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### Overview of Competition Law in Myanmar

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### I. INTRODUCTION

On February 24, 2015, Myanmar became the sixth and latest member of the Association of Southeast Asian Nations (“ASEAN”) to enact its competition law (Pyidaungsu Hluttaw Law No. 9 /2015) (the “Competition Law No. 9/2015”).<sup>2</sup> The Competition Law No. 9/2015 will come into force at a time determined by the President of Myanmar.

### II. BACKGROUND TO THE INTRODUCTION OF COMPETITION LAW NO. 9/2015

The introduction of the Competition Law No. 9/2015 follows Myanmar’s accession to the ASEAN chair in 2014, for the first time since it became an ASEAN member state in 1997.

ASEAN member states had, in adopting the ASEAN Economic Community Blueprint (“AEC Blueprint”) in 2007, committed to endeavor to introduce competition policy in all ASEAN member states<sup>3</sup> by 2015. The ASEAN Regional Guidelines on Competition Policy (published in August 2010) (the “Regional Guidelines”) recommends that competition law regimes should be aimed at, *inter alia*, preventing: (i) anticompetitive business practices, (ii) abuse of market power, and (c) anticompetitive mergers.<sup>4</sup> The AEC Blueprint was likely a leading factor towards the introduction of the Competition Law No. 9/2015 in Myanmar.

The move to enact the Competition Law No. 9/2015 in Myanmar can also be seen as part of the economic reforms being introduced in Myanmar. As stated in Chapter 2 (Objectives) of the Competition Law No. 9/2015, and in public statements made by the Myanmar government, one of the main objectives of passing the Competition Law No. 9/2015 is to safeguard against any adverse effect to public interest caused by monopolistic practices or price manipulation, by an individual or group, that endangers fair competition in economic activities, for the purpose of the development of the national economy.

The Competition Law No. 9/2015 is underpinned by basic principles such as, *inter alia*, enabling Myanmar to become a domestic and regional economically developed community through the development of a free and fair competition environment that supports international inflows and investments. These principles and objectives reflect the Myanmar government’s goals under its Fifth Five-Year Plan (FY2011/12 to 2015/16), which includes achieving an annual

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<sup>2</sup> All references to the Competition Law No. 9/2015 in this article are based on the official English translated version of the Competition Law No. 9/2015 from the Attorney-General’s Office.

<sup>3</sup> The ASEAN member states are Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam.

<sup>4</sup> ASEAN Secretariat, ASEAN Regional Guidelines on Competition Policy (2010) Article 2.1

gross domestic product (“GDP”) growth of 7.7 percent and a 30 to 40 percent increase in GDP per capita from 2010.<sup>5</sup>

The Competition Law No. 9/2015 is not, however, the first piece of competition legislation in Myanmar. Prior to the enactment of the Competition Law No. 9/2015, the Constitution of the Union of Burma (1948) included a general prohibition on anticompetitive practices (Chapter II),<sup>6</sup> which had not to date been implemented in practice.

### III. COMPETITION LAW NO. 9/2015: KEY PROHIBITIONS

The key prohibitions in the Competition Law No. 9/2015 are similar to those in the competition laws of established jurisdictions, and are primarily along the lines of:

1. **Prohibitions against anticompetitive acts** (Chapter 7 of the Competition Law No. 9/2015): such as fixing purchase or selling prices, collusion in tenders or auctions, abuse of dominance, agreements to restrict competition in the market, and/or restrictions on sharing of markets or resources, production, market acquisition, technology, and development of technology and investment;
2. **Prohibition against monopolization of markets** (Chapter 8 of the Competition Law No. 9/2015): such as through controlling the purchase price or selling price of goods or fees of services, restricting services or production, or specifying compulsory terms and conditions directly or indirectly for other businessmen with the aim(s) of controlling prices; suspending, reducing or restraining services without any appropriate reasons; or restraining or controlling the area where goods or services are traded to prevent entry and to control market share;
3. **Prohibition of unfair competition** (Chapter 9 of the Competition Law No. 9/2015): such as deception of consumers, disclosure of business secrets, coercion between businessmen, defamation of another business, carrying out advertising and sales promotion for purposes of unfair competition, discrimination among businessmen, and/or sale at prices below cost of production; and
4. **Prohibition on collaboration among businesses** (Chapter 10 of the Competition Law No. 9/2015): includes mergers, consolidations, acquisitions, and joint ventures which raise market dominance, intend to lessen competition to a single or only a few businesses, or exceed the market share limit specified.

