THE REGULATION OF COMPETITION AND INNOVATION IN THE EUROPEAN UNION AND SPAIN: OPPORTUNITIES FOR THE PHILIPPINES AND THE ASEAN

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ABSTRACT

The Philippines are currently facing a process of regional economic integration inside the ASEAN, in some way similar to the process undertaken by Spain and the European Union decades ago. Since January 2016, the ASEAN has become a Common Market, for whose effective achievement Competition and Innovation Law and Policies may play a crucial role. The scope of these pages is to overview the importance of the regulation in these issues and the promotion of competition within the member States throughout the process of regional economic integration. Then, we will consider the role that Competition and Intellectual Property Law and Policies have played in the construction of the European Union, and we will point out some current challenges that are still to be faced. Finally, we will offer some comparative conclusions considering the importance that these norms and policies will have in the construction of the ASEAN as an economic integrated area, and the way the ASEAN might follow the footsteps set by the European Union in its integration process.

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I. THE LONG WAY TO ECONOMIC INTEGRATION

In the increasingly globalized World resulting from the Second World War, opened to a bigger international competition between the economies, the States have found in the cooperation with the neighbouring countries a way to grow and being more competitive. The establishment of these networks provides important advantages for the countries involved:

1) First of all, it allows to remove barriers to trade between the member States, fostering the intensity of trade: both in quantity and in quality.

2) Secondly, it expands the markets of the participating economies. This means that the potential demand for the goods and services produced by a country grows; but also competition does expand, as the local companies will have to compete not only with other local manufacturers, but also with the ones of the other States participating in the integration.

3) This latter factor fosters innovation and competition, so as the specialization of the countries in those goods in whose production they enjoy a comparative advantage[1]. Manufacturers will now have to produce their goods in better economic conditions than the other countries do. The attractiveness of the local offer may come out of better prices, but also of a better quality of the products or the incorporation of any innovation protected by intellectual property rights.

The processes of economic integration must satisfy three requirements at least: the removal of obstacles to trade between the participating countries; some kind of cooperation in economical and/or legal matters; and the improvement in the general level of welfare of the integrated zone[2].

Regional Integration Agreements may adopt different forms according to the extension of the commitments undertaken by the parties involved in it. Normally, economic integration represents a process formed by different stages. In each stage the parties assume greater obligations, the trade barriers are lowered and the interconnection between the economies grows[3]. From an economic point of view, we can distinguish up to six steps in the economic integration process:

A) **Preferential agreements**. By means of a preferential agreement, the parties confer themselves some kind of commercial preferences, such as a reduction of tariffs or other form of protection, mainly regarding to the industrial production. The problem of these agreements is that they do not fit inside the legal framework introduced by the WTO, for they undermine the principle of non-discrimination and shall not be included in the exception considered, first by the GATT, and now by the Marrakech Agreement (art. XXIV GATT).

B) **Free trade area**. The simplest form of economic integration is the free trade area. It only implies the removal of tariff and no-tariff barriers to the trade of goods among the involved countries. The definition of the trade policy remains within the competence of every single participating State, so as trade with third countries not party to the integration process, which remain bonded by the existing barriers.
The functioning of this level of integration requires to set a monitoring system in order to control trade inside the free trade area, so as the goods imported by third countries may not be commercialized inside the integrated area free of the tariffs or non-tariff barriers that are normally applied to the goods coming from third parties. The general solution adopted to overcome this problem is the requirement of export certificates.

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[1] See BALASSA, B., *A "stage" approach to comparative advantage*, The World Bank, Washington, 1977.
[2] See BALASSA, B., *Teoría de la integración económica*, Unión Tipográfica Editorial Hispano-Americana, Mexico, 1964.
[3] An in-deep analysis of the economic integration processes can be seen in CALVO HORNERO, A., Integración económica y regionalismo: Principales acuerdos regionales, 3rd Ed., Ed. Ramón Areces, Madrid, 2003.

This form of the Free Trade Agreement between the countries of the ASEAN set in 1992.

