



Handbook on Competition Policy and Law in ASEAN for Business 2019



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The Association of Southeast Asian Nations (ASEAN) was established on 8 August 1967. The Member States are Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam. The ASEAN Secretariat is based in Jakarta, Indonesia.

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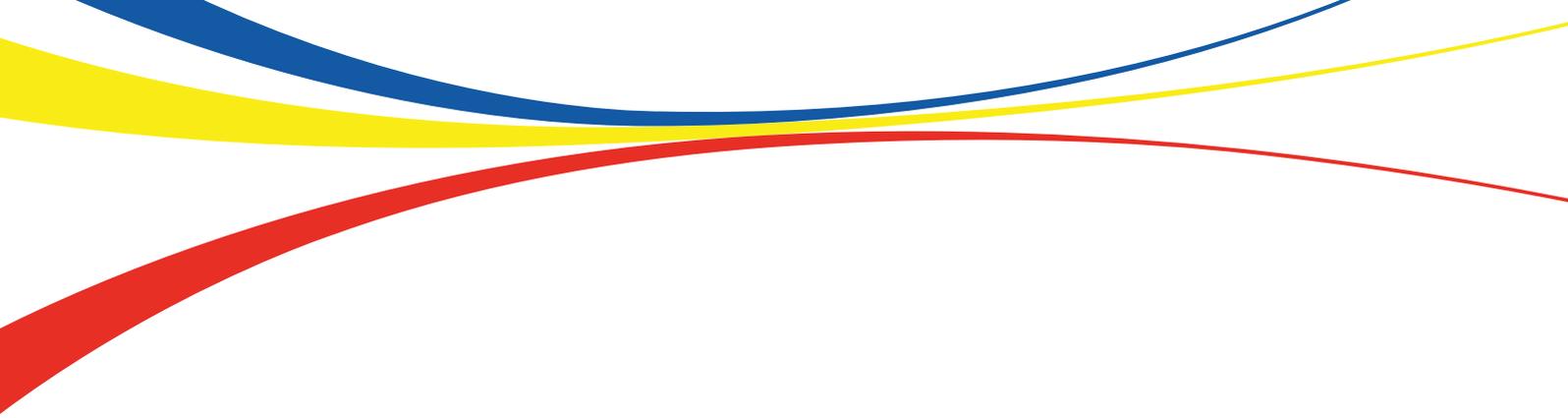
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The ASEAN Secretariat
Jakarta



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Table of Contents

Foreword from the Secretary General of ASEAN	iii
Introduction	v
PART I: Competition Policy and Law in ASEAN: Basic Principles	1
Chapter 1: Overview of CPL in ASEAN	3
Chapter 2: Scope of Competition Law	5
PART II: Competition Law in Individual ASEAN Member States	9
Brunei Darussalam	11
Cambodia	15
Indonesia	16
Lao PDR	23
Malaysia	27
Myanmar	41
Phillipines	44
Singapore	54
Thailand	66
Viet Nam	73
ANNEX I: Contact Points	85
ANNEX II: Comparative Table on Competition Law Frameworks	93
ANNEX III: Compendium of Competition Policy and Law in ASEAN	97
ANNEX IV: Glossary of Competition Law Terminologies in ASEAN	147
ANNEX V: Case Studies	175

Foreword

As ASEAN continues to forge ahead economically, effective competition law enforcement plays a central role in enabling markets to work more efficiently by way of preventing or providing remedies for anti-competitive conducts. Enhanced competition enforcement provides the incentive for businesses to innovate and to invest in the development of new technologies and know-how.

Competition Policy and Law in ASEAN has seen major developments in terms of putting in place comprehensive laws and institutional mechanisms and the strengthening of regional cooperation. To name a few examples of the recent developments; Lao PDR and Myanmar have established their Competition Commissions, and Thailand has substantially reformed the Thai Trade Competition Act BE 2650 (2017) and its Commission.

The 5th Edition of the **Handbook on Competition Policy and Law in ASEAN for Businesses** is aimed at updating businesses and other relevant stakeholders, on the basic notions of the substantive and procedural aspects of Competition Policy and Law in ASEAN. Since it was last updated in 2017, the Handbook incorporates recent developments including the establishment of the ASEAN Competition Enforcers Network (ACEN) that aims to strengthen cross-border enforcement.

Through the regular updating of this Handbook, it is hoped that businesses, especially Micro, Small and Medium Enterprises (MSMEs), can continue to benefit from the extensive and up-to-date coverage of the ASEAN Member State's institutional and legal provisions of competition laws, the scope of prohibited practices, other restrictive business practices as well as procedural issues.



H.E. DATO LIM JOK HOI
Secretary-General
Association of Southeast Asian Nations (ASEAN)



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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.

In addition, competition policy is also beneficial to developing countries as it helps to monitor and control the private sector which has become more dominant as a result of continuing privatization, deregulation and liberalization of markets.

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.

The last AMS, Cambodia has already drafted their Competition Laws and these are pending the passage of approval under their legislature and is likely to be passed soon. 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.

Competition policy also contributes to the stimulation of other policy objectives including the integration of domestic markets and facilitates regional integration, protects mSMEs, diversify industrialization, protects the environment, fights inflation, creates jobs, promotes equal rights in the work place and enhance the interest of consumer groups.

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 put in place a robust competition legal framework,



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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. Since 2017, Myanmar has set up its own Competition Commission (MmCC). There are now 8 Competition Agencies that have been set up. Laos is expected to establish their Commission in the near future. 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. Thailand's 1999 Competition Laws which was the first to be promulgated in the ASEAN region was substantially reformed by the Thai Trade Competition Act BE 2650 (2017).



Despite these developments, challenges remain 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 2017, 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 annexed to the Handbook:

- ANNEX I** – Relevant Websites and Contact Points;
- ANNEX II** – Comparative Table on Competition Law Frameworks which is a matrix of CPL that provides an at-a-glance comparative review on competition regimes in ASEAN;
- ANNEX III** – Compendium of Competition Policy and Law in ASEAN which is a Compendium of English Translations of National Competition Laws in ASEAN;
- ANNEX IV** – Glossary of Competition Law Terminologies for ASEAN to enhance understanding of commonly used terms in CPL; and
- ANNEX V** – Case Studies





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 twelve 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 twelve 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) enhancement of capacity of competition related agencies in AMS to effectively implement competition policy and law;
- iv) creation of a “competition-aware” region that supports fair competition; and
- v) 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) (54 pages), which were considered in the formulation of new competition laws across the region.

A concept note has been prepared in October 2019 to update the 2010 Regional Guidelines and targeted to be completed in 2020/21. This update will take into account amongst others a literature review of current international best practices and new developments

regarding competition law and policy in the world and in the ASEAN region.

The Regional Guidelines on Developing Core Competencies in Competition Policy and Law for ASEAN (80 pages) was developed in 2012. This supplements the 2010 Regional Guidelines by providing guidance on developing a competition enforcement system and core competencies in competition law and policy, to define recommended practices and to advice on options to develop these competencies.

The first Handbook on Competition Policy and Law in ASEAN for Business (Handbook) was also completed in 2010 and a revised fourth edition was published in 2017 (559 pages). The present Handbook is the fifth edition and published in 2019/20.

Further, the Competition Compliance Toolkit for Businesses in ASEAN (24 pages) was published in 2018 and served to provide businesses with information on the basic principles of competition law, benefits of competition compliance, as well as guidelines on implementing an internal Competition Compliance Program (CCP) in the ASEAN context.

In addition, the Toolkit on Competition Advocacy in ASEAN (2016) (28 pages) 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. Case studies from ASEAN member states on successful advocacy approaches will be added periodically to the toolkit with further tools and templates.



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.

Additionally the Peer Review Guidance Document is being developed and expected to be finalized in 2019/20 to pave the way for AMS to carry out the first peer review by 2020.

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 (including joint cross border investigations), inter-sectoral studies (e.g. energy, aviation, telecoms, IP), impact of the fourth industrial revolution on the ASEAN competition landscape, study visits, staff exchanges and secondments of experts.

In 2018, the ASEAN Competition Enforcers' Network (ACEN) was set up as a platform for case handlers, litigators, merger analysts and AMS competition agencies to share information, experiences and best practices, and to cooperate on cross border enforcement and capacity building. Regional cooperation is also further enhanced with the completion of the ASEAN Regional Cooperation Framework in 2018.

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.

A mid-term review of ACAP 2025 is being proposed in the last quarter of 2019 and expected to be carried out in 2020 and will take into account the latest development in the competition landscape such as the adoption and consideration of national competition laws in all AMS including any reforms that have taken place to date, the establishment of new competition agencies, the emergence and dominance of the digital economy and the growing number of regional and cross-border competition cases that would require a more coordinated and coherent approach amongst AMS in implementing their competition policies and laws.

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) anticompetitive 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

anticompetitive 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 anticompetitive 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 anticompetitive agreements, while exclusions are dealt with separately in dedicated sections.





PART II

Competition Law in Individual ASEAN Member States

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Legislation and Jurisdiction

The Law

What is the relevant legislation?

The **Competition Order 2015** (Order).

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 (Section 11);
- (b) **Abuse of dominant position** (Section 21); and
- (c) **Mergers** that resulted or may result in a substantial lessening of competition (Section 23).

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** was established on 1 August 2017 with a mandate to promote and protect competition in Brunei Darussalam economic landscape through the prohibition of anti-competitive conducts. The Competition and Consumer Affairs Department was also established as an Executive Secretariat to the Commission and is responsible in carrying out functions such as advocacy, receiving complaints, investigation 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.



Anti-competitive Practices

Agreements

Which agreements are prohibited?

Section 11 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?

Section 13 of the Order provides individual exemption application to the Minister, through the Commission, for agreement that 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 or 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 the 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 within Brunei Darussalam or elsewhere.

When are monopoly and dominant position prohibited?

Section 21 of the Order prohibits undertaking to abuse its dominant position in any market in Brunei Darussalam with the following conducts:

- (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 provided for abuse of dominant position under the Order.

Merger control

What is a merger?

Merger occurs if:

- (a) Two or more undertakings, previously independent of one another, merge;
- (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 a position to replace or substantially replace the second 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?

Section 23 of the Order prohibits mergers that have resulted, or may be expected to result, in a substantial lessening of competition within any market in Brunei Darussalam for goods or services.

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 infringe Section 23 prohibition.

Which mergers may be exempted?

The parties to anticipated mergers 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 Order, in which the Commission may interpret and give effect to the provisions by publishing *Gazette* regulations. In preparing any regulations, the Commission may consult with relevant stakeholders as it thinks appropriate.

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 agreements;
- (b) Infringement of section 21 relating to abuse of dominant position;
- (c) Infringement of section 23 relating to anti-competitive 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 authorised officer and such other person as the Commission has authorised to accompany the authorised officer may enter any premises; 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 satisfied the conditions stated in the Order.

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?

Section 70 of the Order provides protection to confidential information that was obtained during performing functions and duties under the Order.

In case there is an infringement, the parties involve will receive a notice from the Commission and be given opportunity to make representations to the Commission as stated in Section 41 of the Order.

Is there any leniency programme?

The Order regulates leniency regime, with a reduction of up to a maximum of 100 percent of any penalties which would otherwise have been imposed. Leniency is 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?

Upon completion of an investigation and when a decision has been made, the Commission may issue directions as it considers appropriate to bring the infringement or the circumstances to an end and, where necessary, requiring that undertakings 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.

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, up to a maximum of three years.

Judicial review

Can the enforcement authorities' decisions be appealed?

Under the 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.

As of date of publication, the establishment of a Competition Appeal Tribunal that would be responsible for handling appeals on decisions made by the Competition Commission of Brunei Darussalam, is 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.



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 the draft law. The draft law has finished the discussion at the Inter-Ministerial Meeting at the Council of Ministers and waiting for full Cabinet meeting by the end of 2020. Then it will be submitted to the National Assembly which is expected to be enacted by early 2021.

To whom does it apply?

This draft Law applies to all Persons conducting business activities, or any actions supporting business activities, which significantly prevent, restrict or distort competition in the market regardless of whether the activities take place inside or outside the territory of the Kingdom of Cambodia.

The term “**Person**” refers to a natural person or legal entity that is properly incorporated or formed in accordance with the laws in force whether for making a profit or for non-profit and whether it is registered or not registered.

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 unlawful 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 at the Council of Ministers.

The Authority

Who is the enforcement authority?

The competition agency will be the Cambodian Competition Commission “CCC” (hereinafter, “the Commission”) in which the Consumer Protection Competition and Fraud Repression Directorate General “C.C.F” (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 a number of representatives from line ministries together with 1 (one) former judge and 4 (four) individuals who have experiences in law and economy this Commission shall be Chaired by the Minister of Commerce. The Commission shall perform these duties:

- (i) Prepare policies and plans regarding to competition;
- (ii) Advise on draft legislation and regulations regarding competition;
- (iii) Request the Government to revise or amend any legislation, regulations or agreements which affect competition;
- (iv) Issue decisions, orders and interim measures and impose fines at the request of the Directorate or on its own initiative to restore and promote competition;
- (v) Establish the rules and procedures related to calculating fines;
- (vi) Establish rules regarding Conflicts of Interest for members of the CCC; and
- (vii) Establish other rules and guidelines to implement laws and regulations regarding competition.

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

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



Legislation and Jurisdiction

The Law

What is the relevant legislation?

The relevant legislation is Law Number 5 Year 1999 concerning the prohibition of monopolistic practices and unfair business competition (the “Law”), together with the Elucidation on the Law, Law Number 20 Year 2008 concerning Micro, Small and Medium Enterprises, the Decree of the President of the Republic of Indonesia No. 75 of 1999 on Indonesia Competition Commission (ICC) or domestically known as Komisi Pengawas Persaingan Usaha (KPPU) (the “Decree”), several procedural regulations and guidelines, available on the ICC website at: <http://kppu.go.id> and/or <http://eng.kppu.go.id> (English page).

1. Regulation of the Supreme Court of the Republic of Indonesia Number 3 Year 2019 regarding the Procedures for Filing Objections to the Decisions of KPPU, replaces Regulation of the Supreme Court of the Republic of Indonesia Number 3 Year 2015, for cases introduced as of 9 August 2019;
2. Government Regulation Number. 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. Government Regulation Number 17 Year 2013 concerning the Implementation of Law Number 20 Year 2008 on Micro, Small and Medium Enterprises;
4. Commission Regulation Number 4 Year 2019 on Procedures for Partnership’s Supervision and Case Handling .
5. Commission Regulation Number 1 Year 2019 regarding Case Handling Procedures replaces KPPU Regulation Number 1 of 2010, Number 1 of 2006 and Number 2 of 2008, for cases introduced as of 4 February 2019;

6. Commission Regulation Number 3 Year 2019 on Review of Merger or Consolidation of Business Entities and Acquisition of Shares of Companies which may cause Monopolistic Practices and Unfair Business Competition, which replace Commission Regulation Number 3 Year 2012.

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 of anticompetitive 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 the Indonesian market could be investigated and sanctioned by ICC (exercise of extraterritorial jurisdiction); (ii) the shifting of mandatory post-merger notification to mandatory premerger 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 Authorities

Who is the enforcement authority?

The enforcement authority is the ICC. According to Chapter VI of the Law, the Decree and the regulations, the ICC 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 ICC 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 ICC 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); and 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 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 of 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”).

In 2019, ICC issued the Commission Regulation Number 3 Year 2019 on Review of Merger or Consolidation of Business Entities and Acquisition of Shares of Companies which may cause Monopolistic Practices and Unfair Business Competition, which replace Commission Regulation Number 3 Year 2012.

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), acquisition of shares and transfer of assets.

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 ICC 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 ICC. 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 ICC from assessing the merger after it has been implemented. Further explanation on the consultation process is described by Commission Regulation Number 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 ICC 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 ICC should be made within 90 (ninety) working days after the submitted notification document is completed. If the ICC finds the existence of a competition violation due to the merger, the ICC can continue the process using the applicable case handling procedure stipulated by Commission Regulation Number 1 Year 2019 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 ICC 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 ICC can use other tools such the Concentration Ratio (CR) or any other measures of market concentration. Two spectrums are used 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 ICC in assessing a merger.

What happens if prohibited mergers are implemented?

If it was being implemented, then the ICC will enter the investigation process as defined by Commission Regulation Number 1 Year 2019 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.



Procedure

Investigations

How does an investigation start?

Investigations are regulated by Chapter VII of the Law and by the Procedural Regulations. ICC 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 ICC.

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

The ICC 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 ICC 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 ICC?

The ICC 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 ICC 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 Advocacy Directorate for any inquiries through the official e-mail address at infokom@kppu.go.id

Adjudication***What are the final decisions?***

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

What are the sanctions?

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 practices, 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 IDR1 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 ICC'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 resupply 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 V - Case Studies.



Legislation and Jurisdiction

The Law

What is the relevant legislation?

The main legislation is the Competition Law (here in after, “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 Lao Competition Committee (LCC) has been established on 4 October 2018. Division of Competition under Department of Internal Trade, the Ministry of Industry and Commerce has been 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.



Anticompetitive 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 position 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. However, in the implementation, businesses can appeal to higher court if they disagree with enforcement authorities' decisions.

Private enforcement

Are private actions for damages available?

There are some specific provisions for private enforcement as indicated in Article 76 of the Competition Law such as when there is the confession and agreed for compensation from the violator and the complainants or damaged person (s) agreed to end the case (paragraph 2).



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 licensed 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 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” applies to “licensees” defined to mean a person who either holds any individual licence or undertakes activities, which are subject to a class licence under this Act.

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 and Competition Commission Act 2010.

The Malaysian Communication and Multimedia Commission has also proposed amendments to the Communications and Multimedia Act 1998.

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.

Under section 16 of the Malaysia Communications and Multimedia Commission Act 1998, the Malaysian Communication and Multimedia Commission (MCMC) has the powers and functions to implement and enforce the communications and multimedia laws.

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 the aviation industry, MAVCOM is the competition 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.

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.

The Communications and Multimedia Act 1998 contains prohibition of the following agreements:

- 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).

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, including 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 Commission (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 agreement, 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.

For aviation service markets, further details are provided in MAVCOM’s Guidelines on Anti-Competitive Agreements.

Which agreements may be exempted?

Under Section 5 of the Competition Act 2010, agreements that are prohibited under the Act 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. However, authorization of conduct would not be applicable to per se prohibitions under sections 135 and 136 of the Communications and Multimedia Act 1998.

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". MCMC may authorize the conduct if it is satisfied that the conduct

is in the national interest. Accordingly, a Guideline on Authorisation of Conduct was published by MCMC to provide clarity to the industry on MCMC's approach in asserting the conduct.

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 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 the requirements under section 50 of the MAVCOM Act 2015 are fulfilled. 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, MAVCOM will publish a summary of the application to solicit feedback from the public. MAVCOM will 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. 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 4.6), MCMC may amongst others consider the market structure and nature of competition, barriers to entry and expansion, countervailing buyer power and nature and effectiveness of economic regulation, prior to determining any operator dominant. MCMC takes a broader view of the meaning of licensee for the purpose of section 137 of the Communications and Multimedia Act 1998 to include the licensee’s group of companies, so the licensee is responsible for any intra-company arrangements. In general, a market share of 40% or more, will be considered high in this industry. 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 dominant position is not prohibited but it is the abuse of the dominant position that is prohibited. Under section 139(1), MCMC may direct a licensee in a dominant position in a communications market to cease the conduct which has or may have the effect of substantially lessening competition, and to implement the 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. MAVCOM's Guidelines on Abuse of Dominant Position provide further details on exclusionary and exploitative conducts that may amount to an abuse of dominance.

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. MCMC will carry out a cost-benefit analysis prior to authorizing a conduct. Licensees may be required to provide an undertaking.

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 from 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. However, efforts are currently ongoing to incorporate Mergers Control Regime into the Competition Act 2010.

There are no express provisions on merger control under the Communication and Multimedia Act. However, MCMC is of the view that term conduct in the Communications and Multimedia Act 1998 is broad enough to encompass mergers and acquisitions. MCMC has published Guidelines on Mergers and Acquisitions which is aimed to increase transparency and provide the industry with clarity on MCMC's approach in assessing mergers and acquisitions. Notification is on a voluntary basis.

Licensees that do not apply for assessment run the risk of enforcement actions by MCMC upon completion of mergers and acquisitions.

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.

Further details on merger control in the aviation industry are provided in MAVCOM's Guidelines on Substantive Assessment of Mergers and Guidelines on Notification and Application Procedure for and Anticipated Merger or a Merger.



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.

For aviation services, MAVCOM has the power to investigate any infringement as provided under the MAVCOM Act 2015.

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 made to the MyCC.

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 1990, 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.

For the aviation industry, MAVCOM will carry out an investigation if there is reason to suspect that there is an infringement of any prohibition of anti-competitive behavior. Complaints can be lodged by any person by filling up the Complaint Form and submitting it to competition@mavcom.my, together with any supporting documents or information to substantiate your complaint. Upon receiving a complaint, MAVCOM will carry out an initial enquiry before deciding whether to initiate a formal investigation.

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 in the Commission's investigation process i.e.: preliminary phase (up to 30 days); investigation phase (up to 90 days or up to 180 days if it involves the assessment of a dominant position); decision-making phase (up to 30 days). These timelines are specified in the Guidelines of Substantial Lessening of Competition. There are also timelines specified for assessment of mergers, i.e. Phase 1 is up to 30 business days and Phase 2, 120 business days. Timelines on assessment of authorization of conduct is also specified in the Guidelines on Authorisation of Conduct, which is similar to the Commission's investigation process.

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 MAVCOM publish reasons for its decision in the event that MAVCOM determines that there is an infringement of a prohibition under Part VII of the Act. 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. MCMC has powers under section 73 to gather information or documents relevant to investigation. 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 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 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.

There are currently no leniency programme under the Communication and Multimedia Act 1998.

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. Further details are provided in MAVCOM's Guidelines on Leniency Regime.

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 Department, Compliance Division
63000 Cyberjaya, Malaysia
☎ + 603 8688 8000
☎ + 603 8688 1001
✉ aduanskmm@mcmc.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
 and Industry Development Department
 7th and 5th Floors
 No. 12 Jalan Tun Hussein Precinct 2
 62100 Putrajaya MALAYSIA
 + 603 88708500
 + 603 88888648
 www.st.gov.my

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 MyCC 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 MyCC may also, subject to possible conditions, accept undertakings to do or refrain from doing anything, as it considers appropriate, in which

case it 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, MAVCOM may make a finding of infringement or non-infringement at the end of an investigation. In the event of a finding of infringement, MAVCOM shall require that the infringement be ceased immediately. 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).

In relation to the aviation industry, MAVCOM may impose a financial penalty not exceeding ten percent of the worldwide turnover of the enterprise over the period during which an infringement occurred. Further details are provided in MAVCOM's Guidelines on the Determination of Financial Penalties.

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 decision 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. Section 121, allows the person affected by the decision or other action of the Minister or Commission to apply to the court for a judicial review, by first exhausting all other remedies provided for under this Act.

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 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 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. Such application must be made within 14 days from the date of notice of the infringement decision.

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.

 **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 36 b, 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 non compete agreements in the framework of the sale of good will 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?

Myanmar Competition Commission is the enforcement authority. In exercise of the power conferred under section 5, sub-section (a) and (b) of Myanmar Competition Law, the Union Government has established “Myanmar Competition Commission” on 31st October 2018 with the notification no. 106/2018. The Minister of the Ministry of Commerce will take the role of the Chairman of the Commission and members are representatives from Union Attorney General's Office, Ministry of Commerce, Ministry of Home Affairs, Ministry of Transport and Communications, Ministry of Industry and UMFCCL, economist and lawyers.

 **Anticompetitive practices****Agreements**

Which agreements are prohibited?

Chapter VII of the Myanmar Competition Law 2015 stipulates that: No person shall carry out any of

the following acts which cause act of restraint on competition:

- (a) fixing the price directly or indirectly in purchase price or selling price or other commercial situation;
- (b) making agreement on restraint on competition in the market;
- (c) abusing by taking chance on the situation of dominance in the relevant market;
- (d) conducting restraint on market by individual or organization;
- (e) restraining and preventing to share market or resources provision;
- (f) restraining or controlling on production, market acquisition, technology and development of technology and investment;
- (g) collusion in tendering or auctioning;

Which agreements may be exempted?

The Myanmar Competition Commission may exempt the prohibited agreement that restrains 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.

 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?

Yes, there are plans to conduct a general review of the Act to address the current limitations in the enforcement powers considering the Philippine Competition Commission’s (PCC) experience in implementing the law.

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?

To improve ease of doing business for merging parties, the PCC modified its merger control regime, allowing for the annual adjustment of merger notification thresholds based on the nominal GDP growth of the previous year. As of March 2019, the thresholds have been adjusted from PhP5 billion to PhP5.6 billion (USD 109.3 million) for the Size of Person, and from PhP2 billion to PhP2.2 billion (USD 42.96 million) for the Size of Transaction.

Additionally, 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.

In cases of joint ventures (JVs), PCC has issued rules to streamline its merger review process for solicited public-private partnership (PPP) projects.

In its Memorandum Circular No. 19-001, the PCC detailed the procedure in securing a Certificate of Project Exemption, effectively allowing prospective bidders to meet both the requirements of the Philippine Competition Act and the Build-Operate-Transfer Law in the streamlined process. Under the circular, agencies may seek exemption from compulsory notification in behalf of their solicited project’s prospective bidders by filing with the PCC an application for a Certificate of Project Exemption.

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.

Moreover, the PCC is offering a fast-track review route for qualified M&A transactions. Under the rules that took effect on 2 July 2019, expedited review for qualified M&A transactions will take only 15 working days, down from the 30 calendar-day turnaround time for regular Phase 1 review prescribed by the Philippine Competition Act.

Based on PCC's experience in merger review, certain transactions are less likely to substantially prevent, restrict or lessen competition in their relevant markets. Expedited review will be available to four (4) types of transactions. These transactions involve (1) parties with no actual or potential overlapping business relationships; (2) foreign entities whose subsidiaries in the Philippines only act as manufacturers or assemblers of products, at least 95% of which are exported; (3) parties with a global scale but with negligible or limited presence in the Philippines; and (4) joint ventures formed purely for the construction and development of residential and/or commercial real estate projects. Merging parties may apply for the expedited review within 30 days after signing the definitive agreement on the deal, but prior to any acts of consummation.

In 2018, Phase 1 review of M&A transactions took an average of 23 calendar days. The expedited process for non-problematic mergers will allow PCC to more efficiently use its resources in the effective implementation of a holistic merger control regime.

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?

Yes, Section 35 of the Philippine Competition Act mandates the development of a Leniency Program.

The Leniency Program of the PCC allows any entity that participates or participated in a violation of Section 14(a) or 14(b) of the law, to avail of “leniency” in the form of either: (1) immunity from suit; or (2) exemption, waiver, or gradation of fines (“reduction of fines”) in exchange for the voluntary disclosure of information regarding such violation, subject to certain requirements.

for each reported violation of Section 14(a) or 14(b). This principle is meant to ensure that members of a cartel will race to the PCC and disclose the existence of the anti-competitive agreement to obtain the benefits of the Leniency Program.

Violations of Sections 14(a) and 14(b) of the law, which include price-fixing, bid-rigging, output restriction and market allocation, are widely considered to be the most harmful forms of anti-competitive behavior. The PCC's Leniency Program is designed to deter the creation of such cartels, and to aid in the detection and prosecution of existing ones by incentivizing cooperation from current and former cartel participants who possess information and/or evidence necessary for a successful investigation.

The benefits available depend on when the entity applied for leniency and the entity's role in the cartel. The available benefits are summarized in the matrix below:

	Role of Applicant in the Anti-Competitive Agreement	Available Benefits	
		Submitted <i>Marker Request Form</i> PRIOR to start of Preliminary Inquiry	Submitted <i>Marker Request Form</i> AFTER the start of Preliminary Inquiry
Entity No. 1	Participant	<ul style="list-style-type: none"> Immunity from suit 	<ul style="list-style-type: none"> No fine Immunity from suit at the discretion of the PCC
	Leader, Originator, or Coercer	<ul style="list-style-type: none"> 80% reduction of actual fines 	<ul style="list-style-type: none"> 45% reduction of actual fines
Entity No. 2	Participant	<ul style="list-style-type: none"> 65% reduction of actual fines However, immunity from suit may be granted if the first Entity was only given reduction of fines 	<ul style="list-style-type: none"> 35% reduction of actual fines However, immunity from suit may be granted at the discretion of the PCC if the first Entity was only given reduction of fines
	Leader, Originator, or Coercer	<ul style="list-style-type: none"> 50% reduction of actual fines 	<ul style="list-style-type: none"> 25% reduction of actual fines

Immunity from suit includes immunity from administrative and criminal liability arising from violations of Sections 14(a) and 14(b) of the law. It likewise includes immunity from civil actions initiated by the PCC on behalf of

affected parties and third parties. Reduction of fines only applies to the administrative penalty that may be imposed by the PCC.

It must be noted that the benefit of immunity from suit is available until it is granted to an entity. Hence, in case the first qualified entity is only granted reduction of fines, the second qualified entity may be granted immunity from suit if it submitted the Marker Request Form prior to the start of Preliminary Inquiry, or at the discretion of the PCC if the Marker Request Form was submitted after the start of the Preliminary Inquiry.

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 consumer.



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 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 and Consumer Commission of Singapore (CCCS) website (www.cccs.gov.sg, under “Legislation”).

CCCS has also issued a set of 12 guidelines in order to provide greater transparency and clarity on how CCCS will administer and enforce the Competition Act. They are available at CCCS’ website (www.cccs.gov.sg, under “Our Legislation” > Competition Act and Guidelines).

To whom does it apply?

The Act applies to **undertakings**, i.e., any natural or legal person (including individuals operating 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 CCCS 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?

On 16 May 2018, the Competition (Amendment) Act came into effect. Amongst the main changes to the Act are: (a) changes to empower CCCS to accept legally binding and enforceable commitments for anti-competitive conduct relating to sections 34 and 47 prohibitions so as to address and resolve the competition concerns arising from the conduct; (b) streamlining and simplification of the interview process by allowing CCCS to conduct general interviews during inspections and searches under section 64 and section 65 of the Act; (c) To provide more certainty to businesses and stakeholders by providing for confidential advice for anticipated mergers under the Act.

For the latest information please refer to CCCS website at www.cccs.gov.sg.

The Authority

Who is the enforcement authority?

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

CCCS 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). Beginning April 2018, CCCS also took on the additional function of administering the Consumer Protection (Fair Trading) 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 CCCS 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 CCCS 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 CCCS 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 CCCS can be found at CCCS website (www.cccs.gov.sg, under "Approach Us > Seek Guidance and Decision > Apply for a guidance or decision"). Notifying parties are required to submit Form 1 and subsequently, if requested by CCCS, to submit Form 2 (CCCS 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: CCCS website www.cccs.gov.sg, under "Approach CCCS> 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 CCCS 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 CCCS, together with the prescribed initial fee. Where requested by CCCS, 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 CCCS's website (www.cccs.gov.sg), under "Approach Us > Seek Guidance and Decision > Apply for a guidance or decision".

In cases where Form 2 is submitted, CCCS may, within 2 months of receiving Form 2, specify a time frame within which the applicant is to pay CCCS a further fee, over and above that which was paid with the initial filing. This further fee will be levied in cases where CCCS is of the opinion that the application requires significant analysis. The applicant may choose not to pay the further fee, in which case CCCS 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 CCCS 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 CCCS or later, within 7 working days from the filing.

The time taken by CCCS 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 CCCS's website at www.cccs.gov.sg and CCCS 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, CCCS will consider a market share above 60% as likely to indicate that an undertaking is dominant in the relevant market (CCCS 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 to 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 CCCS 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 CCCS) 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 CCCS for a decision on whether the

- **Anticipated merger** 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 CCCS 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 CCCS’ review of the submission, merging parties intending to make an application may approach CCCS for a **pre-notification discussion (PND)** (CCCS Guidelines on Merger Procedures 2012 §§ 4.6-4.11).

With the revision of the CCCS Guidelines on Merger Procedures in July 2012, CCCS has introduced a new service whereby merger parties can obtain confidential advice from CCCS 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 CCCS on whether or not their mergers would infringe the Competition Act could approach CCCS 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 CCCS is unlikely to investigate a merger situation that involves only small businesses. For greater clarity, small business is defined by turnover. The CCCS 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 CCCS 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 CCCS's website (www.cccs.gov.sg, under "Approach Us > Notify a Merger – File a merger notification with CCCS").

