Handbook on Competition Policy and Law in ASEAN for Business 2017

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ASEAN: A Community of Opportunities

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The ASEAN Secretariat
Jakarta

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Foreword

ASEAN@50 in 2017 is a significant milestone in the journey of the ten ASEAN Member States (AMS) in community building and integration. One of its key accomplishments is the progress in putting in place the building blocks for a competitive business environment. Nine ASEAN Member States had competition law in place by the time of the establishment of the ASEAN Economic Community in 2015 and the remaining AMS is expected to enact its law in the very near future.

The importance of competition law in ASEAN cannot be overstated in terms of its importance in promoting competition among businesses, with the ultimate aims of preserving the processes of competition, improving economic efficiency and protecting the interests of consumers. ASEAN under the AEC Blueprint 2025 places importance on strengthening further the legislative regimes, building institutional capacity and enhancing advocacy on competition issues.

In this regard, this Third Edition of the **Handbook on Competition Policy and Law in ASEAN for Business** aims to update information on the competition laws and policies in AMS, given the developments since 2013 when the last edition was released. These included the recent enactment of competition laws in four AMS (Brunei Darussalam, Lao PDR, Myanmar, and the Philippines) and amendments to competition laws in Singapore and Thailand. This updated Handbook also serves as a useful guide to businesses, especially Micro, Small and Medium Enterprises (MSMEs), as the Handbook covers the institutional and legal provisions of competition laws, the scope of prohibited practices, other restrictive business practices as well as procedural issues.

I would like to congratulate the ASEAN Experts Group on Competition on coming up with this latest edition, which has the additional features of the Glossary of Terms and the Compendium of AMS laws. I would also like to thank the German Federal Ministry for Economic Cooperation and Development (BMZ) and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH for their support in realising this publication.

Le Luong Minh
Secretary-General of ASEAN

Jakarta, December 2017

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Introduction

Competition Policy and Law (CPL) is an important tool to promote fair competition and make markets work more efficiently. Effective competition law enforcement can contribute substantially to economic efficiency, economic growth and development, and consumer welfare.

Although CPL was only recently introduced in many AMS, considerable progress has been made in promoting and implementing competition legislation. As part of the AMS commitments towards the ASEAN Economic Community (AEC) 2015 goals, nine out of ten AMS have enacted economy-wide competition laws since 2015. There is growing awareness of the adverse effects of anti-competitive practices on the economies and consumers in ASEAN, and recognition of the benefits of fair competition as a driver for increased competitiveness and innovation.

The AEGC has focused on activities aimed at information sharing including best practices among AMS, support capacity building in areas of legislation design, institutional and enforcement capacities. Through this body, a number of activities have been organised in cooperation with development partners. The AEGC has successfully steered the implementation of the AEC Blueprint 2015 goals for competition, which were putting in place a robust competition legal framework, fostering a culture of competition through advocacy, building regional linkages via a network of authorities or agencies responsible for competition policy as well as institution-building.

Following the adoption of the ASEAN Economic Community (AEC) Blueprint 2025 and the more elaborated competition initiatives under the ASEAN Competition Action Plan (ACAP) 2016-2025, the AEGC has been entrusted to implement the ACAP 2025 under a more ambitious framework for competition policy and law in ASEAN.

The ACAP 2025 charts the direction of competition policy in the medium to longer term, with outcomes and initiatives that are geared towards deeper regional cooperation and integration.

Many AMS are currently in the process of setting-up their competition commissions to enforce their newly enacted laws. Meanwhile, some AMS with long-standing competition laws in place, are in the process of reviewing their laws to ensure they continue to be relevant and could well address the challenges posed by the new digital economy.

The 7th ASEAN Competition Conference (ACC)
8-9 March 2017, Selangor, Malaysia

5th ASEAN Competition Conference

6th ASEAN Competition Conference

Despite these developments, challenges remains as the level of awareness and understanding still needs to be enhanced. The legal, institutional and procedural aspects of competition law enforcement in many AMS are very different, owing to the heterogeneity of political and economic systems in the region, as well as varying degrees of maturity of the competition regimes. ASEAN under the AEC Blueprint 2025 and ACAP 2025 will endeavor to better align such laws and regulations and to ensure that such gaps are minimised.

The Handbook on Competition Policy and Law in ASEAN for Business (Handbook) aims at providing basic notions of the substantive and procedural aspects of competition laws in each AMS, in a language that is easily understood by businesses as well as by relevant stakeholders. It is intended to update businesses on the developments of CPL in the region since 2013, with a view towards promoting awareness of the various elements of CPL, develop a competition culture and ensure greater compliance within the business community.

The Handbook covers a general overview of the basic principles and status of CPL in ASEAN, followed by an overview of the key areas and provisions of competition legislations in each AMS. At the later part of the Handbook, readers will find the following supplementary materials; i) a matrix of CPL that provides an at-a-glance comparative review on competition regimes in ASEAN, ii) a Glossary of Competition Law Terminologies for ASEAN to enhance understanding of commonly used terms in CPL, and iii) the Compendium of English Translations of National Competition Laws in ASEAN.

PART I

Competition Policy and Law in ASEAN: Basic Principles

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Chapter 1: Overview of CPL in ASEAN

ASEAN Experts Group on Competition (AEGC)

The AEGC was established ten years ago in August 2007, comprising of representatives from the authorities and agencies responsible for competition policy and law matters in AMS.

Looking back, a number of important milestones have been achieved during these ten years which have contributed to: i) the enactment of national laws on competition in AMS; ii) the establishment of institutional framework and mechanisms for the implementation of competition law; iii) creation of a "competition-aware" region that supports fair competition; and iv) the promotion of greater regional competition cooperation.

Among others, the AEGC have published a number of reference and resource documents to guide AMS in their enforcement and advocacy efforts. These include the Regional Guidelines on Competition Policy and Law (2010), which were considered in the formulation of new competition laws across the region.

The first Handbook on Competition Policy and Law (Handbook) was also completed in 2010 and a revised third edition was published in 2013. In addition, the Toolkit on Competition Advocacy in ASEAN (2016) was developed to serve as a step-by-step guide for competition authorities in planning and conducting awareness-raising campaigns targeted at various stakeholder groups.

Under the implementation of the ACAP 2025, a Self-Assessment Toolkit on Competition Enforcement and Advocacy (2017) was completed. The Toolkit supports AMS periodic assessment and monitoring of its competition regimes and benchmark progress against set indicators. This is with a view towards eventual improvements and contribute towards narrowing the gaps with international best practices.

Furthermore, institutional capacity building of competition authorities is facilitated by the AEGC through the organisation of various activities such as seminars and workshops on different aspects of competition law, study visits, staff exchanges and secondments of experts.

Moving forward, the AEGC is committed to focus its work on establishing enforceable competition rules,

putting in place effective institutional mechanisms for the implementation of competition law, creating a competition-aware region, strengthening regional cooperation on CPL, and ensuring the gradual alignment of competition rules under the new AEC Blueprint 2025 and the ACAP 2025.

ASEAN Competition Action Plan (ACAP) 2016-2025

Under the overarching vision of a competitive, innovative and dynamic ASEAN with an effective and progressive competition policy, the strategic measures on competition outlined in the ASEAN Economic Community (AEC) Blueprint 2025 are further expanded in the ACAP 2025. The ACAP 2025 contains five strategic goals:

(i) effective competition regimes are established in all AMS;

(ii) the capacities of competition-related agencies in AMS are strengthened to effectively implement CPL;

(iii) regional cooperation arrangements on CPL are in place;

(iv) fostering a competition-aware ASEAN region; and

(v) moving towards greater harmonization of competition policy and law in ASEAN.

The implementation of the ACAP 2025 is overseen by the AEGC with the support of various development partners. In addition, cooperation with other ASEAN Sectoral Bodies and regulators is increasingly foreseen, considering the cross-cutting nature of CPL and its interfaces with other policy areas, such as consumer protection, intellectual property rights, or standards-setting.

More information can be accessed from the AEGC web portal at www.asean-competition.org.

Chapter 2: Scope of Competition Law

Introduction

This Chapter provides a basic, comprehensive description of what competition rules are and which practices they cover. A country-specific description of the applicable rules follows in **Part II**. In **Annex III**, selected case studies from the AMS are captured to provide concrete examples of enforcement practices. **Annex I** lists relevant websites and contact points in the AMS.

The legal and institutional framework: what is competition law and who enforces it?

In general, the basic substantive and procedural competition law provisions are based on the primary law, while the more detailed implementing rules are left to secondary legislation and "soft law" measures (i.e., guidelines and other non-binding instruments).

The competition laws in AMS generally foresee the establishment of dedicated Competition Authorities, which are in charge of competition law enforcement. Their main tasks are those of investigating and adjudicating cases, and of imposing sanctions for infringements of the competition law. In some jurisdictions, adjudication may be left to a judicial or third authority. Depending on the national law, the Competition Authority may also provide advice to the government and related agencies on competition-related issues. In addition, the Competition Authorities shall also play an advocacy role in promoting compliance within the business community and getting the buy-in of the general public.

Although almost all AMS have now introduced competition laws that cover all business actors and the entire economy, in some AMS, certain industries or sectors may still be subject to sector-specific regulation. This means that in those cases, competition agencies need to establish cooperation mechanisms with other regulators overseeing the respective sectors.

The addressees: to whom does competition law apply?

Competition law applies to market operators, i.e., a business person (whether an individual or a corporation) engaged in an economic activity (i.e., the purchase or sale of goods or services). It generally does not distinguish between private and state-owned enterprises, provided that they engage in an economic activity.

However, it is for the national law of the AMS to define the exact scope of application of competition law. AMS may exclude from the scope of application of competition law (or from some of its provisions) specific business operators (e.g., companies in charge of a public service, small and medium enterprises (SMEs), and others) or business operators operating in specific (sensitive) sectors (e.g., defense industry), as explained below.

The substance: what practices are prohibited under competition law?

Competition law generally prohibits three main practices: (i) anti-competitive agreements; (ii) abuse of a dominant position or a monopoly; and (iii) anti-competitive mergers. It can also have provisions related to unfair commercial practices.

Anti-competitive agreements

Anti-competitive agreements are agreements or other arrangements between market operators that negatively affect competition in a specific ("relevant") market (competition laws often refer to agreements which "prevent, restrict or distort" competition or to similar expressions). The term "agreements" is not limited to formal, enforceable agreements, but usually includes concerted practices (i.e., informal collusion and other non-formal arrangements) as well as decisions by associations of business operators (regardless of whether they are binding or not).

Anti-competitive agreements may be horizontal - i.e., between market operators operating at the same level (either production/distribution/ sale) in the market chain (e.g., between two or more producers, two or more distributors, etc.) - or vertical - i.e., between market operators operating at a different level of the market chain (e.g., between a producer and its distributors, etc.). Both horizontal and vertical agreements are generally subject to the above prohibition, with a few exceptions (e.g., under Singapore law vertical agreements are, with some exceptions, excluded from the prohibition).

Agreements are usually prohibited if they have an anti-competitive effect. For example, a cartel might agree to set a high price or set production limits on each member of the cartel, which also results in a higher price. The competition authority would have to prove the anti-competitive effect, which is sometime difficult to do.
To make it easier for a Competition Authority to take action against a cartel, some jurisdictions allow for legal action to be taken against a cartel, by proving that the cartel had the 'object' or the intention of restricting competition in some way. Therefore, an exchange of emails between two or more firms setting price, even if the higher price had not been introduced, would be caught under some competition laws because the email indicated the intention to fix a higher price.

Agreements which are in principle anti-competitive may be exempted, provided that they produce beneficial effects. In general, agreements which are otherwise prohibited are exempted only by way of a specific authorisation or permission by the Competition Authority or other competent agency. Competition law usually indicates the conditions under which anti-competitive agreements may be exempted and the procedures to be followed in order to get the exemption.

In some competition laws, a whole category of agreements (e.g., distribution agreements) can be automatically exempted by law (block exemption). The law generally specifies the conditions under which the exemption applies.

Abuse of dominant position

Competition law prohibits the abuse of dominant position (i.e., a monopoly or a firm with substantial market power). Normally the term abuse covers practices where a business operator with substantial market power restricts competition in a market.

The notion of dominant position, or substantial market power, may vary according to national legislation. Generally, it refers to a situation where the business operator has enough economic strength to act in the market without regard to what its competitors (actual or potential) do.

In order to determine dominance, competition law may refer to market shares and/or a series of other

market structure indicators, such as the extent of vertical integration, technological advantages, financial resources, the importance of brand name, etc.

Competition law can apply both to single firm dominance and to collective dominance (where two or more business operators jointly hold a position of market power). To determine collective dominance, competition law may refer to market shares and other indicators.

Seeking or reaching a dominant position is usually not prohibited; only abuse of a dominant position. Abusive behaviour can either be an exploitative abuse (setting excessive prices or unfair conditions for the customers) or an exclusionary abuse (conduct that excludes efficient competitors from the market, such as predatory pricing or exclusive dealing contracts with the only supplier of materials needed for production). Competition law may provide examples of abusive conduct to provide greater business certainty.

Anticompetitive mergers

Generally, competition law covers the following categories of mergers: mergers, acquisitions, and joint ventures (joint ventures may be regulated either under merger or anti-competitive agreement provisions).

Mergers are only prohibited when they lead to a restriction of competition. For many jurisdictions, the merger test is whether there is a "substantial lessening of competition". Mergers falling under the prohibition should be screened and approved by the Competition Authority or other competent agency. Competition law may establish a system of either voluntary or mandatory notification of the (proposed) transaction to the Competition Authority.

Competition law often provides for minimum (market share and/or turnover) thresholds over which a transaction shall or may be notified. Where notification is mandatory, failure to notify may lead to sanctions. Generally, a merger cannot be completed until approved by the Competition Authority.

Other restrictive commercial practices

In some AMS, competition law also regulates (prohibits) practices that, while not strictly related to the basic competition law provisions discussed above, belong

to the more general category of restrictive/unfair commercial practices.

Where such provisions are included within the national competition law, they will be illustrated in a specific paragraph of the relevant country-chapter of this Handbook.

The procedures: how are the prohibitions enforced?

In most cases, competition law establishes specific procedural rules for enforcement. Generally, the Competition Authority opens a case either following a complaint or on its own motion. Where exemptions or authorisations are sought an investigation may also be triggered by notification from the parties to the transaction.

The investigation entails a series of activities, some of which may be regulated by competition law. For example, the law may specify the phases and time-limits of the investigation, the investigative powers of the Competition Authority (e.g., the power to interrogate, search, seize evidence, etc.), and the right of the parties involved in the investigation (e.g., business or other secret, confidentiality, right of a fair trial, right of appeal, etc.).

The investigation is followed by an adjudication (i.e., the adoption of a preliminary or final decision), which, depending on national law, may be carried out by the

Competition Authority itself or may be left to another (judicial or administrative) authority.

Once an infringement has been established, competition law provides the applicable sanctions. Sanctions may be applied both to procedural infringements (e.g., violation of investigative measures) and infringements of the substantive law (e.g., participation in a cartel or abuse of dominance, etc.). Sanctions may consist of pecuniary fines, orders or injunctions, which may impose behavioural or structural remedies (e.g., to refrain from or to adopt a certain behaviour, to sell/divest assets, etc.), and other measures.

Decisions by the Competition Authority or other competent agency may be subject to review by a judicial or administrative authority.

Are there any exclusions or exemptions from the application of competition law?

Competition law is usually a law of general application (i.e., it applies to all economic sectors and to all business persons engaged in economic activities). However, according to national systems and constitutional requirements, some (sensitive) sectors (e.g., defense or agriculture) or certain businesses (such as state-owned enterprises or enterprises in charge of public services) may be fully or partially excluded from the application of the CPL. These will be referred to as "exclusions".

In addition to exclusions, which apply to a whole economic sector or category of business operators, competition law may also grant exemption from specific provisions in the competition law. For example, an exemption may be given for agreements that restrict competition between business operators because they contribute to specific national objectives (e.g., technical development, consumer welfare, environment, development of SMEs, etc.).

In the following country chapters, exclusions and exemptions are treated separately: exemptions are featured within the specific sections relating to anti-competitive agreements, while exclusions are dealt with separately in dedicated sections.

PART II

Competition Law in Individual ASEAN Member States

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BRUNEI DARUSSALAM

Legislation and Jurisdiction

The Law

What is the relevant legislation?

Brunei Darussalam enacted the **Competition Order 2015** (Order) concerning the proceeding of commission and prohibition of anti-competitive practices.

To whom does it apply?

The Order applies to the undertaking, means any person, being an individual, a body corporate, an unincorporated body of persons or any other entity, capable of carrying on commercial or economic activities relating to goods or services.

Which practices does it cover?

The Order covers the key prohibitions of anti-competitive behavior, which are:

(a) **Anti-competitive agreements** that are preventing, restricting, or distorting competition;

(b) **Abuse of dominant position**; and

(c) **Mergers** that resulted or may result in a substantial lessening of competition.

Are there proposals for reform?

No proposal for reform as of date of publication.

The Authorities

Who is the enforcement authority?

The **Competition Commission of Brunei Darussalam** is the enforcement authority established under the Order. The establishment of the Competition Commission of Brunei Darussalam and the appointments of the Chairman and members of Commission are effective from 1 August 2017.

Beside the Competition Commission of Brunei Darussalam that is responsible for enforcement of the Order, the Competition and Consumer Affairs Department is established under the Department of Economic Planning and Development, to serve the Competition Commission as their investigative and administrative arms. The Department is also responsible in carrying out functions such as advocacy, receiving complaints and conducting market reviews.

Are there any sector-specific regulatory authorities (RAs) with competition enforcement powers?

No sector-specific regulatory authorities as of date of publication.

Anticompetitive practices

Agreements

Which agreements are prohibited?

Chapter II of the Order prohibits **agreements**, **decisions**, or **concerted practice** that have as their object or effect the prevention, restriction, or distortion of competition within Brunei Darussalam with the following acts:

(a) Directly or indirectly fix purchase or selling prices or any other trading conditions;

(b) Limit or control production, markets, technical development or investment;

(c) Share markets or sources of supply;

(d) Apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(e) Make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by nature or according to commercial usage, have no connection with the subject of contracts; or

(f) Bid rigging.

Which agreements may be exempted?

The Order stipulates individual exemption. To apply for such exemption, the undertaking may apply to the Minister, through the Commission, for an exemption, if the agreement contributes to:

(a) Improving production or distribution; or

(b) Promoting technical or economic progress.

But, the agreements shall not:

(a) Impose on the undertakings concerned restrictions, which are not indispensable to the attainment of those objectives; or

(b) Afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods and services.

Monopoly and dominant position

Is monopoly or dominant position regulated?

The Order prohibits abuse of dominant position in any market in Brunei Darussalam.

What is dominant position?

Under Competition Order, dominant position refers to a situation in which one or more undertakings possess such significant power in a market to adjust prices or outputs or trading terms, without effective constraint from competitors or potential competitors without Brunei Darussalam or elsewhere.

When are monopoly and dominant position prohibited?

According to Chapter 3, the abuse of dominant position is prohibited when it consists of:

(a) Predatory behaviour towards competitors;

(b) Limiting production, markets or technical development to the prejudice of consumers;

(c) Applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or

(d) Making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations, which, by their nature or according to commercial usage, have no connection with the subject of the contracts.

Can abuse of dominant position be exempted?

No exemption is allowed.

Merger control

What is a merger?

Merger is regulated by the Order under Chapter 4, which prohibits mergers that have resulted or may be expected to result in a substantial lessening of competition within any market in Brunei Darussalam. According to the Order, a merger occurs if:

(a) Two or more undertakings, previously independent of one another;

(b) One or more persons or other undertakings acquire direct or indirect control of the whole or part of one or more other undertakings; or

(c) The result of an acquisition by one undertaking (the first undertaking) of the assets (including goodwill, or a substantial part of the asset, of another undertaking (the second undertaking) is to place the first undertaking in the business or, as appropriate the part concerned of the business in which that undertaking was engaged immediately before the acquisition.

Which mergers are prohibited?

According to the Order, a merger shall not be deemed to occur if:

(a) The person acquiring control is a receiver or liquidator acting as such or is an underwriter acting as such;

(b) All of the undertakings involved in the merger are, directly or indirectly, under the control of the same undertaking;

(c) Control is acquired solely as a result of a testamentary disposition, intestacy or the right of survivorship under a joint tenancy; or

(d) Control is acquired by an undertaking normal activities of which include the carrying out of transactions and dealings in securities for its own account or for the account of others.

The circumstances that may constitute the latter is further explained under the Order, which are:

(a) The control concerned is constituted by the undertaking's holding, on a temporary basis, securities acquired in another undertaking; and

(b) Any exercise by the undertaking of voting rights in respect of those securities, whilst that control subsist:

- Is for the purpose of arranging for the disposal, within the specified period, of all or part of the other undertaking or its assets or securities; and
- Is not for the purpose of determining the manner in which any activity of the other undertaking, being an activity that could affect competition in markets for goods or services in Brunei Darussalam is carried on.

Are foreign-to-foreign mergers included?

Foreign mergers are not specifically defined or stipulated in the Order.

Do mergers need to be notified?

The parties involved in a merger or anticipated merger may, on a voluntarily basis, notify and apply for Commission's decision on whether the merger or anticipated merger has infringed or will infringed Section 23 prohibition.

Which mergers may be exempted?

The party or merged entity may apply to the Minister for the merger to be exempted on the ground of any public interest consideration.

Procedure

Investigation

The investigation and enforcement follow the rules and procedures set by the Commission by virtue of its power under the Competition Order, in which the Commission may interpret and give effect to the provisions by publishing *Gazette* guidelines.

In preparing any guidelines, the Commission may consult with relevant stakeholders as it thinks appropriate. In case the guidelines would apply to an industry or a sector of industry that is subject to the regulation and control of another regulatory authority, the Commission shall consult with that regulatory authority.

How does an investigation start?

The Commission could start the investigation if there are reasonable grounds for suspecting that:

(a) Infringement of Section 11 relating to anti-competitive agreement;

(b) Infringement of Section 21 relating to abuse of dominant position;

(c) Infringement of Section 23 prohibition relating to merger by any anticipated merger and merger.

What are the investigation powers?

The investigative powers of the Commission are laid down in Sections 34, 35, 36, 37, and 38 of the Order, which consist of:

(a) Power to require documents or information. For the purposes of an investigation, the Commission or an authorised officer may, by notice in writing, require the party to produce or provide a specified document or information, which relates to the investigation;

(b) Power to enter premises without warrant. In connection with an investigation, any authorized officer and such other person as the Commission has authorised to accompany the authorised officer may enter any premises, with at least 2 working days' written notice given to the occupier; and

(c) Power to enter premises under warrant. Any authorised officer may apply to a court for a warrant and the court may issue such a warrant if it is satisfied that there are reasonable grounds for believing that person has in his possession any document, equipment or article which has a bearing on the investigation.

What are the rights and safeguards of the parties?

The party may claim, before making a statement disclosing information that the statement might tend to incriminate him/her, the statement:

(a) Shall not be admissible in evidence against him in criminal proceedings other than proceedings under Part IV; but

(b) Shall, for the avoidance of doubt, be admissible in evidence in civil proceedings, including proceedings under this Order.

Is there any leniency programme?

The Order regulates the leniency regime, with a reduction of up to a maximum of 100 percent of any penalties which would otherwise have been imposed, which may be available in the cases of any undertakings which has:

(a) Admitted its involvement in an infringement of any section 11 prohibition; and

(b) Provided information or other form of cooperation to the Commission, which is likely or significantly assisted, in the identification or investigation of any finding of an infringement of any prohibition by any other undertakings.

Adjudication

What are the final decisions?

The Commission proposes to make a decision upon completion of investigation. In case there is an infringement by any agreement / conduct / anticipated merger / merger, the Commission shall:

(a) Give written notice to the person likely to be affected by such decision; and

(b) Give such person an opportunity to make representations to the Commission.

When the above decision has been made, the Commission may give to the party such directions as it considers appropriate to bring the infringement or the circumstances to an end and, where necessary, requiring that party to take such action as is specified in the direction to remedy, mitigate or eliminate any adverse effects of such infringement or circumstances and to prevent the recurrence of such infringement or circumstances.

Commission shall, within 14 days of its making any **decision** or **direction**, notify any party affected by such decision or direction.

What are the sanctions?

The main sanction that can be imposed under the Order is the financial penalty, only if it is satisfied that the infringement has been committed intentionally or negligently. However, no financial penalty may exceed 10 percent or such other percentage of such turnover of the business of the undertaking in Brunei Darussalam for each year of infringement for such period suspension.

Other sanction that can be applied is structural/ behavioural remedies for infringements of the anti-competitive prohibitions.

Judicial review

Can the enforcement authorities' decisions be appealed?

Under the Competition Order, any party may appeal within the prescribed period to the **Competition Appeal Tribunal** against, or with respect to, the decision or direction made by the Commission. Except in the case of an appeal against the imposition, or the amount, of financial penalty, the making of an appeal shall not suspend the effect of the decision.

The establishment of a Competition Appeals Tribunal that would be responsible for handling appeals on decisions made by the Competition Commission of Brunei Darussalam is still underway. It is foreseen, under the Order, that the Competition Appeal Tribunal to be consisted of not more than 30 members appointed, from time to time, by the Minister on the basis of their ability and experience in industry, commerce or administration or their professional qualifications or their suitability otherwise for appointment.

The Tribunal shall have all the powers and duties of the Commission that are necessary to perform its functions and discharge its duties under the Order. The Tribunal shall have the powers, rights and privileges vested in a court on the hearing of an action, including:

(a) The enforcement of the attendance of witnesses and their examination on oath or otherwise;

(b) The compelling of the production of documents; and

(c) The award of such costs or expenses as may be prescribed under the Order.

