

**ASEAN CONFERENCE ON
FAIR COMPETITION LAW AND POLICY
IN THE ASEAN FREE TRADE AREA
COMPETITION POLICY AND ECONOMIC GROWTH IN
ASEAN COUNTRIES**

A Myanmar's Perspectives

The topic of this Conference, "Fair Competition Law and Policy in the AFTA", is futuristic and the path is anticipated to be strewn with economic, political, social and even anthropological landmines. But current ASEAN position being what it is and the global economic environment being what it is, ASEAN needs a Competition Policy to be of relevance in the world economy. So if we do not start now, then when?

A look at the theme for Session III, "Competition Policy and Economic Growth in ASEAN Countries", is very pertinent as ASEAN seeks wider and deeper economic liberalization not just within itself, but extending to its dialogue partner's. Here again, the relationship between competition policy and economic growth will be meshed with diverse situational and structural aspects of ASEAN member countries.

Generally, a market economy does bring about economic growth. Myanmar experienced this in the last century. Myanmar adopted the Burmese Way to Socialism in the sixties. The economy degenerated to such an extent that the GDP was *minus* 4 per cent for fiscal 1987. When an "open door" economic policy was introduced at the end of eighties, a private sector sprang up and so did the economy. Myanmar achieved an average growth rate of 7.5 per cent for the Four Plan Fiscal Year 1992 – 1995.

ASEAN member countries went through this kind of experience at one time or another. So did other African, Asian, European and Latin American nations. So, what happened to Myanmar a decade ago is nothing new.

In the mean time, the concept of economic growth have evolved. As a lay man sees it, at first it was just economic growth. If GDP or GNP increases, well and good. Then people realized that while the economy was growing, the environment was degrading. Economic growth by itself was no longer sufficient, It has to be sustainable. Environmental laws and action plans were introduced to remedy the problem. It seems smooth sailing until nations suddenly discovered that inspite of an overall climb in the living standard, there still exist pockets of poverty and groups of citizens at the margin. A shock or a crisis (endogenous or exogenous) in the economic sector will make the first group poorer and the second group marginalized. Thus, the concept of sustainable economic growth was extended to growth with "human dignity" as the late Japanese Prime Minister Keizo Obuchi coined it.

The concept of economic growth is important for ASEAN initiated AFTA to sharpen the region's competitive edge and strengthen its economic resilience. Trade liberalization together with the solution of its accompanying problems is one of the means for achieving the set goals. ASEAN, as it known, also have a services

liberalization program, an investment liberalization program, an industrial cooperation program and an e-ASEAN program. These programs will bring about liberalization trade, services, investments and free movement of professional people. All barriers – trade, non-trade, technical, governmental – will be removed. Rules and regulations will be rationalized for good governance and transparency. The gains from this process are the usual enlarged market, greater market access, growth in trade, investment, private sector, consumer welfare, so on and so forth.

The flip side of this process is the potential for trade restriction and distortion practices by the newly empowered enterprises; anti competitive practices of large foreign companies and investors which can have trans-border dimension; and setting of protective rules by politically powerful vested interest dominant groups. These may take a variety of forms like horizontal restraints, vertical restraints, abuse of dominant position, mergers and acquisitions. The very change in the economic cliché that denotes “large is Beautiful” throws open the threat to the SMEs/SMIs who may be forced to shut down or be subject to the domination of the large mergers. “Small is Beautiful” may not be valid anymore. Since the SMEs/SMIs are the dominant basis for growth, it is imperative that they are protected. They are very relevant to the developing countries.

In the interest of enhancing consumer welfare, creating economic efficiency and promoting innovation, a competitive policy is direly needed. This competitive policy need to be compatible with the overarching goal of achieving economic welfare, economic efficiency and social stability.

This Conference, in seeking principles for compatible competitive laws or a criteria for it, will be a bold first step towards an ASEAN Competitive Policy. It will not be an easy task for the national competitive laws of ASEAN member countries will be quite diverse. As far as market structure and market culture are concerned, ASEAN is ten-tiered, not two. Therefore, a one size fit all concept will be irrelevant. For appropriate and realistic provisions, different countries will require different models. Because the ultimate objectives are identical, there will be enough commonalities for compatible national competitive laws.

Turning to a possible competitive law for Myanmar, it is conjectured that a competitive policy and a competitive law as such are not on the immediate horizon of the policy makers. There may be legitimate concerns over dominance of foreign investors with a liberalized inward flow of foreign direct investment. There may be scepticism about the benefits of competition. There may be fears of losing national identity or sovereignty. In seeking to find a solution in such a situation fine balance or equilibrium has to struck with deep considerations.

Consumer sovereignty is somewhat of a new concept because of a lack of competition culture. This being the tragic heritage of almost three decades of inward looking, isolated closer door socialism. At that time, “take it or leave it” did not exist. You take it. Otherwise, you will find yourself sans the basic necessities, such as soap and toothpaste.

Even today, Myanmar is neither here nor there due to its slow process of transition. Old habits die hard. It takes time, a decade – a generation, to change the mind set of set minds. There is plenty of room for improvement in providing service, prioritising

consumer satisfaction or welfare. For this reason, Myanmar should put consumer welfare at the heart of its competition law.

As to the economic efficiency aspect of a national competition law, it needs to take into account the particular characteristics of the country. With respect to market competition, there is low level education, asymmetric information, under-developed private sector, skewed distribution of wealth and the like. For these country specific characteristics, Myanmar will need “escape clauses” or exceptions. For example, small and medium enterprises are encouraged to form clusters for economic scale and be competitive. The government allowed small groups of private businesses for high cost infrastructure projects in public interest and economic scale. Such actions run counter to fair competition as defined in economic textbooks. Care must be taken in introducing exceptions for fear of unnecessary prolonging and eventually back firing.

A first step for Myanmar will perhaps be a coordinated, well thought through economic plan of action. There is a clear need for fashioning appropriate policies and translating them into practical competition policy and legislation. The Competition policy will have to be introduced in a staggered manner.

This process may also apply to ASEAN as a whole. Policy linkages need to be clearly understood to have effective coordination. Regulatory measures must not only be appropriate, but also sound, transparent and non-discrimination. “Rules and disciplines that are not based on privilege” is what the Terms of Reference for this Conference stated. Then, for the administrative part, a strong independent authority with political support from the highest level is required.

After driving-up a “shopping list” of the requirements, mention must be made that ASEAN can not do it alone. A Conference, such as this, will promote awareness and sound a “wake-up call”. Further capacity and institutional building aid will be required, not just in monetary terms. Sharing of lessons learnt and good practices by the international institution like OECD, UNCTAD, World Bank, and WTO, competition authorities and consumer groups of experienced countries will enhance ASEAN’s effort towards agreeing on the principles for an ASEAN Competition Policy. There will be a lack of expertise, inefficiency, resource constraint, and to an extent, a lack of political will.

Be that as it may, the expertise and experience of the distinguished participants will produce constructive suggestion, food for thought and throw a light on how to proceed.

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