



Competition Order 2015

Towards a more efficient market and sustainable growth

Competition and Consumer Affairs Department
Department of Economic Planning and Development
Ministry of Finance and Economy



A law that prohibits
business practices which **restrict**
a fair competition process
in a market.

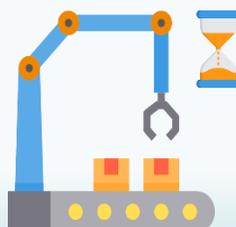
“to promote & protect competition in markets in Brunei Darussalam, to promote economic efficiency, economic development & consumer welfare...”
– Section 1 (3), Competition Order

Efficient market

Consumer welfare



↑ Supply



↑ Productivity



↑ Innovation



↑ Consumer choices
& ↓ Prices



↑ Quality of goods & services

3 Key Prohibitions



Section 11



Anti Competitive Agreement (Cartels)

First Phase

Section 21



Abuse of Dominant Power

Will be enforced at a later stage

Section 23



Anti-Competitive Mergers

1st Prohibition: Anti-Competitive Agreements (Cartels)



- Agree to act together instead of competing
- Agreements are designed to reduce competition to drive up profits

The 4 Don'ts:

- 1) Price Fixing
- 2) Bid Rigging
- 3) Market Sharing
- 4) Limit supply



Price Fixing

- **Agreeing to fix or maintain price** (verbal or written agreement)
- **Keep prices high** compared to a competitive market
- **Sharing market information** like pricing, profit, through associations / informal discussions

Sector: Confectionary and Bakery

Country: Malaysia

Companies: 24 members of the Sibul Confectionery and Bakery Association (the 'SCBA')

Case story:

- The 24 competing companies were found to agree to **increase prices of products by 10-15% in Sibul area.**
- This narrows and eliminates competition in market.
- This agreement gives the parties opportunity to impose higher prices to maximize profitability without any competition.

Penalty: RM\$439,000 (approx. BND\$145,522)



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Bid Rigging



- Any **agreement** (written or oral) between bidders that **limits or reduces competition in a tender**
- The agreement may be between a **bidder** and a **potential bidder** that does not actually submit a bid
- The bidder agree amongst themselves **who should win the tender and at what price**

Different forms of bid rigging

“Bid Rigging is the most egregious violations of competition law”



1. Bid Suppression

One or more competitors **agree not to bid**, or withdraw a bid submitted previously



2. Complementary Bidding

Bidders agree to submit **bids with higher prices** or unacceptable terms than the bid of the designated winner



3. Bid Rotation

Competitors agree to **take turns winning bids** on a series of contracts. The terms of rotation may vary according to the size of cartel members, geographic territory or by the type of consumer concerned



4. Subcontracting

Subcontracting part or main contract to the “**losing bidders**”, or forming a **joint-venture (JV)** to submit a single bid

Sector: Information Technology

Country: Hong Kong

Companies: Nutanix Hong Kong Limited, BT Hong Kong Limited, SiS International Limited, Innovix Distribution Limited, Tech-21 Systems Limited

Type(s) of Bid Rigging: Complementary bidding

Case story:

- Hong Kong Commission discovered **unusually similar errors in all five tender applications** submitted by the companies
- It was found that these companies **colluded and submitted premeditated losing bids**
- The ringleader sent its tender application pricing information and template to the other companies for reference via email