There is a statutory 90-day waiting period during which the Myanmar government is required to introduce rules and regulations to implement the Competition Law No. 9/2015. As of July 2015, such rules and regulations had not yet been introduced.

In the Guidelines on Developing Core Competencies in Competition Policy and Law for ASEAN (the “Core Competencies Guidelines”), the ASEAN Secretariat cautions that transitional

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<sup>5</sup> Organisation for Economic Co-operation and Development, ECONOMIC OUTLOOK FOR SOUTHEAST ASIA, CHINA AND INDIA 2015: STRENGTHENING INSTITUTIONAL CAPACITY (2015)

<sup>6</sup> Myanmar’s 1948 Constitution states that “private monopolist organizations, such as cartels, syndicates and trusts formed for the purpose of dictating prices or for monopolizing the market or otherwise calculated to injure the interests of the national economy, are forbidden.”

economies may unintentionally overlook acquiring a clear understanding of how competition law fits within their own economic and industrial framework, as such countries often adopt competition law following international commitments.<sup>7</sup> The Core Competencies Guidelines recommends conducting a comprehensive analysis of the effect of a country's intended competition law in order to tailor the law to that country's specific characteristics.<sup>8</sup> In this regard, while the essence of the prohibitions in the Competition Law No. 9/2015 appears similar to those in established jurisdictions, it remains to be seen how the prohibitions will be interpreted and enforced by the Myanmar Competition Commission.

#### **IV. COMPETITION LAW NO. 9/2015: INSTITUTIONAL ARRANGEMENTS**

The Competition Law No. 9/2015 will be administered and enforced by the Myanmar Competition Commission, which will be an independent body formed by the Union Government Cabinet of the Republic of the Union of Myanmar (the "Cabinet") and will comprise a Chairman, Vice-Chairman, Secretary, and experts and suitable individuals from relevant Union Ministries, government departments, government organizations, and non-governmental organizations. It is not clear when the Myanmar Competition Commission will be formed, the size and/or composition of the Myanmar Competition Commission, or the qualifications and experience the Myanmar government will require for its members.

The Competition Law No. 9/2015 provides for the Myanmar Competition Commission to form a committee to carry out its functional duties, including investigating conduct that may infringe the Competition Law No. 9/2015 (the "Investigation-Committee"). The Ministry of Commerce of the Union of the Republic of Myanmar (the "Ministry of Commerce") will undertake the office functions of the Myanmar Competition Commission, the Investigation-Committee, and any other committees and working groups formed by the Myanmar Competition Commission and the Investigation-Committee, respectively. The Ministry of Commerce may also, subject to the approval of the Cabinet, issue necessary rules, regulations, and bylaws in the implementation of the prohibitions in the Competition Law No. 9/2015.

Further information on establishing the Myanmar Competition Commission, including information on its relationship with the judiciary in Myanmar and the Investigation-Committee, respectively, is expected to be provided in the rules to implement the Competition Law No. 9/2015. As currently provided in the Competition Law No. 9/2015, the expected relationship between the Myanmar Competition Commission and the judiciary in Myanmar will likely arise from the coordination between the two to offer leniency to eligible individuals (see section V below).

#### **V. LIKELY IMPACT OF THE COMPETITION LAW NO. 9/2015 ON BUSINESSES IN MYANMAR**

The Competition Law No. 9/2015 has been received with some curiosity by the business community. As this is a new law, and as businesses operating in Myanmar have had no experience operating within the framework of such legislation, there is a lack of understanding

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<sup>7</sup> ASEAN Secretariat, GUIDELINES ON DEVELOPING CORE COMPETENCIES IN COMPETITION POLICY AND LAW FOR ASEAN (2012).

