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Vertical Agreements and Dominant Firms 2026

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1 General

1.1 What authorities or agencies investigate and enforce the laws governing vertical agreements and dominant firm conduct?

The Malaysia Competition Commission ("**MyCC**") is the authority responsible for enforcing the Competition Act 2010 ("**Competition Act**").

The MyCC is mandated to implement and enforce the competition laws, advise the Minister on competition matters, conduct general studies into competition issues, and promote public awareness of the competition laws.[1]

Certain sectors are excluded from the Competition Act's application,[2] namely:

(a) communications and multimedia;
(b) energy;
(c) upstream petroleum operations; and
(d) aviation services.

Competition enforcement in those sectors falls to the respective regulators.

1.2 What investigative powers do the responsible competition authorities have?

The MyCC possesses broad investigatory powers under the Competition Act. It may conduct investigations where it has reason to suspect an infringement or upon a complaint from any person,[3] and must investigate upon a direction from the Minister.[4]

Commission officers have all the powers of investigation and enforcement, including police investigation powers in seizable cases.[5] The MyCC may require any person believed to be acquainted with the facts of a case to provide information, produce documents, or make statements.[6] Commission officers may conduct searches and seizures with[7] or without a warrant,[8] and are entitled to access computerised data.[9]

The MyCC also has the power to conduct market reviews to determine whether any feature of a market prevents, restricts or distorts competition.[10]

1.3 Describe the steps in the process from the opening of an investigation to its resolution.

The MyCC may initiate investigation on its own initiative[11] or upon a complaint from any person[12] and must investigate upon a direction from the Minister.[13]

Where a complaint is made, the MyCC may make inquiries before deciding whether to investigate.[14] During the investigation, the MyCC may exercise its powers to require information or documents, and carry out searches and seizures.[15] It may also impose interim measures if it has reasonable grounds to believe a prohibition has been or is likely to be infringed, and considers it necessary to act urgently.[16]

Upon completion, if the MyCC proposes to make a finding of infringement, it must give written notice of the proposed decision to each affected enterprise setting out the reasons, any proposed penalties or remedial actions, and the enterprise's right to submit written or oral representations.[17] The MyCC may conduct a hearing, providing at least 14 days' written notice.[18]

The MyCC will issue its final decision, either making a finding of non-infringement[19] or infringement,[20] with written reasons.

1.4 What remedies (e.g., fines, damages, injunctions, etc.) are available to enforcers?

Where a finding of infringement is made, the MyCC must require the infringement to be ceased immediately,[21] and may specify steps to end the infringement,[22] impose a financial penalty not exceeding 10% of the worldwide turnover of the enterprise during the infringement period,[23] and give any other direction as it deems appropriate.[24]

The MyCC may impose interim measures during an ongoing investigation, including directing any person to suspend the effect of an agreement, desist from infringing conduct, or do or refrain from doing any act (not requiring the payment of money).[25]

The MyCC may also bring proceedings before the High Court against any person who fails to comply with its directions or decisions.[26]

1.5 How are those remedies determined and/or calculated?

The Competition Act does not prescribe a specific formula for the calculation of financial penalties but caps any financial penalty at 10% of the worldwide turnover of an enterprise over the period during which the infringement occurred.[27]

In determining the amount of any financial penalty, the MyCC may consider factors including:[28]

(a) seriousness, duration and impact of the infringement;
(b) turnover of the market involved during the infringement period;
(c) degree of fault;
(d) role of the enterprise in the infringement;

(e) recidivism;
(f) existence of a compliance programme; and
(g) level of financial penalties imposed in other similar cases.

Aggravating factors include acting as an instigator or leader, obstruction of the investigation, recidivism, continuation of the infringement after the start of investigation, and involvement of senior management.[29]

Mitigating factors include a low degree of fault, a minor role in the infringement, cooperation in the investigation, the existence of a corporate compliance programme, and any compensation made to victims.[30]

If the enterprise has received leniency, the penalty is further reduced by the amount stipulated in the grant of leniency.[31] An enterprise that admits involvement in an infringement of the horizontal agreement prohibition and provides significant cooperation may receive a reduction of up to 100% of penalties.[32]

The MyCC has published the Guidelines on Leniency Regime, which provide guidance on, among others, how to apply for leniency.

