

Intergovernmental Group of Experts on Competition Law and Policy

16th Session

5-7 July 2017

Room XVII, Palais des Nations, Geneva

Wednesday, 5 July 2017

Afternoon Session

**Agenda Item 3a. Capacity-building and technical assistance
activities implemented**

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UNSW Law

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Project to develop ASEAN Regional Capacity Building

Roadmap for 2017-2020

IGE July 2017

Summary of Presentation: what will be discussed?

- Methodology/process
- Summary findings
- Substantive approach to capacity building
- Expanding on the main suggestions
- Focus on one suggestion

What was the project about?

- Project under the Competition Law Implementation Program (CLIP) Phase 11 of the AANZFTA Cooperation Work Program with the aim of updating ASEAN's 2012 Regional Capacity Building Roadmap in accordance with Initiative 2.1 of the ASEAN Competition Action Plan 2025
- Funded by the Australian Competition and Consumer Commission under its Competition Law Implementation Program (CLIP)
- CLIP Program assists newer agencies in the region with practical assistance by, for example, running investigation workshops, and by being embedded for a while in teams investigating cartels or assessing mergers

Methodology /process

- Professor Deborah Healey (project leader); Mr Hassan Qaqaya; Professor May Cheong
- Research project: ethics approval; issues of confidentiality
- 8 jurisdictions (not tasked with reviewing Singapore or Brunei Darussalam)
- Desktop research on competition law and policy in each jurisdiction
- Development of checklist for discussions with interviewees
- 2 research trips: December 2016 and January 2017 by Deborah Healey/ACCC officers
- Interviews with regulators, practitioners, academics, business, government
- Comprehensive review to isolate individual and common gaps in capacity
- Drafting individual country reports with individual recommendations (some of which are outside the scope of the roadmap) to address these gaps
- Report summarising proposals and roadmap submitted April 2017

Summary findings

Background issues:

Resources, agency independence, clarity of individual laws

Capacity building issues:

- Greater skills needed in the economics of competition law and economic analysis across the board, including for conduct of market studies, developing a theory of harm, analysis of conduct
- Longer term capacity building in economics
- Clarifying uncertain areas of competition laws
- Selling the benefits of competition to all stakeholders
- Continuing to advocate to government in a competition policy sense
- Advocacy planning and implementation: despite work, levels of recognition
- Investigation skills, interview skills
- Clarifying relationships with sector regulators as to laws and co-operation as necessary
- Development and updating of guidelines

Approach to capacity building

Jurisdictions varied greatly:

- Some agencies were very new, with very recent competition law or no law
- Another group had little enforcement experience
- Another group had an established law and enforcement history

Approach to capacity building

- Gaps in capacity consistent but jurisdictions at different stages of need
- More involvement between the individual ASEAN jurisdictions to draw on areas of strength and to share ideas
- Links will assist co-operation in enforcement going forward
- Suggestions involve both jurisdictional and all- ASEAN solutions

Focus of capacity building: Key result areas

- Support introduction and amendment of competition law in ASEAN states
- Review and amendment of all guidelines, directories and other advisory documentation more than two years old
- Develop effective competition enforcement institutions
- Enhance capacity to undertake analysis and market studies
- Create capability development plans for effective enforcement and staff retention
- Enhance capacity to advocate and engage in support of competition
- Development of priorities for regional capacity building going forward

Suggested approaches to capacity building

- Workshops at preliminary, intermediate and advanced levels/retraining
- Seminars Conferences using local and invited international experts
- Individual expert in country training Review of plans by experts
- Peer review
- Training all staff, commissioners and judges
- Internship, secondment, study visit, attachment of experts
- Priorities and future plans
- Assessing effectiveness of individual initiatives
- Encouraging further tertiary study by staff

Substantive approach to capacity building: economic capacity

Embedded Economic Expert

- Focus on theory of harm and developing economic approach
- Economist selected locally if possible from other government department, academia or local economic consultancy
- The economist/mentor to train on competition law and economics, and work in house with a team through the investigation of an individual case/ enforcement action/ market study for a period of two to three months
- On-going periodic meetings (weekly or fortnightly) following the initial period and phone contact for emergency queries while team continues the study/ enforcement action
- Possible follow-on enforcement of a case arising from the investigation/market study
- Detailed seminar presentation of the completed exercise by team and economist to staff and commissioners as a training exercise
- Use of the completed exercise for on-going in-house training exercises by a member of the original team
- Different variations depending upon organisation of the regulator

