NUS National University of Singapore | EW Barker Centre for Law & Business
Faculty of Law

The ASEAN Competition Compliance Experience Survey-Study (ACCESS)

Phase 1 Report

August 2021

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Explanatory Note:

This Report summarises and analyses the findings of an empirical electronic survey conducted between November 2019 and February 2020 pursuant to a research project ("Developing Competition Law within the ASEAN Economic Community") supported by the EW Barker Centre for Law and Business at the National University of Singapore's Faculty of Law.

This Report relies on the inputs given by over 100 survey participants familiar with competition law matters in the ASEAN region. These responses were aggregated and anonymised before they were analysed alongside the inputs submitted by invited stakeholders from the region. The contents of this Report do not represent the views of the ASEAN Experts Group on Competition (AEGC).

Any queries relating to, or feedback arising from, this Report may be addressed to Competition_law@nus.edu.sg.

Acknowledgements:

The authors of this report would like to thank the participants of the two post-survey workshops for their valuable insights and inputs that have refined the contents of this report. All errors remain ours alone.

CHAPTER 1

INTRODUCTION

Following the establishment of the ASEAN Economic Community (AEC) at the end of 2015, the ASEAN Member States (AMSs) committed themselves to a 10-year plan, documented in the *ASEAN Economic Community Blueprint 2025*, that aimed to "[c]reate a deeply integrated and highly cohesive ASEAN economy" and "[r]einforce ASEAN centrality in the emerging regional economic architecture by maintaining ASEAN's role as the centre and facilitator of economic integration in the East Asian region".[1] One of the main pillars of the Blueprint is the establishment of "[a] Competitive, Innovative and Dynamic ASEAN",[2] with "Effective Competition Policy" identified as the primary mechanism "[f]or ASEAN to be a competitive region with well-functioning markets".[3] Competition law rules are envisaged as a means to "provide a level playing field of all firms, regardless of ownership" and regarded by the AMSs as "an important way to facilitate liberalization and a unified market and production base, as well as to support the formation of a more competitive and innovative region".[4]

In the absence of a supranational competition law framework for ASEAN, a key strategic measure articulated in the AEC Blueprint is to "[a]chieve greater harmonisation of competition policy and law in ASEAN by developing a regional strategy on convergence".[5] Despite the challenges associated with such an enterprise, in light of the divergent levels of maturity of the national competition law regimes in each AMS (see table below), all the member states have demonstrated a clear commitment towards working towards this goal through their endorsement of the *ASEAN Competition Action Plan* (ACAP) in 2016. The first step towards this harmonisation/convergence process is articulated in Strategic Goal 1 of ACAP, where AMSs have pledged to ensure that "[e]ffective competition regimes are established in all ASEAN Member States."[6]

By 2020, the regional competition law landscape in the AEC may be regarded as a patchwork of distinctive national competition law frameworks across the different AMSs, with many differences in the scope of their respective legislation (including regulations and guidelines) and enforcement practices. These national competition law frameworks are constant works in progress, particularly in those AMSs which have since signed on to regional free trade agreements with Competition Policy chapters that require them to "adopt or maintain national competition laws" to proscribe anti-

[1] *ASEAN Economic Blueprint 2025 ("AEC Blueprint")*, at [6(i)] and [6(ix)].

[2] "Characteristics and Elements of ASEAN Economic Community Blueprint 2025", *AEC Blueprint*, at [25]

[3] *AEC Blueprint* at [26].

[4] *AEC Blueprint* at [26].

[5] *AEC Blueprint* at [27(v)].

[6] *ASEAN Competition Action Plan* at page 3

competitive business conduct and activities.[7] Some of the more obvious differences between these legal regimes, presently observable, are summarised in the table below.

Comparative table of competition law frameworks in AMSs (selected features)

ASEAN Member State	Current National Competition Law	Merger Regulation?	Exemptions for SOEs or SMEs?	Cartel leniency programme?
Brunei	Since 2015	Yes, Voluntary		Yes
Cambodia	TBC	In progress[8]		Yes
Indonesia	Since 1999	Yes, Mandatory (post-merger)[9] and Voluntary (pre-merger)	SMEs/SOEs[10]	No
Lao PDR	Since 2015	Yes, Mandatory[11]	SMEs/SOEs[12]	Yes[13]

[7] See Chapter 16 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("CPTPP") Agreement, which entered into force on 30 December 2018, at Article 16.1(1), as well as Chapter 13 of the Regional Comprehensive Economic Partnership ("RCEP") Agreement, signed on 15 November 2020, at Article 13.3(1). All 10 AMSs are party to the latter agreement, while Brunei, Malaysia, Singapore and Vietnam are also party to the former agreement.

[8] No merger control regulation currently in force, though the Article 11 of the Draft Law on Competition of Cambodia provides that "business combinations" which have or may have the effect of significantly restricting or distorting competition in a market in Cambodia are unlawful. However, Sub-Decree No. 38 on the Organization and Functioning of the Ministry of Commerce, dated 16 March 2020, established the Consumer Protection Competition and Fraud Repression Directorate-General (CCF), a ministerial department within the Ministry of Commerce, that is granted authority over competition law matters and serves as the secretariat for the Competition Commission of Cambodia (CCC), which will perform merger approval functions and regulate "business combinations".

[9] Article 29 (1) of the Indonesian Law No. 5 of 1999 provides for compulsory post-closing notification of mergers and acquisitions. However, pre-closure notification is voluntary. A pre-merger consultation does not prevent the post-merger assessment.

[10] Article 50(h) of the Indonesian Law No. 5 of 1999 (The Prohibition of Monopolistic Practices and Unfair Business Competition) excludes "business actors of the small-scale group" from the provisions of this law, while Article 51 declares that State-Owned Enterprises and government institutions are permitted to engage in monopoly or concentration activities "related to the production and or marketing of goods and or services affecting the livelihood of society at large as well as branches of production of strategic importance to the state".

[11] Article 39 of the Lao PDR Law on Business Competition 2015 (No. 60/NA) exempts combinations between SMEs from pre-merger notifications, but requires post-merger notifications to the Business Competition Control Commission.

[12] Article 45 of the Lao PDR Law on Business Competition 2015 (No. 60/NA) provides for an exemption for anti-competitive agreements that "[strengthen] the competitiveness of SMEs". Article 46 allows the government to consider exemptions, on a base by case basis, for conduct that amounts to an "abuse of a dominant market position and market monopoly practices… if those practices are contributing to the national socio-economic development or due to national strategy and security reasons."

[13] Article 62 of the Lao PDR Law on Business Competition 2015 (No. 60/NA).

Malaysia	Since 2010	No		Yes
Myanmar	Since 2017	Yes, Details pending	SMEs[14]	Yes
Philippines	Since 2015	Yes, Mandatory		Yes
Singapore	Since 2006	Yes, Voluntary		Yes
Thailand	Since 2017	Yes, Mandatory	SOEs	No (settlements possible)
Vietnam	Since 2004	Yes, Mandatory	SMEs (until 2018 revised law)[15]	Yes[16]

Given the degree of diversity between the national competition law landscapes of the AMSs, and in the absence of any binding commitments from these countries to adopt common cross-jurisdictional legal rules or procedural frameworks, the status quo appears to be very far from the aspirational picture painted in the AEC Blueprint. If ASEAN wishes to realise these aspirations, it needs to identify specific areas of law reform which can be implemented consistently across the national competition law frameworks of the AMSs as part of the regional harmonisation process. In this regard, the practical experiences of competition law practitioners and advisors who have had to grapple with the different national competition rules of each AMS provide a useful "bottom up" perspective of what can and should be done to achieve the regional convergence goals of the AEC Blueprint.

In order to systematically gather and analyse these points of view, the EW Barker Centre for Law and Business (EWBCLB) undertook a research project to study the encounters that such stakeholders have had with, and the opinions that they have formed of, the national competition law frameworks found in the each AMS. A survey-study was conceived of as a means to solicit their views on how the status quo might be improved upon. The ASEAN Competition Compliance Experience Survey-Study (ACCESS) was launched at the end of 2019 and attracted more than 100 hundred responses from stakeholders based in almost all of the AMSs and beyond the ASEAN region. ACCESS sought to identify some of the competition law compliance challenges they encountered in relation to commercial activities occurring within the AEC. This Report aims to summarise the findings of ACCESS, identify and analyse the general trends that emerge from inputs of participants, as well as

[14] Section 8(b) of the Myanmar Competition Law (The Pyidaungsu Hluttaw Law No. 9, 2015) empowers the Myanmar Competition Commission to exempt "businesses essential for the benefit of the State and small and medium enterprises, if necessary" from compliance with the competition law prohibitions in that statute.

[15] Under the revised law, SMEs are no longer exempted from the competition law prohibitions. Article 31(1)(b) does, however, mention that the promotion of SMEs is a positive criterion in the assessment of notified mergers.

[16] Article 112 ("Leniency Policy"), Law No. 23/2018/QH14, Vietnam Law on Competition 2018 (Effective July 1st 2019)

to offer preliminary recommendations for what future concrete steps might be taken by the AMSs in furtherance of the harmonisation/convergence goals of ACAP 2025.

Our analysis of the ACCESS results was further refined by two post-survey workshops facilitated by EWBCLB with stakeholders from the ASEAN region familiar with competition law compliance matters in one or more ASEAN Member States. The first workshop (18 participants) was held on 27 April 2021, with the support of the Competition and Consumer Commission of Singapore, and was a closed-door event with invited participants who were government officers from the national competition authorities of the ASEAN Member States. The second workshop (44 participants) was held on 21 May 2021 and was an open event which brought together competition law practitioners, advisors and academics from different ASEAN Member States. Chatham rules applied to both workshops, which gave us the opportunity to stress-test some of the observations made about, and inferences drawn from, the ACCESS results.

CHAPTER 2

RESEARCH METHODOLOGY

1. Background

In the absence of a supranational competition law regime within the ASEAN region, undertakings engaged in cross-border transactions or economic activity that straddles two or more legal jurisdictions have to comply with the national competition laws of the relevant AMSs they operate within. While convergence and harmonisation are encouraged at the ASEAN level and guidelines to this effect have been issued, significant differences exist between the substantive rules and procedural systems of these national legal frameworks.

Divergent national competition laws between the individual AMSs create operational obstacles for undertakings with multi-jurisdictional business activities within the AEC, regardless of whether they are sophisticated multinationals or indigenous SMEs venturing beyond their home jurisdictions. These challenges include higher compliance costs, as well as problems designing or implementing regional business or investment strategies, because these undertakings have to deal with multiple agencies and navigate dissimilar national competition law frameworks.

To get a more accurate picture of what is happening on the ground, before any agenda for reform can be meaningfully formulated, we have devised the ASEAN Competition Compliance Experience Survey-Study (ACCESS) as a tool to capture the practical experiences of competition law professionals working within the region. ACCESS provided stakeholders working at the frontlines of transnational competition law matters within the AEC (especially lawyers and in-house counsel) an avenue to express their views, opinions and perceptions of the issues which deserve the attention of the AMSs as they embark on implementing the AEC Blueprint and the ACAP.

ACCESS is, to our knowledge, the first empirical survey study of this kind which seeks bottom-up views from stakeholders within the regional competition law community. Data gathered from ACCESS will, hopefully, be useful to policy-makers within the AEC in refining their strategies for achieving convergence and harmonisation between the national competition law frameworks of the ten AMS jurisdictions.

2. Methodology

a) Research method

The basic strategy behind ACCESS was to solicit the views of a broad range of competition law professionals within the AEC from which key issues of concern may be identified and extracted. With these insights, which we hope to supplement with more in-depth discussions at workshops or similar events with key stakeholders, we had hoped to identify and analyse those specific issues that AMS national competition authorities ought to focus upon while they seek to implement the objectives of the AEC Blueprint and the ACAP.

