

ERIA Discussion Paper Series

Competition Policy Challenges of Single Market and Production Base

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September 2013

Abstract: Competition policy is an important beyond-the-border element of the single market and production base envisioned in the ASEAN Economic Community (AEC). The targets for competition policy in the AEC Blueprint have been largely met. Looking beyond 2015, ASEAN needs to consider broadening the policy measures for competition policy to encompass the state's presence and interventions that affect the level playing field within markets. In the longer term, the main challenge for AEC will be related to the depth of integration desired in terms of harmonization of competition policy. Deeper integration may require fundamental changes in ASEAN institutions.

Keywords: Competition Policy, Competition Law, Consumer Protection, ASEAN, Regional Integration, ASEAN Economic Community, AEC Blueprint

JEL Classification: F15, K21, L40, L50

1. Introduction

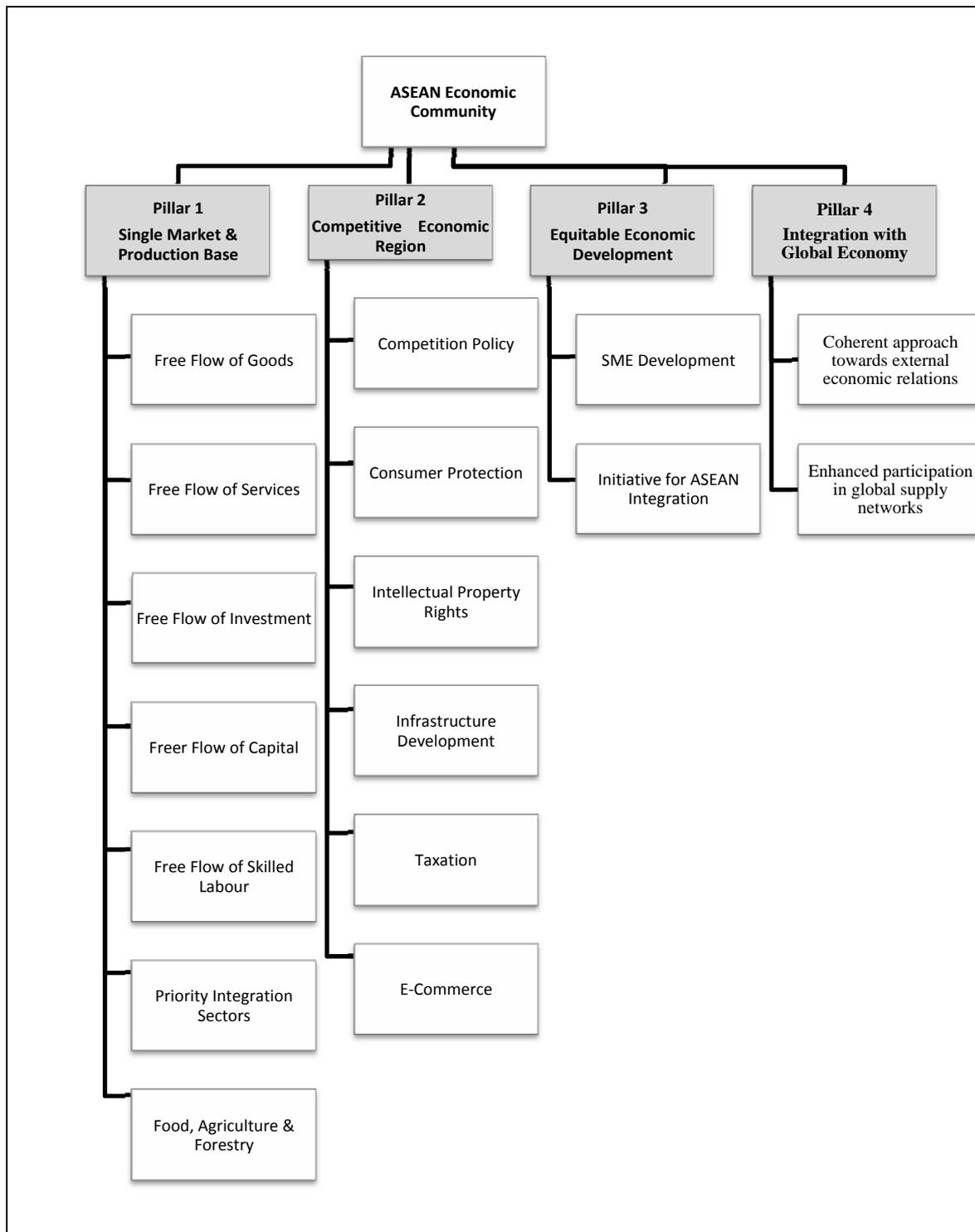
ASEAN is home to some 605 million people. Even though ASEAN's total population is higher than European Union's (501 million), the average per capita income of most ASEAN member states (AMSs) is less than 10 percent of the average income level in the EU. There are also significant inequalities between AMSs in terms of income per capita as well in infrastructure, health and education.¹ These developmental challenges lie at the heart of the ASEAN Economic Community (AEC). First announced in 2003, the AEC represents AMSs' concerted effort to enhance economic growth and development via the establishment of a single market and production base by the end of 2015.² This objective is to be achieved by implementing a number of programs and activities that are grouped into four major pillars, namely: (1) single market and production base, (2) competitive economic region, (3) equitable economic development, and (4) integration into the global economy (see **Figure 1**).

Competition policy has been identified as a key focus area that is crucial for the achievement of a "competitive economic region" (Pillar 2 of the AEC). Competition policy is of fundamental importance to the AEC and is in fact integral to all four pillars of the AEC. The formation of a single market and production base is premised upon the existence of a level-playing field across markets in ASEAN. This will further ensure that firms in AMSs are able to compete globally and be integrated into global production networks. Aside from the job creation and income effects of the AEC, there is a further need to ensure that citizens of AMSs are able to exercise their consumption choices effectively. This can be brought about by effective implementation of competition policy and other policies such as consumer protection.³

What has been achieved in the area of competition policy with regards to the AEC? In terms of the implementation, specific targets and milestones have been set out in the AEC Blueprint with the view to achieving the AEC by the year 2015. Recent assessments by ASEAN (2012) and ERIA (2012) indicate that significant progress has been achieved in competition policy. In the area of competition policy, five of the ten AMSs have thus far implemented comprehensive national competition laws (Lee and Fukunaga, 2013). However, the other targets set have been fully achieved – namely, establishment of a competition policy network, capacity building programs and activities, and regional guideline on competition policy.

