



**Malaysia Competition Commission**



# **Competition Act 2010 - Introducing the New Law**

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## **Two General Laws on Competition**

### **Competition Act 2010 (Act 712)**

An Act 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.

### **Competition Commission Act 2010 (Act 713)**

An Act to provide for the establishment of the Competition Commission, to set out the powers and functions of such Commission, and to provide for matters therewith or incidental thereto.

(Sector Regulators operate under other laws)

## **Core Objectives of Competition Law**

Almost all competition laws include amongst their objectives the following:

Promotion of economic efficiency  
Promotion of consumer welfare, and  
Promotion of economic development.

## **Developing and Transition Economies also have Social Objectives :**

- Local production and employment
- Regional development
- Opportunities for small and medium sized businesses
- National champions (sometime couched in terms such as  
export-led economy or external competitiveness)
- “National” interest and national ownership
- Economic stability
- Anti-inflation policies
- Social progress
- Welfare
- Poverty alleviation
- Spread of ownership stakes of historically disadvantaged  
persons (equity and fairness)
- Economic and political pluralism
- Security interest
- Market integration (in the European Union)

## South Africa Competition Act' Section 2 :

The purpose of this Act is to promote and maintain competition in the Republic in order--

- a) to promote the efficiency, adaptability and development of the economy;
- b) to provide consumers with competitive prices and product choices;
- c) to promote employment and advance the social and economic welfare of South Africans;
- d) to expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic;
- e) **to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy;**  
and
- f) **to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.**

## Purpose of Competition Act 2010

### Long Title

An Act

**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.

### Preamble

Whereas the process of competition encourages efficiency, innovation and entrepreneurship, which promotes competitive prices, improvement in the quality of products and services and wider choices for consumers;

And whereas in order to achieve these benefits, **it is the purpose of this legislation to prohibit anti-competitive conduct**



## Definition of Important Terms

### Competition Act 2010, section 2:

**“Agreement”** means any form of contract, arrangement or understanding, whether or not legally enforceable, between enterprises, and includes a decision by an association and concerted practices;

**“Enterprise”** means any entity carrying on commercial activities relating to goods or services, **and for the purposes of this Act, a parent and subsidiary company shall be regarded as a single enterprise if,** despite their separate legal entity, they form a single economic unit within which the subsidiaries do not enjoy real autonomy in determining their actions on the market.

## **Competition Act 2010, section 2:**

**“Consumer”** means any direct or indirect user of goods or services supplied by an enterprise in the course of business, and includes another enterprise that uses the goods or services thus supplied as an input to its own business as well as a wholesaler, a retailer and a final consumer.

(Explicit inclusion of intermediate purchasers)

## **Consumer Protection Act 1999, section 3:**

**“Consumer”** means a person who:

- (a) acquires or uses goods or services of a kind ordinarily acquired for personal, domestic or household purpose, use or consumption; and
- (b) does not acquire or use the goods or services, or hold himself out as acquiring or using the goods or services, primarily for the purpose of :
  - (i) resupplying them in the trade;
  - (ii) consuming them in the course of a manufacturing process; or
  - (iii) in the case of goods, repairing or treating, in trade, other goods or fixtures on land.

(Explicit exclusion of intermediate purchasers)

## **Scope of the Competition Law**

1. Advocate of competition policy and law (CCA 2010)
2. Prohibition of anti-competitive agreements (CA 2010)
3. Prohibition of abuse of dominance(CA2010)
4. Regulation of mergers and acquisitions (Not covered by CA 2010 or CCA 2010)

Malaysian law thus takes a 'behavioural approach' in regulating dominance firms rather than a 'structural approach'. Simply put, it is alright to be big or dominant; what the law prohibits is 'abuse' of that dominance

**A complex law that seeks to protect the competitive process rather than competitors**

## Part II Chapter 1 Anti-competitive agreement

### Prohibited horizontal and vertical agreements

4 (1) A horizontal or vertical agreement between enterprises is prohibited insofar as the agreement has the **object or effect of significantly preventing, restricting or distorting competition in any market for goods or services.**

(2) Without prejudice to the generality of subsection (1), a horizontal agreement between enterprises which has the object to –

(a) – (d)

**Is deemed to have the object of significantly preventing, restricting or distorting competition in any market for goods or services.**

## 5. Relief of Liability

Notwithstanding section 4, an enterprise which is a party to an agreement may relieve its liability for the infringement...under section 4 based on the following reasons:

(a), (b), (c) **and** (d)

## 6. Individual exemption

## 7. Block exemption

## Part II Chapter 2

### **Abuse of dominant position is prohibited**

10. (1) An enterprise is prohibited from engaging, whether independently or collectively, in any conduct which amounts to an abuse of a dominant position in any market for goods or services.
- (2) Without prejudice to the generality of subsection (1) an abuse of dominant position may include:
- (a), (b), (c), (d), (e), (f), **or** (g),



- (3) This section does not prohibit an enterprise in a dominant position 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.
- (4) The fact that the market share of any enterprise is above or below any particular level shall not in itself be regarded as conclusive as to whether the enterprise occupies, or does not occupy, a dominant position in that market.

## **Penalty for Infringement**

### **Section 40**

(4) A financial penalty shall not exceed ten percent of the worldwide turnover of an enterprise over the period during which an infringement occurred.

**Malaysian Competition Jurisprudence not yet established.**

**Will evolve in time guided by the decisions of:**

**1. Part IV Decision of the Commission**

Section 35 Interim measures

Section 39 Finding of non-infringement

Section 40 Finding of an infringement

**2. Part V Competition Appeal Tribunal**

Section 44 There is established a Competition appeal tribunal, which shall have exclusive jurisdiction to review any decision made by the Commission under sections 35, 39 and 40.

### **3. Private action in the Courts**

Section 64 (1) Any person who suffers loss or damage directly as a result of an infringement of any prohibition under Part II shall have a right of action for relief in civil proceedings in a court under this section against any enterprise which is or which has under this section against any enterprise which is or which has at the material time been a party to such infringement.

(2) The action may be brought by any person referred to in subsection (1) regardless of whether such person dealt directly or indirectly with the enterprise.

**THANK YOU**



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