THE HARMONIZATION OF BUSINESS COMPETITION REGULATION IN ASEAN ECONOMIC COMMUNITY FRAMEWORK

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ABSTRACT

Economic globalization is a condition that cannot to be avoided. Due to the economic globalization problem, many countries develop the bilateral, multilateral, and regional economic agreement. In varying degrees of economic cooperation agreement, the business competition and antitrust law or regulation is one of the main topics that also should be discussed. The business competition and antitrust law or regulation is an important instrument to ensure that free trade can work well. The existence of business competition and antitrust regulation aims to avoid the unfair business practices. The fair business and trade competition brings positive impacts to welfare society such as innovation and product variation. In fact, the competition regulation cannot be directly included in the agenda in trade or economic agreements because of differences in philosophy and goal of regulation.

Recently, ASEAN countries are going to initiate the ASEAN Economic Community (AEC) in 2015. The AEC scope is broader than the AFTA arrangement because it covers goods, services, investment and production factors liberalization. In order to achieve the AEC framework, the setting in ASEAN business competition regulation is absolutely needed. This study aims to describe the trade condition in ASEAN, compare business competition regulations among ASEAN five and make recommendation about business competition regulations. This study analyzed and compared the competition regulation of five countries' (Indonesia, Malaysia, Singapore, Thailand and Philippines). The qualitative study was used to find out how high the differences of business competition regulation among ASEAN countries.

The result of this study showed that the competition law in each member of ASEAN was still weak. Until now, not all countries have antitrust law. This study also showed that Singapore, Indonesia and Thailand were the members of ASEAN that applied the antitrust law in most advanced. This study also found that small scale of market, protection to indigenous businessman, unpreparedness of institution, and lack of government political were the cause of the competition law has not been made. The difference of antitrust practice between countries allowed for unfair business and trade.

Based on these results, ASEAN needs to arrange an arrangement of competition regulation among members because harmonization of competition and antitrust regulation will give a benefit for ASEAN economies. Competition regulation should be harmonized through the formal institution like ASEAN Consultative Forum on Competition (ACFC).

Keywords*: Business Competition Regulation, Antitrust Law, Harmonization, AEC framework.*

1. INTRODUCTION

Economic globalization is a condition that cannot to be avoided. Due to the economic globalization problem, many countries develop the bilateral, multilateral, and regional economic agreement. In varying degrees of economic cooperation agreement, the business competition and antitrust law or regulation is one of the main topics that also should be discussed. The business competition and antitrust law or regulation is an important instrument to ensure that free trade can work well.

The existence of business competition and antitrust regulation aims to avoid the unfair business practices. Competition policy and law have a positive and influential role to play in facilitating economic development, promoting consumer-producer welfare, and improving micro-level efficiency and productivity. The fair business and trade competition also bring positive impacts to welfare society such as innovation and product variation.

In fact, the competition regulation cannot be directly included in the agenda in trade or economic agreements because of differences in philosophy and goal of regulation. Furthermore, the dynamics of increasing interdependence and integration at the global and regional levels mean that competition policy will become even more important to many developing economies, including those in ASEAN.

Recently, ASEAN countries are going to initiate the ASEAN Economic Community (AEC) in 2015. The AEC Blueprint is a very significant development milestone in ASEAN. It is a specific effort to deepen regional economic integration. The AEC scope is broader than the AFTA arrangement because it covers

goods, services, investment and production factors liberalization. In order to achieve the AEC framework, the setting in ASEAN business competition is absolutely needed. In the context of formation of the ASEAN Economic Community (AEC) by 2015, competition policy has been included as one of the elements of the AEC Blueprint under its key characteristics of promoting a highly competitive economic region.

Currently, however, only Indonesia, Singapore, Thailand, and Viet Nam have national competition policy and law (CPL) as well as competition regulatory bodies (CRBs). Another three ASEAN Member States (AMSs), Cambodia, Lao PDR and Malaysia, are planning to introduce CPL and CRBs. Meanwhile, Brunei Darussalam, Myanmar and Philippines tend to rely on sector-level laws and regulations to achieve competition objectives in domestic markets.

Table 1 below shows the indicators of economic integration. This indicators show that ASEAN does not have competition law converging yet whereas the competition regulation convergence is important to face trade and investment liberalization.

