

CLIPPINGS



50 years of ASEAN, a 7-year review of AANZFTA and ACAP's first anniversary

This year is proving to be an important year in which we mark significant regional milestones, including ASEAN's 50th anniversary, seven years since entry into force of the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA) and one year of implementing the ASEAN Competition Action Plan (ACAP).

There is a lot to celebrate on the competition front in the AANZFTA region too. The landscape has changed markedly over the last few years and the opportunities to further strengthen and promote cooperation and collaboration are considerable.

ASEAN's flagship annual event, the ASEAN Competition Conference, took place from 7–8 March in Malaysia and highlighted the opportunities that exist for the region's competition authorities to work together, to manage technological change and share ideas and developments in competition law enforcement. Competition officials were also in Kuala Lumpur for the Malaysia Competition Conference on 6–7 March. In his opening address, His Royal Highness Sultan of Perak Darul Ridzuan, eloquently accounted for how monopolies tend to hurt lower income consumers and communities more than that of high income earners.

CLIP also entered new territory in 2017 with a regional workshop in Brunei Darussalam focused on putting competition economics into practice. The importance of developing competition economic capabilities also came through strongly in the work to update ASEAN's capacity building roadmap for 2017–2020. And, in this edition of CLIPPINGS, we speak to one of Australia and now New Zealand's leading economists on competition and economic regulation, Dr Jill Walker.

Happy reading, and we hope you enjoy our new look for CLIPPINGS! As always, we very much welcome and appreciate your ongoing feedback and comments.

Since 2014 CLIP (managed by the Australian Competition and Consumer Commission) has been delivering assistance to ASEAN as it implements competition law.

The below infographics set out CLIP activities delivered so far.





Conference hosts (The Malaysia Competition Commission) and expert speakers at the 7th ACC.

Assessing ASEAN's competition landscape and the way forward: 7th ASEAN Competition Conference

8-9 March 2017, Selangor, Malaysia

The ASEAN Competition Conference (ACC), held annually since 2011, serves as one of the flagship activities of the ASEAN Expert Group on Competition (AEGC). It serves as a platform for exchanging views on recent developments and emerging issues in competition policy at both regional and national levels in ASEAN, while providing a platform to engage with competition experts and stakeholders from within and outside the region.

The 7th ACC marked the 50th anniversary of ASEAN and the 10th anniversary of the establishment of the AEGC. Panels of distinguished speakers discussed recurring challenges faced by competition agencies in ASEAN, as well as new and emerging issues.

Discussion confirmed the need for capacity building and enhanced advocacy efforts to combat anti-competitive conduct in the region. The importance of fair competition to support Micro, Small and Medium Sized Enterprises was underscored. Panelists also commented on the potential for a regional cooperation framework among ASEAN Member States to strengthen cooperation and combat cross-border anti-competitive conduct; which many suggest could rise with integration of the ASEAN market.

The 7th ACC was organised by the Malaysia Competition Commission and co-sponsored by the AANZFTA Economic Cooperation Support Programme and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ).

The AEGC looks forward to future biennial ASEAN Competition Conferences as an important platform to solidify the competition culture and strengthen enforcement in the region.

ACCC awarded international prize for competition advocacy

The ACCC has been honoured by the World Bank and International Competition Network for its role in elevating competition policy to the national economic agenda.

The ACCC won the award for its advocacy work in promoting pro-competition measures when governments are privatising public assets. 'We have been saying that to be successful, privatisations should seek to maximise competition and ensure adequate regulatory safeguards are in place,' ACCC Chairman Rod Sims said. 'Without this the sale of public assets could lead to higher prices or reduced services for businesses, and ultimately, consumers.'

