The ASEAN Competition Compliance Experience Survey-Study (ACCESS)

Phase 2 Report

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EXECUTIVE SUMMARY

This Report summarises and analyses the findings of an empirical survey, conducted electronically between February and December 2022, 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 is a continuation of the ASEAN Competition Compliance Experience Survey Study (ACCESS), with a second iteration of the electronic survey ("ACCESS 2") initiated in response to earlier feedback obtained from stakeholders that the additional data points would improve the quality of its research findings. The first iteration ("ACCESS 1") took place between November 2019 and February 2020 and its results were discussed at virtual stakeholder workshops with representatives from national competition authorities ("NCAs") from the ASEAN Member States ("AMSs") and other stakeholders respectively in 2021.[1]

In the present, second iteration, we received a total of 220 responses. This is over twice as much as in the first iteration. The greater number of responses can likely be attributed to our three-strand approach to increase the response rate: ACCESS 2 had a much larger survey population reached (about seven times the size of ACCESS 1), a longer timeframe in which the survey was open (about three times as long) and translations of the survey questions into the four most widely spoken ASEAN languages. However, like in the first iteration, not all of the 220 respondents answered each question. After consideration, we decided to only include responses which have completed at least 30% of the survey for this second iteration. The present report thus relies on the aggregated and anonymised inputs given by 124 survey participants familiar with competition law matters in the ASEAN region.

Overall, despite the newer and more comprehensive data, the results are remarkably similar to those obtained from the first iteration. A few key differences observed are summarised below.

Participant type and location

In ACCESS 2, we managed to reach more in-house counsel, including in-house counsel in SMEs which were lacking in the first round. Response rates from all AMSs (except Lao PDR and Myanmar) increased, but only marginally in Malaysia where the response rate is still disappointingly low given the size and importance of this jurisdiction.

Interactions with competition regimes/ NCAs

As in ACCESS 1, more respondents had engaged with the competition law frameworks of Indonesia, Singapore, Vietnam, the Philippines and Malaysia than with the remaining AMSs (only 10% or less of respondents each).

In terms of kinds of interactions, a majority of respondents had interacted with NCAs in the form of informal discussions and consultations, as well as in the form of merger or joint venture notifications. Over a quarter had had encounters with infringement investigations and conduct notifications respectively, while fewer respondents had worked on leniency (9%) or other matters (12%). In addition to the specified forms of interactions, some respondents also engaged in competition law training and compliance related activities connected to their respective

[1] The report analysing the findings of phase 1 is available on https://law.nus.edu.sg/ewbclb/wp-content/uploads/sites/6/2021/08/ACCESSPhase1ReportAug2021.pdf.

organisations. These kinds of activities had not been identified by respondents who participated in ACCESS 1. They may have been identified in ACCESS 2 due to the higher number of in-house counsels participating in the second iteration of this survey-study. In contrast to ACCESS 1, advocacy and advisory activities were not mentioned in the free-text comments, which could be related to the greater maturity of the competition law regimes two-years further down the road.

Perceptions of the AMS's competition regimes

A majority of ACCESS 2 respondents perceived the national competition regimes of the AMSs to cover all major forms of anti-competitive conduct (except in Malaysia and Myanmar) and to be aligned with international standards (except in Myanmar and Vietnam). These results are not dissimilar from ACCESS 1 with the only exception being Myanmar where the majority had largely expressed agreement on both counts in the first iteration of the survey.

When asked about transparency, business-friendliness and equality of application of the competition regimes, the majority of question respondents agreed that these terms were applicable to the competition regimes of Brunei, Malaysia, the Philippines and Singapore. The majority also agreed that the competition law regime of Indonesia was equally applicable to all undertakings, but participants were divided on transparency and business-friendliness (with about half agreeing and half either disagreeing or being neutral on both accounts). In Laos, Myanmar, Thailand and Vietnam the majority of question respondents did not agree that these terms were an accurate description of the respective competition regimes. Despite these reservations, the overall percentages agreeing with these descriptions have either remained similar or improved in all countries with the exception of Myanmar, where question respondents appear to have a less positive view of their national competition law regime in terms of these factors. In Singapore, while percentage of confidence in transparency and business-friendliness improved, the percentage of those who strongly agreed that there was equality of application went down from 85% to 61%.

The majority of question respondents agreed that the competition laws of Brunei, Indonesia, Malaysia, the Philippines and Singapore were administered by a professionally competent authority. No majority agreement was reached on this in Lao PDR, Myanmar, Thailand and Vietnam. Here, large percentages of participants remained neutral. In Lao PDR and Myanmar, there were also higher percentages of disagreement (50% and 36% respectively). These overall results on professional competence are similar to those in ACCESS 1 with the exception of Brunei, Indonesia and Malaysia, where attitudes towards the NCAs' competency have significantly improved.

Remarkably, only among ACCESS 2 respondents who had engaged with the Malaysian and Singaporean competition law regimes was there a majority view that the introduction of competition law had made markets in those jurisdictions more competitive. In Lao PDR and Myanmar, the majority disagreed (50% and 63% respectively), while many respondents remained neutral in the remaining AMSs. While this may still be indicative of some scepticism towards the value of competition law in these countries, it should be noted that, in all AMSs, the percentage of ACCESS 2 respondents who held the view that competition law has led to improved market competitiveness either remained roughly the same or increased compared to ACCESS 1. The increase was specifically significant in Brunei (from 0 to 33% agreement), Malaysia (from 13 to 55% agreement), the Philippines (from 23 to 46% agreement) and Singapore (from 45 to 65%

agreement). This may be due to the greater maturity of the regimes making the potential benefits of competition law more visible.

Broadly speaking, in all AMSs with the exception of Myanmar, the overall picture is either roughly similar to ACCESS 1, in terms of how the national competition law regimes are perceived using these seven criteria, or perceptions have become more positive. Only in Myanmar did the ACCESS 2 responses convey a lower level of positive perceptions than those expressed in ACCESS 1.

Cross-border or multi-jurisdictional dealings

49% of the 124 analysed survey participants (61 question-respondents) indicated that they had encountered competition law compliance matters that involved cross-border or multi-jurisdictional issues. This is a significant increase from the 21 respondents who had done so in the first iteration. The distribution in terms of which AMSs they had engaged with is not entirely dissimilar from ACCESS 1. In both iterations, Indonesia, Malaysia, Singapore and Vietnam were the most frequently encountered jurisdictions when cross-border competition law issues were faced. Amongst these jurisdictions, Singapore's competition law regime was by far the most often encountered, with 75% of respondents in this category reporting that they have had dealings with the country's competition law framework in both survey studies.

Amongst those who had engaged with cross-border or multi-jurisdictional competition law compliance matters, 17% (10 respondents) characterised themselves as having no awareness of the differences between the national competition law frameworks. In ACCESS 1, only a single respondent had indicated such an absence of awareness. In this second iteration of the survey-study, the percentage of respondents who described themselves as having 'limited awareness' is also higher, while the percentage of respondents with 'some awareness' or 'substantial awareness' is now lower. This might be indicative of an increased appreciation amongst stakeholders of the complexities arising from navigating two or more substantially different national competition law frameworks.

49% of these ACCESS 2 question-respondents indicated that the legal differences between the national competition law frameworks of the AMSs, that they had encountered, had affected the compliance decisions they had to make. This is not drastically different from the 57% who had said so in ACCESS 1. Like in the first iteration, differences between the national merger control frameworks of the AMSs (e.g. mandatory or voluntary notification systems, kinds of mergers considered, analysis of anti-competitiveness and timelines) were highlighted by question-respondents as a major factor in this regard. Further, in ACCESS 2, differences in approach towards vertical agreements (distribution agreements, parallel imports, etc.) were more frequently identified as well as the differences in the independence and pro-activeness of the NCAs.

Areas for closer alignment

Participants overwhelmingly agreed that harmonisation or closer alignment in eight specified areas[2] would be useful. In particular, harmonisation in the areas of merger pre-notification guidance, merger control timelines and cartel detection/leniency were desired with over 90% of question

[2] Single Economic Entity, market definition, most serious forms of infringing conduct, exemptions, conduct notification and clearance, merger notification thresholds, guidance and timelines as well as cartel detection/leniency.

respondents agreeing. These results are very similar to those in ACCESS 1 (less than 5% difference in each category), though having common legal standards for the 'most serious forms of infringing conduct' was then in the top three areas for harmonisation instead of 'cartel detection and leniency'. The only significant difference between ACCESS 1 and ACCESS 2 was the increase, from 68% to 83%, in the percentage of respondents agreeing with the suggestion to more closely align 'merger notification thresholds'.

In the free text comments and the question on potential obstacles, several ACCESS 2 participants acknowledged the difficulties towards achieving convergence between the national competition law regimes of the AMSs (e.g. different national legal and non-legal context, different levels of experience and capacity of NCAs). However, they suggested that some procedural alignment of e.g. merger thresholds, time scales, notification requirements, existence of a leniency programme, etc. would still be beneficial even if there remained divergence on more substantive matters. Other obstacles identified included, similar to what was expressed in ACCESS 1, a lack of support for and/or knowledge of competition law and policy (both within state bodies and the public), corruption and a lack of hard powers at the regional level to effect convergence from there.

Observations and recommendations

Despite the differences in the finer details of the two iterations of our survey-study, we believe that there is enough consistency between them to confirm our initial hypotheses. There are significant differences between the national competition regimes that raise compliance costs for undertakings involved in cross-border commercial transactions (esp. in terms of mergers and infringement investigations). Further, stakeholder perceptions of the national competition law regimes also differed significantly; in particular when it came to transparency, professional competence, business-friendliness and equality of application. It is thus unsurprising that participants were highly supportive of closer alignment between AMSs even as they also appreciated that there were obstacles to achieving this. A large number of participants pointed to the very real issue of different local conditions, needs and goals of each AMS, while some also mentioned less axiomatic obstacles such as divergences in the level of experience, knowledge, resources and powers of the NCAs, lacking support within the wider government as well as governance-related problems such as corruption.

Despite this, given the competition law compliance needs of the undertakings expressed in both ACCESS iterations, as well as the regional market integration goals of the AEC, it remains a rational course of action to pursue a multi-jurisdictional law reform strategy that facilitates closer alignment between the national competition law regimes of each AMS. This does not mean that 'one size always fits all' but that achieving greater convergence, or even harmonisation, in targeted areas of these national competition law frameworks can translate into tangible benefits for undertakings whose business operations straddle two or more AMSs. As such, the recommendations for a modest competition law-related reforms path proposed in ACCESS 1[3] are reinforced by the results of ACCESS 2.

The first of these recommendations involved identifying specific areas for reform with the input of stakeholders and experts which are both likely to reap immediate and substantial benefits, and

[3] Summarised in below in chapter 4 section 3.

practically feasible. To facilitate this first step, and building on what we have learnt from ACCESS 2, we have organised a workshop with local competition law experts from the six AMSs with the most mature competition law regimes: Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam. Our preliminary findings from this workshop were shared with a wider audience of practitioners and stakeholders at a public conference scheduled immediately after the workshop, where we investigated the similarities and differences between two aspects of the competition law frameworks of the AMSs – merger review and anti-cartel laws – and examined the possibility of convergence or harmonisation of these aspects between these jurisdictions. Despite our initial hypothesis that these were areas of law where there were opportunities for convergence or harmonisation in the form of 'low hanging fruit', our discussions over the course of the workshop-conference revealed a more complex picture than what was previously contemplated.