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: CCCS website www.cccs.gov.sg, under "Approach CCCS > Notify 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 CCCS website (www.cccs.gov.sg, under "Approach CCCS > 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 CCCS 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 CCCS 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, CCCS assesses that the notification form meets all applicable filing requirements, charges the filing fee and makes a quick assessment of the filing. This allows CCCS to give a favourable decision for proposed mergers that clearly do not raise any competition concerns under the Act.

If CCCS is unable during the Phase 1 review to conclude that the proposed merger does not raise any competition concerns, CCCS 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, CCCS will proceed to carry out a more detailed assessment ("Phase 2" review). CCCS 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 (CCCS Guidelines on Merger Procedures 2012, §4.66).

However, according to Section 58A of the Act, CCCS 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 CCCS’ 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 CCCS Guidelines on Merger procedures 2012, CCCS considers that an SLC is unlikely to result, and CCCS 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).

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 CCCS’ notice proposing to issue an infringement decision (Sections 57(3), 58(3) and 68(3) of the Act).



Procedure

Investigations

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 CCCS 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 (CCCS Guidelines on Substantive 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.

How does an investigation start?

CCCS 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 CCCS website (www.cccs.gov.sg, under “Approach CCCS”).

Parties may submit a complaint to CCCS via:

- Online complaint form: www.cccs.gov.sg/approach-cccs/making-complaints/complaint-online-form
- E-Mail: cccs_feedback@cccs.gov.sg
- Post: Competition and Consumer 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 CCCS' hotline at 1800-325 8282 for assistance.

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

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

CCCS 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.

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

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

What are the investigation powers of CCCS?

Under Sections 63, 64 and 65 of the Act, CCCS 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)). CCCS 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 CCCS 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, CCCS 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 CCCS’ 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 CCCS 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 CCCS, 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 an-

nex. However, where it is necessary to reveal confidential information for effective handling of complaints, CCCS 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 CCCS propose an infringement decision, Section 68 of the Act provides safeguards for the parties involved. The CCCS 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 CCCS. The Competition Regulations 2007 (§8) also require CCCS to provide the relevant party or parties a reasonable opportunity to inspect documents relating to the decision issued.

Parties affected by CCCS’ 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 CCCS 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 CCCS, 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 CCCS 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 CCCS 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 CCCS issues a notice of its Proposed Infringement Decision (§4.1).

CCCS 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. CCCS has also introduced a channel whereby merger parties can obtain confidential advice from CCCS as to whether or not a merger raises concerns.

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

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

Adjudication

What are the final decisions?

Following the investigation, CCCS 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, CCCS 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 (CCCS Guidelines on Appropriate Amount of Penalties); and
- **Criminal sanctions** where a person fails to cooperate with CCCS 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, CCCS' 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 CCCS' 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



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, for example, the broadcasting and telecommunications sectors, and the energy sector.

Concerning the competition regulation in the broadcasting and telecommunications sectors, the National Broadcasting and Telecommunications Commission (NBTC) has the power to decide competition cases and to issue rules and regulations concerning competition in its sector in accordance with the Act on Organisation to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunications Services B.E. (2010).

Additionally, According to the Telecommunications Business Act B.E. 2544 (2001), in operating the telecommunications business, the NBTC 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) crossholding 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). Moreover, 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 aht throughout the period of violation (Section 67).

In terms of competition regulation in the energy sector, the Energy Regulatory Commission (ERC) shall have the power to establish regulations to prevent any act that is monopolistic or that reduces or limits competition in energy service provision under the Section 60 of the Energy Industry Act B.E. 2550 (2007). Furthermore, the ERC shall announce and determine the type and term of license of Energy industry operation, taking into account the competitive features of each industry category, and may impose conditions on a case by case basis under Section 47 of the Energy Industry Act B.E. 2550 (2007).



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 of Trade Competition Commission on Rules for a Business Operator with Power Over the Market B.E. 2561 (2018) issued under the Trade Competition Act B.E. 2560 (2017), 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 such business operator is 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 such business operators are 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.

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:

- by unfairly obstructing 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?

According to the Rates of Fees under the Trade Competition Act B.E. 2560 (2017), the filing fees for a permission to conduct a merger under Section 51 paragraph two is 250,000 THB per a request.

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 notifications which are comprising of 1) Notification on the Criteria, Procedures and Conditions in Requesting for the Permission and the Permission for Business Merging B.E.2561, and 2) Notification on Rules, Procedures and Conditions for Notification of Business Merging Results B.E. 2561 will be exempted from the obligations of pre-merger permission and post-merger notification under the law respectively.

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 subcommittees 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
5th floor, Car Parking (BC), The Government Complex
Commemorating His Majesty The King's 80th Birthday
Anniversary, 120 Chaeng Wattana Road, Thungsong-
hong, Laksi, Bangkok 10210

☎ +66 2 199 5419, +66 2 199 5409

☎ +66 2 143 7715

✉ legal@otcc.or.th ; international@otcc.or.th



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 maximum 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.

 **Legislation and Jurisdiction**

The Law

What is the relevant legislation?

The main legislation is the **Viet Nam Competition Law No. 23/2018/QH14** dated June 12, 2018 (hereinafter “the Law”), which replaced the Viet Nam Competition Law No.27/2004/QH11. The Law took effective since July 1, 2019.

In order to enforce the Law effectively and comprehensively, 02 implementation Decrees were issued by the Government as follows:

- Decree No. 75/2019/ND-CP dated September 26, 2019 prescribing penalties for administrative violations against regulations on competition.
- Decree No.35/2020/ND-CP dated March 24, 2020 on detailed regulations of some provision of the Competition Law.

In addition, Viet Nam is in the process of drafting a Decree on the tasks, power and organization structure of the National Competition Commission which shall also be issued by the Government.

The Law and the implementing guidelines shall be available on the Viet Nam Competition Commission website (www.vcca.gov.vn, under “legal resources”).

To whom does it apply?

According to Article 2, the Law applies to the following:

1. Business organizations and individuals (hereinafter referred to as “**enterprises**”), including enterprises that produce and provide public-utility products and services, enterprises that operate in state-monopolized sectors/domains, public sector entities and foreign enterprises that operate in Viet Nam.
2. Industry associations operating in Viet Nam.
3. Relevant domestic and foreign agencies, organizations and individuals.

Which practices does it cover?

The Law covers the following practices:

- “**Anti-competitive agreements**” (Chapter III), which include enterprises’ practices that cause or may cause anti-competitive effects, including anti-competitive agreement, abuse of a dominant position on the market and abuse of monopoly power;
- “**Abuse of a dominant position, abuse of monopoly position acts**” (Chapter IV), defined as behavior of enterprises with dominant position, monopoly position which causes or may cause anti-competitive effects;
- “**Economic concentration**” (Chapter V), include merger of enterprises, consolidation of enterprises, acquisition of enterprises, joint venture between/ among enterprises; and
- “**Unfair competition acts**” (Chapter VI), defined as competition acts performed by enterprises against the principles of good faith, honesty, business norms and standards, which cause or may cause damage to the legitimate rights and interests of other enterprises..

Are there proposals for reform?

The Law is the result of the reform process in order to amend the Viet Nam Competition Law 2004. The revised Viet Nam Competition Law 2018 is considered as a fundamental and comprehensive amendments of the previous Law. The Law consisting of 10 chapters with 118 articles which shall include important amendments as follows: (i) extending the scope of Law application, (ii) Expanding the applicable subjects, (iii) Amending the approach to control the competition restriction agreements, (iv) Amending the approach to control the abuse of dominant and monopoly position in the market; (v) Amending the approach to control economic concentration activities; (vi) Adjusting regulations on controlling unfair competition practices and (vii) Restructuring of Viet Nam Competition Agency.

The Law takes effect on July 1, 2019.

The Authorities

Who is the enforcement authority?

According to Chapter VII of the Competition Law 2018, Viet Nam National Competition Commission shall be the enforcement authority of Viet Nam Competition Law.

The Viet Nam National Competition Commission shall be established on the basis of the merger of two former competition agencies including Viet Nam Competition and Consumer Authority and Viet Nam Competition Commission.

The National Competition Commission is a body affiliated to the Ministry of Industry and Trade, composed of Chairman, Vice Chairman, and members. The Competition Investigation Agency and other units form an assisting apparatus of the National Competition Commission (Article 46 of the Law).

National Competition Commission has the following duties and powers (i) Give advice to the Minister of Industry and Trade for performing state management of competition; and (ii) Initiate competition legal proceedings; control economic concentration; consider granting exemption decision; handle complaints against settlement decisions and other duties as prescribed in this Law and other law provisions.

The Chairman of the National Competition Commission is the head and take legal liability for the operation of the National Competition Commission (Article 47 of the Law).

National Competition Commission shall be the only agency to enforce the Competition Law, with the function of adjudicating anti-competition practices, unfair competition cases; exemption of anti-competitive agreements and deciding on whether economic concentration cases fall within the prohibited category.

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 competition agency 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 Viet Nam Competition Commission may cooperate with the relevant administrative authorities.



Anticompetitive practices

Agreements

Which agreements are prohibited?

According to Article 3(2), “*anti-competitive agreements*” is one out of two types of “*anti-competitive practices*” which are enterprises’ practices causing or being likely to cause anti-competitive effects. In term of “*anti-competitive effects*”, it is clarified by Article 3(3) as eliminating, reducing, distorting or deterring competition

on the market. Meanwhile, Article 3 (4) regulates interpretation of term “*anti-competition agreements*” which means arrangements made by parties in any form which causes or may cause anti-competitive effects.

Article 11 identifies a list of “*anti-competition agreements*”, while Article 12 regulates prohibited provisions of these agreements based on the per-se rule and the rule of reason. Beside that, under Article 12, language of “horizontal agreements” is agreements between enterprises on the same relevant market, while language of “vertical agreements” is agreements between enterprises doing business in different stages of the production, distribution, supply chain for goods, services.

Prohibitions on anticompetitive agreements are regulated as that:

- *Per-se rule prohibitions*: According to Article 12.(1) and (2), anti-competitive agreements are prohibited per-se, including:
 - Horizontal agreements on directly or indirectly fixing goods or service prices;
 - Horizontal agreements on distributing customers, consumption market, sources of supply of goods, provision of services;
 - Horizontal agreements on limiting or controlling the quantity, volume of produced, purchased, sold goods or provided services;
 - Horizontal and vertical agreements for one of more parties to the agreements to win tenders when participating in tenders for supply of goods or services;
 - Horizontal and vertical agreements on preventing, restraining, disallowing other enterprises from entering the market or develop business;
 - Horizontal and vertical Agreements on abolishing from the market enterprises other than the parties to the agreements.
- *Rule of reason prohibitions*: According to Article 12 (3) and (4), anti-competitive agreements are prohibited only when these agreements cause or

are likely cause substantial anti-competitive effects on the market, including:

- Vertical agreements on directly or indirectly fixing goods or service prices;
- Vertical agreements on distributing customers, consumption market, sources of supply of goods, provision of services;
- Vertical agreements on limiting or controlling the quantity, volume of produced, purchased, sold goods or provided services;
- Horizontal and vertical agreements on restricting technical or technological development and investments;
- Horizontal and vertical agreements on imposing on other enterprises conditions for signing of 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;
- Horizontal and vertical agreements on not trading with enterprises other than the parties to the agreements;
- Horizontal and vertical agreements on restricting consumption market, sources of supply of goods and services from enterprises other than the parties to the agreements;
- Other agreements that cause or may cause anti-competitive effects.

In addition, Article 13 regulates six factors in order to assess substantial anti-competitive effects caused or probably caused by these agreements which are applied with the rule of reason.

Which agreements may be exempted?

Article 14 regulates exemption from prohibition on anti-competitive agreements in which there are two different exemptions as automatic exemptions and specific exemptions.

- *Automatic exemptions*: Agreements shall be exempted automatically in accordance with the provisions of Law on Competition in cases that these are either (i) labor agreements or (ii) cooperative agreements in specific sectors have been regulated by other Laws.

- *Specific exemptions:* Exemptions for a specific period shall be granted by the National Competition Commission to agreements prescribed in Clauses 1, 2, 3, 7, 8, 9, 10 and 11 Article 11 and prohibited in Article 12 if these agreements benefit consumers and meet one of the conditions as that:
 - Promoting technical and technological advances, raising the quality of goods, services;
 - Increasing the competitiveness of Vietnamese enterprises on international market;
 - Promoting the single application of quality standards and technical norms of product categories;
 - Agreeing on conditions for contract performance, goods delivery and payment, which are not related to prices and price elements.

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

In respect of automatic exemptions, parties implement the agreements in accordance with the Law regulating provisions on labor or cooperative agreements without informing the agreements to the National Competition Commission. Whereas, according to Article 22(1) of Law on Competition, parties intending to enter into anti-competitive agreements that are eligible for exemption prescribed in Article 14(1) are prevented from implementing the agreements until the formal decision approving the exemption is granted.

Procedure and timeline

Articles 15 to Article 30 regulate procedure and timeline applied in specific exemptions. The National Competition Commission is responsible for handling exemption application. Documents in exemption application must be satisfied in accordance with Article 15(2). According to Article 20, within 60 days from the date on which the application is accepted, the National Competition Commission issues a decision approving

or disapproving the exemption. In a complicated case, the time limit may be extended but not exceeding 30 days prohibition.

Monopoly and dominant position

Is monopoly or dominant position regulated?

Section IV of Law on Competition governs “*abuse of a dominant position and abuse of a monopoly position on the market*” in which it clarifies term of “a dominant position” and “a monopoly position”; regulates prohibited abuse of a dominant position or a monopoly position, and control of enterprises operating in state-monopolized domains.

What is a dominant position?

According to the Article 24, the dominant position is determined based on “*substantial market power*” or “*level of market share*” on the relevant market. Moreover, substantial market power is determined based on some of 9 factors regulated in Article 26(1).

In other words, an enterprise or a group of enterprises is considered to hold a dominant position in the following cases:

- *Single dominance:* (i) an enterprise has a market share of at least 30% on the relevant market; or (ii) an enterprise hold substantial market power determined based on Article 26(1).
- *Collective dominance:* (i) a group of enterprises has a combined market share of at least 50% (two enterprises), 65% (three enterprises), 75% (four enterprises), 85% (five enterprises) on the relevant market; (ii) a group of enterprises hold substantial market power determined based on Article 26(1). Especially, enterprise holding market share of less than 10% on the relevant market is excluded by the group of enterprises holding a dominant market position.

What is a monopoly position?

According to Article 25, an enterprise holds a monopoly position when there are no other enterprises competing in the relevant market.

When are monopoly and dominant positions prohibited?

Article 27 regulates prohibited abuse of a dominant position or abuse of a monopoly position including the following practices:

- *Abuse of a dominant position practices:*
 - Selling goods or providing services below costs that drives or probably drives competitors out of the market;
 - Imposing irrational buying or selling prices of goods or services or establishing minimum resale price maintenance (RPM), which causes or possibly causes damage to customers;
 - Restricting production and distribution of goods, services, limiting markets, preventing technical and technological development, which causes or possibly causes damage to customers;
 - Applying dissimilar commercial conditions in similar transactions, which leads to or possibly leads to prevention of other enterprises from market entry or expansion or exclusion of other enterprises;
 - Imposing conditions on other enterprises to conclude goods or services purchase or sale contracts or requesting customers to accept obligations which have no direct connection with subjects of such contracts, which leads to or possibly leads to prevention of other enterprises from market entry/expansion or exclusion of other enterprises;
 - Preventing other enterprises from market entry or expansion;
 - Other prohibited abuse of a dominant position prescribed in other laws.
- *Abuse of a monopoly position practices:*
 - Performing acts prescribed in points b, c, d, dd and e Clause 1 Article 27;
 - Imposing unfavorable conditions on customers;

- Taking advantage of the monopoly position to unilaterally modify or cancel the contract already signed without justifiable reasons;
- Other prohibited abuse of a monopoly position prescribed in other laws

Can abuses of dominant or monopoly position be exempted?

No exemption is allowed.

Merger control

What is a merger?

Chapter V of the Law regulates “economic concentrations”, which include the following transactions:

- Merger of enterprises: an act whereby one or several 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 enterprises (Article 29.2 of the Law);
- Consolidation of enterprises: an act whereby two or more enterprises transfer all of their property, rights, obligations and legitimate interests to form a new enterprise and, at the same time, terminate the existence of the consolidating enterprises (Article 29.3 of the Law);
- Acquisition of enterprises: an act whereby an enterprise acquires the whole or part of property or shares of another enterprise sufficient to control or dominate all or one of the trades of the acquired enterprise (Article 29.4 of the Law);
- Joint venture between enterprises: an act whereby two or more enterprises jointly contribute part of their property, rights, obligations and legitimate interests to the establishment of a new enterprise (Article 29.5 of the Law);
- Other acts of economic concentrations, as it may be prescribed by law (Article 29, Paragraph 1. Dd of the Law).

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 of the Law). There is no distinction of the Competition Law enforcement applied to domestic and foreign-to-foreign mergers.

Do mergers need to be notified?

According to Article 33 of the Law, The enterprises engaging in economic concentration must file a dossier of economic concentration notification (hereinafter referred to as notification dossier) to the Viet Nam Competition Commission as prescribed in Article 34 of this Law before initiating economic concentration if they reach the notification threshold.

In addition, Article 13, Decree 35/2020/ND-CP detailed regulations for implementation of the Law on Competition specifies threshold requiring notification of an economic concentration.

In detail, enterprises proposing to participate in an economic concentration as prescribed in article 33.1 of the *Law on Competition*, except for the enterprises being credit institutions, insurance enterprises [insurers] and securities companies, must notify the NCC prior to carrying out the economic concentration in any of the following cases:

- (a) Total assets in the market of Viet Nam of the enterprise or group of affiliated enterprises of which such enterprise is a member was three (3) trillion VND or more in the financial year immediately preceding the year of proposed implementation of economic concentration;
- (b) Total sales turnover or input purchase turnover in the market of Viet Nam of the enterprise or group of affiliated enterprises of which the enterprise is a member was three (3) trillion VND or more in the financial year immediately preceding the year of proposed implementation of economic concentration;
- (c) The transaction value of the economic concentration is one (1) trillion VND or more;
- (d) The combined market share of the enterprises proposing to participate in the economic concentration was 20% or more in the relevant market in the financial year immediately preceding the year of proposed implementation of economic concentration.

In addition, Enterprises being credit institutions, insurance enterprises [insurers] and securities companies proposing to participate in an economic concentration in accordance with article 33.1 of the *Law on Competition* must notify the NCC before implementing such economic concentration in any one of the following cases:

- (a) The total assets in the Vietnamese market of the insurer or group of affiliated insurers of which such insurer is a member or of the [securities] company or group of affiliated securities company of which such company is a member was 15,000 billion VND or more in the financial year immediately preceding the year in which it is proposed to implement the economic concentration; or if the total assets in the Vietnamese market of the credit institution or group of affiliated credit institutions of which such credit institution is a member was 20% or of the total assets of the system of credit institutions in the Vietnamese market in the financial year immediately preceding the year in which it is proposed to implement the economic concentration;
- (b) Total sales turnovers or input purchase turnovers in the Vietnamese market of the insurer or group of affiliated insurers of which such insurer is a member was 10,000 billion VND or more in the financial year immediately preceding the year in which it is proposed to implement the economic concentration; or total sales turnovers or input purchase turnovers in the Vietnamese market of the securities company or group of affiliated securities companies of which such securities company is a member was 3,000 billion VND or more in the financial year immediately preceding the year in which it is proposed to implement the economic concentration; or total turnovers in the Vietnamese market of the credit institution or group of affiliated credit institutions of which such credit institution is a member was 20% or more of the total turnover of the system of credit institutions in the Vietnamese market in the financial year immediately preceding the year in which it is proposed to implement the economic concentration;
- (c) The transaction value of the economic concentration of insurers [or] securities companies was 3,000 billion VND or more; or the transaction

value of the economic concentration of credit institutions was 20% or more of the total chartered capital of the system of credit institutions in the financial year immediately preceding the year in which it is proposed to implement the economic concentration;

- (d) The combined market share of the enterprises proposing to participate in the economic concentration was 20% or more of the relevant market in the financial year immediately preceding the year in which it is proposed to implement the economic concentration.

The economic concentration notification form shall be available online. Further information on notification requirements and procedure for notification of economic concentration may be found online (www.vca.gov.vn).

Are there any filing fees?

There are no filing fees for economic concentration notification.

Are there sanctions for not notifying?

A fine ranging from 01% to 05% of total turnover of each enterprise participating in the economic concentration earned from the relevant market in the financial year preceding the year in which the violation is committed shall be imposed upon that enterprise for failure to give notification of such economic concentration as regulated in Article 33 of the Competition Law.

How long does it take for approval?

According to Article 35 of the Law, within 07 working days from receipt of a notification application, the National Competition Commission shall notify the applicant in writing that whether the application is complete and valid. If the application is incomplete or invalid, the National Competition Commission shall notify the applicant in writing of deficiencies need amendments and allow them 30 days to make amendments from the date of notice.

Upon expiry of 30 days, if no amendment is made or the application is not amended completely, the National Competition Commission shall return the notification dossier.

According to Article 36.2 of the Law, within 30 days from receipt of a complete and valid notification dossier, the National Competition Commission shall notify the preliminary assessment.

According to Article 37 of the Law, in cases of official assessment of economic concentration, the National Competition Commission shall carry out the official assessment of economic concentration within 90 days (may be extended, but not exceeding 60 days).

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

According to Article 43 of the Law, a merger may only be implemented after approval.

Which mergers are prohibited?

According to Article 30 of the Law, an economic concentration shall be prohibited if it causes or probably cause substantial anti-competitive effects on the Vietnamese market.

What happens if prohibited mergers are implemented?

According to Decree 75/2019/ND-CP prescribing penalties for administrative violations against regulations on competition. The sanction applied for each banned form of economic concentration but still are carried by the parties is as following:

For banned merger of enterprises

1. A fine ranging from 01% to 05% of total turnover of the transferee enterprise and the transferor enterprise earned from the relevant market in the financial year preceding the year in which the violation is committed shall be imposed upon the transferee enterprise for carrying out the merger banned as regulated in Article 30 of the Competition Law.
2. Remedial measures:
 - a) The transferee enterprise is forced to carry out full/partial division;
 - b) The transferee enterprise is forced to operate under a competent authority's control over prices of goods/services or other transaction terms included in its signed contracts.

For banned consolidation of enterprises

1. A fine ranging from 01% to 05% of total turnover of consolidating enterprises earned from the relevant market in the financial year preceding the year in which the violation is committed shall be imposed upon the consolidated enterprise for carrying out the consolidation banned as regulated in Article 30 of the Competition Law.
2. Additional penalties:
The enterprise registration certificate which has been issued to the consolidated enterprise shall be revoked.
3. Remedial measures:
 - a) The consolidated enterprise is forced to carry out full/partial division;
 - b) The enterprise that is established after the economic concentration process is forced to operate under a competent authority's control over prices of goods/services or other transaction terms included in its signed contracts.

For banned acquisition of enterprises

1. A fine ranging from 01% to 05% of total turnover of the acquirer enterprise and the acquired enterprise earned from the relevant market in the financial year preceding the year in which the violation is committed shall be imposed upon the acquirer enterprise for its purchase of a part or all of paid-in capital and assets of another enterprise which is banned as regulated in Article 30 of the Competition Law.
2. Remedial measures:
 - a) The acquirer enterprise is forced to sell the part or all of paid-in capital and assets which have been purchased;
 - b) The acquirer enterprise is forced to operate under a competent authority's control over prices of goods/services or other transaction terms included in its signed contracts for a specific period.

For banned joint venture between enterprises

1. A fine ranging from 01% to 05% of total turnover of each enterprise participating in the joint venture

earned from the relevant market in the financial year preceding the year in which the violation is committed shall be imposed upon that enterprise for participating in the joint venture banned as regulated in Article 30 of the Competition Law.

2. Additional penalties:
The enterprise registration certificate which has been issued to the joint venture shall be revoked.
3. Remedial measures:
The enterprise participating in the joint venture is forced to operate under a competent authority's control over prices of goods/services or other transaction terms included in its signed contracts.

Can mergers be exempted/authorized?

Under Article 41 of the Law, the National Competition Commission shall issue a final decision of an economic concentration case as the following situations:

- the economic concentration is approved, or
- the economic concentration is subject to conditions prescribed in Article 42 of the Law; or
- the economic concentration is prohibited.

Therefore, there is no provision on exemption or authorization for approving economic concentration under the Competition Law 2018.

How to apply for a notification?

As provided in Article 34 of the Law, A notification dossier shall consist of:

- a) A notification of economic concentration issued by the National Competition Commission;
- b) Agreed contents of the economic concentration or draft contracts, memorandum of understanding regarding economic concentration between/among enterprises;
- c) Valid copies of the business registration certificates of similar documents of all enterprises engaging in economic concentration;
- d) Financial statements of all enterprises engaging in economic concentration in two consecutive years before the notification year or, in case of newly-established enterprises, from the establishment time to the notification time as per the law;

- dd) The list of parent companies, subsidiaries, associate companies, branches, representative offices and other affiliated entities of every enterprise engaging in economic concentration (if any);
 - e) The list of goods, services dealt in by each enterprise engaging in economic concentration;
 - g) Information about market shares in the sector where economic concentration will take place held by every enterprise engaging in economic concentration in 2 consecutive years before the notification year;
 - h) Proposed remedies for possible anti-competitive effects of the economic concentration;
 - i) Report on assessment of positive effects of economic concentration and measures to enhance the positive effects of economic concentration.
- 3. Discrediting competitors through directly or indirectly providing untruthful information about such competitors which negatively impacts their goodwill, financial status or business operation.
 - 4. Disrupting competitors' business through directly or indirectly interrupting or disrupting their legitimate business operation.
 - 5. Illegally luring customers through:
 - a) Providing false or misleading information to customers about the enterprise or products, services, sale promotion programs, transaction conditions related to the products or services provided by the enterprise to attract customers of competitors;
 - b) Comparing products, services of the enterprise with those of the same kinds of competitors without evidence to prove the comparison.
 - 6. Sale of goods and services below cost that drives or probably drives competitors out of the market.
 - 7. Other prohibited unfair competition practices prescribed in other laws.

The notification application form is available on Viet Nam Competition Commission, Ministry of Industry and Trade 25 Ngo Quyen, Hoan Kiem, Hanoi, Viet Nam,

 +84 24 22205002

 +84 24 22205003

 www.vcca.gov.vn,

Interested parties may require further information/ assistance on procedures/exemptions at the above address and number.

Other unfair commercial practices

Which unfair commercial practices are regulated?

Chapter VI of the Law prohibits “unfair competition acts” include:

1. Trade secret infringement in the following forms:
 - a) Assessing and acquiring trade secrets by going against security measures of the owner of such trade secrets;
 - b) Disclosing or using trade secrets without consent of the owner.
2. Forcing customers or business partners of other enterprises through threatening or coercion so that they do not enter in transaction or stop transaction with such enterprises.



Procedure

Investigations

How does an investigation start?

A competition investigation decision is issued in the following cases:

- **Complaints:** Organizations and individuals assuming that their rights and interests have been are infringed due to violations of this Law submit a complaint against a competition case. If the complaint satisfies the completeness and validity in accordance with Article 77 and does not fall under Article 79, the National Competition Commission open an investigation based on this complaint.
- **Initiative:** If the National Competition Commission detects signs of violation of competition law within 3 years from the date the acts with signs of

violation are committed, the National Competition Commission also open an investigation on its own initiative.

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

Fundamentally, the procedures in both anti-competitive cases and unfair competition case follow three stage: investigation, processing and adjudication.

Under Article 81, the time limit for investigation is vary depending on types of cases among an anti-competitive case, a M&A case or an unfair competition case.

Case	Time limit	Extension
An anti-competitive case	9 months from the date of investigation decision	may be extended once but not exceeding 3 months
A M&A case	90 days from the date of investigation decision	may be extended once but not exceeding 60 days
An unfair competition case	60 days from the date of investigation decision	may be extended once but not exceeding 45 days

What are the investigation powers of the Competition Investigation Agency under the National Competition Commission?

According to Article 50, the Competition Investigation Agency have the following powers in investigation as that:

- Gathering and receiving information for detecting signs of violations against the Law on competition;
- Carrying out investigation measures in the course of investigating competition cases as per the law;
- Proposing the application, change or cancellation of measures to prevent and guarantee imposition of sanctions against administrative violations in investigation and settlement of competition cases.

What are the rights and safeguards of the parties?

Article 54(2) introduces general safeguards to protect the confidentiality of information containing business secretes to protect rights and interests of organizations and individuals. Moreover, Section 3 Chapter III provides rights and obligations of participants in competition legal proceeding depending on types of

participants (the complainant; the respondent; the investigated party; person with relevant rights and obligations, persons protecting legitimate rights and interests of the complainant, respondent, investigated party, persons with related interests and obligations; witnesses, expert witnesses and interpreters).

Is there any leniency programme?

According to Article 112, leniency programme sets out the policy of the National Competition Commission in relation to applications for immunity from fines by those involved in anti-competitive agreements prohibited prescribed in Article 12, and how cooperation provided to the National Competition Commission will detect, investigate and handle these anti-competitive agreements. In addition, Article 112 introduces: (1) the leniency programme conditions to grant immunity from fines; (2) criteria for determining the enterprises entitled to leniency. This leniency policy is applicable to no more than the first 3 enterprises which apply for leniency to the National Competition Commission and meet all the conditions specified in this Article 112(3). The full or partial immunity from fines shall be granted as follows:

- The first enterprise receive full immunity from fines;
- The second and third enterprises receive 60% and 40% of immunity from fines respectively.

Is it possible to obtain any informal guidance?

Interested parties may obtain informal guidance from the National Competition Commission in relation to anti-competitive practices and unfair commercial practices.

Adjudication

What are the final decisions?

- In term of the competition legal proceeding, there are the decision on violation of economic concentration regulations, the decision on an unfair competition case and the decision on an anti-competitive case.
 - Both the decisions on violation of economic concentration regulations and an unfair competition case are taken by the Chairman of the National Competition Commission.

- The decision on an anti-competitive case is taken by an anti-competitive settlement council established by the Chairman of the National Competition Commission.
- In term of the administrative procedure, there are the decision on exemption for prohibited anti-competitive agreements; and the decision on economic concentration. Both these decisions are taken by the National Competition Commission.

What are the sanctions?

Sanctions for infringing the Law on competition are dealt with by Chapter IX. The sanctions against violations of this law include primary penalties, additional penalties and remedies. In particular, Articles 110 and 111 list the following penalties and remedies:

Primary penalties:

For each violation of competition law, the violator shall be subject to one of the following primary penalties including warning and fines. A violation of regulations on competition law committed by an individual shall be subject to a half of fine that imposed on an organization committing the same violation. The maximum fines applied to violations committed by organizations are as that:

- The maximum fine for violations of regulations on anti-competitive practices shall be equal to 10% of the total turnover of violating enterprises on the relevant market in the fiscal year preceding the year of violation, but not less than the minimum fine imposed on violations prescribed by the Penal Code.
- The maximum fine for violations of economic concentration regulations shall be 5% of the total turnover of violating enterprises on the relevant market in the fiscal year preceding the year of violation.
- If total turnover of the violating enterprise earned from the relevant market in the financial year preceding the year in which it committed the violation as prescribed above is zero as determined, it shall be liable to a fine ranging from VND 100 million to VND 200 million.

- The maximum fine for violations of regulations on unfair competition shall be VND 2 billion.
- The maximum fine for other violations of this Law shall be VND 200 million.

Additional penalties:

The violator may be subject to one of the following additional penalties:

- Revocation of enterprise registration certificates or equivalent, deprivation of licenses and practicing certificates;
- Confiscation of the exhibits and means used for violations of competition law;
- Confiscation of the profit earned from the violations of competition law.

Remedies:

Beside these penalties, the violator may be subject to the application of one or more of the following remedial measures:

- Enforced public correction of information;
- Enforced removal of violating elements on the goods, goods labels, means of trading or articles;
- Enforced restructuring of the enterprise that has abused its dominant position or monopoly position;
- Enforced removal of illegal terms and conditions from business contract, agreement or transaction;
- Enforced full/partial division or transfer of partial or entire paid-in capital or assets of the enterprise that is established from the economic concentration;
- Enforced operation under a competent authority's control over prices of goods/ services or other transaction terms included in contracts concluded by transferee/acquirer enterprises or enterprises that are established from economic concentration;
- Enforced provision of sufficient information/ documents;
- Enforced restoration of conditions for technical/technological development which has been obstructed by the enterprise;

- Enforced removal of terms and conditions unfavorable to customers;
- Enforced restoration of terms and conditions of contracts or contracts which have been changed or invalidated without legitimate reasons;
- Enforced restoration of original state.