<sup>8</sup> *Id.*

among the business community of the law. However, there is a desire among at least some companies to understand how it works. The government conducted consultations in the course of the drafting of the law and, together with the apex business chamber, it will be doing more to raise awareness among the business community.

While there is no clarity yet on how the Myanmar Competition Commission will interpret and implement the Competition Law No. 9/2015, there are several noteworthy implications of the Competition Law No. 9/2015 on businesses operating in Myanmar.

#### **A. Prohibitions and Substantive Assessment**

##### **1. The Competition Law No. 9/2015 does not distinguish between vertical and horizontal agreements**

The general prohibition against anticompetitive acts (Chapter 7 of the Competition Law No. 9/2015) does not distinguish between vertical and horizontal agreements. Conventional thinking in relation to antitrust principles is that vertical agreements are generally less harmful to competition than horizontal agreements. One issue to monitor in relation to competition law in Myanmar is whether common vertical agreements, such as resale price maintenance, exclusive distribution, tying or bundling, and single branding may constitute *per se* infringements of the Competition Law No. 9/2015.

##### **2. The Competition Law No. 9/2015 does not specify whether an effects-based approach or *per se* approach will be taken**

In the absence of further guidelines, rules, or regulations on the implementation of the Competition Law No. 9/2015, a literal interpretation of the Competition Law No. 9/2015 suggests that the black list of activities set out in the Competition Law No. 9/2015 will be prohibited on a *per se* basis.

For instance, this may have the consequence that any contract that restricts competition could be *per se* prohibited. There is a question of whether the Myanmar Competition Commission will, in its guidelines, rules, or regulations, stipulate the market share or effects-based thresholds in the investigation of potential infringements.

The geographic scope of the Competition Law No. 9/2015 is also unclear. In particular, the Competition Law No. 9/2015 does not include express guidance on whether the provisions will apply to entities or conduct outside of Myanmar, such as in the case of foreign-to-foreign transactions, or whether a local effects test will be used to determine the geographic scope of the Competition Law No. 9/2015.

##### **3. There appears to be a *per se* prohibition of transactions exceeding a market share limit**

The Competition Law No. 9/2015 prohibits collaboration where the total market share of the collaborating businesses exceeds a market share limit to be specified by the Myanmar Competition Commission (Chapter 10 of the Competition Law No. 9/2015). It is unclear at this stage whether the Myanmar Competition Commission will apply a substantial lessening-of-competition test and take into account efficiency gains in implementing the Competition Law No. 9/2015 in relation to mergers and acquisitions.

## ***B. Notification and Exemptions***

### **4. The Competition Law No. 9/2015 refers to a notification regime and a prescriptive list of exemptions**

The Myanmar Competition Commission has the powers to specify the necessary forms, procedures, and other terms for businesses in applying for permission to collaborate or to restrain competition (Chapter 5 of the Competition Law No. 9/2015), but no guidelines have been published yet.

The powers of the Myanmar Competition Commission to grant approval appear to be limited to, *inter alia*, exemptions for a specified period in relation to agreements with an aim of (i) reducing the expense to consumers (Chapter 7 of the Competition Law No. 9/2015), (ii) maintenance of other businesses or creation of new businesses (Chapter 8 of the Competition Law No. 9/2015), and/or (iii) aiding small- and medium-sized businesses where the collaboration involves firms that are at the risk of collapsing or of bankruptcy, or where the collaboration has an effect on export promotion, supports the development of technique and technology, or establishes entrepreneurial businesses (Chapter 10 of the Competition Law No. 9/2015).