We had hoped to, ideally, survey as large a number of legal practitioners as possible so that ACCESS is representative of the different experiences encountered across the AEC. As such, a large number of practitioners needed to be reached in the first step to gather this initial information. The most

appropriate design for this kind of research was therefore a quantitative[17] survey that would enable us to record and aggregate a large number of responses from stakeholder-participants.

b) Survey design:

The survey design chosen was a standardised questionnaire with several multiple-choice questions, as well as open-ended questions which solicited the views of the participants. The questions asked were mainly questions relating to the practical experiences of the participants, while a few questions also enquired about the opinion of the practitioner on current situations and reform proposals for future developments of competition law in ASEAN.[18] The questions were drafted by the research team in line with the research questions of the project, and feedback was sought from a few practitioners. The survey was designed with an online software for easier distribution and data collection. The software used was *Verint e-survey*.

c) Population

Population in questionnaire design refers to all members of the group one is interested in. The population for this study were, as mentioned, competition law practitioners including:

i. Practitioners in law firms handling competition law matters for undertakings,
ii. In-house-counsel or related staff in undertakings working on competition law matters
iii. Executives in trade associations familiar with issues their members may face when confronted with competition law (especially in cross-border situations) as well as trade association members and
iv. Other stakeholders familiar with the relevant issues (e.g. technical assistance providers in the field of competition law and policy in ASEAN).

d) Methods utilised to identify population

We thus proceeded to research and compile a list of these kinds of practitioners in each AMS.[19] Since many law firms have an established online presence, lawyers practising in firms were quite easily identified. The matter was more complicated with in-house counsel, who did not necessarily have an online presence on their companies' websites and were not as easily contactable. Therefore, we also liaised with personal contacts to identify in-house counsel. Trade associations representing international businesses in the ASEAN Member States were quite easily found. However, we only had access to their generic e-mail addresses on their websites, requiring us to first contact them to explain the project and survey before enquiring if someone in the organization would be interested in participating and/or if they could help us to distribute the survey to their members. A few trade organisations got back to us with generous offers of assistance, which we gratefully accepted. Along the way, our personal contacts also revealed various other interested parties familiar with the issues we were investigating (including former lawyers, technical assistance consultants and researchers). Some of these individuals also helped us to distribute the survey further in their personal and

[17] On quantitative research see MQ Patton, *Qualitative Research & Evaluation Methods* (3rd edn Sage, Thousand Oaks/London/New Delhi 2002) p. 348.

[18] See full questionnaire in Appendix 1.

[19] Where competition law has not been implemented (i.e. in Cambodia), we looked for practitioners in related matters such as M&A and business law more generally.

professional networks. In summary, the methods used to identify the population for the survey were:

- Online research
- Personal contacts and referrals from such contacts
- Trade organisations and other organisations who circulated the survey amongst their members

e) Methods utilised to reach out to population

We devised the strategy to contact the identified potential participants whom we did not personally know with an official system-generated survey invitation, while contacting those potential participants known to us personally with a personal invite and a shareable link. That way we could request their help to share the survey further amongst their contacts.

161 single use e-mails were sent off by the system on 12th November 2019. Roughly 50 personal invites had been sent with the request to distribute further a couple of days earlier. In addition, the trade organisations and a technical assistance organisation who had kindly agreed to assist us, resent the invites out to their mailing list. We thus assume that, at the very least, 250-300 individuals would have received an invitation to participate in the survey. Reminders were sent to those who had not yet completed the survey on 3rd December 2019, 19th December 2019 and 17th January 2020.

Table 2: strategy to reach out to population and resulting participation

	Single use system generated survey invites	**Personal invites with a shareable survey link**
Group	For potential participants we did not personally know	For known contacts / organisations
Number	161 invites were sent	Roughly 50 personal invites were sent coupled with a request to forward the survey link to contacts within their respective networks
Participants generated	35 participants generated	70 participants generated

The survey was open from 11th November 2019 till 4th February 2020.

f) Key data on survey-study participants

In total we estimate that at least 250 people were reached, from which we obtained responses from **105** participants (though not every question in the survey was answered by every participant).

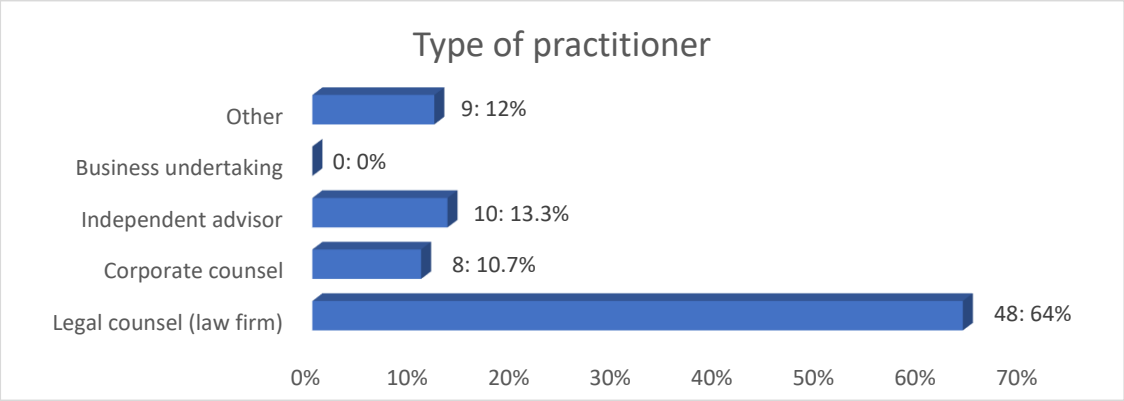
Chart 1 (below) identifies the different categories to which the survey participants identified themselves as belonging.

Types of participants

Not all the participants who responded to the survey answered the question about which classification category they fell into (30 null responses were received). Amongst those participants

who did respond to this question, the vast majority (64%) were lawyers practising in law firms. The rest of the participants were a relatively equal mix of corporate counsel, independent competition law consultants/advisors and "others". The last, residual, category included former national competition authority officers, academics, non-practising lawyers, persons holding two or more roles (e.g. lawyer and academic) and trade association executives. Amongst those who identified themselves as corporate counsel, three-quarters worked in multinationals and one quarter in government-linked companies.

Chart 1: Type of practitioner



Location of participants

About one-fifth of participants, who identified where they resided, were based in Singapore. This was followed by participants based in Vietnam (16.2%), Indonesia (14.9%) and Thailand (12.2%). About one in ten survey participants was located in the Philippines, with a similar percentage based in Malaysia. 6.8% were located in Myanmar and 5.4% in Cambodia. Only just over 1% were based in Brunei Darussalam, Lao PDR and outside of ASEAN. This geographical distribution of the survey participants is summarised in Figure 1 below.

Figure 1: Location of practitioners [AMS: Number of Participants, Percentage of Total Participants]

g) Ethics

The research consisted of an online survey with subject-matter experts (all or most of whom were presumably legally-trained individuals) who voluntarily replied without being promised any incentives (aside from being up-dated about the results). As such, no particular ethical concerns were identified, as the study neither contained vulnerable groups nor any potential risk-exposure to the researchers or the participants. The survey participants were informed on the first page of the survey about its objectives and the data protection policies of the University, while also reassured that their responses would be anonymised and aggregated. By proceeding to complete the survey, these participants consented to this arrangement. Furthermore, participants were given the option of providing their personal contact details on the last page of the survey on an entirely voluntary basis (45 participants opted to leave their contact details), with this information to be only used to apprise them of, and seek their responses to, the final results of the survey.

h) Data analysis

The answers were stored in a password-protected online system and accessible only by the research team. Quantitative data extracted from the system was used to generate graphical representations of the responses submitted by participants. Where appropriate, this was supplemented with specific data points manually extracted from the survey results to construct a more fine-grained picture of the responses received from the participants.

i) Validity and reliability

We expect that the survey responses have a high level of validity, since the practitioners are reporting about their everyday experiences and have no apparent incentive to give false responses. Instead, providing reliable answers and suggestions is in the interest of the practitioners, as the research aims to uncover the obstacles and challenges they face in practice, identifying possible areas for legal and policy reform, which can only be beneficial to the performance of their professional roles as competition law advisors. Furthermore, as is generally the case with questionnaires, it is expected that similar results would have been obtained if the survey had been conducted by different researchers and that the data gained can thus be regarded as reliable. With over 100 responses, the sample size is at least satisfactory for a first attempt, though we would have of course preferred an even larger number of participants from across the ASEAN region.

CHAPTER 3

SURVEY RESULTS AND RESPONSES

1. Interactions with National Competition Authorities of AMSs (Questions 3 and 4)

The national competition law frameworks of the AMSs which survey participants had previous dealings with can be categorised into two groups. The first group comprises of Singapore, Vietnam, Indonesia, Philippines and Malaysia – jurisdictions which 25% or more of the question-respondents had competition law related compliance matters to engage with in the 24-month period preceding the survey. Competition law issues arose in the remaining AMS jurisdictions for between 2-20% of the question-respondents.

Most of the question-respondents (66.7%) indicated that they engaged with the AMS national competition authorities in informal discussions and consultations, while just under half (47%) were involved in merger or joint venture notifications. A significant number of question-respondents had encounters with investigations into suspected competition law infringements (42.4%) and conduct notifications (31.8%). In the free text response section (i.e. for those who had responded that they had 'other' interactions), question-respondents explained that they interacted with the AMS national competition authorities in a diverse range of settings, including participating in advocacy activities organised by these authorities, representing these authorities in appellate proceedings, as well as other advisory-related conduct.

A more detailed breakdown of these interactions between question-respondents and the AMS national competition authorities can be found in Section I of Appendix II.

2. Expenditure on Competition Law Compliance (Question 5)

While many interactions between the question-respondents and the AMS national competition authorities incurred compliance costs of between zero and USD$10,000, the responses indicate that certain interactions incur significantly higher costs. In particular, a majority of question-respondents indicated spending more than USD$20,000 in cases involving investigations into suspected infringing activities (80%), matters relating to cartel leniency and whistleblowing (73%), and merger notifications (57%).

Some question-respondents explained that certain national competition authorities did not charge formal fees to business undertakings who dealt directly with them. Any legal fees incurred by hiring law firms would vary according to the complexity of the relevant issues and the stage of the proceedings for which legal representation was sought.

3. Perceptions of National Competition Law Frameworks of AMSs (Question 6)

Having indicated which AMS national competition law frameworks they had previous dealings or encounters with, survey participants were asked to express the extent to which they agreed with descriptive statements about various aspects of each competition law jurisdiction:

(i) [Scope] That the scope of the AMS's competition law framework prohibited all major forms of anti-competitive conduct.
(ii) [International standards] That the AMS's competition law framework was consistent with international standards.
(iii) [Transparency] That the AMS's competition law framework was transparent.
(iv) [Business-friendliness] That the AMS's competition law framework was business-friendly.
(v) [Equal application] That the AMS's competition law framework applied equally to all undertakings, regardless of their size, nationality, proximity to the state or strategic importance to the economy.
(vi) [Professional competence] That the AMS's competition law framework was administered by a professionally competent national competition authority.
(vii) [Market competitiveness] That the implementation of the AMS's competition law framework has made markets in that jurisdiction more competitive.

In response to the statements about the scope of the competition law prohibitions in each AMS and whether they were consistent with international standards, the following percentages of question-respondents expressed agreement or strong agreement:

ASEAN Member State	Number of question-respondents[20]	Scope	International standards
Brunei Darussalam	1	100%	100%
Indonesia	13-14	78.6%	35.7%
Lao PDR	4	25%	25%
Malaysia	14-15	66.7%	73.4%
Myanmar	8	87.5%	62.5%
Philippines	13	84.6%	76.9%
Singapore	20	80%	80%
Thailand	9-10	80%	50%

[20] Due weight should be given to the small number of question-respondents who had dealings with the national competition authorities of some of these ASEAN Member States when interpreting these results. The small sample size for some jurisdictions was due to the personalised nature of the process behind identifying stakeholders (described above in Sections 2(d) and 2(e) of Chapter 2) with the relevant experience and expertise required to respond to the ACCESS questionnaire.

Vietnam	11-12	63.6%	18.2%

In response to the statements relating to the transparency, business-friendliness and equal application of the national competition law frameworks of each AMS, the following percentages of question-respondents expressed agreement or strong agreement:

ASEAN Member State	Number of question-respondents	Transparency	Business-Friendliness	Equal Application
Brunei Darussalam	1	100%	100%	100%
Indonesia	13-14	28.6%	14.2%	46.2%
Lao PDR	4	0%	25%	0%
Malaysia	14-15	57.1%	33.3%	71.4%
Myanmar	8	25%	50%	25%
Philippines	13	69.2%	38.5%	46.2%
Singapore	20	75%	65%	85%
Thailand	9-10	30%	20%	40%
Vietnam	11-12	18.2%	18.2%	18.2%[21]

In response to the statements relating to the professional competence of the national competition authority in each AMS and whether the level of market competitiveness had increased as a result of the implementation of its national competition law framework, the following percentages of question-respondents expressed agreement or strong agreement:

ASEAN Member State	Number of question-respondents	Professional competence	Market competitiveness
Brunei Darussalam	1	0%	0%
Indonesia	13-14	14.3%	35.7%

[21] These results, which represent the views of a small sample of respondents, are puzzling given that Article 2 of the Vietnam Competition Law 2018 provides that the law regulates "*1. Business organizations and individuals (hereinafter referred to as enterprises), including enterprises that produce and provide public-utility products and services, enterprises that operate in state-monopolized sectors/domains, public sector entities and foreign enterprises that operate in Vietnam.*"

Lao PDR	4	0%	0%
Malaysia	14-15	46.7%	13.3%
Myanmar	8	12.5%	12.5%
Philippines	13	76.9%	23.1%
Singapore	20	90%	45%
Thailand	9-10	20%	11.1%
Vietnam	11-12	18.2%	41.7%

A country-specific summary of the opinions share by these question-respondents about each AMS national competition law framework can be found in Section II of Annex B.

