



# CONSULTATION PAPER ON THE PROPOSED AMENDMENTS TO THE COMPETITION ACT 2010 (ACT 712)

25 APRIL 2022

▶ Presented By :  
Malaysia Competition Commission (MyCC)

▶ Presented to :  
Stakeholders &  
Interested Parties



**The Malaysia Competition Commission (MyCC) seeks comments and feedback on the proposed amendments to the Competition Act 2010 (Act 712) from interested stakeholders and the public. The public consultations were held following the policy approval from the Cabinet to amend the existing Act 712 and introduce the merger control regime.**

We welcome any interested stakeholders or members of the public to make a written submission in response to the proposed amendments to Act 712. Those interested are invited to do so by **27 May 2022** via: -

- (a) Email to the Amendment Team of MyCC at [amendment@mycc.gov.my](mailto:amendment@mycc.gov.my); or
- (b) The Malaysia Productivity Corporation's [Unified Public Consultation \(UPC\) portal](#)

Any written submissions that are made after 27 May 2022, will not be accepted or entertained by the MyCC.

Please note that, unless requested otherwise, any written submissions submitted to the MyCC will be made publicly available in the form and manner determined suitable by the MyCC.

# **1 BACKGROUND OF MyCC LAW AMENDMENT EXERCISE**



## MALAYSIA COMPETITION COMMISSION (MyCC)

MyCC is a quasi-judicial statutory body that was established by the Competition Commission Act 2010 (Act 712) to enforce the Competition Act 2010 (Act 712)



### GAZETTING

Act 712 and Act 713 were gazetted on

10 June 2010



### ESTABLISHMENT

MyCC was established on

1 Apr 2011



### ENFORCEMENT

Act 712 came into force on

1 Jan 2012

## STRUCTURE OF MyCC



**MyCC CONDUCTS INVESTIGATION**



**MyCC MAKES A DECISION**



**MyCC IMPOSES PENALTY AND ENFORCES ITS DECISION**

Among MyCC's main functions as outlined in Act 712 and Act 713



**Investigation and Enforcement**



**Advocacy**



**Market Review**



**Exemption**



**Compliance**



**Policy Advice**



**Leniency Regime**

## Prohibitions that are listed under the Act 712



**Anti-Competitive Agreement**



**Abuse of Dominant Position**



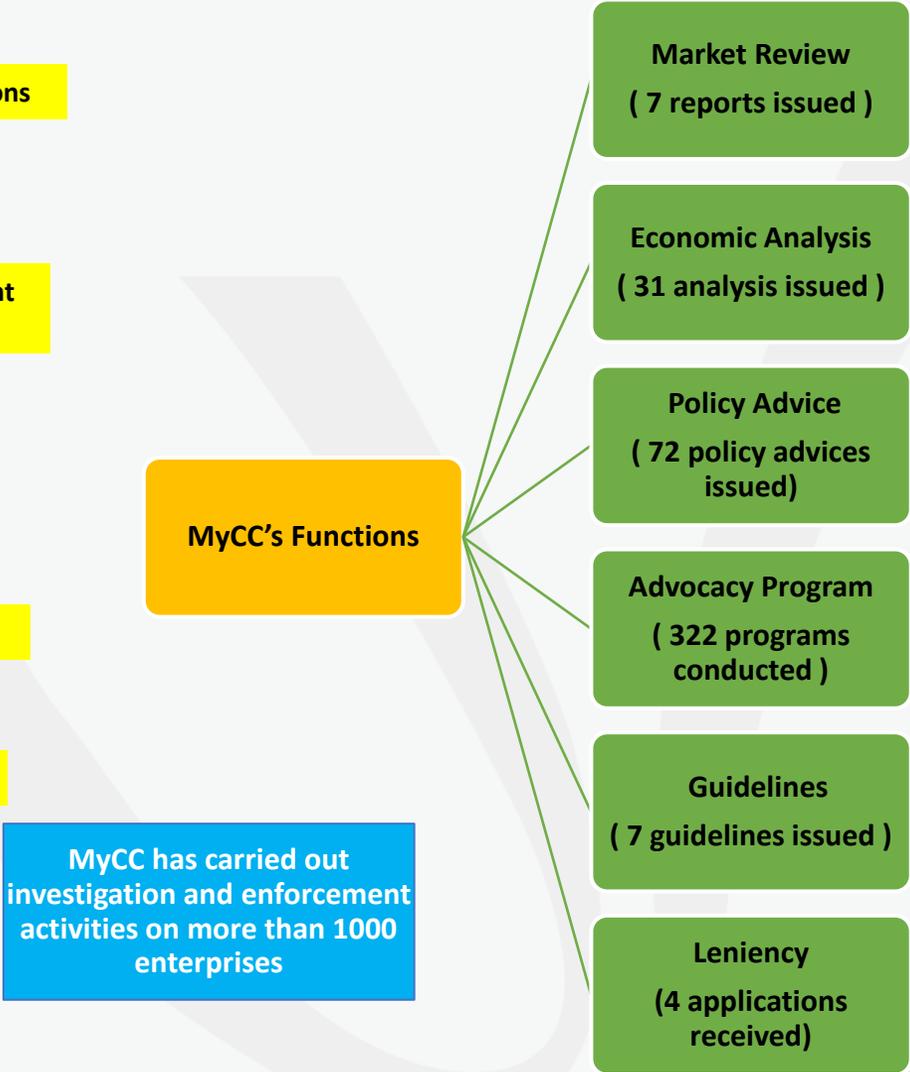
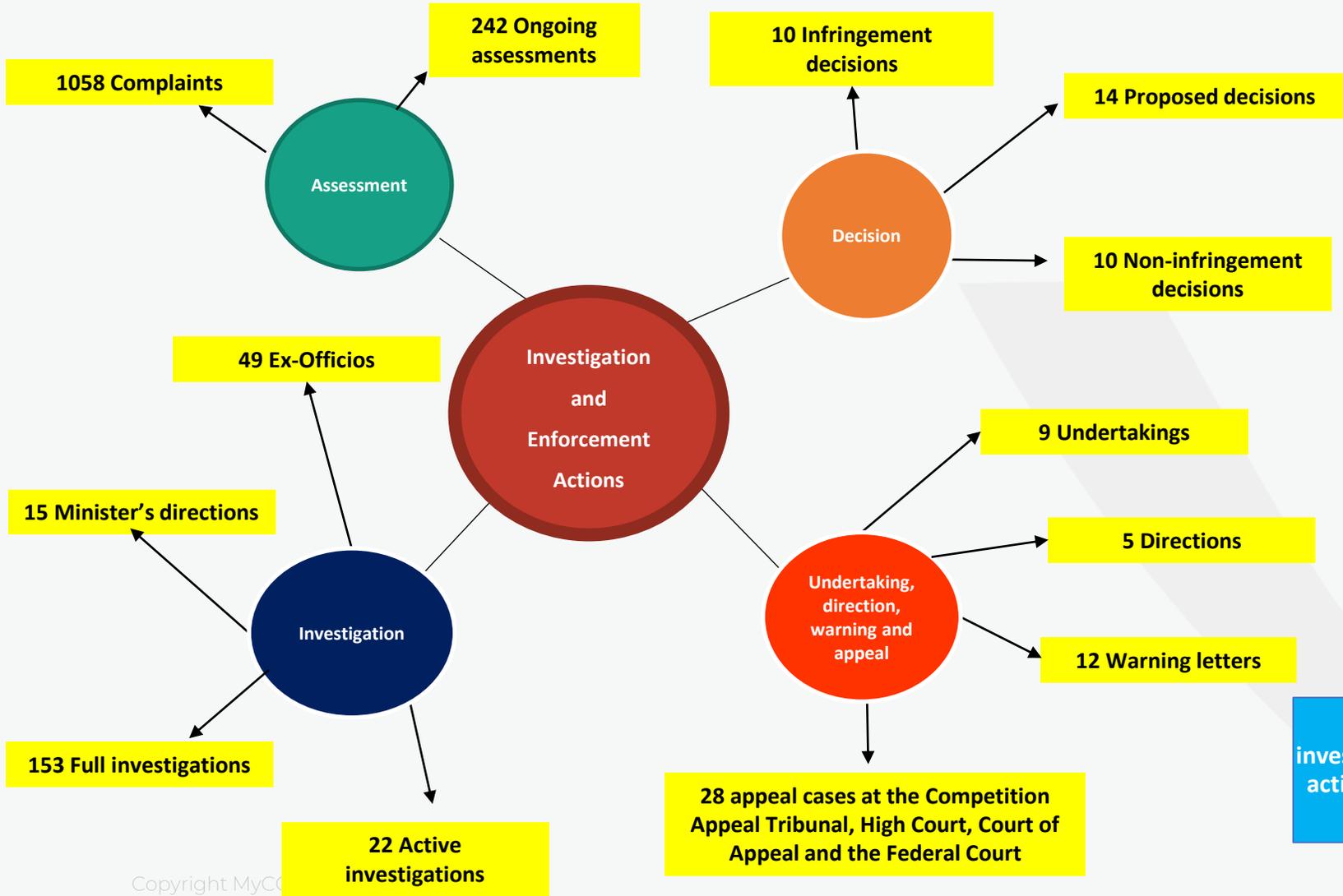
**Mergers that cause anti-competitive effects in the market**

