
Introduction to the *Research Handbook on Asian Competition Law*

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1. THE PROLIFERATION OF COMPETITION LAW IN ASIA AND ITS CHALLENGES

In the Asian region, which is rapidly growing in importance, competition policies and laws have started to play a vital role in building the infrastructure for a market-based economy. Thailand and Indonesia adopted a competition law in 1999. India followed in 2002, then Singapore and Vietnam in 2004. China, Malaysia and Hong Kong introduced competition laws in 2007, 2010 and 2012 respectively. ASEAN Member States committed themselves to introduce competition policies and laws by 2015 and all ASEAN Member States apart from Cambodia have complied with this commitment. Cambodia is still in the process of finalizing its competition law. Japan, Korea and Taiwan, to the contrary, have a much longer history with competition policy and law. Japan was forced by the Allied Powers to adopt a competition policy and law in 1947. Korea enacted its competition law in 1980. Taiwan followed about a decade later and adopted its competition law in 1992.

The proliferation of competition laws in Asia confronts competition law scholarship with challenges. Asia does not only combine developed and developing economies; it also combines free market economies with socialist market economies. With Singapore and Hong Kong, the region has two small economies. With the exceptions of Japan, Korea and Taiwan, the idea of competition policy and law is relatively new to many Asian countries. In several countries the adoption of this new idea was mandatory, that is, imposed by either another country (Japan) or an international institution (Thailand and Indonesia). Despite these differences, many Asian countries have been looking at well-developed competition law regimes in order to formulate their own laws.

Finding inspiration in well-developed competition laws adds another layer of complexity. Besides the issue of whether these competition laws are adept to the environment of the countries contemplating the adoption of a competition law, the well-developed competition law regimes have been facing problems of their own. The interpretation of competition law in these well-developed competition law regimes has differed. During the period in which the tension between different models of competition law was being tested, a debate on the convergence of competition law on economic efficiency appeared. Confronted, however, with the reality of politics, the convergence scholarship shifted to understanding each other's differences in order to enable the different outcomes to be accepted in a globalizing world. The inception of the International Competition Network (ICN) is probably the best example of this trend.

Combining the different environments in which competition laws have been adopted in Asia with the struggle of well-developed competition law regimes to establish the goals of competition law, one could raise the question of where this is leading Asia. Focusing on the drafting of competition law, one could ask whether competition laws in Asia are drafted along the lines of the competition laws of the jurisdictions in which inspiration was sought. Socioeconomic dif-

ferences in Asian countries could have pushed the drafting process in a direction different from that which exists in other jurisdictions. Focusing on implementation, one could ask whether the implementation of competition law has suffered from the way in which it was introduced in the country. The level of economic development could influence the level of enforcement or the direction of the enforcement. The size of the economy could also matter in terms of selecting enforcement priorities.

Building on these observations, this book aims to address the question of whether Asian competition laws converge with or diverge from the competition laws that inspired their drafting. For this reason, the chapters elaborate on the modelling process of the respective country's competition law (which competition laws stood as a model for both the original version and, if any, its amendments) and to what extent and for what reason(s) the legislator or enforcer gave his or her own direction to the relevant competition law. In other words, the aim is to identify specific characteristics of the respective competition laws and why these specific characteristics have developed either in the legislative stage or the enforcement stage.

We draw conclusions on these issues from countries in South, East and Southeast Asia that have a comprehensive competition law in place as of August 2019. Following several other works in this area, the book will use the general term 'Asia' to refer to the following jurisdictions (in alphabetical order): China PRC, Hong Kong, Indonesia, Japan, Korea, Malaysia, Myanmar, Philippines, Singapore, Taiwan, Thailand and Vietnam. To this list will be added one ASEAN country that is still in the process of adopting a competition law: Cambodia.

2. OVERVIEW OF THE BOOK

The book is divided into five parts. One sets out the background of a changing environment in which competition law has to be created; the remaining four discuss the characteristics of the competition laws in the above-mentioned jurisdictions.