ACCC names key enforcement and compliance priorities for 2017

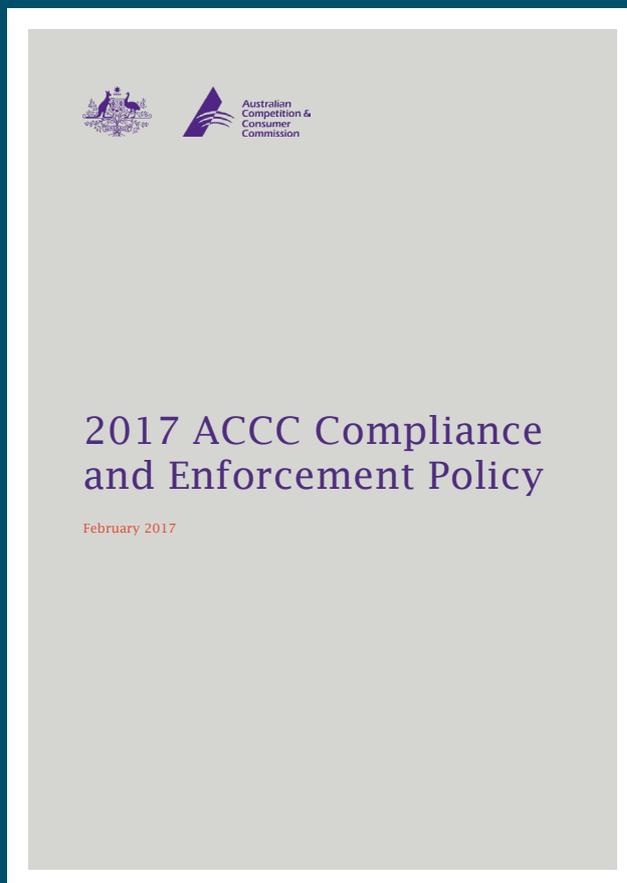
The ACCC Chairman Rod Sims says 2017 will see its enforcement teams hone in on misleading and deceptive practices, anti-competitive conduct and unfair contract terms affecting small businesses.

On 24 February, Mr Sims launched the ACCC's 2017 Compliance and Enforcement policy, which details the industries and issues the ACCC will focus on in the year ahead. Clear priorities will be unfair contract terms, cartels, and misconduct in the health, construction and agriculture sectors.

'The ACCC does a lot of educating and working with businesses, large and small, on compliance with laws that are set up to ensure the market economy runs as it should, to the benefit of living standards and household budgets,' Mr Sims said.

Mr Sims says cartel conduct is an area in which significant penalties, including jail sentences, can be used as a deterrent. Fresh concerns about anti-competitive conduct have also led the ACCC to establish a new commercial construction investigation unit.

The Compliance & Enforcement Policy is available at: www.accc.gov.au/system/files/ACCC%20Compliance%20and%20Enforcement%20Policy%202017.pdf



Upcoming activities

April

Secondment – Malaysia to New Zealand in Wellington, New Zealand (27 March – 12 May)

OECD / Korea Policy Centre event in Manila, Philippines (3 – 4 April)

Informal meeting of the AANZFTA Competition Committee in Yangon, Myanmar (6 April)

May

Resident advisor, ACCC to Philippines Competition Commission in Manila, Philippines (10 May – 10 August)

CLIP Module 2: Evidence and Interviewing Skills Workshop in Manila, Philippines (9 – 11 May)

OECD / Korea Policy Centre event on Pharmaceuticals in Sydney, Australia

AANZFTA Joint Committee Meeting in Auckland, New Zealand (29 May – 3 June)

June

CLIP Leniency Workshop in Auckland New Zealand (2 – 3 June)



Q&A with Dr Jill Walker

Commission Member, New Zealand Commerce Commission (NZCC)

Dr Jill Walker commenced her term as a Commission member with the NZCC on 1 December 2015, following her appointment as an Associate Commissioner in November 2010. She was a Commissioner of the ACCC from 2009 to 2016 and has a history with the agency that dates back to the 1980s. Jill has also been a Member of the Australian Competition Tribunal and worked as an economic consultant. She holds a BA in economics and a PhD in land economy from the University of Cambridge, as well as a Masters degree in economics from the University of Massachusetts.