Can the enforcement authorities' decisions be appealed?

Section 5 Chapter VIII introduces regulations on handling of complaints against settlement decisions. In case of disagreement with a part or the whole of a settlement decision, the organizations or individuals may lodge a complaint with the Chairman of the National Competition Commission. The decision on handling complaints against settlement decisions is taken by the complaint handling council composed of the Chairman of the National Competition Commission and all members of the National Competition Commission, except for members who have participated in the anti-competitive settlement council. In case of disagreement with a complaint handling decision, the related party may initiate a lawsuit against a part or the whole of the contents of such decision to the competent court as prescribed in the Law on Administrative Proceedings.

Private enforcement

Are private actions for damages available?

According to Article 110(1) of the Law on competition, any entity committing violation of competition law and causing damage to the interests of the State, legitimate rights and interests of organizations and individuals must pay compensation according to the provisions of law. Therefore, 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.

Exclusions

Is there any exclusion from the application of the Law?

There are no specific exclusions from the application of competition law. However, under Article 28, enterprises operating in state-monopolized domains are subject to the following State control measures:

- Deciding buying prices, selling prices of goods, services in state-monopolized domains;
- Deciding the quantity, volume and market scope of goods, services in state-monopolized domains;
- Directing, organizing the markets related to goods, services in state-monopolized domains prescribed by this Law and other relevant laws.



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 Statistics,
Ministry of Finance and Economy**

Block 2A,
Jalan Ong Sum Ping,
Bandar Seri Begawan BA1311, Negara Brunei
Darussalam

☎ +673 2233 344
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✉ brunei.competition@jpes.gov.bn
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Cambodia

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Indonesia Competition Commission (ICC)

Komisi Pengawas Persaingan Usaha (KPPU)
KPPU Building
2nd Floor Jl. Ir. H. Juanda No. 36
Jakarta INDONESIA 10120

☎ +6221 3507015

✉ international@kppu.go.id
infokom@kppu.go.id

🌐 <http://eng.kppu.go.id>

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Secretary General

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Head of PR and Cooperation Bureau

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deswin.nur@gmail.com

Ms Retno Wiranti
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enno.wiranti@gmail.com



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Ministry of Industry and Commerce

Department of Domestic Trade,
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Vientiane Capital city, Lao PDR.

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☎ +603 2272 1692
✉ complaints@mycc.gov.my
🌐 www.mycc.gov.my

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Commission (MCMC), Competition & Access
Department Market Regulation Division,
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☎ + 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
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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 Competition Commission (MmCC)

Competition Commission Office

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✉ 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 and Consumer Commission of Singapore

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The URA Centre

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☎ +65-6224-6929

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☎ +65 6224 6929

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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).

Thailand

Office of Trade Competition Commission

Office of Trade Competition Commission
5th floor, Car Parking (BC), The Government Complex
Commemorating His Majesty
The King's 80th Birthday Anniversary,
120 Chaeng Wattana Road,
Thungsong-hong,
Laksi, Bangkok 10210

☎ +66 2 507 5883-85

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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.



ANNEX II

Comparative Table on Competition Law Frameworks in ASEAN

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ANNEX II: COMPARATIVE TABLE ON COMPETITION LAW FRAMEWORKS

ASEAN MEMBER STATE	National Competition Law	Authority administering the National Competition Law	Does the agency also take on functions to protect consumer interests?	Are there specific sectors that come under sectoral regulators with own competition laws?	Prohibition on anti-competitive agreements	Prohibition against abuse of dominant position	Prohibition against anti-competitive mergers	Main exemptions from the National Competition Law (e.g. SOEs/GLCs are exempted, statutory boards, etc.)	Adjudication	Appeal	Leniency Program	Mandatory or Voluntary Merger Regime?	Are there provisions which allow entities to seek guidance or decision from the authority whether a particular agreement, conduct or merger is likely to or has infringed the competition law?	Does national competition law have settlement provisions?	Criminal Liability for breaching prohibitions against anti-competitive conduct?	Main investigative powers conferred by the Law	Rights of Private Action (Standalone or follow-on)
 Brunei Darussalam	Yes. Competition Order 2015.	Competition Commission of Brunei Darussalam and Consumer Affairs Department http://www.depd.gov.bn/SitePages/Competition%20and%20Consumer%20Affairs.aspx	No. The Commission is only responsible for competition matters. While the Competition and Consumer Affairs Department has function to protect consumers.	N/A.	Yes. Chapter 2 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.	Yes. Chapter 3 of the Order prohibits abuse of dominant position in any market in Brunei Darussalam, when it consists of: (a) Predatory behaviour; (b) Limiting production; (c) Applying dissimilar conditions to equivalent transactions; (d) Making contract conclusion.	Yes. Chapter 4 of the Order prohibits mergers that have resulted or may be expected to result in a substantial lessening of competition within any market.	The Order does not apply to activities carried on by the government and Statutory Bodies.	Yes. The adjudication starts from investigation and Commission's decision upon completion of investigation.	Yes. Any party may appeal within the prescribed period to the Competition Appeal Tribunal against, or with respect to, the decision/direction made by the Commission.	Yes. The Order regulates the leniency program, with a reduction of up to 100 percent of any penalties which would otherwise have been imposed.	Voluntary.	N/A.	N/A.	N/A.	Yes. Investigative powers of the Commission are: (a) power to require documents/information; and (b) power to enter premises without/under warrant.	Yes. Any person who suffers loss/damage directly as a result of an infringement of the Section 11, 21, and 23 of the Order, shall have a right of action in civil proceedings in a court.
 Cambodia	Ministry of Commerce has completed the drafting of the national competition law, and waiting for full Cabinet meeting by the end of 2020. Then it will be submitted to the National Assembly with which is expected to be enacted by early 2021.	The National Competition Agency will be established under this law namely "The Competition Commission of Cambodia" in which the Consumer Protection Law and Competition Law, the Consumer Protection Directorate-General "C.C.F." will be the Secretariat of this Commission.	No. There will be another agency established by different law to protect consumer interests. Based on both Consumer Protection Law and Competition Law, the Consumer Protection Directorate-General "C.C.F." will be the sole Secretariat of both Commissions.	Under the proposed law, 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.	Yes.	Yes.	Yes.	No.	Yes.	Yes. A decision, statement on remedies and sanctions, and order issued by the Commission may be appealed to the Competent Court of the Kingdom of Cambodia.	Yes.	Not yet to be determine will be put on the sub-degree (Consumer Protection Competition and Fraud Repression Directorate-General "C.C.F." prefer to have a Mandatory Merger Regime).	Yes.	No.	Yes. Investigative powers of the Commission are: (a) power to require documents/information; and (b) power to enter premises with compliance to the criminal code, (according to the draft law).	Yes. Any person who suffers loss/damage directly as a result of an infringement of the article 42 of the draft law, requiring violators to return unlawfully obtained profits to the victims of their unlawful actions where the victims can be identified.	
 Indonesia	Yes. The Law No. 5/1999 concerning the Prohibition of Monopolistic Practices and Unfair Competition.	Indonesia Competition Commission (ICC) http://www.kppu.go.id/new/index.php http://eng.kppu.go.id/ (English version).	No.	No.	Yes. Article 5 excluded price fixing agreement by joint venture. Article 50 excluded violation in implementing certain law, IPR, franchise, technical standard, agency, research, international agreement, export, SMEs, and cooperatives.	Yes. Article 50 excluded violation in implementing certain law, IPR, franchise, technical standard, agency, research, international agreement, export, SMEs, and cooperatives.	Yes. Article 28 and 29. Exclusion gives to mergers between affiliated companies.	Exemption is provided by Article 51 to the establishment of monopoly or concentration by SOE and enterprises by certain Law under public interest's background.	Yes.	Yes.	No.	Both, voluntary pre-merger and mandatory post-merger notification. Three holders IDR 2.5 trillion of combined asset, or IDR 5 trillion of combined sales. For banking, the combined asset is IDR 20 trillion.	Not specified, but companies may proposed for unbinding consultation to ICC.	Yes. Based on the current Case Handling Procedure (Commission Regulation Number 1 Year 2019), ICC could issue commitment decision to companies who are willing to cease and desist their violating behavior in the market.	Yes. Rules by Article 48, but can be imposed by Court at appeal proceeding.	Power to summon, and request for documents. No power for search and seizure.	No.
 Lao PDR	Yes. Law on Competition 2015.	Yes. Lao Competition Committee (LCC).	Yes.	Sectoral regulators have wide powers to consider matters in their sectors including, potentially, competition law matters.	Yes. Article 20 of the Law prohibits anti-competitive agreements. Exemption is allowed if the agreement provides benefits in promotes technological advancement, improves quality of products/services, and strengthens SMEs.	Yes. Article 31 of the Law prohibits abuse of dominant position. Exemption may apply if the practices are contributing to the national socio-economic development or due to national strategy and security reasons.	Yes. Article 38 of the Law prohibits anti-competitive mergers or acquisitions, but can be exempted if under bankruptcy and if merger contributes to growth or technological advancement.	Yes. Certain agreements, monopoly or dominant position, and mergers may be exempted on a case-by-case basis.	Yes. LCC shall take actions on issuing order and decision.	N/A.	N/A.	Mandatory. Article 39 of the Law provides an obligation to notify a proposed merger.	N/A.	N/A.	Yes.	Yes.	N/A. There are no specific provisions in the Law related to private actions for damages from anti-competitive behaviors.
 Malaysia	Yes. Competition Act 2010.	Malaysia Competition Commission (MyCC) http://www.mycc.gov.my	No.	Yes. i. Communication and Multimedia Sector regulated by the Malaysian Communications and Multimedia Commission (MCMC); ii. Energy Sector regulated by Energy Commission (ST); iii. Aviation Sector regulated by the Malaysian Aviation Commission (MAVCOM); and iv. Upstream Oil and Gas Activities regulated by the Petroleum Development Act 1974 and Petroleum Regulations 1974.	Yes. Section 4 of the Competition Act 2010 (exclusions: non-commercial activities, agreements with net benefits, individual exemptions, block exemptions, agreements in pursuance of legislative requirements, collective bargaining activities for employment terms, services of general economic interests, activities regulated by the Malaysian Multimedia and Communications Commission and the Energy Commission.	Yes. Section 10 of the Competition Act 2010.	N/A.	Yes. Activities in exercise of governmental authority, activities conducted on the principle of solidarity, purchase of goods/services not for the purposes of an economic activity, agreements in pursuance to a legislative requirement, collective bargaining activities for employment terms, services of general economic interests.	Yes.	Yes.	Yes.	N/A.	N/A.	No. However, the Competition Act 2010 contains a provision to accept voluntary undertakings as per Section 43.	No. With regard to infringing the main provisions of the CA 2010 but there is criminal liability with regard to certain acts in relation to powers of investigation.	Yes. (1) Power of search and seizure (with and without a warrant); (2) Power to require information.	Yes. Under section 64 (follow-on).
 Myanmar	Yes. Competition Law 2015 (The Pyidaungsu Hluttaw Law No. 9, 2015).	Myanmar Competition Commission (MmCC).	Yes.	N/A.	Yes. Article 13 of Chapter VII.	Yes. Article 15 and 27.	Yes. Article 31 and 32.	Yes. The Commission has the power for exempting from the compliance of this Law to businesses essential for the benefit of the State and small and medium enterprises, if necessary.	N/A.	Yes.	Yes.	N/A.	N/A.	N/A.	Yes. Article 50.	Yes.	Yes. Article 51.
 Philippines	Yes. Philippine Competition Act 2015 (PCA or the Act).	Philippine Competition Commission (PCC) http://phcc.gov.ph/	No.	Yes. The Philippines adopts a sectoral and holistic approach to competition policy and law enforcement with over thirty (30) industry-specific and consumer welfare laws, addressing competition-related practices.	Yes. Section 14 of the Act stipulates three (3) types of anti-competitive agreements.	Yes. Section 15 of the Act prohibits abuse of dominant position.	Yes. Section 20 of the Act prohibits mergers and acquisitions that substantially prevent, restrict, or lessen competition.	Yes. Prohibited mergers and acquisitions may be exempt from prohibition if the same brings gains in efficiencies or in cases of imminent financial failure. For abuse of dominance cases, permissible price differentials are exempted. In addition, the PCC may forbear from applying the Act, in whole or in part, in all or in specific cases, under certain determinations.	Yes.	Yes.	Yes.	Mandatory. The PCA adopts a mandatory merger control regime.	Yes.	Yes. Section 37(a) of the Act allows an entity to request for a Binding Ruling on a contemplated act, course of conduct, agreement, or decision.	Yes. Section 33 of the Act confers upon the PCC the power to investigate and enforce orders and resolutions by making use of any available means, provisional or otherwise under existing laws and procedures.	Yes. Private actions are available under Article 28 of the New Civil Code.	
 Singapore	Yes. Competition Act (Chapter 50B). Original Enactment: 2004 Revised: 2006.	Competition and Consumer Commission of Singapore (CCCS) http://www.cccs.gov.sg/	Yes.	Yes. (Telecoms, media, energy, airport services).	Yes. Under section 34 (Refer to Third Schedule of the Competition Act for list of full exclusions from Section 34 and Section 47).	Yes. Under section 47 (Refer to Third Schedule of the Competition Act for list of full exclusions from Section 34 and Section 47).	Yes. Under section 54 (Refer to Fourth Schedule of the Competition Act for list of full exclusions from Section 54).	Government activities; supply of piped potable water & waste-water management services; bus and rail services; cargo terminal operations; clearing houses for banks; armed security services.	Yes.	Yes.	Yes.	Voluntary.	Yes.	Yes.	No. (no criminal liability for infringing the prohibitions under the Act; however criminal liability exists for offences relating to powers of investigation under the Act).	Yes. (1) Powers to require documents or information; (2) Powers to enter and search premises.	Yes. Follow-on action.
 Thailand	Yes. Competition Act B.E. 2560 (2017).	Office of Trade Competition Commission (OTCC) https://otcc.or.th/?lang=en	No. The Office of the Consumer Protection Board (CCPB) established under the Consumer Protection Act B.E. 2522 is actively responsible for consumer protection matters.	Yes. (Telecoms and energy).	Yes. Section 54 (horizontal agreements severely reducing competition) with exemption for those considered a single economic entity. Section 55 (horizontal and vertical agreements less severely affecting competition). Exemptions to Section 55 provided under Section 56 for single economic entity, R&D, and particular patterns, e.g. franchise.	Yes. Under section 50.	Two tracks are in place: 1) post-merger notification without clearance requirement for mergers with the minimum amount of market share, sales revenue, capital amount, number of stocks, or assets, to be prescribed in an implementing regulation; 2) pre-merger clearance required for mergers that may cause a monopoly or a dominant position in a market. Exemptions for mergers of operators considered as a single economic entity for restructuring purposes.	Section 4 of the Act excludes conducts of (a) central, regional or local administrations; (b) SOEs, public organizations, or other gov agencies regulated under the law or Cabinet's resolution for public interest purposes; (c) groups of farmers, cooperatives, or cooperative groups recognized under the law; (d) business that are specifically regulated under other sectoral laws.	Yes.	Yes.	No.	Mandatory. Both permission requirements for mergers that may cause a monopoly or a dominant position in a market and post-merger notification for certain sizes of mergers are mandatory under the Act.	Yes.	Yes. (for abuse of market dominance under Section 50 and hardcore cartel under Section 54).	Yes. The officers shall have the powers to issue a subpoena, enter places/venues, gather documents/evidences, and collect or bring a good as a sample for examination.	Yes.	
 Viet Nam	Yes. The Law on Competition (Law No. 23/2018/QH14). Effective date: 01/7/2019.	The Viet Nam Competition Commission (Formerly Viet Nam Competition and Consumer Authority and Viet Nam Competition Council) http://www.vca.gov.vn/web/default.aspx?lang=en-VN	Yes.	Yes. If there is any discrepancy between this Law and other laws in terms of anti-competitive practices, economic concentration, unfair competition practices and handling of unfair competition practices, the latter shall prevail.	Yes. Chapter III.	Yes. Chapter IV.	Yes. Chapter II Section III (from Article 16-Article 24). Exclusions: mergers with net economic benefits, SMEs.	Supply of public goods and services; SMEs; enterprises go bankrupt.	Yes.	Yes.	Yes. Article 112.	Yes. The notification threshold bases on total assets, total turnover, transaction value and combined market share.	Yes. (Government Decrees).	Yes.	Yes. There is no provision on criminal liability in Competition Law 2018. However, certain types of anticompetition agreements shall be subjected to criminal liability under the Criminal Code No.100/2015/QH13.	Yes. (1) Powers to require documents or information; (2) Powers to enter and search premises; (3) Powers to seize persons and documents.	Yes. Organizations and individuals assuming that their rights and interests are breached due to violations of this Law shall have the right to lodge complaints against competition cases to the National Competition Commission.



22ND MEETING OF THE ASEAN EXPERTS GROUP ON COMPETITION AND RELATED MEETINGS

8 - 11 OCTOBER 2018 | SINGAPORE



ANNEX III

Compendium of Competition Laws in ASEAN

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THE NATIONAL ASSEMBLY ----- Law No. 23/2018/QH14	SOCIALIST REPUBLIC OF VIETNAM Independence - Freedom - Happiness ----- <i>Hanoi, June 12, 2018</i>
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COMPETITION LAW

Pursuant to the Constitution of the Socialist Republic of Vietnam;

The National Assembly promulgates the Competition Law.

Chapter I

GENERAL PROVISIONS

Article 1. Scope

This Law sets forth anti-competitive practices, economic concentration that causes or may cause anti-competitive effects on the market of Vietnam; unfair competition practices; competition legal proceedings; sanctions against violations of competition law; state management of competition.

Article 2. Regulated entities

1. Business organizations and individuals (hereinafter referred to as enterprises), including enterprises that produce and provide public-utility products and services, enterprises that operate in state-monopolized sectors/domains, public sector entities and foreign enterprises that operate in Vietnam.
2. Industry associations operating in Vietnam.
3. Relevant domestic and foreign agencies, organizations and individuals.

Article 3. Interpretation of terms

For the purpose of the Law, these terms below shall be construed as follows:

1. “Industry association” includes business association and professional association.
2. “Anti-competitive practices” means enterprises’ practices that cause or may cause anti-competitive effects, including anti-competitive agreement, abuse of a dominant position on the market and abuse of monopoly power.
3. “Anti-competitive effects” means the effect of eliminating, reducing, distorting or deterring competition on the market.
4. “Anti-competitive agreement” means arrangements made by parties in any form, which causes or may cause anti-competitive effects.

5. “Abuse of a dominant position, abuse of monopoly position” means behavior of enterprises with dominant position, monopoly position which causes or may cause anti-competitive effects.
6. “Unfair competition practices” means competition acts performed by enterprises against the principles of good faith, honesty, business norms and standards, which cause or may cause damage to the legitimate rights and interests of other enterprises.
7. “Relevant market” means the market of those products and/or services that are regarded as interchangeable by reason of their characteristics, intended use and prices in a specific geographical area with homogeneous conditions of competition, which is considerably differentiated from neighboring geographic areas.
8. “Competition legal proceedings” means investigation, handling of competitions cases and handling of claims against decisions on settlement of a competition case (hereinafter referred to as settlement decisions) following the procedures prescribed herein.
9. “Competition case” means case showing signs of violation of competition law, which is investigated and handled in accordance with this Law, including anti-competition, violation of regulations on economic concentration and unfair competition.

Article 4. State’s policies on competition

1. This Law governs competition relations in general. Investigation and handling of competitions cases, exemption from prohibition on anti-competitive agreement and notification of economic concentration shall apply this Law.
2. If there is any discrepancy between this Law and other laws in terms of anti-competitive practices, economic concentration, unfair competition practices and handling of unfair competition practices, the latter shall prevail.

Article 5. Competition rights and rules in business

1. Enterprises are entitled to freedom of competition in accordance with legal provisions. The State guarantees the lawful right to competition in business.
2. Competition must be implemented on the principles of honesty, fairness, non-infringement upon the interests of the State, public interests, legitimate rights and interests of enterprises and consumers.

Article 6. State’s policies on competition

1. Create and maintain healthy, fair, and transparent competition environment.
2. Promote competition, ensure right to freedom of competition in business accordance with legal provisions.

3. Enhance accessibility to market, improve efficiency, social welfares and protect consumers' interests.
4. Enable society and consumers to oversee the implementation of competition law.

Article 7. Roles of regulatory agencies in competition

1. The Government shall perform uniform state management of competition.
2. The Ministry of Industry and Trade shall be the designated contact point that assists the Government in state management of competition.
3. Ministries, ministerial-level agencies, within their tasks and powers, shall cooperate with the Ministry of Industry and Trade in state management of competition.
4. People's Committees of provinces, within their tasks and powers, shall perform state management of competition.

Article 8. Prohibited acts related to competition

1. State agencies are prohibited from performing the following acts to prevent competition on the market:
 - a) Forcing, requesting, recommending enterprises, organizations or individuals to or not to buy, sell specific products, provide services or from/to specific enterprises, except for products and services in state-monopolized domains or in emergency cases prescribed by law;
 - b) Discriminating among enterprises;
 - c) Forcing, requesting, recommending industry associations, social-occupational organizations or enterprises to associate with one another with a view to restrain competition on the market;
 - d) Taking advantage of their positions and powers to illegally intervene the competition.
2. Organizations, individuals are prohibited from providing information, mobilizing, encouraging, coercing or enabling enterprises to engage in anti-competitive practices or unfair competition.

Chapter II

RELEVANT MARKET AND MARKET SHARE

Article 9. Determination of relevant market

1. Relevant market is defined on the basis of relevant product market and relevant geographic market.
A relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by reason of the products' characteristics, their prices and their intended use.

A relevant geographic market is a specific geographical area in which provided goods and services are interchangeable under homogeneous conditions of competition, and which is considerably differentiated from neighboring geographic areas.

2. The Government shall provide guidelines for Clause 1 of this Article.

Article 10. Determination of market share and combined market share

1. Based on characteristics and nature of the relevant market, the market share of enterprises on the relevant market shall be determined using one of the following methods:
 - a) The percentage of sales revenue of an enterprise out of the total sales revenue of all enterprises on the relevant market on a monthly, quarterly or yearly basis;
 - b) The percentage of purchase revenue of an enterprise out of the total purchase revenue of all enterprises on the relevant market on a monthly, quarterly or yearly basis;
 - c) The percentage of volume of product/service sold by an enterprise out of the total volume of products/services sold by all enterprises on the relevant market on a monthly, quarterly or yearly basis;
 - d) The percentage of volume of product/service purchased by an enterprise out of the total volume of product /service purchased by all enterprises on the relevant market on a monthly, quarterly or yearly basis.
2. Combined market share is total market shares on relevant market of enterprises engaging anti-competitive practices or economic concentration.
3. The revenue used to determine market share prescribed in Clause 1 hereof shall be defined by Vietnam's accounting standards.
4. In case where an enterprise operates for less than one financial year, the revenue, sales, volume of goods and services sold/purchased used to determine the market share prescribed in Clause 1 hereof shall be calculated from the date of commencing its operations till the date of determining its market share.
5. The Government shall provide guidelines for this Article.

Chapter III

ANTI-COMPETITIVE AGREEMENTS

Article 11. Anti-competitive agreements

1. Agreements on directly or indirectly fixing goods or service prices.
2. Agreements on distributing customers, consumption market, sources of supply of goods, provision of services.

3. Agreements on limiting or controlling the quantity, volume of produced, purchased, sold goods or provided services.
4. Agreements for one of more parties to the agreements to win tenders when participating in tenders for supply of goods or services.
5. Agreements on preventing, restraining, disallowing other enterprises from entering the market or develop business.
6. Agreements on abolishing from the market enterprises other than the parties to the agreements.
7. Agreements on restricting technical or technological development and investments.
8. Agreement on imposing on other enterprises conditions for signing of 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.
9. Agreements on not trading with enterprises other than the parties to the agreements.
10. Agreements on restricting consumption market, sources of supply of goods and services from enterprises other than the parties to the agreements.
11. Other agreements that cause or may cause anti-competitive effects.

Article 12. Prohibited anti-competitive agreements

1. Enterprises on the same relevant market are prohibited from entering anti-competitive agreements prescribed in Clauses 1, 2, and 3 Article 11 of this Law.
2. Enterprises are prohibited from entering anti-competitive agreements prescribed in Clauses 4, 5 and 6 Article 11 of this Law.
3. Enterprises on the same relevant market are prohibited from entering anti-competitive agreements prescribed in Clauses 7, 8, 9, 10 and 11 Article 11 of this Law if such agreements cause or may cause substantial anti-competitive effects on the market.
4. Enterprises doing business in different steps of the same production, distribution, supply chain for specific kinds of goods, services are prohibited from entering anti-competitive agreements prescribed in Clauses 1, 2, 3, 7, 8, 9, 10 and 11 Article 11 of this Law if such agreements cause or may cause substantial anti-competitive effects on the market.

Article 13. Assessment of substantial anti-competitive effects caused or probably caused by anti-competitive agreements

1. The National Competition Commission shall assess substantial anti-competitive effects caused or probably caused by an anti-competitive agreement based on the following factors:
 - a) Market share of the enterprises engaging in the agreement;
 - b) Barriers to market entry and expansion;

- c) Limitations to technological research, development, renovation or technological capacity limitation;
 - d) Reduction in accessibility or ownership to essential infrastructure;
 - dd) Increase of customers' costs and time for buying goods and services of the enterprises engaging in the agreement or customers' switching to other related products;
 - e) Obstruction of competition in the market through control of other specific factors in the sectors and domains related to the parties engaging in the agreement.
2. The Government shall provide guidelines for Clause 1 of this Article.

Article 14. Exemption from prohibition on anti-competitive agreements

1. Anti-competitive agreements prescribed in Clauses 1, 2, 3, 7, 8, 9, 10 and 11 Article 11 which are prohibited in Article 12 of this Law shall be granted exemption for a definite term if they meet one of the following conditions and benefit consumers:
- a) Promoting technical and technological advances, raising the quality of goods, services;
 - b) Increasing the competitiveness of Vietnamese enterprises on international market;
 - c) Promoting the single application of quality standards and technical norms of product categories;
 - d) Agreeing on conditions for contract performance, goods delivery and payment, which are not related to prices and price elements.
2. In cases where labor agreements, cooperation agreements in specific sectors or domains have been prescribed by other relevant laws, they shall be exempted in accordance with the provisions of this Law.

Article 15. Application for exemption from prohibition on anti-competitive agreements

1. Enterprises intending to enter into anti-competitive agreements shall submit an application for exemption for prohibited anti-competitive agreements (hereinafter referred to as exemption application) to the National Competition Commission.
2. Required documents in exemption application:
- a) An application form issued by the National Competition Commission;
 - b) Draft contents of the agreement reached by the parties;
 - c) A valid copy of the enterprise registration certificate or equivalent document of each enterprise participating in the anti-competitive agreement and a copy of the association's charter, for cases where an industry association participates in the agreement;

- d) Financial statements of the two consecutive years preceding the year of submission of the exemption application or, in case of newly established enterprises, financial statements from the time of establishment to the time of submission of the exemption application of each enterprise participating in an anti-competitive agreement, which are certified by an auditing firm in accordance with the provisions of law;
 - dd) A report explaining in detail the eligibility for exemption as specified in Clause 1 Article 14 of this Law, enclosed with evidence;
 - e) Letter(s) of authorization given to representatives by the parties to the anti-competitive agreement.
3. The party submitting the application shall be responsible for the truthfulness of the application. Vietnamese translations are required if documents in the application are made in foreign language.

Article 16. Acceptance of exemption application

1. The National Competition Commission shall be responsible for accepting exemption applications.
2. Within 7 working days from receipt of an exemption application, the National Competitive Commission shall notify the applicant in writing that whether the application is complete and valid.

If the application is incomplete or invalid, the National Competition Commission shall notify the applicant in writing of deficiencies need amendments and allow them 30 days to make amendments from the date of notice.

Upon expiry of 30 days, if no amendment is made or the application is not amended completely, the National Competition Commission shall return the application.

3. After receiving a notice certifying that the application is complete and valid, the applicant shall pay an amount of appraisal fee as prescribed in law on fees and charges.
4. The application is accepted when the applicant fully pays the appraisal fee.

Article 17. Request for further documentation in exemption application

1. After accepting the exemption application, the National Competition Commission may request the applicant to provide further documentation relating to the intention to execute the anti-competitive agreement.
2. If the applicant fails to provide additional documentation or provide insufficient documentation, the National Competition Commission shall consider the application according to provided documentation.

Article 18. Consultation while processing exemption application

1. The National Competition Commission may consult relevant entities about the contents of the prohibited anti-competitive agreement in question.
2. Within 15 days from the date on which the request for consultation is received, the relevant entity shall respond in writing and provide documentation supporting their consultation.

Article 19. Withdrawal of exemption application

1. An applicant is entitled to withdraw its exemption application. A request for withdrawal of such application shall be made in writing and sent to the National Competition Commission.
2. The appraisal fee shall not be refunded to the applicant who withdrew its exemption application.

Article 20. Power and time limit to grant exemption

1. The National Competition Commission has power to grant or not grant exemption as prescribed in this Law; if exemption is not granted, it shall provide explanation in writing.
2. Time limit for granting exemption is 60 days from the date on which the application is accepted.
3. In a complicated case, the time limit prescribed in Clause 2 of this Article may be extended by the National Competition Commission but not exceeding 30 days. The extension must be notified to the applicant at least 3 working days before the deadline for consider granting the exemption.
4. If the National Competition Commission commits violations against regulations on procedures and time limit for granting exemption, the enterprise is entitled to file a claim or lawsuit as per the law.

Article 21. Exemption decision

1. An exemption decision must at least contain:
 - a) Names and address of parties engaging in the agreement;
 - b) Contents of the agreement to be performed;
 - c) Conditions and obligations of parties engaging in the agreement;
 - d) Exemption period.
2. An exemption decision must be sent to parties engaging in the agreement within 7 working days from its date of issuance.
3. The exemption period prescribed in Point d Clause 1 hereof is no longer than 5 years from the date of issuance.

Within 90 days before expiry of exemption period, at the request of parties engaging in the agreement, the National Competition Commission shall consider granting further exemption. If a further exemption is granted, the extra period is no longer than 5 years from the date on which the decision of further exemption is issued.

Article 22. Execution of anti-competitive agreement eligible for exemption

1. Parties engaging in an anti-competitive agreement that are eligible for exemption prescribed in Clause 1 Article 14 hereof may only enter into the agreement after they obtain an exemption decision as prescribed in Article 21 hereof.
2. Parties engaging in the agreement eligible for exemption must adhere to the exemption decision as prescribed in Article 21 hereof.

Article 23. Annulment of exemption decision

1. The National Competition Commission shall decide to annul exemption decisions in the following cases:
 - a) Eligibility for exemption is not longer available;
 - b) Fraud is found in the application for exemption;
 - c) The enterprise gaining exemption fails to fulfill the conditions and obligations specified in the exemption decision;
 - d) The exemption decision is made based on inaccurate information on eligibility for exemption.
2. If the enterprise gaining exemption is no longer eligible for exemption, it shall notify the National Competition Commission, the National Competition Commission shall then issue a decision on annulment of exemption decision.
3. An annulment of exemption decision must be sent to parties engaging in the agreement within 7 working days from its date of issuance.

Chapter IV

ABUSE OF A DOMINANT POSITION, ABUSE OF A MONOPOLY POSITION

Article 24. Enterprises, groups of enterprises holding a dominant position on the market

1. An enterprise shall be considered to hold a dominant position on the market if it has substantial market power as specified in Article 26 of this Law or has market shares of 30% or more on the relevant market.

2. A group of enterprises shall be considered to hold a dominant position on the market if they jointly cause anti-competitive effects and have substantial market power as specified in Article 26 of this Law or their total market shares fall into one of the following cases:
 - a) Two enterprises having the total market share of 50% or more on the relevant market;
 - b) Three enterprises having the total market share of 65% or more on the relevant market;
 - c) Four enterprises having the total market share of 75% or more on the relevant market;
 - d) At least five enterprises having the total market share of 85% or more on the relevant market.
3. A group of enterprises holding a dominant market position prescribed in Clause 2 of this Article excludes an enterprise holding market share of less than 10% of the relevant market.

Article 25. Enterprises holding a monopoly position

An enterprise shall be considered to hold the monopoly position if there is no enterprise competing on the goods or services dealt in by such enterprise on the relevant market.

