



AEC BLUEPRINT 2025 ANALYSIS

AN ANALYSIS OF ASEAN COMPETITION LAW

Foreword

The following report is part of a series which attempts to provide a detailed analysis on the ASEAN Economic Community (AEC) Blueprint 2025. Each report will cover a single element of the blueprint, providing a comprehensive look at past achievements, present problems, and the future plans of the AEC. Special attention will be placed upon the strategic measures outlined in the AEC Blueprint 2025. This report aims to provide insight into the viability surrounding regional economic integration under the AEC.

Competition Policy and Law (CPL)

At its core, ASEAN defines the aims of CPL as institutions and regulations which create a culture of fair competition. Fair competition is a building block of any free market and involves ensuring a level playing field for businesses, regardless of ownership or origin. (ASEAN Secretariat, 2016) CPL legislation may address explicit areas such as monopoly laws, to more general areas cross covered by other AEC initiatives such as foreign ownership laws. This report will illustrate the groundwork achieved by ASEAN and the goals that have yet to be attained in the interests of a fully integrated and functioning AEC.

A. Targets under the AEC 2015 Blueprint

- AEC Blueprint 2015
 - As at 2007 when the AEC Blueprint 2015 was ratified, only four member states including Singapore, Indonesia, Thailand, and Vietnam had domestic competition laws and regulatory bodies.
 - The 2015 Blueprint therefore called for four goals:
 1. Member states were to introduce competition policies domestically by 2015.
 2. Domestic authorities on competition policy were to be established in each ASEAN state, which would in turn discuss and coordinate CPL efforts.
 3. Following the two initial goals, capacity building initiatives were to be undertaken to grow the depth of CPL amongst member states. (Capacity building, put simply indicates a nation dedicating resources towards passing laws and strengthening its regulatory bodies in the areas of CPL)
 4. A regional guideline was also an explicit goal the original blueprint set out to achieve.
- **ASEAN Experts Group on Competition (AEGC)**
 - The ASEAN Economic Ministers (AEM) endorsed the establishment of the AEGC in 2007 with the express purpose of having the body be a forum for CPL discussion and cooperation. This resulted in the adoption of several best practices and policy guidelines enumerated on the right.
 - Three main areas of focus in each of the CPL documents were:
 - Institutional Building
 - Enforcement
 - Advocacy

AEGC Policy Guides & Plans

1. 2007 ASEAN Regional Guidelines on Competition Policy
2. 2013 Handbook on Competition Policy and Law in ASEAN for Business
3. 2015 Guidelines on Developing Core Competencies in CPL for ASEAN

- The policy guides and plans were emphasised further in a set of region wide socialisation workshops targeted at government officials and select private sector groups in order to raise awareness and advocate the adoption of CPL
- ASEAN Competition Action Plan (ACAP)
- The ACAP was finalised in 2014 by the ASEAN Secretariat as a CPL action plan for the 2016 - 2025 period (ASEAN Secretariat, 2016)
- The ACAP enumerates 7 main focuses:
 1. Establish CPL for all remaining member states.
 2. Strengthen CPL related agencies through comprehensive technical assistance, capacity building, and the implementation of institutional mechanisms.
 3. Foster CPL awareness through platforms for regular exchange and engagement on CPL matters.
 4. Establish Regional Cooperation Arrangements for CPL.
 5. Harmonise CPL policies.
 6. Ensure alignment of CPL amongst intra-ASEAN FTAs and ASEAN+1 FTAs.
 7. Consider international best practices for enhancement of CPL guidelines.

B. Significant Achievements To Date

- Of the four main goals set out by the AEC Blueprint 2015, the first two goals of establishing domestic competition policies and institutions have not been met in spirit to a larger extent.
 - As of the official formation of the AEC at the end of 2015 and subsequent release of the AEC Blueprint 2025, nine of ten ASEAN member states have implemented comprehensive CPL legislation.
 - Cambodia is expected to draft and implement its dedicated CPL legislation by the end of 2016.
- At face value, progress seems promising, but it should be noted that the CPL of Myanmar, the Philippines, Laos, and Brunei have merely ratified CPL legislation, whilst the implementation of relevant laws are still being revised and deferred.