4. Cross-Border and Multi-Jurisdictional Competition Law Compliance Issues (Questions 7, 8 and 9)

This group of survey questions identified a subset of survey participants whose dealings with the national competition law frameworks of the AMSs encompassed cross-border or multi-jurisdictional issues. Question-respondents falling within this subset were asked to identify which were the individual AMS jurisdictions in which their cross-border or multi-jurisdictional issues arose and a few follow-on questions were asked about their experiences dealing with the differences between the national competition law frameworks of these AMS jurisdictions.

20% of the survey participants (21 question-respondents) indicated that they had encountered competition law compliance matters that involved cross-border or multi-jurisdictional issues across more than one AMS. Of these 21 participant respondents, the following AMS jurisdictions were identified as one of the countries whose national competition law framework was engaged:

ASEAN Member State	Percentage of question-respondents whose cross-border or multi-jurisdictional competition law compliance dealings included this jurisdiction
Brunei Darussalam	0%
Indonesia	50%
Lao PDR	0%
Malaysia	45%
Myanmar	20%
Philippines	30%
Singapore	75%

Thailand	25%
Vietnam	45%

All but one of these question-respondents who had to engage with cross-border or multi-jurisdictional competition law compliance matters across these AMSs had at least a limited awareness of the differences, both substantive and procedural, between the national competition law frameworks of these jurisdictions. 50% of question-respondents indicated that they had "some awareness" of these legal differences. 22.7% of question-respondents indicated that they had "substantial awareness" of these legal differences.

57% of these question-respondents indicated that the legal differences between the national competition law frameworks of the AMSs that they encountered affected the compliance decisions they had to make. Differences between the national merger control frameworks of the AMSs were highlighted by question-respondents as a major factor in this regard, with the various characteristics– including whether merger notifications are mandatory or voluntary, how "relevant markets" are defined and the level of effort required to meet the documentary requirements of each national competition authority – singled out as issues which posed challenges or created difficulties for competition law advisors and their clients.

5. Harmonisation and Convergence between National Competition Law Regimes of AMSs (Questions 10 and 11)

The attention of survey participants was drawn to the stated objectives of the ASEAN Competition Action Plan (ACAP 2025) and the longer-term goals of the ASEAN Economic Community Blueprint, both of which encourage convergence and harmonisation between the national competition law frameworks of the AMSs, before seeking their views on a range of proposals of concrete steps that might be taken to achieve such outcomes.

About half of all the survey participants responded to the following proposed topics for legal reform that might be pursued to harmonise (or more closely align) the national competition laws of the AMSs:

(a) Harmonisation of substantive legal principles, particularly in the following areas:
    a. Common legal principles to determine the applicability of the Single Economic Entity doctrine (i.e. when separate legal entities should be regarded as part of the same undertaking for the purposes of competition law enforcement) ["Single Economic Entity principles"]
    b. Common guiding principles used to define the relevant markets for competition law assessment purposes ["Market Definition principles"]
    c. Common legal standards for identifying or categorising the most serious forms of anti-competitive agreements and unilateral conduct that are most likely to be regarded as competition law infringements ["Most serious forms of infringing conduct"]
(b) More closely aligned legal exemptions from the application of national competition laws ["Competition law Exemptions"]

(c) More closely aligned conduct notification and approval procedures for parties seeking compliance clearance from national competition authorities ["Conduct notification and clearance"]
(d) More closely aligned merger control procedures adopted by national competition authorities, particularly in the following areas:
    a. Market share and turnover thresholds used in merger notification guidelines ["Merger notification thresholds"]
    b. Availability and reliability of merger pre-notification guidance from national competition authorities ["Merger pre-notification guidance"]
    c. Merger control timelines used by national competition authorities administering the merger review process ["Merger control timelines"]
(e) More closely aligned cartel detection and leniency programmes implemented by national competition authorities ["Cartel detection and leniency"]

Proposed topics	Percentage of question-respondents who expressed agreement or strong agreement in support of pursuing efforts to harmonise (or more closely align) this facet of the various AMS national competition law frameworks
Single Economic Entity principles	87.2%
Market Definition principles	85.1%
Most serious forms of infringing conduct	90.5%
Competition law Exemptions	79.6%
Conduct notification and clearance	87.0%
Merger notification thresholds	67.9%
Merger pre-notification guidance	90.6%
Merger clearance timelines	92.5%
Cartel detection and leniency	87.1%

Other areas of the AMS national competition law frameworks specifically identified by question-respondents as desirable candidates for harmonisation (or greater alignment) include the following:

(i) Principles guiding the imposition of financial penalties and immunity from penalties (including a "one-stop shop" leniency regime for the ASEAN region)
(ii) Remedies for competition law infringements
(iii) Principles of extra-territorial jurisdiction
(iv) Applicability of criminal law principles to competition law infringements
(v) Simplified merger clearance procedures for transactions unlikely to result in a substantial lessening of competition
(vi) Streamlined merger notification procedures for transactions that need clearance in more than one AMS (i.e. a "one-stop shop" framework for merger control)

The following areas of competition law and policy were also identified as areas which AMS national competition authorities should prioritise in their co-operation efforts to achieve the market integration and pro-competitive policy objectives of the AEC:

(i) Application of competition law principles to data-driven industries and the digital economy
(ii) Legal frameworks for dealing with cross-border cartels
(iii) Legal frameworks for dealing with cross-border mergers
(iv) Legal frameworks for dealing with cross-border competition law investigations
(v) Exchange of information between national competition authorities
(vi) The interface between competition law and intellectual property rights

Finally, survey participants were asked to share their views on what they thought were the most significant obstacles towards regional convergence or harmonisation between the national competition law frameworks of the AMSs. In summary, these differences were perceived as key factors that have complicated regional efforts to bring the national competition law frameworks of the AMSs in closer alignment with each other:

(i) Differences in the stages of economic development and market structures of individual AMSs, which translate into different socio-economic and political conditions that shape each jurisdiction's interests, needs, norms and priorities.
(ii) Differences in the levels of expertise of, and resources available to, national competition authorities and appellate tribunals.
(iii) Differences in the level of independence of national competition authorities from other branches of government.
(iv) Differences in the relationship between national competition law frameworks and industrial policies of AMSs (e.g. attitudes towards national champions, SMEs etc.)
(v) Differences between how domestic legal regimes navigate the interaction between the national competition law framework and other adjacent legal frameworks, such as intellectual property, data protection and other economic laws.
(vi) Differences between the levels of "political will" in each AMS to modify their respective national competition law frameworks to achieve regional convergence.

CHAPTER 4

OBSERVATIONS AND RECOMMENDATIONS

1. General Observations

ACCESS was devised as an empirical research exercise aimed at soliciting the views of competition law practitioners with first-hand experience dealing with competition law compliance issues in the ASEAN region. We were interested in surveying their perceptions of the national competition law frameworks of the AMSs, based on their encounters and engagement with the competition laws of these jurisdictions. In particular, we wanted to know what these stakeholders thought of the prospects for regional convergence and harmonisation between the substantive and procedural dimensions of these national competition law frameworks.

Reviewing the survey results and responses gathered from survey participants, a number of predictable observations emerge:

- There are significant differences between the national competition law regimes of the AMSs in terms of their respective legal and institutional frameworks. These differences were clearly perceived by survey participants.
- Commercial transactions which entailed cross-border and multi-jurisdictional competition law compliance issues were not uncommon.
- Competition law compliance costs were not insignificant, particularly when they relate to formal dealings with national competition authorities – including merger notifications and infringement investigation proceedings.
- Many of the "users" of the national competition law frameworks were highly supportive of proposals that promoted harmonisation or closer alignment between AMSs.
- Despite the obvious attractiveness of developing common legal norms and procedural systems across the AMSs to establish a regional competition law and policy system that facilitates the objectives of the ASEAN Economic Community, there are significant impediments to the realisation of such aspirations.

In addition, stakeholder perceptions of individual national competition law regimes varied significantly from jurisdiction to jurisdiction, depending on their personal experiences dealing with the relevant enforcement agencies. This diversity of opinions was apparent, in particular, to the extent to which the national competition law frameworks in each AMS jurisdiction were consistent with international standards, the levels of transparency and business-friendliness of each framework, whether these frameworks were applied equally to all undertakings, as well as the professional competence of the officers responsible for administering or enforcing these laws.

However, across jurisdictions, survey participants were generally consistent in having a less sanguine view about whether the existence of these national competition law frameworks had actually made markets more competitive in their respective AMSs. This is an interesting observation worthy of further attention in future research.

2. Inferences from survey results and responses

The willingness of survey participants to engage with the ACCESS project may suggest a genuine interest in contributing to a study that may encourage AMSs to collectively pursue competition law and policy reform initiatives at a regional level that produce convergence or harmonisation outcomes at a national level. In addition to the "low hanging fruit" that had been included in the list of proposed areas of competition law and policy that could be standardised across the AMSs, many survey participants also conveyed their own "wish-lists" of substantive and procedural changes that they believed would advance the regionalisation agenda of the AEC. There was both a sense that much *needed* to be done on this front, and that much *could* be done.

The level of support expressed by survey participants for greater convergence or harmonisation efforts that close the gaps between the national competition law frameworks of the AMSs belied a recognition that such developments would reduce compliance costs, while making it easier to take business decisions at a regional level, thereby benefitting both multinational undertakings as well as small and medium-sized enterprises that are seeking to expand their operations beyond the jurisdictional boundaries of individual AMSs. Such sentiments are consistent with the expectation that cross-border transactions and business models, especially those that involve electronic commerce and digital platforms, have grown (and will continue to grow) in significance within the AEC.

At the same time, there was a sense that survey participants had tempered their expectations about the likelihood of these desired convergence or harmonisation outcomes actually materialising in the short term. They might have adopted a cynical perspective of the broader geopolitical complexities confronting the ASEAN region or the practical feasibility of the AEC successfully achieving its aspirational goals. Many have also pointed to the different local conditions, needs and goals of each AMS which need to be respected, a point that was echoed by participants at the follow-on workshop with practitioners. But even as they have articulated the very real obstacles that stand in the way of AMSs seeking to more closely align their respective national competition law frameworks with each other, it remains an entirely rational course of action to pursue given the undeniable nexus between the need to have common competition rules across individual neighbouring jurisdictions and the regional market integration goals of the ASEAN community. Moreover, achieving greater alignment in some areas of these national competition law frameworks, where particular national peculiarities do not stand in the way of this, need not be particularly controversial if they involve substantive principles that are based on conventional economic wisdom and well-established international norms. This does not mean that 'one size always fits all'. Different levels of development and market size may justify certain differences in the way competition rules are implemented in each jurisdiction. For example, the numerical thresholds at which conduct raises competition concerns may depend on size and structure of the market in an individual AMS.

While the report has focused on identifying the perceptions of undertakings to which the different national competition laws are applicable, the benefits of greater legal harmonisation and inter-agency cooperation should be equally apparent for individual national competition authorities and, ultimately, consumers. Follow-up discussions in a workshop with agency officials about the results of the ACCESS survey confirmed that various national competition authorities had, indeed, encountered cross-border competition law cases and issues. These agency officials shared some of the struggles they faced on previous occasions, such as low levels of compliance from foreign

companies due to their unfamiliarity with the national competition law framework, their failure to submit notifications of potentially anti-competitive behaviour or the difficulties encountered by agencies in conducting investigation and enforcement activities against foreign companies. Furthermore, the different national legal frameworks of each AMS have different exemptions and timelines, thereby creating obstacles for cross-border inter-agency cooperation.

Some of these concerns were echoed in the second, practitioner-focused, follow-on workshop. One issue mentioned was the lack of awareness by some firms, especially SMEs. Similarly, unlike the national competition authorities of the AMSs, not all other branches within their respective national governments may appreciate the significance of competition law or regard competition policies as being a matter of priority. This is especially the case in AMSs where the national competition authorities are relatively young agencies who have yet to establish their "national standing". Such divergent attitudes towards competition issues have resulted in different arms of the same administration taking very different positions on the same conduct (e.g. what the national competition authority might identify as anti-competitive conduct might be regarded as unproblematic, or even necessary, by another government agency). Other issues discussed were the differences in jurisdictional scope of national authorities as well as, occasionally, knowledge gaps in the agencies themselves and differing enforcement powers.

Bearing all of the above in mind, we have formulated a series of modest recommendations to suggest a law reform path forward for the region, identifying the steps it can take to advance a pro-convergence or harmonisation agenda that AMSs might embrace in order to bring their respective national competition law frameworks closer to each other. These recommendations are not intended to be prescriptive, but should instead be regarded as suggested signposts that point in the direction that law and policy reforms should head towards in order to bring the stated objectives of the AEC Blueprint and ACAP to fruition.

