

Competition Law Alert

Dear Clients & Friends

Malaysian competition law to come into effect on 1 January 2012

The Competition Act 2010 of Malaysia (the “**Act**”), which was passed in Dewan Rakyat (Malaysia’s House of Representatives) in May 2010, was gazetted on 10 June 2010. The Act will be Malaysia’s primary legislation against anti-competitive practices and will come into effect on 1 January 2012. According to the Minister for Domestic Trade, Cooperatives and Consumerism, the Malaysian Competition Commission (the “**MCC**”) is expected to be established in the next 18 months. The MCC will be responsible for enforcing the Act when it comes into effect.

Essentially, the Act prevents cartel-like activities and abusive behaviour by dominant entities. However, unlike the Competition Act of Singapore, the Act does not provide for any prohibitions against anti-competitive mergers.

Set out below are some of the key features of the Act.

- **Anti-competitive agreements:** Horizontal or vertical agreements between enterprises will be prohibited if they have the object or effect of significantly preventing, restricting or distorting competition in the relevant market.
- **Abuse of dominance:** Enterprises will be prohibited from engaging, whether independently or collectively, in any conduct which amounts to an abuse of a dominant position in any market for goods and services. Enterprises in a dominant position would not however be prevented from taking any step which has reasonable commercial justification or represents a reasonable commercial response to the market entry or market conduct of a competitor.
- **Anti-competitive activities outside Malaysia:** Anti-competitive activities outside Malaysia will be caught so long as they have an effect on competition in any market in Malaysia.
- **Individual exemption:** Enterprises may apply for individual exemption, with respect to a particular agreement, from the prohibition against anti-competitive agreements. Block exemptions may be granted for certain categories of agreements which can be shown to produce efficiencies or social benefits.
- **Powers of investigation:** The MCC will have significant powers of investigation, including the ability to enter and search a premise or persons, to seal off documents/cupboards, to require the provision of information and to be given access to computerised data.
- **Competition Appeal Tribunal:** In addition to the MCC, a Competition Appeal Tribunal (the “**CAT**”) will also be established. The CAT will have exclusive jurisdiction to review any decision made by the MCC relating to interim measures, finding of non-infringement and finding of infringement.
- **Financial penalties:** An enterprise which is found to have infringed the prohibitions in relation to anti-competitive agreements and abuse of dominance may be imposed with a financial penalty not exceeding 10% of the worldwide turnover of an enterprise over the entire period during which an infringement occurred.

- **Leniency regime:** There will be a leniency regime to encourage whistle blowing, and which allows a reduction of up to a maximum of 100% of any penalties which would otherwise have been imposed.
- **Offences:** A body corporate which commits an offence under the Act will be liable on conviction to a fine of up to RM5 million for a first offence, and a fine of up to RM10 million for a second or subsequent offence.
- **Individual sanctions:** A person who is not a body corporate who commits an offence under the Act will be liable on conviction to a fine of up to RM1 million or imprisonment for a term of up to five years or both for a first offence, and a fine of up to RM2 million or imprisonment for a term of up to five years or both for a second or subsequent offence.
- **Liability of directors:** If a body corporate commits an offence under the Act, a director, chief executive officer, chief operating officer, manager, secretary or other similar officer of such body corporate may be personally liable unless such officer proves that the offence was committed without his knowledge, consent or connivance and that he had taken all reasonable precautions and exercised due diligence to prevent the commission of such offence.

Further information

Should you have any queries as to how this development may affect your business, please do not hesitate to get in touch with the following:

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Allen & Gledhill Competition & Antitrust Practice

The Allen & Gledhill Competition & Antitrust award-winning practice is one of the largest and most experienced competition teams in Singapore. It is a full-time dedicated competition practice and consists of competition lawyers, the country's first in-house competition economics team and former officers of the Competition Commission of Singapore (the "CCS"). The practice is placed in "Tier 1" by *Global Competition Review* and highly recommended by *PLC Which Lawyer?*, *Chambers Global* and *Chambers Asia 2010* have identified it as "a market-leading competition team, which has led the way on merger filing clearance since the establishment of the CCS' merger control regime". The practice has to-date acted in approximately three-quarters (15 out of 21) of all merger control notifications lodged with the CCS.

Further, it was commissioned to establish the merger regimes under both Singapore's Airport Competition Code as well as the country's Media Market Competition Code. The practice has also defended clients in several landmark antitrust hearings.

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Yours faithfully

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