

Other possible policy objectives that can be achieved by competition policy are noted to include:

“the integration of national markets and promotion of regional integration, the promotion or protection of small businesses, the promotion of technological advancement, the promotion of product and process innovation, the promotion of industrial diversification, environment protection, fighting inflation, job creation, equal treatment of workers according to race and gender or the promotion of welfare of particular consumer groups.²⁴

The Regional Guidelines note that “each AMS may decide which objectives it wishes to pursue, taking into account its own national competition policy needs” (paragraph 2.2.5).

1.2 Policy Objectives in AMS Competition Laws

Most of the AMS contain competition policy objectives in their laws (Singapore and Thailand do not). The main objectives identified in the Regional Guidelines – promotion and protection of competition, fair competition, economic efficiency, economic growth and development, and consumer welfare feature prominently (see Table 3). Additional policy objectives identified by each of the AMS are reflective of their stages of economic development (for example, Article 4 Lao PDR law sets out the ‘State Policy on Competition’ and includes the State creating conditions for and enhancing the capacity of SMEs to participate in fair competition).

The policy objectives will have an impact on the way in which the laws are interpreted on a daily basis and, therefore, will be critical to convergence. The objective of consumer welfare is well recognised as a key objective of competition law internationally and, together with the promotion and protection of competition, is the most common of the objectives identified in the AMS laws. A point of distinction between the AMS is that Indonesia refers only to people’s welfare, while Vietnam recognises both consumer interests and social welfare. Lao PDR sets the objective of protecting the State, business and consumers.

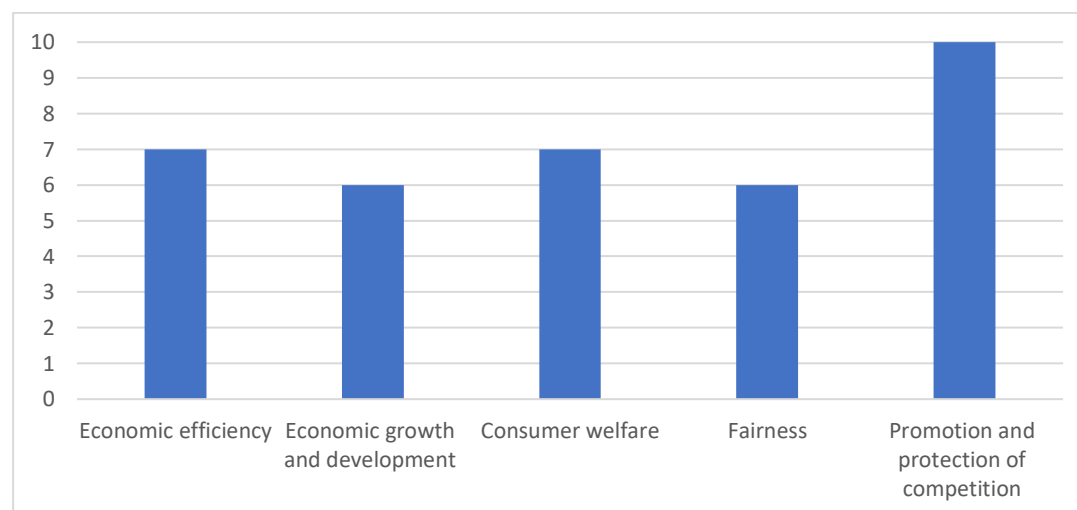
²⁴ Ibid., paragraph 2.2.3

Table 3: AMS Policy objectives²⁵

	Economic efficiency	Economic growth and development	Consumer welfare	Fairness	Promotion and protection of competition
Brunei Darussalam	✓	✓	✓	-	✓
Cambodia	✓	-	✓	✓	✓
Indonesia	✓	-	People's welfare	✓	✓
Lao PDR	-	✓	Protect interests of State and businesses as well as consumers	✓	✓
Malaysia	-	✓	✓	-	✓
Myanmar	-	✓	Public interests also considered	✓	✓
The Philippines	✓	✓	✓	✓	✓
Singapore	✓	-	-	-	✓
Thailand	✓	-	✓	-	✓
Vietnam	✓	✓	Consumer interests and social welfare	✓	✓

Source: Author's analysis based on review of laws and input from AMS

Figure 2: AMS Policy Objectives



²⁵ Prepared based on the policy objectives contained in the AMS laws. In the case of Singapore and Thailand, the table has been completed based on its response on this issue in the Self-Assessment.