CAMBODIA

Legislation and Jurisdiction

The Law

What is the relevant legislation?

There is no comprehensive competition law in Cambodia. At the time of writing, the Ministry of Commerce is finalizing a draft law. It is expected that this draft law will be submitted to the Council of Ministers of Cambodia by the end of 2017.

To whom does it apply?

This draft Law applies to all persons conducting business activities or other pro-business activities that significantly prevent, restrict or distort competition in the market, regardless of the source of activity arising inside or outside the territory of the Kingdom of Cambodia.

The term "Person" refers to natural persons or legal persons whether performing any activity to make profit or no profit, be registered or not be registered, be privately owned, be partly owned or be wholly owned by the state.

Which practices does it cover?

The draft law will cover (i) unlawful agreements which prevent, restrict or distort competition, (ii) abuse of a dominant position, and (iii) any business combination which has the effect of significantly preventing, restricting or distorting competition in a market.

Are there proposals for reform?

The draft law is currently being discussed.

The Authority

Who is the enforcement authority?

The competition agency will be the Cambodian Competition Commission "CCC" (hereinafter, "the Commission") in which the Cambodia Import Export Inspection and Fraud Repression Directorate General "CAMCONTROL" (hereinafter, "the Directorate") will be the Secretariat of the Commission.

The Commission will be established to promote a competitive market economy for Cambodia and to enforce the provisions of the law. Subject to the law, initially the Commission shall be composed of 13 (thirteen) Commissioners and can be added up to not more than 15 (fifteen) commissioners. The chairman of the Commission is the Minister of Commerce, while the members are representatives from relevant ministries together with 1 (one) former judge and other 4 (four) individuals who have experiences in law and economy.

The Commission shall perform these duties: (i) issue orders, regulations and fines at the request of the Directorate or of its own initiative to restore and promote competition, (ii) establish rules concerning conflict of interest of commissioners, (iii) establish policies and plans relevant to competition, (iv) advise on drafts legislation relevant to competition, (v) request to the Government to edit or amend on legislations or agreements which has effects on competition, (vi) establish formation and the procedures of the calculation on penalties, and (vii) establish other rules and regulations to enforce this law.

The tasks and duties of the Directorate concerning competition shall compose of: (i) study, prepare and implement policies, strategies and action plans for the promotion of competition, (ii) investigate any activity which is prohibited or prevent, restrict and distort competition, (iii) establish the drafted order for the Commission, (iv) represent the Commission in court, (v) evaluate any activity related to competition for the Commission, (vi) communicate with national and international institutions concerning competition, (vii) report and give advice to the Commission about its operation and (viii) perform other tasks instructed by the Commission.

Are there any sector-specific regulatory authorities (RAs) with competition enforcement powers?

The Commission and Directorate are responsible for the application of competition law in all sectors. The existing RAs will not have competition enforcement powers after this law enters into force.

INDONESIA

Legislation and Jurisdiction

The Law

What is the relevant legislation?

The relevant legislation is Law No. 5 of 1999 concerning the prohibition of monopolistic practices and unfair business competition (the "Law"), together with the Elucidation on the Law, the Decree of the President of the Republic of Indonesia No. 75 of 1999 on Commission for the Supervision of Business Competition or the KPPU (the "Decree"), five procedural regulations and several guidelines, available on the KPPU website at: http://eng.kppu.go.id (English page).

1. Regulation of the Supreme Court of the Republic of Indonesia No. 3 of 2005 regarding the Procedures for Filing Objections to the Decisions of KPPU;
2. Government Regulation No. 57 Year 2010 concerning Merger or Consolidation of Business Entities and Acquisition of Shares of Companies which may cause Monopolistic Practices and Unfair Business Competition;
3 KPPU Regulation No. 1 of 2010 regarding Case Handling Procedures replaces KPPU Regulation No. 1 of 2006 and No. 2 of 2008 for cases introduced as of 5 April 2010;
4. KPPU Regulation No. 1 Year 2015 regarding Procedures for the Supervision of Partnership Implementation;
5. KPPU Regulation No. 3 Year 2015 regarding Procedures for Partnership's Case Handling.

To whom does it apply?

The Law applies to all "business actors", defined by Article 1(5) of the Law as "individual(s) or business entities, either incorporated as legal entities or not, established and domiciled or conducting business activities within the jurisdiction of the Republic of Indonesia, either independently or jointly based on agreement, conducting various business activities in the economic field". Therefore, it applies to any business actor doing business in Indonesia, including, amongst other, state-owned enterprises and subsidiaries of foreign enterprises.

Which practices does it cover?

The Law covers practices, which include anti-competitive agreements; anti-competitive activities; abuse of dominant position; and mergers which lessen competition.

Are there proposals for reform?

A new draft law is being prepared, with 5 (five) major issues in the amendment, which are; (i) expanding the definition of enterprises, thus, enterprises who reside abroad and conducting their businesses in Indonesian market could be investigated and sanctioned by KPPU (exercise of extraterritorial jurisdiction); (ii) the shifting of mandatory post-merger notification to mandatory pre-merger notification; (iii) revising the amount of imposed fines from maximum of IDR 25 billion (USD 1.8 million) to minimum 5 % and maximum 30% of the total sales value during the infringement period; (iv) the implementation of leniency program; and (v) search and seizure authority.

The Authority

Who is the enforcement authority?

The enforcement authority is the KPPU.

According to Chapter VI of the Law, the Decree and the regulations, the KPPU is a state-independent institution, free from the Government and other stakeholders' influence, and accountable only to the President of Indonesia. Its members are appointed and dismissed by the President upon approval of the People's Legislative Assembly.

The KPPU is responsible for supervising and evaluating the conduct of business actors in the Indonesian markets under the Law. It carries out investigations and enforces the Law (e.g., issues decisions on the alleged violations), provides advice and opinions concerning Government's policies related to monopolistic practices and/or unfair business competition, issues guidelines and submits periodic reports on its activity to the President of Indonesia and the People's Legislative Assembly.

Are there any sector-specific regulatory authorities (RAs) with competition enforcement powers?

The KPPU is responsible for the application of competition law in all sectors. The existing RAs do not have competition enforcement powers.

Anticompetitive practices

Agreements

Which agreements are prohibited?

Chapter III of the Law (Articles 4 to 16) identifies a list of agreements, classified according to their object, which are prohibited "per se" or insofar as they result in monopolistic practices and/or unfair business competition (under the "rule of reason").

The agreements prohibited per se are the following:

- Agreements leading to price fixing (Article 5(1)), except agreements in the context of a joint venture or expressly prescribed by law (Article 5(2));
- Price discrimination (Article 6);
- Agreements aimed at boycott (Article 10) that (a) injure or may injure other business actors or (b) limit access of other competitors to sell or to buy goods and services in the relevant market;
- "Exclusive agreements", i.e., agreements leading to resale restrictions, tying and exclusive supply (Article 15);

The agreements prohibited under the rule of reason, are the following:

- Agreements leading to oligopoly (Article 4(1)). Business actors may be suspected or deemed of being part of oligopolies when two or three of them control the production and or marketing of over 75% of the relevant market (Article 4(2));
- Agreements leading to predatory pricing (i.e. price below cost) (Article 7) and resale price maintenance (Article 8).
- Agreements leading to market partitioning and market allocation (Article 9);
- Cartels (Article 11);
- Trusts (Article 12);
- Agreements leading to oligopsony (Article 13(1)). Business actors may be suspected or deemed of being part of oligopsonies when two or three of them control the purchases or acquisitions of over 75% of the relevant market (Article 13(2));
- Agreements leading to vertical integration (Article 14);
- Agreements with foreign parties (Article 16).

According to Article 1(7) of the Law, anti-competitive agreements are prohibited regardless of their form: both formal agreements ("in writing") and concerted practices ("not in writing") are included.

The Law includes both horizontal and vertical agreements.

Which agreements may be exempted?

The Law does not explicitly foresee any possibility of individual exemption. However, some instances, including some categories of agreements, are excluded from the scope of application of the Law (see below, under "Exclusions").

Monopoly and dominant position

Is monopoly or dominant position regulated?

The Law separately prohibits monopolistic practices (i.e., monopoly and monopsony) (Chapter IV) and the abuse of a dominant position and, in specific cases, the creation thereof (Chapter V).

What is a monopoly/monopsony position?

According to Article 1(1) of the Law, "monopoly" refers to the "control over the production and or marketing of goods and or over the utilization of certain services by one business actor or by one group of business actors".

According to Article 17(2), business actors are deemed to have a monopoly position if:

- There is no actual substitute available for the goods or services concerned;
- Other business actors are unable to compete for the same goods or services; or
- One business actor or a group of business actors control over 50% of the relevant market.

According to Article 18(2), business actors are deemed to have a monopsony position when one business actor or a group of business actors controls over 50% of the relevant market.

What is a dominant position?

According to Article 25(2) business actors are deemed to have a dominant position when:

- one business actor or a group of business actors controls over 50% of the relevant market; or
- two or three business actors or a group of business actors control over 75% of the relevant market.

When are monopoly and dominant position prohibited?

According to Articles 17(1) and 18(1) monopoly and monopsony are prohibited from:

- "controlling the production and or marketing or goods or service" or, respectively,
- "controlling the acquisition of supplies or from acting as sole buyer of goods and or services" when this may "result in monopolistic practices and or unfair business competition".

Furthermore, the following practices are prohibited when they may result in monopolistic practices or unfair business competition:

- Market control, defined as:
  - > "(a) Reject and or impede certain other business actors from conducting the same business activities in the relevant market; or (b) bar consumers or customers of their competitors from engaging in a business relationship with such business competitors; or (c) limit the distribution and or sales of goods and or services in the relevant market; or (d) engage in discriminatory practices towards certain business actors" (Article 19);
  - > Predatory pricing (Article 20);
  - > "Determining false production cost and other costs as part of the price component of goods and or services" (Article 21);
- Conspiracy, defined as:
  - > Bid rigging/collusive tendering (Article 22);
  - > Violating company secrets (Article 23);
  - > Reducing quantity, quality or timeliness or goods or services (Article 24).

According to Article 25(1), business actors are prohibited from using a dominant position either directly or indirectly to:

- Determine the conditions of trading with the intention of preventing and or barring consumers from obtaining competitive goods or services both in terms of price and quality;
- Limit markets and technology development; or
- Bar other potential business actors from entering the relevant market.

Article 26 of the Law also prohibits a person, concurrently holding a position as member of the board of directors or as a commissioner of a company, from simultaneously holding either of the same position in other companies in the event that such companies:

- Are in the same relevant market;
- Have a strong bond in the field and/or type of business activities; or,
- Are jointly capable of controlling the market share of certain goods or services

Which may result in monopolistic practices or unfair business competition.

Likewise, Article 27 of the Law prohibits business actors from owning majority shares in several similar companies conducting business activities in the same relevant market, or establishing several companies with the same business activities when:

- one business actor or a group of business actors control over 50% of the relevant market; or
- two or three business actors or groups of business actors control over 75% of the relevant market.

Can abuse of dominant position be exempted?

No exemption is allowed.

Merger control

What is a merger?

Merger is regulated by Articles 28 and 29 of the Law, and further implemented through Government Regulation No. 57 Year 2010 concerning a Merger and Acquisition which may Cause Monopolistic Practices and Unfair Business Competition (the "Merger Regulation").

According to the Law, a merger includes the following transactions:

- Concentration of control of several previously independent business actors into one business actor or a group of business actors; or
- Transfer of control (for example, through the acquisition of shares) from one previously independent business actor to another, leading to control or market concentration.

Specifically, the scope of a merger by the Law and the Merger Regulation is limited to a merger (merger of one business actor into another, or merger of some business actors into one new entity) and the acquisition of shares.

Are foreign-to-foreign mergers included?

Foreign mergers are defined as (i) mergers between two foreign business entities where both or one of them operate in Indonesia (ii) mergers between a foreign business entity operating in Indonesia and an Indonesian legal entity; (iii) mergers between a foreign business entity which does not operate in Indonesia and an Indonesian business entity; and (iv) other forms of merger involving foreign elements.

Foreign mergers are included when all the parties conduct business activities in the domestic market. Foreign mergers taking place beyond Indonesian jurisdiction are not subject to investigation, insofar as they do not bring any direct or individual control over an Indonesia business entity.

Do mergers need to be notified?

The Law and the Merger Regulation establishes a system of both voluntary consultation (pre-merger notification) and mandatory post-merger notification.

According to the Merger Regulation, the merging parties must notify the KPPU on any merger that meet the following conditions:

- combined asset value of the merged business actors exceeding IDR 2.5 trillion (IDR 20 trillion for banking institutions); and/or
- combined sales value of the merged business actors exceeding IDR 5 trillion.

The notification must be made no later than 30 (thirty) working days after the merger is legally effective.

The mandatory post-merger notification is not applicable to mergers between affiliated business actors.

Any merging business actors that meet the threshold (above) can ask for a voluntary consultation (or in other jurisdiction define as voluntary pre-merger notification) to the KPPU. The result of a consultation should be made within 90 (ninety) working days after the submitted proposal is completed. However, it shall be noted that an opinion from a consultation does not prevent the KPPU from assessing the merger after it has been implemented. Further explanation on the consultation process is described by KPPU Regulation No. 11 Year 2010 regarding Consultation of Merger.

Are there any filing fees?

There are no filing fees.

Are there sanctions for not notifying?

As mentioned above, the Merger Regulation stipulates that any failure to notify (late notification) means an administrative fine can be imposed amounting to IDR 1 billion per day, with maximum fine of IDR 25 billion. Further explanation on the fines for delay is describe by KPPU Regulation No. 4 Year 2012 on Guideline on Imposing Fines to Delay in Merger Notification.

How long does it take for approval?

According to the Merger Regulation, merger assessment by the KPPU should be made within 90 (ninety) working days after the submitted notification document is completed. If the KPPU finds the existence of a competition violation due to the merger, the KPPU can

continue the process using the applicable case handling procedure stipulated by KPPU Regulation No. 1 Year 2010 regarding Case Handling Procedures.

Is there any obligation to suspend the transaction pending the outcome of the assessment (standstill clause)?

There is no standstill obligation.

Which mergers are prohibited?

According to the Merger Regulation, the prohibited merger is a merger that results in monopolistic practices and or unfair business competition. In assessing whether the merger will lead to monopolistic practices and or unfair business competition, the KPPU will analyze a number of factors, including market concentration, entry barriers, potential anti competitive practices, business efficiency, and or likely bankruptcy.

For example, market concentration is mainly assessed on the basis of the Herfindahl-Hirschman Index (HHI). If not applicable, then the KPPU can use other tools such the Concentration Ratio (CR) or any other measures of market concentration. Two spectrums are use for the HHI, namely Spectrum I (HHI under 1,800) for a low market concentration, and Spectrum II (HHI over 1,800) for high market concentration.

It is important to note that market concentration is only the first step in the analysis conducted by the KPPU in assessing a merger.

What happens if prohibited mergers are implemented?

If it was being implemented, then the KPPU will enter the investigation process as defined by KPPU Regulation No. 1 Year 2010 regarding Case Handling Procedures, as the violation of Article 28 or 29 of the Law.

Can mergers be exempted/authorized?

Mandatory post-merger notification between affiliated business actors may be exempted from the application of the Merger Regulation.

Procedures

Investigations

How does an investigation start?

Investigations are regulated by Chapter VII of the Law and by the Procedural Regulations. KPPU can start an investigation on its own motion or following a complaint. Any person having knowledge or a reasonable suspicion of infringements of the Law, or suffering losses as a result thereof, may file a complaint to the KPPU.

What are the procedural steps and how long does the investigation take?

The KPPU conducts a preliminary examination and determines, within 30 days, whether or not a follow-up examination is needed. The follow-up examination must be completed within 60 days, which may be extended by not more than 30 days. The KPPU must determine whether or not an infringement occurred within 30 days from the conclusion of the follow-up examination.

What are the investigation powers of the KPPU?

The KPPU has the power to:

- Conduct investigations and hearings on allegations of cases of monopolistic practices and/or unfair business competition;
- Summon business actors suspected of having infringed the Law or witnesses, expert witnesses, or any person deemed to have knowledge of violations of the Law;
- Seek the assistance of investigators to invite the above-mentioned persons;
- Require business actors and other parties to submit evidence;
- Request statements from Government institutions;
- Obtain, examine and/or evaluate letters, documents or other evidence for investigations and/or hearings.

What are the rights and safeguards of the parties?

The KPPU is bound by the duty of confidentiality in respect of all information classified as company secrets, as well as all information provided by complainants and reporting parties.

Is there any leniency programme?

The Law does not provide for a leniency programme. However, currently discussions are being held on whether a leniency programme should be introduced as part of the reform.

Is it possible to obtain any informal guidance?

Interested parties can contact the Legal, Public Relations, and Cooperation Bureau for any inquiries through the official e-mail address at infokom@kppu.go.id or International Cooperation Division at international@kppu.go.id. Guidance on mergers may be obtained from the Merger Directorate at merger@kppu.go.id.

Adjudication

What are the final decisions?

According to Article 43(3) of the Law, at the end of the examination, the KPPU decides whether or not the Law has been violated.

What are the sanctions?

According to Article 47 of the Law, the KPPU may impose sanctions in the form of administrative measures against business actors violating the provisions of the Law. Sanctions include:

- Declarations that anti-competitive agreements be null and void;
- Orders to stop vertical integration, monopolistic practises, unfair business competition, misuse of dominant position;
- Declarations that mergers or consolidation of business entities or acquisition of shares are null and void;
- Stipulation of compensation payments;
- Fines between IDR 1 billion and IDR 25 billion. According to Article 48 of the Law, basic criminal sanctions may be imposed by the courts: the most serious infringements are subject to a fine between IDR 25 billion and IDR 100 billion or to imprisonment up to six months. Other infringements are subject to a fine of between IDR 5 billion and IDR 25 billion or to imprisonment up to five months, Procedural infringements (refusal to provide required evidence, or to provide information, or impeding the investigation) are subject to a fine between IDR 1 billion and IDR 5 billion or to imprisonment up to 3 months.

According to Article 49 of the Law, additional criminal sanctions may be imposed, in the form of:

- Revocation of business licenses;
- Prohibition of holding the positions of director or commissioner for a period between two and five years;
- Orders to stop certain activities or actions producing damages to other parties.
- Criminal sanctions are imposed by the courts on the basis of Indonesian criminal law.

Judicial review

Can the enforcement authority's decisions be appealed?

According to Article 44 of the Law, business actors may appeal KPPU's decisions before the District Court no later than 14 days after receiving notification of the decision. District Courts' decisions can be appealed to the Supreme Court of the Republic of Indonesia within 14 days.

Private enforcement

Are private actions for damages available?

Not available.

Exclusions

Is there any exclusion from the application of the Law?

According to Article 5 (2) of the Law, price fixing agreements in the context of joint ventures or expressly prescribed by law are excluded from the application of the Law.

According to Article 50 of the Law, the following are excluded from the provisions of the Law:

(a) Actions and or agreements intended to implement applicable laws and regulations;

(b) Agreements related to intellectual property rights, such as licenses, patents, trademarks, copyright, industrial product design, integrated electronic circuits and trade secrets, as well as agreements related to franchise;

(c) Agreements for the stipulations of technical standards of goods or services which do not inhibit, and/or impede, competition;

(d) Agency agreements which do not stipulate the re-supply of goods or services at a price lower than the contracted price;

(e) Cooperation agreements in the field of research for the upgrading or improvement of the living standard of society at large;

(f) International agreements ratified by the Government of the Republic of Indonesia;

(g) Export-oriented agreements or actions not disrupting domestic needs and/or supplies;

(h) Business actors of small scale, according to the provisions of Law No. 20 of 2008 on micro, small and medium enterprises.

(i) Activities of cooperatives aimed specifically at serving their members.

In addition, Article 51 specifies that “monopoly and concentration of activities related to the production and or marketing of goods and or services affecting the livelihood of society at large and branches of production of a strategic nature for the state shall be stipulated in a law and shall be implemented by State-Owned Enterprises and or institution formed or appointed by the Government”.

Enforcement Practices

Please refer to the Annex I - Case Studies.

LAO PDR

Legislation and Jurisdiction

The Law

What is the relevant legislation?

The main legislation is the Competition Law (hereinafter, "the Law") that was signed in 2015 and came into force in 2016.

To whom does it apply?

The Law applies to domestic and foreign individuals, legal entities and organizations with business presence in Lao PDR.

Which practices does it cover?

The Law prohibits "**unfair competition**", which is defined as a business operation of one or two or a group(s) of enterprises involving in any practice of the following practices:

(a) Misleading conduct, an act that provides consumers with misleading information about goods or services;

(b) Violation of business secrets, in order to take advantage of other business operators;

(c) Coercion in business operation, in which business operator directly or indirectly coerces other operators to do or not to do something in favor of his/her interest;

(d) Defamation of other business operators, by directly or indirectly disclosing and providing false information that negatively affects their business operation;

(e) Imposing obstacles to business operation, by directly or indirectly creating difficulties for other business operators in operating businesses such as the access to finance, raw materials, information and technology;

(f) False advertisement, which discloses incorrect, distorted or over-stated information regarding production, characteristics, quality of goods and services which negatively affect interests of other business operators and consumers;

(g) Unfair sales promotion, which is a deceptive advertisement or any kind of acts that persuade the consumers to buy more goods and services through any means;

(h) Discrimination by business association, by unfairly refusing admission to or withdrawal from the Business Association, as well as unequal treatment to its members, in order to gain benefit from competition.

The Law also prohibits "**restraint of competition**", which is defined as the business operation of one or two or a group(s) of enterprises aimed to reduce, distort and/or prevent competition through any types of operation as stipulated below:

(a) Agreement aimed at restraint of competition;

(b) Abuse of dominant market position and market monopoly; and

(c) Combination aimed at restraint of competition.

Are there proposals for reform?

The Division on Competition under the Ministry of Industry and Commerce has been established. The Lao Competition Committee (LCC) will be established.

The Authorities

Who is the enforcement authority?

Article 48 of the Law provides for the establishment of the **Lao Competition Committee (LCC)** as the non-standing committee/commission that performs in accordance with the laws and regulations, acts as advisor to the Government.

Are there any sector-specific regulatory authorities (RAs) with competition enforcement powers?

Sector-specific authorities have powers to regulate their respective sector and issue (or request the Prime Minister to issue) notices to address disruptive behaviors. These might include, though there is no precedent in this respect, anti-competitive behaviors.

Informal guidance can be requested at the authority concerned:

Ministry of Industry and Commerce:
www.moic.gov.la +856 21 412015;

Ministry of Posts and Telecommunications:
www.mpt.gov.la +856 21 219858;

Ministry of Public Works and Transport:
www.mpwt.gov.la +856 21 412255;

Ministry of Energy and Mining:
www.mem.gov.la +856 21 413000;

Ministry of Information, Culture and Tourism:
www.kplnet.net +85621 212412;

Ministry of Public Health:
www.moh.gov.la +856 21 214000;

Ministry of Science and Technology:
+85621 213470.

Anti-Competitive Practices

Agreements

Which agreements are prohibited?

Article 20 of the Law prohibits agreement among business operators that is aimed at restraining competition by reducing, distorting or impeding the business competition, such as:

(a) Fixing the price of goods and services;
(b) Fixing the market share and allocating market;
(c) Fixing the quantity of production;
(d) Restraining the development of technology and quality of goods and services;
(e) Imposing conditions/terms on purchasing and selling of goods and services;
(f) Preventing other business operators from entering market;/impeding market access of other business operators
(g) Driving other business operators out of the market;
(h) Bid rigging;
(i) Other practices as stipulated in the relevant laws and regulations.

Which agreements may be exempted?

According to Article 45 of the Law, the agreement aimed at restraint of competition can be considered for an exemption by the Competition Committee on a case by case basis, if such agreement provides benefits in promoting the advance of technologies and techniques, improves the quality of goods and services and strengthens the competitiveness of small and medium enterprises.

Monopoly, dominant posit ion and other unilateral conducts

Is monopoly or dominant position regulated?

The Law regulates a monopoly or a dominant position under the Section 2 of the Law.

What is a dominant or a monopoly position?

Article 30 of the Law defines a "**market monopoly**" as "the business operation of one or a group of enterprises as only seller of goods and services in the relevant market." and "**dominant market position**" as "the business operation of one or two or a group of enterprises which has the market share over the threshold defined periodically by the Competition Committee."

When are monopoly and dominant positions prohibited?

Conduct which leads to a monopoly (including dominance) is prohibited. Article 31 of the Law prohibits practices of abuse of dominant market position and market monopoly are as follows:

(a) Unfairly fixing the prices of purchasing and selling of goods and services;
(b) Selling goods and services at below production costs and selling goods with poor quality;
(c) Refusing to sell goods and services to customers;
(d) Imposing the terms/conditions of tied selling-buying of goods and services;

(e) Offering/Imposing the different prices or terms/ conditions of purchasing and selling the same kind of goods and services;

(f) Other practices as stipulated in the relevant laws and regulations.

Can abuse of dominant position or monopoly be exempted?

The Law regulates a monopoly or a dominant position under the Section 2 of the Law According to Article 46 of the Law, the Government, on a case-by-case basis, may exempt any of the above acts if those practices are contributing to the national socio-economic development or due to national strategy and security reasons, however, the exempted enterprises shall comply with the following Government's Administration and Regulations:

1. Management of the prices of goods and services;
2. Management of the quantity, market scope of goods or service;
3. Management of the production plans and the distribution of goods or services.

Merger control

What is a merger?

The Law defines a **merger** as "an act whereby two or more enterprises agree to transfer all of their legitimate assets, rights, obligations and interests to become either the existing enterprises or a new enterprise". While **acquisition** of enterprise refers to an act whereby an enterprise agrees to buy a part or all of assets of other enterprise to be under its ownership and administration.