C) **Customs union**. The next step in the economic integration is the creation of a customs union. In this case, the countries that conform a free trade area decide to fix a common tariff regarding to third countries. That is, the import of goods from third countries must face a single common tariff. By these means the above-mentioned problem of trade of imported goods inside the free trade area is solved. In Europe, this phase of evolution was reached in 1968 with the European Community (EC).

D) **Common market**. The Common Market represents the addition to a customs union of the freedom of circulation of factors of production, such as labour, assets or companies. Normally, when a common market is set, the parties involved agree in the convergence of some common policies, such as a common policy for agriculture, fishing or commercial relationships with third parties. The establishment of a common competition policy is crucial in this phase. The achievement of the goals of the Common Market requires the elimination of physical borders (customs), technical frontiers (which requires the harmonization of rules about qualities, public markets…) and tax frontiers (by means of the harmonization of some taxes). The European Union set in 1993 by the Maastricht Treaty represented the achievement of this step in Europe[4]. The ASEAN has become a Common Market since January 2016, allowing the free trade of goods, assets and labour.

E) **Economic union**. The harmonization of some politics, especially regarding to macroeconomics, can lead to the achievement of an Economic Union. To reach this phase two provisions are required: (a) the harmonization of monetary policy; and (b) the establishment of an harmonized fiscal policy. But other policies are normally harmonized, such as the rules regarding public budgets or the fixation of common policies to foster structural changes and regional development. In Europe, this stage was reached in 1999 with the Economic and Monetary Union (following the steps set in the Amsterdam Treaty); but this kind of integration had been achieved long before in the Benelux (1948), the Lagos Plan of Action (1980) or the Mano River Union (1973)[5].

F) **Full economic and political integration**. Along with the coordination and unification of the domestic economies of the Member Estates, full integration requires the establishment of a common parliament, so as the adoption of a single foreign, defence and domestic policy. Europe has not yet achieved this phase, and the problems of the latter decades make us feel that it will be more difficult than what it was thought. Euroscepticism,

[4] See CECCHINI, P., *The European Challenge, 1992: The Benefits of a Single Market*, Aldershot, Hants, 1988.

[5] Though, as one can easily see, these cases are cases of more reduced entity.

a possible Brexit[6] and the refusal to implement some community policies –especially regarding to the control of the public budget deficit- are threatening not only the completion of the integration process, but also the stability of the phase of Economic Union already achieved.
The United States is an example of this kind of integration, so as was the unification of Germany in 1871 or Italy in 1870.

As the member States get integrated within this process, there is still the possibility for new members to enter in the Agreement. The European Union, originally formed by six member States (Germany, France, Italy, Belgium, the Netherlands and Luxembourg), has grown throughout 7 Accession Treaties[7]. Nowadays it is integrated by 28 members. The same happened in the ASEAN, originally constituted by 5 members (Indonesia, Malaysia, Philippines, Singapore and Thailand) and nowadays formed by 10 members[8].

II. REGIONAL INTEGRATION WITHIN THE BIG INTERNATIONAL ECONOMIC AGREEMENTS

The regulation of international economy does not fall only within the scope of regional integration agreements. International economic relationships take place at a global scale, and thus even regional agreements must fit inside international agreements and work along with international economic organizations. Two international organizations are of special interest for the purposes of this pages: The World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO), for both affect to competition and innovation at international level.

- **WTO**. The intents to create an intergovernmental organization to regulate international trade remotes to the end of the Second World War, through the pretended International Trade Organization (ITO). After the conflict, the United States and its allies intended the creation of the ITO by means of the passing of the Havana Charter in 1948. But this organization never came into being, due to lack of approval by the US Congress. The absence of this organization was covered during 46 years by the General Agreement on Tariffs and Trade (GATT), which was just an agreement and it did not constitute any international organization to govern international trade. The situation changed in 1994, when 123 nations signed the the Marrakesh Agreement which constituted the World Trade Organization, and substituted the GATT[9].

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[6] The possibility of the United Kingdom to get out of the European Union, which will be subjected to referendum next 23th June 2016. The possibility of a Member State to leave the Union had previously been considered regarding to Greece and its difficult economic situation.

