

# **COMPETITION ACT AND ROLES AND AUTHORITIES OF COMPETITION COMMISSION: PERCEPTION OF ACADEMICIANS OF INDONESIA AND MALAYSIA**

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## **ABSTRACT**

This paper gives an overview of the ASEAN countries that had implemented the Competition Act and sectors that are not subjected to the Act. Competition Commissions are independent bodies that are set up to implement the Act. Amongst their roles and authorities are to issue guidelines and advise ministers on competition issues, carry out studies in relation to issues on particular sectors of the economy and summon business actors suspected of having violated the Act. The study examines the level of awareness of the academic on the role and authority of Competition Commission. A total of 138 academicians participated in the study, comprising of 74 respondents from Universiti Gadjah Mada (UGM) and 64 respondents from Universiti Sains Malaysia (USM). The results indicated a wider expectation gap on the Commission's roles amongst academicians in Malaysia than Indonesia. There is a significant difference between perceived roles of Competition Commission by the academicians in UGM and USM but there is no significant difference found concerning the perceived authorities of the Commission. The findings suggest that there should be more visibility of Competition Commission's actions to the public which includes advising ministry on competition issues, deciding on anti-competitive behavior in the market and imposing penalties on the companies that are not in compliant with the Act. Implications of the study include increasing the advocacy and outreach program for this group of stakeholder and also introducing course(s) on competition economics at the University.

**Keywords:** Competition Commission; Competition Act; Expectation Gap; Roles; Authorities.

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## 1. INTRODUCTION

ASEAN has witnessed a significant growth in terms of the number of competition law regimes. It was only two decades ago that there was practically no operational competition law regimes in the region; and to date there are five fully functional countries- Vietnam, Thailand, Malaysia, Singapore and Indonesia that has a Competition Act in place. Philippines do not have a Competition Law but has Acts addressing competition issues. Cambodia and Laos are drafting their competition laws while Brunei and Myanmar are in preparation of offering it. However, it is important for the remaining four ASEAN Member States which have yet to adopt competition law to do so soon so that ASEAN can achieve its goal of having a functional competition law regime in every Member State by 2015 in order to establish the ASEAN Community in that year. Table 1 summarizes the Competition Law Implementation in ASEAN.

**Table 1:** Summary of Competition Law Implementation in ASEAN

Country	Implementation	Year	Details
Brunei	No	-	Sector provisions- Telecommunications Oder 2001, National competition law expected 2015
Cambodia	No	-	Draft law under consideration- Council of Ministers in 2012 Law No 5 of 1999
Indonesia	Yes	1999	Agency – Komisi Pengawas Persaingan Usaha (KPPU), Commission for Supervision of Business Competition
Lao PDR	No	-	Decree 15/PO on Trade Competition to prohibit restrictive business practices- enacted in 2004 but not enforced Agency- Trade Competition Commission Ministry
Malaysia	Yes	2010	Competition Act 2010
Myanmar	No	-	Agency: Malaysia Competition Commission (MyCC) Article 36(b) of Constitution contains general intention for competition policy National competition law expected by 2015.
Philippines	No	-	Competition-related provisions in the 1987 Constitution, Revised Penal Code and New Civil Code. Agency: Office for Competition (DOJ) established in June 2011.
Singapore	Yes	2005	Competition Act
Thailand	Yes	1999	Agency: Competition Commission of Singapore (CCS) Trade Competition Act B.E.2542(1999)
Vietnam	Yes	2005	Agency: Trade Competition Commission Competition Law No 27/2004/QH11 Agencies: Vietnam Competition Authority ( investigation and Vietnam Competition Council (adjudication)

**Sources:** Lee, Casey and Fukunaga, Yoshifumi, April 2013, Asean Regional Cooperation on Competition Policy, ERIA Discussion Paper Series, Table 1, pg 8. [www.eria.org/publications/discussion\\_papers/asean-regional-cooperation-on-competition-policy-html](http://www.eria.org/publications/discussion_papers/asean-regional-cooperation-on-competition-policy-html).

It can be seen that Indonesia's Competition Act came into being in 1999, 11 years earlier than Malaysia and KPPU is responsible to enforce the Competition Act for Indonesia whereas MyCC is responsible to do the same for Malaysia. Since there are many similarities in terms of cultural background of the two countries, this paper would like to examine the level of awareness of one of the stakeholders of the Competition Commission, the academicians, in particular, of the roles and authorities of the Competition Commission. The reason for why the study was undertaken is because despite the fact that KPPU has existed more than a decade, KPPU, has admitted that the awareness level amongst their stakeholders is poor ("Vice Chairman of KPPU...", n.d.; Ariyanto, 2011). In Malaysia, even though MyCC has conducted various advocacy programs, even starting a year before the Law was implemented (Bernama, 2011) yet, there are critics that express doubt on the role of the Competition Commission. This could be due to the lack of understanding regarding what the Commission and the Law is all about (Abdullah, 2012; Keong, 2012; Lim & Ng, 2012). However, it would be expected that the academicians from Indonesia, represented by academicians from UGM would have a clearer perception than that of USM since Indonesia has implemented the Competition Act much longer than in Malaysia.

