
KEYNOTE SPEECH AT NUS-CLB CONFERENCE

THE REGIONALISATION OF COMPETITION LAW & POLICY: IMPLICATIONS FOR THE ASEAN ECONOMIC COMMUNITY

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Ladies and gentlemen,

A very good morning to you.

2 This week marks the start of an eventful period for the global competition community, as Singapore hosts the 2016 Annual Conference of the International Competition Network (ICN) from 26 to 29 April. It is the first time that the ICN Annual Conference is being held in Southeast Asia and is taking place amidst some very exciting regional developments which you are no doubt keenly observing.

3 For a start, the ASEAN Economic Community (AEC) was formally established on 31 December 2015. An Indonesian newspaper, the Jakarta Post describes this as “a point of no return for all member states”¹. The economic potential of the ASEAN single market is tremendous – collectively, the region is the 7th largest economy in the world with a combined market size of over US\$ 2.5 trillion. The population of over 622 million people represents the 3rd largest market base in the world, bigger than the EU, and behind only China and India.

4 Following the AEC’s establishment, a new blueprint to strengthen regional economic integration for the single market has been adopted, namely the AEC Blueprint 2025. In the area of competition policy, the ASEAN Experts Group on Competition (AEGC) has

¹ <http://www.thejakartapost.com/news/2016/01/14/aec-2015-a-point-no-return-all-member-states.html>

developed a dedicated competition action plan to guide development of competition policies and enhance its implementation in the region over the next decade. These are positive steps towards creating a more effective regional competition regime in the long-term.

5 As we move towards creating more integrated competition policies in the region, it is important for us to look outward and study what other economic communities have done. In this regard, I am heartened to note that one of the themes of today's conference will focus on examining the approaches that other economic communities, such as the European Union, have taken to integrate competition laws in their market as well as how their experiences could apply in the ASEAN context. Indeed, there is much to learn from the EU in the regionalisation of competition policy. ASEAN, in developing its Regional Guidelines on Competition Policy, had referred to the EU model for guidance. Due to the similarities between Singapore's competition law and UK/EU law, the Competition Appeal Board in Singapore has recognised in various appeals that decisions of the EU/UK Courts on competition law are persuasive when considering similar issues.

6 As you draw inferences between the two regions, I urge you to adopt a multi-dimensional perspective, taking into account the unique institutional structures, and the substantive and procedural aspects of competition law in the region. In particular, we should bear in mind the different institutional structures between the EU and ASEAN. The EU adopts a supra-national structure that allows an over-arching regional body the powers to decide on cross-border competition cases. On the other hand, ASEAN operates on a consensus-driven model with each member state maintaining full sovereignty over their laws and decisions.

7 The consensus-driven model is often criticised for resulting in non-optimal outcomes by veering towards the "lowest common denominator". However, given the political context

of the region and the varying stages of economic development the ASEAN countries are at, this model may be the most practical approach for ASEAN. In this regard, we may want to also look at how the International Competition Network (ICN) has become a successful example of consensus-driven harmonisation on competition policy and law, with over 130 member agencies collaborating to develop certain common principles and recommendation practices based on consensus among its members.

8 Given ASEAN's diversity, it is unavoidable that there will be significant differences across the competition regimes in ASEAN in both substantive and procedural aspects. To have an effective and credible competition regime, the region will need to work towards developing and putting in place common principles for due process, particularly in the areas of transparency, non-discrimination, independent decision-making, and right of appeal. For instance, Thailand is in the process of amending its competition law to cover state-owned enterprises and their subsidiaries, as well as strengthening the effectiveness of competition law enforcement by establishing a new independent body to handle competition-related matters². Over time, this will create greater alignment of competition regimes in the region.

9 There are many other positive steps being taken by competition authorities in the region to enhance the implementation of competition law. Indonesia's KPPU is proposing legislative changes to its law to give it broader powers to enforce competition law more effectively. Newer competition jurisdictions in ASEAN, such as the Philippines, are also putting in place the necessary institutional and manpower setup to enable them to begin enforcement.

² <http://www.nationmultimedia.com/business/Much-needed-changes-to-competition-law-set-for-Cab-30277649.html>

10 But challenges also lie ahead for a successful implementation of competition policy and law in ASEAN. I shall call these challenges the three “P”s, namely politics, protectionism and populism.

11 Politics refers to active lobbying by powerful businesses who see competition law as a threat to their market share and entrenched positions in the economy. Warren Buffet famously said that he looks to invests in economic castles that are protected by unbreachable moats. Sometimes these moats can be created as a result of pro-competitive innovation resulting in a patent. At other times, moats are created when businesses seek powerful allies from the politicians to lobby them to impede or stymie the growth and enforcement of competition law. We have seen this happen in Malaysia and Hong Kong where the merger control provisions have been suspended because of a political compromise to get the rest of the Act through. It has been reported that there has been resistance from Indonesian lawmakers to KPPU’s proposals to enhance its investigation powers such as the ability to conduct dawn raids.

12 Protectionism and populism are interrelated. In order to satisfy local stakeholders, national governments may be inclined to adopt economic populism and enact laws and policies that protect local businesses from foreign investment and invoke what they term “unfair competition” from the foreign bogeyman. Even Singapore is not immune from this and we already see calls to “favour” local companies over foreign ones in procurement simply on the basis of nationality and not merit. Populism can also occur when governments or regulators bow to popular pressure to engage in price regulation or tolerate crisis cartels which will appearing to give relief in the short term will have damaging effects in the long term.

13 Some critics of competition law even allege that competition law is a “western concept” that is not suitable for Asia. But the truth of the matter is that because competition policy and law takes a long term view of markets, it will receive short shrift for those who are only looking to win votes for the next election or from incumbents who want to protect their economic castles with unbreachable moats.

14 As such, more guidance to competition agencies, particularly the newer regimes, on conducting effective advocacy work, would be critical. In this regard, CCS has led efforts to develop an advocacy toolkit with relevant case studies to provide guidance to competition authorities in ASEAN on how to conduct effective advocacy campaigns targeted at specific stakeholder groups. It is therefore critical to get ground up support for competition policy and law and demonstrate its benefits to businesses and the public. I am pleased to report that the toolkit has been completed and will be launched at the ICN Annual Conference this week.

15 I would like to end off by drawing your attention once again to the tremendous economic potential of the ASEAN Economic Community. Competition policy and law can play an important role to support cross-border activity in the region, by creating a level playing field for new entrants and existing businesses to compete with one another. For us to fully realise the benefits of competition policy, the region will need to deal with the 3 “P”s of politics, protectionism and populism and move towards a more harmonised approach in terms of competition law enforcement based on a core set of common principles, even if it may not be possible to achieve full harmonisation in terms of the substantive and procedural aspects. The ICN is a successful example of how diverse members can come together to reach consensus on developing common principles for competition law enforcement. I also hope that NUS-CLB will organise more of such conferences moving forward as academics and institutions play a critical role in shaping and growing the competition ecosystem

15 With this, I wish you a successful conference and fruitful discussions ahead.