The above achievements notwithstanding, the progress towards achieving an ASEAN single market and production base is likely to extend beyond 31 December 2015 – the target date set for the establishment of AEC. This is entirely consistent with the EU's experience with its single market initiative which is always considered to be an on-going process (Pelkmans, 2011a). For ASEAN, this implies a need to identify the various programs and activities that AMSs should consider implementing beyond 2015. This paper provides an analysis of some of the main challenges that ASEAN is likely to encounter in the area of competition policy in its attempt to achieve a single market and production base under the AEC.

Figure 1: Framework of ASEAN Economic Community



Source: AEC Blueprint.

The outline of the paper is as follows. Section 2 will provide a discussion of the notion of single market and production base. The role of competition policy in a single market is clarified in Section 3. The section will also briefly assess the current state of achievement vis-à-vis the measures outlined in the AEC Blueprint. This will then lead to a discussion of the key policies that are required beyond 2015 in Section 4. Section 5 concludes.

2. The Concept of Single Market and Production Base in the AEC

The main objective of the AEC is to achieve economic integration via the formation of a single market and production base. Any assessment of the challenges in establishing a single market and production base clearly requires a clarification of the term “single market and production base”. This is not merely academic exercise because the definition that is adopted will determine the types of policies that are relevant.

2.1. The Concept of Single Market

In most of the literature, the term “single market” is used rather than “single market and production base”. From a conceptual point of view, a “single market” is a market in which “there should be no discrimination according to source in the regional markets for goods, services or factors thus creating a single market with no geographical segmentation” (Lloyd, 2005, p.252). An often-cited test of the existence of a single market is the “law of one price”. From a theoretical point of view, if ASEAN is a fully

integrated region, the law of one price implies the equalization of prices of similar goods and commodities across the AMSs and within each AMS (adjusted for transportation and storage costs). The impact of integration on price convergence can be tested using data on comparable goods (e.g. rice, sugar, fuel) and services. Such data are currently being collected under the project on “Enhancing the ASEAN Community Progress Monitoring System”.⁴

A more common approach to analyzing the progress towards a single market involves an examination of the barriers that prevent the formation of a single market. This is usually discussed in terms of the implementation of policies that would bring about (full) economic integration. These can be further classified into two major categories:⁵

- At-the-border measures – that are aimed at removing restrictions to cross-border movement of goods and services as well as factors inputs (labour and capital). Examples include tariffs and non-tariff barriers (NTBs).
- Beyond-the-border measures (also called as “behind-the-border measures”) – aimed at removing regulatory and other policies within a country’s borders that either (i) directly or indirectly discriminate against good, services and factors sourced from abroad or/and (ii) impose additional costs on foreign suppliers. Examples include taxes, product standards, subsidies, government procurement, and competition policy.

As at-the-border measures are often related to restrictions on trade and investment, they are also sometimes described as ‘negative’ market integration measures as opposed to the ‘positive’ beyond-market measures (Pelkmans, 2011a). Unlike at-the-border measures (which entails removal of restrictions), beyond-the-border measures usually

call for harmonization of laws, regulations and policies across countries. Beyond-the-border measures are particularly important for trade in services especially mode 2 (consumption abroad), mode 3 (commercial presence) and mode 4 (movement of natural persons).⁶

How are these concepts related to the AEC framework? It is an important question as it provides a clarification that is essential especially if a comparison with EU's single market is made.

2.2. Single Market in AEC Declaration & Blueprint

In the context of the AEC, the term “single market and production base” is used instead of “single market”. The term was used when the AEC was announced in the 2003 Declaration of ASEAN Concord II in Bali (henceforth, the Declaration).

Elements of what constitutes a “single market and production base” (Pillar 1) were articulated in the Declaration in terms of the free flow of goods, services and investment, and a “freer” flow of capital:⁷

“... ASEAN economic region in which there is a free flow of goods, services, investment and a freer flow of capital, equitable economic development and reduced poverty and socio-economic disparities”.

In addition, the emphasis on desirable consequences of AEC in the above statement is worth noting i.e. its impact on socio-economic equity and poverty reduction.

These characteristics of the AEC were re-affirmed in the AEC Blueprint – a document which provides the implementation framework and plan for the AEC up to the year 2015. The types of measures to be implemented were organized in terms of the four pillars of the AEC framework, namely:

- (a) a single market and production base
- (b) a highly competitive economic region
- (c) a region of equitable economic development
- (d) a region fully integrated into the global economy

Measures aimed at the creation of a “single market and production base” (Pillar 1) are clearly more related to at-the-border measures within the concept of single market (see earlier discussions).⁸ The measures proposed to achieve “a highly competitive economic region” (Pillar 2) are mostly related to beyond-the-border measures.

Pillar 3 contains measures to address the unequal state of development amongst the AMSs. Whilst it does not deal with at-the-border or beyond-the-border issues *per se*, it deals with measures that are aimed at accelerating the development of less-developed AMSs. This would bring about a more effective and equitable participation in the AEC’s single market and production base.

One important characteristic of the AEC that sets it apart from other regional integration initiatives is its emphasis on the openness of most AMSs’ economies. This is stated in the Declaration in terms of enhancing ASEAN’s participation in the global supply chain:

“The ASEAN Economic Community shall establish ASEAN as a single market and production base, turning the diversity that characterises the region into opportunities for business complementation making the ASEAN *a more dynamic and stronger segment of the global supply chain.*”

This aspect, which is likely to be related to the term “production base”, is re-emphasized more explicitly in the AEC Blueprint (p.6):

“A single market for goods (and services) will also facilitate the development of production networks in the region and enhance ASEAN’s capacity to serve as a global production centre or as a part of the global supply chain.”

The measures to achieve these “production base” aspects of an integrated ASEAN (within ASEAN and with the rest of the world) are contained in the Pillar 4 of the AEC framework (see **Figure 1**).

The above statements in the Declaration and the AEC Blueprint provide a broad description of the single market and production base. A substantial number of measures have been proposed in the AEC Blueprint with the objective of achieving the AEC by 2015. Any discussion of the challenges of AEC beyond 2015 requires an assessment of what has been achieved thus far as well as what is expected to be achieved by 2015. These will feed into an assessment of the depth of economic integration that should be sought by ASEAN beyond 2015 as well the relevant measures that are required to achieve this.

2.3. The Single Market and Production Base in AEC Beyond 2015

How far has ASEAN advanced towards the goal of establishing the AEC by 2015? Two studies have recently been carried out to assess the progress made towards achieving the AEC.