CHAPTER 1: INTRODUCTION

As is well-known, and despite the importance assigned to this policy area by the ASEAN Economic Community (AEC),[4] there is no supranational ASEAN-level competition law. Instead, a key strategic measure articulated in the ASEAN Economic Community Blueprint 2025 (AEC Blueprint) is to *'[a]chieve greater harmonisation of competition policy and law in ASEAN by developing a regional strategy on convergence'*.[5] Yet, by 2019, the regional competition law landscape in the AEC was still a patchwork of distinctive national competition law frameworks with many differences in the scope of their respective legislation (including regulations and guidelines) and enforcement practices. As such, we argued that if ASEAN wishes to realise its aspirations of convergence, it needs to identify specific areas of law reform which can be implemented consistently across the national competition law frameworks of the ASEAN Member States (AMS) as part of the regional harmonisation process.[6] A useful approach to identifying these areas would involve gaining insights into the experiences of competition law practitioners and advisors who have had to grapple with the different national competition rules of each AMS which would allow a 'bottom up' perspective of what could 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 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. The analysis of the ACCESS 1 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 AMS. The results of this first phase of project have been published in a report.[7]

However, a recommendation arising from the workshop was to repeat the survey in order to 1) try to gather additional data, especially as replies from some jurisdictions were small in number, and 2) to investigate how the views may or may not have changed two years down the road and after a global pandemic. After all, the competition regimes continue to display several differences as the table below shows.

[4] Further on ASEAN integration and the role of competition law therein, see Ong B and Gideon A, *The ASEAN Competition Compliance Experience Survey-Study (ACCESS) - Phase 1 Report* (National University of Singapore 2021) available on https://law.nus.edu.sg/ewbclb/wp-content/uploads/sites/6/2021/08/ACCESSPhase1ReportAug2021.pdf p. 3.

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

[6] Ong and Gideon (n 4) p. 5.

[7] Ong and Gideon (n 4).

Table 1: 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	Since 2021[8]	In progress[9]	-	Yes
Indonesia	Since 1999	Yes, mandatory (post-merger)[10] and voluntary (pre-merger)	SMEs/SOEs[11]	No
Lao PDR	Since 2015	Yes, mandatory[12]	SMEs/SOEs[13]	Yes
Malaysia	Since 2010	No[14]	-	Yes
Myanmar	Since 2017	Yes, details pending	SMEs/SOEs[15]	Yes

[8] Cambodia's competition law came into effect in October 2021. However, the Cambodia Competition Commission (CCC), which is administering the law has not been established since February 2022 and the members of the CCC have only been appointed in July 2022.

[9] Article 11 of the Law on Competition of Cambodia provides that: '*Any Business Combination which has or may have the effect of significantly preventing, restricting or distorting competition in a Market shall be prohibited. Business Combinations shall be subject to examination, inspection and evaluation of their effect on competition […] by the CCC. The requirements and procedures for Business Combinations shall be determined by Sub-Decree*'.

[10] Article 29 (1) of the Indonesian Law No. 5 of 1999. A pre-merger consultation does not prevent the post-merger assessment.

[11] 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*'.

[12] 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.

[13] 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 case-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.'*

[14] However, MyCC is consulting about amendments to the Competition Law including the introduction of a merger control regime. See further https://www.mycc.gov.my/public-consultation.

[15] 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.

Philippines	Since 2015	Yes, mandatory	-	Yes
Singapore	Since 2006	Yes, voluntary	-	Yes
Thailand	Since 1999; new law since 2017	Yes, mandatory (either pre- or post-merger depending on thresholds)	SOEs[16]	No (settlements possible)
Vietnam	Since 2004	Yes, mandatory	SMEs (until 2018 revised law)[17]	Yes

As such, we conducted a second round of the survey in 2022 to gather fresh and complementary data (ACCESS 2). The results are presented in this report and will be supplemented with insights from a workshop and conference both to be held in March 2023. The results of the entire research project will be used to create policy proposals to be shared with the national competition authorities of the AMSs/the ASEAN Expert Group on Competition. Data gathered from both ACCESS 1 and ACCESS 2 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.

[16] Section 4(2) of the Trade Competition Act B.E. 2560 provides an exclusion for '*state-owned enterprises, public organizations, or other government agencies, provided that they conduct their undertakings according to the law or resolutions of the Cabinet which are necessary for the benefit of maintaining national security, public interest, the interests of society, or the provision of public utilities*'.

[17] 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.

CHAPTER 2: RESEARCH METHODOLOGY

1. Background

Divergent national competition laws between the individual AMSs contain the potential to 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 ACCESS as a tool to capture the practical experiences of competition law professionals working within the region. This was meant to provide 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 ASEAN Competition Action Plan (ACAP) endorsed in 2016. ACCESS was, to our knowledge, the first empirical survey-study of this kind which seeks bottom-up views from stakeholders within the regional competition law community.

We conducted a first round of the survey in Nov 2019-Feb 2020. The responses were then anonymised before they were analysed. Initial results were presented to and discussed with stakeholders at two workshops:

- A closed-door workshop with government officers from the national competition authorities (18 participants, 27 April 2021) with the support of the Competition and Consumer Commission of Singapore
- An open event which brought together competition law practitioners, advisors and academics from different AMS (44 participants, 21 May 2021)

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. Our final results of the first phase (ACCESS 1) were published in a report.[18]

However, we had been encouraged by participants at the workshops, especially at the agency workshop, to repeat the survey with a view to gather additional data points to improve the quality of the research findings. In order to illicit more responses, it was recommended to translate the survey into some of the local languages. As such we embarked on ACCESS 2 in 2022.

2. Methodology

The methodology used in ACCESS is explained in detail in the phase 1 report[19] and will thus merely be repeated here in summary with more detailed elaboration only where changes had been made in the second iteration.

[18] Ong and Gideon (n 4).

[19] Ong and Gideon (n 4) p. 7-11.

In essence, the research method was a quantitative survey, given that we needed to record and aggregate a large number of responses from stakeholder-participants. It was designed as a standardised questionnaire with several multiple-choice questions and some open-ended questions. The questions aimed to elicit the experiences and, partly, opinions on situations or reform suggestions of the practitioners. The survey was designed with an online software for easier distribution and data collection. The software used in the second iteration was *qualtrics*.

2.1. Identifying and reaching out to survey population

As in ACCESS 1, the population for this study consisted of practitioners including lawyers, in-house counsel, and other stakeholder practitioners. In ACCESS 1, we had identified the population through online research, personal contacts and with the help of trade associations and other organisation who circulated the survey for us. After the first iteration, we had the following contact lists:

a. Participants of ACCESS 1 who had left their contact details
b. Potential participants identified through online research in ACCESS 1 who had not participated then
c. Personal contacts[20]
d. Organisations and associations potentially willing to participate and distribute the survey
e. Potential participants identified in ACCESS 1 for whom we did not have an email address and who had, therefore, not been contacted in ACCESS 1

In addition, the national competition agencies (NCAs) had kindly offered at the agency workshop to provide us with address lists of practitioners working in the competition law area. When following up with the agencies subsequently, four agencies supplied us with such lists.[21] From these we eliminated any duplicates with our own lists and not applicable contacts (e.g. governmental stakeholders). We then remained with the following country specific lists:

f. Brunei 196 contacts
g. Cambodia 3 contacts
h. Philippines 91 contacts
i. Vietnam 1032 contacts

The identified potential participants, aside from those on list (e), first received an introduction email with some background information about ourselves and ACCESS 1 and subsequently an email invite as well as occasional reminders, where applicable. Emails to personal contacts and organisations included a shareable link as well as a QR code for further distribution of the survey. In total 1593 email addresses were contacted through the survey software. The QR code was also used at relevant conferences and events to elicit participation as well as in direct emails by the research team.

Contacts on list (e) were divided into:

- organisations with only a web contact form (6)
- individuals on LinkedIn (53)

[20] We would like to express our gratitude to all contacts who helped spread the survey. Your help was invaluable and much appreciated.

[21] We would like to express our gratitude to those agencies for their invaluable support which was much appreciated.

- potential participants with only a telephone number (4)

The first of these groups was contacted through their webform, provided with a shareable link and asked to participate and/or distribute the survey, if possible. The second group was contacted in the same way on LinkedIn (as far as possible with the restrictions inherent in that platform). The third group was deemed unfeasible to contact.

We assume that, at the least, 1700-1800 individuals would have received an invitation to participate in the survey through one of the discussed channels. As such the reach was about seven times as wide as in ACCESS 1. The survey was open from February till December 2022 and thus about three times as long as in ACCESS 1.

In a further effort to get a good response rate, we offered translated versions of the survey questions, in four of the most widely spoken ASEAN languages (Bahasa Indonesia, Bahasa Malaysia, Thai and Vietnamese), in addition to the original questions which were posed in the English language. The survey software provided the option of automatic translation into these languages and the Vietnamese and Bahasa translations were additionally vetted by the Vietnam Competition and Consumer Authority and the Department of Competition and Consumer Affairs in Brunei. We are grateful for their kind assistance on this front.

We received a total of 220 responses which originated from the different distribution channels as shown in table 2 below. This is over twice as much as in ACCESS 1.

Table 2: Responses by distribution channel

Distribution channel	**Responses**
Invite over email	67
QR code	67
Anonymous link	86

2.2. Key data on survey-study participants

Like in ACCESS 1, not all of the 220 respondents answered each question. In an attempt to avoid question skipping, we had set the survey to require answers for most questions to be able to continue. However, participants were, of course, free to simply not finish the survey. As such we had a large number of incomplete responses as illustrated in table 3.

Table 3: Participant number according to percentage completed

Percentage of survey completed	Number of participants
2%+	220
10%+	161
30%+	124

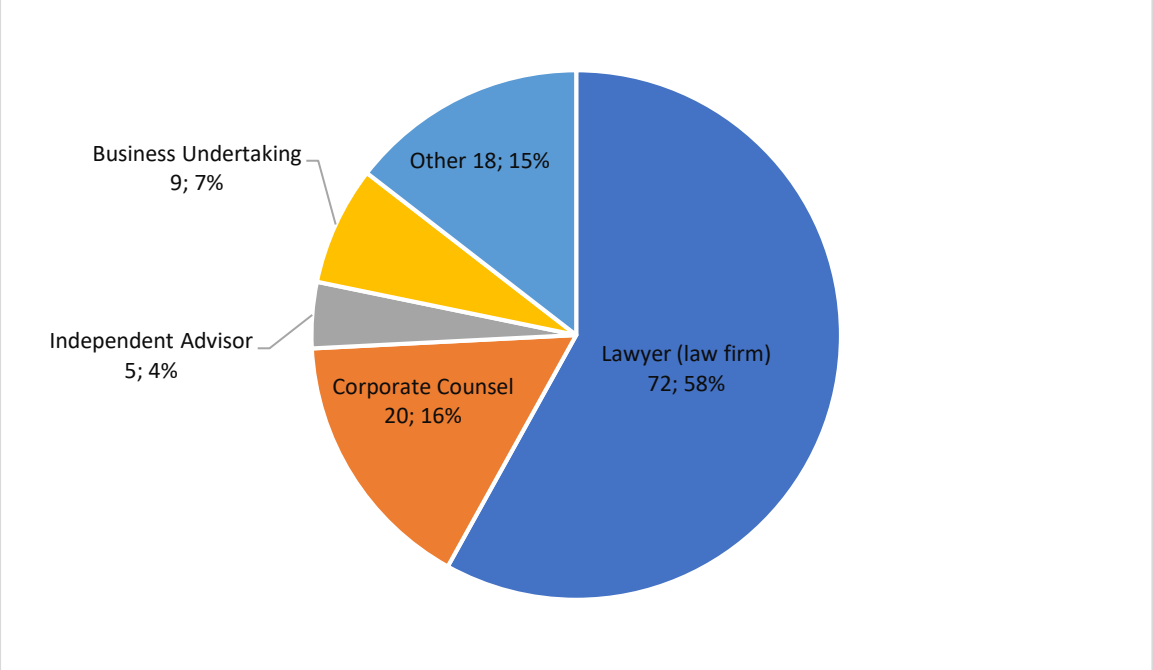
50%+	108
70%+	106
90%+	101
100%	95

Unlike in ACCESS 1, where we included all responses, we decided to only include responses which have completed at least 30% of the survey for this second iteration. This consequently left us with 124 responses to be analysed.