1.6 Describe the process of negotiating commitments or other forms of voluntary resolution.

An enterprise may offer an undertaking to do or refrain from doing anything that the MyCC considers appropriate.[33]

If the MyCC accepts the undertaking, it will close the investigation without making any finding of infringement and will not impose a penalty.[34]

In deciding whether to close an investigation, the MyCC may also consider whether continuation would not constitute the best use of its resources.[35]

It should also be noted that, according to the Competition (Appeal Tribunal) Regulations 2017, if the parties before the Competition Appeal Tribunal ("**CAT**") reach a settlement, they may request the CAT to make a consent order on agreed terms.[36]

1.7 At a high level, how often are cases settled by voluntary resolution compared with adversarial litigation?

Based on the publicly available decisions, the majority of cases investigated by the MyCC have proceeded to a proposed decision or a final decision[37] rather than being resolved through voluntary undertakings.[38]

1.8 Does the enforcer have to defend its claims in front of a legal tribunal or in other judicial proceedings? If so, what is the legal standard that applies to justify an enforcement action?

The MyCC is not required to defend its claims before a tribunal or court. As noted in *Malaysian Airline System Bhd v Competition Commission & Another Appeal*,[39] the MyCC is a quasi-judicial body.

The MyCC conducts the investigation, considers representations from the affected enterprises, and issues its decision on whether an infringement has occurred.

The Competition Act establishes the CAT, which has exclusive jurisdiction to review any decision made by the MyCC.[40]

The CAT may confirm or set aside the MyCC's decision, remit the matter to the MyCC, impose or revoke or vary financial penalties, or make any other decision the MyCC could have made.[41]

1.9 What is the appeals process?

Any person aggrieved or whose interest is affected by a MyCC decision may appeal to the CAT by filing a notice of appeal within 30 days.[42] The appellant must serve a copy of the signed and sealed notice of appeal on the Chairman of the MyCC within 14 days of the notice being returned to the appellant.[43] The MyCC must then file a statement in reply within 30 days of service.[44]

The CAT may conduct case management hearings[45] and give directions for the expeditious decision of the appeal.[46] Hearings are held in public, though parts may be held in closed session.[47] The CAT's decision is final and binding,[48] and may, by leave of the High Court, be enforced in the same manner as a judgment or order.[49]

1.10 Are private rights of action available and, if so, how do they differ from government enforcement actions?

Section 64 of the Competition Act provides for a right of private action. Any person who suffers direct loss or damage arising from an infringement of the prohibitions under Part II of the Competition Act has a right of action for relief in civil proceedings against the enterprise that is, or was at the material time, a party involved in the infringement.

Private actions seek compensation for loss or damage, while MyCC enforcement is focused on requiring cessation of the infringement.

1.11 Describe any immunities, exemptions, or safe harbours that apply.

The Competition Act provides a relief of liability for enterprises party to an infringing agreement, provided the enterprise demonstrates that:[50]

(a) the agreement gives rise to substantial and identifiable technological, efficiency, or social benefits;
(b) those benefits could not reasonably be achieved without the agreement having the effect of restricting, preventing, or distorting competition;
(c) the detrimental effect on competition is proportionate to the benefits; and
(d) the agreement does not enable the enterprise to eliminate competition entirely in respect of a substantial part of the goods or services.

An enterprise may apply to the MyCC for an exemption from the prohibition under section 4 in respect of a particular agreement.[51] The MyCC may also grant a block exemption to a category of agreements that are likely to satisfy the section 5 criteria.[52]

In respect of abuse of dominance, the Competition Act provides that an enterprise in a dominant position is not prohibited from taking any step that has reasonable commercial justification or represents a reasonable commercial response to the market entry or market conduct of a competitor.[53]

The Second Schedule further excludes from the prohibitions:

(a) any agreement or conduct to the extent that it is carried out for the purpose of complying with a legislative requirement;
(b) collective bargaining activities and collective agreements relating to employment terms and conditions; and
(c) enterprises entrusted with the operation of services of general economic interest, or those having the character of revenue-generating monopolies, where the application

of the prohibitions would impede the performance of the specific tasks assigned to them, whether in law or in fact.

The Guidelines on Chapter 1 Prohibition also indicate that anti-competitive agreements will generally not be considered "significant" if:[54]

(a) the parties are competitors and their combined market share does not exceed 20%; or
(b) the parties are not competitors and each individually has less than 25% market share.

1.12 Does enforcement vary between industries or businesses?

The Competition Act applies to any commercial activity, subject only to the specific sectoral exclusions set out in the First Schedule. Within its scope, the MyCC has investigated enterprises across a diverse range of sectors.

1.13 How do enforcers and courts take into consideration an industry's regulatory context when assessing competition concerns?

