

No. S 7

**COMPETITION ORDER, 2015
(S 1/2015)**

COMPETITION REGULATIONS, 2020

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SCHEDULE — WARRANT TO ENTER PREMISES AND EXERCISE THE
STATUTORY POWERS UNDER SECTION 38 OF THE
COMPETITION ORDER

**COMPETITION ORDER, 2015
(S 1/2015)**

COMPETITION REGULATIONS, 2020

In exercise of the power conferred by section 73 of the Competition Order, 2015, the Minister of Finance and Economy, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Regulations —

PART 1

PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Competition Regulations, 2020 and shall be deemed to have commenced on 1st January 2020.

Interpretation

2. In these Regulations, unless the context otherwise requires —

“confidential information” means —

(a) commercial information the disclosure of which would, or might, in the opinion of the Commission, significantly harm the legitimate business interests of the undertaking to which it relates;

(b) information relating to the private affairs of an individual the disclosure of which would, or might, in the opinion of the Commission, significantly harm the individual’s interests; or

(c) information the disclosure of which would, in the opinion of the Commission, be contrary to the public interest;

“internal document” means —

(a) a document —

(i) produced by the Commission or any other public authority; or

(ii) exchanged —

(A) between the Commission and any other public authority;
or

(B) between such other public authorities; or

(b) a document produced by any person retained under a contract for services by the Commission or any other public authority in connection with such a contract;

“public authority” includes —

(a) a court or tribunal and any person or body exercising functions of a public nature; and

(b) in any country or territory outside Brunei Darussalam, a court or tribunal and any person or body which appears to the Commission to be exercising functions of a public nature;

“working day” means any day other than a Friday, Sunday or public holiday;

“writing” includes text that is —

(a) transmitted by electronic means;

(b) received in legible form; and

(c) capable of being used for subsequent reference.

PART 2

PROPOSED DECISIONS IN RESPECT OF INVESTIGATIONS

Proposed infringement decision

3. Where an authorised officer has conducted an investigation into any agreement or conduct and the Commission proposes to make a decision that the section 11 prohibition or the section 21 prohibition has been infringed, as the case may be, the Commission shall —

(a) give notice of this to each person whom the Commission considers is or was a party to the agreement, or is or was engaged in the conduct, as the case may be, which the Commission considers has infringed a prohibition; and

(b) state in the notice which prohibition the Commission considers has been infringed.

Notices, access to file and representations

4. (1) Every notice referred to in regulation 3 shall state —

(a) the facts on which the Commission relies and its reasons for the proposed decision;

(b) the period within which a relevant person may make representations to the Commission, which shall be in the form of a written statement, identifying the information contained in the notice which that relevant person considers the Commission should treat as confidential information and explaining why he considers the Commission should treat such information as confidential information; and

(c) the period within which a relevant person may submit a written statement to the Commission on the matters referred to in the notice.

(2) The Commission shall give a relevant person a reasonable opportunity to inspect the documents in the Commission's file that relate to the matters referred to in the notice given to that relevant person, except that the Commission may withhold any document —

(a) to the extent that it contains confidential information; or

(b) which is an internal document.

(3) Where, in his written statement on the matters referred to in a notice given to a relevant person, that relevant person requests to make oral representations to the Commission on such matters, the Commission may give that relevant person a reasonable opportunity to make the oral representations.

(4) Where, at the end of the period referred to in sub-regulation (1)(c), no written statement on the matters referred to in a notice given to a relevant person have been made by that relevant person, the Commission may proceed with its proposed decision in the absence of such statement.

(5) Where the Commission has given a relevant person a reasonable opportunity to make oral representations under sub-regulation (3) but no oral representations have been made, the Commission may proceed with its proposed decision in the absence of such representations.

(6) Nothing in sub-regulation (1)(b) shall be construed as restricting the application of regulation 21(2), (3), (5) and (6).

(7) In this regulation, "relevant person" means a person to whom notice is required to be given under regulation 3.

PART 3

DECISIONS FOLLOWING APPLICATIONS AND INVESTIGATIONS

Notice of decision

5. (1) Where the Commission has made a decision that the section 11 prohibition has been infringed or a decision that the section 21 prohibition has been infringed, it shall —

(a) give notice of the decision to each person whom the Commission considers is or was a party to the agreement, or is or was engaged in the conduct, which is the subject of the decision, stating the facts on which the Commission bases the decision and the Commission's reasons for making the decision; and

(b) publish the decision in such manner as the Commission may direct.

