



Suruhanjaya Persaingan Malaysia
Malaysia Competition Commission (MyCC)

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Promoting Competition, Protecting You

**STRATEGY
PLAN
FOR
COMPETITION
ADVOCACY
2012-2014**

WORKING COMMITTEE ON ADVOCACY
13 December 2011



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1. Preamble

Malaysia occupies the 21st position out of 142 countries in the World Economic Forum's Global Competitiveness Index 2011-2012 rankings, an improvement from the previous year's 26th spot.¹ It has also moved up five notches to 18th position in the 2012 World Bank's Doing Business Report.²

These impressive advances are the consequence of the nation embarking on a path of economic transformation with a greater role earmarked for the private sector whilst pursuing trade and services liberalization, privatization, foreign direct investment, dismantling of protectionist measures, and addressing bureaucracy issues.

The Competition Act 2010 (CA 2010) which comes into effect on 1 January 2012 is part of this reform process. The long title and preamble to the CA 2010, make it clear that it is intended to "promote economic development by promoting and protecting the process of competition" and that "the process of competition encourages efficiency, innovation and entrepreneurship which in turn promotes competitive prices, improvement in the quality of products and services and wider choices for consumers".

The CA 2010 is administered by the Malaysia Competition Commission (MyCC), established under the Competition Commission Act 2010 (CCA 2010). The MyCC has established several Working Committees to facilitate performance of its functions. This strategy plan relates to the work of the Working Committee on Advocacy (WCA).

The Strategy Plan for Competition Advocacy 2012-2014 sets out the rationale and framework for the work programme of the WCA in this first phase of the implementation of the CA 2010.



2. Scope of Competition Advocacy

The functions of the MyCC are set out in Section 16 of the CCA 2010 (see Box 1).

The first three of the functions of the MyCC as stipulated in section 16 relate to advising and alerting the Minister and other regulatory bodies as regards their task in relation to their duties pertaining to competition:

- To advise the Minister or any other public or regulatory authority on all matters concerning competition (section 16 (a));
- To alert the Minister to the actual or likely anti-competitive effects of current or proposed legislation and to make recommendations to the Minister, if appropriate, for the avoidance of these effects (section 16 (b));
- To advise the Minister on international agreements relevant to competition matters and to the competition laws (section 16 (c));

In Malaysia, the government and the MyCC are institutionally connected through the appointment of Commissioners from four key government agencies – the Attorney General (AG), the Secretary-General of the Ministry of Domestic Trade, Consumerism and Cooperatives (MDTCC), the Secretary General of the Ministry of International Trade and Industry (MITI), and the Director-

General of the Economic Planning Unit (EPU). As the AG's Chambers advises on and drafts legislation for all government departments, both at federal and state level, it is poised to play a pivotal role in influencing policy making at source. The MDTCC, MITI, and EPU are the incubators where the country's national and international economic and commercial policies are generated. The MyCC will work through the respective Commissioners from these government agencies to fulfill its duties as specified in section 16 (a), (b) and (c) cited above.

As noted earlier, the MyCC has established several Working Committees.³ Three Working Committees perform advocacy related⁴ functions as follows:

- i) The Working Committee on External Guidelines to develop “guidelines in relation to the implementation and enforcement of the competition laws” as required by section 16 (e);
- ii) The Working Committee on Publicity and Communication to “publish and otherwise raise awareness among persons engaged in commerce or trade and among the public of, information concerning the competition laws and the manner in which the Commission will carry out its functions under the competition laws” as required by section 16 (i); and
- iii) The Working Committee on Advocacy (WCA) to perform the remaining non-enforcement functions. The MyCC’s functions that are to be the focus of the WCA are therefore;



- To act as an advocate for competition matters (section 16 (f));
- To carry out, as it considers appropriate, general studies in relation to issues connected with competition in the Malaysian economy or particular sectors of the Malaysian economy (section 16 (g));
- To collect information for the performance of the Commission’s functions (section 16 (h)); and
- To inform and educate the public regarding the ways in which competition may benefit consumers in, and the economy of, Malaysia (section 16 (j));

“The mission of the WCA shall be the promotion of a robust competition friendly environment through advocacy and non-enforcement initiatives, directed at targeted stakeholders in the government, business and civil society sectors.”

