

## 21<sup>st</sup> ASLI Conference 2024 – 29 & 30 May 2024

<b>Panel Category</b>	:	<b>Competition Law</b>
<b>Panel Title</b>	:	<b>ASEAN Competition Law and Policy</b>
<b>Participation Type</b>	:	<b>Panel Submission – Panel 3</b>

### **Panel Abstract**

At the 55th ASEAN Economic Ministers' (AEM) Meeting, the joint statement among ASEAN member countries reaffirmed the ASEAN's commitment to deepening regional economic integration by advancing the ASEAN Economic Community Blueprint 2025. The statement also supports the enhancement of ASEAN competition law and policy. The Guidelines for Sharing Merger Cases among ASEAN Competition Authorities recommend developing an information portal to exchange details on mergers impacting ASEAN member economies. The ASEAN competition law also reaches out to member countries by adopting the ASEAN Framework Agreement on Competition (AFAC), intending to build up fair competition in ASEAN through cross-border cooperation between Competition Authorities. However, there are also challenges for the ASEAN competition law and policy both at the local and regional levels. Thus, the panel proposes to be a vital academic form for sharing foundational substantive principles at regional and national competition frameworks in ASEAN. This panel will explore the opportunities and challenges in achieving substantive convergence or harmonisation between the competition laws of the ASEAN.

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<b>Name of Author</b>	:	Benjawan Tangsatapornpan (Panellist #2)
<b>Designation / Academic Post</b>	:	Full-Time Professor
<b>Institution / Organisation</b>	:	Court of Appeal for Specialized Cases (Thailand)
<b>Title of Paper (Convenor and Panellist #2)</b>		
Exemption of Thai Competition Law and challenges for cross-sector competition		
<b>Abstract (Convenor and Panellist #2)</b>		
<p>The paper explores the exemption of Thai Competition of competition law according to section 4 of the Thai Trade Competition Act BE 2560 (2017) and the possible challenges in applying competition law in certain sectors. The paper highlights that the exemption had been included since the previous Competition Act BE 2542 (1999) and continued into the Thai Trade Competition Act BE 2560 (2017). While the exemption provides greater room for various sectors to ensure socioeconomic objectives, it also contributes to challenges in applying competition law toward anticompetitive conduct concerning essential business sectors impacting consumers in Thailand. The paper will be divided into four parts. The first part explores the general framework of competition law and the development of the exemption of competition law in Thailand. The second part focuses on the exemption of competition law with a comparison to some ASEAN countries. The third part presents the challenges of the exemption of competition law toward some economic sectors in Thailand. The final provides a conclusion and recommendation on competition law reform regarding the exemption.</p>		
<b>Brief Biography of Authors (Convenor and Panellist #2)</b>		
<p><b>Pornchai Wisuttisak</b> Associate Professor Dr Pornchai Wisuttisak is Assistant to the President of Chiang Mai University, Thailand. He is a former Dean of the Faculty of Law. He completed his PhD in Business Law and Taxation from the University of New South Wales and his Master of Commercial Law from Macquarie University, Australia. His PhD thesis is on “Competition law and the development and regulation of the Thai Electricity Sector” He also graduated with a BA in Political Science in Government from Thammasat University, Thailand. He has worked with Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) and Friedrich Naumann Foundation (FNF) on training courses for competition law and policy in Thailand, Myanmar, and Laos. He has been an advisor to a consultancy project with the Energy Regulatory Commission of Thailand. His research involved the political economy and regulation on economic activities. His recent research relates to Anti-competitive Behavior and Dominant Criteria on competition law, under support from TCCT and Asia Foundation. He has also published papers on political economy of economic cooperation in journals.</p>		
<p><b>Benjawan Tangsatapornpan</b> Dr Tangsatapornpan is the former Executive Director of Thai Arbitration Institute (TAI) and a judge attached to the Court of Appeal for Specialized Cases. She teaches in various leading universities e.g. Thammasat University (Thailand), Nagoya University (Japan) and National Taipei University (Taiwan) etc. In her role with the government, Dr Tangsatapornpan participated in important legislative drafting, as the representative of the office of the judiciary in the consideration of the Council of State regarding to be the member of CISG Convention, drafting of the Contracts for the International Sale and Purchase of Goods Act, and as ad hoc committee member in the drafting and revising of various regulations including Thailand’s Trade Competition Act.</p>		

