

Competitiveness in the Context of Private Sector Growth: The Malaysian Experience

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New Economic Model

- Malaysia has unveiled the New Economic Model (NEM) on 30 March 2010.
- In a nutshell, this programme aims to shift affirmative action from being ethnically-based to being need-based hence becoming more competitive, market and investor friendly.
- The NEM's goal is to "transform the Malaysian economy to become one with high incomes and quality growth" by 2020.
- It is an economic plan which is intended to double the per capital income in Malaysia by 2020 from RM 23,100 (USD7,000) in 2010 to RM49,500 (US\$15,000) in 2020.



New Economic Model....Cont.

- This is done by stimulating economic growth by improving worker productivity across all sectors of society, in part through an improved system of affirmative action with sustainability as the end goal.
- One important aspect of the NEM is to empower the private sector to drive the growth in the Malaysian economy.
- The Malaysian has introduced the national transformation agenda through the Government Transformation Programme (GTP) and the Economic Transformation Programme (ETP).

Competition Framework in Malaysia

- The Malaysian Government has responded to the increased privatisation by creating regulatory framework to safeguard consumer welfare and ensure competition.
- Hence, the first comprehensive competition law in Malaysia, the Competition Act 2010 (the Act), was gazetted on 10 June 2010, and came into force on 1 January 2012.
- The Act borrows heavily from the European competition law.
- Previously, Malaysia did not have a general and comprehensive competition law that applied across all economic sectors.

Competition Framework in Malaysia... Cont.

- Previous competition laws and regulations in Malaysia had been implemented only in two specific sectors:
 - ✓ The communications and multimedia sector
 - Governed by the Communications and Multimedia Act 1998
 - ✓ The energy sector
 - Governed by the Energy Competition Commission Act 2001
- The Malaysian Competition Commission (MyCC) has also been set up to oversee the administration and enforcement of this Act.
- This Commission is under the purview of the Ministry of Domestic Trade, Cooperatives and Consumerism (MDTCC).
- A Competition Commission has also been created. The current Chairman is The Honourable Tan Sri Siti Norma Yaakob, former Chief Justice of Malaya.



What Are The Powers Of MyCC?

- To investigate any official complaints against anti-competition practices
- To review and determine situations of any industry which is practicing anti-competitive practice
- To request any person to produce documents or information to facilitate investigations
- To seize and retain possession of documents (other than necessary clothing)
- To enter any place and seize documents for investigation (night and dawn raid and with or without warrant)
- To require attendance of witness for questioning
- To make any finding of infringement of the provisions of competition law

Two Main Areas Of Regulation

The Act regulates business activity in Malaysia through two main areas of regulation:

- Prohibition on anti-competitive agreements
- Prohibition on the abuse of a dominant market position



How Does Competition Law Encourage Business Growth?

- Competition increases economic welfare. The most important factor in ensuring productivity growth and improvements is the increase in incomes per capita.
- Business has nothing to fear and a great deal to gain from properly enforced competition law. It protects all types of businesses from multinationals to the small medium enterprises ('SMEs') and 'mom and pop' shops from monopolies. It protects business from monopolistic behaviour of certain companies, trade associations or cartels. Everyone will get to participate in the market on equal terms.
- Business has remedies against conduct that reduces economic welfare in Malaysia.
- Rising incomes mean greater demand for products.
- More competition in Malaysia means Malaysian firms will become more efficient and so better able to compete in export markets and against imports.

Who Will Benefit From The Competition Act?

The Competition Act will benefit 3 groups:

- Malaysian Government
- Businesses
- Consumers



Who Will Benefit From The Competition Act?...Cont.

1. Malaysian Government

- For Malaysia to remain competitive internationally
 - Fulfills part of Malaysia's international commitments
 - To have competition law for ASEAN integration by 2015
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- The implementation of the Competition Act will bring Malaysia in line with over 100 jurisdictions worldwide including its Asean neighbours Indonesia, Singapore, Thailand and Vietnam.

Who Will Benefit From The Competition Act?...Cont.

2. Businesses

- To have in place fairness and rules for all companies (whether big or small). It will regulate all types of businesses from multinationals to the small medium enterprises (SMEs) and 'mom and pop' shops
- To minimise abuses by dominant firms
- To be on par with foreign companies to promote globalisation

Who Will Benefit From The Competition Act?...Cont.