Working towards a vision of a competitive market economy that is fair and efficient, the mission of the WCA shall be the promotion of a robust competition friendly environment through advocacy and non-enforcement initiatives, directed at targeted stakeholders in the government, business and civil society sectors. Grounded on the presumption that awareness of the law and the benefits of competition will lead to greater compliance, the

WCA shall direct its advocacy efforts towards encouraging stakeholders to choose self compliance over being caught for non-compliance of the law. It is believed that the pre-emptive nature of advocacy initiatives will result in better compliance thereby reducing the need for resource-heavy enforcement. The advocacy work of the WCA is meant to be pro-active and to complement the work of the enforcement unit in implementing the CA 2010.

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Functions of the MyCC

Section 16. The Commission shall have such functions as specified under the competition laws and shall also have the following functions:

- | | |
|----|---|
| a) | to advise the Minister or any other public or regulatory authority on all matters concerning competition; |
| b) | to alert the Minister to the actual or likely anti-competitive effects of current or proposed legislation and to make recommendations to the Minister, if appropriate, for the avoidance of these effects; |
| c) | to advise the Minister on international agreements relevant to competition matters and to the competition laws; |
| d) | to implement and enforce the provisions of the competition laws; |
| e) | to issue guidelines in relation to the implementation and enforcement of the competition laws; |
| f) | to act as an advocate for competition matters; |
| g) | to carry out, as it considers appropriate, general studies in relation to issues connected with competition in the Malaysian economy or particular sectors of the Malaysian economy; |
| h) | to collect information for the performance of the Commission's functions; |
| i) | to publish, and otherwise raise awareness among persons engaged in commerce or trade and among the public of, information concerning the competition laws and the manner in which the Commission will carry out its functions under the competition laws; |
| j) | to inform and educate the public regarding the ways in which competition may benefit consumers in, and the economy of, Malaysia; |
| k) | to consider and make recommendations to the Minister on reforms to the competition laws; and |
| l) | to carry on such activities and do such things as are necessary or advantageous and proper for the administration of the Commission." |



3. Strategies

According to the International Competition Network (ICN), competition culture is strong in certain countries because of:⁵

- Participation of the competition agency in regulatory reform and privatization processes;
- Long experience with competition policy;
- Resolution of cases with significant media coverage;
- Existence of specialized competition tribunals;
- Interaction with universities;
- Publication of decisions;
- Case studies; and
- Personal leadership of the head of the competition authority.

The ICN also reports that the strongest support for advocacy action comes from the academic community, consumer associations, the media and NGOs.⁶ The WCA shall keep in view these findings in crafting its strategies and work plan on competition advocacy.

As the MyCC is in the beginning phase of its operation, it is prudent for the WCA to prioritise its competition advocacy activities in order to maximise resources and achieve successes in the shortest period of time. The early successes of the WCA will underscore the MyCC's visibility and credibility as an authority that is committed to enforcing the CA 2010. Therefore, the strategies for competition advocacy will focus on projects that are:

- i. Economically important;
- ii. Visible;
- iii. Resource efficient;
- iv. Reasonably capable of achieving success; and
- v. Enhance credibility, accountability and transparency.

In undertaking competition advocacy activities, the WCA shall study and adopt the best practices of the competition advocacy work of competition agencies in other countries. The WCA will therefore ensure that it networks and maintains international linkages in order to continuously learn from the successful advocacy activities carried out by these competition agencies.

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The WCA shall adopt a collegial approach by working with the various stakeholders and through their associations to deliver its messages. The ultimate goal of this approach is to win over stakeholder groups by building trust and encouraging self-compliance to achieve its objective of promoting a competition culture in Malaysia.

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Keeping in view the above-mentioned approaches, the WCA shall direct its competition advocacy initiatives to the targeted **priority sectors** and **key stakeholders** listed below.

3.1 Priority sectors

The priority sectors shall be determined by various means such as:

- Organizing a hearing for representatives of the private sector, sector regulators, consumer representatives, government departments, local authorities, public procurement agencies, etc, to provide feedback on the perceived anti-competitive practices that exist in Malaysia;
- Evidence-based market studies;
- Complaints from the public or business sectors;
- Information received from Commissioners, government agencies, members of the WCA or whistle blowers;
- Intelligence gathering of existing inefficient and non-competitive sectors; and
- Conventional wisdom derived from the experiences of competition agencies from other countries.