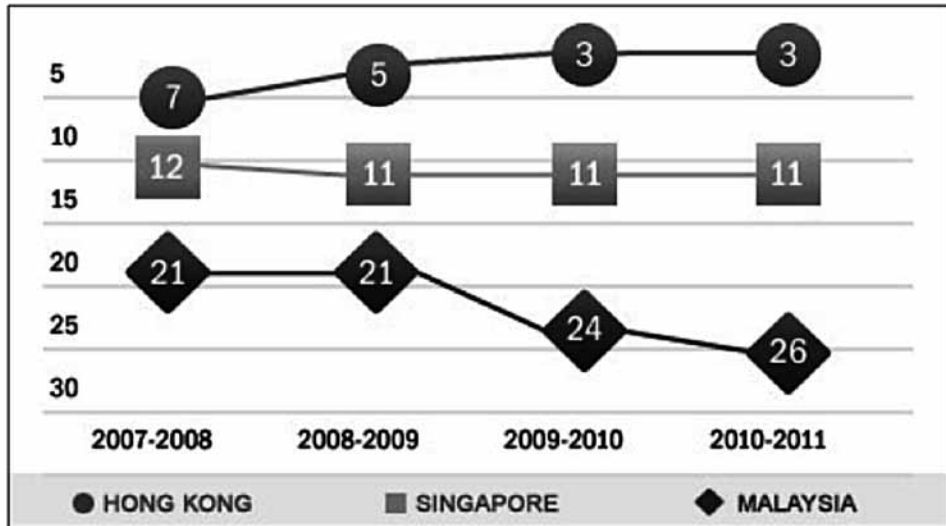
The next section will discuss the background that leads to the formation of the Competition Act, roles and authorities of Competition Commission of Malaysia and Indonesia, methodology of collecting data, findings and conclusion of the chapter.

## 2. MALAYSIA'S COMPETITION ACT 2010

The year 2010 marked the introduction and implementation of Malaysia's Economic Transformation Programme (ETP), a comprehensive effort that will transform Malaysia into a high-income nation by 2020. Holding to four common foundations, which are '1Malaysia, People First, Performance Now', Government Transformation Programme (GTP), New Economic Model and Tenth Malaysia Plan; the ETP Roadmap developed contains concrete target, developed through a series of labs and a series of forums where individuals from both private and public sector came together to develop ideas into action. The Performance Management and Delivery Unit (PEMANDU) was set up to facilitate the initiatives (etp.pemandu.gov.my).

Against this background, strengthen with the fact that Malaysia's Global Competitiveness ranking has been dropping for the past few years (as shown in Figure 1). The first comprehensive competition law in Malaysia, the Competition Act 2010, was gazette on 10 June 2010 and come into force on 1 January 2012 (ww.mycc.gov.my). Prior to the Act, existing competition laws and regulations in Malaysia has been implemented only in two specific sectors, which are the communications and multimedia sector governed by Communications and Multimedia Act 1998 and the energy sector governed by the Energy Commission Act 2001 (Lee, 2005). This initiative may help as Krakowski (2005) found that the effectiveness of antitrust policy has a significant influence on the intensity of local competition. Malaysian Competition Commission (MyCC) was established to implement the Act and it is under the purview of the Ministry of Trade, Cooperatives and Consumerism.

**Figure 1: Malaysia's Global Competitiveness Ranking**



*Source:* Global Competitiveness Report 2010-2011 & 2008-2009 (etp.pemandu.gov.my)

The Act is intended to enhance consumer welfare, business practices and economic development. Figure 2 explains that competition forces enterprises to be more efficient, innovative and responsive to consumer demand. The benefits of competitions are lower prices, better products, wider choice for consumers and greater efficiency of enterprises and the economy as a whole.

Since independence, competition legislation does exist at the sectoral level in Malaysia, which mainly took the form of government control over entry conditions (via licenses and permits) and in some sector, prices. This sectoral approach of regulation has continued even after the implementation of a major privatization program since the mid-1980s. Table 2 summarizes the sectoral regulation in Malaysia prior to 2004 (Lee, 2004).

### 3. INDONESIA'S COMPETITION ACT 1999

For about three decades before 1999, business activities in Indonesia developed without a comprehensive legal framework that serves as a guideline for fair business competition policies. This subsequently resulted in a number of complicated problems. Experts had pointed out that a primary cause of problems in effort to recover from economic crisis in Indonesia was that the structure of Indonesia economy was built inefficiently (Rizkiyana & Iswanto, 2007). Moreover, Shauki (1999) claims that the government is the major contributor to market distortion in Indonesia as there is an existence of dependency of the anti-competitive acts taken by the private bodies on the variables issued by the government. Table 3 mapped the source of business competition problems in industries which were selected by extraction from a list developed by Fane and Condon (1996).

