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Competition Law and Policy in the European Union: Some Lessons for Southeast Asia

Lino Briguglio*

Abstract

This paper describes the main thrust of competition law and policy in the European Union (EU) from which it draws some lessons for the Association of Southeast Asian Nations (ASEAN), mainly with regard to the development of a single market in the region. The paper argues that the success of competition law and policy in the EU to further strengthen the single market can be attributed mainly to the fact that member countries accepted to forgo part of their sovereignty to the union, and to allow a central entity (the European Commission) to enforce competition law, with investigative powers, backed by an EU-wide legislative framework transposed into national laws. The paper contends that the creation of an ASEAN single market by 2015 is not likely to be attained due to weaknesses in the institutional framework relating to competition law and policy within the region, particularly because of weak enforcement across the region.

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1. Introduction

In the European Union (EU), competition law and policy are, by and large, consistently applied in member states. An effective enforcement mechanism with regard to practices that affect the internal market has been instrumental in the progression toward a single market in the EU. On the contrary, competition law and policy are not applied consistently throughout the Association of Southeast Asian Nations (ASEAN). Some member states (e.g., the Philippines) do not even have an overarching competition law in place. As the integration process within the ASEAN evolves, its regional market will require a regulatory regime that is consistent across the member states.

This paper describes the main thrust of competition law and policy in the EU, from which some lessons for the ASEAN are drawn, mainly with regard to the development of a single market in the region.

The paper is organized as follows. The next section highlights the main differences between the EU and the ASEAN types of economic integration. Section 3 describes competition law and policy in the ASEAN, while section 4 deals with competition law and policy of the EU, referring to the major institutions, enforcement procedures within the union, and the collaborative arrangements between the EU member countries. Section 5 derives some lessons for the ASEAN from the EU experience with regard to competition law and policy. The penultimate section presents the way forward for the ASEAN. Section 7 concludes the paper.

2. Main differences between the EU and the ASEAN

In comparing the EU with the ASEAN, Eliassen and Arnesen [2007] argue that the main difference is that there is no supranational authority in the ASEAN, with each member country going its own way; whereas in the EU, integration is more formalized, with each member country consenting to surrender a degree of its sovereignty to the union. As a result, the ASEAN can be considered an informal type of integration, aiming mostly to promote dialogue and consultation. According to Eliassen and Arnesen [2007], the main reason for this difference relates to the cultural and religious heterogeneity of ASEAN member countries. The same authors opine that because of such differences, the ASEAN is not likely to ever become like the EU and is likely to develop on its own way.

A similar opinion was expressed earlier by Koh [1996], who argued that a harmonized ASEAN legal regime similar to that found in the European Union is not likely to materialize. Koh proposed a step-by-step gradual approach to foster legal cooperation in response to the expansion of economic cooperative activities within ASEAN. Tay [2008], discussing the ASEAN Charter signed on the 40th anniversary of the ASEAN¹ adds that the grouping mainly comprises developing countries, including Cambodia, Laos, Myanmar, and Vietnam, with a high degree of diversity in economic development and experience in dealing with free markets.

¹ The Charter of the Association of Southeast Asian Nations, which entered into force on 15 December 2008 (available at <http://www.asean.org/asean/asean-charter/asean-charter>), was signed at the 13th Summit of Leaders of the ASEAN, held in Singapore on 20 November 2007.

On the other hand, as Matsushita [2002] contends, the most successful and far-reaching regional agreement is the European Community. The author likened Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) to a national competition law rather than an international cooperative agreement on competition laws. The European Community as a whole should be regarded as one jurisdiction as far as the enforcement of competition laws is concerned. Matsushita distinguishes between nonbinding and mandatory agreements, with the former, which may be referred to as “soft law”, containing provisions that are not compulsory for the contracting parties to enforce within their domestic laws. For example, there may be an agreement that requests the participants to harmonize their domestic laws as much as possible but does not oblige them to do so. However, nonbinding agreements may contain provisions requesting each party to exchange information about the enforcement of the relevant laws, but may leave it up to the member country to implement the laws or otherwise. Mandatory agreements, on the other hand, which may be referred to as “hard law”, require the contracting parties to apply the agreement by modifying their domestic laws to meet the provisions of the agreement or its minimum requirements.