Not currently prohibited by Act 712

# MyCC'S ACHIEVEMENT UP TO 25 APRIL 2022

## INVESTIGATION AND ENFORCEMENT FUNCTIONS

## OTHER MAIN FUNCTIONS OF MyCC



## STRUCTURE OF THE LAW AMENDMENT EXERCISE

### Competition Act 2010 (Act 712)

Amendments made to Act 712 for the purposes of –

- a) Strengthening the MyCC's investigative and enforcement powers to ensure that MyCC has the necessary tools to exercise its statutory functions effectively
  - This includes the power for MyCC to take action against anti-competitive mergers in the market
- b) Improving existing provisions based on MyCC's investigation experiences and with reference to international best practice standards
- c) Addressing any procedural gaps and lacunae in the current Act 712
- d) Strengthening procedures to maintain compliance with principles of natural justice
- e) Strengthening the powers and functions of the Competition Appeal Tribunal (CAT)

### Competition Commission Act 2010 (Act 713)

Amendments are made to Act 713 for the purpose of –

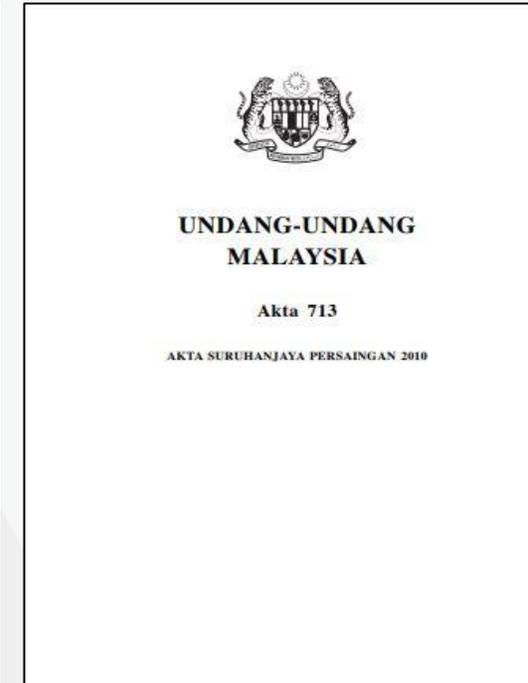
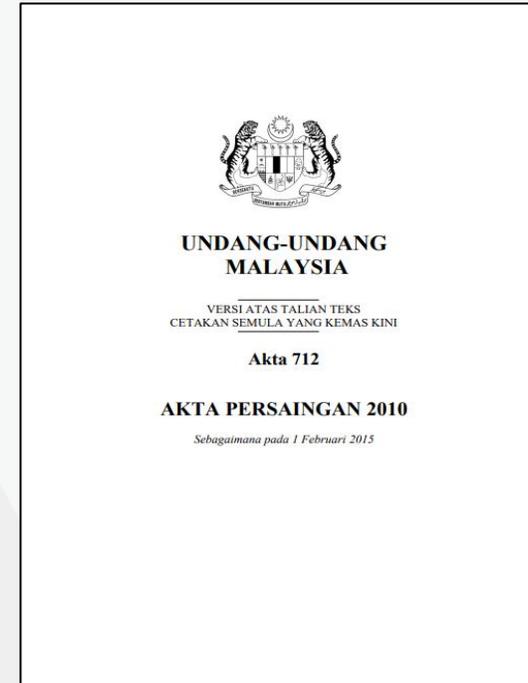
- a) Optimising MyCC's functions
- b) Addressing any inconsistencies and lacunae in the current Act of 713 for the betterment of the administrative aspects of MyCC

Upon consultation with the Malaysia Productivity Corporation (MPC), the amendments to Act 713 WILL NOT BE SUBJECTED to the public consultation process as the amendments are administrative in nature and do not have an impact on the public in general