Both of the above conducts are considered as "combination", an agreement among business operators in the forms of merger, acquisition or transfer of the enterprises, and a joint venture.

Are foreign-to-foreign mergers included?

Yes. The Law applies to domestic and foreign individuals, legal entities and organizations with business presence in Lao PDR.

Do mergers need to be notified?

Article 39 of the Law does provide an obligation to notify a proposed merger. All required documents for the combination of large enterprises should be submitted to the Competition Committee for consideration.

As for the small and medium enterprises, the submission of documents thereof shall be exempted, but their combinations shall be notified to the Competition Commission.

Which mergers are prohibited?

Article 38 of the Law prohibits mergers or acquisitions aimed at restraining competition that results in the following consequences:

(a) Holding the market share in the relevant market over the threshold defined by the Competition Committee;

(b) Restraining market access and the development of technology;

(c) Creating a negative impact on consumers, other business operators and the national socio-economic development.

What happens if prohibited mergers are implemented?

The Law does not establish specific sanctions for implementing prohibited mergers.

Can mergers be exempted/authorized?

Under Article 47 of the Law, mergers and acquisitions may be exempted for the following:

- One or two or more enterprises involving in the combination aimed at restraint of competition is under the circumstance of bankruptcy;
- The combination shall contribute to the growth of exports or foster the technological and technical development

Procedure

Investigations

Investigation or inspection of competition violation may be based on the following grounds:

1. Receiving the report or complaint from any individual, legal entity, or organization relating to the competition violation;
2. Receiving the confession from the violator[s];
3. Finding out a clue/trace of the violation such as data and evidence relating to the unfair competition and the restraint of competition.

Further, the inspection procedure shall be proceeded as follows:

1. Gathering preliminary information;
2. Issuing an inspection order;
3. Interrogating;
4. Searching, seizing or sequestering materials or documents;
5. Applying preventative measures;
6. Summarizing and reporting on findings of the inspection.

Adjudication

What are the final decisions?

After receiving the summarizing and reporting on findings of the inspection regarding the competition violation, the LCC shall take actions as follows:

1. Issuing an order to apply the administrative measure;
2. Issuing an order to conduct additional inspection;
3. Compiling criminal referral;
4. Issuing the Decision to cease the settlement.

What are the sanctions?

Individuals, legal entities or organizations violating the Law on Competition shall be educated, warned, disciplined, fined for the damages resulted from the violation of competition law.

Sanctions for violation of any of the offence under the Law are the following:

- Fines;
- Civil measures;
- Criminal measures;
- Additional penalty measures.

Judicial review

Can the enforcement authorities' decisions be appealed?

There are no provisions in this respect in the Law.

Private enforcement

Are private actions for damages available?

There are no specific provisions in the Law related to private actions for damages from anti-competitive behaviors.

MALAYSIA

Legislation and Jurisdiction

The Law

What is the relevant legislation?

The **Competition Act 2010** came into force on 1st January 2012 and introduces a comprehensive set of competition rules. It is accompanied by the **Competition Commission Act 2010**, which establishes the Competition Commission as the authority in charge of competition enforcement.

The Competition Act 2010 does not apply to any commercial activity regulated under four legislations specified in the First Schedule that concerns four other sector regulators i.e., the Malaysian Communications and Multimedia Commission (MCMC), the Energy Commission (ST) and the Malaysian Aviation Commission (MAVCOM). The said legislations are as follows:

i. Communications and Multimedia Act 1998;
ii. Energy Commission Act 2001;
iii. Petroleum Development Act 1974 and Petroleum Regulations 1974; and
iv. Malaysian Aviation Commission Act 2015.

These activities are subject to some competition related provisions, which can be found in the following acts:

- Part VI, Chapter 2, of the **Communications and Multimedia Act 1998**. The MCMC has issued the Guideline on Substantial Lessening of Competition (the "Guideline on Substantial Lessening of Competition ("SLC")) under section 134 of the Communications and Multimedia Act 1998 to define the meaning of "substantial lessening of competition" and the Guideline on Dominant Position on a Communications Market (the "Guideline on Dominant Position") under section 138 of the Communications and Multimedia Act 1998 to clarify how it will apply the test of "dominant position" to a licensee;
- The Energy Commission Act 2001, the Electricity Supply Act 1990 and the Gas Supply (Amendment) Act 2016 are the "energy supply laws" that govern the electricity and downstream pipeline gas supply sectors in Malaysia. The Energy Commission (ST) which was established in 2001, apply these energy supply laws in regulating both respective sectors in the aspects of economic, technical and safety including competition in these sectors among others, electricity involving utilities and other licenced generators, transmission operators, distributors and suppliers, licensed gas importers, regasification terminal and gas transportation, distributors and users, qualified practitioners, contractors and the consuming public.
- On competition matters, **Energy Commission Act 2001** in Part III (paragraph 14(1)(h)) provides a wide function and power of the ST "to promote and safeguard competition and fair and efficient market conduct or, in the absence of a competitive market, to prevent misuse of monopoly or market power in respect of the generation, production, transmission, distribution and supply of electricity and the supply of gas through pipelines".
- Pursuant to the above and in specific reference to the regulation of competition in the electricity sector, **Electricity Supply Act 1990** in Part III (subsection 4(c)) provides for the function, duty and power of the ST to "promote competition in the generation and supply of electricity to, inter alia, ensure the optimum supply of electricity at reasonable prices."
- Similarly for competition in the downstream pipeline gas supply sector, **the Gas Supply Act 1993** in Part III (paragraph 4(1)(g)) provides the specific function and duty of the ST to "enable persons to compete effectively in the supply of gas through pipelines." The relevant Act was amended in 2016 and came into operation on 16.1.2017 whereby a new Part VIA on General Competition Practices was introduced.

The upstream petroleum activities in Malaysia are not applicable under the Competition Act 2010, which can be found in the following:

"3. Petroleum Development Act 1974 [Act 144] and the Petroleum Regulations 1974 [P.U. (A) 432/1974] in so far as the commercial activities regulated under these legislation are directly in connection with upstream operations comprising the activities of exploring, exploiting, winning and obtaining petroleum whether onshore or offshore of Malaysia."

- The MAVCOM Act 2015, which came into effect from 1 March 2016, establishes the Malaysian Aviation Commission (MAVCOM) as the economic regulator for the civil aviation industry. Part VII of the MAVCOM Act 2015 contains competition law provisions that govern the aviation services, which is defined under section 2 of the MAVCOM Act 2015 as including air transport services, ground handling services and aerodrome operation. The MAVCOM Act 2015 also empowers the MAVCOM as the competition authority for these aviation services.

To whom does it apply?

The Competition Act 2010 applies to "**enterprises**", defined as any entities carrying on commercial activities relating to goods or services, both within and outside Malaysia, provided that the commercial activity has an effect on competition in any market in Malaysia.

The Communications and Multimedia Act 1998 refers to any "conduct" in its broadest sense, which could encompass any commercial or other activities that are undertaken by a licensee in the relevant market, for example:

- entering into or giving effect to a contract with another party;
- Decisions on price setting;
- Decisions on the marketing of products or services;
- Decisions to supply or not supply products or services;
- Decisions on the quality of products or services offered; and
- A merger or acquisition (Guideline on SLC, para 2.6).

The energy supply laws govern the licensed electricity utilities and generators including the Independent Power Producers (IPPs), transmission and distribution licensees, licenced gas importers, regasification terminal, transportation, shippers, distributors, retailers and users, all of whom perform their respective licenced activities in accordance with the competition provisions of the energy supply laws as regulated by the ST.

All activities regulated under the Petroleum Development Act 1974 and Regulation that are directly in connection with upstream operations comprising the activities of exploring, exploiting, winning and obtaining petroleum whether onshore or offshore of Malaysia are excluded from the Competition Act 2010.

The definition of "aviation services" as per Section 2 of the MAVCOM Act 2015 is "any of the following services:

(a) The carriage passengers, mail or cargo for hire or reward by air or by the use of any aircraft between two or more places, of which at least one place is in Malaysia;

(b) The provision in Malaysia of any of the ground handling services as specified in the Second Schedule;

(c) The operation of an aerodrome in Malaysia for the take-off and landing of any aircraft engaged in the carriage of passengers, mail or cargo for hire or reward; or

(d) any other service determined by MAVCOM to be necessary or expedient for the carriage of passengers, mail or cargo referred to in paragraph (a), whether or not such service is provided by a licensee, permit holder or otherwise."

Part VII of the MAVCOM Act 2015 applies to any commercial activity, agreement or merger within and outside Malaysia which has an effect on competition in any aviation service market in Malaysia. The prohibitions under Part VII of the MAVCOM Act 2015 apply to enterprises. An "enterprise" is defined as any individual, body corporate, unincorporated body of persons or any other entity carrying on commercial activities relating to aviation services.

Which practices does it cover?

The Competition Act 2010 prohibits agreements which have the object or effect of significantly preventing, restricting or distorting competition, and the abuse of dominant position in any market for goods or services.

The Communications and Multimedia Act 1998 covers both concerted practices (agreements) and unilateral conduct with the purpose or effect of substantially lessening competition in the communications markets.

In accordance with the competition provisions under the energy supply laws, the ST promotes and safeguards competition and fair and efficient market conduct by persons governed under the laws as well as implementing numerous measures to prevent the misuse of monopoly or market power in the electricity and downstream pipeline gas supply markets. In addition, for the piped gas supply sector, the Gas Supply Act 1993 prohibits horizontal and vertical agreements having the object or effect of significantly preventing, restricting or distorting competition in the market. Also prohibited is any conduct by one or more persons which amounts to abuse of a dominant position in the market.

The MAVCOM Act 2015 prohibits agreements which have the object or effect of significantly preventing, restricting or distorting competition in any aviation service market, the abuse of dominant position in any aviation service market, and a merger or an anticipated merger that substantially lessens competition in any aviation service market.

Are there proposals for reform?

The Malaysia Competition Commission (MyCC) has recently proposed amendments to the Competition Act 2010.

As a relatively new law that came into effect from 1 March 2016, the MAVCOM Act 2015 will continue to be refined.

The Authorities

Who is the enforcement authority?

Pursuant to the Competition Commission Act 2010, the enforcement authority is the **Malaysia Competition Commission (MyCC)**. The MyCC became fully operational on 1st April 2011.

Under Section 16 of the Competition Commission Act 2010, the MyCC has both enforcement and implementation powers (e.g., through guidelines). It also has advisory powers towards the Minister and other public authorities (e.g., through recommendations), as well as advocacy functions, carries out general studies in relation to issues connected with competition in the Malaysian economy or particular sectors thereof, and collects and publishes information.

For the electricity supply and downstream pipeline gas supply ("energy supply sectors") and including competition under the energy supply laws, the ST is the enforcement authority

In relation to competition law, the MAVCOM is the enforcement authority for aviation services, which covers air transport services, ground handling services and aerodrome operation.

Are there any sector-specific regulatory authorities (RAs) with competition enforcement powers?

The **MCMC** is responsible for the enforcement of the competition-related provisions under the Communications and Multimedia Act 1998, while the ST is responsible for the enforcement of the competition-related provisions under the Energy Commission Act 2001, the Electricity Supply Act 1990 and the Gas Supply Act 1993.

The MAVCOM is the economic regulator as well as the competition enforcement authority for aviation services, which cover air transport services, ground handling services and aerodrome operation under the MAVCOM Act 2015.

Anticompetitive practices

Agreements

Which agreements are prohibited?

The Competition Act 2010 prohibits any horizontal or vertical agreement between enterprises, insofar as the agreement has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services. The term "agreement" is defined as "any form of contract, arrangement or understanding, whether or not legally enforceable, between enterprises, and includes a decision by an association and concerted practices".

In particular, the Competition Act 2010 prohibits horizontal agreements aimed at fixing prices or other

trading conditions; sharing markets or sources of supply; limiting or controlling production, market outlets or market access, technical or technological development, or investment; or bid rigging.

In the communications markets, the Communications and Multimedia Act 1998 contains a prohibition of the following practices:

- Any conduct by a licensee which has the purpose of substantially lessening competition in a communications market (Section 133 of the Communications and Multimedia Act 1998 and Guideline on SLC);
- Arrangements and practices, whether legally enforceable or not, which provide for rate fixing, market sharing, boycott of a supplier of apparatus, or boycott of another competitor (Section 135 of the Communications and Multimedia Act 1998); and
- Mandatory tying or linking arrangements regarding the provision or supply of products and services (Section 136 of the Communications and Multimedia Act 1998).

According to the Guideline on SLC (para 4.2), examples of conduct that the Commission considers to be more likely to have an adverse impact on competition in a communications market include predatory pricing, refusal to supply, margin squeeze, bundling, foreclosure strategies and mergers or acquisitions.

In the energy supply sectors, the competition provisions under the energy supply laws enable the ST to regulate the conduct of the parties governed under the laws, in-cluding agreements for the supply of electricity or gas through pipelines. In the electricity supply industry, the Electricity Supply Act 1990 requires that agreements for the supply of electricity must be approved by the Com-mission (sections 9E, 28B and 29).

For the piped gas supply sector, the amendment of the Gas Supply Act 1993 has come into operation from 16.1.2017 whereby a new Part VIA on General Competition Practices has been introduced. Section 28C prohibits horizontal and vertical agreements having the object of significantly preventing, restricting or distorting competition in the market.

Section 49 of the MAVCOM Act 2015 prohibits any agreement between enterprises, insofar as the agreement has the object or effect of significantly preventing, restricting or distorting competition in any aviation service market. The term “agreement” is defined as “any form of contract, arrangement or understanding, whether or not legally enforceable, between enterprises, and includes a horizontal agreement, a vertical agreement, an airline code sharing, alliance, partnership or joint venture agree-ment, a decision by an association and concerted practices”.

Certain horizontal agreements are deemed to have the object of significantly preventing, restricting, or distorting competition in an aviation service market. These are horizontal agreements, which have the object to fix prices or other trading conditions; share market or sources of supply; limit or control production, market outlets or market access, technical or technological development, or investment; or perform bid-rigging in connection with aviation services.

Which agreements may be exempted?

Agreements which are prohibited under the Competition Act 2010 can be exempted, provided that:

(a) There are significant identifiable technological, efficiency or social benefits directly arising from the agreement;

(b) The benefits could not reasonably have been provided by the parties to the agreement without the agreement having the effect of preventing, restricting or distorting competition;

(c) The detrimental effect of the agreement on competition is proportionate to the benefits provided; and

(d) The agreement does not allow the enterprises concerned to eliminate competition completely in respect of a substantial part of the goods and services.

More detailed information can be found in the **Guidelines on Chapter 1 Prohibition (Anti- competitive Agreements)**. This can be viewed at:

http://www.mycc.gov.my/sites/default/files/handbook/MYCC-4-Guidelines-Booklet-BOOK1-10-FA-copy_chapter-1-prohibition.pdf.

In the communications markets, under Section 140 of the Communications and Multimedia Act 1998 "any conduct which may be construed to have the purpose or the effect of substantially lessening competition in a communications market" can be authorized by the MCMC when this is in the national interest. This will normally require that the national interest in the conduct outweighs the possible negative effects (if any) of substantially lessening competition in a communications market. The MCMC can also authorize a conduct subject to undertakings.

In the energy supply sectors, the competition provisions under the energy supply laws enable the ST to regulate competition and the parties governed under the laws. For the piped gas supply sector, ST also has the power to grant individual and block exemptions from prohibited agreements by order published in the Gazette under sections 28E and 28F of Act 501.

In the aviation sectors, agreements which are prohibited under the MAVCOM Act 2015 may be exempted, provided that: (a) there are significant identifiable technological, efficiency or social benefits directly arising from the agreement; (b) the benefits could not reasonably have been provided by the parties to the agreement without the agreement having the effect of preventing, restricting or distorting competition; (c) the detrimental effect of the agreement on competition is proportionate to the benefits provided; and (d) the agreement does not allow the enterprises concerned to eliminate competition completely in respect of a substantial part of the aviation services. These grounds for relief of liability are provided under section 50 of the MAVCOM Act 2015.

Is there any formal notification requirement and to which authority should a notification be made?

An enterprise may apply for an individual exemption to the MyCC, which may grant an exemption if the abovementioned requirements are fulfilled. An exemption may be subject to conditions or obligations, or granted for a limited duration.

The MyCC may cancel the exemption, vary or remove any condition or obligation, or impose additional conditions or obligations in case of a material change of circumstances or a breach of an obligation. The exemption may also be cancelled when it is based on false or misleading information or any condition has been breached.

The MyCC may also, after public consultation, grant block exemptions for agreements falling within a particular category.

Neither the Communications and Multimedia Act 1998 nor the Energy Act 2001 set up any notification procedure for exemption from the competition provisions. However in the communications markets, according to Section 140(1) of the Communications and Multimedia Act 1998, a licensee may apply to the MCMC for authorization, "prior to engaging into any conduct which may be construed to have the purpose or the effect of substantially lessening competition in a communications market".

For the energy supply sectors, any notification may be issued in the formal process as practiced by Government bodies and agencies for example, through official circulars and notices. In addition, notification may also be made by the Ministers in accordance with the legal process under the energy supply laws i.e. by publication in the Gazette.

An enterprise carrying on commercial activities relating to aviation services may apply to the MAVCOM for an individual exemption under section 51 or a block exemption under section 52 of the MAVCOM Act 2015. An exemption may only be granted if all the requirements mentioned above are fulfilled. The MAVCOM will publish a summary of any exemption application as well as its proposed decision for the purpose of public consultation. An exemption may be subject to conditions or obligations, or granted for a limited duration.

Procedure and timeline

The Competition Act 2010 does not specify the procedural steps and timeline for an exemption. Exemption application procedures and form are available on the MyCC's website at www.mycc.gov.my.

In the energy supply sectors, the procedures and timeline, wherever applicable, may be included in the formal notification to be issued.

For aviation services, upon receiving a complete exemption application, the MAVCOM will publish a summary of such application to solicit feedback from the public. The MAVCOM will proceed to consider information provided by the applicant and any public feedback, as well as carry out its own analysis of the application, in order to determine whether an exemption should be granted. The MAVCOM will publish its draft decision for public consultation before such decision is finalised. In the event that an exemption is granted, an exemption order will be published in the Gazette. The timeline for the consideration of an exemption application would be determined on a case-by-case basis, depending on factors such as the complexity of each case and the completeness of information provided by the enterprise.

Monopoly and dominant position

Is monopoly or dominant position regulated?

The Competition Act 2010 prohibits an enterprise 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.

Both the Communications and Multimedia Act 1998 and the energy supply laws prohibit specific unilateral conduct by enterprises in a position of monopoly or dominant position in those sectors.

Section 53 of the MAVCOM Act 2015 prohibits an enterprise from engaging, whether independently or collectively, in any conduct which amounts to an abuse of a dominant position in any aviation service market.

What is a dominant or a monopoly position?

The Competition Act 2010 defines a dominant position as "a situation in which one or more enterprises possess such significant power in a market to adjust prices or outputs or trading terms, without effective constraint from competitors or potential competitors".

In the communications markets, according to the Guideline on Dominant Position (para 4.2) "A licensee will be in a dominant position if it is not subject to effective competitive constraints in a communications market and has the ability to exercise substantial market power in that market." Further it is elaborated that "A licensee will have substantial market power and therefore possess the ability to act to a significant extent independently of competitors and customers if it is capable of substantially increasing prices, either by directly increasing prices or decreasing output, above the competitive level for a significant period of time." (para 4.3, Guideline on Dominant Position).

In the energy supply sectors, the energy supply laws regulate monopoly or market power and the ST implements measures to prevent to prevent any misuse or abuse of dominant position or monopoly.

In the aviation sectors, section 47 of the MAVCOM Act 2015 defines a dominant position as "a situation in which one or more enterprises possess such significant power in an aviation service market to adjust prices or outputs or trading terms, without effective constraint from competitors or potential competitors".

When are monopoly and dominant positions prohibited?

Under the Competition Act 2010, dominance will only be prohibited if there is abuse. According to Section 10(2) of the Competition Act 2010, an abuse of a dominant position includes, but is not limited to, the following conducts:

(a) Directly or indirectly imposing unfair purchase or selling price or other unfair trading condition on any supplier or customer;

(b) Limiting or controlling production, market outlets or market access, technical or technological development, or investment, to the prejudice of consumers;

(c) Refusing to supply to a particular enterprise or group or category of enterprises;

(d) Applying different conditions to equivalent transactions with other trading parties to an extent that may (i) discourage new market entry or expansion or investment by an existing competitor; (ii) force from the market or otherwise seriously damage an existing competitor which is no less efficient than the enterprise in a dominant position; or (iii) harm competition in any market in which

the dominant enterprise is participating or in any upstream or downstream market;

(e) Making the conclusion of contract subject to acceptance by other parties of supplementary conditions which by their nature or according to commercial usage have no connection with the subject matter of the contract;

(f) Predatory behaviour towards competitors; or

(g) Buying up a scarce supply of intermediate goods or resources required by a competitor, in circumstances where the enterprise in a dominant position does not have a reasonable commercial justification for buying up the intermediate goods or resources to meet its own needs.

In the communications markets, the Communications and Multimedia Act 1998 contains a prohibition of the following practices:

- Any conduct by any licensee which has the purpose of substantially lessening competition in a communications market (Section 133 of the Communications and Multimedia Act 1998 and Guideline on SLC);
- Understandings, agreements or arrangements which provides for rate fixing, market sharing, boycott of a supplier or competitor (Section 135 of the Communications and Multimedia Act 1998); and
- Mandatory tying or linking arrangements regarding the provision or supply of products and services (Section 136 of the Communications and Multimedia Act 1998).

According to the Guideline on SLC (para 4.2), examples of conduct that the Commission considers to be more likely to have an adverse impact on competition in a communications market include predatory pricing, refusal to supply, margin squeeze, bundling, foreclosure strategies and mergers or acquisitions.

According to Section 139, the MCMC may direct a licensee in a dominant position in a communications market to cease a conduct in that communications market which has, or may have, the effect of substantially lessening competition in any communications market, and to implement appropriate remedies.

In the energy markets, the energy supply laws provide for the prevention of misuse of monopoly or market power in respect of the generation, production, transmission, distribution and supply of electricity and the supply of gas through pipelines and the ST implements the necessary measures, for example licensing requirements, to regulate the competition matters and the parties governed.

For the aviation services, The MAVCOM Act 2015 prohibits an abuse of a dominant position in any aviation service market.

Can abuse of dominant or monopoly position be exempted?

According to Section 10(3) of the Competition Act 2010, Section 10 "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".

More detailed information can be found in the **Guidelines on Chapter 2 Prohibition (Abuse of Dominant Position)**. This can be viewed at:

http://www.mycc.gov.my/sites/default/files/handbook/MYCC%204%20Guidelines%20Booklet%20BOOK2-6%20FA%20copy.pdf.

In the communications markets, under Section 140, "any conduct which may be construed to have the purpose or the effect of substantially lessening competition in a communications market" can be authorised by the MCMC when this is in the national interest. This will normally require that the national interest in the conduct outweighs the possible negative effects (if any) of substantially lessening competition in a communications market. The MCMC can also authorize a conduct subject to conditions.

In the electricity supply industry, the Electricity Supply Act 1990 empowers the Minister to exempt any installation, plant or equipment from the provisions of the Act or regulation made under the Act.

For the piped gas supply sector, Part VIA of Gas Supply Act 1993 does not provide any exemption in the case

of abuse of dominant position. A general provision in Section 42 of Act 501 empowers the Minister to exempt any person or class of person form being licensed under the Act.

For aviation services, the MAVCOM Act 2015 does not provide for any exemption application process for an abuse of dominant position in an aviation service market.

Merger control

There is no merger control regulation under the Competition Act 2010.

Merger control for enterprises providing aviation services is provided under Division 4, Part VII of the MAVCOM Act 2015. Section 54 of the MAVCOM Act 2015 prohibits mergers that have resulted, or may be expected to result, in a substantial lessening of competition in any aviation service market. Sections 55 and 56 provide for a voluntary notification regime where a party to an anticipated merger or a merger may notify and apply to MAVCOM for a decision on whether the anticipated merger or a merger infringes section 54 of the MAVCOM Act 2015. Parties to an anticipated merger or a merger shall carry out their own assessment to determine whether notification may be appropriate, and may wish to seek legal advice if necessary.

An anticipated merger or a merger that was not notified to MAVCOM that raises competition concerns under the MAVCOM Act 2015 carries risks to the merger parties. MAVCOM may investigate an anticipated merger or a merger where there is a reason to suspect that the anticipated merger or merger would infringe section 54 of the MAVCOM Act 2015. Upon a determination by MAVCOM that an anticipated merger or merger infringes the prohibition under section 54 of the MAVCOM Act 2015, MAVCOM may require the merger to be dissolved or modified, and/or impose financial penalties to the merger parties.

Procedure

Investigations

The Competition Act 2010 provides the MyCC with powers to investigate any infringement in accordance to the rules and procedures under Part III of the same Act.

Enforcement in the communications markets follows the rules and procedures of the Communications and Multimedia Act 1998. As for the energy supply sectors, the Electricity Supply Act 1990 and the Gas Supply Act 1993 provide the ST with investigative powers and procedures in respect of accidents, offences, information gathering and any non-compliance or contravention of these Acts and the Regulations made thereunder.

How does an investigation start?

Under the Competition Act 2010, an investigation can start on the MyCC's initiative, on the direction of the Minister or following a complaint.

The complaint shall specify the person against whom it is made and details of the alleged infringement or offence under the Act (Section 15(2) of the Competition Act 2010). If the MyCC decides not to investigate a complaint, it shall inform the complainant and state reasons for the decision (Section 16(2) of the Competition Act 2010).