[7] United Kingdom, Ireland and Denmark (22 January 1972); Greece (28 May 1979); Spain and Portugal (12 June 1985); Austria, Finland and Sweden (24 June 1994); Cyprus, Estonia, Hungry, Malta, Poland, Latvia, Lithuania, Czech Republic, Slovakia and Slovenia (16 April 2003); Bulgaria and Romania (25 April 2005) and Croatia (9 December 2011).

[8] Brunei (since 8 January 1984), Vietnam (28 July 1995), Laos and Myanmar (23 July 1997) and Cambodia (30 April 1999). East Timor and Papua New Guinea are nowadays candidate Countries to enter in the ASEAN.

[9] On the evolution of the WTO see CALVO HORNERO, A., *Economía internacional y organismos económicos internacionales*, Ed. Ramón Areces, Madrid, 2010, pp. 291 ff.

The Marrakesh Agreement attributed the WTO all the competencies of the GATT regarding the trade of goods and services, but also gave other competencies regarding to intellectual property, environmental policy, trade and development, regional trade agreements, Balance-of-Payment restrictions, technology transfer and transparency in public procurement. The agreement also included some sectoral agreements (public markets, beef, civil aircrafts…), so as some rules affecting the artificial exports promotion (subsidies) or regarding the regulation of exportations.

From a systematic point of view, the constitutive agreements of the WTO were divided into four parts: GATTS (regarding the trade of goods); the GATS (General Agreement on Trade and Services); the TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights); so as the establishment of a dispute settlement system[10]. We will focus on the implications of the TRIPS.

The TRIPS agreement focuses on five main aspects:

1) The implementation of the basic principles of intellectual property relating to trade:
    a. national treatment, which implies that the treatment given inside a country must be the same for nationals and foreigners.
    b. the most-favoured-nation principle implies that any advantage given to a third country automatically extends to all the members of the WTO.
    c. and technology transfer, which recons that intellectual property must serve to technical innovation and the transfer of technology, getting advantage of it both producers and users, seeking the economic and social welfare.
2) The protection of intellectual property, on the basis of the agreements set by the WIPO. The role of the TRIPS is only to reinforce some of these agreements, adding some specific and more rigorous rules.
3) The obligation to the member states to protect intellectual property rights establishing sanctions severe enough to product deterrent effects (both civil and criminal sanctions).
4) The dispute settlement between the members of the WTO regarding to Intellectual Property, according to the general system of the WTO.
5) Some transition provisions for the entering into force of this legal framework which considers the special needs of the least developed countries[11].

- **WIPO**. In this field of Intellectual Property, time before the WTO was created, there was an international body with the aim «to encourage creative activity and promote the protection of intellectual property throughout the World»[12]. The World Intellectual Property Organization (WIPO) was created in 1967 and it is now one of the specialized agencies

[10] On its objectives and instruments, see CALVO HORNERO, A., *Integración económica y regionalismo: Principales acuerdos regionales*, 3rd Ed., Ed. Ramón Areces, Madrid, 2003, pp. 105 ff.

[11] See REQUEIJO, J., *Economía Mundial*, 4th Ed., McGraw Hill, Madrid, 2011, pp. 26 ff.

[12] Desiderata of the Convention Establishing the World Intellectual Property Organization (Signed at Stockholm on 14 July 1967 and as amended on 28 September 1979).

of United Nations[13]. The WIPO consists on 188 member states, among them Spain since its foundation in 1970 and the Philippines since 1980. But neither is the WIPO a new organization, it is the successor of the BIRPI (Bureax Internationaux Réunis pour la Protection de la Propriété Intellectuelle –United International Bureaux for the Protection of Intellectual Property), set in 1893 with the scope to administer the Paris Convention for the Protection of Industrial Property, so as the Berne Convention for the Protection of Literary and Artistic Works. Nevertheless, the WIPO assumed more competences that originally had the BIRPI, playing also an important role regarding the promotion of technology transfer and economic development.