Sectors excluded by the First Schedule of the Competition Act are not subject to the MyCC's jurisdiction.

For sectors not excluded, the MyCC assesses competition concerns in line with the Competition Act. The Minister may also direct the MyCC regarding interworking arrangements with other authorities.[55]

1.14 Describe how your jurisdiction's political environment may or may not affect antitrust enforcement.

The MyCC is an independent statutory body whose enforcement decisions are made on a quasi-judicial basis. The Minister may give directions of a general character,[56] but would not give directions relating to specific decisions.

The government has been supportive of competition enforcement, ultimately for the benefit of consumers.

1.15 What are the current enforcement trends and priorities in your jurisdiction?

The MyCC's current enforcement and policy priorities include:

(a) active enforcement against anti-competitive conduct; and
(b) conducting market reviews relating to the digital economy ecosystem.[57]

1.16 Describe any notable recent legal developments in respect of, e.g., vertical agreements, dominant firms and/or vertical merger analysis.

The Competition (Amendment) Bill 2026 ("**Bill**"), which was recently tabled, does not amend the laws relating to vertical agreements and dominant firms.

It should be noted that, in April 2022, the MyCC issued a public consultation proposing to add a comprehensive merger control chapter to the Competition Act;[58] however, the Bill does not include any provisions on merger control. That being said, the omission of merger control from the present Bill does not preclude its introduction in a subsequent legislative exercise.

2 Vertical Agreements

2.1 At a high level, what is the level of concern over, and scrutiny given to, vertical agreements?

Vertical agreements are subject to scrutiny under section 4(1) of the Competition Act.

The Guidelines on Chapter 1 Prohibition state that vertical agreements are generally less harmful to competition compared to horizontal agreements as enterprises in a vertical relationship usually have a joint interest in ensuring the final product or service is competitive.[59]

MyCC enforcement has to date focused predominantly on horizontal cartel conduct rather than vertical agreements.

2.2 What is the analysis to determine (a) whether there is an agreement, and (b) whether that agreement is vertical?

The Competition Act defines "agreement" broadly to mean any form of contract, arrangement or understanding, whether or not legally enforceable, between enterprises, and the definition includes a decision by an association and concerted practices.

An agreement is classified as "vertical" if it is between enterprises each of which operates at a different level in the production or distribution chain.[60]

It should also be noted that the Bill proposes to expand the section 4 prohibition to apply to "any agreement", not just horizontal or vertical agreements. This amendment would extend the prohibition to cover hub-and-spoke cartels.

2.3 What are the laws governing vertical agreements?

Vertical agreements are governed under the Competition Act, which prohibits agreements between enterprises operating at different levels of the chain where the agreement has the object or effect of significantly preventing, restricting, or distorting competition in any market for goods or services.[61]

The prohibition applies to all commercial activities within Malaysia, and extends to commercial activity outside Malaysia that has an effect on competition in any market in Malaysia.[62]

The MyCC has also issued the Guidelines on Chapter 1 Prohibition, which provides guidance on the assessment of vertical agreements.

2.4 Are there any types of vertical agreements or restraints that are absolutely ("*per se*") protected? Are there any types of vertical agreements or restraints that are *per se* unlawful?

The Competition Act does not classify any vertical agreement as *per se* unlawful. Unlike the deeming provision for horizontal agreements,[63] there is no corresponding deemed prohibition for vertical agreements.

Similarly, no category of vertical agreement is absolutely or *per se* protected from the prohibition.

However, the Guidelines on Chapter 1 Prohibition indicate that the MyCC will take a strong stance against minimum resale price maintenance ("**RPM**") and will find it to be anti-competitive.[64]

2.5 What is the analytical framework for assessing vertical agreements?

The agreement will be assessed to determine whether it has the object or effect of significantly preventing, restricting or distorting competition.[65]

The Guidelines on Chapter 1 Prohibition indicate that anti-competitive non-price vertical agreements may not be considered to have a "significant" effect if the individual market share does not exceed 25% of their relevant market.[66]

2.6 What is the analytical framework for defining a market in vertical agreement cases?

The MyCC uses the Hypothetical Monopolist Test ("**HMT**"). The HMT defines the relevant market as the smallest group of products in a geographical area where a hypothetical monopolist could profitably sustain a price above the competitive price[67] by 5–10%.[68] If yes, the market definition is the relevant product market and the market definition exercise is complete. If not, the closest substitute products should be included, and the assessment should be repeated using this expanded set of products.[69]

Market is defined under the Competition Act to refer to a market in Malaysia or any part of Malaysia.[70] The geographic market refers to the area within which consumers can substitute the products and suppliers can compete to sell the relevant products.[71]

The question is whether a hypothetical monopolist supplying the relevant products within an area could profitably sustain a price increase of 5–10%. If yes, the focal area constitutes the relevant geographic market. If not, the neighbouring areas should be included in the geographic market.[72]

2.7 How are vertical agreements analysed when one of the parties is vertically integrated into the same level as the other party (so-called "dual distribution")? Are these treated as vertical or horizontal agreements?