Could you describe for us the work you do as a NZCC Commission Member?

I am one of seven Commissioners at the NZCC. Since moving to the NZCC, the focus of my work has shifted from competition and consumer protection work to being more closely involved in economic regulation, including both energy transmission and distribution, airports and telecommunications.

I am a strong believer in housing competition, consumer protection and regulatory functions together in a single agency. They are all directed at benefitting the long-term interests of consumers, by promoting competition where competition is possible and regulating where it is not. Now I get to practice what I preach!

Of all the regulatory work I am now involved in, telecommunications would have to be my favourite. It is the 'crossover' between regulation and competition. We regulate access to certain

telecommunications services in order to promote competition in other related markets, but the appropriate boundary between regulation and competition changes with the constant evolution of technology and markets in this sector.

I also continue to be heavily involved in competition work. New Zealand has a formal but voluntary merger clearance regime and mergers can also be authorised on public benefit grounds. These decisions can be extremely significant, especially in a small economy, with relatively concentrated markets, such as New Zealand.

I am also very pleased to be continuing my work as a Bureau member of the OECD's Competition Committee.

You are a strong advocate for trans-Tasman cooperation. Can you tell us why you consider cooperation to be so important?

Yes, Australia and New Zealand have a unique relationship and this includes the relationship between the ACCC and the NZCC. Our laws are very similar, though there are also differences in both the written law and the jurisprudence that has evolved over the years.

Before I became a full time Commissioner in New Zealand, I was an Associate Commissioner under the trans-Tasman co-operation arrangements, while Mark Berry was an Associate Commissioner in Australia. This was helpful in ensuring consistency of decision making – not necessarily the same answer – and has also driven deeper co-operation at the staff level.

On a practical level, the two countries are also at the forefront of co-operation, with both having information sharing 'gateways' in their legislation and a 'second generation' MOU between the two agencies. The ability to exchange information and to co-operate on the planning and execution of competition investigations is extremely important to combat cartels in particular, which, like the companies involved, often cross national boundaries.

Could you comment on the changes you have seen to Australia's competition law and the ACCC?

The law has evolved, which is clearly evident from the number of pages in the Competition and Consumer Act these days! One particularly significant change was the adoption of a 'substantial lessening of competition' test for mergers in 1992. This was hugely controversial at the time, but is now well established. Another very significant and long fought change to the law was the introduction of criminal penalties for cartels.

Today I am particularly pleased that the government has adopted the recommendations of the Harper [Competition Policy] review such that an 'SMP plus SLC' test applies to unilateral conduct. The existing jurisprudence in this area has not been helpful for the effective policing of anti-competitive conduct by firms with substantial market power.

The ACCC has also grown enormously over the past few decades. When I was first at the Trade Practices Commission (TPC) we had about 160 staff (this was in the early 1990s). We had no regulatory function then and only about three people worked on mergers!

I first started at the TPC with Chairman Allan Fels and he changed the culture of the agency completely. We went from being an unknown entity to being front page news. That continues today under Rod Sims, who also engages with the media, industry and government to lift the profile of competition law enforcement and advocate for competition reform.

Please tell us a fact about yourself that many would not know?

I used to be a competitive powerlifter and once held the national bench press record! I still train but haven't competed for almost 20 years now.



Competition economics in practice

By Sam Strudwick Day

CLIP's first workshop dedicated to economics and economic thinking – Competition Economics in Practice – took place against the backdrop of a beautiful river, lively village and golden mosque on 7-9 February in Bandar Seri Begawan, Brunei Darussalam.

The workshop, led by ACCC Principal Economist Jennifer Orr, focused on the role of an economist in various competition law investigations. Jenny, together with ACCC Director (Merger Investigations) Cameron McKean and NZCC Senior Economist Catherine Corbett, facilitated discussion on how economists can work to affect and direct economic thinking within their organisations. The importance of economics and how economic thinking can guide an investigation (even without ready access to data) stood out as a key message of the workshop.

