



Malaysia Competition Commission (MyCC)

COMPETITION COMPLIANCE IN A TIME OF CHANGE & LESSONS LEARNT THROUGH CASES

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Presentation Overview

Part 1 - Introduction to MyCC

Part 2 – Introduction to Competition Law and Policy

Part 3 – Competition Compliance

Part 4 – Recent Cases



Malaysia Competition Commission



INTRODUCTION TO MyCC

Background

An independent body established under the Competition Commission Act 2010 (began operation on 1 April 2011)

The Competition Act 2010 aims to promote economic development by **promoting and protecting the process of competition**. It came into force on 1 January 2012

Functions of the Commission among others:

- ❖ To advise Minister on all matters concerning competition
- ❖ To implement and enforce the provisions of the competition laws
- ❖ To issue guidelines in relation to the implementation and enforcement of the competition laws
- ❖ To act as an advocate for competition matters
- ❖ To alert the Minister to the actual or likely anti-competitive effects of current or proposed legislation
- ❖ To consider and make recommendations to the Minister on reforms to the competition laws

Powers of the Commission among others:

- ❖ To impose penalty for the infringement of the provisions of the competition laws
- ❖ To appoint such agents, experts or consultants as it deems fit to assist the Commission in the performance of its functions
- ❖ To co-operate with any body corporate or government agency for the purpose of performing the Commission's functions
- ❖ To grant loans, scholarships and advances to its employees for such purposes and on such terms as the Commission may determine

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SCOPE OF LAW

Applies to **all commercial activities, both within and outside Malaysia** which has an effect on competition in any market in Malaysia



SCOPE OF LAW (ACTIVITIES NOT INCLUDED)

“Commercial activity” means any activity of commercial nature but does not include:-

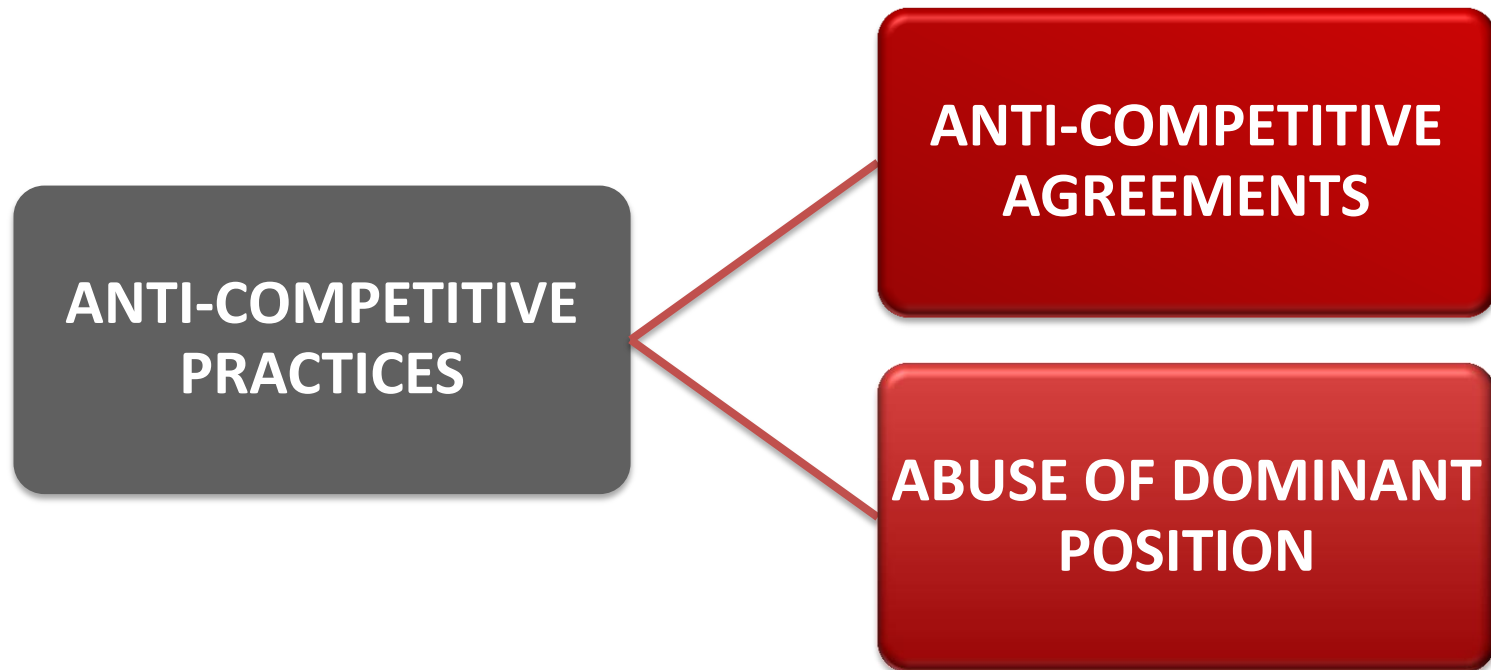
1. Any activity, directly or indirectly in the exercise of governmental authority;
2. Any activity conducted based on the principle of solidarity; and
3. Any purchase of goods or services not for the purposes of offering goods and services as part of an economic activity