## The Gist of Cabinet Policy approval that was granted to the MyCC in December 2021

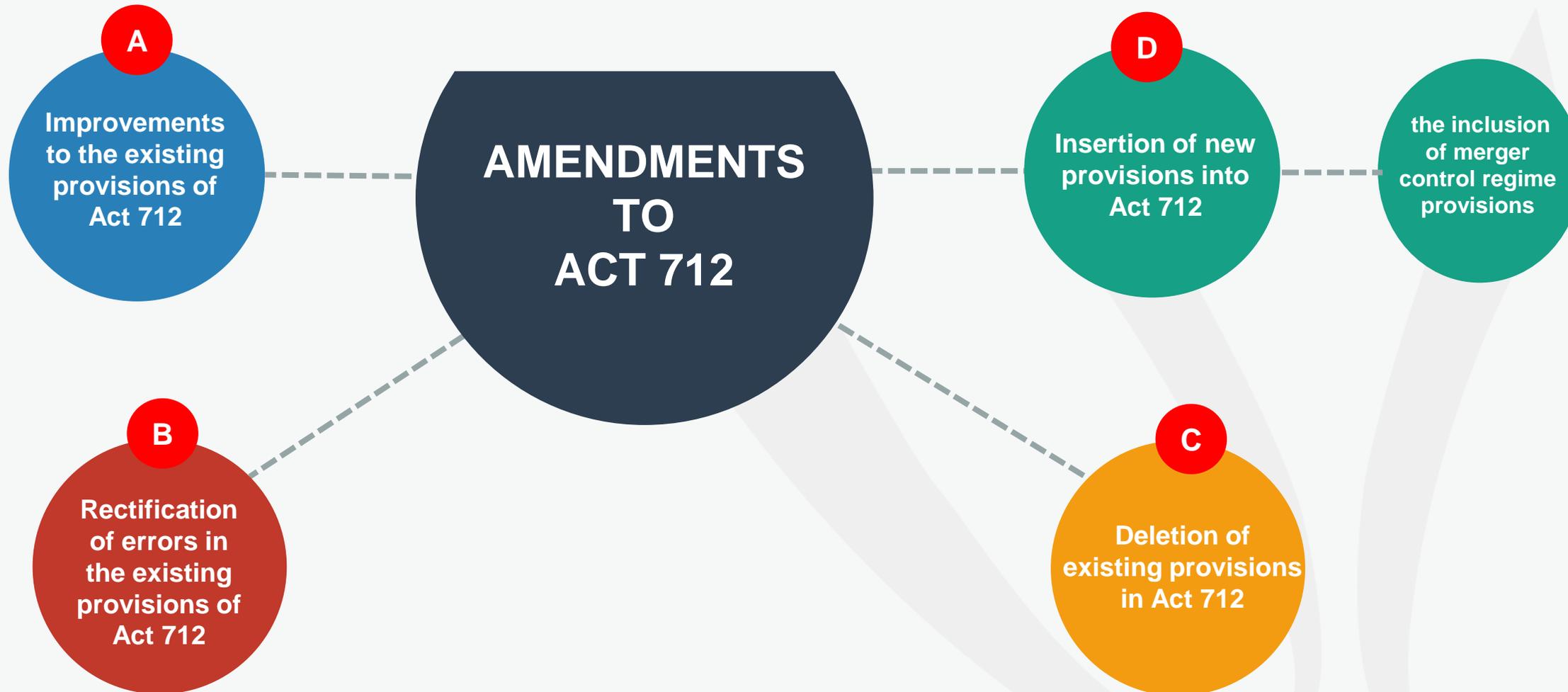
*Jemaah Menteri bersetuju dengan*

- a) *Pengenalan Rejim Kawalan Penggabungan di bawah Akta Persaingan 2010 (Akta 712) untuk mengawal selia transaksi penggabungan (mergers) di Malaysia serta pindaan-pindaan lain yang berkaitan dengan amalan antipersaingan, kuasa penyiasatan dan penguatkuasaan serta bidang kuasa Tribunal Rayuan Persaingan;*
  
- a) *Pindaan peruntukan-peruntukan di bawah Akta Suruhanjaya Persaingan 2010 (Akta 713) berkaitan dengan kuasa dan fungsi Suruhanjaya Persaingan Malaysia serta pindaan-pindaan lain yang berkaitan.*



# **2 AMENDMENTS TO THE EXISTING PROVISIONS OF ACT 712**

The amendments to Act 712 can generally be divided into 4 categories



## A IMPROVEMENTS TO THE EXISTING PROVISIONS OF ACT 712 (25 PROVISIONS)

Section 2: Interpretation	Section 35: Interim measures
Section 5: Relief of liability	Section 36: Proposed decision by the Commission
Section 13: Exclusion	Section 37: Oral Representation
Section 14: Investigation by the Commission	Section 39: Finding of non-infringement
Section 16: Close of an investigation	Section 40: Finding of an infringement
Section 18: Power to require provision of information	Section 41: Leniency regime
Section 21: Confidentiality	Section 43: Power to accept undertaking
Section 22: Privileged communication	Section 44: Establishment of the Competition Appeal Tribunal
Section 24: Destruction, concealment, mutilation and alteration or records, <i>etc.</i>	Section 45: Constitution of the Competition Appeal Tribunal
	Section 51: Appeal to the Competition Appeal Tribunal
Section 25: Search and seizure with warrant	Section 65: Power to make regulations
Section 29: List of record, book, account, <i>etc.</i> , seized	First Schedule
Section 34: Threat and reprisal is prohibited	Second Schedule