Table 2: Sectoral Regulation in Malaysia

Sector	Regulatory Agency	Legislation	Type of Regulation
Distributive Trade	Ministry of Domestic Trade and Consumer Affairs (MOTCA)	Consumer Protection Act 1999, Price Control Act 1946 and the Supply Control Act 1961	Prices of essential goods are regulated. No provision for competition regulation.
Road	Public roads are regulated by the Road Transport Department (Ministry of Transport). Privatized roads are regulated by the Malaysian Highway Authority under the Ministry of Works.	Road Transport Act, 1987	Price regulation (toll rates) By Ministry of Works. Commercial vehicle licensing (entry) by Commercial Vehicle Licensing Board, Ministry of Entrepreneurial Development.
Railways	Railways Department (Ministry of Transport)	Railways Act 1991 and Railways (Successor Company) Act 1991	Price regulation (fare rates) by Ministry of Transport
Ports	Cooperativized ports are regulated by the respective Ports Commission (e.g. Johor Port Authority, Kuala Port Authority, Klang Port Authority etc.) Federal ports are regulated by the Ministry of Transport.	Ports Authority Act 1963, Ports Act (Privatization), 1990, and the various port commission acts for each port	Price regulation by port commission
Airports	Civil Aviation Department, Ministry of Transport	Civil Aviation Act, 1969; Landing, Parking and Housing, Passenger Services and Air Navigation Facility Charges (and) Regulations 1992.	Price regulation by Ministry of Transport
Communications and Multimedia	Communications and Multimedia Commission	Communications and Multimedia Act 1998	Price regulation and Competition regulation - CIMC advises the Ministry of Energy, Communications and Multimedia. Entry is regulated via licensing.
Electricity Supply	Energy Commission	Energy Commission Act 2001, Electricity Supply Act 1990, Electricity Supply (Successor Company) Act 1990	agreements or various price vs agreements between IPPs and Tenaga Nasional (incumbent distribute company). Retail tariffs regulated by Ministry of Energy, Communications and Multimedia.
Water Supply	Water Supply Department, Water Board, PWD	Water Supply Act, and state legislation	For privatized supplier prices are regulated concession agreements

**Table 3:** Several Sources of Competition Problem on Selected Manufacture Industries

ISIC	Industry	Government		Private
		Import Protection	Industrial Policy	Anti-competitive conduct
31121	Powdered, condensed and preserved milk	Yes	Yes	-
31122	Milk	Yes	Yes	-
31159	Cooking oil and fat made of vegetables and animal	-	Yes	-
33111	Sawmills	-	Yes	Yes
33113	Plywood	Yes	Yes	Yes
38431	Motor vehicles	Yes	Yes	-
38441	Motor cycle and motorized tricycles	-	Yes	-
38490	Other transport equipmentsn.e.c	Yes	Yes	-
36310	Cement	-	Yes	Yes
38131	Fabricated metal products	Yes	Yes	-
35121	Natural fertilizer/non synthetic	-	-	-
37101	Iron and steel basic industries	Yes	Yes	-
35600	Plastic wares	Yes	-	-
31168	Wheat flour	Yes	Yes	-
31171	Macaroni, spaghetti and noodle	Yes	-	Yes
31420	Clove cigarettes	Yes	Yes	-
35511	Tire and inner tubes	Yes	-	-

When the financial crisis in 1997 demonstrated that Indonesia lacked a clean policy for determining what constitutes fair and unfair business competition, the government realized that Indonesia lacked a mechanism for systematically dealing with business actors whose practices are against the principles of free and fair competition (Shauki, 1998). According to Maarif (2004), in an attempt to end the economic crisis, the Government of Indonesia signed a Letter of Intent (LOI) as part of an International Monetary Fund (IMF) loan-rescue program in January 1998. Part of the IMF's requirements was that the Indonesian Government should allow businesses to compete freely so as to avoid "market distortions".

This gives rise to Law No.5/1999 or the Competition Act of Indonesia which was fully enacted in September 1999 and was effective on 5 March, 2000. Businesses were given an additional six-month grace period – until 5 September 2000 – to comply with the Act.

Sirait (2005) has shared some of the experiences of Indonesia whilst implementing the Act. He said that the public and the business are more aware that there is a law which regulates business behaviour towards a more competitive market economy. Over the past five years, KPPU was able to come out with significant decisions which are believed to lead to Indonesia's business being more competitive. On the negative side, there have been some business actors who have been sanctioned by the KPPU who have challenged KPPU's decision and submitted their appeal to the Court – and in most cases, KPPU decisions were overturned by the Court. This is partly because there might be a lack of understanding of the Judges of Competition Act at the Court of Appeal which makes it difficult for the KPPU to defend its decisions.

#### **4. COMPETITION COMMISSION OF MALAYSIA AND INDONESIA**

In Malaysia, Malaysia Competition Commission (MyCC) was formed in April 2011 and in Indonesia, Komisi Pengawas Persaingan Usaha (KPPU) was established in June 2000. They are independent bodies set up to enforce the Competition Act.