More detailed information can be found in the **Guidelines on Complaints Procedures**. This can be viewed at:

http://www.mycc.gov.my/sites/default/files/handbook/MYCC-4-Guidelines-Booklet-BOOK3-6-FA-copy_complaint-procedures.pdf.

In the communications markets, the Malaysian Communications and Multimedia Commission is empowered to start an investigation upon its own initiative, following a complaint, or if directed by the Minister (Sections 68 and 69 of the Communications and Multimedia Act 1998).

A complainant must identify the person against whom the complaint is made.

The MCMC will inform the respondent that the matter is being investigated at the beginning of the investigative phase (Section 70 of the Communications and Multimedia Act 1998). During the preliminary and investigating phases, the MCMC may ask further information from all related parties.

In the energy supply sectors, there are provisions on the conduct of investigation by the ST through their authorized officers which also covers competition-related matters under the energy supply laws. For the Electricity Supply Act 199**0**, Part III sections 4A until 8 provide for such powers and procedures of investigation and in the case of the Gas Supply Act 1993, similar provisions are contained in Part IV sections 4A until 9.

Lastly, Part III paragraph 14(1)(o) of the Energy Commission Act 2001 [Act 610] grants the Energy Commission the power to carry on all such activities as may appear necessary, advantageous or convenient for the purpose of carrying out or in connection with the performance of its functions.

What are the procedural steps and how long does the investigation take?

During the investigation, the MyCC may give directions to prevent serious and irreparable damage, economic or otherwise, or for protecting the interests of the public, when it has reasonable grounds to believe that any prohibition under the Act has been infringed or is likely to be infringed (Section 35 of the Competition Act 2010).

Upon completion of investigation, when it considers that one of the prohibitions under the Competition Act 2010 has been infringed, the MyCC shall give written notice of its proposed decision to the enterprise(s) that may be directly affected by the decision (Section 36).

The enterprise(s) concerned may submit written representations and/or ask for oral representations, in which case an oral hearing will take place (Section 37).

The Competition Act 2010 does not introduce further detailed rules on procedural steps and timing. The MyCC may decide to introduce procedural rules in the future.

In the communications markets, there are three stages: preliminary phase (up to 30 days); investigation phase (up to 90 days, and further 90 days if it involves the assessment of a dominant position); decision-making phase (up to 30 days).

For the energy supply sectors, the provisions on investigation powers and procedures under the Electricity Supply Act 1990 and the Gas Supply Act 1993 do not limit the process and period of investigation and any further action to be taken by the Energy Commission.

In the aviation sectors, the MAVCOM Act 2015 provides that pending the completion of an investigation, the Commission may direct interim measures to be taken to prevent serious and irreparable damage to a particular person or category of persons, or to protect public interest. The Act also requires that the MAVCOM publish reasons for its decision in the event that the MAVCOM determines that there is an infringement of a prohibition under Part VII of the Act. Other details of the procedures are not prescribed in the MAVCOMAct 2015 and will be provided in the guidelines published by the MAVCOM. The time length for each investigation would depend on the complexity of the case.

What are the investigation powers?

The Competition Act 2010 confers extensive investigation powers on the MyCC.

In general, the Commission officer investigating any offence under the Act "shall have all or any of the powers of a police officer in relation to police investigation in sizable cases as provided for under the Criminal Procedure Code" (Section 17(2)).

In particular, the MyCC has the power to require information (Section 18), take and retain documents (Section 19), access records and other material (Section 20), including computerized data (Section 27). The MyCC can also, under the warrant of a Magistrate, enter and search premises and seize relevant material (Section 25). These activities can be conducted without a warrant when, due to the time needed for search warrant, the investigation would be adversely affected or when evidence is likely to be tampered with, removed, damaged or destroyed (Section 26).

In the communications markets, the investigation powers of the MCMC are outlined in Part V, Chapters 4 and 5 and Part X, Chapter 3 of the Communications and Multimedia Act 1998. Under Section 246 of the Communications and Multimedia Act 1998, the Malaysian Communications and Multimedia Commission may investigate "the activities of a licensee or other person material" to ensure compliance with the Communications and Multimedia Act 1998 or its subsidiary legislation.

In the energy supply sectors, the investigation powers and procedures of the Energy Commission are specified under Part III, Sections 4A – 6 and 8 of the Electricity Supply Act 1990 **[Act 447]** and Part IV, Sections 4A to 9 of the Gas Supply Act 1993. The ST has the general power to investigate any accident, misconduct, non-compliance and commission of offences and infringements under the said Acts and Regulations made under the Acts.

For aviation services, the investigation powers of the MAVCOM are provided in Part XII of the MAVCOM Act 2015, which includes the power to investigate, the power to require information, the power to conduct inspection and the power to make compliance order.

What are the rights and safeguards of the parties?

The Competition Act 2010 guarantees, in particular, confidentiality (Section 21) and privileged communication between a professional legal adviser and his client (Section 22).

In the communications markets, as there are no specific provisions on the rights and safeguards of the parties in competition-related investigations, it is advisable to refer to the provisions on investigatory powers and limits of the respective authorities' officials, outlined in Part X, Chapter 3 of the Communications and Multimedia Act 1998.

In the energy supply sectors, the rights of any party are safeguarded under the general provisions of the energy supply laws. The powers and procedures of investigation, prosecution of offences in court and the determination of disputes by the ST under the energy supply laws are to be performed strictly and in accordance with the requirements of the laws and in good faith. In this respect, section 37 of the Energy Commission Act 2001 specifies that "The Public Authorities Protection Act 1948 **[Act 198]** shall apply to any action, suit, prosecution or proceedings against the Commission or a member of the Commission, a member of a committee, and an officer or agent of the Commission in respect of any act, neglect or default done or committed by him in good faith or any omission omitted by him in good faith, in such capacity."

For the piped gas supply sector, section 37A of Gas Supply Act 1993 extends the Public Authorities Protection Act 1948 to the Commission, Chairman, Chief Executive Officer, member, officer, servant, agent of the Commission, President, member, Secretary, officer, servant or agent of the Gas Competition Appeal Tribunal in respect of any act, neglect or default done or committed or any omission by it or him in good faith, in such capacity.

For investigations relating to aviation services, the MAVCOM Act 2015 guarantees the right of a person to make written representations before the Commission direct any interim measures. The MAVCOM Act 2015 also provides that any person who is affected by a decision shall be notified by the Commission.

Section 62 of the MAVCOM Act 2015 also provides for the power of the MAVCOM to accept undertaking from an enterprise to do or refrain from doing anything as the Commission considers appropriate.

Is there any leniency programme?

Section 41 of the Competition Act 2010 introduces a leniency regime.

A reduction of up to a maximum of one hundred percent of the applicable penalty applies to any enterprise which has admitted its involvement in an anti-competitive agreement under Section 4(2) and provided information or other form of co-operation to the MyCC. Different percentages of reductions apply depending on (a) whether the enterprise was the first person to bring the suspected infringement to the attention of the MyCC; (b) the stage in the investigation at which an involvement in the infringement was admitted or any information or other co-operation was provided; or (c) any other appropriate circumstance.

More detailed information can be found in the **Guidelines on Leniency Regime**. This can be viewed at http://www.mycc.gov.my/sites/default/files/handbook/MyCC_Guideline-on-Leniency-Regime.pdf.

In the energy supply sector, the energy supply laws provide for compounding of offences i.e. payment of up to 50% of the maximum fine with the result that the offender will not be prosecuted further in court if the compound is awarded. For electricity supply under the Electricity Supply Act 1990, the compounding provisions of Part IX section 43 allows the ST with the written consent of the Public Prosecutor to compound offences, as prescribed by the Minister.

In the piped gas supply sector, section 34 of Gas Supply Act 1993 allows the Chief Executive Officer of the Commission with the written consent of the Public Prosecutor to compound offences as prescribed by the Minister.

Section 34 gives power to the Minister to prescribe by order in the Gazette, any offence pertaining to the supply of gas through pipelines in the Act or any regulation made thereunder as an offence, which may be compounded. Pursuant to this, the Gas Supply (Compoundable Offences) Order 2006 [P.U.(A)320] allows for the compounding of all offences except offences relating to investigation, inquiry and obstruction or giving false information to an authorized officer of the ST (sections 5(4), 29(5) and 30(3) respectively).

In the specific area of competition in the piped gas supply sector, section 28 O of Gas Supply Act 1993 provides for a leniency regime with a reduction of up to 100% of any penalties where any person, including a licensee admits involvement in an infringement of any prohibition under subsection 28C(2) and had provided information or cooperation to the Commission which significantly assisted the investigation.

Section 60 of the MAVCOM Act 2015 provides for a leniency regime with a reduction of maximum one hundred percent of any penalties that would otherwise have been imposed. The leniency regime is available to any enterprise which has admitted its involvement in an infringement of any prohibition under subsection 49(2) of the MAVCOM Act 2015 and provided information or other form of co-operation to the MAVCOM which significantly assisted, or is likely to significantly assist, in the identification or investigation of any finding of an infringement of any prohibition by any other enterprises.

Is it possible to obtain any informal guidance?

For further enquiries please refer to the Guidelines and Publications on the Competition Act 2010 which can be obtained at www.mycc.gov.my or contact:

Malaysia Competition Commission (MyCC) Level 15, Menara SSM@Sentral,
No. 7 Jalan Stesen Sentral 5, KL Sentral,
59623 Kuala Lumpur, Malaysia
+603 22732277
+603 2272 1692
enquiries@mycc.gov.my
www.mycc.gov.my

Specific guidance on the application of the Communications and Multimedia Act 1998 can be obtained at the following contacts:

Malaysian Communications and Multimedia Commission (MCMC), Competition & Access Department Market Regulation Division
63000 Cyberjaya, Malaysia
+ 603 8688 8000
+ 603 8688 1001
Aduan_SKMM@cmc.gov.my
www.skmm.gov.my

The relevant Unit and Department in the Energy Commission can be contacted as follows:

Energy Commission(ST),
Legal Unit Energy Management
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The MAVCOM Act 2015 does not provide for any informal guidance process. Enterprises are advised to seek legal advice and carry out self-assessment exercises based on the MAVCOM 2015 and guidelines published by

MAVCOM to determine the appropriate course of action in terms of competition law compliance. However, any enquiries relating to competition law for the aviation services sector can be made via email to competition@mavcom.my.

Adjudication

What are the final decisions?

Under the Competition Act 2010, further to the investigation the Competition Commission may take:

(a) A decision that there is no infringement under the Act, in which case the Commission shall give notice of the decision to any person affected by the decision, stating the reason for the decision (Section 39);

(b) A decision finding an infringement under the Act and requiring that the infringement be ceased immediately. The decision may specify the appropriate steps which are required for bringing the infringement to an end, and may impose a financial penalty or give any other appropriate direction; the Commission shall state the reasons for the decision (Section 40).

Under Section 43, the Competition Commission may also, subject to possible conditions, accept undertakings to do or refrain from doing anything, as the Commission considers appropriate, in which case the Commission shall close the investigation without making any finding of infringement and shall not impose a penalty.

In the communications markets, under Section 139 of the Communications and Multimedia Act 1998, the MCMC may direct a licensee with a dominant position in a communications market to cease a conduct which has, or may have, the effect of substantially lessening competition. The MCMC may also seek interim or interlocutory injunctions under Section 142 or seek the imposition of fines under Section 143, against a licensee engaging in any conduct prohibited under Section 133. The offence is prosecuted by the Public Prosecutor in the Sessions Court.

In the energy supply sectors the ST may make use of the general powers of determining disputes, holding enquiries and investigation and prosecution of offences in accordance with the energy supply laws. For electricity supply, the Electricity Supply Act 1990 provides for such powers in sections 30, 34, 5 to 7 and 42 respectively. Under the Gas Supply Act 1993, similar provisions are found under sections 29, 5 to 8 and 9 respectively.

For aviation services, the MAVCOM may make a finding of infringement or non-infringement at the end of an investigation. In the event of a finding of infringement, the MAVCOM shall require that the infringement be ceased immediately. The MAVCOM may also impose a financial penalty, specify steps which are required to be taken by the infringing enterprise to bring the infringement to an end, or give any other directions as the Commission deems appropriate.

What are the sanctions?

Under Section 40 of the Competition Act 2010, the MyCC may impose a financial penalty not exceeding ten percent of the worldwide turnover of an enterprise over the period during which an infringement occurred, or give any other appropriate direction.

Specific provisions on general penalties, compounding of offences and offences by body corporate are established under Sections 61 to 63.

In the communications markets, under Section 143, a person who contravenes any of the prohibitions under the Act shall be liable to a fine not exceeding five hundred thousand MYR and/or to imprisonment for a term not exceeding five years and shall also be liable to a further fine of one thousand MYR for every day or part of a day during which the offence is continued after conviction.

In the energy supply sectors, there are provisions on the sanctions applicable to include anti-competitive conduct or abuse of dominant position or monopoly, especially by licensees. Under the Electricity Supply Act 1990, Part IX subsections 37(6) and (7) provides for the offence by a licensee of carrying out activities outside the area of supply and the offence of non-compliance with licence conditions for which the punishments are provided i.e. RM 5,000.00 fine and RM 10,000.00 fine respectively. These offences are non-compoundable.

For the offence of obstruction and refusal to give information under section 8, the punishment is a fine not exceeding RM 5,000.00 or imprisonment for a term not exceeding 3 years or both.

Under the Gas Supply Act 1993, Part VIII subsections 30(2) and (4) provides for the compoundable offence by a licensee of carrying out activities outside the area of supply and the offence of non-compliance with licence conditions for which the punishments are provided i.e. a fine not exceeding RM 1,000.00 continuing fine for each day the offence continues after conviction.

Where any prohibition of anti-competitive agreement or abuse of dominant position is infringed, ST may commence investigations and further proceedings to decide on the matter after a hearing. In event of deciding there had been an infringement, ST may impose a financial penalty not exceeding 10% of worldwide turnover, in the case of a person carrying on a business, or RM500,000.00, in the case of any other person. (section s 28J – 28N).

Judicial review

Can the enforcement authorities' decisions be appealed?

Section 44 of the Competition Act 2010 establishes a Competition Appeal Tribunal (CAT), which shall have exclusive jurisdiction to review any decision made by the MyCC under Sections 35 (interim measures), 39 (finding of non-infringement) and 40 (finding of an infringement).

Under Section 53 of the Act, pending the de cision of an appeal by the Competition Appeal Tribunal, a decision of the MyCC is enforceable, except where a stay of decision has been granted by the Competition Appeal Tribunal.

Under Section 58(2) of the Act, the CAT may confirm or set aside the appealed decision, or any part of it, and may: (a) remit the matter to the Commission; (b) impose or revoke, or vary the amount of, a financial penalty; (c) give such direction, or take such other step as the Commission could itself have given or taken; or (d) make any other decision which the Commission could itself have made. A decision of the Competition Appeal Tribunal is final.

In the communications markets, according to Section 18 of the Communications and Multimedia Act 1998, the Appeal Tribunal, established by the Ministry, may review any decision or direction (but not a determination) of the MCMC. Under Section 18 (2) of the Act, any decision by the Appeal Tribunal is final and binding on the parties to the appeal and it is not subject to further appeal.

In the energy supply sectors, the energy supply laws provide for appeals to the Minister from the decisions of the ST. Under the Electricity Supply Act 1990, the relevant provisions are in Part VIII subsection 34(2) where any person aggrieved by a decision of the Commission "may apply to the Minister for a re-consideration of the matter in dispute."

Under the Gas Supply Act 1993 similar provisions are found under Part VII subsection 29(8). In addition, for competition in the piped gas supply sector, Chapter 6 of Act 501 comprising of sections 28R – 28AD provide for the appeal of decisions of ST by the Gas Competition Appeal Tribunal (GCAT).

For aviation services, any decision made by the MAVCOM under Part VII of the MAVCOM Act 2015 may be appealed by a person or body aggrieved by such decision to the High Court within the period of three months beginning from the date on which the decision was communicated to him.

In the event of a finding of an infringement by the MAVCOM, any person affected by the decision may apply to the Minister for the applicable commercial activity, agreement, merger or anticipated merger to be exempted from the prohibition on the ground of any public interest consideration.

Private enforcement

Are private actions for damages available?

Under Section 64 of the Competition Act 2010, 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 civil action for damages against any enterprise which is, or which has been, party to the infringement. The action may be brought regardless of whether the applicant dealt directly or indirectly with the enterprise.

In the energy supply sectors, the licensees which supply electricity or gas, as the case may be, hold a monopoly in their respective sectors. As such they cannot cease or reduce the supply of electricity or gas to customers except in the circumstances as provided under the laws since the customers have no other source of supply.

Under the Electricity Supply Act 1990, Part IV subsection 17(3) allows for a claim for damage to person or property where "the damage or cessation is shown to have resulted from negligence on the part of persons employed by the licensee, his agents or servants, as the case may be, or from his faulty construction of the installation."

Under the Gas Supply Act 1993, Part VI subsection 20(4) allows for a claim for "damage to any person or property for any cessation or reduction of the supply of gas which is shown to have resulted from negligence on the part of persons employed by the retail licensee, his agents or servants, as the case may be, or from his faulty construction of the piping system." In addition, section 28AE of Act 501 enables any person who suffers loss or damage directly as a result of an infringement of any prohibition of anti-competitive agreement of abuse of dominant position to have the right of action for relief in civil proceedings in court against any person, including a licensee which was a party to the infringement.

For aviation services, any person who suffers loss or damage directly as a result of an infringement of any prohibition under Part VII of the MAVCOM Act 2015 shall have a right of action for relief in civil proceedings in a court against any enterprise which is or has been a party to such infringement.

Exclusions

Is there any exclusion from the application of the Law?

According to the Second Schedule of the Competition Act 2010, the above prohibitions do not apply to the following instances:

(a) An agreement or conduct to the extent to which it is engaged in an order to comply with a legislative requirement;

(b) Collective bargaining activities or collective agreements in respect of employment terms and conditions and which are negotiated or concluded between parties, which include both employers and employees or organisations established to represent the interests of employers or employees;

(c) An enterprise entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly in so far as the prohibitions would obstruct the performance, in law or in fact, of the particular tasks assigned to that enterprise.

The Communications and Multimedia Act 1998 do not provide for specific exclusions.

For the energy supply sectors, this matter has already been covered under the exemptions as aforementioned.

Part VII of the MAVCOM Act 2015 does not apply to any commercial activity, agreement or merger specified in the Third Schedule of the Act.

MYANMAR

Legislation and Jurisdiction

The Law

What is the relevant legislation?

Myanmar enacted the **Competition Law 2015**, which came into force on 24 February 2017. The law consists of thirteen chapters covering all business practices, including trade and services. The objectives of the Competition Law 2015 of Myanmar are:

- To protect and prevent acts that injure of public interests through monopolization or manipulation of prices by any individual or group;
- To be able to control unfair market competition;
- To be able to prevent from abuse of dominant market power; and
- To be able to control the restrictive agreements and arrangements among businesses.

The promotion of fair competition is even stipulated in the constitution in Myanmar. The **Constitution (2008)**, at Article 36b, provides that Myanmar shall "protect and prevent acts that injure public interests through monopolization or manipulation of prices by an individual or group with intent to endanger fair competition in economic activities".

Furthermore, under section 27 of the **Contract Act** of 1872, "any agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind is to that extent void". The prohibition does not apply to noncompete agreements in the framework of the sale of goodwill to a competing business, within reasonable limits.

To whom does it apply?

The provisions of the Competition Law 2015 apply to "**business**/**es**" and specifically, "**businessman**", meaning the person who carries out any business or service business. In this expression, an organization that operates business or service is also included.

Which practices does it cover?

The Competition Law 2015 of Myanmar covers two following broad categories of anti-competitive practices:

- **Act of restraint on competition,** means the act which reduces or hinders the business competition in the market such as, agreements of restraints on competition, taking chance on the abuse of dominant market positions, and monopolization by any individual or group;
- **Unfair competition**, means practices by businesses which cause or may cause damage to interests of the State / legitimate rights and interests of other businesses / consumers.

Are there proposals for reform?

There are no proposals for reform at the date of publication.

The Authorities

Who is the enforcement authority?

Pursuant to the Myanmar Competition Law 2015, the **Myanmar Competition Commission** will be formed as the enforcement authority. Presently, Competition Policy Division of Ministry of Commerce is preparing to form the Myanmar Competition Commission.

Anticompetitive practices

Agreements

Which agreements are prohibited?

Chapter VII of the Myanmar Competition Law 2015 stipulates that: "Making agreement on restraint on competition in the market" is considered as one of the "acts of restraint on competition". The latter means constraining or hampering of competition of economic activities in the market.

Which agreements may be exempted?

The Myanmar Competition Commission may exempt the prohibited agreement that restraints competition if the said agreement intends to lessen the expense of consumers with any of the following matters:

(a) Reforming formation and type of any business to improve the capability of business;

(b) Upgrading of technology and technology level in order to improve the quality of goods and services;

(c) Ensuring to be uniform development of technological standards and quality level of different products;

(d) Ensuring to be uniform in the matters of carrying out business, distribution of goods and payment not concerned with price or facts related to price;

(e) Ensuring to raise competitiveness of small and medium enterprises;

(f) Ensuring to raise competitiveness of Myanmar businesses in the international market.

Is there any formal notification requirement and to which authority should a notification be made?

There are no notification requirements.

Monopoly and dominant position

Is monopoly or dominant position regulated?

No specific definition for the term "monopoly" in the Myanmar Competition Law 2015. However, Chapter VIII of the Law prescribes the restricted acts, which may lead to a monopoly in the market, specifically:

(a) Controlling purchase price or selling price of goods or fees of services;

(b) Restraining services or production or restricting of opportunities in purchase and sale of goods or specifying compulsory terms and conditions directly or indirectly for other businessmen, for the purpose of price controlling;

(c) Suspending or reducing or restraining services, production, purchasing, distribution, transfer or import without any appropriate reasons or destroying or causing damage the goods to reduce the quality in order to lessen under the demand;

(d) Controlling and restraining the area where goods or services are traded in order not to enter other businessmen into the market and to control market share;

(e) Interfering in carrying out business of other person without fairness.

When are monopoly and dominant positions prohibited?

In Myanmar Competition Law 2015, there is no definite market share or positions for prohibited monopoly and dominant positions. But, Chapter V of the Law prescribes the powers and duties of the Commission as follows;

Specifying and determining market share, supply, amount of capital, number of share and magnitude of owned property relating to business which is assumed as monopolization by the Commission;

(a) Directing to a business or a group of businesses to reduce the specified magnitude of market share if the ownership of market share of such business or group of businesses exceeds or is assumed by the Commission to be exceeding, the stipulated magnitude that can cause detriment to competition in the market;

(b) prohibiting by issuing notification of restriction on market share and sale promotion of any businessman who might monopolize assumed by the Commission.

This means Myanmar Competition Commission will specify the share and amount for prohibited monopoly and dominant positions.

Can abuses of monopoly or dominant position be exempted?

The Myanmar Competition Law 2015 merely restricts any acts by businesses which may lead to monopoly due to control of the prices, restricting provisions of services or production of goods or distribution which may establish condition to be followed by others in the market; delay or scale-down, without a cause provisions of services or distribution of goods.

Merger control

Merger control regime in Myanmar applies to mergers, acquisitions, joint-ventures, or any other means of

"**collaboration among businesses**", which may cause market dominance with the following situations prescribed under the Chapter X, Section 31 of the Law:

(a) Collaboration intends to raise extremely the dominance over market within a certain period;

(b) Collaboration intends to decrease competition for acquiring the market, which is a sole or minority of businesses.

What is a merger?

No specific definition for "merger" in the Myanmar Competition Law 2015.

Are foreign-to-foreign mergers included?

The Law does not make a distinction between local-to-local, local-to-foreign, or foreign-to foreign mergers. Therefore, it can be assumed that even a foreign-to-foreign merger that has an appreciable adverse effect on competition in Myanmar, or results in an act that affects or causes the interests of the State and the benefits of interests, such as other businesses or consumers, would fall under the prohibitions imposed under the Law.

Do mergers need to be notified?

Notification is not stipulated.

Are there any filing fees?

No rules have been finalized as yet.

Which mergers are prohibited?

Prohibited mergers are those that are inconsistent with or violate the Myanmar Competition Law 2015 as stipulated under Section 31 of the Law, and those combined market share of business collaboration that exceed the market share specified by the Commission.

What happens if prohibited mergers are implemented?

Prohibited mergers will be punished with imprisonment for a term not exceeding two years or with fine not exceeding Kyat one hundred lakhs or with both.

THE PHILIPPINES

Legislation and Jurisdiction

The Law

What is the relevant legislation?

After languishing in Congress for almost two decades, the Philippines enacted into law the Philippine Competition Act ("Act") in 2015 as the primary competition law in the country. Apart from the Act, the Philippines adopts a sectoral and holistic approach to competition policy and law enforcement with over 30 industry-specific and consumer welfare laws, addressing competition-related practices. Among others, these include:

1. The 1987 Constitution;
2. The Act to Prohibit Monopolies and Combinations in Restraint of Trade (Act No. 3247);
3. The Revised Penal Code (Act No. 3815), as amended;
4. The New Civil Code (Republic Act No. 386);
5. Amending the Law Prescribing the Duties and Qualifications of Legal Staff in the Office of the Secretary of Justice (Republic Act No. 4152); and
6. Executive Order No. 45, series of 2011, Designating the DOJ as the Competition Authority.

To whom does it apply?

The Act shall apply to **any person** or **entity** engaged in any trade, industry and commerce in the Republic of the Philippines. It shall likewise be applicable to international trade having direct, substantial, and reasonably foreseeable effects in trade, industry, or commerce in the Republic of the Philippines, including those that result from acts done outside the Republic of the Philippines.