Table 1 Indicators of economic integration

INDICATOR	ASEAN	EU	NAFTA	CER	MERCOSUR
Free trade in goods	part	yes	yes	yes	part
Free trade in services	part	yes	part	yes	part
Labor Mobility	no	yes	no	yes	no
Competition law converging	no	yes	no	yes	no
Monetary union	no	yes	no	no	no
Unified fiscal policy	no	yes	no	no	no

Source: Hal, Menon, 2010

2. PURPOSES

This study is preceded in three purposes, they are:

a) Describing the trade condition in ASEAN countries and AEC blueprint development.
b) Comparing business competition regulations among ASEAN countries.
c) Making recommendation about business competition regulations among ASEAN countries

3. LITERATURE REVIEW: BEST PRACTICES OF BUSINESS COMPETITION REGULATION IN ECONOMIC COOPERATION

Business competition is an important aspect that needs to be regulated in economic cooperation. The argument is to ensure that every businessman will receive an equal treatment for business competition or face the same level of playing field.

Even though many countries aware about that, but not a lot of economic cooperation achieve and realize the business competition regulation. Only the small portions of more than two hundred Regional Trade Arrangements (RTAs) initiate the competition regulation for the economic cooperation. The first competition regulation on regional arrangement occurred in 1957 by European Treaty Pact, and now become a part of European Community. European community also complements its regulation with competition committee in Europe.

OECD (2000) stated that there are four options of competition regulation that can be chosen by RTAs. The five options are:

a) Voluntary convergence
b) Bilateral cooperation between competition authorities;
c) Regional agreements containing competition policy provisions;
d) Multilateral competition policy agreements.

Based on competition regulation best practices, there are three forms that is interesting to be observed. They are European Union (EU), NAFTA and APEC. Competition regulation in EU is centralized, NAFTA which is decentralized, and APEC is not binding (Adiningsih and Lestari, 2007).

EU is the earliest and most important RTA that regulates business competition in its cooperation agreement and promotes competition policy intensively. Nowadays, EU is the most comprehensive RTAs that implements competition policy cooperation. One of the important aspects is establishment of regional supranational authority i.e. Directorate General (DG) IV. DG IV tasks are to develop additional principles, detailed rules of cooperation and disseminate information between regional and national competition authorities.

On this basis, the EU constructs measurement standard of competition law for member countries. In addition, EU also set up a centralized judicial institution i.e. European Court of Justice (ECJ). The ECJ is the European level court that would prosecute violations of antitrust policy of the member countries. DG IV and ECJ reflect the centralized competition policy. DG IV and ECJ also have the power to conduct enforcement against companies that violate. They also do not depend on the decision of the domestic government of the company.

Nowadays, business competition items that are regulated in agreement are (www.ec.europa.eu/competition):

a) Cartels, control of collusion and other anti-competitive practices
b) Monopolies or preventing the abuse of firms' dominant market positions.
c) Mergers, control of proposed mergers, acquisitions and joint ventures involving companies that have a certain defined amount of turnover in the EU

d) State aid, control of direct and indirect aid that is given by Member States of the European Union to companies.

European Commission is the independent institution of competition policy (www.ec.europa.eu/competition). The Commission is empowered by the Treaty to apply prohibition rules and enjoys a number of investigative powers to that end (e.g. inspection in business and non business premises, written requests for information, etc). It may also impose fines on undertakings that violate EU antitrust rules. Since 1 May 2004, all national competition authorities are also empowered to apply fully the provisions of the Treaty in order to ensure that competition is not distorted or restricted. National courts may also apply these prohibitions so as to protect the individual rights conferred to citizens by the Treaty.

Currently, antitrust regulation in EU is not adequate. Desai (2010) evaluated that one of economic crisis triggers in 2008 was regulatory failure in antirust policy implementation. Although debatable, some arguments indicate that there is needed antitrust regulation in global level.

The Working Group on the Interaction between Trade and Competition Policy (WGTCP) has been guided by mandates at various Ministerial Conferences and in the WTO General Council. In the "July 2004 package" adopted 1 August 2004, the WTO General Council decided that the issue of competition policy "will not form part of the Work Program set out in that Declaration and therefore no work towards negotiations on any of these issues will take place within the WTO during the Doha Round". The Working Group is currently inactive (www.**wto**.org).

