

CLIPPINGS

2018 Reflections

Looking back on the past 12 months is rewarding (a little exhausting, even!) - so many and so significant have been the achievements of those working to help markets in the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) work better through competition.

There have been significant reforms to laws and institutions, and some important changes in the staff and leadership of competition agencies across the region. The developments are too many to list comprehensively in a short editorial such as this, however highlights include Cambodia submitting its draft competition law (with explanatory note) to Cambodia's Council of Ministers, the CCS becoming the CCCS (*Competition and Consumer Commission of Singapore*), Indonesia and Malaysia welcoming new Chairs (Dr Kurnia Toha and Dato' Seri Mohd Hishamudin Md Yunus), Lao PDR and Myanmar formally appointing competition commissions for the first time, the Philippine Competition Commission signing a memoranda of agreement with the Office of the Ombudsman and the Department of Justice to harmonise enforcement against cartels, Thailand issuing formal guidelines bringing into force the new Trade Competition Act, and Viet Nam's National Assembly passing a new and upgraded competition law.

It has been a privilege for the Australian Competition and Consumer Commission (ACCC) and New Zealand Commerce Commission (NZCC) to work closely with our ASEAN counterparts and the ASEAN Secretariat in support of such significant achievements, and bolster regional cooperation on competition enforcement along the way.

The ACCC's CLIP team would like to thank you for another year of fantastic cooperation and wish you, your family, and friends all the very best for 2019.

CLIP activities in 2018



Short-term placements in ASEAN



Number of tools

- 4 Judicial primers
- 3 eLearning modules

26 CLIP ACTIVITIES



Q&A with KPPU Commissioner, Dinni Melanie



Could you describe for us your career path so far?

My first job after graduating university was in a corporate law firm. I joined the Komisi Pengawas Persaingan Usaha (KPPU) as an investigator shortly after and loved it. The variety of cases gave me the opportunity to learn very quickly about a range of sectors, such as construction and air transport. The challenges in each case have made me far less afraid of failure (and similarly, more accepting of calculated risks).

How did your path lead you to being Commissioner?

After 15 years of working with the KPPU, I wanted to raise the stakes for myself. I like to grow by taking on workplace challenges outside my comfort zone. I have found this and more in the role of Commissioner.

It also gives me an opportunity to contribute to the KPPU's strategic direction and focus on promoting best practice. I have personally experienced the obstacles faced by officials.

What were some challenges or success stories along the way?

The biggest challenge is to understand, and effectively communicate with, different stakeholders involved in

competition cases, such as the reported parties, the complainant, witnesses, etc. It is such a dynamic area to work in and adapting to such nuances is always a great learning experience.

The cartel case investigation into short messaging services (SMS) was a milestone to celebrate. Since the decision was announced in 2008, the tariff for SMS in Indonesia has declined significantly, and 10 years later some consumers text for free. The finding has been confirmed by our Supreme Court and the administrative fines have been paid to our State Treasury.

What are KPPU's main priorities for 2018 and 2019?

Under new leadership, KPPU is committed to focus on early prevention and strengthen relationships with business communities. We are in the process of revising our Case Handling Procedure and Merger Review Mechanism regulations to help with this.

In addition, KPPU has set enforcement priorities for the next five years on sectors which correspond to the following efforts:

- Monitoring the public interest in the food, health, education, housing, digital economy, and automotive sectors;
- Supporting national economic efficiency in the logistics, transportation, and ICT sectors;
- Assisting with the sound and resilient development of the finance and banking, and the energy and natural resource sectors;
- Supervising partnerships as stated in Law Number 20 (2008) in the food and beverages, retail, and Micro, Small and Medium Enterprise (MSME) industries to be aligned with the equal business opportunity framework.

How has the KPPU worked with CLIP so far, and what do you look forward to moving ahead?

We highly appreciate CLIP's contribution in providing comprehensive capacity building activities for our investigators. I believe it helps our investigators very much with their daily tasks. I look forward to achieving greater outcomes with CLIP, especially with our upcoming secondment from the Australian Competition and Consumer Commission (ACCC).

What do you think are the secret ingredients for a successful and enjoyable career in competition law?

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Where is your favourite place to relax?

My favorite place to relax is my home, together with my family. There is no other place better than that.

CLIP partners with Federal Court of Australia and OECD to launch competition primers

One of the recommendations under the updated ASEAN Capacity Building Roadmap (2017-2020) was that support be provided to promote effective and efficient adjudication of competition law matters being reviewed by courts. Responding to this recommendation, in 2018 under CLIP the ACCC entered a Memorandum of Understanding with the Federal Court of Australia, and engaged competition experts at the OECD to develop "Judicial Primers" (primers).