This distinction applies to the EU and the ASEAN with regard to competition law and policy, in which the ASEAN is characterized by “soft law” and the TFEU as “hard law”. The TFEU is a typical example of a mandatory agreement, as it is a binding international agreement for all member states of the EU. Matsushita [2002], however, notes that although the ASEAN arrangements are nonmandatory, such agreements would create the framework for cooperation and, in spite of its discretionary nature, contribute to the promotion of international cooperation.

3. Competition law and policy in the ASEAN

The Association of Southeast Asian Nations was established in 1967 with the overarching aim of promoting social and economic development in Southeast Asian countries by furthering cooperation toward regional integration and promotion of competitiveness. Currently the ASEAN hasten member countries.²

The economies of these member countries are very different in various aspects, including levels and rates of development, institutional setups, and regulatory frameworks. There is, however, a high degree of liberalization in most ASEAN economies, which has helped them attract considerable foreign investment.

3.1. Competition law developments within the ASEAN

Competition law and policy are considered of major importance in the liberalization process within the ASEAN, as these seek to discourage barriers to entry that distort competition and further promote regional economic integration.

Since the establishment of the ASEAN, there have been several developments relating to competition law and policy in the region. In 2007, the ASEAN leaders agreed to establish the ASEAN Economic Community by 2015, involving free movement of goods, services, investments, and skilled labor. An important document, titled “Declaration on the

² These are Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam.

ASEAN Economic Community blueprint”,³ agreed upon in the same year, further elaborated on the road toward economic integration. This blueprint also urged all ASEAN member states to ensure the development of competition law and policy in their respective countries.

The actions relating to competition envisaged in the blueprint were the following:

- a. an endeavor to introduce competition policy in all ASEAN member countries by 2015
- b. the establishment of a network of authorities or agencies responsible for competition policy, which will serve as a forum for discussing and coordinating competition policies
- c. the encouragement of capacity-building programs/activities for ASEAN member countries in developing a national competition policy
- d. the development of regional guidelines on competition policy by 2010, based on country experiences and international best practices with the view to creating a fair competition environment

This stance by the ASEAN is founded on the premise that competition law and policy would reduce market barriers, including cross-border barriers (often created by national governments, sometimes in response to lobbying by inefficient producers), and therefore facilitate regional integration. This objective is very similar to that associated with competition law and policy in the EU. As we shall show, the main differences between the two competition regimes lie elsewhere, mainly in the extent to which competition law is enforced across the region and the extent to which the law covers government undertakings.

Another important development that occurred in 2007 with regard to competition law and policy was the establishment of the ASEAN Experts Group on Competition (AEGC), as recommended by the ASEAN Consultative Forum for Competition (ACFC)⁴ and endorsed by the ASEAN economic ministers. The AEGC is a regional forum to discuss and cooperate on competition law and policy. Since its inception, this forum has fostered awareness of the benefits of competition law and policy in the region and helped develop capacity in this regard through various programs. The forum has also served as an informal network that promotes and facilitates collaboration between the different competition agencies in the region, including an exchange of experiences.

The AEGC has developed the ASEAN *regional guidelines on competition policy* [ASEAN 2010a] and compiled a *Handbook on competition policies and laws in ASEAN for businesses* [ASEAN 2010b]. Both guidelines and handbook were launched in 2010 at the 42nd ASEAN Economic Ministers Meeting in Vietnam. These two publications were intended to raise awareness of competition law and policy and further help civil society and business to understand and appreciate the benefits of fair trade.

3.2. Competition laws in the ASEAN member countries

Only five ASEAN member countries have an overarching competition act. These are Singapore, Indonesia, Thailand, Vietnam, and Malaysia. The following table briefly describes the situation relating to competition legislation in the ASEAN member states.

³ <http://www.aseansec.org/5187-10.pdf>. The blueprint was accompanied by the ASEAN *regional guidelines on competition policy*.

⁴ The ACFC was established in 2004.