**B**

## RECTIFICATION OF ERRORS IN THE EXISTING PROVISIONS OF ACT 712 (5 PROVISIONS)

Malay version of section 4: *Perjanjian mendatar dan menegak yang dilarang*

Malay version of section 10: *Penyalahgunaan kedudukan dominan adalah dilarang*

English version of section 10: *Abuse of dominant position is prohibited*

Malay version of section 16: *Penutupan suatu penyiasatan*

Section 20: Access to records

**C**

## DELETION OF EXISTING PROVISIONS OF ACT 712 (1 PROVISION)

Section 38: Conduct of hearings

**D**

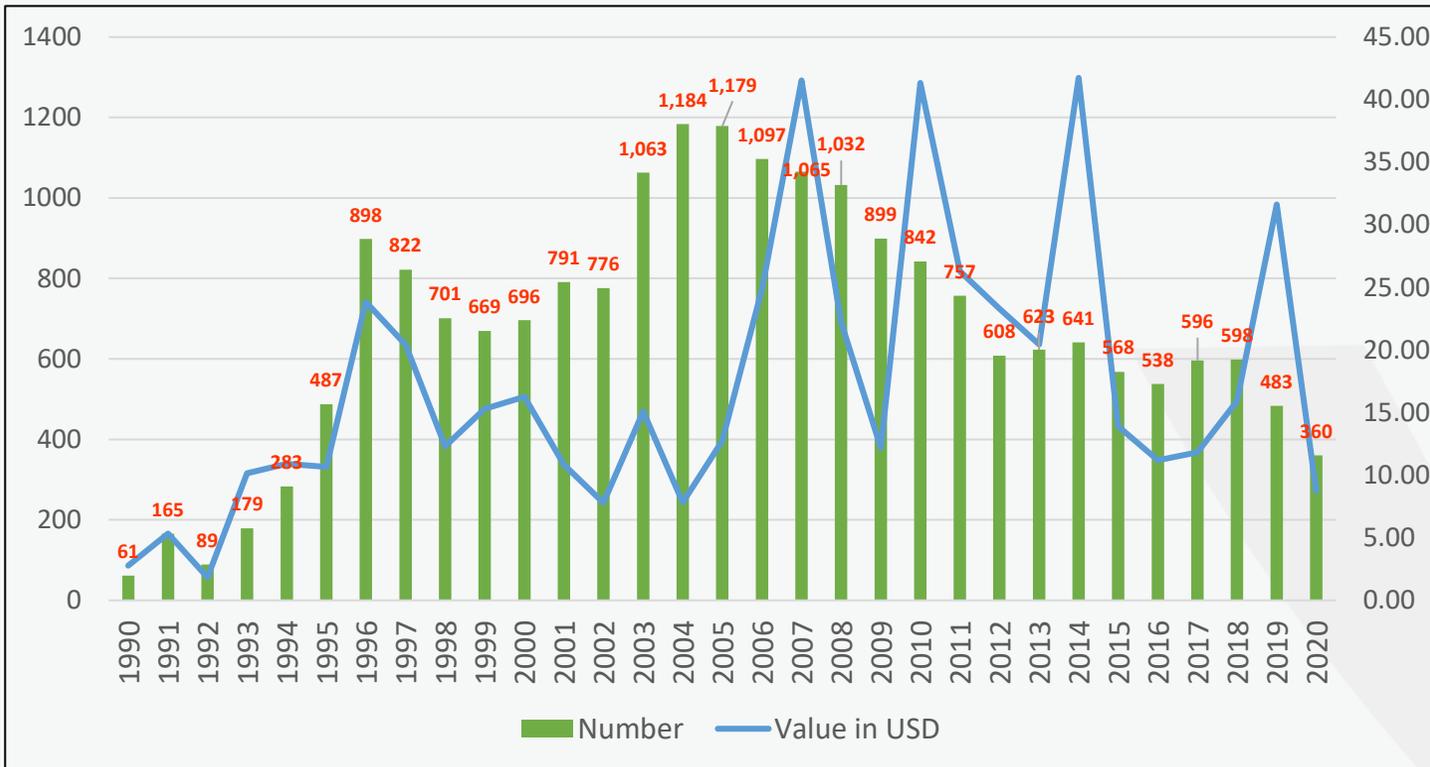
## INSERTION OF NEW PROVISIONS INTO ACT 712 (40 PROVISIONS)

Section 11A: Power to require provision of information or document for market review	Chapter 2A of Part II: Mergers and anticipated mergers that substantial lessen competition
Section 13A: Application of Part III to Chapter 1 and 2 of Part II	
Section 16A: Power to issue warning letter	
Section 34G: Application of Part IV to Chapter 1 and 2 of Part II	10 new sections that provide for - <ul style="list-style-type: none"> <li>• Prohibition of mergers or anticipated mergers that results in substantial lessening of competition</li> <li>• The merger notification framework</li> </ul>
Section 40A: Settlement procedure	
Section 41A: Whistleblower regime	
Section 54A: Continuation of proceedings notwithstanding absence of member	Part IIIA: Investigation and enforcement of mergers or anticipated mergers
Section 57A: Power to prescribe fees	
Section 58A: Appeal to the High Court	
Section 66A: Power to issue and publish practice standard	7 new sections that provide for – <ul style="list-style-type: none"> <li>• Investigation and enforcement powers for the Commission under the merger control regime</li> </ul>
	Part IVA: Mergers or anticipated mergers decision by the Commission
	13 new sections that provide for – <ul style="list-style-type: none"> <li>• The procedures for the issuance of merger-related directions and decisions by the Commission</li> <li>• Power of the Commission to impose a merger-related financial penalty</li> </ul>

3

# **BASIS FOR THE INTRODUCTION OF MERGER CONTROL REGIME INTO ACT 712**

## TIME SERIES OF M&A TRANSACTION IN MALAYSIA

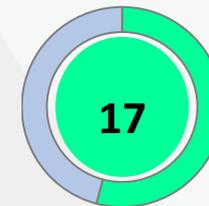
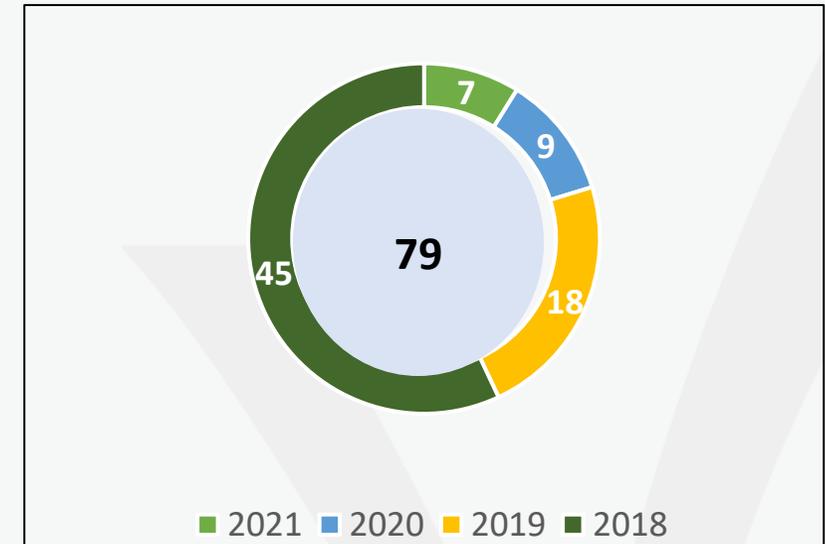


The above statistic demonstrates the high number of merger transactions that take place in Malaysia.