2.1 Background Perspectives on Competition Law in Asia

The process of adopting competition law in Asia has spread over the course of nearly one century. The Philippines adopted its first competition law in 1925; Japan did so in 1947; Korea and Taiwan followed around the 1980s; and all other Asian countries followed from 1999 onwards. Much has changed during this period. Steven Van Uytsel, in his contribution on the complex reality behind the adoption of competition law, argues that each of these changes has made it more difficult to create a competition law, in comparison with the period in which the Philippines and Japan adopted their respective original competition laws. To start with, the United States is no longer the only competition law model. New diverging models have advanced, giving countries a broader choice to model in the writing of their respective competition laws. Despite the enlarged choice, competition theory started to call for the opposite. Competition law and economics advocated for convergence and this on the standards being put forward by economic theory. As convergence seemed difficult to achieve, exemplified by the continuation of conflicts in international competition cases, the pendulum swung back in the opposite direction. Divergence became the mantra. Two different stances were taken. The international competition community still called for convergence, but only after studying the divergent approaches among all competition laws. Hence, divergence was only accepted

because it could show the way to the best practice on which all competition regimes should converge. Scholarship focusing on developing countries and countries in economic transition broke with the concept of convergence. This scholarship emphasized that countries should adopt a competition law that is suitable to their needs and appropriate for its abilities. The call for divergence seemed to fit the Association of Southeast Asian Nations (ASEAN), because this would allow each member state to develop its own competition law. Yet, ASEAN promoted European competition law and policies in many of its documents instructing its member states on how to develop a competition law.

After explaining the changing environment in which competition law has to be created, Steven Van Uytsel expands on the reasons why Asian countries turned to competition law. He argues that besides the call for economic democratization, five other reasons have been driving forces behind the adoption of competition law in Asian countries: sustaining economic growth, complying with obligations from the WTO and other trade agreements, guidance by international organizations, obtaining loans and an economic integration project. Each of these reasons are linked back to the Asian jurisdictions whose characteristics will be discussed in this book.

2.2 Competition Laws in Search for Their Identity: Japan, Korea and Taiwan

Part II discusses the three oldest Asian competition laws: Japan, Korea and Taiwan. The scholars elaborate on how these laws have been in search of their own identity.

Japan, as Shuya Hayashi, Kunlin Wu and Xiaoyu Ma point out, has a competition law inspired by the different competition laws of the United States. While the Japanese bureaucrats were able to influence the drafting process, the search for a Japanese identity for the Antimonopoly Act (AMA) only started after Japan regained its sovereignty in 1952. For about two decades, this meant the creation of various formal and informal mechanisms to weaken the AMA. The 1970s were the start of a paradigm shift. With a serious enforcement attempt and various changes to the AML, such as increased sanctions and the creation of the administrative surcharge, a four-decade period of change was initiated. Hayashi, Wu and Ma divide this era into three periods. The first period runs from the end of the 1970s to the Structural Impediments Initiative. This is the period in which the United States formulated a complaint over access to the Japanese market. To respond to this complaint, Japan agreed, among others, to strengthen the AMA. The first step was to address the understaffing of the Japan Fair Trade Commission (JFTC). The second period begins during the early 1990s and runs up until the 2005 amendments, and reflects the changes promised in the previous period. Whereas the changes were initially slow and concentrated on cartel enforcement and the independence of the JFTC, the Koizumi cabinet endorsed major revisions including, on the one hand, an increase of the surcharge and the criminal fines, and on the other hand, the introduction of the JFTC's criminal investigation powers and the leniency programme. The third period, initiated by the 2005 amendments, runs until the present. Hayashi, Wu and Ma claim that this period is characterized by reforms requested by the industry. These reforms included the abolishment of the *ex post* hearing procedure, as this gave too much weight to the JFTC in deciding cases. Instead, an *ex ante* hearing procedure and a new appeal procedure outside of the JFTC was asked for. In this new appeal, the courts should not, according to the industry, be bound by a substantial evidence rule. Hence, the substantial evidence rule was abolished. Scholarly research and the JFTC are, as Hayashi, Wu, and Ma point out, trying to curb the industry's

influence on the legislative process. On the one hand, there is advocacy to transform the nondiscretionary surcharge system into a discretionary one. On the other, there are arguments about making the leniency programme more effective by including greater bargaining power for the JFTC with regard to leniency applicants.