The Competition Act does not contain specific provisions addressing dual distribution scenarios. However, where one party is vertically integrated and operates at the same level as the counterparty, the agreement could potentially be characterised as horizontal.

2.8 What is the role of market share in reviewing a vertical agreement?

Under the Guidelines on Chapter 1 Prohibition, anti-competitive non-price vertical agreements may not be regarded as having a significant anti-competitive effect where the market share of either the seller or the buyer does not exceed the *de minimis* threshold of 25% of the relevant market.[73] In such circumstances, the agreement is less likely to raise competition concerns under the Competition Act.

2.9 What is the role of economic analysis in assessing vertical agreements?

The MyCC uses various types of economic evidence, including market research surveys on consumer switching behaviour, evidence on switching costs, price elasticity, and interviews with industry participants, to indicate the relevant market.[74]

2.10 What is the role of efficiencies in analysing vertical agreements?

Efficiencies play a role through the relief of liability under the Competition Act. Please refer to our response to question 1.11.

2.11 Are there any special rules for vertical agreements relating to intellectual property and, if so, how does the analysis of such rules differ?

The Guidelines on Intellectual Property Rights and Competition Law discuss several forms of vertical restrictions, including:

(a) Vertical price-fixing.[75]
(b) Territorial and field-of-use restrictions.[76]
(c) Exclusive licensing (generally permissible unless coupled with anti-competitive conduct).[77]
(d) Grant-back clauses (non-exclusive grant-backs may have pro-competitive effects).[78]

2.12 Does the enforcer have to demonstrate anticompetitive effects?

The MyCC must demonstrate that the agreement has the object or effect of significantly preventing, restricting or distorting competition.[79] Unlike horizontal agreements falling within section 4(2), the deeming provision does not apply to vertical agreements.

2.13 Will enforcers or legal tribunals weigh the harm against potential benefits or efficiencies?

Yes. Section 5 of the Competition Act relating to the relief of liability provides that the detrimental effect of the agreement on competition must be proportionate to the benefits provided.[80]

2.14 What other defences are available to allegations that a vertical agreement is anticompetitive?

An enterprise may obtain an individual exemption[81] or benefit from a block exemption.[82] The exclusions under the Second Schedule and the safe harbour thresholds (25% individual market share for anti-competitive non-price vertical agreements) may also apply.[83]

2.15 Have the enforcement authorities issued any formal guidelines regarding vertical agreements?

Yes. The MyCC has issued:

(a) the Guidelines on Chapter 1 Prohibition;
(b) the Guidelines on Market Definition; and
(c) the Guidelines on Intellectual Property Rights and Competition Law.

2.16 How is resale price maintenance treated under the law?

The Guidelines on Chapter 1 Prohibition state that the MyCC will take a strong stance against minimum RPM and will find it to be anti-competitive.[84] Other forms of RPM, such as maximum pricing or recommended retail pricing, may also be considered anti-competitive if they act as a focal point for downstream collusion.[85]

2.17 How do enforcers and courts examine exclusive dealing claims?

Under the Guidelines on Chapter 1 Prohibition, a seller imposing a condition that the buyer must buy all or a substantial proportion of supplies from the seller may foreclose a substantial part of the downstream market to other sellers, if the seller has a significant share of the downstream market.[86]

2.18 How do enforcers and courts examine tying/supplementary obligation claims?

Tying occurs when customers are required to buy a product they want together with a product from a different market that they may not want. Tying is considered anti-competitive as it restricts competitors' access to the tied product market.[87]

The main concern with tying is the leveraging dominance from one market to obtain market power in another.[88]

The Competition Act also provides that making the conclusion of a contract subject to acceptance of supplementary conditions unconnected to the subject matter of the contract constitutes potential abuse of a dominant position.[89]