Types of participants

All of these 124 participants answered the question about which classification category they fell into. The vast majority (58%) were lawyers practising in law firms. Around 15% each identified as in-house/corporate counsel or 'other'. The latter residual category included (former) national competition authority officers, academics, members of private oversight organisations, non-practising lawyers etc. Amongst those who identified themselves as corporate counsel 60% worked in multinationals and 15% each in government-linked companies and SMEs. The rest of the participants identified as either 'business undertaking' or 'independent competition law consultants/advisors'.

Chart 1: Type of practitioner



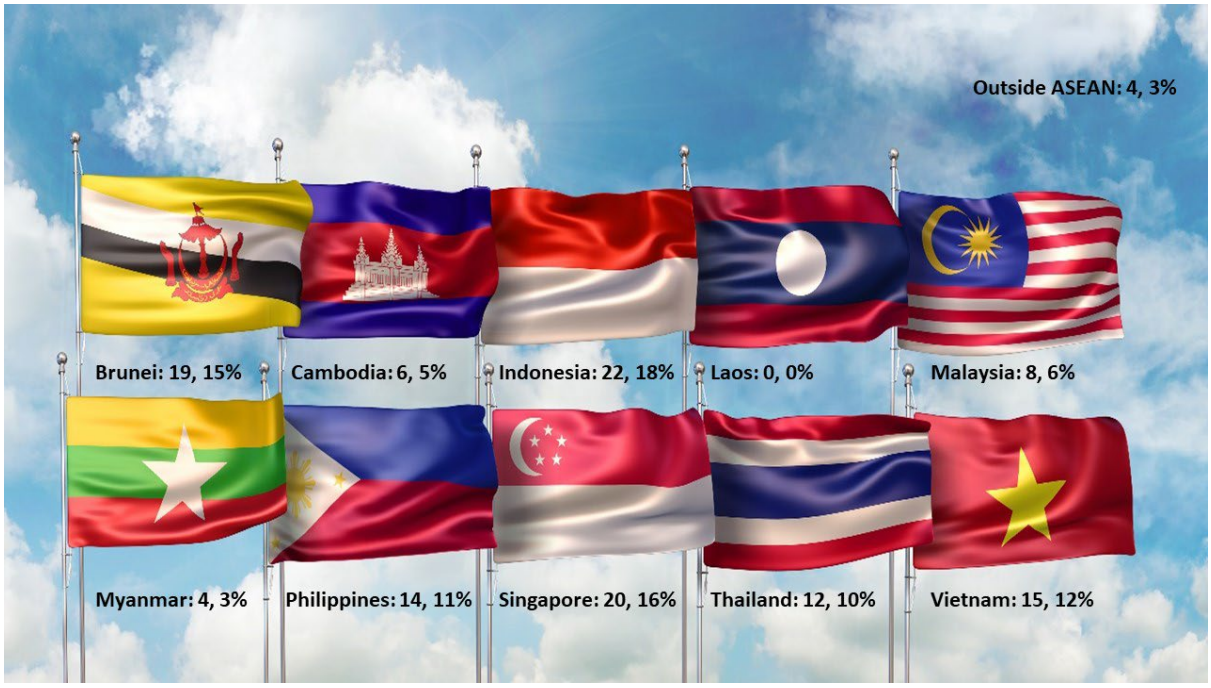
These results are not entirely dissimilar from ACCESS 1. However, we did manage to reach more in-house counsel this time including in-house counsel in SMEs which were lacking in ACCESS 1.

Location of participants

The highest numbers of replies originated from participants located in Indonesia (18%), Singapore (16%) and Brunei (15%). We also received a good number of replies from Vietnam (12%), the

Philippines (11%) and Thailand (10%). This was followed by Malaysia (6%) and Cambodia (5%). 3% of responses came each from Myanmar and from outside the ASEAN region, while nobody located in Lao PDR took part. The geographical distribution of the survey participants is summarised in Figure 1 below.

Figure 1: Location of practitioners [AMS: Number of Participants, Percentage of 124 participants]



Given that we decided to only include responses of 30%+ completeness, the figures are not entirely comparable to ACCESS 1, where all responses had been counted. However, some observations can still be made. In absolute numbers, aside from Lao PDR, where we lost the one respondent that we had had in the first iteration, response numbers were higher everywhere. The increases were less significant in Malaysia (+1), Cambodia (+2) and Vietnam and Thailand (both +3). With Cambodia's competition law only operational since June 2022, we had not expected high numbers here and from both Vietnam and Thailand we already had decent response numbers in ACCESS 1. It was, however, disappointing that we did not manage to get a higher response rate from Malaysia, despite making multiple specific efforts to reach out to contacts in the country and sending targeted reminders.

We had an encouraging increase in participation numbers from the Philippines (+6) and Singapore (+5). The latter is, however, not the largest originator of responses anymore (neither in absolute numbers nor in percentages). This is now Indonesia, where responses in absolute numbers doubled in ACCESS 2. Given an initial low response rate from the country we had, like in Malaysia, we made targeted efforts to increase responses, which seemed to have borne fruit. Most noticeable is the huge increase in response numbers from Brunei (from just one response in ACCESS 1 to 19 responses in ACCESS 2). The kind assistance by the Department of Competition and Consumer Affairs in Brunei will undoubtedly have played a role here.

2.3. Ethics, analysis, validity and reliability

Deliberations on ethics, the data analysis technique employed and the considerations on validity and reliability have not changed from what has been discussed in the ACCESS 1 report to which the reader is therefore referred.[22]

With 124 analysed responses the sample size is bigger and more robust than in the ACCESS 1, where we had not excluded responses with a very low rate of completeness. We thus believe that sample size in this second iteration is at least satisfactory, though we would have, of course, preferred an even larger number of participants from across the ASEAN region.

[22] Ong and Gideon (n 4) p. 11.

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 Indonesia, Singapore, Vietnam, the Philippines and Malaysia – jurisdictions in which between 10% and 20% of the 124 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 1% and 9% of the question-respondents. The same groups had emerged in ACCESS 1 albeit with different percentages. This is probably not surprising as the former group contains the larger jurisdictions with more mature competition law frameworks.

Most of the 124 question-respondents (59%) indicated that they engaged with the AMS's national competition authorities in informal discussions and consultations, while just over half (51%) were involved in merger or joint venture notifications. A significant number of question-respondents had encounters with investigations into suspected competition law infringements (29%) and conduct notifications (27%). Only few had worked on leniency (9%) or other matter (12%). Again, while percentages are slightly different, the order in which these categories appear is identical to ACCESS 1.

In the space provided for free text responses for those who had responded that they had 'other' interactions, a large number of question-respondents explained that they had conducted training or reviewed processes or standard agreements within organisations to make them competition law compliant. This kind of activity had not featured significantly in the ACCESS 1 responses and might be due to the higher number of in-house counsels reached this time. In addition to such organisation-internal work, researching competition law matters or advising lawyer counterparts in other countries was mentioned. Some respondents simply named particular infringements (e.g. predatory pricing, anti-competitive agreements) without specifying in which kind of interaction this had come up. In contrast to ACCESS 1, participation in advocacy activities organised by the NCAs, representing these authorities in appellate proceedings, as well as other advisory-related conduct was not mentioned.

A more detailed breakdown of the data on competition law interactions question-respondents have had with the various national competition law frameworks can be found in Section 1 of Appendix II.

2. Expenditure on Competition Law Compliance (Question 5)

The overall picture on expenditure in ACCESS 2 is not dissimilar from what we learned in ACCESS 1. While many interactions between the question-respondents and the NCAs incurred compliance costs of between USD$0 and 10,000, the responses indicate that certain interactions incur significantly higher costs. In particular, 53% of respondents who had been involved in investigations into suspected infringing activities, 64% of respondents who had been involved in cartel leniency and whistleblowing matters and 66% of respondents who had been involved in merger notifications indicated spending more than USD$20,000 on each occasion. In the free text comments, it was even indicated that the costs for interactions could reach seven figures.

Some question-respondents explained that certain national competition authorities did not charge formal fees to business undertakings who dealt directly with them. Instead, a major cost factor for respondents was the fees for the legal advice they required in such interactions. Other costs can also occur from research (e.g. market analysis) and training activities.

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

Having indicated which AMS's 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) That the scope of the AMS's competition law framework prohibited all major forms of anti-competitive conduct. [Scope]
(ii) That the AMS's competition law framework was consistent with international standards. [International standards]
(iii) That the AMS's competition law framework was transparent. [Transparency]
(iv) That the AMS's competition law framework was business-friendly. [Business-friendliness]
(v) 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. [Equal application]
(vi) That the AMS's competition law framework was administered by a professionally competent national competition authority. [Professional competence]
(vii) That the implementation of the AMS's competition law framework has made markets in that jurisdiction more competitive. [Market competitiveness]

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**[23] (number in ACCESS 1)	**Scope** (percentages in ACCESS 1)	**International standards** (percentages in ACCESS 1)
Brunei Darussalam	**15** (1)	**93%** (100%)	**80%** (100%)
Cambodia	**0**[24] (0)	-	-
Indonesia	**37** (13-14)	**84%** (79%)	**54%** (36%)
Lao PDR	**2** (4)	**50%** (25%)	**50%** (25%)

[23] Due weight should be given to the small number of question-respondents who had dealings with the national competition authorities of some of these AMS (esp. Lao PDR) when interpreting these results.

[24] Practitioners had reached out to us in October 2022 to alert us of the appointment of the CCC in July 2022 and request for Cambodia to be added to the options of jurisdictions one could have had dealings and express perceptions about (questions 3 and 6). Yet, despite having subsequently added that option we, unfortunately, have not had any responses in terms of perceptions on the above seven factors.

Malaysia	**22** (14-15)	**44%** (67%)	**82%** (73%)
Myanmar	**11** (8)	**36%** (88%)	**18%** (63%)
Philippines	**24** (13)	**81%** (85%)	**86%** (77%)
Singapore	**23** (20)	**78%** (80%)	**83%** (80%)
Thailand	**18** (9-10)	**67%** (80%)	**50%** (50%)
Vietnam	**24** (11-12)	**58%** (64%)	**42%** (18%)

Overall, the tendencies are not remarkably dissimilar from round 1, except for the result from Myanmar. While the eight respondents in round 1 agreed to 88% and 63% respectively with the statements on scope and international standards, the majority now did not express agreement with these statements.

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** (number in ACCESS 1)	**Transparency** (percentages in ACCESS 1)	**Business-Friendliness** (percentages in ACCESS 1)	**Equal Application** (percentages in ACCESS 1)
Brunei Darussalam	**15** (1)	**60%** (100%)	**67%** (100%)	**73%** (100%)
Cambodia	**0** (0)	-	-	-
Indonesia	**37** (13-14)	**49%** (29%)	**51%** (14%)	**68%** (46%)
Lao PDR	**2** (4)	**0%** (0%)	**0%** (25%)	**0%** (0%)
Malaysia	**22** (14-15)	**73%** (57%)	**55%** (33%)	**73%** (71%)
Myanmar	**11** (8)	**0%** (25%)	**0%** (50%)	**18%** (25%)
Philippines	**24** (13)	**63%** (69%)	**50%** (39%)	**63%** (46%)
Singapore	**23** (20)	**91%** (75%)	**78%** (65%)	**61%** (85%)
Thailand	**18** (9-10)	**33%** (30%)	**33%** (20%)	**44%** (40%)
Vietnam	**24** (11-12)	**25%** (18%)	**25%** (18%)	**33%**[25] (18%)

[25] These results, which represent the views of only 24 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*

Compared to ACCESS 1, question respondents in Myanmar seem to have lost confidence in their competition law on these factors,[26] while Indonesia, Malaysia and the Philippines have improved the percentage of respondents who agreed with the statements. In Singapore, percentages of agreement with the statements on transparency and business-friendliness improved, but the percentage of those who agreed that there was equal application went down from 85% to 61%.

