

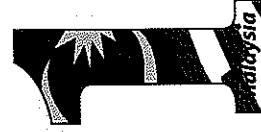
What are Examples of Prohibited Anti-Competitive Practices?



COMPETITION ACT MALAYSIA 2010

The table below lists down the practices which are normally prohibited :-

ANTI-COMPETITIVE AGREEMENTS	ABUSE OF DOMINANT POSITION
a. <i>Price Fixing</i> - competitors agree to fix, control or maintain price of goods and services.	a. <i>Price Discrimination</i> - practice of selling the same product to different customers at different prices without reasonable commercial justification.
b. <i>Market Allocation</i> - where competitors divide customers either by geographical area or customer type and agree to sell only to their allotted customers.	b. <i>Excessive pricing</i> - where dominant firms set prices of goods and services significantly above the effective competitive level.
c. <i>Bidding agreement</i> - where competitors agree on who should win a tender.	c. <i>Predatory pricing</i> - which is the practice of selling a product or service at a very low price, intending to drive competitors out of the market or create barriers to entry for potential new competitors.
d. <i>Limiting Production</i> - where dominant businesses maximize profits by limiting or controlling supply of goods and services.	



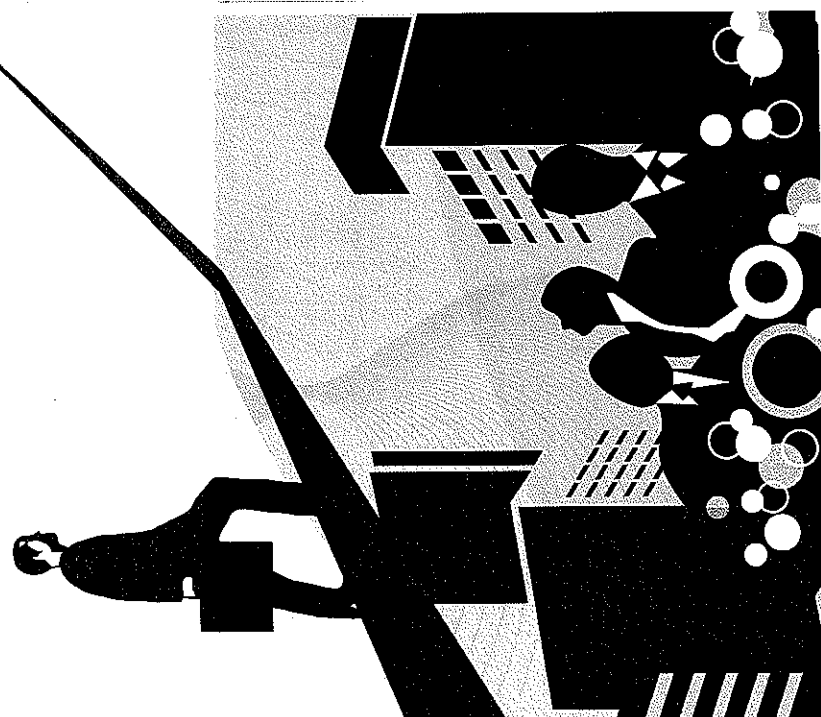
Ministry Of Domestic Trade, Co-operatives & Consumerism

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What is Competition Act 2010?

- The Act was passed by Parliament in May 2010 and gazetted in June 2010. It will be enforced on 1st January 2012.

- Except for anti-competitive practices regulated under the Communications and Multimedia Commission Act 1998 and Energy Commission Act 2001, the Act provides a comprehensive competition law at the national level which cuts across all economic sectors.

- It applies to all commercial activities undertaken within Malaysia and those outside Malaysia which have effects on competition in the Malaysian market.

- It aims to promote economic development by promoting and protecting the process of competition in the Malaysian market in order to maximize consumer welfare. This is achieved through the prohibition of anti-competitive practices.

- Anti competitive practices are divided into 2 main prohibitions:-

- Anti competitive agreements; and
- Abuse of dominant position

- A Competition Commission will be established to oversee the implementation of the Act. The Competition Commission will investigate against any potential anti-competitive practices and will also be empowered to impose financial penalties. Decision by the Competition Commission may be appealed to the Competition Appeal Tribunal.

How will Competition Act Benefit Malaysia?

- The Competition Act provides a framework for identifying and dealing with anti-competitive practices by all types of enterprises in the country from multinationals to the small and medium enterprises.

- It promotes a competitive market environment and provides level playing field for industry players

- It will create a better business environment by providing safeguards against anti-competitive market practices that could drive enterprises out of business.

- It will control unhealthy competition and restrictive business practices such as international cartels.

- It will apply to any commercial activity both within and outside Malaysia. In relation to the application of the Act outside Malaysia, it applies to any commercial activity transacted outside the country but which has an effect on competition in any market in the country.

How will Competition Act benefit Producers?

- It will create lower entry barriers into the market which will promote entrepreneurship and growth of SMEs.

- There will be increased competition and the easier access to markets will force enterprises to be more efficient. It will lead to weeding out of inefficient enterprises.

- Increased competition will create the need to innovate and invest in the research and development of new products and new processes.

- A larger market share will be available to more cost-efficient firms and encourage new firms to enter the market.

- There will be efficient allocation and utilization of resources. These consequences are likely to spur economic growth and development in the country and help to reduce poverty.

How will Competition Act benefit Consumers?

- It will create a more competitive, efficient and regulated market-place and this will result in:

- lower prices;
- more choices;
- adequate availability of quality goods and services; and

the development of new and better products

- If there is no competition, enterprises need not worry about consumers having alternative choices. They may then have reduced incentive to lower costs or innovate.

Main Provisions of the Competition Act 2010

- **Section 4 – Prohibition against anti-competitive agreement:**

Prohibition against any horizontal or vertical agreement which has the object or effect of significantly preventing, restricting or distorting competition in Malaysia.

- **Section 10 – Prohibition against abuse of dominant position:**

Prohibition against abuses by enterprises occupying "dominant position" in the market they are operating. "Dominant position" is defined as the ability of such businesses to adjust prices or dictate trading terms in the market without effective constraint from competitors or consumers.

- **Section 11 – Power to conduct market review:**

The Competition Commission may conduct a review into any market in order to determine whether any feature or combination of features of the market prevents, restricts or distorts competition in the market. Such review will be published and made available to the public.