There has been no published list of exemptions by the Myanmar government as of July 2015. Nonetheless, the ASEAN Secretariat noted in the Core Competencies Guidelines that exemptions are calibrated for some country-specific needs or characteristics that are occasionally justified by industrial policy objectives, which may conflict with competition law objectives.<sup>9</sup> The Core Competencies Guidelines recommends that the use of exemptions and their impact should be carefully weighed against the objectives pursued and the likely impact of these exemptions on the overall effectiveness of the competition law framework.<sup>10</sup> The Myanmar government may have reference to such recommendations by the ASEAN Secretariat in formulating the list of exemptions.

## ***C. Directions and Penalties***

### **5. The Competition Law No. 9/2015 provides for directions to be issued to reduce operational volume if specified market-share limits are exceeded**

The Myanmar Competition Commission has powers under the Competition Law No. 9/2015 to direct a business, or a business group, to reduce its operational volume if the market share of such business or business groups exceeds, or is deemed by the Myanmar Competition Commission to be exceeding, the level of market share specified as adversely affecting competition in the market by the Myanmar Competition Commission.

It is not clear whether such directions will arise from, and whether a breach of the prescribed market-share limits will constitute, a *per se* infringement of the prohibitions in the Competition Law No. 9/2015, such as the prohibitions against anticompetitive acts (Chapter 7 of the Competition Law No. 9/2015), monopolies (Chapter 8 of the Competition Law No. 9/2015), or unfair competition (Chapter 9 of the Competition Law No. 9/2015).

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

## **6. Penalties include the suspension of operation**

The Myanmar Competition Commission has the powers to impose a prescribed fine, which can range from MMK 5 million (approximately U.S. \$5,000) to MMK 15 million (approximately U.S. \$15,000) (Chapter 12 of the Competition Law No. 9/2015), for infringements of the Competition Law No. 9/2015. More importantly, the penalties that can be imposed also include the suspension of a business' operations temporarily or permanently.

## **7. The Competition Law No. 9/2015 allows for criminal sanctions to be imposed on individuals**

Individuals directing a business may be convicted, together with the relevant business, unless such person can prove that the infringing conduct was not entered into intentionally or negligently. In addition to financial penalties, any person convicted of violating a prohibition under the Competition Law No. 9/2015 may be penalized with imprisonment between one to three years (Chapter 12 of the Competition Law No. 9/2015).

### ***D. Leniency Regime***

## **8. The Competition Law No. 9/2015 refers to a leniency regime being put in place**

The Competition Law No. 9/2015 provides for the Myanmar Competition Commission to coordinate with a relevant court of law or law office to provide leniency and exemption to a person who discloses their participation in a violation of the prohibitions against anticompetitive acts (Chapter 13 of the Competition Law No. 9/2015). To assess the level of leniency to be granted, the relevant court of law may take into account the time and type of cooperation by any businessman (Chapter 13 of the Competition Law No. 9/2015).

### ***E. Rights of Private Action***

## **9. The Competition Law No. 9/2015 provides for rights of private action**

Any person convicted under the Competition Law No. 9/2015 may also be sued under civil procedure for damages by an aggrieved person. It would appear that such right of private action can only take place after the Myanmar Competition Commission has arrived at an infringement finding.

### ***F. Appeals***

## **10. Rights of appeal**

There is a right of a final appeal to the Myanmar Competition Commission against any order or decision of the Investigation-Committee or other committees to the Myanmar Competition Commission (Chapter 11 of the Competition Law No. 9/2015).

### ***G. Transitional Period***

The basic framework for the Competition Law No. 9/2015 appears to take into account international best practices of sophisticated competition law jurisdictions. However, there are still many areas that require elaboration. The Myanmar government has stated that there will be a two-year grace period to educate the business community about the Competition Law No. 9/2015 and raise awareness, providing some lead time for businesses to update their compliance

practices. There are no official stipulated start dates for the two-year grace period at this point, and it is not clear whether agreements, business practices, or collaborations that take place during the two-year grace period will be subject to investigation by the Myanmar Competition Commission.