While it will take time before information can be gathered through some of these means, the WCA shall prioritise sectors based on the experiences of other competition agencies, its general knowledge of existing market conditions in Malaysia, particularly sectors in which hard core cartels are thought to be operating or where collusion is believed to be taking place affecting essential goods and services, and matters that are fundamentally critical to consumers' quality of life. **The proposed priority sectors are as follows:**

- i. Food production, import and distribution;**
- ii. Transport such as taxis, buses, mass rapid transit, railways, air travel, hauliers and shipping;**
- iii. Healthcare Institutions, including the pharmaceutical industry;**
- iv. Professional services;**
- v. Housing developers; and**
- vi. Financial institutions;**

The WCA shall adopt a flexible approach in allowing this shortlist to be amended when new information comes to light so that sectors can be phased in or out as and when appropriate.

3.2 Key stakeholders

The WCA shall work with key stakeholders in order to promote a competition friendly climate in the above-mentioned priority sectors. Additionally, the WCA will also need to undertake general awareness raising programmes for the targeted stakeholders to raise their level of understanding and comprehension of competition concepts, the benefits of competition and their role in creating and sustaining a competition culture. The targeted stakeholders for the WCA's competition advocacy activities shall be:



i. All three branches of government – Executive, Legislature and Judiciary, at federal, state and local government level.

The ICN states that the most important component of competition advocacy is participation in legislative and regulatory procedures as it has a direct impact on the normative environment.⁷ The Executive and Legislature at all levels in Malaysia are responsible for regulatory policies and rule making. Educating these branches of government will ensure that competition concepts are embedded at the formative stages of policy and rule making. Such proactive action will prevent new government policies and regulations from hindering competition culture through unnecessary intervention in the market, imposition of trade barriers, favouring of trade lobbies or special interest groups (regulatory capture), etc.

As noted earlier, in Malaysia, the government and the MyCC are institutionally connected through the appointment of Commissioners from four key government agencies and therefore the policy intervention role will be undertaken by these Commissioners. The WCA will instead focus its efforts on assisting these Commissioners to educate their key staff on competition concepts and benefits by collaborating with the Public Services Training Institute (INTAN) to conduct training seminars. The procurement officers in the public sector institutions will be a special focus group in these education programmes.

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The Judiciary interprets rules and adjudicates disputes. It is critical that judgments are based on technically sound reasoning and such reasoning is uniformly applied. Educating judges of the technicalities associated with competition concepts is therefore critical in ensuring that judgments delivered are sound, fair and uncontestable. The WCA shall work with the Judicial and Legal Service Training Institute (ILKAP) to conduct training programmes for judges on competition concepts and the provisions of the CA 2010.

The WCA shall also conduct education programmes for parliamentarians and state assembly representatives so that they are better equipped to play their role as legislators of competition related matters in Parliament and the various State Assemblies and Local Councils.



ii. Enterprises and Associations of Enterprises

The CA 2010 not only regulates, but also empowers enterprises. It provides sanctions for those that infringe and remedies for those that are aggrieved. A robust competition culture can therefore only thrive if enterprises are aware of their rights and obligations under the CA 2010. A key focus area of WCA work shall therefore be enterprises and their representative associations such as the Federation of Malaysian Manufacturers (FMM) and the Chambers of Commerce.

Associations of enterprises can play a key role in educating their members on the benefits of competition for business profitability and compliance with the CA 2010 including the External Guidelines issued by the MyCC.

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To enable the associations to play their role effectively, the WCA shall conduct ‘train the trainer’ programmes for staff of such associations so they may in turn conduct education programmes for their members. A major portion of these programmes will focus on compliance with the CA 2010 as well as compliance with international trade norms as most countries have enacted competition laws. A key part of the learning objectives of these programmes shall be the provisions of the CA 2010 relating to the lodging of complaints, whistle-blowing and

the leniency regime. Also addressed in the programmes will be the rights of enterprises to file private actions under Section 64 of the CA 2010. Associations of enterprises will also be encouraged to assist their members to establish competition law compliance units to monitor and track their own trade practices as well as those of their competitors. In this regard, the WCA shall consult with the Competition Commissions of other countries to tap on their experiences with the implementation of their successful Competition Law Compliance Programmes.

iii. Professionals and Associations of Professionals.

