VISION FOR AN ASEAN COMPETITION REGIME

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This paper will be discussing on challenges and opportunities of introducing competition law in the ASEAN region; the state of play of competition regimes in ASEAN; the experiences of Vietnam’s introduction of competition law: lessons learned; what is the ASEAN regional perspective on competition law and policy?

I. CURRENT SITUATION OF PLAYING THE COMPETITION REGIMES IN ASEAN

1. Overview of National CPL in ASEAN

The creation of the World Trade Organisation (WTO) in 1995 extended the liberalisation process to more than 20 new member countries and provided for a multilateral agreement settlement mechanism to arrest the growth in plurilateral (selective and differentiated) agreements under previous GATT rounds. As a direct result of the relaxing of tariff and non-tariff barriers to international trade and investment, product and capital markets are now more global and integrated – i.e. transcending national and regional boundaries – than ever before.

In one sense the reforms that have liberalised product and capital markets work as a substitute for national CPL. They do this by reducing or removing protections that may previously have allowed local firms to sustain anticompetitive practices in the domestic market. For example:

- the globalisation of product and capital markets has made it less likely that a firm with a dominant position in the local market could profit from misuse of market power (e.g. by raising prices above the competitive level) because it would know that it faces the prospect of losing market share to an actual or potential foreign-owned or foreign-based entrant. Indeed, just the threat of entry by a foreign firm can discipline the price and output decisions of local firms with large local market share; and

- with increased integration of national markets, there is also a higher probability that local firms that enter into anticompetitive agreements (including cartels between local firms) will lose market share to actual or potential foreign entrants who do not engage in such practices.

However, as is now well documented, these reforms are not a complete substitute for national CPL because they may prompt an increase in anticompetitive activity. Consequently, there is widespread recognition of the importance of well-designed national CPL in securing and enhancing the economic and social benefits that are potentially conferred by trade liberalisation and increased FDI (e.g. lower prices and greater product variety for consumers and potentially more internationally competitive industries due to lower input costs), while at the same time managing potential risks (e.g. foreclosure of opportunities for competitive local businesses by opportunistic multinational firms and, conversely, anticompetitive exclusion of efficient foreign competitors by historically dominant local firms).

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Regionally, all non-ASEAN East Asia Summit (EAS) countries have established national CPL. However, only 4 out of 10 AMCs — namely Indonesia, Singapore, Thailand and Viet Nam — have established domestic competition law and competition regulatory bodies. A further 3 AMCs have signalled their intention to soon establish national CPL — namely Lao PDR, Cambodia and Malaysia. The other AMCs – namely, Brunei, Myanmar and the Philippines – tend to rely on sector-level policies and regulations to achieve competition policy objectives in various domestic markets for end-products and services and for factor inputs.

2. Overview of Cooperative CPL in ASEAN

Cooperation on CPL via RTAs

In view of the difficulties in establishing a large-scale cooperative approach to CPL, many countries are instead seeking to limit the potential for anticompetitive practices to undermine the benefits of trade liberalisation by directly incorporating competition provision into bilateral and regional trade agreements (RTAs). For example, all recent bilateral free trade agreements concluded by the European Union have included provisions on competition issues, albeit to different degrees. Developed countries have tended to be the main demandeurs of such provisions (consistent with the pattern in the WTO). Developing countries have nonetheless viewed competition issues as relevant to RTAs, both in negotiations with developed countries (so-called North-South agreements) and with other developing countries (so-called South-South agreements).

Developing country motivations for including competition provisions in RTAs include:

- increasing concern about cross-border anticompetitive practices;
- as a ‘testing ground’ for negotiating complex issues prior to their negotiation in a multilateral context;
- as an anchor for motivating and reinforcing domestic policy reforms; and
- as part of a deeper integration effort to establish a region-wide common market.

In general, RTAs involving the more developed ASEAN members (e.g. Singapore, Thailand and Malaysia) are more likely to deal with competition issues. The majority of competition chapters in RTAs negotiated by ASEAN countries nonetheless appear to be at the ‘shallow’ end of the spectrum of international cooperation, with the exception of some of the more comprehensive bilateral agreements involving Singapore.

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3 See InBrief, No. 6E – July 2004.
4 According to one study, approximately 100 agreements out of more than 300 RTAs contain competition provisions, 56 including developing countries. Alvarez, A. 2006, ‘Competition provisions in RTAs’, presented at the Developing Countries and the Challenge of Regionalism Assessing the Options conference, University of Sussex, 28-30 September 2006.
A review of 7 agreements to which Singapore is a party suggests the following broad features:

- all contain general language that parties will adopt and apply competition measures;
- all contain general cooperation provisions with a focus on exchange of information and consultations concerning enforcement of competition law and policy;
- the majority do not contain specific language on anticompetitive agreements and practices;
- the majority do contain provisions on abuse of market dominance or monopolisation, although this may relate only to a specific area;\(^6\)
- the majority do not contain provisions on anticompetitive mergers;
- the majority contain at least general provisions concerning non-discrimination, due process and transparency; and
- the majority contain some form of exclusion of competition provisions from dispute settlement procedures.\(^7\)

Competition provisions also appear in sectoral chapters of RTAs. For example, the US-Singapore free trade agreement deals extensively with competition issues in the treatment of telecommunications services.

The general nature of many competition provisions in RTAs suggests they largely supplement (rather than duplicate) national CPL law where it exists. In some cases, for example, agreements provide that each party shall take measures which it considers appropriate against anticompetitive activities without setting out the specific provisions the domestic law should contain (e.g. the New Zealand-Singapore free trade agreement and the Japan-Singapore Economic Partnership Agreement).

Moreover, consultation mechanisms concerning the application of measures (such as procedures for notification, exchange of information and enforcement of competition rules) should be read in conjunction with other cooperative anti-trust arrangements. There is evidence to suggest that informal cooperation between competition authorities can be of greater significance in practice than the textual wording of a trade agreement.\(^8\) The exclusion of competition provisions from dispute settlement procedures further highlights the sensitivities that can surround the use of such agreements as mechanisms of enforcement.

As a rule, competition provisions in South-South agreements involving ASEAN countries tend to be even more general and less binding, possibly reflecting lower interest in the issue from a development perspective and lower levels of institutional capacity. In this context, competition provisions may be seen as an interim step

\(^6\) In the case of the Singapore-US free trade agreement, for example, only with regard to state monopolies and state enterprises, whereas in the case of the Japan-Singapore Economic Partnership Agreement, only with regard to the services chapter.

\(^7\) Based on a taxonomy of competition-related provisions in RTAs between Singapore and, respectively, Australia, EFTA, Japan, Korea, New Zealand and the United States, as well as the Trans-Pacific Strategic Economic Partnership (Singapore, Brunei, Chile and New Zealand). See Solana, O and A. Sennekamp (2006) ‘Competition provisions in regional trade agreements’, OECD Trade Policy Working Paper No. 31, Joint Group on Trade and Competition, OECD, Table 1.

towards developing a national CPL arrangement given the time and complexity involved in establishing an effective competition regime in a small developing country.