The second oldest operational competition law in Asia is the Korean one. Yo Sop Choi holds that the competition law is a response to the government's policy of stimulating the growth of economic power to compete internationally. Yet, there has been much discussion among Korean scholars as to the purpose the new law should serve. After detailing this discussion, Choi concludes that the main principle driving Korean competition law is the *missbrauchprinzip* – the principle of abuse – underlying European and especially German competition theory. The Korean competition law is enforced through the provisions on unfair business practice, anticompetitive agreements, abuse of market dominance and mergers and acquisitions. Choi argues that of all of these provisions, the unfair business practice one is particular in that it is used to deal with almost any kind of conduct that is considered to infringe on the competition law. In relation to the provision of anticompetitive agreements, the main characteristic is that exemptions are being granted based on a notification system. Also, the provision on anticompetitive agreements does not recognize the concept of concerted practice. Enforcement practice, however, has created a similar outcome by incorporating a system of plus factors. To enforce the provision on abuse of dominance, the Korean competition law relies on fixed concentration ratios to presume market dominance. In this sense, the Korean law deviates from the European competition law provisions on abuse of dominance. The Korean Supreme Court has introduced its own interpretation accents in the Korean competition law. Information-sharing concerning price has not been considered as an infringement of competition law. In abuse of dominance cases, the Supreme Court has introduced the need to prove intent. The Supreme Court has further ruled that guidelines drafted to facilitate the implementation of competition law should not be considered as binding. These above elements show, according to Choi, that Korean competition law is searching for its own character and its reason for existence. This does not mean, however, that the Korean competition law is also moving towards developed competition law regimes. This, Choi says, represents the modernization of Korean competition law.

Andy C.M. Chen, after introducing us to the political and economic factors underlying the enactment of the Taiwan Fair Trade Act (TFTA), informs us that the TFTA has been written with the legislation of the United States, Germany, Japan and Korea in mind. Chen meticulously details how each of these jurisdictions has had an influence on the TFTA. One could say that the TFTA is like a patchwork quilt, something composed of elements taken from different parts in order to function in its new capacity. The existence of unfair trade practice provisions in the United States, Germany and Japan has inspired Taiwan to include a chapter on unfair competition in the TFTA. To define the concept of monopoly, the legislator looked at the competition laws of Japan and Korea, due to which it was limited to firms that did not face any competition at all. Inspired by the German competition law, the TFTA was given different provisions for regulating competition law issues related to horizontal and vertical agreements. The United States Clayton Act was the basis for treble damages in the TFTA, though the original version left it to the courts to determine the multiplier. Eventually, the legislator limited the use of treble damages to intentional infringements. Taiwan chose to treat resale price maintenance as a *per se* infringement of the TFTA. However, Taiwan decided to exempt daily necessities from this *per se* infringement without having an apparent reason for it. Until 2017,

the original TFTA changed seven times. Chen indicates that the reasons for these changes are various. Difficulties created by the enforcement of the TFTA has triggered revisions. For example, the obligation to publish a list of firms in a monopoly position was abolished because it caused confusion among the firms. Being on the list made the firms too careful; not being on the list meant for many firms free reign to do whatever they believed appropriate. The Taiwanese Fair Trade Commission initiated revisions to incorporate policy considerations. One of these revisions created the rule that administrative competition enforcement should always precede criminal enforcement. Domestic legal changes also triggered revisions. When the Administrative Procedure Act imposed requirements of transparency, several provisions of the administrative regulation assisting the enforcement of the TFTA had to be upgraded to law and thus be included in the TFTA. Improving economic conditions prompted the debate to revise the sanctions upwards in order to maintain their relevance. Other revisions were prompted by international experience. Incorporating a leniency programme, for example, was suggested by the OECD.

