

MALAYSIA – COUNTRY PROFILE

INTRODUCTION

1. Malaysia comprises 13 states and 3 federal territories. Kuala Lumpur is Malaysia's federal capital and was also its administrative capital until 1999 when the seat of government was moved to the newly-created federal territory of Putrajaya.

GEOGRAPHY

2. With its land area totalling 329,847 sq km, Malaysia consists of Peninsular Malaysia and East Malaysia (the states of Sabah and Sarawak) which are separated by the South China Sea. Peninsular Malaysia shares its border with Thailand and sits north of Singapore while East Malaysia is located on the island of Borneo and shares its border with Brunei and the Indonesian territory of Kalimantan. The country enjoys a tropical climate with hot and humid weather all year round. Annual southwest and northeast monsoons also occur from April to September and November to February respectively.

DEMOGRAPHICS

3. Malaysia has a population of slightly less than 29 million people, with approximately one-third of them below the age of 18. Only 3.6% are below the poverty level while 11.63 million are in the labour force. The population is relatively young with only 5% above the age of 65. In terms of geographic distribution, 24 million people inhabit Peninsular Malaysia where the population is mostly concentrated on the west coast. East Malaysia, on the other hand, is home to 5 million people. The Malaysian demography stands out due to a multiethnic society comprising of Malays (60%), Chinese (25%), Indians (10%), Eurasians as well as indigenous groups from Peninsular and East Malaysia.

LANGUAGE & RELIGION

4. The official language of Malaysia is *Bahasa Malaysia*, but English is widely used and is the preferred language of business. Due to Malaysia's multiethnic society, a variety of other languages are spoken including Cantonese, Mandarin,

Hokkien and Tamil. Islam is the official religion of Malaysia, but other religions such as Buddhism, Taoism, Hinduism, Christianity and Sikhism are freely practiced.

ECONOMIC PROFILE

5. Malaysia, a middle-income country, has transformed itself since the 1970s from a producer of raw materials into an emerging multi-sector economy. Continuing efforts to boost domestic demand and reduce the economy's dependence on exports are being done. Nevertheless, exports - particularly of electronics, oil and gas, palm oil and rubber – remain a significant driver of the economy. The central bank maintains healthy foreign exchange reserves and its well-developed regulatory regime has limited Malaysia's exposure to riskier financial instruments and the global financial crisis. The purchasing power parity of Malaysia is at an estimated US\$414.4 billion (2010) while per capita income is at US\$14,700 (2010). The services sector makes up the bulk of the economy (48.2%) followed by the manufacturing sector (41.4%) and agriculture (10.5%). Inflation continued to remain below 3.5%. Agricultural products produced in Peninsular Malaysia are rubber, palm oil, cocoa and rice, while in Sabah, it is subsistence crops, i.e. coconuts and rice and in Sarawak, rubber, timber and pepper. Main industries in Peninsular Malaysia are rubber and oil palm processing and manufacturing, light manufacturing, pharmaceuticals, medical technology, electronics, tin mining and smelting, logging and timber processing, while in Sabah it is logging and petroleum production, and in Sarawak, agriculture processing, petroleum production and refining and logging. Main export partners are Singapore 13.4%, China 12.6%, Japan 10.4%, US 9.5%, Thailand 5.3% and Hong Kong 5.1% while import partners are China 12.6%, Japan 12.6%, Singapore 11.4%, US 10.7%, Thailand 6.2% and Indonesia 5.6%.

ECONOMY

6. For the year 2011, Malaysia experienced a 5.1% growth in GDP which was a fall from the 7.2% growth displayed in 2010. The slump in growth was due to a number of factors, particularly the economic crisis in Europe which resulted in a fall in demand for Asian exports. That same year, Malaysian exports were also affected

following the floods in Thailand and the slump in production after the Japanese earthquake. Bank Negara Malaysia, the central bank, has set a forecast of between 4%-5% of GDP growth for 2012 with domestic demand, the key pillar for internal growth, expected to counteract any negative external factors.