3. Recommendations

Recommendation (1): Engage with relevant stakeholders

Representing the national competition authorities of the AMSs, the ASEAN Experts Group on Competition (AEGC) / ASEAN Competition Enforcement Network should conduct focus group discussions with relevant stakeholders who have navigated cross-border and multi-jurisdictional competition law compliance matters within ASEAN.

These discussion sessions will assist the AEGC in identifying areas of competition law or policy reform that, if implemented in the national competition law frameworks of the AMSs to achieve greater harmonisation or closer alignment, would reap immediate and substantial benefits to undertakings operating in two or more jurisdictions within ASEAN. The goal here is to identify a shortlist of the more obvious areas of substantive law or procedure that obstruct the flow of regional commerce because of the different sets of competition rules have to be complied with in each AMS.

From the survey results and responses obtained via ACCESS and underlined by the discussion during the second, practitioner-focused workshop, this shortlist would most probably include the legal frameworks for cartelistic conduct (especially leniency and penalty rules), notification frameworks for collaborative arrangements between competitors and merger clearance (especially timelines), as

well as the analytical frameworks of core legal and economic concepts that are applied by national competition authorities when interpreting their respective national competition laws.

Recommendation (2): Conduct intra-governmental and inter-governmental consultations simultaneously

With the shortlist of potential areas of competition law reform for AMSs to consider pursuing in their respective jurisdictions, the AEGC members should conduct internal discussions with their national governments to explore the feasibility of these reforms, while simultaneously arranging for dialogues at the ASEAN Ministerial level to nurture sufficient political will to drive this convergence and harmonisation process forward.

Given that the processes for introducing amendments to legislation can take a very long time in some countries, priority can be given to those areas of law reform which can achieve convergence between the AMSs' national competition law frameworks without necessarily re-writing their respective competition law statutes. Instead, more attention should be paid to harmonising the rules, policies and guidelines that shape the scope and application of the national competition laws in each AMS. These are areas of law reform which can be realistically achieved within a shorter timeframe and can lay the foundations for more ambitious statutory reforms further down the road.

This two-tiered approach is recommended so that any law reform proposals that emerge from these discussions are credible, realistic and acknowledged by all parties involved to be desirable improvements to the status quo. Discussions should be conducted with all parties in good faith, working off the underlying principle that such law reforms will contribute to the development of a regional competition framework for the AEC as a necessary step towards achieving the market integration goals of the AEC Blueprint.

Recommendation (3): Formulate specific competition law reform action plans

Once a consensus is reached between the AMSs that some or all of the shortlisted areas of competition law reform should be pursued regionally, the AEGC can kick-start this process forward by formulating specific action plans that the national competition authorities can execute with their respective national governments.

These action plans will probably require a competent study of the existing divergences between the national competition law frameworks of the AMSs, the reasons for those differences, and strategic evaluations of the ways in which these gaps may be closed. Depending on the issue at hand, the action plan could explore what kinds of legislative amendments need to be made, how existing norms and standards need to be adjusted or perhaps how particular enforcement mechanisms need to be redesigned. Given that not all the AMSs might be in a position to pursue these law reforms at exactly the same time, the next best thing would be if a sub-set of these states who are ready to forge ahead were prepared to do so, with the remainder still involved in the process as far as possible on the understanding that they will follow suit eventually. Not all the AMSs need to arrive at the same place at the same time, so long as they have a common understanding of where they will meet up and have committed themselves to heading in that direction.

Apart from law reform efforts directed at harmonisation and convergence of the substantive legal principles that buttress the scope of the AMSs national competition law frameworks, parallel measures should also be explored to foster closer co-operation between national competition

authorities. Formal mechanisms for information-sharing should be established as a foundation for aligning the enforcement activities of these authorities when two or more of them have an interest in a cross-border competition law case or issue. This may necessitate tweaking the national laws of each AMS to explicitly define the different categories of confidential information and the rules that regulate how and when information in each category may be shared with the AMS partner agencies of each national competition authority. Yet, such exchanges do not always need to comprise confidential information. Cases will include vast amounts of general and agency generated information for which in many AMSs there are already legal possibilities for exchange which could be further utilised. The already-established ASEAN Competition Enforcers Network could provide a platform for such exchanges to take place.

Recommendation (4): Establish inter-governmental taskforces to implement action plans

Once there are competition law reform action plans in place, an inter-governmental taskforce comprising government officers from all the relevant agencies in the AMSs should be assembled to coordinate the implementation of these action plans.

Implementing these law reform action plans at the national level should be closely accompanied by regional co-operative efforts between governments to ensure the "interoperability" of these facets of the national competition law frameworks that will be impacted. For example, if the law reform proposal involves developing a common whistleblowing and leniency programme across two or more AMSs, then appropriate governmental measures must be taken by all the parties involved to develop common standards to safeguard the integrity of these processes, to provide adequate protections and immunities from prosecution and to develop appropriate mechanisms to facilitate information-sharing between enforcement agencies. Pursuing these sorts of law reforms may require different national bodies to coordinate closely with their corresponding counterparts in neighbouring AMSs.

Recommendation (5): Formalise inter-governmental co-operation via ASEAN-level treaties

When all the details have been worked out, the AMSs can formalise their commitment to the convergence or harmonisation of their national competition law frameworks within the ASEAN region by documenting these reforms in appropriate ASEAN-level treaty agreements. Information gathered from agencies confirms that having a formal cooperation mechanism can significantly facilitate collaboration. Yet, entering into general international collaboration treaties, or implementing domestic legislation to give effect to such treaties, is likely to involve cumbersome and lengthy processes that may not achieve satisfactory results. This is where specific arrangements can and should be made to achieve more targeted substantive and procedural convergence outcomes. The benefits of increased collaboration are manifold, such as savings and efficiencies of sharing information already gathered during an investigation or adopting common market definitions to ease investigations and introduce greater legal certainty for firms engaging with more than one national competition authority. Opportunities for inter-agency collaboration are likely to become increasingly important in the future as cross-border cases are likely to increase, inter alia, due to the rise of the digital economy.

Inspiration for competition-specific arrangements can be drawn from the work of the intellectual property (IP) offices of the AMSs who have made significant progress in the last decade to develop a regional intellectual property framework, integrating their respective national IP regimes into an

intra-ASEAN network to advance the strategic goals of the ASEAN Intellectual Property Rights Action Plan 2016-2025. Apart from setting up regional portals to provide information and IP-related service information to IP owners[22] – such as the ASEAN IP Portal, ASEAN TMview, ASEAN TMclass and ASEAN Patentscope – specific multilateral and bilateral IP work-sharing arrangements have been entered into between AMSs to introduce both substantive and procedural legal reforms that streamline the frameworks for simultaneously acquiring IP protection in multiple ASEAN jurisdictions, thereby advancing the market-integration goals of the AEC in the process.

For example, AMSs may wish to consider developing regional competition compliance frameworks modelled after the ASEAN Patent-Examination Co-operation (ASPEC) programme that was launched in 2009.[23] ASPEC reduces duplication in the search and examination process for patent examiners in AMSs when patent applications are filed in two or more AMS national patent offices. This pillar of ASEAN's regional IP infrastructure allows for the sharing of search and examination reports from participating IP offices and furthers the "full technical and procedural convergence" strategic goal of the ASEAN Intellectual Property Rights Action Plan 2015-2025. Subsequent co-operative arrangements between AMSs have emerged by building upon ASPEC, such as the 2019 ASPEC-Acceleration for Industry 4.0 Infrastructure and Manufacturing (ASPEC-AIM) initiative between 9 AMS IP offices to expedite the patent-application process for selected areas of technology.[24] In 2020, these 9 AMS IP offices further expanded their scope of co-operation by allowing patent applicants to use Patent Co-operation Treaty reports (PCT) issued by an ASEAN International Search Authority (ISA) and International Preliminary Examining Authority (IPEA) to expedite patent applications filed in any of the participating ASEAN jurisdictions.[25]

Appropriate features of such ASEAN-level initiatives might be potentially transplantable into the context of a regional merger review framework, a regional cartel investigation and leniency framework or a regional negative clearance framework for cross-border agreements and transactions.

[22] https://www.aseanip.org ; http://www.asean-tmview.org ; http://www.asean-tmclass.org ;

[23] https://www.aseanip.org/Services/ASEAN-Patent-Examination-Co-operation-ASPEC/What-is-ASPEC

[24] ASPEC-AIM focuses on emerging technologies relating to interconnectivity, real-time data, automation and machine learning, that are used in fields such as financial technology, cybersecurity and robotics, to have their patent applications concluded within 6 months from filing.

[25] PCT-ASPEC allows PCT reports issued by the IP offices of Singapore and the Philippines, so far the only 2 national offices in ASEAN appointed as ISAs and IPEAs under PCT, to be used in expedited patent filings made in the other participating ASEAN national IP offices.

APPENDIX 1

SURVEY QUESTIONS IN ELECTRONIC QUESTIONNAIRE

Question 1 of 11:

Please identify the category which best describes the capacity in which you dealt with the national competition law regimes of the AMSs

(Participants could only choose a single response)

- Legal Counsel – Private Practice
- Corporate Counsel – In-House Legal Advisor
    - Please indicate which category best describes your employer
        - Multi-national corporation
        - State-owned or government-linked enterprise
        - Small or medium sized enterprise
- Independent Competition Law Consultant or Advisor
- Business Undertaking - Non-legal
    - Please indicate if you are a member of a business or trade association
        - Yes
            - If yes, please indicate which trade association(s) you belong to
        - No
- Other
    - If other, please specify

Question 2 of 11:

Which country/region are you based in?

(Participants could only choose a single response)

- Brunei Darussalam
- Cambodia
- Indonesia
- Lao PDR
- Malaysia
- Myanmar
- Philippines
- Singapore
- Thailand
- Vietnam
- Outside of the ASEAN region

Question 3 of 11:

Which national competition law regimes or national competition authorities have you or your organization dealt with in the past 24 months?

(Participants were allowed to choose multiple responses)

- Brunei Darussalam
- Indonesia
- Lao PDR
- Malaysia
- Myanmar
- Philippines
- Singapore
- Thailand
- Vietnam

Question 4 of 11:

Which of the following best describe the nature of the competition law compliance matters you have encountered in the ASEAN region?

(Participants were allowed to choose multiple responses)

- Informal discussions or consultation with the national competition authority
- Conduct notifications made to a national competition authority – e.g. for guidance or seeking an exemption from a competition law prohibition
- Investigations conducted by national competition authorities into suspected anti-competitive conduct – e.g. cartel investigations
- Cartel leniency and whistleblowing matters (including settlement schemes and other informal mechanisms that assist with cartel investigations)
- Merger or joint venture notifications
- Others
    - If other, please specify

Question 5 of 11:

In your experience, please estimate the average expenditure that the undertaking(s) you represent have incurred, on each occasion, when dealing with the following competition compliance matters.

(Participants were reminded of their previous choices and invited to identify the average expenditure for each compliance matter separately)

- USD$0-10,000
- USD$10,000-$20,000
- USD$ Above $20,000

Please provide additional details, if necessary.

Question 6 of 11:

Based on your experiences dealing with the national competition authority in XXX, please evaluate the following statements:

(Participants were asked individually for each previously selected jurisdiction and could only choose a single response for each topic)

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
The scope of the competition law framework in XXX prohibits all major forms of anti-competitive conduct.					
The competition law framework in XXX is consistent with international standards.					
The competition law framework in XXX is transparent.					
The competition law framework in XXX is business-friendly.					
The competition law framework in XXX appears to be equally applicable to all undertakings (except where sector-specific legislative exclusions apply) regardless of their size, nationality, proximity/links to the state or strategic importance to the economy.					
The competition law framework in XXX is administered by a professionally competent national competition authority					
The implementation of the competition law framework in XXX has made markets in XXX more competitive.					

Please elaborate upon any of your views expressed above:

Question 7 of 11:

Did any of the competition law compliance matters identified above involve cross-border or multi-jurisdictional issues across more than one ASEAN Member State?

(Participants could only choose a single response)

- Yes
    - If yes, please indicate which of these jurisdictions were involved (in aggregate)
        - Brunei Darussalam
        - Indonesia
        - Lao PDR
        - Malaysia

    - Myanmar
    - Philippines
    - Singapore
    - Thailand
    - Vietnam
- No

(If 'no', participants were taken to question 11.)

Question 8 of 11:

Are you aware of the differences (both substantive and procedural) between the national competition law regimes in the different ASEAN Member States?

(Participants could only choose a single response)

- No awareness
- Limited awareness
- Some awareness
- Substantial awareness

Question 9 of 11:

Did the differences between the national competition law regimes within ASEAN that you encountered affect any of the competition compliance decisions you have made?

