













ANNEX II

Comparative Table on Competition Law Frameworks in ASEAN

This page is intentionally left blank

ANNEX II: COMPARATIVE TABLE ON COMPETITION LAW FRAMEWORKS IN ASEAN

ASEAN MEMBER STATE	National Competition Law	Authority administering the National Competition Law	Does the agency also take on functions to protect consumer interests?	Are there specific sectors that come under sectoral regulators with own competition laws?	Prohibition on anti-competitive agreements	Prohibition against abuse of dominant position	Prohibition against anti-competitive mergers	Main exemptions from the National Competition Law (e.g. SOEs/GLCs are exempted, statutory boards, etc.)	Adjudication	Appeal	Leniency Program	Mandatory or Voluntary Merger Regime?	Are there provisions which allow entities to seek guidance or decision from the authority whether a particular agreement, conduct or merger is likely to or has infringed the competition law?	Does national competition law have settlement provisions?	Criminal Liability for breaching prohibitions against anti-competitive conduct?	Main investigative powers conferred by the Law	Rights of Private Action (Standalone or follow-on)
 Brunei	Yes. Competition Order 2015	Competition Commission of Brunei Darussalam and Consumer Affairs Department http://www.dcpd.gov.bn/StaticPages/Competition%20and%20Consumer%20Affairs.aspx	No. The Commission is only responsible for competition matters. While the Competition and Consumer Affairs Department has function to protect consumers.	N/A	Yes. Chapter 2 of the Order prohibits agreements, decisions, or concerted practice that have as their object or effect the prevention, restriction, or distortion of competition within Brunei Darussalam.	Yes. Chapter 3 of the Order prohibits abuse of dominant position in any market in Brunei Darussalam, when it consists of: (a) Predatory behaviour; (b) Limiting production; (c) Applying dissimilar conditions to equivalent transactions; (d) Making contract conclusion.	Yes. Chapter 4 of the Order prohibits mergers that have resulted or may be expected to result in a substantial lessening of competition within any market.	The Order does not apply to activities carried on by the government and Statutory Bodies.	Yes. The adjudication starts from investigation and Commission's decision upon completion of investigation.	Yes. Any party may appeal within the prescribed period to the Competition Appeal Tribunal against, or with respect to, the decision/direction made by the Commission.	Yes. The Order regulates the leniency program, with a reduction of up to 100 percent of any penalties which would otherwise have been imposed.	Voluntary	N/A	N/A	N/A	Yes. Investigative powers of the Commission are: (a) power to require documents/information; and (b) power to enter premises without/under warrant.	Yes. Any person who suffers loss/damage directly as a result of an infringement of the Section 11, 21, and 23 of the Order, shall have a right of action in civil proceedings in a court.
 Cambodia	Ministry of Commerce finalizing a draft national competition law, which is expected to be submitted by the end of 2017.	Proposed to be the Cambodian Competition Commission and the Directorate.	No. There will be another agency established by different law to protect consumer interests.	Under the proposed law, the Commission and Directorate are responsible for the application of competition law in all sectors. The existing RAs will not have competition enforcement powers after this law enters into force.	Yes	Yes	No	Yes. The prohibitions of this law shall not apply to independent small Business Operators whose profits are exempted from taxation.	Yes	Yes. A decision, statement on remedies and sanctions, and order issued by the Commission may be appealed to the Competent Court of the Kingdom of Cambodia.	Yes	Not yet to be determine will be put on the sub-degree	No	Yes	Yes	Yes. Investigative powers of the Commission are: (a) power to require documents/information; and (b) power to enter premises without/under warrant. (according to the draft law)	Yes. Any person who suffers loss/damage directly as a result of an infringement of the article 41 of the draft law, shall have the right for compensation.