SCOPE OF LAW (EXCLUSION)

- Commercial activities regulated under:
 - **Communications and Multimedia Act 1998 [Act 588]**
 - **Energy Commission Act 2001 [Act 610]**
 - **Petroleum Development Act 1974 [Act 144] and the Petroleum Regulations 1974 [P.U. (A) 432/1974] – Amendment of First Schedule Order**
- Agreement or conduct that comply with any legislative requirement
- Collective bargaining activities in respect of employment terms & conditions
- Services of general economic interest or having the character of a revenue-producing monopoly



Main aspects of the Competition Act 2010



ANTI-COMPETITIVE AGREEMENTS EXEMPTION

EXEMPTIONS



INDIVIDUAL

BLOCK

Section 6

Section 8

RELIEF OF LIABILITY

SECTION 5

- a) **Significant identifiable technological, efficiency or social benefits**
- b) **Benefits could not be provided without the anti-competitive agreement**
- c) **The detrimental effect of the agreement is proportionate to the benefits**
- d) **Competition is not eliminated completely**

ABUSE OF DOMINANT POSITION

Reasonable Commercial Justification

Conduct defined as **ABUSE** and prohibited may be allowed if there are **reasonable commercial justification** or represents a **reasonable commercial response** to the market entry or market conduct of a competitor.

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Compliance

First, ask yourself the following questions:

- Am I managing a company that is doing business in Malaysia?
- Am I working in a company that does business in the Malaysia?

If the answer is yes, to either one of these questions, then you should be concerned!

Compliance

- The CA 2010 concerns everyone who does business in Malaysia or outside Malaysia (*but have effect in Malaysia*)
- This means **not only managers**, who have choices to make in the interest of their companies, but **also employees**, who require guidance on how to implement these choices

Compliance

- Companies whose market behaviour fails to comply with the CA 2010 run the risk of incurring **high fines** and facing other negative implications
- The responsibility for complying with the CA 2010 lies with those who are subject to it
- **Ignorance of the law is not an excuse**
- Awareness of the law is always a precondition for effective adherence to it



Why Compliance Matters?

- Agreements which are incompatible with the CA 2010 are automatically **void** and **cannot be enforced** in court by the parties involved
- If an infringement of the CA 2010 causes or has caused harm to a third party, the victim may institute a civil action for damages before a national court – **rights of private action**
- Damage to the brand and reputations can be the most harmful consequence of regulatory enforcement

Why Compliance Matters?

- Global cooperation by competition authorities is becoming more commonplace
- Investigations by competition authorities can be **time-consuming and costly** for companies
- Existence of a competition compliance programme is one of the factors to be taken into account by competition authorities in determining the amount of financial penalty

How Can Compliance Be Ensured?

- Identify the overall risk and individual exposure
- Develop a competition compliance strategy
- Make the strategy known to others - *A practical set of 'DON'Ts' and 'RED FLAGS' can be a useful tool*
- Lasting commitment to the compliance strategy by the Board and senior management – *(instil a competition culture. constant reminder should be given to all employees on the implications).*

How Can Compliance Be Ensured?

- Constant update, contact points for advice and training – *create an internal reporting facilities*
- Formal acts of acknowledgement by staff and consideration of compliance efforts in staff evaluation
- Review internal disciplinary procedures
- Monitor and revisit compliance activities

How Can Compliance Be Ensured?

- Where the strategy has failed to ensure full compliance?
 - Stop the infringement at the earliest possible stage – *early detection will enable company to take appropriate measures*
 - Cooperate under the leniency regime

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Cases decided by the Commission (2012-2014)

- ❖ Cameron Highland Floriculturist Association (CHFA) – Decision (2012)
- ❖ Barbers Association – Undertaking (2013)
- ❖ Megasteel Sdn Bhd – Proposed Decision (2013)
- ❖ Malaysia Airlines (MAS) & AirAsia – Final Decision (2014)
- ❖ Ice Manufacturers – Proposed Decision (2014)
- ❖ Education Malaysia Group Services (EMGS) – Policy Advice (2014)
- ❖ Pan Malaysia Lorry Owners Association (PMLOA) – Undertaking (2014)
- ❖ Sibü Confectionary and Bakery Association (SCBA) – Proposed Decision

THANK YOU



www.mycc.gov.my