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** (number in ACCESS 1)	**Professional competence** (percentages in ACCESS 1)	**Market competitiveness** (percentages in ACCESS 1)
Brunei Darussalam	**15** (1)	**53%** (0)	**33%** (0)
Cambodia	**0** (0)	**-**	**-**
Indonesia	**37** (13-14)	**59%** (14%)	**49%** (36%)
Lao PDR	**2** (4)	**0%** (0%)	**0%** (0%)
Malaysia	**22** (14-15)	**77%** (47%)	**55%** (13%)
Myanmar	**11** (8)	**9%** (13%)	**0%** (13%)
Philippines	**24** (13)	**67%** (77%)	**46%** (23%)
Singapore	**23** (20)	**87%** (90%)	**65%** (45%)
Thailand	**18** (9-10)	**34%** (20%)	**22%** (11%)
Vietnam	**24** (11-12)	**29%** (18%)	**38%** (42%)

Remarkably, in all countries the believe that the respective competition law has led to improved market competitiveness either remained roughly the same or significantly increased. This may be due to the increasing maturity of the regimes making potential benefits more visible. Brunei, Indonesia, Malaysia, Thailand and Vietnam also achieved higher (in the first three cases significantly higher) percentages agreeing that the authority was professionally competent.

and services, enterprises that operate in state-monopolized sectors/domains, public sector entities and foreign enterprises that operate in Vietnam.'

[26] When looking on the bare percentages this appears to be true for Brunei as well. However, with only one respondent in ACCESS 1, the percentages as such are less meaningful than the overall tendency which is similar.

A country-specific summary of the opinions shared by these question-respondents about each AMS's 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.

49% the 124 analysed survey participants (61 question-respondents) indicated that they had encountered competition law compliance matters that involved cross-border or multi-jurisdictional issues across more than one AMS. This is a significant increase from the 21 respondents who had done so in the first iteration. Of these 61 participant respondents, the following AMS jurisdictions were identified as countries whose national competition law framework had been engaged with:

ASEAN Member State	**Percentage of question-respondents whose cross-border or multi-jurisdictional competition law compliance dealings included this jurisdiction** (percentages in ACCESS 1)
Brunei Darussalam	**2%** (0%)
Cambodia	**2%** (n/a)
Indonesia	**39%** (50%)
Lao PDR	**2%** (0%)
Malaysia	**31%** (45%)
Myanmar	**8%** (20%)
Philippines	**16%** (30%)
Singapore	**75%** (75%)
Thailand	**20%** (25%)
Vietnam	**41%** (45%)

The distribution is not significantly dissimilar from ACCESS 1.

17% of respondents, who had engaged with cross-border or multi-jurisdictional competition law compliance matters, categorised themselves as having no awareness of the differences, both substantive and procedural, between the national competition law frameworks. 32% indicated they had 'limited awareness', 37% 'some awareness' and 14% 'substantial awareness. In ACCESS 1, only

5% had indicated 'no awareness', while 23% indicated 'limited awareness', 50% 'some awareness' and 23% 'substantial awareness'. This might indicate that there is an increased appreciation amongst stakeholders of the complexities arising from navigating two or more substantially different national competition law frameworks.

49% of the question-respondents having encountered cross-border competition compliance issues indicated that the legal differences between the national competition law frameworks of the AMSs, that they have had dealings with, had affected the compliance decisions they had to make. This is not drastically different from the 57% who gave this response in ACCESS 1.

Like in ACCESS 1, differences between the characteristics of the national merger control frameworks of the AMSs were highlighted by question-respondents as a major factor in this regard. In particular, whether merger notifications are mandatory or voluntary, which kinds of mergers fall under the regime, how mergers were substantively assessed and timelines were singled out as issues which posed challenges or created difficulties for competition law advisors and their clients. Further, in ACCESS 2, differences in approach towards vertical agreements (distribution agreements, parallel imports, etc.) were frequently named, as well as the differences in the levels of independence and pro-activeness of the NCAs.

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

The attention of all survey participants then was drawn to the stated objectives of the ASEAN Competition Action Plan (ACAP 2025) and the longer-term goals of the AEC 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 for concrete steps that might be taken to achieve such outcomes.

Slightly less than half of the 124 analysed 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** (percentages in ACCESS 1)
Single Economic Entity principles	**89%** (87%)
Market Definition principles	**88%** (85%)
Most serious forms of infringing conduct	**89%** (91%)
Competition law Exemptions	**81%** (80%)
Conduct notification and clearance	**89%** (87%)
Merger notification thresholds	**83%** (68%)
Merger pre-notification guidance	**93%** (91%)
Merger control timelines	**93%** (93%)
Cartel detection and leniency	**91%** (87%)

These results are very similar to those in ACCESS 1 with the exception of 'merger notification thresholds', where only 68% expressed that they would like to see closer alignment in the first iteration of ACCESS.

In the free text comments, where participants could elaborate on the expressed opinions, several participants expressed understanding of the obstacles that stood in the way of convergence between the AMSs (e.g. different legal traditions, stages of development). However, they suggested that some procedural alignment of e.g. merger thresholds, time scales, notification requirements etc. would still be beneficial even if there remained divergence on more substantive matters. Further, reference was made to the difficulties faced by undertakings arising from the divergence in national competition law leniency policies.

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

(i) Application of competition law principles to data-driven industries and the digital economy
(ii) Treatment of vertical agreements
(iii) Measuring dominance of an undertaking
(iv) Essential facilities doctrine

Some of these (e.g. competition law and the digital economy) were also amongst those named in ACCESS 1. Others mentioned in ACCESS 1 (e.g. extraterritorial application, application of criminal law principles to competition law) did not come up in ACCESS 2.

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 obstacles that have complicated regional efforts to bring the national competition law frameworks of the AMSs in closer alignment with each other:

(i) Different national legal and non-legal contexts (mentioned by over 30 participants)
    - E.g. different legal traditions, different economic systems leading to different understanding of the importance of competition, different stages of economic development, cultural differences, etc.
(ii) NCAs / Enforcement (mentioned by over 20 participants)
    - Differences in the levels of expertise, capacity, and resources available to NCAs resulting in different levels of enforcement
(iii) Lack of support (mentioned by about ten participants)
    - For competition law in other government branches and the judiciary as well as competing national interests (e.g. protection of SOEs/GLCs)
(iv) Different legal frameworks (mentioned by over five participants)
    - Including different procedural approaches, as well as different interpretation (even when laws are similar)
(v) Weak ASEAN level (mentioned by three participants)
    - Insufficient power at the ASEAN level to effect convergence from the regional level
(vi) Corruption (mentioned by three participants)
(vii) Language differences (mentioned by two participants)
(viii) Lack of knowledge (mentioned by two participants)
    - Of competition law and policy and its potential benefits within the country due to limited advocacy or exchange with NCA
(ix) Differences in how competition and intellectual property laws interact (mentioned by one participant)

These points raised are not entirely dissimilar to what was remarked by participants in ACCESS 1.

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 and stakeholders 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 of ACCESS 2, a number of predictable observations emerge which largely coincide with what had been observed in ACCESS 1:

- 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. Indeed, if anything they seem to have increased in number since ACCESS 1.
- 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 AEC, 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 when it came to transparency, professional competence, business-friendliness and equal application. These tendencies are overall similar to ACCESS 1. However, it should be noted that the number of those who did agree with the statements on 'international standards' and 'professional competence' generally increased. In both ACCESS 1 and ACCESS 2, survey participants across jurisdictions, were generally more 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, though, again, the percentages of those who did agree are higher in ACCESS 2. As mentioned above, it may be that with increased maturity of the competition law regimes potential benefits of competition law have become more visible.

2. Inferences from survey results and responses

The inferences which can be drawn from ACCESS 2 are similar to those of ACCESS 1. The willingness of a large number of practitioners to make time in their busy schedules to partake in the survey

(partly for the second time) suggests a genuine interest in contributing to a study that might encourage AMSs to collectively pursue competition law and policy reform initiatives at a regional level that produce convergence or harmonisation outcomes. In addition to the areas of competition law and policy proposed, many survey participants also suggested other areas in which they felt convergence could be useful to advance the regionalisation agenda of the AEC. Such engagement belies a recognition that such developments would entail benefits for the concerned undertakings such as reduced compliance costs and making it easier to take business decisions at a regional level. This, along with the increased number of participants having been involved in cross-border transactions, may indicate an 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 such convergence or harmonisation materialising in the short term. A large number of participants pointed to the very real issue of different local conditions, needs and goals of each AMS, which need to be respected. Another issue standing in the way of convergence in the view of many respondents were the unequal experience, knowledge, resources and powers of the NCAs. However, it also appeared that some have adopted a more cynical view of the level of governmental support for such convergence proposals within the AMSs - for example, because competition law convergence was simply not a priority or because there might be competing national interests. A few stressed the lack of supranational laws at the ASEAN level as an impediment towards the achievement of its aspirational competition law goals for the AEC. Despite these obstacles, which stand in the way of AMSs aligning their respective national competition law frameworks more closely with each other - obstacles which are not entirely dissimilar from those identified in ACCESS 1 - it remains a rational course of action to pursue convergence given the undeniable nexus between the need to have common competition rules across individual neighbouring jurisdictions and the regional market integration goals of the AEC. Nor does it necessarily need to be particularly controversial, if such alignment involves core 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 justify 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 the sizes and structures of the markets in the different AMSs, or exemptions for SMEs might be justifiable in some countries with a view to encourage entrepreneurship as part of their poverty reduction strategies. Yet, achieving greater alignment in some areas of the national competition law frameworks, where particular national peculiarities do not stand in the way of this, can offer great benefits for undertakings.

While the report has focused on identifying the perceptions of undertakings to which the different national competition laws are applicable, the benefits of greater convergence and harmonisation between these legal frameworks should be equally apparent for each AMS's national competition authorities and, ultimately, consumers within the AEC. Indeed, as regards the former, the ACCESS 1 agency workshop revealed that various NCAs had faced struggles in cross-border competition cases (e.g. low levels of compliance from foreign companies, difficulties in conducting investigations and enforcement activities against foreign companies, or different exemptions and timelines creating obstacles for cross-border agency cooperation). Closer inter-agency cooperation is more likely to be

fostered between national competition law regimes with more closely aligned substantive and procedural frameworks.

3. Recommendations

Bearing all of the above in mind, we formulated a series of modest recommendations in ACCESS 1 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, which can only be reinforced in the light of the results of ACCESS 2, are summarised below.[27]

Recommendation (1): Engage with relevant stakeholders

Here we encouraged the ASEAN Experts Group on Competition (AEGC) / ASEAN Competition Enforcement Network to conduct focused discussions with relevant stakeholders to identify areas of competition law or policy reform that would reap immediate and substantial benefits to undertakings operating in two or more jurisdictions within ASEAN. We suggested that, on the basis of the ACCESS 1 results, such a list 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 the difficulty and timeframe legislative reforms involve, we suggested to initially focus on areas which can be achieve without having to re-write statute (e.g. changes in policies and guidelines).

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

Once a consensus is reached on the areas of competition law reform to be pursued regionally, we suggested the AEGC could kick-start this process by formulating specific action plans that the national competition authorities can execute with their respective national governments. Not all AMS would necessarily need to conduct reforms at the same time. It would be entirely possible to for some to forge ahead in a 'two-speed ASEAN', something which has been undertaken in other regional integration communities such as the European Union on several occasions. 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. Further, we suggested that the reform agenda should not only entail policy and legislative changes but also

[27] The more detailed explanations of these recommendations can be found in the phase 1 report (see Ong and Gideon (n 4) p. 21-24).

parallel measures to foster closer co-operation between national competition authorities (e.g. on information sharing).

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 and to ensure 'interoperability'.