The ASEAN Economic Community Scorecard Report prepared by the ASEAN Secretariat provides a quantitative tally of the number and percentage of measures that have been achieved during Phase 1 (2008-2009) and Phase 2 (2010-2011) of the

implementation plan contained in the AEC Blueprint. Overall, 67.5 percent of the targets under both phases have been implemented by 2011 (ASEAN, 2012).

A more detailed analysis of the progress made was undertaken in a study titled the Mid-Term Review of the Implementation of the AEC Blueprint by ERIA (2012). The report documented the significant progress that have been achieved in cross-border measures, notably in the areas of tariff reductions (CEPT), trade facilitation (NSWs), investment liberalization (AIA and ACIA) and passenger air services liberalization (MAFLPAS).⁹ The achievements in non-tariff measures (NTMs) were more limited and recommendations were made on the greater need to focus on core NTMs. As for beyond-the-border measures, the number of target measures that has been achieved appears to be high in some areas of competition policy. Overall, as at 2012, more substantive progress have been documented in the area of at-the-border measures compared to beyond-the-border measures.

The above achievements aside, has ASEAN economic integration deepened in recent years? Recent studies provide some preliminary indirect evidence suggesting that intra-ASEAN trade and FDI has grown substantially (ASEAN, 2013). Despite this, there is evidence that trade costs continue to vary significantly across AMSs (due to inadequate and uneven infrastructure). Furthermore, there are still barriers to trade (both in goods and services), investment and factor flows. Thus, the overall evidence does suggest that whilst ASEAN has become more integrated – it is still far from a single market. Thus, aside from a continuing emphasis on at-the-border measures (primarily NTMs), beyond-the-border measures are likely to become more important in the period beyond 2015.

3. Competition Policy in the AEC

Competition policy plays an important role in the AEC. The role of competition policy in a single market and production base is examined in this section, both from a conceptual point of view and with specific reference to the AEC. The former provides a broader context within which the treatment of both issues in AEC can be evaluated.

3.1. Role of Competition Policy in a Single Market

The goal of competition policy is “the maintenance of the competitive process or of free competition, or the protection or promotion of effective competition” (World Bank and OECD, 1999). Achieving the goals would lead to the enhancement of economic efficiency and maximization of consumer welfare. Competition policy focuses primarily on the supply side of the market, namely – the behavior of firms (conduct) that are anti-competitive or market structure (seller concentration) that would be conducive to anti-competitive business practices. In recent years, the role of competition policy has expanded beyond the conduct of private firms to include government interventions that may have adverse impact on competition in markets. Furthermore, there could be potential conflicts between the multiple objectives of competition policy such as economic efficiency and promotion of small and medium enterprises (SMEs).

Given the above descriptions of the goals and nature of competition policy, what roles does it play in a single market and production base?

(a) Single Market Issues

In the single market context, competition policy relates primarily to beyond-the-border policies. It addresses business practices that are generally associated with the sale of a good within a national border (domestic market). However, competition policy can also impact trade and investment, e.g. international mergers. For buyers within a single market, such policies affect their interest and welfare irrespective of whether they purchase goods/services within their own country (domestic transactions) or from other country (imports). The latter could take the form of direct import of goods/services or the buyer travelling to another country to purchase the goods/services.

With the formation of a single market such as the AEC, competition policy is likely to become even more important. In countries without competition law, access to markets (e.g. by firms from other AMSs) in these countries could be affected due to the restrictive business practices of dominant domestic firms. Thus, even though trade and investment have been liberalized, large domestic firms could reduce their prices to make the market unattractive for entry, only to increase their prices after such threat of market entry are removed (i.e. limit pricing). Even if market entry is successful, foreign firms (from other AMSs, especially SMEs) could be made to exit the market when a large domestic incumbent firm reduces its prices to force the former out of the market (i.e. predatory pricing). In addition, a large foreign firm (from another AMS) could gain access to the market, dominate it (by predatory pricing or taking over local firms) and abuse their market power. In such cases, the development of SMEs could be curtailed. The welfare of consumers in AMSs could also be adversely affected.

Going beyond a consumer-centric view, the diversity in competition policy across AMSs (in terms of existence and/or coverage) have implications on transactions costs

incurred by AMS firms engaged in cross-border trade and investment within ASEAN. This is particularly true for firms from jurisdictions with weaker competition policy – which are faced with higher compliance costs compared to a domestic firm in a country with competition law. Furthermore, compliance costs with different sets of competition laws will put additional burden on ASEAN and non-ASEAN firms operating in several AMSs. This could compromise ASEAN’s attractiveness as an FDI destination. Some of these arguments are supported by empirical evidence on the synergies arising from the complementarities between trade, investment and competition policies (see Bartok and Sebastien, 2008).

(b) Production Base Issues

As discussed earlier, the AEC is unique for its emphasis on enhancing ASEAN’s integration into the global production network. In this regard, competition policy is relevant due to its emphasis on business-to-business (B2B) transactions. The relationship between buyers (Multinational enterprises, MNEs) and sellers (domestic firms) is essentially a vertical one. There are relatively few studies examining the relationship between competition law and production networks.¹⁰ A key area of focus is obviously the outsourcing agreements between MNEs and domestic firms. Unfair vertical agreements that reduce contracting flexibility may arise when one of the parties (buyer or seller) is dominant in the market. For example, vertical agreements involving restrictions on right to supply to rival firms (refusal to supply) may make the market unattractive for potential rival firms to locate their production operations in such a country. It is quite possible that large MNEs may have the market power to impose such vertical restraints on small domestic SMEs.

The above discussions relate to the behavior or conduct of firms. It is also plausible that policies that affect market structure such as merger controls can also affect the development of production network. Horizontal mergers involving suppliers could increase their market power to the extent of affecting competition in the outsourcing market. This could, hypothetically, affect the buyer firm's decision to establish or maintain a production presence in the country (both of which relates to FDI). An MNE's incentive to undertake FDI may be reduced by an increase in market power in the upstream (input) market in the host country. Likewise, outsourcing across borders could also be affected.

Another possibility is that merger controls could affect the mode of entry chosen by the MNEs, i.e. outsource (buy), joint-venture or greenfield investments (FDI – vertical integration). In this case, merger controls and the degree to which they are enforced could affect the options available, and the relative attractiveness of various options (partly through its impact on transactions costs of compliance with merger control rules). For example, MNEs may prefer to enter a market via acquisition (instead of greenfield or joint venture) in the absence of merger controls.