(Participants could only choose a single response)

- Yes
    - If yes, please elaborate, particularly if these differences posed challenges or created difficulties for you or your client
- No

Question 10 of 11:

Under the ASEAN Competition Action Plan 2016-2025 (ACAP 2025), the ASEAN Member States (AMS) have agreed upon a number of strategic measures in furtherance of the competition policy initiatives of the ASEAN Economic Community Blueprint 2025. The strategic goals of ACAP 2025 include the establishment of effective competition regimes, strengthening the capacities of competition authorities in the AMSs and moving towards greater harmonization of competition policy and law in ASEAN.

In light of the above, what are your views on the following proposals for enhancing the level of co-operation, along with the potential for harmonization and convergence, between the national competition law regimes of the AMSs in the following areas?

(Participants could only choose a single response for each topic)

Efforts to harmonise the substantive national competition laws of the AMSs should be pursued in the following areas:

	Strongly agree	Agree	Neutral	Disagree	Strongly Disagree
Common legal principles used to determine the applicability of the Single Economic Entity doctrine (i.e. when separate legal entities ought to be regarded as part of the same undertaking for the purposes of competition law enforcement)					
Common guiding principles used to define the relevant markets for the purposes of assessing market power and applying the competition law prohibitions found in national competition law frameworks					
Common legal standards for identifying or categorizing the most serious forms of anti-competitive agreements and unilateral conduct that are most likely to infringe the prohibitions found in national competition law frameworks					
Others					

If 'others' please specify:

Exemptions from the application of national competition laws (e.g. for SMEs or for particular forms of conduct) should be more closely aligned to each other.

Strongly agree	Agree	Neutral	Disagree	Strongly Disagree

Notification or antitrust approval procedures for potentially anti-competitive conduct (i.e. where parties seek confirmation that their conduct does not infringe a competition law prohibition or qualifies for an exemption) should be more closely aligned with each other.

This could include situations where undertakings that want to enter into co-operation agreements that, for example, involve price-fixing or output-limiting elements choose to seek clearance for their conduct from national competition authorities.

Strongly agree	Agree	Neutral	Disagree	Strongly Disagree

Merger control procedures administered by individual national competition authorities in the AMSs should be more closely aligned with each other, particularly in the following areas:

	Strongly agree	Agree	Neutral	Disagree	Strongly Disagree
Market share and turnover thresholds used in merger notification guidelines					
The availability and reliability of merger pre-notification guidance from national competition authorities					
The timelines used by national competition authorities administering the merger notification process					
Others					

If 'others' please specify:

Cartel detection (e.g. whistleblowing) and leniency programmes implemented by individual national competition authorities in the AMSs (and the availability of such leniency programmes in those AMSs which do not have them at present) should be more closely aligned with each other.

Strongly agree	Agree	Neutral	Disagree	Strongly Disagree

Please elaborate on any, or all, of your responses to the previous propositions.

Are there any other areas of competition law or policy within the ASEAN region which the national competition authorities of the AMSs should prioritise in their co-operation efforts to achieve the market integration and pro-competitive policy objectives of the ASEAN Economic Community?

Question 11 of 11:

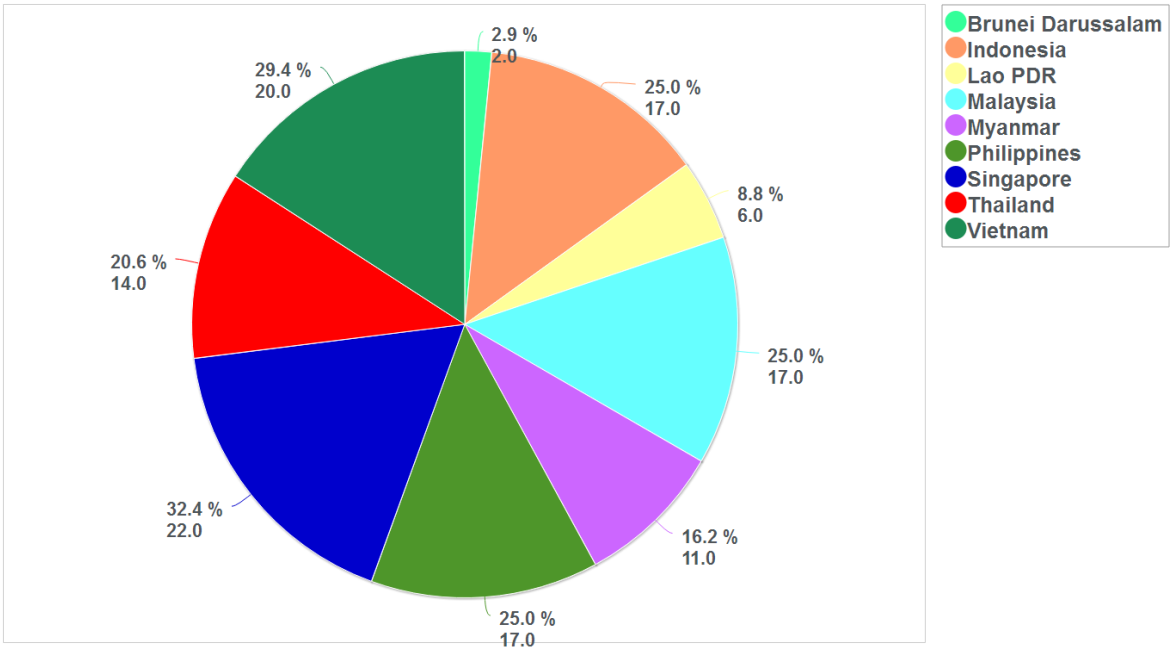
What, in your view, are the most significant obstacles towards regional convergence or harmonization between the national competition laws of the AMSs?

APPENDIX II

SURVEY PARTICIPANTS' PERCEPTIONS OF INDIVIDUAL AMS NATIONAL COMPETITION LAW FRAMEWORKS

1. Participants' engagement with AMS national competition law frameworks

Of the 105 survey participants who took part in ACCESS, 68 responded to [Question 3] to indicate that they had dealt with one or more of the ASEAN national competition law frameworks or national competition authorities in the preceding 24 months. Amongst these 68 participants, the following jurisdictions raised competition law compliance matters which they had to engage with: Singapore (32.4%), Vietnam (29.4%), Indonesia, Malaysia and the Philippines (25% each), Thailand (20.6%), Myanmar (16.2%), Lao PDR (8.8%) and Brunei Darussalam (2.9%).



Of the 105 survey participants who took part in ACCESS, 66 responded to [Question 4] to indicate that they had engaged with AMS national competition authorities in the following types of dealings:

Competition law matters encountered	Percentage of question-respondents
Informal discussions and consultations	66.7%
Merger or joint venture notifications	47%
Investigations into suspected infringement activities	42.4%
Conduct notifications (e.g. for guidance or exemptions)	31.8%

Cartel leniency, whistleblowing etc	16.7%
Other compliance matters[26]	21.2%

Of the 105 survey participants who took part in ACCESS, 21 responded to [Question 7] to indicate that they had been involved in competition law compliance matters that involved cross-border or multi-jurisdictional issues across more than one AMS. Between 45-75% of these participants indicated that they had to engage with the following national competition law frameworks as one of the relevant jurisdictions they encountered: Singapore (75%), Indonesia (50%), Malaysia (45%) and the Philippines (45%).

Of the 105 survey participants who took part in ACCESS, the following responded to [Question 7] to share their perceptions of the national competition law frameworks in individual AMS jurisdictions. The following number of respondents, who had previously indicated having engaged with competition law compliance matters in each of these specific AMS jurisdictions, shared their perceptions about each national competition law framework:

ASEAN Member State	Number of Question-respondents who expressed their views on the national competition law framework of this AMS
Brunei Darussalam	1
Indonesia	14
Lao PDR	4
Malaysia	15
Myanmar	8
Philippines	13
Singapore	20
Thailand	10
Vietnam	11

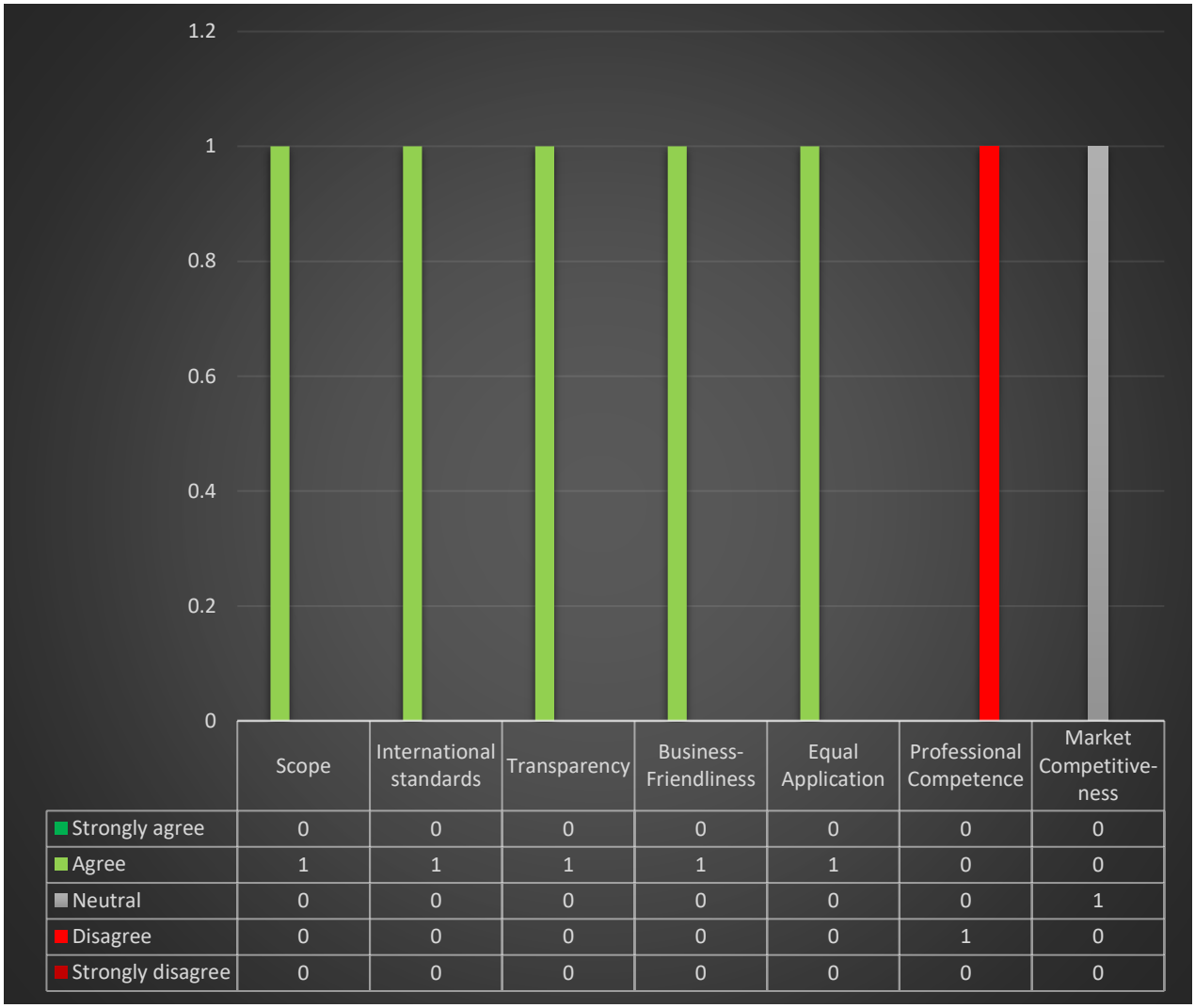
[26] This included, for example, consulting on draft competition legislation, providing general competition law advice to clients, representing an NCA in front of courts and tribunals, providing training, etc.

2. Participants' perceptions of individual national competition law frameworks

Brunei Darussalam

Two participants in ACCESS indicated having had previous dealings in this jurisdiction, but only one participant responded to our invitation to share their perceptions of the national competition law framework of Brunei Darussalam. This respondent indicated that Brunei Darussalam's competition law framework generally covered all major forms of anti-competitive conduct, was consistent with international standards, transparent, business friendly and applied equally to all undertakings. However, concerns were raised about the competence and independence of the competition authority, given that it is attached to the PM's office. This respondent was also neutral about whether or not these laws had made markets in Brunei Darussalam more competitive.

