Aiding Economic Growth: Competition Law and Policy in the Philippines

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Background

- More than 120 countries around the world now have a competition law
- Increased globalization of corporations and business = increased need for global cooperation on competition law
- ASEAN Economic Community (AEC) established in 2015
- New AEC Blueprint (2016-2025) adopted. It states:
  - “...for ASEAN to be a competitive region with well-functioning markets, rules on competition will need to be operational and effective.”
- 9 out of 10 ASEAN Member States now have competition laws in place
Overview

1. Australia’s relationship with ASEAN and the Philippines
2. Update on competition law development in ASEAN, including the Philippines
3. The role of competition policy and law in economic development
4. Challenges facing the PCC
5. Next steps
Australia in ASEAN
ASEAN - Some facts & figures

- Population: 629.5 million
- GDP: USD2,578.1 billion (USD2.58 trillion)
- ASEAN no.6 in GDP world rankings (between UK and France)*
- 3.3% of world’s economy*
- GDP forecast to double by 2020

<table>
<thead>
<tr>
<th>Philippines GDP Growth (% per year)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2011</strong></td>
</tr>
<tr>
<td>---------</td>
</tr>
<tr>
<td>3.7</td>
</tr>
</tbody>
</table>


*World Development Indicators database, World Bank, 22 July 2016*
### Growth in ASEAN

<table>
<thead>
<tr>
<th>GDP Economic Growth Forecast (%)</th>
<th>2016</th>
<th>2017</th>
<th>Ranked</th>
<th>GDP (million USD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brunei Darussalam</td>
<td>1.0</td>
<td>2.5</td>
<td></td>
<td>15,492</td>
</tr>
<tr>
<td>Cambodia</td>
<td>7.0</td>
<td>7.1</td>
<td>2</td>
<td>18,050</td>
</tr>
<tr>
<td>Indonesia</td>
<td>5.2</td>
<td>5.5</td>
<td></td>
<td>861,934</td>
</tr>
<tr>
<td>Laos</td>
<td>6.8</td>
<td>7.0</td>
<td>3</td>
<td>12,327</td>
</tr>
<tr>
<td>Malaysia</td>
<td>4.2</td>
<td>4.4</td>
<td></td>
<td>296,218</td>
</tr>
<tr>
<td>Myanmar</td>
<td>8.4</td>
<td>8.3</td>
<td>1</td>
<td>64,866</td>
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<tr>
<td>Philippines</td>
<td>6.0</td>
<td>6.1</td>
<td>5</td>
<td>291,965</td>
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<tr>
<td>Singapore</td>
<td>2.0</td>
<td>2.2</td>
<td></td>
<td>292,739</td>
</tr>
<tr>
<td>Thailand</td>
<td>3.0</td>
<td>3.5</td>
<td></td>
<td>395,282</td>
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<tr>
<td>Viet Nam</td>
<td>6.7</td>
<td>6.5</td>
<td>4</td>
<td>193,599</td>
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<tr>
<td><strong>AVERAGE</strong></td>
<td><strong>4.5</strong></td>
<td><strong>4.8</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Australia’s trade relationship - ASEAN

<table>
<thead>
<tr>
<th>ASEAN’s principal export destinations 2015</th>
<th>ASEAN’s principal import sources 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. China 16.5 %</td>
<td>1. China 23 %</td>
</tr>
<tr>
<td>2. US 12.7 %</td>
<td>2. Japan 11.4 %</td>
</tr>
<tr>
<td>3. Japan 12.4 %</td>
<td>3. US 9.3 %</td>
</tr>
<tr>
<td>6. Australia 4.7 %</td>
<td>9. Australia 2.6 %</td>
</tr>
</tbody>
</table>

Source: DFAT/ASEAN Factsheet (updated June and December)
Australia’s trade relationship - Philippines

<table>
<thead>
<tr>
<th>Philippines’ principal export destinations 2015</th>
<th>Philippines’ principal import sources 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Japan 21.1 %</td>
<td>1. China 16.4 %</td>
</tr>
<tr>
<td>2. US 15.0 %</td>
<td>2. US 10.9 %</td>
</tr>
<tr>
<td>3. China 10.9 %</td>
<td>3. Japan 9.6 %</td>
</tr>
<tr>
<td>17. Australia 0.8 %</td>
<td>16. Australia 1.2 %</td>
</tr>
</tbody>
</table>

*Source: DFAT/Philippines Factsheet (updated June and December)*
## Competition Law in ASEAN

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Name of law</th>
<th>Anti-Competitive Agreements</th>
<th>Unfair Trade Practices</th>
<th>Abuse of Dominance</th>
<th>Merger Regulation</th>
<th>Exemptions for SMEs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brunei Darussalam</td>
<td>Competition Order 2014</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Cambodia</td>
<td>Unknown</td>
<td>Unknown</td>
<td>Unknown</td>
<td>Unknown</td>
<td>Unknown</td>
<td>Unknown</td>
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<tr>
<td>Indonesia</td>
<td>No.5/1999 Regarding Prohibition of Monopolistic Practices and Unfair Business Competition (1999)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Lao PDR</td>
<td>Law on Business Competition (2015)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Malaysia</td>
<td>Competition Act (2010)</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No (but safe harbours)</td>
</tr>
<tr>
<td>Myanmar</td>
<td>The Pyidaungsu Hluttaw Law No. 9 /2015</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>On application</td>
</tr>
<tr>
<td>Philippines</td>
<td>Competition Act (2015)</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Singapore</td>
<td>Competition Act 2004</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No (but safe harbours)</td>
</tr>
<tr>
<td>Thailand</td>
<td>Trade Competition Act (1999)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Vietnam</td>
<td>Law on Competition (2004)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>On application</td>
</tr>
</tbody>
</table>
Philippine Competition Act 2015