Table 1. Situation relating to competition legislation in the ASEAN member states

Country	OCA*	Competition law
Brunei Darussalam	No	Brunei Darussalam does not have a specific competition law but has various provisions to regulate the telecommunications sector`
Cambodia	No	Cambodia plans to introduce competition legislation. However there are sector regulations on the telecommunications sector and the baking industry.
Indonesia	Yes	No.5 of 1999 on the Prohibition of Monopoly and Unfair Business Competition Practices, which was introduced in March 1999 and entered into force in the year 2000.
Lao PDR	No	Laos plans to introduce competition legislation. However there is a decree that prohibits anticompetitive business practices.
Malaysia	Yes	The Competition Act 2010 which into force in January 2012.
Myanmar	No	Myanmar is passing through a transition stage
Philippines	No	The Philippines is yet to enact a specific competition law. However there constitutional provisions relating to competition policy (Article XII of the 1987 Constitution). There are also sector-specific regulation.
Singapore	Yes	The Competition Act
Thailand	Yes	The Trade Competition Act 1999
Vietnam	Yes	Law of Competition (no.27-2-4-QH11)

*Overarching Competition Act

Not all the five ASEAN countries that have adopted an overarching competition act have done so voluntarily: Thailand and Indonesia have had the competition law practically forced upon them as a result of conditionalities by the International Monetary Fund (IMF) in exchange for financial support. The laws adopted by the five ASEAN members also vary, although they all prohibit anticompetitive agreements in the private sector and abuse of dominance. Sivalingam [2006] discusses the similarities and differences between competition acts in the ASEAN countries.

4. Competition law and policy in the EU

4.1. The Treaty on the Functioning of the European Union

Competition law is enshrined in the TFEU with the major objective of speeding up market integration through a regulatory framework with a centralized enforcement authority. The TFEU is supported by a number of regulations and directives intended to be observed by all member states.

Competition law and policy of the EU are built on two main pillars—namely, controlling anticompetitive behavior arising from collusion (Article 101 of the TFEU) and

preventing abuse of dominance (monopolization) of the market (Article 102 of the TFEU).

Other relevant Articles of the TFEU are 106 and 107. Article 106⁵ states that public undertakings are covered by the same legal provision as private undertakings. However, some exceptions are allowed in Article 106(2), as when public undertakings are entrusted with the operation of services of general economic interest (water, energy, transport, and telecommunications) so as not to obstruct the particular tasks assigned to them. Nevertheless, Article 106 explicitly states that the development of European trade must not be affected by aid to these undertakings to such an extent as would be contrary to the interests of the EU. For this purpose, the European Commission, while recognizing that genuine services of general economic interest may be considered an exception in the context of Article 106, has adopted a case-by-case approach to eliminate restrictive practices so as to establish, for example, whether an alternative service provision is possible.⁶

Article 107 of the TFEU relates to state aid and provides that, in principle, aid and other forms of support that distort competition should not be given by the government of member states to business. For example, aid that shelters inefficient firms is not permissible.⁷

In addition, competition law and policy in the EU also cover control of proposed mergers, acquisitions, and joint ventures that could significantly impede effective competition,⁸ in particular as a result of the creation or strengthening of a dominant position.

4.2. The relevant institutions of the EU

Three main institutions are involved in EU legislation in the union: the European Parliament, which represents the EU's citizens and is directly elected by them; the Council of the European Union, which represents the governments of the individual member countries and whose presidency is shared by the member states on a rotating basis; and the European Commission, which represents the interests of the union as a whole.⁹

⁵ Article 106 states, inter alia: "In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in the Treaties ... Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them."

⁶ In December 2011, the European Commission adopted a revised package for public compensation for services of general economic interest (SGEI). The new package clarifies key state aid principles and introduces a diversified and proportionate approach with simpler rules for SGEIs that are small, local in scope, or pursue a social objective, while better taking account of competition considerations for large cases.

⁷ The European Commission demands a high degree of transparency of financial relations between the government and public undertakings in order to establish whether transfer of public funds to those undertakings is in line with the competition provisions of the treaty (Directive 2006/111).