An important caveat surrounds the difficulty in evaluating the implementation and enforcement record of competition-related provisions in RTAs. The lack of information on international cooperation suggests many competition provisions in RTAs are still to be tested.\(^9\)

Regional cooperation among South East Asian countries on competition-related matters has also been facilitated by the ASEAN Consultative Forum for Competition (ACFC), a non-official body founded in 2004. The ACFC has served as an informal network for competition agencies or other relevant bodies to chart and facilitate collaboration on CPL and CRB-related work of mutual interest. It has also provided useful opportunities for ASEAN and non-ASEAN countries and international organisations to exchange policy experiences and institutional norms and practices on CPL and CRB.

With the accelerated establishment of the ASEAN Economic Community (AEC) by 2015, the Senior Economic Officials Meetings (SEOM) of ASEAN recently suggested that it is necessary for economies in the region to look into competition issues and that, where appropriate, AMCs should “seek technical assistance from ASEAN Dialogue Partners for capacity building and best practices for introducing competition policy”.\(^{10}\)

In response to this suggestion, and to give a formal status and legal standing for regional collaboration in CPL, among other reasons, the ACFC recently recommended the establishment of the ASEAN Experts Group on Competition (AEGC). This recommendation, made at the 3rd ACFC Annual Meeting in Ha Noi, Viet Nam on 14 August, was endorsed by the ASEAN Economic Ministers (AEM) at the 39th AEM Meeting held in Makati City, the Philippines, on 24 August 2007.

3. Challenges of introducing competition law in the ASEAN

Key challenges to the establishment and implementation of national CPL in EAS countries that are yet to establish national CPL include:

- Government unconvinced that establishment of national CPL will confer net benefits or accepts that establishment of national CPL will confer net benefits, but considers that other government policies have higher priority or that competition policy objectives can be achieved without national CPL (e.g. through industry or sectoral policies);
- Lack of technical expertise and institutional capacity to design, implement or enforce an effective national CPL regime; and/or
- Low receptivity among local business community and other interest groups.

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\(^{10}\) para. 21, SEOM 1/38 Report, 1 February 2007 as cited in REPSF II Project No. 07/008 RFT at page7.
Jurisdictions that have already established national CPL also face a number of challenges. Key challenges to the implementation of an effective national CPL regime in EAS countries that have already established national CPL include:

- Poor specification of the objectives of national CPL;
- Legislation vaguely specified, leaving too much discretion to regulator and a lack of transparency;
- Lack of clarifying supplementary documents, including implementing regulations and guidelines;
- Difficulties balancing national versus sectoral interests – for example, due to overlap in jurisdiction of national and industry/sectoral regulator or conflict between national CPL objectives and industry/sectoral level objectives;
- Low public awareness and support;
- Low standard of information provided to regulator by firms and low standards of self-assessment of competition issues;
- Perception of lack of independence or commitment of regulatory agency;
- Difficulty experienced by regulatory authority attracting and retaining relevant skills and experience;
- Unreliable market data and insufficient information about production costs, market shares, and consumer behaviour;
- Perception that private firms are being held to a higher standard than government businesses; and/or
- Legal system not sufficiently experienced to handle competition cases.

II. EXPERIENCES OF VIETNAM’S INTRODUCTION OF COMPETITION LAW

1. Overview on competition regime in Vietnam

Since the launch of the Doi Moi Policy in 1986, Vietnam has been pursuing the introduction of a market-oriented economy. In the 1990s, these efforts shifted to full-scale reforms, such as reforming state-run enterprises, accepting private enterprises, and easing government regulations, which led the market to the centre of economic activities. At the same time, numerous cases of abuse are taking place increasingly whole Commercial Law and other laws could not protect competition effectively. The other reason is that the integration of Vietnam economy into the world economy (especially for the requirements imposed by the negotiators of during WTO assessment.

This drew the government’s attention to the importance of ensuring fairness, and in the early of 2000s, the government began emphasising the need to establish laws to regulate competition.

In an effort to create a favorable environment that facilitates economic development, on the 3rd of December, 2004, at session 6th, the National Assembly in legislature XI, passed the Competition Law No. 27/2004/QH11 and the law took effect on the 1st of July, 2005.

With 123 Articles incorporated in 6 chapters, the Competition Law aims at:

- Control competition-restricting acts or acts that would likely result in competition restriction, particularly in the context of market opening-up and global economic integration;
- Protect from unfair competition actions the legitimate rights of enterprises to do business, and;
- To create and sustain a fair competitive environment.

The Law applies to all business and professional and trade associations in Viet Nam; FDI enterprises registered in Viet Nam; public utilities and state monopoly enterprises; and state administrative bodies. It has superseding power over other enacted laws regarding restrictive business practices and unfair trade practices.

The Law prohibits five broad types of anticompetitive practices:
- agreements that substantially restrict competition;
- abuse of dominant or monopoly position;
- concentration of economic power that restricts competition;
- acts of unfair competition; and
- anti-competitive behavior or decisions by officials or State administrative agencies, taking advantage of their authority.

There is specific competition legislation for the electricity industry, telecommunications, pharmaceutics, banking and credit institutions. These sectors are also controlled by sector regulations. However, the general competition law applies to all industries and sectors, including those with industry-specific competition legislation, and both the public and private sectors. The legislation is non-discriminatory.

Two State authorities have been established for the law implementation—the VCAD (with investigative powers) belonging to Ministry of Industry and Trade of Vietnam, and the Vietnam Competition Council (VCC) with adjudicative powers.

2. The challenge on introduction of CP regime in Vietnam, the efforts to overcome the challenges

2.1 Challenges

During period of drafting the law, we were facing with difficulties like other developing countries such as competition administration is fairly new to Vietnam, the country was lack of expertise and academics in competition issues, the public waraness is inadequately understanding about competition and thus there was a high expectation from the public.

In the enforcement phase (Being come in to effect on 1st July 2005), it will be a continuing challenge to educate the sectoral regulators to consider the impact of their policies and activities on competition in the market, and to prioritize the interest of the overall economy rather than the interests of a particular sector. While VCAD has reached an understanding with some sectoral regulators that have concurrent powers to oversee competition matters in their sectors, the coordination of the enforcement actions of VCAD and the other sectoral regulators remains one of the key challenges in moving forward. Some of the majors difficulties are:
- Coordination with other government agencies, sectoral regulators and other stakeholders are not easy tasks
- Lack of sufficient statistical data for market research and analysis
Limited resources: Over workload; Insufficient human resource in terms of both quantity and quality; Tight financial resource; Lack of experience; Poor working facility

Our efforts to overcome the difficulties:

During the drafting stage

+ References from other countries' competition laws: study tour to experienced countries, research practical enforcement of their law, hold public seminars to hear comments on drafts form lawyers, academics, businesses and public

+ Looked for international assistances (from APEC economies): A project of “Canadian technical assistance in drafting the Vietnam Competition Law” in 2002 (PIAP Project), assistance from Korea Fair Trade Commission and Taiwan Fair Trade Commission, comments of international experts on draft of competition law

+ Formed CRBs: Vietnam competition Administration Department (VCAD) established by Decree No. 06/2006/ND-CP with 70 staff to date; The Vietnam Competition Council (VCC) established by Decree No. 05/2006/ND-CP with 11 commissioners appointed by the PM with a Secretariat Board (headed by a Director).