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. Yet, in addition specific arrangements can and should be made to achieve more targeted substantive and procedural convergence outcomes. Inspiration for competition-specific arrangements could 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.

4. Specific reform proposals

Both ACCESS 1 and ACCESS 2 have tried to identify some of the more obvious areas of competition law reform that ought to be explored within the national competition law frameworks of the AMSs. However, to identify more specific areas for reform, which are both likely to reap immediate and substantial benefits and practically feasible as envisaged in our recommendation (1) above, the ACCESS team convened a workshop in March 2023 with local competition law experts from the six AMSs with the most mature competition law regimes: Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam. The preliminary findings from this workshop were then shared with a wider audience of practitioners and stakeholders at a public conference scheduled immediately after the workshop. The workshop-conference investigated the similarities and differences between two aspects of the competition law frameworks of the AMSs – merger review and anti-cartel laws – and examined the possibility of convergence or harmonisation between the different national laws. The aim was to concretely identify specific areas within these two fields of competition law in which law reform efforts with convergence or harmonisation objectives may be pursued.

As mentioned above, the results from ACCESS do not point towards systemic convergence between these national competition law regimes. It is unavoidable that each AMS pursues their particular policy objectives within their respective legal, social, economic and political contexts. Instead, the workshop conducted with competition law experts from the six most established AMS competition law systems focused on specific aspects of their respective cartel and merger laws to identify similarities and differences. As the discussions progressed, the divergences between the details of these aspects of their national competition law frameworks were brought into sharp focus. These ranged from the role of market definition, to what is regarded as an 'agreement' or 'merger' under the relevant laws, as well as the sanctions imposed for infringements.

Market definition principles might be one obvious area for closer alignment because the underlying economic analysis does not appear to depend very much on the cultural or political environment of each AMS. Furthermore, how markets are defined is also often decided by the NCA rather than dependent on codified laws, which would make closer alignment easier to achieve as it would not require legislative changes to be made.

Cartel prohibitions

All AMSs differentiate, in some form, between more severe conduct which would normally be considered as anti-competitive and rarely (if at all) able to benefit from exemptions (per se restrictions or object restrictions) and other conduct which would be regarded as anti-competitive depending on the actual effects produced on the market (rule-of-reason restrictions or effect-based restrictions). However, the types of conduct which fall into each category, and which legal tests should be applied, differed significantly between AMSs. Some of the differences may have been due to idiosyncrasies of the drafting processes in the individual AMSs, but others can also relate to the core of what exact goals are pursued by each jurisdiction. Further, due to different experiences and capacities of the authorities, approaches requiring detailed economic analysis may be more difficult to realise in some AMSs than in others and a more form-based approach could, at least in the beginning, be useful. This area may thus be difficult to harmonise completely. However, it is still worth exploring if there are particular forms of hardcore cartel conduct which all NCAs agree should be condemned by their respective national competition laws in the same way. Bid-rigging is a good example, as it not only seems to be regarded as a severe restriction of competition in all six AMSs analysed at the workshop, it is also likely to cause significant and direct costs to the public purse in every individual AMSs. Price fixing also seems to be widely considered as one of the most serious forms of anti-competitive conduct in those six jurisdictions.

The possibility of leniency for whistle-blowers could also be considered as a potential area for competition policy convergence. In this respect, a few important obstacles were raised at the workshop. Leniency is often brought up in the context of increasing detection. However, leniency is only likely to be utilised by companies if there is already aggressive and successful enforcement, because otherwise there is little incentive to come forward. In that sense, it might not necessarily achieve the same benefits in each AMS. Cultural differences were equally discussed. In some AMSs there is a strong sense that wrongdoers should be punished and as such these AMSs might be opposed to granting complete immunity. This in turn might make it less likely for undertakings to want to blow the whistle. Further, differences in business culture might mean that leniency programmes would not be utilised by undertakings that might regard whistleblowing as inappropriate business behaviour. Finally, in certain jurisdictions it would be considered inconsistent with the constitutional division of powers to allow administrative authorities to grant leniency because this is regarded as something only the courts should have the power to grant. Despite these obstacles, it was stressed that many cartels were indeed cross-border these days and convergence in leniency would be useful. Without leniency in all the AMSs, it seemed unlikely that an undertaking would ever come forward in cases where there is even the slightest chance of facing sanctions (esp. criminal ones) in another AMS. Four of the six countries represented at the workshop already have leniency programmes and reforms towards integrating such programmes in the other two were discussed. Notwithstanding these difficulties, this could therefore be a suitable area for greater reform efforts directed at convergence and/or cooperation between competition enforcement agencies. More specifically, a discussion that needs to take place is whether criminal sanctions in

one AMS can be suspended in cases where an undertaking is willing to come forward to reveal the existence of a cartel when seeking leniency in another AMS. Potentially comity between AMSs could be relied upon in such cases. After all, arguably eliminating the anti-competitive harms in the multiple markets could outweigh the interest in criminally prosecuting the whistleblowing individuals when it comes to a cross-border cartel.

Another area where closer alignment was examined involved sanctions for anti-competitive agreements. Some AMSs have criminal sanctions, while others have purely administrative fines. The feeling in those countries with criminal sanctions appeared to be that administrative fines would not be taken seriously and would not achieve the same degree of deterrence. Yet, arguably, this might depend on the level of the fine imposed. With larger fines, it might be possible to make administrative sanctions as deterrent as criminal ones. However, cultural differences between the AMSs may also create obstacles towards achieving alignment on this front. In some countries, the view taken was that cartels have the intention to cause serious economic harm and those responsible should be severely punished. While criminal sanctions might stigmatise the wrongdoing of cartel members, it would also require a criminal burden of proof which would create enforcement difficulties for the relevant authorities. An approach based on criminal sanctions may thus make it harder for the national competition law framework to eliminate the harms that cartels inflict upon consumers. This raises the question if alignment towards administrative sanctions would be more practical, an issue which requires further research inquiry.

Finally, aside from issues relating to how the law is drafted or interpreted, alignment efforts could also be directed towards identifying which cross-border markets could be treated as priority sectors by the national competition authorities. There are certain industry sectors within ASEAN (e.g. supply of farmed food products, cross-border transportation services, etc.) which are inherently multi-jurisdictional in character, making them ideal focal points for NCAs in their enforcement activities.

The workshop and conference have demonstrated the difficulties in achieving alignment in even only a few specific areas of the national competition laws of the AMSs. Nonetheless, there are clearly several features of these national anti-cartel-laws, where some convergence is certainly worth exploring. The possibility of common soft law guidelines can, at the very least, be looked into by the NCAs at the ASEAN level.

Mergers

When it comes to merger control, issues which could be explored for closer alignment include the definition of what counts as a 'merger' and the relevant thresholds. While there are justifiable differences between jurisdictions as to what thresholds should trigger notification obligations (e.g. a jurisdiction with a lower GDP may be affected more by mergers with lower combined turnovers), AMSs might consider agreeing on how thresholds are measured or calculated (e.g. as turnover, asset values or profits, etc.). Equally, a common position may potentially be reached on the scope of merger control – whether it covers acquisitions, joint ventures, asset transfers, etc. These questions do not seem to be overly affected by local cultural or economic conditions. One of the common observations from the workshop discussion between the ASEAN competition law experts was that different outcomes were reached in the handling of the well-known Uber-Grab merger in each AMS because the transaction was not captured by the scope of the merger control laws of each

jurisdiction. Some alignment here across the AMSs could therefore have achieved a more coherent and consistent regulatory response across the entire region.

Another area for convergence could be the stage at which the merger notification has to be, or can be, made (i.e. whether *ex ante* or *ex post* notifications ought to be made). Currently, while some jurisdictions require prior notification, others demand notification after the fact, while yet others make notification entirely voluntary. This creates a complex regulatory landscape and diminishes the degree of legal certainty that undertakings with pan-ASEAN merger transactions would find beneficial.

A more specific idea brought forward at the workshop was to attempt a *sui generis* ASEAN merger procedure for cross-border mergers. While a one-stop-shop, such as in EU law, would not be possible or practical at the ASEAN level, something as simple as a combined form/application could be a solution to facilitate cross-border merger processes. Such a form could have sections for common information such as the businesses' industry background, financial data and future plans. In addition, there could be jurisdiction-specific sections where questions could be asked that are relevant for the analysis in only some or even only one jurisdiction. These forms could then be filled in by the undertakings' legal teams and provided to all relevant NCAs. The NCA's would have to adhere to common timelines while still conducting each assessment locally. Information in the forms would have to be treated with the same confidentiality protections that would apply to all other local merger notifications made under each national competition law framework. However, this could diminish duplication of efforts and provide the notifying undertaking with some predictability in terms of timelines.

As with anti-cartel laws, the difficulties towards closer alignment in the realm of merger control are manifold. Nonetheless, there could be real benefits for the AEC in pursuing some of the convergence efforts outlined above.

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
    - Please describe the nature of your professional interest in your dealings with the national competition law regimes of the AMSs

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
- Cambodia [since appointment of Commission in July 2022][28]
- 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
    - Please describe the competition law compliance matters that you have encountered

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 on expenditures, if necessary.

[28] As mentioned above (n 8) , the members of the CCC have only been appointed in July 2022. As such, practitioners could only have had dealings with the CCC since the latter date.

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 prohibits all major forms of anti-competitive conduct.					
The competition law framework is consistent with international standards.					
The competition law framework is transparent.					
The competition law framework is business-friendly.					
The competition law framework 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 is administered by a professionally competent national competition authority					
The implementation of the competition law framework has made markets 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
        - Cambodia [since July 2022]
        - 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	Somewhat Agree	Neither agree nor disagree	Somewhat 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	Somewhat Agree	Neither agree nor disagree	Somewhat disagree 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	Somewhat agree	Neither agree nor disagree	Somewhat 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	Somewhat agree	Neither agree nor disagree	Somewhat 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	Somewhat agree	Neither agree nor disagree	Somewhat 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?

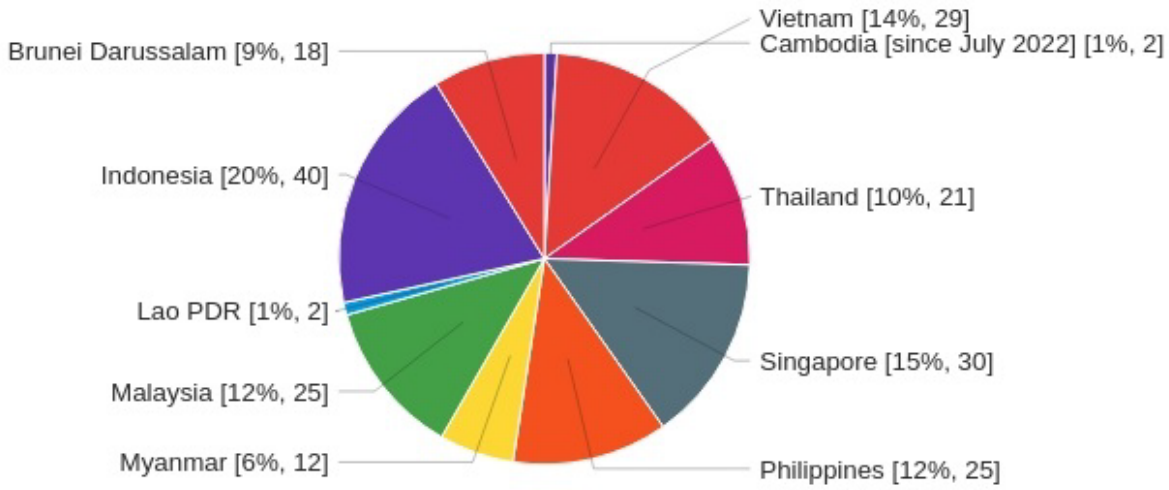
Question 11 of 11:

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'S NATIONAL COMPETITION LAW FRAMEWORKS

1. Participants' engagement with AMS national competition law frameworks

All of the 124 survey participants, who were included in the analysis, responded 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 [Question 3]. The following jurisdictions raised competition law compliance matters which they had to engage with: Indonesia (20%), Singapore (15%), Vietnam (14%), Malaysia and the Philippines (12% each), Thailand (10%), Brunei Darussalam (9%), Myanmar (6%) and Cambodia and Lao PDR (1% each).