Chart 1: Key perceptions Brunei

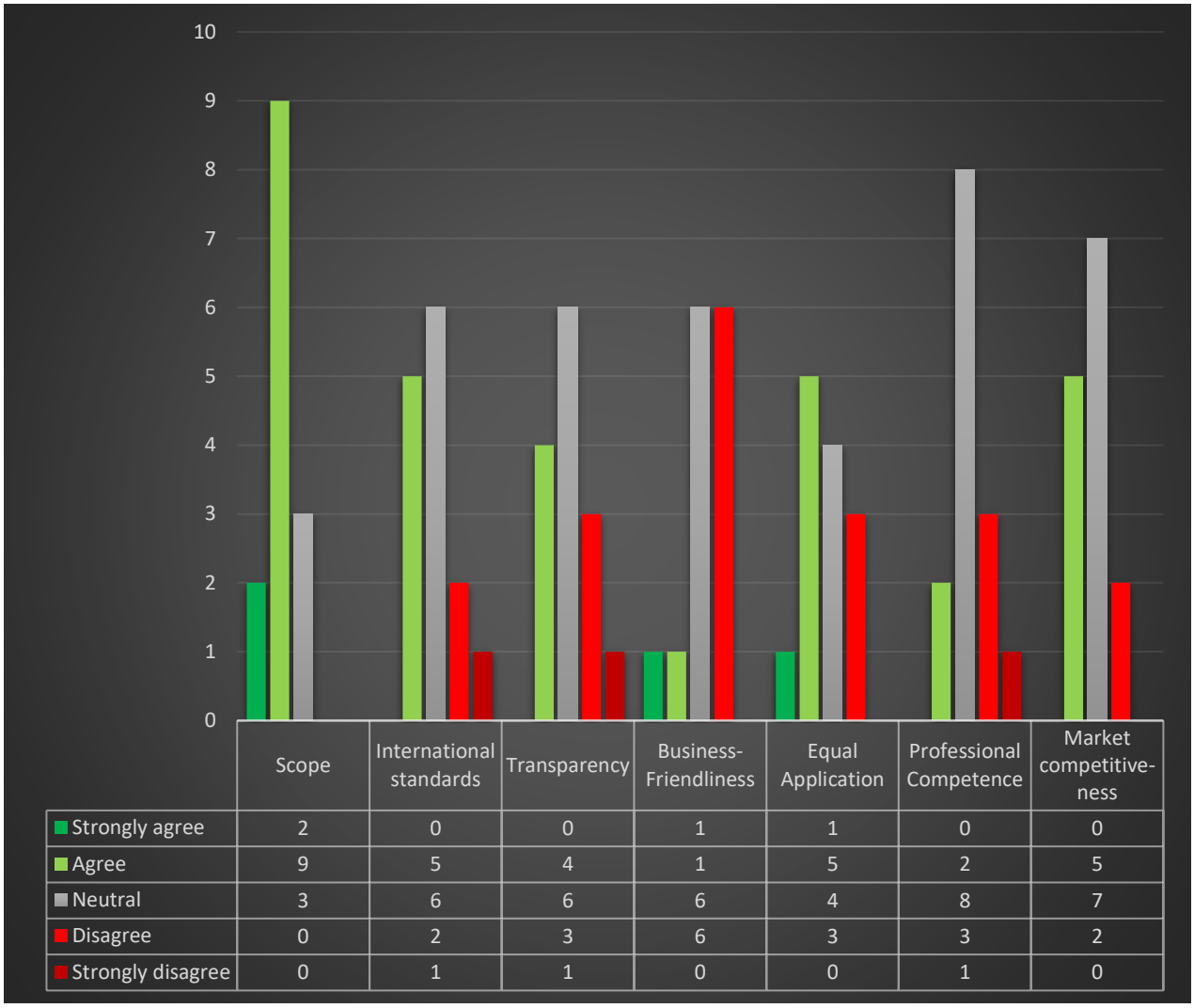


	Scope	International standards	Transparency	Business-Friendliness	Equal Application	Professional Competence	Market Competitive-ness
Strongly agree	0	0	0	0	0	0	0
Agree	1	1	1	1	1	0	0
Neutral	0	0	0	0	0	0	1
Disagree	0	0	0	0	0	1	0
Strongly disagree	0	0	0	0	0	0	0

Indonesia

Of the 14 respondents who have had dealings with the national competition law framework in Indonesia and reacted to these statements, most agreed that it covered all major forms of anti-competitive conduct. However, less than half agreed that this framework was transparent, business-friendly or complied with international standards. The same was true for equal application and professional competence. As for the question if markets had become more competitive with the implementation of these laws, opinions were quite divided. Half of the respondents were neutral, while 36% agreed and 14% disagreed.

Chart 2: Key perceptions Indonesia

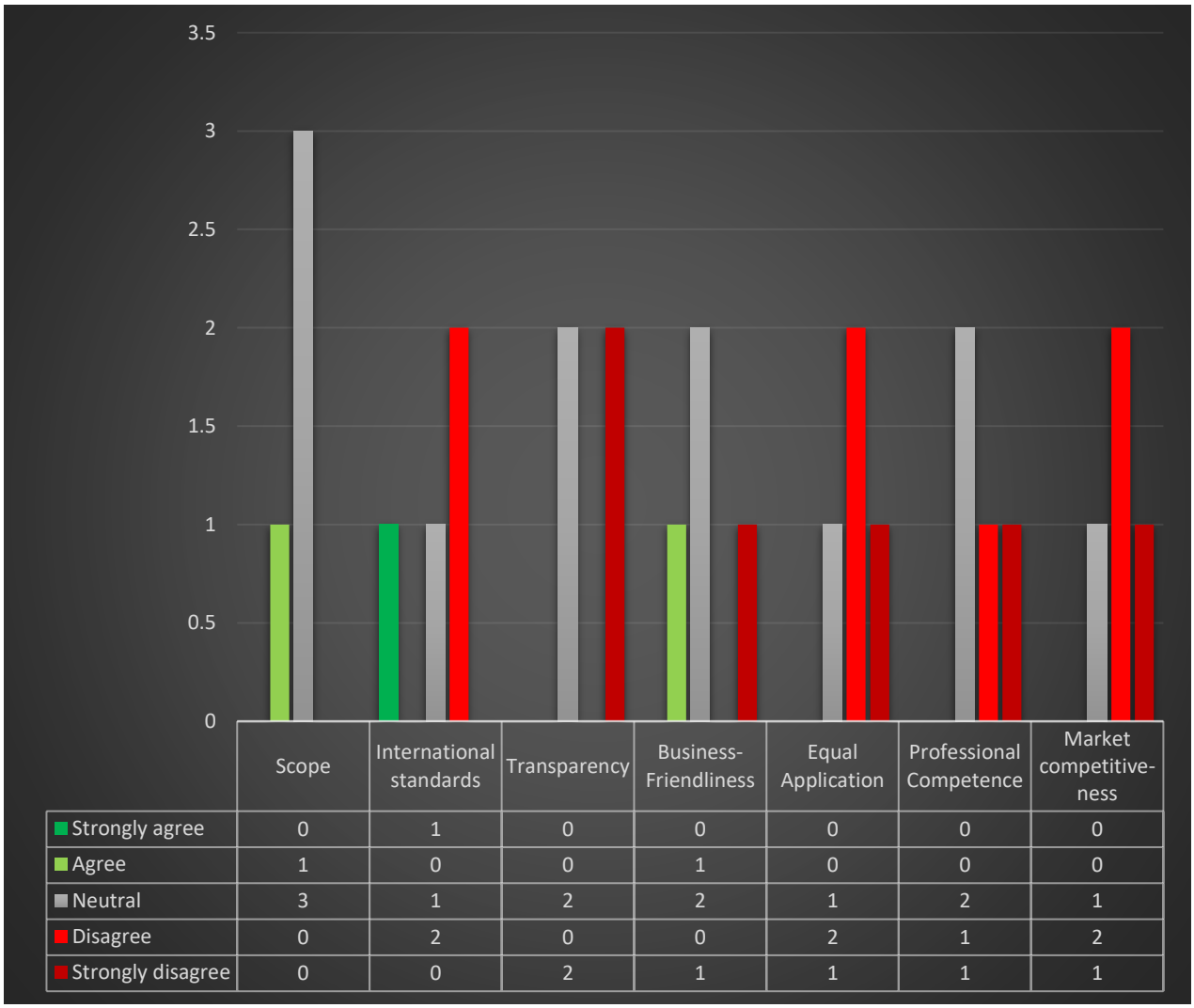


	Scope	International standards	Transparency	Business-Friendliness	Equal Application	Professional Competence	Market competitive-ness
Strongly agree	2	0	0	1	1	0	0
Agree	9	5	4	1	5	2	5
Neutral	3	6	6	6	4	8	7
Disagree	0	2	3	6	3	3	2
Strongly disagree	0	1	1	0	0	1	0

Lao PDR

Of the 4 question-respondents who had previous dealings with the national competition law framework in Lao PDR and reacted to these statements, most were neutral (75%) towards the question whether or not it covered all major forms of anti-competitive conduct, while 1 person agreed that it did. However, half of those who answered these questions disagreed that it was consistent with international standards and an equal number strongly disagreed that it was transparent. A quarter of respondents strongly disagreed that it was business friendly, while half were neutral towards this question. Not a single respondent found that it applied to all undertakings equally (25% strongly disagreed, 50% disagreed and 25% were neutral) or that it was administered by a professionally competent NCA (50% neutral, 50% disagreed of which 25% strongly). Finally, three-quarters did not believe that the introduction of competition law had made markets more competitive, while 25% remained neutral.

Chart 3: Key perceptions Laos

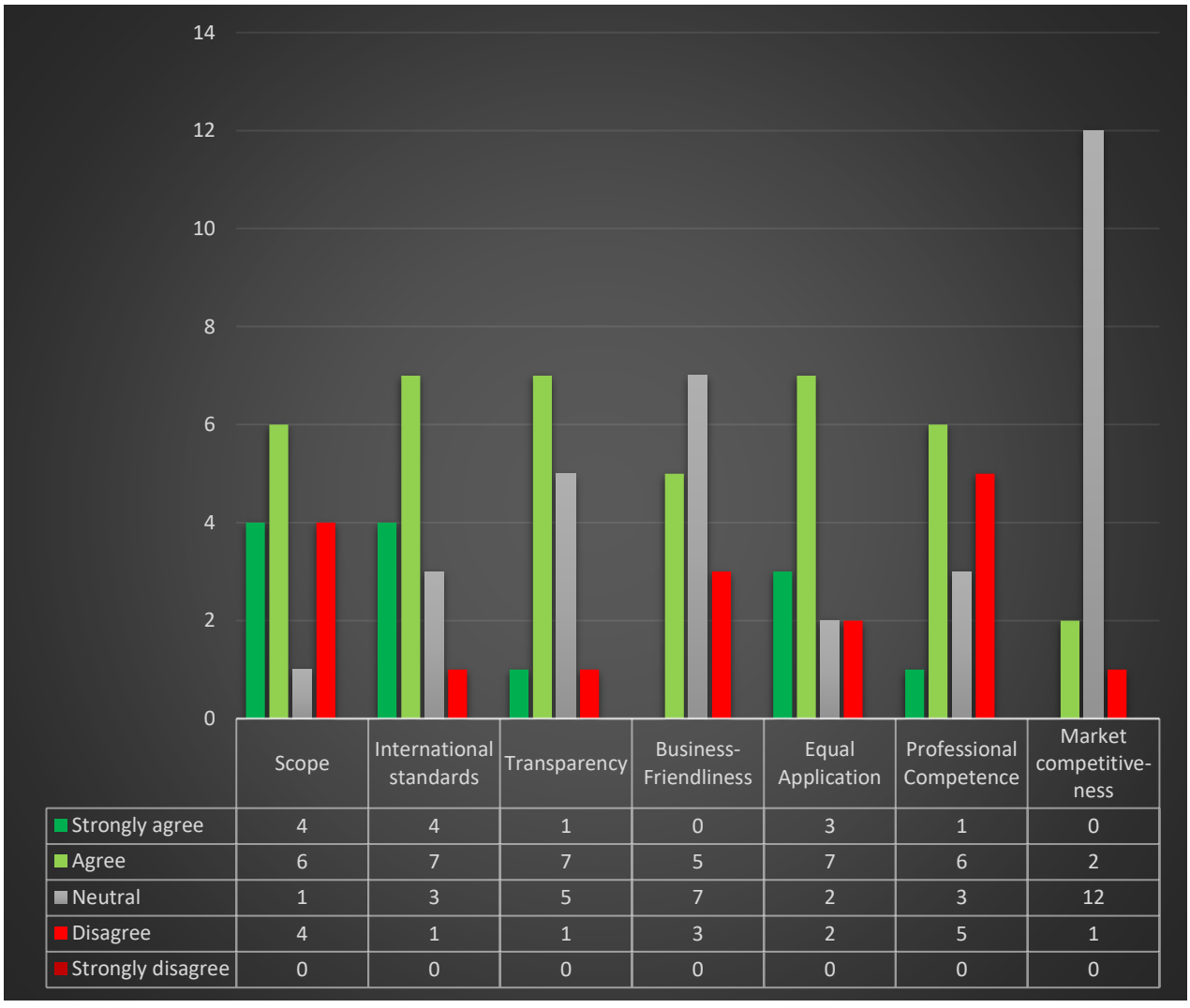


	Scope	International standards	Transparency	Business-Friendliness	Equal Application	Professional Competence	Market competitive-ness
Strongly agree	0	1	0	0	0	0	0
Agree	1	0	0	1	0	0	0
Neutral	3	1	2	2	1	2	1
Disagree	0	2	0	0	2	1	2
Strongly disagree	0	0	2	1	1	1	1

Malaysia

Of the 15 question-respondents who had previous dealings with the national competition law framework in Malaysia and reacted to these statements, the majority (over 66%) agreed that it covered all major forms of anti-competitive conduct. The free text comments suggested that those who disagreed did so because Malaysia did not have a merger control regime. Nearly three-quarters generally found Malaysia's competition law to be consistent with international standards and nearly 60% found it transparent. A third found it business friendly (with over 45% being neutral in this regard) and over 70% agreed that it applied to all undertakings equally. There was some divergence in responses to the question of whether competition law was administered by a professionally competent NCA (with about half expressing agreement). Regarding the question of whether or not the introduction of competition law had made markets more competitive, the vast majority of respondents (80%) were neutral.