<b>Name of Author</b>	:	May Fong Cheong (Panellist #3)
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<b>Institution / Organisation</b>	:	University of New South Wales, Faculty of Law & Justice
<b>Title of Paper (Panellist #3)</b>		
The Future of Competition Law in Malaysia: Waiting for the much-awaited Merger Control Regime		
<b>Abstract (Panellist #3)</b>		
<p>Malaysia is in an exceptional position of being the only ASEAN state without a merger control regime. The Malaysian Competition Act 2010 which came into force on 1 January 2012 provides for two pillars of control focussing on anti-competitive agreements and abuse of dominance. Ten years on and despite long-standing debates on the need for cross-sector merger control rules, the much-awaited third pillar remains to be realised. Initiatives to introduce amendments to include new provisions on mergers and acquisitions into the Act started in 2019. On 22 April 2022, the Commission issued a consultation paper and salient points on the proposed amendments which were to be tabled in Parliament in October 2022 and take effect in October 2023. There has been no progress since the close of the consultation process. While businesses anticipate the impact of the regulatory regime, consumers await the hoped-for benefits of freer competition.</p> <p>The paper highlights some challenges of key provisions of the proposed regime. While the broad definition of “merger” and “control” accompanying the hybrid approach of both mandatory and voluntary notifications will allow the Commission to enforce the relevant controls, limited resources may inhibit the Commission to provide speedy merger clearance. The criteria for the threshold for notification has yet to be set: if set too low, it may result in “regulatory over-capture”. Conversely, if it is too high, the Commission will be tasked with investigating many potential mergers. There is no perfect fit; putting in place merger controls expeditiously and improving them through the shared experiences of ASEAN counterparts will define the future of Malaysia’s competition laws – a lesson learnt from the Grab/Uber merger that slipped regulation through the lack of a merger control regime.</p>		
<b>Brief Biography of Author (Panellist #3)</b>		
<p>May Fong Cheong has a PhD from University of Sydney, LLM from National University of Singapore, LLB (Hons) from University of Malaya and a Diploma in Shariah Law and Practice from International Islamic University Malaysia. She is an Associate Professor at the School of Private and Commercial Law, Faculty of Law and Justice, University of New South Wales, Australia. She is also an Adjunct Professor, Faculty of Law, Multimedia University, Malaysia and was formerly Professor and Dean, Faculty of Law, University of Malaya. Her research interests include contracts, commercial law, remedies, consumer and competition law and Asian comparative law. May also researches on legal transplants, gender equality and legal education.</p>		