There are two main legal backgrounds in the establishment of KPPU, which are Law No.5/1999 and Presidential Decree No.75/1999 (Juwana, 2002) while the two main legal backgrounds in the establishment of MyCC are Competition Act 2010 and Competition Commission Act 2010 (MyCC, 2011). Both commissions are an independent body, which consist of chairman and commissioners. KPPU is assisted by the General Secretary and nine other bureaus, while MyCC supported by five other executive bodies.

Both commissions have the responsibility to be transparent in its activities and provide annual reports that are accessible to the public. KPPU's commissioners were appointed by the President of Indonesia, Susilo Bambang Yudhoyono for a term of 5 years (KPPU, 1999) and MyCC's commissioners is appointed by the prime minister for a term of 3 years (Laws of Malaysia, 2010a).

Competition Commissions are established as the guardians of the Competition Act and they would need support from their stakeholders to ensure that the Competition Act is upheld. Thus there is a need for the stakeholders to be aware of the role and authority of the Competition Commission for them to work hand in hand with the Commissioner to ensure smooth implementation of the Act. The greater the level of awareness of the role and authority of the Competition Commission amongst the academicians (one of the stakeholders of the Competition Commission), the easier it would for them to assist the Competition Commission.

#### **5. ROLE AND AUTHORITY OF COMPETITION COMMISSION**

In general, MyCC and KPPU have almost similar functions and both ensure that fair and competitive business environment exist to ensure a healthy playing field and the end result is to protect the interest of consumers. Table 4 and 5 lists the roles and authorities of the Commission according to the respective country's Act – Competition Act 2010 (Malaysia) and Law No.5/1999 (Indonesia). In summary the roles and authority of Competition Commission is quite similar in both countries.

**Table 4:** Comparison of KPPU and MyCC roles

<b>Statements of the commission roles and authorities</b>	<b>KPPU standard (Law No.5/1999)</b>	<b>MyCC standard (Competition Commission Law 2010 (Act 713) &amp; Competition Law 2010 (Act 712)</b>
S1: MyCC/KPPU is an independent body	Article 30 (2)	Section 3
S2: To carry out general studies in relation to issues connected with competition in the nation economy or particular sectors of the nation economy	Article 35 (a) Article 35 (b)  Article 35 (c)	Section 16 (g)
S3: To alert the Government to the actual or likely anti-competitive effects of current or proposed policy and to make recommendations to the Government, if appropriate, for the avoidance of these effects	Article 35 (e)	Section 16 (a) Section 16 (b) Section 16 (c) Section 16 (k)
S4: To advise the Minister on international agreements relevant to competition matters and to the competition laws	Article 35 (e)	Section 16 (e)
S5: To carry on such activities and do such things as are necessary or advantageous and proper for the administration of the Commission, in accordance with their authority	Article 35 (d)	Section 16 (l)
S6: To issue guidelines in relation to the implementation and enforcement of the competition law	Article 35 (f)	Section 16 (e)
S7: To publish, otherwise raise awareness among persons engaged in commerce or trade and among the public of, information concerning the competition laws and the manner in which MyCC/KPPU will carry out its function under the competition laws	Article 35 (f)	Section 16 (i) Section 16 (f)



**Table 5:** Comparison of KPPU and MyCC Authorities

Statements of the commission roles and authorities	KPPU standard (Law No.5/1999)	MyCC standard (Competition Commission Law 2010 (Act 713) & Competition Law 2010 (Act 712))
S8: Receive reports from the public and or business actors regarding allegations of the existence of monopolistic practices and or unfair business competition	Article 36 (a)	Section 15
S9: Conduct research concerning the possibility of the existence of business activities and or actions of business actors which may result in monopolistic practices and or unfair business competition	Article 36 (b)	Section 11
S10: Conduct investigations and or hearings on allegations of cases of monopolistic practices and or unfair business competition reported by the public or by business actors or discovered by the Commission as a result of its research	Article 36 (c)	Section 14 Section 15
S11: Make conclusion regarding the result of its investigations and or hearings as to whether or not there are any monopolistic practices and or unfair business competition	Article 36 (d)	Section 12 Section 36
S12: Summon business actors suspected of having violated the provisions of this law	Article 36 (e)	Section 17
S13: Summon and invite witnesses, expert witnesses and any person deemed to have knowledge of violations of the provisions of this law	Article 36 (f)	Section 17
S14: Seek the assistance of investigators to invite business actors, witnesses, expert witnesses, or any person, who are not prepared to appear upon the Commission's invitation	Article 36 (g)	Section 17
S15: Obtain, examine and or evaluate letters, documents or other instruments of evidence for investigations and or hearings	Article 36 (i)	Section 19 Section 20 Section 27
S16: Determine and stipulate the existence of losses on the parts of business actors or society	Article 36 (j)	Section 61
S17: Announce the Commission's decision to business actors suspected of having engaged in monopoly practices and or unfair business competition	Article 36 (k)	Section 36
S18: Impose administrative sanctions on business actors violating the provisions of this Law	Article 36 (l)	Section 62

