



ASEAN Guidelines on Consumer Impact Assessment (CIA)



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The Association of Southeast Asian Nations (ASEAN) was established on 8 August 1967. The Member States of the Association are Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam.

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The ASEAN Secretariat
Jakarta



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List of Abbreviations

ACAN	ASEAN Consumer Associations Network
ACCP	ASEAN Committee on Consumer Protection
AEC	ASEAN Economic Community
AHLPCP	ASEAN High-Level Principles on Consumer Protection
AMS	ASEAN Member State(s)
ASAPCP	ASEAN Strategic Action Plan on Consumer Protection
ASEAN	Association of Southeast Asian Nations
B2C	Business-to-Consumer
CIA	Consumer Impact Assessment
COVID-19	Coronavirus disease of 2019
DOCA	Department of Consumer Affairs, Myanmar
EASA	European Advertising Standards Alliance
ERP	Extended producer responsibility
EU	European Union
FDA	Food & Drug Administration, Thailand
FGD	Focus Group Discussion
MPT	Myanmar Post and Telecommunication
MTR	Mid-Term Review
NBTC	National Broadcasting Telecommunication Commission, Thailand
OECD	Organization for Economic Co-operation and Development
RIA	Regulatory Impact Assessment
RT-PCR	Reverse transcription polymerase chain reaction
SARS-CoV-2	Severe acute respiratory syndrome coronavirus 2
SCP	Sustainable Consumption & Production
SDG	Sustainable Development Goal
UNCTAD	United Nations Conference on Trade and Development
UNGCP	United Nations Guidelines on Consumer Protection

ASEAN Guidelines on Consumer Impact Assessment (CIA)

PART A. OVERVIEW

Background

1. The ASEAN Member States (AMS) are committed to developing a dynamic and people-centered ASEAN Economic Community (AEC) that generates prosperity for consumers and businesses while building confidence in fair and transparent markets. This acknowledges the importance of consumer protection for economic and social development, and requires cooperation between national consumer protection authorities, consumer associations and other stakeholders both within and across AMS.
2. [The ASEAN Strategic Action Plan for Consumer Protection \(ASAPCP\) 2016-2025](#) guides the work of the ASEAN Committee on Consumer Protection (ACCP) in building comprehensive and effective consumer protection systems throughout the region. Considerable progress has been made in implementing key deliverables under the ASAPCP, which was acknowledged in a Mid-term Review (MTR) conducted in 2020 and accounted for in the further development of the Implementation Schedule 2021-2025. An important recommendation derived from the MTR concerns the need to improve the quality of the overall policy framework protecting consumers across sectors and in accordance with good regulatory practices.
3. Outcome 4.3 under Strategic Goal 4 of the ASAPCP (“Integrating consumer concerns in all ASEAN policies”) comprises the development of the **ASEAN Guidelines on Consumer Impact Assessment (CIA)**. Tailored to the ASEAN context, the CIA Guidelines are expected to support consumer protection authorities in AMS in systematically assessing the impacts of policies, laws and/or regulations on consumers, their rights and legitimate interests. This in turn would contribute to a stronger anchoring of consumer perspectives in national policies, laws and/or regulations, in a similar manner as such “mainstreaming” is foreseen at the regional level.
4. Furthermore, the application of a CIA methodology in policymaking is also aligned with the ASEAN High-Level Principles on Consumer Protection (AHLPCP), specifically Principle No. 6 on the promotion of consumer advocacy, which entails accounting for consumer views and representation by governments “before decisions are taken on relevant industrial, trade and social policy issues”.¹

Purpose and Structure of the CIA

5. Consumers play a vital role in the economy. Their demand and purchasing habits incentivize producers and drive what products are available in the market. Any economic policy or market regulation would inevitably affect consumers. However, seeing that many policies, laws and/or regulations tend to not explicitly mention consumers as subject to their application, their relevance for consumer protection is often neglected and any impact on consumers rarely examined.
6. Failing to effectively account for the rights and interests of consumers in policymaking can result in social inequality, disadvantage certain groups in society and even exacerbate existing vulnerabilities, for example if access to essential goods and services is limited. Where possible, policymakers are therefore advised to anticipate and proactively address potential adverse impacts of policies, laws and/or regulations on consumers.

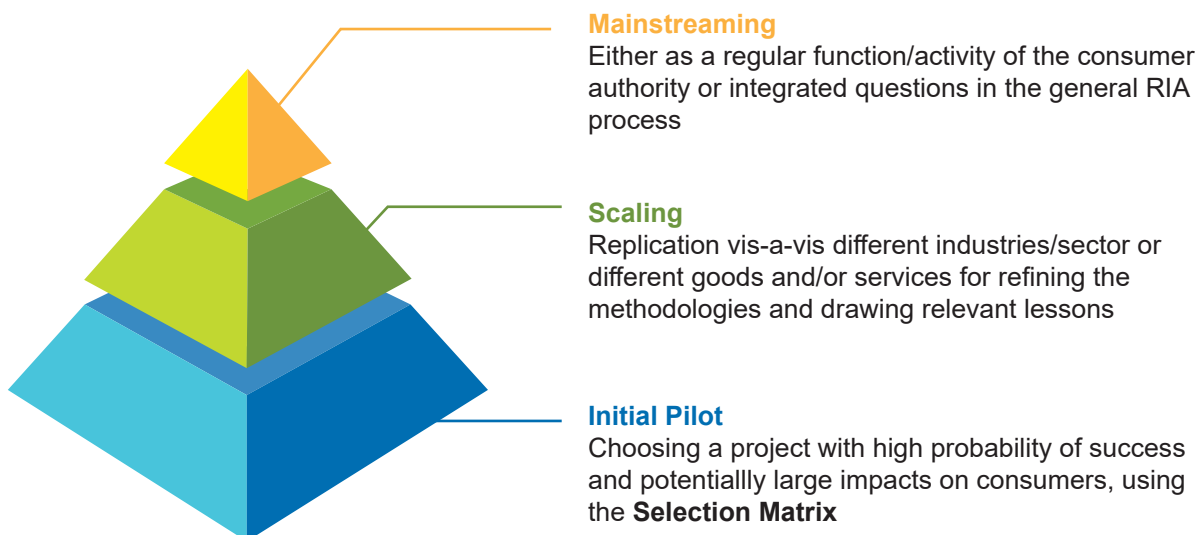
¹ <<https://aseanconsumer.org/cterm-terms-regional-cooperation-in-asean/asean-high-level-principles-on-consumer-protection>>

7. Consumer protection authorities in AMS have several tools at their disposal to exercise their mandate in protecting consumers and monitoring market conducts. These tools range from demand-side measures to empower consumers, for example by improving consumer information and research, to supply-side measures that target firm behaviors, for example by mandating product standards or encouraging voluntary codes of conduct. Consumer protection authorities may also draw on complaints data to guide their work, notably by focusing enforcement and/or advocacy activities on certain sectors, products/services or types of business practice.
8. The CIA complements these tools by drawing the attention of policymakers to any unintended, negative consequences for consumers as a result of economic policies or market regulation. The application of the CIA methodology in AMS, for example as part of the broader Regulatory Impact Assessment (RIA) process, would ensure that any conflict(s) with the goals and principles of consumer protection can be avoided. It would further allow for “mainstreaming” consumer protection across different sectors and policy areas.
9. The CIA offers clear guidance for screening and reviewing (draft) policies, laws and/or regulations whether they will likely result in any impact(s) for consumers and their legitimate interest(s), and what such impact looks like. This is intended to support the design of optimal policy options that minimize negative outcomes for consumers and maximize consumer welfare. At this, the CIA would prove useful for AMS in modernizing their respective legal frameworks to become more responsive to emerging issues, such as data protection or e-commerce, without losing sight of the consumers.
10. Aside from anticipating consumer impacts at the policy formulation stage, the CIA methodology could also be used for evaluating policies, laws and/or regulations that have already been introduced or implemented, in order to generate recommendations for reform. If, for example, an existing legislation is slated for amendment, a CIA could be carried out with a view to further strengthening the legal framework for enforcing consumer rights in the country.
11. The CIA is designed with practical application in mind and deliberately kept rather simple. Law reform processes tend to be lengthy and complex, thus any kind of additional loop – in this case to examine potential consumer impacts – should not unnecessarily convolute existing mechanisms or overstretch resources. Moreover, the “policy space” for consumer protection authorities in some AMS may still be limited. The introduction of a new and comprehensive method or tool, if perceived as all too complicated or cumbersome, would be counterproductive for increasing the engagement of consumer protection authorities in broader, cross-sectoral policymaking.
12. An additional consideration is that consumer protection authorities in ASEAN may not be the ones to lead the application of the CIA if that is not foreseen according to the rules and practices of policymaking in the respective AMS. Therefore, the CIA should be understandable and easily usable by non-specialists, with minimal technical guidance, albeit providing an option for more in-depth consultation with subject matter experts, including the consumer protection authorities themselves.
13. In their present version, the ASEAN Guidelines on Consumer Impact Assessment (CIA) comprise the following parts:
 - (A) **Overview**, including the main rationale for the CIA in the ASEAN context;
 - (B) **CIA Checklist**, with a set of screening questions to be used for an initial scan of policies, laws and/or regulations and to determine the existence of potential consumer impacts;
 - (C) **Process Guidance**, with orientation for a step-by-step assessment process, data collection and stakeholder consultation;
 - (D) **Annexes**, including (1) Explanatory Notes on the screening questions; (2) a Selection Matrix for selecting policies, laws and/or regulations for the CIA; and (3) an Indicative Outline for the CIA report.
14. The ACCP is encouraged to monitor the application of the CIA across AMS, and to periodically take stock of good practices and lessons learnt. This would not only help with mutual learning but also support methodological refinement or updating, based on clear evidence and experience. It could further exert positive “peer pressure” and serve as inspiration for those AMS not yet undertaking a CIA in pursuing or encouraging the same.