NEW GROWTH MODEL FOR MALAYSIA

7. The year 2010 marked the introduction and implementation of Malaysia's Government Transformation Programme (GTP) and a new chapter for the Government where programmes have been introduced aimed to radically transform the way the Government worked so as to serve the nation in a more effective and efficient manner. These programmes are also being executed with the aim of turning Malaysia into a high-income nation by the year 2020. The Economic Transformation Programme (ETP), in particular, marks a shift from public-sector led growth with the private sector expected to fuel 92% of the required \$448bn investment needed to propel the economy to 2020. As a nation that has shifted from agriculture and mining to manufacturing and services, Malaysia now aspires to be driven by knowledge and innovation. The ETP builds upon the policy directions, strategies and programmes of the 10th Malaysia Plan. The nation's focus will shift towards areas where there is inherent competitive advantages. The ETP Roadmap developed contains concrete targets, developed through a series of labs and a series of forums where individuals from both the private as well as the public sector came together to develop ideas into actions. The special purpose vehicle that was set up to facilitate these initiatives is PEMANDU, i.e the Performance Management and Delivery Unit.

8. Against this background, one of the labs focused on competition law. In 2011, the Competition Lab began working where individuals from both the public and private sector came together to deliberate on how the Competition Law 2010 should be implemented, focusing on advocacy, and institutional capacity building. Many initiatives were proposed and approved by the Minister of Domestic Trade, Cooperatives & Consumerism. Some of these are now being adopted by the newly created Malaysia Competition Commission.

Background to the introduction of the policy on Competition Law in Malaysia

9. The role of the Ministry of Domestic Trade, Cooperatives & Consumerism (formerly known as the Ministry of Domestic Trade & Consumerism) is to have oversight over the domestic economy and to ensure ethical and fair trade practices and consumer interests are protected. In recognition of this, several mandates were given to the Ministry to introduce a policy on competition law. These were as follows:-

- (i) In 1993, the Meeting of the Cabinet Committee on Inflation on 27/8/93 concluded that the Ministry is to take appropriate action towards curbing market structure problems through the following initiatives:-
 - To monitor and supervise closely oligopolistic industries so as to ensure that the market is not controlled by limited number of firms and at the same time to encourage healthy competition. A Bank Negara Malaysia study in 1993 identified that then 4 big firms were found to control 70% of the market.
 - To study unfair trade practices among manufacturers and distributors. For instance, benefits and profits acquired through changes in prices or foreign currency exchange were not channelled to consumers; and
 - To study competition laws in other countries with the aim of introducing one in Malaysia. This is to encourage good business practices which can bring about healthy competition
- (ii) In line with this and the need to establish a policy on competition law, Chapter 16 of the 8th Malaysia Plan stated that “During the Plan Period (2001 – 2005), efforts will be made to foster fair trade practices that will contribute towards greater efficiency and competitiveness of the economy. In this context, a fair trade policy and law will be formulated to prevent anti-competitive behaviour such as collusion, cartel, price fixing, market allocation and abuse of market power.”
- (iii) The Hon.Prime Minister on 13 January 2004 at a New Economic Action Council Forum mentioned that "the Government is in the midst of formulating

a comprehensive competition policy to ensure sufficient levels of healthy competition across various industries and to promote productivity led growth.”

10. Throughout the above mentioned period efforts continued to be undertaken to formulate a policy on competition law to promote healthy competition and encourage fair trade practices. In 2004, the Ministry's officers involved in the drafting of the policy engaged Mr.Hassan Qaqaya from UNCTAD to assist them in identifying issues which should be addressed in the proposed bill. A study visit to UNCTAD in Geneva to draft the policy together with experts in UNCTAD was held in 2004. This subsequently culminated in the final policy being drafted and approved by the Cabinet on 26 October 2005.

11. The objectives of the policy, known as the Fair Trade Practices Policy sought to achieve eight policy objectives as follows:-

- i) Promote and protect competition in the market
- ii) Create dynamic and competitive entrepreneurs
- iii) Provide fair and competitive market opportunities for business
- iv) Prohibit anti-competitive practices including those originating outside the Malaysia territory and affecting the domestic territory
- v) Prohibit unfair trade practices in the economy
- vi) Promote right of SME to participate in the market place
- vii) Promote consumer welfare
- viii) Encourage sosio-economic growth, generate efficiency and equity

12. The policy was not applicable to sovereign functions of Government and all actions and measures attributable to the State that seeks to encourage socio-economic growth, generate efficiency and equity. It will address anti-competitive practices, cartels, abuse of dominant positions, monopolisation, anti-competitive practices and unfair trade practices. Explicit and implicit exemptions will be granted in order to balance the interest of business, consumers and the needs of government objectives and at the same time to ensure government functions are sanctioned.