**Source:** Adapted from Laws of Malaysia, 2010; Laws of Malaysia, 2010a; KPPU, 1999

## **6. LEVEL OF AWARENESS OF ROLES AND AUTHORITIES OF COMPETITION COMMISSION**

### ***6.1. Academicians as the key stakeholder of Competition Commission***

Universities are one of key stakeholders that had been identified by MyCC's working advocacy committee (WCA, 2011). Universities play an important role as the educators and suppliers of the future workforce for the country (WCA, 2011, p.15). Universities should equip graduates with the right knowledge and skills to equip them for the job market and also the challenges of the real world. This would include a better understanding of market structure and the functions of competition law. MyCC's WCA stated their openness to collaborate with public and private universities to design new courses on competition policy and law or embed competition concepts in existing university courses. Moreover, academicians shall be encouraged to contribute to the law reform through efforts such as conduct and publish their findings of the market studies and engage in discourse on competition issues in the country (WCA, 2011, p.22).

UGM has been established for 64 years as compared to USM with 44 years of establishment. It can be seen that USM has a greater number of Schools and only offer undergraduate and postgraduate programs unlike UGM which also offers Diploma programs. Currently, there is no economics competition course that is being offered in UGM and USM like that offered in Singapore and in western countries although not offered as a specific course, anti-competitive behavior is covered in the economics courses of both universities as a topic.

### ***6.2. Culture of Indonesia and Malaysia***

Culture can much shape human behaviour. Culture is usually measured using Hofstede's five dimensions of culture (The Hofstede Centre, n.d.a). Using Hofstede's five dimension of culture, Malaysia and Indonesia scores about the same in terms of individualism (Malaysia 26, Indonesia 14), masculinity (Malaysia 50, Indonesia 46) and uncertainty scores (Malaysia 36, Indonesia 48). For power distance dimension, Malaysia scores higher than Indonesia (Malaysia 104, Indonesia 78) (The Hofstede Centre, n.d., n.d.b). It can be explain that people in Malaysia accept a hierarchical order in which everybody has a place and which need no further justification. Therefore, it can be said that academicians in Indonesia and Malaysia are culturally the same and that is the reason for why academicians from UGM and USM is chosen to be the sample of the study.

### ***6.3. Expectation Gap***

In this research, expectation gap can be defined as the difference between what public expect or believe from a profession and what the profession is actually providing (Liggio, 1974; Monroe & Woodliff, 1993; Jennings et al., 1993, Lowe, 1994). Adapted reasonableness gap from Porter's audit expectation gap model (1993), anything that is below than set by the Act is named "reasonable expectation" and anything that is not set by the Act is named "unreasonable expectation". In this study, respondents are asked to rate on a scale of 1 (strongly disagree) to 5 (strongly agree with respect to the role and authority of the Competition Commission. The role and authority determined by the Act is given a scale of 5. There are three specific objectives of this paper:

- (i) To determine if there is an expectation gap of the role and authority of the Competition Commission of academics from Malaysia and Indonesia and if so, which country has a wider expectation gap. Wider expectation gap indicates lower level of awareness.
- (ii) To determine if there is a significant difference between academics from Malaysia and Indonesia with respect to their perception of role and authority of Competition Commission. If there is a significant difference, it indicates that academics from Malaysia and Indonesia differ with respect to their level of awareness of role and authority of Competition Commission. If there is no significant difference, it means to say that their level of understanding is about the same.
- (iii) To make recommendations to the stakeholders, MyCC and Ministry of what initiatives to be taken to increase the level of awareness of the academics.

#### **6.4. Hypotheses of the study**

The issue of expectation gap is impossible to be removed, as acknowledged in the auditing literature. Expectation gap persistently occurs although measures have been undertaken to lessen the size (Sikkaet *al.*, 1998; Fadzly & Ahmad, 2004, Lee *et al.*, 2007; Kasim & Hanafi, 2008).

Stakeholders' perception survey 2012 conducted by Competition Commission Singapore (CCS) reveals that awareness of CCS has generally improved for consumers and business from 2009 to 2012, although awareness among them is still relatively low (less than 50%). CCS is struggling to make it clear to the society that it is not a price regulator, as the people felt that prices are not competitive in some markets (usually taxi and petrol) and wonder why CCS didn't take any actions (Fung, 2012).

Stakeholders' perception survey 2011 on UK CC identified a low score of dissatisfaction in some areas, which some of these areas are remaining unchanged until now. Those areas are the demands that CC investigations make on parties, how well decisions are explained and how up to date the CC is with practices in the industries investigated. (Competition Commission, 2012). There might be a possibility that the level of stakeholders' expectation is higher and the lower the perception of the quality of the performance of the Competition Commission has led to the dissatisfaction of the stakeholders (Pu, 2009). Studies in service quality literature that show that customers' satisfaction and dissatisfaction are being influenced by their prior expectations (Peters, 1988; Kong & Mayo, 1993; Baron-Epel, Dushenat & Friedman, 2001; LeBlanc & Nguyen, 1997; Patterson & Spreng, 1997; Kim, Ferrin & Rao, 2003).