 Indonesia	Yes. The Law No. 5/1999 concerning the Prohibition of Monopolistic Practices and Unfair Competition	Komisi Pengawas Persaingan Usaha (KPPU) http://www.kppu.go.id/new/index.php http://eng.kppu.go.id/ (English version)	No.	No.	Yes. Article 5 excluded price fixing agreement by joint venture. Article 50 excluded violation in implementing certain law, IPR, franchise, technical standard, agency, research, international agreement, export, SMEs, and cooperatives	Yes. Article 50 excluded violation in implementing certain law, IPR, franchise, technical standard, agency, research, international agreement, export, SMEs, and cooperatives	Yes. Article 28 and 29. Exclusion gives to mergers between affiliated companies.	Exemption is provided by Article 51 to the establishment of monopoly or concentration by SOE and enterprises by certain Law under public interest's background.	Yes	Yes	No	Both, voluntary pre-merger and mandatory post-merger notification. Thresholds are IDR 2.5 trillion of combined asset, or IDR 5 trillion of combined sales. For banking, the combined asset is IDR 20 trillion.	Not specified, but companies may proposed for unbinding consultation to KPPU	No	Yes. Rules by Article 48, but can be imposed by Court at appeal proceeding	Power to summon, and request for documents. No power for raid or seizure.	No
 Lao PDR	Yes. Law on Competition 2015	Yes. Lao Competition Committee (LCC)	Yes.	Sectoral regulators have wide powers to consider matters in their sectors including, potentially, competition law matters.	Yes. Article 20 of the Law prohibits anti-competitive agreements. Exemption is allowed if the agreement provides benefits in promoting technological advancement, improves quality of products/services, and strengthens SMEs.	Yes. Article 31 of the Law prohibits abuse of dominant position. Exemption may apply if the practices are contributing to the national socio-economic development or due to national strategy and security reasons.	Yes. Article 38 of the Law prohibits anti-competitive mergers or acquisitions, but can be exempted if under bankruptcy and if merger contributes to growth or technological advancement.	Yes. Certain agreements, monopoly or dominant position, and mergers may be exempted on a case-by-case basis.	Yes. LCC shall take actions on issuing order and decision.	N/A.	N/A.	Mandatory. Article 39 of the Law provides an obligation to notify a proposed merger.	N/A.	N/A.	Yes.	Yes.	N/A. There are no specific provisions in the Law related to private actions for damages from anti-competitive behaviors.
 Malaysia	Yes. Competition Act 2010	Malaysia Competition Commission (MyCC) www.mycc.gov.my	No.	Yes. i. Communication and Multimedia Sector regulated by the Malaysian Communications and Multimedia Commission (MCMC); ii. Energy Sector regulated by Energy Commission (ST); iii. Aviation Sector regulated by the Malaysian Aviation Commission (MAVCOM); and iv. Upstream Oil and Gas Activities regulated by the Petroleum Development Act 1974 and Petroleum Regulations 1974	Yes. Section 4 of the Competition Act 2010 (exclusions: non-commercial activities, agreements with net benefits, individual exemptions, block exemptions, agreements in pursuance of legislative requirements, collective bargaining activities for employment terms, services of general economic interests, activities regulated by the Malaysian Multimedia and Communications Commission and the Energy Commission	Yes. Section 10 of the Competition Act 2010	N/A	Yes. Activities in exercise of governmental authority, activities conducted on the principle of solidarity, purchase of goods/ services not for the purposes of an economic activity, agreements in pursuance to a legislative requirement, collective bargaining activities for employment terms, services of general economic interests.	Yes.	Yes.	Yes.	N/A	N/A	No. However, the Competition Act 2010 contains a provision to accept voluntary undertakings as per Section 43.	No. With regard to infringing the main provisions of the CA 2010 but there is criminal liability with regard to certain acts in relation to powers of investigation.	Yes. (1) Power of search and seizure (with and without a warrant) (2) Power to require information	Yes. Under section 64 (follow-on).
 Myanmar	Yes. Competition Law 2015 (The Pyidaungsu Hluttaw Law No. 9, 2015)	Department of Trade, Ministry of Commerce	Yes.	N/A	Yes. Article 13 of Chapter VII	Yes. Article 15 and 27	Yes. Article 31 and 32	Yes. The Commission has the power for exempting from the compliance of this Law to businesses essential for the benefit of the State and small and medium enterprises, if necessary.	N/A	Yes.	Yes.	N/A	N/A	N/A	Yes. Article 50	Yes.	Yes. Article 51