Application of the CIA in AMS

15. AMS may consider the adaptation of the ASEAN CIA methodology, as set out in these Guidelines, to their respective country context and/or specific formal requirements for its application within the framework of wider RIA and law reform processes. The CIA can be easily plugged into existing processes; for example, AMS may integrate the screening questions of the CIA into a RIA exercise, and use them for consultation with policymakers and parliament, other (sectoral) regulators, drafting committees, or the public at large. This helps to increase transparency and accountability in policymaking.
16. Similarly, the CIA is easily expandable. Once proven applicable and effective, additional screening questions could be added to address further cross-cutting issues or deepen any follow-on analysis. While this option exists in principle, it is recommended that in practice, AMS first test and build commitment for the CIA in its simpler version. Prior to embarking on more complex approaches to render the CIA mandatory and institutionalize it in the RIA process, its application on a selective, case-by-case basis could be useful to demonstrate its value vis-à-vis stakeholders.

As a pilot, the CIA could be applied to policies, laws and/or regulations where there is a high probability of success and acceptance, and where impact on a large number of consumers can be easily demonstrated (See **Annex 2** for a Selection Matrix which could be used for selecting appropriate policies, laws and/or regulations for applying the CIA). Once piloted and tested, ideally a number of times vis-à-vis different industries/sectors or different goods and/or services to allow for generating lessons, refining methods and assess potentials for “scaling”, the CIA could then be ‘mainstreamed’ either as a regular function/activity of the consumer protection authorities or part of the general RIA process, depending on specific country contexts.



17. Marketing the CIA to policymakers could also help elevate the standing of consumer protection authorities in national reform processes, acknowledging that consumer protection and related issues should not be treated as an afterthought. In positioning consumer protection more prominently and visibly in policymaking processes, the CIA can be considered a crucial tool for consumer advocacy in ASEAN, and indirectly as a means to build capacities on consumer protection law and policy, particularly within governments in AMS.
18. Last but not least, outside the government realm, the CIA methodology could be used by consumer associations/organizations for undertaking policy research and advocacy. Thanks to their inherent affinity to consumer concerns, consumer associations/organizations are usually the first in line to detect/hear about any problems or impacts caused by new or existing policies, laws and/or regulations from their constituencies. Applying the CIA would help them to develop more analytical and well-grounded arguments, ensuring a better chance of persuading the governments/policy-makers about the case for changes. As such, it is recommended that members of the ASEAN Consumer Associations Network (ACAN) are familiarized with and invited to any training events on the practical application of the CIA Guidelines.

PART B. CIA CHECKLIST

General Scope

19. Standard economic theory presumes that free markets will usually produce the best outcomes for consumers. There are, however, circumstances in which markets fail to deliver optimal outcomes. These market failures (i.e. asymmetric information, concentrated market power, public goods and externalities) prompt governments to intervene in markets and to devise policies, laws and/or regulation to remedy them. Nevertheless, the latter may have unintended consequences or implications for businesses and consumers, in spite of their sound social and economic rationale or objectives.
20. An integral part of the CIA is its Checklist with the five lead questions, each with several sub-questions. The Checklist serves to support a quick scan of policies, laws and/or regulations in AMS in order to identify potential impacts or unintended consequences that have a bearing on consumers. Entry points for the application of the Checklist exist either during the drafting stage (*ex ante*) or at the review/amendment stage (*ex post*). While an *ex ante* assessment looks at the likely impacts of the policies, laws and/or regulations at hand, *ex post* assessment is concerned with existing policies, laws and/or regulations after a certain period of implementation.
21. The questions in the Checklist have been formulated in line with good practices available from international organizations, such as the Organization for Economic Co-operation and Development (OECD)², as well as jurisdictions outside of ASEAN, notably the European Union (EU)³ and the Government of Canada⁴. In the event AMS wish to expand the CIA methodology, the latter references may be drawn upon for further background information.

Concepts and Terminology

22. The following terms are used throughout the Guidelines:

- “Consumers” refers to a natural person who avails of goods or services acting primarily for personal, family or household purposes.
- “Business” refers to the merchant/trader/seller who produces, markets and/or makes goods or services available to consumers.
- “Consumer protection authorities” refers to the main government agencies in charge of consumer protection matters in AMS, i.e. the national ACCP focal points. Generally, these would have also covered sectoral ministries or regulators with concurrent mandates. These Guidelines treat sectoral ministries or regulators with concurrent mandates as a separate stakeholder group to be consulted by the main consumer protection authorities during the CIA process.
- “Consumer associations” and/or “consumer organizations” mean membership-based non-governmental non-profit bodies created to promote the interests of consumers of goods and services, by disseminating information and lobbying for laws to protect consumers against [irresponsible] producers or sellers, who may usually be better organized or have more resources.⁵

Screening Questions

23. Specifically, a CIA should be conducted if a draft (revised) law, policy and/or regulation has any of the following effects:⁶

² OECD Consumer Policy Toolkit: <<https://www.oecd.org/sti/consumer/consumer-policy-toolkit-9789264079663-en.htm>> and Competition Assessment Toolkit: <<https://www.oecd.org/competition/assessment-toolkit.htm>>

³ Better Regulation Toolbox: <https://ec.europa.eu/info/sites/default/files/better-regulation-toolbox_1.pdf>

⁴ <http://www.ic.gc.ca/eic/site/oca-bc.nsf/eng/h_ca02564.html>

⁵ ASEAN Handbook on Consumer Protection Laws and Regulations: <<https://asean.org/wp-content/uploads/2021/01/Handbook-on-ASEAN-Consumer-Protection-Laws-and-Regulations.pdf>>

⁶ Annex 1 explains the screening questions in further details and cites specific examples, including references from AMS, to help illustrate the rationale for each set of questions and to guide their interpretation.

A – Affecting the price and/or supply of goods and/or services available in the market

This is likely to be the case if the policy, law and/or regulation:

- Imposes maximum or minimum (retail) prices of all or certain goods and/or services in the market
- Limits the quantity of good(s) and/or service(s) available in the market
- Significantly raises the costs of producers/suppliers
- Limits the appearance of new good(s) and/or service(s) in the market
- Limits the number of business(es) producing/providing good(s) and/or service(s) in the market

B – Affecting consumer behavior and allowing businesses to take undue advantage of consumers

This is likely to be the case if the policy, law and/or regulation:

- Fails to provide consumers with adequate information to make purchasing decision(s)
- Affects the ability of consumers to assess the usefulness and value of good(s) and/or service(s)
- Limits the ability of consumers to negotiate a contract/transaction or withdraw from it
- Limits the ability of consumers to switch to new producer/provider(s) of good(s) and/or service(s)
- Limits the ability of consumers to obtain redress when problems occur

C – Affecting the safety and/or environmental sustainability of goods and/or services

This is likely to be the case if the policy, law and/or regulation:

- Affects the safety of consumers while using/consuming good(s) and/or service(s)
- Affects the ability of consumers to use/consume good(s) and/or service(s) in an environmentally sustainable manner

D – Affecting vulnerable consumers and their interactions with businesses

This is likely to be the case if the law, policy and/or regulation:

- Limits fair and equitable access of vulnerable consumers to good(s) and/or service(s), as well as their ability to obtain redress in the case of disputes, in a way that undermines their health, safety and economic interests
- Affects, in a significant and different way, the health, safety and economic interests of women as consumers

E – Affecting consumers' right to privacy and personal data protection

This is likely to be the case if the policy, law and/or regulation:

- Affects the way consumer data is collected, used and disclosed by business and relevant third parties
- Results in any (new/additional) consumer privacy risks, and how these risks have been/are being managed

PART C. PROCESS GUIDANCE

24. The CIA covers four main steps that can be phased in accordance with the complexity of the assessment process. If the answer to all screening question is 'no', no further steps beyond the application of the Checklist need to be taken, and the CIA can be considered as completed. If any of the screening questions, as featured in Part B, generate responses pointing to a likely consumer impact, a more in-depth or detailed assessment may be warranted. An intermittent step for this is to examine the significance or magnitude of the consumer impact.