Table 9: Dominance

	Dominance defined			Collective dominance	Presumption of dominance	
	Market power	Market share	Other		Rebuttable	Pre-requisite Effect
Brunei Darussalam	✓	-	-	✓	-	-
Cambodia	✓	-	-	-	-	-
Indonesia	✓	-	✓	✓	-	✓ (50%)
Lao PDR	-	✓	-	✓	-	-
Malaysia	✓	-	-	✓	✓ (60%)	-
Myanmar	Not defined			-	-	-
Philippines	✓	✓ ⁹⁵	-	✓	✓ (50%)	✓
Singapore	Not defined ⁹⁶			✓	✓ (60%)	✓
Thailand	✓	✓	✓	-	✓	-
Vietnam	✓	✓		✓	-	✓ (30%)

Source: Author's analysis based on review of laws and input from AMS

5.2.2 Exclusionary versus exploitative practices

Exclusionary practices are those which exclude competitors (actual or potential) from the market, to the detriment of consumers. Exploitative practices are those where consumers are exploited directly (usually through high prices).

Maximiano, Burgess and Meester note that “[a]lmost all jurisdictions prohibit both exclusionary and exploitative practices...Indonesia expressly refers to exploitative and exclusionary practices in its *Guidelines on Article 25*⁹⁷, as does Malaysia⁹⁸. Singapore only refers to exclusionary practices⁹⁹.

5.2.3 Types of abuse

Jurisprudence from the developed competition regimes has determined common categories of abuse of dominance. Exclusionary abuses commonly include predatory pricing, refusal to supply, exclusivity provisions (which includes fidelity or loyalty rebates), tying/bundling, margin

⁹⁵ As it is the market share of 50% that gives rise to a rebuttable presumption of dominance, the view of the PCC is that the Philippines defines dominance not solely in terms of “market power” but also “market share”.

⁹⁶ Note, the CCCS *Guidelines on the Section 47 Prohibition* provides guidance on how dominance would be assessed

⁹⁷ Accessed 12 February 2019 but no longer available on the KPPU website

⁹⁸ Paragraph 3.1 *Guidelines on Chapter 2 Prohibition*

⁹⁹ Maximiano, Burgess and Wouter, *Promoting Regional Convergence in ASEAN Competition Laws*, in Paulo Burnier da Silveira and William Kovacic (eds) *Global Competition Enforcement: New Players, New Challenges*. Kluwer Publishing, 2019, p 246

squeeze, and access to essential facilities. Exploitative abuses include excessive pricing, price discrimination and unfair prices¹⁰⁰.

In some of the AMS laws, the language used reflects commonly recognised categories of abuse. In other cases, the wording used appears intended to cover these internationally recognised abuses without using the same terminology. In a few jurisdictions, it can be difficult to reconcile the provisions with international norms without further guidance on what is intended by the terminology used¹⁰¹. Where the laws do not expressly cover certain abusive behaviours, the laws may be able to be interpreted widely enough to cover additional breaches.

The following table illustrates the substantial degree of consistency across the AMS in relation to the types of abuses contemplated by the respective laws (based on the author's interpretation and checked by the AMS).

¹⁰⁰ A discussion of exclusionary abuses with a short overview of exploitative abuses can be found in European Commission Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings (2009/C 45/02), available at [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XC0224\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XC0224(01)&from=EN)

¹⁰¹ Maximiano, Burgess and Wouter, *Promoting Regional Convergence in ASEAN Competition Laws*, in Paulo Burnier da Silveira and William Kovacic (eds) *Global Competition Enforcement: New Players, New Challenges*. Kluwer Publishing, 2019, p 246

Table 10: Exclusionary and exploitative practices

	Exclusionary practices					Exploitative practices			Catch all
	Pre-datory pricing ¹⁰²	Tying/Bundling ¹⁰³	Refusal to supply ¹⁰⁴	Exclusivity provisions	Limiting production, markets, technical development	Monopoly/excessive pricing	Price discrimination	Unfair pricing (high or low)	
Brunei Darussalam	✓	✓			Section 21(2)(b) ✓		✓ ¹⁰⁵	-	-
Cambodia	✓ (Art 9)	✓ (Art 9)	✓ (Art 9)	✓ (Art 9)	(Art 9) ✓ Refusing access to essential facility	-	-	-	✓
Indonesia	✓ ¹⁰⁶	✓ ¹⁰⁷	✓ ¹⁰⁸	✓ ¹⁰⁹	✓ ¹¹⁰	✓ ¹¹¹	✓ ¹¹²	✓ ¹¹³	-
Lao PDR	✓	✓	✓	-	✓ ¹¹⁴	-	✓	✓	Other practices stipulated in Regulations
Malaysia	✓	✓	✓		✓ ¹¹⁵		✓ ¹¹⁶	✓ ¹¹⁷	-
Myanmar	✓ ¹¹⁸	? ¹¹⁹	? ¹²⁰	✓ ¹²¹	✓ ¹²²	-	-	-	-
Philippines	✓	✓	✓	✓ ¹²³	✓ ¹²⁴	✓ ¹²⁵	✓ ¹²⁶	✓ ¹²⁷	✓ ¹²⁸
Singapore	✓	✓	✓ ¹²⁹	✓ ¹³⁰	✓	-	-	-	-
Thailand	✓	✓ ¹³¹	✓ ¹³²	✓ ¹³³	✓ ¹³⁴	-	-	✓	-
Vietnam¹³⁵	✓	✓	✓	✓ ¹³⁶	✓ ¹³⁷	✓ ¹³⁸	✓ ¹³⁹	✓ ¹⁴⁰	✓ ¹⁴¹