Most mergers cause no harm to market's competition. However, there are instances where merger transactions alter the market structure or provide the merged entity with the ability to exercise market power and significantly distort the market's competitive process.

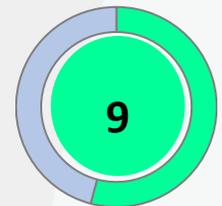
Due to the lack of legislative authority, MyCC is unable to investigate and intervene in mitigating the merger's anti-competitive effects.

## INQUIRIES, COMPLAINTS AND OBSERVATIONS ON MERGERS & ACQUISITIONS IN MALAYSIA



**OBSERVATION**

MyCC's action in relation to the inquiries and complaints relating to merger transactions in the market



**ECONOMIC ADVICE**

Nonetheless, MyCC is unable to initiate any investigative and enforcement actions towards a merger that causes an anti-competitive effect in the market due to the lack of legislative power under the current provision of Act 712



1

## Lacuna of Act 712 - Malaysia's competition law's missing pillar

Unable to intervene in any merger transactions that result in a substantial lessening of competition in the market prior to the completion of the merger transactions. The enterprises may exploit the merger transaction to legalize their cartel, which may undermine the competition process.



2

## Addressing issues for the increasing cost of living

Mergers that result in a substantial lessening of competition in the market may lead to economic sabotage, which consequently has derailed the efforts to assist marginalised groups and distort Malaysia's economic growth in the long term.



3

## Creation of monopolies & concentrated market

Unmonitored merger transactions may lead to the creation of monopolies that result in a concentrated market, which may pose a high barrier to entry for new players in a market and impede the innovative incentive for enterprises.

# ENCOURAGING FOR THE INTRODUCTION OF MERGER CONTROL REGIME

**1**



**ASEAN Economic Community  
Blueprint 2025 (AEC Blueprint)**

Commitment under the AEC Blueprint for ASEAN countries to have comprehensive competition legislation in place

**2**



**Malaysia Digital Economy  
Blueprint (MyDIGITAL)**

Achieving the objective under MyDIGITAL to promote competition in the Malaysian digital economy sector for the benefit of the rakyat

**3**

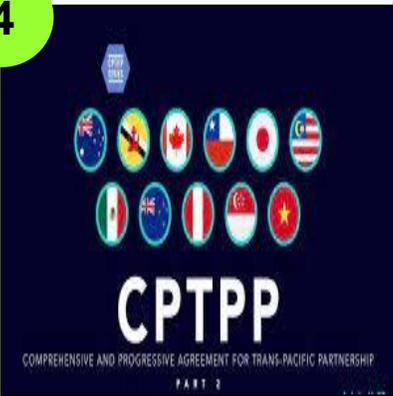


**WAWASAN  
KEMAKMURAN  
BERSAMA  
2030**

**SHARED PROSPERITY VISION  
2030 (SPV 2020)**

Eradication of economic sabotage that threatens the attainment of a fair and equitable economic distribution in the country

**4**

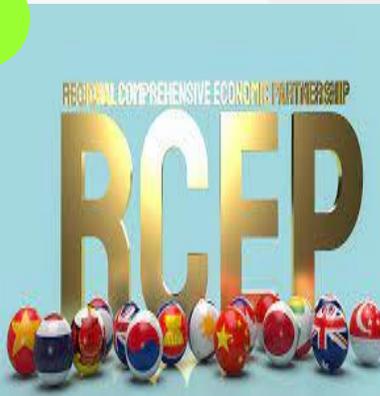


**CPTPP**  
COMPREHENSIVE AND PROGRESSIVE AGREEMENT FOR TRANS-PACIFIC PARTNERSHIP  
PART 2

**Comprehensive and Progressive  
Trans-Pacific Partnership  
(CPTPP)**

Chapter 16 of the CPTPP requires CPTPP countries to have a comprehensive competition legislation that prohibit anti-competitive practices in the market

**5**



**REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP**  
**RCEP**

**Regional Comprehensive  
Economic Partnership (RCEP)**

Chapter 13 of the RCEP requires the competition legislation of RCEP countries to include a merger control regime framework

**6**



**RMK12**  
**RANCANGAN MALAYSIA  
KEDUA BELAS 2021-2025**  
KELUARGA MALAYSIA - Makmur, Inklusif, Maman

**Rancangan Malaysia ke-12  
(RMK 12)**

Increase the competitiveness and ensure the sustainability of the micro, small and medium enterprises (MSME) business ecosystem

## EFFECTS OF UNREGULATED MERGER TRANSACTIONS

- 1 MARKET MONOPOLISATION**  
 Unregulated mergers resulted in market concentration and lead to the creation of a monopoly in the long run
- 2 REDUCTION OF COMPETITION**  
 Reduction of competition in the market due to the exit of a competitor/market player from the market
- 3 FORECLOSURE OF ACCESS**  
 Foreclosure of access to the market or essential upstream inputs for existing or new competitor
- 4 PRICE AND SUPPLY**  
 A merger has the ability to influence the price of goods or services in the market
- 5 INCREASE IN COST OF LIVING**  
 Merger results in an increase in the price of goods or services in the market; which leads to a reduction in purchasing power and contributes to the increase in the cost of living of the *rakyat*



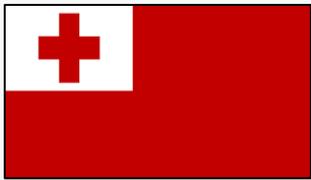
## BENEFITS OF HAVING A MERGER CONTROL REGIME

- Prevent merger transactions from being misused as a platform for enterprises to disguise their cartel activities
- Eradication of economic sabotage, monopolisation and excessive increase in the prices of goods and services
- Grant MyCC the power to take early and effective intervention action on merger transaction that results or may be expected to result in a substantial lessening of competition in the market
- Making Malaysia a conducive, competitive and attractive destination for investors
- Enhancing the country's economic growth and protecting the competitiveness of industry players in the market
- Creation of a comprehensive competition law legislative framework that promotes the process of competition in the market

## COMPARISON WITH OTHER COUNTRIES

Only about 20 of the 140 countries with a competition law framework do not have a merger control regime in place.