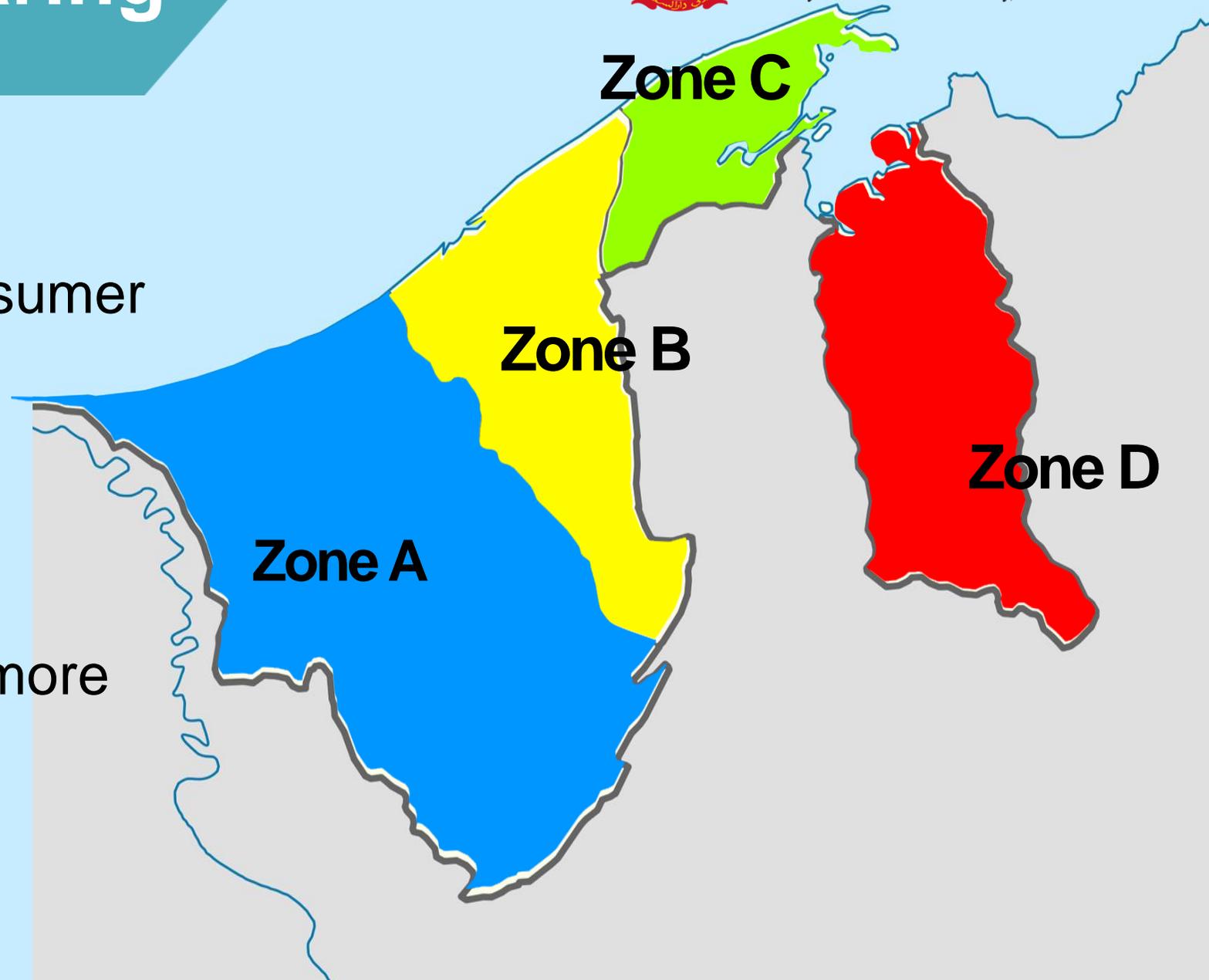
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Market Sharing



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- Divide up consumers by geographical area or consumer type
- Agree not to compete
- Consumer forced to pay more with less choice



Sector: Fresh Chicken

Country: Singapore

Companies: Gold Chic Poultry Supply and its related firm; Hua Kun Food Industry; Hy-fresh Industries; Kee Song Food Corporation; Ng Ai Food Industries; Sinmah Poultry Processing; Toh Thye San Farm; & Lee Say Group and Tong Huat Group (affiliated companies)

Case story:

- Competition Commission Singapore (CCS) found that the 13 chicken distributors have agreed to increase price (\$0.10 - \$0.30 per kg)
- Also agreed not compete for each other's customers in the market of supply of fresh chicken products in Singapore.
- Customers had "limited option" to switch to more competitive companies

Penalty: BND\$26.8 million



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- Agreeing to limit the quantity of goods or services
- Keep prices high by limiting supply of goods (artificial shortage)

Supply Control

2nd Prohibition: Abuse of Dominant Position



- Nothing wrong being dominant; nothing abusive being profitable
- Abusive conducts:
 - Predatory pricing
 - Refusal to supply/limiting production to the prejudice of consumers
 - Exclusionary dealings
- Two-step test:
 - Whether a company is dominant in a relevant market (substitutability test) ; and
 - Whether it abuses its dominance
- Needs **economic-based assessment** to determine whether the act has, or likely to have, an adverse effect to competition.