Overall, competition policy can potentially affect the development of SMEs and production network. However, this is not a well-studied subject which requires further investigation.

(c) SOEs, GLCs and Competitive Neutrality

Competition laws are enforced by enforcement agencies based on legal provisions contained in these laws (as well as laws establishing these agencies). Governments also intervene in the economy in ways that affect competition, producers and consumers.

Before the 1980s, state involvement in the provision of services (especially in the infrastructure sector) through state-owned enterprises (SOEs) was fairly extensive. With the advent of a more liberal approach to economic policy since the 1980s, many of these SOEs were subsequently corporatized and privatized. The extent to which this has been carried out in AMSs varies from country to country (Lee and Fukunaga, 2012). Even after a state enterprise is privatized, it is not uncommon for the government to continue to hold a controlling share in these firms. Even though these firms (more commonly known as government-linked corporations or GLCs) are commercial entities, they may enjoy special privileges due to their close links to the government in terms of access to government projects (procurement), government-issued financial guarantees and state-aid /state subsidy (OECD, 2012).

Today, SOEs and GLCs continue to play a significant role in the economies of AMSs. In a recent survey, it is estimated that the SOEs and GLCs' share of GDP is around 15 percent in Thailand, 17 percent in Malaysia and 48 percent in Singapore.¹¹ In the context of AEC, the competitive neutrality between SOEs/GLCs and other private enterprises can be compromised in markets in AMSs and across AMSs.¹² For example, in a recent study, Menon and Ng (2013) found evidence of private non-GLC investment being adversely affected by the presence of dominant GLCs in Malaysia. Thus, it is possible that the lack of competitive neutrality can work against the achievement of the single market and production base objective in the AEC given absence of a level-playing field between SOEs/GLCs and other firms in these markets.

(d) Regulatory Governance and Competition

The reforms of SOEs via corporatization and privatization are often accompanied by regulatory reforms. These reforms often involve the setting up of new regulatory regimes and institutions for markets that were once “self-regulated” before the privatization exercise. The primary objectives of these reforms are the regulation of market structure and the behavior of the incumbent privatized firm as well as other firms in the market. These state-based regulatory interventions essentially affect competition directly through control over market entry via licensing (often linked to right of access to required resources such as the radio spectrum in mobile telecommunications).

In markets exhibited by natural monopolies, the government could affect competition by the manner in which the right to operate as a monopoly is sold. In this case, the government could either choose a competitive bidding process (competition for market) such as auction or a less competitive procedure such as beauty contest (where firms are selected via a list of criteria). In other markets where competition is possible, multiple operating licenses could be issued (competition in market).

It can be argued that in so far these regulatory interventions have impact on competition, they should be within the purview of competition policy. This is entirely consistent with the broader definition of competition policy adopted by ASEAN in the *Regional Guidelines on Competition Policy* published by the ASEAN Secretariat in 2010:

“Competition policy can be broadly defined as a governmental policy that promotes or maintains the level of competition in markets, and includes governmental measures that directly affect the behaviour of enterprises and the structure of industry and markets”. (ASEAN, 2010, p.3).

From the perspective of competition law, which is only one component of competition policy, government actions are usually excluded from competition law (which covers only commercial practices). However, competition laws in some AMSs countries contain legal provisions for the monitoring of competition-related effects of government regulations by competition agencies, e.g. the KPPU in Indonesia. Such avenues may not necessarily exist in other countries. The importance of monitoring regulations for their effects on competition in a single market cannot be overemphasized. The lack of regulatory neutrality that results in the discrimination of some firms (e.g. GLCs, domestic firms) against others could result in the creation of entry barriers to markets in AMSs and prevent further economic integration. Even in the presence of investment liberalization, such beyond-the-border barriers may discourage cross-border capital flows and movement of establishments (e.g. mode 3 of trade in services).

There are also regulatory practices that affect competition via controls over prices. Examples include price controls on essential goods and tariffs of regulated utilities. Often such regulations have direct impact on competition – sometimes by providing focal points for collusions. The study of the impact of regulations on competition and stakeholders (including consumers) has been institutionalized via good regulatory governance practices such as the use of regulatory impact assessment or RIA (OECD,

2002). Through RIAs, the impact of a proposed regulation can be assessed by taking into account its impact on competition, amongst others.

(e) Anti-dumping and Competition

Another competition-related issue that has received significant attention amongst a number of AMSs is anti-dumping activities. More recently, there have been a number of AMSs which have imposed anti-dumping duties on other AMSs. For example, in February 2013, Malaysia imposed anti-dumping duties on a number of companies from Taiwan, China, Indonesia and South Korea that exported steel wire rods to Malaysia. In the following month, in March 2013, Indonesia imposed anti-dumping duties on the imports of cold rolled coil and sheet from China, Japan, South Korea, Taiwan and Vietnam.

Anti-dumping involves the sale of products in a foreign market at a price below the home country price. Such activities essentially harm domestic producers but can be beneficial to consumers. Note that the goal of competition policy is to protect the competitive process and not the competitors (firms) – the latter being an anti-dumping objective. Thus, there may be a conflict between trade policy (anti-dumping policy which focuses on firms) and competition policy (which focuses on consumer welfare).

Even though anti-dumping is primarily a trade-related issue, it can have a significant long-run impact on domestic market structure and competition via the decimation of domestic producers (much like the impact of predatory pricing). This could be an especially important issue for an AMS if the dumped product is from another AMS. Things get more complicated if exporters from an AMS rely on the supply of intermediate products that are “dumped” from other countries (AMSs and

non-AMSs). In this case, the competitiveness of the affected industry is enhanced by the use of dumped products as inputs.

Anti-dumping is clearly an important issue that needs to be addressed in the context of a single market and production base. Thus far, anti-dumping is currently not mentioned or addressed in the AEC. As argued above, there is a need to address this issue in the future. With regards to the experience of EU, the EU's approach has been to establish the primacy of competition policy over anti-dumping. There is no intra-EU anti-dumping due to the absence of customs at the border.

3.2. Competition Policy in the AEC

(a) Role of Competition Policy in the AEC

Within the AEC framework, competition policy has been placed under a component labelled as “competitive economic region”. The meaning of “competitive economic region” is not explicitly stated in the AEC Blueprint. The areas that have been put under this component of the AEC framework are very diverse. Aside from competition policy (B1), it includes consumer protection (B2), intellectual property rights (B3), infrastructure development (B4), taxation (B5) and e-commerce (B6). Based on the measures recommended and their intended effects, the recommended measures in these areas are likely to provide a more conducive environment for businesses to become more competitive in an increasingly regional integrated market. The positive interaction between regional integration and firm-level competitiveness is an aspect that is recognized in the collective set of proposed measures in the AEC Blueprint.