ASEAN FTAs/CEPAs			
Country	Implementation	Year	Details
Brunei	Yes	2015	- Competition Order of Brunei Darussalam Agency: - Competition Commission, and Competition Tribunal
Cambodia	No	N/A	- To be implemented by end of 2016
Indonesia	Yes	1992	- Law No.5 of 1999 - Agency: Komisi Pengawas Persaingan Usaha (KPPU, Commission for Supervision of Business Competition)
Laos	Yes	2004	- Decree on Trade Competition 2004 & Lao Competition Law 2016 - Agencies: Ministry of Industry & Commerce/Department of Domestic Trade
Malaysia	Yes	2010	- Competition Act 2010 - Agency: Malaysia Competition Commission (MyCC)
Myanmar	Yes	2015	- Competition Rules (Only coming into effect in 2017) - Agencies: Competition Policy Division
Philippines	Yes	2015	- Republic Act 10667 or the Philippine Competition Act (PCA) - Agencies: DOJ-Office for Competition (OFC), and the Philippine Competition Commission (PCC)
Singapore	Yes	2005	- Competition Act - Agency: Competition Commission of Singapore (CCS)
Thailand	Yes	1999	- Trade Competition Act B.E.2542 - Agency: Trade Competition Commission
Vietnam	Yes	2005	- Competition Law No.27/2004/QH11 - Agencies: Viet Nam Competition Authority (investigation) and Viet Nam Competition Council (adjudication)

- The third goal of the AEC Blueprint 2015, which concerns capacity building initiatives, has been achieved to a larger extent. Over the course of the first five years of the establishment of the AEGC, 14 capacity building activities were conducted with the participation of 700 plus government officials from member states. (ASEAN Secretariat, 2016)

Number of AEGC Activities According to Areas of Engagement (2008 - 2012)						
Activity Focus	2008	2009	2010	2011	2012	Total
Capacity Building	2	6	3	5	5	19
Policy Dialogue/ Conferences/Outreach	1	4	4	1		10
Brainstorming Sessions			2			2
ASEAN Guidelines on CP		2	1			3
Handbook on CP		1	1			2
Regional core competencies				2	2	4
Others - Foundation laying, stock -taking, study visit	2	3				5

Sources: ASEAN 2016

- The fourth goal of the AEC Blueprint 2015, which calls for a regional CPL guideline to be established, was largely addressed by the three main publications released by the AEGC as outlined above.
- A key facet of competition policy would be anti-monopoly laws, which help to maintain a fair and competitive market. The following statistics help to illustrate that in terms of perceived effectiveness, Singapore still maintains a lead in the region.
- A general positive correlation can be found between the level of development of each member state and the perceived effectiveness of anti-monopoly policy.

Effectiveness of Anti-Monopoly Policy								
Country	2007	2008	2009	2010	2011	2012	2013	2014
Brunei	...	3.54	3.80	3.93	3.98	4.22	4.60	...
Cambodia	3.02	2.93	3.36	3.86	4.02	4.30	4.32	3.95
Indonesia	5.15	4.77	4.73	4.56	4.26	4.46	4.50	4.49
Laos	...	...	...	...	...	...	4.62	4.54
Malaysia	4.91	4.77	4.32	4.59	4.84	4.79	4.80	5.05
Myanmar	...	...	...	...	...	...	...	3.27
Philippines	3.57	3.59	3.54	3.71	3.61	3.82	3.87	3.97
Singapore	5.08	5.28	5.44	5.32	5.20	5.39	5.39	5.26
Thailand	4.05	3.88	4.14	4.25	3.90	3.89	4.12	4.06
Vietnam	3.16	3.88	4.10	4.23	3.78	3.87	3.97	3.86

... = no available data. Scoring is a weighted average on a scale from 1 to 7 based on the question: "In your country, to what extent does anti-monopoly policy promote competition?" (1= does not promote competition; 7= effectively promotes competition).

Sources: World Economic Forum Global Competitiveness Index

C. Current Issues and Challenges

- All member states are expected to have passed their respective CPL legislation domestically by the end of 2016. Whilst the token policies are in place, the effective adoption and deepening of general guidelines will be key in achieving ASEAN's goals concerning competition law.
- The effectiveness of CPL legislation amongst ASEAN member states is not currently being measured. No progress reports nor feasibility studies have been carried out.

D. Plans under the AEC 2025 Blueprint

- The AEC 2025 Blueprint does not deviate from the AEGC's seven point ACAP plan. As such, the current status of the ACAP plan shall be examined.