Which practices does it cover?

The Philippine Competition Act covers the following anti-competitive practices:

(a) Anti-competitive agreements;

(b) Abuse of dominant position;

(c) Anti-competitive mergers and acquisitions.

Are there proposals for reform?

There are no proposals for reform as of the date of publication.

The Authorities

Who is the enforcement authority?

The Philippine Competition Act established the Philippine Competition Commission (hereinafter referred to as the "PCC" or "Commission") as the country's competition authority to implement the national competition policy and attain the objectives and purposes of the Act. As an independent quasi-judicial body, it shall be an attached agency to the Office of the President for administrative purposes.

Upon establishment of the Commission, Executive Order No. 45, series of 2011, designating the Department of Justice as the Competition Authority is repealed in so far as it is inconsistent with the Act. The Office for Competition ("OFC") under the Office of the Secretary of Justice shall, however, be retained, with its powers and functions modified pursuant to the Act.

Pursuant to the Act, powers and functions of the PCC are the following:

- Conduct inquiry, investigate, and hear and decide on cases involving any violation of this Act and other existing competition laws *motu proprio* or upon receipt of a verified complaint from an interested party or upon referral by the concerned regulatory agency, and institute the appropriate civil or criminal proceedings;
- Review proposed mergers and acquisitions, determine thresholds for notification, determine the requirements and procedures for notification, and upon exercise of its powers to review, prohibit mergers and acquisitions that will substantially prevent, restrict, or lessen competition in the relevant market;
- Monitor and undertake consultation with stakeholders and affected agencies for the purpose of understanding market behavior;
- Upon finding, based on substantial evidence, that an entity has entered into an anti-competitive

agreement or has abused its dominant position after due notice and hearing, stop or redress the same, by applying remedies, such as, but not limited to, issuance of injunctions, requirement of divestment, and disgorgement of excess profits under such reasonable parameters;

- Conduct administrative proceedings, impose sanctions, fines or penalties for any noncompliance with or breach of this Act and its implementing rules and regulations (IRR) and punish for contempt;
- Issue subpoena *duces tecum* and subpoena *ad testificandum* to require the production of books, records, or other documents or data which relate to any matter relevant to the investigation and personal appearance before the Commission, summon witnesses, administer oaths, and issue interim orders such as show cause orders and cease and desist orders after due notice and hearing in accordance with the rules and regulations;
- Upon order of the court, undertake inspections of business premises and other offices, land and vehicles, as used by the entity, where it reasonably suspects that relevant books, tax records, or other documents which relate to any matter relevant to the investigation are kept, in order to prevent the removal, concealment, tampering with, or destruction of the books, records, or other documents;
- Issue adjustment or divestiture orders including orders for corporate reorganization or divestment in the manner and under such terms and conditions as may be prescribed in the rules and regulations;
- Deputize any and all enforcement agencies of the government or enlist the aid and support of any private institution, corporation, entity or association, in the implementation of its powers and functions;
- Monitor compliance by the person or entities concerned with the cease and desist order or consent judgment;
- Issue advisory opinions and guidelines on competition matters for the effective enforcement of this Act and submit annual and special reports to Congress, including proposed legislation for the regulation of commerce, trade, or industry;
- Monitor and analyze the practice of competition in markets that affect the Philippine economy; implement and oversee measures to promote transparency and accountability; and ensure that prohibitions and requirements of competition laws are adhered to;
- Conduct, publish, and disseminate studies and reports on anti-competitive conduct and agreements to inform and guide the industry and consumers;
- Intervene or participate in administrative and regulatory proceedings requiring consideration of the provisions of this Act that are initiated by government agencies such as the Securities and Exchange Commission, the Energy Regulatory Commission and the National Telecommunications Commission;
- Assist the National Economic and Development Authority, in consultation with relevant agencies and sectors, in the preparation and formulation of a national competition policy;
- Act as the official representative of the Philippine government in international competition matters;
- Promote capacity building and the sharing of best practices with other competition-related bodies;
- Advocate pro-competitive policies of the government; and
- Charging reasonable fees to defray the administrative cost of the services.

Aside from the PCC, the OFC, which is under the Department of Justice is also responsible for the enforcement of the Act by conducting preliminary investigation and undertaking prosecution of all criminal offenses arising under the Philippine Competition Act and other competition-related laws. The OFC shall be reorganized and allocated resources as may be required therefor to effectively pursue such mandate.

Are there any sector-specific regulatory authorities with competition enforcement powers?

Yes. Enforcement of competition-related laws/ statutes and regulation or monitoring of unfair trade practices and anti-competitive behavior is vested in different government agencies as mandated by several laws, some of which are the following:

1. Downstream Oil Industry Deregulation Act - Department of Energy (DOE);

2. Electric Power Industry Reform Act – Energy Regulatory Commission (ERC);
3. Public Telecommunications Policy Act - National Telecommunications Commission (NTC);
4. Revised Charter of the Philippine Ports Authority - Philippine Ports Authority (PPA)
5. Domestic Shipping Development Act - Maritime Industry Authority (MARINA);
6. Consumer Act and Price Act - Department of Trade and Industry (DTI);
7. Tariff and Customs Code of the Philippines - Tariff Commission (TC);
8. Securities Regulation Code, Corporation Code and Revised Securities Act - Securities and Exchange Commission (SEC);
9. Civil Aeronautics Act - Civil Aeronautics Board (CAB);
10. New Central Bank Act - Bangko Sentral ng Pilipinas (BSP);
11. Insurance Code - Insurance Commission (IC); and
12. National Food Authority Act - National Food Authority (NFA).

Anti-competitive practices

Agreements

Which agreements are prohibited?

Chapter III, Section 14, of the Act enumerates three types of anti-competitive agreements:

(a) The following agreements, between or among competitors, are ***per se* prohibited**:

- Restricting competition as to price, or components thereof, or other terms of trade;
- Fixing price at an auction or in any form of bidding including cover bidding, bid suppression, bid rotation and market allocation and other analogous practices of bid manipulation

(b) The following agreements, between or among competitors which have the object or effect of substantially preventing, restricting or lessening competition **shall be prohibited**:

- Setting, limiting, or controlling production, markets, technical development, or investment;
- Dividing or sharing the market, whether by volume of sales or purchases, territory, type of goods or services, buyers or sellers or any other means

(c) Agreements other than those specified in (a) and (b) which have the object or effect of substantially preventing, restricting or lessening competition shall also be prohibited.

Which agreements may be exempted?

Agreements that contribute to improving the production or distribution of goods and services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, may not necessarily be deemed a violation of the Act.

Is there any formal notification requirement and to which authority should a notification be made?

Apart from mandatory notification requirements for mergers and acquisitions reaching the threshold value, as discussed below, there are no other notification requirements required under the Act.

Monopoly and dominant position

Is monopoly or dominant position regulated?

Chapter III, Section 15, of the Act prohibits one or more entities to abuse their dominant position by engaging in any of the following conduct that would substantially prevent, restrict or lessen competition:

(a) Selling goods or services below cost with the object of driving competition out of the relevant market. In the Commission's evaluation, it shall consider whether the entity/ies have no such object and the price established was in good faith to meet or compete with the lower price of a competitor in the same market selling the same or comparable product or service of like quality;

(b) Imposing barriers to entry or committing acts that prevent competitors from growing within the market in an anti-competitive manner except those that develop in the market as a result of or arising from a superior product or process, business acumen, or legal rights or laws;

(c) Making a transaction subject to acceptance by the other parties of other obligations, which, by their nature or according to commercial usage, have no connection with the transaction;

(d) Setting prices or other terms or conditions that discriminate unreasonably between customers or sellers of the same goods or services, where such customers or sellers are contemporaneously trading on similar terms and conditions, where the effect may be to lessen competition substantially;

(e) Imposing restrictions on the lease or contract for sale or trade of goods or services concerning where, to whom, or in what forms goods or services may be sold or traded, such as fixing prices, giving preferential discounts or rebate upon such price, or imposing conditions not to deal with competing entities, where the object or effect of the restrictions is to prevent, restrict or lessen competition substantially;

(f) Making supply of particular goods or services dependent upon the purchase of other goods or services from the supplier which have no direct connection with the main goods or services to be supplied;

(g) Directly or indirectly imposing unfairly low purchase prices for the goods or services of, among others, marginalized agricultural producers, fisherfolk, micro and small-medium scale enterprises, and other marginalized service providers and producers;

(h) Directly or indirectly imposing unfair purchase or selling price on their competitors, customers, suppliers or consumers, provided that prices that develop in the market as a result of or due to a superior product or process, business acumen or legal rights or laws shall not be considered unfair prices; and

(i) Limiting production, markets or technical development to the prejudice of consumers, provided that limitations that develop in the market as a result of or due to a superior product or process, business acumen or legal rights or laws shall not be a violation of the Act.

What is a monopoly or a dominant position?

According to the Act, *dominant position* refers to a position of economic strength that an entity or entities hold which makes it capable of controlling the relevant market independently from any or a combination of the following: competitors, customers, suppliers, or consumers.

It must also be noted that jurisprudence defines a monopoly as a privilege or peculiar advantage vested in one or more persons or companies, consisting in the exclusive right (or power) to carry on a particular business or trade, manufacture a particular article, or control the sale of a particular commodity".

When are monopoly and dominant positions prohibited?

Under Section 15 of the Act, it is provided that nothing in the Act shall be construed or interpreted as a prohibition on having a dominant position in a relevant market or on acquiring, maintaining and increasing market share through legitimate means that do not substantially prevent, restrict or lessen competition. Meaning that, the monopoly or dominant position is only prohibited when it is acquired through illegitimate means.

Further, the Act provides that any conduct which contributes to improving production or distribution of goods or services within the relevant market, or promoting technical and economic progress while allowing consumers a fair share of the resulting benefit may not necessarily be considered an abuse of dominant position. Thus, any act which positively contributes to the economic progress and consumer interest may be considered as an extenuating circumstance in determining whether the conduct amounts to an abuse of dominant position.

The constitutional basis of these provisions is found under Article XII, Section 19 of the Philippine Constitution, which provides that the government shall prohibit specific monopolies, based on the public interest. Moreover, the Supreme Court has made it clear that "monopolies

are not *per se* prohibited by the Constitution but may be permitted to exist to aid the government in carrying on an enterprise or to aid in the performance of various services and functions in the interest of the public".

Can abuses of monopoly or dominant position be exempted?

To reiterate, the Philippine Competition Act stipulates that monopoly or dominant position is not prohibited *per se*, provided that the same does not engage in anti-competitive conduct.

Other unilateral practices

Other competition-related laws and regulations enforced by other sectoral regulators also provide for several prohibited unilateral practices regarding the pricing. Specifically, Section 5 of the Price Act prohibits the following acts:

- *Hoarding*, which is defined as "the undue accumulation by a person or combination of persons of any basic commodity beyond his or their normal inventory levels or the unreasonable limitation or refusal to dispose of, sell or distribute the stocks of any basic necessity of prime commodity to the general public or the unjustified taking out of any basic necessity or prime commodity from the channels of reproduction, trade, commerce and industry;" and
- *Profiteering*, which is defined as "the sale or offering for sale of any basic necessity or prime commodity at a price grossly in excess of its true worth."

Further, Section 11 of the Downstream Oil Industry Deregulation Act prohibits *predatory pricing*, defined as "selling or offering to sell any oil product at a price below the seller's or offeror's average variable cost for the purpose of destroying competition, eliminating a competitor or discouraging a potential competitor from entering the market." However, pricing below average variable cost in order to match the lower price of a competitor and not for the purpose of destroying competition is not deemed to be predatory pricing.

Under the Act, the conduct of setting prices is tantamount to an abuse of dominant position, which discriminates unreasonably between customers or sellers, where the effect may be to lessen competition substantially. By way of guidance, the Act provides the following factors to be considered as permissible price differentials:

(1) Socialized pricing for the less fortunate sector of the economy;

(2) Price differential, which reasonably or approximately reflect differences in the cost of manufacture, sale, or delivery resulting from differing methods, technical conditions, or quantities in which the goods or services are sold or delivered to the buyers or sellers;

(3) Price differential or terms of sale offered in response to the competitive price of payments, services or changes in the facilities furnished by a competitor; and

(4) Price changes in response to changing market conditions, marketability of goods or services, or volume.

Merger control

The Philippine Competition Act adopts a mandatory merger control regime by prohibiting merger or acquisition agreements that substantially prevent, restrict or lessen competition in the relevant market or in the market for goods or services.

The Mergers and Acquisitions Office ("MAO") of the PCC is responsible for the review and investigation of mergers and acquisitions notified to the PCC.

What are mergers and acquisitions?

Under the Act, "**merger**" is defined as the joining of two (2) or more entities into an existing entity or to form a new entity.

On the other hand, "**acquisition**" refers to the purchase or transfer of securities or assets, through contract or other means, for the purpose of obtaining control, by:

- One (1) entity of the whole or part of another;
- Two (2) or more entities over another; or
- One (1) or more entities over one (1) or more entities.

Acquisition through "other means" includes, among others, acquisition of an entity through a subsidiary or affiliate of the acquiring entity.

Which mergers are prohibited?

Prohibited mergers and acquisitions are those agreements that substantially prevent, restrict or lessen competition in the relevant market or in the market for goods or services as may be determined by the Commission.

Are foreign-to-foreign mergers included?

Yes. As defined in the Act, an "entity" refers to any person, natural or juridical, sole proprietorship, partnership, combination or association in any form, whether incorporated or not, **domestic or foreign**, including those owned or controlled by the government, engaged directly or indirectly in any economic activity.

Do mergers need to be notified?

The Philippine Competition Act imposes a **compulsory notification** for the parties to the merger or acquisition agreement wherein the value of the transaction exceeds one billion pesos (P1,000,000,000.00).

Further, the PCC shall promulgate other criteria, such as increased market share in the relevant market in excess of minimum thresholds that may be applied specifically to a sector, or across some or all sectors, in determining whether parties to a merger or acquisition shall notify the transaction to the PCC.

Are there any filing fees?

Yes. The PCC's filing fees are provided for under Memorandum Circular No. 17-002 2017. These fees consist of payments received by PCC for notification and review of proposed mergers and acquisitions, as follows:

1. Notification Filing and Phase 1 Review: Php 250,000.00;
2. Phase II Review: 1% of the 1% of the value of the transaction, which shall not be less than Php 1,000,000.00 or exceed Php 5,000,000.00.

These fees have to be paid within 10 days from receipt of an Order of Payment from the PCC.

How long does it take for approval or exemption?

It takes 30 days. The relevant parties are prohibited from consummating their agreement until 30 days after providing notification to the Commission in the form and containing the information specified in the regulations issued by the Commission, which shall have the power to review mergers and acquisitions based on factors deemed relevant.

Should the Commission deem it necessary, it may request further information from the parties to the agreement before the expiration of the 30-day period. The issuance of such a request has the effect of extending the period within which the agreement may not be consummated for an additional 60 days. However, in no case shall the total period for review by the Commission of the subject agreement exceed 90 days from initial notification by the parties.

When the above periods have expired and no decision has been promulgated for whatever reason, the merger or acquisition shall be deemed approved and the parties may proceed to implement or consummate it.

What happens if prohibited mergers are implemented? Are there sanctions for not notifying?

In the absence of a notification to the Commission, the agreement pertaining to merger shall be considered void, as if no merger took place. The concerned parties may also be held liable for violating the Act and will be subjected to an administrative fine of one percent (1%) to five percent (5%) of the value of the transaction.

Which mergers may be exempted?

Merger or acquisition agreement prohibited may, nonetheless, be exempt from prohibition by the Commission when the parties establish either of the following:

(a) The concentration has brought about or is likely to bring about gains in efficiencies that are greater than the effects of any limitation on competition that result or likely to result from the merger or acquisition agreement; or

(b) A party to the merger or acquisition agreement is faced with actual or imminent financial failure, and the agreement represents the least anti-competitive arrangement among the known alternative uses for the failing entity's assets.

Procedure

Investigations

How does an investigation start?

The PCC, by virtue of the Philippine Competition Act, *motu proprio*, or upon the filing of a verified complaint by an interested party or upon referral by a regulatory agency, shall have the sole and exclusive authority to initiate and conduct a fact-finding or preliminary inquiry for the enforcement of the Act based on reasonable grounds.

Unless regulated, no other law enforcement agency shall conduct any kind of fact-finding, inquiry or investigation into any competition-related matters.

What are the procedural steps and how long does the investigation take?

The PCC as competition authority shall undertake preliminary inquiry for fact-finding purposes. After considering the information gathered in the course of the fact-finding or preliminary inquiry, the Commission shall terminate the same by:

(a) Issuing a resolution ordering its closure if no violation or infringement is found; or

(b) Issuing a resolution to proceed, on the basis of reasonable grounds, to the conduct of a full administrative investigation.

After due notice and hearing, and on the basis of facts and evidence presented, the Commission may issue an order for the temporary cessation or desistance from the performance of certain acts by the respondent entity.

If the evidence so warrants, the Commission may file before the DOJ criminal complaints for violations of the Act or relevant laws for preliminary investigation and prosecution before the proper court in accordance with the Revised Rules of Criminal Procedure.

The preliminary inquiry shall, in all cases, be completed by the Commission within 90 days from submission of the verified complaint, referral, or date of initiation by the Commission, *motu proprio*, of the same.

What are the investigation powers?

The PCC has the power to Investigate and enforce orders and resolutions, which are conducting inquiries by administering oaths, issuing *subpoena duces tecum* and summoning witnesses, and commissioning consultants or experts. The PCC can enforce its orders and carry out its resolutions by making use of any available means, provisional or otherwise, under existing laws and procedures including the power to punish for contempt and to impose fines.

Meanwhile, the OFC has the authority to request for information addressed in writing to the respondent or any person or entity which may have information relevant to the case, indicating the legal basis and the purpose of the request as well as the sanctions for supplying incorrect information as provided by law. It may require the submission of additional documents from the complainant.

Subject to the necessary processes, including the issuance of search warrants by the court, the OFC may enter premises and inspect any pertinent document and/or record pursuant to the purpose of the investigation and secure certified true copies of any document necessary for the conduct of the investigation.

As allowed by law, the OFC shall sanction any act committed by the respondent under investigation or by any of its directors, officers, employees or agents that is intended to or shall prevent, impede or obstruct the exercise by the investigator/s of the foregoing authority.

On the other hand, the preliminary investigation power of the public prosecutor refers to a determination whether probable cause exists to hold the respondent for trial for criminal violations. Each sector regulator, in the exercise of its administrative powers, has its own process for conducting investigations.

What are the rights and safeguards of the parties?

The Act guarantees the confidentiality of information submitted by entities or parties. Confidential business information shall not be disclosed, published, transferred, copied or disseminated. Apart from the Act, parties also have the right to due process, both procedural and substantive, as guaranteed by the Constitution. The rights and safeguards of the parties in civil and criminal procedures are provided for in the Rules of Court, Revised Penal Code, as amended, and the New Civil Code.

Is there any leniency programme?

The Act provides for a leniency programme to be granted to any entity in the form of immunity from suit or reduction of any fine which would otherwise be imposed on a participant in an anti-competitive agreement in exchange for the voluntary disclosure of information regarding such an agreement which satisfies specific criteria prior to or during the fact-finding or preliminary inquiry stage of the case.

Immunity from suit will be granted to an entity reporting illegal anti-competitive activity before a fact-finding or preliminary inquiry has begun if the following conditions are met:

(a) At the time the entity comes forward, the Commission has not received information about the activity from any other source;

(b) Upon the entity's discovery of illegal activity, it took prompt and effective action to terminate its participation therein;

(c) The entity reports the wrongdoing with candor and completeness and provides full, continuing, and complete cooperation throughout the investigation; and

(d) The entity did not coerce another party to participate in the activity and clearly was not the leader in, or the originator of, the activity.

Even after the Commission has received information about the illegal activity after a fact-finding or preliminary inquiry has commenced, the reporting entity will be granted leniency, provided preceding conditions (b) and (c) and the following additional requirements are complied with:

(1) The entity is the first to come forward and qualify for leniency;

(2) At the time the entity comes forward, the Commission does not have evidence against the entity that is likely to result in a sustainable conviction; and

(3) The Commission determines that granting leniency would not be unfair to others.

Such program shall include the immunity from any suit or charge of affected parties and third parties, exemption, waiver, or gradation of fines and/or penalties giving precedence to the entity submitting such evidence. An entity cooperating or furnishing information, document or data to the Commission in connection to an investigation being conducted shall not be subjected to any form of reprisal or discrimination.

The DOJ-OFC may likewise grant leniency or immunity as provided in this section in the event that there is already a preliminary investigation pending before it.

Is it possible to obtain any informal guidance?

Yes. For mergers and acquisitions, the PCC's MAO often conducts pre-notification consultations if requested by any party to a potentially notifiable transaction. The PCC has likewise published several publications such as Handbook for the General Public, Guide for Business, and Merger Review Guidelines. The Guidelines are adapted from regional and international practices, tailored to apply to the Philippine commercial and legal practices and made consistent with the Act and its implementing rules and regulations. For any queries, the PCC can be contacted at:

queries@phcc.gov.ph

On the other hand, the OFC, in accordance with the implementing guidelines of Executive Order No. 45, series of 2011, may issue advisory opinion/s to provide guidance to businesses, industry associations, consumers and other stakeholders.

Adjudication

What are the final decisions?

Final decisions are the decisions, orders, and resolutions issued by the Commission as an exercise of its powers and mandates under the Act, after the conduct of notice and hearing. In line with the transparency clause under the Act, final decisions, orders and rulings of the Commission shall be published on its official website.

What are the sanctions?

The Commission may impose **administrative penalties for** the first offense (fine of up to one hundred million pesos (P100,000,000.00)) and second offense (not less than one hundred million pesos (P100,000,000.00) but not more than two hundred fifty million pesos (P250,000,000.00)), failure to comply with an order of the Commission, supply of incorrect or misleading information, and any other violations not specifically penalized under the relevant provisions of the Act. The amount of fines indicated in the Act shall be increased by the Commission every five (5) years to maintain their real value from the time it was set.

Apart from that, the courts may also impose **criminal penalties** for the entity that enters into any anti-competitive agreement, for each and every violation, be penalized by imprisonment from two (2) to seven (7) years, and a fine of not less than fifty million pesos (P50,000,000.00) but not more than two hundred fifty million pesos (P250,000,000.00). The penalty of imprisonment shall be imposed upon the responsible officers, and directors of the entity. When the entities involved are juridical persons, the penalty of. Imprisonment shall be imposed on its officers, directors, or employees holding managerial positions, who are knowingly and willfully responsible for such violation.

Judicial review

Can the enforcement authorities' decisions be appealed?

Any decisions of the Commission shall be appealable to the Court of Appeals in accordance with the Rules of Court. The appeal shall not stay the order, ruling or decision sought to be reviewed, unless the Court of Appeals shall direct otherwise upon such terms and conditions it may deem just. In the appeal, the Commission shall be included as a party respondent to the case.

Private enforcement

Are private actions for damages available?

Private actions are available under Article 28 of the New Civil Code, which establishes that unfair competition in agricultural, commercial or industrial enterprises or in labor through the use of force, intimidation, deceit, machination or any other unjust, oppressive or highhanded method shall give rise to a right of action by the person who thereby suffers damage". This includes the right to prove a breach in order to seek damages. In addition, Section 6 of the Act Prohibiting Monopolies and Combinations in Restraint of Trade provides for recovery of treble damages for civil liability arising from anti-competitive behaviour, plus the costs of the suit and a reasonable attorney's fee.

Exclusions

Is there any exclusion from the application of the Law?

The PCC may forbear from applying the provisions of the Act, for a limited time, in whole or in part, in all or specific cases, on an entity or group of entities, if in its determination:

(a) Enforcement is not necessary to the attainment of the policy objectives of the Act;

(b) Forbearance will neither impede competition in the market where the entity or group of entities seeking exemption operates nor in related markets; and

(c) Forbearance is consistent with public interest and the benefit and welfare of the consumers.

In making this determination, a public hearing shall be held to assist the Commission. The Commission's order exempting the relevant entity or group of entities shall also be made public. Conditions may be attached to the forbearance if the Commission deems it appropriate to ensure the long-term interest of consumers.

SINGAPORE

Legislation and Jurisdiction

The Law

What is the relevant legislation?

The relevant legislation is the Competition Act (Chapter 50B), together with the following regulations/orders:

- Competition Regulations;
- Competition (Notification) Regulations;
- Competition (Transitional Provisions for Section 34 Prohibition) Regulations;
- Competition (Fees) Regulations;
- Competition (Composition of Offences) Regulations;
- Competition (Appeals) Regulations;
- Competition (Block Exemption for Liner Shipping Agreements) Order 2006 [Competition (Block Exemption for Liner Shipping Agreements) (Amendment) Order 2015]
- Competition (Financial Penalties) Order [Competition (Financial Penalties) (Amendment) Order 2010]

The Competition Act (the "Act") and the relevant regulations/orders are available at the Competition Commission of Singapore (CCS) website (www.ccs.gov.sg, under "Legislation").

CCS has also issued a set of 12 guidelines in order to provide greater transparency and clarity on how CCS will administer and enforce the Competition Act. They are available at CCS' website (www.ccs.gov.sg, under "legislation" > CCS Guidelines).

To whom does it apply?

The Act applies to **undertakings**, i.e., any natural or legal person (including individuals ope-rating as sole traders, businesses, companies, firms, partnerships, societies, co-operatives, business chambers, trade associations or even non-profit organizations) capable of engaging in economic activities, regardless of its legal and ownership status and the way in which it is financed (Sections 2 and 33 of the Act and CCS Guidelines on the Major Provisions 2016, §1.1 and §2.5).