2.19 How do enforcers and courts examine price discrimination claims?

Price discrimination is addressed under the abuse of a dominant position. The Competition Act prohibits a dominant enterprise from imposing different conditions on equivalent transactions with different trading parties where such conduct may deter market entry or expansion, exclude or seriously damage an equally efficient competitor, or affect competition in the relevant market or the upstream or downstream market.[90]

The Guidelines on Chapter 2 Prohibition note that price discrimination can be beneficial (e.g., enabling access to products by lower-income groups) but can also adversely affect consumers (e.g., a dominant enterprise charges low prices in competitive areas and high prices in less competitive areas).[91]

2.20 How do enforcers and courts examine loyalty discount claims?

While generally considered pro-competitive, a dominant enterprise may use loyalty discounts to foreclose a market to competitors.[92] Non-cost-related discounts that are structured to foreclose part of the market may constitute abuse of dominance.[93]

2.21 How do enforcers and courts examine multi-product or "bundled" discount claims?

Bundling can be used as a form of predatory pricing, making it difficult for other producers to compete.[94] The main concern is the leveraging of dominance from one market to obtain market power in another market.[95]

The MyCC would assess whether the bundled discount effectively forecloses competitors from a significant part of the market and whether an equally efficient competitor could compete against the bundled offering.

2.22 What other types of vertical restraints are prohibited by the applicable laws?

The Guidelines on Chapter 1 Prohibition identify the following types of vertical restraints:

(a) exclusive distribution agreements covering a geographic territory;[96]

(b) exclusive customer allocation agreements;[97] and

(c) upfront access payments.[98]

2.23 How are MFNs treated under the law?

The Competition Act does not specifically address most-favoured-nation clauses. They would be assessed under the general framework of the Competition Act.

3 Dominant Firms

3.1 At a high level, what is the level of concern over, and scrutiny given to, unilateral conduct (e.g., abuse of dominance)?

The Competition Act prohibits an enterprise from engaging, whether independently or collectively, in any conduct amounting to abuse of a dominant position.[99] The MyCC has been actively enforcing against such conduct.

3.2 What are the laws governing dominant firms?

Please refer to our response to question 3.1.

"Dominant position" is defined as a situation where one or more enterprises have sufficient market power to adjust prices, output, or trading terms, without being effectively constrained by the competitors.[100]

The prohibition does not preclude conduct that is reasonably commercially justified or constitutes a reasonable commercial response to market entry or market conduct of a competitor.[101] Market share alone shall not be conclusive of dominance.[102]

The MyCC has issued the Guidelines on Chapter 2 Prohibition to provide detailed guidance on the application of these provisions.

3.3 What is the analytical framework for defining a market in dominant firm cases?

The framework for defining a market in dominant firm cases is the same as for vertical agreement cases.

3.4 What is the market share threshold for enforcers or a court to consider a firm as dominant or a monopolist?

There is no fixed threshold for dominance. Market share shall not, in itself, be conclusive of dominance.[103]

As a general guide, the MyCC considers a market share exceeding 60% as an indication that an enterprise is dominant.[104] Other factors will also be taken into account, such as the degree of product differentiation,[105] barriers to new entry,[106] and price regulation.[107]

However, an enterprise with a lower market share could still be found dominant if, for example, it has a new product with patented technology and its market share is rapidly growing.[108]

3.5 In general, what are the consequences of being adjudged "dominant" or a "monopolist"? Is dominance or monopoly illegal *per se* (or subject to regulation), or are there specific types of conduct that are prohibited?

Dominance itself is not illegal *per se* under the Competition Act – it is only the abuse of a dominant position that is prohibited.[109]

The Competition Act provides a list of conduct that may constitute abuse of a dominant position, including, among others:[110]

(a) imposing unfair prices or trading conditions;
(b) refusing to supply to a particular enterprise or class of enterprises; and
(c) imposing different conditions on equivalent transactions with different trading parties in a manner that may impede market entry, expansion or investment by competitors, exclude or seriously damage an equally efficient competitor, or affect competition in the relevant market or in any upstream or downstream market.

Importantly, the prohibition does not prevent a dominant enterprise from taking steps that have reasonable commercial justification or represent a reasonable commercial response to market entry or competitor conduct.[111]

3.6 What is the role of economic analysis in assessing market dominance?

The Guidelines on Chapter 2 Prohibition provide that dominance is assessed by reference to a range of competitive conditions, including market shares, degree of product differentiation, the degree to which innovation drives competition, and barriers to new entry.

3.7 What is the role of market share in assessing market dominance?

Market share is the starting point in assessing dominance but is not conclusive.[112] A market share above 60% is generally indicative of dominance;[113] however, dominance can be found at lower market shares depending on other factors.