(2) Where the Commission has made a decision that there are no grounds for action in respect of —

(a) an agreement because the conditions of the section 11 prohibition are not met or because the agreement is excluded under section 12 or exempted under section 13 or 15; or

(b) any conduct because the conditions of the section 21 prohibition are not met or because the conduct is excluded under section 22,

the Commission —

(i) shall, without delay, give notice of the decision to —

(A) any person whom the Commission considers is or was a party to the agreement, or is or was engaged in conduct, against whom any of the powers of investigation in the Order have been exercised; and

(B) such other person as the Commission thinks appropriate, stating the facts on which the Commission bases the decision and the Commission's reasons for making the decision; and

(ii) may publish the decision in such manner as the Commission may direct.

PART 4

DIRECTIONS

Directions under section 40

6. (1) Subject to sub-regulation (2), if the Commission proposes to give a direction under section 40, it shall give each person to whom it proposes to give the direction a reasonable opportunity to inspect the documents in the Commission's file relating to the proposed direction.

(2) The Commission may withhold any document —

(a) to the extent that it contains confidential information; or

(b) which is an internal document.

(3) When giving a person an opportunity to make representations under section 40(3)(b), the Commission shall specify the period within which that person may make the representations.

(4) Where the Commission gives a direction to a person under section 40, it shall at the same time inform that person in writing of the facts on which it bases the direction and its reasons for giving the direction, and it shall publish the direction.

Directions under section 42

7. (1) Where the Commission proposes to give such person as it thinks appropriate any direction referred to in section 42(1), the Commission shall give notice to that person of the action it proposes to take and its reasons therefor.

(2) Regulation 4, except regulation 4(1)(a), applies, with the necessary modifications, to a notice referred to in sub-regulation (1).

(3) Where the Commission gives a direction to a person under section 42 (including the payment of any financial penalty), it shall at the same time inform that person in writing of its reasons for giving the direction, and it shall publish the direction.

PART 5

BLOCK EXEMPTIONS

Proposed cancellation of block exemption

8. (1) If the Commission proposes to make a decision for or in relation to the cancellation of a block exemption in respect of an agreement —

(a) the Commission shall give notice of this; and

(b) the provisions of regulation 9 apply.

(2) The notice referred to in sub-regulation (1)(a) shall be given to each person whom the Commission considers is or was a party to the agreement.

Notices, access to file and representations

9. (1) Every notice referred to in regulation 8 shall state —

(a) the facts on which the Commission relies and its reasons for the proposed decision;

(b) the period within which a relevant person may make representations to the Commission, which shall be in the form of a written statement, identifying the information contained in the notice which that relevant person considers the Commission should treat as confidential information and explaining why he considers the Commission should treat the information as confidential information; and

(c) the period within which a relevant person may submit a written statement to the Commission on the matters referred to in the notice.

(2) The Commission shall give a relevant person a reasonable opportunity to inspect the documents in the Commission's file that relate to the matters referred to in the notice given to that relevant person, except that the Commission may withhold any document —

(a) to the extent that it contains confidential information; or

(b) which is an internal document.

(3) Where, in his written statement on the matters referred to in a notice given to a relevant person, that relevant person requests to make oral representations to the Commission on such matters, the Commission may give that relevant person a reasonable opportunity to make such oral representations.

(4) Where, at the end of the period referred to in sub-regulation (1)(c), no written statement on the matters referred to in a notice given to a relevant person have been made by that relevant person, the Commission may proceed with its proposed decision in the absence of such statement.

(5) Where the Commission has given a relevant person a reasonable opportunity to make oral representations under sub-regulation (3) but no oral representations have been made, the Commission may proceed with its proposed decision in the absence of such representations.

(6) Nothing in sub-regulation (1)(b) shall be construed as restricting the application of regulation 21(2), (3), (5) and (6).

(7) In this regulation, "relevant person" means a person to whom notice is required to be given under regulation 8.

Notice of cancellation of block exemption

10. Where the Commission has made a decision for or in relation to the cancellation of a block exemption in respect of an agreement, it shall —

(a) give notice of the decision to each person whom the Commission considers is or was a party to the agreement, stating the facts on which the

Commission bases the decision and the Commission's reasons for making the decision; and

- (b) publish the decision in such manner as the Commission may direct.