⁸ EU competition law requires that undertakings intending to merge and have a community dimension need to notify the European Commission of the proposed merger and seek authorization from the commission. Community dimension refers to the combined aggregate worldwide turnover of all the undertakings concerned and the aggregate communitywide turnover of the undertakings concerned. For details about these thresholds, see Council Regulation 139/2004, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004R0139:EN:NOT>. Undertakings that have a community dimension and do not seek such authorization or if they are found to impede effective competition after they merge are subject to substantial fines (see Article 14 of the same council regulation).

⁹ The European Commission is made up of 27 commissioners, one from each EU country, appointed for a five-year term, with each commissioner being assigned responsibility for a specific policy area. The president of the current commission is José Manuel Barroso.

The institution directly entrusted with the oversight of EU competition law is the European Commission. Article 105 of the TFEU mandates the commission to see to it that the articles relating to competition are not contravened, and gives the commission extensive investigative powers, including dawn raids, on undertakings suspected of breaking the law.

There are many ways by which the Euro European Commission could become aware of a potential violation of the treaty on related regulations. For example, the European Commission may carry out investigations or inspections of its own accord (even following an anonymous tip), or through a complaint from an aggrieved party, from member states, or ordinary persons with a legitimate interest.

The commission¹⁰ may impose fines in line with Article 23 of Regulation 1/2003.¹¹ These fines can be quite substantial, amounting to a maximum of 10 percent of the turnover of undertakings infringing competition law. Fines are also levied for every day an undertaking fails to comply with the commission decision; such fines pose a major deterrent.¹² The commission intervenes if it has evidence of an infringement of competition rules affecting cross-border trade, and its decisions are subject to appeal before the Court of Justice of the European Union.

Article 17 of Regulation 1/2003 empowers the commission to conduct inquiries into—including inspections of—a specific economic sector when there is reasonable suspicion that competition may be restricted or distorted within the common market. In other words, the investigation relates not just to a possible transgression by a single actor but to a possible transgression by an entire sector. A sector inquiry that received a great deal of attention was the pharmaceutical sector inquiry, which took place in 2008 and 2009 and in which the European Commission used dawn raids following suspicion that competition within the EU was distorted in that sector.¹³ Other such sector inquiries related to electricity and gas,¹⁴ business insurance,¹⁵ and retail banking.¹⁶

4.3. Cooperation within the EU

A decentralized arrangement exists for competition law and policy within the EU so that national competition authorities and national courts can ensure compliance with EU law within a particular member state. This is in line with EU Council Regulation 1/2003.¹⁷ This arrangement means that national competition authorities and courts are empowered to apply European law, even in cases that have an effect beyond national borders.

¹⁰ In matters related to competition, the commission operates through the directorate-general for competition. For more information about this directorate, visit http://ec.europa.eu/dgs/competition/factsheet_general_en.pdf.

¹¹ Articles 23 of Regulation 1/2003 states: “In order to achieve these objectives, it is appropriate for the Commission to refer to the value of the sales of goods or services to which the infringement relates as a basis for setting the fine. The duration of the infringement should also play a significant role in the setting of the fine. It necessarily has an impact on the potential consequences of the infringements on the market. It is therefore considered important that the fine should also reflect the number of years during which an undertaking participated in the infringement.”

¹² Private parties may also sue for treble damages (as in the United States) through the national courts. This would act as an additional deterrent against breaching the competition law. However, such court suits are not common in the EU.

¹³ Available at <http://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/>.

¹⁴ Available at <http://ec.europa.eu/competition/sectors/energy/inquiry/index.html>.

¹⁵ Available at http://ec.europa.eu/competition/sectors/financial_services/inquiries/business.html.

¹⁶ Available at http://ec.europa.eu/competition/sectors/financial_services/inquiries/retail.html.

¹⁷ EU Council Regulation 1/2003 assigned enforcement powers relating to Articles 101 and 102 to competition authorities and national courts of the EU member states.

In any case, national courts may ask the commission for information or for its opinion on points concerning the application of competition law, and are expected to collaborate with the commission and the competition authorities of the other member states so as to promote uniform application of the competition rules. National competition authorities may also share information, including any confidential information, which may be required when dealing with cases relating to Articles 101 or 102 of the TFEU.