<b>Name of Author</b>	:	Pham Hoai Huan (Panellist #4)
<b>Designation / Academic Post</b>	:	Full-Time Professor
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<b>Institution / Organisation</b>	:	Ho Chi Minh City University of Law
<b>Title of Paper (Panellists #4 and #5)</b>		
Navigating Regulatory Shifts: A Comprehensive Analysis of Competition Law Changes in Vietnam and Strategies for International Investors in M&A Transactions in Vietnam		
<b>Abstract (Panellists #4 and #5)</b>		
<p>In recent decades, Vietnam has emerged as a favored market for international investors engaging in cross-border M&amp;A. Despite past challenges stemming from inadequately controlled M&amp;A transactions, the enactment of the new Competition Law in 2018 marked a significant shift in regulatory approach and techniques, reshaping the landscape for FDI enterprises and cross-border M&amp;A transactions in Vietnam.</p> <p>This article delves into the evolving regulatory framework for competition management under the Competition Law 2018, offering a nuanced perspective on its impact and implications for foreign investors. Through a meticulous analysis, the article examines changes in the system of regulations governing M&amp;A transactions in Vietnam, including key aspects such as transaction control thresholds and criteria influencing Vietnam's approval or prohibition decisions. Drawing from this analysis, the article provides valuable suggestions for international investors aiming to navigate the complexities of M&amp;A transactions in Vietnam. Addressing critical aspects affecting transaction structures, the article outlines strategic considerations and offers insights into factors crucial for compliance with the new regulatory landscape; some actionable recommendations to mitigate risks and enhance their legal compliance in cross-border M&amp;A transactions within the Vietnamese market.</p>		
<b>Brief Biography of Authors (Panellists #4 and #5)</b>		
<p><b>Pham Hoai Huan</b></p> <p>Pham Hoai Huan holds a LLB and PhD degree from Ho Chi Minh City University of Law. He has substantial knowledge and experience in corporate, foreign investment, commercial and competition laws. With nearly 10 years of practice, Huan has gained rich experience in mergers and acquisitions advisory including legal and securities due diligence, negotiation, corporate restructuring, accumulated through transaction services to both local and foreign companies. Mr. Huan has advised for both sellside and buy-side of M&amp;A transactions. Huan has published a number of books and academic articles in the prestigious legal journals of Vietnam. He also teaches laws at the Ho Chi Minh City University of Law</p>		
<p><b>Tran Viet Dung</b></p> <p>Dr. Tran is founding member of DL &amp; Partners with more than 16 years of legal practice in Vietnam and Singapore, focusing primarily on mergers and acquisitions, equity capital market, competition policy, foreign investment in Vietnam and international trade law. He has extensive experience working in both civil and common law jurisdictions, having previously based in Singapore for more than 6 years working for WongPartnership and KhattarWong. Prior to founding DL &amp; Partners, he served as country manager of Khattar Wong Vietnam for 2 years.</p> <p>Dr. Tran has been extensively involved in work for multinational companies with respect to their investment in Vietnam, as well as leading Vietnamese companies in their overseas investments and international trade. He has been involved in various capital market transactions, including public offerings of shares of Vietnamese enterprises on the Singapore Exchange (SGX), Malaysia Exchange (MYX).</p> <p>Dr. Tran is also lecturing laws at Ho Chi Minh City University of Law, University of West England, Chulalongkorn University, Jean Moulin University Law School, Montesquieu University of Bordeaux; a member of Board of Management of Development of International Law in Asia (DILA). He has written and published numerous articles on international trade, competition policy, foreign investment and international dispute settlement.</p>		

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<b>Name of Author</b>	:	Udin Silalahi (Panellist #8)
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#### **Title of Paper (Panellists #6, #7 and #8)**

An Urgency of a Regional Competition Guideline in Responding to the 'Algorithmic Pricing Practice' resulting from the Artificial Intelligence (AI) to achieve the ASEAN Economic Community 2025

#### **Abstract (Panellists #6, #7 and #8)**

At present, Indonesia and other ASEAN Member Countries (AMCs) have entered the digital economy era. The digital economy chiefly refers to a broad range of economic or business activities that utilize digitalized information and knowledge as the key factors of production through the usage of internet, cloud computing, 'big data', financial technology (fintech) and other new digital technologies in order to collect, store, analyze and share information. This includes the Artificial Intelligence's application. As the transactions in digital market frequently involve cross-border transactions, this inevitably prerequisites a regional regulatory approach thereof. In the digital market, the employment of AI and 'Big data' can bring positive effects to business activities, but it can also incur negative effects to the fair competition and consumer welfare's interests in the digital market. However, the application of AI and 'Big data' utilization have also raised competition concerns for the Competition Authority in Indonesia (KPPU) as well as the Competition Authorities of AMCs. The application of the aforementioned instruments can indeed cause the imposition of algorithmic pricing practices, which ultimately leads to collusion and lead to 'monopolization of digital markets' by the (incumbent) undertakings in ASEAN digital market. AMCs have agreed on the ASEAN Economic Community 2025' Goals, whereas one of its pillars is a competitive, innovative and dynamic ASEAN. This research attempts to study how and to what extent the AMCs can formulate a regional regulation or guideline concerning the algorithmic pricing resulted from AI in ASEAN digital market. This regulation is important to promote and protect the fair competition and consumers' welfare's interest n the ASEAN digital market in the long run.

