BACKGROUND

Increased cross-border trade in the ASEAN region has seen the need to enhance regional cooperation among various countries with the region. As an example, this can be seen from the negotiations of the Regional Comprehensive Economic Partnership Agreement (RCEP) that is set to be the world largest free trade agreement if signed in 2020. Other than RCEP, regional cooperation agreements have also been signed by various ASEAN Member States (AMS) with other countries and even among the AMS themselves.

The continued increase in intra-ASEAN and inter-ASEAN trade will certainly amplify the impetus for the region to achieve their overarching vision of a competitive, innovative and dynamic ASEAN with an effective and progressive competition policy. Such cross border trade development coupled with the borderless nature of e-Commerce and the global nature of businesses have compounded the need for competition authorities to work and cooperate with each other in dealing with cross border competition cases. Recent examples of such coordination by AMS competition agencies can be seen in recent cases such as the Grab / Uber mergers, cargo cases, etc.

The AEGC has embarked on several competition cooperation initiatives such as the development of the ASEAN Regional Cooperation Framework (ARCF) on Competition; the RCEP competition chapter (once adopted); the formation of the ASEAN Competition Enforcers’ Network (ACEN); and the recommendations for cooperation from the ‘Study on the Commonalities and Differences across Competition Legislations in ASEAN, including a Strategy Paper on Areas for Regional Convergence’. However, more is still required to be done to address cross-border anti-competitive conduct.

This is in part to recognize the complexity of cooperation in multi-jurisdictional cases which can sometimes lead to inconsistent decisions and unchallenged illegal (or anti-competitive) conduct. Challenges also arise from the fact that the need for cooperation may vary as the competition authorities in ASEAN are in varying stages of development and some of which may become more active as a result of their growing economies.

In line with this, Strategic Goal 3 of the ASEAN Competition Action Plan (ACAP) 2025 envisaged that “regional cooperation arrangements on CPL are in place” with an initiative to “develop enforcement mechanisms to handle cross-border cases in ASEAN”. This initiative requires the preparation of “a study on recommended procedures for joint investigations and decisions on cross-border cases by 2020” as part of its outcome (see Initiative 3.2, Outcome 3.2.2, ACAP 2025).

At the 24th ASEAN Experts Group on Competition (AEGC) Meeting, the AEGC agreed to conduct “a study on recommended procedures for cooperation on cross-border competition cases”. This study is expected to recommend a model that would facilitate
coordination, cooperation and/or collaboration among the respective competition authorities (and their related agencies) in ASEAN, in handling cross-border competition cases; to take into account existing and proposed cooperation initiatives; and to ensure that the cooperation model meets global standards or international best practices.

OBJECTIVE

In light of the background set out above, the main objective of this activity is to prepare a study on recommended procedures for cooperation on cross-border cases which will result in the formulation of a model for cooperation to handle competition cases involving more than one AMS.

In addition, the study will elaborate several objectives as follow:

- a. to assess case handling procedures by competition authority in AMS and address (and identify) potential challenges in cooperation and how these impediments to cooperation can be reduced or mitigated;
- b. to identify and harmonize certain definition in case handling procedures;
- c. to recommend means and suggested procedures which can be applied by AMS in dealing with cooperation (e.g. on prevention, investigation and enforcement etc.) on cross-border competition cases which would include but not limited to hard core cartels and transnational mergers; and
- d. to recommend the framework and procedures where notification, coordination and the sharing of confidential information can be effected during such cooperation, as well as the necessary safeguards to protect such information and due process rights of parties.

The study will be developed by referring to existing AEGC publications such as the Study on Commonalities and Differences in Competition Law, the Regional Guideline on Competition Law and Policy, as well as international best practices including the UN Guiding Principles for International Cooperation, and the UNCTAD’s IGE on Competition Law and Policy Report on Enhancing International Cooperation in the Investigation of Cross-border Competition Cases: Tools and Procedures.

However, it is to be noted that recommendations from the Study should take into account:

- i) existing national laws and policies of AMS as well as ASEAN regional guidelines, ii) should not be construed to impact or affect AMS’s national sovereignties, or iii) result to the modification of any existing legislation currently in effect in each AMS’s.

SCOPE OF WORK

The consultants will conduct the Study with guidance from the AEGC and the ASEAN Secretariat. The scope of work are as follows:

1. Performing a desk research to provide background information on the study.
2. Assessing the legal systems of each AMS and the means competition law is enforced, case handling procedures, and treatment of confidential information across ASEAN. This will require the circulation of questionnaire to AMS through the ASEAN Secretariat on issues relating to their competition legal systems, case handling
measures, procedures to cooperate with external entities, and the protection of confidential information.

3. Conducting a desk research on the need for cooperation, and tools for cooperation (and how to use them) based on international best practices and experiences by AMS. The study will look into available regional and international publications and materials that are relevant to the task.