13. With this mandate, the Ministry with the assistance of Mr. Hassan Qaqaya from UNCTAD appointed two consultants to draft the bills, ie Fair Trade Practices Bill and the Fair Trade Practices Commission Bill. These consultants namely, Zaid & Co from Malaysia and Monckton Chambers from the UK assisted Malaysia draft these two bills. The Ministry formed a consultative group known as the CG25 comprising representatives from key government agencies, several chambers, associations and also the civil society. Several consultations were held with this group with the aim of receiving feedback of the draft bills. The feedback was positive but there were several aspects of the draft bills which this group requested to be reviewed.

14. Based on the feedback the Ministry tabled another paper to the Cabinet meeting seeking a mandate to change the scope of the law on 9 September 2009. The change in scope covered the following:-

- i) To change the title of the law from Fair Trade Practices Act to Competition Act and the name of the Commission from Fair Trade Practices Commission to Competition Commission
- ii) The Competition Act to address mergers and acquisitions
- iii) That the Competition Act not address unfair trade practices; and
- iv) The Competition Act to be the main law to address competition issues in order to ensure enforcement of the law is consistent.

15. However, the Cabinet Meeting directed the MDTCC to have further discussions with respective stakeholders before the final change in policy. Following this the Ministry held discussions with respective agencies and Ministries on 13 October 2009 where the following matters were agreed upon and decided:-

- i) The Act to be changed to Competition Act and the Commission to be known as the Competition Commission
- ii) The act not to address Mergers and Acquisitions
- iii) The act not to be the mother act of competition and that sector regulators continue to enforce the competition regulations under their respective laws.

16. The above issues were incorporated into the new policy and bill which were submitted to the Cabinet and approved on 2 April 2010. It was subsequently tabled and read in the Lower House of Parliament on 12 April 2010 and received Royal gazette on 10 June 2010. An 18 months grace period was given to allow companies to comply with the law as well as to establish the Commission.

17. An interim competition unit was then set up in the Ministry to plan for the establishment of the Commission. An implementation competition committee was set up to plan the establishment as well as to conduct advocacy programmes. Meanwhile since over the past three years then, Malaysia's Global Competitiveness ranking dropped and to help enhance Malaysia's competitiveness, the National Economic Advisory Council (NEAC) recommended policy measures that were grouped into the International Standards and Liberalisation (ISL) lab that focused on three key areas: Standards, Liberalisation of Services and Competition Law. Following this a Competition Lab, comprising full time and part time lab members from the public and private sector, was formed to look at issues that could assist in the swift and resolute implementation of the law. The lab was conducted from February 21 - April 1 2011 and what was recommended was a solid structure for the Commission, clear and efficient processes in implementing the law, effective advocacy programmes and autonomy and sufficient funds to function at optimum level. Most of these recommendations were based on the implementation plan that had already been drawn up by the Interim Competition Unit in the Ministry.

18. On 1 April 2011, the Chairman of the Commission was appointed, while the 9 other members of the Commission were appointed on 1 May 2011. The Chief Executive Officer and other Commission officers were appointed in June 2011.

19. Six Working Committees (WC) were established to assist in the work plan of the Commission. These were the WC on Advocacy, WC on External Guidelines, WC on Internal Guidelines, WC on Human Resource Management, WC on Finance and Procurement and WC on Publicity and Communications. Each of these committees are chaired by members of the Commission while external members comprise people with some expertise in the areas concerned. For 2011 and 2012, each of

these committees drafted their work plans which were converted to the Strategic Plan of the Commission for 2012.

