

POST MID-TERM REVIEW 2020
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ASEAN COMPETITION ACTION PLAN 2025



ASEAN COMPETITION ACTION PLAN (2016-2025)

IMPLEMENTATION SCHEDULE

The ASEAN Competition Action Plan (ACAP) 2016-2025 contains five (5) strategic goals that are supportive of the overarching vision of **a competitive, innovative, and dynamic ASEAN with an effective and progressive competition policy.**

Terms used:

- Strategic Goals denote the desired outcomes that will lead to the achievement of the strategic vision.
- Deliverables mean specific actions/activities within the framework of the strategic goals.
- Outcomes show or measure results of the deliverables. Outcomes are in effect the intermediate milestones towards the achievement of the strategic goals.
- Key Performance Indicators (KPIs) indicate or measure the achievement of the strategic goals and are thus drawn up at Outcome level. KPIs need to be clearly defined and phrased in a manner that they are specific, measurable, achievable, realistic and timely (SMART Criteria).

Strategic Goal 1: Effective competition regimes are established in all ASEAN Member States (AMS).

This strategic goal builds on the commitment of ASEAN to “endeavour to introduce competition policy in all Member States by 2015” (as outlined in the AEC Blueprint 2009-2015). As of December 2015, a consolidated national competition statute was in place in nine (9) Member States, and it is expected that by the year 2021, competition laws will have been adopted in all ten (10) AMS. Moving to the implementation stage requires setting up institutions, developing implementing regulations, and drafting substantive and procedural guidelines in order to support enforcement. At the same time, some Member States are currently in the process of reviewing their existing competition regimes, in light of their enforcement experiences, changing market dynamics and in accordance with international best practices.

Outcomes	Deliverables
1.1 The legal framework on competition is completed in all AMS.	1.1.1 Enacting competition laws in all AMS by 2021 (<i>Continuing</i>)
1.2 The legislative framework of AMS is strengthened to meet changing market dynamics and in accordance with international best practices	1.2.1 Developing a compendium of English translations of national competition laws, regulations, guidelines etc. (where applicable), toward standardizing language and/or compiling terminologies to facilitate the understanding of competition rules across ASEAN Member States; and developing an ASEAN glossary of competition terms (<i>Completed</i>) 1.2.2 Undertaking self-assessment based on the assessment toolkit on competition enforcement and advocacy (<i>Completed</i>) 1.2.3 Undertaking voluntary peer reviews of select competition regimes in ASEAN (<i>Continuing</i>)

Strategic Goal 2: The capacities of competition-related agencies in AMS are strengthened to effectively implement CPL.

Once a competition law has been adopted, the more complex challenge of implementation begins. The initiatives under this strategic goal are oriented towards addressing capacity building gaps in view of a set of skills or competencies that competition agencies and related actors (including, among others, judges, lawyers, economists) should possess in order to be able to effectively enforce the law. The ASEAN Regional Core Competencies (RCC) Guidelines already provide guidance to Member States on their required competencies in CPL and recommendations on how to develop these. Capacity building measures would have to be delivered in a holistic approach and customized to various (groups of) Member States, according to the degree of development of their respective competition regimes.

Outcomes	Deliverables
2.1 National and regional capacity needs related to CPL are assessed and clearly mapped.	2.1.1 Undertaking a comprehensive capacity needs assessment in 2016, with a reference to the RCC Guidelines (<i>Completed</i>) 2.1.2 Developing the Regional Capacity Building Roadmap 2016-2020 by 2017, with a vision until 2025 (<i>Completed</i>) 2.1.3 Developing the Regional Capacity Building Roadmap 2021-2025 by 2021 (<i>New Deliverable</i>)
2.2 Technical capacities in institutional development, enforcement, advocacy, economic analysis / sector studies and related policy areas are enhanced.	2.2.1 Developing a set of in-house training tools for competition agency staff by 2017 (<i>Completed</i>) 2.2.2 Undertaking appropriate capacity building activities for staff members of competition agencies until 2025 (<i>Continuing</i>) 2.2.3 Developing an e-learning course on substantive areas of competition law for hosting on AEGC web portal (<i>Continuing</i>) 2.2.4 An increasing annual average of the number of competition initiatives (i.e., advocacy and outreach events, competition advisories, market studies, and preliminary enquiries) conducted by AMS competition authorities (<i>Continuing</i>)
2.3 The Virtual ASEAN Competition Research Center (V-ACRC) is	2.3.1 Conducting a feasibility study for the V-ACRC by 2017 (<i>Completed</i>)