2.3 Substantial Revisions for Early Adopters: Indonesia, Thailand and Vietnam

In Part III, Indonesia, Thailand and Vietnam are discussed. These jurisdictions were relative early adopters of competition law in Asia. However, the competition laws are at a crossroads. Each of these jurisdictions have, each for their own reasons, recently revised their competition laws extensively.

Sih Yuliana Wahyuningtyas notes that the successful functioning of the markets in Indonesia was jeopardized by state-related support for domestic industries on the one hand, and private restraints on competition on the other. To deal with the latter, Indonesia adopted Law No 5/1999, the Indonesian competition law. This law broadly follows the traditional approach to competition law by prohibiting various forms of anticompetitive agreements and anticompetitive unilateral conduct. One other category of prohibited activities is added to the categorization of prohibitions. Specific to the Indonesian competition law is that these three categories of prohibitions are elaborated over various articles. Moreover, the assessment of whether an agreement or a conduct is contrary to competition law rests on a rule of reason. Only in specific circumstances, such as price fixing in the narrow sense, is something illegal *per se*. Bid rigging, for example, is not classified as price fixing and thus is assessed based upon a rule of reason. In its enforcement, the Indonesian competition commission, Komisi Pengawas Persaingan Usaha (KPPU), has focused on the protection of small and medium-sized enterprises and consumer protection. However, due to difficulties in applying the law and collecting evidence, on the one hand, and relatively low fines, on the other, effective enforcement has been troubled. Amendments are therefore suggested. However, the amendments are probably not of such a nature as to cause a shift in enforcement; rather, they simply suggest rationalizing the categorization of the prohibitions, introducing new selection criteria for the Commissioners of the KPPU, elaborating a leniency policy and compensating the removal of the criminal sanctions with higher administrative sanctions.

Thailand has, according to Sakda Thanitcul, been experimenting with competition-related laws since 1947. The scope of the early competition law was limited to the monopolization of markets with the aim of creating shortages that could lead to excessive pricing. A full-fledged competition law was only adopted in 1999, when the Thai economy was facing problems with automobile manufacturers who had stopped importing their vehicles into Thailand and it was

not clear whether the earlier adopted price laws could deal with this issue. Despite the efforts of the Thai government to draft a competition law based on the competition laws of South Korea and Germany, the government was not able to pass an effective one. Sakda explains that the law has triggered 93 complaints, the majority related to unfair trade practices, but none of these complaints have led to a decision that the competition law was violated. To address this situation, a new competition law was adopted in 2017. The reconceptualization of the Trade Competition Commission (TCC) is one of the major changes. It is hoped that the appointment of full time commissioners will make the TCC less dependent on the industry. Court cases, whether criminal or civil, are now grouped together in one specialized court with mostly foreign-trained judges: the Intellectual Property and International Trade Court. The TCC has also been given the authority to issue written administrative orders to suspend, cease or rectify anticompetitive conduct. The TCC can further impose an administrative fine, though for only a limited number of violations (nonhardcore violations, unfair trade practices and unreasonable agreements with offshore entities). The aim to achieve an international standard is also visible in how the law defines a business operator with market dominance by referring to market share, turnover and market conditions. The new law is supposed to have extraterritorial reach and could also apply to agreements with offshore entities. Despite these changes, the law still offers opportunities to exclude state-owned enterprises from its scope.