Examples of such countries are:-



TONGA



JAMAICA



RWANDA



Malaysia is the only country in ASEAN that does not have a merger control regime



MALAYSIA



SENEGAL

## INTERNATIONAL COMMITMENT AND SUPPORT



ASEAN Economic Community  
Blueprint 2025

### THREE PILLARS OF COMPETITION LAW



Special emphasis is given by the OECD, the World Bank and UNCTAD for **Act 712 to be amended and for MyCC to be given the mandate** to regulate the competition aspect of merger transactions in Malaysia



# **4 PROPOSED MERGER CONTROL REGIME FRAMEWORK UNDER ACT 712**

## PROPOSED MERGER CONTROL FRAMEWORK IN THE COMPETITION ACT 2010 (ACT 712)

<p><b>1</b> What is prohibited</p>	<p>(a) Mergers that result; or (b) An anticipated merger, if consummated, may result In a <b>substantial lessening of competition (SLC)</b> within any market for goods or services.</p>
<p><b>2</b> What is subjected to the merger control regime?</p>	<p>Any merger or anticipated mergers transacted <b>within and outside</b> of Malaysia has an <b>effect on competition in any market in Malaysia</b></p>
<p><b>3</b> Notification Regime</p>	<p><b>Hybrid Notification</b></p> <ul style="list-style-type: none"> <li>• Mandatory pre-notification for the anticipated merger that exceeds the threshold; and</li> <li>• Anticipated merger or merger that does not exceed the notification threshold can be voluntarily notified to the MyCC before or after the anticipated merger or merger has been consummated</li> </ul>
<p><b>4</b> Threshold</p>	<p>The threshold will be prescribed by an <b>order published in the Gazette</b> after the amendments to Act 712 have been passed</p>
<p><b>5</b> Review period</p>	<p><b>120 working days</b> from the receipt of a complete notification for anticipated mergers that is mandatory to be notified to the Commission</p> <p>Mergers or anticipated mergers that were voluntarily notified to the Commission and do not exceed the threshold will not be subjected to the 120 working days time limit</p>
<p><b>6</b> Obligation not to consummate an anticipated merger</p>	<p>Anticipated mergers that are mandatory to be notified to the Commission shall not be consummated until the Commission has made a decision within the 120 working days period whether to clear or to prohibit the anticipated merger</p>

## PROPOSED MERGER CONTROL FRAMEWORK IN THE COMPETITION ACT 2010 (ACT 712)

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### Outcome of the review

#### Clearance Decision or Prohibition Decision

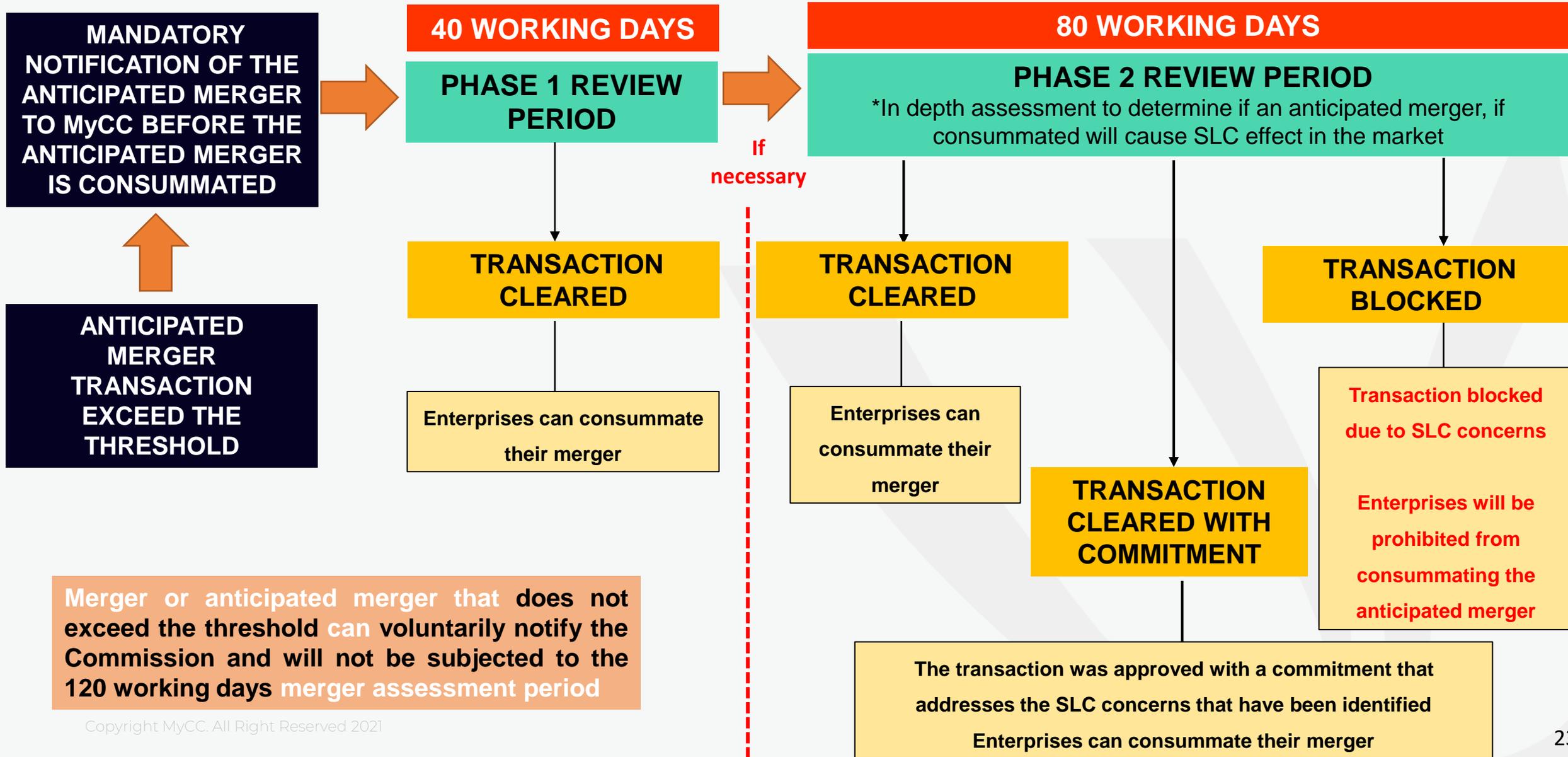
- A clearance decision will be issued and enterprises can consummate/proceed with their merger or anticipated merger if the Commission determines that a merger or anticipated merger, if consummated
  - (a) Does not result in SLC in the market; or
  - (b) Resulted in SLC in the market, but the merger or anticipated merger was cleared following the acceptance of commitment that addresses the SLC concerns that have been identified
- A prohibition decision will be issued when the Commission determines that a merger or anticipated merger, if consummated, resulted in SLC in the market