Step 1 – Apply the Checklist

25. It is important to note that the majority of proposed policies, laws and/or regulations are quite unlikely to draw a positive response from the Checklist, thereby indicating no potential consumer impact. A careful run-through of all the screening questions would be sufficient for the purpose of reconfirming that no impacts or issues that might affect consumers have been overlooked. Thus even if there are no positive responses from such an initial scan of the policies, laws and/or regulations at hand, this step of the CIA can be regarded a valuable exercise to ensure the systematic consideration of consumer interests, and an opportunity to document the results in a transparent manner.

26. If there is a 'yes' answer to any of the screening questions from the Checklist, this suggests a need to embark on a more detailed analysis of the effects or consequences of the policies, laws and/or regulations in question. Guidance on these further steps is described in the following sections.

Step 2 – Assess the Impact(s)

27. Although the screening questions in above Checklist help in identifying potential consumer impacts of certain policies, laws and/or regulations, this does not automatically indicate the magnitude or severity of these impacts. In many cases, even though a 'yes' response has been triggered, the actual impact may still only be limited. In order to determine whether such impact is significant enough to merit further scrutiny, a preliminary assessment should be carried out.

28. While there is no one-size-fits all threshold on what constitutes a 'significant' impact, it can be understood as an impact which is important, notable, or of consequence, having regard to its context or intensity.⁷ When the person or the team conducting the assessment is unable to decide on the level of significance of the impact using available data and information, it is recommended to conduct consultation(s) with consumers and businesses affected by the proposed policies, laws and/or regulations, or to seek advice from subject-matter experts.

29. A more in-depth assessment is likely required in the following instances:

- The policy, law and/or regulation affects a market or markets having a high volume of business-to-consumer (B2C) commerce;
- The policy, law and/or regulation significantly affects the supply of a product and/or service highly demanded by consumers, or essential goods and/or services;
- The policy, law and/or regulation significantly affects an attribute of the good(s) or service(s) often considered as important by consumers, such as price, safety, or sustainability; or
- The policy, law and/or regulation raises substantial concerns amongst consumers and/or consumer associations.

30. Once it has been determined that a policy, law and/or regulation might indeed have a significant impact on consumers, an in-depth assessment should be conducted of **these relevant impacts (only)**. In many aspects, the in-depth assessment would be similar to a RIA process, albeit narrower in scope.⁸

⁷ See Matters of National Environmental Significance – Significant Impact Guidelines 1.1 by the Australian Department of Environment, downloadable from <<http://www.environment.gov.au/epbc/publications/significant-impact-guidelines-11-matters-national-environmental-significance>>

⁸ If the consumer authorities do not readily possess capable/qualified personnel who can undertake such task of policy analysis, external expertise could be acquired. Even so, maintaining leadership and ownership by consumer protection authorities is critical throughout.

The scope and depth of the analysis depends on the potential severity of the impact(s), the feasibility of gathering information and data, available human and financial resources, as well as the overall timeline for conducting the assessment.⁹

31. In the case of an *ex ante* CIA, which entails assessing the likely impacts of policies, laws and/or regulations at the drafting stage, most information or data would not be readily available from existing research, studies, records or databases. This is because the impacts have not materialized yet and would only likely happen in the future as a result of the implementation of the proposed (new or revised) policies, laws and/or regulations. In this case, the only viable method to collect information about such future impacts is to consult relevant stakeholders.
32. Methods for stakeholder engagement include public meetings, surveys, focus group discussions (FGDs), and in-depth interviews. It is critical to weigh which method for stakeholder engagement is most appropriate to achieve the desired results, i.e. whether depth or breadth of knowledge would be more helpful:
 - If a considerable degree of technical expertise is required, *qualitative* approaches that employ open debate and one-on-one consultations would be suitable for teasing out the views and perceptions that are truly held by stakeholders.
 - If, on the other hand, breadth is required, *quantitative* methods, such as direct surveys and other more standardized measurement tools to reach larger numbers of respondents, should be considered. Though covering wider audiences, such approaches are largely restricted to closed questions and rating scales that generate numerical data and allow for statistical analysis in a more generalist manner.
33. The below table summarizes the strengths or advantages of various methods:

Strengths of Commonly Used Methods for Stakeholder Consultation

Attribute	Surveys	FGDs and individual meetings	Public meetings
1. Quality/depth of feedback		✓	
2. Speed of execution	✓		
3. Level of engagement with stakeholders		✓	
4. Relationship-building		✓	✓
5. Opportunity for idea-sharing & consensus-building		✓	✓
6. Measurement of attitudes	✓		✓
7. Cost effectiveness	✓		✓

34. In the case of an *ex post* assessment, information or data on consumer impacts or changes due to policy implementation would be more readily available from various sources, notably:
 - Past consumer complaints and court cases;
 - Government agencies (e.g. statistical offices, line ministries and sector regulators);
 - Chambers of commerce, and industry associations;
 - Media coverage/reporting;
 - Academic institutions and think-tanks; and
 - Commercial data-gathering organizations, market-research companies, and survey companies.
35. Where information is not available from such secondary sources, primary information collection could prove useful to seek feedback and elicit opinions about how a policy, law and/or regulation could be modified or replaced by a superior one. This can be achieved through the following methods:

⁹ At times, only a few days may be available for such assessment, due to timing considerations. As a result, the scope and depth of analysis would be limited. On the other hand, if the timeline is long, a more elaborate project might be conducted.

- Stakeholder interviews (including individual interviews, focus group discussions, public meetings and workshops);
- Consumer surveys;
- Public calls for submissions on identified topics;
- Internet product searches and mystery shopping; and
- On-site inspections.

36. An extensive inquiry into (more) technical aspects of policy analysis, such as a cost-benefit analysis or quantification of consumer welfare loss, goes beyond the scope of these Guidelines.

Step 3 – Identify Alternative Option(s) and/or Safeguard(s)

37. When a new or revised policy, law and/or regulation is found to have potential significant adverse or negative impact(s) on consumers, alternative options should be sought that could help achieve the relevant policy objectives based on an understanding of the rationale for the policy, law and/or regulation in question, also taking into account the broader regulatory environment and the technical features of the sector being regulated.

38. Similarly, certain safeguard measures or controls could be proposed to be built in the proposed policy, law and/or regulation in order to address the consumer problem(s) and ease stakeholder concern(s). Provisions on safeguards may be included in policies, laws and/or regulations in order to reduce or eliminate certain risks, for example imposing certain specific obligations or requirements on businesses that would render any consumer impact less severe.

39. For the identification of policy alternatives, it could prove useful to examine and learn from the experiences of other jurisdictions, both within and outside of the ASEAN region. Quite likely, problems or issues of similar nature and/or scale have occurred elsewhere. While successful and effective approaches in addressing these problems or issues would be preferable, important lessons may be drawn from failures as well. In any case, it is recommended to critically weigh options against their feasibility and/or adequacy in a particular country context.

40. Once a policy alternative or safeguard has been identified, its outcomes and important trade-offs need to be carefully checked and clarified, for example with respect to impacts on different groups of consumers, particularly vulnerable ones. In doing so, the merits and feasibility of various policy options, along with their chances of success, can be readily justified vis-à-vis policymakers and other stakeholders.

41. **Annex 3** provides an Indicative Outline for preparing the CIA report, which could be adjusted depending on the scope and depth of analysis, as well as the intended recipient(s) of the report.