4.4. European Competition Network

Regulation 1/2003, referred above, deals with decentralized decision making with regard to competition law, including enforcement, and establishes a network of competition authorities called the European Competition Network (ECN).

This comprises the commission and the competition authorities of the member states, based on the principle that the best-placed authority should handle a case that affects the EU as a whole. This arrangement is especially effective in counteracting cross-border practices that restrict competition. The ECN also helps ensure that competition law is effectively and consistently applied throughout the member states. The ECN also provides a system of information between the competition authorities of member states, enabling the national competition authorities to pool their experiences and gain knowledge of best practices so as to promote a common approach in competition issues. The ECN may also support investigations by national competition authorities.

The cooperation and exchange of best practices in the area of merger control within the ECN led to the setting up of an EU Merger Working Group in 2010, which consists of representatives of the European Commission and the national competition authorities of the EU member states. The ECN also issues a periodic brief with very useful information about competition law and policy within the EU¹⁸

4.5. Leniency policy

The Commission operates a leniency policy through which it offers immunity or a reduction in fines to undertakings that inform the commission of the existence of a cartel in which these undertakings participate.¹⁹ The undertaking that first submits such information and collaborates with the commission in order to prosecute the cartel in line with Article 101 of the treaty is granted complete immunity. If the firm is not the first to denounce its existence, it gets a lower reduction in fines. This means there is a major advantage in being the first to confess. This policy has been instrumental in identifying cartels.

5. ASEAN competition weaknesses and some lessons from the EU

The main weaknesses in the ASEAN with regard to competition law and policy can be summarized as follows: the lack of an appropriate institutional framework, the lack of an enforcement mechanism, governments' unwillingness to let state enterprises be subject to competition law, and asymmetries between consumer lobbies and business power.

¹⁸ The fourth issue of the brief is available at http://ec.europa.eu/competition/ecn/brief/04_2012/brief_04_2012_short.pdf.

¹⁹ See European Commission notice on immunity from fines and reduction of fines in cartel cases available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52006XC1208%2804%29:EN:NOT>.

5.1. Lack of an appropriate institutional framework

As we have seen, the EU has a centralized competition authority—namely, the European Commission—with a highly skilled competition directorate and a well-developed judicial framework. This is lacking in the ASEAN, which is considered a region although, as we have seen, some of its member states do have an overarching competition act.

One major lesson that can be learned from the EU is that successful competition law and policy, especially those that can also serve to strengthen the common market, require a strong institutional framework backed by appropriate legislative provisions. Whether this can be done through the AEGC or the AFCF is debatable, although proposals have been made to create an institution that would supervise the promotion and protection of market competition in ASEAN economies, which could eventually develop into a full-fledged regional competition commission with the power to enforce competition rules to protect competition in ASEAN.²⁰

Another lesson to be learned from the EU relates to the European Competition Network, which, as explained earlier, is instrumental in fostering consistency across the EU in matters relating to competition law and policy. Such a role can be carried out by the AEGC or the AFCF, but here again, the member countries must first accept a centralized entity with the power of enforcement.

5.2. Weak enforcement of competition law and policy

The drawback relating to enforcement relates to the first weakness—namely, the lack of an appropriate institutional framework. There is no mechanism within the ASEAN to ensure that a harmonized regional competition law is enforced. Enforcement is sometimes weak even in those countries that do have an overarching competition act. However, most importantly, there is no regionwide enforcement structure: even the guidelines for competition that have been drawn up are mere guidelines, as the name implies. In addition, within the ASEAN, trade and industrial policies still exist within member states that are in conflict with competition law.

Within the EU, the treaty and the ensuing regulations are laws for all member states, and these are very thoroughly enforced. In addition, state aid provisions ensure that industrial policies do not conflict with competition law.

The second lesson that can be learned from the EU regime is that if competition law is to be uniformly applied throughout the region, it must be suitably enforced. This requires each member state to surrender a portion of its sovereignty—something that is not likely to happen in the ASEAN in the near future.²¹

5.3. Exclusion from compliance by government authorities and state enterprises

²⁰ The Va Ba Phu [2009] argues that the ASEAN requires an institution that will principally assume the role of a regional Steering Committee, similar to the European Commission, in order to promote market integration in the lead-up to the establishment of a common market in 2015, promote a culture of competition in the ASEAN region, and provide information to member countries that have not yet decided to establish national competition law and policy.