- President Aquino III signed Philippine Competition Act into law on 21 July 2015. Fully in force from 8 August 2017 (transitional arrangements)
- ‘languished’ in Congress for more than 20 years
- Regulates:
  - Anti-competitive agreements
  - Abuse of dominance (misuse of market power)
  - Anti-competitive mergers & acquisitions
- Philippine Competition Commission
  - Quasi-judicial independent body
  - Makes decisions on infringement and imposes fines
- Civil and criminal sanctions
**Competition policy & law (CPL)**

- UNCTAD (2002) says benefit of CPL:
  - Wider consumer choice, lower prices, increased innovation
  - Promote transparency
  - Enhance attractiveness of economy to foreign investment
  - Advocacy role - create a culture of competition

- But what about in developing countries?
  - Is it needed or not?
  - Needs to take into account stage of development and structure of economy
  - Needs to emphasize dynamic, as well as static, efficiency
  - Broader social objectives may be built in e.g. employment
  - Likely to need ongoing review as country develops
In Philippine Development Plan 2011-2016, the Philippine government states that it intends to pursue “rapid and sustainable economic growth and development”.

Will competition law help achieve this economic growth and development?

Controversial relationship between competition law and economic growth and development

To achieve sustainable and inclusive growth and development, UNCTAD argues that competition policy needs to be part of a wider mix of trade, economic, social and environmental policies (UNCTAD, 2015)

To do this, UNCTAD argues:

- Inclusive engagement with stakeholders (governments, businesses, consumers, academia, civil society)
- Set priority sectors - relevant to economy and poor people (e.g. agriculture)
- Consider if exemptions are needed for certain sectors e.g. farmers cooperatives (US and EU have exemptions in the agricultural sector)

Philippines National Competition Policy is being prepared
CPL in the Philippines

- Philippine Competition Act 2015:
  - Section 2 gives a declaration of policy, including:
    - The State will ‘enhance economic efficiency and promote free and fair competition in trade, industry and all commercial economic activities’
    - Includes the objective of ‘protecting consumer welfare and advancing domestic and international trade and economic development’
  - Section 28 PCA allows for forbearance if PCC determines ‘enforcement is not necessary to the attainment of the policy objectives’ of the PCA
  - Section 26(d) PCA - obligation on the PCC to balance the need to ensure competition is not prevented or substantially restricted’ with the ‘risk that development of priority areas or industries in the general interest of the country may be deterred by overzealous or undue intervention’
  - Also a recognition of key markets - a violation of the law that involves basic necessities and prime commodities (defined in Republic Act No 7581) will be subject to tripled fines
CPL in the Philippines

- Philippine Competition Commission:
  - Competition leads to both economic growth and reduced poverty. It helps markets work better, fosters innovation, and protects investors and consumers. It will help to encourage wider domestic and foreign direct investments.
  - Competition provides an improved enabling environment for small and medium enterprises that are critical to more inclusive economic growth and development in the country.
  - Consumers win because free and fair competition leads to more choices, lower prices, and higher quality of goods.”

  *Source: PCC Website (emphasis added)*

- National Economic Development Authority (NEDA) - some PCC staff are former NEDA staff, including Chairman
Challenges

- Challenges for PCC in establishing a new competition authority:
  - Capacity building
    - Competition law is complex - need highly skilled and trained lawyers, economists, investigators
    - Judiciary needs to be familiar with competition law and economics
  - Independence
  - Creating a competition culture
    - Government, businesses, general public
    - Advocacy is key in early years
  - Coordination with other government departments, regulators
  - GOCCs (government owned & controlled corporations), oligopolies, monopolies
Australia’s role

- ASEAN
  - Under AANZFTA - Competition Law Implementation Project (CLIP) (since October 2014)
  - Programmes have included:
    - Three advocacy workshops on *The Role of Competition Law in Supporting Economic Success* held in Lao PDR, Cambodia and Myanmar
    - Secondment of two ACCC staff to the Malaysia Competition Commission from 19 January-18 June 2015

- The Philippines
  - DFAT - engaging with PCC to provide assistance
Next steps

- The Minister for Trade and Investment (Why Asean and why now?):
  “From the region’s financial services capital in Singapore to growing Burma, the ASEAN region has never offered more opportunities than it does today.”

- Australia does, and should continue to, support the establishment of competition law in ASEAN Member States

- Philippines is growing economic power and will be of increasing importance in the region

- Great opportunity to monitor the impact of competition law on economic growth and development in a developing country
Thank You
References