In this regard, OECD (2000) noted that it "did not retain options that have been discarded in joint discussions as unrealistic, such as full harmonization of competition laws, or an international antitrust authority with supranational powers."

The NAFTA competition regulation cooperation agreement is decentralized. The antitrust harmonization of the NAFTA is very unique. Only USA and Canada had antitrust law (Clayton Act and Sherman Antitrust Act – USA, and Competition Act – Canada), when NAFTA was agreed. USA and Canada agreed to lead Mexico to develop antitrust policy.

Because of NAFTA decentralization model, there is no regulation to be applied equally to all countries, no agency commission, and no court which can deal with competition issues conflict among member countries. Treatment standardization among member countries is needed to achieve the harmonization of competition policy.

Canada Competition Bureau, the U.S Federal Antitrust and FECL are institutions that deal with violations of fair competition among member countries. These three institutions are responsible for making convergence of competition arrangement.

In the other case, APEC regulates business competition similar with WTO. Many APEC member economies have not regulated business competition or enforced antitrust law yet. APEC established the Competition Policy and Law Group (CPLG). The CPLG, formerly known as Competition Policy and Deregulation Group, was established in 1996, when the Osaka Action Agenda (OAA) work programs on competition policy and deregulation were combined. In 1999 APEC Ministers endorsed the APEC Principles to Enhance Competition and Regulatory Reform and approved a "road map" which established the basis for subsequent work on strengthening markets in the region. To execute the Osaka Action Plan, APEC economies develop Collective Action Plan (CAP) and Individual Action Plan (IAP) in business competition regulation. APEC CPLG therefore works to promote an understanding of regional competition laws and policies, to examine the impact on trade and investment flows, and to identify areas for technical cooperation and capacity building among member economies. (www.apec.org/Groups/Economic-Committee/Competition-Policy-and-Law-Group).

4. DESIGN OF EVALUATION, METHODOLODY AND VALIDITY

The qualitative method was used in this study. This study analyzed and compared the competition regulation of ASEAN five (Indonesia, Malaysia, Singapore, Thailand and Philippines). The ASEAN five was chosen because they have and develop competition regulation more progressive than Cambodia, Lao, Myanmar, Brunei and Vietnam.

Ratio and growth analysis were used to describe economic condition and trade activity, whilst the qualitative study was used to find out how high the differences of business competition regulation among ASEAN five countries.

5. RESEARCH RESULTS

5.1. ASEAN Economic Community (AEC)

ASEAN regional economic integration efforts are geared toward creating an ASEAN Economic Community (AEC). The ASEAN Leaders had originally intended to create the AEC by 2020, but in early 2007 they advanced the deadline to 2015 (AEC Blueprint, www.aseansec.org).

In the ASEAN Economic Community (AEC) Blueprint, ASEAN Member States (AMSs) have endeavored to introduce nation-wide competition policy by 2015. The AEC is the realization of the end goal of economic integration as promoted in the Vision 2020, which is based on a convergence of interests of AMSs to deepen and broaden regional economic integration. The AEC will establish ASEAN as a single market and production base making; more dynamic and competitive with new mechanisms and measures to strengthen the implementation of its existing economic initiatives; accelerating regional integration in the priority sectors;

facilitating movement of business persons, skilled labor and talents; and strengthening the institutional mechanisms of ASEAN (AEC Blueprint, www.aseansec.org).

The Blueprint targets four objectives:

a) A single market and production base;
b) A highly competitive economic region;
c) A region of equitable economic development;
d) A region integrated into the global economy.

Given the diversity within ASEAN, and sensitivities regarding different issues/sectors, it was agreed that liberalization of goods, capital, and (skilled) labor flows proceed at different speeds according to member countries' readiness, national policy objectives, and levels of economic and financial development.

The blueprint also talks about competition regulation. The competition regulation is to ensure a level playing field and develop a culture of fair business competition for enhanced regional economic performance in the long run. At present, only Indonesia, Singapore, Thailand and Viet Nam have economy-wide CPL and competition authorities, while Malaysia has just adopted nation-wide competition law which is expected to be in force in 2012. Other countries have relied on sector-level policies and regulations to achieve competition policy objectives and are endeavoring to introduce competition policy by 2015.

The main objective of the competition policy is to foster a culture of fair competition. Institutions and laws related to competition policy have recently been established in some (but not all) AMSs. There is currently no official ASEAN body for cooperative work on CPL to serve as a network for competition agencies or relevant bodies to exchange policy experiences and institutional norms on CPL.