Chart 4: Key perceptions Malaysia

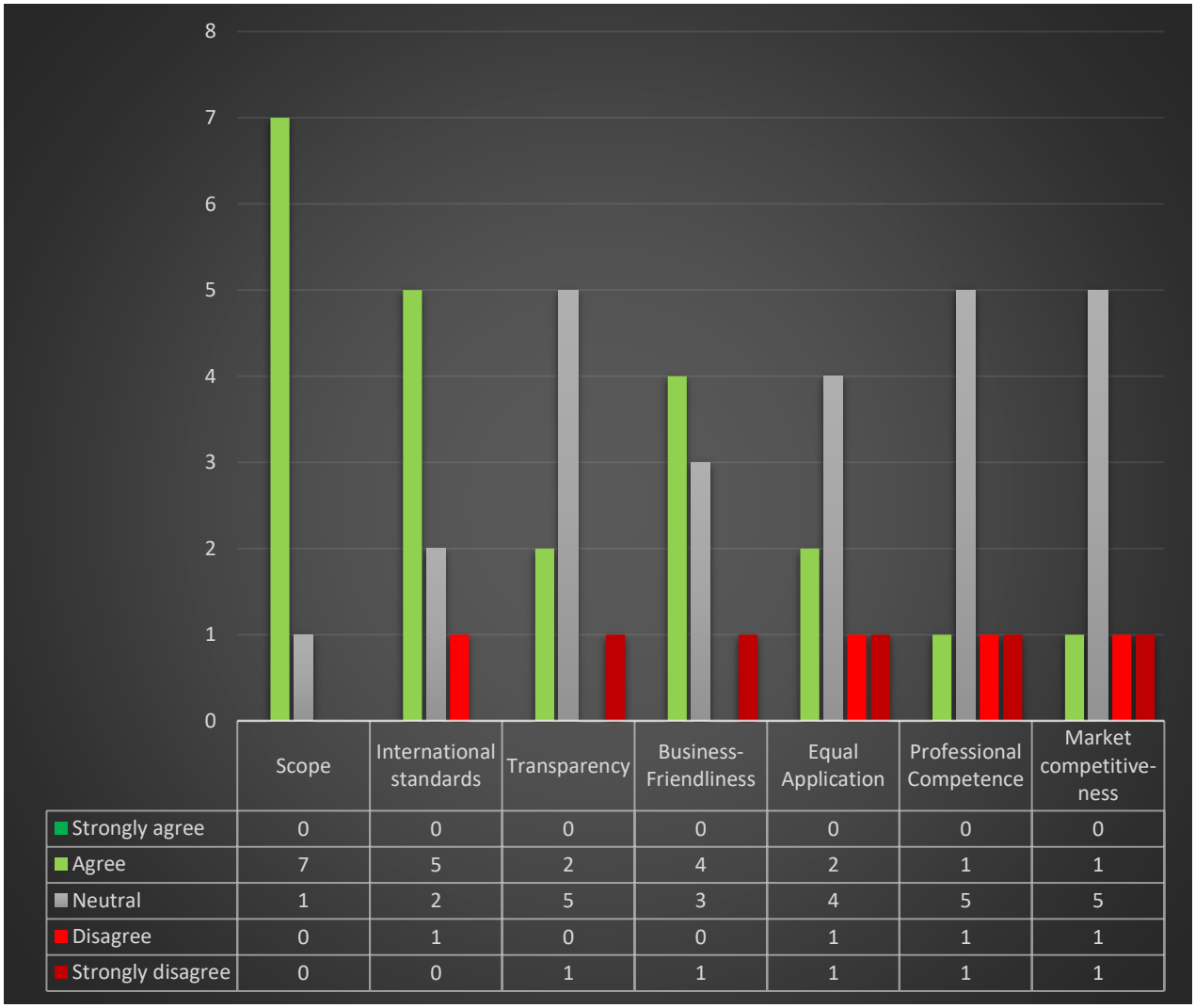


	Scope	International standards	Transparency	Business-Friendliness	Equal Application	Professional Competence	Market competitive-ness
Strongly agree	4	4	1	0	3	1	0
Agree	6	7	7	5	7	6	2
Neutral	1	3	5	7	2	3	12
Disagree	4	1	1	3	2	5	1
Strongly disagree	0	0	0	0	0	0	0

Myanmar

Of the 8 question-respondents who had previous dealings with the national competition law framework in Myanmar and reacted to these statements, almost all of them agreed that the scope of these laws covered all major forms of anti-competitive conduct. Over 60% also agreed that it was consistent with international standards and half found it business friendly. As for transparency and equality of application the opinions were more divided. In both cases only one-quarter agreed, while most (62.5% and 50% respectively) remained neutral and an eighth in both cases strongly disagreed. There was even less agreement that the competition law framework was administered by a professionally competent NCA or that the implementation of competition law had made markets more competitive (only 12.5% expressed agreement to both statements) with a quarter disagreeing or disagreeing strongly.

Chart 5: Key perceptions Myanmar

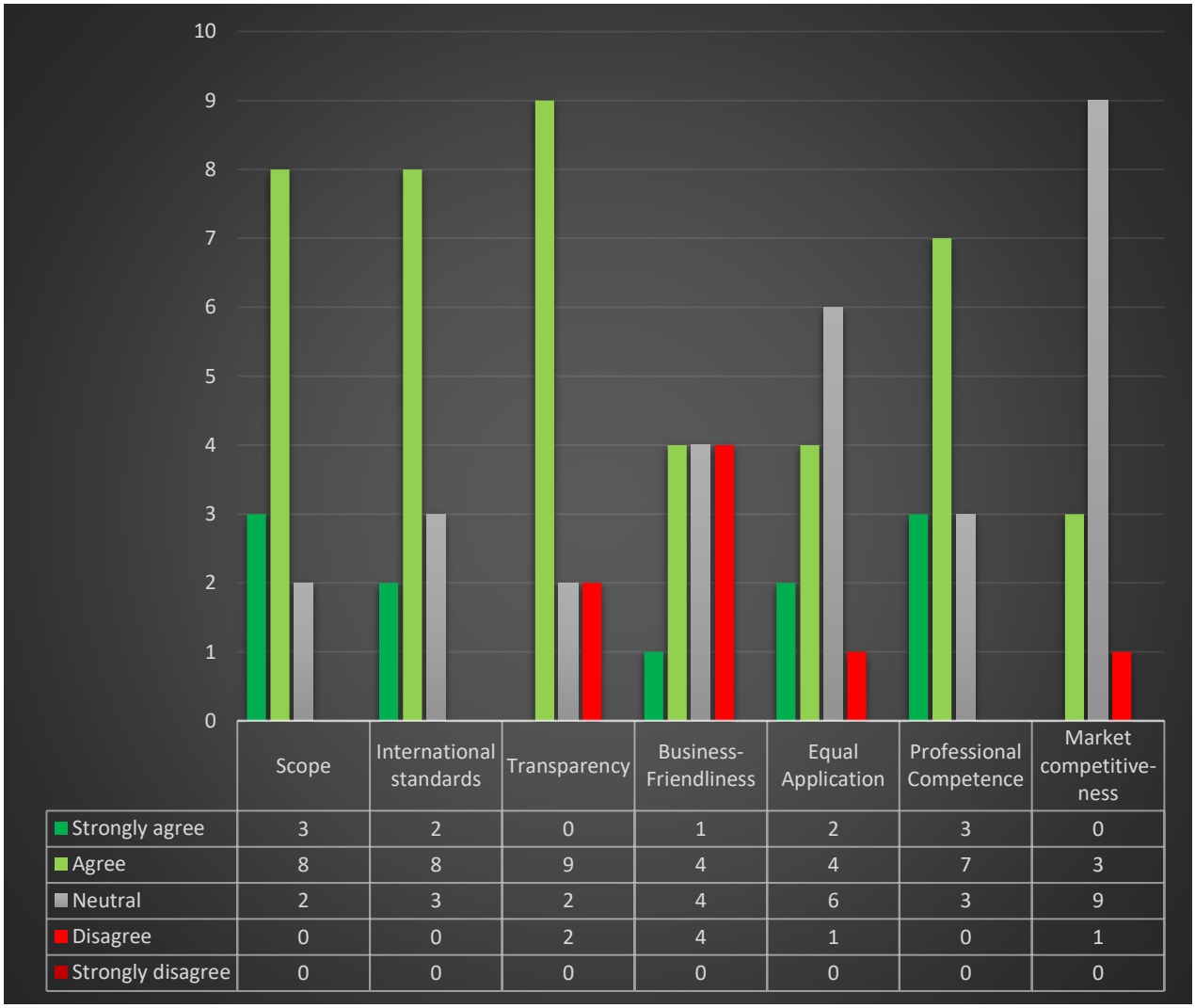


	Scope	International standards	Transparency	Business-Friendliness	Equal Application	Professional Competence	Market competitive-ness
Strongly agree	0	0	0	0	0	0	0
Agree	7	5	2	4	2	1	1
Neutral	1	2	5	3	4	5	5
Disagree	0	1	0	0	1	1	1
Strongly disagree	0	0	1	1	1	1	1

The Philippines

Of the 13 question-respondents who had previous dealings with the national competition law framework in the Philippines and reacted to these statements, a clear majority agreed that these laws covered all major forms of anti-competitive conduct and were consistent with international standards. Nearly 70% also agreed that the framework was transparent. However, just under 40% agreed that the competition framework was business friendly and just over 46% agreed that it applied equally to all undertakings. There was more confidence in the competence of the national competition authority, with more than three-quarters agreeing that was administered with professional competence, with the rest remaining neutral. However, less than a quarter agreed that the introduction of competition law had made markets more competitive. Most (almost 70%) felt neutral about this, while the rest disagreed.