+ The VCAD did activities of capacity building: recruitment; 6 times in 4 years (from 16 to 70 officials), held training and workshop (10 in 2006 and 12 in 2007, 14 in 2008) and sent its officials to overseas for training workshop

+ Several advocacy activities taken (seminars, press Conferences and publishing booklets and brochures) aim at raising awareness of business community and the public, and in truduction of Important role in the enforcement of the Law

+ We did coordination with other agencies such as meeting with sectoral agencies, signing MOUs to cooperate in handling of competition cases and coordinate with them in policy making (both sectoral policies and competition policies)

+ We did research and publishing to provide fundamental database on competition, contribution to an effective control mechanism of competition acts. The typical researches are researches of market structure in milk, beer, beverage, pharmaceutical and insurance… and other in ther service industry such as logistic and construction services

+ Several typical publication were launched such as “Overview of Vietnam Competition Law; Cases and Materials of Taiwan Fair Trade (Volume 5 and Volume 6); Guidelines for the Canada Competition Act; Q&As on competition and Q&As on consumer protection”

+ Relied on the International cooperation and integration:

  - Chair ASEAN Consultative Forum for Competition (ACFC)
  - Actively participate in East Asia Conference on Competition Law and Policy, ICN
  - Host international conferences on competition in Vietnam
  - To be Chair of AEGC in 2010

With a legal system on competition which is considered to be relatively sufficient, based on these regulations, the Competition Administration Agency has begun to receive complaint dossiers and proceed its investigations over anti-competition behaviors. The table below indicates some figures that express the VCA efforts’s achievements:
Lesson learned

- Cross-Border Collaboration: It is natural for young competition authorities, such as VCAD, to focus on building up its internal capacity and establishing its credibility through effective enforcement rather than on international collaboration. As such, to encourage the establishment of cross-border cooperation, it is imperative to establish a set of key milestones to guide the competition authorities toward achieving the longer term goal of cross-border cooperation.

- Interface between Sectoral Regulation and General Competition Law: To avoid conflict between sectoral regulators and the competition authorities as well as confusion within the industry, it is important to ensure that there is clarity in terms of the roles and responsibilities of each agency. This will avoid scarce resources being spent through duplicating investigation into the same cases. It will also get rid of situations whereby different standards are applied by different agencies based on their respective set of laws, resulting in different decisions depending on which agency handles the matter.

- Responsive Legal Framework
The Competition Law has to be tailored to the local legal and economic context of a particular country. While the legislators can adopt common legal principles from other jurisdictions, it would be almost impossible to develop a set of perfect Competition Laws from scratch, particularly when a country does not have the necessary experience. As such, a legal framework that is responsive to the needs of the competition authority, including allowing competition rules to be amended within a reasonable timeframe as well as relevant competition authorities certain autonomy to issue administrative guidelines, is likely to enhance the effectiveness of the agency.
- Increase Awareness of Competition Law among Different Stakeholders: It is imperative for competition authorities to undertake public education when the Competition Law is first put in place. This is to ensure that the public understands the purpose and scope of the Competition Law, and supports enforcement. It will also encourage businesses to review their business practices and encourage the Competition Law compliance. Further, it will equip them to monitor and provide feedback if they come across any anti-competitive activities.

- Increase Government Awareness of Competition Law: Besides the public and businesses, increasing awareness of the Competition Law amongst government agencies is also critical, particularly when government policies and activities have extensive impact on the economy. Government agencies should be encouraged to consider the competitive effects when drafting new policies as well as reviewing their existing policies to see whether they have impeded market competition in any way, including putting in place market structures that lead to the creation of monopolistic powers.

III. ASEAN REGIONAL PERSPECTIVE ON COMPETITION LAW AND POLICY

1. ASEAN Economic Community Blueprint (20/11/2007 in Singapore)

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) ASEAN Member Countries (AMCs). 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 experience and institutional norms on CPL.

Actions will be taken:

i. Endeavour to introduce competition policy in all AMCs by 2015;

ii. Establish a network of authorities or agencies responsible for competition policy to serve as a forum for discussing and coordinating competition policies;

iii. Encouraging capacity building programs/activates for AMCs in developing national competition policy; and

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.

2. Towards a cooperative approach to CPL among ASEAN countries

Key challenges to cooperative CPL among ASEAN countries

The key challenges to the establishment of a cooperative CPL arrangement in ASEAN countries are very similar to the challenges confronting the establishment of national CPL though on a regional scale. In many instances they are also the same challenges to further trade liberalisation by ASEAN countries. They include:

- Many AMCs (i.e. 6 out of 10) have no base of national CPL or CRB from which to build a cooperative CPL and CRB arrangement;

- Some governments that have yet to establish national CPL believe that CPL policy objectives are incompatible with their other policy objectives (particularly equity or distributional objectives) and resist both national and cooperative CPL in the belief that this will preserve their freedom to pursue these other policy objectives. This can
make it difficult to achieve a consensus agreement on the appropriate objectives and scope of a cooperative CPL regime; and

- Many CRB have very limited financial resources and specialist technical expertise and are already stretched to establish and implement a national CPL regime. They do not have spare resources to make a material contribution to a cooperative CPL arrangement.

- Differences among the governments of ASEAN countries in terms of their commitment to a cooperative CPL arrangement. The level of political commitment of member countries tends to vary depending on perceptions of the national costs and benefits of a cooperative CPL regime. In some quarters there is concern that member countries have a competitive rather than complementary relationship in many regional and global product markets and so a cooperative approach to CPL might confer a competitive advantage to ASEAN or EAS rivals;

- A fear of competition among many small, medium and large businesses (private and government-owned). Many SMEs fear that CPL will make it more difficult to compete in the domestic market, while many large businesses fear the loss of market share to overseas rivals. This fear manifests in the form of businesses lobbying against the establishment of CPL. In some cases this fear appears to be the result of a misunderstanding of the purpose and benefits of CPL – many businesses are in fact beneficiaries of CPL. In other cases it appears to reflect vested interest in preserving the status quo, as it provides greater flexibility to pursue profitable anticompetitive practices;

- Some of the key beneficiaries of national and cooperative CPL lack bargaining power to persuade governments to implement national and cooperative CPL. Consumers and small businesses, who are the main beneficiaries of CPL, lack the resources, information and coordination to exert sufficient political influence to counter those with a vested interest in no CPL or weak CPL. Additionally, some of the beneficiaries of CPL (businesses and consumers) are located in other countries. As foreigners they usually find it difficult to influence domestic policy decisions;

Any cooperative approach to CPL and CRB involving ASEAN countries needs to be designed with these challenges in mind.