This is supported by the speech from the Vice Chairman of KPPU, Dr Sukarmi, and titled "The KPPU's decision for consumers' interest" during a meeting with The Indonesian Business Association (APINDO). She mentioned; "...the Commission realized that public's awareness and understanding on duties and authority of KPPU is still low, and sometimes even misunderstood, especially concerning the decision basis, the investigation procedures and the penalty count." ("Vice Chairman of KPPU...", n.d.).

Mr Taufik Ariyanto, Head of Research Bureau, KPPU in Competition Act Seminar in Penang on October 13, 2011, as the conclusion of business community survey show that majority of respondent

(represent business actors from various sectors, with additional information from business expert, academician and public figures) have low awareness or understanding of the competition law and the existing competition advocacy is not sufficient.

Furthermore, long period taken of investigation and hearings have led the public to form negative perception towards KPPU functions and capabilities (Nugroho et al., 2013; Hogarth et al., 2010.). In an informal interviews with four (4) MBA students in MMUGM, Indonesia (conducted on various date in month of December), almost all of them mentioned KPPU's failed cases like Carrefour and Temasek cases.

Adding on to this, is that KPPU's integrity was also being questioned, as it noted that the KPPU had been known for wasting valuable resources "to investigate cases with little merit and with most of its past rulings thrown out by district courts". For example in the case of Temasek, KPPU seems to have been "biased in handling this case" right from the start (Lingga, 2007). KPPU's losses experience in court over Indomobil case was a real shock to the public and makes the public question whether anti-monopoly law is too weak, especially if a district court can easily overturn KPPU rulings (Wijaksana, 2002). Furthermore, the caliber of the KPPU's investigation processes and the quality of KPPU's decision was questioned (Andy, 2002). KPPU also encountered hard times in gaining trust when one of their commissioners, Muhammad Iqbal was arrested for alleged bribery. Khalik (2008) wrote in The Jakarta Post, that past KPPU rulings in doubt after Iqbal arrest. Former KPPU chairman, Sutrisno Iwantono agreed the bribery case had put the anti-monopoly body's credibility on the line as the trust that the KPPU has built over the past eight years will collapse. Appeal made by Iqbal was rejected by the Supreme Court ("Court rejects former KPPU commissioner appeal," 2010).

To date in Malaysia, as the Act is still new, there is no survey conducted as yet to examine stakeholder's perception or understanding on the Act as it is still new. MyCC has initiated various advocacy programs to consult public before the Competition Act 2010 comes into force on 1 January 2012 (Bernama, 2011) and the advocacy programs were still planned ahead by the MyCC (Malaysia Competition Commission. (2012). However, MyCC can learn useful lessons from Indonesia who have implemented the law over twelve years.

MyCC also has received negative perceptions from the public. Keong (2012), a member of parliament for Wangsa Maju, mentioned in his blog (weechookeong.com) that "many critics in Malaysia are not convinced that MyCC will go the whole hawk in its investigation into the secret MAS-Air Asia share swap and comprehensive collaborative framework (CCF)". In the case price-fixing among the Cameron Highlands Floriculturist Association (CHFA), the CHFA president said that they do not know that there is a new competition law, show that the news still not spreading out much ("Cameron's association being investigated," 2012).

Based on the evidences presented above, this paper wishes to address the following hypotheses:

- H1:** There is a significant difference between perceived roles of Competition Commission by the academicians in Indonesia (UGM) and in Malaysia (USM).
- H2:** There is a significant difference between perceived authorities of Competition Commission by the academicians in Indonesia (UGM) and in Malaysia (USM).

### 6.5. Methodology

A descriptive study method using a cross-sectional survey design was employed. Data was collected via online survey from academicians from two countries, Indonesia and Malaysia. The data collection was conducted for 3 months, starting January for UGM and end of February for USM. The sample respondents were academicians who teach business and economics in USM and UGM. 138 respondents, with 74 respondents from UGM and 64 respondents from USM participated in the study.

To test the validity of the questionnaire, the questionnaires were first sent to two commissioners of KPPU and two commissioners of MyCC. The objective was to examine whether the roles and authorities in the questionnaire resemble the actual roles and authorities required to be performed by the Competition Commission A pilot test was then conducted on three academicians in UGM and three academicians in USM to assess the clarity of the questionnaire.

### 6.6. Questionnaire

The online questionnaire was designed to ascertain the respondent's perceptions about the Commission roles. The questionnaire contains three sections. The first part is related demographics (age, gender, highest education, job specification, etc). The second part sets as filter questions, to ensure the respondents chosen for SPSS analysis were valid. The third part contains a list of Competition Commission's roles (7 statements) and authorities (12 statements) as explained in Table 6. The measurement instrument of the statements is a Five-Point Likert type scale, coded and described as 1 (Strongly Disagree), 2 (Disagree), 3 (Neutral), 4 (Agree) and 5 (Strongly Agree). Respondents were asked to rate their extent of agreement to the statements given.