Perhaps more importantly, the workshop provided a platform for the ASEAN delegates to discuss the challenges they face in using economics within their agencies. This sharing of experiences brought to light insightful and interesting approaches to applying economics in advocacy, as well as options for directing and encouraging the use of economics through investigations.

Finally, the workshop would not have been a success without the gracious hosts from Brunei. I am glad to have made new friends over the course of the workshop, the welcome dinner and a very special boat ride along the river village of Bandar Seri Begawan. My thanks go out to Heidi, Anisah, Zati and the team.

For more information about the workshop, please contact the CLIP team.



60 Seconds with the Lao PDR competition team

Responsibility for implementing the new Lao law on competition rests with the Competition Division of the Lao Ministry of Industry and Commerce (MOIC). The Division is busy working on a competition implementation plan and taking the necessary steps to establish the Lao Competition Commission.

Meet the team:

Khadsakone – has worked at the MOIC for more than 5 years and oversees engagement with other ministries and divisional projects. Khadsakone will soon take a break to celebrate the birth of her new baby.

Pavina – recently joined the Division and is involved in many competition law workshops to develop her expertise in competition policy. Pavina supports the Division through her work on monitoring business practices. She also keeps the Lao competition facebook page up to date!

Syfong – joined the Division in 2013 and supervises the Division's main competition law implementation activities. He engages closely with his ASEAN counterparts and is a talented soccer player.

Stewart – is from the ACCC and undertook an expert placement with the Division from February to March 2017. Stewart managed to learn a lot of Lao language from the MOIC team (but has a lot to learn).

Phomma – joined the Division as Director in late 2016 and is responsible for overseeing implementation of the competition law. Phomma has worked in many different divisions at the MOIC. He has also worked and studied in Germany, Vietnam, Thailand and Lao and brings a world of knowledge to the Division.

Mai – joined the Division at the end of 2016 and has been working at the MOIC for over 5 years. Mai is busy working on implementation of the competition law and setting up investigation processes for the new authority. He completed a PhD in economics in Vietnam.

Kear – joined the Division in early 2017. He has worked in a range of areas at the MOIC and has a broad range of experience in commercial matters. Mr Kear is not in the photo because he was busy attending a consumer protection workshop.



From left: Mrs Khadsakone Boudtavong, Ms Pavina Vonglerdmany, Mr Syfong Suontha, Mr Stewart McKechnie, Mr Phomma Inthanam, Mr Mai Yanyongyear

ASEAN competition law news

Significant recent milestones

22 February 2017

The Malaysia Competition Commission issued a Proposed Decision (with financial penalties) against the General Insurance Association of Malaysia ('PIAM') and its 22 members for being parties to an anti-competitive agreement. The enterprises concerned had thirty days from the date of receipt of the Proposed Decision to make their representations in accordance to section 36 of Malaysia's *Competition Act 2010*. The MyCC will make its final decision after it has considered the representations and all the available information and evidence.

24 February 2017

Myanmar's competition law, The *Pyidaungsu Hluttaw Law No. 9 /2015*, came into force. The next step is to introduce implementing rules and regulations.

2 March 2017

Malaysia's Competition Appeals Tribunal dismissed an appeal brought by a container depot operator last year found by the Malaysia Competition Commission (MyCC) to have engaged in price-cartel activities.

24 March 2017

Thailand's National Legislative Assembly approved Thailand's new competition law. An official English translation is not yet available.

March 2017

The Philippine Competition Commission issued the final version of its Mergers Guidelines. They are available at http://phcc.gov.ph/wp-content/uploads/2017/03/PCC_Merger_Guidelines_MAO_03232017.pdf

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CLIPPINGS is the newsletter of the Competition Law Implementation Program (CLIP). CLIP is a competition law enforcement capacity building program for ASEAN, managed by the ACCC and funded by the AANZFTA Economic Cooperation Support Program.