3. Consumers

- To enjoy benefit from the competition through lower prices, better products and more choices of products to choose from



Sectors Subjected to the Competition Act 2010

- All business entities in Malaysia which are involved in **commercial activity**, including government linked businesses (GLC), statutory bodies, government agencies or public authority if they are involved in commercial activity, whether within or outside Malaysia



Enforcement of the Competition Act 2010

- ❑ First infringement decision for a price-fixing cartel by a trade association (October 2012)
 - MyCC has taken action against Cameron Highlands Floriculturist Association (CHFA) for engaging in an anti-competitive agreement to increase the prices of flowers by 10%. The move to increase the flower prices was a violation under the Competition Act 2010 `when enterprises in the same level of production or supply chain agree to fix the price of their goods or services’ .
 - This is deemed to have the object of significantly preventing, restricting or distorting competition in the market for the goods. A decision by an association is also defined as an agreement under the Act.
 - MyCC indicated in its proposed decision that it would fine the association RM20,000 if it did not immediately cease the anti-competitive conduct and take the remedial action required by the MyCC.
 - In the final decision, the financial penalty was dropped as the association had been co-operative during the investigation but upheld the remedial action.
 - In 2012, MyCC’s efforts were focused on advocacy and encouraging compliance.



Enforcement of the Competition Act 2010...Cont.

❑ The second case MyCC is investigating:

- MyCC is currently looking into the culling of 5 million layer chickens by farmers for any anti-competitive elements. The culling has resulted in a shortage of egg supply and an immediate price increase of between 2 – 5 sen per egg.
- However the Federation of Livestock Farmers Association of Malaysia's (FLAM) layer unit chairman Yap Hoong Chaias said that farmers typically cull about 10% of their older layer hens from each cycle (of one to three months, depending on the farm size) to make room for younger, more productive hens
- According to the MyCC CEO, Shila Dora Raj, if the unilateral decision by a farmer to reduce his production for purpose of prudent costs management may not be an anti-competitive conduct but if it is done in agreement with other farmers, then this may be an infringement under the Act. The Act `prohibits enterprises operating at the same level in the production chain to collusively agree to limit or control production of goods and services.'
- This is deemed to have the object of significantly preventing, restricting or distorting competition in the market for the goods. A decision by an association is also defined as an agreement under the Act.
- The investigation is still ongoing.



Enforcement of the Competition Act 2010...Cont.

- The third case MyCC is investigating:
 - MyCC is currently investigating into the recent hike in charges by container depot operators in Penang in response to the complaints filed by the Penang branch of the Federation of Malaysian Manufacturers (FMM) the Federation of Malaysian Freight Forwarders on the fee increase.
 - FMM had on May 23, 2013 claimed that container depot operators in Penang are engaging in unfair business practices with respect to an unilateral increase in depot gate charges (DGC) from RM5 to RM15-RM25 per empty container per entry since May 6 this year.
 - MyCC has taken note of the complaints on the raising of the DGC although it has not discussed yet with any parties nor given any consent on any new systems that led to rates revision of the depot gate charges in Penang.
 - MyCC maintains that while it is not a regulator on pricing issues, action will be taken against any enterprises or associations found to be acting in concert to fix prices and/or other trading conditions. Such acts are infringements of Section 4 of the Competition Act 2010.



Way Forward - The Implementation of the Act

- In 2012, MyCC's efforts were focused on advocacy and encouraging compliance. (As shown in the Cameron Highlands Floriculturist Association (CHFA)).
- MyCC will shift gears and no longer adopt a 'soft approach'. MyCC's enforcement priorities will be cartels, bid rigging and trade associations.
- MyCC has commenced investigations in the cement and steel sectors following complaints.
- It has also indicated its intention to focus on food production, import and distribution, transport and logistics, health care, professional services, housing developers and financial institutions.



Conclusion

- The Malaysian Government is serious in liberalising trade and economy in Malaysia by introducing a New Economic Model that has empowered the private sector to stimulate economic growth in the country.
- To support the initiative of the private sector, a competitive regulatory framework in the form of the Competition Act 2010 to create a level playing field for all businesses has been in place. This is also to safeguard competition in years to come.
- There will be challenges in the implementation as the regulatory framework is a new idea in Malaysia not only to the government but also to the business community on the whole. The government will need many awareness programmes to educate the business community especially the SMEs.
- However, the business community and entrepreneurs will soon realise the benefit of this competitive environment and hopefully will strive to be more innovative and creative under this freer business and economic eco-system.

Questions???



THANK YOU