established to conduct regional research and training activities related to CPL.	2.3.2 Setting up the V-ACRC 2020 with activity plan until 2025 (<i>Completed</i>)
2.4 Enforcement strategies and tools tailored to ASEAN economies are developed to facilitate the effective implementation of CPL in the region.	2.4.1 Developing the ASEAN Toolkit for Formulating National Strategies (<i>Completed</i>) 2.4.2 Developing an ASEAN Investigation Manual on CPL for the Digital Economy by 2022 (<i>New Deliverable</i>)
2.5 Engagement with the judiciary is developed at the national and regional level.	2.5.1 Continuously engaging the judiciary via study visits, conferences and other appropriate group activities comprising of AMS with similar legal systems (<i>Continuing</i>)

Strategic Goal 3: Regional cooperation arrangements on CPL are in place

The initiatives under this strategic goal serve to advance the regional cooperation agenda on CPL and essentially build on the initiatives carried out under the strategic goals related to the strengthening of national competition regimes in ASEAN (no. 1 and no. 2). Efforts need to be directed towards addressing competition issues or cases that are cross-border or regional in nature. It is anticipated that in a post-2015 landscape, issues such as cross-border mergers of multinational companies, private international as well as export / import cartels, abuse of dominance in export, regional or global markets, as well as competition problems related to foreign direct investment etc. will increasingly occur, exceeding the mandate of single national jurisdictions. This will prompt AMS to establish and enhance cooperation arrangements on CPL, with a view towards establishing a common understanding and eventually joint actions.

The external factors driving this are worldwide trends towards increased convergence of competition rules on the one hand, and international, case-related coordination efforts among jurisdictions on the other. The latter is set against the backdrop of a broader spectrum of options and instruments available to competition agencies, depending on their degree of commitment to enforcement coordination and cooperation. In the absence of a supranational competition agency, AMS need to start laying the foundation for an adequate cooperation mechanism to address competition cases affecting more than one country.

Outcomes	Deliverables
3.1 Regional cooperation mechanism(s) on CPL is developed.	<p>3.1.1 Identifying common elements, guidelines or principles of a regional cooperation agreement on CPL enforcement for ASEAN by 2018 <i>(Completed)</i></p> <p>3.1.2 Developing Guidelines for Sharing Merger Cases in the AEGC Portal, and establishing an Information Portal on Merger Cases by 2023 <i>(New Deliverable)</i></p>
3.2 Enforcement mechanisms are developed to handle cross-border cases in ASEAN.	<p>3.2.1 Launching the ASEAN Competition Enforcers' Network (ACEN) by 2019, and deepening the discussions in ACEN by reviewing the number of the meetings held annually and focusing on more case and non-case related discussions <i>(Continuing)</i></p> <p>3.2.2 Conducting a study on recommended procedures for joint investigations and decisions on cross-border cases by 2021 <i>(Continuing)</i></p>
3.3 The AEGC is strengthened.	3.3.1 Revising the TOR of the AEGC so as to enhance the representation level therein <i>(Completed)</i>

	3.3.2 Publishing and disseminating biennial reports of the AEGC (<i>Continuing</i>)
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Strategic Goal 4: Fostering a competition-aware ASEAN region

While the initiatives under the strategic goals no. 1-3 largely build upon one another and are essentially inward-looking, this strategic goal is cross-cutting and focuses on developing both a competition culture and a wider competition community to promote fair competition in the region. With the ASEAN Competition Conference (ACC) as its flagship event, the AEGC has already established a regular forum for the interaction with different stakeholder groups. In the future, there could be additional specific initiatives for regional advocacy campaigns, particularly vis-à-vis the private sector. This is based on the understanding that the effectiveness of a competition regime is not only founded on a sound legal framework, adequate institutional capacities and a considerable enforcement record, but also on widespread business compliance and understanding by the general public about the benefits and principles of CPL.