8

### Ancillary merger provisions

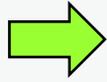
- Obligation to notify anticipated mergers that exceed the threshold
- Prohibition not to consummate anticipated mergers that are mandatory to be notified to the Commission (gun jumping)
- Power to investigate un-notified mergers or anticipated mergers that do not exceed the threshold due to SLC concerns
- Power to investigate failure to notify and gun jumping conduct
- Imposition of an interim measure
- Right to be heard for the merging enterprises (written and oral representations)
- Acceptance of commitment by the Commission
- Imposition of the penalty and other directions by the Commission if enterprises engage in mergers or anticipated mergers that resulted in SLC in the market
- Imposition of penalty if enterprises engage in a merger violation (failure to notify or gun jumping)

# TIMELINE FOR THE ASSESSMENT OF ANTICIPATED MERGERS THAT ARE MANDATORILY NOTIFIED TO THE MyCC



# APPLICATION AND EXCLUSION OF THE MERGER CONTROL REGIME

## MERGER CONTROL REGIME



Applicable to any commercial activities, within and outside of Malaysia which has an effect on competition in any market in Malaysia

## EXCLUSION FROM THE MERGER CONTROL REGIME PROVIDED BY THE REVISED FIRST SCHEDULE OF ACT 712

A. Mergers involving commercial or economic activities regulated by the following legislations will be excluded from the merger control regime under Act 712

B. Mergers between enterprises licensed or approved or registered enterprise under Bank Negara Malaysia (BNM), Securities Commission (SC), Labuan Financial Services Authority (LOFSA) and *Suruhanjaya Perkhidmatan Air (SPAN)* under the following act:



Communications and Multimedia Act 1998



Malaysian Aviation Commission Act 2015



Energy Commission Act 2001

Postal Services Act 2012



Petroleum Development Act 1974 (exclusion for upstream activities)

Gas Supply Act 1993



Financial Services Act 2013



Labuan Financial Services and Securities Act 2010



Capital Markets and Services Act 2007



Water Services Act 2006

Islamic Financial Services Act 2013

Labuan Islamic Financial Services and Securities Act 2010

Securities Industry (Central Depositories) Act 1991

Money Services Business Act 2011

Development Financial Institutions Act 2002

Despite these sectors being excluded from being subjected to the merger control regime under Act 712, the regulator in charge of the sector or the merging enterprise can seek the opinion of the MyCC as to whether a merger or anticipated merger that is not subjected to Act 712 has resulted or may be expected to result in a substantial lessening of competition within any market for goods or services in Malaysia

C. Mergers that were engaged in order to comply with a legislative requirement

D. Mergers carried out an enterprise entrusted by the Federal or State Government with the operation of services of general economic interest or having the character of a revenue-producing monopoly in so far as the prohibition under section 10A would obstruct the performance of the task assigned to the enterprise

5

# CONSULTATIONS AND ENGAGEMENTS ON THE AMENDMENT OF ACT 712

MyCC has been actively engaging and consulting with various stakeholders inside and outside of Malaysia to gain input and feedback on the amendments to Act 712 since the beginning of the law amendment process in 2019.



*Ensuring businesses compete and consumers benefit*



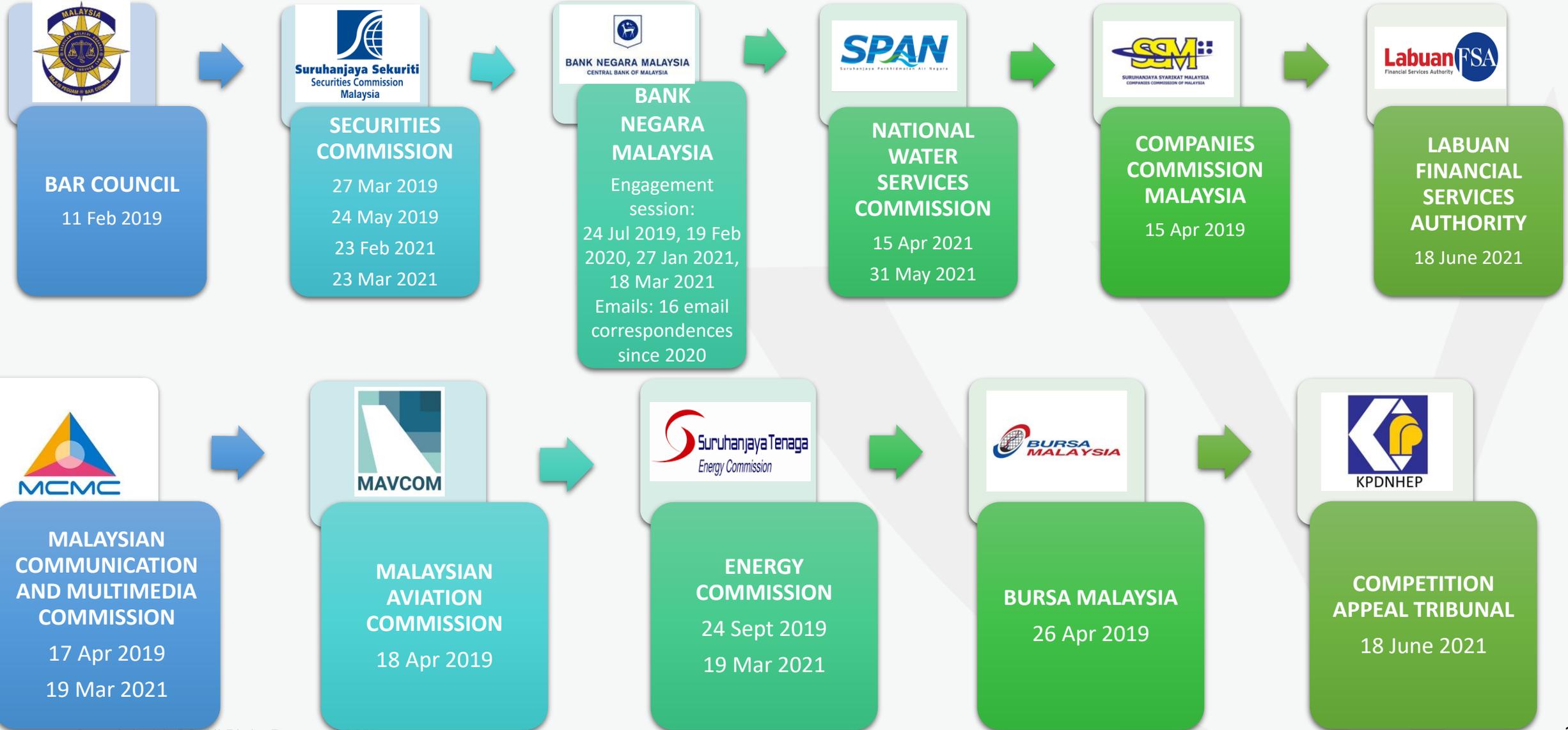
**Technical advisor  
placement at the  
MyCC in 2021**