Another country that has revised its competition law is Vietnam, which was still one of the early adopters of a competition law in the ASEAN region, albeit about five years later than Indonesia and Thailand (in 2004). Ly Huong Luu explains that the early adoption of the competition law was fit within Vietnam's strategy to transform its economy from a centrally planned system to a multisectoral one. In 2018, a decision was taken to change the original competition law. For the details of this change, Vietnam mainly looked at the EU, Australia and China. This resulted in a more independent enforcement agency, where the commissioners are not necessarily officials from other state related departments. The substantive scope of the new Vietnamese Competition Law (VCL) covers unfair competition practices, anticompetitive agreements, abuse of dominance and monopolization, and economic concentrations. The first category is left over from the original VCL, but in line with the Australian competition law. The second category is inspired by EU competition law in treating price-fixing agreements as hardcore forbidden agreements and nonprice-fixing agreements as illegal only when there is an anticompetitive effect. The new VCL allows for exemptions, with qualifications similar to the EU, even for the hardcore agreements. The third category is centred on the concept of dominance and monopoly. Whereas many countries' laws do not specify the existence of dominance or monopoly, the new VCL, just like the old one, does. Dominance and monopoly are solely determined by market share. The presumption of dominance or monopoly created by a certain degree of market share is not rebuttable. On top of that, once a dominant position or a monopoly is obtained, these firms need to abstain from the conduct mentioned in the VCL. The effect of that conduct is not important to determine illegality. In other words, there is a use of *per se* prohibitions for unilateral conduct. The fourth category deals with economic concentrations, including consolidations, mergers, joint ventures and acquisitions. The provisions on economic concentrations are in line with what mature competition laws prescribe, meaning that the VCL has compulsory premerger notification, turnover thresholds and provisions on conditioned concentrations. However, the Vietnamese legislator retained local elements: market share as the threshold for notification and silence on whether there is a hearing during the review process or whether there is a right of defence. The Chinese influence is noticeable,

with the introduction of a provision on the administrative monopoly in the new VCL which deals with anticompetitive privileges that state-owned enterprises had been able to obtain. In relation to enforcement, the Vietnamese legislator decided to concentrate all enforcement power in one agency and to make private enforcement dependent on public enforcement.

2.4 European Competition Law as the Main Source of Inspiration: Singapore, Hong Kong, Malaysia and China

Part IV introduces how Singapore's, Hong Kong's, Malaysia's and China's respective competition laws have been influenced by the Anglo-European or German competition law provisions. Despite the European competition law template being strongly prevalent, it cannot be said that only one was used. All jurisdictions are trying to develop their own take on these provisions.

Burton Ong, after describing the background against which Singapore adopted a competition law, reveals that the competition law in Singapore is mainly based on the Anglo-European competition law framework. The influence is mainly visible in what Ong calls the language of the basic trinity of prohibitions – the prohibition on anticompetitive agreements, the prohibition on abuse of dominance and a prohibition on mergers that substantially lessen competition. In the fine-tuning of these provisions, Singapore has brought in its own focus. Not to overburden the newly established enforcement agency, individual exceptions to the prohibition of anticompetitive agreements are, in principle, not entertained. Further, a choice has been made for a total economic welfare standard. This choice allows the exclusion of vertical agreements from the scope of competition law, the acceptance of exceptions to prohibited anticompetitive agreements on the sole basis of economic benefits and the exclusion of exploitative abuses of market power from the scope of the competition law. Case law has further contributed to departures from the Anglo-European competition law framework. Ong argues that a prohibition 'by object' has been interpreted to include conduct that is noncartelistic in nature. The Guidelines of the Competition Commission of Singapore (CCS, now Competition and Consumer Commission of Singapore) further stipulate that the prohibitions by object always have an appreciable adverse effect on competition. To be able to address international cartels, the CCS decided to reinterpret the concept of single economic unity, not only to attribute liability from the subsidiary to the parent, but also to attribute liability from the parent to the subsidiary. To secure the interests of sectors crucial to the Singaporean economy, such as the airline and maritime sectors, the CCS has been swift in accepting that restricting agreements are offering economic benefits to the companies involved. It seems that, when rendering these decisions, the CCS is receptive to advice from other government agencies.