#### H. State-owned Enterprises

It is not clear from the Competition Law 9/2015 whether state-owned enterprises would fall under the definitions of “Business” and “Businessman” and accordingly, be regulated under the Competition Law No. 9/2015. The State-Owned Economic Enterprises Law (SLORC Law No. 6/97) grants the Myanmar government the right to carry out various major economic activities across multiple sectors, including oil and gas, telecommunications, banking, and insurance. Other jurisdictions with full or partial exemptions for state-owned enterprises include Cyprus, Hungary, Iceland, and Thailand.

In view of the powers of the Myanmar Competition Commission to exempt businesses essential for Myanmar’s benefit and small- and medium-sized businesses under the Competition Law No. 9/2015, there is potentially room for certain state-owned enterprises to be exempted by the Myanmar Competition Commission. This will likely only become clearer once the rules and regulations to implement the Competition Law No. 9/2015 are introduced by the Myanmar government.

## VI. MYANMAR’S COMPETITION LAW REGIME: A COMPARISON WITH OTHER COMPETITION LAW REGIMES IN ASEAN MEMBER STATES

Competition law regimes in the ASEAN member states vary across multiple dimensions to meet their differing objectives. Table 1 summarizes the competition law frameworks currently in place within ASEAN.

Table 1: ASEAN – Varying competition law regimes (as of May 2015)

	Indonesia	Malaysia	Myanmar	Singapore	Thailand	Vietnam
<b>Competition legislation</b>	Law of the Republic of Indonesia Number 5 Year 1999 concerning the prohibition of monopolistic practices and unfair business competition.	Laws of Malaysia Act 172 Competition Act 2010.	Competition Law No. 9/2015.	Competition Act, Chapter 50B, of Singapore.	The Trade Competition Act, B.E. 2542 (1999).	The Competition Law No. 27/2004/QH11.
<b>Year of enactment</b>	1999	2010	2015	2004	1999	2004
<b>Objectives of the competition legislation<sup>11</sup></b>						
<b>Efficiency</b>	✓	✓		✓	✓	✓
<b>Consumer Welfare</b>	✓	✓	✓ <sup>12</sup>			✓

<sup>11</sup> Cassey Lee & Yoshifumi Fukunaga, *ASEAN Regional Cooperation of Competition Policy*, ERIA Discussion Paper Series, ERIA-DP-2013-03 (2013), with the exception of Myanmar. The summary on Myanmar is based on the official English translated version of the Competition Law No. 9/2015 from the Attorney General’s Office.

<sup>12</sup> Chapter 2 (Objectives) of the Competition Law No. 9/2015.



	Indonesia	Malaysia	Myanmar	Singapore	Thailand	Vietnam
<b>Economic development</b>		✓	✓ <sup>13</sup>		✓	
<b>Competitiveness</b>	✓(firm-level)			✓(economy-level)		
<b>Free and fair trade</b>	✓		✓ <sup>14</sup>		✓	
<b>Institutional structure</b>						
<b>Competition authority</b>	The Commission for the Supervision of Business Competition (“KPPU”).	The Malaysian Competition Commission (“MyCC”).	The Myanmar Competition Commission.	The Competition Commission of Singapore (“CCS”).	The Office of Thai Trade Competition Commission (“TCC”).	The Vietnam Competition Authority (the “VCA”) and the Vietnam Competition Council (the “VCC”).
<b>Commission members</b>	Nine, including the Chairman and Vice Chairman. <sup>15</sup>	Nine, including the Chairman.	To be prescribed by the Cabinet.	Nine, including the Chairman.	Minister of Commerce as Chairman, Permanent-Secretary for Commerce as Vice-Chairman, Permanent-Secretary for Finance, and not less than eight, but not more than 12, qualified persons.	11 to 15 members in the VCC.
<b>Case statistics</b>						
<b>Number of published cases<sup>16</sup></b>	Mergers: 201 Anticompetitive practices: 401	Mergers: Not applicable Anticompetitive practices: 6	To be enforced.	Mergers: 49 Anticompetitive practices: 25	Mergers: 0 Anticompetitive practices: 0	Mergers: 29 Anticompetitive practices: 5
<b>Competition law framework</b>						
<b>General prohibitions</b>	Anticompetitive agreements, abuse of a dominant position, and mergers that lessen competition.	Anticompetitive agreements and abuse of a dominant position.	Anticompetitive acts, unfair competition, monopolization of markets, and collaboration among businesses.	Anticompetitive agreements, abuse of a dominant position, and mergers and acquisitions that substantially lessen competition.	Anticompetitive agreements, abuse of a dominant position, anticompetitive mergers, and unfair trade commercial practices.	Anticompetitive agreements, abuse of a dominant position, anticompetitive mergers, and unfair business practices.
<b>Vertical agreements</b>	<i>Per se</i> illegal.	<i>Per se</i> illegal.	To be prescribed.	Excluded, unless amounts to abuse of a dominant position.	Unclear.	Unclear.
<b>Merger control regime</b>						
<b>Notification thresholds</b>	Post-merger assets of more than IDR 2.5 trillion (or IDR 20 trillion for	No merger control regime.	No published jurisdictional thresholds yet.	Post-merger market share of more than 40 percent, or post-merger market	No published jurisdictional thresholds yet.	Combined market share between 30 to 50 percent If combined