5.2. ASEAN Economic Condition

ASEAN is characterized by great internal diversity. The richest country, Singapore, has a per capita income of about 50 times the poorest, Cambodia. In terms of economic size, Indonesia is the dominant economic - with over 35% of ASEAN GDP, and by far has the largest population (Hal, Menon, 2010). There are also large differences in economic structure, reflecting both levels of development and relative resource endowments.

Singapore still had the highest GDP per capita in 2009, while Myanmar was the lowest. In 2009, many countries like Brunei Darussalam, Malaysia, Singapore and Thailand experienced the negative growth of GDP (respectively -0.5%; -1.7%; -1.3%; and -2.2%). Although Lao PDR and Vietnam met the positive growth of GDP (7.6% and 5.2%), but on the other hand they experienced the highest inflation (8.5% and 6.9%).

Table 2 ASEAN at a Glance (2009)

Country	GDP per capita at current price (US$)	Growth of GDP at constant price (%)	Inflation rate (%)	Exchange rate (per US$)
Brunei Darussalam	34,827.0	-0.5	1.9	1.42
Cambodia	693.2	0.1	5.3	4,221
Indonesia	2,362.1	4.5	2.8	9,400
Lao PDR	942.1	7.6	8.5	8,506
Malaysia	6,822.1	-1.7	1.1	3.42
Myanmar	419.5	4.8	n/a	n/a
Philippines	1,749.6	1.1	4.4	46.36
Singapore	36,631.2	-1.3	-0.6	1.40
Thailand	3,950.8	-2.2	3.5	33.32
Viet Nam	1,104.2	5.2	6.9	17,941
ASEAN	**2,533.5**	**1.5**	**n/a**	**n/a**

Source: ASEAN Secretariat, www.aseansec.org, processed data.

Various estimates of openness and the summary indicators of commercial policy regimes presented in table 3. With respect to trade/GDP ratio, Singapore was one of the most open economies in the ASEAN. Singapore export and import was higher than its GDP. Economic condition of Singapore depends on its trade activities. Other countries that had a high trade/GDP ratio were Malaysia and Thailand. Ratio of exports to GDP and imports to GDP of Malaysia and Thailand are 81.9% and 64.4% (Malaysia) and 57.7% and 50.6% (Thailand). Lao PDR in 2009 experienced a significant growth of export and import (116.7% and 153.6%). The Indonesian growth of import was higher than the growth of export.

Table 3 Trade Indicators of ASEAN (2009)

Country	Ratio of export to GDP (%)	Ratio of import to GDP (%)	Growth of export (%)	Growth of import (%)	Growth of FDI (%)
Brunei Darussalam	50.7	17.0	14.4	48.1	-26.1
Cambodia	48.1	37.6	11.6	20.2	-35.0
Indonesia	21.3	17.7	20.1	73.5	47.7
Lao PDR	21.5	30.0	116.7	153.6	39.9
Malaysia	81.9	64.4	10.4	-1.8	-81.1
Myanmar	23.9	14.5	11.6	36.1	-40.7
The Philippines	23.7	28.2	-2.9	2.0	26.2
Singapore	152.0	138.4	-19.3	-12.3	49.0
Thailand	57.7	50.6	13.9	26.9	-30.5
Viet Nam	58.9	71.9	27.9	29.0	-20.7
ASEAN	**54.2**	**48.6**	**2.3**	**10.7**	**-20.0**

Source: ASEAN Secretariat, www.aseansec.org, processed data.

Employing the growth of FDI as a crude measure of openness, Singapore had one of the highest growths in the ASEAN in 2009 (49%). Indonesia, Lao PDR and The Philippines also had a positive FDI growth.

Other indicators can be seen on intra and extra ASEAN trade.