Step 4 – Monitoring and Evaluation

42. Following up on the results in policy implementation upon completion of the CIA is critical for establishing whether the predicted outcomes or impacts on consumers have indeed occurred. The CIA inevitably involves assumptions about the likely impacts on consumers of certain policy alternatives, but the actual costs and benefits of each option may only become apparent with time. The same applies to being able to tell whether the option chosen for implementation was the most appropriate to fulfill the policy objective(s) while addressing consumer concern(s).

43. The chosen option for the policy, law or regulation may lead to a different outcome from the one originally forecasted, either due to changed circumstances, the emergence of unforeseen factors, or imperfect/incorrect analysis. If this is the case, it presents an opportunity to consider the adjustment of the analysis or improve the methodology.

44. Finally, it is important to demonstrate and document that the recommendations emerging from a CIA exercise are taken up and put into practice. This should not be understood as an academic exercise to be outsourced to external experts. Rather, it should be taken on as an initiative by the consumer protection authorities as it would also attest to their effectiveness and professionalism. Through successful efforts to influence wider economic or sectoral policies, laws and/or regulations to better account for consumer rights and interests, consumer protection authorities can inspire greater public confidence in their powers and capabilities.

Practical Considerations and Partnerships

45. The CIA is an ASEAN initiative shepherded by the ACCP, and thus ownership and active contributions by consumer protection authorities in the AMS is indispensable throughout the entire process of applying it. The initial scan of policies, laws and/or regulations using the Checklist and screening questions, as featured in Part B, requires minimal resources from consumer protection authorities who may designate an *ad hoc* team or taskforce internally to lead and undertake this activity. This internal team or taskforce, if possessing the relevant technical knowledge, could also be responsible for any follow-up action and overseeing an in-depth assessment, in case needed. More importantly, the team or taskforce of the consumer protection authority would be tasked with monitoring the outcomes of the CIA and the ensuing (revised) policy, law and/or regulation.
46. Where an in-depth assessment following the application of the Checklist cannot be avoided, consumer protection authorities are advised to engage external subject-matter experts who would be able to share additional data and research insights. Sharing the CIA with other relevant stakeholders that possess an interest in consumer rights, notably consumer associations and consumer advocates, could also prove useful. Aside from generating inputs for the CIA, its underlying concepts and the screening questions could help deepen the understanding about the potential consumer impacts of policies, laws and/or regulations so that concerns could be more proactively raised in policy discussions.
47. All in all, stakeholder engagement and consultations are integral to an in-depth assessment undertaken as part of a CIA exercise. The below table outlines the roles and contributions by various stakeholders:

Stakeholder Roles and Contributions

Consumers	Consumers are the most important group of stakeholders to be consulted since they would be the ones bearing the costs of or benefiting from the future policy implementation. Consumers may be largely un-informed and un-organized so that it is more feasible to consult with consumer associations and/or engage them in surveys to be conducted among their members and wider network.
Relevant government authorities and/or sector regulators	Government agencies and/or sector regulators that are responsible for implementing past or similar policies, laws and/or regulations would very likely have experiences/knowledge about the implementation results of revised or similar future policies, laws and/or regulations.
Business	Certain businesses might benefit from the implementation of specific policies, laws and/or regulations, while others might feel they would be marginalized or incur additional costs for complying with these policies, laws and regulations. It is important to hear the views of both these two types of businesses regarding likely impacts of future regulations, either through FGDs or by engaging with business associations.
Other groups	Other stakeholder groups include subject/sector experts and academics who would have in-depth knowledge about how the market works for consumers and businesses in certain circumstances,

ANNEX 1 - EXPLANATORY NOTES OF THE SCREENING QUESTIONS

This Annex contains explanations of unintentional impacts of policies, laws and/or regulations on consumers, with some references from the ASEAN region. The featured examples serve to illustrate what policymakers and consumer protection authorities might want to look out for when screening policies, laws and/or regulations using the CIA methodology.

It is, however, worth noting that **not** all government actions related to the examples necessarily are inappropriate or always result in unintended negative impacts for consumers. Rather, such conclusions could only be made on a case-by-case basis and as a result of a rigorous assessment.



Question A – Would the proposed policy, law and/or regulation affect the price and/or supply of goods and/or services available in the market?

Some policies, laws and/or regulations could affect the price and supply of goods and/or services available in the marketplace. This is likely to be the case if the proposed policies, laws and/or regulations:

Impose maximum or minimum (retail) prices of all or certain goods and/or services

Price regulation is widespread across many economies, including several ASEAN Member States (AMS). Governments often impose price controls when they feel that consumers are unable to afford certain (essential) goods and services or when they want to steer the market in a certain direction. For instance, price ceilings (maximum prices) are established to prevent producers from price gouging. And price floors (minimum prices) are used to help (certain) producers when governments believe that prices are too low, leading to an unfair market.

Price controls, however, might lead to an imbalance between supply and demand. This can, in turn, lead to shortages and underground markets. When prices are too low, there may not be enough supply thereby increasing demand.

Price controls can also lead to losses and a significant drop in quality. When prices are too low, producer's revenue is likely to drop. Producers may need to find a way to cut down on costs. Some may choose to cut down production or may end up releasing more inferior products to the market. As a result, newer and more innovative products could stop appearing on the market.

With the above in mind, any price regulation should be carefully assessed for its multi-faceted impacts on consumers. At the very least, the regulation should only be imposed for a definite term and its relevance regularly assessed and rationale made transparent, in close consultation with stakeholders.

During the COVID-19 pandemic, there have been demand surges for products, such as face masks, test kits, or anti-viral drugs. To prevent the exploitation of consumers, many governments in ASEAN, such as those of Indonesia, Malaysia, and Viet Nam to name a few, have imposed maximum retail prices for these products and services. The imposition of price caps, however, has been observed to lead to scarcity due to low supply, smuggling, the emergence of black-market dealings, as well as compromises in terms of product quality. Recognizing these unintended impacts on consumers, the consumer protection authorities in AMS have increased their market monitoring and inspection activities to ensure compliance, as well as promoted the adoption of quality standards and technical regulations for these products and services.

Limit the quantity of good(s) and/or service(s) that could be supplied in the market or sold/ provided to consumers

Governments might also impose restrictions on the number and/or quantity of certain goods and/or services

supplied in the market for various reasons, for instance to discourage usage of certain products and services (such as tobacco, alcohol etc.) in the name of public health and order, or to preserve natural resources and protect the environment (e.g. in the case of oil and coal production, or ocean fishing). In the context of international trade, such quantity controls or quota can be used to limit how many goods are allowed to be imported and/or exported, often with a view to promoting domestic production. As the law of demand and supply dictates, when quantity is restricted, scarcity ensues and prices rise.

Any regulation that foresees certain production, import or export quota should therefore be carefully considered and consumer impacts anticipated. This is because quantity restrictions could limit consumer choice and lead to unfairly priced goods that may subsequently become inaccessible to consumers, especially from low-income households.

Significantly raise the costs of producers/suppliers

Policies and regulations that significantly raise the costs incurred by producers/suppliers might affect consumers as well as producers and suppliers will pass down some of these (additional) costs along the supply chain to end consumers. As a result, consumer prices would go up. This could provide crucial challenges for low-income consumers and potentially exacerbate social inequality.

As an example, governments in many countries set standards to ensure product quality and consumer safety. However, sometimes product testing requirements might prove to be too rigorous, or technical specifications may be unnecessarily high, thus adding to the costs of producers. While such requirements may have been originally put in place for the benefit of consumers, an unintended adverse consequence may be reduced affordability of certain products.

In another instance, governments might limit the flow of goods, services, capital and/or labour across jurisdictional boundaries, as an instrument of regional industrial policy. Such limitations, however, may reduce the number of suppliers in a certain geographic area and allow them to exercise market power and increase prices, once again at the expense of consumers.

In recent years, greater attention to sustainable consumption and production (SCP) in many AMS has led to new and strict requirements for certain products, including common household appliances, such as fridges, air conditioners etc. However, newly introduced ecolabels and extended producer responsibility (EPR) throughout the entire product cycle also means increased investments are necessary from production, to marketing and distribution, up until the disposal stage. Producers may decide to pass on these investments to consumers in the form of higher prices.

Limit the appearance of new good(s) and/or service(s) in the market

In contrast to the traditional command-and-control model of government regulation, certain professions and producers of goods and services have historically been allowed to self-regulate (or co-regulate). Self-regulation is often more flexible in its form and approach as well as less costly for both business and the government, allowing for leveraging on resources and industry knowledge.