In his contribution, Thomas Cheng explains that the initial intention of the Hong Kong government was to follow the Australian competition law. For this purpose, an Australian law firm was retained. Without being able to pinpoint the exact reason, Cheng indicates that the Hong Kong government instead moved towards the competition law of the European Union. However, extensive study of the Australian competition law left its traces in the Competition Ordinance based on the EU competition law provisions. Though the substantive structure is the same, various alterations have been made. Cheng itemizes the following localizations of the law: (1) associations can be punished for implementing an illegal agreement; (2) unilateral conduct can be punished only when there is a substantial degree of market power and not a dominant position; (3) the object/effect dichotomy typically used for judging agreements

under competition law has been extended to the provision dealing with unilateral conduct; (4) collective dominance is not included in the Competition Ordinance; (5) the scope of the provision dealing with unilateral conduct is more limited than its European equivalent and excludes, for example, excessive pricing. The influence of the European competition law provisions is also visible in the way the exemptions are formulated in the Competition Ordinance. Both the system of individual and block exemptions and the system to exempt agreements enhancing efficiency are inspired by the European competition rules. Another example of similarity is the introduction of the *de minimis* rule. However, the content of that rule has been greatly localized in order to get support for the competition law from small and medium-sized enterprises (SMEs). Rather than working with market share, the Competition Ordinance has set a turnover threshold to exempt agreements from the application of the law and has expanded its scope to unilateral conduct. Another localization is the exclusion of statutory bodies from the scope of application of the Competition Ordinance. When designing the guidelines, the Commission has been influenced by EU practice as well. Concepts such as undertaking, agreement or concerted practice are elaborated based on EU jurisprudence. Despite the similarities, the Commission has also localized several elements in the guidelines. One such example – again, included to accommodate the SMEs – is the inclusion of the concept of serious anticompetitive conduct and the stipulation that enforcement action regarding this conduct can only be undertaken after the Commission has issued a warning. In relation to unilateral conduct, the Commission is inclined to follow the EU approach in its guidelines. However, some of the formulations allow for developing an approach which offers a compromise between the EU and the US approach. Such is the case for predatory pricing.

May Fong Cheong, Joshua Beni Chris Teoh and Esther Li Ean Khoo, after expounding on the different theories of legal transplants, explain that Malaysia decided to borrow the competition law provisions from the EU. The similarity can be noticed in the provisions regulating agreements and unilateral conduct. However, adaptations to the Malaysian context have been made. Consumer protection has been given a much more profound role in the interpretation of the Malaysian competition law, enabling, for example, the consideration of vertical agreements within an effects test to determine legality. Another contextualization has been to explicitly set bid rigging as a practice that falls within the context of forbidden horizontal agreements. It was also decided not to include a merger review system in the Malaysian law, in order to allow for the development of a strong domestic industry. With only a few enforcement actions, it is still too early to make a firm conclusion on whether the Malaysian Competition Commission is further deviating from the source of the Malaysian competition law. A contextualized interpretation is, for example, still possible in the area of state involvement in conduct that may violate the Malaysian competition law. To better address competition law issues, the authors contend that the enforcement agency, the Malaysian Competition Commission, needs to professionalize human resources and educate the public and the commercial sectors to better understand the implications of a competition law regime. Further, there is also a need for the legal profession to familiarize itself with this new field of law. To this end, the authors call on universities to actively engage in competition law education.

