



ASEAN - Australia - New Zealand Free Trade Area (AANZFTA)
Economic Cooperation Support Programme (AECSP)

AECSP CASE STUDY

Competition Law Implementation Programme

Building Competitive and Efficient
Markets in ASEAN

Summary Report



Background

Developing a competitive business environment is necessary to foster dynamic and innovative economies by promoting business efficiency. New investments are encouraged in an environment that allows open and fair competition. Therefore, adopting a consistent and robust competition policy plays an integral role in enhancing ASEAN competitiveness. When firms are free to compete fairly, and the competition process is protected, consumers benefit by receiving cheaper and higher quality choices in goods and services. The benefits of competitive markets are realised through effective competition regulation and regional cooperation on competition.

In this pursuit, the Competition Law Implementation Programme (CLIP) delivers targeted capacity-building assistance to the ASEAN Member States (AMS) to help combat anti-competitive activities in individual markets and the ASEAN region more broadly. CLIP aims to further ASEAN's regional goal of building a globally integrated, highly competitive economic region through effective competition laws and their implementation and enhanced regional cooperation mechanisms.

Since 2020, competition agencies in the AANZFTA region and others are dealing with the immediate and significant impact of the global outbreak of COVID-19 on their people, economies, and work. Competition policies and laws have a vital role in times of economic crisis to support the effective functioning of markets and help protect vulnerable consumers. Competition agencies need to prevent anti-competitive market structures and identify anti-competitive behaviour or arrangements that will make it more difficult for smaller businesses and new entrants to compete. Realising the relevance of effective capacity building in competition, especially during the economic crisis, the activities under the CLIP project have been adapted to support Parties' responses in addressing COVID-19 impacts and the economic recovery post-pandemic. This has included the dedicated use of online platforms and communication tools on account of the pandemic to conduct capacity-building workshops and the increased use of CLIP Academy to share relevant resources and materials to competition authorities in ASEAN.

Project Information

The below table provides key information on the four phases of the CLIP project.

Title				
Competition Law Implementation Programme (CLIP)				
	Phase 1	Phase 2	Phase 3	Phase 4
Timelines	May 2014 - March 2016 <i>(23 months)</i>	April 2016 - June 2018 <i>(27 months)</i>	July 2018 - December 2019 <i>(18 months)</i>	October 2020 - September 2021* <i>(11 months)</i>
Proponents / Implementers	Australian Competition and Consumer Commission (ACCC)	AANZFTA Committee on Competition and ACCC	ACCC	ACCC
Participating AMS	All AMS			
Number of participants	744	458	384	311**
Total number of activities	22	47	47	4**

*This is the expected project phase end date.

**This is based on the Project Progress Report prepared in April 2021 and may be different from the actual number at the end of Phase IV in September 2021.

Importance of Improved Competition for Open and Inclusive Markets for Enhanced Regional Trade and Integration and Relevant ASEAN Initiatives

A competitive environment promotes new investments, especially from micro, small and medium enterprises. It enables the entry of start-up firms which bolsters innovation in an economy. By enhancing the ability of firms to enter and innovate, improved competition in one sector and its spill-over effects on other sectors and industries makes the entire market more open and inclusive for regional trade. Effective competition laws and institutions are focused on making markets work more efficiently by ensuring markets are open to economic participation by all.

The AANZFTA Economic Cooperation Support Programme (AECSP) was established in 2010 to assist Parties in

operationalising AANZFTA and to maximise the benefits they receive from the AANZFTA. The AECSP is aimed at contributing to and supporting:

- ◆ the operationalisation of AANZFTA so that implementation difficulties are kept to a minimum;
- ◆ AANZFTA's built-in agenda, including preparatory work and any necessary capacity development activities;
- ◆ economic integration among and strengthening the links between the Parties; and
- ◆ business utilisation of AANZFTA opportunities.

CLIP has addressed three of the four AECSP objectives above (excluding the objective on progressing AANZFTA's built-in agenda). As a substantive project of cooperation on competition, CLIP gives effect to Chapter 14 of the AANZFTA and, as such, has made a significant contribution to the Agreement's operationalisation. CLIP has engaged in all the suggested fields of cooperation on competition contained in Chapter 14, including (but not limited to):

- ◆ exchanging experiences on the promotion and enforcement of competition law and policy, such as at workshops and seminars;
- ◆ exchanging information on competition law and policy, including on CLIP Academy, at workshops, and through the CLIPPINGS newsletter;
- ◆ exchange officials and experts for training purposes, including secondments, resident advisers and in-country placements; and
- ◆ sharing of experiences in delivering advocacy programmes.