Common areas for self-regulation and co-regulation are product characteristics, including quality and safety; design compatibility; co-ordination of technical standards; ethical standards of practice; and control of pollution. Particularly where policies, laws and regulations have yet to be updated or amended, voluntary actions taken by the industry could help in filling important gaps in the legal framework, at least as a temporary solution to drive more responsible conduct.

However, self-regulatory mechanisms may also be abused by firms who engage in collusive practices. Such practices include price-fixing, quantity restrictions, or other barriers to entry to protect incumbents, thereby affecting consumer choice and driving up prices. Industry self-regulation may also come with a lack of incentives to engage in research and development, or firms may decide for a certain standard to be exclusively applied. While the latter may be in compliance with a government policy, law and/or regulation that rigidly promotes the said standard, it may also mean that innovative or improved products or services are not offered to consumers.

In another instance, while there are clear justifications for granting patents, a lot of debates remain with regard to government policy to extend patent periods. Pharmaceutical companies around the world have always fought aggressively for patent extension. However, extending patent protection can have significant disadvantages. At the very least, it extends the period over which consumers will have to pay higher prices for patented products. Moreover, patent holders can impose heavy costs, e.g. through litigation, on potential entrants – such as generic drug manufacturers – which might hamper innovation and act against the development of new technologies and products.

Patent policies, similarly as quotas and price control, should therefore be carefully assessed and applied only for a certain period of time, in order to maintain fair competition in the market – and by extension, provide consumers with more choices for products at higher quality and lower prices.

Limit the number of business(es) producing/providing good(s) and/or service(s) in the market

In those industries that have traditionally been considered as ‘natural monopolies’ (e.g. electricity, natural gas, telecommunications, water, postal services or railroads), governments would grant exclusive rights to one single firm, as a means of encouraging substantial investment in infrastructure and promoting economies of scale. Over time, as markets and technology evolve, many countries started to deregulate these sectors and allow competition (at least in specific segments that are potentially competitive). Where legal monopolies persist, government policies need to be examined, or checks and balances put in place in order to prevent these monopolies from abusing their position and exploiting consumers.

Even in seemingly liberalized sectors, licenses or permit requirements could still exist. For example, in some industries, potential entrants may be required to take a ‘public interest’ or ‘economic need’ test to demonstrate the necessity of an additional producer/supplier, and in some cases to show that their entry would not have a negative impact on existing businesses. In extreme cases, there may be only a fixed number of licenses to be provided, i.e. only a fixed number of business(es) would be allowed to produce/provide goods or services in the market. These licensing or permit requirements are often stricter than necessary for consumer protection, thereby reducing consumer choice unnecessarily or creating artificial scarcity and inflated prices.

Similarly, protectionist policies to advance so-called “national champions” in strategic sectors may be pursued by governments with the aim of promoting (infant) domestic industries and domestic welfare. They may, however, have a potentially adverse effect on consumers as a lack of competitive pressure may lead to higher prices for consumers.



Question B – Would the proposed policy, law and/or regulation affect consumer behavior and allow businesses to take undue advantage of consumers?

Some policies, laws and/or regulations could affect consumer behavior and/or inadvertently allow businesses to take undue advantage of consumers. This is likely to be the case if the proposed policies, laws and/or regulations:

Fail to provide consumers with adequate information to make purchase decision(s)

Companies use a variety of advertising, promotion and other methods to convey information about their goods and services to consumers. In established markets, such information can be supplemented by other sources such as previous usage experience, supplier reputation, word-of-mouth and online third-party reviews. These mechanisms, combined together, generally provide effective ways for consumers to obtain the information they need in order to make informed and appropriate choices.

However, regulatory reforms can create situations where normal information sources initially provide only limited information to consumers. This is particularly the case where new markets are being created for products for which consumers have previously not had to choose amongst different products or suppliers. For example, deregulation of the electricity sector may result in consumers being asked to choose amongst service providers

that are new to the market, and agree to supply offers that neither they nor other consumers have previous experience evaluating.

On the one hand, a risk in these cases is that many consumers will be induced into signing service contracts that are not in their interests. On the other hand, lack of information can result in many consumers remaining with incumbent suppliers, even though other better options may be available. Some suppliers might be able to win business and make profits because of consumers' lack of information, potentially giving these companies less incentive to reveal information about their products that would be useful to consumers.

In either case, the lack of adequate information can seriously affect the potential benefits from regulatory reforms and perhaps even threaten the entire deregulation process. Information requirements should be put in place to accompany the creation of new choices, providing consumers with a reference point for comparing offers. At the same time, careful consideration must be given to whether such requirements may create additional problems of their own, through unanticipated consequences or increased business costs.

This situation could be observed during the liberalization and deregulation process of the telecommunications sector in Myanmar. Until 2012, Myanmar had only one State-owned enterprise operating in this sector - Myanmar Post and Telecommunication (MPT). After the sector was liberalized with the adoption of the new Telecommunications Law in 2013, there are now at least four mobile telecom service providers catering to the demand of Myanmar consumers, resulting in more choice and lower prices.

However, at the same time, there were reports/complaints of low-quality service, misleading advertisements and hidden/extra service fees charged to consumers.¹⁰ In fact, the Department of Consumer Affairs (DOCA - Ministry of Commerce, Myanmar) received over 1,500 consumer complaints in 2020, with the majority from the telecommunications sector (56.4%), followed by financial services and online shopping.¹¹ This showed the adverse effect of a deregulatory government policy that was not accompanied by sufficient standards and safeguards to protect consumers.

Affect the ability of consumers to assess the usefulness and value of good(s) and/or service(s)

In general, advertising serve as a very important information source for consumers. To protect consumers from false, misleading or potentially harmful information, regulations on advertising and marketing of various goods and services are quite common, including bans on misleading and untruthful advertising and requirements for validation by an independent authority or third party of any claims made by businesses concerning the quality, safety and sustainability of their products and services.

Many jurisdictions also impose rules to restrict or ban the advertising and marketing of certain products, such as pharmaceuticals, alcohol, and professional services; comparative advertising; or direct-to-consumer marketing, etc. Despite their good intentions to protect consumer interests, the latter restrictions also ultimately prevent consumers from obtaining the full or complete information that they might find valuable for assessing the usefulness and value of products or services. Moreover, a ban on advertising could also be abused as an entry barrier to reduce competition in the market, with the effect of limiting consumer choice. Therefore, these restrictions should be carefully considered and minimized where possible.

The rapid development of the digital economy has come with a wealth of new and more accessible information available to consumers. As information can be obtained easily and often entirely free of charge, there is generally greater convenience for consumers making informed purchasing decisions. However, at the same time, the wealth of information online also heightens the risks of consumer confusion and information overload. Moreover, producers or sellers may deliberately provide opaque, confusing, misleading, and manipulative information in order to purposefully trick consumers into making suboptimal decisions.

Governments have tried to address this problem by putting in place information guidelines and disclosure requirements for businesses, either through dedicated policies or as part of self- or co-regulatory schemes with the industry, for example e-marketplaces. These information guidelines/requirements need to be carefully

¹⁰ Myanmar Gazette- "Inquiry on violations against consumer rights by mobile service providers", Records of the Second Pyithu Hluttaw's 11th Session, May 17, 2019

¹¹ Information obtained from the Myanmar Consumer Report 2020 by Myanmar Consumer Union (MCU)

checked in order to ensure that they facilitate the understanding and ability of consumers to correctly assess the usefulness and value of good(s) and service(s), including information regarding final price, terms and conditions, and scarcity, etc. At the same time, there is a need to deal with businesses that may abuse rather than adhere to such information duties, or guide businesses where they themselves may be inadvertently overwhelmed by the requirements.

In Thailand, for example, advertising is not controlled by the government but subject to a self-regulation model and an Advertising Code of Ethics. The self-regulation model was created by the Advertising Association of Thailand, based on the experiences of the European Advertising Standards Alliance (EASA) and after several rounds of consultation with advertisers, government agencies, consumers, academics, students, and interested members of the public.¹² Nevertheless, there have been many critics that false and misleading advertising is quite rampant in Thailand, undermining the consumer right to 'right' information. In 2020 alone, the Food and Drug Administration (FDA) of Thailand and the National Broadcasting Telecommunication Commission (NBTC) have taken action against more than 1,300 false advertisements for food, drugs and food supplements on social media and in the e-market which overstated the effects of the advertised products.¹³

Limit the ability of consumers to negotiate a contract/transaction or withdraw from it

The written terms of consumer contracts are seldom individually negotiated between the supplier of goods and services and the consumer. Rather, other than those terms related to the price and subject matter, contract terms will most usually be set out in standard form on a 'take-it-or-leave-it' basis. Although such standard form contracts are convenient (reducing the time and cost for suppliers and consumers to come into agreement, thereby facilitating more efficient commerce), they often contain one-sided terms which are unfavorable to consumers since they are drafted by the suppliers, who have more inside information about the goods and/or services and superior bargaining power.