The adoption and development of competition law in China is well documented by Xiaoye Wang. The adoption of a competition law in China was preceded by economic reforms. However, nearly three decades passed between the initiation of the economic reform in 1980 and the final adoption of competition law. Wang details the reasons: objections to competition law creating domestic champions; government-ordered restrictions to competition made com-

petition law appear not to be a matter requiring urgent action; industry opposition to competition law; and internal government struggles over how to position the competition law among the existing competition-related laws. Some of these problems have shaped the Chinese Antimonopoly Law (AML). Besides prohibitions on anticompetitive agreements, abuse of dominance, and concentrations, the AML includes a prohibition on administrative monopolies aiming to deal with government-ordered restrictions. The enforcement of the AML was spread over three agencies – the Ministry of Commerce (MOFCOM), the National Development and Reform Commission (NDRC) and the State Administration for Industry and Commerce (SAIC) – to deal with internal governmental power struggles. In an attempt to anticipate any problems with industry, industrial policy elements were interwoven in the text of the AML. During its first decade, demonstrates Wang, the enforcement agencies have fully embraced the AML. MOFCOM is developing provisions on concentrations alongside developed concepts in the field and is, when necessary, taking appropriate decisions for the domestic market. NRDC has focused on price-related anticompetitive conduct, both in terms of agreements and unilateral conduct. NDRC did not hold back on international cases or cases with complex anticompetitive issues. Similarly, SAIC is pursuing non-price related anticompetitive cases in line with the objectives set by the NDRC: any case that would infringe the AML – international or not, complex or not – SAIC would pursue it. Despite this success, Wang argues that there are also a few points of critique. Two of the critiques are related to the enforcement agencies: (1) inability to retain full independence when dealing with large state-owned enterprises and (2) insufficient staffing levels. As to the substantive provisions, more normative guidance is called for. The most striking example that Wang puts forward is the different treatment of resale price maintenance by the NDRC and courts. While the former seem to pursue a *per se* approach, the latter follow a rule of reason.

2.5 Fusion of Different Competition Law Models: The Philippines, Laos, Myanmar and Cambodia

Part V groups together the three Asian countries that have adopted competition laws relatively recently: Laos, Myanmar and the Philippines. To this list is added Cambodia, which is still finalizing its competition law. The timing of their adoption of competition law is not the only reason why these countries are grouped together. Each of these countries' competition laws have the characteristic that more than one competition law can be identified as having served as a template for the drafting.

The Philippines, explains Alizedney M. Ditucalan, is among the few countries in Asia to have adopted competition law statutes early, mainly as products of American colonialism. For various reasons, these laws have not, however, developed into a robust competition law regime. In 2015, competition law in the Philippines took a different shape with the enactment of the Republic Act 10667, otherwise known as the Philippine Competition Act (PCA). The PCA created a national competition authority called the Philippine Competition Commission, which shall have 'original and primary jurisdiction over the enforcement and implementation' of competition law statutes. As explained by Ditucalan, the antitrust liability provisions are a clear, deliberate fusion of European Union and United States competition law systems by the Philippine lawmakers. The 'idea' was to create a 'superior' regime. Ditucalan argues that the result of the fusion was complex law 'that struggles to conform with the norms of legal certainty, predictability and administrability'. He further argues that the idea of combining

two legal systems was controversial in competition law design because the ideal model for developing economies should be 'sufficiently lean, simple, transparent and friendly to enforcement', taking into consideration the country characteristics.

The Lao People's Democratic Republic (Laos), demonstrate Steven Van Uytsel and Somsack Hongvichit, was experimenting with competition law as early as 2004. The main source of information for this competition law was the Thai 1999 competition law. Against the backdrop of the ASEAN soft obligation to adopt a competition law, Laos decided to reinvigorate its competition law. Inspiration was sought in Vietnam, but EU and US influences can be seen as well. The foreign influence has further been complemented by local elements. Van Uytsel and Hongvichit evaluate the combination of all foreign and local elements in the Lao competition law. It is difficult to draw one line in the evaluation. Despite some smaller issues with the provisions on unfair competition, unilateral conduct and combinations, these provisions are relatively simple and transparent to apply. The provision on agreements in restraint of trade has been made immensely complex by creating different standards of illegality where only one could have sufficed. Moreover, while the provision is upfront with its standards of illegality for price-related agreements, no guidance is given for agreements that are not price related. Due to this situation, the evaluation of Van Uytsel and Hongvichit is partly positive. The enforcement agency will be able to settle many disputes with the unfair trade practices provision and so justify its existence. However, in hardcore cartels, an area in which enforcement could be easy for developing countries, the competition law is overly complex. To make this part of the law effective, an immense effort will have to be made in explaining and justifying each and every standard of illegality.