All of the 124 analysed participants also responded to indicate that they had engaged with the AMS's national competition authorities in the following types of dealings [Question 4]:

Competition law matters encountered	Percentage of question-respondents
Informal discussions and consultations	59% (73 respondents)
Merger or joint venture notifications	51% (64 respondents)
Investigations into suspected infringement activities	29% (36 respondents)
Conduct notifications (e.g. for guidance or exemptions)	27% (34 respondents)
Cartel leniency, whistleblowing etc.	9% (11 respondents)
Other compliance matters[29]	12% (15 respondents)

[29] This included, for example, corporate training and review of agreements, internal discussions on risk of infringing competition laws, research on draft competition legislation, etc.

Of the 124 survey participants analysed, 61 had been involved in competition law compliance matters that involved cross-border or multi-jurisdictional issues across more than one AMS [Question 7]. Between 30% and 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%), Vietnam (41%), Indonesia (39%) and Malaysia (31).

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:

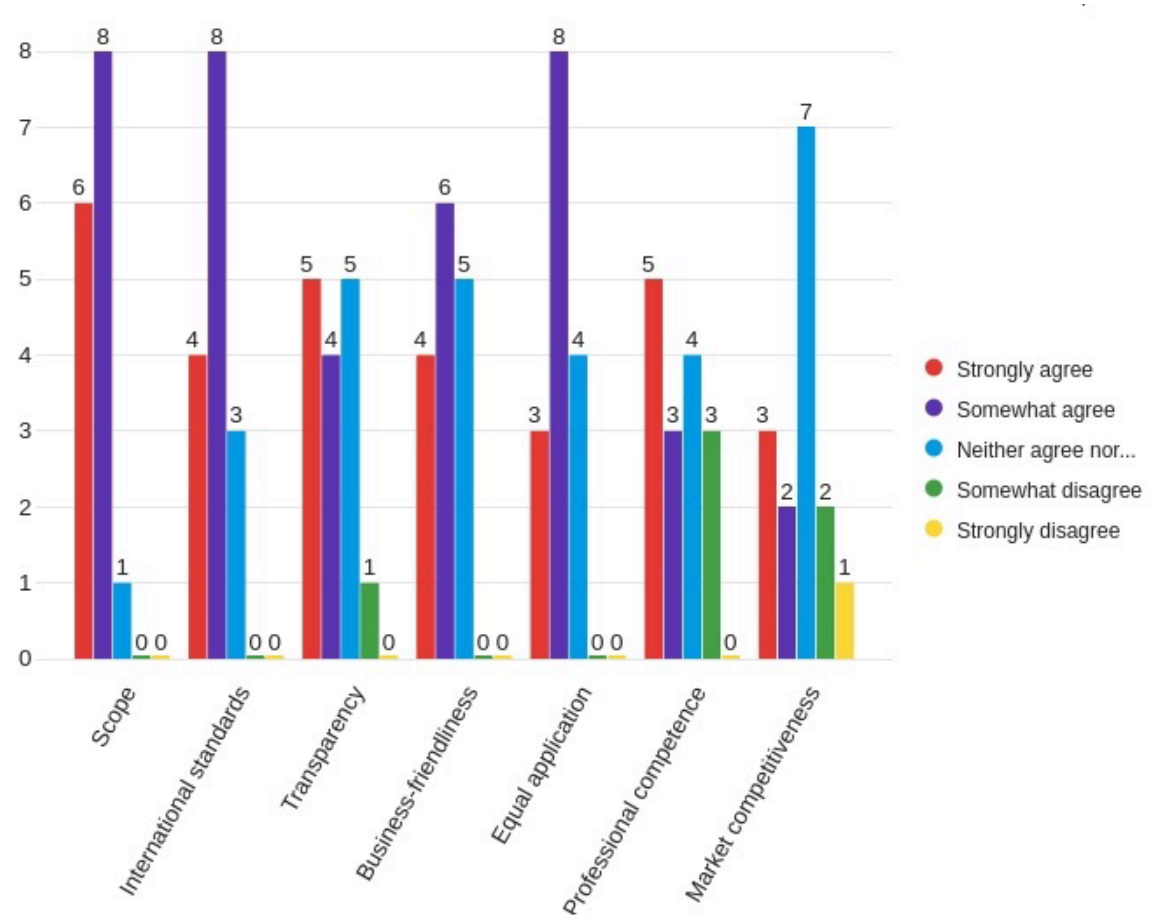
ASEAN Member State	Number of respondents who expressed their views on the national competition law framework
Brunei Darussalam	15
Cambodia	0
Indonesia	37
Lao PDR	2
Malaysia	22
Myanmar	11
Philippines	24
Singapore	23
Thailand	18
Vietnam	24

2. Participants' perceptions of individual national competition law frameworks

Brunei Darussalam

18 participants indicated having had previous dealings in this jurisdiction, but only 15 participants responded to our invitation to share their perceptions of the national competition law framework of Brunei Darussalam. A vast majority of them indicated that Brunei Darussalam's competition law framework generally covered all major forms of anti-competitive conduct and was consistent with international standards. The clear majority also agreed that it was business-friendly and applied equally to all undertakings. None of the respondents expressed any disagreement on these four questions. A slighter majority agreed with the questions on transparency and professional competence. Here, one respondent also disagreed that the competition law was transparent and a fifth expressed doubts about the professional competence of the authority. Responses were particularly mixed on market competitiveness with only a third agreeing, while nearly half were neutral and a fifth disagreed. The overall results are not entirely dissimilar from ACCESS 1. However, then they were only based on one respondent and as such are now more robust.

Chart 1: Key perceptions Brunei



Cambodia

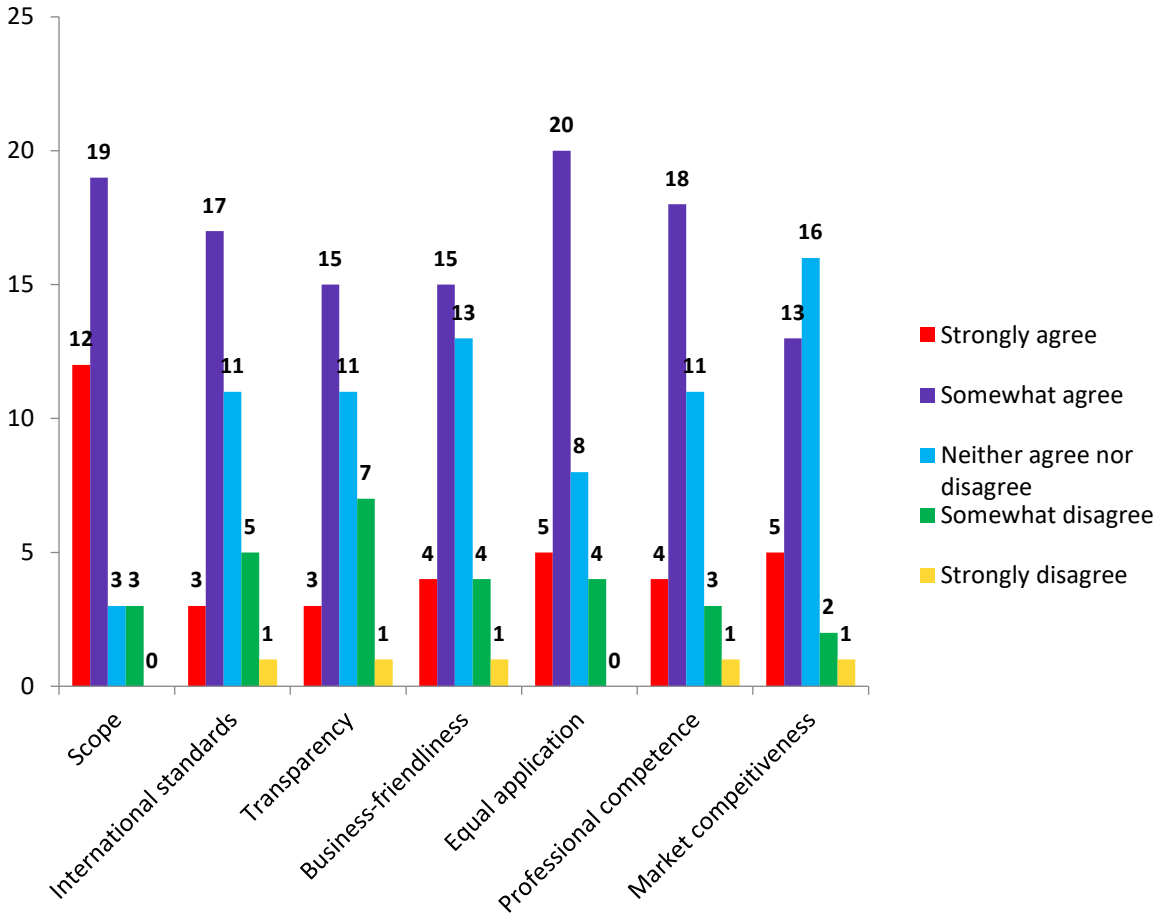
Practitioners kindly reached out to us in October 2022 to alert us of the appointment of the CCC in July 2022 and request for Cambodia to be added to the options of jurisdictions one could have had

dealings with (questions 3 and 6). Two participants subsequently did indicate that they have had dealings with the Cambodian competition law regime or NCA in the past 24 months. Despite that, unfortunately, neither of them responded to our invitation to share their perceptions in question 6. As such we have no further data here.

Indonesia

Of the 40 respondents who have had dealings with the national competition law framework in Indonesia, 37 reacted to these statements. A vast majority agreed that the national competition law framework covered all major forms of anti-competitive conduct. Between 51% and 68% of these 37 participants agreed with the statements on international standards, business-friendliness, equal application and professional competence. However, less than half agreed that this framework was transparent and had made markets more competitive. Indeed, 22% disagreed or strongly disagreed that the national competition law framework was transparent. When it comes to market competitiveness a large number (43%) where undecided. These results are overall improvements from ACCESS 1.