Such terms may also be in small print or written in legal jargons which is difficult for consumers to understand. Furthermore, consumers often sign contracts 'there and then' without having read the contract or understood the terms, perhaps even feeling pressured to conclude the contract quickly without perusing or questioning its contents. Even where consumers are aware of any unfavorable terms, they may feel that they have no bargaining power to negotiate the terms, especially where the terms are standard across the industry.

Consumer protection laws generally either ban these unfair contract terms, or set out a test of 'reasonableness' to check whether the terms are fair to all relevant parties. In many countries, unfair contract terms are considered void or no longer binding to both the consumers and businesses. In those countries where there is no consumer protection law yet, or where the consumer protection laws do not contain any provisions related to unfair contract terms or standard form contracts, the matter is generally regulated under contract law or general civil law.

Where this is the case, these laws and regulations should be examined to ensure that consumers are generally afforded the right to negotiate a contract/transaction and can reasonably withdraw from it when they no longer find the terms acceptable or find the goods and/or services suitable.

Limit the ability of consumers to switch to new producer/provider(s) of good(s) and/or service(s)

Regulations can make consumers more or less willing to switch suppliers by affecting 'switching costs', i.e. the explicit and implicit costs borne by a consumer in changing from one supplier to another. Switching costs may arise for various reasons, such as through long-term contracts or tying of assets to suppliers in a way that makes switching inconvenient for consumers. Suppliers typically have vested interests to promote specific policies that would lead to high switching costs, for example if given service provider has exclusive ownership over a phone number without number portability. Similarly, suppliers may apply lock-in contracts or up-front fees, dictate specific terms and timelines for supplier switches etc.

¹² Sankaran Ramanathan, Advertising Self-Regulation in Asia and Australasia, downloadable from <https://icas.global/wp-content/uploads/2011_04_Ad_SR_Asia_Australia.pdf>

¹³ <<https://www.bangkokpost.com/thailand/general/2023495/state-agencies-crack-down-on-1-300-false-food-drug-product-ads>>

Lowering barriers to switching is a prerequisite for effective markets, as it enables consumers to exercise their bargaining power and hold businesses to higher standards. In such cases when consumers face high switching costs, suppliers are able to charge higher prices for their goods and services, thereby exploiting consumers – with particularly severe impacts on low-income households. Regulations that result in limiting the ability of consumers to switch to new producers/providers of goods and/or services should therefore be minimized.

Limit the ability of consumers to obtain redress when problems occur

There are different hurdles consumers may face in accessing dispute resolution schemes and pursuing claims against businesses, at times resulting from the way the procedures and institutional mechanisms for consumer redress are designed. A centralized and analog system for dispute resolution might limit access by consumers based in the provinces or remote areas, while a fully online system would disadvantage consumers with limited digital connectivity or literacy. Similarly, a high value threshold for fast-tracking consumer cases would mean a lot of smaller cases are bound to fall through the cracks. Overly complex rules and high filing fees would discourage consumers from utilizing the system to solve their disputes with businesses.

Consumer dispute resolution and redress should be accessible, effective, efficient, fair and transparent for consumers so that they feel comfortable using them when problems occur. This is pertinent both in offline as well as digital markets. As new policies, laws and/or regulations to govern e-commerce and other aspects of the digital economy are being devised, it is therefore important to ensure that options for consumers to obtain redress are accounted for. For example, rules on data protection, automated decision-making, or the use of artificial intelligence in mass surveillance should also cover provisions on consumer redress, thereby ensuring that the latter can be obtained in accordance with the principles noted above.



Question C – Would the proposed policy, law and/or regulation affect the safety and/or sustainability of goods and/or services?

Some policies, laws and/or regulations could affect the safety and/or environmental sustainability of goods and/or services in the market in both positive and negative manners. This is likely to be the case if the proposed policies, laws and/or regulations:

Affect the safety of consumers while using/consuming good(s) and/or service(s)

Governments often set standards on product content or characteristics, including minimum quality standards, for example food standards and technical regulations to ensure safety and nutritional value, residential and commercial building codes, or guidelines and standards on environmental protection and pollution control. Setting standards and quality is often necessary and clearly serves the public interest. If standards and quality regulations are too low, the safety of consumers while using/consuming goods and/or services would be jeopardized. But ‘unduly high’ or stringent rules and regulations on product characteristics and minimum quality can, at times, clash with consumer preferences which tend to be diverse.

Regulations that force the quality to unduly high levels may disadvantage consumers, especially lower-income ones, who may prefer the lower prices and accept the lower quality that comes with such prices. The potential downside is that such lower-income consumers may shy away from paying higher prices and may prefer to hold on to using older (and probably more dangerous) products for longer periods. While safety features have to be improved, it is useful to evaluate the marginal benefits from a new safety regulation against its marginal costs.

Affect consumers’ ability to use/consume good(s) and/or service(s) in an environmentally sustainable manner

The need for environmental protection and preservation of natural resources is higher now than ever and has become a shared responsibility and commitment of all stakeholders: government, business and consumer. A whole range of rules and regulations could be adopted for this purpose including limits to excessive usage of

plastics, more stringent standards and requirements regarding product information and environmental claims, eco-labeling schemes, and adoption of extended producer responsibility, etc. These policies, combined with specific incentives for producers and consumers, and widespread informational and educational campaigns could affect the behaviors of both business and consumer in a positive manner.

However, same as with requirements on quality and safety, there is a need to ensure that policies in this regard cover regulatory requirements and oversight that are neither too low nor too high so as to discourage businesses and consumers from adopting or complying with certain standards. In other words, if the regulatory requirements are unduly high or too strict, prices would be pushed up inadvertently or in extreme cases, supply would be reduced/ stopped because producers cannot meet these high standards. Consumers, in turn, would be deterred by high prices or limited choice. Moreover, if certain types of products and/or services are not effectively regulated or there are no limits to excessive usage, consumers risk ending up with unsustainable products and/or services. It is therefore pertinent to carefully assess policies on sustainable production and consumption (SCP) so that optimal impacts are realized for the environment, industry and consumers alike.



Question D – Would the proposed policy, law and/or regulation affect vulnerable consumers and their interactions with businesses?

In addition to assessing the aforementioned impact(s) of policies, laws and/or regulations on the ‘average’ consumer,¹⁴ it is important to identify how these policies, laws and/or regulations affect vulnerable groups of consumers as well as their interactions with businesses. As a result, we need to check whether these policies, laws and regulations:

Limit fair and equitable access of vulnerable consumers to good(s) and/or service(s), as well as their ability to obtain redress in the case of disputes, in a way that undermines their health, safety and economic interests

A wide range of economic and non-economic factors can contribute to consumer vulnerability in specific markets. Consumer vulnerability can mean belonging to a socio-economic group likely to be less empowered, or lacking full capacity to operate as consumer, as defined by laws and regulations in some countries.¹⁵ Every consumer may become vulnerable in certain situations, e.g. due to changes in life situations or because of the complexity of goods, services or marketing practices that make it difficult to verify the validity of their choice.¹⁶

It is therefore important to identify how potentially vulnerable consumers may experience a change as a result of new/revised policies, laws and/or regulations. This would help to ensure that their health, safety and economic interests are still adequately protected and that they can still buy (or to decide in an informed way on buying) essential goods and services, or can effectively obtain redress in the case of disputes.

A sector where consumer vulnerability can be particularly pronounced is energy. In many countries, low-income consumers require specific attention and assistance by policymakers in order to protect them against energy poverty. Viet Nam, for example, applies a reverse scale for retail electricity prices. Accordingly, residential consumers/households, who typically consume less electricity as compared to commercial or industrial consumers, pay a lower price. This is contrary to common market practices where larger customers usually receive discounts or enjoy lower prices. However, it would help to lower the electricity bills for poorer householders/consumers including those from rural and remote regions, even though the costs of supplying electricity to them are usually higher.¹⁷

¹⁴ The “average consumer” standard is a concept introduced by the practice of Court of Justice of the European Union, formulated in its cases on the free movement of goods, misleading advertising, as well as analysing questions related to the trade mark protection. That is a hypothetical average of all consumers (or their particular group), on the basis of which the impact of the provided information on economical behaviour of a particular consumer is judged. The Court of Justice defines an “average consumer” as an informed, observant and reasonably circumspect person together providing the flexibility necessary for the application of this concept.