Article 26. Determination of substantial market power

1. Substantial market power of an enterprise or group of enterprises is determined based on some of the following factors:
 - a) Market shares of enterprises on the relevant market;
 - b) Financial strength and size of the enterprise;
 - c) Barriers to market entry and expansion to other enterprises;
 - d) Ability to obtain, assess, control the goods distribution/consumption market or sources of supply;
 - dd) Advantages in technology and technical infrastructure;
 - e) Right to own, obtain and assess infrastructure;
 - g) Right to own or use subject matters of intellectual property;
 - h) Ability to transfer to other sources of supply or demand associated with other goods and related services;
 - i) Particular factors in the sector that the enterprise runs the business.
2. The Government shall provide guidelines for Clause 1 of this Article.

Article 27. Prohibited abuse of a dominant position or abuse of a monopoly position

1. An enterprise or group of enterprises holding a dominant position on the market is prohibited from:
 - a) Selling goods or providing services below costs that drives or probably drives competitors out of the market;
 - b) Imposing irrational buying or selling prices of goods or services or establishing minimum resale price maintenance (RPM), which causes or possibly causes damage to customers;
 - c) Restricting production and distribution of goods, services, limiting markets, preventing technical and technological development, which causes or possibly causes damage to customers;
 - d) Applying dissimilar commercial conditions in similar transactions, which leads to or possibly leads to prevention of other enterprises from market entry or expansion or exclusion of other enterprises;
 - dd) Imposing conditions on other enterprises to conclude goods or services purchase or sale contracts or requesting customers to accept obligations which have no direct connection with subjects of such contracts, which leads to or possibly leads to prevention of other enterprises from market entry/ expansion or exclusion of other enterprises;
 - e) Preventing other enterprises from market entry or expansion;
 - g) Other prohibited abuse of a dominant position prescribed in other laws.
2. An enterprise holding a monopoly position is prohibited from:
 - a) Performing acts prescribed in Points b, c, d, dd and e Clause 1 hereof;
 - b) Imposing unfavorable conditions on customers;
 - c) Taking advantage of the monopoly position to unilaterally modify or cancel the contract already signed without justifiable reasons;
 - d) Other prohibited abuse of a monopoly position prescribed in other laws.

Article 28. Control of enterprises operating in state-monopolized domains

1. The State controls enterprises operating in state-monopolized domains with the following measures:
 - a) Deciding buying prices, selling prices of goods, services in state-monopolized domains;
 - b) Deciding the quantity, volume and market scope of goods, services in state-monopolized domains;
 - c) Directing, organizing the markets related to goods, services in state-monopolized domains prescribed by this Law and other relevant laws.

2. When undertaking other business activities outside state-monopolized domains, enterprises shall not be subject to the provisions of Clause 1 of this Article but be still subject to the application of other provisions of this Law.

Chapter V

ECONOMIC CONCENTRATION

Article 30. Categories of economic concentration

1. Economic concentration includes the following categories:
 - a) Merger of enterprises;
 - b) Consolidation of enterprises;
 - c) Acquisition of enterprises;
 - d) Joint venture between/among enterprises;
 - dd) Other categories of economic concentration as per the law.
2. Merger of enterprises means an act whereby one or several 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 enterprises.
3. Consolidation of enterprises means an act whereby two or more enterprises transfer all of their property, rights, obligations and legitimate interests to form a new enterprise and, at the same time, terminate the existence of the consolidating enterprises.
4. Acquisition of enterprises means an act whereby an enterprise acquires the whole or part of property or shares of another enterprise sufficient to control or dominate all or one of the trades of the acquired enterprise.
5. Joint venture between enterprises means an act whereby two or more enterprises jointly contribute part of their property, rights, obligations and legitimate interests to the establishment of a new enterprise.

Article 30. Prohibited economic concentration

Economic concentration shall be prohibited if it causes or probably cause substantial anti-competitive effects on the Vietnamese market.

Article 31. Assessment of substantial anti-competitive effects caused or probably caused by economic concentration

1. The National Competition Commission shall assess substantial anti-competitive effects cause or probably caused by economic concentration based on the following factors:
 - a) Combined market share of enterprises engaging in the economic concentration on the relevant market;

- b) The degree of concentration on the relevant market before and after the economic concentration;
 - c) The relationship of the parties engaging in the economic concentration in the production, distribution or supply chain for a certain kind of goods/service or the business lines of the parties engaging in the economic concentration which are inputs of or complementary to one another;
 - d) Competitive advantage brought about by economic concentration in the relevant market;
 - dd) The ability of enterprises after the economic concentration for increasing significantly their prices or return on sales;
 - e) The ability of enterprises after the economic concentration for removing or preventing other enterprises from market entry or expansion;
 - g) Particular factors in the sectors and domains where enterprises are engaging in economic concentration.
2. The Government shall provide guidelines for Clause 1 of this Article.

Article 32. Assessment of positive effects of economic concentration

1. The National Competition Commission shall assess positive effects of economic concentration based on one of the following factors or a combination of factors:
- a) Positive effects on the development of the sector, domain, science and technology in accordance with the state's strategies and planning;
 - b) Positive effects on the development of small and medium-sized enterprises;
 - c) Increase of the competitiveness of Vietnamese enterprises on the international market.
2. The Government shall provide guidelines for Clause 1 of this Article.

Article 33. Notification of economic concentration

1. The enterprises engaging in economic concentration must file a dossier of economic concentration notification (hereinafter referred to as notification dossier) to the National Competition Commission as prescribed in Article 34 of this Law before initiating economic concentration if they reach the notification threshold.
2. The notification threshold shall be determined based on one of the following criteria:
- a) Total assets of the enterprises engaging in the economic concentration on the Vietnamese market;
 - b) Total turnover of enterprises engaging in the economic concentration on the Vietnamese market;

- c) The transaction value of the economic concentration;
 - d) Combined market share of enterprises engaging in the economic concentration on the relevant market.
3. The Government shall provide guidelines for this Article in conformity with socio-economic conditions in each period.

Article 34. Notification dossier

1. A notification dossier shall consist of:
 - a) A notification of economic concentration issued by the National Competition Commission;
 - b) Agreed contents of the economic concentration or draft contracts, memorandum of understanding regarding economic concentration between/ among enterprises;
 - c) Valid copies of the business registration certificates of similar documents of all enterprises engaging in economic concentration;
 - d) Financial statements of all enterprises engaging in economic concentration in two consecutive years before the notification year or, in case of newly-established enterprises, from the establishment time to the notification time as per the law;
 - dd) The list of parent companies, subsidiaries, associate companies, branches, representative offices and other affiliated entities of every enterprise engaging in economic concentration (if any);
 - e) The list of goods, services dealt in by each enterprise engaging in economic concentration;
 - g) Information about market shares in the sector where economic concentration will take place held by every enterprise engaging in economic concentration in 2 consecutive years before the notification year;
 - h) Proposed remedies for possible anti-competitive effects of the economic concentration;
 - i) Report on assessment of positive effects of economic concentration and measures to enhance the positive effects of economic concentration.
2. Enterprises submitting notification dossiers shall be accountable for the truthfulness of their dossiers. Vietnamese translations are required if documents in the dossier are made in foreign language.

Article 35. Receipt of notification dossiers

1. The National Competition Commission shall receive notification dossiers.
2. Within 7 working days from receipt of an exemption application, the National Competitive Commission shall notify the applicant in writing that whether the application is complete and valid.

If the application is incomplete or invalid, the National Competition Commission shall notify the applicant in writing of deficiencies need amendments and allow them 30 days to make amendments from the date of notice.

Upon expiry of 30 days, if no amendment is made or the application is not amended completely, the National Competition Commission shall return the notification dossier.

Article 36. Preliminary assessment of economic concentration

1. The National Competition Commission shall be responsible for preliminary assessment of economic concentration. Matters to be preliminarily assessed in economic concentration:
 - a) Combined market share of enterprises engaging in the economic concentration on the relevant market;
 - b) The degree of concentration on the relevant market before and after the economic concentration;
 - c) The relationship of the parties engaging in the economic concentration in the production, distribution or supply chain for a certain kind of goods/service or the business lines of the parties engaging in the economic concentration which are inputs of or complementary to one another;
2. Within 30 days from receipt of a complete and valid notification dossier, the National Competition Commission shall notify the preliminary assessment result that:
 - a) economic concentration is approved; or
 - b) economic concentration is subject to further official assessment.
3. Upon expiry of 30 days prescribed in Clause 2 of this Article, if the National Competition Commission fails to notify the preliminary assessment result, the economic concentration may be effected and the National Competition Commission may not give a notification as provided in Point b Clause 2 of this Article.
4. The Government shall provide guidelines for Clause 1 of this Article and criteria for determining economic concentration subject to official assessment as prescribed in Point b Clause 2 of this Article.

Article 37. Official assessment of economic concentration

1. The National Competition Commission shall carry out the official assessment of economic concentration within 90 days from the date on which a notification of preliminary assessment result prescribed in Point b Clause 2 Article 36 of this Law.

In complicated cases, the time limit for official assessment of economic concentration may be extended, but not exceeding 60 days and the National Competition Commission shall inform enterprises submitting the notification dossier.

2. Matters to be officially assessed in economic concentration:
 - a) Assessment of substantial anti-competitive effects caused or probably caused by economic concentration as prescribed in Article 31 of this Law and remedial measures for anti-competitive effects;
 - b) Assessment of positive effects of economic concentration as prescribed in Article 32 of this Law and measures to enhance the positive effects of economic concentration;
 - c) Consolidated assessment of anti-competitive effects and positive anti-competitive effects of economic concentration forming the basis for consideration of economic concentration.

Article 38. Additional documentation on economic concentration

1. During the official assessment of economic concentration, the National Competition Commission may require the enterprise submitting notification dossier to provide additional documentation but not exceeding 2 times.
2. The enterprise submitting notification dossier shall provide additional documentation on economic concentration and be accountable for the completeness and accuracy of the documentation provided at the request of the National Competition Commission.
3. If the enterprise fails to provide additional documentation or provide insufficient documentation, the National Competition Commission shall consider the application according to provided documentation.
4. The duration for providing additional documentation prescribed in Clause 2 hereof shall not be included in the time limit for assessment of economic concentration prescribed in Clause 1 Article 37 of this Law.

Article 39. Consultation during the assessment of economic concentration

1. During the assessment of economic concentration, the National Competition Commission may consult the bodies which manage the domains/sectors where enterprises engaging in the economic concentration are operating.

Within 15 days from the date on which the request for consultation made by the National Competition Commission is received, the relevant entity shall respond in writing and provide documentation supporting their consultation.

2. During the assessment of economic concentration, the National Competition Commission may consult other related entities.

Article 40. Responsibility for providing documentation by related entities during the assessment of economic concentration

1. Related entities are responsible for fully, accurately and promptly providing the documentation requested by the National Competition Commission during the assessment of economic concentration, except the cases where the law provides otherwise.
2. The National Competition Commission shall ensure confidentiality of documentation provided as per the law.

Article 41. Decision on economic concentration

1. Upon completion of the official assessment of economic concentration, the National Competition Commission shall issue a decision determining that:
 - a) the economic concentration is approved;
 - b) the economic concentration is subject to conditions prescribed in Article 42 hereof; or
 - c) the economic concentration is prohibited.
2. The decision on economic concentration prescribed in Clause 1 hereof shall be sent to enterprises engaging in economic concentration within 5 working days from the date of issue.
3. If the National Competition Commission issues a decision beyond the given time limit that cause damage to enterprises, it shall compensate for such damage as per the law.

Article 42. Conditional economic concentration

Conditional economic concentration is economic concentration which is approved but subject to one or certain conditions below:

1. Total or partial division, resale of partial capital holding of enterprises engaging in economic concentration;
2. Control of the content related to the purchase and sale prices of goods, services or other trading conditions in business contracts of enterprises formed after the economic concentration;
3. Remedies to rectify the probability of causing adverse effects on competition on the market;
4. Other measures to enhance the positive effects of economic concentration.

Article 43. Implementation of economic concentration

1. Enterprises engaging in the economic concentration specified in Point a Clause 2, Clause 3 Article 36 and Point a, Point b Clause 1 Article 41 of this Law may carry out economic concentration procedures according to the legal provisions on enterprises and other relevant laws.

2. Enterprises engaging in the economic concentration specified in Point b Clause 1 Article 42 of this Law must fully meet the conditions for economic concentration as specified in the decision of the National Competition Commission before and after the economic concentration implementation.

Article 44. Violations against regulations on economic concentration

1. An enterprise fails to notify economic concentration under the provisions of this Law.
2. An enterprise implements economic concentration without receiving a notification of preliminary assessment result from the National Competition Commission prescribed in Clause 2 Article 36 of this Law, except for the case prescribed in Clause 3 Article 36 hereof.
3. An enterprise implements economic concentration before the National Competition Commission issues a decision on economic concentration prescribed in Article 41 of this Law although it is subject to official assessment of economic concentration.
4. An enterprise fails to meet or fully meet conditions specified in the decision on economic concentration prescribed in Point b Clause 1 Article 41 of this Law.
5. An enterprise implements economic concentration which is prohibited under Point c Clause 1 Article 41 of this Law.
6. An enterprise implements economic concentration which is prohibited under Article 30 of this Law.

Chapter VI

PROHIBITED UNFAIR COMPETITION PRACTICES

Article 45. Prohibited unfair competition practices

1. Trade secret infringement in the following forms:
 - a) Assessing and acquiring trade secrets by going against security measures of the owner of such trade secrets;
 - b) Disclosing or using trade secrets without consent of the owner.
2. Forcing customers or business partners of other enterprises through threatening or coercion so that they do not enter in transaction or stop transaction with such enterprises.
3. Discrediting competitors through directly or indirectly providing untruthful information about such competitors which negatively impacts their goodwill, financial status or business operation.
4. Disrupting competitors' business through directly or indirectly interrupting or disrupting their legitimate business operation.

5. Illegally luring customers through:
 - a) Providing false or misleading information to customers about the enterprise or products, services, sale promotion programs, transaction conditions related to the products or services provided by the enterprise to attract customers of competitors;
 - b) Comparing products, services of the enterprise with those of the same kinds of competitors without evidence to prove the comparison.
6. Sale of goods and services below cost that drives or probably drives competitors out of the market.
7. Other prohibited unfair competition practices prescribed in other laws.

Chapter VII

NATIONAL COMPETITION COMMISSION

Article 46. National Competition Commission

1. The National Competition Commission is a body affiliated to the Ministry of Industry and Trade, composed of President, Deputy Presidents, and members.
The Competition Investigation Agency and other units form an assisting apparatus of the National Competition Commission.
2. The National Competition Commission has the following duties and powers:
 - a) Give advice to the Minister of Industry and Trade for performing state management of competition;
 - b) Initiate competition legal proceedings; control economic concentration; consider granting exemption decision; handle complaints against settlement decisions and other duties as prescribed in this Law and other law provisions.
3. The Government shall provide guidelines for duties, powers and organizational structure of the National Competition Commission.

Article 47. President of National Competition Commission

The President of the National Competition Commission is the head and take legal liability for the operation of the National Competition Commission.

Article 48. Members of National Competition Commission

1. Members of the National Competition Commission act as members of anti-competitive settlement council or anti-competitive complaint handling council in accordance with the competition legal proceedings prescribed in this Law.

2. The maximum number of members of the National Competition Commission is 15, including: President and other members. Members of the National Competition Commission are officials of the Ministry of Industry and Trade, relevant ministries, experts and scientists.
3. Members of the National Competition Commission shall be appointed and dismissed by the Prime Minister at the request of the Minister of Industry and Trade.
4. Term of office of members of the National Competition Commission is 5 years and they may be reappointed.

Article 49. Standards for members of National Competition Commission

1. Being Vietnamese citizens, having good moral qualities, integrity and honesty.
2. Obtaining at least a bachelor's degree or higher in law, economics or finance.
3. Having at least 9 years of work experience in one of the domains defined in Clause 2 of this Article.

Article 50. Competition Investigation Agency

1. The Competition Investigation Agency is an authority under the National Competition Commission and in charge of investigating violations against this Law.
2. The Competition Investigation Agency shall have the duties and powers to:
 - a) Gather and receive information for detecting signs of violations against this Law;
 - b) Organize the investigation of competition cases;
 - c) Propose the application, change or cancellation of measures to prevent and guarantee imposition of sanctions against administrative violations in investigation and settlement of competition cases;
 - d) Carry out investigation measures in the course of investigating competition cases as per the law;
 - dd) Other duties as assigned by the Chairperson of the National Competition Commission.

Article 51. Head of Competition Investigation Agency

1. The Head of the Competition Investigation Agency shall be appointed or dismissed by the President of the National Competition Commission.
2. The Head of the Competition Investigation Agency shall be responsible for organizing the operation of the Competition Investigation Agency in order to implement the provisions of Article 50 of this Law.

Article 52. Investigators

1. Investigators shall be appointed by the President of the National Competition Commission.
2. Investigators shall investigate competition cases as assigned by the Head of the Competition Investigation Agency.

Article 53. Standards for investigators

1. Being Vietnamese citizens, having good moral qualities, integrity and honesty.
2. Being officials of the National Competition Commission.
3. Obtaining at least a bachelor's degree or higher in law, economics, finance or information technology.
4. Having at least 5 years of work experience in one of the domains defined in Clause 3 of this Article.
5. Having been trained in investigation procedures.

Chapter VIII**COMPETITION LEGAL PROCEEDINGS****Section 1. GENERAL PROVISIONS****Article 54. Principles of competition legal proceedings**

1. All competition legal proceedings of competition presiding agencies, competition presiding officers, participants in competition legal proceedings and concerned entities must comply with the provisions of this Law.
2. In the process of carrying out competition legal proceedings, the competition presiding agencies, competition presiding officers and participants in competition legal proceedings must, within the scope of their respective tasks and powers, keep secrets of the competition case and trade secrets of enterprises as per the law.
3. Legitimate rights and interests of enterprises and relevant entities shall be respected during the competition legal proceedings.

Article 55. Language and script used in competition legal proceedings

The language and script used in competition legal proceedings is Vietnamese. Participants to competition legal proceedings shall be entitled to use their native language and script; in this case interpretation is required.

Article 56. Evidence

1. Evidences are facts used as grounds for determining whether or not violations against competition law exist, violating enterprises and other details which are meaningful in the settlement of competition cases.
2. Evidences are collected from the following sources:
 - a) Readable, audible, visible materials, electronic data;
 - b) Exhibits;
 - c) Testimonies, explanations of witnesses;
 - d) Testimonies, explanations of complainants, investigated parties, related entities;
 - dd) Expertise conclusions;
 - e) Records made during the investigation, settlement of competition cases;
 - g) Other documents, objects or sources prescribed by law.
3. Determination of evidence:
 - a) Readable documents shall be regarded as evidence if they are originals or notarized/authenticated copies provided or certified by involved or competent entities.
 - b) Audible and visible materials shall be regarded as evidence if they are presented together with the written explanation by the persons who have such materials about the origin of the materials in case they make records on their own, or the written explanation about the origin of the materials by the persons who have provided such materials to the persons who submit them, or description of the circumstances related to such recording or filming;
 - c) Electronic data messages in the form of exchange of electronic data, electronic vouchers, electronic mails, telegrams, faxes and other similar forms in accordance with the provisions of law on e-transactions;
 - d) Exhibits regarded as evidence that must be original objects related to the case;
 - dd) Statements, testimonies of witnesses; statements, testimonies and explanations of the complainant, the person against whom the complaint is made (hereinafter referred to as respondent), the investigated party or relevant entities shall be regarded as evidence if they are recorded in writing, audio tapes, audio disks, video clips or by other audio and visual equipment as prescribed in Points a and b of this Clause or made verbally at the hearing;
 - e) Expertise conclusions shall be regarded as evidence if the expertise is carried out in accordance with the procedures prescribed by law.
4. The Government shall provide guidelines for this Article.

Article 57. Responsibility for collaborating with and supporting the National Competition Commission

1. Competent bodies/persons, within the scope of their respective functions, duties and powers, shall be responsible for collaborating with and supporting the investigation and settlement of competition cases at the request of the National Competition Commission, the Competition Investigation Agency and the Anti-Competitive Settlement Council.
2. Enterprises, entities shall have to fully, accurately and promptly provide the information and documents they are managing or owning at the request of the National Competition Commission, the Competition Investigation Agency and Anti-Competitive Settlement Council.

Section 2. COMPETITION PRESIDING AGENCIES, COMPETITION PRESIDING OFFICERS

Article 58. Competition presiding agencies, competition presiding officers

1. Competition presiding agencies include:
 - a) National Competition Commission;
 - b) Anti-competitive settlement council;
 - c) Anti-competitive complaint handling council;
 - d) Competition Investigation Agency;
2. Competition presiding officers include:
 - a) President of the National Competition Commission;
 - b) President of the anti-competitive settlement council;
 - c) Members of the anti-competitive settlement council;
 - d) Members of anti-competitive complaint handling council;
 - dd) Head of Competition Investigation Agency;
 - e) Investigators;
 - g) Hearing clerks.

Article 59. Tasks and powers of the President of the National Competition Commission when conducting competition legal proceedings

1. Decide the establishment of the anti-competitive settlement council to settle anti-competitive practices and appoint a hearing clerk among officials of the National Competition Commission.
2. Decide the replacement of members of the anti-competitive settlement council, hearing clerks.

3. Set up an anti-competitive complaint handling council and act as the council chairperson.
4. Handle complaints against decisions on settlement of violations against regulations on economic concentration or unfair competition.
5. Require competent authorities to apply, change or cancel measures to prevent and guarantee imposition of sanctions against administrative violations in the investigation and handling of competition cases as prescribed in law on sanctions against administrative violations.
6. Decide the settlement of violations against economic concentration regulations.
7. Decide the settlement of unfair competition cases.
8. Other duties and powers prescribed by this Law.

Article 60. Anti-competitive settlement council

1. The anti-competitive settlement council shall be set up by of the President of the National Competition Commission to deal with specific anti-competitive cases. It shall automatically terminate operation and dissolve upon completion of its tasks. Anti-competitive settlement council operates independently and in line with the law.
2. The number of members of an anti-competitive settlement council shall be 3 or 5. These members shall be selected by the President of the National Competition Commission among the members of the National Competition Commission, of whom one shall be assigned to be the President of the anti-competitive settlement council.
3. When handling anti-competitive cases, anti-competitive settlement council shall operate on the principle of collectivity and under the majority rule.

Article 61. Duties and powers of anti-competitive settlement council and its chairperson and members

1. An anti-competitive settlement council has duties and powers to:
 - a) Open a hearing;
 - b) Summon participants to the hearing;
 - c) Summon witnesses at the request of involved parties;
 - d) Solicit expert opinion; replace expert witnesses or interpreters;
 - dd) Require Competition Investigation Agency to conduct further investigation;
 - e) Suspend the settlement of anti-competitive cases;
 - g) Handle anti-competitive cases;
 - h) Request the President of National Competition Commission to perform duties and powers as prescribed in Clause 2 and Clause 5 Article 59 of this Law;
 - i) Other duties and powers prescribed by this Law.

2. The chairperson of anti-competitive settlement council has duties and powers to:
 - a) Handle anti-competitive cases;
 - b) Summon and preside over meetings of the anti-competitive settlement council;
 - c) Sign documents of the anti-competitive settlement council;
 - d) Other duties and powers prescribed by this Law.
3. Members of anti-competitive settlement council have duties and powers to:
 - a) Join all meetings of anti-competitive settlement council;
 - b) Discuss and vote on issues under duties and powers of anti-competitive settlement council.

Article 62. Duties and powers of the Head of Competition Investigation Agency when conducting competition legal proceedings

1. The Head of Competition Investigation Agency shall have the duties and powers to:
 - a) Decide the investigation of competition cases upon the approval of the President of the National Competition Commission;
 - b) Decide the assignment of investigators for competition cases;
 - c) Request entities to provide documents, information, objects and explanation related to the cases at the request of investigators;
 - d) Decide the replacement of investigators of competition cases;
 - dd) Solicit expert opinion; replace expert witnesses or interpreters in the course of investigation;
 - e) Summon witnesses at the request of involved parties;
 - g) Decide the extension or suspension of investigation of competition cases upon the approval of the President of the National Competition Commission;
 - h) Propose the President of National Competition Commission to request competent authorities to apply, change or cancel measures to prevent and guarantee imposition of sanctions against administrative violations in the course of investigation;
 - i) Conclude the investigation of competitions cases;
 - k) Join hearings;
 - l) Other duties and powers prescribed by this Law.
2. Upon the completion of the investigation process, the Head of the Competition Investigation Agency shall sign the final investigation report, submit the investigation report and the entire competition case dossier to the President of the National Competition Commission.

Article 63. Duties and powers of investigators when conducting competition legal proceedings

1. Investigate competition cases as assigned by the Head of the Competition Investigation Agency.
2. Produce an investigation report upon completion of the investigation.
3. Preserve the materials provided.
4. Be held accountable to the Head of the Competition Investigation Agency and before the law for the performance of their duties and powers.
5. Join hearings.
6. Carry out investigation measures in the course of investigating competition cases as per the law.
7. Propose the Head of Competition Investigation Agency to extend, suspend and conclude the investigation of competitions cases, solicit expert opinion, or replace expert witnesses or interpreters during the investigation.
8. Report to Head of the Competition Investigation Agency for proposal to the President of the National Competition Commission who shall then request competent authority to apply measures to prevent and guarantee imposition of sanctions against administrative violations during investigation.
9. Other duties and powers prescribed by this Law.

Article 64. Duties and powers of hearing clerks

1. Prepare necessary professional operations before the opening of the hearing.
2. Read the rules of the hearing.
3. Report to the anti-competitive settlement council on the presence or absence of persons summoned to the hearing.
4. Take minutes of the hearing.
5. Perform other tasks assigned by the chairperson of the anti-competitive settlement council.

Article 65. Replacement of competition presiding officers

1. Members of the anti-competitive settlement council, investigators, hearing clerks shall be replaced if they fall into one of the following cases:
 - a) Being relatives of the investigated party or the complainant;
 - b) Being person with relevant rights and obligations to the competitions cases;
 - c) There are obvious grounds to believe that they are biased when performing their duties.
2. The President of National Competition Commission shall replace members of the anti-competitive settlement council or hearing clerks at his/her discretion or at the request of anti-competitive settlement council.

3. At the hearing, in case of replacement of member(s) of the anti-competitive settlement council or the hearing clerk, the anti-competitive settlement council shall issue a decision to postpone the hearing and request the President of National Competition Commission to replace the members of the anti-competitive settlement council or the hearing clerk. The hearing shall not be suspended more than 15 days from the date of suspension.

Section 3. PARTICIPANTS IN COMPETITION LEGAL PROCEEDINGS

Article 66. Participants in competition legal proceedings

1. The complainant.
2. The respondent.
3. The investigated party.
4. Person with relevant rights and obligations.
5. Persons protecting legitimate rights and interests of the complainant, respondent, investigated party, persons with related interests and obligations.
6. Witnesses.
7. Expert witnesses.
8. Interpreters.

Article 67. Rights and obligations of complainants, respondents and investigated parties

1. Complainant is an organization or individual who files a complaint prescribed in Article 77 of this Law to National Competition Commission for investigation as prescribed in Article 78 of this Law. A complainant has the following rights:
 - a) The rights prescribed in Clause 3 of this Article;
 - b) Propose the President of the National Competition Commission to request competent authority to apply measures to prevent and guarantee imposition of sanctions against administrative violations during investigation.
2. Respondent is an organization or individual against whom the complaint about competition violation is made. A respondent has rights to:
 - a) Be informed of information about the complaint;
 - b) Explain matters of complaint.
3. Investigated party is an organization or individual against whom the National Competition Commission carries out an investigation in the cases prescribed in Article 80 of this Law. An investigated party has rights to:
 - a) Participate in stages of the competition procedure;
 - b) Provide information, documents and objects to protect their legitimate rights and interests;

- c) Be informed of information, documents and objects presented by the complainant or the Competition Investigation Agency;
 - d) Study documents in the competition case dossier and to record, copy necessary documents included in the competition case dossier in order to protect their legitimate rights and interests; except for documents and evidence which cannot be publicized in accordance with law;
 - dd) Participate and present opinions at the hearing;
 - e) Request the presence of witnesses;
 - g) Request solicitation of expert opinion;
 - h) Request replacement of competition presiding officers, participants in competition legal proceedings;
 - i) Authorize protectors of their rights and legitimate interests to participate in competition legal proceedings;

 - k) Request the Completion Investigation Agency, anti-competitive settlement council to accept the participation of persons with related interests and obligations in competition legal proceedings;
 - l) Other rights as per the law.
4. Investigated parties and complainants have obligations to:
- a. Provide sufficient and accurate information, documents, objects related to their proposals or requests in a timely manner;
 - b. Be present in response to the summonses of the Competition Investigation Agency and the anti-competitive settlement council.
 - c. Not to disclose investigation secrets which they know in the process of participating in competition procedures; not to use the recorded or copied documents in the competition case dossier for the purpose of infringing upon the interests of the State and legitimate rights and interests of other organizations or individuals;
 - d. Execute decisions of the National Competition Commission, the competition settlement council and the Competition Investigation Agency.

Article 68. Protectors of legitimate rights and interests of the complainant, respondent, investigated party, persons with related interests and obligations

1. Protectors of legitimate rights and interests of the complainant, respondent, investigated party, persons with related rights and obligations are participants in competition legal proceedings to protect the legitimate rights and interests of the complainant, respondent, investigated party or person with related rights and obligations at their written requests.

2. The following persons may act the protectors of legitimate rights and interests of the complainant, respondent, investigated party, or persons with related rights and obligation when so requested:
 - a) Lawyers as prescribed by law on lawyers;
 - b) Vietnamese citizens who have full legal capacity, have legal knowledge, have no criminal convictions and have not been charged with offences.
3. Protectors of the legitimate rights and interests of the complainant, respondent, the investigated party, persons with related rights and obligations may protect the legitimate rights and interests of more than one party in the same case if the legitimate right and interests of those parties are not opposite. Multiple protectors of legitimate rights and interests may jointly protect the legitimate rights and interests of one party in a case.
4. When a person registers as a protector of legitimate rights and interests of the complainant, respondent, investigated party, or person with related rights and obligations, he/she must present the written request made by the complainant, respondent, investigated party, or person with related rights and obligations.
5. When participating in competition legal proceedings, the protector of the legitimate rights and interests of the complainant, respondent, investigated party or person with related rights and obligations shall have rights and obligations to:
 - a) Participate in stages of the competition procedure;
 - b) Verify and collect evidence and submit them in order to protect the legitimate rights and interests of the party which they represent;
 - c) Study documents in the competition case dossiers and to take notes and copy necessary documents in such dossiers in order to protect the legitimate rights and interests of the parties which they represent;
 - d) Propose the replacement of competition presiding officers and/or participants in competition legal proceedings, on behalf of the parties they represent;
 - dd) Respect truth and law; not to bribe, force or incite other persons to give false testimonies or supply untruthful documents;
 - e) Appear in response to the summonses of the National Competition Commission, Competition Investigation Agency and competition settlement council;
 - g) Not to disclose investigation secrets they know in the process of participating in competition legal proceedings; not to use their notes and copies of documents in the competition case dossiers for the purpose of infringing upon the State's interests or legitimate rights and interests of organizations and individuals;
 - h) Other rights and obligations as prescribed by law.

Article 69. Witnesses

1. Persons who know about details related to competition cases may be summoned by the Competition Investigation Agency, anti-competitive settlement council to participate in competition legal proceedings in the capacity as witnesses. A legally incapacitated person may not act as a witness.
2. A witness shall have rights and obligations to:
 - a. Supply all documents, papers and things they have, which are related to the settlement of competition cases; give testimony to the Competition Investigation Agency, the anti-competitive settlement council on all details they know, which are related to the settlement of competition cases;
 - b. Participate in hearings and give testimony to the anti-competitive settlement council;
 - c. Be allowed to take leave when they are summoned by or give testimony to the Competition Investigation Agency or the anti-competitive settlement council if they are working for agencies, organizations or enterprises;
 - d. Be paid for relevant expenses as prescribed by law;
 - dd. Refuse to give testimony if such testimony is related to State secrets, professional secrets, trade secrets or personal privacy or badly, disadvantageously affects the complainant or investigated party who are their close relatives;
 - e. Pay damages and take legal liability for their false testimony causing damage to the complainant, investigated party or other entities;
 - g. Appear at the hearings in response to the summonses of the anti-competitive settlement council if they must give testimony publicly at the hearings;
 - h. Pledge before the Competition Investigation Agency or the anti-competitive settlement council to exercise their rights and fulfill their obligations, except for minor witnesses;
 - i. Witnesses shall be protected as per the law.
3. Witnesses who refuse to give testimony, give false testimony, supply false materials or are absent without justifiable reasons when being summoned by the Competition Investigation Agency or the anti-competitive settlement council shall have to bear liability as per the law, except for the case prescribed at Point dd Clause 2 of this Article.

