



# CLIPPINGS

## 2017: A year in review

**U** 2017 has seen momentous change in the competition landscape in ASEAN, from the enforcement of new laws to changing agency structures and expanded responsibilities (e.g. consumer protection). For the Competition Law Implementation Program (CLIP) this translated into an exciting and busy program of activities over the past 12 months.

In 2017 CLIP provided opportunities for ASEAN, Australian and New Zealand competition officials to come together through workshops rich with peer-to-peer learning experiences. Australian Competition and Consumer Commission (ACCC) staff undertook missions to ASEAN to work with peers on implementation challenges. An additional highlight of the 2017 program was welcoming ASEAN competition officials on secondments to the ACCC and New Zealand Commerce Commission.

Our workshops this year have again focused on providing opportunities for officials to learn practical competition enforcement skills from peers and experts in highly interactive environments. During 2017, CLIP facilitated workshops on economics, evidence and interview skills, leniency, cartel investigations, regional cooperation, agency design, and aviation and competition regulation.

Expert placements, secondments and resident advisors have also been great avenues to facilitate timely one-on-one learning. ACCC Chief Operating Officer Rayne de Gruchy recently commented “*CLIP activities, such as staff exchanges, are proving an effective way to share know-how among agencies, as well as developing mutual understanding and relationships that can help agencies become operational more quickly.*”

This message was reinforced by a secondee to the ACCC who said, “*The investigation skills which I have picked up during the secondment will be most helpful to me....Learning these investigative skills greatly enhanced my role in vetting and ensuring that enforcement work carried out by my home agency meets high standards of investigation.*”

ASEAN has endorsed an exciting program of CLIP activities in 2018. We look forward to another great year of collaboration and cooperation on competition.

*Seasons greetings from the CLIP Team*

2017: The below infographics set out CLIP activities delivered in 2017.



**22** CLIP ACTIVITIES 2017

Short-term placements in ASEAN



To Australia & New Zealand



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# Strengthening Cooperation between Competition Agencies and Aviation Regulators



Strengthening the interface between ASEAN competition and aviation regulators was the focus of the two-day workshop on competition policy and aviation sector. The workshop, delivered in partnership with Myanmar's Ministry of Commerce and the ASEAN Secretariat, was held in Bagan, Myanmar on 23 and 24 November 2017. The workshop was attended by 56 transport and competition officials from within ASEAN Member States and provided an opportunity for aviation officials to learn about the importance of competition law and policy, and examined the complementarity of competition and regulatory instruments. It included interactive sessions for participants to share insights on the competition-related challenges facing the sector and develop a plan for how to work together to achieve common goals.

Highlighting the importance of the workshop, Mr Aung Min Thyke, Chair of the ASEAN Experts Group on Competition noted that *"it is important to enhance the networking between competition and regulatory officials to better promote understanding of the role of competition policy in the economy and the intersection with aviation policies"*.

The Workshop provided participants with a background on the key elements of ASEAN competition laws, an understanding of the role of governments in curbing anti-competitive practices, and using case studies and practical examples specific to the aviation sector. It also offered an opportunity to establish and strengthen the relationship between ASEAN competition and aviation regulators.

Mr. Viengxay Singkham, Director of Air Transport Division at the Department of Civil Aviation of Lao PDR, representing the chair of the ASEAN Transport Working Group remarked *"The workshop has been a valuable opportunity to learn about the importance of competition to markets and discuss how aviation regulators and competition authorities can work together to achieve each of our goals."*



## Q&A with Rose Webb

Ms Rose Webb returned to Australia in September 2017 having concluded her appointment as Chief Executive Officer of the Hong Kong Competition Commission (HKCC). Ms Webb was closely involved in the formation and development of the HKCC and in all aspects of its operations since the commencement of the Competition Ordinance on 14 December 2015. Immediately prior to her appointment to the HKCC, Ms Webb was Executive General Manager, Mergers and Adjudication at the ACCC.