Which practices does it cover?

Part III of the Act covers the following practices:

- **Anti-competitive agreements**, which include decisions by associations and concerted practices (Section 34 of the Act);
- **Abuse of a dominant position** (Section 47 of the Act); and
- **Mergers and acquisitions that substantially lessen competition** (Section 54 of the Act)

Are there proposals for reform?

There are no proposals for reform at the date of publication. For the latest information please refer to CCS website at www.ccs.gov.sg.

The Authority

Who is the enforcement authority?

The enforcement authority is the **Competition Commission of Singapore (CCS)**, an independent statutory board under the Ministry of Trade and Industry (MTI).

CCS investigates and adjudicates anti-competitive practices. It also undertakes outreach activities to promote competition and activities to promote competition and advises the Government on competition-related issues (Section 6 of the Act).

Are there any sector-specific regulatory authorities (RAs) with competition enforcement powers?

In Singapore, the following RAs have enforcement powers under their laws or competition codes:

- Civil Aviation Authority of Singapore (www.caas.gov.sg): regulation of airport services under the Civil Aviation Authority of Singapore Act 2009 (Act No. 17 of 2009) and Airport Competition Code;
- Energy Market Authority of Singapore (www.ema.gov.sg): regulation of electricity and gas services under the Energy Market Authority

of Singapore Act (Chapter 92B), the Electricity Act (Chapter 89A) and the Gas Act (Chapter 116A);

- Infocomm Media Development Authority of Singapore (www.imda.gov.sg): regulation of telecommunications, postal services, and media services under the Info-communications Media Development Authority Act (No. 22 of 2016);
- Singapore Police Force (www.spf.gov.sg): regulation of auxiliary police force services under the Police Force Act (Chapter 235).

Anti-competitive practices

Agreements

Which agreements are prohibited?

Section 34 of the Act prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices, which have the object or effect of appreciably preventing, restricting or distorting competition within Singapore.

Section 34(2) provides for an illustrative list of such agreements which:

- Directly or indirectly fix purchase or selling prices or any other trading conditions;
- Limit or control production, markets, technical development or investment;
- Share markets or sources of supply;
- Apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- Make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

The prohibition applies notwithstanding that the agreement was entered outside of Singapore, or that the party to the agreement is outside Singapore (Section 33(1) of the Act).

Only horizontal agreements are prohibited under Section 34. Vertical agreements, as defined in the Third Schedule to the Act, are excluded from the Section 34 prohibition (please see the section on Exclusions, under "Third Schedule" or refer to CCS Guidelines on Section 34 prohibition).

Which agreements may be exempted?

Section 36 provides that the MTI may issue block exemption orders to exclude particular categories of agreements, from the section 34 prohibition on anti-competitive agreements, decisions and practices, which contributes to:

(a) Improving production or distribution; or

(b) Promoting technical or economic progress,

But which does not:

- Impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or
- Afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question.

The block exemption order may impose conditions or obligations subject to which the exemption is granted. The only block exemption currently in force covers liner shipping agreements, which is valid until 31 December 2020.

Specified goods and services are excluded from the Section 34 prohibition under the Third Schedule to the Act (please see the section on Exclusions, under "Third Schedule").

Is there any formal notification requirement and to which authority should a notification be made?

Undertakings may apply in writing to CCS for a **block exemption.**

Otherwise, undertakings may (but are not required to) notify their agreements (with respect to the section 34 prohibition) or conduct (with respect to the Section 47 prohibition) and formally apply to CCS for either:

- **Guidance** as to whether the agreement is likely to infringe the Act (Sections 43);

- **Guidance** as to whether the conduct is likely to infringe the Act (Sections 50);
- **Decision** as to whether the agreement infringes the Act (Sections 44);
- **Decision** as to whether the conduct infringes the Act (Sections 51);

if they have serious concerns as to whether they are infringing the Act's prohibitions.

Notification cannot be made in respect of prospective agreements (i.e. agreements where the parties have yet to enter into the agreement) or prospective conduct.

Is there a notification form?

Notification forms for guidance or decision from CCS can be found at CCS website (www.ccs.gov.sg, under "Reporting to CCS> Seeking Guidance and Decision"). Notifying parties are required to submit Form 1 and subsequently, if requested by CCS, to submit Form 2 (CCS Guidelines on Filing Notifications for Guidance and Decision with respect to the Section 34 Prohibition and Section 47 Prohibition.

Are there any filing fees?

Please refer to the table below on filing fees (source: CCS website www.ccs.gov.sg, under "Approach CCS> Seeking Guidance and Decision"):

	Initial Fee	Further Fee
Notification for Guidance	SGD 3,000	SGD 20,000
Notification for Decision	SGD 5,000	SGD 40,000

Is there any obligation to suspend the transaction pending the outcome of the assessment (standstill clause)?

There is no standstill clause. The notification for guidance or decision provides parties to an agreement with immunity from financial penalties for any infringement of the prohibition occurring during the period beginning from the date on which the notification was given and ending with such date as may be specified in a written notice to the applicant by CCS when the outcome of the notification has been determined (Guidance - Sections 43(4) and 45(4), Decision - 44(3) and 46(4) of the Act). There is no immunity for notifications covering single-firm conduct.

Procedure and timeline

Applications for guidance or decision are made by filling out Form 1 and submitting it to CCS, together with the prescribed initial fee. Where requested by CCS, the applicant must also fill out and submit Form 2, after having submitted Form 1. The information in Form 2 may not be required in all cases. The application forms can be found on CCS website (www.ccs.gov.sg), under "Approach CCS> Apply for a guidance or decision".

In cases where Form 2 is submitted, CCS may, within 2 months of receiving Form 2, specify a time frame within which the applicant is to pay CCS a further fee, over and above that which was paid with the initial filing. This further fee will be levied in cases where CCS is of the opinion that the application requires significant analysis. The applicant may choose not to pay the further fee, in which case CCS may then determine the application by not giving guidance or a decision.

The applicant is required to submit the completed Form 1 or Form 2 in both hard and soft copies (stored in CD-Rom) to CCS from 0900 hrs to 1700 hrs on weekdays (except on Public Holidays).

The applicant is required to notify all other parties to the agreement or conduct about the application, either before the filing with CCS or later, within 7 working days from the filing.

The time taken by CCS to furnish guidance or decisions will depend very much on the nature and complexity of the application, as well as on the volume of applications which have been filed at that point in time.

Please refer to CCS website at www.ccs.gov.sg and CCS Guidelines on Filing Notifications for Guidance and Decision with respect to the Section 34 Prohibition and Section 47 Prohibition for more information.

Monopoly and dominant position

Is monopoly or dominant position regulated?

Section 47 of the Act prohibits undertakings (whether established in Singapore or elsewhere) from abusing their **dominant position** in any market in Singapore.

These practices may refer both to **single dominance** and to **collective dominance**.

What is a dominant position?

A dominant position exists when an undertaking has **substantial market power**. An undertaking's market share is an important factor in assessing dominance but does not, on its own, determine whether an undertaking is dominant. For example, it is also important to consider the positions of other undertakings operating in the same market. Generally, as a starting point, CCS will consider a market share above 60% as likely to indicate that an undertaking is dominant in the relevant market (CCS Guidelines on the Section 47 Prohibition).

When are dominant positions prohibited?

Section 47(2) of the Act provides an illustrative list of such conduct:

- Predatory behavior towards competitors;
- Limiting production, markets, or technical development to the prejudice of consumers;
- Applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- Making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according or commercial usage, have no connection with the subject of such contracts.

Examples of conduct that may amount to an abuse and different possible scenarios can be found in Annex C of CCS Guidelines on the Section 47. For example, it is not necessary for the dominant position, the abuse and the effects of the abuse, to be in the same market.

Can abuses of dominant position be exempted?

The Act does not contain provisions for block exemption from the Section 47 Prohibition. Specified goods and services are excluded from the Section 47 prohibition under the Third Schedule to the Act (please see the section on **Exclusions** under "Third Schedule").

Is there any formal notification requirement and to which authority should a notification be made?

Refer to section on procedures relating to filing a notification for guidance or decision with respect to the section 34 prohibition or the Section 47 prohibition above.

Merger control

What is a merger?

Section 54 of the Act prohibits **mergers** that have resulted, or may be expected to result, in a substantial lessening of competition within any markets in Singapore.

Section 54(2) of the Act provides that a merger occurs where:

- Two or more undertakings, previously independent of each other, merge;
- One or more persons or other undertakings acquire direct or indirect control of the whole or part of one or more other undertakings;
- One undertaking acquires the assets (including goodwill), or a substantial part of the assets, of another undertaking, with the result that the acquiring undertaking is placed in a position to replace or substantially replace the second undertaking in the business (or the part concerned of the business) in which that undertaking was engaged immediately before the acquisition;
- The creation of a joint venture where two or more undertakings establish, on a lasting basis, an autonomous economic entity.

The Act covers both mergers which are already implemented and projects of mergers (referred to as "anticipated mergers").

The determination of whether a merger exists for the purposes of Section 54 of the Act is based on qualitative rather than quantitative criteria, focusing on the concept of control. These criteria include considerations of both law and fact (Section 54(3) of the Act).

However, Section 54(7) introduces four situations where the acquisition of a controlling interest does not constitute a prohibited merger:

- The person acquiring the control is acting in its capacity as a receiver or liquidator, or underwriter;
- All of the undertakings involved in the merger are, directly or indirectly, under the control of the same undertaking (intra-group merger);
- Control is acquired solely as a result of a testamentary disposition, intestacy or right of survivorship under a joint tenancy; or
- Securities are acquired on a temporary basis by an undertaking whose normal activities include the carrying out of transactions and the dealing in securities, where the acquiring undertaking exercises its voting rights in respect of the securities: i) with a view to the disposal of the acquired undertaking (or of its assets or securities) within 12 months (or the longer period set by CCS) from the acquisition; and ii) not for the purpose of setting the strategic commercial behaviour of the acquired undertaking (Section 54(8), (9) and (10)).

Are foreign-to-foreign mergers included?

Foreign mergers are included when they have the effect of substantially lessening competition within a market in Singapore (Section 33(1) of the Act).

Do mergers need to be notified?

Notification is not mandatory.

Merging parties are not required to notify mergers or anticipated mergers. They may do so if they have serious concerns as to whether the merger or the anticipated merger has resulted (or may result) in a substantial lessening of competition (SLC).

Merging parties may, on a **voluntary basis**, formally apply to CCS for a decision on whether the

- **Anticipated merge**r will infringe the Act, if carried into effect (Sections 57);
- **Merger** has infringed the Act (Sections 58).

In the case of an anticipated merger, notification will not be accepted if the transaction is still confidential (Regulation 3 of the Competition (Notification) Regulations and CCS Guidelines on Merger Procedures 2012, §2.5).

In order to help merging parties identify the information needed for a complete submission, as well as any additional useful information to expedite CCS' review of the submission, merging parties intending to make an application may approach CCS for a **pre-notification discussion (PND)** (CCS Guidelines on Merger Procedures 2012 §§ 4.6-4.11).

With the revision of the CCS Guidelines on Merger Procedures in July 2012, CCS has introduced a new service whereby merger parties can obtain confidential advice from CCS as to whether or not a merger raises concerns, subject to the fulfillment of certain conditions. Essentially, businesses that intend to keep their mergers confidential for the time being, but nevertheless wish to get an indication from CCS on whether or not their mergers would infringe the Competition Act could approach CCS for confidential advice.

At the same time, new turnover guidelines that provide greater certainty to SMEs were implemented. The new guidelines make it clear that the CCS is unlikely to investigate a merger situation that involves only small businesses. For greater clarity, small business is defined by turnover. The CCS is unlikely to investigate a merger If the turnover in Singapore of each of the parties in the financial year preceding the transaction is below SGD 5 million, and where the combined worldwide turnover of all of the parties in the financial year preceding the transaction is below SGD 50 million.

The merger notification forms were also streamlined for greater clarity and to be more business-friendly. Applicants should refer to the CCS Guidelines on Merger Procedures 2012 and the Competition (Notification) Regulations before completing the forms. They may also wish to consider the assessment criteria in the forms to ascertain if notification is necessary.

Merger notification forms can be found on CCS website (www.ccs.gov.sg, under "Approach CCS > Notifying a Merger – filing a merger notification with CCS").

Are there any filing fees?

According to the Competition (Fees) Regulations, a fee is charged for filing the notification, depending on the turnover of the undertaking/ assets acquired in the merger (i.e., "net aggregate turnover") and on whether the acquiring party is a SME.

For the following mergers involving SMEs, the fee payable is a standard SGD 5,000:

- In a merger situation under Section 54(2)(a) of the Act, where all the merging undertakings are SMEs; or
- In a merger situation involving the acquisition of undertakings or assets, where the acquiring party is an SME and there is no acquisition of direct or indirect control of the SME arising from the transaction.

In most of the other merger situations, the fees are based on the turnover of the target undertaking or turnover attributed to the acquired asset, and are calculated as follows (source: CCS website www.ccs.gov.sg, under "Approach CCS > Notifying a Merger – how much does it cost"):

Description	Amount of fees
The turnover is equal to or less than $200 million	SGD 15,000
The turnover is between $200 million and $600 million	SGD 50,000
The turnover is above $600 million	SGD 100,000

More details and updates can be found on CCS website (www.ccs.gov.sg, under "Approach CCS > Notifying a Merger").

Are there sanctions for not notifying?

There are no sanctions for not notifying, as merger notification is **voluntary**.

However, if a merger infringes the Section 54 prohibition, Section 69(2) of the Act provides that CCS may impose a financial penalty if satisfied that the infringement has been committed intentionally or negligently.

How long does it take for approval?

According to the CCS Guidelines on Merger Procedures 2012, the analysis of a merger consists of two phases.

In "Phase 1", within an indicative timeframe of 30 working days, CCS assesses that the notification form meets all applicable filing requirements, charges the filing fee and makes a quick assessment of the filing. This allows CCS to give a favourable decision for proposed mergers that clearly do not raise any competition concerns under the Act.

If CCS is unable during the Phase 1 review to conclude that the proposed merger does not raise any competition concerns, CCS will provide the applicants(s) with a summary of the key concerns, and upon the filing of a complete Form M2 and response to the Phase 2 information request, CCS will proceed to carry out a more detailed assessment ("Phase 2" review). CCS endeavours to complete "Phase 2" within 120 working days.

Is there any obligation to suspend the transaction pending the outcome of the assessment (standstill clause)?

The merger procedure has no suspensive or holding effect, and merging parties may carry the anticipated merger into effect or proceed with further integration of the merger prior to a decision (CCS Guidelines on Merger Procedures 2012, §4.66).

However, according to Section 58A of the Act, CCS may impose **interim measures** ("directions"), including suspension of the transaction, where it has reasonable grounds that the prohibition will be infringed by an anticipated merger, if carried into effect, or the prohibition has been infringed by a merger, to prevent the merging parties from taking any action that might prejudice CCS' ability to assess the merger situation and/or to impose the appropriate remedies. Such directions may also be issued as a matter of urgency in order to prevent serious, irreparable damages to a particular person or category of persons or to protect the public interest.

Which mergers are prohibited?

Only mergers which **substantially lessen competition** (SLC) within a market in Singapore are prohibited (Section 54(1) of the Act and Guidelines on the Substantive Assessment of Mergers 2016, §4.3).

There are no specific criteria that automatically makes a proposed merger prohibited. Instead whether a proposed merger is prohibited depends on a range of economic criteria applied to the facts of each particular merger situation.

However, according to §3.6 of the CCS Guidelines on Merger procedures 2012, CCS considers that an SLC is unlikely to result, and CCS is unlikely to investigate a merger situation unless:

- The merged entity has a market share of at least 40%; or
- The merged entity has a market share of between 20% and 40% and the post-merger combined market share of the three largest undertakings is at least 70%.

Mergers may also be approved on the basis of **commitments** presented by the merging parties (Section 60A of the Act).

Some mergers are excluded from the Section 54 prohibition under the Fourth Schedule to the Act (please see the section on Exclusions under "Fourth Schedule").

What happens if prohibited mergers are implemented?

Under Section 69 of the Act, where CCS finds that the prohibition has been infringed, it may issue such directions as it deems appropriate to result in the prohibited merger from being effected and, where necessary, to remedy, mitigate or eliminate any adverse effects of such infringement, which include (CCS Guidelines on Substanstive Assessment of Mergers 2016, §8):

- De-concentration or other modifications;
- Divestments;
- Requiring the merged entity to enter into agreements designed to prevent or lessen the anti-competitive effects of the merger;
- Financial penalties up to 10% of the turnover of each relevant merger party in Singapore for each year of infringement for a maximum period of three years; and
- Guarantees or other appropriate form of security.

Can mergers be exempted/authorised?

Mergers may be exempted under public interest considerations.

The section 54 prohibitions does not apply to mergers specified in the Fourth Schedule of the Act (please see the section on Exclusions, under "Fourth Schedule").

How to apply for an exemption?

The Act provides that merging parties may apply to MTI for exemption on the grounds of **public interest considerations**, within 14 days from CCS' notice proposing to issue an infringement decision (Sections 57(3), 58(3) and 68(3) of the Act).

Procedure

Investigations

How does an investigation start?

CCS is empowered to commence proceedings (formal investigation), either following a complaint or upon its own initiative.

A general complaint form and a merger complaint form can be found at CCS website (www.ccs.gov.sg, under "Approach CCS").

Parties may submit a complaint to CCS via:

- Online complaint form: www.ccs.gov.sg/approach-ccs/making-complaints/complaint-online-form
- E-Mail: ccs_feedback@ccs.gov.sg
- Post: Competition Commission of Singapore, 45 Maxwell Road, #09-01 The URA Centre, Singapore 069118
- Fax: + 65-6224 6929

For queries on how to complete the Complaint Form, parties may contact CCS' hotline at 1800-325 8282 for assistance.

CCS accepts anonymous complaints, but complainants are required to provide all the information requested in the complaint form to allow CCS to seek clarifications or further details under "Fourth Schedule").

How to apply for an exemption?

The Act provides that merging parties may apply to MTI for exemption on the grounds of **public interest considerations**, within 14 days from CCS' notice proposing to issue an infringement decision (Sections 57(3), 58(3) and 68(3) of the Act).

Procedure

Investigations

How does an investigation start?

CCS is empowered to commence proceedings (formal investigation), either following a complaint or upon its own initiative.

A general complaint form and a merger complaint form can be found at CCS website (www.ccs.gov.sg, under "Approach CCS").

Parties may submit a complaint to CCS via:

- Online complaint form: www.ccs.gov.sg/approach-ccs/making-complaints/complaint-online-form
- E-Mail: ccs_feedback@ccs.gov.sg
- Post: Competition Commission of Singapore, 45 Maxwell Road, #09-01 The URA Centre, Singapore 069118
- Fax: + 65-6224 6929

For queries on how to complete the Complaint Form, parties may contact CCS' hotline at 1800-325 8282 for assistance.

CCS accepts anonymous complaints, but complainants are required to provide all the information requested in the complaint form to allow CCS to seek clarifications or further details necessary for the evaluation of the complaint (Guidelines on the Major Provisions 2016 §8.2).

What are the procedural steps and how long does the investigation take?

CCS may launch a **formal investigation** if there are reasonable grounds for suspecting an infringement (Section 62 of the Act) of any of the prohibitions of the Act.

CCS may also conduct **preliminary enquiries** before launching a formal investigation.

Upon completion of investigation, if CCS proposes to make an infringement decision, CCS shall give written notice of its Proposed Infringement Decision to the affected person and give that person an opportunity to make representation to CCS. CCS may, as it thinks fit, make an infringement decision after considering the representations.

What are the investigation powers of CCS?

Under Sections 63, 64 and 65 of the Act, CCS has the power to:

- Require, by notice in writing, the disclosure of documents and information related to any matter relevant to the investigation (no privilege against self-incrimination is granted – Section 66(1)). CCS can take copies of, or extracts from, or seek an explanation of any document produced, with the exemption of legal privileged communications (Section 66(3) and CCS Guidelines on the Powers of Investigation 2016, §7.1);
- Enter premises with (Section 65) or without warrant (Section 64). If the premises are occupied by an undertaking under investigation, no advance notice of entry needs to be given. Premises include any vehicle, but do not include domestic premises unless they are used in connection with the affairs of the business activities or documents related to the business activities are kept there.

According to Section 67, CCS may also impose **interim measures** ("directions") during investigations, where:

- There are reasonable grounds for suspecting an infringement; and

- It is necessary to act urgently, either to prevent serious, irreparable damage to a particular person or category of persons, or to protect public interest.

In addition, with reference to Section 54 prohibition of the Act, directions may also be imposed for the purpose of preventing any action that may prejudice CCS' investigations or its ability to give directions under Section 69.

What are the rights and safeguards of the parties?

Section 89 of the Act introduces safeguards to protect the **confidentiality** ("preservation of secrecy") of information, which may come to the knowledge of CCS when performing its functions and duties:

- Containing commercial/business sensitive data;
- Containing details of individuals' private affairs acquired during searches/investigations; or
- Relating to matters which have been identified as confidential, unless disclosure is necessary, or lawfully required by any court or the Competition Appeal Board (CAB) or required by law.

The Guidelines on the Major Provisions 2016 also introduces safeguards to protect the identity and commercial interests of **complainants** (§9).

For these purposes, when providing information or documents to CCS, complainants may:

- clearly identify any confidential information;
- explain the reasons why the information should be treated as confidential; and
- provide confidential information in a separate annex. However, where it is necessary to reveal confidential information for effective handling of complaints, CCS will consult the person who provided the information where practicable to do so.

Sections 89(5), (6) and (7) introduce **exceptions to disclosure of evidence** and identify the extent to which disclosure is authorized.

Should CCS propose an infringement decision, Section 68 of the Act provides safeguards for the parties involved. The CCS must provide written notice to the party/parties likely to be affected by the decision and to give such parties an opportunity to make representations to the CCS. The Competition Regulations 2007 (§8) also require CCS to provide the relevant party or parties a reasonable opportunity to inspect documents relating to the decision issued.

Parties affected by CCS' decision may make an appeal to the Competition Appeal Board (CAB), an independent specialized tribunal which may confirm or set aside the decision which is the subject of the appeal. The CAB may also vary or revoke the amount of financial penalties. The functions and powers of the CAB are detailed in Section 72 and 73 of the Act.

The Act also provides for judicial review and private rights of action (elaborated subsequently in this section).

Is there any leniency programme?

According to CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity Cases 2016, lenient treatment is granted to organisations or persons participating or having participated in cartel activities for providing effective cooperation to CCS, where certain conditions are met, for example: i) coming forward with all the information to establish the alleged cartel existence; ii) refraining from further participation in the cartel; and iii) maintains continuous complete cooperation throughout the investigation (§2.2).

Leniency includes:

- **Immunity** from financial penalties: granted to undertakings which cooperate before an investigation has started, provided that CCS does not already have sufficient information to establish the existence of the alleged cartel activity (§2.2);
- **Reduction of financial penalties up to 100%**: granted to undertakings being the first to come forward, which cooperate after an investigation has started, but before CCS issues a notice of its Proposed Infringement Decision (§3.1);
- **Reduction of financial penalties up to 50%**: granted to undertakings which come forward after the first cooperative undertaking, but before CCS issues a notice of its Proposed Infringement Decision (§4.1).

CCS has introduced a **marker system** for leniency applications to obtain immunity or a reduction of up to 100% in financial penalties (§§ from 5.4 to 5.9). A marker protects an undertaking's place in the queue for a given period of time and allows it to gather evidence and necessary information on the cartel activity while maintaining its place in the queue for leniency. The grant of a marker is discretionary, but it is expected to be the norm rather than the exception.

Additional reduction from financial penalties (**Leniency Plus**) may be granted for a cartel member involved in completely separate cartel activities (failing to obtain 100% reduction in respect of the first cartel), where it provides information on a second cartel. Under the Leniency Plus system, the cartel member may obtain a significant reduction in the financial penalties for the first cartel, which is additional to the reduction which it would have received for its cooperation in the first cartel alone (§6).

Is it possible to obtain any informal guidance?

The Guidelines on Merger Procedures 2012 (§§ 4.6 – 4.11) allow for (informal) **pre-notification discussion (PND)**, prior to the submission of a merger notification, in order to help merging parties to identify the information needed for a complete submission and make any additional useful queries pertaining to filing procedures. CCS has also introduced a channel whereby merger parties can obtain confidential advice from CCS as to whether or not a merger raises concerns.

Undertakings may also obtain formal guidance from CCS in relation to anti-competitive practices (see the above section on Agreements).

Interested parties who require further information/ assistance on procedures can call CCS' hotline number (1800-325 8282).

Adjudication

What are the final decisions?

Following the investigation, CCS may issue:

- An **infringement decision** establishing the infringement of the Act (Section 68);
- A **decision** establishing that there are no grounds for action.

What are the sanctions?

Sanctions for infringing the Act include:

- **Directions** requiring among others to: i) modify agreement or conduct; ii) terminate the agreement or cease the conduct; or iii) make structural changes to the business of the undertaking involved (Section 69 (1) and (2));
- **Financial penalties** provided that the infringement has been committed intentionally or negligently (up to 10% of the turnover in Singapore for each year of infringement, for a maximum of three years) (Section 69(3) and (4)). When setting the amount of penalties, CCS takes into account, among others: i) the seriousness and the duration of the infringement; ii) the deterrent value; and iii) any other aggravating or mitigating factor (CCS Guidelines on Appropriate Amount of Penalties); and
- **Criminal sanctions** where a person fails to cooperate with CCS during investigations (e.g., refusing to provide information, destroying or falsifying documents, provide false or misleading information). Such person may be prosecuted in Court and be subject to fine (not exceeding $10,000) and/or to imprisonment (not exceeding 12 months) or both (Section 83). Section 81 of the Act also refers to criminal offences committed by a "body corporate", a "partnership" or an "unincorporated association (other than a partnership)".