What is more explicitly stated is the objective of competition policy. In the AEC Blueprint, the objective of competition policy was stated as “to foster a culture of fair competition”. This statement notwithstanding, the implications of a “culture of fair competition” are not clear. For example, is fair competition essential for greater economic integration in ASEAN? If so, is this due to gains in economic efficiency related to “fair competition”? These issues are worth considering when formulating strategies for competition policy in the AEC beyond 2015.

(b) Progress Achieved Towards the AEC

How far has ASEAN progressed towards achieving the competition policy dimensions of the AEC? The AEC Blueprint, declared in 2007, contains specific targets, actions and timelines aimed at achieving AEC 2015 (**Table 1**). One approach to assessing the progress made would be to assess the extent to which these targets and actions have been met up to now. Alternatively, one could provide a broader assessment of what has been achieved with reference to the establishment of a single market and production base as envisioned in the AEC.

Even though competition policy has been defined by ASEAN in a broad sense (as encompassing all government policies that affect competition), the main emphasis of the AEC Blueprint in this area has been on competition law. The proposed actions and priority actions in the AEC Blueprint have focused on the implementation of competition law, establishment of a regional network of competition authorities, capacity building activities and drafting of a regional guideline on competition law (**Table 1**). With the exception of competition law implementation, all other proposed actions in the AEC Blueprint have been achieved well ahead of the 2015 deadline.¹³ In

the case of competition law, five AMSs have implemented comprehensive national competition laws, namely: Indonesia (1999), Thailand (1999), Singapore (2005), Viet Nam (2005) and Malaysia (2010).

The above achievements notwithstanding, are the measures proposed for competition policy in the AEC adequate to achieve a single market and production base? Perhaps, even more important, have these issues received adequate emphasis in the AEC?

Table 1: Competition Policy in the AEC Blueprint

Proposed Actions	Achievement as at 2012
Endeavour to introduce competition policy in all ASEAN Member Countries by 2015	Partial – 5 AMSs have implemented comprehensive national competition laws
Establish a network of authorities or agencies responsible for competition policy to serve as a forum for discussing and coordinating competition policies	Full – The ASEAN Experts Group on Competition (AEGC) was established in 2007
Encourage capacity building programmes/activities for ASEAN Member Countries in developing national competition policy	Full – Between 2008 and 2011, AEGC has organized 14 capacity building activities involving 700 government officials from AMSs
iv. Develop a regional guideline on competition policy by 2010, based on country experiences and international best practices with the view to creating a fair competition environment	Full – The ASEAN Regional Guideline on Competition Policy was published by the ASEAN Secretariat in 2010.
Proposed Priority Actions	
2008-2009: Carrying out a foundation-laying study, review of study findings and recommendations, and convening a regional meeting on study findings and recommendations.	Full – The study on “Best practices in the introduction and implementation of competition policy and law” was completed in June 2008
2010-2015: Drawing up a regional work plan on Competition Policy and Law with special focus: capacity building and the introduction of best practices for introducing competition policy.	Full – AEGC tabled a capacity building roadmap at the Sixth AEGC Meeting in July 2010
2010-2015: Exploring funding opportunities for the implementation of selected elements of the work plan in line with the strategic schedules of AEC building.	Full – AEGC received funding for capacity building from InWent (2009-2010, 2011-2013) and ASEAN-GIZ (2011-2014)

Source: Lee and Fukunaga (2012), ASEAN (2012)

In the case of competition policy, one can point to the narrow focus on competition law.

This can be justified on the grounds that early implementation of competition policy

within such a diverse group of countries is likely to require an easily identifiable target with clear-cut stakeholder ownership. Thus, the focus on competition law is appropriate in this case. The relative “newness” of competition law in ASEAN is a good reason for the establishment of the network of competition authorities (AEGC) which can facilitate knowledge sharing and capacity building.

4. Competition Policy in the AEC Beyond 2015

Given what has been achieved thus far in the area of competition policy in the AEC Blueprint, what should ASEAN aim for beyond 2015? Aside from addressing the remaining gaps in implementation of the AEC Blueprint, recommendations for future plans are determined by several factors such as the collective vision and aspiration of AMSs, progress achieved in at-the-border measures and the required institutions. In terms of timeline, these can be organized into two phases: 2016-2020 (medium term) and 2021-2030 (long term).

4.1. Competition Policy in the AEC Beyond 2015 – Broad Vision

Going beyond 2015, ASEAN should endeavor to consolidate the progress achieved and introduce new beyond-the-border measures that will bring about further regional economic integration and economic benefits to the citizens of ASEAN. It is also important that the AEC should be viewed as a continuing process rather than an end-point. Even the EU continues to emphasize this aspect of economic integration in the region.

Broadly defined, competition policy plays a key role in the creation and deepening of a single market and production base in ASEAN. The focus beyond 2015 should be on deepening competition policy by focusing on implementation as well as enforcement of competition laws. There is a need to broaden the coverage of competition policy measures by including other government policies that impact competition such as regulation and state aid. This should be part of a comprehensive approach to regulatory governance and regulatory neutrality.

In this regard, ASEAN should consider modifying the existing AEC framework by emphasizing the interactions between trade, investment and competition. AMSs will also need to consider new mechanisms and institutions that are likely to be required as efforts are made towards deeper and broader economic integration in ASEAN. The EU experience certainly suggests the importance of new mechanisms and institutions that are required as regional integration deepens (Wallace, *et al.*, 2010).

4.2. Competition Policy in AEC Beyond 2015 – Policy Recommendations

A number of recommendations are presented to enhance the role of competition policy in AEC beyond 2015. These are summarized in **Table 2** and discussed in greater detail below.

(a) Implementation of Competition Law

In the area of competition policy, the current emphasis is on the implementation of competition law, development of competition authority network and capacity building. It is likely that there might be a few remaining ASEAN countries that would not have implemented comprehensive national competition laws by 2015. This remaining gap

should and can be addressed before 2020. However, no strict timeline should be imposed on these countries as great care should be taken to implement competition laws that are comprehensive and can be enforced effectively. It would be meaningless to have a competition law that cannot be enforced for various reasons. In this regard, AMSs should continue to share their experiences in the implementation and enforcement of competition laws. In addition seeking technical support from outside ASEAN, AMSs with mature competition law regimes such as Indonesia and Singapore should consider providing advisory and technical assistance to other AMSs.