Ms Webb has over 25 years of government and regulatory authority experience with wide exposure at Australian federal departments and regulatory authorities such as the ACCC and the Australian Securities and Investments Commission. Most recently, Ms Webb has been appointed as the new Commissioner for NSW Fair Trading Commission.

### **1. Rose you have had a formidable career. Could you please share a little about how you came to be a leader in competition law enforcement?**

I've always had a great interest in competition law having done degrees in both law and economics (a long time ago!). I studied competition law but then my career took a divergent path to securities and companies regulation for quite a while. However in 2001 I had the opportunity to join the ACCC and was fortunate enough to work in a number of different roles in both competition and consumer protection enforcement and then merger review. When the headhunters came calling to offer me the role in Hong Kong it was a very hard decision as I was thoroughly enjoying my position in mergers and adjudication in Australia. However the chance to start a competition agency from scratch in a very different jurisdiction seemed like a once in a lifetime opportunity that I couldn't pass up. It certainly proved to be a fascinating and rewarding experience.

### **2. What were the key differences between your experience in competition law enforcement in Hong Kong as compared with Australia?**

Australia has had competition law in some form for more than 40 years, and while they might not always be fully compliant the business community has a good understanding of the reasons for having competition law, and the benefits and obligations that it brings. In Hong Kong we were dealing with a business sector which either had no knowledge of competition law, or were not convinced that it was a good idea. It meant that we had to go back to basics in our outreach and education activities to explain what competition law was about and what a competition agency would do. There were a lot of very ingrained business practices, and activities of trade associations, that had to change before the law commenced. However in some ways the early days of enforcement in Hong Kong were easier than in Australia as companies were not as careful to keep cartels and other anticompetitive conduct secret so we found quite a few matters to investigate quite quickly.

#### **Upcoming Activities in 2018:**

##### **January:**

Module One: Cartel Investigations Workshop in Ho Chi Minh City, Vietnam (23-25 January)

##### **February**

Forum on Competition in Developing Countries in Makati City, Philippines (1-2 February 2018)

Phasing Competition Law Enforcement Workshop in Vientiane, Lao PDR (20-22 February)

##### **March**

21st AEGC and 8th AANZFTA Competition Committee Meetings in Singapore (5-8 March)

ASEAN-Australia Special Summit in Sydney, Australia (17-18 March)

ACCC expert placement in Lao Ministry of Industry and Commerce, Vientiane, Lao PDR (Date TBC)

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**3. You recently helped deliver the CLIP Agency Design Workshop in Cambodia. Based on your observations, what are some of the key roadblocks new competition enforcers in ASEAN will likely face? Can you offer any advice for overcoming these? What about the key opportunities?**

Similar to Hong Kong the new enforcers in ASEAN will have to face a business sector and general community who will not understand the benefits of competition law or have much knowledge of it. Investment in a lot of education and outreach activities will be vital to ensure that the new agency is seen in a positive light. Advocacy will also encourage compliance, which will enable enforcement to focus on significant issues. I think it is also important to start with straight forward matters and not try to do too much at first. Winning one or two earlier simple cartel cases will be much more meaningful than getting tied up in complex economic issues that the general public doesn't understand.

**4. When it comes to recruitment, how important a consideration is gender balance?**

Having people with different backgrounds and experience in investigation teams is always a good idea so that a diverse range of skills and perspectives can be brought to dealing with the issues. My observation is that both males and females may vary in skills such as in paying attention to details in documents or interviewing witnesses. In both Australia and Hong Kong I have found that there were quite a few women working in competition law both in the agency and in private practice, which may be something to do with it being a relative young field of legal practice.

**5. What advice would you give to ASEAN officials starting a new career in competition law enforcement?**

I would say embrace the opportunities that it provides. Working in competition law enforcement means that you will get insights into a really wide range of businesses, including sectors of the economy that you might not even know exist. As well as being intellectually challenging, you will also feel that you are contributing to the economic development of your jurisdiction. And you will get to meet a great bunch of people in the international competition community.

