The current COVID-19 virus is both a health and economic crisis, which has spread beyond the places in which it originated and affected countries and markets worldwide. Logically, competition policy enforcers when applying competition law and advising policymakers on government interventions in dealing with this crisis should, therefore, look beyond national borders.

The COVID-19 crisis came at the time when the policy debate criticizing the activities of competition authorities has been broad and wide-ranging from questioning the inadequacy of the consumer welfare standard, to concerns about the current merger control standards. Competition authorities faced questions about the effectiveness of their activities and whether competition may be skewed, favouring large firms to the detriment of smaller ones or certain economic classes of the population over others. It is against this background that competition agencies face COVID-19.

The current COVID-19 crisis will pass and despite the varying levels of success of previous state interventions, stimulus packages can prevent a more severe downturn and be instrumental to the recovery and stability of markets. It is, therefore, best to find a compromise between competition law and policy and industrial policy rather than focusing on their potential conflicts.

This said, a realistic approach to competition law enforcement in times of COVID-19 necessitates taking account of the unique economic characteristics of the current crisis.

According to an IMF report ‘growth in Asia is expected to stall at zero percent in 2020. This is the worst growth performance in almost 60 years, including during the Global Financial Crisis (4.7 percent) and the Asian Financial Crisis (1.3 percent).’ This exogenous shock requires measures to protect people, jobs, and industries directly. All Association of Southeast Asian Nations (ASEAN) countries are hit by the global tourism slowdown, and by lower commodity prices. Within the Asia,
low-income countries are among the most vulnerable given the limited fiscal space, as well as comparatively underdeveloped health infrastructure and essential food stockpiles.

In addition to the impact of lockdowns measures, two other factors may influence the position of the ASEAN region:

- Global recession: the IMF expects the global economy ‘to contract in 2020 by 3 percent—the worst recession since the Great Depression. This is a synchronized contraction, a sudden global shutdown’. ASEAN’s key trading partners are expected to contract sharply, including Australia, Japan, Europe, and the USA.
- China’s recession: the IMF predicts that China’s growth to decline from 6.1 per cent in 2019 to 1.2 per cent in 2020. This sharply contrasts with China’s growth performance during the Global Financial Crisis. Most observers do not expect a Chinese fiscal stimulus of about 8 per cent of GDP this time, and China won’t help ASEAN’s growth as it did in 2009.

The above factors will further disrupt the integration of ASEAN countries into the global value chain that is the backbone of their trade and investment strategies.

The ASEAN’s immediate response to the COVID-19 crisis has been two-fold: a ‘light touch’ approach to enforcement of competition law, including authorization of crisis collaboration between competitors when this is necessary, and the establishment of the several COVID-19 multi-ministerial task forces to tackle immediate harmful consumer problems arising from the crisis, as well as rescue failing businesses.

Like other countries, ASEAN responses to the pandemic crisis were largely influenced by political pressure and took various forms of government intervention including, inter alia:

- the provision of cash and credit injections into the banking sector to maintain liquidity for commercial and trade transactions;
- the setting-up of national stockpiles of essential commodities and health products, including temporary bans on the exports of essential commodities such as rice, and the facilitation of joint-buying, joint production and sales, as well as the exchanges of information;
- requiring competition agencies to apply a flexible approach to enforcement and in some cases temporarily suspending the application of some of the provisions of competition law;
- state bail out of firms in most sectors of the economy.

The COVID-19 crisis is an unprecedented and on a global scale. It requires a wide-ranging and an ASEAN’s coordinated response that includes government interventions and a wisely calibrated competition law enforcement.

The relaxation of competition rules by each ASEAN country may adversely affect other members, and therefore cross-border cooperation in cases affecting more than one country should be sought. The ASEAN Enforcement Network could provide a practical and beneficial platform for this cooperation.
Targeted state support, combined with domestic demand stimulus in a recovery, will help to during the transition, but it needs to reach people and smaller firms, and coordinated at the ASEAN level, to avoid beggar-their-neighbour policies.