Professional associations set standards for their members for entry into the profession, their continued compliance with the norms of the profession, and sanctions and exclusions when these norms are breached. Professional associations themselves must ensure that they are not operating as cartels, fixing prices for the services offered by their members, or offering their services in any other manner that could be construed to be anti-competitive.

In addition, professional groups are in a position to influence policy positions of their corporate clients. Therefore, they are in the forefront in applying competition concepts in their day-to-day work. The WCA shall organize education programmes for professional associations to comply with the CA 2010 and work with them and the Working Committee on External Guidelines to develop and monitor pro-competition standards/codes for their members.

iv. Consumer associations and civil society organizations.

Working with consumer associations and civil society organizations will help build the capacity of the demand side of the market. A vigilant corps of consumers and citizens will keep businesses on their toes.

The WCA shall work with these organizations to build their capacity to play a co-enforcement role by becoming informers of anti-competitive business practices, investigating and acting on consumer complaints, filing Section 64 private action civil suits, and organising consumer campaigns against anti-competitive enterprises.



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v. Universities and think tanks.

Universities perform teaching, learning and research functions. They are the educators and suppliers of the future workforce for the country. Universities need to ensure that their graduates enter the job market with a better understanding of market structure and how competition policy and law functions. The WCA shall collaborate with public and private universities to introduce new programmes/courses on competition policy and law or embed competition concepts in existing university programmes/courses.

The WCA shall commission universities and think tanks to conduct research and market studies and evaluation studies of the impact achieved by the competition advocacy activities of the WCA.

“The WCA shall collaborate with public and private universities to introduce new programmes/courses on competition policy and law or embed competition concepts in existing university programmes/courses.”

Academics shall also be encouraged to publish their findings of the market studies, to engage in discourse on competition issues in Malaysia by co-organising seminars and conferences with the MyCC and to contribute to law reform efforts.



4. Work Programme

The WCA shall undertake the following work programme, in line with its functional responsibilities under Section 16 of the CA 2010.

4.1 Advocate for Competition Matters [Section 16 (f)] and Inform and Educate Public [Section 16 (j)]

To advance its competition advocacy work, the WCA shall employ two approaches –

- i. produce information and education materials tailored for the different stakeholder groups and priority sectors and
- ii. organise talks, workshops, seminars, and road shows aimed at all the different stakeholder groups and priority sectors.

The WCA shall work with the Working Committee on Publicity and Communication to produce information and education materials for its advocacy activities such as booklets, pamphlets, articles in the newspapers, newsletters, skits for radio & TV, write-ups for the MyCC website, etc.

The WCA and the Working Committee on Publicity and Communication will need to engage massmedia organizations as partners to disseminate the information contained in these advocacy materials as well as to publicise news of the advocacy activities carried out with all stakeholder groups and priority sectors. Such publicity will not only spread awareness but also enhance the image and visibility of the MyCC as an active proponent of competition culture.

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4.2 Studies on Competition Issues [Section 16 (g)]

The WCA shall recommend to the MyCC what specific market surveys and studies relating to the priority sectors should be carried out so that a body of evidence on anti-competitive and pro-competitive practices can be developed and used as case studies for advocacy activities. These case studies will be used by the MyCC’s Working Committee on External Guidelines to develop Guidelines for Best Practices for the priority sectors.

*“ The MyCC shall itself
launch a Research Grants
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The market studies shall also evaluate whether the advocacy and enforcement activities of the WCA/ MyCC have been successful and resulted in tangible benefits for the various stakeholders and the economy. The MyCC shall commission such market studies by seeking the cooperation of the Ministry of Higher Education (MOHE) to designate competition studies as a priority area of research in the grant of MOHE research grants.

The MyCC shall itself launch a Research Grants Scheme for academics from local public and private universities to conduct such research. The WCA shall recommend a list of priority areas for the market studies and the research project proposals that are the best fit for the award of the research grants. The MyCC shall make an annual budget allocation to fund the Research Grants Scheme.