Once summarised the international context[14], we will focus on the role that Competition and the protection of innovations play in the processes of regional economic integration. For obvious reasons, we will mainly consider the European experience and the evolution of these policies; so as the importance that the strengthening of these politics may have in the proceeding of economic integration in the ASEAN.

III. COMPETITION POLICY IN THE EUROPEAN PROCESS OF ECONOMIC INTEGRATION

Economic integration processes have a twofold dimension: a) An external dimension which means the adoption of the measures needed to remove the tariffs and barriers to trade within the involved countries; and b) an internal dimension which requires the promotion of free competition within the participating countries. The first perspective requires the positive agreement between the parties to reduce the obstacles to trade, so as to provide the same treat to third parties. Once achieved these agreements, integration is fulfilled, but this does not imply the existence of proper competition inside the integrated area.

A more active approach is needed to ensure the proper functioning of a common market under competition circumstances. In Europe, since the very European Coal and Steel Community treaty (ECSC), some regulation of competition in the affected markets (coal and steel) was established with the aim to promote competition between the companies involved in them[15]. But the objectives of competition policy go beyond the establishment and proper functioning of a unitary

[13] Actually, the WIPO was created by the Convention Establishing the World Intellectual Property Organization (into force on 25 April 1970), and it only became a specialized agency of the United Nations in 1974.

[14] The author apologies for the excessive simplification when dealing with these international organizations and the international framework. The limitation of time and space forces us to just give a superficial view of their functioning, as we will focus in the importance of competition and intellectual property policies so as their role in the processes of economic integration.

[15] On the process of economic integration in Europe, see CALVO HORNERO, A., *Fundamentos de la Unión Europea*, 3rd ed., Ed. Ramón Areces, Madrid, 2014; GOYDER, D.G., *EC Competition Law*, Oxford University Press, Oxford, 2003, sp. pp. 16 ff.

market, they also promote an efficient resource allocation, foster innovation and technical development so as the intertwinement with the international economy[16].

The first and main goal of the Competition policy in Europe was to prevent the obstacles to the trade of goods and services[17]. This policy was intended to contribute to the construction of the community based on the market economy principles and free competition. The functioning of a single internal market depends on the effectiveness of competition policy, especially by means of rules to ensure that obstacles to trade (that had already been removed within the economic integration process) will not be substituted by other kind of restrictions, both of public or private origin.

The processes of economic integration and, in particular, the creation of single markets produce necessarily an increase of competition, for the national companies must now compete not only with other domestic rivals, but also with the producers of other countries. This phenomenon fosters an increase in the investments and the progress of the economic activity in the region, as the companies must be more competitive in the production and commercialization of their goods. Integration also triggers a surge of mergers and acquisitions, as the companies will have to adapt their resources and installations to operate at a new dimension. The processes of economic integration of companies, such as international mergers and acquisitions are an indicative that the regional integration is becoming a reality. Along with that, competition in a common market fosters the specialization of the national industries in the production of those goods or services in which they have a comparative advantage. This implies a better allocation of resources as the countries may specialise in the production of those goods that they can manufacture at lower prices and higher quality, at the same time that the other countries may reduce the production of the goods that they can only offer at higher prices, deviating these resources in the production of the better gifted industries.

The implementation of Competition Law at a Community level has been attributed to the European Commission, which has to cooperate with the national competition authorities to the effectivity of the rules. In particular, the sphere of activity of the European Commission are those practices that involve at least two member states or which may produce effects at a community scale. National cases remain to the competence of national authorities.

The main rules of European Competition Law derive nowadays from articles 101-109 of the Treaty on the Functioning of the European Union (TFEU)[18], so as

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[16] On the role that Competition Law has played in the process of economic integration in Europe, see FONT GALÁN, J.I., *La libre competencia en la Comunidad Europea*, Studia Albornotiana, Bolonia, 1986, sp. pp. 25 ff. GERADIN, D., *Competition Law and Regional Economic Integration. An Analysis of the Southern Mediterranean Countries*, World Bank, Washington, 2004. On the goals of Competition Policy within the process of European integration, see BISHOP, S. / WALKER, M., *The Economics of EC Competition Law*, 2nd Ed., Sweet & Maxwell, London, 2002.