Judicial review

Can the enforcement authority's decisions be appealed?

According to Section 71 of the Act, CCS' decisions and directions imposing financial penalties may be appealed before the Competition Appeal Board (CAB), an independent specialized tribunal.

The appeal does not have suspensive effect, except against the imposition of, or the amount of, financial penalties (Section 71(2)).

A further appeal from a CAB decision may be made, under Section 74, to the High Court and then to the Court of Appeal, either on a point of law arising from a

decision of the CAB or from any decision of the CAB as to the amount of financial penalties.

Private enforcement

Are private actions for damages available?

Section 86 of the Act allows individuals who suffer loss or damage to seek damages for losses incurred following an infringement decision.

According to Section 86(6), actions may be brought before civil courts within the time-limit of two years from CCS' decision or from the determination of the appeal (if any).

Exclusions

Is there any exclusion from the application of the Law?

Activities of the Government

Under Section 33(4) of the Act, the prohibitions under the Act do not apply to any activity, agreement or conduct undertaken by the Government, any statutory body or any person acting on behalf of the Government or that statutory body in relation to that activity, agreement or conduct. Under Section 33(5), the Act shall apply to such statutory body or person acting on behalf of such statutory body or such activity, agreement or conduct undertaken by a statutory body or person acting on behalf of the statutory body in relation to such activity, agreement or conduct, as the Minister may, by order published in the Gazette, prescribe.

Exclusions from Section 34 and 47 prohibitions

The Law provides for certain exclusions from Section 34 and Section 47 prohibitions in the Third Schedule to the Act ('Third Schedule'). These are:

- An undertaking entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly, insofar as the prohibition would obstruct the performance, in law or fact, of the particular tasks assigned to that undertaking;
- An agreement/conduct to the extent to which it is made in order to comply with a legal requirement, that is any requirement imposed by or under any written law;
- An agreement/conduct which is necessary to avoid conflict with an international obligation of Singapore, and which is also the subject of an order by the Minister for Trade and Industry ('Minister');
- An agreement/conduct which is necessary for exceptional and compelling reasons of public policy and which is also the subject of an order by the Minister;
- An agreement/conduct which relates to any goods or services to the extent to which any other written law, or code of practice issued under any written law, relating to competition gives another regulatory authority jurisdiction in the matter (See Section under The Authority, for a list of goods and services under the jurisdiction of another regulatory authority);
- An agreement/conduct which relates to any of the following specified activities:
  - > The supply of ordinary letter and postcard services by a person licensed and regulated under the Postal Services Act (Chapter 237A);
  - > The supply of piped potable water;
  - > The supply of wastewater management services, including the collection, treatment and disposal of wastewater;
  - > The supply of scheduled bus services by any person licensed and regulated under the Bus Services Industry Act 2015;
  - > The supply of rail services by any person licensed and regulated under the Rapid Transit Systems Act (Chapter 263A); and
  - > Cargo terminal operations carried out by a person licensed and regulated under the Maritime and Port Authority of Singapore Act (Chapter 170A);

- An agreement/conduct which relates to the clearing and exchanging of articles undertaken by the Automated Clearing House established under the Banking (Clearing House) Regulations (Chapter 19, Rg 1); or any related activities of the Singapore Clearing Houses Association;
- Any agreement or conduct that is directly related and necessary to the implementation of a merger;
- Any agreement (either on its own or when taken together with another agreement) to the extent that it results, or if carried out would result, in a merger; and
- Any conduct (either on its own or when taken together with other conduct) to the extent that it results in a merger.

In addition to the above, the Section 34 prohibition does not apply to vertical agreements and agreements which have net economic benefits.

Section 34 of the Act does not apply to **vertical agreements** (see definition in Part I of this Handbook), except for those whose primary object is related to intellectual property rights (IPRs) and other IPRs agreements, such as IP licensing agreements. However, MTI may, by order, apply the Act to vertical agreements if there is cause for concern under the Act (Third Schedule of the Act, §8 and Guidelines on the Section 34 prohibition 2016, §2.12).

Under § 9 of the Third Schedule of the Act and Section 35 of the Act, agreements with **net economic benefits** (i.e. there are economic benefits from the agreement that are greater than the negative effects on competition) are excluded from Section 34 prohibition. In order to be excluded, the agreements must generate net economic benefits by improving production or distribution, or promoting technical or economic progress. The exclusion covers only those agreements leading to restrictions that are absolutely indispensable to achieve these benefits and do not unduly impose restrictions on undertakings or substantially eliminate competition.

Exclusions from the Section 54 prohibition

The Act also provides for certain exclusions from the Section 54 prohibition in the Fourth Schedule to the Act ('Fourth Schedule'). These are:

- A merger:
  - > Approved by any Minister or regulatory authority pursuant to any requirement for such approval imposed by any written law;
  - > Approved by the Monetary Authority of Singapore pursuant to any requirement for such approval under any written law; or
  - > Under the jurisdiction of another regulatory authority under any written law relating to competition, or code of practice relating to competition issued under any written law;
- Any merger involving any undertaking relating to any of the following specified activities:
  - > The supply of ordinary letter and postcard services by a person licensed and regulated under the Postal Services Act (Chapter 237A);
  - > The supply of piped potable water;
  - > The supply of wastewater management services, including the collection, treatment and disposal of wastewater;
  - > The supply of scheduled bus services by any person licensed and regulated under the Bus Services Industry Act 2015;
  - > The supply of rail services by any person licensed and regulated under the Rapid Transit Systems Act (Chapter 263A); and
  - > Cargo terminal operations carried out by a person licensed and regulated under the Maritime and Port Authority of Singapore Act (Chapter 170A);
- Any merger with net economic efficiencies.

Enforcement Practices

Please refer to the Annex 5 - Case Studies.

THAILAND

Legislation and Jurisdiction

The Law

What is the relevant legislation?

The main legislation is the **Trade Competition Act B.E. 2560 (2017)** (hereinafter, "the Act"), which replaced the **Trade Competition Act B.E. 2542 (1999).**

To whom does it apply?

The Act is of general application and does not make any distinction between corporations and individuals. It applies to any "**business operator**", defined in Section 5 as "a vendor, producer for sale, person who places an order or imports products into the Kingdom for sale, buyer for production or resale of goods, or service provides in the business".

However, under Section 4 of the Act, there are some exclusions under the application of the Act (see below, under "Exclusions").

Which practices does it cover?

Chapter III of the Act (Sections 50 to 58) covers both anti-competitive practices (agreements, abuse of dominant position and mergers) and some forms of restrictive / unfair trade practices.

Are there proposals for reform?

The Act is the result of the reform process in order to amend the Trade Competition Act B.E. 2542 (1999).

The Authorities

Who is the enforcement authority?

The enforcement authority is the **Office of Trade Competition Commission** (hereinafter, "the OTCC" or "the Office").

According to Chapter II of the Act, the Office shall be established as a government agency, which is not part of the civil service, nor a state-owned enterprise, but shall have the status of a legal person. Its main powers and duties are: application and implementation of the Act.

Are there any sector-specific regulatory authorities (RAs) with competition enforcement powers?

The OTCC is responsible for the enforcement of competition law in all sectors, except those having jurisdiction over competition matters under their sectoral law. However, in the broadcasting and telecommunications sectors, the National Broadcasting and Telecommunications Commission (NBTC), under the Act on Organisation to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunications Services B.E. (2010) has the power to decide competition cases and to issue rules and regulations concerning competition in its sector.

According to the Telecommunications Business Act B.E. 2544 (2001), in operating the telecommunications business, the Commission shall, in addition to the law on competition, prescribe specific measures according to the nature of telecommunications business, to prevent the licensee from committing any act that leads to monopoly, reduction or restriction of competition in supplying the telecommunications service in the following matters: (1) cross-subsidization; (2) cross-holding in the same category of service; (3) abuse of dominant power; (4) anti-competitive behavior; (5) protection of small-sized operators (Section 21). Any licensee who violates **Section 21** shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding six hundred thousand THB or to both, and to a double penalty in the case of repeated violation (Section 69). Furthermore, in relation to the Broadcasting and Television Business Operations Act B.E. 2551 (2008), in the broadcasting business, there are specific sections concerning anti-monopoly issues (sections 31-32). Any licensee who violates section 31 or 32 shall be subject to imprisonment for a term not exceeding three years or a fine not exceeding three million baht or both and a daily fine not exceeding thirty thousand baht throughout the period of violation (Section 67)

Anticompetitive practices

Agreements

Which agreements are prohibited?

Section 54 of the Act prohibits agreements between business operators competing in the same market that may amount to monopoly restrictions or reductions of competition in that market, through one of the following ways:

- Fix purchasing or selling price, or any trading conditions that affect the price of goods and services (**price fixing agreements**);
- Limiting the quantity of goods or services (**output limitation**);
- Agreements or conditions that enable one side to win an auction or bid (bid rigging (**collusive tendering**);
- Allocating areas in which each business operator will sell (**market partitioning and customer/ supplier allocation**);
- Section 55 of the Act prohibits other agreements between business operators that may amount to monopoly restrictions or reductions of competition in that market, through one of the following ways:
    1. Agreements of non-competing business operators to fix prices, limit output, or partition or allocate market;
    2. Reduce the quality of goods or services to a condition lower than that previously produced, sold, or provided;
    3. Appoint or assign any one person to exclusively sell the same goods/services or the same type of them;
    4. Set conditions or practices for purchasing or producing goods or services so that the practice follows what is agreed.

Which agreements may be exempted?

According to Sections 54 and 56, the above provisions shall not apply to one of the following situations:

- Conduct of business operators who are related to each other due to a policy or commanding power as prescribed in the Commission's notification (single economic entity);
- Joint business agreement for the purpose of developing production, distribution of goods, and promotion of technical or economic progress (R&D);
- Joint agreement in the pattern of contracts between business operators of different levels, in which one side grants the right in goods or services, trademarks, business operational methods, or business operation support, and the other side is granted rights, with a duty to pay charges, fees, or other remunerations for the rights granted (franchise or similar types of agreements);
- The agreement type or business format that is prescribed in a ministerial regulation on the Commissions' advice.

Monopoly and dominant position

Is monopoly or dominant position regulated?

Section 50 of the Act prohibits the abuse of a dominant position in a market.

What is a dominant position?

According to Section 5 of the Act, business operator with a "dominant position of market power" means one or more business operators in a market who have a market share and sales revenue in excess of the thresholds prescribed in the Commission's notification taken into account one or more factors on competition conditions. The Commission shall review the market shares and sales revenue thresholds at least once every three years from the date of issuance of the notification.

According to the Notification on Dominant Business Operators with Market Domination B.E. 2550 (2007) issued under the Trade Competition Act B.E. 2542 (1999), the thresholds of a dominant position in a market are as follows:

- One business operator with a market share at least 50% and a turnover of at least 1,000 million THB in the previous year;
- Top three business operators with combined market shares at least 75% and a turnover of at least 1,000 million THB in the previous year, except business

operators whose market share is less than 10% or whose turnover is less than 1,000 million THB.

According to Section 92 of the Act, this notification shall be effective until the new notification under the Act is issued.

When is dominant position prohibited?

Under Section 50 of the Act, the following practices by a dominant business operator are prohibited:

- Unfairly fixing or maintaining the level of purchasing or selling prices;
- Imposing an unfair condition for another business operator which is its trading partner in order to limit services, production, purchase, or sale of goods, or to limit an opportunity in purchasing or selling goods, receiving or providing services, or seeking credits from other business operators;
- Suspending, reducing, or limiting service provision, production, sale, delivery, importation into the Kingdom without any appropriate reason, or destroying or damaging goods for the purpose of reducing the quantity to be lower than demand of the market;
- Intervening in the business operation of others without any appropriate reason.

Can abuses of dominant position be exempted?

No exemption is specifically provided for abuses of dominant position in a market.

Other unilateral restrictive practices

Which other practices are prohibited?

Under Section 58 of the Act, "No business operator shall carry out a legal act or enter a contract with a business operator in a foreign country without appropriate justification, where that action will result in a monopoly conduct or unfairly restrict trade, as well as cause serious harm to the economy and consumers' benefits as a whole."

Under Section 57 of the Act, "No business operator shall undertake any conduct resulting in damage on other business operators in one of the following ways: (i) by unfairly obtructing the business operation of other business operators; (ii) by unfairly utilising superior market power or superior bargaining power; (iii) by unfairly setting trading conditions that restrict or prevent the business operations of others; and (iv) by conduct in other ways prescribed in the commission notification."

Merger control

What is a merger?

Section 51 of the Act regulates "merger" that may substantially reduce competition in a market, which include the followings:

- Mergers among producers, sellers, producers and sellers, or service providers, resulting in one business remaining and the others' business terminating, or a new business coming into existence;
- Acquisition of all or some part of the assets of other business in order to control its policy, business administration, direction, or management in accordance with the criteria prescribed in the Commission's notification;
- Acquisition of all or some part of the stocks of the other business, whether directly or indirectly, in order to control policy, business administration, direction, or management in accordance with the criteria prescribed in the Commission's notification.

Are foreign-to-foreign mergers included?

The Act makes no distinction between national and foreign mergers. Section 51 regulates business mergers between "business operators", which are defined in the Section 5 of the Act as vendor, producers for sale, person who places an order or imports products into the Kingdom of Thailand for sale, buyer for production or resale of goods, or service provider in the business.

Do mergers need to be notified?

Post-merger notification is mandatory for those mergers which may substantially reduce competition in a market under the criteria prescribed in the Commission's notification indicating the minimum amount of market share, sales revenue, capital amount, number of stocks, or assets of business operators. Such notification shall be submitted to the Commission within 7 days from the date of merging.

In addition to the above, Section 51 paragraph two of the Act also stipulates any business operator planning to conduct a merger that may cause a monopoly or result in a dominant position in the market, to seek permission from the Commission. The procedure for such matter shall be prescribed in the Commission's notification.

Under Section 52 paragraph three, the Commission may set a time period or any other condition for the business operator granted a permission to follow, and Section 53 requires the business operators to undertake the action as provided under the conditions.

Are there any filing fees?

There will be filing fees but the amounts are under consideration and will be clarified in the forthcoming merger guideline to be issued as the Commission's notifications, which will be made publically available.

Are there sanctions for not notifying?

According to Section 80 of the Act, any person who fails to submit a post-merger notification to the Commission, shall be liable to an administrative fine of maximum 200,000 Baht and a further fine of maximum 10,000 Baht per day for the duration of or the period the violation occurred.

According to Section 81, any person fails to ask for a permission pursuant to Section 51 paragraph two or to take actions as required under Section 53 shall be liable to an administrative fine of not more than 0.5 percent of transaction value of the merger.

How long does it take for approval?

Under Section 52 of the Act, the Commission shall complete the procedure of granting a permission within 90 days from the date of request is received. An extension of not more than 15 days shall be given "by reason of necessity."

The Commission shall consider granting a permission in recognition of valid "business-related necessity" that has benefit in supporting a business operator, not causing severe damage to the economy, and no impact on the essential benefits consumers are entitled to as a whole.

Is there any obligation to suspend the transaction pending the outcome of the assessment (standstill clause)?

There is an obligation to suspend the transaction until permission is granted by the TCC; however, such pending is limited for those mergers that may cause a monopoly or a dominant position in a market.

Which mergers are prohibited?

Mergers that may cause a monopoly or a dominant position in a market, may be prohibited only if they do not satisfy the conditions under Section 52 paragraph two.

What happens if prohibited mergers are implemented?

According to Section 81 of the Act:
Any person who fails to seek permission of the Commission in planning to conduct a merger that may cause a monopoly or a dominant position in a market or fails to undertake actions under the conditions provided by the Commission, shall be subject to an administrative fine of maximum 0.5 percent of the transaction value (Section 51 Paragraph two and Section 53).

Can mergers be exempted/authorised?

Those mergers not under the criteria specified under Section 51 paragraph two and not under the criteria prescribed in the Commission's notification (to be issued later) will be exempted from the obligations of pre-merger permission and post-merger notification under the law.

Authorization of mergers that may cause a monopoly or a dominant position in a market will be granted according to Section 52 Paragraph two.

Procedure

Investigations

How does an investigation start?

Under Section 17 of the Act, the Commission shall have powers to impose regulations on investigation and inquiry undertaken by subcommittees of inquiry. Section 21 of the Act further stipulates that sub-committees of inquiry shall have powers and duties to investigate and inquire about matters regarding an offence under the Act.

The formal investigation can start either by a complaint filed by a person/legal person or by the Office when being reported of any wrongful conduct. A team will be assigned to undertake this process.

After that step of investigation, the assigned team will make a conclusion if such conduct will be proceeded under (1) criminal procedure – i.e. Section 50 Abuse of market dominance or Section 54 Hardcore cartel, or (2) administrative punishment – i.e. Section 55 Non-hardcore cartel, Section 57 Unfair trade practices, or Section 58 – unreasonable agreements.

Under (2), the Commission can impose a cease and desist order (under Section 60) and a fine. And the case will end with an opportunity for the complained to appeal in the administrative court.

Under (1), the Commission will make a decision to proceed under the criminal procedure, meaning a sub-committee of inquiry will be established and it will have the power under the Criminal Procedure Code. Then, the inquiry sub-committee will submit its decision to the Commission to proceed to submit the matter to Attorney-General or not. There is an opportunity for a settlement of the case.

What are the procedural steps and how long does the investigation take?

Under Section 21, the Commission may appoint one or more sub-committees of inquiry to investigate and inquire about matters regarding an offence under the Act. This investigation power is under the Criminal Procedure Code. When a sub-committee considers that the inquiry process has been completed, it shall provide for an opinion along with a report to be submitted to the Commission within **twelve months** from the date the Commission appoints that sub-committee. In any case of justified necessity, an extension shall be given for **no more than six months** by the Commission. The reasons underlying the necessity for such an extension shall be recorded.

What are the investigation powers?

Under Section 63 of the Act, the officers for general investigation shall have the following powers:

- to issue a subpoena for any person to give an oral presentation and provide factual information or explanation in writing or to send accounts, registrations, documents or any evidence
- to enter places and venues where it is reasonably believed that there is a violation of provisions under the Act in order to conduct an examination to search and seize, or gather documents, accounts, registrations, or other evidence;
- to collect or bring a good in the required quantity as a sample for examination or analysis without paying for the good. This shall be carried out in accordance with the criteria prescribed in the Commission's notification.
- to enter places and venues where it is reasonably believed that there is a violation of provisions under the Act in order to conduct an examination to search and seize, or gather documents, accounts, registrations, or other evidence;
- to collect or bring a good in the required quantity as a sample for examination or analysis without paying for the good. This shall be carried out in accordance with the criteria prescribed in the Commission's notification.

Is it possible to obtain informal guidance?

Business operators may contact:
Office of Trade Competition Commission
Department of Internal trade, Ministry of Commerce
563 Nonthaburi Road, Muang District
Nonthaburi 11000, Thailand
+66 2 507 5880
+66 2 547 5434
fauotcc@gmail.com; gff.otcc@gmail.com

Adjudication

What are the final decisions?

The final decisions is the following:

- Under Section 60 of the Act, in a case where the Commission has sufficient evidence to believe that a business operator has violated or will violate the Act, the Commission shall have the power to make an order in writing to instruct that business operator to suspend, stop, or correct or change anti-competitive conduct.

Which are the sanctions?

Under Part 1 of Chapter 6 of the Act (Sections 71 to 79), the following criminal sanctions apply to any person who infringes the following provisions of the Act:

- Criminal sanctions for violating Section 16 or Section 43: Imprisonment of maximum one year and/or a fine of maximum 100,000 Baht (Section 71);
- Criminal sanctions for violating Section 50 or Section 54: Imprisonment of maximum two years and/or a fine of maximum ten percent of the turnover in the year of the offence (Section 72);
- Criminal sanctions for failing to comply with summons document from officers under Section 63 (1): Imprisonment of maximum three months and/or a fine of maximum 5,000 Baht (section 73);
- Criminal sanctions for obstructing officers in their performance of duties under Section 63 (2) or (3): Imprisonment of maximum one year and/or a fine of maximum 20,000 Bath (Section 74);
- Criminal sanctions for failing in facilitating officers under Section 64: Imprisonment of maximum one month and/or a fine of maximum 2,000 Baht (Section 75);
- Criminal sanctions for revealing factual information regarding business or operation that is normally reserved and not revealed by a business operator and was received or known due to performance of duties: Imprisonment of maximum one year and/or a fine of maximym 100,000 Baht (Section 76).

Under Part 2 of the Act (Sections 80 to 85), the administrative sanctions apply to any person who infringes the following sections of the Act:

- Administrative sanction for violating the merger provision under Section 51 paragraph one: administrative fine of maximum 200,000 Baht and a further fine of maximum 10,000 Baht per day for the duration of violation occurred (section 80);
- Administrative sanction for violating the merger provision under Section 51 paragraph two and Section 53: administrative fine of maximum 0.5 percent of transaction value of the merger (section 81);
- Administrative sanction for violating the Sections 55, 57, and 58: administrative fine of maximum 10 percent of the turnover in the year of offence (section 82);
- Administrative sanction for violating the Section 60: administrative fine of maximum 6 million Baht and a further fine of maximum 300,000 Baht per day when the violation continues (section 83);

Judicial review

Can the enforcement authority's decisions be appealed?

Under Chapter 3, the business operator that is in disagreement with the order/instruction of the Commission, shall have the following rights:

- Section 52: the business operator may file a lawsuit in an administrative court within 60 days from the date of the Commission's decision on granting or not granting a permission to merge;
- Section 60: the business operator shall have a right to file a lawsuit in an administrative court within 60 days from the date of Commission's order instructing business operator to suspend, stop, or correct or change dominant position in the market.

Private enforcement

Are private actions for damages available?

Under Chapter 5, Section 69 of the Act, any person suffering damages as a consequence of a competition infringement shall have a right to file a lawsuit for damage. In filing a lawsuit for damage, the Consumer Protection Commission or recognized associations/ foundations shall have a right to file a lawsuit for damage on behalf of consumers or members of the associations or foundations.

In filing a lawsuit for damage, if the lawsuit has not been filed within the time period of **one year** from the date the person suffering damage knows or should have known the cause of such damage, the right to bring the case to the court shall lapse.

Exclusions

Is there any exclusion from the application of the Law?

Under Section 4, the Act does not apply to the operation of the following:

- Central, regional, or local administrations;
- State-owned enterprises, public organizations, or other government agencies regulated under the law or resolutions of the Cabinet which are necessary for the benefit of maintaining national security, public interest, the interests of society, or the provision of public utilities;
- Groups of farmers, cooperatives, or cooperative groups recognized under the law and having the objective in their business operations to benefit the occupation of farmers;
- Businesses that are specifically regulated under other sectoral laws having jurisdiction over competition matters.

VIET NAM

Legislation and Jurisdiction

The Law

What is the relevant legislation?

The relevant legislation includes the **Competition Law No. 27/2004/QH11** (the "Law") and six implementing guidelines (five decrees and a circular).

The implementing provisions are the following:

- Decision No. 3808/2017/QD-BCT of 02 October 2017 on the functions, tasks, power and organization structure of the Competition and Consumer Authority;
- Decree No.116/2005/ND-CP of 15 September 2005, setting forth detailed provisions for implementing a number of Articles of the Law;
- Decree No.71/2014/ND-CP on imposition of penalties for violation against the law on competition
- Decree No. 42/2014/ND-CP of 01 July 2014 on Management of Multi-level sale activities;
- Circular No. 24/2014/TT-BCT on management of multi-level sales activities;
- Decree No. 05/ 2006/ND-CP of 6 January 2006 on the functions, tasks, powers, and organization structure of the VCC;

Both the law and the implementing guidelines are available on the Viet Nam Competition Authority website (www.vca.gov.vn, under "legal resources").

To whom does it apply?

According to Article 2, the Law applies to any business organisations and individuals (referred to as "**enterprises**"), including enterprises providing publicutility products or services, enterprises operating in State monopoly industries and sectors ("State-monopolized sectors and domains"), as well as foreign enterprises and professional associations operating in Viet Nam.

Which practices does it cover?

The Law covers the following practices:

- "**Competition-restriction acts**" (Chapter II), which include agreements, abuse of monopoly/dominant position and economic concentrations which distort or restrain competition in the market; and
- "**Unfair competition acts**" (Chapter III), defined as business practices, which run counter to common standards of business ethics and cause actual or potential damage to State's interests, legitimate rights and interests of other enterprises or consumers.

Are there proposals for reform?

As foreseen under the VCA work program, the Viet Nam Competition Law 2004 is currently being reviewed and revised with fundamental amendments related to institutional set-up, exercise of extraterritorial jurisdiction, adjustments of approach with the application of anti-competitive effect analysis, market power, and economic concentration. The amended law will take effect on January 2019..

The Authorities

Who is the enforcement authority?

According to Chapter IV of the Law, there are two authorities: the Viet Nam Competition Authority (VCA) and the Viet Nam Competition Council (VCC). Since August 2017, VCA was restructured to become the Viet Nam Competition and Consumer Authority (VCCA) under the Ministry of Industry and Trade, with the main function of enforcing the competition law and consumer protection law.

The VCCA (Article 49 of the Law), established within the Ministry of Industry and Trade (MoIT), is responsible for investigating competition-restriction acts, application for exemptions for agreements and mergers, and unfair competition practices.

The VCC (Article 53 of the Law), established by the Government, is responsible for adjudicating cases concerning competition restrictive acts. In competition matters, the VCC establishes a Competition Case-Handling Council, composed of at least five members of the VCC.