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**KPPU hosts meeting of competition leaders in East Asia**—Fourteen East Asian competition authorities gathered for the 13th East Asia Top Level Officials Meeting on Competition Law and Policy (EATOP) in Bali on 6-7 September 2017. Discussion focused on the priorities and interests of each economy in the area of competition law and policy, including sharing information on country developments, taking stock of one another's challenges, and discussing the way ahead in enforcement cooperation.

The EATOP meeting has been held annually since 2005 for Southeast and East Asia enforcement authorities to exchange views and experiences on competition policy and its best practices. It is championed by the Japan Fair Trade Commission and delivered with support from the Asian Development Bank Institute. Australia looks forward to hosting the 14th EATOP meeting in August 2018 in Sydney.

**ACCC releases 2016-17 Annual Report**—The ACCC's Annual Report for 2016-17 has been tabled in Parliament, highlighting a broad range of successes that have promoted competition and fair trade to benefit consumers, businesses and the community.

"The 2016-17 financial year marked the first ever successful criminal cartel conduct brought by the ACCC in July 2016 against Japanese shipping company Nippon Yusen Kabushiki Kaisha (NYK). This case resulted in a fine of \$25 million in August 2017, the second largest competition penalty in Australia. The ACCC's action against NKY was a watershed moment in Australia's competition law history, demonstrating the significant repercussion for engaging in this destructive practice" ACCC Chairman Rod Sims said.

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# CLIP Helping ASEAN Members to Start-Up National Competition Enforcers



A highlight of CLIP in 2017 has been the delivery of the Agency Design Workshop. CLIP was very pleased to bring together a team including Rose Webb, former CEO of the HKCC, Commissioner Johannes Bernabe, Philippine Competition Commission (PCC), and Rayne de Gruchy, ACCC Chief Operating Officer, to deliver this capacity building workshop.

Between 18 and 20 October 2017, a group of 20 officials from Cambodia, Lao PDR, Myanmar and Vietnam gathered in Siem Reap, Cambodia to participate in the workshop. The CLIP team cooperated with colleagues at the Competition Division of Cambodia's Ministry of Commerce, CAMCONTROL, to prepare and co-host the workshop.

The three-day workshop was designed for new competition authorities as a forum to discuss and consider a range of topics including: making decisions concerning resources, structure and processes for competition enforcement; and considerations for internal design and resourcing in support of effective external engagement.

The workshop was enriched by the participation of His Excellency Kim Meas Sokseiha, Deputy Director-General of CAMCONTROL. His Excellency remarked *"Gathering in Siem Reap this week with competition colleagues from Laos, Myanmar, Vietnam, the Philippines and Australia has been valuable and timely. Not only has it developed our thinking on considerations for establishing a national competition agency, the workshop will help inform the anticipated legislation process in Cambodia and has strengthened relationships among competition officials in our region"*.

Likewise, PCC Commissioner Bernabe provided valuable and current insights into the opportunities and challenges facing new agencies. He observed, *"I could see how incredibly useful CLIP's Agency Design Workshop is for countries in the process of legislating their competition law or in the midst of organising their competition agencies. The insights shared by the resource experts and the issues discussed by the different competition officials are very relevant even for a competition commission already in the thick of implementation like the Philippines. I found myself wanting to share as much as I could, given all the recent experience the PCC has gone through, so that ASEAN colleagues could learn from our journey too. The highly interactive approach as well as the surprisingly fun group case studies made the participants think proactively and much more engaged throughout"*.

This workshop was the first in a two-part series designed for ASEAN member states yet to have established a national competition enforcement authority. The second part of the series, the Phasing Competition Law Enforcement Workshop, will be held in Lao PDR in February 2018.