Table 4 Intra and Extra ASEAN Trade (2009)

Country	Intra-ASEAN export	Extra-ASEAN export	Intra-ASEAN import	Extra-ASEAN import
	US$ million	US$ million	US$ million	US$ million
Brunei Darussalam	1,229.28	5,939.30	1,242.81	1,156.76
Cambodia	644.63	4,341.17	1,453.27	2,447.59

Indonesia	24,623.90	91,886.09	27,742.40	69,086.76
Lao PDR	997.36	239.80	1,480.80	244.18
Malaysia	40,365.08	116,525.79	31,700.24	91,630.24
Myanmar	3,196.68	3,144.79	2,065.73	1,784.14
The Philippines	5,838.43	32,496.23	11,561.07	33,972.87
Singapore	81,646.50	188,185.96	59,047.56	186,737.11
Thailand	32,490.61	120,006.59	26,759.52	107,010.12
Viet Nam	8,554.80	48,136.23	13,566.69	55,664.19
ASEAN	199,587.26	610,901.95	176,620.08	549,733.98

Source: ASEAN Secretariat, www.aseansec.org, processed data.

In 2009, two features dominated ASEAN trade. First, ASEAN economies trade predominantly with the rest of the world. That is, extra-regional trade was much larger than intraregional trade. An important point to bear in mind in interpreting these shares is the fact that the ASEAN economies only account for a small share of global trade

5.3. Evaluation of Business Competition Regulation in the ASEAN Five

Although ASEAN has agreed that AEC will be held on 2015, but until now there has been no agreement of business competition regulation in ASEAN level. Nevertheless, AMSs have committed in the ASEAN Economic Blueprint to introduce nation-wide Competition Policy and Law (CPL) by 2015. This is to ensure a level playing field and incubate a culture of fair business competition for enhanced regional economic performance in the long run.

One of the cooperation constraints of business competition regulation is not all of ASEAN country members has an equal business competition policy. ASEAN-5 countries have a different vision and philosophy of antitrust policy. At present, only Indonesia, Singapore, Thailand and Viet Nam have such laws and competition authorities. Malaysia and Philippine has not had a comprehensive antitrust regulation.

5.3.1. Indonesia

Indonesia has had business competition law since 1999 (and has implemented since 2000), namely The Act number 5 (www.kppu.go.id). This Act No. 5 is concerning prohibition of monopoly practices and unfair business competition. The principle of the Act No. 5/1999 is economic democracy. This law gives attention to the balance between business and public interests. The Act No. 5 /1999 purposes are:

a) To keep the public interest and improve the efficiency of the national economy, as an effort to improve the welfare;
b) To achieve a conducive business climate through the arrangement of fair competition. It will guarantee the equal business opportunities to large, medium and small businesses
c) To prevent monopolistic practices and or unfair business competition
d) To create business effectively and efficiency.

Target of the Act No. 5/1999 is all businesses that are individual or business entity, whether incorporated or legal entity that are established and domiciled or conducting activities in Indonesia, either alone or jointly, through the implementation of agreements in various business activities. Based on these provisions, the Act No. 5/1999 applies to all business entities. To oversee the implementation of this Act, government establishes the Business Competition Supervisory Commission (Komisi Pengawas Persaingan Usaha – KPPU). The KPPU is an independent agency ad responsible to the President.

The tasks of KPPU are:

a) to conduct an assessment of the agreement;
b) to conduct an assessment of the business activities and or actions of business actors;
c) to conduct an assessment of whether there is any abuse of dominant position.

KPPU can take action in accordance with its authority, provide advice to government about policies that are related to monopolistic practices and or unfair business competition, prepare guidelines and or publications that are related to the Act No. 5/1999, and provide regular reports on the work of KPPU to the Indonesian House of Representative.

The important authorities of KPPU are to receive reports, conduct research, carry out the investigation, conclude the result of investigation, call employers, present witnesses, request information from other parties, decide and impose sanctions against business that violate the provisions of Act No. 5/1999.

Competition setting of Act No. 5/1999 can be grouped into several sections. Article 4 to article 16 arranges the agreements which are prohibited. Article 17 to article 24 arrange activities that are prohibited, whereas article 25 to 29 set of dominant position. Enforcement of Act No. 5/1999 is quite dynamic. Many cases have dealt. Today Act No.5/1999 is in process of change for improvement.

5.3.2. Thailand

Thailand has had and implemented the antitrust law since 1999, namely Thailand Trade Competition Act (TTCA). The purposes of TTCA are to promote free and fair trade within fair competition and control anti-competition practices. The targets of TTCA are different with Indonesia Act. Not all of the business entities subject to TTCA. Central, provincial and local Administration Agency, state owned enterprises, farmer groups, and all business entities under ministerial regulation do not go as TTCA target.