On **economic integration**, CLIP has supported cooperation and dialogue between AANZFTA competition agencies and sector regulators. The region's regulators are better equipped to cooperate on cross-border competition cases. This is a significant development that will strengthen in significance as cross-border trade continues to grow.

CLIP's support for the introduction and enforcement of effective competition policies and laws contributes directly to **business utilisation** of the FTA by enhancing traders' access to overseas markets. That is, businesses will be better able to trade and invest in markets where businesses are competing fairly, not colluding or misusing market power or merging operations to effect market structures in a way that substantially lessens competition.

An objective under the ASEAN Economic Community (AEC) Blueprint 2025 is to increase the region's competitiveness and productivity. The Blueprint highlights effective competition policy as a key element for a competitive, innovative and dynamic ASEAN. It sets strategic measures in support of achieving an effective competition policy. In 2016, the ASEAN Secretariat developed the ASEAN Competition Action Plan (2016-2025) (ACAP) to drive competition law and policy implementation in the region.

Under CLIP, ASEAN Member States are receiving tailored training and mentoring from the Australian Competition and Consumer Commission (ACCC) and other international experts to introduce and implement national competition laws and policies to meet commitments under the ASEAN Economic Community Blueprint, ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) and the ASEAN's post-2015 vision for competition.



Summary of the Key Outcomes of CLIP Project and Activities

Deepened AMS understanding of competition law and the importance of fostering a culture of competition

CLIP has increased understanding of how best practice approaches to enforcement can be adopted and adapted within a competition agency. Where previously officials lacked the experience or capability to incorporate recommended policies and practices into their operations, CLIP activities provided practical and hands-on approaches to assist the region's officials in translating best practice approaches into actions.



I was placed at the ACCC office for the secondment programme and worked alongside the ACCC officers, conducting investigations and dealing with the day-to-day operations. Throughout my secondment, I was able to see what is lacking in our own internal processes and it has opened our eyes to other investigation-related issues that we are not aware of. This has subsequently prompted us to improve our procedures and work processes.

Zainab Hanis Zulkifli, Assistant Director, Investigation Enforcement Division, Malaysia Competition Commission



CLIP programme provided both technical and practical knowledge through their targeted capacity-building workshops and secondment programme at ACCC, especially to young competition officials who are fresh graduates and do not have prior specialised knowledge in the competition field.

Akarapon Houbcharaun, Director of Foreign Affairs Division, Office of Trade Competition Commission, Thailand

Improved capacity building to support the ASEAN Member States become effective competition regulators

Participation in various CLIP activities has led to positive changes in how competition agencies of ASEAN Member States are tackling investigations. Improving the institutional arrangement and basis for competition policy and law, especially for AMS, who are yet to introduce national competition laws to understand better specific proposed laws and frameworks for proposed competition authorities, has been one of the key focus areas of CLIP activities. For other AMS, activities were aimed at building capacity to implement competition policy and law effectively.

Enhanced cooperation networks between regional competition agencies

Activities under CLIP have strengthened coordination and cooperation between regional agencies by extending networks and facilitating the exchange of information and knowledge, including secondment programmes, capacity building workshops, comparative studies and other technical assistance. CLIP initiatives have provided valuable opportunities for the ASEAN Member States to develop and maintain informal networks essential to creating meaningful long-term cooperative regional relationships.



The members know each other, and it does feel like a family. The AANZFTA agreement is all about fostering regional cooperation and engagement between us all, that's part of the ACCC's incentive to be involved in a programme like this. It is to have the trust and the relationships should we need them when it comes to cross border matters. You can really see that has grown and developed over time. So, that to me is what makes this programme a real success.

Julie Glasgow, Director, Competition Law Implementation Programme, Australian Competition and Consumer Commission

Increased progress towards finalising new and revised competition regulations

Nine of the ten AMS have enacted competition laws. While Cambodia has yet to enact a competition law, officials told CLIP that *'...without your support, we could not come to this stage in terms of drafting CPL regulations and capacity building of all officials.'* The expert placement programme was described as *'a key factor in fostering the process of drafting competition law and capacity building as well as setting up the Competition Commission in Cambodia.'* In Cambodia, Lao PDR, Myanmar, and Viet Nam, CLIP supported workshops and expert assistance that informed and built capacity to advocate for law reform proposals and prepare regulations and guidelines.



I am the officer of MyCC that I am today, and this can be attributed to CLIP. It has allowed me to grow tremendously. I think it gives you a future sight on what to expect as a competition authority.