The Competition Act 2010

20. The Competition Act 2010 introduced, aims to promote economic development by promoting and protecting the process of competition, thereby protecting the interests of consumers and to provide for matters connected therewith. It has two main prohibitions, ie prohibition of anti-competitive practices and abuse of a dominant position in the market. The Competition Act 2010 emphasizes the importance for industry players to compete and move forward based on principles of efficiency and not based on market manipulation, abuse of dominant position in the market, control of resources and market cycles which suppress and burden competitors and consumers in general. A healthy process of competition in the economy will also encourage more efficient use of resources and this will benefit consumers in terms of product and service choices in addition to more competitive prices. This Act came into force on 1 January 2012.

The Competition Commission Act 2010

21. This Act provides for the establishment of the Competition Commission and sets out the powers and functions of the Commission. This Act came into force on 1 January 2011.

Activities Undertaken by MyCC since its establishment

Advocacy Programmes

22. In ensuring that the objective and impact of the Competition Act 2010 is understood and adopted by stakeholders, MyCC actively undertook organising advocacy programmes. These advocacy programmes were vital in ensuring that the Competition Act 2010 is adopted comprehensively as well as to indirectly ensure that the relevant parties conduct self-assessments of their respective business activities. Furthermore, during the first phase of implementation, MyCC was of the view that

advocacy programmes would help provide a basic understanding of the new law and its implication as well as to convey the message that competition law not only imposes constraints but also provides enormous business opportunities. In 2011 alone, a total of 34 advocacy programmes were conducted all over Malaysia, including Sabah and Sarawak, i.e East Malaysia.

23. The multiplier effect resulting from these advocacy sessions was seen through the number of requests from the business sector to give briefings to businesses and associations as well as requests to advise them on their agreements and activities. For 2012, as of April 2012, 15 advocacy programmes have been conducted. This does not include the numerous advisory services that were given to Government Ministries and agencies on their new laws being drafted, current review of policies and administrative circulars.

24. A strategy plan titled “MyCC Strategy Plan for Competition Advocacy 2012-2014” has been developed and several main priority sectors that MyCC will focus on have been identified. These priority sectors will be the focus for MyCC in terms of its advocacy programmes as well as in terms of reviewing their practices. For 2012, a more comprehensive and structured advocacy programme will continue to be conducted in accordance with the above mentioned strategy plan.

Preparation of Guidelines

25. The introduction of guidelines, which will be issued by MyCC from time to time, will explain in a more comprehensive way the application procedures, concepts and main considerations that will be taken into account during an investigation of infringement under the Competition Act 2010.

26. By the end of December 2011, MyCC had drafted 3 guidelines and conducted six public consultations where more than 500 participants from various sectors were engaged. After taking into account the relevant stakeholders’ views, MyCC finalised the 3 main guidelines on 2 May 2012 namely:

- (i) Guidelines on Complaint Procedures;
- (ii) Guidelines on Market Definition; and
- (iii) Guidelines on Chapter 1 Prohibition of the Competition Act 2010.

27. Apart from that, the final draft of the Guidelines on Abuse of Dominant Position has been completed and opened for public consultation. Meanwhile, there are 2 other guidelines that are in the process of being drafted, i.e. the Guidelines on Exemptions and the Guidelines on Investigation and Enforcement Procedures.

Market Studies

28. Due to public interest and frequent outcry of escalating prices of broiler chicken, the Minister of Domestic Trade, Co-operatives and Consumerism, directed the MyCC to undertake a study of the broiler market. This is also provided for under the Competition Act 2010. MyCC undertook the market study to determine if there are any features or combination of market features that are preventing or distorting competition in the said market. The above mentioned market study focuses on the current market structure, interaction between traders and market behaviour at the production, wholesale and retail stages. The issues paper which outlines some of the concerns of MyCC will be open for public consultation in June/July 2012 while a public consultation on this matter will also be held in July 2012. This is aimed at obtaining the relevant stakeholders' views and feedback. Based on the feedback, MyCC will make some policy recommendation to the Government.

