



Aiding Economic Growth: Competition Law and Policy in the Philippines

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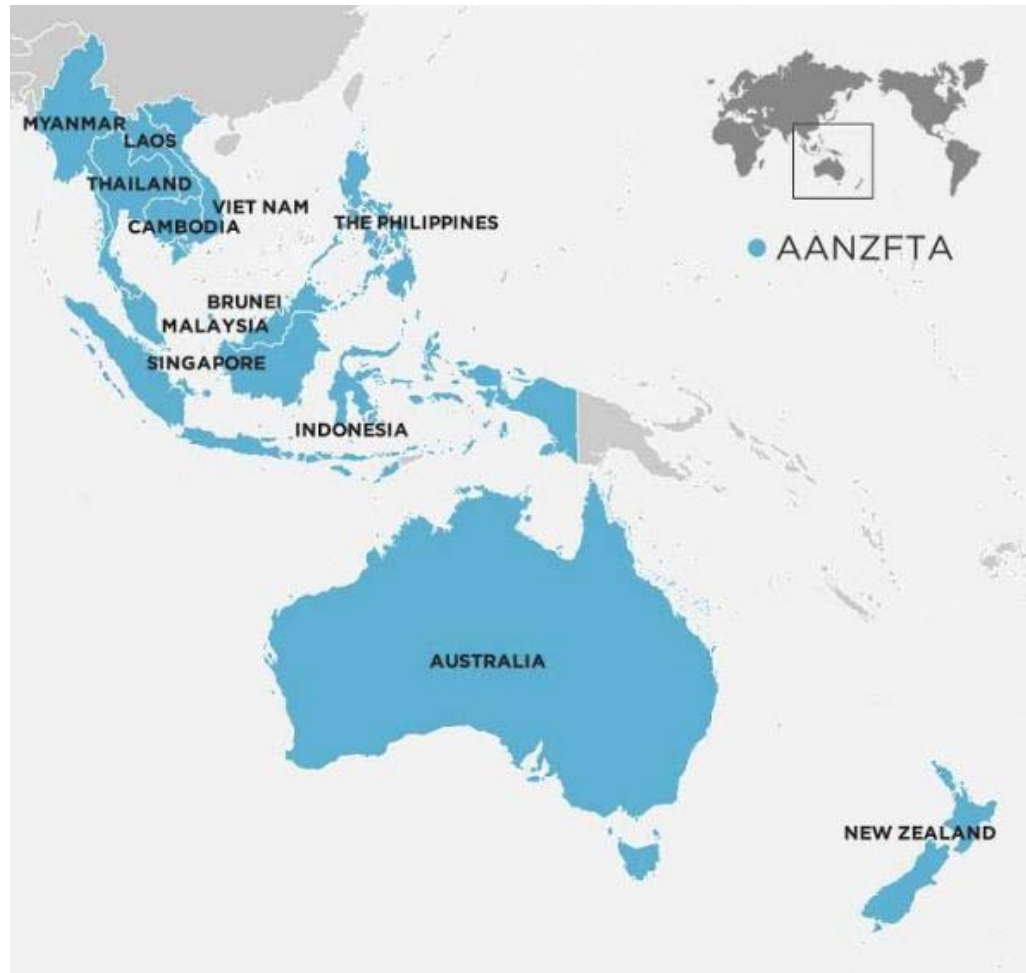
Background

- ▶ 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

Philippines GDP Growth (% per year)				
2011	2012	2013	2014	2015
3.7	6.7	7.1	6.1	5.8
<i>Source: ADB Asian Development Outlook 2016</i>				

* World Development Indicators database, World Bank, 22 July 2016

Growth in ASEAN

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

Source: ADB Asian Development Outlook 2016 and World Development Indicators database, World Bank, 2016

Australia's trade relationship - ASEAN

ASEAN's principal export destinations 2015		ASEAN's principal import sources 2015	
1. China	16.5 %	1. China	23 %
2. US	12.7 %	2. Japan	11.4 %
3. Japan	12.4 %	3. US	9.3 %
6. Australia	4.7 %	9. Australia	2.6 %

Source: DFAT/ASEAN Factsheet (updated June and December)

Australia's trade relationship - Philippines

Philippines' principal export destinations 2015		Philippines' principal import sources 2015	
1. Japan	21.1 %	1. China	16.4 %
2. US	15.0 %	2. US	10.9 %
3. China	10.9 %	3. Japan	9.6 %
17. Australia	0.8 %	16. Australia	1.2 %
<i>Source: DFAT/Philippines Factsheet (updated June and December)</i>			

Competition Law in ASEAN

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

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

CPL - a tool for economic development?