Source: Author's analysis based on review of laws and input from AMS

- ¹⁰² Brunei Darussalam, s 21(2)(a); Indonesia law, Article 20; Lao PDR law, Arts 31(2), (33); Malaysia law, s 10(2)(f); Philippines law, s 15(a); Singapore law, s 47(2)(a); Vietnam law, Art 27(1)(a))
- ¹⁰³ Brunei Darussalam law, section 21(2)(d); Lao PDR law, Arts 31(4), 35; Malaysian law, s 10(2)(e); Philippines law, s 15(c), (f); Singapore law, s 47(2)(d); Vietnam law, Art 27(1)(dd)
- ¹⁰⁴ Indonesian law, Art 25(1)(c), Lao PDR law, Arts 31(3), 34; Malaysia law, s 10(2)(c); Philippines law, s 15(c); Vietnam law, Art 27(1)(e)
- ¹⁰⁵ Brunei Darussalam law, section 21(2)(c)
- ¹⁰⁶ Article 7 and 20, Indonesia law
- ¹⁰⁷ Article 15(2) Indonesia law
- ¹⁰⁸ Articles 15(1) and 24 Indonesia law
- ¹⁰⁹ Article 25(1)(c) or (a) Indonesia law
- ¹¹⁰ Article 25(1)(b) Indonesia law
- ¹¹¹ Article 17 Indonesia law
- ¹¹² Article 19(d) Indonesia law
- ¹¹³ Article 6 Indonesia law
- ¹¹⁴ Art 14 Lao PDR law prohibits the imposition of obstacles that directly or indirectly create difficulties for other business operators in operating businesses such as access to finance, raw materials, information and technology.
- ¹¹⁵ Section 10(2)(b) and (2)(g) Malaysia law which relates to purchasing scarce supply of intermediate goods
- ¹¹⁶ Section 10(2)(d) Malaysia law
- ¹¹⁷ Section 10(2)(a) Malaysia law
- ¹¹⁸ 15(a) Myanmar law;
- ¹¹⁹ 15(b) Myanmar law may be applicable, subject to how it is interpreted
- ¹²⁰ 15(b) Myanmar law may be applicable, subject to how it is interpreted
- ¹²¹ 15(d) Myanmar law
- ¹²² 15(c) Myanmar law
- ¹²³ 15(3) Philippines law
- ¹²⁴ 15(i) Philippines law
- ¹²⁵ 15(h) Philippines law
- ¹²⁶ 15(d) Philippines law
- ¹²⁷ 15(g) and (h) Philippines Law
- ¹²⁸ The list of unilateral conduct found in section 15 is not meant to be an exhaustive list of acts of abuse of dominance
- ¹²⁹ Refusal to supply and exclusive purchasing are examples of conduct that may amount to an abuse under section of the Singapore law. See Annex C of the *Guidelines on the Section 47 Prohibition*
- ¹³⁰ Ibid
- ¹³¹ Could be covered by section 50(2) Thai law
- ¹³² Id.
- ¹³³ Id.
- ¹³⁴ Section 50(3) Thai law
- ¹³⁵ Note Vietnam also imposes different prohibitions against enterprises holding a monopoly position: these include all of the prohibitions against dominant players except predatory pricing. It also adds a prohibition against imposing conditions to the disadvantage of customers, unilaterally rescinding or changing signed contracts without justifiable reasons and other acts abusing a market monopoly position which are prescribed by other laws.
- ¹³⁶ Art 27(1)(d) or (e) Vietnam law
- ¹³⁷ Article 27(1)(c) Vietnam law
- ¹³⁸ Article 27(1)(c) and 27(2)(a) Vietnam Law
- ¹³⁹ Id.
- ¹⁴⁰ Id.
- ¹⁴¹ Article 27(2)(d) Vietnam