Objectives and priorities of cooperative CPL arrangement

The Asean Secretariat recently hired a consultant to conduct a research on the CPL arrangement in ASEAN. Based on opinions expressed by CRB staff during fieldwork interviews and the results of a survey of country expert opinions, there appears to be strong endorsement that the overarching or long term objectives of a cooperative CPL arrangement involving at least AMCs should be:

- To promote market integration in the lead up to the establishment of a common market in 2015; and

- To promote economic efficiency and growth at a regional level.\(^\text{11}\)

In the short to medium term (i.e. over the next 5 years) there appears to be widespread support for a more targeted set of goals that contribute to (but do not fully achieve) the abovementioned 2 overarching objectives, namely:

\(^{11}\) Technically, the promotion of economic efficiency and growth at a regional level can be interpreted to include the promotion of the efficiency and effectiveness of national CPL and CRB.
• Goal 1: To promote a culture of competition in the ASEAN region;
• Goal 2: To share information with AMCs that have not yet decided to establish national CPL about (i) the potential benefits conferred by national CPL and CRB, and (ii) how to address perceived problems, so that they can make an informed decision on whether and how to establish an effective national CPL regime;
• Goal 3: To improve the efficiency and effectiveness of national CRB through the sharing and exchange of information, knowledge and resources;
• Goal 4: To develop and agree on the basic elements of a common framework for national CPL within the ASEAN region; and
• Goal 5: To develop a cooperative arrangement involving established national CRB to improve the efficiency and effectiveness of CPL enforcement.

While there is widespread endorsement among country experts and many CRB for many or all of these goals, it cannot be claimed that there is 100% consensus agreement among the consulted parties as there are still pockets of hesitation to the establishment of national CPL and CRB, at least within the next 5 years. This hesitation has prompted many of those who generally believe national and cooperative CPL confers net benefits to suggest that the first 2 goals listed above (promotion of a culture of competition in the ASEAN region and provision of information to those yet to establish national CPL) should be pursued with some urgency.

**What type of cooperation is needed**

The cooperative CPL experiences reported in the previous chapter suggest there are 3 broad types of cooperation: collaboration, harmonisation and centralisation.

**Support for the different types of cooperation among AMCs**

Of the 3 types of cooperation, there appears to be very strong support for collaboration, reasonably strong support for a particular form of harmonisation and generally little support for centralisation within the next 5 years.

i. **Collaboration**

Several parties suggested that the first priority in terms of exchange of information is to narrow the gap of understanding of the potential benefits of national CPL and appreciation of options for dealing with potential concerns about the objectives or scope of CPL among AMCs. This form of information sharing should not be confined to established CRB. It should also involve key stakeholders in the decision of whether to establish national CPL as well as parties that would be involved in the design of a national CPL arrangement.

In addition it is almost universally envisaged that national CRB should share non-confidential information such as economic data and published enforcement decisions as well as “case studies” of total enforcement experience from the time of complaint through investigation and until final disposition (whether that be no action, case dismissed, case upheld and penalties or appeal). Many expressed a desire that this information be supplemented by an open exchange of experiences and difficulties faced in implementing national CPL and how these difficulties were overcome (or not).

There was reasonably strong support for collaboration among CRB on the design and delivery of technical assistance and capacity building programs for CRB,
provided collaboration did not prevent the tailoring of such programs to suit the needs of individual countries, this tailoring is critical to the effectiveness of technical assistance and capacity building programs.

Support for cooperation in CPL enforcement appears to be more consistent with the principle of negative comity, rather than positive comity, at least over the next 5 years. Several people suggested that at a minimum CRB could begin notifying each other of pending cases (including provision of details of infringing party and industry). In time this could evolve to the sharing of confidential information on ongoing investigations and enforcement to be used in each other's investigation and enforcement action. This would require that CRB formally enter into appropriate confidentiality and cooperation agreements.

ii. Harmonisation

There appears to be reasonably strong support among the parties for harmonisation in the form of the development of a common framework for the basic elements of an effective national CPL regime across the ASEAN region. It is envisaged that the common framework would initially cover:

- Basic elements of CPL scope or coverage
- Basic rules and process; and
- Basic institutional arrangements – for example, sufficient for CRB to enjoy a reputation for independence, even if they are not administratively separated from executive government

The majority view was that adoption of this common framework should be voluntary.

iii. Centralisation

Some parties expressed a view that the long term objectives of promoting regional integration as well as economic efficiency and growth at a regional level will likely not be fully realised until ASEAN adopts the kind of regional competition law, regional institutions and judiciary support that currently underpins the EC cooperative CPL arrangement.

While there is widespread openness to the possibility of centralising some CPL provisions and CRB functions at some point well into the future, there is generally little support for the development of a supra-national CPL or CRB in ASEAN during the next 5 years.

First of all there is concern that it is premature to move to a centralisation model when so many member states have yet to establish national CPL or CRB. This would mean that up to 60% of AMCs could not participate in the administration or enforcement of CPL at the regional level. The EC experience with cooperative CPL highlights the benefits of a cooperative approach to enforcement of supra national CPL provisions. A high level of centralisation of information and enforcement can stifle incentives for member countries to share the regulatory burden and actively contribute to the creation of a ‘culture of competition’ across a common market.

Second, since many AMCs are still contemplating whether that national CPL is in the nation interest, let alone any form of cooperative CPL, it is highly unlikely that there would be universal support among AMCs at this point in time to relinquish their sovereignty in various matters in the regional interest, which is necessary for centralisation of CPL.

Third, given the large disparity in economic development of AMCs, an obligation for equal contribution in terms of the level of (financial and human) commitment to the
resourcing of a centralised CPL and CRB among participating governments could deter some AMCs from participating in any cooperative arrangement.

Fourth, ASEAN is not a supra national organisation and there is currently no regional parliament, regulator or court to establish and implement supra national CPL. It would take some time and considerable financial and human resources for ASEAN to establish these institutions to operate in conjunction with national CPL and CRB. Since many of the benefits of a cooperative approach may be achievable under a less costly collaborative or harmonisation approaches, it is prudent to first explore what level of benefit can be achieved under these less costly cooperative approaches.

For these reasons we suggest that when there is (a) wider establishment of national CPL and CRB in the ASEAN region, (b) a reasonably well-established tradition of collaboration among CRB, and (c) widespread agreement to implement a common CPL framework, member states may wish to examine the additional benefits that may be conferred by a supra-national CPL and CRB arrangement. Some parties suggested that the appropriate time for such a review might be around 2013 to 2015 in the immediate lead up to the establishment of the common market.

If and when the time comes to establish a centralised model of cooperation to support the formation and operation of a common market, careful consideration will need to be given to:

- The creation of an extraterritorial CPL regime for the common market;
- The sacrifice of national sovereignty by AMCs in certain fields (in order to limit the ability of a minority of states from overriding decisions that otherwise would confer net benefits to the region as a whole);
- The creation of a supranational CRB to administer and enforce extraterritorial CPL (jointly with national CRB); and
- The creation of a supranational judiciary or independent appeals body.

Organisational, institutional and resource requirements to support a collaborative-harmonisation approach

The organisational arrangements underpinning collaborative-harmonisation CPL arrangements such as the ICN and OECD arrangements discussed (i.e. Steering Committee supported by working groups) serve as a good guide or model for the organisation of a cooperative CPL arrangement in ASEAN.

In the case of an ASEAN collaborative arrangement, a Steering Committee comprising one representative per member country could develop a work/ research agenda in consultation with key stakeholders. This Steering Committee could be supported by a Secretariat in order to effectively fulfil its role.

Working Groups comprising senior CRB staff (or government officials where no national CRB has been established) and other recruited expertise as required could then carry out the work program and report back to the Steering Committee. The Steering Committee could then consider the findings and recommendations of each Working Group and deliberate on whether those findings and recommendations should receive the status of a consensus recommendation to member countries. Where the Steering Committee could not reach a consensus recommendation there could be provision for the communication of a majority recommendation, noting the differing views. This work would then be disseminated among the membership for their consideration and feedback.

