrangements with any taxi fleet in Singapore so as to increase choices for drivers and riders.
- Maintaining Grab's premerger pricing algorithm and driver commission rates. This protects riders' interests against excessive price surges, and drivers' interests against increases in commissions that they pay to Grab, while not affecting Grab's flexibility to apply dynamic pricing under normal demand and supply conditions or restricting the amount of rider promotions and driver incentives that Grab wishes to offer.
- Requiring Uber to sell the vehicles of Lion City Rentals to any potential competitor who makes reasonable offer based on fair market value, and preventing Uber from selling these vehicles to Grab without CCCS's prior approval. This prevents Grab and Uber from absorbing or hoarding Lion City Rentals vehicles to inhibit the access to a vehicle fleet by a new competitor.

### *Financial penalties*

In addition to the remedies mentioned above, CCCS has imposed financial penalties on Grab and Uber respectively to deter completed, irreversible mergers that harm competition.

CCCS had sent a letter to each Party on 9 March 2018 to explain Singapore's merger notification regime and CCCS's corresponding powers to investigate and penalise anti-competitive mergers. Under Singapore's merger notification regime, the Parties had the option to notify the Transaction for CCCS's clearance prior to its completion. However, the Parties proceeded to complete the Transaction on 26 March 2018 and began the transfer of the acquired assets immediately, thus rendering it practically impossible to restore the status quo (i.e. pre-Transaction). CCCS's investigations also revealed that the Parties had provided for a mechanism to apportion competition law penalties.

In levying the financial penalties, CCCS has taken into account the relevant turnovers of the Parties, the nature, duration and seriousness of the infringement, aggravating and mitigating factors (such as whether the Parties were cooperative). The financial penalties imposed are as follows:

Party	Financial Penalty
Uber	S\$6,582,055
Grab	S\$6,419,647
<b>Total</b>	<b>S\$13,001,702</b>

#### **Further information**

Further information on the investigations, analysis of the case and the basis of calculation of the financial penalties imposed on the Parties are set out in the Infringement Decision, which can be found here: <https://www.cccs.gov.sg/publicregister-and-consultation/public-register>.

# THE ACQUISITION OF GLENCORE AGRICULTURE LIMITED BY MONROE CANADA INC. CPPIB

## INDONESIAN COMPETITION COMMISSION (ICC)

The ICC has completed its assessment on the acquisition of Glencore Agriculture Limited by Monroe Canada Inc CPPIB in December 2018. The acquisition involved transactions in the agricultural sector, particularly on wheat products.

Monroe Canada Inc. CPPIB, is a Canadian company established in March 23, 2016, and is based in Toronto, Canada. The company is a subsidiary of the Canada Pension Plan Investment Board (CPPIB), which is an organization responsible for investing Canada's Pension Plan (CPP) funds. In Indonesia, CPPIB operates through several companies engaged in international sports media, software development, and the retail of luxury goods.

Glencore Group is a company engaged in the production and marketing of metals, minerals, energy and agriculture, marketing and logistics. In particular, Glencore Agriculture Limited (GAL) is Glencore Plc's global agricultural holding company. GAL produces and sells agricultural commodities at the global level inclu-

-ding grains, vegetable oils, nuts, sugar, rice, cotton, protein foods and biodiesel. In Indonesia, GAL operates in the sale of wheat, cotton and agricultural commodities (grain products).

The ICC focuses its assessment on the potential impact of the acquisition of wheat products. The assessment found that in 2016, Indonesia imported USD3.131 million worth of wheat products. Wheat in Indonesia is mostly imported from Australia, Ukraine and Canada. The wheat imports are mostly absorbed by the flour industry which is eventually distributed to the food and beverage industry.

The assessment further revealed that GAL was not the market leader of wheat in Indonesia, and thus since it was not a dominant player, the acquisition does not fall under anti-competitive business practices. Based on the analysis of the relevant market and the potential impact of the transaction, the ICC concluded that the acquisition did not have much impact on the concentration levels of the wheat market in Indonesia.

# BLIBLI.COM'S ACQUISITION OF TIKET.COM



\*Further update and information on ICC could be accessed through [eng.kppu.go.id](http://eng.kppu.go.id)

In December 2018, the Indonesian Competition Commission (ICC) completed its assessment of PT Global Digital Niaga's acquisition of PT Globalnet Sejahtera. The transaction was carried out between two e-Commerce firms, namely Blibli.com and Tiket.com. PT Global Digital Niaga is an e-Commerce company offering goods and/or services such as electronic network media, the internet, telephone services, television and other electronic media. One of the company's products is Blibli.com. Meanwhile, PT Globalnet Sejahtera is engaged in trading and has a subsidiary company named PT Global Tiket Network (GTN) offering online travel services through Tiket.com, which includes transportation ticket sales (airplane, train), concert tickets, and hotel and car rental bookings based online.

The acquisition is aimed at diversifying PT Global Digital Niaga chain of online businesses which includes Kaskus, Beritagar.id, Dailysocial.net, and Merah Putih Inc.

The ICC identified 11 relevant markets within the digital economy, namely; market place, online retail, banking, classified ads, daily deals, infrastructure, transportation, logistics, online directory, payment gateway, and online travel. The ICC concluded that the relevant market in the acquisition of shares of PT Globalnet Sejahtera by PT Global Digital Niaga is the sales of electronic services (e-Commerce) specifically online ticketing services for trains, planes and hotels covering all regions of Indonesia.

