

COMPETITION BILL TABLED

The Competition Bill 2010 ("Bill") was tabled in the Malaysian Parliament for first reading on 6 April 2010 together with the Competition Commission Bill 2010. The former seeks to promote economic development and protect consumer interests by prohibiting anti-competitive conduct and practices, while the latter will establish a competition commission responsible for enforcing the proposed Competition Act.

The Bill prohibits:

- (i) agreements or concerted practices between enterprises or associations of enterprises which have the object or effect of significantly preventing, restricting or distorting competition; and
- (ii) the abuse by enterprises of a dominant position i.e. a situation where an enterprise possesses significant power in a market which enables it to adjust prices or outputs or trading terms without effective constraints from competitors.

Enterprise covers any entity carrying on commercial activities relating to goods or services and a subsidiary will be regarded as a single enterprise with its parent company, if the subsidiary does not enjoy real autonomy in determining its actions on the market. 'Commercial activities' include those transacted outside Malaysia which have an effect on competition in Malaysia but excludes:

- (i) commercial activities governed by the Communications and Multimedia Act 1998 and Energy Commission Act 2001 as these two legislations already have competition provisions within them and arguably the regulation of these two sectors are better left managed within their respective industry; and
- (ii) any activity in exercise of governmental authority or conduct based on the principle of solidarity, or where goods or services purchased are not part of an economic activity.

An enterprise which is a party to any prohibited anti-competitive agreement or practice can be relieved of its liability or obtain exemption if it can establish that: (i) there are significant technological, efficiency or social benefits; (ii) the benefits could not reasonably have been provided without the agreement having the anti-competitive effect; (iii) the detrimental effect on competition is proportionate to the benefits provided; and (iv) competition would not be eliminated completely.

The Bill sets out an illustrative list of activities which may constitute an abuse of dominant position and expressly provides that the market share of an enterprise would not in itself be conclusive evidence of whether the enterprise occupies a dominant position in the market. The Bill also empowers the Minister of Domestic Trade, Cooperative and Consumerism to exclude certain types of activities from prohibition.

The Bill however does not have provisions for fair trade practices and a merger control regime which are commonly found in most antitrust legislation. However this is a first step in the right direction as the benefit of competition is manifold and Malaysia truly needs to be more competitive if it wishes to achieve its vision of becoming a developed nation. Hopefully the proposed Competition Act will be implemented swiftly and fairly so that there will be a free and fair market economy and level playing field for all.

For further information and assistance, please contact the RL Corporate M&A Team at T: + 603 2093 3939 ext. 286 or email: rexlex@raslanloong.com.

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