PART 6

EXERCISE OF POWERS OF INVESTIGATION

Search warrants

11. A warrant under section 38 shall —

- (a) be in the form set out in the Schedule;
- (b) be signed by a Magistrate; and
- (c) bear the seal of the court.

List of all things taken to be made and signed

12. (1) A list of all things taken in the course of any entry to any premises under the Order and of the places in which they are respectively produced or found shall be prepared or caused to be prepared and signed by the authorised officer entering the premises.

(2) The occupier of the premises entered or some person in his behalf shall in every instance be permitted to attend during the entry, and a copy of the list prepared and signed under sub-regulation (1) shall be delivered to that occupier or person at his request, as soon as practicable.

Legal advice during investigations

13. (1) An authorised officer shall grant a request of the occupier of premises entered by the authorised officer to allow a reasonable time for the occupier's professional legal adviser to arrive at the premises before the investigation continues, if —

- (a) the authorised officer considers it reasonable in the circumstances to do so; and
- (b) the authorised officer is satisfied that such conditions as he considers appropriate to impose in granting the occupier's request are, or will be, complied with.

(2) In sub-regulation (1), "a reasonable time" means such period of time as the authorised officer considers is reasonable in the circumstances.

(3) A person required by the Commission under section 36 to provide specified information or an explanation of a specified document in person may be accompanied by a professional legal adviser.

PART 7

GENERAL

Reliance on exclusions and exemptions in Order

14. Any undertaking claiming the benefit of any —

(a) exclusion from the section 11 prohibition or the section 21 prohibition specified in the Third Schedule to the Order; or

(b) exemption from the section 11 prohibition under a block exemption order made pursuant to section 15,

shall bear the burden of proving that the conditions relating thereto have been satisfied.

Forms

15. The forms for the purpose of submission of any information or documents to the Commission under these Regulations shall be in such form as the Commission may determine.

Directions as to forms

16. (1) The form shall be completed and submitted in accordance with such directions as are specified in that form or by the Commission.

(2) The Commission may, in its absolute discretion, refuse to accept any form that is not completed or submitted in accordance with these Regulations.

Directions as to documents submitted to Commission

17. (1) Any document submitted to the Commission shall be in accordance with such directions as are specified in the form for which the document is required or by the Commission.

(2) Every document, if not in the Malay or English language, shall be accompanied by a translation thereof in either such language —

(a) certified by a court translator; or

(b) verified by the *affidavit* of a person qualified to translate it,

before it may be received, filed or used by the Commission.

Notices: general

18. (1) Any notice required to be given to any person under the Order or these Regulations may be —

- (a) delivered personally at his last known address;
- (b) left at or sent to him by ordinary post to his last known address; or
- (c) sent to him by facsimile or, with his consent, electronic mail.

(2) Where the Order or these Regulations require the Commission to give any notice to any person and —

(a) the Commission has taken the steps referred to in sub-regulation (1) to give notice to that person but has been unable to give such notice or in the Commission's opinion there is doubt that it has been able to give such notice; or

(b) the Commission is of the view that none of the steps referred to in sub-regulation (1), if taken, would give the required notice to that person,

the Commission may, instead, take one or both of the steps specified in sub-regulation (3).

(3) The steps specified for the purposes of sub-regulation (2) are as follows —

(a) publish a summary of the notice by means of entry in the register maintained by the Commission under regulation 23; and

(b) cause a reference to the summary of the notice published in that register to be published in at least one national daily newspaper.

(4) Except where sub-regulation (2) applies, where the Order or these Regulations allow or require notice to be given to a person, the notice shall be treated as if it had been received by or served on that person —

(a) in the case of personal delivery, on the day of delivery;

(b) when left at the last known address, on the day of leaving;

(c) when sent by ordinary post, on the working day after the day on which it was posted;

(d) in the case of a facsimile transmitted on a working day, on that day, or in any other case, on the working day after the day on which it is transmitted; or

(e) in the case of electronic mail or similar means, on the working day after the day on which it is transmitted.

(5) Where sub-regulation (2) applies, the notice shall be treated as having been given on the date of its publication in accordance with sub-regulation (3)(a) and (b).

(6) Any notice given under the Order or these Regulations shall be in writing.