**Table 6:** The variables of study

Variable	Statements	Measurement	Sources
Section C: Roles of Competition Commission	Statement 1 to Statement 7	Five-point likert scale	(Law No.5/1999; Competition Commission 2010)
Section C: Authorities of Competition Commission	Statement 8 to Statement 19	Five-point likert scale	(Law No.5/1999; Competition Act 2010)

Validity and reliability and testing of the two hypotheses of the study were conducted. Content adequacy and reliability analysis scale were confirmed through factor analysis. The KMO sampling of adequacy was at 0.661, and 4 out of 19 factors extracted were dropped due to some factor loading was less than 0.50 on one factor and cross loading more than 0.35 (Igbariaet al., 1995). All constructs of scales show high levels of reliability, since Cronbach's Alpha is larger than 0.8 for both scales (Sekaran, 2003).

## 7. FINDINGS AND ANALYSIS

At the end of the data collection period, 143 responses were received, yielding 56.3 percent response rate as shown in Table 7. Five responses received were not valid to be used due to the filtered questions in part 2 of the survey. T-test conducted to see significant difference in answers by UGM and USM since survey were conducted on different dates.

**Table 7:** Response Rate

Subjects	Response Received	Percentage (%)
Questionnaires sent through email	254	100.0
Received questionnaires	143	56.3
Usable questionnaires	138	54.3
Unusable questionnaire	5	1.9

### 7.1. Demographic Profile of Respondents

The respondents' profiles from both universities are quite similar and depict a higher percentage as a PhD degree holder as compared to the master degree. The sample also consisted of mostly adult (age range 45 to 54), male with high level of teaching and industrial experience.

To analyze the expectation gap, independent t-test is used to test the significant expectation gap between academicians in USM and UGM. Assumptions of t-test were fulfilled before running the test.

**Hypothesis 1:** There is a significant difference between perceived roles of Competition Commission by the academicians in Indonesia (UGM) and academicians in Malaysia (USM)

**Table 8:** Comparative means responses – roles statements

	Mean responses		t-test
	Indonesia	Malaysia	
Roles of Competition Commission	4.195	3.971	2.169*
Statements on roles of Competition Commission			
S1: MyCC/KPPU is an independent body	4.18	4.05	1.087
S2: To carry out general studies in relation to issues connected with competition in the nation economy or particular sectors of the nation economy	4.26	4.03	2.458*
S3: To alert the Government to the actual or likely anti-competitive effects of current or proposed policy and to make recommendations to the Government, if appropriate, for the avoidance of these effects	4.01	3.98	.223

**Table 8:** Comparative means responses – roles statements (*cont*)

	Mean responses		t-test
	Indonesia	Malaysia	
S4: To advice the Minister on international agreements relevant to competition matters and to the competition laws	4.15	3.84	2.151*
S5: To carry on such activities and do such things as are necessary or advantageous and proper for the administration of the Commission, in accordance with their authority	4.26	3.88	3.392*
S6: To issue guidelines in relation to the implementation and enforcement of the competition law	4.34	4.14	1.480
S7: To publish, otherwise raise awareness among persons engaged in commerce or trade and among the public of, information concerning the competition laws and the manner in which MyCC/KPPU will carry outs its function under the competition laws	4.18	3.88	1.915**

*Note:* \* $p < .05$ ; \*\* $p < .10$

It can be seen from Table 8 that expectation gap (perceived role- actual rating and that required by the standard- rating of 5) is higher for academics from Malaysia than Indonesia. This means that academics from Indonesia have a higher level of awareness as compared to academics from Malaysia.

Table 8 also shows that there is significant difference between Indonesia and Malaysia on the matter of academicians' perceived roles of Competition Commission ( $p < .05$ ). Therefore, hypothesis 1 can be supported.

Further examination by items, have shown that Statements 2 (S2), 4 (S4) and 5 (S5) significant at  $p < .05$  and Statement 7 (S7) has shown a significant result at  $p < .10$ , as presented in Table 6. Overall, mean scores by Indonesian academicians are much higher than of Malaysia for all statements. This indicated a closer gap which represents better understanding among Indonesian academicians towards Competition Commission's roles.

Both countries show larger gap in roles and authorities concerning the Government/Minister. UGM's result indicated bigger gap on Statement 3 (S3), while USM's on Statement 4 (S4). This might due to the performance of KPPU in monitoring and advising the Government. Out of 100 advices submitted to Government, only 27% were positively responded by the Government (KPPU, 2011), which might lead the public to feel skeptical regard the responsibility of KPPU towards the Government and the obligations of the Government to obey (Andy, 2002; Wijaksana, 2002). Also, there are high merit cases (such as Carrefour, Temasek, Indomobil and Indosat) investigated by

KPPU were turned over by the court or still ongoing hearing or appeal, years after the investigation officially started, might leave negative impact on the academicians' perception towards Competition Commission roles. While MyCC has performed their role on the low-merit players such as CHFA, nestle and shipping association (Loong & Kamaruddin, 2012). Therefore, instead of aiming at low merit cases, the Commission must also examine big player or high merit business players as well in order to show to the key stakeholder that the Commission is an independent body and not biased in performing their duties.