Chart 6: Key perceptions Philippines

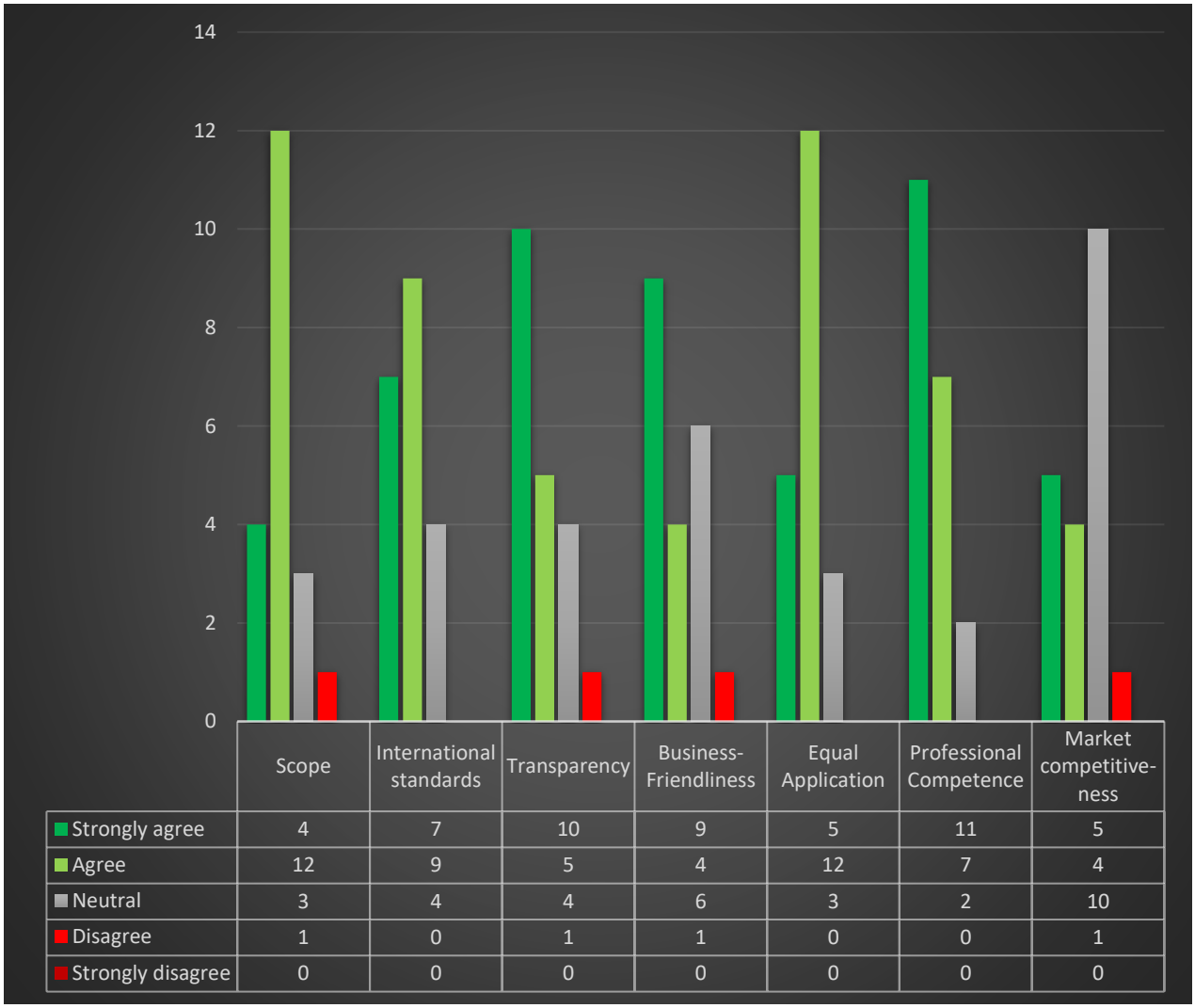


	Scope	International standards	Transparency	Business-Friendliness	Equal Application	Professional Competence	Market competitive-ness
Strongly agree	3	2	0	1	2	3	0
Agree	8	8	9	4	4	7	3
Neutral	2	3	2	4	6	3	9
Disagree	0	0	2	4	1	0	1
Strongly disagree	0	0	0	0	0	0	0

Singapore

Of the 20 question-respondents who had previous dealings with the national competition law framework in Singapore and reacted to these statements, the vast majority of respondents (between 65% and 85%) agreed (or strongly agreed) that it covered all major forms of anticompetitive conduct, was consistent with international standards, transparent, business-friendly and applied equally to all undertakings. Respondents felt even more strongly about the professional competence of the authority (35% agreed and 55% strongly agreed). Despite this generally positive evaluation of Singapore's competition law framework, only 45% felt that its introduction had made markets more competitive, with half of respondents remaining neutral and 5% disagreeing.

Chart 7: Key perceptions Singapore

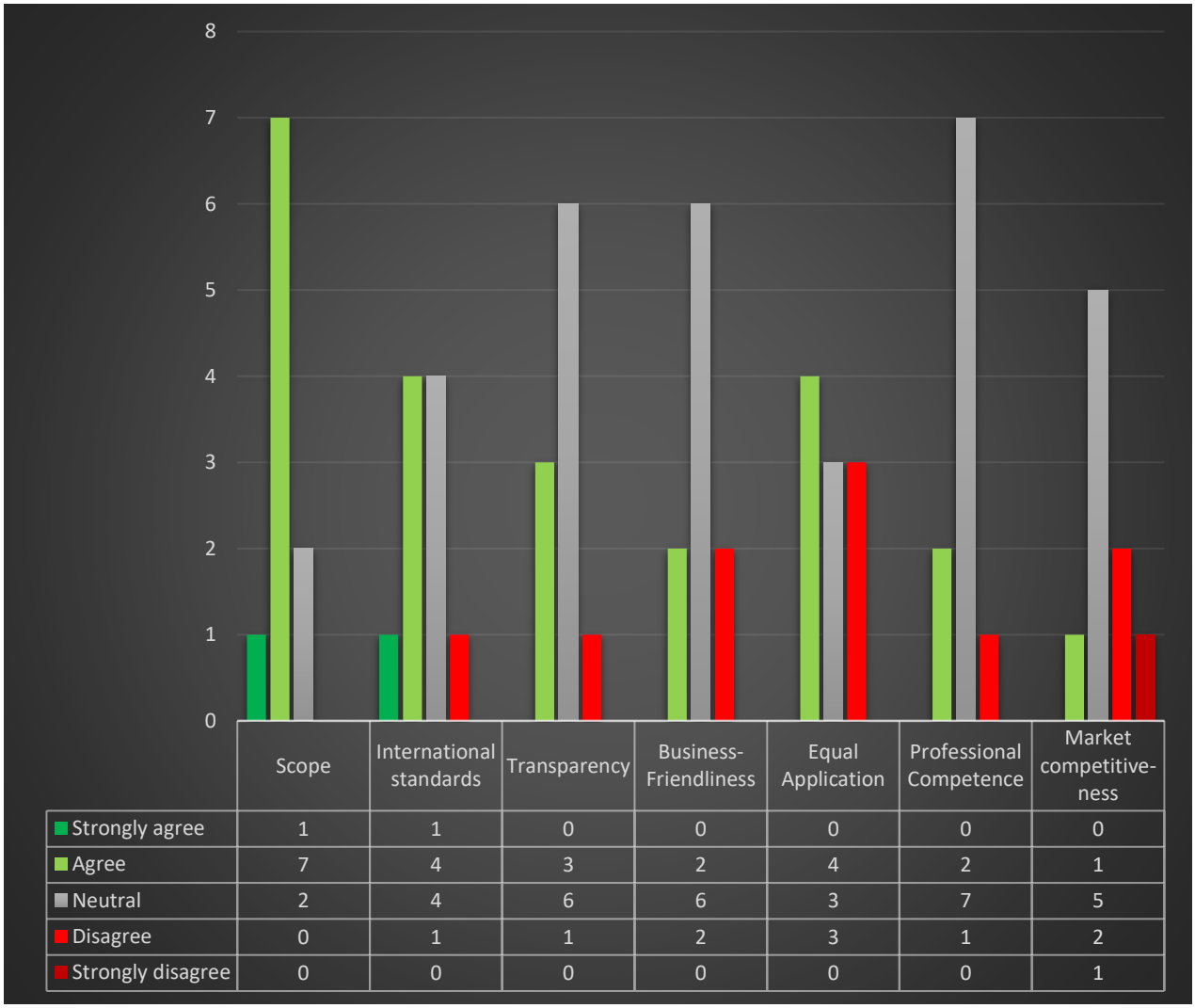


	Scope	International standards	Transparency	Business-Friendliness	Equal Application	Professional Competence	Market competitive-ness
Strongly agree	4	7	10	9	5	11	5
Agree	12	9	5	4	12	7	4
Neutral	3	4	4	6	3	2	10
Disagree	1	0	1	1	0	0	1
Strongly disagree	0	0	0	0	0	0	0

Thailand

Of the 10 question-respondents who had previous dealings with the national competition law framework in Thailand and reacted to these statements, a strong majority agreed that these laws covered all major forms of anti-competitive conduct. Half of the respondents agreed that these laws were consistent with international standards. However, only between 20% and 40% agreed that these laws were transparent, business-friendly and equally applied to all undertakings. The perception of professional competence of the authority also received a mixed response, with 20% agreement and 10% disagreement, while the vast majority (70%) remained neutral. Finally, only 10% believed that the introduction of competition law had made markets more competitive, more than half did not take a position and a third disagreed. Unfortunately, respondents did not submit free text comments that could shed more light on this.

Chart 8: Key perceptions Thailand

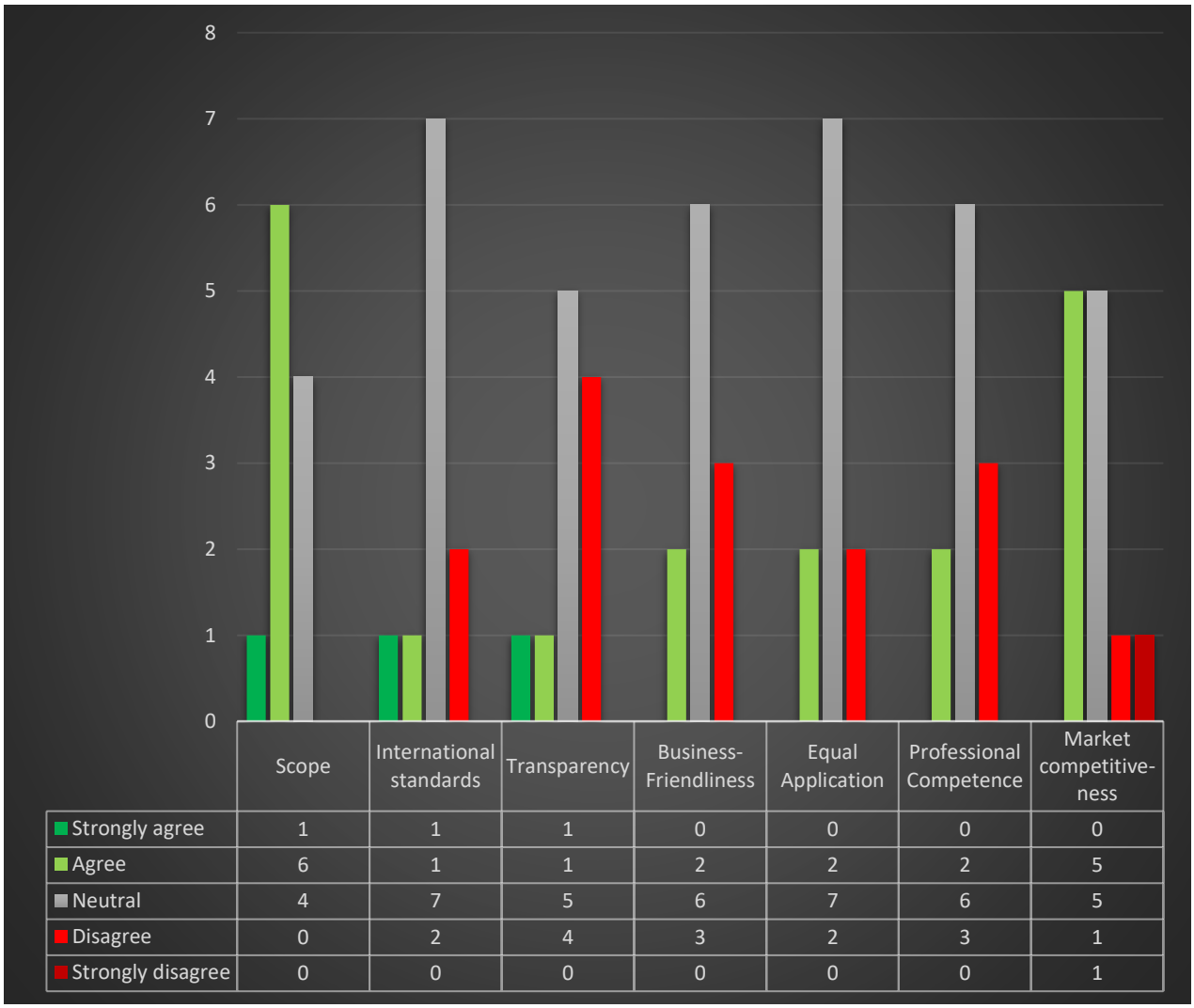


	Scope	International standards	Transparency	Business-Friendliness	Equal Application	Professional Competence	Market competitive-ness
Strongly agree	1	1	0	0	0	0	0
Agree	7	4	3	2	4	2	1
Neutral	2	4	6	6	3	7	5
Disagree	0	1	1	2	3	1	2
Strongly disagree	0	0	0	0	0	0	1

Vietnam

Of the 11 question-respondents who had previous dealings with the national competition law framework in Vietnam and reacted to these statements, most agreed that these laws covered all major forms of anti-competitive conduct. Responses where more mixed when it came to whether these laws were consistent with international standards, business-friendly, applied equally to all undertakings or administered by a professionally competent national competition authority. For each of these statements, less than 20% of the respondents expressed agreement, with the majority remaining neutral and the rest expressing disagreement. Similarly, on whether the national competition law framework was transparent, less than 20% of respondents expressed agreement, while around 45% remained neutral and over a third disagreed. Nevertheless, over 40% agreed that the introduction of competition law had made markets more competitive, with an equal number remaining neutral and less than 20% expressing disagreement.

Chart 9: Key perceptions Vietnam



	Scope	International standards	Transparency	Business-Friendliness	Equal Application	Professional Competence	Market competitive-ness
Strongly agree	1	1	1	0	0	0	0
Agree	6	1	1	2	2	2	5
Neutral	4	7	5	6	7	6	5
Disagree	0	2	4	3	2	3	1
Strongly disagree	0	0	0	0	0	0	1