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4.3 Information Collection for MyCC [Section 16 (h)]

The WCA shall carry out its information collection functions in the following manner:

- i) **Resource Centre** - establish a Resource Centre at the MyCC with the principal aim of collecting information and retaining knowledge to serve the interests of MyCC as well as its stakeholders. The Resource Centre shall document the views and recommendations gathered during the various advocacy programmes, collect market studies, newsletters, case studies, publications, conference papers and related materials on competition policy and law in Malaysia and other countries. These



materials are valuable resources for the MyCC for the further development of its strategies, work programmes and activities. The Resource Centre shall be available for the use of MyCC Commissioners and staff as well as the stakeholder groups.

- ii) **Conferences** - organize conferences including an annual international conference and invite international experts to discuss, share and exchange information on best practices and case studies. The annual international conferences will also be an excellent avenue to bring together all the various stakeholder groups to raise awareness on the latest issues relating to competition policy and law. The annual international conference shall have separate sessions where each stakeholder group can share and exchange information and experiences on their efforts in promoting a competition culture in their respective community.

- iii) **International Linkages** - network, benchmark itself and update on best practices of other competition agencies advocacy activities. The WCA shall develop a contact list

of competition agencies with expertise in particular areas. MyCC staff and WCA members may perform study visits to these agencies or invite officers from these agencies to visit and share information and experiences. Further, the WCA shall actively engage with international organizations such as the ICN Advocacy Working Group, UNCTAD, ASEAN, OECD, European Competition Network, and the WTO, for their assistance in implementing its strategy plan and work programme. The WCA shall also gather information from other countries to assist the MyCC to provide its input to the Malaysian government before it enters into any international obligations relating to competition for e.g. WTO's proposed multilateral treaty on competition, rules on government procurement, etc.



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5. Work Plan 2012-2014

The WCA shall draw up a detailed work plan. The Work Plan shall outline the activities to be undertaken for each year from 2012-2014, the human and financial resources required to implement the Work Plan including the budget, and identify internal resources as well as external expertise that will be needed.

Also included in the Work Plan will be continuous evaluation of the impact of the advocacy activities of the WCA so that the strategy plan can be reviewed and adjusted if need be and the work plans fine tuned accordingly. Evaluating the impact of the advocacy activities will help to ensure that the next phase of operations will be better informed by activities that had the most impact with the least cost.

End note :

- 1 World Economic Forum (2011), 'The Global Competitiveness Index 2011-2012 Rankings', www.weforum.org/gcr.
- 2 The World Bank and International Finance Corporation (2012), *Doing Business*, Washington DC, World Bank.
- 3 The six Working Committees are: WC on Finance and Procurement, WC on Human Resource Management, WC on Internal Guidelines, WC on External Guidelines, WC on Publicity & Communications and the WC on Advocacy.
- 4 Definitions of the term 'competition advocacy' differ. The Advocacy Working Group of the International Competition Network defines competition advocacy as "those activities conducted by the competition authority related to the promotion of a competitive environment for economic activities, by means of non-enforcement mechanisms mainly through its relationships with other governmental entities and by increasing public awareness of the benefits of competition." See www.internationalcompetitionnetwork.org. See also See Clark, J. (2005) 'Competition Advocacy: Challenges for Developing Countries', *OECD Journal: Competition Law and Policy*, No. 10, Vol. 6, Issue. 4, 69-80, at p. 69; The World Bank, OECD (1998): *A Framework for the Design and Implementation of Competition Law and Policy*, Chapter 6, at p. 93; Simon J. Evenett, *Competition Advocacy: Time for a Rethink?* (Spring, 2006) 26 *Northwestern Journal of International Law & Business*, 495. For the purposes of this strategy plan, the term is used to mean the functions of the MyCC that have been demarcated by the MyCC as the scope of activity of its Working Committee on Advocacy
- 5 International Competition Network (2002), 'Advocacy and Competition Policy', Report prepared by the Advocacy Working Group, ICN Conference, Naples, Italy, x.
- 6 *Ibid*, xi.
- 7 International Competition Network (2001), *op. cit.*, vii-viii.