(b) Capacity Building

Capacity building is likely to continue to be a key issue in the years beyond 2015. ASEAN has made significant progress in capacity building in the area of competition law. Whilst training courses have contributed much to this process, a more formal and institutionalized approach needs to be considered. This is to ensure sustainability in capacity building and development of human capital in the area of competition policy. In this regards, ASEAN should consider establishing a network of training programs on competition policy in selected AMSs by 2020. This could be organized based on the ASEAN University Network comprising 26 leading public and private universities from the ten AMSs. Beyond 2020, ASEAN should consider establishing a research and training center focusing on competition policy.

(c) Peer Review of Competition Policy

The enforcement performance of competition authorities has been fairly uneven across AMSs with national competition law. There are room for improvements in existing national competition laws. Thus, it is important for AMSs to review their national competition laws with the view of improving them via further reforms. To achieve this, ASEAN (possibly through AEGC) should consider undertaking peer reviews of country performance sequentially, starting from countries with more mature competition law regimes. OECD has been conducting in-depth peer reviews of national competition laws and policies in OECD as well as non-OECD countries since 1998. At present, Indonesia is the only ASEAN country that has undergone such a review. Thus, ASEAN undertake peer reviews of competition law and policy in AMSs. A suggested schedule in Phase 1 could be as follows (in accordance with the year of introduction of competition law):

- Indonesia (2016)
- Thailand (2017)
- Singapore (2018)
- Viet Nam (2019)
- Malaysia (2020)

This should be continued with a five-year cycle for each country. As more AMSs implement competition laws, additional countries can be added to the peer review schedule.

(d) Enforcement Cooperative Arrangements

Cross-border intra-ASEAN competition cases are expected to become more important beyond 2015. There is a need to further strengthen arrangements for enforcement cooperation including general information exchange, case-handling guidelines, and joint investigations. A study on how this can be achieved should be conducted by the AEGC before 2018. The study should include the formulation of a road map for implementation before 2020 and beyond. It should also identify and discuss the required institutions and mode of cooperation including legal requirements (e.g. relating to exchange of case information).

(e) Competitive Neutrality Review and Implementation

A level playing field between SOEs/GLCs and other private companies is an important aspect of AEC that requires further attention. This is particularly important to ensure fair beyond-the-border market access especially in the services sector (OECD 2012). As an initial step towards achieving greater competitive neutrality within and across AMSs, a study should be conducted by 2017. The study should cover issues related to government procurement, government-issued financial guarantees and state-aid /state subsidy. As a follow-up to the proposed study, ASEAN should issue a general guideline on competitive neutrality by 2019. Beyond 2020, the focus should be on the formulation and implementation of a plan to achieve greater competitive neutrality in ASEAN. The initial focus of the plan should be on ensuring and promoting greater transparency on government policies affecting competitive neutrality (such as state aid) amongst AMSs.¹⁴ The plan should also address the types of exemptions (with sunset

clauses) that might be sought by AMSs to achieve socio-economic and developmental objectives.

(f) Regulatory Governance

In the context of a broader conception of competition policy, there is a need to consider the impact of government regulations on competition. These include regulations related to entry restrictions and price controls that can potentially affect competition in markets. It is recommended that ASEAN consider carrying out a review of regulatory governance in AMSs (with some emphasis on regulations that affect competition) to be carried out by 2018. The emphasis of this initiative on regulatory governance should be on an assessment of key aspects of the regulatory structure in AMSs in terms of autonomy, decision making, decision tools and accountability.¹⁵ A guideline on good regulatory governance practice and an implementation roadmap should be drafted and published by 2020.¹⁶ Operationalizing such guidelines in AMSs should be considered beyond 2020.

(g) Anti-dumping

Of late, there have been a number of intra ASEAN anti-dumping cases. Anti-dumping, which has an impact on competition, needs to be incorporated within a broader policy framework on competition. The potential conflict between competition policy and anti-dumping should be addressed in the framework. It is recommended that a review of anti-dumping cases and policies in AMSs be undertaken by 2018. ASEAN

should then develop a guideline on anti-dumping by 2020. The implementation of this guideline should be carried out beyond 2020.

(h) Harmonization

A broader issue that needs to be address at a later stage of economic integration is the issue of harmonization. One benefit of harmonization could be its impact on regulatory independence via sheltering from vested interests (which prevents regulatory capture). The downside of harmonization is the difficulty encountered arising from diverse national preferences and the associated non-economic goals. This should be considered to be a beyond 2020 issue due to the significant changes in ASEAN's institutions (including possibly the ASEAN Charter) that are likely to be required for such changes to be implemented. However, a study to review this need is recommended by 2020.

Table 2: Competition Policy Measures Beyond 2015

Objective	2016-2020	2021-2030
Implementation of competition law	Ensure that comprehensive national competition laws are implemented in all AMSs by 2020	
Capacity building	Establish a network of training programs in competition policy	Establish a ASEAN research and training centre on competition policy
Peer review of competition law enforcement	Conduct peer reviews of national competition laws with a five-year cycle	Conduct peer reviews of national competition laws with a five-year cycle
Enforcement cooperative arrangements	<ul style="list-style-type: none"> - Study on enforcement cooperative arrangements including roadmap by 2016 - Commence implementation of roadmap before 2020 	Implementation of enforcement cooperative arrangements
Competitive neutrality	<ul style="list-style-type: none"> - Undertake study on competitive neutrality in AMSs by 2017 - Develop guidelines on competitive neutrality for ASEAN by 2019 	Develop and implement plans for greater competitive neutrality in ASEAN
Regulatory governance	<ul style="list-style-type: none"> - Undertake study on regulatory governance in AMSs by 2018 - Develop guidelines on good regulatory governance practice by 2020 	Develop and implement plans for greater regulatory governance in ASEAN
Anti-dumping	<ul style="list-style-type: none"> - Undertake study on anti-dumping by 2018 - Develop guidelines on antidumping for ASEAN by 2020 	Develop and implement plans for anti-dumping in ASEAN
Harmonization	Undertake comprehensive study on harmonization of competition policy in ASEAN by 2018	Harmonization of competition policy

5. Conclusions

ASEAN is collectively a large diverse market. The ASEAN Economic Community is an ambitious initiative to further integrate the economies of AMSs. The creation of a single market and production base is an on-going project that will extend beyond the establishment of AEC in 2015. Competition policy is a crucial beyond-the-border element of the envisioned single market and production base.