Article 70. Expert witnesses

1. Expert witness is a person who is knowledgeable about an area of expertise at the request of the Head of Competition Investigation Agency or the anti-competitive settlement council or at the request of the involved parties in a case where the Head of Competition Investigation Agency or anti-competitive settlement council refuses the solicitation of expert opinion.

2. An expert witness shall have rights and obligations to:
 - a. Read documents in the competition case dossier which are related to the subject matters requiring expert opinions; to request the relevant entities, the expertise solicitor to supply documents necessary for giving expert opinions;
 - b. Raise questions to the participants in competition legal proceedings on matters related to subject matters requiring expert opinions;
 - c. Appear in response to the summonses of the competition presiding agencies c, give answers on matters related to the expertise as well as make expertise conclusions in an honest, grounded and objective manner;
 - d. Notify in writing the expertise solicitor of the impossibility to perform expertise because the subject matters requiring expert opinions fall beyond their professional capability or the supplied documents are not enough or are of no use for expertise;
 - dd. Preserve the received documents and return them to the expertise solicitor together with the expertise conclusions or the notice on the impossibility to perform expertise;
 - e. Not to collect by themselves documents for expertise, not to privately contact other participants in competition legal proceedings if such contact affects the impartiality of the expertise results; not to disclose information they know during the expertise, not to notify the expertise results to other persons, except for presiding agencies, expertise solicitor in a case where the Head of Competition Investigation Agency, anti-competitive settlement council refuses the solicitation of expert opinion;
 - g. Be paid for relevant expenses as prescribed by law.
3. Expert witnesses who refuse to give expertise conclusions without justifiable reasons or give false expertise conclusions or are absent without justifiable reasons when summoned by competition presiding agencies shall have to bear liability as per the law.
4. An expert witness must refuse to participate in competition legal proceedings or be replaced in the following cases:
 - a) He/she is the complainant, investigated party, person with relevant rights and obligations or relative of the complainant, investigated party, person with relevant interests;
 - b) He has participated in competition legal proceedings as a protector of legitimate rights and interests, witness or interpreter in the same competition case;
 - c) There are obvious grounds to believe that he/she is biased when performing his/her duties.

Article 71. Interpreters

1. Interpreter is a person who is capable of translating a language other than Vietnamese into Vietnamese and vice versa in case where participants in competition legal proceedings cannot use Vietnamese. The interpreter may be requested by Competition Investigation Agency, the anti-competitive settlement council or selected by the complainant, investigated party or person with relevant rights and obligations or agreed upon by involved parties with approval of the Competition Investigation Agency or the anti-competitive settlement council.
2. An interpreter shall have rights and obligations to:
 - a. Appear in answer to the summonses;
 - b. Interpret in a truthful, objective and accurate manner;
 - c. Ask competition presiding officers, participants in competition legal proceedings to clarify the contents to be interpreted;
 - d. Not to contact other participants in competition legal proceedings if such contact may affect the truthfulness, objectivity and accuracy of the interpretation;
 - dd. Be paid for relevant expenses as prescribed by law.
3. The expert witness must refuse to participate in competition legal proceedings or be replaced in the following cases:
 - a) He/she is the complainant, investigated party, person with relevant rights and obligations or relative of the complainant, investigated party, person with relevant interests;
 - b) He has participated in competition legal proceedings as a protector of legitimate rights and interests or expert witness in the same competition case;
 - c) There are obvious grounds to believe that he/she is biased when performing his/her duties.
4. The provisions of this Article also apply to those who understand the sign language of participants in competition legal proceedings with hearing or speech impairments. Where only the representatives or relatives of participants in competition legal proceedings with hearing or speech impairments can understand the latter's sign language, they may be accepted by the Competition Investigation Agency or the competition settlement council to act as interpreters for such hearing/speech-impaired persons.

Article 72. Persons with relevant rights and obligations

1. Persons with rights and obligations related to a competition case are those who do not complain about the competition case or are not the investigated party, yet the settlement of the competition case is related to their rights and obligations.

Therefore, they propose themselves or are requested by the complainant or the investigated party and accepted by the Competition Investigation Agency or the anti-competitive settlement council for participation in the procedures as persons with related rights and obligations, or are requested by the Competition Investigation Agency or the anti-competitive settlement council to participate in the procedures as persons with related rights and obligations.

2. Persons with related interests, obligations may file independent claims or participate in competition legal proceedings on the side of the complainant or investigated party.

The procedures for filing independent claims shall be compliant with procedures for competition claims.

3. Persons with related interests, obligations who file independent claims, participate in competition legal proceedings on the side of the complainant or persons with interests only shall have the rights and obligations prescribed in Clause 1 and Clause 4 Article 67 of this Law.
4. Persons with related interests, obligations who participate in competition legal proceedings on the side of the investigated parties or persons with obligations only shall have the rights and obligations prescribed in Clause 3 and Clause 4 Article 67 of this Law.

Article 73. Refusing expertise, interpretation or requesting replacement of expert witnesses or interpreters

The refusal of expertise or interpretation or request for replacement of expert witnesses or interpreters must be made in writing with clear explanation.

Article 74. Deciding replacement of expert witnesses or interpreters

1. The replacement of expert witnesses or interpreters shall be decided by the Head of Competition Investigation Agency, except for the case prescribed in Clause 2 hereof.
2. During a hearing, the replacement of expert witnesses or interpreters shall be decided by the anti-competitive settlement council.

If it is necessary to replace expert witnesses or interpreters at the hearing, the anti-competitive settlement council shall issue a decision to postpone the hearing. The solicitation of other expert witnesses or appointment of other interpreters shall comply with the provisions of Articles 70 and 71 of this Law.

Section 4. PROCEDURES FOR INVESTIGATION AND SETTLEMENT OF COMPETITION CASES

Article 75. Provision of information on violations

1. An entity when having doubt or detecting signs of violation of the provisions of this Law shall have to notify and provide information and evidence for the National Competition Commission.
2. Organizations and individuals shall be responsible for the truthfulness of the information and evidence provided to the National Competition Commission.
3. When required, the National Competition Commission take necessary measures to ensure the confidentiality of information and identity of the organizations or individuals providing information or evidence.

Article 76. Receipt, verification and evaluation of information on violations

1. The National Competition Commission shall be responsible for receiving, verifying and evaluating information and evidence on violations provided by organizations and individuals.
2. The National Competition Commission shall have the right to request the organizations and individuals specified in Clause 1 Article 78 of this Law to provide further information, documents and evidence to clarify signs of violation.

Article 77. Complaints against competition cases

1. Organizations and individuals assuming that their rights and interests are breached due to violations of this Law shall have the right to lodge complaints against competition cases to the National Competition Commission.
2. The time limit for making such a complaint is 3 years since the performance of the acts with signs of violation of competition law.
3. A complaint dossier shall include:
 - a) A written complaint, using the form issued by the National Competition Commission;
 - b) Evidence to prove that contents of the complaint have grounds and legality;
 - c) Other relevant information (if any) that the complainant considers necessary for settlement of the case.
4. The complainant shall be responsible for the truthfulness of the information and evidence provided to the National Competition Commission.

Article 78. Receipt and verification of complaint dossiers

1. Within 7 days from receipt of the complaint dossier, the National Competition Commission shall verify if the complaint dossier is complete and valid; if it is complete and valid, the National Competition Commission shall notify the complainant and the respondent as the acknowledgement of complaint dossier.
2. Within 15 days from the notices given to relevant parties prescribed in Clause 1 of this Article, the National Competition Commission shall assess the complaint dossier; if it fails to meet requirements prescribed in Clause 3 Article 77 of this Article, the National Competition Commission shall notify the complainant in writing of amendments to the complaint dossier.

The time limit for amendments to the complaint dossier is 30 days from the date of receiving the Commission's written notice of the amendments. The Commission may extend the time limit for amendments for only 1 time of no more than 15 days at the request of the complainant.

3. Within the time limits set out in Clauses 2 and 3 of this Article, the complainant shall have the right to withdraw the complaint dossier and the National Competition Commission may stop the assessment of the complaint dossier.

Article 79. Return of complaint dossiers

The National Competition Commission shall return a complaint dossier in the following cases:

1. The time limit for making complaint is expired;
2. The complaint does not fall under the authority of the National Competition Commission;
3. The complainant does not amend the complaint dossier according to the provisions of Clause 2 Article 78 of this Law;
4. The complainant withdraws the complaint dossier.

Article 80. Competition investigation decisions

The Head of the Competition Investigation Agency shall issue a competition investigation decision in the following cases:

1. The complaint against a competition case satisfies the requirements prescribed in Article 77 of this Law and does not fall under Article 79 of this Law;
2. The National Competition Commission detects signs of violation of competition law within 3 years from the date the acts with signs of violation are committed.

Article 81. Competition investigation time limit

1. The time limit for investigation of an anti-competitive case is 9 months from the date of investigation decision; in case of complicated case, it may be extended once but not exceeding 3 months.

2. The time limit for investigation of a case in which a violation of economic concentration is found is 90 days from the date of investigation decision; in case of complicated case, it may be extended once but not exceeding 60 days.
3. The time limit for investigation of an unfair competition case is 60 days from the date of investigation decision; in case of complicated case, it may be extended once but not exceeding 45 days.
4. The extension of the investigation time limit must be notified to investigated party and concerned parties within 7 working days before the expiry date of the investigation.

Article 82. Application of measures to prevent and guarantee imposition of sanctions against administrative violations in investigation and settlement of competition cases

1. During the investigation and settlement of competition cases, the President of the National Competition Commission, within his/her competence, shall require competent authorities to apply measures to prevent and guarantee imposition of sanctions against administrative violations in accordance with law on sanctions against administrative violations:
 - a) Temporarily seizing exhibits and means of violations, licenses, practicing certificates;
 - b) Searching means of transport and objects;
 - c) Searching locations suspected to store exhibits and means of violations.
2. The Government shall set forth procedures for application of measures to prevent and guarantee imposition of sanctions against administrative violations in investigation and settlement of competition cases.

Article 83. Taking of testimonies

1. Investigators shall take testimonies of complainants, investigated parties, persons with related rights and obligations, witnesses, concerned organizations and individuals in order to gather and verify necessary information and evidence for settling competition cases.
2. The taking of testimony provided in Clause 1 of this Article shall be conducted at the headquarters of the National Competition Commission. In necessary circumstances, the testimonies may be taken outside the headquarters of the National Competition Commission.
3. The written record of the testimonies must be read by or to givers of testimonies, and be signed or fingerprinted by them. Givers of testimonies have the right to request amendments to the written record of the testimonies and sign or fingerprint on the amended/supplemented parts. The record must bear signatures of the testimony taker and the recorder on every page.

4. If the giver of testimonies refuses to sign or fingerprint the record, the investigator shall take the testimonies and sign the record and provide explanation.

Article 84. Summoning witnesses during investigation

1. The person who requests summoning a witness shall give explanation to the Competition Investigation Agency for consideration.
2. Testimonies taken from the witness shall be recorded as prescribed in Article 83 of this Law.

Article 85. Transfer of competition dossiers showing criminal signs

1. During the investigation, in a case where signs of crime are detected, investigators must report it to the Head of the Competition Investigation Agency for consideration and requesting the President of the National Competition Commission to transfer all or part of the relevant dossier to the competent regulatory body for settlement according to the legal provisions.
2. Where there is no ground or no criminal proceedings shall be instituted against a violation of competition regulations, the competent authority shall return the dossier to the National Competition Commission to continue the investigations in accordance with this Law. The investigation time limit shall commence from the date on which the National Competition Commission receives the dossier back.

Article 86. Suspension of investigation

The Head of the Competition Investigation Agency shall issue a decision to suspend the investigation of a competition case in the following cases:

1. Evidence to prove violations cannot be taken as prescribed in this Law;
2. The complainants withdraws the complaint and the investigated party commits to terminate the investigated act, commit to take remedial measures which are approved by the Competition Investigation Agency;
3. The investigated party commits, in case the investigation falls under the provisions of Clause 2 Article 80, to terminate the investigated acts, commit to take remedial measures which are approved by the Competition Investigation Agency.

Article 87. Re-establishment of investigation

1. The Head of the Competition Investigation Agency shall, on his own or at the request of the President of the National Competition Commission/of any involved party, re-establish the investigation in the following cases:
 - a) The investigated party fails to comply or complies in an incorrect and incomplete manner with the commitments as prescribed in Clauses 2 and 3 Article 86 of this Law;

- b) The investigated party's decision to accept commitments is based on incomplete, inaccurate or misleading information provided by involved parties.
2. The investigation time limit after the decision on re-establishment of investigation is issued is 4 months.

Article 88. Investigation reports

1. Investigators shall make an investigation report upon completion of the investigation which contains the following key contents and send it to the Head of Competition Investigation Agency:
 - a) A brief description of the case;
 - b) Determination of the violation;
 - c) Verified details and evidence;
 - d) Proposed handling measures.
2. The Head of the Competition Investigation Agency shall have to sign investigation conclusions and submit the competition case dossier, investigation report and investigation conclusions to the President of the National Competition Commission for settlement in accordance with this Law.

Article 89. Settlement of violation of economic concentration regulations

1. Within 30 days from receipt of the competition case dossier, investigation report and investigation conclusions, the President of the National Competition Commission shall issue a decision to:
 - a) settle a violation of economic concentration regulations;
 - b) request Competition Investigation Agency to carry out further investigation if the evidence collected is not sufficient to determine violations against competition regulations. The time limit for further investigation is 30 days from the date of decision; or
 - c) suspend the settlement of a violation of economic concentration regulations.
2. Time limit for settlement of a violation of economic concentration regulations in case of further investigation is 20 days from the date on which the dossier, investigation report and investigation conclusions are received.

Article 90. Settlement of an unfair competition case

1. Within 15 days from receipt of the competition case dossier, investigation report and investigation conclusions, the President of the National Competition Commission shall issue a decision to:
 - a) settle the unfair competition case;

- b) request Competition Investigation Agency to carry out further investigation if the evidence collected is not sufficient to determine violations against competition regulations. The time limit for further investigation is 30 days from the date of decision; or
 - c) suspend the settlement of the unfair competition case.
2. Time limit for settlement of an unfair competition case in case of further investigation is 10 days from the date on which the dossier, investigation report and investigation conclusions are received.

Article 91. Settlement of an anti-competitive case

1. Within 15 days from receipt of the competition case dossier, investigation report and investigation conclusions, the President of the National Competition Commission shall establish an anti-competitive settlement council.
2. Within 30 days from the date of establishment, the anti-competitive settlement council may request Competition Investigation Agency to carry out further investigation if the evidence collected is not sufficient to determine violations against competition regulations. The time limit for further investigation is 60 days from the date of request.
3. Within 60 days from the date on which the council is established or the report and conclusions on further investigation are received, the anti-competitive settlement council shall issue a decision to suspend the settlement of competitions case as prescribed in Article 92 of this Law or to issue a settlement decision as prescribed in Article 94 of this Law.
4. Before issuing a decision on settlement of anti-competitive case, the anti-competitive settlement council shall open a hearing as prescribed in Article 93 of this Law.
5. The anti-competitive settlement council shall issue a decision on settlement on anti-competitive case according to discussion, ballot and decision on the majority rule.

Article 92. Suspension of competition case settlement

1. The President of the National Competition Commission shall decide to suspend the settlement of violations of economic concentration regulations and unfair competition cases in the following cases:
 - a) The complainants withdraws the complaint and the investigated party commits to terminate the investigated act, commit to take remedial measures;
 - b) The investigated party commits, in case the investigation falls under the provisions of Clause 2 Article 80, to terminate the investigated acts, commit to take remedial measures.

2. The anti-competitive settlement council shall decide to suspend the settlement of anti-competitive cases in the following cases
 - a) The complainants withdraws the complaint and the investigated party commits to terminate the investigated act, commit to take remedial measures;
 - b) The investigated party commits, in case the investigation falls under the provisions of Clause 2 Article 80, to terminate the investigated acts, commit to take remedial measures.

The decision on suspension of competition case settlement must be sent to the complainant, the investigated party and made public.

Article 93. Hearings

1. Within 15 days before expiry of time limit prescribed in c, 3 Article 91 of this Law, the anti-competitive settlement council shall open a hearing.
2. Such hearing shall be held in public. Where the contents of the hearing are related to national secrets or trade secrets, the hearing shall be held in confidentiality.
3. The decision to open the hearing and invitations to the hearing must be sent to the complainant, the investigated party and related organizations and individuals within 5 working days before the opening of the hearing. If they are absent in the hearing without justifiable reasons or still absent in second hearing although they are summoned validly, the anti-competitive settlement council shall still settle the competitions case as prescribed.
4. Participants in the hearing:
 - a) Members of the anti-competitive settlement council;
 - b) The complainant;
 - c) The investigated party;
 - d) Protectors of the legitimate rights and interests of the complainant or the investigated party;
 - dd) The Head of Competition Investigation Agency and investigators who have investigated the competition case;
 - e) Hearing clerks;
 - g) Person with relevant rights and obligations and others listed in the hearing opening decision.
5. At the hearing, participants shall present and discuss to protect their rights and legitimate interests. Opinions and arguments presented at the hearing must be recorded.

Article 94. Settlement decision

1. A settlement decision shall at least contain:
 - a) A brief description of the case;

- b) Analysis of the case;
 - c) Conclusion of the case.
2. The settlement decision shall be served to relevant organizations and individuals within 5 working days from the date of signing.
 3. The settlement decision shall be served by one of the following methods:
 - a) Personal service;
 - b) Service by post;
 - c) Service through an authorized third party.
 4. If the settlement decision cannot be served using one of the methods prescribed in Clause 3 of this Article, it shall be put up publicly or announced by means of mass media.

Article 95. Effect of settlement decision

A settlement decision shall take effect from the expiry of a complaint period as prescribed in Article 96 of this Law, except for the case prescribed in Clause 2 Article 99 of this Law.

Section 5. HANDLING OF COMPLAINTS AGAINST SETTLEMENT DECISIONS

Article 96. Complaining about a settlement decision

In case of disagreement with a part or the whole of a settlement decision, the organizations or individuals may lodge a complaint with the President of the National Competition Commission within 30 days after receiving the settlement decision.

Article 97. Complaints against settlement decisions

1. A complaint against a settlement decision must at least contain:
 - a) Date of the complaint;
 - b) Name and address of the complainant;
 - c) Code and date of the settlement decision against which the complaint is filed;
 - d) Grounds for complaint and requests of the complainant;
 - dd) Signature and seal (if any) of the complainant.
2. The complaint against a settlement decision must be sent to together with additional evidence (if any) proving that the complaint is well-grounded and lawful.

Article 98. Processing of complaints against settlement decisions

Within 10 days after receiving a complaint, the President of the National Competition Commission shall process the complaint and notify the complainant and related parties in writing of the contents of the complaint; in case of refusal, the President of National Competition Commission shall provide explanation in writing.

Article 99. Consequences of complaints against settlement decisions

1. A settlement decision against which a complaint is filed shall continue to be enforced except for the cases stipulated in Clause 2 of this Article.
2. During the handling of complaints, if deeming that the implementation of a part or the whole of complained settlement decision shall result in consequences difficult to remedy, the President of the National Competition Commission shall decide to temporarily suspend the implementation of a part or the whole of such decision. The suspension decision issued by the President of National Competition Commission shall cease to be effective from the date on which the decision on handling of above-mentioned complaint take effect.

Article 100. Handling of complaints against settlement decisions

1. Handling of complaints against settlement decisions:
 - a) Within 5 working days from acceptance of a complaint, the President of National Competition Commission shall decide to set up a complaint handling council composed of the President of the National Competition Commission and all members of the National Competition Commission, except for members who have participated in the anti-competitive settlement council;
 - b) The decision on handling of the complaint must be voted by at least two thirds of total members of the complaint handling council.
The decision on handling of complaint shall be adopted by voting under majority rule; in the event of equal votes, the chairperson of the council shall have the deciding vote;
 - c) The time limit for handling of complaints is 30 days from the date on which the decision on establishment of the complaint handling council is issued.
2. Handling of complaints against decisions on settlement of violations of economic concentration regulations or unfair competition:
 - a) After receiving a complaint, the President of the National Competition Commission shall have to handle the complaint within his/her competence;
 - b) The time limit for handling of complaints is 30 days from the date on which the complaint is accepted.
3. In complicated cases, the time limit for handling complaint prescribed in Clauses 1 and 2 of this Article may be extended but for no more than 45 days.

Article 101. Handling of complaints against settlement decisions

1. Uphold the settlement decision.
2. Amend a part or the whole of the settlement decision.

3. Cancel the settlement decision for re-settlement in any of the following cases:
 - a) The composition of the anti-competitive settlement council does not comply with this Law;
 - b) There is a serious violation against competition legal proceedings;
 - c) There are new facts leading possibly basic changes of the settlement decision that are not found during the investigation.
4. If the settlement decision is cancelled as prescribed in Article 3 of this Article, the President of National Competition Commission shall return the dossier in question to the Competition Investigation Agency or set up an anti-competitive settlement council as prescribed in this Law. A member of the anti-competitive settlement council or an investigator who commits a violation prescribed in Point a and b Clause 3 of this Article shall not be allowed to keep participating in investigation and settlement of this case.

Article 102. Effect of complaint handling decisions

1. A decision on handling of the complaint against settlement decision shall take effect from the day on which it is signed.
2. Within 5 working days from the date of signing, the decision on handling of the complaint against settlement decision shall be sent to relevant entities for further enforcement.

Article 103. Initiation of a lawsuit against complaint handling decisions

1. In case of disagreement with a complaint handling decision, the related party may initiate a lawsuit against a part or the whole of the contents of such decision to the competent court as prescribed in the Law on Administrative Proceedings within 30 days from the date of receiving the decision.
2. If the court accepts the lawsuit petition as prescribed in Clause 1 of this Article, the National Competition Commission shall transfer the competition dossier to the court within 10 days from the date on which the court's request is received.

Section 6. ANNOUNCEMENT OF DECISIONS OF NATIONAL COMPETITION COMMISSION

Article 104. Decisions to be announced

1. The following decisions must be announced, except for the contents prescribed in Article 105 of this Law:
 - a) Decision on exemption for prohibited anti-competitive agreements;
 - b) Decision on economic concentration;

- c) Decision on competition case settlement;
 - d) Decision on suspension of competition case settlement;
 - dd) Decision on handling complaints against settlement decisions.
2. The National Competition Commission shall announce the decisions referred to in Clause 1 of this Article only after they have taken effect.

Article 105. Contents not to be disclosed

The President of the National Competition Commission shall decide the contents related to State secrets or trade secrets which are not to be disclosed in the decisions specified in Clause 1 Article 104 of this Law.

Article 106. Posting of contents to be announced

The contents allowed to be announced in the decisions referred to in Clause 1 Article 104 of this Law shall be posted on the website of the National Competitive Commission for a period of 90 consecutive days after such decisions take effect.

Article 107. Announcement and publication of annual performance reports of the National Competition Commission

The National Competition Commission shall announce and publish its annual performance reports on its website.

**Section 7. INTERNATIONAL COOPERATION
IN COMPETITION LEGAL PROCEEDINGS**

Article 108. International cooperation in competition legal proceedings

1. The National Competition Commission shall conduct cooperation activities with foreign competition authorities in the course of competition legal proceedings in order to promptly detect, investigate and handle acts with signs of violation of competition law.
2. The scope of international cooperation in competition legal proceedings includes consultation, exchange of information and materials or other appropriate international cooperation activities in accordance with the provisions of Vietnamese law and international treaties to which the Socialist Republic of Vietnam is a party.

Article 109. Principles of international cooperation in competition legal proceedings

1. International cooperation in competition legal proceedings shall be conducted on the principle of respect for each other's independence, sovereignty and territorial

integrity, non-interference in each other's internal affairs, equality and mutual benefit, in conformity with Vietnamese Constitution, laws and international treaties to which the Socialist Republic of Vietnam is a party.

2. In cases where Vietnam has not yet signed or joined related international treaties, international cooperation in competition legal proceedings shall be conducted on the principle of reciprocity but not contrary to Vietnamese laws, and in conformity with international laws and practices.

Chapter IX

SANCTIONS AGAINST VIOLATIONS OF COMPETITION LAW

Article 110. Rules and forms of sanctions against violations and remedial measures for violations of competition law

1. Any entity committing violation of competition law shall, depending on the nature and seriousness of their violations, be disciplined, incur penalties for administrative violations or face a criminal prosecution; in case of damage to the interests of the State, legitimate rights and interests of organizations and individuals, compensation must be paid according to the provisions of law.
2. For each violation of competition law, the violator shall be subject to one of the following primary penalties:
 - a) Warning;
 - b) Fines.
3. Depending on nature and severity of the violation, the violator may be subject to one of the following additional penalties:
 - a) Revocation of enterprise registration certificates or equivalent, deprivation of licenses and practicing certificates;
 - b) Confiscation of the exhibits and means used for violations of competition law;
 - c) Confiscation of the profit earned from the violations of competition law.
4. Apart from penalties prescribed in Clauses 2 and 3 hereof, the violator may be subject to the application of one or more of the following remedial measures:
 - a) Restructure the enterprises having abused their dominant position on the market or abused their monopoly position;
 - b) Remove illegal provisions from business contracts, agreements or transactions;
 - c) Divide, split or sell a part or all paid-in capital, assets of the enterprise which is established after economic concentration;
 - d) Subject to the control of competent authority related to purchase prices and sale prices of goods, services or other transaction conditions in contracts of the enterprise which is established after economic concentration;

- dd) Make public correction;
 - e) Other necessary measures to overcome anti-competitive effects of the violation.
5. The Government shall provide guidelines for penalties and remedial measures for each violation prescribed in competition law.

Article 111. Fines imposed on violations of competition law

1. The maximum fine for violations of regulations on anti-competitive agreements, abuse of the dominant position on the market, abuse of the monopoly position shall be equal to 10% of the total turnover of violating enterprises on the relevant market in the fiscal year preceding the year of violation, but not less than the minimum fine imposed on violations prescribed by the Penal Code.
2. The maximum fine for violations of economic concentration regulations shall be 5% of the total turnover of violating enterprises on the relevant market in the fiscal year preceding the year of violation.
3. The maximum fine for violations of regulations on unfair competition shall be VND 2 billion.
4. The maximum fine for other violations of this Law shall be VND 200 million.
5. The maximum fines prescribed in Clauses 1, 2, 3 and 4 of this Article shall apply to violations committed by organizations; a violation of regulations on competition law committed by an individual shall be subject to a half of fine that imposed on an organization committing the same violation.
6. The Government shall provide guidelines for amounts of fines imposed on violations prescribed in this Law.

Article 112. Leniency policy

1. Enterprises that voluntarily inform to help the National Competition Commission detect, investigate and handle anti-competitive agreements prohibited prescribed in Article 12 of this Law might receive full or partial immunity from fines under the leniency policy.
2. The President of the National Competition Commission shall decide the granting of full or partial immunity from fines in accordance with the leniency policy.
3. The full or partial immunity from fines prescribed in Clause 1 hereof shall be granted if the enterprise meets the following conditions:
 - a) It has engaged in the anti-competitive agreement as a party as prescribed in Article 11 of this Law;
 - b) It voluntarily gives notice of the violation before competent bodies make an investigation decision;

- c) It honestly provides all information/evidence that it has on the violation, which is of great help for the National Competition Commission to detect, investigate and handle the violation;
 - d) Fully cooperate with competent bodies during the investigation and handling of the violation.
4. Regulations in Clause 1 hereof shall not apply to enterprises that play the role of forcing or arranging other enterprises to participate in the agreement.
 5. This leniency policy is applicable to no more than the first 3 enterprises which apply for leniency to the National Competition Commission and meet all the conditions specified in Clause 3 of this Article.
 6. Criteria for determining the enterprises entitled to leniency:
 - a) Order of the notification;
 - b) Time of notification submission;
 - c) Fidelity and values of the provided information/evidence.
 7. The full or partial immunity from fines shall be granted as follows:
 - a) The first enterprise applying for leniency and meeting the conditions specified in Clause 3 of this Article might receive full immunity from fines;
 - b) The second and third enterprises applying for leniency and meeting the conditions specified in Clause 3 of this Article might receive 60% and 40% of immunity from fines respectively;

Article 113. Power and forms of sanctions against violations of competition law

1. If a regulatory body performs an act prescribed in Clause 1 Article 8 of this Law, the National Competition Commission shall request such regulatory body to terminate the act and adopt remedial measures. The aforesaid regulatory body shall terminate the act, adopt remedial measures and compensate for damage as per the law.
2. In case of prohibited acts prescribed in Clause 2 Article 8 of this Law, the President of the National Competition Commission and the anti-competitive settlement council shall have power to:
 - a) Give warnings;
 - b) Impose fines as prescribed in Clause 4 Article 111 of this Law;
 - c) Adopt measures prescribed in Points b, c Clause 3 and Points dd, e Clause 4 Article 110 of this Law;
 - d) Request the competent authority to adopt measures prescribed in Point a Clause 3 Article 110 of this Law.
3. In cases of violations of anti-competitive agreements, abuse of the dominant position on the market, abuse of the monopoly position, the anti-competitive settlement council shall have the power to:
 - a) Give warnings;

- b) Impose fines as prescribed in Clause 1 Article 111 of this Law;
 - c) Adopt measures prescribed in Points b, c Clause 3 and Points a, b, d, dd, e Clause 4 Article 110 of this Law;
 - d) Request the competent authority to adopt measures prescribed in Point a Clause 3 and Point a Clause 4 Article 110 of this Law.
4. In cases of violation of economic concentration regulations, the President of the National Competition Commission shall have power to:
- a) Give warnings;
 - b) Impose fines as prescribed in Clause 2 Article 111 of this Law;
 - c) Adopt measures prescribed in Points b, c Clause 3 and Points a, c, d, e Clause 4 Article 110 of this Law;
 - d) Request the competent authority to adopt measures prescribed in Point a Clause 3 and Point a Clause 4 Article 110 of this Law.
5. In case of violations of unfair competition and other violations prescribed herein other than the cases prescribed in Clauses 1, 2, 3 and 4 hereof, the President of National Competition Commission shall have power to:
- a) Give warnings;
 - b) Impose fines as prescribed in Clauses 3 and 4 Article 111 of this Law;
 - c) Adopt measures prescribed in Points b, c Clause 3 and Points dd, e Clause 4 Article 110 of this Law;
 - d) Request the competent authority to adopt measures prescribed in Point a Clause 3 Article 110 of this Law.
6. Prohibited acts prescribed in Clause 7 Article 45 of this Law shall be settled as prescribed in relevant laws.

Article 114. Enforcement of settlement decisions

1. Within 15 days from the effective date of a settlement decision, if the party obliged to comply with the decision fails to voluntarily do so, the President of the National Competition Commission and the successful party shall have the right to request competent authorities to enforce the settlement decision.
2. If a settlement decision is related to the properties of the party bound to comply with such decision, the National Competition Commission shall request the competent civil enforcement agency to carry out the enforcement.

Article 115. Enforcement of decision on handling of complaint against settlement decision

1. Within 15 days from the effective date of a settlement decision, if the party obliged to comply with the decision fails to voluntarily do so, the President of the National Competition Commission and the successful party shall have the right to request competent authorities to enforce the settlement decision.

2. If a settlement decision is related to the properties of the party bound to comply with such decision, the National Competition Commission and the successful party may request the competent civil enforcement agency to carry out the enforcement.