²¹ The expression “the ASEAN way” has been coined to refer to the manner in which the ASEAN arrives at cooperative arrangements. The ASEAN is sometimes perceived as a group of sovereign nations that never enter into binding agreements and only meet to draw up understandings and informal procedures. This contrasts with the EU, in which most cooperative arrangements are formalized and are backed by legal provisions.

ASEAN state enterprises tend to enjoy monopoly power and often restrict private-sector access to the market. In those ASEAN countries that have adopted a dedicated competition law, government authorities and state enterprises are excluded from compliance with the law. Even the ASEAN competition guidelines referred to previously do not consider government authorities and state enterprises as economic players to be covered by competition law (see Article 3.5.4).

In the EU competition regime, government authorities and state enterprises that may compete with actual and potential private undertakings are, with some exceptions, subject to competition law (Article 106 of the TFEU). The underlying assumption is that public undertakings can negatively affect competition and, therefore, fall under the same legal provisions as private undertakings (according to the principle of competitive neutrality between private and public undertakings). There are admittedly exceptions, especially when it is established that the state undertaking provides a service of general economic interest. But the European Commission is actively on its guard to detect and prevent abuses by public undertakings that may distort competition.

5.4. Asymmetries between consumer lobbies and business power

Although the AEGC was an important institutional development in the ASEAN insofar as raising awareness of competition law and policy in the region is concerned, one cannot say that there is a strong competition culture among the ASEAN population. Several studies referring to developing countries in general (e.g., Cook [2002]) argue that civil society, which could offer countervailing pressure to business interests, such as consumer groups, tends not to be well organized in these countries. To a certain extent, this is also true in the ASEAN economies [Rarick 2008], especially those that have so far refrained from adopting competition law and policy. Particularly in those countries where an overarching competition act is absent, the business milieu tends not to be conducive to a competition culture because of corruption, lack of transparency, and vested business interests. In addition, the judicial system is not always sufficiently strong and independent to take decisions against big business and corrupt bureaucrats.

Such asymmetries also exist in the EU, but the strong enforcement arrangements significantly reduce the power associated with vested business interests. This is particularly true in the case of cartels and abuse of dominance. In the case of cartels, the leniency provisions, often result in the detection and breaking of collusion between strong and influential companies. In addition consumers are generally well-organized in most EU member states;²² together with the advocacy activities of the Commission²³ these have generated a well-rooted competition culture in the EU.

Another lesson that can be learned from the EU competition regime, therefore, is that laws and regulations need to be supported by strong advocacy and empowerment of civil society—particularly consumer associations.

²² The European Consumer Organisation represents EU-wide organizations. Visit <http://www.beuc.org/Content/Default.asp?PageID=591>.

²³ See, for example, the European Commission's website: http://ec.europa.eu/competition/consumers/index_en.html.

6. The way forward for the ASEAN

6.1. Stakeholder sensitization

The ASEAN as an organization should strengthen its advocacy regarding competition law and policy in the region to further promote a culture of competition nationally and regionally, mainly to counteract the idea that government intervention in the market is essential. In the ASEAN region, as in many other developing countries, government intervention is still rampant, and all sorts of pretexts are put forward by the governments to reduce the coverage of competition law, particularly in relation to state enterprises. As Sengupta and Dube [2008] argue, for a competition culture to prevail in any economy, there is need for acceptance by the key stakeholders in the economy to, among other things, counteract misinformation (e.g., that competition may lead to a loss of jobs, or that research and development requires monopolization of the market in order to ASEAN profits).

The ASEAN agencies entrusted with fostering a competition culture should step up stakeholder sensitization in this regard to disseminate the argument that competition law and policy improve the efficient allocation of resources (often leading to a reduction in prices), encourage technical progress, attract investment,²⁴ and therefore create jobs and improve market flexibility and resilience in the face of external economic shocks.