*Ahmad Ismail Illman Mohd Razali,
Assistant Director, Malaysia Competition
Commission*

Country Case Examples

Philippines – a young competition agency with a strong mandate

Since the enactment of the Philippine Competition Act (PCA) in 2015, after great efforts for 20 years, the Philippine Competition Commission (PCC) has been working tirelessly to establish its institutional frameworks, build its capacity, and expand its operations. Within just four months of its implementation, the PCC issued the PCA's Implementing Rules and Regulations. The PCC then conducted a National Competition Policy review to identify key competition issues and priorities for enforcement.

Being a young agency, the country's dearth of knowledge and expertise had made institution building an extreme challenge. The Competition Law Implementation Programme (CLIP), which started in 2014, has allowed the agency to benefit from holistic and high-quality training across various functions spanning competition enforcement, merger review, economic analysis, and agency effectiveness.

The PCC has learned from the experience of more mature jurisdictions that the true determinants of a new competition agency's success rest in the capabilities of its staff, their ability to work inter-operably across its network of competition champions and enforcers locally and internationally, and a robust strategy to engage a broad range of stakeholders in competition advocacy. All these opportunities were provided by the various CLIP activities that the Philippines participated in.



What I appreciated the most from my secondment was the exposure to the ACCC's systems and processes. I learned a lot about how they handled merger cases. I saw what the PCC can be in the next 5 to 10 years, and I want PCC to grow into a respected agency.

*Antonio E. Arcilla, Attorney,
Philippine Competition Commission*



The people behind the programme were very supportive to the extent that until now, we still manage to tap them for some of these consultations. They really welcome all our questions and provide helpful feedback.

*Jasmine Rose Maquiling, Attorney,
Enforcement Office,
Philippine Competition Commission*

Cambodia – a country on the road to competition law and enforcement

While Cambodia has yet to enact a comprehensive competition law, work is ongoing to finalise a draft law in line with the ASEAN Economic Community Blueprint 2015 and 2025 objectives for all ASEAN Member States to have competition legislation in place. In 2016, even when the work on a draft Competition Law was stalled, the leadership of the Ministry of Commerce established a Competition Department that was tasked with moving forward with discussion and finalising the draft legislation.

Having heard first-hand the concerns of stakeholders and with a greater appreciation of the challenges faced in introducing and implementing a competition law in Cambodia, CLIP experts have worked with officials in the Department to equip them with information and insights to engage with and respond to concerns raised by the government, business, and consumers.

In August 2015, the ACCC sent its first CLIP expert to Cambodia to undertake a short-term placement within the department. Six further CLIP expert placements were undertaken between 2016 and December 2019. CLIP has supported Cambodia's efforts in advocacy for pro-competitive reforms through three secondments of Cambodian officials abroad: a 10-week study and secondment programme with the ACCC and two six-week secondments with the New Zealand Commerce Commission.

Even with the onset of the COVID-19 pandemic, Cambodia's has been keen on its efforts to implement the country's first competition law. The Cambodian officials virtually met with ACCC experts to discuss priority tasks and resources needed to prepare for introducing the new competition law. With all the guidance from the ACCC experts under the CLIP project in capacity augmenting and advocacy efforts, Cambodia is now confident and set to enact its Competition Law by the end of 2021.



To my knowledge, I'm pretty proud to have been working so far with ACCC on Cambodia's competition policy. When drafting anything about competition, we try to engage the competition expert from an early stage itself when starting the outline and getting comments and ideas. We ensure that we take ownership of the document.

Meng Songkheang, Director, Competition Department, General Department of Consumer Protection, Competition and Fraud Repression, Cambodia



Competition Officials from Cambodia, Lao PDR, Myanmar, and Viet Nam at CLIP Agency Design Workshop (Siem Reap, 18-20 October 2017)

CLIP Success Factors

CLIP's multi-phased programmatic approach to address capacity development

A vital benefit of the multi-year format of CLIP is how it has enabled the ACCC to develop an understanding of and productive working relationship with competition regulators in ASEAN over time. Relationships have been developed face-to-face at CLIP activities and remotely (by phone, Skype and email) for planning or debriefing on CLIP activities. These relationships have helped CLIP improve its design of activities and follow up on how the outputs and outcomes of CLIP are being sustained.

Well-structured and logical training approach with content tailored towards the needs of the AMS

CLIP Phases have succeeded because they have efficiently addressed the issues that emerging competition agencies face in seeking to implement, or enforce more effectively, competition policies and laws. Regulators have heard from other regulators on international best practice approaches to investigations and options to develop the core competencies needed to be effective competition regulators in the AANZFTA region.