- ▶ 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

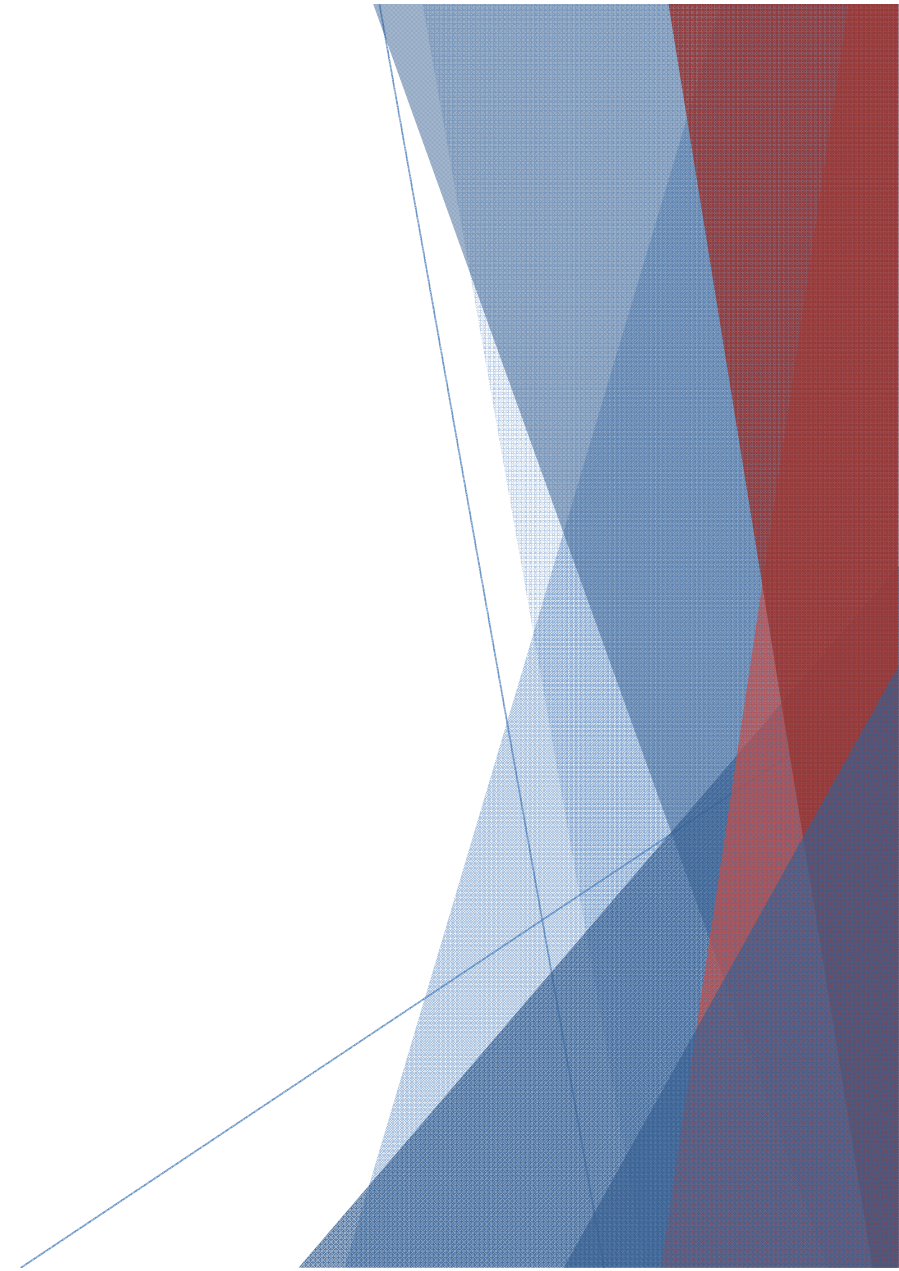
▶ The Philippines

- ▶ 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

- ▶ *Why ASEAN and why now? Insights for Australian business - A joint Austrade and DFAT publication*, available at <https://dfat.gov.au/about-us/publications/Documents/why-asean-and-why-now.pdf>
- ▶ *The role of competition policy in promoting sustainable and inclusive growth*, UNCTAD Secretariat, 2015, available at http://unctad.org/meetings/en/SessionalDocuments/tdrbpconf8d6_en.pdf
- ▶ *The relationship between competition, competitiveness and development*, UNCTAD Secretariat, 2002, available at http://unctad.org/meetings/en/SessionalDocuments/tdrbpconf8d6_en.pdf