Thailand government creates 3 commission to run the TTCA that are: (a) Trade Competition Commission (TCC), (b) Sub-committees and Sub-committees investigative, and (c) Appeal Committee. TCC is the government agency that carries out TCCA with 8-12 members. Minister of Commerce is as chairman and Secretary to the Minister of Commerce is as vice

chairman. Its members consist of the Secretary to the Minister of Finance lawyers, economists, trade experts, and specialists in business administration and public administration. This commission shall have the power and obligation to consider the complaint, determine rules for dominant business actors, and consider applications for merger permission.

Sub-committees ad sub-committees investigative are responsible for giving advice, opinions and recommendation to the commission. This investigative committee has the power and right to investigate and inquire about the violation of the competition law. The last committee –Appeal Committee – is responsible for determining the rules and procedures for applicants, etc.

Article 25 of TTCA control abuse of dominant position, article 26 regulate about merger, whereas article 27 is about collusion, while article 28 and 29 regulate agreement between domestic and foreign business and unfair trade. All of articles are rule of reason, so it is still possible to discuss and negotiate with commission in case of violation. Nowadays, the Trade Competition Act is under reviewed according to the economy and trade situation aiming to protect competition, to enhance business activities so as to create innovation, and to protect consumer welfare (APEC, 2010).

5.3.3. Malaysia

Until now, Malaysia does not have the business competition law, but the attempt to establish this law has emerged since ten years ago. Malaysia realized that competition policy is very important, but Malaysia faces several obstacles to apply. The constraints are political will and public acceptance of competition policy, and lack of human resource and institutions capacity.

Husain (2006) showed that another dilemma is the industrial policy. The Malaysian industrial policy allows the existence of monopoly in identification and promotion of indigenous domestic product. Government has to protect the natives-owned company against of unfair trade practices, despite the ongoing trade liberalization such as AFTA.

Husain (2006) also argued that Malaysian market scale is small. It causes the number of businesses needed is little. Small and medium enterprises in Malaysian market have limitation of market access and take the economies of scale. These facts – dilemma between competition policy purposes and social economic purposes- make a difficulty for Malaysian government to implement the competition regulation.

So far, regulation and supervision of business competition is only done in certain sectors. Communication and multimedia sector is regulated by the Communication and Multimedia Act of 1998; energy sector is regulated by Energy Commission Act 2001; financial sector is regulated by Bank Negara Malaysia with the Banking and Financial Institution Act (1989), and the Insurance Act (1996). Today Malaysia still continues to work simultaneously and carefully to ensure the competition law will be effective and can be applied to address the competition problems (Anonymous, 2005).

The last progress shows that the Competition Act will be in place to protect consumers against market abuse from cartel activities and monopolies. Draft of the new legislation had already been submitted to the Attorney-General's Chambers and would be up for its first reading in Parliament (Nik Anis, Star Online, 2010)

5.3.4. Philippines

Similar with Malaysia, recently Philippines does not have and implement antitrust law and formalize business competition policy. Some of the provisions related to competition policy are applied by government agencies and other entities. Competition framework refers to section 19, article XXII of the Philippines Constitution that said *"combination in restraint of trade or unfair competition shall not be allowed"*.

Some laws related to competition issues are implemented such as The Price Act of 1992, The Consumer Act of the Philippines, and The Public Telecommunication Policy Act of the Philippines. In addition, enforcement is also conducted by several agencies. The agencies in the Philippines undertaking the implementation and enforcement of competition laws are (www.tariffcommission.gov.ph/competit.html):

a) Tariff Commission (TC) – An attached agency of the National Economic and Development Authority (NEDA). It is mandated to assist the Cabinet Committee on Tariff and Related Matters (TRM) in the formulation of a national tariff policy and to monitor the implementation of the Tariff and Customs Code (TCC).
b) Bureau of Import Services (BIS) – A staff agency of the Department of Trade and Industry (DTI). It is mandated to monitor import quantities and prices of selected sensitive items (particularly liberalized goods) to anticipate surges of imports and assist domestic industries against unfair trade practices.
c) Bureau of Trade Regulation and Consumer Protection (BTRCP) - Also a staff agency of the DTI. It is mandated to formulate and monitor the registration of business names and the licensing and accreditation of establishments; it also evaluates consumer complaints and product utility failures.
d) Securities and Exchange Commission (SEC) – An attached agency of the Department of Finance (DOF). It is mandated to administer corporate government laws such as the approval and registration of corporate consolidations, mergers and combinations. It also implements the Securities Act of 1982 which penalizes fraudulent acts in connection

with the sale of securities (*e.g.* price manipulation, inside trading, short selling, etc).