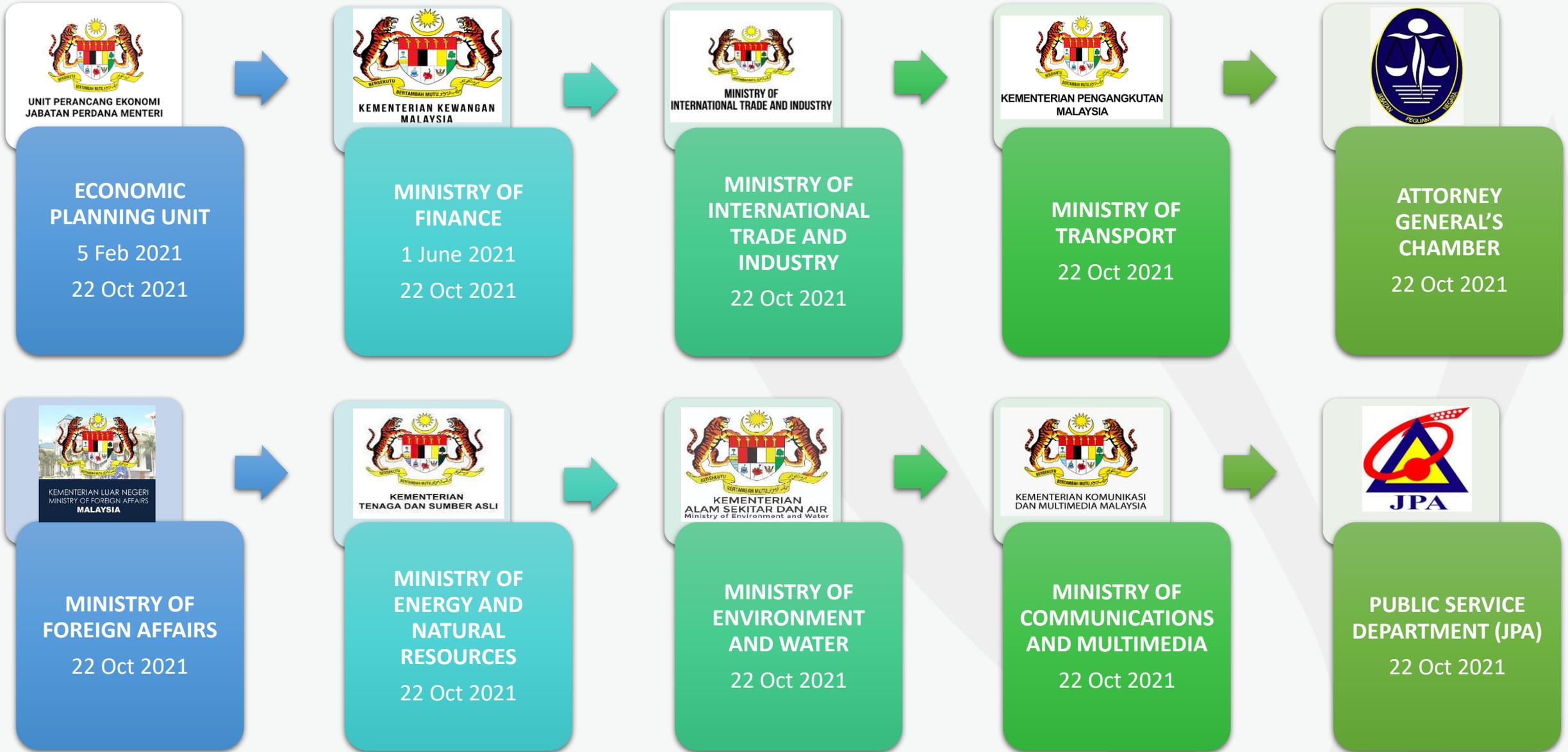
**Technical  
advisor  
placement at  
the MyCC in  
2019**



# CONSULTATIONS CONDUCTED WITH RELEVANT STAKEHOLDERS



# CONSULTATIONS CONDUCTED WITH RELEVANT STAKEHOLDERS



**6** **PROJECTED TIMELINE  
OF THE MyCC LAW  
AMENDMENT  
EXERCISE**



## 1 POLICY APPROVAL

MyCC obtained the policy approval from the Cabinet to introduce a merger control regime and amend Act 712 and Act 713.

21 December 2021

## 2 BUU & AGC APPROVAL

Consultation with the Legal Division of the Ministry of Domestic Trade and Consumer Affairs (BUU) and the Attorney General's Chamber (AGC) on the amended provisions of Act 712 and Act 713

Ongoing since February 2022 is expected to continue until August 2022

## 3 RIA & CONSULTATION

MyCC started the Regulatory Impact Assessment (RIA) process and conduct public consultations to seek views from the stakeholder and the public on the proposed amendment of Act 712

April to June 2022

## 4 PARLIMENT

Submission and tabling of the amendments to Act 712 and Act 713 in Parliament

October 2022

# PROJECTED TIMELINE OF MyCC LAW AMENDMENT EXERCISE

## 5 COMING INTO FORCE OF THE AMENDMENTS TO ACT 712

The non-merger related provision will come into force once the amendments have been passed by Parliament

The merger provision will come into force at a later date



December 2022

## 6 FURTHER CONSULTATION ON THE THRESHOLD, NOTIFICATION FEE AND NOTIFICATION PROCEDURES

Consultations will be held by the MyCC with stakeholders to obtain feedback on the threshold, notification fee and notification procedures



February 2023

## 7 ISSUANCE OF MERGER RELATED PRACTICE STANDARD AND GUIDELINES

The practice standard and merger-related guidelines will be issued by the MyCC to supplement the merger provisions in Act 712



July 2023

## 8 COMING INTO FORCE OF THE MERGER CONTROL REGIME

It is expected that the merger control regime will come into force within one year (or earlier) after the introduction of the merger control regime in the amendments to Act 712



October 2023  
(Provided that the amendment of Act 712 is passed by Parliament in October 2022)

**DISCLAIMER: THIS PROJECTED TIMELINE MAY BE REVISED BY THE MyCC**

**Please refer to the Supplementary Document to this Consultation Paper for  
the salient points of the proposed amendments to the  
the Competition Act 2010 (Act 712)**

THANK YOU

**Malaysia Competition Commission**

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**PROMOTING  
COMPETITION,  
PROTECTING YOU**