CLIP has endeavoured to support AMS achieve home-grown solutions to problems rather than attempting to solve problems on behalf of AMS. As well as developing well-researched content to share with trainees, the ACCC as implementer emphasised endeavouring to listen as much as speak to better understand the particular circumstances of participating agencies and facilitate intra-ASEAN learning and development.



I think the real success of this project is it is demand-driven. We've always been able to continue and basically develop alongside the member states. The project accommodates to the needs of the ASEAN Member State.

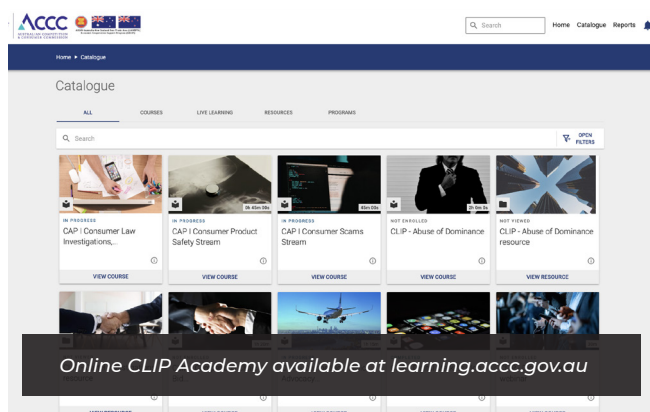
*Sarah Firdaus, Senior Officer,
Competition, Consumer Protection &
IPR Division, ASEAN Secretariat*



Participants' Discussion at the AANZFTA Competition Commissioners' Retreat (Brisbane, 2-4 July 2019)

Cascading of knowledge across the organisation augmenting capacity

CLIP collaborates with Competition, Consumer Protection & IPR Division (CCPID) and ASEAN Secretariat Unit (ASU) colleagues to ensure learning and experiences developed through CLIP are disseminated more broadly. Examples include sharing electronic material for upload to the CLIP Academy, contributing to ASU reports on regional activities, and distributing the CLIPPINGS newsletter.



A key factor behind the program's success has been the commitment of ASEAN officials to promoting competition and the benefits it can deliver to communities. Those officials have focused on building their skills and contributing to their agencies. It has been so rewarding to see the many changes and development that have taken place in recent years.

Julie Glasgow, Director, Competition Law Implementation Programme, Australian Competition and Consumer Commission

The CLIP Academy has been a valuable resource, allowing further knowledge dissemination and reach to a broader audience when CLIP is not able to deliver activities in-country.

Openness of the relevant agencies to improve capacity and adopt new practices learned through a CLIP activity

The openness of relevant agencies has been a significant success factor for CLIP activities. The outcomes described in the previous section were possible because beneficiary agencies have been open to, and have supported, changes based on best practices learned from their participation in CLIP. This openness of agencies is also partly due to the commitment of trainees to demonstrate the practical benefits of practices learned at CLIP activities.



Personally, I feel like the CLIP Academy is one of the good programmes which can incorporate young official like us to be familiar with what is the competition concept and also act as a guidance for us and a place for us to seek information as well as to receive information when needed in terms of competition. So, for me personally, CLIP Academy is one of the best programmes.

Virakoudom Penn, Deputy Director, Competition Department, Directorate General of Consumer Protection, Competition and Fraud Repression, Cambodia

Gender equality as one of the critical factors

CLIP aims for equal access by males and females to the capacity building and technical assistance it delivers by encouraging AMS to consider gender balance when nominating participants for CLIP activities. Given existing

women representation levels in the public service in AMS, the gender balance of participants in training activities delivered through CLIP Phases has been good. The CLIP team also sought to ensure that experienced female trainers who present as solid role models were engaged to deliver activities and work in-country with ASEAN competition officials.