Until now, the enforcement of antitrust policy in Philippines is poor. Some of the reasons behind the poor enforcement of competition laws:

a) Despite the number of laws and their diverse nature, competition has neither been fully established in all sectors of the economy nor has existing competition been enhanced in other sectors. Since each law is meant to address specific situations, there runs the risk of one law negating the positive effects of another.
b) There is no central enforcement agency. Enforcement is done by several individual agencies that do not operate in a coordinated manner and sometimes produce conflicting policies. Moreover, responsibility is too diffused and accountability for implementation of the laws is difficult to place. There is also a lack of expertise in the appreciation and implementation of competition laws.
c) Fines imposable for breaches of the laws are minimal. Likewise, most punishments are penal in nature; hence, evidence requirements are substantial.
d) There is a lack of jurisprudence and judicial experience in hearing competition cases.
e) The SEC regards "efficiency gains" as more important than competition considerations in mergers and does not have a mandate to challenge mergers unless it can demonstrate they are against the public interest.

5.3.5. Singapore

Singapore has had the Competition Act (Chapter 50B) since January 2005. The Act is implemented gradually. Phase I, Competition Commission of Singapore started to work at January 1st 2005. Phase II, at January 1st 2006, provision of prohibition of anti-competition agreement and market dominance began to be applied. Provision of prohibition of anti competitive merger is forced after phase II

Objective of Competition Act (Chapter 50B) (http://app.ccs.gov.sg/) seeks to prohibit anti-competitive activities that unduly prevent, restrict or distort competition. There are three main prohibited activities under the Act:

a) Anti-competitive agreements, decisions and practices (the section 34 prohibition);
b) Abuse of dominant position (the section 47 prohibition);and
c) Mergers and acquisitions that substantially lessen competition (the section 54 prohibition).

In its administration and enforcement of the Act, the Competition Commission Singapore (CCS) will bear in mind that any regulatory intervention in the market may impose costs. Therefore, the Commission will balance regulatory and business compliance costs against the benefits from effective competition.

Instead of attempting to catch all forms of anti-competitive activities, the Commission's principal focus will be on those that have an appreciable adverse effect on competition in Singapore or those that do not have any net economic benefit. In assessing whether an activity is anti-competitive, the Commission will give due consideration to whether it promotes innovation, productivity or longer-term economic efficiency. This approach will ensure that we do not inadvertently constrain innovative and enterprising endeavors.

Given the wide-ranging industries and markets, CCS will not be able to look into every possible infringement of the Competition Act. It wills priorities its enforcement efforts based on (http://app.ccs.gov.sg/):

a) potential impact on the economy and society (eg, how significant is the industry in the Singapore Economy, does it have a great impact on business costs in Singapore, how large a consumer base it has, how much will it add to costs of living?);
b) severity of the conduct (is it hard-core price-fixing, serious abuse of dominance, mergers which substantially lessen competition);
c) Importance of deterring similar conduct (will other companies feel free to engage in the same conduct if it is left unchecked?);
d) Resource considerations (how many cases is CCS handling, how resource intensive is the case relative to the expected benefits?);
e) Risk of over-intervention (when action by CCS may inadvertently deter innovation and risk-taking by businesses).

Singapore Competition Act tends to be based on contestable market philosophy. So the most important condition is the company does not act the monopolistic strategies and practices that will create the welfare loss

5.4. Possibilities of Business Competition Regulation Harmonization in AEC Framework

Background and history of ASEAN showed since the beginning of ASEAN was never designed a business competition policy or regulation at ASEAN level. Obligation of business competition arrangement at ASEAN level is realized after the agreement of economic cooperation development from AFTA to the AEC.

Based on the previous research and several best practices, purposes and target of AEC is similar with EU cooperation (ASEANSec, 2009). So the most appropriate form of the harmonization of business competition regulation is centralized (Adiningsih and

Lestari, 2007).