In analyzing the acquisition, the ICC evaluates the market concentration by using the Hirschman Herfindahl Index (HHI). It was discovered that the market concentration is high, reaching 5,691 before the acquisition. This may be caused by the dominant position held by other applications, such as Traveloka.com. Following the post-acquisition, the change in HHI only reached 30.8. Noting that the HHI value is above 1800 and the change in HHI value before and after the acquisition did not exceed 150, the ICC considers the market share of both companies after the acquisition transaction did not amount to any concerns of potential monopolistic practices or unfair competition.

The ICC also considers other factors in its assessment, namely the potential for market entry barriers and the views of competitors. The ICC found that there are also several existing online platforms offering trains, airplanes and hotel booking services. Following consultations with relevant parties, it was concluded that there be a considerable potential for the emergence of new competitors in the future due to the absence of market entry barriers.

Taking into account the above consideration, the ICC concluded that the acquisition of PT Globalnet Sejahtera by PT Global Digital Niaga is not considered to be anti-competitive. Nevertheless, the ICC continues to monitor the market.

# THE TIRE CARTEL CESSATION IN SUPREME COURT

## INDONESIAN COMPETITION COMMISSION (ICC)

The ICC received a report on notice of the Ruling of Supreme Court, Republic of Indonesia, Number 167-PK/Pdt.Sus-KPPU/2017 dated January 25, 2018 in a cessation case between PT Bridgestone Tire Indonesia and PT Sumi Rubber Indonesia, respectively as Cessation-I Petitioner and Cessation-II Petitioner against the ICC as Cessation Respondent, on Friday, May 4, 2018. The contents of the aforementioned decision are as follows:

1. Rejecting the aforementioned petition for cessation filed by Cessation I Petitioner: PT Bridgestone Tire Indonesia, and Cessation II Petitioner: PT Sumi Rubber Indonesia;
2. Sentencing Cessation Petitioners I and II to pay for the case fees in the examination of the cessation stipulated amounting to IDR2,500,000.00 (two million five hundred thousand Rupiah).

On December 10, 2014, ICC issued a decision to 6 (six) tire manufacturer, namely PT Bridgestone Tire Indonesia, PT Sumi Rubber Indonesia, PT Gajah Tunggal, Tbk., PT Goodyear Indonesia, Tbk., PT Elang Perdana Tyre Industry, and PT Industri Karet Deli to have legally and convincingly violated Articles 5 and 11 of Law Number 5 Year 1999 regarding Prohibition of Monopolistic Practices and Unfair Business Competition. The Panel of Commission has also imposed penalty on each of the Reported Parties amounting to IDR25 Billion (twenty-five billion Rupiah) that must be paid to the state treasury. Based on the aforementioned ICC Decision No. 08/KPPU-I/2014, the Reported Parties have filed a remedy in the form of objection with the District Court.

At remedy level in the form of objection, the Central Jakarta District Court passed a decision on Case 70/Pdt.Sus-KPPU/2015/PN.Jkt.Pst

on July 8, 2015 confirming the Decision of the ICC and changed the amount of the penalty. Subsequently, at remedy level in the form of cessation, the Supreme Court passed a decision on Case Number 221K/pdt.Sus-KPPU/2016 on June 14, 2015 confirming the aforementioned Decision of the District Court and rejecting the petition for cessation filed by the Petitioners, which means reconfirming the Decision of the ICC.

Upon the rejection of the petition filed by the extraordinary remedy Petitioners through Cessation by the Supreme Court, ICC Decision No. 08/KPPU-I/2014 regarding Alleged Violation of Article 5 paragraph (1) and Article 11 of Law Number 5 Year 1999 in Automotive Industry regarding the Four-Wheeled Motor Vehicle Tire Cartel has had a permanent legal force (inkracht).

# CESSATION OF THE GARLIC IMPORTATION CARTEL AT THE SUPREME COURT

## INDONESIAN COMPETITION COMMISSION (ICC)



The Indonesian Competition Commission (ICC) welcomes the decision of the Indonesian Supreme Court which affirms the ICC's decision on the Garlic Importation Cartel, whereby 22 reported parties were found to have violated Articles 11, 19(c) and 24 of the Law No.5 Year 1999 on the prohibition of Monopolistic Practices and Unfair Business Competition.

The case illustrates ICC's effort to improve the business climate and competition, as well as deter the government or businesses to avoid cartel behaviors which are found to be in breach of the law.

Based on the existing facts during the hearings, there are three affiliated cases among the parties. Firstly, Reported Party I has an affiliation with Reported Party V,

wherein Reported Party V is the Company of the Parents of Reported Party I. Secondly, Reported Party VI has an affiliation with Reported Party XII wherein the management at Reported Party VI is also the management of Reported Party XII. Thirdly, Reported Party VII has an affiliation with Reported Party XII wherein the Management at Reported Party XII is the nephew of the Management of Reported Party VII. In addition, the party submitting documents in the administration of the Import Approval and/or the extension of the Import Approval is the same.

It is hoped that the Supreme Court will continue to support the national competition law enforcement, which will lead to good and fair business climate.



ANNUAL REPORT

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2018