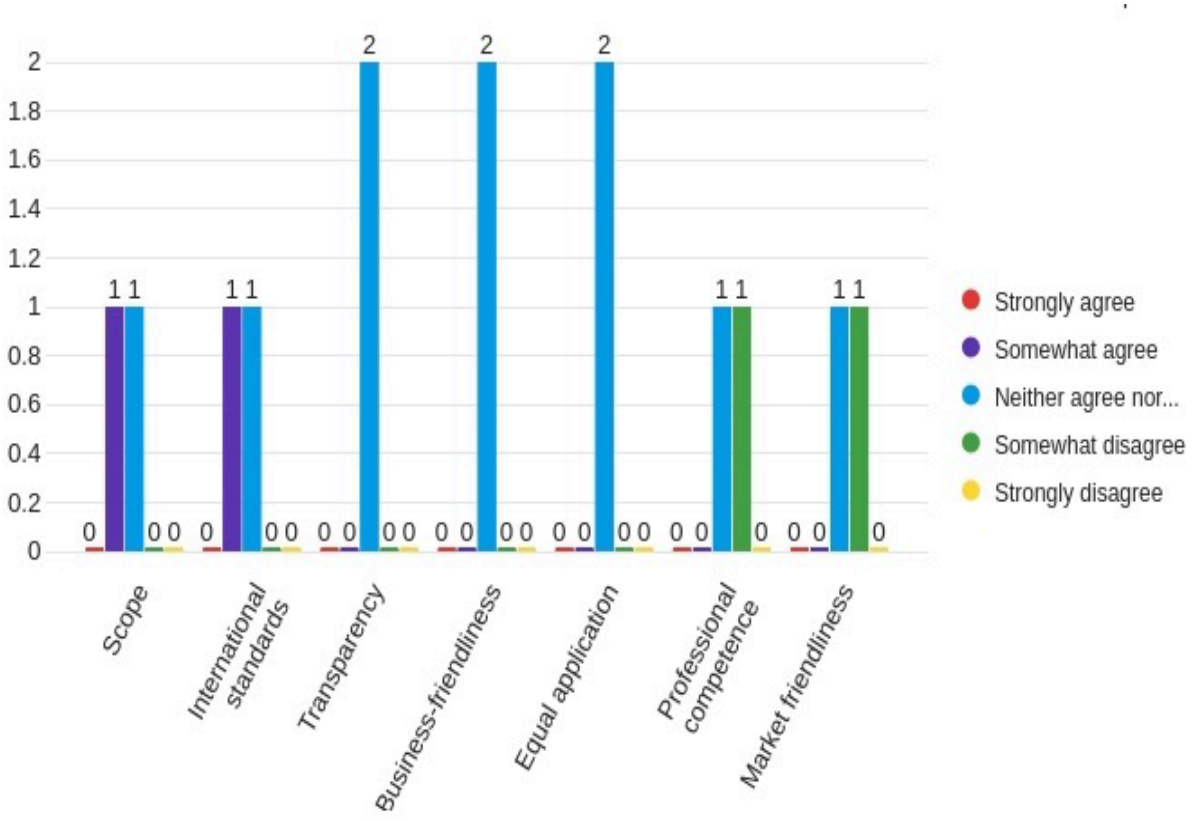
Chart 2: Key perceptions Indonesia



Lao PDR

Both of the two respondents who had previous dealings with the national competition law framework of Lao PDR reacted to the statements in question 6. Half agreed that the national competition law framework covered all major forms of anti-competitive conduct and that it was consistent with international standards. Both participants were undecided on its transparency, business-friendliness and equality of application. Yet, half had doubts about the professional competence of the NCA and if the introduction of competition law had made markets more competitive. These results are improvements from ACCESS 1. However, note should be taken of the small number of respondents when engaging with these results (both in ACCESS 1 and ACCESS 2).

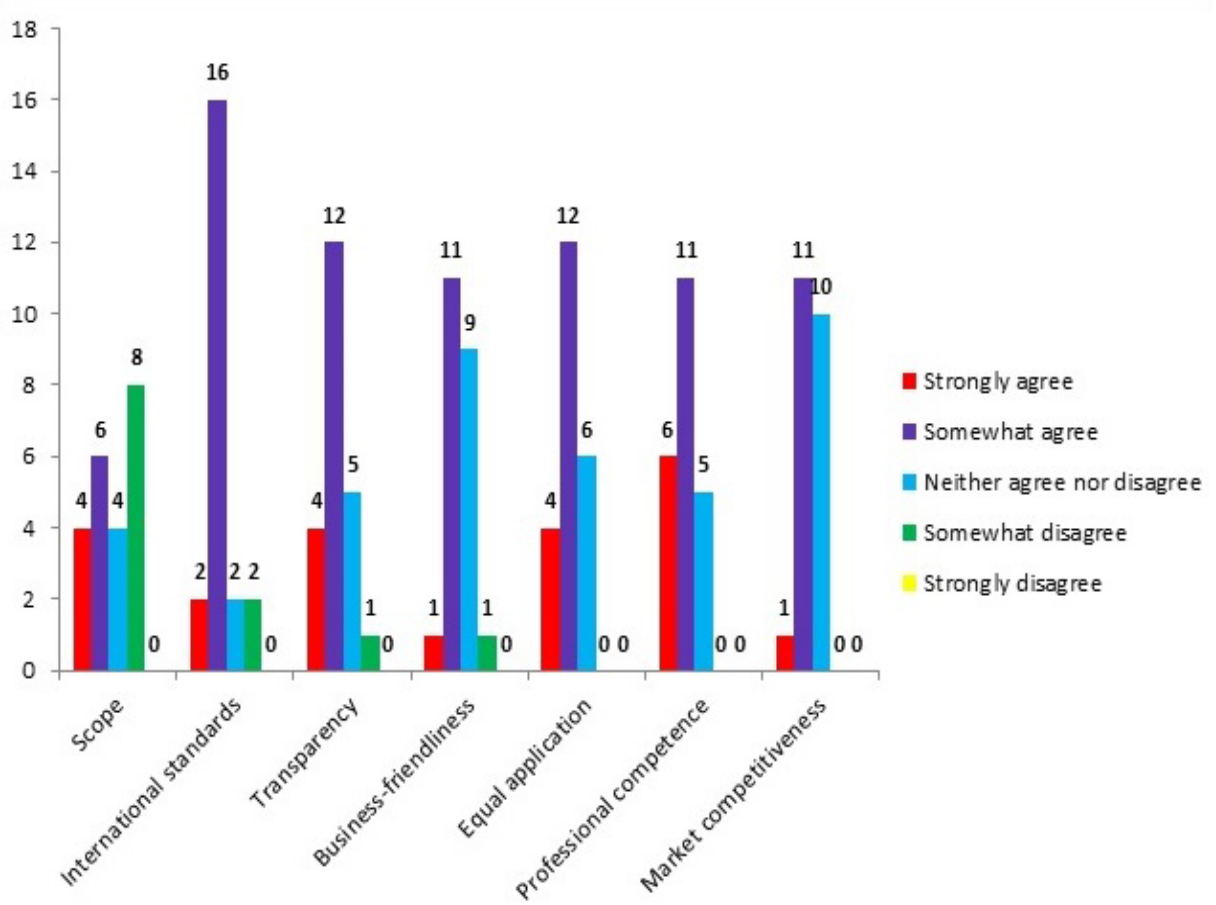
Chart 3: Key perceptions Laos



Malaysia

Of the 25 question-respondents who had previous dealings with the national competition law framework in Malaysia, 22 reacted to these statements. Less than half (45%) agreed that it covered all major forms of anti-competitive conduct, while 36% disagreed. This is likely due to the lack of a merger control regime. A vast majority considered the competition law regime consistent with international standards, transparent, equal in application and administered by a professionally competent NCA. Remarkably, the opinions on the latter (i.e. the professional competence of the NCA) have significantly improved since ACCESS 1. Just over half each were of the opinion that the competition law framework was business-friendly and led to more competitive markets. In both cases over 40% were neutral.

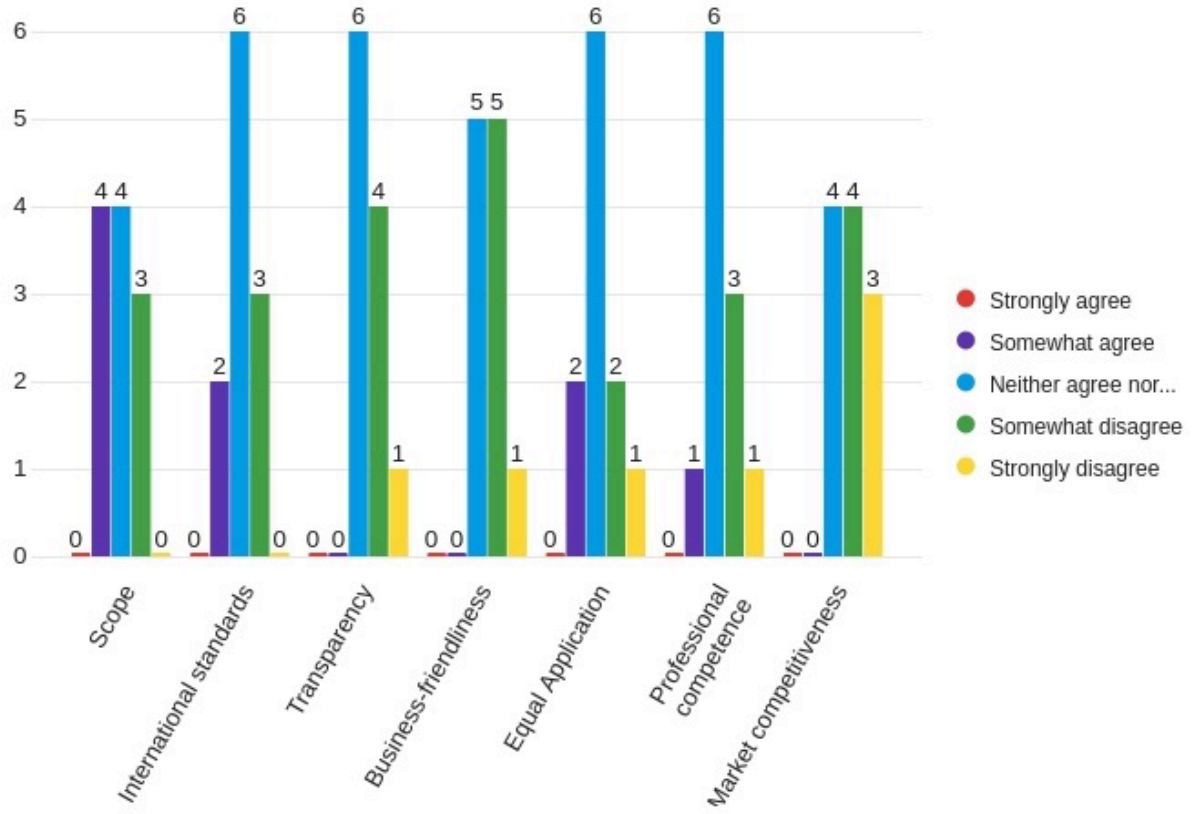
Chart 4: Key perceptions Malaysia



Myanmar

Of the 12 question-respondents who had previous dealings with the national competition law framework in Myanmar, 11 reacted to these statements. 36% agreed that that the scope of these laws covered all major forms of anti-competitive conduct. 18% agreed that the competition law framework was consistent with international standards and applied equally to all undertakings with, in both cases, 27% disagreeing. Only 9% agreed with the statement on professional competence of the NCA, while 36% disagreed. There was no agreement at all that the competition regime was transparent, business-friendly and had led to more competitive markets with 45%, 55% and 64% respectively disagreeing (some of them strongly). These results are overall much less positive than in ACCESS 1. Especially in terms of scope, consistency with international standards and business-friendliness the majority had agreed with the statements in the first iteration. This change might be interesting to be investigated in future research.