[17] Thus, article 3.f) of the Treaty establishing the European Economic Community (1957), considers as one of the fundamental policies of the EEC «the establishment of a system ensuring that competition shall not be distorted in the Common Market.

[18] Treaty of Lisbon, signed on 13 December 2007.

from dozens of Regulations and Directives implementing these norms. This field of law is built on the basis of three different proceedings:

A) The prevention and sanctioning of anticompetitive behaviours. Articles 101 and 102 declare contrary to the common market the practices consisting in:
    a. Cartels: Any agreement between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market. In particular, the following behaviours are forbidden: 1) the fixation of prices or other trade conditions; 2) the limitation or control of production, markets, technical development or investment; 3) the share of markets or sources of supply; 4) the discrimination in the conditions applied to equivalent transactions to other trading parties, producing a competitive disadvantage; 5) the imposition of tying contracts.
    b. Abuse of a dominant position by one or more undertakings within the internal markets affecting trade between member States. In particular, these abuses may consist in: 1) The imposition of unfair purchase or selling prices or unfair trading conditions; 2) the limitation of production, markets or technical development to the prejudice of consumers; 3) applying dissimilar conditions to equivalent transactions with other trading parties, creating a competitive disadvantage; 4) the imposition of tying contracts.

    With regards to cartels and the abuse of a dominant position, the intervention of the European Competition policy plays a role in both ways: sanctioning the conclusion of such behaviours and preventing and deterring the undertakings to collude such practices in prejudice to competition.

B) The control of economic concentrations. As already mentioned, as a consequence of the enlargement of the market, European companies face the need to adequate their dimensions to a new scale. This fosters the conclusion of mergers and acquisition as a regional level. But some of these agreements may lead to monopolization and the detriment of competition, when just one or a little number of companies produce any kind of good or services. Those cases must be monitored by some institution (the European Commission) to ensure that they will not produce any harmful effect for competition in the common market.

C) The control of state aids. Competition within a common market requires to ensure that the States do not give a more favourable treatment or more advantageous economic conditions to the local companies. To this extent, in the European Union there is a procedure in order to control that the state aids given by the public institutions to private companies are conferred on the basis of the non-discrimination principle and that the granting of those measures –which may consist in an economic advantage

or other kind of preferential treatment- do not distort competition in the functioning of the common market.

Along with this three instruments, competition policy is now evolving to face other aspects that may affect the functioning of the common market under competitive circumstances. As will be analysed bellow, the European Union is working in the late decades to promote competition within the sectors that used to work under direct public intervention (such as transports, energy, postal service, telecommunications…). Another objective of Competition policy is to find a proper balance between the promotion of free competition and the fostering of innovation by granting exclusive rights to their creators, such as patents or copyright. Finally, in the latter years the main concern in the implementation of Competition policy is the so-called «private enforcement of Competition Law» which means the possibility for particulars to promote the implementation of Competition Law in private causes, and especially the possibility for particulars to claim for a compensation in the cases in which they have suffered a damages a consequence of any breach of Competition rules[19]. We will go over this issue further on.

IV. THE PROMOTION AND PROTECTION OF INNOVATIONS: INTELLECTUAL PROPERTY POLICY

Competition policy promotes the functioning of common market granting that the companies of all the Member States may compete without distortion, basing this competence in their better performance in the exploitation of resources, production of goods, delivery of services or the quality of their offer. But this competition is based on a static premise –the competition in the current market, for existing products-, and it does not incorporate a dynamic prospective, which shall mean the introduction of measures to promote the development of new and better products or services, so as the technical and economic progress. This latter goal is achieved by the interaction of competition policy and the effective protection of intellectual property rights. Intellectual property rights offer a proactive competitiveness policy by the promotion of innovation.