Working groups could generally be expected to meet (physically or virtually) as frequently as needed to perform tasks assigned to them by the Steering
Committee. The Steering Committee would meet regularly (say every 4-6 months) to review progress in implementing the collaborative work agenda and to deliberate on draft and final work products of Working Groups.

An annual conference could be held to enable members to consolidate knowledge accumulated over the previous year, debate current issues and consider the work program and composition of working groups for the next year. Like the ICN’s annual conference and the OECD’s Global Forum on Competition, much of this annual forum could be open to invited non-member groups, including private sector organisations, non-governmental organisations, consumer groups, lawyers, economists and members of the academic community. This would help to disseminate a culture of competition and promote transparency in competition policy debate throughout the region.

All Working Group Reports, Steering Committee Recommendations and other outputs generated by Working Groups under the cooperative arrangement could be disseminated to member countries and other interested parties via a purpose build website, which could also provide links to member CRB websites and various resources that are useful to CRB, government departments and agencies, academics, researchers, business and the general public. This website could also form the focal point of competition advocacy and outreach activities undertaken at the regional level. Indeed, such a website could form a virtual gateway or ‘shopfront’ for the ASEAN common market, in much the same way that the European Commission’s website is a gateway to the European common market.

The values or ethics of a collaborative arrangement involving CRB could be based on the ethics underpinning the ICN arrangement. Under the ICN arrangement each participating member has an equal say on the work program and consensus recommendations are reflective of the membership of the Steering Committee and the degree of participation of members in ICN activities.

When potential members lack a capacity (expertise, experience and financial) to share the workload associated with a collaborative arrangement of this type, it may be considered desirable that their capacities be strengthened so that in time they may contribute on an equal basis with other members. For a transitional period, they may be allocated reduced responsibilities.

Where a substantial proportion of the target membership lacks a capacity to make a material contribution to the collaborative arrangement, there is a risk that any collaborative arrangement may wither. If a minority group of members shoulder the majority of the workload for a prolonged period, they may become disenchanted and the cooperative CPL arrangement may lose momentum. At the same time, if a large group of members become used to free-riding on the efforts of other members they may become complacent and less engaged in a cooperative CPL arrangement, which could also have consequences for the realisation of a common market in ASEAN.

The OECD and ICN do not encounter this problem as their membership is either predominantly developed economies with well-established national CPL (in the case of the OECD) or well established CRB (in the case of the ICN). To sustain even a modest work program, a collaborative arrangement involving ASEAN countries would need to consider options for the resourcing of Working Groups to implement the cooperative work program. Options include:

- opening the collaborative arrangement to CRB in other EAS countries that may be willing to make a relatively greater contribution of resources (financial or human);
- enter into a strategic partnership arrangement with a well-resourced global organisation or forum (e.g. OECD or ICN) to gain access to the parts of their past,
current and future research program and resources that are most relevant to ASEAN CRB; and/or

- seeking financial support from donor organisations so that Working Groups could include contributions from academics and other expert advisors from the private sector and both the Steering Committee and Working Groups could be supported by a small dedicated Secretariat.

It also is important to bear in mind that there are already several collaborative opportunities for CRB in ASEAN and EAS countries. For example, all ASEAN countries are already members of the East Asia Competition Policy Forum mooted by the Japanese Fair Trade Commission and several are also members of the APEC Competition Policy and Deregulation Group. To ‘compete’ with these rival collaborative approaches, an ASEAN collaborative arrangement would need to offer members something that they could not otherwise achieve via participation in another regional collaborative arrangement. One obvious comparative advantage in joining an ASEAN collaborative CPL arrangement is that it would assist AMCs to build relationships and work together to realise the creation of a common market by 2015.

Range of activities to meet short to medium term objectives

In this section we consider the range of activities (work program) that might be undertaken under a collaboration-harmonisation style of cooperative CPL arrangement in order to achieve the 5 short to medium term goals listed in above section (2.2. of this part).

In implementing this work agenda it is important that the Steering Committee have regard to work produced by other fora, such as the OECD, the ICN, the OECD-Korea Regional Centre for Competition, the East Asia Competition Policy Forum and the APEC Competition Policy and Deregulation Group. There may be opportunity to adapt and refine these work products, rather than invest resources in duplicating them, to meet the goals of a cooperative CPL arrangement involving ASEAN countries.

Activities to support Goal 1: to promote a culture of competition in the ASEAN region

- Under direction from the Steering Committee, a Working Group could be assigned the task of developing a suite of resources that are tailored to support competition advocacy and outreach activities by national CRB in AMCs, drawing from the large pool of resource material already disseminated by organisations such as the OECD, ICN, and the APEC Competition Policy and Deregulation Group. This suite of resources could include:
  - a Competition Assessment Toolkit for policymakers, which sets out a method for identifying unnecessary restraints on competition and developing alternative, less restrictive measures that still achieve government policy objectives;
  - Guidance on best practices in the design and implementation of outreach programs and how such programs can be tailored to suit local conditions and requirements;
  - Preparation of briefing notes containing factual information on (a) the role of competition policy in promoting efficiency and economic growth, (b) the kinds of business practices that may be harmful to competition, efficiency and economic growth, and (c) who stands to benefit from an arrangement that disallows these practices; and
• A Strategy Plan that a government could adopt to achieve government business compliance with CPL provisions, including by making Community Service Obligations (CSOs) transparent and appropriately funded.

• Steering Committee could also issue regular updates (e.g. press releases) and an annual report to keep the potential beneficiaries of a more competitive environment informed about the progress that is being made in establishing or refining national CPL across the region, key competition decisions that have multi-member country dimensions or applicability, and key resolutions (consensus recommendations) by the Steering Committee.

Activities to support Goal 2: to provide information to AMCs that have not yet decided to establish national CPL about (i) the potential benefits conferred by national CPL and CRB, and (ii) how to manage perceived problems, so that they can make an informed decision on whether and how to establish an effective national CPL regime

• A Working Group could be assigned the task of developing an information pack for countries that are yet establish national CPL and CRB. This information pack could include information about:
  o the potential national benefits from the establishment of a national CPL regime prior to the establishment of the common market in 2015;
  o the options and strategies for managing government’s concerns about introducing national CPL;
  o common misunderstandings about national CPL (e.g. that it diminishes a government’s flexibility to pursue social and environmental objectives); and
  o the potential additional benefits that may be conferred by participation in a cooperative CPL arrangement that is focussed on supporting AMCs to establish an effective CPL and CRB.

• Under direction from the Steering Committee, a Working Group could be assigned the task of developing a ‘model’ CPL regime for a developing country and guidance on how to establish a CPL regime so as to avoid some of the problems that have been encountered by others in the past. AMCs would then have the option of adopting the ‘model’ regime in whole or in part according to their preference.

• Under direction from the Steering Committee, a Working Group could be assigned the task of developing a guide to the setting up of an effective national CRB. This work product could take the form of a series of questions and answers. AMCs could be invited to submit “frequently asked questions” on this topic.

• Under direction from the Steering Committee, a Working Group could investigate and possibly even arrange international study trips for AMC officials to obtain information and first-hand insights on CPL regimes elsewhere in the world.