Notices: associations of undertakings

19. (1) Where the Order or these Regulations require the Commission to give notice of any matter to an association of undertakings, the Commission shall give the notice to the director, secretary, manager or other similar authorised officer of the association on its behalf.

(2) Where the Order or these Regulations require the Commission to give notice of any matter to each of more than twenty members of an association of undertakings, the Commission may, instead of giving such notice to any such member, give the notice to the director, secretary, manager or other similar authorised officer of the association on that member's behalf, provided that individual notice shall be given to any member who has made an application in respect of the agreement or conduct to which the notice relates.

Time

20. (1) Where an act is required to be done in accordance with these Regulations within a specified period after or from a specified date, the period begins immediately after that date.

(2) Where an act is required to be done in accordance with these Regulations within or not less than a specified period before a specified date, the period ends immediately before that date.

(3) Where the time prescribed by these Regulations for doing any act expires on a day which is not a working day, the act is in time if done at or before 4.30 p.m. on the next following working day.

(4) Where an act done in accordance with these Regulations is done on a day which is not a working day, the act shall be treated as done on the next following working day.

Information to be treated as confidential

21. (1) Where a person submitting any information or document to the Commission considers the information or, in the case of a document, any of the information contained therein, as confidential information under section 70(1)(b), that person shall, at the time of submitting the information or document —

(a) in the case of such information, identify to the Commission the confidential information and provide a written statement explaining why the information is confidential information; and

(b) in the case of such document, provide —

- (i) a confidential version of the document containing and clearly identifying the confidential information;
- (ii) a non-confidential version of the document, in which the confidential information has been removed in the manner specified by the Commission; and
- (iii) a written statement explaining why the information is confidential information.

(2) Where a person has identified any information he is submitting to the Commission as being confidential information, or any document he is submitting to the Commission as containing confidential information, but the person does not provide the Commission with the written statement referred to in sub-regulation (1)(a) or (b)(iii), as the case may be, the Commission may give notice to the person submitting the information or document to provide such written statement within such time limit as the Commission considers appropriate.

(3) Where a written statement has been given to the Commission to explain why any information submitted to the Commission is confidential information, the Commission may, in its discretion, give notice to the person submitting the information or document to provide written clarification of the written statement within such time limit as the Commission considers appropriate.

(4) Where the person submitting the information or document fails to provide the Commission with the written statement referred in sub-regulation (1)(a) or (b)(iii) or with the written clarification referred to in sub-regulation (3), as the case may be, within the time limit specified by the Commission, the information submitted shall be treated as not falling within section 70(1)(b).

(5) Where the Commission proposes to disclose information which has been submitted to the Commission and identified as confidential information under section 70(1)(b), the Commission may —

(a) inform the person who submitted the information or document or the person from whom the information or document originated, of the Commission's proposed action; and

(b) give that person a reasonable opportunity to make representations to the Commission on the Commission's proposed action.

(6) For the avoidance of doubt, nothing in this regulation shall be construed as preventing the Commission from having regard to any information which is, or any document containing information which is, confidential information, or any part thereof, in its determination of any matter for which the confidential information is required.

(7) This regulation does not apply in any case where regulation 4, 7 or 9 applies, except as may be provided in such regulation.

Consultation

22. (1) Where the Commission is required to consult a person under these Regulations, it shall —

(a) give notice to that person; and

(b) state in that notice the action the Commission proposes to take, its reasons for proposing such action and the period within which that person may make written representations to the Commission on these matters.

(2) The Commission shall have the discretion to consult with such persons as it thinks appropriate, if the Commission feels that this would be advantageous, necessary or convenient for it to carry on its functions or discharge its duties under the Order.

(3) Where the Commission proposes to consult the public in exercise of its discretion to do so under these Regulations, it shall publish, in such manner as the Commission thinks appropriate, a notice stating the action it proposes to take, its reasons for proposing such action and the period within which written representations may be made to the Commission on these matters.

Register

23. (1) The Commission shall maintain a register in which there shall be entered —

(a) all decisions that the Commission is required to publish under these Regulations;

(b) all decisions published under regulation 5(2)(ii);

(c) all directions (including the payment of any financial penalty) that the Commission is required to publish under these Regulations; and

(d) all summaries of notices published under regulation 18(3)(a).

(2) The register shall, at all times, be open for public inspection at any working day.