The Treaty on the Functioning of the European Union is aware of the importance of fostering innovation in relation with competition policy, and thus, it states that competition rules –mainly regarding to cartels- shall not sanction those agreements which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not impose restrictions which are not indispensable to the attainment of these objectives, neither afford the possibility of eliminating competition in respect of a substantial part of the products affected[20].

In this context, the efforts of the European Union are to harmonize the legal proceedings of the member States to protect intellectual property rights within the

[19] One of the best works on this topic so far is KOMNINOS, A.P., *EC Private Antitrust Enforcement: Decentralised application of EC Competition Law by national courts*, Hart, Portland- Oregon, 2008. Also see MARCOS, F. / SÁNCHEZ GRAELLS, A., "Damages for breach of the EC antitrust rules: harmonising Tort Law through the back door?", *InDret*, enero 2008.
[20] See art. 101.3 TFUE.

legal framework established by the WIPO and the International Agreements on the issue[21]. All member states must ensure the protection of intellectual property rights, in particular copyright, patents, trademarks, designs and geographical indications. The technical progress of the latter years has required to promote special rules regarding to the protection of biotechnological inventions[22], computer programmes (software)[23], microchips[24], a supplementary protection certificate for medical products[25], etc.

The major contribution of the European Union to the protection of intellectual property is the establishment of Community rights, with validity and effects in the whole territory of the Common Market. These rights are the Community plant variety rights[26], the European Union trademark[27], the Community designs[28] and the Community geographical indications and traditional specialities guaranteed[29]. The registry of this Community rights takes place in the EUIPO (European Intellectual Property Office[30]); the European Patent Office (EPO – Munich), and the Community Plant Variety Office (CPVO – Angers).

The most important challenge that the European Union is facing nowadays regarding to the protection of intellectual property is the creation of a European Unitary Patent and a Unified Patent Court[31]. When this Unitary Patent shall be into force, it will imply the concession of a single patent with effect in the territory of all

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[21] Mainly the Berne and Paris Conventions, so as the TRIPS. On the commitments assumed by Spain regarding intellectual property in its integration in the European Community, see. BERCOVITZ, A., "Aspectos jurídicos del acuerdo con la CEE en materia de patentes", en *Derecho de Patentes. España y la Comunidad Económica Europea*, Ariel, Madrid, 1985, pp. 9 ff; so as GALÁN CORONA, E., "La libre circulación de mercancías en la CEE y en el Acuerdo suscrito por España en materia de patentes", en *Derecho de Patentes. España y la Comunidad Económica Europea*, Ariel, Madrid, 1985, pp. 33 ff.

[22] Directive 98/44/EC, of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions.

[23] Directive 2009/24/EC, of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs.

[24] Council Directive 87/54/EEC, of 16 December 1986 on the legal protection of topographies of semiconductor products

[25] Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009, concerning the supplementary protection certificate for medicinal products.

[26] Council Regulation (EC) No 2100/94, of 27 July 1994, on Community plant variety rights.

[27] Council Regulation (EC) No 207/2009, of 26 February 2009, on the Community trade mark. Regulation (EU) 2015/2424 of the European Parliament and the Council amending the Community trade mark regulation entered into force on 23 March 2016, has changed the name of the previous «Community trademarks» into the «European Union trademarks».

[28] Council Regulation (EC) No 6/2002, of 12 December 2001 on Community designs.

[29] Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012, on quality schemes for agricultural products and foodstuffs.

[30] The European Regulation (EU) 2015/2424 of the European Parliament and the Council amending the Community trade mark regulation entered into force on 23 March 2016, changing the name of the previous OHIM (Office for the Harmonization of the Internal Market) for the current European Union Intellectual Property Office (EUIPO).

[31] The first step to reach a Unified Patent is the signing of the Unified Patent Court Agreement (16351/12) of 11 January 2013. The legal basis for the Unified Patent and the Court are set in the Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012, implementing enhanced cooperation in the area of the creation of unitary patent protection; so as in the Council Regulation (EU) No 1260/2012 of 17 December 2012, implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements.

member States, with no need to being granted a patent right in every single country. The disputes regarding the validity of the protected patents will be resolved by a Unified Patent Court (which is intended to be in Paris). As one can easily see, this is a new and important move forwards to a more effective economic integration with regards to the promotion and protection of innovations, as the granting of patents, so as their validity are unified for the territory of all the 28 Member States.