3.8 What defences are available to allegations that a firm is abusing its dominance or market power?

A dominant enterprise may take actions supported by a reasonable commercial justification or that constitute a reasonable commercial response to the market entry or market conduct of a competitor.[114]

Examples of justified conduct include refusing to supply a customer who has failed to pay for previous purchases and matching a competitor's prices even where such pricing may result in short-term losses.[115]

The exclusions under the Second Schedule of the Competition Act also apply in cases involving alleged abuse of dominance.

3.9 What is the role of efficiencies in analysing dominant firm behaviour?

Please see our response to question 3.8. The Guidelines on Chapter 2 Prohibition also adopt an effects-based approach, ensuring that conduct that benefits consumers will not be prohibited.[116]

3.10 Do the governing laws apply to "collective" dominance?

Yes. The Competition Act expressly provides that an enterprise is prohibited from engaging, whether independently or collectively, in any conduct that amounts to abuse of a dominant position.[117]

The Guidelines on Chapter 2 Prohibition indicate that findings of collective dominance are expected to be uncommon. However, there may be a case where two or more independent enterprises possessing substantial market power engage in similar conduct that has the effect of excluding equally efficient competitors from the market.[118]

3.11 How do the laws in your jurisdiction apply to dominant purchasers?

The prohibition on abuse of a dominant position applies equally to dominant purchasers. The Guidelines on Chapter 2 Prohibition provide that an enterprise may be considered dominant where it possesses significant market power in a relevant market, whether in its capacity as a supplier or as a purchaser.[119]

3.12 What counts as abuse of dominance or exclusionary or anticompetitive conduct?

Please see our response to question 3.5.

The Guidelines on Chapter 2 Prohibition elaborate further on specific types of exclusionary conduct including predatory pricing, price discrimination, exclusive dealing, loyalty rebates and discounts, refusal to supply and sharing of essential facilities, buying up scarce inputs, and bundling and tying.

3.13 What is the role of intellectual property in analysing dominant firm behaviour?

The Guidelines on Intellectual Property Rights and Competition Law provide that the ownership of intellectual property does not, in itself, confer market power, as sufficient actual or potential close substitutes may exist.[120] Nevertheless, intellectual property may create barriers to entry and thereby contribute to market power, particularly where exclusive rights restrict competitors' access to market.[121] A cross-licensing arrangement may also raise competition concerns where the licence is limited to certain members.[122]

3.14 Do enforcers and/or legal tribunals consider "direct effects" evidence of market power?

Yes. The Guidelines on Chapter 2 Prohibition indicate that an enterprise's ability to maintain prices well above competitive levels over a prolonged period, or to exclude an equally efficient competitor from the market, may demonstrate the existence of considerable market power.[123] However, dominance is generally assessed indirectly based on a range of criteria, rather than any single factor.

3.15 How is "platform dominance" assessed in your jurisdiction?

Platform dominance would be assessed under the general framework for abuse of a dominant position.

The Guidelines on Chapter 2 Prohibition also recognise network effects as a potential barrier to entry, as consumers may value a product more highly where it is widely used.[124]

3.16 Are the competition agencies in your jurisdiction doing anything special to try to regulate big tech platforms?

There is no specific framework in Malaysia targeting big tech platforms. However, market reviews relating to the digital economy ecosystem have been conducted.

The proposed amendments to the Competition Act to introduce a merger control regime would also allow the MyCC to scrutinise acquisitions. Although the Bill does not include any provisions on merger control, the absence of such provisions does not preclude the introduction of a merger control regime in a subsequent legislative exercise.

It should also be noted that the Bill does not amend the laws relating to vertical agreements and dominant firms.

3.17 Under what circumstances are refusals to deal considered anticompetitive?

The Competition Act identifies the refusal to supply to a particular enterprise or category of enterprises as a potential form of abuse of a dominant position.[125]

The Guidelines on Chapter 2 Prohibition further provide that this may include refusal to supply downstream customers where the dominant enterprise also operates in the downstream market, refusal to license intellectual property rights, and refusal to provide access to essential facilities that cannot be economically duplicated.[126]

The remedy for such conduct may involve requiring supply on reasonable terms. However, the MyCC recognises that compelled supply may enhance short-term competition but could undermine longer-term incentives for innovation and investment.[127]

4 Miscellaneous

4.1 Please describe and comment on anything unique to your jurisdiction (or not covered above) with regard to vertical agreements and dominant firms.

