

MALAYSIA



Malaysian competition law



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The *Competition Act 2010* of Malaysia is set and ready to go into full force with effect from 1st January 2012. Along with it, a Competition Commission has been recently established to be the body vested with the power and function to implement and enforce the competition law and regulations.

Who is affected?

The *Competition Act 2010* (the Act) seeks to promote economic development by protecting the process of competition with the ultimate objective that it will benefit consumers. With a few exceptions, the Act covers all and any entities carrying on commercial activities relating to goods or services. As such, this includes statutory bodies or government linked companies to the extent of them carrying on any commercial activity. Although it primarily applies to commercial activities within Malaysia, those transacted outside the country are also within its scope if they have an effect on competition in any market in Malaysia.

Anti-competitive agreements

The Act mainly focuses on two key prohibitions: first, it prohibits 'anti-competitive agreements' between entities. An agreement having the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services is thus prohibited. Such an agreement is not limited to a form of contract. It includes any arrangement or understanding, whether or not legally enforceable, as well as a decision by an association. It can also include any form of coordination between the entities or any practice which involves communication between the entities which has the effect of influencing the conduct of one or more entities in a market. Certain agreements are deemed by the Act to be anti-competitive such as price fixing agreements, market sharing agreements, bid rigging agreements and agreements on limiting production or market access.

Market dominance

The Act also prohibits abuses of market dominance. An entity is

prohibited from engaging, whether independently or collectively, in any conduct which amounts to an abuse of a dominant position in any market for goods or services. An entity is in a 'dominant position' if it possesses such significant power in a market to adjust prices or outputs or trading terms without effective constraint from competitors or potential competitors. The Act also provides for a wide range of conducts that may fall within the ambit of 'abuse of dominant position'. These include the imposition of unfair selling prices or trading condition on any supplier or customer or the imposition of a supplementary condition which has no commercial connection as a condition precedent to the conclusion of a contract. Unlike some other jurisdictions, the Act does not presently have any provision on 'merger control'.

Substantial penalties

The consequence of an infringement of a prohibition under the Act can be substantial. In the event of an infringement, the Competition Commission has the discretion to impose a financial penalty of up to 10 percent of the worldwide turnover of an entity over the period during which the infringement occurred. Any person committing an offence under the Act can also be made liable to a fine of up to RM5 Million for a body corporate or to a fine of RM1 Million or to imprisonment for up to five years (or both) in the case of an individual. In addition, any person who suffers loss or damage directly as a result of the infringement may bring a right of action for relief in civil proceedings against the entity which committed the infringement.

Compliance

With the implementation of the Act, Malaysian entities or entities which are carrying on any commercial activity having potential impact on competition in any market in Malaysia are advised to review their business and operation processes to ensure that they will be in full compliance with the Act when it comes into effect on 1st January 2012.

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