4. Performing a desk research on multilateral, regional, or bilateral cooperation related to competition which involves all or some AMS to assess the aspect of transparency and protection of confidential information in cross-border issues.

5. Convening an interactive discussion with AMS (or selected AMS) through a Brainstorming Meeting on the challenges, experience and best practices in cooperating on cross-border cases.

6. Recommending the procedures for cooperation in handling cross-border competition cases for ASEAN that would be feasible to implement (including providing recommendations on the role of the ASEAN Secretariat as part of the process).

7. Presenting the results of the study at the ASEAN Competition Enforcement Network (ACEN) Meeting and ASEAN Expert Group on Competition (AEGC) Meeting, through a conference call.

REQUIRED EXPERTISE

The Consultant shall have the following expertise:
1. Proven competence in competition law proceedings in ASEAN.
2. Experiences working in and/or with competition authorities in one or multiple AMS.
3. A Doctoral or minimum Master Degree in Law and/or Economics with minimum 8 (eight) years of experiences in competition law.
4. Ability to meet the corresponding deadlines for each task, excellent command in English, and understand the ASEAN legal structure and government system. Proof-reading the document is included as part of the service.

BUDGET

The study will be funded under Japan-ASEAN Integration Fund (JAIF) Program, which will support the consultancy fees of **2 (two) consultants from ASEAN Member States** and travel cost for the consultants to attend the Brainstorming Meeting. The consultancy fee for each consultant, excluding travel cost for attendance at the Brainstorming Meeting, is **USD 19,431** with the following breakdown of payments in accordance to the corresponding milestones:

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Percentage</th>
<th>Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Submission of draft Methodology (including Work plan, report outline, and questionnaire for data gathering) (including addressing satisfactorily AEGC’s and ASEC’s inputs)</td>
<td>15%</td>
<td>USD 2,914.65</td>
</tr>
</tbody>
</table>

AMS will be required to complete the questionnaire, provide the procedure for case handling applicable within their authority, and provide a copy of their national competition law and relevant documents that would be useful for the study.
2. Submission of the first draft report (including addressing satisfactorily AEGC’s and ASEC’s inputs) 30% USD 5,829.30

3. Finalisation of the Brainstorming Meeting Report (including addressing satisfactorily AEGC’s and ASEC’s inputs) 20% USD 3,886.20

4. Endorsement of the Final Report (including addressing satisfactorily AEGC’s and ASEC’s inputs) 35% USD 6,800.85

The project fund will be available for this study until November 2020.

TIME AND DELIVERABLES

The study will be conducted in accordance with the following timeline and deliverables:

<table>
<thead>
<tr>
<th>No.</th>
<th>Activity</th>
<th>Schedule</th>
<th>Deliverables</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Preparation of draft work plan, proposed outline of report, and draft questionnaire for data/information gathering</td>
<td>March 2020</td>
<td>Work plan, proposed outline of report, and questionnaire</td>
</tr>
<tr>
<td>2.</td>
<td>Data gathering and circulation of questionnaire</td>
<td>April-May 2020</td>
<td>Completed questionnaire and its annexes</td>
</tr>
<tr>
<td>3.</td>
<td>Preparation of first draft report</td>
<td>June 2020</td>
<td>First draft report</td>
</tr>
<tr>
<td>4.</td>
<td>Circulation of draft report to AMS</td>
<td>June – mid-July 2020</td>
<td>Consolidated input from AMS</td>
</tr>
<tr>
<td>5.</td>
<td>Brainstorming Meeting for Study on recommended procedures for cooperation on cross-border cases</td>
<td>End-July – August 2020</td>
<td>Agenda and Report of Brainstorming Meeting</td>
</tr>
<tr>
<td>6.</td>
<td>Amendment of draft report</td>
<td>Sept 2020</td>
<td>Second draft report</td>
</tr>
<tr>
<td>7.</td>
<td>Presentation of second draft report at the 5th Meeting of ACEN and the 26th Meeting of AEGC, through conference call</td>
<td>Oct 2020</td>
<td>Endorsement of report and consolidated non-substantial input</td>
</tr>
<tr>
<td>8.</td>
<td>Consolidaing non-substantial input to the report</td>
<td>Oct 2020</td>
<td>Final report</td>
</tr>
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</table>

SUBMISSION OF APPLICATION

Applicants should send their application as a team of 2 (two) ASEAN individuals, with a cover letter together with other supporting documents with “Study on Recommended Procedures for Cooperation on Cross-Border Competition Cases” as the subject via email to enno.wiranti@gmail.com, jaif.ia@mcn.co.id, with a copy to the ASEAN Secretariat, competitionandconsumerprotection@asean.org, no later than 21 February 2020 at 05:00pm Jakarta time.
Any queries on the TOR should be sent to enno.wiranti@gmail.com, and jaif.ia@mcn.co.id with the subject line: “Query: Study on Recommended Procedures for Cooperation on Cross-Border Competition Cases.”

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