Chapter X

IMPLEMENTATION

Article 116. Amendments to and annulment of provisions of other laws

1. Certain articles of the Law on Civil Judgment Enforcement No. 26/2008/QH12 which are amended in the Law No. 64/2014/QH13 are amended as follows:
 - a) Replacing the phrase “quyết định xử lý vụ việc cạnh tranh của Hội đồng xử lý vụ việc cạnh tranh” (settlement decisions of the anti-competitive settlement council) prescribed in Article 1, Point e Clause 2 Article 35, Point a Clause 1 Article 56 with the phrase “quyết định xử lý vụ việc cạnh tranh của Chủ tịch Ủy ban Cạnh tranh Quốc gia, Hội đồng xử lý vụ việc hạn chế cạnh tranh, quyết định giải quyết khiếu nại quyết định xử lý vụ việc cạnh tranh của Chủ tịch Ủy ban Cạnh tranh Quốc gia, Hội đồng giải quyết khiếu nại quyết định xử lý vụ việc cạnh tranh” (settlement decisions of the President of National Competition Commission, the anti-competitive settlement council, decisions on handling of complaints against settlement decisions of the President of National Competition Commission, the anti-competitive complaint handling council);
 - b) Replacing the phrase “Hội đồng xử lý vụ việc cạnh tranh” (the anti-competitive settlement council) prescribed in Article 26 and Article 27 with the phrase “Chủ tịch Ủy ban Cạnh tranh Quốc gia, Hội đồng xử lý vụ việc hạn chế cạnh tranh, Hội đồng giải quyết khiếu nại quyết định xử lý vụ việc cạnh tranh” (the President of the National Competition Commission, the anti-competitive settlement council, the anti-competitive complaint handling council);
 - c) Point dd Clause 1 Article 2 shall be amended as follows:

“dd)A settlement decision of the President of National Competition Commission or anti-competitive settlement council, a decision on handling of complaint against settlement decision of the President of National Competition Commission or anti-competitive settlement council that involved parties are unwilling to enforce or do not file a lawsuit to a court after 15 days from the date on which the decision takes effect;”.
2. Clause 6 Article 19 of the Law on Telecommunication No. 41/2009/QH12 shall be annulled.
3. Point 4.1, sub-section 04, section II, Part A of Appendix No. 01 issued together with the Law on Fees and Charges No. 97/2015/QH13 shall be annulled.

Article 117. Entry in force

1. This Law comes into force as of July 1, 2019.
2. The Competition Law No. 27/2004/QH11 ceases to be effective from effective date of this Law.

Article 118. Transitional regulations

From effective date of this Law, violations against competition law prescribed in the Competition Law No. 27/2004/QH11 shall be considered further as follows:

1. If a violation is determined not contravening this Law during investigation, the investigation shall be suspended;
2. If a violation is determined contravening this Law during the investigation and handling of complaint, the investigation or handling of complaint shall keep being carried out as prescribed in this Law. If the penalties or amounts of fines imposed on violations prescribed in this Law are higher than those prescribed in Competition Law No. 27/2004/QH11, Competition Law No. 27/2004/QH11 shall prevail.

This Law is passed by the 14th National Assembly of the Socialist Republic of Vietnam at the 5th meeting on June 12, 2018.

CHAIRPERSON OF NATIONAL ASSEMBLY

Nguyen Thi Kim Ngan

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ANNEX IV

Glossary of Competition Law Terminologies for ASEAN

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A

Abuse of Bargaining Position

Anti-competitive practices which a firm with an upper-hand (superior) position may use its position to improperly exploit consumers (competitor or end-consumer) in order to maintain or increase its position in the market.

Abuse of Dominant Position

A dominant firm may use its substantial market power to stop efficient competitors from entering a market, to drive existing efficient competitors out of the market or to charge a high price. Using substantial market power to stop new entry or to drive competitors out of business is called exclusionary conduct. Using substantial market power to prevent competition that allows the dominant firm to charge higher prices is called exploitative conduct. In Europe and in countries that follow the European competition law exclusionary and exploitative conduct by a firm with substantial market power is called abuse of a dominant position. Exclusionary conduct in the United States is called monopolisation.

In developed competition law jurisdictions, economics determines what is abusive conduct. For example, the following kinds of exclusionary practices have been found to be abusive conduct: price discrimination, predatory pricing, price squeezing by vertically integrated firms, refusals to deal or sell, tied selling. **See Anti-competitive practices.**

Absolute Territorial Protection

Practice by manufacturers or suppliers relating to the resale of their products and leading to a separation of markets or territories. Under absolute territorial protection, a single distributor obtains the rights from a manufacturer to market a product in a certain territory and other distributors are prohibited to sell actively or passively into this territory. (Definition by European Commission).

Acquisition

Refers to obtaining ownership and control by one firm, in whole or in part, of another firm or business entity. As distinct from a **merger**, an acquisition does not necessarily entail *amalgamation* or **consolidation** of the firms. An acquisition, even when there is complete change in control, may lead the firms involved to continue to operate as separate entities. Nevertheless, joint control implies joint profit maximization and is a potential source of concern to antitrust authorities. See also **Takeover**.

Agreement (to lessen or restrict competition)

Agreement refers to an explicit or implicit arrangement between firms normally in competition with each other to their mutual benefit. Agreements to restrict competition may cover such matters as prices, production, markets and customers. These types of agreements are often equated with the formation of **cartels** or **collusion** and in most jurisdictions are treated as violations of competition legislation because of their effect of increasing prices, restricting output and other adverse economic consequences.

Agreements may be arrived at in an extensive formal manner, and their terms and conditions are explicitly written down by the parties involved; or they may be implicit, and their boundaries are nevertheless understood and observed by convention among the different members. An explicit agreement may not necessarily be an "overt" agreement, that is one which can be openly observed by those not party to the agreement. Indeed, most agreements which give rise to **anticompetitive practices** tend to be covert arrangements that are not easily detected by competition authorities.

Not all agreements between firms are necessarily harmful of competition or proscribed by competition laws. In several countries, competition legislation provides exemptions for certain cooperative arrangements between firms which may facilitate efficiency and dynamic change in the marketplace. For example, agreements between firms may be permitted to

develop uniform product standards in order to promote **economies of scale**, increased use of the product and diffusion of technology. Similarly, firms may be allowed to engage in cooperative research and development (R&D), exchange statistics or form **joint ventures** to share risks and pool capital in large industrial projects. These exemptions, however, are generally granted with the proviso that the agreement or arrangement does not form the basis for **price fixing** or other practices restrictive of competition.

Anti-Competitive Agreement

Anti-competitive agreement refers to an explicit or implicit arrangement between firms, normally in competition with each other, which prevents entry by new firms, raises price or restricts output. Agreements to restrict competition may cover such matters as collectively setting prices, introducing production quotas which has the effect of increasing prices or dividing markets geographically or by customers. Anti-competitive agreements violate competition law because they increase prices to business and final consumers directly, or indirectly by restricting output.

Agreements may be formal, with their terms and conditions explicitly written down in a contract between the parties involved or informal through a verbal agreement. Agreements may also be implicit where there is no formal communication between them at all. For example, anti-competitive practices by customs where competitors understand the terms of the agreement through convention and practices in the market. Alternatively, competitors in a market learn how other competitors react to changes in price which results in higher prices even though there is no communication between them. Agreements, whether formal, informal or implicit are usually secret and so not easily detected by competition authorities.

Not all anti-competitive agreements are prohibited by competition laws. Some countries allow for exemptions for anti-competitive agreements which provide benefits greater than the anti-competitive effect. Benefits can include improving firm efficiency or promoting technological change which benefits consumers either in the short or long-term. For example, agreements

between firms to develop uniform product standards that benefit consumers or agreements that allow faster diffusion of new technology may be permitted by competition authorities because the benefits are greater than the anti-competitive impact. Similarly, competing firms may be allowed to engage in cooperative research and development (R&D), to exchange statistics on past sales or to form joint ventures to share risks and pool capital in large industrial projects. These exemptions, however, are generally granted on the condition that the agreements are the least restrictive way of achieving those benefits.

Anti-Competitive Practices

This refers to a wide range of business practices in which either a single firm or a group of firms act in ways which restrict competition. Restricting competition leads to higher prices and less production or output in the market.

In a competitive market firm try to beat competitors by offering lower prices (due to being more efficient in production) or by offering better quality products. Anti-competitive practices artificially limit competition resulting in higher prices and lower quality products.

Many competition law jurisdictions make a distinction between anti-competitive practices which are per se illegal those which are examined under a rule of reason. Under a per se rule the conduct is presumed to be illegal without examining the actual effects in a particular case. Under a rule of reason the effect of the conduct on competition (e.g. whether the conduct leads to higher prices or lower output) is examined. For example, resale price maintenance is usually per se illegal in most countries but exclusive dealing is usually subject to a rule of reason.

Anti-competitive practices can be broadly divided into horizontal and vertical restraints on competition. Anti-competitive horizontal restraints are between firms that operate at the same level in the production chain (e.g. between manufacturers or between wholesalers or between retailers). They include price-fixing between competitors (in a cartel) and a merger between competitors. Vertical restraints are between sellers and

buyers (i.e. at different levels of the production chain). This can include a seller signing an exclusive dealing contract with a buyer or only allowing the buyer to resell within a particular geographic area, market restrictions, resale price maintenance and tied selling. Economists generally believe horizontal restrictions to have a greater impact on competition than vertical restrictions. Sometimes the difference between horizontal and vertical restraints on competition is not always clear. For example competitors in the same market may agree to place restrictions in a downstream market.

Antitrust Law

Antitrust law refers to laws dealing with monopoly and monopolistic practices. The terms antitrust law and antitrust policy are used mainly in the United States. In most other countries the terms competition law or policy are used. Some countries also use the terms Fair Trading or Antimonopoly law.

The economic basis for antitrust economics or policy is the *industrial organization* specialisation in economics which looks at the conduct of firms operating in different market structures (from monopoly to many competitors) and the effect this has on economic performance.

B

Barriers to Entry

Barriers to entry are factors, which prevent or deter the entry of new firms into a market. Entry barriers limit competition. There are three broad classes of barriers: legal (where governments restrict entry into a market (to protect state-owned enterprises, for example), economic (which refer to cost conditions that impede entry) and behavioural barriers to entry (where a dominant firm acts to prevent new entry).

Economic barriers to entry arise from basic market characteristics such as technology, costs and demand. There is some debate over what factors constitute structural barriers that are relevant to competition

law. The widest definition is given by Bain who argues that barriers to entry include the following: product differentiation, absolute cost advantages of incumbents, and economies of scale. Product differentiation makes it harder for new entrants because entrants must overcome the existing, accumulated, brand loyalty of existing products (not all economists see this as something competition law should worry about because existing firms have spent considerable money to gain loyal customers). Incumbent absolute cost advantages mean that the entrant will face higher costs at every rate of output than the incumbent. Higher costs could result from new entrant having higher input costs. Scale economies mean that bigger firms have lower costs. Because an incumbent firm has had time to grow and achieve lower costs because of economies of scale, potential new entrants may decide not to enter because it takes time to achieve the same costs of incumbents.

Strategic entry deterrence involves some kind of pre-emptive behaviour by incumbents. One example is where an incumbent over-invests in existing capacity in order to *signal* to new entrants that it has the capacity to expand production and charge low prices to drive the new entrant out of business. Another is the artificial creation of new brands and products in a market in order to limit the size of a new entrants part of the market. There is considerable debate among economists about the importance of strategic entry deterrence.

It should also be noted that probably the most important source of entry barriers can be the government restricting entry into markets by licensing and other regulations.

Bid Rigging

Bid rigging is a form of price-fixing. Here, firms agree on who will win the bid for government and non-government contracts, with the same effect as the firms agreeing on the price. There are a number of ways in which tenders can be rigged. For example, firms agree on which firm will offer the lowest price. The firms then take turns to win contracts. Bid rigging is one of the most widely prosecuted forms of collusion.

Bilateral Monopoly/Oligopoly

A situation where there is a single (or few) buyer(s) and seller(s) of a given product in a **market**. The level of **concentration** in the sale of purchase of the product results in a mutual inter-dependence between the seller(s) and buyer(s). Under certain circumstances the buyer(s) can exercise countervailing power to constrain the **market power** of a single or few large sellers in the **market** and result in greater output and lower prices than would prevail under **monopoly** or **oligopoly**. This would particularly be the case when: the “upstream” supply of the product is elastic, i.e. fairly responsive to price changes and not subject to production bottlenecks; the buyers can substantially influence downwards the prices of monopolistic sellers because of the size of their purchases; and the buyers themselves are faced with price competition in the “downstream” markets (see **vertical integration** for discussion of terms upstream-downstream). Such a situation is particularly likely in the case of purchase of an intermediate product. However, if the supply of the product upstream is restricted and there is no effective competition downstream, the bilateral monopoly/oligopoly may result in joint profit maximization between sellers-buyers to the detriment of consumers.

Block Exemption

The Block Exemption Regulation is an exemption in a business line or industry, which debars organizations in the industry from some business activities in order to create competition. The regulation issued by the European Commission, specifying the conditions under which certain types of agreements are exempted from the prohibition on restrictive agreements. When an agreement fulfils the conditions set out in a block exemption regulation, individual notification of that agreement is not necessary: the agreement is automatically valid and enforceable.

These block exemption regulations are particularly useful for small and medium enterprises (SMEs) and were in many respects specifically designed for their benefit.

Bundling

Bundling is related to the concept of **tied selling**. For example, a car manufacturer may offer a complete package including automatic transmission, radio and air conditioning because consumers on average want them and because the final price to the consumer is lower than if all the different products were supplied or bought separately. However, bundling may be anticompetitive if it makes it difficult for a new firm to enter any of these different product markets. For example, a car air-conditioning firm may not be able to enter if existing car manufacturers have long-term contracts with existing car air-conditioning firms. The competition implications of bundling, including that of tied selling generally, are complex and need to be evaluated on a case by case basis adopting a rule of reason approach. See also **Tied Selling**.

Buyout

Refers to a situation where the existing owners of a firm are “bought out” by another group, usually management and/or workers of that firm. A buyout may be for the whole firm or a division or a plant as the case applies. The financing of the buyout can be structured in various ways such as bank loans or through the issuance of bonds. In a leveraged buyout for example, a fairly large proportion of debt in relation to the asset value of the firm is incurred. Because buyouts lead to replacing publicly traded equity with debt (in the form of bonds backed by assets and other guarantees) the firms are often viewed as “going private” since its shares may no longer be listed on the stock exchange. Buyouts are viewed as an integral part of the market for corporate control and the re-deployment of assets from lower to higher valued uses.

C

Cartel

A cartel is an agreement between firms in a market to set prices or the amount of market output, allocate customers or geographic areas between them, engage in bid-rigging, divide profits etc. Cartels try to maximise cartel profits in the same way that a monopolist restricts market output, or raises or fixes prices in order to earn higher profits.

Some cartels are controlled by governments. Here, the government may establish and enforce rules relating to prices, output and other such matters. Some cartels may be exempted from, or not covered by, competition laws. Normally competition law only prohibits anti-competitive conduct that had an adverse on competition and prices in the home country. Export cartels may be exempted from competition law or be outside a country's competition law because the effect (e.g. higher prices) only affects consumers overseas.

In some countries, depression cartels have been permitted in industries where governments feel price and production stability is important or to allow the rationalization of the industry and reduction in excess capacity during economic downturns. In Japan for example, such arrangements have been permitted in the steel, aluminium smelting, ship building and various chemical industries. Cartels were also permitted in the United States during the depression in the 1930s and continued to exist for some time after World War II in industries such as coal mining and oil production. Cartels have also played an extensive role in the German economy during the inter-war period. International commodity agreements covering products such as coffee, sugar, tin and oil (i.e. OPEC – the Organization of Petroleum Exporting Countries) are examples of international cartels between different national governments and so outside any country's competition laws.

Collusion

Collusion refers to either formal or informal agreements between sellers to raise or fix prices or to reduce output in order to increase joint profits. Normally the term cartel refers to a formal agreement. However, collusion does not necessarily require a formal agreement and can occur informally where a 'wink' or 'nod' or simply following a *market leader* occurs. However, the economic effects of formal and informal collusion are the same and often the terms are used interchangeably.

Collusion between firms to raise or fix prices and reduce output are viewed by most authorities as the single most serious violation of competition laws. Collusion is usually easier when there are a few sellers who sell homogenous products. This happens because it is easier to get agreement on a single product if there are only a few sellers involved but it is also easier to monitor each other member of the agreement if there are only a few sellers. A cartel is more difficult to form and maintain if there is a large number of members selling different products. However, price fixing has also been found in the sale of complex products with a large number of members. An example is the electrical equipment industry in the United States which involved 29 different companies selling diverse technical products such as turbine generators, transformers, switch gears, insulators, controls and condensers. Similarly, through agreement on product specification details and standards, American steel producers were able to collude successfully for some time.

Combination

In the parlance of competition law and policy, the term combination refers to firms organized together to form a **monopoly, cartel or agreement** to raise or fix prices and restrict output in order to earn higher profits. This term has been interchangeably used with **conspiracy** and **collusion** as well.

Competition

Competition exists when sellers in a market *independently* try to win customers from other sellers through lower prices, better quality products or service. Competition here means *rivalry* between two or more firms.

Competition forces firms to be internally efficient (**productive efficiency**) and at least to match the price and quality of products offered by other firms. Competition, by ensuring the best prices are offered at the lowest possible price, ensures that consumer welfare is maximised and that a country's resources are allocated to their best uses (**allocative efficiency**). Competition also ensures that firms innovate to the extent that consumers want by developing better products and production methods – called **dynamic efficiency**.

Competition law

A competition law is a law that promotes or maintains healthy market competition by stopping anti-competitive conduct. Usually, a competition law has three main elements:

- (1) prohibiting agreements or practices (such as price-fixing) that restrict competition in markets.
- (2) banning abusive conduct by a firm that has substantial market power (i.e. is dominant). Abusive conduct may include predatory pricing, tying, price gouging, refusing to deal and many others;
- (3) controlling mergers and acquisitions, including some joint ventures, that are likely to reduce market competition in the future (because the merger etc leads to a firm with substantial market power or creates conditions that make it easier to collude).

Mergers can be prohibited altogether, or approved subject to conditions such as an obligation to divest part of the merged business or to offer licenses or access to facilities to enable other businesses to continue competing.

Competition policy

Competition policy means any government policy aimed at increasing competition. Competition policy covers trade policies (lower tariffs mean more competition from overseas), privatisation policies (privatising government monopolies and allowing for private sector competition) and reducing licensing requirements (which allows more firms into the market) as well as competition law (which regulates competitor conduct). So competition policy is a broader concept than competition law.

Concentration

Market Concentration (also often referred to as *seller concentration*) measures the size distribution of firms in a market. Economic theory suggests that, other things being equal, higher levels of market concentration are more likely to lead to anti-competitive conduct. Market concentration is used as a possible indicator of market power.

Concentration Indexes

Various concentration indexes are used to describe market structure (the size distribution of firms) as a prima facie indicator of market power in a market. Essentially, concentration indexes attempt to measure the number and relative size of firms. The most frequently used measures are:

- *Market Concentration Ratio*: The percentage of total industry output (or other such measure of economic activity, e.g., sales revenue, employment) accounted for by a given number of the largest firms in a particular market. For example, the four-firm concentration ratio (CR_4) measures the proportion of total market output accounted for by the four largest firms. Similarly, CR_3 , CR_5 , CR_8 , etc may be computed. However, concentration ratios may not adequately reflect the level of competition in a market. For example, two markets with the same CR_4 levels of 75 percent may differ considerably if in one market the remaining 25% is held by one firm but in the other there are 25 firms with 1% each.

- **Herfindahl-Hirschman Index (HHI):** This measure takes account of the total number and size distribution of firms in the market. It is computed as the sum of the square of the relative size of all firms in the market. Algebraically it is:

$$\text{HHI} = \sum_{i=1}^n (\mathbf{S}_i)^2 ; \text{ where } \sum_{i=1}^n \mathbf{S}_i = 1$$

\mathbf{S}_i is the relative output (or other measures of economic activity such as sales or capacity) of the i^{th} firm, and n is the total number of firms in the industry.

In a market with only one firm (monopoly), the HHI measure will be equal to 1. In a duopoly with two equal sized firms, the HHI measure will be:

$$(0.5)^2 + (0.5)^2 = 0.50$$

The index is used by many competition authorities. For example, the United States Department of Justice Antitrust Division uses the HHI in its Merger Guidelines to screen mergers that may warrant further examination for their effects on competition. The HHI has several mathematical and economic theoretic properties which make it a desirable concentration measure.

Conglomerate

A firm or business enterprise having different economic activities in different unrelated markets. Competition law may be concerned that conglomerates may be able to act anti-competitively by subsidising a member of the group to price below cost to drive out competitors. See also **Merger**.

Consolidation

Generally refers to combination or *amalgamation* of two or more firms into one new firm through the transfer of net assets. The new firm may be specially organized to distinguish it from a merger.

Conspiracy

Normally a covert or secret arrangement between competing firms in order to earn higher profits by entering into an **agreement** to fix prices and restrict output. The terms **combination**, **conspiracy**, **agreement** and **collusion** are often used interchangeably. For further details see discussion under these headings.

Consumers' Surplus

Consumers' surplus is a measure of consumer welfare. It is defined as the difference between what consumers are willing to pay for a product less the amount they actually have to pay.

In the diagram below, the market demand curve for good X is drawn as AC. At price = P_0 , Q_0 units of X are purchased by consumers. However, given the demand curve, there are some consumers who would be prepared to pay a higher price for X. These consumers receive a benefit from the fact that they actually pay only P_0 . The dollar value of the benefit to all such consumers is given by the area of the triangle P_0AB which is the dollar measure of consumers' surplus.

Consumer Welfare

Consumer welfare refers to the individual benefits derived from the consumption of goods and services. In theory, individual welfare is defined by an individual's own assessment of his/her satisfaction, given prices and income. Exact measurement of consumer welfare therefore requires information about individual preferences.

In practice, applied welfare economics uses the notion of consumer surplus to measure consumer welfare. When measured over all consumers, **consumers' surplus** is a measure of aggregate consumer welfare. In anti-trust applications, some argue that the goal is to maximize consumers' surplus, while others argue that producer benefits should also be counted. See **Consumers' Surplus**, **Deadweight Welfare Loss**.

Consumer Protection Policy

Consumer protection policy is a body of legal rules enforced to ensure that consumers can make well-informed decisions about their choices and that sellers will fulfil their promises about the products they offer. In other words, consumer protection policy prevents producers from engaging in unfair practices while seeking to increase their sales.

Contestability / Contestable Market

A contestable market is a theoretical market where the following conditions are satisfied:

- a) there are no barriers to entry or exit;
- b) all firms, both incumbent and potential entrants, have access to the same production technology;
- c) all consumers and firms have perfect information on prices;
- d) entrants can enter and exit before incumbents can adjust prices.

While similar to the theoretical model of **perfect competition**, the difference is that while perfectly competitive markets have large numbers of firms, a contestable market may have any number of firms (including only one or a few) and these firms need not be price-takers. The analysis of contestable markets is designed for cases where market conditions (such as the existence of scale economies) precludes a large number of competitors.

Contestable markets theory suggests that economic efficiency is possible even in a market consisting of one or a few firms. The basic idea is that incumbent firms will maintain prices close to the competitive level because of the threat posed by potential entrants. If incumbents raise price, entry will occur (because there are no **barriers to entry**), and the entrants will be able to produce as efficiently as incumbents (same access to technology). Moreover, if price declines as a result of the entry, the entrant will be able to exit the industry quickly and costlessly (there are no barriers to exit). This is known as “hit and run” entry. It is the fear of “hit and run” entry which motivates even a monopolist to maintain prices close to average cost.

Control of Enterprises

A shareholder (or group of shareholders) with more than 50% of the shares of a firm can exercise control over the firm. However, “effective control” may be exercised with less than 50% share ownership. It may be possible to control a firm with 20% share ownership when the remaining shares are widely held by many small investors who do not vote at firm general meetings. Control of enterprises may also be exercised through interlocking directorates and inter-corporate ownership links between firms as happens in **conglomerates**.

Costs

Costs may be fixed or variable. Fixed costs are costs that must be paid even if nothing is produced. Examples are interest on debt, property taxes and rent. Variable costs are costs that vary with the amount produced. Examples are materials, fuel, labour and maintenance. As the relevant time period is extended, more costs become variable.

Total costs refer to the sum of fixed and variable costs. *Average costs* refer to total costs divided by output. *Marginal cost* is the addition to total cost that results from producing an additional unit of output. Marginal cost is a function of variable costs alone, since fixed costs do not change as output increases.

Marginal cost has a particular importance in economic theory. In theory, the profit maximizing firms will maximise profits by producing the output where marginal cost equals marginal revenue. In practice, determining marginal costs and revenues are difficult and average costs and revenues may be used instead.

D

Deadweight Welfare Loss

The deadweight welfare loss is the dollar value of consumers’ surplus lost (but not transferred to producers) as a consequence of a price increase. Consider the following diagram:

It is assumed that the industry is originally in a state of **perfect competition**, such that price equals marginal cost ($P_c = MC$), where the latter is assumed to be constant (constant returns to scale). Market output is therefore Q_c and consumers' surplus is triangle P_cAC . Now compare this with the situation where the market is controlled by a monopolist. The monopoly price (P_m) exceeds marginal costs. Market output is now reduced to Q_m and **consumers' surplus** is P_mAB , a reduction of P_cP_mBC . However, a portion of the lost consumer surplus, P_cP_mBD , is transferred to producers in the form of additional profits, referred to as producers' surplus (P_cP_mBE). The remainder, the triangle BCE , is referred to as a deadweight welfare loss and is a measure of lost **allocative efficiency** i.e. the loss of benefits in the economy due to the presence of a monopoly rather than competition.

Deconcentration

A policy of breaking up and divesting operations of large firms in order to reduce the degree of concentration in an industry. This policy has been advocated from time to time in different countries particularly in periods of high levels of merger activity. Lower industry concentration levels and increase in the number of firms are viewed as being conducive to stimulating competition. There are however inherent risks in adopting this policy as a general approach to resolving competition problems that may be associated with high industry concentration levels. A structural deconcentration policy may result in significant loss in economic efficiency. Large firms may be large because of economies of scale, superior technology and innovation which may not be divisible without high costs. This is more likely to be the case where firms have attained their respective size in response to market conditions and opportunities. However, in several countries, particularly in Eastern European economies, growth of industrial concentration and large firm size have been encouraged by deliberate government policy. Deconcentration policies in such an environment may be appropriate in order to promote market oriented firm behaviour and efficiency.

Diversification

The term refers to the expansion of an existing firm into another product line or market. Diversification may be related or unrelated. Related diversification occurs when the firm expands into similar product lines. For example, an automobile manufacturer may engage in production of passenger vehicles and light trucks. Unrelated diversification takes place when the products are very different from each other, for example a food processing firm manufacturing leather footwear as well. Diversification may arise for a variety of reasons: to take advantage of complementarities in production and existing technology; to exploit economies of scope; to reduce exposure to risk; to stabilize earnings and overcome cyclical business conditions; etc. There is mounting evidence that related diversification may be more profitable than unrelated diversification.

Divestiture

Refers to firms selling part of their current operations, divisions or subsidiaries. Divestiture may take place as a result of firms restructuring their business in order to concentrate on certain products or markets. It may also be imposed upon them by competition authorities as a result of a merger or acquisition which is likely to reduce competition substantially. Divestiture under these latter circumstances is aimed at maintaining existing competition in the market. Divestiture may also form a part of a policy to deconcentrate an industry.

Dominant Firm

A dominant firm is one which has some control over a market e.g. influences or controls the price, the quality of products and the way business is conducted. Competition authorities often use market share as a proxy for market power. In some jurisdictions there is a presumption that a firm is dominant if it has a **market share** of more than 40 per cent. In other jurisdictions the presumption arises when the market share is more than 60%. The competition law concern is that dominant firms have market power i.e. the power to set prices independently.

Like a monopolist, a dominant firm faces a downward sloping demand curve. However, unlike the monopolist, the dominant firm must take into account competitors in making its price/output decisions.

Dumping in Overseas Markets

This is the practice of selling products abroad at prices below prices in the home market. This price discrimination could also be **predatory pricing** if the price in the overseas market is below the cost of production in the home market. Economists argue that pricing lower in overseas markets benefits consumers in the overseas market and should be allowed as long as the price is above the exporter's production and selling costs.

Under the General Agreement on Tariffs and Trade (GATT) rules, dumping is discouraged and firms may apply to their respective government to impose tariffs and other measures to obtain competitive relief. As in the case of **predatory pricing** or selling below costs (see discussion under these headings).

Duopoly

A duopoly is a market consisting of two sellers.

E

Economies of Scale

Economies of scale occur when the average cost or production goes down as the size of the production plant or firm gets bigger. When the minimum average cost is reached, the size of plant or firm is called the minimum efficient scale (MES). At some point after MES average costs will start to increase (called diseconomies of scale) or stay the same (called constant returns to scale).

If market demand is small relative to MES then only a few firms can compete efficiently and so competition law problems may arise.

Economies of Scope

Economies of scope exist when it is cheaper to produce two products together (joint production) than to produce them separately. For example, it may be less costly to provide air service from point A to points B and C with one aircraft than to have two separate air flights from A to B and then another flight to C.

While factors such as technology may explain economies of scope, of particular importance is the presence of common input(s) and/or complementarities in production.

Effect Doctrine

According to this doctrine, domestic competition laws are applicable to foreign firms - but also to domestic firms located outside the state's territory, when their behaviour or transactions produce an "effect" within the domestic territory. The "nationality" of firms is irrelevant for the purposes of antitrust enforcement and the effects doctrine covers all firms irrespective of their nationality.

The "effects doctrine" was embraced by the Court of First Instance in Gencor when stating that the application of the Merger Regulation to a merger between companies located outside EU territory "is justified under public international law when it is foreseeable that a proposed concentration will have an immediate and substantial effect in the Community."

Efficiency

The term in economics refers to three kinds of efficiency:

1. Productive or internal efficiency within the firm.
2. Allocative efficiency which refers to the efficient allocation of scarce resources (the allocation that maximises the value of those resources).
3. Dynamic efficiency which refers to the efficient use of resources over time.

Economists agree that competition promotes all three kinds of efficiency. Competition forces firms to be internally efficient otherwise they go out of business.

Firms competing with each other force price down to cost which ensures allocative efficiency. Competition ensures that firms engage in innovation to improve products and production processes that give consumers what they want over time.

Elasticity of Demand (Price)

The price elasticity of demand measures how demand changes as price changes. If price increases by 1 per cent and demand decreases by 50 per cent then demand is *elastic*. Consumers are sensitive to price and, importantly for competition law, it means consumers are willing to switch to other products. This means sellers do not have market power (the ability to control price).

On the other hand, if price increases by 1 per cent and demand decreases by only 0.5 per cent then consumers do not have other choices - they must buy the product. In this case demand is *inelastic* and so sellers have considerable control over the price because they do not lose many sales if they increase price.

Technically, price-elasticity of demand is defined as the percentage change in quantity demanded divided by the percentage change in price. Since the demand curve is normally downward sloping, the price elasticity of demand is usually a negative number. However, the negative sign is usually omitted.

In principle, the price elasticity may vary from (minus) infinity to zero. The closer to infinity, the more elastic is demand; and the closer to zero, the more inelastic is demand. If demand is inelastic a price increase will increase total revenues while if demand is elastic, a price increase will decrease revenues.

The price elasticity of demand is determined by a number of factors, including the degree to which substitute products exist (see cross price elasticity of demand). When there are few substitutes, demand tends to be inelastic. Thus firms have some power over price. When there are many substitutes, demand tends to be elastic and firms have limited control over price.

Enterprise

A term in the commercial world used to describe a project or venture undertaken for gain. It is often used with the word "business" as in "business enterprise". Usually, by extension, it refers to the business entity carrying out the enterprise and is thus synonymous with "undertaking", "company" or "firm". See also **holding company**.

Entry Barriers

Barriers to entry are factors which prevent or hinder companies from entering a specific market. Entry barriers may result for instance from a particular market structure or the behaviour of incumbent firms. It is important to add that governments can also be a source of entry barriers.

Excess Capacity

A situation where a firm is producing at a lower scale of output than it has been designed for. It exists when marginal cost is less than average cost and it is still possible to decrease average (unit) cost by producing more goods and services.

Excess capacity is a characteristic of natural monopoly or monopolistic competition. It may arise because as demand increases, firms have to invest and expand capacity in lumpy or indivisible portions.

Excess Prices

Refers to prices set significantly above competitive levels as a result of **monopoly** or **market power**. However, in practice, in absence of a **conspiracy** or **price fixing agreement** or evidence of market power stemming from high concentration, it is very difficult to establish a threshold beyond which a price may be considered excessive or unreasonable.

Exclusionary Practice

Practice by (mostly) a dominant firm that tends to impair the opportunities of competitors based on considerations other than competition on the merits. An example would be the decision, by a dominant on the market for production of a certain product, not to supply a client, because he is a competitor active in the market for distribution of this product. In Indonesian competition law, exclusionary practice considers part of abuse of dominant provisions, as well as certain prohibited agreement provisions. See also **Exclusive Dealings** and **Exclusive Distribution**.