<sup>13</sup> *Id.*

<sup>14</sup> Chapter 3 (Fundamental Principles) of the Competition Law No. 9/2015.

<sup>15</sup> As at May 26, 2015.

<sup>16</sup> As at May 26, 2015, with the exception of Vietnam (as at December 2014).

	Indonesia	Malaysia	Myanmar	Singapore	Thailand	Vietnam
	banks), or post-merger turnover of more than IDR 5 trillion.			share of more than 20 percent and post-merger combined market share of three largest firms of more than 70 percent.		market share is more than 50 percent, the merger is prohibited unless exempted.
<b>Mandatory or voluntary notification</b>	Mandatory post-completion within 30 days if thresholds are met.	No merger control regime.	To be prescribed by the Myanmar Competition Commission.	Voluntary.	Mandatory if thresholds (not yet published) are met.	Mandatory if thresholds are met.
<b>Penalties</b>						
<b>Individual liability</b>	No	No	Yes	No	Yes	Yes
<b>Criminal liability</b>	Yes	No	Yes	No	Yes	No
<b>Financial penalties</b>	Range from approximately U.S. \$75,000 to U.S. \$2 million.	Up to 10 percent of the worldwide turnover of an enterprise over the period during which the infringement occurred.	Range from approximately U.S. \$5,000 to U.S. \$15,000.	Up to 10 percent of the turnover of the business of an undertaking in Singapore for each year of infringement for a maximum period of three years.	Up to approximately U.S. \$200,000, and up to U.S. \$400,000 for repeated offences.	Up to 10 percent of the total turnover of the infringing organization or individual for the preceding financial year.
<b>Appeals</b>						
<b>Appeal process</b>	Appeals can be made to the district court within 14 working days after defendants have become aware of or been notified about the KPPU's decision and to the high court for criminal investigations. Both the KPPU and the defendants may appeal against a district court decision to the Supreme Court.	Appeals can be made to the Competition Appeal Tribunal (the "CAT") within 30 days of the MyCC decision. The CAT's decision is final and binding on the parties to the appeal, but may be subject to judicial review by the High Court.	Right of a final appeal to the Myanmar Competition Commission against any order or decision of the Investigation-Committee within 60 days of receipt of such order or decision.	Appeals can be made to the Competition Appeal Board ("CAB") within two months from the date of the CCS' infringement decision. Parties may appeal CAB decisions to the High Court and then to the Court of Appeal.	Appeals can be made to the Appellate Committee within 30 days of the TCC's decision. The Appellate Committee's decision is subject to appeal to the Administrative Courts of First Instance.	Decisions issued by the council dealing with a competition case may be appealed before the VCC. Decisions issued by the head of the VCA may be appealed before the Ministry of Industry and Trade.