Activities to support Goal 3: To improve the efficiency and effectiveness of national CRB through the sharing and exchange of information, knowledge and resources

• Under direction from the Steering Committee, a Working Group could be assigned the task of negotiating information sharing arrangements with international organisations (such as the OECD and the ICN) and academic institutions to enable AMC member countries and their CRB to tap into their global experience and expertise.

• Under direction from the Steering Committee, a Working Group could be assigned the task of organising an annual forum on CPL, to be hosted by each AMC in turn if
possible, for the purpose of bringing together high-level competition officials from member and non-member countries for the purpose of policy dialogue.

- Under direction from the Steering Committee, a Working Group could be assigned the task of organising a website to disseminate Steering Committee press releases, conference proceedings, information briefs, Working Group reports, AEGC recommendations, competition advocacy and outreach materials, AEGC and national CRB annual reports, etc.

- Under direction from the Steering Committee, a Working Group could be assigned the task of organising a virtual platform (intranet) for the secure exchange of information, knowledge and resources between national CRB of member countries. This site could make provision for a virtual library to assist national CRB to access relevant legal and economic journals and reference material relevant to competition assessments. This would include provision for question and answer exchange on hot topics.

- Under direction from the Steering Committee, a Working Group could be assigned the task of organising an interactive capacity building workshop that brings together AMC government representatives, AMC CRB officials, foreign CRB officials with first hand experience in the design or delivery of technical assistance, donor agencies and other potential providers of technical assistance in order to exchange information on AMC recipient needs, local conditions, and how to prepare a detailed blueprint for addressing capacity building and technical assistance needs in each AMC.

- Under direction from the Steering Committee, a Working Group could be assigned the task of formulating best practice guidelines for identification of CRB capacity building needs and the processes of designing and delivering a technical assistance program for AMCs. Each national CRB would then be responsible for identifying its own capacity building needs, documenting local conditions that a provider of technical assistance would need to take into account and preparing a tailored technical assistance and capacity building program.

- Under direction from the Steering Committee, the same Working Group could then reconvene to consider which technical assistance programs might be more efficiently or more effectively managed or delivered at a regional or multi-country level. The Steering Committee could then develop, manage and lead technical assistance activities (e.g. interactive workshops) in these areas. Examples of technical assistance programs that may be more efficiently managed and delivered at a regional level include:
  - Training in general legislative drafting skills;
  - Training in investigative skills required to perform CRB duties; and
  - Building advocacy and outreach skills.

- Under direction from the Steering Committee, a Working Group could be assigned the task of organising a regional platform (e.g. via intranet) for matching requests for assistance from national CRB with potential providers of assistance, including other national CRB, international organisations and academic institutions.

- Regular roundtable discussions between Steering Committee members and national CRB representatives to exchange information and ideas on specific competition law cases and competition issues, with a view to fostering mutual understandings of the ways in which CRB have handled or propose to handle certain types of case in their country, problems they encountered in implementing this approach (e.g. handling political and vested interest pressures), strategies they devised to deal with such problems and ideas for making national CPL more effective in each AMC.
• The Steering Committee could prepare topic-specific Information Briefs setting out
majority or consensus findings or recommendations from roundtable discussions.
Topics that might be considered here include:
  o Protocols for handling cross-border competition issues (this could serve as a
  preparatory step towards activities considered under Goal 5 below);
  o National and cooperative strategies for identifying and dealing with hard core
cartels in the region;
  o Best practice in the design of leniency programs to fight hard core cartels;
  o Best practice in the preparation of guidelines and other publications to
  support implementation of national CPL; and/or
  o Strategies for building CRB reputation for independence.
• Under direction from the Steering Committee, a Working Group could be assigned
the task of developing a regional platform or agreement to facilitate coordination
between national CRB to manage cross-border competition issues.
  Activities to support Goal 4: To develop and agree on the basic elements of a
  common framework for national CPL within the ASEAN region.
• Under direction from the Steering Committee, a Working Group could be convened
to develop and coordinate an agreement on the broad principles of national CPL in
AMCs.
• Under direction from the Steering Committee, a Working Group to be convened,
to develop the basic elements of a common framework for CPL to be recommended to
AMCs (and implemented on a voluntary basis).
• Steering Committee to explore the merits of establishing a sub-committee or a
separate ASEAN body to act as arbiter or appellate body for international disputes
between AMCs regarding CRB decisions.
  Activities to support Goal 5: To develop a cooperative arrangement involving
established national CRB to improve the efficiency and effectiveness of CPL
enforcement
• Under direction from the Steering Committee, a Working Group could be assigned
the task of consulting with member countries to develop a proposal for a formal
negative comity agreement that members who have established national CPL and
CRB would be willing to agree to adopt. As more AMCs establish national CPL and
CRB they could be invited to sign-up to participate in this cooperative arrangement.
• Under direction from the Steering Committee, a Working Group to be assigned the
task of developing protocols for the formal exchange of information between national
CRB in hard core cartel investigations.

Potential role(s) for ASEAN Experts Group on Competition (AEGC)
As noted in Chapter I, regional cooperation on competition-related matters has been
carried out through the ASEAN Consultative Forum for Competition (ACFC), a non-
official body founded in 2004. The Forum has served as an informal network for
competition agencies or other relevant bodies to chart and facilitate collaboration on
CPL and CRB-related work of mutual interest. It has also provided useful
opportunities for ASEAN and non-ASEAN countries and international organisations
to exchange policy experiences and institutional norms and practices on CPL and
CRB.
The ACFC recently recommended the establishment of the ASEAN Experts Group on Competition (AEGC). This recommendation was endorsed by the ASEAN Economic Ministers (AEM) at the 39th AEM Meeting held in Makati City, the Philippines, on 24 August 2007.

Several parties consulted in the course of this study had an ambitious long term vision for the role of the AEGC. They see the AEGC eventually playing a role similar to the role of the European Commission – that is, administrator of supra national CPL, coordinator of enforcement of supra national CPL (in cooperation with national CRB) with powers to override the sovereignty of individual member countries, and competition policy advisor to national and supra national governments. Notwithstanding this, the majority of consulted parties expressed a more modest agenda for the AEGC in the short term, such as:

- encouraging establishment of national CPL and CRB in all ASEAN countries;
- facilitating agreement on the broad principles of competition law;
- promoting exchange of information, knowledge and resources;
- facilitating capacity building of national CRB;
- facilitating collaboration on CPL at policy and enforcement levels; and
- developing regional guidelines setting out key principles and best practices as a first step to a more coordinated approach.

On this basis, we suggest that the AEGC should assume the role of the Steering Committee described in sections D and E above. Accordingly, the AEGC’s overarching or long term objective would be:

- To promote market integration in the lead up to the establishment of a common market in 2015; and
- To promote economic efficiency and growth at a regional level.

Over the next 5 years the AEGC’s would pursue the following 5 short-medium term objectives:

- To promote a culture of competition in the ASEAN region;
- To provide information to AMCs that have not yet decided to establish national CPL about (i) the potential benefits conferred by national CPL and CRB, and (ii) how to manage perceived problems, so that they can make an informed decision on whether and how to establish an effective national CPL regime;
- To improve the efficiency and effectiveness of national CRB through the sharing and exchange of information, knowledge and resources;
- To develop and broker agreement on the basic elements of a common framework for national CPL within the ASEAN region; and
- To develop a cooperative arrangement involving established national CRB to improve the efficiency and effectiveness of CPL enforcement.