The primers, launched at the 8th Organisation for Economic Cooperation and Development (OECD)/ Korea Policy Centre Competition Seminar in Jakarta on 10 October 2018, provide practical guidance focusing on challenges and issues judges may face when evaluating evidence in a competition law context. They are designed to assist in the development of effective competition law precedent, contributing to an increase in legal certainty and efficiency, and fostering consistency for competition law matters within AMS.

The principles-based primers were developed in the context of the differences in, and the varying stages of development of, competition laws in AMS. The topics covered are:

- Economics for judges in the competition law context
- Abuse of dominant position: what is it and how is it assessed?
- Circumstantial evidence in the context of competition law
- Expert evidence in the context of competition law.

The Hon. John Middleton, Judge, Federal Court of Australia commented that "Cases arising under Part IV (restrictive trade practices) and Schedule 2 (the Australian Consumer Law) of the Competition and Consumer Act 2010 constitute a significant part of the workload of the Federal Court of Australia."

"It was a privilege to be able to draw on the expertise the FCA has acquired engaging with principles of both competition law and economics to develop, with input from the OECD, written tools to assist the diverse audience of judges in the ASEAN Member States. We trust that the Primers will prove a valuable and long enduring resource for judges in our region deciding competition law matters."

The primers are available here: <https://www.asean-competition.org/read-publication-competition-primers-for-asean-judges>.

ACCC & ASEAN Member States News

Rod's reappointment

The ACCC is pleased to announce our Chair Rod Sims has been appointed for an additional three-year term. Rod joined the ACCC in 2011 and his extension to July 2022 will make him the longest serving ACCC Chair. This is a testament to the incredible work we have been able to accomplish as an agency over the past seven years under Rod's leadership. Read the [media release](#) and read Rod's [RBB Economics Conference speech](#) on the economic foundations of competition law.

Myanmar Competition Commission established

The Myanmar Competition Commission has been appointed, with Notification 106/2018 of the Union Government released on 31 October 2018. This is the next step towards the active implementation of the Myanmar Competition Law 2015, which took effect in February 2017. Read more about it at [Global Compliance News](#).

Viet Nam reforms its competition law

Viet Nam has voted to replace its current law for competition with a new law. The new law introduces substantial changes to the country's existing competition framework, which is effective from 1 July 2019. It means Viet Nam will have a single dedicated competition authority. The new law also has implications on the expanded scope of application and merger filings. Read more from law firm [Allens](#).

New Thai implementation regulations come into effect

The Office of Trade Competition Commission (OTCC) recently published secondary regulations to implement the 2017 Trade Competition Act B.E. 2560 (New Act). The regulations came into effect on 2 November, 2018 and outline the general principles underlying the OTCC's future enforcement of the New Act. Read more at [In-House Community](#).

Singapore imposes record antitrust fine on poultry cartel

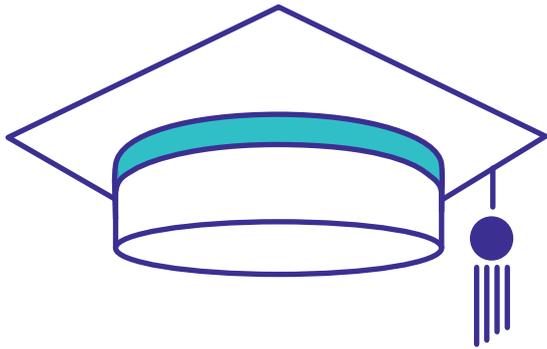
The Competition and Consumer Commission of Singapore (CCCS) recently imposed its highest fine to date of SGD 26.9 million (USD 20 million) against 13 fresh chicken distributors for price-fixing and market-sharing. A leniency applicant that satisfied leniency conditions received the highest penalty among the companies fined, as the CCCS had, in its decision, rejected passive participation in a cartel as a mitigating factor in Singapore. [Read the media release](#).

Philippine Competition Commission calls for more predictability and transparency in its leniency program

The Philippine Competition Commission (PCC) wants to introduce elements of transparency and predictability to its leniency program by adopting a marker system that would provide certainty among potential applicants, says James Donato, Head of Litigation.

Donato said further study is needed regarding the marker system and the incentives to be given to qualified applicants, particularly the likelihood of receiving immunity.

The PCC is working with their counterparts at the Philippines Department of Justice (DoJ) to harmonize leniency guidelines to ensure the protection of witnesses, including an entitlement to relocation and a change of identity at the expense of the program. Read the [draft leniency program](#).