#### **Brief Biography of Authors (Panellists #6, #7 and #8)**

##### **Henki M. Sibuea**

Dr (cand.) Hengki Sibuea is an Indonesian qualified attorney with more than 15 years professional experiences. Currently, Mr. Sibuea is a Doctoral Student at the Graduate School of Law, Universtias Pelita Harapan, Indonesia. His practice covers wide range of commercial litigation, private law, criminal law, and business law matters within Indonesian geographic boundaries. He is best known for his special focus on Prohibition of Monopolistic Practices and Unfair Business Competition, Bankruptcy and Suspension of Debt Payment Obligation (PKPU), Manpower, Arbitration and Alternative Disputes Resolution, etc. He has worked with various types of clients, including foreign companies, private companies, state owned enterprises, banking and finance institutions, pharmaceuticals companies, etc. Mr. Sibuea has finished the bachelor and master studies in the law science.

##### **Dian Parluhutan**

Assistant Professor Dr. Dian Parluhutan, was born in Jakarta, Indonesia, in October 1979. Currently, Mr. Parluhutan works as an Assistant Professor at the Faculty of Law, University of Pelita Harapan for the Competition and Energy laws subjects. Mr. Parluhutan finished his Doktor des Rechts (Dr. iur) from the Fachbereich Rechtswissenschaft, Freie Universität Berlin under supervision of Professor Dr. Dr. Dr. Franz Jürgen Säcker. Mr Parluhutan is also an Associate Consultant at Lembaga Management, University of Indonesia (UI) as well as a legal expert staff at the Provincial Government of DKI Jakarta. Mr. Parluhutan graduated from the Faculty of Law, University of Indonesia (UI), with specialization on the World Trade Organization (WTO) law. With the scholarship from the Ministry of Foreign Affairs (Auswärtige Amt), Hanns Seidel Stiftung, from 2007 until 2009, Mr. Parluhutan completed the Magister des Europarechts (LL.M) from the Europa-Institut, Universität des Saarlandes under the supervision of Professor Dr. Iris Canor. After serving as the returning legal expert (CIM RF Germany) at the Civil Servant Management Unit, Provincial Government of Yogyakarta, Mr. Parluhutan joined the Faculty of Law, Pelita Harapan University (UPH), Indonesia, as a full-time Lecturer in the fields of international public law and international trade law (WTO law). During his academic

services in UPH, he also teaches international trade law (WTO law) course for the International Relations Department, Social and Political Science Faculty. Further, he was responsible as a co-mentor for the WTO Moot-court team, Willem C. Vis Arbitration Moot-court of the UPH Law Faculty. In 2011, he acted as the vice-judge in the Asia-Pacific Moot-court competition on International Space Law (IISL). He performs research, delivers academic presentations and publishes articles in the Indonesian newspaper and nationally accredited law journals (UPH Law Review) concerning competition law and energy law in the ASEAN and a comparison of the European and Indonesian economic laws. Mr. Parluhutan received doctoral scholarship from the German Ministry of Foreign Affairs (Auswärtige Amt), Hanns Seidel Foundation as well as dissertation scholarship from the Indonesian Ministry of Finance (LPDP). Besides teaching international law and international business law at Universitas Pelita Harapan, Mr. Parluhutan has also published several books and articles both in the national and international journals, such as the Necessity of ASEAN Competition Law: Rethinking, The Principle of Extraterritoriality in Indonesian Competition Law, Handbook on Indonesian Competition Law, The Implementation of Leniency Program in the Indonesian Competition Law in the Framework of the ASEAN Economic Integration 2025.