## VII. IMPACT ON ASEAN INTEGRATION

Competition law is often cited as one of the mechanisms facilitating regional economic integration by addressing anticompetitive conditions and regional market barriers. Successful examples of competition law facilitating economic integration include the experiences of, among others, the European Union and the Australia-New Zealand Closer Economic Relations Trade

Agreement.<sup>17</sup> Similarly, competition policy is one of the focal policy areas of the AEC Blueprint in furthering the objectives of establishing a region of equitable economic development, which is fully integrated into the global economy.

The development of competition law principles in Myanmar in line with the adoption of international best practices may provide confidence to foreign investors intending to conduct business in Myanmar, especially where the relevant rules are philosophically consistent with those which foreign investors are likely to be most familiar with. At the same time, as noted in the Core Competencies Guidelines, it is critical for transitional economies to customize competition laws to that country's specific features, which will have an impact on the manner in which Myanmar-based firms operate.

The ASEAN Secretariat has been working to establish a framework to ensure regional consistency in the development of competition laws, for nearly the last two decades. Harmonization across the ASEAN countries, which are at different stages of economic development, is generally viewed as a challenging and a long-term goal.<sup>18</sup>

As of May 2015, all of the ASEAN member states have either introduced competition laws, or have draft competition bills that are yet to be passed. As discussed in Section VI, ASEAN member states appear to have adopted and customized competition laws to best suit their respective economic needs, and there is not necessarily a single competition law regime to adopt. While there is no one-size-fits-all approach to competition law regimes in ASEAN, and each jurisdiction's regime has been customized to its domestic circumstances, the unifying trend across the various regimes is that universally acknowledged anticompetitive forms of activities and conduct, namely anticompetitive agreements, abuse of dominance, and anticompetitive mergers and acquisitions, are generally prohibited.

The Competition Law No. 9/2015 in Myanmar, if effective, accordingly goes towards facilitating Myanmar's economic integration into the ASEAN region, and thereby advances the AEC objectives, through, among others:

- i. a reduction in the barriers to entry and other impediments to free trade;
- ii. a sound competition law and policy which provides investors with confidence of a level playing field and, thereby, helps to attract foreign investment; and
- iii. encouraging overall economic development in Myanmar through a competitive process.

With six months to the end of 2015, of the ASEAN member states only Brunei, Cambodia, and the Lao PDR remain with general competition laws in draft form. It remains to be seen whether the objective of introducing comprehensive competition policies in all ASEAN member states by 2015 will be met, which would be the first step towards establishing a single economic market.

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<sup>17</sup> Pornchai Wisuttisak & Nguyen Ba Binh, *ASEAN Competition Law and Policy: Toward Trade Liberalization and Regional Market Integration*, International Conference on International Relations and Development (2012).

<sup>18</sup> Ashish Lall & R. Ian McEwin, *Competition and Intellectual Property Laws in the ASEAN "Single Market"*, THE ASEAN ECONOMIC COMMUNITY: A WORK IN PROGRESS (Sanchita Basu Das, Jayant Menon, Rodolfo Severino, & Omkar Lal Shrestha, eds. 2013), Asian Development Bank and Institute of Southeast Asian Studies, Singapore.

## VIII. CONCLUSION

One of the challenges ahead affecting the overall effectiveness of the Competition Law No. 9/2015 on economic growth is the Myanmar government's ability to overcome a host of practical challenges expected in its implementation. Commentators have recognized that a common challenge in many ASEAN nations, particularly transitional economies, is the lack of adequate competition law expertise, and legal and institutional infrastructures to administer the legislation.<sup>19</sup>

For the new competition law regime to be effective, the Myanmar Competition Commission will need to balance policy considerations with competition law principles, and clearly articulate the rules and regulations needed to implement the law, including investigative powers, enforcement procedures, and transparency. It is still too early to foresee how the competition law landscape in Myanmar might evolve in the near future.

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<sup>19</sup> Michal Gal, *Regional Competition Law Agreements: An Important Step for Antitrust Enforcement* 60 UNIV. TORONTO L.J. 239 at 243–5 (2010).