Capacity Building Programmes

29. As the institution was set up in June 2011, with a relatively small number of staff, MyCC undertook to send the officers for several capacity building programmes. In 2011 alone, MyCC was involved in 14 capacity building programmes for its officers. The members of the Commission were given a training programme by UNCTAD while a working visit to the Competition Commission of Singapore was also undertaken in July 2011 and to the Australia Consumer and Competition

Commission in June 2012. Meanwhile, from January to April 2012, officers from MyCC were involved in 10 capacity building programmes mainly focusing on enforcement issues. Regular capacity building programmes are vital in cultivating and producing expertise within the organisation, even more so since MyCC is a quasi-judicial body that acts as a facilitator of competition policy and law in the country.

Other Activities

Involvement of MyCC in Negotiations

30. MyCC has also been actively involved in the various negotiations being undertaken by Malaysia. Technical advice on competition policy and law was given for the Trans Strategic Economic Partnership Agreement (TSEP), the Malaysia-EU FTA and the Malaysia-Australia FTA.

International Conferences and Training

31. From 10 to 12 October 2011, MyCC, with the cooperation of the Japan Fair Trade Commission (JFTC) successfully organised an APEC-level conference and training session titled “APEC Training Course on Competition Policy – Effective Mechanism Against Cartel Offences”. This event was attended by 21 participants from the APEC member economies. Since the focus of the event was on cartel activities, several Government officials involved in policy formulation were also invited to attend. About 70 Government officials attended. Journalists from the media were also invited as this was the beginning of an advocacy effort towards building the understanding of competition law for them.

32. MyCC also successfully organised the 7th East Asia Conference and the 8th East Asia Top Level Officers Meeting from 2 to 3 May 2012 where competition experts from the East Asian nations were invited to share their experiences on cartel investigations and to discuss with local participants the latest competition policy and law developments in their respective countries. The Competition Policy and Law

Conference, was jointly organised by MyCC, JFTC and the Asian Development Bank Institute (ADBI).

Institutional Building

33. In conferring an identity for MyCC, the corporate logo and official website, which enhances MyCC's corporate image, was launched on 23 September 2011. The website, which can be accessed at www.mycc.gov.my acts as a bridge between MyCC and the public which is important in disseminating and sharing information with regards to MyCC's activities particularly in relation to the legal aspects, enforcement and other incidental matters. Furthermore, MyCC's corporate video, produced and carrying an important message about competition culture is being used during the advocacy and briefing sessions for the public.

34. The MyCC Strategic Plan 2012 was finalised on 10 January 2012, establishing the vision and mission that needs to be achieved via the objectives and priorities that have been identified over the last one year. MyCC has identified 10 strategies in its scope of work and each plan executed by MyCC will be adjusted accordingly to fit the organisation and nation's overall direction.

35. In addition to this, MyCC has issued several collaterals for the general public, i.e. pamphlets on the Competition Act 2010, information about the Malaysia Competition Commission and "10 Frequently Asked Questions(FAQ)". Several booklets on competition law for the general public, business and the public sector is being prepared.

Challenges Faced by MyCC

36. As Competition Law issues are very new to Malaysia, both the public and private sector face various challenges in their endeavour to ensure compliance with the law. As in any new competition jurisdiction, during the first stage of enforcement, MyCC's efforts are being focussed in four directions: (i) building a workable institution with sufficient and the right kind of workforce (ii) building education and

research facilities to support the MyCC's enforcement activities, (iii) intensive publicity in order to spread the word that the law has been enforced and (iv) concentrating on enforcement of "low hanging fruits" in order to strengthen advocacy efforts and to send a strong message out.

37. While these are MyCC's focus area, the various challenges faced are manifold and some of these are as follows:-

- (i) managing the very high expectations that the law is going to bring about a radical change immediately by dismantling existing anti-competitive policies introduced during the pre-competition era in the public sector and anti-competitive practices in the business community;
- (ii) getting the public to understand clearly the demarcation between competition issues and consumer related issues;
- (iii) getting the business community to shed their stage of denial and accept the fact that anti-competitive practices such as price fixing arrangements or market sharing are deemed to be infringements under the law and no longer a way of doing business;
- (iv) lack of data/information/research material on sectors/industries/practices which will be useful and helpful for MyCC in their enforcement and advocacy efforts; and
- (v) convincing the business community that competition law should not be seen as a threat but rather as an opportunity provided to redress anti-competitive practices of competitors or dominant players who abuse their position.

15 June 2012

Malaysia Competition Commission