The VCCA adjudicates unfair competition cases and decides on whether mergers fall within the prohibited category. In all other cases, the VCCA submits a report, respectively to the VCC (who decides competition-restriction cases), to the MoIT (who decides on exemptions for competition-restriction agreements and economic concentrations between parties in danger or dissolution or bankruptcy) or to the Prime Minister (who decides on exemptions for economic concentrations which may have the effect of expanding export or contributing to socio-economic development, technical and technological development).

Are there any sector-specific regulatory authorities (RAs) with competition enforcement powers?

There are no RAs with exclusive competition enforcement powers. However, there are a number of RAs or administrative authorities which cooperate with the VCCA in competition cases, such as:

- In the electricity sector, the Electricity Regulatory Authority of Viet Nam (Ministry of Industry and Trade);
- In the telecommunications sector, the Department of Telecommunications (Ministry of Information and Communications) (under the new telecommunications law, a regulatory authority for telecommunications is to be established);
- In the maritime sector, the Viet Nam National Maritime Bureau (Ministry of Transport);
- In the civil aviation sector, the Civil Aviation Administration of Viet Nam (Ministry of Transport);
- In the foreign investment sector, the Foreign Investment Agency (Ministry of Planning and Investment);
- In the financial sector, the Ministry of Finance and The State Bank of Viet Nam;
- In the pharmaceutical sector, the Drug Administration of Viet Nam (Ministry of Health);
- In the intellectual property sector, the National Office of Intellectual Property of Viet Nam (Ministry of Science and Technology);
- In the insurance sector, the Insurance Administration and Supervision Department (Ministry of Finance).

In other industries and sectors the VCCA may cooperate with the relevant administrative authorities.

Anticompetitive practices

Agreements

Which agreements are prohibited?

Article 8 of the Law identifies a list of "competition-restrictive agreements". According to Article 9, some of these agreements are prohibited per-se, namely agreements:

- preventing, restraining or impeding other enterprises from entering the market or develop business (Article 8, Paragraph 6);
- excluding other enterprises from the market (Article 8, Paragraph 7); and
- favouring one or all of the parties in tender procedures (collusive tendering) (Article 8, Paragraph 8).

In addition, some agreements are prohibited only where the parties' combined market share is equal to or above 30%, namely agreements:

- directly or indirectly fixing prices for goods or services (Article 8, Paragraph 1);
- partitioning outlets, sources of supply of goods and provision of services (Article 8, Paragraph 2);
- restricting or controlling production, purchase or sale output of goods or services (Article 8, Paragraph 3);
- restricting technical and technological development and investments (Article 8, Paragraph 4); and
- imposing on other enterprises conditions on goods or services purchase or sale contracts or forcing other enterprises to accept obligations which have no direct connection with the subject of such contracts (Article 8, Paragraph 5).

These categories include both vertical and horizontal anti-competitive agreements.

Which agreements may be exempted?

According to Article 10 of the Law, exemptions for a specific period may be granted by the MoIT to agreements that are not per se prohibited and when

the parties' combined market share is equal to or above 30%, provided that the agreements aim to:

- rationalise an organisational structure or business scale and increase business efficiency;
- promote technical or technological progress, improve the quality of goods or services;
- promote the uniform application of quality standards and technical norms of certain products;
- harmonise business, goods delivery and payment conditions, which are not related to prices or any price factors;
- enhance the competitiveness of medium and small-size enterprises;
- enhance the competitiveness of Viet Namese enterprises in the international market.

Is there any formal notification requirement and to which authority should a notification be made?

There is a formal notification system. Notifications shall be made to the VCCA at the following address:

Viet Nam Competition and Consumer Authority, Ministry of Industry and Trade Address: 25 Ngo Quyen Street, Hoan Kiem district, Hanoi, Viet Nam
+84 24 2220 5002
+84 24 2220 5003
phuongttm@moit.gov.vn

Alternatively, submissions can be sent online at www.vca.gov.vn, under the section "competition > submit information online".

Is there a notification form?

Applications for exemption shall be submitted according to the VCCA notification form, which is available at the above addresses.

Further information is available online (www.vca.gov.vn, under the section "competiti- on > exemption of competition restriction agreements" - Viet Namese text).

Are there any filing fees?

Filing fees currently amount to fifty million VND, under Article 57 of Decree No. 116/2005/ND-CP of 15 September 2005, implementing Article 30(3) of the Law.

Further updates on applicable fees will be available online (www.vca.gov.vn, under the section "competition").

Is there any obligation to suspend the transaction pending the outcome of the assessment (standstill clause)?

According to Article 36(1) of the Law, parties are prevented from implementing the agreement until the formal decision approving the exemption is granted.

Procedure and timeline

The MoIT is responsible for granting exemptions.

According to Article 34(1) of the Law, within 60 days from receiving the exemption application from the VCCA, the MoIT issues a decision approving or disapproving the exemption. According to Article 34(2), the MOIT may extend the deadline no more than twice, for up to 30 days per time.

Further information on notification requirements and procedure for exemption of competition restriction agreements can be found at www.vca.gov.vn, under the section "competition > competition-restrictive acts > exemptions and procedures".

Monopoly and dominant position

Is monopoly or dominant position regulated?

Chapter II, Section 2 of the Law prohibits both the abuse of a dominant position ("market dominance") and the abuse of a monopoly position in the market.

What is a dominant position?

According to the Article 11 of the Law, one or more enterprises are presumed to hold a dominant position when:

- (single dominance): an enterprise has a market share of at least 30% in the relevant market or it is capable of restricting competition considerably on the basis of specific factors (provided for in Article 22 of Decree 116/2005/ND-CP);

- (collective dominance): more enterprises hold a combined market share of at least 50% (two enterprises), 65% (three enterprises) or 75% (four enterprises) in the relevant market.

What is a monopoly position?

According to Article 12, an enterprise holds a monopoly position when there are no other enterprises competing in the relevant market.

When are monopoly and dominant positions prohibited?

Under Article 13, **abuse of dominant position** includes the following practices:

- Predatory pricing (selling goods or providing services below cost in order to eliminate competitors) (Paragraph 1);
- Unreasonable purchase or selling prices or minimum re-selling prices causing damage to customers (Paragraph 2);
- Restricting production, distribution, and limiting markets or preventing technical and technological development causing damage to customers (Paragraph 3);
- Imposing discriminatory commercial conditions in similar transactions with the aim of creating inequality in competition (Paragraph 4);
- Imposing conditions on other enterprises in purchase or sale contracts or forcing other enterprises to accept obligations which have no direct connection with the object of such contracts (Paragraph 5);
- Preventing competitors from entering the market (Paragraph 6).

Under Article 14, **abuse of a monopoly position** includes all the practices above and:

- Imposing unfavourable conditions on customers (Paragraph 2); and
- Abusing the monopoly position to unilaterally modify or terminate a contract without plausible reasons (Paragraph 3).

Can abuses of dominant or monopoly position be exempted?

No exemption is allowed.

Merger control

What is a merger?

Chapter II, Section 3 of the Law regulates "economic concentrations", which include the following transactions:

- Mergers: one or more enterprises transfer all of its/their property rights, obligations and legitimate interests to another enterprise and, at the same time, terminate the existence of the merged enterprise(s) (Articles 16 and 17, Paragraph 1);
- Consolidations: two or more enterprises transfer all their property rights, obligations and legitimate interests to form a new enterprise and, at the same time, terminate the existence of the consolidated enterprises (Articles 16 and 17, Paragraph 2);
- Acquisitions: one enterprise acquires the whole or part of another enterprise sufficient to obtain control on the latter (Articles 16 and 17, Paragraph 3);
- Joint ventures: two or more enterprises jointly contribute to the establishment of a new enterprise (Articles 16 and 17, Paragraph 4); and
- Other acts of economic concentrations, as it may be prescribed by law (Article 16, Paragraph 5).

Are foreign-to-foreign mergers included?

The Law also applies to foreign enterprises operating in Viet Nam, which are therefore subject to merger control (Article 2.1 of the Law).

Do mergers need to be notified?

According to Article 20(1) of the Law, enterprises having a combined market share of between 30% and 50% must notify the VCCA before implementing the transaction (requirements for merger notification are laid down in Article 21), except where the enterprises are, and remain after the concentration, of small or medium-size. The definition of small and medium-sized enterprises, specified under Article 3 of Decree 56/2009/ND-CP with

reference to registered capital or average employees, varies according to the sector, i.e., agriculture, industry or services.

The VCCA notification form is available online (www.vca.gov.vn). Further information on notification requirements and procedure for exemption of economic concentrations may be found online (www.vca.gov.vn, under the section "competition > competition-restrictive acts > exemption of economic concentration").

According to Article 20(2) of the Law, enterprises which apply for an exemption from the prohibition shall, instead of notifying the merger according to Article 21, submit an application for exemption according to Section 4 of Chapter II (procedures for execution of exemption cases).

Are there any filing fees?

There are no filing fees for merger notification. http://www.vca.gov.vn

Are there sanctions for not notifying?

Fines for not notifying a merger range from 1% to 3% of the previous fiscal year total turnover of the parties involved, according to Article 29 of Decree No. 120/2005/ND-CP, implementing Article 20 of the Law.

How long does it take for approval or exemption?

According to Article 23 of the Law, within 45 days from the receipt of a complete file the VCCA shall establish whether the economic concentration (i) does not fall under a prohibited category or (ii) is prohibited under Article 18.

When the merger "involves many complicated circumstances" the VCCA may extend the deadline no more than twice, for up to 30 days per time (in any case, under Article 24 the expiry of the time limit does not provide for an automatic clearance of the merger).

According to Article 34, the procedure for exemption before the MoIT lasts 60 days from the receipt of the exemption application from the VCCA. The VCCA may extend the deadline no more than twice, for up to 30 days per time.

Is there any obligation to suspend the transaction pending the outcome of the assessment (standstill clause)?

According to Article 24, a merger may only be implemented after approval.

Which mergers are prohibited?

According to Article 18 of the Law, economic concentrations are prohibited where the parties' combined market share exceeds 50%, except where the enterprises are (and remain after the concentration) of small or medium-size or are exempted under Article 19 (see below).

What happens if prohibited mergers are implemented?

According to Article 117, the Law allows the VCCA to impose

- Warnings or fines (up to 10% of the previous fiscal year total turnover of the merging parties);
- Additional sanctions, namely the revocation of business registration certificates, deprivation of licenses and practicing certificates, and the confiscation of exhibits and means used for competition law infringements;
- Remedies, namely the de-concentration of prohibited mergers, i.e., dividing or separating the merged or consolidated enterprises, or forcing the resale of the share of the acquired enterprise.

Can mergers be exempted/authorised?

Under Article 23 of the Law, an economic concentration is approved when it does not fall into Article 18 prohibition.

Under Article 19, prohibited economic concentrations (i.e., concentrations which exceed the 50% threshold) may be exempted if:

- one or more of the parties is/are at risk of being dissolved or declared bankrupt, or
- the economic concentration has the effect of expanding export or contributing to socio-economic development, technical and technological progress.

According to Article 25, the Minister of Industry and Trade is responsible for approving economic concen-

trations under Article 19(1), while the Prime Minister is responsible for granting exemptions under Article 19(2).

How to apply for an exemption?

As explained above, the merging parties may notify for approval under Article 20 (notification requirements are laid down in Article 21) or apply for exemption under Section 4 (application requirements are laid down in Article 29).

The VCCA application form is available from the Economic Concentration Controlling Division, Viet Nam Competition and Consumer Authority, Ministry of Industry and Trade 25 Ngo Quyen, Hoan Kiem, Hanoi, Viet Nam,

+84 24 22205002
+84 24 22205003
www.vca.gov.vn,

under the section "competition > competition- restrictive acts > exemption of economic concentration" (Viet Namese text).
Interested parties may require further information/ assistance on procedures/exemptions at the above address and number.

State management agencies, state monopolies and public utilities

Which special provisions apply to State management agencies, State monopolies and public utilities?

Under the Law, the following special provisions apply to State management agencies, State monopolies and public utilities. According to Article 6 of the Law, State management agencies are prohibited from:

- Forcing enterprises, organisations or individuals to buy or sell goods, or provide services to enterprises which are designated by these agencies, except for goods and services in the State monopoly sectors or in emergency cases prescribed by law;
- Discriminating between enterprises;
- Forcing professional associations or enterprises to align with one another with a view to precluding, restricting or preventing other enterprises from competing in the market;
- Engaging in other acts that prevent lawful business activities of enterprises.

According to Article 15(1), the State controls enterprises operating in the State-monopolized domains through deciding, in the State monopolized domains: (a) buying and selling prices of goods and services; (b) quantities, volumes and scope of market of goods and services.

According to Article 15(2), the State controls enterprises producing and supplying publicutility products and services through ordering goods, assigning plans or bidding according to prices or charges set by the State.

Article 15(3) specifies that, when undertaking other business activities outside the State-monopolized and public-utility sectors, enterprises shall not be subject to the application of Article 15(1) and (2).

Other unfair commercial practices

Which unfair commercial practices are regulated?

Chapter III of the Law prohibits "unfair competition acts", defined in Article 3, Paragraph 4, as "competition acts performed by enterprises in the process of doing business, which run counter to common standards of business ethics and cause damage or can cause damage to the State's interests, legitimate rights and interests of other enterprises or consumers". According to Article 39, these include:

- misleading indications (Article 40);
- infringement of business secrets (Article 41);
- coercion in business (Article 42);
- discrediting other enterprises (Article 43);
- disturbing business activities of other enterprises (Article 44);
- advertising for the purpose of unfair competition (Article 45);
- sale promotion for the purpose of unfair competition (Article 46);
- discrimination by associations (Article 47);
- illicit multi-level sale (Article 48);
- other unfair competition acts as prescribed by the Government (Article 39, Paragraph 10).

Does the Law provide for any exemption?

No exemption is allowed.

Procedure

Investigations

How does an investigation start?

Under Article 58 of the Law, interested parties (business organisations and individuals) who believe that their rights and interests have been infringed due to a breach of the Law can submit a complaint to the VCCA, within two years from the violation. Under Article 86, the VCCA can also open an investigation on its own initiative.

A complaint may be submitted directly or posted to the Corporate Affairs Division of Viet Nam Competition and Consumer Authority, Ministry of Industry and Trade (25 Ngo Quyen, Hoan Kiem, Hanoi, Viet Nam,
+84 24 2220 5002
+84 24 2220 5003).

What are the procedural steps and how long does the investigation take?

Under Article 87 of the Law, the VCCA conducts a preliminary inquiry within 30 days from the start of the investigation.

Where indications of an offence are found, the VCCA opens an official inquiry, which according to Article 90 is concluded within 180 days for competition- restrictive cases (extended "in case of necessity" no more than twice, for up to 60 days per time) and 90 days for unfair competition cases (extended "in case of necessity" for up to 60 days).

The procedure in competition-restrictive cases follows three stages: investigation, processing and adjudication (details are provided for in Article 90 of the Law and Articles 46 and 47 of Decree 116/2005/ND-CP).

What are the investigation powers of the VCCA?

Under Article 77 of the Law, the investigators of the VCCA have the power to:

- Request organisations and individuals to provide necessary information and documents;
- Request parties under investigation to produce documents and give explanations concerning competition cases;
- Request expertise; and
- Apply administrative preventive measures.

What are the rights and safeguards of the parties?

Article 56(3) of the Law introduces general safeguards to protect the confidentiality of information containing business secretes and to protect rights and interests of organizations and individuals.

A more detailed description of the rights of parties involved in the proceedings (investigated parties and complainants) are specified in Article 66, while Articles 67 to 71 specify, respectively, the rights of lawyers (of both complainants and investigated parties), witnesses, experts, interpreters and persons with interests and obligations related to the case.

Is there any leniency programme?

Currently, there is no leniency programme in Viet Nam. However, a voluntary declaration of prohibited acts, before they are detected by competent agencies, is treated as an attenuating circumstance (Article 85(1.a) of Decree 116/2005/ND-CP).

Is it possible to obtain any informal guidance?

Interested parties may obtain informal guidance from the VCCA in relation to anti-competitive practices and unfair commercial practices at the following addresses:

For anticompetitive cases: Antitrust Investigation Division,
Viet Nam Competition and Consumer Authority, Ministry of Industry and Trade Address:
25 Ngo Quyen Str., Hoan Kiem Dist.,
Hanoi, Viet Nam
+84 24 22205016
+84 24 22205003

For unfair commercial cases:

Unfair Competition Investigation Division, Viet Nam Competition and Consumer Authority,
Ministry of Industry and Trade
Address: 25 Ngo Quyen Street,
Hoan Kiem District, Hanoi
+84 24 22205015
+84 24 22205003

Adjudication

What are the final decisions?

Under the procedures for exemption (Chapter II, Section 4), a final decision approving or disapproving the exemption (Article 34) is taken by the MoIT in case of exemption from restrictive agreements and merger approval and by the Prime Minister in case of exemption from prohibited mergers (Article 25).

Following an investigation (under Chapter V of the Law), a final decision is taken by the VCC in case of restrictive-agreements and abuse of dominant position or monopoly cases and by the VCCA in unfair competition cases.

What are the sanctions?

Sanctions for infringing the Law are dealt with by Section 8 of Chapter V. In particular, Articles 117 and 118 list the following sanctions and remedies:

- Sanctions in the form of warnings or fines (Article 117(1)), which may be:
  - > Fines up to 10% of the previous fiscal year total turnover of the parties involved in case of competition-restrictive acts (Article 118(1));
  - > Sanctions according to the relevant administrative law provisions in case of unfair competition and other acts violating the Law (Article 118(2));
- Additional sanctions, namely (a) revocation of business registration certificates, deprivation of licenses and practicing certificates; (b) confiscation of exhibits and means used for competition law infringements (Article 117(2));
- Remedies, namely (a) restructuring enterprises who have abused a dominant position; (b) deconcentration of prohibited mergers, i.e., dividing or separating the merged or consolidated enterprises, or forcing the resale of the share of the acquired enterprise; (c) public corrections; (d) removing illegal provisions from business contracts or transactions; (e) "other necessary measures to overcome the competition restriction impacts of the violation acts" (Article 117(3)).

Judicial review

Can the enforcement authorities' decisions be appealed?

According to Article 107 of the Law, decisions of the Competition Case-Handling Council may be appealed before the VCC, while decisions issued by the head of the VCCA may be appealed before the Minister of Industry and Trade.

In both cases, according to Article 115 further appeal ("administrative lawsuit") may be lodged before the competent provincial/municipal Peoples' Court.

Private enforcement

Are private actions for damages available?

Private parties (individual and organizations) may bring actions in court for damages resulting from the violation of competition law, according to general civil procedural law, best to place in brackets (Article 117).

Exclusions

Is there any exclusion from the application of the Law?

There are no specific exclusions from the application of competition law. However, enterprises operating as State monopolies (in "State-monopolised domains") or in publicutility sectors are subject to specific State control measures, as explained above.

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ANNEX I

Relevant Websites and Contact Points

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Relevant Websites and Contact Points

Brunei Darussalam

Competition Commission of Brunei Darussalam and Competition and Consumer Affairs Department, Department of Economic Planning and Development, Prime Minister Office

Block 2A,
Jalan Ong Sum Ping,
Bandar Seri Begawan BA1811,
Brunei Darussalam
+673 2233 344
+673 2230 226
brunei.competition@jpke.gov.bn
www.depd.gov.bn

Contacts points:

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+673 2233 344 ext 340
+673 2230 203
farah.rahman@jpke.gov.bn

Ms Nurulizzati Jahari
+673 2233 344 ext 230
+673 2230 203
nurulizzati.jahari@jpke.gov.bn

Ms. Anisah Syakirah Anwari
+673 2233 344 ext 230
+673 2230 203
Syakirah.anwari@jpke.gov.bn

Cambodia

Ministry of Commerce

Lot 19-61, MOC Road (113B Road),
Phum Teuk Thla,
Sangkat Teuk Thla,
Khand Sen Sok,
Phnom Penh,
Kingdom of Cambodia
+855 23 866 469

Contact Points:

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Director of Competition Department
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+855 15 718 189
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http://www.moc.gov.kh/

Ms. KEM Saroeung
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+855 12 831 769
kesaroeung@gmail.com
http://www.moc.gov.kh/

Mr. MENG Songkheang
Chief of Bureau of Competition Department
+855 12 824 948
+855 23 866 469
mengkheang06@yahoo.com
http://www.moc.gov.kh/

Indonesia

Commission for the Supervision of Business Competition

Komisi Pengawas Persaingan Usaha (KPPU)
KPPU Building
2nd Floor Jl. Ir. H. Juanda No. 36
Jakarta INDONESIA 10120
+6221 3519144 or
3517015/16/43
international@kppu.go.id
infokom@kppu.go.id
http://eng.kppu.go.id

Contact points:

Mr. Charles Panji Dewanto
Interim Secretary General

Mr. Taufik Ariyanto
Head of Legal, PR and Cooperation Bureau

Ms. Retno Wiranti
Head of International Cooperation Division

Lao PDR

Ministry of Industry and Commerce

Phonexay Rd, Saysetha District,
Vientiane Capital city, Lao PDR.
+856 21 412015
+856 21 412001
laoscompetition@gmail.com
laocompetition@moic.gov.la
www.moic.gov.la

Contact points:

Consumer Protection & Competition Division,
Department of Domestic Trade,
Ministry of Industry and Commerce,
(856-21) 412015
(856-21) 412001

Mr. Phomma Inthanam
Director, Consumer Protection
& Competition Division

Department of Domestic Trade,
Ministry of Industry and Commerce,
Phonxay Road, Ban Phonxay,
Saysettha District, Vientiane Capital,
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+856 21 243109
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(mobile) +856 20 22244488
syfonge@hotmail.com
syfongsoumontha@yahoo.com

Malaysia

Malaysia Competition Commission (MyCC)

Level 15, Menara SSM@Sentral, No.7 Jalan Stesen Sentral 5, KL Sentral,
59623 Kuala Lumpur, Malaysia
+603 22732277
+603 2272 1692
complaints@mycc.gov.my
www.mycc.gov.my

Malaysian Communications and Multimedia Commission (MCMC), Competition & Access Department Market Regulation Division,
63000 Cyberjaya, Malaysia
+ 603 8688 8000
+ 603 8688 1001
Aduan_SKMM@cmc.gov.my
www.skmm.gov.my

Energy Commission (ST), Legal Unit,
Energy Management and Industry Development Department,
7th and 5th Floors No. 12 Jalan Tun Hussein,
Precinct 2,
62100 Putrajaya MALAYSIA.
+ 603 8870 8500
+ 603 8888 8648
www.st.gov.my

Malaysian Aviation Commission (MAVCOM)
Level 19, Menara 1 Sentrum
201 Jalan Tun Sambanthan
50470 Kuala Lumpur, Malaysia
+603 2772 0600
competition@mavcom.my
www.mavcom.my

Myanmar

Ministry of Commerce

Department of Trade
Building No.(3), Nay Pyi Taw
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moc022@moc.gov.mm

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Philippines

Philippine Competition Commission

2/F DAP Bldg., San Miguel Avenue
Ortigas Center, 1600 Pasig City

+632 631 2129
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queries@phcc.gov.ph
www.phcc.gov.ph

Contact Points:

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otc@phcc.gov.ph

Singapore

Ministry of Trade and Industry

100 High Street #09-01
The Treasury
Singapore 179434
+65-6225-9911
+65 6332-7260
mti_email@mti.gov.sg
www.mti.gov.sg

For a comprehensive listing of contact details, please visit the Ministry's directory at Singapore Government Directory Interactive.

Competition Commission of Singapore

45 Maxwell Road #09-01
The URA Centre
Singapore 069118
+65 6325 8206
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ccs_feedback@ccs.gov.sg
www.ccs.gov.sg

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Sector-specific regulators

- Civil Aviation Authority of Singapore (www.caas.gov.sg): regulation of airport services under the Civil Aviation Authority of Singapore Act 2009 (Act No. 17 of 2009) and Airport Competition Code;
- Energy Market Authority of Singapore (www.ema.gov.sg): regulation of electricity and gas services under the Energy Market Authority of Singapore Act (Chapter 92B), the Electricity Act (Chapter 89A) and the Gas Act (Chapter 116A);
- Infocomm Media Development Authority of Singapore (www.imda.gov.sg): regulation of telecommunications, postal services, and media services under the Info-communications Media Development Authority Act (No. 22 of 2016);
- Singapore Police Force (www.spf.gov.sg): regulation of auxiliary police force services under the Police Force Act (Chapter 235).

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Sector-specific regulators

- In the electricity sector, the Electricity Regulatory Authority of Viet Nam (Ministry of Industry and Trade, www.moit.gov.vn);
- In the telecommunications sector, the Department of Telecommunications (Ministry of Information and Communications, www.mic.gov.vn);
- In the maritime sector, the Viet Nam National Maritime Bureau (Ministry of Transport www.mt.gov.vn);
- In the civil aviation sector, the Civil Aviation Administration of Viet Nam (Ministry of Transport, www.mt.gov.vn);
- In the foreign investment sector, the Foreign Investment Agency, www. fia.mpi.gov.vn (Ministry of Planning and Investment, www.mpi.gov.vn);
- In the financial sector, the Ministry of Finance (www.mof.gov.vn) and The State Bank of Viet Nam (www.sbv.gov.vn);
- In the pharmaceutical sector, the Drug Administration of Viet Nam www.dav.gov.vn (Ministry of Health, www.moh.gov.vn);
- In the intellectual property sector, the National Office of Intellectual Property of Viet Nam www.noip.gov.vn (the Ministry of Science and Technology www.most.gov.vn);
- In the insurance sector, the Insurance Department of the Ministry of Finance www.mof.gov.vn.