However, succumbing to systematic political pressure to relax competition rules and enforcement can have adverse consequences on competition both at domestic and ASEAN levels and delay economic recovery. The global nature of markets and the widespread reach of the COVID-19 crisis highlight the external impact economic activities in one country may have on the markets of another.

For example, mergers affect market composition and structure and impact policy areas beyond competition. A large proportion of foreign direct investment in ASEAN takes the form of mergers and acquisitions and is often encouraged by governments seeking economic growth. Merger policy, therefore, lies at a crossroads between industrial, political, or economic policy objectives. Addressing how to approach merger control in times of economic crisis presents a considerable challenge to competition authorities. Some of the challenges for ASEAN competition agencies may include:

- Increased pressure on governments to relax merger control laws and standards of enforcement overall.
- State-backed or instigated mergers may be used in conjunction with large stimulus packages as part of wider government policy for recovery.
- The COVID-19 crisis is likely to increase the level of complexity in the substantive analysis of merger decisions. Counterfactual analysis may require technical and economic skills which ASEAN young agencies may not have at the moment.
- Procedural issues may be a challenge as young competition authorities may come under pressure to respond quickly to applications due to the fragility of the market and financial health of firms raising concerns as to the quality of the substantive assessment.

ASEAN is a heterogeneous group of countries with varying levels of economic developments. Of the 10 Member States of ASEAN, six have already introduced some form of COVID-19-related control measures and restrictions. Amidst these control measures, consumers worried about food supply as well as medical masks and sanitizers have led to many panic-buying dry food staples such as rice and instant noodles and sanitizers. Concern has also been raised by business about disruption to supply chain arising from restriction of movements, including the workforce and logistics.

For example, Malaysia’s lockdown did not only cause panic buying locally but also in neighbouring Singapore which imports large amounts of fresh produce from Malaysia. In Vietnam, which is the world’s third-largest rice exporter, the government decided to temporarily stop all rice exports and suspend all contracts to secure local food supply.

The economic and social challenges facing the ASEAN members are similar and affect the same markets in which the same businesses operate across several ASEAN markets. Different state interventions in the same markets would require coordination and consultation to minimize the unintended adverse effects on markets.
importantly, to the extent that a market failure impacts the welfare in other ASEAN jurisdictions, increased cooperation can be instrumental in addressing the concern of other ASEAN members. This approach requires policymakers to perceive ‘competition area’ as more of a legal intervention than a political one.

ASEAN made giant steps in this direction by adopting a 10-year Strategic Action plan on Competition, 2025, developing guidelines on the formulation and enforcement of competition laws, conducting peer reviews of competition law, providing extensive capacity-building programmes, as well as establishing an ASEAN Enforcement Network. These developments have established strong foundations on which further cooperation, particularly, relevant to the current crisis.

In an ever more open and interdependent world economy, effective enforcement requires the application of competition law and policy in the context of broader global cooperation. The advantage of ASEAN approach to regional cooperation and integration is that it is premised on free-market economies that would allow all ASEAN countries to benefit from greater access to global markets. This enables dynamism, growth, and economic development within each ASEAN Member State national markets. For this reason, ASEAN decided that it is in their long-term interest that all members have competition law and policy regimes in place and are equipped with the necessary expertise, resources, and legal infrastructure to effectively implement them.

Different ASEAN countries will apply different approaches according to their circumstances, and it cannot be expected that an approach that works for one country could be imposed on another. The powerful forces that shape nations’ competition and regulatory systems are often unique to a particular nation, and national differences impose significant limitations on cooperation, particularly in times of economic crisis. However, the strong and flexible foundations that ASEAN has adopted as a pillar of their regional integration provide the tools for a coordinated and comprehensive approach to addressing the COVID-19 crisis while preserving competitive markets.