3. This Warrant continues to be in force until the end of the period of one (1) month beginning with the day on which it is issued and may be executed on any one or more days within that period.

4. By this Warrant the named authorised officer [“and such other authorised officers and person(s) authorised in writing by the CCBD to accompany the named authorised officer” or, where the named authorised officer is an authorised officer appointed to conduct an investigation under the Order for purposes of the investigation, “and such other person(s) required by him” named] in Schedule B, are authorised to produce this Warrant and on producing this Warrant —

(a) to enter the premises using such force as is reasonably necessary for the purpose;

(b) to search any person on the premises if there are reasonable grounds for believing that that person has in his possession any document, equipment or article which has a bearing on the investigation;

(c) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application referred to in this Warrant was granted (“the relevant kind”);

(d) to take possession of any document appearing to be of the relevant kind if —

(i) such action appears to be necessary for preserving the document or preventing interference with it; or

(ii) it is not reasonably practicable to take copies of the document on the premises,

and to retain possession of any document so taken for a maximum period of 3 months;

(e) to take any other step which appears to be necessary for preserving any document of the relevant kind or preventing interference with them including but not limited to a requirement to seal the premises or any part thereof (including any office, cupboard or file etc.) for not more than 72 hours, except where the occupier consents to a longer period or where access to the documents is unduly delayed;

(f) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge and belief, where it may be found;

(g) to require any information which is stored in any electronic form and is accessible from the premises and which the named authorised officer considers relates to any matter relevant to the investigation, to be produced in a form —

- (i) in which it can be taken away; and
- (ii) in which it is visible and legible,

and the power to require such information to be produced includes the power to require any document to be produced which the named authorised officer believes may contain that information;

(h) to remove from those premises for examination any equipment or article which relates to any matter relevant to the investigation; except that instead of removing from the premises for examination any such equipment or article, the named authorised officer may allow any such equipment or article to be retained on the premises subject to such conditions as he may impose; and

(i) to take action as mentioned in sub-paragraphs (a) to (h) above in relation to any other documents on the premises relating to the investigation described in paragraphs 1 and 2. [This sub-paragraph to be included in a Warrant applied under section 38(1)(b) of the Order if the court so orders.]

5. Where the premises are occupied when this Warrant is executed, the named authorised officer shall produce this Warrant upon arrival and serve a copy thereof personally on the occupier or person appearing to be in charge of the premises thereafter, as soon as practically possible.

6. Any person entering the premises by virtue of this Warrant may take with him such equipment as appears to him to be necessary.

7. If there is no one at the premises when the named authorised officer proposes to execute this Warrant, he must, before executing it —

(a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and

(b) if the occupier is so informed, afford him or his legal or other representative a reasonable opportunity to be present when this Warrant is executed.

8. If the named authorised officer is unable to inform the occupier of the intended entry he must, when executing this Warrant, leave a copy of it in a prominent place on the premises.

9. On leaving the premises, the named authorised officer must, if they are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.

10. Terms used in this Warrant have the following meanings in accordance with the Order —

“document” has the same meaning as in section 3 of the Evidence Act (Chapter 108) and includes information recorded in any form;

“information” includes estimates and forecasts;

“occupier” means any person whom the named authorised officer reasonably believes is the occupier of the premises; and

“premises” does not include domestic premises unless —

- (a) they are used in connection with the affairs of an undertaking; or
- (b) documents relating to the affairs of an undertaking are kept there, but includes any vehicle.

SCHEDULE A

The relevant provisions of sections 53, 54, 55 and 56 of the Competition Order, 2015 are as follows —

Access to records etc.

53. (1) A person shall, if at any time directed by the authorised officer, allow the authorised officer access to his records, books, accounts, documents, computerised data, or other things for the purposes of carrying out any of the function of the authorised officer or powers under this Order.

(2) Any person who fails to comply with the direction under subsection (1) is guilty of an offence.

Giving false or misleading information, evidence or document

54. A person who fails to disclose or omits to give any relevant information or evidence or document, or provides any information, evidence or document that he knows or has reason to believe is false or misleading, in response to a direction issued by the Commission, is guilty of an offence.

Destruction, concealment, mutilation or alteration of records etc.

55. A person who —

- (a) destroys, conceals, mutilates or alters; or
- (b) sends or attempts to send or conspires with any other person to remove from its premises or send out of Brunei Darussalam,