E. AEC 2025 Blueprint Analysis

Strategic Measure	Current Status and Development
1 Establish CPL for all remaining member states	
<ul style="list-style-type: none">• Establish CPL for all remaining member states.	<ul style="list-style-type: none">• Cambodia is slated to implement its CPL policy by the end of 2016.• Myanmar, the Philippines, Laos, and Brunei will continue domestic efforts to ratify and implement their respective CPL legislation.
2 Strengthen CPL	
<ul style="list-style-type: none">• Strengthen CPL related agencies through comprehensive technical assistance, capacity building, and the implementation of institutional mechanisms.	<ul style="list-style-type: none">• Comprehensive Technical Assistance This involves the sharing of CPL related legislation amongst member states, as well as candid discussion regarding the adjudication of competition law cases amongst states.• Capacity Building As with technical assistance, capacity building will involve the sharing of resources amongst member states/the dedication of resources domestically to improving the abilities of CPL institutions and legislation.• Institutional Mechanisms The establishment of the AEGC marks the first regional institution overseeing the development of CPL in member states. The further growth of the AEGC and potential spin off organisations may help to regulate intra ASEAN competition law disputes and address problem areas.
3 Foster Awareness	
<ul style="list-style-type: none">• Foster CPL awareness through platforms for regular exchange and engagement on CPL matters.	<ul style="list-style-type: none">• The establishment of the AEGC has begun the process for dialogue to take place between member states. Outreach to end beneficiaries of CPL implementation such as the private sector, however, have limited to no access to CPL legislation direction or information.• Socialisation workshops such as those carried out by the AEGC have begun to raise awareness for CPL legislation and changes, however a dedicated domestic and/or regional outreach platform may be established to this end.

Strategic Measure

Current Status and Development

4 Regional Cooperation

- Establish Regional Cooperation Arrangements for CPL.
- With regional guidelines paving the way, a regional binding agreement on what constitutes CPL effective policy, restricted sectors, and timelines can be established. Whilst the ACAP may be enhanced to fit the bill of a binding agreement for CPL, in its current form it has more to be desired in terms of detail.
- The ACAP agreement has an implementation schedule which is attached to the action plan that list out specific targets and action lines for the first five years.
- It is expected that a timeline for the entire next ten years will be developed once progress can be reliably measured.
- As of 2016, the AEGC is developing an Assessment Toolkit on Competition Enforcement and Advocacy tailored to the completion of the ACAP.

5 Harmonisation of CPL Policies

- Harmonise CPL policies.
- As the establishment of basic CPL legislation and bodies have yet to be effectively implemented in half of the member states, this goal will most likely be a long term initiative.

6 Further CPL Initiatives Through Trade Agreements

- Ensure alignment of CPL amongst intra-ASEAN FTAs and ASEAN+1 FTAs.
- The ASEAN Regional Comprehensive Economic Partnership (RCEP) negotiations will most likely address this facet of the Blueprint's goals.
- Ensuring that comprehensive CPL is uniform amongst trade agreements will likely be a long term goal as mentioned above.

7 Best Practices

- Consider international best practices for enhancement of CPL guidelines.
- If 2013's revision of CPL guidelines is any indication, the adoption of best practices in an ever-changing landscape of threats will continue to occur under the guidance of the AEGC.

F. Conclusion: Moving Forward with the AEC 2025 Plans

- The main focus of the AEC 2015 Blueprint, which was the establishment of CPL institutions and legislation, has yet to be met as of 2016. Further action will need to be taken and the AEC 2025 Blueprint's first provision regarding establishing CPL in remaining member states recognises this fact.
- The next step would be to conduct an in-depth analysis on the effectiveness of CPL in each member state to provide a basis for the AEGC on how to move forward to further promote CPL in ASEAN.
- Though great strides have been made in the area of competition law, more comprehensive measures need to be taken in defining what constitutes competition law in a binding manner.
- Further cooperation and partnership with more advanced economic regions and relevant international organisations will greatly support the implementation of the ASEAN CPL.
- Cross-sectoral cooperation with other sectors under the AEC and enhanced dialogue with the relevant industries could ensure that enforcement of CPL can be carried out in a more comprehensive manner.

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Suggested Citation:

Yee, K. L. (2016). An Analysis of Liberalisation in the Movement of Skilled Labor. AEC Blueprint 2025 Analysis. J. Hong, S. Omarsdottir, CIMB ASEAN Research Institute. 1: 4.

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