Exclusive Dealings

Exclusive dealing refers to an arrangement whereby a retailer or wholesaler is 'tied' to purchase from a supplier on the understanding that no other distributor will be appointed or receive supplies in a given area. It occurs when one person trading with another imposes some restrictions on the other's freedom to choose with whom, in what, or where they deal. Most types of exclusive dealing are against the law only when they substantially lessen competition, although some types are prohibited outright.

Exclusive dealing can be divided into two broad categories, third line forcing and other types of exclusive dealing. Third line forcing occurs when a business will only supply goods or services, or give a particular price or discount on the condition that the purchaser buys goods or services from a particular third party. If the buyer refuses to comply with this condition, the business will refuse to supply them with goods or services. Other types of exclusive dealing, including conduct known as full line forcing, involve a supplier refusing to supply goods or a service unless the intending purchaser agrees not to buy goods of a particular kind or description from a competitor, or resupply goods of a particular kind or description acquired from a competitor, or resupply goods of a particular kind acquired from the company to a particular place or classes of places.

Exclusive Distribution

A distribution system, in which a company grants exclusive rights on its products or services to another company. See also **Exclusive Dealings**.

Export Cartel

Agreement or arrangement between firms to charge a specified export price and/or to divide export markets. Many competition law statutes exempt such agreements from competition law as long as the cartel does not affect competition in the home market.

Extraterritorial Jurisdiction

Extraterritorial jurisdiction is the legal ability of a government to exercise authority beyond its normal boundaries.

F

Fair Competition

Competition between companies or business based on the factors of price, quality, and service; and not on practices, which is condemned by public or law like abuse of monopoly powers, competitor bashing, predatory pricing, etc.

Foreclosure

Strategic behaviour by a firm or group of firms to restrict market access possibilities of potential competitors either upstream or downstream. Foreclosure can take different forms, from absolute refusal to deal to more subtle forms of discrimination such as the degradation of the quality of access. A firm may, for example, preempt important sources of raw material supply and/or distribution channels through exclusivity contracts, thereby causing a foreclosure of competitors.

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Franchises

A special type of vertical contractual relationship between two firms. The franchisor supplies a proven product, trademark or business method and ancillary services to the individual franchisee in return for royalties and other payments. The contractual relationship may cover such matters as product prices, advertising, location, type of distribution outlets, geographic area in which the franchisee may operate, etc.

Franchise agreements are generally subject to competition laws as they include provisions that restrict the ability of the franchisee to set price, advertise or the area in which the franchisee can compete. Franchise agreements do not pose competition law problems if there are other products or franchises that compete.

Full Cost Pricing

This is a practice where the price of a product is calculated by a firm on the basis of its direct costs per unit of output plus a markup to cover overhead costs and profits. The overhead costs are generally calculated assuming less than full capacity operation of a plant in order to allow for fluctuating levels of production and costs. Full cost pricing is often used by firms as it is very difficult to calculate the precise demand for a product and establish a market price. Empirical studies indicate that full cost pricing methods are widely employed by business firms.

G

Geographical Market

Geographical market is that “section of the country” where a firm can increase its price without attracting new sellers or without losing many customers to alternative suppliers outside that area. But if either response occurs (when prices are raised above marginal cost), then a larger market should be drawn to include the sellers.

H

Holding Company

A holding company is set up to acquire interests (normally controlling interests) in a number of operating companies. Although the purpose of a holding company is mainly to gain control and not to operate other companies, it will typically appoint directors to the boards of operating firms.

Horizontal Merger

A horizontal merger is a merger or business consolidation that occurs between firms that operate in the same space, as competition tends to be higher and the synergies and potential gains in market share are much greater for merging firms in such an industry. Horizontal mergers help companies gain advantages over competitors. For example, if one firm sells products similar to the other, the combined sales of a horizontal merger give the new company a greater share of the market. If one firm manufactures products complementary to the other, the newly merged firm may offer a wider range of products to customers. Merging with a firm offering different products to a different sector of the marketplace helps the new firm diversify its offerings and enter new markets. See also **Merger**.

|

Import Cartel

Import cartels are agreements between domestic importers in order to gain control over some specific import markets and to act as a counterbalance against export cartels. See also Export cartels.

Income Elasticity of Demand

The demand for certain products may be sensitive to changes in income. The concept of income elasticity of demand measures the percentage change in quantity demanded of a given product resulting from a percentage change in income.

Income elasticity of demand may be either positive or negative. If, as a result of an increase in income, the quantity demanded of a particular product decreases, the product is called an “inferior” good. If demand goes up the product is called a “normal” good. Margarine has in past studies been found to have a negative income elasticity of demand indicating that as family income increases, its consumption decreases possibly due to substitution of butter.

Industry Concentration

Concentration refers to the extent to which a small number of firms or enterprises account for a large proportion of economic activity such as total sales, assets or employment. Industry or market concentration (also often referred to as seller concentration) is distinct concept embodied within the term concentration which measures the relative position of large enterprises in the provision of specific goods or services such as automobiles or mortgage loans. The rationale underlying the measurement of industry or market concentration is the industrial organization economic theory which suggests that, other things being equal, high levels of market concentration are more conducive to firms engaging in monopolistic practices which

leads to misallocation of resources and poor economic performance. Market concentration in this context is used as on possible indicator of market power.

Intellectual Property Rights

IPRs are rights established by government to encourage innovation. Patents protects ideas, copyright protects expressions and trademarks protect brand image. IPRs give the right to exclude others from using the idea, expression or trademark but do not usually confer market power. For example, copyright may allow the author of a book to stop others from copying his book but does not give market power because there are many other competing books in the market for books.

J

Joint Profit Maximization

A situation where members of a **cartel**, **duopoly**, **oligopoly** or similar market condition engage in pricing-output decisions designed to maximize the groups' profits as a whole. In essence, the member firms seek to act as a **monopoly**. Note should be made that joint profit maximization does not necessarily entail **collusion** or an **agreement** among firms. The firms may independently adopt price-output strategies which take into account rival firms' reactions and thereby produce joint profit maximization.

Joint Venture

A joint venture is an agreement between firms or individuals to undertake a specific business project together. It is similar to a partnership, but limited to a specific project such as producing a specific product or doing research in a specific area. Joint ventures can become an issue for competition policy when they are established by competing firms. For example, competing minerals companies might form a joint venture to build a port or railway line.

Competition law may permit joint ventures where the benefits of the joint venture outweigh the anti-competitive costs. Some jurisdictions apply different rules to short and long-term joint ventures.

K

L

Leniency

Leniency is a generic term used to describe a system of partial or total amnesty from the penalties that would otherwise be applicable to a cartel member, which reports its cartel membership to a competition authority. In addition, competition authority decisions that could be considered lenient treatment include agreeing to pursue a reduction in penalties or not to refer a matter for criminal prosecution. The term leniency, thus, could be used to refer to total immunity and “lenient treatment”, which means less than full immunity.

Lerner Index

A measure proposed by economist A.P. Lerner to measure **monopoly** or **market power**. The Lerner Index (LI) is:

$$LI = \frac{\text{Price} - \text{Marginal Cost}}{\text{Price}} = - \frac{1}{E}$$

where E is the price elasticity of demand

In perfect competition, where price equals marginal cost, the LI is equal to zero. A firm facing a downward sloping demand curve will maximize profits where marginal revenue equals marginal cost and the LI is equal to the inverse of the **elasticity of demand**.

The LI measures market power at a particular point of time (i.e. is a short-term concept) and makes no

judgement about whether the markup (the difference between price and marginal cost) is justified or not - for example, a high markup could be due to the firm innovating or having lower production costs and so represents an appropriate reward.

Licensing

Refers to granting legal permission to do something, such as producing or using a product. Some licenses are granted free of charge, but most require payment. Licenses are legal agreements which may contain restrictions as to how the license is employed.

Governments may give licenses to companies to operate in certain markets. Licensing systems exist in many communication markets (radio and T.V. broadcasting), professions (doctors) and services (banking, liquor outlets). The terms of licenses vary, but they are often accompanied by various restrictions on the lessee. Those restrictions (or regulations) may apply to price, quality or amount of service. Because a firm cannot operate in these markets without a government licence, the licensing represents a *barrier to entry*. IPR licensing is also common for patents, copyright and trademarks.

Limit Pricing

Limit pricing refers to the pricing by incumbent firm(s) to deter or inhibit entry or the expansion of fringe firms. The limit price is below the short-run profit-maximizing price but above the competitive level.

Loss-Leader Selling

A marketing practice of selling a product or service at a loss in order to attract customers to buy other products at regular prices. Although this practice is illegal in some jurisdictions, in others it is viewed benevolently as a promotional device that has the procompetitive effect of increasing total sales and benefitting consumers. However, it could also be used by an incumbent to prevent entry or to drive competitors out of business – see *predatory pricing*.

M

Market

A market is understood by most people to be a place where buyers and sellers exchange goods and services for a price. Markets may be local, regional, national or international. Buyers and sellers do not necessarily have to meet or communicate directly with each other in a physical location. Markets can be defined in situations where buying and selling is done over a telephone or the internet.

Defining a market is very important in competition law. The main purpose for defining a market in competition law is to determine who competes with the supplier of the product being investigated. So market definition for competition law has a specialised meaning and may be different from a market used in everyday language or in marketing. By identifying all the products and firms that compete with each other it is possible to determine whether a firm or group of firms has market power. See also **market definition**.

Market Allocation

Market allocation or sometime calls market division, is agreement in which competitors divide markets among themselves. In such schemes, competing firms allocate specific customers or types of customers, products, or territories among themselves. For example, one competitor will be allowed to sell to, or bid on contracts let by, certain customers or types of customers. In return, he or she will not sell to, or bid on contracts let by, customers allocated to the other competitors. In other schemes, competitors agree to sell only to customers in certain geographic areas and refuse to sell to, or quote intentionally high prices to, customers in geographic areas allocated to conspirator companies.

Market Allocating

Market allocating (or ‘customer sharing’) refers to cartel agreements that divide markets by territory or by customers among competitors.

Market Control

Market control is the ability of buyers or sellers to influence the price or quantity of goods, services, or commodities in a market.

Market Definition

The starting point for most competition analysis is the definition of what is called in competition law *the relevant market*. The relevant market comprises both a relevant product market and a relevant geographic market. The term relevant is used to indicate that the market is being defined in relation to the anti-competitive conduct being complained about.

The relevant product market includes all the products than compete (are substitutable for) the product under investigation. By *compete* we mean determining whether consumers see the different products as being substitutable. If consumers see low price and high-priced cars as substitutable then producers of low cost cars compete with the producers of high cost cars. Different products may compete with each other in a particular geographic area (e.g. a city or country). Therefore, we need to determine not only what products are substitutable but also the geographic area where suppliers come from.

Market definition takes into account both demand and supply considerations. On the demand side, sellers of products are included in the market if they are substitutable from the buyer’s point of view with the product being investigated (the *relevant product*). On the supply side, sellers are included who produce or could easily switch production to the relevant product or close substitutes. Substitutable products and/or the ability of a supplier to switch to supplying the relevant product limit the ability of the supplier of the product being investigated to charge what it likes (i.e. the presence of substitute products of potential new suppliers limits the market power of the firm being investigated).

If relevant markets are defined too narrowly in either product or geographic terms, actual competition may be excluded from the analysis. On the other hand, if the product and geographic markets are too broadly defined, the degree of competition may be overstated.

Market Failure

A general term describing situations in which market outcomes are not **Pareto efficient**. Market failures provide a rationale for government intervention. There are a number of sources of market failure. For the purposes of competition policy, the most relevant of these is the existence of **market power**, or the absence of **perfect competition**. However, there are other types of market failure which may justify regulation or public ownership.

When individuals or firms impose costs or benefits on others for which the market assigns no price, then an externality exists. Negative externalities arise when an individual or firm does not bear the costs of the harm it imposes (pollution, for example). Positive externalities arise when an individual or firm provides benefits for which it is not compensated.

Finally, there are cases in which goods or services are not supplied by markets (or are supplied in insufficient quantities). This may arise because of the nature of the product, such as goods which have zero or low marginal costs and which it is difficult to exclude people from using (called public goods; for example, a lighthouse or national defense). It may also arise because of the nature of some markets, where risk is present (called incomplete markets; for example, certain types of medical insurance).

Market Power

Market power is the ability of a firm (or group of firms) to set price above the competitive level (sometimes called monopoly power). Setting a high price means output must be reduced and so there is a loss of economic welfare (loss of consumer surplus).

The actual measurement of market power is not easy. One approach that has been suggested is the **Lerner Index**, i.e., the extent to which price exceeds marginal cost. However, marginal cost is not easy to measure empirically, and so an alternative is to measure price minus average variable cost. Another approach is to measure consumer substitutability through the firm's price **elasticity of demand**. However, this measure is also difficult to compute.

Market Share

Measure of the relative size of a firm in a market. This could be measured by the percentage of sales or productive capacity of the firm compared to the total sales or productive capacity in the relevant market.

Merger

An amalgamation or joining together of two or more firms into an existing firm or to form a new firm. Competition authorities have to determine whether a merger is occurring to lower costs (to rationalise distribution networks for example) and/or to simply obtain **market power**. Three kinds of mergers can be identified:

Horizontal Merger: A merger between firms that that compete at the same level of production (production, wholesale or retail level). The main problem for competition law are mergers between competitors in the same market i.e. who produce and sell the same products.

Vertical Merger: Merger between firms operating at different stages of production. An example would be a steel manufacturer merging with an iron ore producer. Vertical mergers usually increase economic efficiency, although they may sometimes have an anticompetitive effect. See also Vertical Integration.

Conglomerate Merger: Merger between firms in unrelated business, e.g., between an automobile manufacturer and a food processing firm. Usually, conglomerate mergers do not lead to increased market power in any relevant market.

Merger Control

Merger control procedure is procedure to review merger activities.

Monopolistic Competition

Monopolistic competition describes an industry structure combining elements of both **monopoly** and **perfect**

competition. As in perfect competition, there are many sellers and entry and exit is relatively easy. However, unlike the situation in perfect competition, products are somewhat differentiated. As a consequence, each firm faces a downward sloping demand curve which gives it some power over price. In this sense the firm is like a **monopolist, although the demand curve is more elastic than that of the monopolist (see elasticity of demand)**. In essence, although the product is differentiated, it does have substitutes so that the demand curve facing the firm will depend on the prices charged by rivals producing similar products.

Monopolistic competition is probably the most prevalent market structure, particularly in services industries. Although it can be shown that monopolistic competition is Pareto inefficient because equilibrium price exceeds marginal cost, this inefficiency is the result of producing a variety of products. Because there are many firms and free entry/exit, monopolistic competition is not usually considered a problem for competition policy. In equilibrium, monopolistic competitors earn zero or low economic profits.

Monopolization

This is the term used in the United States to describe both conduct that leads to a dominant position and the abuse of a firm who is already in a dominant position. In Europe abuse of a dominant position only covers predatory conduct by firms who are already dominant. See also discussion under **abuse of dominant position**.

Monopoly

Monopoly describes a situation where there is a single seller in the relevant market. In conventional economic analysis, the monopoly case is taken as the direct opposite of **perfect competition** where there are many firms. As there is only one firm in the relevant market, the monopolist's demand curve is the market demand curve – which is downward sloping. Therefore, a monopolist has power over the price set in the market – called market power.

Economic theory shows that monopolists charge a price to maximise profits which is a price higher than the price set through competition. To set a higher price a monopolist sells less – as a result the monopolist makes economic profits and consumers lose consumer surplus.

Monopoly power describes the ability of a single seller to determine price. Market power describes the ability of any firm to set its own price even when there are competitor in the relevant market. For example, a petrol station may be able to charge more than other petrol stations in a geographic area because local consumers do not want to travel to buy petrol.

Monopolies can only continue to exist if new firms cannot enter i.e. there are **barriers to entry**. An important barrier to entry is granted by government e.g. monopoly licenses. Other monopolies can be created and sustained through the monopolist's predatory or strategic behaviour or through economies of scale – here market demand is not sufficient to have more than one firm – called natural monopolies.

Sometimes (particularly in the United States) monopoly power is used synonymously with market power (i.e. where a firm has less than 100 per cent market share).

Monopsony

A monopsony consists of a market with a single buyer. When there are only a few buyers, the market is defined as an oligopsony. In general, when buyers have some influence over the price of the inputs they buy they are said to have monopsony power.

Monopsony power may be relevant in assessing market power. For example, where monopoly power on the selling side may be offset by powerful buyers. This is sometimes referred to as countervailing power. The ability of a firm to raise prices, even when it is a monopolist, can be reduced or eliminated where buyers have monopsony or oligopsony power.

N

Natural Monopoly

A natural monopoly where a single firm can supply that market at a lower cost than two or more firms. Natural monopolies arise because of declining long-run average cost in relation to the size of market demand. There is room for only one firm to fully exploit available economies of scale and supply the available market.

Natural monopolies exist in electricity, railroads, natural gas, and telecommunications supply. Because productive efficiency requires that only one firm exist, natural monopolies are typically subject to government regulation. Regulations may include price, quality, and/or entry conditions.

Non-Competition (Clause)

Non-competition clause is a contractual clause bringing about a direct or indirect obligation causing the parties to an acquisition agreement, or at least one of them, not to manufacture, purchase, sell or resell independently goods or services which compete with the contract goods or services. Such an obligation on the seller of the assets guarantees that the acquirer receives the full value of the assets transferred and hence is normally considered as ancillary to the main agreement.

Non-Price Predation

Non-price predation is a form of strategic behaviour that involves raising rivals' costs. For example, a dominant firm could disadvantage competitors by using government processes (e.g. setting product standards in a way that disadvantages competitors) or using the legal system (to force a smaller competitor with less resources into litigation).

Notification

Notification or merger notification is a formal information provided by business entities to the Competition

Authority under competition law in certain situations and that concern merger agreements they plan or have concluded.

O

Oligopoly

An oligopoly is a market characterized by a small number of firms (up to about 8-10) who realize that their competitors will respond if they change their price or marketing strategies.

There are several types of oligopoly. When all firms are of (roughly) equal size, the oligopoly is said to be symmetric. When this is not the case, the oligopoly is asymmetric. One typical asymmetric oligopoly is where one firm in the market is dominant.

Oligopolies can also lead to problems of tacit collusion i.e. where the competitors learn to collude without actually communicating with each other. This situation can create problems of proof for a competition regulator.

Oligopsony

Oligopsony is similar to an oligopoly (few sellers), this is a market in which there are only a few large buyers for a product or service. This allows the buyers to exert a great deal of control over the sellers and can effectively drive down prices.

Opportunity Costs (or Alternative Costs)

This is an important concept in economics. Opportunity costs are the costs of using resources in one use rather than another. In other words, it is the benefits given up by using the resources in the current use compared to the next best use. If for example, a consumer buys an apple, the opportunity cost is the benefits lost from buying something else (e.g. a banana). See also **Costs**.

P

Per se rule

Per se rule is a regulatory approach by which some certain business practices are conclusively presumed to impose unreasonable restraint on the competitive process and thus anticompetitive, or can be held as illegal by themselves, without further defence. See also Rule of Reason.

Parent Company

A parent company is one that owns or operates subsidiary companies, known as **subsidiaries**. A parent company can be a **holding company** – which does not operate only controls its operating subsidiary companies.

Pareto Efficiency

Pareto efficiency, also referred to as allocative efficiency, occurs when resources are allocated, at a particular point in time, so that it is not possible to make anyone better off unless someone else is made worse off. It is usually assumed that products are being produced in the most efficient (least cost) way.

Deadweight welfare loss is a measure of allocative inefficiency. In the case considered above under that heading, the total loss of consumer surplus involved in moving from competition to monopoly was $PcPmBC$ of which BCE was deadweight loss and $PcPmBE$ was producers' profit. Now consider the movement from monopoly to competition. The gain in consumers' surplus is $PPBC$, while producers lose $PcPmBE$. However, it is potentially possible for consumers to compensate producers by this amount and still retain BCE . Thus, consumers are potentially better off, producers are no worse off and so the movement to competition represents a Pareto improvement and competition is said to be Pareto efficient.

This result has been termed "the first theorem of welfare economics" and it states that an economy characterized by **perfect competition** in all markets will always be Pareto efficient, if there are no **market failures**.

Patents

Patents give inventors property rights over an idea. This means the patent holder can stop others from using the new idea described in the patent. Exclusive rights to produce and distribute mean that the patent allows higher than normal profits. But this is not normally the case as the product created from a new mousetrap patent still competes with existing mousetraps. The possibility of making above normal profits from obtaining a patent stimulates research and development. Without a patent (the ability to exclude others from using the idea without permission) would mean that others could imitate and so above normal profits would not be made and there would not be the same incentive to innovate.

Investments in research and development are **sunk costs**. That is the costs cannot be recovered if the research and development is unsuccessful. See discussion under **Intellectual Property Rights and Licensing**.

Perfect Competition

Perfect competition is a theoretical model of market structure which does not exist in the real world. It is usually defined by four assumptions:

1. There a very large number of buyers and sellers so that none can individually affect the market price. Price is set by the market. As a result the demand curve facing an individual firm is a horizontal line at the market price. If a firm sets a price higher than the market price it will not be able to sell anything.
2. In the long run, resources are freely mobile, meaning that there are no **barriers to entry** and exit.
3. All market participants (buyers and sellers) must have perfect knowledge. So consumers knows what price every seller sells at and has perfect knowledge of product qualities and characteristics. Sellers have the same knowledge plus knowledge of other firm production processes and technology.
4. The product is homogenous – this assumption is rarely found in practice – even commodities such as rice have differences in quality.

If these theoretical conditions are met, the market is said to be perfectly competitive; when they are fulfilled in all markets, the economy is perfectly competitive.

if the assumptions of perfect competition hold then it can be shown that the market is **Pareto efficient** and the price of the goods produced = *marginal cost*. If all markets are perfectly competitive then resources in the economy are allocated efficiently.

Because perfect competition is only a theoretical construct, economists generally use a more practical model for evaluating competition – the model of workable competition.

Predatory Pricing

A deliberate strategy by a dominant firm to drive competitors out of the market by setting a price below cost (usually competition authorities use average variable cost but other cost measures can be used). Once the predator has successfully driven out existing competitors and deterred the entry of new firms, it can raise prices and earn higher profits.

However, many economists argue that predatory pricing is not rational because it is unlikely the predator can recover lost profits from pricing below cost. It is only a rational strategy if the predator can recoup the lost profits later - which can only happen if new firms do not enter (or old firms re-enter).

Price Discrimination

Price discrimination occurs when a firm charges different prices for the same product or service to customers in different parts of the market (e.g. different geographic location, different time of day etc) where the price difference is unrelated to the cost of supply. Price discrimination only works where customers cannot profitably re-sell the goods or services to other customers who are paying a higher price (i.e. no arbitration is possible).

Price discrimination can be pro-competitive (it increases output) or can be anti-competitive. For example, **dominant firms** may lower prices in particular parts of the market in order to eliminate vigorous local competitors.

Price-Fixing Agreement

An agreement between sellers to raise or fix prices in order to restrict inter-firm competition and earn higher profits. Price fixing agreements are formed by firms in an attempt to collectively behave as a **monopoly**. For further details see discussion under **agreement, cartel** and **collusion**.

Price Leadership

This occurs where firms in a market follow the prices of a price leader. If all the firms in the market know the price leader and always follow the leader then prices will be higher than if there were competition. In some countries, price leadership may be caught by competition law as it represents a form of tacit collusion.

Q

Quasi Competitive

Quasi competitive can be defined as pertaining to be competitive, or having partially consider as competitive. In quasi-competitive model, price is assumed to be taken by all firms (each firm is assumed to be a price taker).

R

Refusal to Deal/Sell

The practice of refusing or denying supply of a product to a buyer, usually a retailer or wholesaler. Competition law may prohibit refusals to deal/sell by a dominant firm

where it has an adverse impact on competition. For example, a dominant firm may refuse to deal/sell with a buyer unless the buyer accepts the dominant firm's resale price – **resale price maintenance (RPM)**. A dominant firm may refuse to supply a producer with an input which is essential to production – thereby driving the downstream firm out of business. However, not all refusal to deal/sell are bad – a dominant firm may refuse to deal/sell to a buyer who is not paying his bills, or fails to provide adequate sales service, product advertising and display, etc. The competitive effects of a refusal to deal/sell by a dominant firm have to be assessed on a case-by-case basis.

Relevant Market

Relevant market is a tool to identify and define the boundaries of competition between firms. It is a market in which a particular product or service is sold. A relevant market is defined according to both product and geographic factors.

Rent

In modern economics, rent refers to the earnings of factors of production (land, labour, capital) which are fixed in supply. Thus, raising the price of such factors will not cause an increase in availability but will increase the return to the factor. This differs from the more common usage of the term, whereby rent refers to payments for the use of a resource.

Economists use the term economic rent to denote the payment to factors which are permanently in fixed supply and quasi-rent to denote payments for factors which are temporarily in fixed supply. The presence of economic rents implies that the factor can neither be destroyed nor augmented. Quasi-rents exist when factors can be augmented over time, or when their supply can be reduced over time through depreciation. Factors which earn economic or quasi-rents typically are paid an amount in excess of their **opportunity costs**.

Rent Seeking

The opportunity to capture monopoly rents (see Rents) provides firms with an incentive to use scarce resources to secure the right to become a monopolist. Such activity is referred to as rent-seeking. Rent-seeking is normally associated with expenditures designed to persuade governments to impose regulations which create monopolies. Examples are entry restrictions and import controls. However, rent-seeking may also refer to expenditures to create private monopolies.

Resale Price Maintenance

Agreements or concerted practices between a supplier and a dealer with the object of directly or indirectly establishing a fixed or minimum price or price level to be observed by the dealer when reselling a product/service to his customers). If a reseller refuses to maintain prices, either openly or covertly, the manufacturer may stop doing business with it. A provision, which foresees resale price maintenance, will generally be considered to constitute a hard-core restriction.

Rule of Reason

An approach by competition authorities or the courts where an attempt is made to evaluate the pro-competitive features of a restrictive business practice against its anticompetitive effects in order to decide whether or not the practice should be prohibited. Some market restrictions which prima facie give rise to competition issues may on further examination be found to have valid efficiency-enhancing benefits. For example, competitors may get together to form a joint venture to produce a particular input which will be used by all of them. Technically, the agreement (which could include a price agreement) would seem to breach competition law – however, the joint venture may lead to lower costs of supply and so to lower prices to consumers. Hence the anti-competitive agreement is overall pro-competitive.

S

Strategic Behaviour

Strategic behaviour is the general term for actions taken by firms which are intended to influence the market environment in which they compete. Strategic behaviour includes actions to influence rivals to act cooperatively so as to raise joint profits, as well as noncooperative actions to raise the firm's profits at the expense of rivals. Various types of **collusion** are examples of cooperative strategic behaviour. Examples of noncooperative strategic behaviour include pre-emption of facilities, price and **non-price predation** and creation of artificial **barriers to entry**. Strategic behaviour is more likely to occur in industries with small numbers of buyers and sellers.

Subsidiary

A company controlled by another company. Control occurs when the controlling company owns more than 50 per cent of the common shares. When the parent owns 100 per cent of the common shares, the subsidiary is said to be wholly-owned. When the subsidiary operates in a different country, it is called a foreign subsidiary. The controlling company is called a **holding company** or **parent**.

Substitute

Substitute is a product which, by its characteristics, price, intended use and customers' patterns of purchases, can serve as a substitute for another (relevant) product thereby satisfying the equivalent need of the customers.

Sunk Costs

Sunk costs are costs which, once committed, cannot be recovered. Sunk costs arise because some activities require specialized assets that cannot readily be diverted to other uses.

Examples of sunk costs are investments in equipment, which can only produce a specific product, or products that can only be used by specific customers. If the customer goes out of business the equipment used to make the specialised product cannot be sold. Other examples include advertising expenditures and R&D expenditures – they are non-recoverable if the advertising or the R&D is not successful.

When considering entry into a market, a firm will consider whether its investment is sunk or not. When sunk costs are present, failure means sunk costs will not be recovered and so the firm may not wish to invest. So the presence of sunk costs can be a **barrier to entry** and affect the contestability of the market.

T

Tacit Collusion

Is a circumstance where two companies agree upon a certain strategy without putting it in writing or spelling out the strategy explicitly. Tacit collusion (or price leadership) happen when other businesses usually accept price changes established by a dominant firm and which other firms then follow. When price leadership is adopted to facilitate tacit (or silent) collusion, the price leader will generally tend to set a price high enough that the least costefficient firm in the market may earn some return above the competitive level.

Takeover

The acquisition of control of one company by another or occasionally by an individual or group of investors. Takeovers are usually instituted by purchasing shares at a "premium" over existing prices and may be financed in a variety of ways including cash payment and/or with shares of the acquiring company. While the terms **mergers**, **acquisitions** and takeover are often used interchangeably, there are subtle differences between them. A takeover may be complete or partial and may not necessarily involve merging the operations of the acquired and acquiring firms. The fact that joint

ownership and control may arise from a takeover implies that the companies could maximize joint profits, which can be a source of concern to competition authorities.

Tied Selling

Refers to situations a seller will only sell product X if the buyer takes product Y. One variant is full-line forcing in which a seller forces a complete line of products on a buyer who is only interested in taking one specific product.

Tied selling is sometimes used as a means of price discrimination. For example, a printer manufacturer will force the buyer to buy its own paper. The more paper the buyer uses the higher the amount paid to the seller – which is similar to charging heavy users of the printer a higher price.

Tying may foreclose market opportunities for other firms. For example, if a dominant firm has 80% of the market for product X then forcing buyers to buy product Y will mean there may be little of market Y left for other suppliers. On the other hand, tying could be used to reduce the costs of producing and distributing the line of products and ensuring that like quality products are used to complement the product being sold. For example, a computer manufacturer may require purchase of disks in order to prevent damage to or poor performance of his equipment by the use of substitute lower quality disks. There is increasing recognition that depending on different market situations, tied selling arrangements may have a valid business rationale. Economists suggest adopting a **rule of reason** approach to tied selling rather than a **per se**.

Trade Mark

Trade mark refers to words, symbols or other marks which are used by firms to distinguish their products or services from those offered by others. A trade mark may often become equated with the product itself and may be a source of competitive advantage. For example, “kleenex” as a trade mark name is used to refer to “tissue “handkerchiefs”; “Xerox” in place of “photocopying”; “Coke” instead of a “cola drink”. Trade marks may communicate information about the quality

of a good or service to consumers. Firms which license their trade marks to retailers may thus require conditions in the licensing contract assuring uniform quality. Economists generally see trade marks as promoting competition because they give consumers information about the quality of products. See **Intellectual Property Rights, Licensing**.

Transaction Costs

Transaction costs refer to the costs involved in market exchange. These include the costs of discovering market prices and the costs of writing and enforcing contracts.

Transaction cost economics, as developed primarily by economists Coase and Williamson, suggests that economic organizations emerge from cost-minimizing behaviour (including transaction costs) in a world of limited information and opportunism.

Transaction-cost analysis has been used to provide efficiency explanations for why firms integrate vertically (e.g. a buyer and seller merge) and franchising.

U

Unfair Trade Practices

Unfair trade practices encompass a broad array of torts, all of which involve economic injury brought on by deceptive or wrongful conduct. The legal theories that can be asserted include claims such as trade secret misappropriation, unfair competition, false advertising, palming-off, dilution and disparagement.

Unilateral Conduct

Unilateral conduct also known as single firm conduct, whether by the holder of an undoubted monopoly or substantial market power, can damage the competitive process in ways that are reachable by competition law. The conduct mostly relates to monopolization or abuse of dominant position.

V

Vertical Integration

Describes merger of firms operating at different stages of the production chain, e.g., petroleum refining firms buying “downstream” terminal storage and retail gasoline distribution facilities and “upstream” crude oil field wells and transportation pipelines. An important motive for vertical integration is efficiencies and minimization of **transaction costs**.