¹⁵ This can be due to e.g. low income, low education, disabilities, diseases or specific behaviours such as credulity or addictive behaviour, developmental and affect comprehension, reasoning and judgement (children, adolescents and the elderly).

¹⁶ E.g. because of lack of technological expertise, time pressure, cognitive overload, lack of transparency of offers, lack of easily available, understandable and balanced information or ignorance concerning long-term effects of use.

¹⁷ In the European Union, Member States are required to provide benefits through their social security systems or to improve energy efficiency. Moreover, with regard to the use renewable energies, EU Member States are required to promote accessibility of self-consumption of renewable energy sources by reducing energy bills for low-income or vulnerable households as these would not otherwise have sufficient up-front capital to invest in renewable energy technologies.

The financial services sector is often mentioned as a market where a lot of consumers have difficulty in understanding and comparing complex offers and contracts, and can find themselves in a vulnerable position as a result of over-indebtedness. The Central Bank of the Philippines (BSP), in 2019, issued a Circular on financial consumer protection, whereby all the financial institutions supervised by the BSP 'must ensure that their consumers have a reasonable holistic understanding of the products and services which they may be acquiring or availing.

In this context, full disclosure and utmost transparency, to the extent allowed under applicable laws and regulations, are the critical elements that empower the consumer to make comparisons and informed financial decisions. This is made possible by providing the consumer with ready access to information that accurately represents the nature and structure of the product or service, its terms and conditions, as well as its fundamental benefits and risks.' Furthermore, these standards of disclosure and transparency shall be applicable even to products and services offered electronically as well as to products catering to different market segments with particular consideration for segments that may have limited financial literacy, i.e. more vulnerable consumers.¹⁸

Finally, the development of e-commerce and artificial intelligence technologies has also raised concerns about consumer vulnerability. The 2017 external study for the fitness check of EU consumer and marketing law warned that certain groups of consumers, especially vulnerable groups, could be particularly at risk from being targeted by unfair practices that exploit consumers' cognitive biases, enabled by advances in technological innovation and behavioral insights (such as online behavioral advertising). The EU's new consumer agenda also warned that the digital transformation – together with the underlying data collection, processing and analysis of consumers' behavior and their cognitive biases – can make it harder for consumers to make informed choices, and may limit the effectiveness of the current rules, including on unfair consumer practices. It warned that practices such as the use of user interfaces aimed at manipulating consumers ('dark' patterns), abusing consumer behavioral biases, profiling, hidden advertising, false or misleading information and manipulated consumer reviews, need to be tackled.¹⁹

Affect, in a significant and different way, the health, safety and economic interests of women as consumers

The importance of considering gender issues in consumer protection has been widely acknowledged, notably by the United Nations Conference on Trade and Development (UNCTAD) in their 2016 updated UN Guidelines on Consumer Protection (UNGCP) and Manual on Consumer Protection. In relation to the 5th Sustainable Development Goal (SDG) on Gender Equality and Women Empowerment, the following is described:

Goal 5: Gender equality and empower all women and girls

"...As the primary shoppers in most cultures, women have a particular role as consumers. It is through this unique position that consumer policy has been successful in enhancing the status of women and helping to realize development goals. For example, their role in microcredit has been widely recognized. Of particular importance are the infrastructure services such as water and energy which can save their time spent fetching and carrying and delivering health benefits in the home such as reduced smoke pollution.

The United Nations Guideline on Consumer Protection (UNGCP) seeks to redress the imbalance that often exists between consumers and producers. Where women are responsible for purchases, this improves their access and power in the market place. The UNGCP also directs Governments to pay particular attention to vulnerable consumers who in many cases are more likely to be women."

(UNCTAD, 2016, *Manual on Consumer Protection*, p. 164).²⁰

¹⁸ <<https://www.bsp.gov.ph/Regulations/Issuances/2019/c1048.pdf>>

¹⁹ European Parliament briefing (2021), Vulnerable consumers, prepared by the European Parliamentary Research Service (EPRS), available for view and download at <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/690619/EPRS_BRI\(2021\)690619_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/690619/EPRS_BRI(2021)690619_EN.pdf)>

²⁰ UNCTAD (2016), *Manual on Consumer Protection*, Kenya: United Nations.

Seen in this light, gender equality in the context of trade means paying particular attention to the interests, needs and demands of women as family providers and caregivers. This means to prevent gender-based price discrimination (i.e. the so-called “pink tax”), or refrain from providing unequal or limited access to essential products and services. Moreover, as “frontliners”, women need to have the necessary, complete and accurate

information on hand in order to make confident purchasing decisions for themselves and their families. Women should be able to transact with trust and confidence in the ASEAN marketplace and be protected from potential abuses, such as stereotyping, price discrimination, manipulation and unsafe offers.

With this in mind, it would be pertinent to ensure that new or revised policies, laws and regulations do not have any adverse impacts on female consumers. When participating in any market transactions, women should be equally treated and not discriminated against on grounds of their gender or different physical/psychological features, specifically in terms of price, access and redress.



Question E – Would the proposed policy, law and/or regulation affect consumers’ right to privacy and personal data protection?

The United Nations, in its Guidelines for Consumer Protection (2015), recognize the need to protect consumer privacy alongside with the other eight (08) fundamental consumer rights upheld since 1985. This means that consumers should have their privacy respected by businesses and their personal data protected ‘through a combination of appropriate control, security, transparency and consent mechanisms relating to [their] collection and use’; just as they should have access to such essential goods and services as adequate food, clothing, shelter, and healthcare; and just as their physical safety should be guaranteed while engaging in consumption.

However, despite this recognition, government actions to protect consumer privacy and personal data remain patchy, due to a multitude of reasons such as different focus/prioritization, outdated legal framework, and lack of technical capacity, etc. In the context of the digital economy and e-commerce development, where consumer data takes on the new role of a highly valuable and strategic asset, new policies, laws and/or regulations should therefore be assessed to see whether they have any unintended impacts on consumers’ privacy and personal data protection. This is likely to be the case if the proposed policies, laws and/or regulations:

Affect the way consumer data is collected, used and disclosed by business and relevant third parties

“Consumer data” refers to data concerning consumers which have been collected, traded or used as part of a commercial relationship. This term, therefore, is narrower than the concept of “personal data”, which often refer to all information relating to an identified or identifiable individual.

Businesses collect and use consumer data in a number of different ways. In general, consumer data can be viewed either as a by-product of a business’ core functions, or as something that a business has actively pursued alongside or even separate to its core business. In some cases, data collection may have started as a passive activity where a business did not yet appreciate the value of such data. For example, once retail businesses understood the economic value of retail scanner data, it became an incentive for them to create fidelity or loyalty schemes to collect ever-greater volumes of consumer data.²¹

There are a number of ways in which businesses can use consumer data, including to:

- increase the quality or functionality of their core products or services,
- offer greater personalization (including personalized pricing or offers),
- train machine learning and Artificial Intelligence systems, and
- sell advertising products or other targeted services.

²¹ In 2019, the Australian Competition & Consumer Commission (ACCC) undertook a review of customer loyalty schemes, which raised a number of consumer policy concerns regarding how businesses collect and use consumer data associated with the use of customer loyalty schemes. In particular, the ACCC was concerned that consumers have very little control over how businesses use such data, and about the lack of clarity provided to consumers regarding the collection and use of their data.

In addition, businesses can sell consumer data to third parties. Depending on the regulatory regime in place in the country, this may potentially be subject to consumer approval or anonymization.

When talking about the collection of consumer data, it is useful to distinguish between first and third-party data collection. First party data collection occurs where a business collects information directly from its customers/users as part of their use of the business' goods or services. By contrast, third-party data collection/tracking happens when extensive amounts of personal data are actively harvested from a variety of first-party sources in the online environment and across different devices, such as smartphones, tablets and laptops/computers, thereby building a comprehensive user profile.

Consumers typically feel more comfortable in relation to volunteered data that is collected and used directly by first parties.²² However, they may be less aware of data gathered through third-party tracking and may not consent to such data being used or collected for any purpose other than that which it was originally collected for.

With the above in mind, it is critical to examine whether new or revised policies, laws and/or regulations contain provisions on data collection and disclosure that would ultimately affect consumer privacy.