 Philippines	Yes. Philippine Competition Act 2015 (PCA or the Act).	Philippine Competition Commission (PCC) http://phcc.gov.ph/	No.	Yes. The Philippines adopts a sectoral and holistic approach to competition policy and law enforcement with over thirty (30) industry-specific and consumer welfare laws, addressing competition-related practices.	Yes. Section 14 of the Act stipulates three (3) types of anti-competitive agreements.	Yes. Section 15 of the Act prohibits abuse of dominant position.	Yes. Section 20 of the Act prohibits mergers and acquisitions that substantially prevent, restrict, or lessen competition.	Yes. Prohibited mergers and acquisitions may be exempt from prohibition if the same brings gains in efficiencies or in cases of imminent financial failure. For abuse of dominance cases, permissible price differentials are exempted. In addition, the PCC may forbear from applying the Act, in whole or in part, in all or in specific cases, under certain determinations.	Yes.	Yes.	Yes.	Mandatory. The PCA adopts a mandatory merger control regime.	Yes.	Yes. Section 37(a) of the Act allows an entity to request for a Binding Ruling on a contemplated act, course of conduct, agreement, or decision.	Yes. Section 33 of the Act confers upon the PCC the power to investigate and enforce orders and resolutions by making use of any available means, provisional or otherwise under existing laws and procedures.	Yes. Private actions are available under Article 28 of the New Civil Code.	
 Singapore	Yes. Competition Act (Chapter 50B). Original Enactment: 2004 Revised: 2006	Competition Commission of Singapore (CCS) http://www.ccs.gov.sg/	Yes. (starting 1 April 2018)	Yes. (Telecoms; media; energy, airport services)	Yes. Under section 34 (Refer to Third Schedule of the Competition Act for list of full exclusions from Section 34 and Section 47)	Yes. Under section 47 (Refer to Third Schedule of the Competition Act for list of full exclusions from Section 34 and Section 47)	Yes. Under section 54 (Refer to Fourth Schedule of the Competition Act for list of full exclusions from Section 54)	Government activities; supply of piped potable water & waste-water management services; bus and rail services; cargo terminal operations; clearing houses for banks; armed security services	Yes	Yes	Yes	Voluntary	Yes	No. for s34/s47 although we accept voluntary undertaking. Our competition law provides for commitments for s54.	No. (no criminal liability for infringing the prohibitions under the Act; however criminal liability exists for offences relating to powers of investigation under the Act)	Yes. (1) Powers to require documents or information; (2) Powers to enter and search premises	Yes. Follow-on action.
 Thailand	Yes. Competition Act B.E. 2560 (2017)	Office of Trade Competition Commission (OTCC) http://otcc.dit.go.th/?lang=en	No.	Yes (Telecoms and energy.)	Yes. Section 54 (horizontal agreements that substantially reduce competition) with exemptions for those considered a single economic entity.	Yes. Section 55 (horizontal and vertical agreements that also affect competition). Exemptions to Section 55 are provided under Section 56 for single economic entity, R&D, and particular patterns, e.g. franchise.	Yes. Under section 50.	Two tracks are in place: 1) post-merger notification without clearance requirement for mergers within the minimum thresholds (market share, sales revenue, capital amount, number of stocks, or assets) to be prescribed in an implementing regulation; 2) pre-merger clearance required for mergers that may result in a monopoly or a dominant position in a market. Exemptions for mergers of operators considered as a single economic entity for restructuring purposes.	Yes	Yes	No. There is a possibility for settlement of cases.	Mandatory.	Yes.	Yes.	Yes. Abuse of market dominance under Section 50 and cartels under Section 54	Yes. The officers shall have the powers to issue a subpoena, enter premises/venues, gather document/evidence, and collect or bring a physical evidence as a sample for examination.	
 Viet Nam	Yes. The Law on Competition (Law No. 27/2004). Enactment: 01/7/2005	The Viet Nam Competition and Consumer Authority (VCCA) (Formerly Viet Nam Competition Authority) http://www.vca.gov.vn/web/default.aspx?lang=en-US	Yes	No. (there are specific sectors that come under sectoral regulators, but the competition law still applies).	Yes. Chapter II Section I (Article 8,9,10). Exclusions: agreements with net economic benefit.	Yes. Chapter II Section II (from Article 11-Article 15). No exclusions.	Yes. Chapter II Section III (from Article 16-Article 24). Exclusions: mergers with net economic benefits; SMEs.	Supply of public goods and services; SMEs; enterprises go bankrupt.	Yes	Yes	No	Mandatory (combined market share >= 30%).	Yes (Government Decree No. 116/2005)	No	No	Yes (1) Powers to require documents or information; (2) Powers to enter and search premises; (3) Powers to seize persons and documents.	No (private damage claim can be taken in civil court under civil procedure).