3rd Prohibition: Anti-Competitive Mergers



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Mergers are prohibited **ONLY** if the merged entity **lessen or restrict competition in the market**

Any anticipated mergers or mergers to be notified to the Commission for consideration and decision

Power to Investigate

Access
information or
documents



Power to Conduct Market Review

- Examine competition issues in the market
- Review if the market is functioning well
- Explore causes of insufficient competition



- For businesses to disclose anti-competitive conducts that they had been involved with.
- Businesses may be granted up to full immunity from financial penalties in exchange to information disclosure and cooperation.





- **Fines**
Not exceeding 10% business turnover in Brunei for a maximum of 3 years
- **Banning order**
May have to stop business operations
- **Business sued**
May face a third party claim
- **Reputational damage**
Loss of reputation and the goodwill of consumers and the public



All commercial entities across sectors



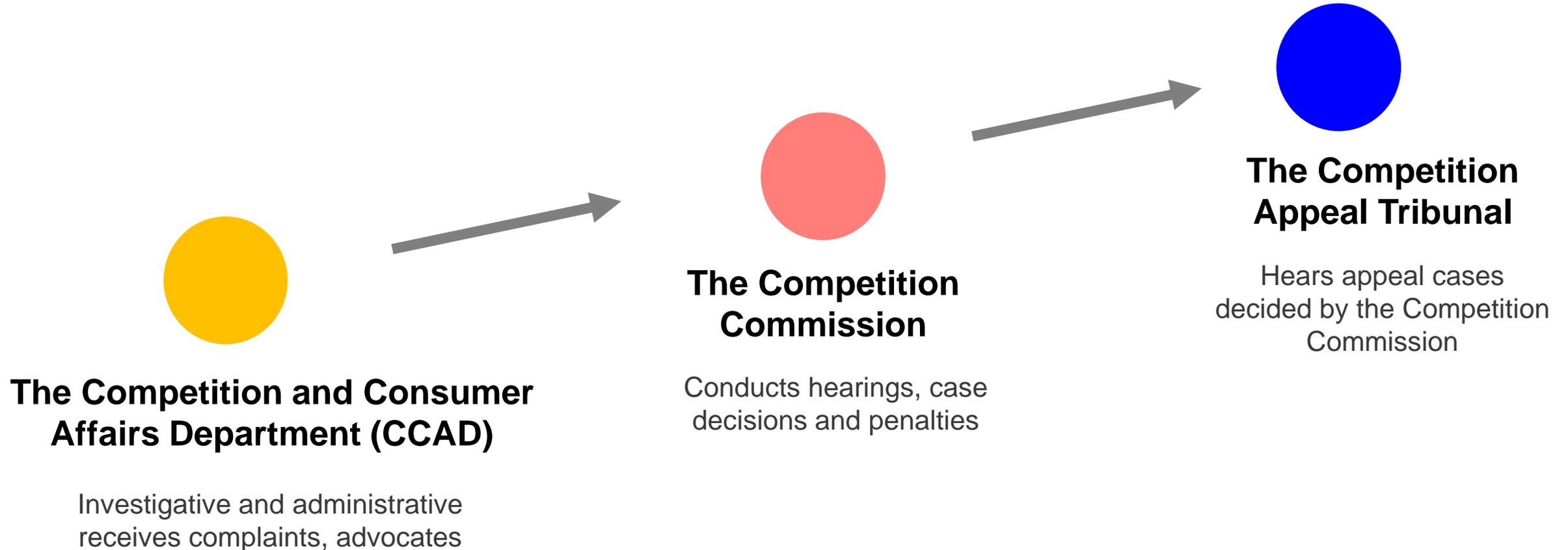
Government and Statutory Body functions and those acting on behalf of Government and Statutory Body

Exemption by application

- Applicable only for Section 11- Anti-Competitive Agreement prohibition
- Application to the Minister through the Competition Competition of Brunei Darussalam
- Satisfy the criteria of:
 - Improving production or distribution; or
 - promoting technical or economic progressAnd must not
 - Be able to be satisfied by other alternatives; or
 - Eliminate competition

Exclusion

- Applicable to Section 11- Anti-Competitive Agreement and Section 21- Abuse of Dominance Position prohibition
- Activities specified in **Third Schedule**:
 - Services of general economic interest
 - Compliance with legal requirements
 - Avoidance of conflict with international obligations
 - Public Policy
 - Goods and Services regulated by other competition law
 - Agreements with net economic benefit





Contact us

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