In line with international trends and good practices, several AMS have introduced a policy or legislation on personal data protection, namely Brunei Darussalam, Malaysia, Singapore, Thailand and the Philippines, while others are considering following suit.²³ These policies, laws and/or regulations, however, might not be concerned much with the commercial aspects of how consumer's personal data could be harvested and used (e.g. for profiling, targeted marketing, personalized pricing and offers, influencing and manipulation, etc.), affecting not only consumer's privacy but also their sovereignty.

Where the laws and/or regulations related to consumer protection are being considered for amendment, such as in the case of Viet Nam, these data-based commercial practices should be incorporated in the interest of consumers.

Where such specific provisions are not yet formally in place, general principles to safeguard consumer privacy with respect to data collection, i.e. concerning consent and control of the use of the data, should be upheld and accommodated also in sector- or industry-specific policies, laws and/or regulations even though they may not exclusively be concerned with data privacy and protection.

Result in any (new/additional) consumer privacy risks, and how these risks have been/are being managed

Breaches of privacy, and the collection and use of consumer data has the potential to result in tangible and intangible consumer harms. The more consumer data is collected and stored, the more broadly it is disclosed, and the longer it is stored, the more likely it will be hacked, accidentally disclosed or used for and illegal purposes.

One key risk is that a consumer's data is used for identity theft, which can have serious implications for the consumer concerned. In addition, consumers may experience data loss, unexpected or unapproved data collection, use or sharing, or nuisance contacts. Even where consumers have willingly provided their information in one context, they may be at risk to the extent that such information is used in another context, or shared without consumers' express consent. This is especially problematic given that a consumer's benefit from sharing or protecting personal information is largely context-specific.

Businesses should proactively take steps to address enhanced consumer privacy and data protection requirements. For example, companies need to know which data they actually require to serve customers. Much of the data that is collected is not used for analytics and will not be needed in the future. Companies therefore could mitigate risks by collecting only the data they will probably need. Another necessary step is to write or revise data storage and data security policies. The best approaches account for the different categories of data, which can require different storage policies.

²²Acquisti, A., C. Taylor and L. Wagman (2016), "The Economics of Privacy", *Journal of Economic Literature*, Vol. 54/2, pp. 442-492, <http://dx.doi.org/10.1257/jel.54.2.442>. OECD (2020), "Consumer Data Rights and Competition", [https://one.oecd.org/document/DAF/COMP\(2020\)1/en/pdf](https://one.oecd.org/document/DAF/COMP(2020)1/en/pdf).

²³ Personal Data Protection in ASEAN, ASEAN Insider Series, ZICO Law, April 2019 http://zico.group/wp-content/uploads/resources/asean_insiders/ASE-AN_Insiders-PDPA.pdf.

Another good practice is for companies to build “privacy by design” into consumer-facing applications, with such features as automatic timed logouts and requirements for strong passwords. Security and privacy should become default options for consumers, while features strike a balance with the user experience.

It is also very important for businesses to communicate transparently. Consumers should know when and why their data are being collected, as well as the possibility for deletion, removal, transfer or lodging of complaints related to the businesses’ data handling practices. There should also be clear, standardized procedures to govern consumer requests for the identification, removal or transfer of their data.

Policies, laws and/or regulations that do not require businesses to take reasonable measures to identify and manage consumer privacy risks, or allow them to circumvent these obligations, would seriously undermine consumers’ legitimate rights and interests. This in turn would reduce consumer trust, hindering them from participating with confidence in the offline as well as online marketplace.

Last but not least, consumer data could be collected, used and/or disclosed without consent where it is necessary to the national interest or for any investigation or proceedings by public authorities. However, this exemption does not mean there is no privacy risk involved or that governmental agencies do not have the obligation to identify and manage these risks. Necessary measures also have to be undertaken to protect consumer privacy when their data is placed in the public domain for government use.

Singapore sets a good example where data management in the public sector is governed by specific legislations and Government-issued instructions, namely the Public Sector (Governance) Act 2018 and the Government Instruction Manual on Infocomm Technology and Smart Systems Management. The Instruction Manual sets out how the Government of Singapore manages and protects data, including personal data, in its possession or control, while the Act imposes criminal penalties on public officers who misuse data, or knowingly or recklessly disclose or re-identify data without authorisation. This is in addition to general legislation on personal data protection – the Personal Data Protection Act 2012 of Singapore – which requires that all (business) organisations must make reasonable security arrangements to prevent unauthorised access, collection, use, disclosure, copying, modification or disposal of personal data or similar risks.

ANNEX 2 – SELECTION MATRIX FOR SELECTING POLICIES, LAWS AND/OR REGULATIONS FOR CIA

In some cases, there might already be a policy decision or decision at the top level within the consumer protection authority to assess the likely impacts of policies, laws and/or regulations on consumers, their rights and legitimate interests. This could be in response to widespread public concerns about significant price increases, consumer access to essential goods and/or services, product safety, or certain business behaviours, etc. A CIA study, in this case, is meant to clarify and respond to such concerns.

In the absence of such a decision, or in the case consumer protection authorities ought to choose amongst several policies, laws and/or regulations for piloting the CIA methodology, the authorities could examine and balance amongst a range of factors to select the most viable option for assessment. This is in view that (financial and human) resources available with the authorities for conducting such studies are often scarce and thus have to be used most judiciously where they are most likely to achieve success.

The following simple Matrix could be used for deciding on such policy selection. Consumer protection authorities or person/organization(s) conducting a CIA could add or subtract from the list of selection criteria as they deem fit to suit their specific context. The Matrix could be filled on the basis of a small FGD within the team who would be responsible for conducting the CIA. Naturally the policy option with the highest total score could be selected for conducting the CIA.

Criteria	Policy		
	A	B	C
The policy, law and/or regulation will likely affect a market or markets having a high volume of B2C commerce	1 Yes	0 No	0
The policy, law and/or regulation might significantly affect the supply of a product and/or service highly demanded by consumers, or essential goods and/or services	0	1	0
The policy, law and/or regulation might significantly affect an attribute of the good(s) or service(s) often considered as important by consumers, such as price, safety, or sustainability	1	0	0
Data availability (i.e. whether it would be feasible to obtain data and information necessary for conducting the CIA)	1	1	0
Availability of resources (e.g. regarding human resources - whether there are staff members or officials within the consumer authorities with relevant expertise/qualifications/sufficient understanding to undertake the CIA, the consumer protection authority and the responsible line ministries or sectoral regulators to ensure that the CIA results might be more readily and positively considered).	1	1	1
Others (to be added by the consumer protection authorities or person/organization(s) conducting the CIA)	0	0	0
Total	4	3	1

ANNEX 3 – INDICATIVE OUTLINE FOR CIA REPORT

Section	Content
Executive Summary	The Executive Summary would present all the key findings and recommendations of the CIA study upfront, in a brief and concise manner, so as to capture the attention of busy readers/stakeholders (such as policymakers)
I. Introduction	This section should succinctly describe the rationale for undertaking the CIA study; its objectives, scope and expected outcomes; as well as the methodologies employed, together with any relevant limitations or assumptions.
II. CIA Checklist Application	This section could contain a table/checklist where all the screening questions and sub-questions are presented, along with brief and concise explanations of why the questions draw a 'Yes' or 'No' answer.
III. In-depth Impact Assessment	<p>This section should describe in more details the likely impacts that the assessed policies, laws and/or regulations will have on consumers, their rights and legitimate interests.</p> <p>Analysis for each of the likely impacts should include the following information:</p> <ol style="list-style-type: none"> 1. Description of relevant legal provisions/regulatory requirements: e.g. <i>The new policy requires a certain type of product testing for Products X, Y, Z.</i> 2. Consumer benefits and/or detriments e.g. This new requirement will ensure consumer safety. However, it is likely that producers/sellers will pass on the increased costs (for conducting the tests) to consumers, resulting in price increase. 3. Policy rationale/objectives e.g. The policy was proposed because of several recent incidents involving serious harms to consumer health and safety. 4. International experiences (if any) e.g. Other neighboring countries have faced with this problem and how they have dealt with it, including both success and failure. 5. Recommendations (on alternative options and/or safeguards)
IV. Conclusions	This section concludes on the overall findings of the CIA study as well as its recommendations.
Annexes	The Annexes could include, though not limited to, any questionnaires used during the CIA study process, survey results, and/or [independent] M&E report on the CIA exercise (to be attached subsequently).