The AEGC would develop a work program and assign tasks to ASEAN cooperative CPL Working Groups comprising national CRB staff (including current members of

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12 The information presented in this paragraph is drawn from fieldwork interviews with CRB officials, presented in Appendix A.

13 To be interpreted to include the promotion of the efficiency and effectiveness of national CPL and CRB.
ACFC), government officials, academics, representatives from international organisations such as the OECD or ICN, and other experts as required.

The activities of the AEGC over the next 5 years could then include:

- Forging links with international organisations such as the OECD and ICN, and academics in EAS countries for the sharing of information and resources, including through participation on ASEAN cooperative CPL Working Groups;
- Deciding on the composition of Working Groups and allocating tasks to Working Groups in the form of a terms of reference and a prescribed reporting period;
- Considering the outputs produced by Working Groups and issuing consensus or majority recommendations where appropriate;
- Overseeing the development of a suite of resources tailored to support competition advocacy and outreach activities by national CRB;
- Overseeing the development of information packs for AMCs considering whether and how to establish national CPL and CRB to enable them to reach an informed decision;
- Overseeing the development of a ‘model’ CPL regime for a developing country and guidance material on how to establish a CPL regime to enable AMCs who are yet to establish national CPL and CRB to benefit from lessons learned in other jurisdictions;
- Overseeing the development of a “question and answer” style guide to the setting up of an effective national CRB, based on questions submitted by AMCs;
- Overseeing the investigation and arranging of international study trips for CRB to assist them to fulfil specific areas of technical assistance and capacity building need.
- Overseeing the formulation of best practice guidelines for identification of CRB capacity building needs and the design and delivery of technical assistance in AMCs;
- Overseeing the development and management of technical assistance activities (e.g. interactive workshops) in situations where such assistance might be more efficiently or more effectively managed or delivered at a regional, or multi-country level;
- Overseeing the organisation of a regional platform for matching requests for assistance from national CRB with potential providers of assistance, including other national CRB, international organisations and academic institutions;
- Overseeing the organisation of an annual regional forum on CPL for the purpose of bringing together high-level competition officials from member and non-member countries for the purpose of policy dialogue. Responsibility for hosting this event would ideally be rotated around AEGC member countries;
- Overseeing the organisation of regular (for example, quarterly) round table discussions with national CRB representatives for the purpose of exchanging information and ideas on specific competition law cases and competition issues. Where a majority or consensus view emerges from roundtable discussions, the AEGC could prepare non-binding best practice recommendations to AMCs and national CRB;
- Preparation of non-binding best practice recommendations on topics of interest to national CRB. Topics that could be explored within the first 5 years include:
Protocols for handling cross-border competition issues (this could serve as a preparatory step towards activities considered under Goal 5 below);

- National and cooperative strategies for identifying and dealing with hard core cartels in the region;
- Best practice in the design of leniency programs to fight hard core cartels;
- Best practice in the preparation of guidelines and other publications to support implementation of national CPL; and/or
- Strategies for building CRB reputation for independence;

- Overseeing the development of a common framework for CPL to be recommended to AMCs (and implemented on a voluntary basis), initially focusing on the basic elements only;

- Providing a regional platform for managing cross-border competition issues;

- Overseeing the development and agreement of a formal negative comity agreement among participating countries;

- Overseeing the development of protocols for the formal exchange of information between national CRB in hard core cartel investigations;

- Exploring the merits of establishing a sub-committee or a separate ASEAN body to act as arbiter or appellate body for international disputes between AMCs regarding CRB decisions;

- Oversee the establishment and maintenance of a virtual forum (intranet) for the secure exchange of information, knowledge and resources between national CRB of member countries;

- Coordinating with member countries, international organisations and other donors to raise funds and resources to implement this work program;

- Issuing regular updates (e.g. press releases) to communicate the progress that is being made in establishing or refining national CPL across the region, key competition decisions that have multi-member country dimensions or applicability, and key findings and recommendations contained in Steering Committee Information Briefs; and

- Preparing an Annual Report on the objectives, goals, work program (activities), outputs and outcomes of the AEGC and Working Groups under the AEGC’s direction. Ideally, the AEGC would also comment on progress in individual member countries in establishing or refining an effective national CPL regime.

This is an ambitious work program. To be effective, the AEGC would require a dedicated Secretariat, comprising a team of some 10-15 individuals with experience and expertise at the policy and operational levels of CPL and CRB. It is envisaged that this small Secretariat would assist the AEGC to carry out its various activities and also provide administrative support to Working Groups.

3. **T/A Needs for realization of the objectives from international community**

Technical assistance is vital for the AMCs from ICN, OECD, UNTAD, EACF, CRB of the developed countries and CPL experienced countries to realise their set objective of CPL introduction and cooperation among AMCs.

Through studied the experience of the countries ahead launching the CPL, the T/A needs checklist of ICN, and the survey on site, We found the common T/A needs from the AMC as follows:
Among the countries that have already established national CPL and CRB, common areas of technical assistance and capacity building needs include:

- training of CRB staff in the more complex and technically demanding areas of CPL including merger assessments;
- the development of guidelines and internal procedures;
- clarification of CPL objectives;
- clarifying the authority of national CRB over government business enterprises;
- building CRB’s reputation for independence;
- investment in outreach activities to business and consumers;
- building the capacity of the judiciary to handle competition cases;
- improving capacity of national CRB to advocate competition policy objectives across all areas of government policymaking; and
- improving coordination between national CRB and sectoral regulators;

Among the countries that appear to be in the process of establishing national CPL and CRB (i.e. Cambodia, Lao PDR and Malaysia), common areas of technical assistance and capacity building needs include:

- preparation of a detailed blueprint for the establishment of an effective national CPL and CRB;
- technical assistance to impart skills in legislative drafting;
- technical assistance to identify CRB priorities;
- technical assistance for TCC staff to prepare necessary documents to support implementation of legislation (e.g. guidelines), establish and implement CRB procedures and processes, administer and enforce CPL;
- technical assistance to enable the new CRB to advocate the benefits and communicate the scope and obligations associated with national CPL to private firms, government businesses, consumers and within government;
- building the capacity of the judiciary to handle competition cases; and
- development of a platform for coordination between national CRB and sectoral regulators.

Among the countries that have yet to decide to establish national CPL and CRB (Brunei, Myanmar and the Philippines), common areas of technical assistance and capacity building to help governments reach an informed decision include:

- detailed assessment of the net benefits likely to be conferred by a national CPL regime relative to other policy instruments that seek to promote competition and efficiency (including sectoral regulation);
- detailed assessment of the additional benefits likely to be conferred by participation in a cooperative CPL and CRB arrangement;
- advice on how national CPL can complement other economic and social policy objectives;
- advice on a 'model' CPL regime for the country concerned; and
• advice on strategies for public outreach to promote better understanding of CPL and educate public sector staff in the benefits and scope of CPL.