Thus far, most of the targets for competition policy contained in the AEC Blueprint have been achieved well ahead of 2015. This notwithstanding, there is much to do beyond 2015. Aside from ensuring that all AMSs implement national competition laws, ASEAN needs to broaden the competition policy dimensions within AEC to encompass other government actions that impact competition. These include the issues of competitive neutrality, regulatory governance and anti-dumping. Peer-review activities and enforcement cooperation should also be developed. The harmonization of competition policy is an important issue but is likely to be a long-term issue beyond 2020.

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Appendix 1: Consumer Protection in the AEC

Consumer Protection and Competition Policy

Consumer protection is another important element in the AEC. It shares a similar goal with competition policy, namely maximization of consumer welfare (see **Table A1**). Consumer protection focuses on business practices that impair the ability of consumers from making choices that are deemed to be optimal. These include false or misleading advertisements. Consumer protection recognizes that consumers may have limited cognitive ability (bounded rationality) to understand complex contracts that may lead to sub-optimal choices. The safety of products is also an issue covered by consumer protection. Both competition policy and consumer protection are complementary policies as firms in a competitive market are interested to ensure that consumers are able to choose effectively whilst the consumers' ability to exercise their choices effectively will provide market discipline to firms (OECD, 2010).

Table A1: Comparisons between Competition Policy and Consumer Protection

	Competition Policy	Consumer Protection
Objective	Enhancement of consumer welfare Process of competition	Enhancement of consumer welfare
Market approach	Supply-side (Seller)	Demand-side (Buyer)
Transactions	Business to consumers (B2C) Business to business (B2B)	Business to consumers (B2C) Consumers to consumers (C2C)
Practices prohibited	Anti-competitive agreements, Bid rigging, Abuse of dominance, Anti-competitive mergers	False and misleading advertisements, Contracts terms that confuse consumers, unsafe products
Laws	Competition law	Consumer protection / fair trade practices law
Source of market failures	Market power (Concentration of sellers)	Fraud, Deception, Asymmetric information, Bounded rationality (Consumers)
Enforcement agency	Competition agency Sector regulators	Consumer agency, Ministry Sector regulators, Consumer tribunal
Enforcement impact	Broad – types of practices by entire markets	Narrow – specific practice by single firm

Source: Author's compilation based partly on Lee (2011) and OECD (2010).

Consumer Protection and Economic Integration

In the case of consumer protection, with greater economic integration (induced by reduction in trade and non-trade barriers), consumers from an AMS will have greater opportunities to purchase products/services from other AMSs. However, these consumers may be misled, cheated or even harmed (health-wise) when buying products from or in an AMS without a strong consumer protection regime. The dissimilarities in language and unfamiliarity with local laws (e.g. contracts), for example, may further exacerbate this problem. Such problems may negatively affect the overall perceptions of consumers towards products/services from other AMSs – thus making de facto direct market access by firms from other AMSs more difficult to achieve.

Consumer Protection in the AEC Blueprint

Similar to the case of competition policy, the proposed actions for consumer protection in the AEC Blueprint have been achieved (**Table A2**). In the case of consumer protection, one area of focus has been on the formation of regional cooperation networks of competition authorities. The ASEAN Committee on Consumer Protection (ACCP), established in 2007, has spearheaded the achievement of other targets in the AEC Blueprint such as regional information sharing and exchange activities as well as capacity building.

Table A2: Consumer Protection in the AEC Blueprint

Proposed Actions	Achievement as at 2012
Strengthen consumer protection in ASEAN through the establishment of the ASEAN Coordinating Committee on Consumer Protection (ACCCP).	Full - ASEAN Committee on Consumer Protection (ACCP) was established in 2007
Establish a network of consumer protection agencies to facilitate information sharing and exchange	Full – Three working groups have been formed to focus on (i) notification and information exchange mechanism (ii) cross border consumer redress mechanism, and (iii) strategic roadmap for capacity building by 2010
Organise regional training courses for consumer protection officials and consumer leaders in preparation for an integrated ASEAN market	Full – two workshops were held in 2011 and 2012 with assistance from ACCC (Australia), FTC (US) and KCA (South Korea).

Source: ASEAN (2012), ACCP Website.

Aside from the AEC Blueprint targets, the ASEAN Australia Development Cooperation Program (AADCP) has identified a number of action targets that are considerably more ambitious than those in the AEC Blueprint (see **Table A3**). These are targets scheduled to be implemented between 2013 and 2017. A two-tier track has been applied to the implementation of some of the actions plan, presumably because some AMSs are more prepared than others to implement the proposed actions.

Given the similarity of the proposed measures for both competition policy and consumer protection, how does the latter compare with the former? A key difference is the absence of a target for the implementation of consumer protection laws in AMSs. This might be relevant to ASEAN as only seven AMSs have principal consumer protection acts, namely, Indonesia, Lao PDR, Malaysia, Philippines, Singapore, Thailand and Viet Nam. In addition, whilst there are no explicit targets for the intensity of capacity building activities, more such activities for competition policy/law appeared to have been organized compared to for consumer protection.

There is a need to balance the deepening of competition policy enforcement with a greater emphasis on consumer protection. The emphasis should be on ensuring that all AMSs have adequate and properly functioning consumer protection laws.

Table A3: AADCP's Target Actions for Consumer Protection, 2013-2017

Time Frame	Consumer Protection Areas	Action Targets
2013 All AMSs	ASEAN Guidelines on Consumer Protection	Develop regional framework on consumer protection in AMSs
2015 IMPSTV 2018 BCLMy	Regional Consumer Policy	Create an ASEAN regional mechanism for harmonizing consumer policy in AMS
2014 IM 2018 Other AMSs	National Consumer Policy	Develop appropriate national policies within the framework of the ASEAN Regional Consumer Policy to lay the foundation for a comprehensive consumer protection regime
2013 All AMSs	Consumer Master Plans	Create a framework that provides the vision, mission, analysis of the national consumer situation and plans for enhancing consumer protection at the national level
2014 ILMPSTV 2015 BCMy	Principal Consumer Protection Law	Create appropriate legal measures to develop comprehensive consumer protection legislation including cross-border regulatory environment
2015 ILMPSTV 2017 BCMy	Enforcement – Best Practice Enforcement Blueprint	Raise the level of compliance of consumer protection laws and regulations while establishing inter-agency coordination
2015 ILMPSTV 2017 BCMy	Redress Mechanisms – legal aid fund	Build an affordable, responsive and speedy system to create a dignified, consumer-friendly environment especially for cross-border transactions
2013 IMPSTV 2015 BCLMy	Advocacy – improved laws and practices	Support consumer organisations and other stakeholders to bring a national profile to overall improvement in consumer protection
2013 IMPSTV 2015 BCLMy	Research and Development	Create various institutional platforms in AMSs to undertake research and policy development including educational programmes to strengthen consumer protection
2013 IMPSTV 2015 BCLMy	Consumer Credit and Banking	AMSs to promote financial inclusion and financial literacy while reducing risk of consumer over-indebtedness
2013 IMPSTV 2015 BCLMy	E-Commerce	Develop an ASEAN framework on consumer protection in e-commerce in relation cross-border redress