V. CURRENT CHALLENGES IN THE EUROPEAN POLICY FOR COMPETITION AND INNOVATION

As mentioned, European Competition and Innovation policy is now facing the challenge to adapt its regulations to the new dynamics of international economy. By way of example, we can mention the need to adapt the promotion of competition to the fixation of technological standards in an increasingly interconnected World; or the need to foster the conclusion of technology transfer and technology development agreements in order to join forces in the creation of new technologies and medical research (R&D agreements). Another focus of interest is the need to open to competition those economic sectors that used to be under national and State control, in order to promote their private management and the possibility to operate within the territories of other member States, taking advantage of the economies of scale.

Competition Policy must also face the challenges of the new economy of the 21st Century. Phenomena such as the collaborative economy or the new possibilities offered by the TICs make it necessary to consider the way in which competition shall be promoted in order to promote technical progress and social and environmental welfare.

Of special interest in the European Competition Policy agenda is the private enforcement of competition law[32]. This implies an active role of particulars in the implementation of competition law, as they may now take legal actions in order to get the prohibition of an anticompetitive behaviour so as to get compensation for the damages that they have suffered as a consequence of the infringement of competition rules.

VI. CONCLUSIVE REMARKS: THE ROLE OF COMPETITION AND INNOVATION POLICY IN THE INTEGRATION PROCESS OF ASEAN

Since its constitution the 8 August 1967[33] by means of the Bangkok Declaration, the Association of Southeast Asian Nations was created with the aim to

[32] Member States are currently facing the duty to adapt their internal regulations to allow private actions for the compensation of damages suffered as a consequence of an infringement of Competition Law. See Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union

[33] The 5 countries party to the original agreement were Indonesia, Malaysia, Philippines, Singapore and Thailand. After that, new members have entered in the ASEAN: Brunei (8 January 1984), Vietnam (28 July 1995), Laos and Myanmar (23 July 1997) and Cambodia (30 April 1999). East Timor and Papua New Guinea are nowadays candidate Countries to enter in the ASEAN.

accelerate economic growth, promote peace and the regional stability[34]. In January 1992, its member States agreed to create a free trade area (ASEAN Free Trade Area – AFTA)[35], reducing tariffs to non-agricultural products for a period of 15 years[36]. The process of regional integration experimented an important step forwards on 15 December 2008, when its members launched in Jakarta a Charter with the aim of moving closer to «an EU-style community». The Jakarta Charter gave the ASEAN legal entity and initiated the process to the creation of a single free-trade area for the region, which has been completed in January 2016, with the establishment of a Common Market with free trade of goods, assets and labour: the ASEAN Economic Community (AEC). This common market must be based in four freedoms, ensuring the free flow of goods, services, capital and labour. From a monetary point of view, important efforts have been made in order to create an Asian Currency Unit (ACU), as a precursor to a common currency. But a common currency still seems difficult to achieve.

The ASEAN is intended to be based on three communities: (1) the ASEAN Security Community, (2) the ASEAN Economic Community and (3) the ASEAN Socio-Cultural Community. Focusing on the AEC, it was set the 31 December 2015, with the aims to implement economic integration initiatives and to create a single market across ASEAN nations[37]. The objectives pursued by the AEC are the construction of a single market and production base, a highly competitive economic region, a region of fair economic development and a region fully integrated into the global economy. To this end, the ASEAN must foster cooperation between the member States in areas such as human resources development, the recognition of professional qualifications, closer consultation on macroeconomic and financial policies, enhanced infrastructure and communications connectivity, etc.

Competition Law and Policy will play a crucial role in the creation of this Economic Community, for its effectivity is critical for the achievement of the goals. In the Declaration on the AEC Blueprint in Singapore in November 2007[38], the Member States agreed to introduce competition policy by 2015[39]. To promote that,

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[34] The ASEAN takes over the Association of Southeast Asia (ASA), group founded in 1961 by the Philippines, Malaysia and Thailand.