**Hypothesis 2:** There is a significant difference between perceived authorities of Competition Commission by the academicians in Indonesia (UGM) and academicians in Malaysia (USM)

**Table 9:** Comparative means – Authorities statements

	Mean responses		t-test
	Indonesia	Malaysia	
Authorities of Competition Commission	4.199	4.016	1.658
Statements on authorities of Competition Commission			
S9: Conduct research concerning the possibility of the existence of business activities and or actions of business actors which may result in monopolistic practices and or unfair business competition	4.32	3.95	2.264*
S12: Summon business actors suspected of having violated the provisions of this law	4.16	3.97	1.442
S13: Summon and invite witnesses, expert witnesses and any person deemed to have knowledge of violations of the provisions of this law	4.08	3.95	.975
S14: Seek the assistance of investigators to invite business actors, witnesses, expert witnesses, or any person, who are not prepared to appear upon the Commission's invitation	4.24	4.14	.777
S15: Request the statements of Government institutions related to the investigations and or hearings about business actors who violate the provision of this Law	4.16	4.11	.424
S16: Obtain, examine and or evaluate letters, documents or other instruments of evidence for investigations and or hearings	4.08	4.16	-.605
S17: Determine and stipulate the existence of losses on the parts of business actors or society	4.24	3.83	2.595*

*Note:* \*p < .05



Table 9 shows that there is no significant difference between Indonesia and Malaysia on the matter of academicians' perceived authorities of Competition Commission. In other words, it does not mean that academicians in UGM are better in understanding authorities of Competition Commission and vice versa. Therefore, hypothesis 2 is not supported.

However, if examined by items, Statements 9 (S9)- conduct research on existence of anti-competitive behaviour and 17 (S17)- determine existence of losses of businesses have shown significant result ( $p < .05$ ) as presented in Table 7. Mean scores of Indonesia are slightly higher than Malaysia for both statements, indicated that closer gap which represent better understanding among Indonesia's respondents towards these statements of the Commission's authorities.

In terms of level of awareness, Indonesia fares lowest level of awareness in statement 13 (summon witnesses who have knowledge of violation of law) and Malaysia fares lowest level of awareness in Statement 17 (determine losses by businesses).

Overall, academicians in Malaysia have a greater expectation gap in the Commission's roles than academicians in Indonesia. Although, H2 is not supported (regarding the expectation gap in the Commission's authorities), it was found that the mean score of academicians in Indonesia is slightly higher than that of academicians in Malaysia.

Indonesia might have difficulties in raising the awareness among their stakeholder due to the lack of advocacy programs focusing on the academicians and the fact that there is no business competition course offered in Indonesian universities. This might cause the academician not alert with the Commission issues, as the academician might not be directly affected by the Commission's performance or services and he/she couldn't sense the importance of the establishment of Competition Commission. Therefore, the Commission might collaborate with MOHE, universities and academicians in the effort of proposing business competition as a course to be included in the curriculum offered.

## ***7.2. Limitations and Suggestions for Future Research***

Like any other study, this study has several limitations. The sample chosen and the sample size for this study might be insufficient to represent the whole population of the sample. Future study can replicate this study using larger population and samples. It can also be extended to the law lecturers rather than confined to the group of business lecturers. This is because in many universities a competition course is offered in the law faculty. The online survey questionnaires employed may lead to self-selection (Stanton, 1998; Thompson *et al.*, 2003; Witmeret *al.*, 1999) and the respondents were required to state their agreement on the perception statement given. Interview would be better approach to get an in depth issues of whether the respondents understand the role and authority of the Competition Commission.

## **8. CONCLUSION**

This paper has given an overview of the Competition Act in ASEAN and note that to date there are fix ASEAN countries that have implemented the Act and one country that have provisions addressing competition issues. This paper also highlights the factors that led to the establishment

of the Competition Act and examines the level of awareness of the academics from USM, Malaysia and UGM, Indonesia. The study has shown that there is a significance difference found between the perceived roles by the USM's and UGM's academicians but not on authorities of Competition Commission. The level of awareness of roles and authorities are much higher by the academics of Indonesia than that of Malaysia. This is understandable as Indonesia's Competition Act has been in existence for a longer period (11 years) as compared to Malaysia (2 years).

Academics from Malaysia show a lower level of awareness of the role of Competition Commission than authority of Competition Commission. Indonesia and Malaysia must continue and increase their advocacy effort to enhance better understanding on the roles and authorities of the Commission amongst the stakeholders. Visibility of Competition Commission's actions to the public in terms of advising ministry on competition issues, deciding on anti-competitive behaviors in the market and imposing penalties on the companies that are not in compliant with the Act should be enhanced. Implications of the study include increasing the advocacy and outreach program for this group of stakeholder and also introducing course(s) on competition economics at the University.

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