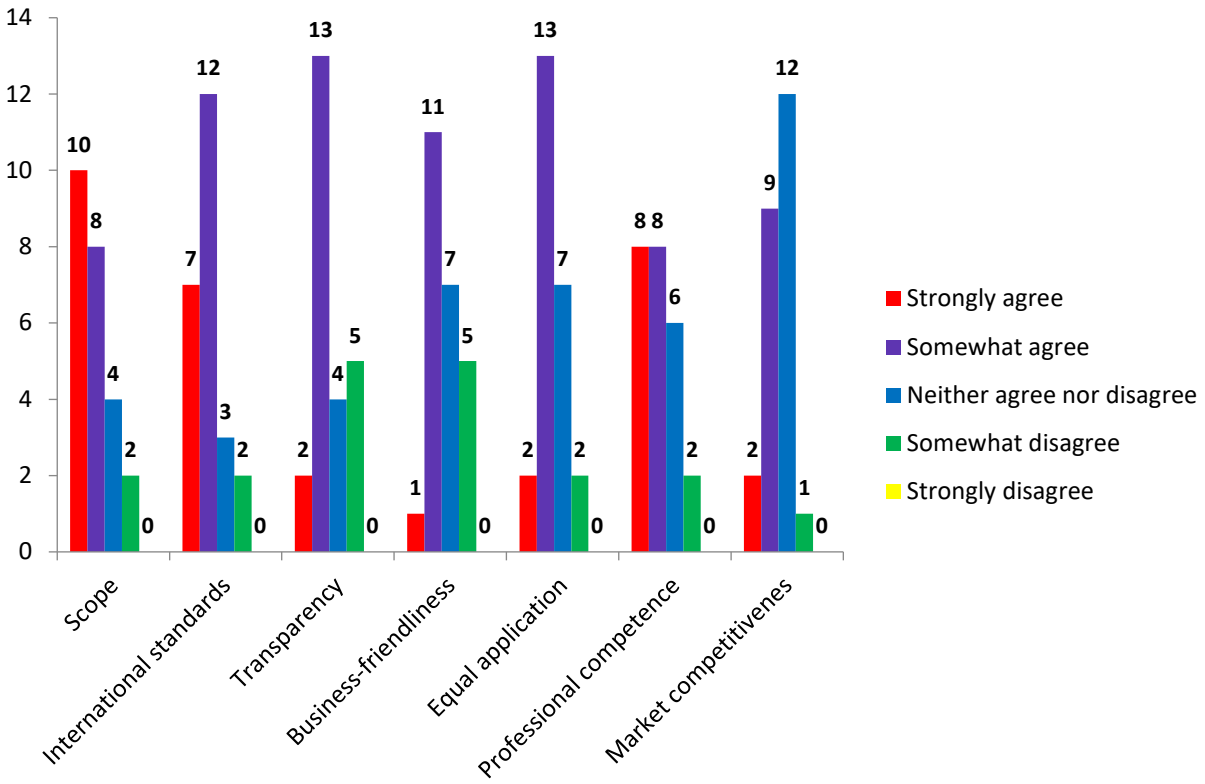
Chart 5: Key perceptions Myanmar



The Philippines

Of the 25 question-respondents who had previous dealings with the national competition law framework in the Philippines, 24 reacted to these statements. A vast majority agreed that these laws covered all major forms of anti-competitive conduct and were consistent with international standards (indeed, 42% and 29% respectively even agreed strongly). Over 60% also agreed that the framework was transparent, applied equally and that the NCA was professionally competent (in regard to the latter a third agreed strongly). Half agreed that the national competition law was business-friendly. The results on business friendliness and equal application are an improvement from ACCESS 1 where less than half had agreed with the relevant statements. Only on the question of whether or not competition law had made markets more competitive was there no majority agreement in ACCESS 2. Here the majority remained undecided. Having said that, this is still an improvement to ACCESS 1 where less than a quarter had agreed.

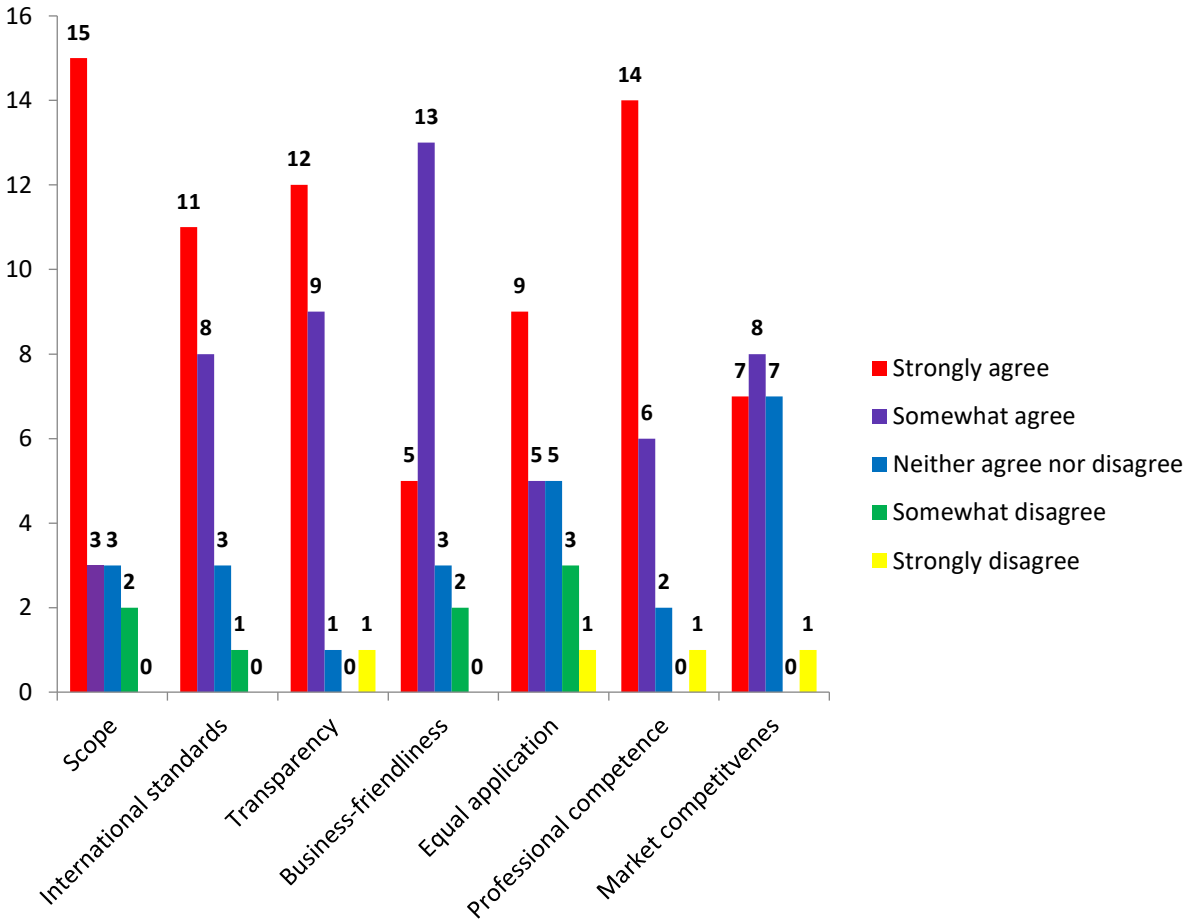
Chart 6: Key perceptions Philippines



Singapore

Of the 30 question-respondents who had previous dealings with the national competition law framework in Singapore, 23 reacted to these statements. The very vast majority of respondents (between 82% and 91%) agreed that the national competition law framework was consistent with international standards, transparent and administered by a professionally competent authority. Amongst these around half (48%, 52% and 61% respectively) even expressed strong agreement. Over three-quarters each also considered these laws to cover all major forms of anticompetitive conduct and to be business-friendly. In terms of scope, 65% even agreed strongly. There was a little more discrepancy on the question of equal application; while 60% agreed with the statement (nearly 40% strongly), around a fifth remained neutral or disagreed. This is surprising and presents a contrast to the ACCESS 1 where 85% had agreed with the statement and nobody had disagreed. Finally, 65% felt that competition law introduction had made markets more competitive; a vast increase from the 45% who had said so in ACCESS 1.

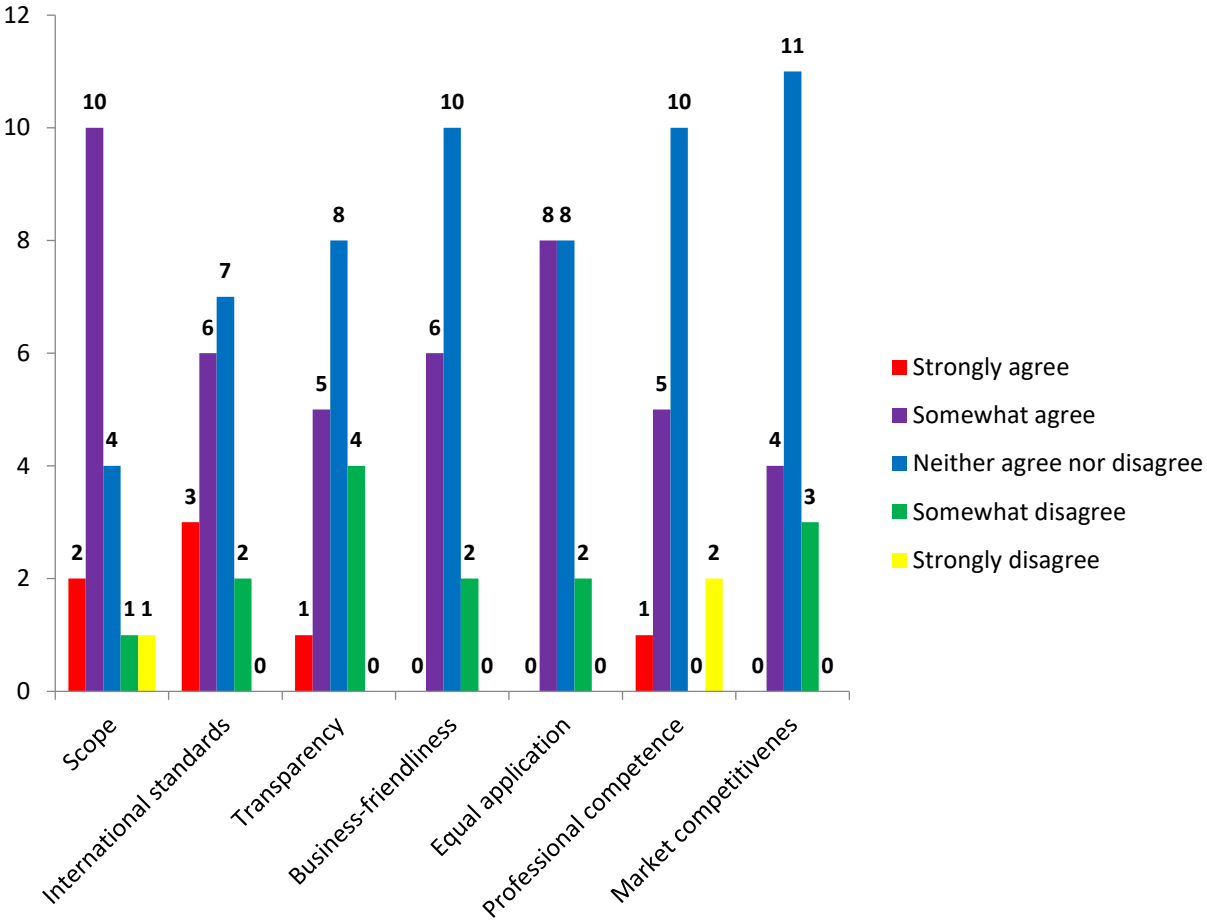
Chart 7: Key perceptions Singapore



Thailand

Of the 21 question-respondents who had previous dealings with the national competition law framework in Thailand, 18 reacted to these statements. Two thirds 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 and 44% agreed that they were equally applicable to all undertakings. Only, a third of respondents each agreed that these laws were transparent, business-friendly and administered by a professionally competent authority. The statement on transparency received over fifth of disagreement (22%), while the majority (56% each) remained undecided with regards to the statements on business-friendliness and professional competence. Finally, only just over a fifth believed that the introduction of competition law had made markets more competitive, while the majority (61%) did not take a position and 17% disagreed. The results are relatively similar to what we saw in ACCESS 1.

Chart 8: Key perceptions Thailand



Vietnam

Of the 29 question-respondents who had previous dealings with the national competition law framework in Vietnam, 24 reacted to these statements. A slight majority (58%) agreed that these laws covered all major forms of anti-competitive conduct, while a quarter disagreed and the rest remained undecided. Less than half (42%) agreed that the national competition law framework was consistent with international standards, while a third were neutral and half disagreed. Around a third of respondents found that the competition law was equal in application and had improved market competitiveness. The majority (58% each) was neutral on these two questions with only little disagreement. Less than 30% agree that the competition law was transparent and administered by a professionally competent authority. Around half were undecided and 29% and 17% respectively expressed disagreement here. Least agreement was expressed in terms of the business-friendliness of the law (only 17%) while over 40% each remained neutral or disagreed. Despite these results still portraying some scepticism, they are overall more positive on the successes of the national competition law framework than those ACCESS 1. In particular, there was significantly more agreement on consistency with international standards.

Chart 9: Key perceptions Vietnam