A properly devised awareness campaign requires the backing of the government, given that competition policy is basically a government initiative. Unfortunately, often under the pretext of public interest, ASEAN governments, while preaching the benefits of competition for the private sector, do not lead by example, and absolve state enterprise from such competition obligations. Some ASEAN governments also seem to only pay lip service to the benefits of competition, even as they directly interfere in the operations of the market—for example, through price controls.

6.2. Strengthening enforcement

Useful as it may be, the promotion of a competition culture may not be enough, and strengthening enforcement may be required. Enforcement requires resources in terms of institutional capacity and human resources. Bilal [2001] suggests the following policy measures for successful enforcement:

First, a clear legislative framework should be put in place. The law should be accompanied by clear guidelines to the business community regarding the types of business practices that are considered anticompetitive. The mandate of the competition authority regarding enforcement of the law must be clear and unambiguous.

Second, the implementation of a competition regime requires adequate institutional setting, including an independent competition authority, so that enforcement of competition rules does not serve political interests.

As indicated earlier in this paper, these two requisites are in somewhat short supply in

²⁴ Various works argue that a properly implemented competition law and policy would encourage investment and promote growth (see Sengupta and Dube [2008]; Sudsawasd [2010]; and Urata and Okabe [2010]).

the ASEAN region. Regionwide enforcement is practically nonexistent; while at the national level, the interests of the government and of large businesses often prevail over competition.

Although most members of the ASEAN have established market reforms and enacted competition legislation, the objective of establishing the ASEAN Economic Community by 2015 is not likely to be attained, as this requires regionally harmonized competition law and policy, effective enforcement institutions, and support by stakeholders (notably governments, business, and consumers).

Given the nature of the ASEAN, which, as explained above, does not and is not likely to have enforcement teeth regionally, a regional overseer is not likely to be created by 2015. For international trade rules, ASEAN member countries are overseen by the World Trade Organization (WTO), as a result of which these countries are compelled to obey international trade rules. Unfortunately, however, there is no international competition organization; therefore, domestic competition law and policy in the ASEAN are likely to remain within the national domain. This, of course, contrasts sharply with the EU, in which the European Commission effectively imposes discipline on the EU member countries in matters of competition law and policy.

7. Conclusion

For those who see the benefits to be derived from competition law and policy both for individual countries and for the region as a whole, the vision expressed in the *ASEAN Economic Community blueprint* [ASEAN 2010a] will be welcome.

However, a number of weaknesses are likely to work against these desired developments. This paper identified the absence of an enforcement mechanism and institutional framework within the region as major weaknesses in this regard. In the absence of reform relating to these weaknesses, competition law and policy advancements as laid out in the blueprint are likely to remain mere words [Hunter 2012].²⁵ Other weaknesses identified in this paper relate to governments' unwillingness to subject state enterprises to competition law, as well as the strong asymmetries between consumer lobbies and business power.

Competition law and policy in the EU succeeded in further strengthening the single market mainly because member countries were willing to forgo part of their sovereignty to the union, and to allow a central entity (the European Commission) to enforce competition law with investigative powers and backed by an EU-wide legislative framework transposed into national laws. The EU Commission has also been actively involved in competition advocacy and the empowerment of civil society.²⁶

The million-dollar question in this regard is, therefore, "Are the ASEAN member states prepared to sacrifice their sovereignty and allow the AEGC or the ACFC to enforce competition law across the region, with the power to investigate and punish possible transgressions in the member countries?" The ASEAN countries have agreed—at least in principle—to create an economic community by 2015, but this will not lead to a single market unless these countries are prepared to extend enforcement and investigative powers to a central ASEAN entity.

²⁵ Hunter [2012] believes that the problem is not just a delay in the schedule but, more important, the result of inward-looking policies of most ASEAN members.

²⁶ The ASEAN can also learn from the EU in matters other than those purely related to the single market. The EU enlargement process, which culminated in ten heterogeneous countries joining the union, has shown that it is possible to foster regional integration among countries with different political heritage, stage of economic development, and cultural environment. The process of screening legislation and negotiated legal changes has enabled these ten countries to prepare themselves for membership by attaining what is known as the *acquis communautaire* (the EU body of legislation).

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