#### **Udin Silalahi**

Professor Dr. jur. Udin Silalahi, SH.,LL.M was born in Sidamanik, Indonesia in September 1958. Currently Professor Silalahi serves as the fulltime Professor of Law at University of Pelita Harapan for the Competition (Antitrust) law. Professor Silalahi received his Bachelor of Law (SH) from the University of Atma Jaya Yogayakarta in 1985 and immediately joined the CSIS Jakarta in mid of 1986. In 1995, he obtained his Master of Law (LL.M) from the University Friedrich-Alexander Erlangen, Nuernberg, Germany. His thesis was entitled: "Franchise according to the European competition law". After receiving his doctor degree with magna cum laude in Law in February 2001 from the University of Friedrich-Alexander Erlangen-Nuernberg, Germany, he immediately joined the CSIS in April 2001 again. Professor Silalahi's doctoral thesis was entitled: "Merger control in Indonesia according to the Government Regulation No. 27/1998 and the Law No. 5/1999 in comparison with German and European merger control". Professor Silalahi is also a part time consultant for the Indonesian Commission for the Supervision of Business Competition (KPPU), from 2002 to 2013. Since April 2009 he joined as fulltime lecturer at the Faculty of Law Universitas Pelita Harapan, Lippo Village, Tangerang Indonesia and now Professor Silalahi is head of legal laboratory Faculty of Law Universitas Pelita Harapan. Professor Silalahi is also a parttime Lecturer at the European Study Program Universitas Indonesia. Professor Silalahi's research interests are antitrust and competition law in Indonesia and ASEAN, comparative competition law, merger and acquisition and political economy. He is teaching also bankruptcy law and European Law. Professor Silalahi has also published many and variety of books and articles on Competition law in Indonesia and ASEAN, both in the national and international journals, among others: Hukum Persaingan Usaha: Antara Teks dan Konteks, Hukum Persaingan Usaha: Buku Teks, Perusahaan Saling Mematikan dan Bersekongkol: Bagaimana cara Memenangkan?, Pembuktian Perkara Kartel di Indonesia dengan Menggunakan Bukti Tidak Langsung (Indirect Evidences), Indirect Evidence dalam Hukum Persaingan Usaha, Single Economic Entity: Kajian Hukum Persaingan Usaha di Indonesia, Persaingan di Industri Ritel ditinjau dari Aspek Hukum Persaingan Usaha, The Harmonization of Competition Law towards the ASEAN Integration, The Necessity of ASEAN Competition Law: Rethinking, Business Competition Law: Between Text and Context.

<b>Name of Author</b>	:	Burton Ong (Panellist #9)
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<b>Institution / Organisation</b>	:	National University of Singapore, Faculty of Law
<b>Title of Paper (Panellist #9)</b>		
Competition Law in the ASEAN Economic Community: Prospects for Convergence within the Region?		
<b>Abstract (Panellist #9)</b>		
<p>Businesses operating across jurisdictions within the ASEAN Economic Community (AEC) are expected to comply with the distinct national competition law frameworks of the individual ASEAN Member States (AMSs). This can create operational challenges such as higher compliance costs and obstructs the formulation and execution of regional commercial strategies. The ASEAN Competition Compliance Experience Survey Study (ACCESS) was conducted to examine the competition law enforcement landscape across the AMSs. ACCESS is, to our knowledge, the first empirical study that engages with competition law stakeholders from multiple jurisdictions in this region. While the results of the study suggest that closer alignment in certain areas of the AMS' national competition laws would be desirable, many obstacles must first be overcome, including the need to accommodate the different local conditions, needs and goals of each AMS.</p> <p>This paper presents the results of ACCESS and explores potential pathways for competition law reform within the AEC. These include, specifically, the opportunities and obstacles for the AMSs to focus their competition law convergence efforts on their respective anti-cartel and merger review laws. It concludes that, despite manifold difficulties, there could be real benefits for the AEC in pursuing some of the convergence efforts outlined.</p>		
<b>Brief Biography of Author (Panellist #9)</b>		
<p>Dr Burton Ong, LLB (NUS); LLM (Harv); BCL/DPhil (Oxon) is an Associate Professor at the Faculty of Law, National University of Singapore (NUS), where he teaches and researches in the fields of competition law, intellectual property, and contract law. He is an Advocate and Solicitor of the Supreme Court of Singapore, as well as an Attorney and Counsellor-at-Law in New York State. He is a Director (Competition Law) at the EW Barker Centre for Law and Business at the National University of Singapore. He is the editor of "The Regionalisation of Competition Law and Policy Within the ASEAN Economic Community" (2018), published by Cambridge University Press</p>		