Outcomes	Deliverables
4.1 Relevant aspects of competition law and policy in ASEAN and the markets are explained to relevant stakeholders. (Rephrasing)	4.1.1 Conducting a regional study on exceptions and exemptions from competition laws in ASEAN, with recommendations by 2021 (<i>Continuing</i>)
4.2 The interface between competition policy issues and other economic areas are strengthened.	4.2.1. Promoting dialogue between the AEGC and other ASEAN Sectoral Bodies, starting with the ASEAN Committee on Consumer Protection (ACCP) (<i>Continuing</i>)
4.3 A platform for regular exchange and engagement by competition agencies with relevant stakeholder groups (general public, judges, relevant public institutions etc.) is established	4.3.1. Organizing the ASEAN Competition Conferences (ACC) every two years (<i>Continuing</i>)
4.4 Business compliance is encouraged.	4.4.1. Updating the ASEAN Handbook on CPL for Business every two years beginning 2017, taking into account the latest legislative and enforcement developments in ASEAN (<i>Continuing</i>) 4.4.2. Measuring the ASEAN Competition Business Perception Index every 5 years (<i>Continuing</i>) 4.4.3. Enhancing the AEGC web portal, integrating it into ASEC website and maintaining it as an online information center for businesses, with regular updates, specific information on CPL-related developments in AMS and reference documents (<i>Completed</i>)

	4.4.4. Publishing a Competition Compliance Toolkit for businesses (<i>Completed</i>)
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Strategic Goal 5: Moving towards greater harmonization of competition policy and law in ASEAN

Competition provisions have become increasingly popular in regional trade agreements (RTAs) and free trade agreements (FTAs) recently concluded. This is due to the realization that cooperation and coordination on competition law and policy issues are needed to ensure that the benefits of trade and investment liberalization are not compromised by cross-border anticompetitive practices, and that state-constructed trade barriers are not substituted by other forms of private restrictive practices (such as, for instance, market-sharing or price-fixing agreements, or market-foreclosing or exclusionary tactics). Furthermore, it is also widely recognized that the creation of region-wide competition policies and institutions would facilitate the achievement of greater levels of integration amongst economies.

Regional harmonization of competition policy and law is one step further, after the ASEAN has successfully introduced national legislations in respective Member States (under goal no. 1) and effectively enforced these rules (under goal no. 2). It means, while recognizing that one size does not fit all and differences might continue to exist for a number of valid reasons, the ASEAN is also committed to promoting similarities and convergence and eliminating contradictions. Greater harmonization of competition policy and law in ASEAN is expected to create a seamless policy environment for goods, services and capitals to move around freely and without barriers; while companies could operate and allocate their resources in the most efficient ways possible. It would also contribute to enhancing the transparency and predictability of the investment climate. Finally, greater harmonization would certainly serve to facilitate regional cooperation with regard to the competition law enforcement (under goal no. 3).

Outcomes	Deliverables
5.1. The commonalities and differences across national competition laws in ASEAN are identified.	1.1.1 Assessing commonalities and differences across competition legislations in ASEAN (<i>Completed</i>) 1.1.2 Recommendations on substantive as well as procedural standards in CPL enforcement for ASEAN by 2021 (<i>Continuing</i>)
5.2. A strategy for regional convergence on CPL matters is developed.	5.2.1. Developing a strategy paper on areas feasible for regional convergence (<i>Completed</i>)
5.3. The Regional Guidelines on Competition Policy is improved.	5.3.1 Updating and improving the Regional Guidelines on Competition Policy by 2021 (<i>Continuing</i>)
5.4. High-level policy dialogue to promote regional harmonization of CPL in ASEAN is conducted. (New)	5.4.1 Conducting meetings of Heads of Competition Agencies in ASEAN from 2021 (<i>New Deliverable</i>)