The MyCC should consider adopting a block exemption or exclusion for vertical agreements, mirroring the approach taken by Singapore under its Competition Act 2004.

Vertical agreements, unlike horizontal arrangements between competitors, may promote economic efficiency by facilitating the distribution of goods and services, reducing transaction costs, and enabling manufacturers to reach consumers more effectively. Certain vertical restraints may also be pro-competitive, particularly where the parties lack significant market power.

The Competition Act does not currently provide a clear exclusion for vertical agreements (with only safe harbours based on market share thresholds and a relief of liability provision). Benign distribution and supply arrangements may risk being caught. By introducing a clear exemption for vertical agreements, the MyCC would reduce unnecessary regulatory burden on businesses, and allow the MyCC to focus its enforcement resources on genuinely harmful cartel conduct and abuse of dominance, where the most significant consumer harm arises.

Endnotes

1 Competition Commission Act 2010, section 16.
2 Competition Act, First Schedule.
3 Competition Act, section 15.
4 Competition Act, section 14.
5 Competition Act, section 17.
6 Competition Act, section 18.
7 Competition Act, section 25.
8 Competition Act, section 26.
9 Competition Act, section 27.
10 Competition Act, section 11.
11 Competition Act, section 14(1).
12 Competition Act, section 15.
13 Competition Act, section 14(2).
14 Competition Act, section 16.
15 Competition Act, sections 18, 25 and 26.
16 Competition Act, section 35.
17 Competition Act, section 36.
18 Competition Act, section 38.
19 Competition Act, section 39.
20 Competition Act, section 40.
21 Competition Act, section 40(1)(a).
22 Competition Act, section 40(1)(b).
23 Competition Act, sections 40(1)(c) and 40(4).
24 Competition Act, section 40(1)(d).
25 Competition Act, section 35.
26 Competition Act, section 42.
27 Competition Act, section 40(4).
28 Guidelines on Financial Penalties, paragraph 3.2.
29 Guidelines on Financial Penalties, paragraph 3.4.
30 Guidelines on Financial Penalties, paragraph 3.5.
31 Guidelines on Financial Penalties, paragraph 3.6.
32 Competition Act, section 41.
33 Competition Act, section 43(1).
34 Competition Act, section 43(2).
35 Competition Act, section 16(3).
36 Competition (Appeal Tribunal) Regulations 2017 ("**Competition Regulations**"), regulation 21.
37 https://www.mycc.gov.my/case
38 https://www.mycc.gov.my/undertaking
39 [2022] 1 CLJ 856.
40 Competition Act, section 44.
41 Competition Act, section 58(2).
42 Competition Act, section 51.
43 Competition Regulations, regulation 6.
44 Competition Regulations, regulation 7.
45 Competition Regulations, regulation 12.
46 Competition Regulations, regulation 13.
47 Competition Regulations, regulation 17.
48 Competition Act, section 58.
49 Competition Act, section 59.
50 Competition Act, section 5.
51 Competition Act, section 6.