W

X

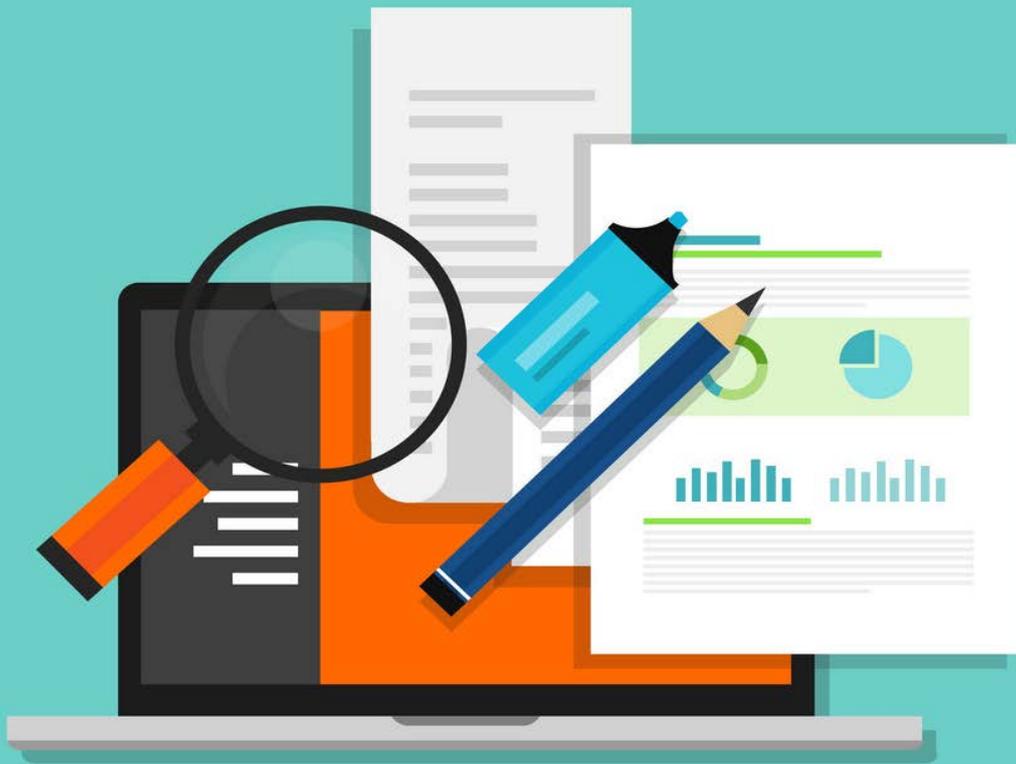
X-Inefficiency

While monopolists raise price above the competitive level, a lack of competition also means that firms have less pressure to be internally efficient. As a result, a firm’s costs are higher than they would be with competition. Leibenstein coined the term X-inefficiency to refer to these additional costs. They include wasteful expenditures such as the maintenance of excess capacity, luxurious executive benefits, political lobbying seeking protection from competition and favourable regulations, and litigation.

Y

Z

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ANNEX V

Case Studies

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Abuse of Dominant Position

PT Angkasa Pura II was Proven Guilty in Cargo and Postal Tariff Case

ICC has decided PT Angkasa Pura II (Persero) as guilty on the violation of Article 17 paragraph (1) and (2) Law Number 5 Year 1999, on monopoly practice.

The market for the product in question are airport services and airport-related services, especially with regard to the administer and or development of terminal facilities for cargo and postal transport services, as well as cargo and mail handling (including but not limited to inspection services and cargo and postal security control), with the geographical market is Kualanamu Airport Medan, North Sumatera.

ICC also assessed the double charge imposed while Regulated Agent has took over the business for outgoing cargo, and the validity of the Restricted Security Area (DKT) for incoming cargo. It was found that there is an abused of monopoly power committed by PT Angkasa Pura II (Persero) to cargo and postal service's users that has created inefficiency in business activities.

At the hearing, the ICC imposed PT Angkasa Pura II (Persero) with a fine of IDR 6,5 billion to be deposited to the State Treasury as an income of fines in the field of business competition.

ICC requested the reported party to decrease the tariff of outgoing cargo and postal services by taking into account the reduction of activities after the businesses was taken over by the Regulated Agent. ICC also requested the reported party to restore the cargo and postal incoming services at Kualanamu Airport by excluding PT Angkasa Pura II (Persero) Line II's partner in the business process.

Anti-competitive Agreement

Supreme Court confirms Decision of ICC on Scootermatic Cartel

The Supreme Court through its official website states that the cassation petition on Decision of North Jakarta District Court No. 163/Pdt.G/KPPU/2017/PN.Jkt.Utr.,

dated December 5, 2017 confirming the Decision of ICC by reported parties (I. PT. Astra Honda Motor, II. PT. Yamaha Indonesia Motor Manufacturing) is overruled. This means that the District Court and the Supreme Court confirm the decision of ICC with regard to the Alleged Violation of Law Number 5 Year 1999 about Anti Monopoly Practices and Unfair Business Competition in the Motorcycle Industry of the scootermatic class 110-125 CC. In addition to the above, upon the rejection of the petition of the Petitioners to take an extraordinary remedy through Judicial Review by the Supreme Court, consequently, Decision of ICC Number 04/KPPU-I/2016 has had a permanent legal force (*inkracht*).

Previously, ICC decided that 2 (two) business actors in the Motorcycle Industry of the Automatic Scooter Type, namely PT. Yamaha Indonesia Motor Manufacturing (Reported Party I) and PT. Astra Honda Motor (Reported Party II) legally and convincingly had violated Article 5 paragraph (1) of Law No. 5 Year 1999 regarding Price Fixing. ICC considered the behaviours of the Reported Parties in 3 matters, namely as follows:

1. Regarding the Meeting in the Golf Course;
2. Regarding the Email dated April 28, 2014;
3. Regarding the Email dated January 10, 2015.

Based on the hearing of facts, an email dated January 10, 2015 is an email sent by witness Mr. Yutaka Terada who at that time served as a Marketing Director of Reported Party I by using email address teradayu@yamaha-motor.co.id and sent to Dyonisius Beti as Vice President Director of Reported Party I, wherein the Panel of Commissioners still consider that the email constituted an official communication conducted between top level management of Reported Party I. Therefore, in light of the capacity of the sender and the recipient of the email as well as the media used namely the official email of the company, then the Panel of Commissioners did not immediately disregard the fact as an instrument of evidence. In the decision, the Panel of Commissioners imposed penalties on Reported Party I amounting to IDR25,000,000,000 (Twenty-Five Billion Rupiah) and on Reported Party II amounting to IDR22,500,000,000 (Twenty-Two Billion Five Hundred Million Rupiah) that had to be remitted to the state treasury.

The confirmation of the Decision substantially proves that the Supreme Court agrees to the due process of law in the examination proceedings and the application of Article 5 (Price Fixing) that has been conducted by ICC.

AQUA found to be guilty of exclusive agreement and market control

Indonesia's leading packaged drinking water producer (AMDK) brand AQUA, PT Tirta Investama (TIV) and PT Balina Agung Perkasa (BAP) as the distributor, proved to conduct unfair competition through exclusive agreement and market control. For the violation, TIV was fined Rp 13.84 billion while BAP was fined Rp 6.29 billion.

"Stating the two reported (TIV and BAP) was proven legally and convincingly violating Article 15 paragraph (3) letter b and Article 19 letter a and b of Law Number 5 the Year 1999," said ICC.

Article 15.3.b stipulates that business actors are prohibited from entering into agreements concerning prices or certain discounts on goods and or services, containing the requirement that business actors receiving goods and or services from a supplier's business agent will not purchase the same or similar goods or services from other business actors who become competitors from supplier business actors.

While articles 19.a and 19.b stipulates that business actors are prohibited from performing one or several activities, either alone or together with other business actors, which may result in monopolistic practices and or unfair business competition in the form of (a) refusing and/or hindering business actors certain to conduct the same business activity in the relevant market; and (b) deter customers or competitors of their competitors from entering into business relationships with their competitors.

This case was started from the complaint of the retailer and retail merchants to the ICC Head Office in September 2016. The retailer claimed to be blocked by PT Tirta Investama to sell Le Minerale products produced by PT Tirta Fresindo Jaya (Mayora Group). One of the clauses of the retail agreement says, if the merchant sells Le Minerale product, then the status will be derived from Star Outlet (SO) to the wholesaler (retail). For this action,

PT Tirta Fresindo Jaya issued an open publication against PT Tirta Investama in the newspaper on October 1, 2017. This action was subsequently responded by ICC and started its investigation.

The action by TIV seemed to deter other business actors in the market of AMDK. Moreover, the degradation causes, the retailer get a higher 3 percent price. For example, for Star Outlet, the price charged is Rp 37.000 per carton for the size of 600 milliliters, while for the Whole Seller is charged Rp 39.350 per carton.

In the process, ICC finds strong evidence to support the violation. One of the evidence which the investigator team has was the evidence of e-mail communications. The investigator found a two-way communication between the TIV and BAP, which were sent to each other by e-mail address of the office. E-mail subject to "Star Outlet Degradation (SO) Being a Wholesaler." contained sanctions applied by BAP to SO retailer. In fact, BAP was said to have executed the sanction to one of the Star Outlets.

Based on the information, AQUA products controlled the market share of up to 46.7 percent in the AMDK market, and followed by Club 4 percent (Indofood), 2 Tang (PT Tang Mas) 2.8 percent, Oasis (PT Santa Rosa Indonesia) 1.8 percent, Super O2 (Garuda Food) 1.7 percent, and Prima (Sosro) 1.4 percent.

Four Shipping Companies Proven of Fixing the Tariff

ICC has completed the examination of Case Number 08/KPPU-L/2018 regarding Alleged Violation of Article 5 Paragraph (1) of Law Number 5 Year 1999 regarding Prohibition of Monopolistic Practices and Unfair Business Competition in the Freight Container Service Industry in the Surabaya to Ambon Route by four shipping companies.

The shipping companies as intended in the a quo case are the shipping companies with the Surabaya to Ambon route, the permits and ship specifications owned of which are merely used for container services. The freight container service tariff agreement for the Surabaya to Ambon route was entered into by four shipping companies, namely PT Tanto Intim Line, PT

Pelayaran Tempuran Emas Tbk, PT Meratus Line, and PT Salam Pasific Indonesia Lines. The existence of the price adjustment letter from each of the Reported Parties within a near period has proven the existence of a form of agreement to fix the amount of the freight container tariff.

ICC then decided to sentence the reported parties to pay for a penalty in accordance with the considerations of the Panel of Commissioners. PT Tanto Intim Line is sentenced to pay for a penalty amounting to IDR 7,154,000,000.00 (Seven Billion One Hundred and Fifty-Four Million Rupiah), the penalty imposed on PT Pelayaran Tempuran Emas, Tbk is IDR 5,642,000,000.00 (Five Billion Six Hundred and Forty-Two Million Rupiah), and the penalty that imposed on PT Meratus Line is IDR 6,580,000,000.00 (Six Billion Five Hundred and Eighty Million Rupiah), while the penalty of PT Salam Pasific Indonesia Lines amounts to IDR1,415,000,000.00 (One Billion Four Hundred and Fifteen Million Rupiah).

In its decision, ICC puts forward a recommendation to the Ministry of Transportation c.q. the Directorate General of Sea Transportation so as to properly manage the shipping industry so that a fair business competition takes place. In the event that the business actors in the said shipping industry do not apply the principles of fair business competition in running their businesses, then the Government is expected to review the business permits of the said shipping companies.

M&A

ICC's conclusion on Blibli.com's acquisition of Tiket.com

ICC has completed its assessment of the acquisition of PT Globalnet Sejahtera by PT Global Digital Niaga in December 2018. The transaction was carried out between two applications in e-commerce, namely Blibli.com and Tiket.com.

PT Global Digital Niaga is a company that conducts activities in the field of e-commerce services, specifically covering trade activities of goods and/or services through electronic network media, internet, telephone, television or other electronic media. One of the company's products is Blibli.com.

Meanwhile, PT Globalnet Sejahtera is engaged in trading, and has sales in Indonesia through its subsidiary, PT Global Tiket Network (GTN). PT Global Tiket Network conducts online travel service activities, namely transportation ticket sales (airplane, train), concert tickets, and hotel and car rental bookings based online, with the name of Tiket.com.

The acquisition is done for diversification of product, because PT Global Digital Niaga as part of PT Global Digital Prima (GDP) is a shareholder of several online businesses such as the Kaskus site, Lintasberita.com which is now Beritagar.id, dailysocial.net, and the Merah Putih Inc.

ICC considers several relevant market categories in digital economy, namely market place, online retail, banking, classified ads, daily deals, infrastructure, transportation, logistics, online directory, payment gateway, and online travel. In the assessment, ICC concluded that the relevant market in the acquisition of shares of the company PT Globalnet Sejahtera by PT Global Digital Niaga is an electronic sales service (e-commerce) specifically in the online ticketing services for trains, planes and hotels in all regions of Indonesia.

In order to analyze the acquisition that is in one relevant market, the first stage is to evaluate market concentration through the Hirschman Herfindahl Index (HHI). HHI is calculated to cross-check the number and market share of all companies in the market. Based on calculations, the market concentration is quite high, reaching 5,691 before the acquisition. This can be caused by the dominant position by other applications, namely Traveloka.com, which controls most of the market. In the post-transaction calculation, the change in HHI from the transaction only reached 30.8. Noting that the HHI value is above 1800 and the change in HHI value before and after the acquisition does not exceed 150, the Commission considers that the market share of both companies after the acquisition transaction does not raise concerns about potential monopolistic practices or unfair business competition.

Furthermore, ICC also considers other factors in the analysis, namely the potential for entry barriers and the opinions of other related parties. From the assessment,

ICC concluded that in addition to the two companies in transactions, there are a variety of online platform options that provide train, airplane and hotel booking services that can provide alternatives to online platforms owned by the two business actors who conduct the transactions. Based on input from various parties, it was identified that with the merging there will be no entry barriers for other business actors who wanted to establish companies with similar business, so that the potential for the emergence of new competitors would remain in the market.

Taking into account the mentioned considerations, ICC concluded that the acquisition of PT Globalnet Sejahtera by PT Global Digital Niaga did not raise concerns about future business competition. As the market concentration in the market is high, ICC also put the implementation of this transaction as part of its monitoring activity.

ICC issued a conditional non-objection opinion on the acquisition of Vinythai Public Company Ltd by Asahi Glass Company Ltd.

Indonesia's competition authority (ICC) finished its assessment on the acquisition of 58.77% share of Vinythai Public Company. Ltd. by Asahi Glass Company. Ltd. by issuing a conditional non-objection opinion for this acquisition. The acquisition took place in 22 February 2017 in Thailand.

Asahi Glass Company is a Japan company established in 1907 which focuses its business activities in glass, electronic chemical, and ceramics manufacturing. Asahi conduct their business activities through its subsidiary in Indonesia, including PT. Asahimas Chemical, PT IWAKI Glass Indonesia, and PT Asahimas Flat Glass, Tbk. Vinythai is a Thailand company which produces Poly Vinyl Chloride (PVC) and Epichlorohydrin (ECH) products for plastic industries. They sale some of their PVC products to Indonesia, specifically Suspension-PVC (S-PVC), Emulsion-PVC (E-PVC) dan Epichlorohydrin (ECH).

ICC assessment focus on relevant market among merging parties, which in this case, S-PVC. PVC is a thermoplastic polymer resulting from a chemical process of chlorine (Cl₂) and ethylene (C₂H₄). While the S-PVC type mostly uses for pipe making, film and sheets, floor, bottle, cable, and many more. The relevant market was

defined through the analysis on cross-price elasticity of substitution (Ey_x) method. The geographical market for this case is Indonesia, and the assessment is limited to their sales in Indonesia.

During the assessment, ICC found a significant increase of Hirschman Herfindahl Index (HHI) on S-PVC market, since one of Asahi's subsidiaries in Indonesia is a market leader in PVC market with more than 50% market share. Even though Vinythai did not have a significant number of sales in Indonesia, this acquisition still passed the threshold of an increased HHI after the acquisition. This makes ICC has to perform a phase 2 analysis on their transaction.

The phase 2 analysis contains several type of analysis, namely analysis on absolute barrier in trade, structural barrier, unilateral effect, coordinated effect, and efficiency analysis. The unilateral effect conducted through the upward pricing pressure (UPP) method.

Based on the analysis, ICC found that the structural barrier in this market is significant, but the absolute barrier is minimum since there is no barrier for cross-border purchase of PVC products to Indonesia. Which mean, international price and import can limit their ability to affect price in domestic market. The UPP test concluded that there is a significant pressure to the domestic price caused by this acquisition. The efficiency test found that the potential efficiency from this acquisition may not lead to a price decrease to one of the merging party.

Following this assessment, ICC issued a conditional non-objection opinion on this acquisition, and requires Asahi Glass Company. Ltd. to regularly report their production, sales, and price of S-PVC in Indonesia, and requires the export and price of S-PVC from Vinythai Public Co. Ltd to Indonesia in quarter for the next 3 (three) years. This remedy aims to monitor the effect of their transaction to the future price of S-PVC in Indonesia

ICC's assessment of the acquisition of Glencore Agriculture Limited by Monroe Canada Inc. CPPIB

ICC has completed its assessment on the acquisition of Glencore Agriculture Limited by Monroe Canada Inc CPPIB in December 2018. The acquisition involved

transactions in the agricultural sector in Indonesia, particularly wheat products.

Monroe Canada Inc. CPPIB is a Canadian company which was established on March 23, 2016 and is domiciled in Toronto, Canada. Monroe Canada Inc. CPPIB has no business activities in Indonesia. The company is a subsidiary of Canada Pension Plan Investment Board (CPPIB), an organization engaged in investment management that invests Canada Pension Plan (CPP) funds based in Toronto, Canada. In Indonesia, CPPIB has sales in Indonesia through several companies engaged in international sports media, software development, and retail of luxury goods.

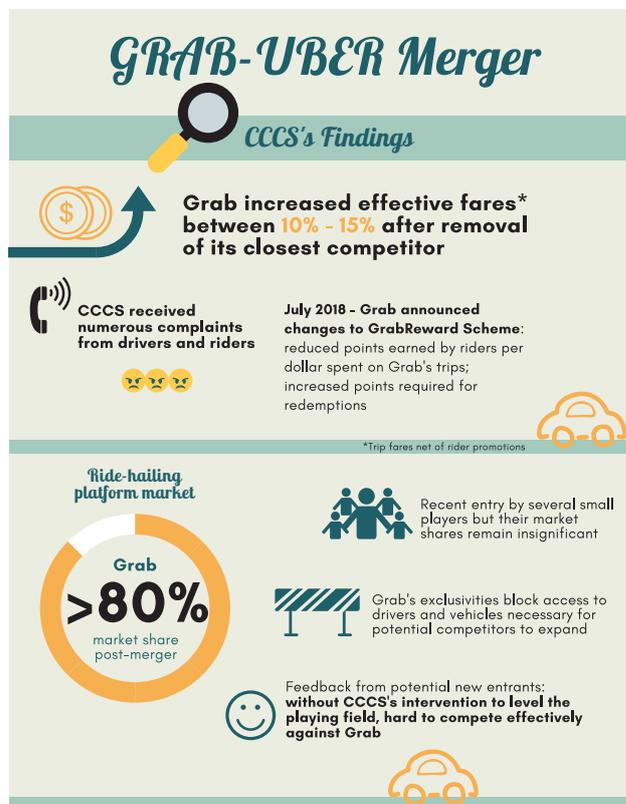
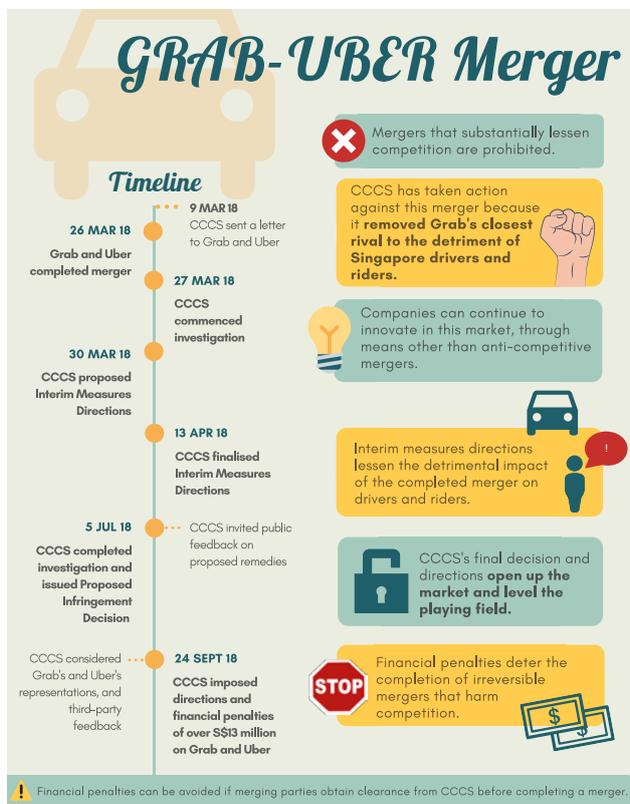
Meanwhile, Glencore Group is a company engaged in the production and marketing of metals, minerals, energy and agriculture as well as marketing and logistics activities. In particular, Glencore Agriculture Limited (GAL) is Glencore Plc's global agricultural holding company which resulted from a reorganization at Glencore Plc that occurred in 2016, before the acquisition in December 1, 2016. GAL is active, at the global level, in starting, handling, processing and marketing agricultural commodities, including grains, vegetable oils, nuts, sugar, rice, cotton, vegetable oils, protein foods and biodiesel. In Indonesia, GAL is active in the sale of wheat, cotton and agricultural commodities (grain products).

Noting that the transaction is in a different relevant market, the ICC's assessment focuses on the potential impact of the transaction on strengthening the dominance of the acquired company in Indonesia, namely wheat products. The assessment saw that in 2016, Indonesia imported wheat products worth USD 3,131 million. As for the wheat products, the import value is USD 2.4 billion with a quantity of 10.53 million tons. Most of the wheat in Indonesia is mostly imported from Australia, Ukraine and Canada. The wheat imports are mostly absorbed by the flour industry which is then distributed to the food and beverage industry. However, the assessment noted that GAL was not the market leader of wheat in Indonesia, with a market share that could not be said to be dominant.

Based on the analysis of the relevant market and the potential impact of the transaction, the ICC's judgment concluded that the acquisition did not have much impact on changes in concentration levels for the wheat market in Indonesia. As such, it does not raise concerns over allegations of monopolistic practices and unfair business competition.



Highlights of Grab-Uber Merger



- On 24 September 2018, the Competition and Consumer Commission of Singapore (“CCCS”) issued an Infringement Decision (“ID”) against Grab¹ and Uber² (each a “Party”, and collectively the “Parties”) in relation to the sale of Uber’s Southeast Asian business to Grab for a 27.5% stake in Grab in return (“Transaction”).
- The Transaction was completed on 26 March 2018. On 27 March 2018, CCCS commenced an investigation on the basis that the Transaction may have infringed the Competition Act as an anti-competitive merger. CCCS proposed Interim Measures Directions on 30 March 2018 and finalised them on 13 April 2018³ to lessen the impact of the Transaction on drivers and riders, while continuing with the investigation.
- On 5 July 2018, CCCS completed its investigation and issued a Proposed Infringement Decision (“PID”) against the Parties and invited public feedback on the possible remedies to address the harm to competition resulting from the Transaction. In reaching its final decision, CCCS has carefully

1 All references to “Grab” in this media release refer to Grab Inc., and its subsidiaries and any other related entities including but not limited to GrabCar Pte. Ltd., GrabTaxi Holdings Pte. Ltd., GrabTaxi Pte. Ltd., Grab Rentals Pte. Ltd. and Grab Rentals 2 Pte. Ltd.

2 All references to “Uber” in this media release refer to Uber Technologies, Inc., and its subsidiaries and any other related entities including but not limited to Uber Singapore Technology Pte. Ltd., Lion City Holdings Pte. Ltd., Lion City Rentals Pte. Ltd., Lion City Automobiles Pte. Ltd., and LCRF Pte. Ltd..⁴ A ride-hailing platform enables riders to book chauffeured point-to-point transport services with drivers of taxis or private-hire cars.

3 The Interim Measures Directions have remained in force until CCCS’s final decision today.

considered the written and oral representations from the Parties⁴, feedback from industry players, stakeholders and the public, as well as all available information and evidence.

CCCS's Findings

Grab increased prices after removal of its closest competitor

4. CCCS has examined internal documents of the Parties, and found that Uber would not have left the Singapore market by simply terminating its business if the Transaction had not taken place. Instead, Uber would have continued its operations in Singapore, while exploring other strategic commercial options, such as collaboration with another market player⁵, or a sale to an alternative buyer. The Transaction has removed Grab's closest competitor in ride-hailing platform services, namely Uber.
 5. CCCS has received numerous complaints from both riders and drivers on the increase in effective fares and commissions by Grab post-Transaction (e.g. via a decrease in the amount and frequency of rider promotions and driver incentives). For example, Grab announced changes to its GrabRewards Scheme in July 2018 which generally reduced the number of points earned by riders per dollar spent on Grab's trips, and increased the number of points required for redemptions. Indeed, CCCS has found that effective fares⁶ have increased between 10% and 15% post-Transaction.
- Potential competitors are hampered by exclusivities and cannot scale to compete effectively against Grab*
6. CCCS finds that Grab currently holds around 80% market share. Despite recent entry by several small players, their market shares remain insignificant. CCCS's investigation found that strong network effects⁷ make it difficult for potential competitors to scale and expand in the market, particularly given that Grab had imposed exclusivity obligations on taxi companies, car rental partners, and some of its drivers. Grab's exclusivities hamper the ability of potential competitors to access drivers and vehicles that are necessary for expansion in the market.
 7. CCCS's assessment is confirmed by feedback from potential new entrants which indicated that without any intervention from CCCS, it would be difficult for them to attain a sufficient network of drivers and riders to provide a satisfactory product and experience to both drivers and riders so as to compete effectively against Grab.
 8. At the conclusion of its investigation, CCCS has found that the Transaction is anti-competitive, having been carried into effect, and has infringed section 54 of the Competition Act by substantially lessening competition in the ride-hailing platform market in Singapore.

4 Where CCCS proposes to make an infringement decision, the affected parties are given an opportunity to make written and oral submissions (also known as representations) in relation to the proposed finding of liability and imposition of financial penalty/ directions (if any). The affected parties are also given an opportunity to inspect documents relating to the matters referred to in the proposed infringement decision.

5 Uber had entered into an agreement to collaborate with ComfortDelGro with the introduction of UberFlash to compete with Grab, and the collaboration was only withdrawn after the Transaction, on 25 May 2018.

6 Trip fares net of rider promotions.

7 A ride-hailing platform that has built up high levels of usage is more attractive to new drivers and riders than a competitor with less usage whose offerings may otherwise be the same. This indirect network effect reinforces the incumbency of the existing players present in the market, and greatly increases the time and upfront expenditure needed for a new potential entrant to build up a driver network and rider network similar in scale and size to the Parties.

CCCS’s directions

Remedies

- 9. CCCS has issued directions to the Parties to lessen the impact of the Transaction on drivers and riders, and to open up the market and level the playing field for new players.⁸ These include:
 - a. Ensuring Grab drivers are free to use any ride-hailing platform and are not required to use Grab exclusively.⁹ This will help to increase choices for drivers and riders, and make the market more competitive.
 - b. Removing Grab’s exclusivity arrangements with any taxi fleet in Singapore so as to increase choices for drivers and riders.
 - c. Maintaining Grab’s pre-merger pricing algorithm and driver commission rates. This protects riders’ interests against excessive price surges, and drivers’ interests against increases in commissions that they pay to Grab, while not affecting Grab’s flexibility to apply dynamic pricing under normal demand and supply conditions or restricting the amount of rider promotions and driver incentives that Grab wishes to offer.
 - d. Requiring Uber to sell the vehicles of Lion City Rentals to any potential competitor who makes a reasonable offer based on fair market value, and preventing Uber from selling these vehicles to Grab without CCCS’s prior approval. This prevents Grab and Uber from absorbing or hoarding Lion City Rentals vehicles to inhibit the access to a vehicle fleet by a new competitor.

8 CCCS may at any time vary, substitute or release Grab from one or more of the directions on its own initiative or pursuant to an application by Grab to CCCS if the direction is no longer necessary or appropriate against the objective of CCCS in preventing the Transaction from resulting in a substantial lessening of competition. For example, CCCS considers it would be appropriate to suspend the directions if an open-platform competitor attains 30% or more of total rides matched in the ride-hailing platform services for 1 calendar month, and for the Parties to be released from the directions if such market share is maintained for 6 consecutive months. Further details are set out in Annex A.

9 Existing exclusive contracts may remain in place for the remaining duration of these agreements, or six (6) months, whichever is shorter, but drivers with existing exclusive contracts can terminate early the agreements at any time on their own initiative without any penalty.

Financial penalties

- 10. In addition to the remedies mentioned above, CCCS has imposed financial penalties on Grab and Uber respectively to deter completed, irreversible mergers that harm competition.
- 11. CCCS had sent a letter to each Party on 9 March 2018 to explain Singapore’s merger notification regime and CCCS’s corresponding powers to investigate and penalise anti-competitive mergers. Under Singapore’s merger notification regime, the Parties had the option to notify the Transaction for CCCS’s clearance prior to its completion. However, the Parties proceeded to complete the Transaction on 26 March 2018 and began the transfer of the acquired assets immediately, thus rendering it practically impossible to restore the status quo (i.e. pre-Transaction). CCCS’s investigations also revealed that the Parties had provided for a mechanism to apportion competition law penalties.
- 12. In levying the financial penalties, CCCS has taken into account the relevant turnovers of the Parties, the nature, duration and seriousness of the infringement, aggravating and mitigating factors (such as whether the Parties were cooperative). The financial penalties imposed are as follows:

Party	Financial Penalty
Uber	S\$6,582,055
Grab	S\$6,419,647
Total	S\$13,001,702

Further information

- 13. Further information on the investigations, analysis of the case and the basis of calculation of the financial penalties imposed on the Parties are set out in the Infringement Decision, which can be found here: <https://www.cccs.gov.sg/publicregister-and-consultation/public-register>.



Economic concentration case between Uber and Grab

1. *Enterprises under investigation*

- Uber Group
- Grab Inc. Group
- Uber Viet Nam Company Limited
- GrabTaxi Company Limited

2. *Case Content*

On March 25, 2018, Uber and Grab Inc. signed a Purchase Agreement on Uber's resale of its business in 08 Southeast Asian markets, including Viet Nam, to Grab Inc..

In Viet Nam, on March 25, 2018, GrabTaxi Co., Ltd. (GrabTaxi) and Uber Viet Nam Co., Ltd. also signed a Bill of sale which transferred and accepted the obligations regarding the sale of assets by Uber Viet Nam, Uber's business activities and other benefits to GrabTaxi.

From 11.5 p.m. on April 08, 2018 (Viet Nam time), Uber's application in Viet Nam is officially inactive.

On April 16, 2018, Director General of VCCA issued Decision No.45/QD-CT on preliminary investigation of the competition restriction case to clarify the sign of violation. On the basis of the preliminary survey results, on May 18, 2018, Director General of VCCA issued Decision No. 64/QD-CT officially investigating the competition case. On November 30, 2018, Director General of VCCA signed the conclusion of investigation of the competition case in accordance with Clause 9, Article 76 of the Competition Law.

3. *Concern on competition*

Based on the results of verifying facts, evidences of the case, VCCA determined that the acquisition between Grab and Uber violated Competition Law and might be sanctioned of fines as follows:

- (i) Acts of not notifying economic concentration specified in Article 20 of the Competition Law; and

- (ii) Under the prohibited economic concentration acts stipulated under Article 18 of the Competition Law.

In addition, VCCA also reviewed and assessed the impact of competition restriction on the market: Grab and Uber are direct competitors and both have market power. Therefore, Grab's acquisition of Uber in Southeast Asia, including the Vietnamese market, changed the market structure in the direction of reducing the number of enterprise operating in the market and forming an enterprise with substantial market power, thus having potential risk of abusing its dominant position, limiting competition in the market.

4. *Investigation results*

On November 11, 2018, VCCA completed its official investigation, transferred the investigation reports, investigation conclusions and the entire dossiers of competition case to Viet Nam Competition Council for final settlement according to the provisions of the competition law. VCCA also recommended the Viet Nam Competition Council to apply a number of measures to reduce the competition restriction effect.

On February 1, 2019, the Competition Handling Council issued Decision No. 08 / QD-HDCT for addition investigation of the Uber/Grab case. After 90 days of supplementary investigation, Viet Nam Competition Council opened the hearing for final decision. Accordingly, the Competition Handling Council determined that the acquisition under investigation do not constitute acts of economic concentration in accordance with the Viet Nam Competition Law 2004. As this result, Viet Nam Competition and Consumer Authority sent a complaint to the Viet Nam Competition Council about the Decision of the case Competition Handling Council.

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