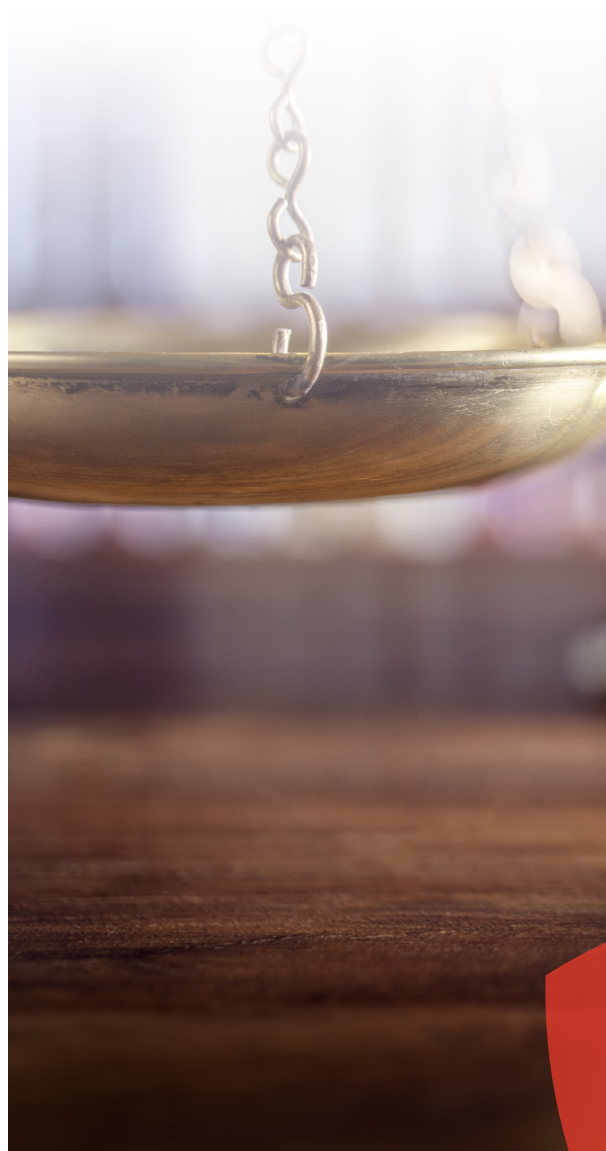
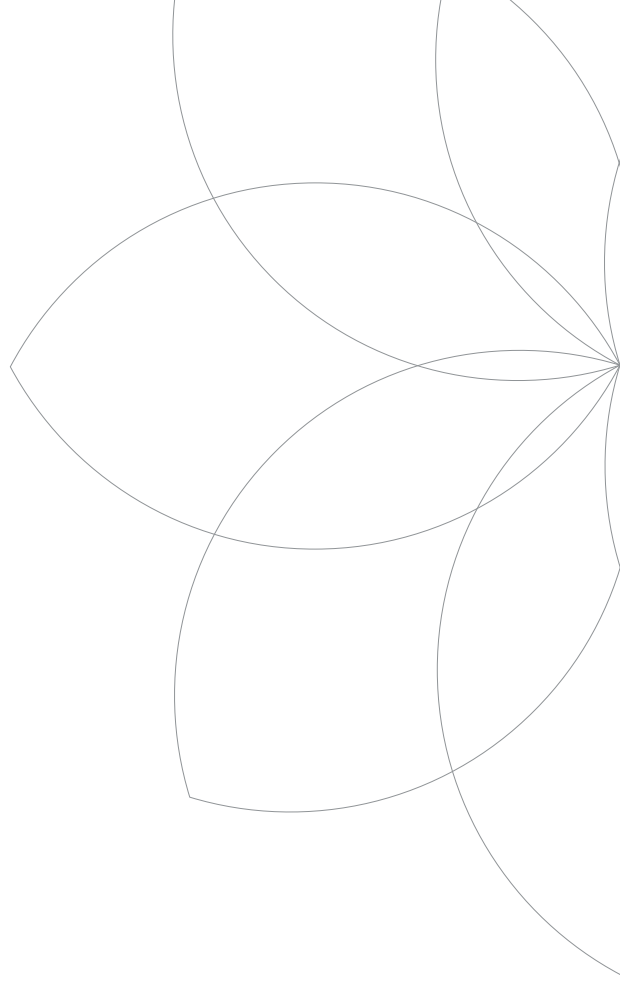
Conclusion and Future Sustainability

The CLIP project has strengthened the establishment of effective competition policies across the ASEAN region. This has created greater business and consumer confidence and supported economies to curb anti-competitive practices. Despite the CLIP project coming to an end by 2021, the project's sustainability has been ensured through two aspects (i) the resources available at the CLIP Academy and (ii) the regional network of competition authorities created through the CLIP project.



In order to secure business confidence, we need to secure three things – (i) business can easily have access to all information relating to competition policies or guidance and consumer policies and laws; (ii) businesses know that authorities and agencies can coordinate well and effectively when it comes to cross-border cases and when it comes to co-ordinating remedies to reduce business risk and (iii) business can have simpler procedure between member states when it comes to cross-border transactions. The programme must be made to secure such confidence and it should involve the competition authorities and sectoral regulators.

Deswin Nur, ASEAN Co-Chair of the Committee on Competition, Indonesia



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