Accelerate your career in competition with CLIP Academy

Earlier this year CLIP has launched its eLearning hub, CLIP Academy (at <https://clip.learnflex.com.au>).

So far CLIP Academy includes three online modules. Just like CLIP workshops, CLIP eLearning has a focus on developing practical skills and knowledge that supports effective enforcement of competition law. The modules are highly visual and interactive – making them a very engaging way to learn.

Hone your expertise in competition law, economics and enforcement practices by registering for a CLIP Academy account today.

Explore different areas of competition law and economic markets

Units currently available:

- Introduction to Competition Law
- Economics for Competition Law, and
- Introduction to Enforcement.

And there are more on the way!

How to register

Enrolment is free for current competition officials in the ASEAN region, and you can always save your work during a module and return later. Head to the website at <https://clip.learnflex.com.au> and create your own account before signing in.

The eLearning modules are responsive to all devices, including smartphones, and support accessibility standards.

Let us know what resources you need to succeed

We would love to hear what competition law and market information you need to thrive at work, at a local, ASEAN, or global level. Specifically, we have a Resources section in CLIP Academy that we will continue to fill with free journal articles, helpful web links, and other resources.

Please get in touch with the CLIP team at CLIP@acc.gov.au if you have any suggestions or feedback.



CLIP Construction and Competition Workshop makes news in Brunei

Competition law and construction regulatory officials from Malaysia, Viet Nam, Cambodia, Indonesia, Thailand, the Philippines, Myanmar, Singapore, Laos, and Brunei Darussalam came together on 30 and 31 October 2018 to discuss competition regulation in the construction industry.

The workshop aimed to strengthen working relationships between competition and construction regulators, and focused on the various regulatory structures in the construction industry to closely examine respective roles in regulating anti-competitive conduct.

In some cases, there is a single competition agency (CA) with full oversight over competition policy. Sometimes regulation agencies (RA) may also have jurisdiction over competition issues, or there may be overlap in responsibilities.

Understanding the different regulatory structures, the functions and roles of local regulatory authorities and strengthening working relationships improves sector-specific knowledge among competition officials in Brunei, and helps to develop a mutual understanding of competition issues and challenges among the authorities from different ASEAN Member States.

Acting Australian High Commissioner to Brunei Darussalam Ms Leah Mottram attended the activity closing, stating, “The construction industry is a critical industry to any economy, and anti-competitive conduct within the industry has the potential to do real, wide reaching harm to every person. To this end, cooperation between construction and competition officials is crucial and will make a real difference to the lives of their citizens.”

Hello from Hanoi! Hien Le returns from Secondment to VCCA



Above: photo of Ninh Binh in Viet Nam, by CLIP advisor Hien Le

The ACCC's Hien Le has returned from Hanoi after spending a few weeks at the Viet Nam Competition and Consumer Authority (VCCA). Hien lent a helping hand with the VCCA's implementing decree for their competition law, helped assess the agency's capacity building needs as CLIP Phase III progresses, and led information sessions on mergers and acquisitions investigations.

Hi, Hien! Can you tell us a bit about the state of competition law and the agency in Vietnam?

Vietnam's competition law was passed in 2004 (with some important amendments passed this year) and the VCCA reports to the Ministry of Industry and Trade. They are at the stage of detecting, investigating and enforcing competition law and using enforcement outcomes to complement advocacy efforts and deter future anti-competitive conduct.

Have you been to Viet Nam before?

I grew up in Ho Chi Minh City (or Saigon, as I'm used to calling it) so I can speak Vietnamese. However, it has become rusty (though I'm glad to see that I'm still, to some extent, understood by VCCA colleagues).

What was the work plan in your placement?

Before I left Australia, my VCCA colleagues and I discussed some goals and projects I could assist with. Specifically:

- information sharing sessions for VCCA officials based on ACCC experiences on topics such as market definition and market power, anti-competitive agreements, abuse of market dominance, leniency schemes, unfair competition practices, administrative remedies, advocacy work and investigative techniques
- discussions around operational structure of the VCCA

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- assisting in the drafting of a decree (containing detailed guidance on the implementation of the new competition law)
 - participating in stakeholder engagement and outreach activities on competition law and policy, and
 - assessing and reporting on the VCCA's future capacity building needs, in order to implement competition law.

It was also great to talk about the ACCC's experiences with cartel investigations, which in the absence of a local and concrete code of conduct was beneficial for the VCCA.



Above: Workshop on Competition Policy in Lao PDR, December 2018

Contact CLIP: clip@acc.gov.au

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

More information: www.acc.gov.au/clip



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