[35] The AFTA agreement was signed on 28 January 1992 in Singapore.

[36] By means of the Common Effective Preferential Tariff (CEPT). A vision on the ways economic integration in the ASEAN might be completed was offered by HEW, D., "Economic Integration in East Asia: an ASEAN Perspective", *UNISCI Discussion Papers*, no. 11, May 2006; HONG TAN, L., "Will ASEAN Economic Integration Progress beyond a Free Trade Area?", *International and Comparative Law Quarterly*, vol. 53, iss. 04, oct. 2004, pp. 953-967; so as by JAE-SEUNG LEE, "Building an East Asian Economic Community", *Les Études du CERI*, no. 87, May 2002; YUNLING, Z., "Toward an East Asian Community: Still a Long Way to Go", paper presented at the Conference *Asian Economic Integration: current status and future prospects*, held in Tokyo, April 22-23, 2002.

[37] For its creation and the achievement of its major objectives, on 20 November 2007, during the 13th ASEAN Summit in Singapore the blueprint for the AEC was adopted. This blueprint served as a master plan guiding the establishment of the AEC 2015.

[38] See ISLAN, R., *Economic Integration in South Asia: Charting a Legal Roadmap*, Nijhoff International Trade Law Series, Brill, 2012.

[39] The goal is to create a common regulation of competition for the ASEAN. The Philippines already count on several norms regulating competition which need to be adapted to this new supranational framework. In particular, we can point out the Act to Prohibit Monopolies and Combinations in Restraint of Trade (Act No. 3247), so as the Executive Order No. 45, series of 2011, designating the DOJ as the Competition Authority. Other legal provisions on competition are set in the Constitution

the ASEAN Secretariat drew up the ASEAN Regional Guidelines on Competition Policy, the Handbook on Competition Policy and Law in ASEAN for Business, so as the Guidelines on Developing Core Competencies in Competition Policy and Law for the ASEAN. These documents point out the importance of introducing Competition Law within the framework of the ASEAN[40], so as the need to create a Competition Authority responsible of the control of its functioning. The effective design of Competition Law and Policy[41] so as the institutional building for its implementation is yet to be defined for the ASEAN. The goal to be achieved is to create some common rules on competition, applicable to the territory of all the member States. These norms will have the final objective to grant the functioning of the common market under competition circumstances, avoiding any distortion that might be produced damaging the proper functioning of the whole ASEAN market. The legislative proposals so far are being designed paying a great deal of attention to European Competition Law. But one thing is certain: this will be a nuclear piece in the construction of a functioning common market for the ASEAN.

1987, so as in the Revised Penal Code (Act No. 3815), in the new Civil Code (Republic Act No. 386), so as in the Amending of the Law Prescribing the Duties and Qualifications of Legal Staff in the Office of the Secretary of Justice (Republic Act No. 4152).

[40] «The introduction of a competition law will provide the market with a set of "rules of the game" that protects the competition process itself, rather than competitors in the market. In this way, the pursuit of fair or effective competition can contribute to improvements in economic efficiency, economic growth and development and consumer welfare (…) Besides contributing to trade and investment policies, competition policy can accommodate other policy objectives (both economic and social) such as the integration of national markets and promotion of regional integration, (…) the promotion of technological advancement, the promotion of product and process innovation (…)», *ASEAN Regional Guidelines on Competition Policy*, pp. 3-4.

[41] In particular, the definition of the Competition Authority responsible for the implementation of the norms, and its powers; the definition of the agreements and practices that will be forbidden or under control; the design of the Competition proceedings (civil, administrative or criminal); the delimitation of exemptions or exclusions from application of competition Law; the definition of enforcement powers, investigation powers, safeguards, confidentiality obligations, the possibility to achieve commitments, the quantity and scope of the sanctions, the calculation of fines, the possibility and design of leniency programmes, the conclusion of proceedings by settlement, the private enforcement of competition law and the actions for damages, etc.