

Competition Law Alert

Dear Clients & Friends

Malaysian competition law tabled for first reading in the Dewan Rakyat

On 7 April 2010, the following competition related Bills were tabled for first reading in the Malaysian Dewan Rakyat (Malaysia's House of Representatives):

- **Competition Bill 2010:** Prevents cartel-like activities and abusive behaviour by dominant entities but does not cover mergers; and
- **Competition Commission Bill 2010:** Establishes the Malaysian Competition Commission (the "MCC") responsible for enforcing the Competition Act when it comes into force.

Lim Teong Sit, Managing Partner of Rahmat Lim & Partners in Malaysia, an associate firm of Allen & Gledhill LLP, notes that: "The extensive powers which will be given to the Malaysian Competition Commission and the penalties set out in the Competition Bill show that Malaysia is serious about implementing anti-competition safeguards on par with other jurisdictions with established antitrust regimes. With directors potentially being liable for offences under the Competition Act when it comes into effect, companies in Malaysia are advised to ensure that their operations are fully compliant with the Competition Act."

Set out below are some of the key features of the Competition Bill 2010 (the "**Competition Bill**").

- **Anti-competitive agreements:** Horizontal or vertical agreements between enterprises will be prohibited if they have the object or effect of significantly preventing, restricting or distorting competition in the relevant market.
- **Abuse of dominance:** Enterprises will be prohibited from engaging, whether independently or collectively, in any conduct which amounts to an abuse of a dominant position in any market for goods and services. Enterprises in a dominant position would not however be prevented 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.
- **Anti-competitive activities outside Malaysia:** Anti-competitive activities outside of Malaysia will be caught so long as they have an effect on competition in any market in Malaysia.
- **Individual exemption:** Enterprises may apply for individual exemption, with respect to a particular agreement, from the prohibition against anti-competitive agreements. Block exemptions may be granted for certain categories of agreements which can be shown to produce efficiencies or social benefits.

- **Powers of investigation:** The MCC will have significant powers of investigation, including the ability to enter and search a premise or persons, to seal off documents/cupboards, to require the provision of information and to be given access to computerised data.
- **Competition Appeal Tribunal:** In addition to the MCC, a Competition Appeal Tribunal (the “**CAT**”) will also be established. The CAT will have exclusive jurisdiction to review any decision made by the MCC relating to interim measures, finding of non-infringement and finding of infringement.
- **Financial penalties:** An enterprise which is found to have infringed the prohibitions in relation to anti-competitive agreements and abuse of dominance may be imposed with a financial penalty not exceeding 10% of the worldwide turnover of an enterprise over the entire period during which an infringement occurred.
- **Leniency regime:** There will be a leniency regime to encourage whistle blowing, and which allows a reduction of up to a maximum of 100% of any penalties which would otherwise have been imposed.
- **Offences:** A body corporate which commits an offence under the Competition Bill will be liable on conviction to a fine of up to RM5 million for a first offence, and a fine of up to RM10 million for a second or subsequent offence.
- **Individual sanctions:** A person who is not a body corporate who commits an offence under the Competition Bill will be liable on conviction to a fine of up to RM1 million or imprisonment for a term of up to five years or both for a first offence, and a fine of up to RM2 million or imprisonment for a term of up to five years or both for a second or subsequent offence.
- **Liability of directors:** If a body corporate commits an offence under the Competition Bill, a director, chief executive officer, chief operating officer, manager, secretary or other similar officer of such body corporate may be personally liable unless such officer proves that the offence was committed without his knowledge, consent or connivance and that he had taken all reasonable precautions and exercised due diligence to prevent the commission of such offence.

“The prohibition provisions in the Competition Bill are similar to those found in jurisdictions with established antitrust regimes. It is interesting that vertical agreements which are excluded from the Singapore Competition Act, are specifically included in the anti-competitive agreements prohibition in clause 4 of the Competition Bill,” comments Mark Tan, a member of Allen & Gledhill LLP’s Competition & Antitrust practice. “This will have a direct effect on business arrangements such as resale price maintenance and exclusivity agreements.”

Daren Shiau, Head of Allen & Gledhill LLP’s Competition & Antitrust practice notes that: “Assisting clients in navigating the differences between Asian competition laws and aligning their business practices to meet these regulatory challenges has been, and will continue, to be a key priority for our competition team.”

Further information

Should you have any queries as to how this development may affect your business, please do not hesitate to get in touch with the following:

Antitrust and Merger Control

Daren Shiau

Partner

Tel: +65 6890 7612

E-mail: daren.shiau@allenandgledhill.com

Competition Economics

Elsa Chen

Deputy Director

Tel: +65 6890 7663

E-mail: elsa.chen@allenandgledhill.com

Litigation and Dawn Raids

William Ong

Partner

Tel: +65 6890 7894

E-mail: william.ong@allenandgledhill.com

Dawnraid hotline: 1800-CCS-RAID

About the Allen & Gledhill Competition & Antitrust practice

The Allen & Gledhill Competition & Antitrust practice is one of the largest and most experienced competition teams in Singapore. It is a full-time dedicated competition practice and consists of competition lawyers, the country's first in-house competition economics team and former officers of the Competition Commission of Singapore (the "CCS"). The practice is placed in "Tier 1" by *Global Competition Review* and highly recommended by *PLC Which Lawyer?*. The practice, which leads the market in CCS filings, has acted in more than three-quarters (14 out of 18) of all merger control notifications lodged with the CCS in the first 30 months since the merger control regime in Singapore came into force. Further, it was commissioned to establish the merger regimes under both Singapore's Airport Competition Code as well as the country's Media Market Competition Code. The practice has also defended clients in several landmark antitrust hearings.

About Rahmat Lim & Partners

Rahmat Lim & Partners is a law firm in Malaysia providing a wide range of legal services to both local and international clients, covering the practice areas of Dispute Resolution, Financial Services, Intellectual Property & Technology, Mergers & Acquisitions and Real Estate. Rahmat Lim & Partners' objective is to deliver truly unique, innovative and cutting edge legal advice to clients in a professional and timely manner to help them address their business needs in today's rapidly changing business environment. Working closely together, Allen & Gledhill LLP and Rahmat Lim & Partners offer an integrated solution comprising the best of Malaysian and Singapore law expertise.

Yours faithfully
Allen & Gledhill LLP
Singapore

Allen & Gledhill LLP
T +65 6890 7188 | F +65 6327 3800 | publications@allenandgledhill.com
One Marina Boulevard #28-00 Singapore 018989 | www.allenandgledhill.com

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