52 Competition Act, section 8.
53 Competition Act, section 10(3).
54 Guidelines on Chapter 1 Prohibition, paragraph 3.4.
55 Competition Commission Act 2010, section 39.
56 Competition Commission Act 2010, section 18.
57 https://www.mycc.gov.my/market-review
58 https://www.mycc.gov.my/public-consultation
59 Guidelines on Chapter 1 Prohibition, paragraph 3.11.
60 Competition Act, section 2.
61 Competition Act, section 4(1).
62 Competition Act, section 3.
63 Competition Act, section 4(2) – Horizontal agreements are deemed to have the object of significantly preventing, restricting or distorting competition if they involve price fixing, market sharing, output limitation, or bid rigging.
64 Guidelines on Chapter 1 Prohibition, paragraph 3.14.
65 Competition Act, section 4(1).
66 Guidelines on Chapter 1 Prohibition, paragraph 3.17.
67 Guidelines on Market Definition, paragraph 2.2.
68 Guidelines on Market Definition, paragraph 2.3.
69 Guidelines on Market Definition, paragraph 2.4.
70 Competition Act, section 2.
71 Guidelines on Market Definition, paragraph 3.2.
72 Guidelines on Market Definition, paragraph 3.3.
73 Guidelines on Chapter 1 Prohibition, paragraph 3.17.
74 Guidelines on Market Definition, paragraph 2.6.
75 Guidelines on Intellectual Property Rights and Competition Law, paragraph 6.9.
76 Guidelines on Intellectual Property Rights and Competition Law, paragraph 6.10.
77 Guidelines on Intellectual Property Rights and Competition Law, paragraph 6.12.
78 Guidelines on Intellectual Property Rights and Competition Law, paragraphs 6.16 and 6.18.
79 Competition Act, section 4(1).
80 Competition Act, section 5(c).
81 Competition Act, section 6.
82 Competition Act, section 8.
83 Guidelines on Chapter 1 Prohibition, paragraph 3.17.
84 Guidelines on Chapter 1 Prohibition, paragraph 3.14.
85 Guidelines on Chapter 1 Prohibition, paragraph 3.15.
86 Guidelines on Chapter 1 Prohibition, paragraph 3.19.
87 Guidelines on Chapter 1 Prohibition, paragraph 3.18.
88 Guidelines on Chapter 2 Prohibition, paragraph 3.30.
89 Competition Act, section 10(2)(e).
90 Competition Act, section 10(2)(d).
91 Guidelines on Chapter 2 Prohibition, paragraphs 3.19 and 3.20.
92 Guidelines on Chapter 2 Prohibition, paragraphs 3.22 and 3.23.
93 Guidelines on Chapter 2 Prohibition, paragraph 3.24.
94 Guidelines on Chapter 2 Prohibition, paragraph 3.31.
95 Guidelines on Chapter 2 Prohibition, paragraph 3.30.
96 Guidelines on Chapter 1 Prohibition, paragraph 3.20.
97 Guidelines on Chapter 1 Prohibition, paragraph 3.22.
98 Guidelines on Chapter 1 Prohibition, paragraph 3.23.
99 Competition Act, section 10(1).
100 Competition Act, section 2.
101 Competition Act, section 10(3).
102 Competition Act, section 10(4).
103 Competition Act, section 10(4).
104 Guidelines on Chapter 2 Prohibition, paragraph 2.2.
105 Guidelines on Chapter 2 Prohibition, paragraph 2.18.
106 Guidelines on Chapter 2 Prohibition, paragraph 2.19.
107 Guidelines on Chapter 2 Prohibition, paragraph 2.22.
108 Guidelines on Chapter 2 Prohibition, paragraph 2.15.
109 Competition Act, section 10(1).
110 Competition Act, section 10(2).
111 Competition Act, section 10(3).
112 Competition Act, section 10(3).
113 Guidelines on Chapter 2 Prohibition, paragraph 2.14.
114 Competition Act, section 10(3).
115 Guidelines on Chapter 2 Prohibition, paragraph 5.2.
116 Guidelines on Chapter 2 Prohibition, paragraph 3.7.
117 Competition Act, section 10(1).
118 Guidelines on Chapter 2 Prohibition, paragraph 2.24.
119 Guidelines on Chapter 2 Prohibition, paragraph 2.1.
120 Guidelines on Intellectual Property Rights and Competition Law, paragraph 8.3.
121 Guidelines on Intellectual Property Rights and Competition Law, paragraph 8.4.
122 Guidelines on Intellectual Property Rights and Competition Law, paragraph 6.30.
123 Guidelines on Chapter 2 Prohibition, paragraph 2.5.
124 Guidelines on Chapter 2 Prohibition, paragraph 2.20.
125 Competition Act, section 10(2)(c).
126 Guidelines on Chapter 2 Prohibition, paragraph 3.26.
127 Guidelines on Chapter 2 Prohibition, paragraph 3.27.

Nadarashnaraj Sargunaraj heads the firm's Competition Law practice group and has extensive experience in relation to contentious and non-contentious competition law matters. Raj advised on the merger between Pos Aviation Engineering Services and SIA Engineering, which was cleared by the Malaysian Aviation Commission under the Malaysian Aviation Commission Act 2015. He also regularly advises on individual exemptions under the same Act, including the individual exemption between Malaysia Airlines and Japan Airlines. Raj advised on the merger notification under the Communications and Multimedia Act 1998 for the merger between Digi and Celcom, which was cleared by the Malaysian Communications and Multimedia Commission. In relation to contentious matters, notable engagements include acting for Containerchain Sdn Bhd in its defence against the MyCC's infringement decision (the MyCC fined five firms RM 645,000 for price fixing).
Raj was part of the law reform project team to review the Communications and Multimedia Act 1998 (which has sector-specific competition law) in 2016 to take into account industry developments. He has in-house experience in the automotive sector, where he advised on competition law compliance. Raj started practising in the Dispute Resolution practice group and advised on general litigation, including commercial and corporate disputes.

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