The contribution on Myanmar revolves around the theme of complexity. To draft its competition law, Myanmar studied the ASEAN guidelines and the competition laws of Myanmar and Thailand. These three documents were blended and new elements were added. Steven Van Uytsel contends that the result of this exercise is complex. Much of the complexity can be reduced to the choice of concepts that are not further interpreted in the law. To define the subjective scope of the Myanmar competition law, the legislator has used two concepts: businessman and person. The former concept is defined, while the latter is not. This will require the Myanmar Competition Commission to elucidate who can be captured under the concept of person. Whereas many other competition laws use the concepts of agreements to determine one category of illegal conduct, the Myanmar competition law has been formulated as acts restraining competition. The question is whether acts should be narrowly understood as agreement or whether unilateral conduct can also be classified as an act restraining competition. If the latter is possible, there are not less than three provisions in the competition law dealing with unilateral conduct. Another quandary within the competition law is whether an interpretation can be constructed to allow for a distinction between horizontal and vertical agreements. There are also four different ways to decide whether a market participant is powerful: dominant position, business power, monopolization and extreme increase of dominance. The law in itself does not allow for making a distinction between these four categories. A final issue, brought to attention by practising lawyers, is whether unilateral conduct that is to be assessed under unfair competition provisions requires an anticompetitive effect. Without addressing these questions, Van Uytsel holds that the Myanmar competition law will be confusing for the business world and legal practitioners.

David Fruitman and Meng Songkheang detail Cambodia's journey towards the adoption of a competition law. The only ASEAN country without a competition law, Cambodia has

been working on different drafts for nearly two decades. Early advice was given by Korean experts, outside the framework of any international obligation. When acceding to the WTO, Cambodia committed to adopting a competition law and sought the help of the European Union and especially the United Nations Conference on Trade and Development (UNCTAD). Despite the existence of a draft, this initiative ‘died’ in 2010 and the government decided to restart the drafting process within the framework of the ASEAN soft obligation to enact a competition law by 2015. It is well known that Cambodia did not meet that deadline and that the law is still being drafted. During the drafting process, support was provided by the Asian Development Bank, the AANZFTA Competition Law Implementation Programme, and recently the Australian Competition and Consumer Commission (ACCC). Draft 5.7, elaborated with the help of the ACCC, regulates horizontal agreements, vertical agreements, abuse of a dominant position and mergers in separate articles. The formulation of these articles is clearly inspired by the language of an advanced competition law regime. If localized additions are made, the language is often carefully considered. The provision on vertical agreements could exemplify this. The article starts out by defining a vertical agreement, after which a nonexhaustive list of infringements is added. Some of the localized additions may need further interpretation. The provision emphasizing individual liability leaves room for interpretation on whether it only applies towards people orchestrating the infringement or also to the ones who implement them. The provision detailing the general exemptions stipulate that the technological, efficiency or social benefit needs to be significant. How to interpret ‘significant’ is not explained. The enforcement authority is divided among the Commission and the Directorate. The former is to set the lines of the enforcement policies and issue decisions and orders. The latter investigates, prepares the decision and represents the Commission in court. Characteristic of the Commission is that there is a lot of influence of the ministries in appointing the Commissioners. As to the Directorate, the authors make the point that the law is conceptualized in a way that may hamper investigations. Examples of such a conceptualization are: cumbersome procedure to appoint investigators, limited hours for searches and no clarification as to what flagrant offences are, making it difficult to assess when a search without a warrant can happen. Whether the above will eventually make it to law without modification will depend on the further legislative process involving the Council of Ministers.