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# 60 Seconds with the ASEAN Secretariat's Competition Team



The ASEAN Secretariat's team of three supports ASEAN's work in competition including the activities of the ASEAN Experts Group on Competition (AEGC) and the implementation of the related programmes and projects in competition policy and law. The team also works closely with development partners to support ASEAN Member States in the design and implementation of such projects.

**Yap Lai Peng**—Yap helms the Competition, Consumer Protection and IP Division (CCPID). The focus on competition has become more intense in recent years, with more emphasis being placed on advocacy, institutional development, and enforcement of competition law. She is encouraged by the progress made by ASEAN towards creating a strong competition culture. Moving forward, disruptive innovations and new on-line business models will provide interesting challenges in taking forward the competition work in ASEAN.

**Sarah Firdaus**—Sarah has been working with the ASEAN Expert Group on Competition (AEGC) in implementing its competition initiatives and finds the fast-paced committee's work motivating. Working on the various projects with the ASEAN competition officials and different stakeholders is providing her a wealth of knowledge and skills and she is still keen to hone her knowledge by pursuing on the side her second Masters, this time in Global Competition and Consumer Law at the University of Melbourne, Australia.

**Karina Utari**—joined the Division in October 2017. Having some experience in industrial development and FDI promotion, she believes in the vital role of competition policy and law in the industrialization process of ASEAN. She is keen to learn more about competition policy and law and develop a better understanding of the interaction between competition and different sectors of the economy. Karina assists and supports the Division through her technical and administrative work with respect to facilitating meetings and events, as well as to the implementation of programmes in the area of competition policy and law.

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## Recent news—Reforms

### Australia

**'Strengthened competition law to benefit Aussie small businesses and consumers'** – On 15 August, the Australian Government legislated significant amendments to strengthen Australia's competition law providing greater protections for small businesses and more choice for consumers by boosting innovation and opening new markets.

The amendments implement a key recommendation of the Harper Competition Policy Review to strengthen section 46 of the Competition and Consumer Act 2010, also known as the misuse of market power provision.' Read more on the media release here: <http://sjm.ministers.treasury.gov.au/media-release/077-2017/>

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## Recent news—Reforms (continued)

**‘New competition laws a protection against big data e-collusion’**—Data-drive innovation has allowed consumers to search for better products and deals instantaneously and allows providers to price discriminate based on minute-by-minute demand analysis, but it also creates opportunities for collusion. Read more of ACCC Chairman Rod Sims’ speech: <https://www.accc.gov.au/media-release/new-competition-laws-a-protection-against-big-data-e-collusion>.

The Australian Government has directed the ACCC to hold an inquiry into the impact of digital platform services on the states of competition in media and advertising services market. Read more on the review here: <http://sjm.ministers.treasury.gov.au/media-release/126-2017/>.

### Thailand

Thailand’s Trade Competition Act 2017 came into effect on 5 October 2017. Thailand’s Office for Trade Competition Commission has published an unofficial English translation of its law on its website: <http://otcc.dit.go.th/?p=3793>

### Vietnam

During the OECD 2017 Global Forum on Competition (7–8 December 2017), a peer review was conducted of Vietnam’s competition law and policy. The peer review process provides valuable insights into the country under study getting to the heart of the way in which each country deals with competition and regulatory issues. Following this, a full report will be available on the OECD website. Read more on the peer review here: <http://www.oecd.org/daf/competition/competition-law-and-policy-in-vietnam.htm>

Have news, an event, opportunity or initiative relating to competition law implementation in the AANZFTA region you’d like featured in CLIPPINGS? Please email us via [clip@acc.gov.au](mailto:clip@acc.gov.au)

From January 2018, Julie Glasgow will be setting off for a 12-month adventure to Papua New Guinea. We would like to wish her all the best for the year ahead and we look forward to welcoming her back in 2019. During this time, Dominique Ogilvie will be stepping into the CLIP Director role. We would also like to welcome Ingrid and Nicole to the CLIP team.

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For more information about the ACCC visit our website: [www.accc.gov.au](http://www.accc.gov.au)



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