Recently AMSs have committed in the ASEAN Economic Blueprint to introduce nation-wide competition policy and law (CPL) by 2015. This is to ensure a level playing field and incubate a culture of fair business competition for enhanced regional economic performance in the long run. To achieve this commitment, in August 2007, the ASEAN Economic Ministers endorsed the establishment of the AEGC as a regional forum to discuss and cooperate in CPL.

The AEGC first met in 2008 and has agreed to focus on, for the next three to five years, building up competition-related policy capabilities and best practices in AMS; developing the ASEAN Regional Guidelines on Competition Policy; and compiling a Handbook on Competition Policies and Laws in ASEAN for Businesses. Both the Guidelines and the Handbook are scheduled for adoption by AMS in 2010 (ASEANSec, 2009).

Currently, the programs that are developed by AEGC are limited to study, cooperation, and dialog with several partners and international entities. The institutional status of competition sector is under Market Integration Directorate. Based on the previous studies, there has not been a plan yet to create a single entity in ASEAN level that is responsible to implement business competition. There is also no commitment about the single system to handle the business competition problems in ASEAN.

If ASEAN want to choose centralized model (like EU) for harmonizing the business competition regulation, there will be some significant obstacles, which are:

a) Historical back ground. At the first, ASEAN establishment did not aim to carry out economic cooperation and establish the AEC. This condition causes there is no agreement to act business competition regulation. This condition is different with EU. EU member states agreed that they need business competition regulation to create economic cooperation perform well. The EU also arranged the commission that manages the implementation of business competition regulation.

b) Legal and institutional aspects. The cooperation agreement of business competition regulation in EU is the agreement between the state leaders. Consequently, the regulation and commission that arrange competition have the legal power over the state law.

c) Countries readiness. At present, only Indonesia, Singapore, Thailand and Viet Nam have such laws and competition authorities. Lao PDR, Cambodia and Malaysia plan to initiate and introduce national CPL soon. The remaining countries, Brunei Darussalam, Myanmar and Philippines have relied on sector-level policies and regulations to achieve competition policy objectives in various domestic markets for productive factors and final or intermediate goods and services. These conditions make harmonization process more complicated because some countries have a personal reason such as local business protection.

d) Countries' vision. There are different countries' visions about business competition regulation. Singaporean vision of business competition regulation is contestable market. The vision of Thailand is small medium enterprises protection, whereas Indonesian vision is fair competition. This different vision will complicate harmonization, because regulation vision will determine how far competition regulation, include exceptions that must be done.

Based on these constraints, there will be not easy for ASEAN to achieve the same competition regulation level as EU in next 2015. But on the other hand, ASEAN has challenges and opportunities ahead. To better respond to the specific and differentiated needs of ASEAN and AMS, ongoing regional efforts to secure sustained support from donors as well as dedicated investment in time and resources from recipients are necessary. Additionally, given the large number of competition-related technical assistance activities carried out at the national level in AMS, it is important to ensure regional consensus on needs identification and assessment, activity programming and timetable-setting in program implementation.

Other areas of emphasis in the work of AEGC in the medium term include fostering closer and more diversified linkages among the intra and extra-regional authorities and offices in charge of competition; promoting greater public awareness and professional education on competition in ASEAN; and facilitating collaboration and networking with private sector bodies within and outside the region.

To realize the opportunities, based on the best practices of competition policy in other RTAs, towards the AEC 2015, ASEAN need to:

a) Establish a competition policy agreement in the level of state leaders to ensure the legal power and power of commission.

b) Unify the vision of competition policy among member states.

c) Establish the ASEAN level commission of business competition. If the commission cannot be establish cause of some reasons, there have to be establish an entity that has the legal power to control competition policy among member states. This entity has to have the legal power to give sanctions for unfair competition in ASEAN.

6. CONCLUSIONS

The result of this study showed that the competition law in each member of ASEAN was still weak. Until now, not all countries have antitrust law. This study also showed that Singapore, Indonesia and Thailand were the members of ASEAN that applied the antitrust law in most advanced. This study also found that small scale of market, protection to indigenous businessman, unpreparedness of institution, and lack of government political were the cause of the competition law has not been made. The difference of antitrust practice between countries allowed for unfair business and trade.

Based on these results, ASEAN needs to arrange an arrangement of competition regulation among members because harmonization of competition and antitrust regulation will give a benefit for ASEAN economies. Competition regulation should be harmonized through the formal institution like ASEAN Consultative Forum on Competition (ACFC).

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