Notes: B: Brunei Darussalam; C: Cambodia; I: Indonesia; L: Lao PDR; M: Malaysia; My: The Republic of the Union of Myanmar; P: The Philippines; T: Thailand; V: Vietnam

Source: AADCP (n.d.)

Consumer Protection in AEC Beyond 2015: Policy Recommendations

The significant diversity within the ASEAN population requires close attention to consumer protection in AEC. Recommendations to enhance this aspect of the AEC are summarized in **Table A4** and discussed below:

(a) Implementation of Consumer Protection Law

Given that not all AMSs would have enacted consumer protection laws by 2015, a key priority area should be implementation of consumer protection laws by 2020. To facilitate this, ASEAN should consider developing a guideline on best practices in consumer protection law with some emphasis on cross-border issues. This should be carried out by 2017. This will not only meet the needs of consumers but ensure its consistency with ASEAN's plans for regional integration.

(b) Harmonization of Legal Framework for Consumer Protection

A key element in consumer protection in the AEC will be the harmonization of the consumer protection laws. It is recommended that a study on how this is to be accomplished be conducted and completed by 2017. This will likely draw upon AADPC's proposed studies on: (i) regional framework on consumer protection (scheduled to be completed by 2013) and (ii) national consumer master plan studies (also, by 2013).

(c) Cross-Border Redress Mechanisms and Institutions

Another critical issue to consumer protection within AEC will be the existence of redress mechanisms for cross-border transactions. A study on how this is to be implemented should be carried out immediately after the study on legal framework for harmonization. This should be completed by 2019. The implementation of such mechanisms and the required institutions should take place after 2020.

(d) Consumer Advocacy

Consumer advocacy is an important aspect of consumer protection. Aside from government agencies, a variety of NGOs – national, regional and international – actively participate in advocacy work in this area. There is no need to greater coordination of such activities. What is needed to enhance their roles is a comprehensive study on how to support such activities especially at the regional level. It is recommended such a study is conducted by 2017 to be followed by the formulation of an ASEAN plan for enhancing such activities in the region.

Overall, for consumer protection, the focus should also be on ensuring that consumer protection laws are implemented in all AMSs. Cross-border redress issues need to be address as well. Early work on the harmonization of the legal framework for consumer protection should begin by 2017 but actual implementation is likely to take place beyond 2020. Emphasis should also be put on enhancing consumer advocacy activities especially at the regional level.

Table A4: Consumer Protection Measures Beyond 2015

Objective	2016-2020	2021-2030
Implementation of consumer protection law	<ul style="list-style-type: none"> - Ensure that consumer laws are implemented in all AMSs by 2020 - Develop guideline on best practices in consumer protection law by 2017 	
Harmonization of legal framework for consumer protection	Develop guidelines on harmonization of legal framework in ASEAN by 2017	Implement harmonization of legal framework for consumer protection
Cross-border redress	Developed plan for cross-border redress by 2019	Implement cross-border redress mechanisms and institutions
Consumer advocacy	Conduct study on consumer advocacy needs in ASEAN by 2017	

ENDNOTES

¹ See Alavi and Ramadan (2008), Menon (2012) and OECD (2013).

² In a recent interview, the current ASEAN Secretary-General, Le Luong Minh, opined that the establishment of the AEC by 2015 is expected to increase the per capita income of the ASEAN-5 nations (Indonesia, Malaysia, Thailand, the Philippines and Singapore) by 17 to 26 percent. See “AEC to lift per capita income in Asean-5 by 26pc”, Borneo Bulletin, 19 February 2013.

³ See Appendix 1 for discussions on consumer protection.

⁴ This is a project under the ASEAN-Australia Development Cooperation Program Phase II (AACDP). A description is available at <http://www.aadcp2.org/home/project.php?id=6>.

⁵ Lloyd (2005) proposed three categories of measures, border, beyond-border and across-border but noted that across-border is an extension of beyond-border.

⁶ In the case of mode 2, for example, cross-country differences in consumer protection could discourage tourists from purchasing services in the country they are visiting.

⁷ In the AEC Blueprint, “free flow of skilled labour” was added to the list of the core elements of the AEC.

⁸ However, some of the policy measures under Pillar 1 touch upon beyond border issues. Examples include: (i) standard and conformance - technically a part of NTM but requires certain level of

harmonization of domestic regulation, and (ii) MRA of professional qualification - requiring harmonization of domestic regulation.

⁹ Abbreviations: CEPT – common effective preferential tariff, NSW – national single window, AIA – ASEAN Investment Area, ACIA - ASEAN Comprehensive Investment Agreement, and MAFLPAS - Multilateral Agreement for the Full Liberalization of Passenger Air Services.

¹⁰ An exception is the theoretical work of Beverelli and Mahlstein (2011). See also the earlier work by Horn and Levinsohn (2001).

¹¹ “Role of Public Sector in Key Asian Economies”, The EDGE, 24 September 2012.

¹² The concept of competitive neutrality focuses the maintenance of level playing field between SOEs, GLCs and other private enterprises. It also takes into account public service obligations that SOEs have to perform. For detailed discussions, see Capobianco and Christiansen (2011) and OECD (2012).

¹³ For a more detailed discussion, see Lee and Fukunaga (2013).

¹⁴ This draws from EU’s experience in which the initial focus was on transparency rather than the abolition of state aid (Wallace, *et al.*, 2010).

¹⁵ For example, see Correa, *et al.* (2006) which provides an assessment of regulatory governance in the Brazilian infrastructure industries.

¹⁶ This is similar in spirit to the ASEAN Good Regulatory Practice that has been implemented since 2003 for harmonization of technical regulation.

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