If and when these governments decide to introduce a national CPL regime then there are a range of capacity building and technical assistance needs that will have to be assessed in close consultation with the proposed CRB. For example, the proposed CRB may require:

• technical assistance to build skills in legislative drafting and to help CRB communicate the benefits and scope of national CPL within government, including explaining the various elements of national CPL;

• technical assistance to formulate guidelines, tool kits and other resources needed to promote a culture of compliance;

• technical assistance to build technical legal and economic skills necessary for the administration and enforcement of national CPL and to impart knowledge of best practice investigation techniques and competition advocacy methods; and

• technical assistance to ensuring CRB is able to achieve a reputation for transparency and impartiality, including though neutrality of enforcement as between private and government businesses.
Vinapco may be fined 10% of 2007 turnover
07-APR-2009 VietNamNet

VietNamNet Bridge - If the Vietnam Air Petrol Company (Vinapco) is judged to have violated the Competition Law by unilaterally stopping providing air petrol to Pacific Airlines, it may face the heavy fine of 10% of its 2007 turnover, according to Tran Anh Son, Deputy Head of the Competition Administration Agency (VCA) under the Ministry of Industry and Trade (MOIT).

VCA asks Vinapco to explain fuel supply interruption

30 flights delayed because of no fuel?

In an interview with VietNamNet, Son said that the Association for Customers' Right Protection has also decided to jump on the bandwagon as 5,000 passengers, who missed flights on April 1, may ask the association to protect their interests.

Senior Economist Le Dang Doanh said that the behaviour of Vinapco is considered a kind of abuse of the monopoly to treat clients unfairly. However, Vinapco's director said that though the company monopolises air petrol, it did not ‘make use of the monopoly'. What is the viewpoint of VCA about the case?

VCA has to investigate the case and then make a report based on the investigation's results, to be submitted to the competition judgment council, which will decide if Vinapco violated the law.

VCA does not have the right to make final decisions, only the competition judgment council has the capacity to do that.

However, I can say that the behaviour of Vinapco of unilaterally interrupting air petrol supply has violated the law, since it has run against customers' benefits. Mass media has reported that some 5,000 passengers missed flights on April 1, and their businesses might have been affected. Besides, the airline may lose prestige in the eyes of passengers.

What will CAD do if Pacific Airlines does not sue Vinapco?

I think that Pacific Airlines should not hesitate to initiate legal proceedings to protect its interests.

Pacific Airlines' General Director Luong Hoai Nam on April 2 told a VietNamNet reporter that it does not intend to sue Vinapco. Does VCA know about this?

Maybe Pacific Airlines implied that it does not intend to bring the case before the economic or civil court. However, it may file with VCA as the case has been affecting the competition environment and its business. It will be easier for us to make an investigation if Pacific Airlines files the case.
If Pacific Airlines decides not to bring the case before VCA, the involved parties also have to cooperate with VCA in providing information about the case. In principle, enterprises must cooperate with state management agencies.

**What has VCA been doing so far to deal with the case?**

VCA on April 3 sent a dispatch to Vinapco, requesting that the company provide information about the interruption of providing air petrol to Vinapco. Our office in the south is also collecting necessary information from Pacific Airlines so that VCA can decide what to do next.

If we find signs of Vinapco violating the laws, we will open the preliminary investigation, and then official investigation if we find it necessary. After finishing the investigation, we will make a report about the case, which will be submitted to the competition judgment council.

The council will decide to set up sub-councils to deal with the issues of the case. A hearing will be opened with the compulsory participation of the two enterprises. After that, the council will make a final decision.

**How will Vinapco be punished if it is found violating the law?**

The heaviest punishment is that Vinapco would have to pay a fine of 10% of its 2007 turnover.

However, this would be another story if Pacific Airlines brought the case before the court.

**Vinapco said it three times sent documents to Pacific Airlines, requesting it accept the petrol supply fee increase, but Pacific Airlines did not reply to the documents. Therefore, Vinapco had to unilaterally stop providing petrol, to protect itself and avoid bankruptcy. What do you think about this?**

That was why we released the document, requesting that Vinapco explain its behaviour.

We need to consider if the petrol price Vinapco offers to Pacific Airlines is the same as offered to other airlines. As far as I know, 28 airlines now are using fuel charging services in Vietnam. However, I have to say that it is quite normal for member companies of a group to change prices applied among the group's members.

Pacific Airlines said that it sent a document declaring that it did not accept the price increase and that it planned to ask for the intervention of state management agencies. However, Vinapco unexpectedly stopped providing petrol.

**What is your comment about the behaviour as a member of the compiling committee of the Competition Law and a one-time businessman?**
I think that enterprises should not have such a business culture. Ten years ago, I was the director of a state owned company which was the sole distributor of India-made tyres. However, we never acted like Vinapco did.

In general, businesses always make concessions in doing business, which helps them survive and develop.

It is clear that there are ‘problems’ in Vinapco's behaviours. If there was not anything 'abnormal' in this case, we would not interfere by asking the parties to explain.

Vinapco's representative said that in a ‘perfect competition environment', he can choose a strategic partner. Of the two Vietnam Airlines and Pacific Airlines, Vinapco has chosen Vietnam Airlines, because this is a big partner which purchases more products. Therefore, Vinapco has the right to apply preferential terms to its strategic partner. What would you say about this?

A market with perfect competition environment must be the one where a lot of enterprises supply products and consume products. In this case, I cannot see a perfect competition environment.

**Jet fuel supplier fined VND3 billion for monopoly abuse**
Wednesday, April 15, 2009

*Monopoly fuel supplier Vietnam Air Petrol Company has been fined VND3 billion (US$168,300) for cutting off supplies to Jetstar Pacific Airlines without justification on April 1 last year.*

The Vietnam Competition Council said at a public hearing Tuesday the petrol company, known better as Vinapco, had abused its monopoly position and flouted the Law of Competition.

A senior official of the council, who wished to be unnamed, told Thanh Nien that Vinapco had imposed unfavorable business conditions on its customer since it is aware that commercial airlines cannot turn to another source of supply in the country.

The penalty was only cautionary, not punitive, because this was its first violation, another council member said.

Vinapco, an affiliate of state-owned Vietnam Airlines, stopped supplying fuel to the Jetstar Pacific fleet on April 1, 2008 as the two sides were arguing over a price increase.

The delay grounded 30 flights supposed to carry some 5,000 passengers. The government ordered Vinapco to resume supply, ending the impasse.

The carrier said at the time that Vinapco had contracted to charge VND593,000 for a ton of aviation fuel for the whole year. But less than three months after the deal, Vinapco demanded VND750,000.

Vinapco said it needed to increase fuel costs to cover the skyrocketing world oil prices, which went past $100 a barrel at that time.
When the dispute broke out, Jetstar Pacific was known as Pacific Airlines. The domestic carrier later transformed into the low-cost Jetstar Pacific in May 2008 under an agreement with Australia’s Jetstar Airways.
At the hearing on Tuesday the budget airline called for separating Vinapco from its rival Vietnam Airlines.
The Vietnam Competition Council said it would forward the proposal to official agencies and tighten control over monopoly services.
Vinapco has 30 days to appeal Tuesday’s ruling, which is also the first anticompetitive ruling the Vietnam Competition Council has made.

Reported by Xuan Danh