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Act 712

COMPETITION ACT 2010

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COMPETITION ACT 2010

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FIRST SCHEDULE

SECOND SCHEDULE

LAWS OF MALAYSIA**Act 712****COMPETITION ACT 2010**

An Act to promote economic development by promoting and protecting the process of competition, thereby protecting the interests of consumers and to provide for matters connected therewith.

[1 January 2012, P.U. (B) 410/2010]

WHEREAS the process of competition encourages efficiency, innovation and entrepreneurship, which promotes competitive prices, improvement in the quality of products and services and wider choices for consumers:

AND WHEREAS in order to achieve these benefits, it is the purpose of this legislation to prohibit anti-competitive conduct:

NOW, THEREFORE, IT IS ENACTED by the Parliament of Malaysia as follows:

PART I**PRELIMINARY****Short title and commencement**

1. (1) This Act may be cited as the Competition Act 2010.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires—

“agreement” means any form of contract, arrangement or understanding, whether or not legally enforceable, between enterprises, and includes a decision by an association and concerted practices;

“Chairman” means the Chairman of the Commission appointed under the Competition Commission Act 2010 [*Act 713*];

“Commission” means the Competition Commission established under the Competition Commission Act 2010;

“Commission officer” has the same meaning assigned to it in the Competition Commission Act 2010;

“concerted practice” means any form of coordination between enterprises which knowingly substitutes practical co-operation between them for the risks of competition and includes any practice which involves direct or indirect contact or communication between enterprises, the object or effect of which is either—

(a) to influence the conduct of one or more enterprises in a market; or

(b) to disclose the course of conduct which an enterprise has decided to adopt or is contemplating to adopt in a market, in circumstances where such disclosure would not have been made under normal conditions of competition;

“consumer” means any direct or indirect user of goods or services supplied by an enterprise in the course of business, and includes another enterprise that uses the goods or services thus supplied as an input to its own business as well as a wholesaler, a retailer and a final consumer;

“direction” means a direction given by the Commission under Part III or Part IV of this Act;

“document” has the same meaning assigned to it in the Evidence Act 1950 [*Act 56*];

“dominant position” means 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;

“enterprise” means any entity carrying on commercial activities relating to goods or services, and for the purposes of this Act, a parent and subsidiary company shall be regarded as a single enterprise if, despite their separate legal entity, both form a single economic unit within which the subsidiaries do not enjoy real autonomy in determining their actions on the market;

“goods” means property of every kind, whether tangible or intangible and includes—

- (a) all kinds of movable property;
- (b) buildings and other structures;
- (c) vessels and vehicles;
- (d) utilities;
- (e) minerals, trees and crops, whether on, under or attached to land or not;
- (f) animals, including fish; and
- (g) choses-in-action;

“horizontal agreement” means an agreement between enterprises each of which operates at the same level in the production or distribution chain;

“infringement” means an infringement of any prohibition under this Act;

“market” means a market in Malaysia or in any part of Malaysia, and when used in relation to any goods or services, includes a market for those goods or services and other goods or services that are substitutable for, or otherwise competitive with, the first-mentioned goods or services;

“Minister” means the Minister charged with the responsibility for domestic trade and consumer affairs;

“price” includes any form of consideration given in return for any goods or services of any kind, whether such consideration has actually been given or is advertised or stated as being required to be given in exchange for such goods or services;

“prohibition” means any prohibition under this Act;

“publish”, where no mode is specified, means to publish in any form or manner as may be determined by the Commission;

“supply” includes—

- (a) in relation to goods, the supply and resupply, by way of sale, exchange, lease, hire or hire-purchase of the goods; and
- (b) in relation to services, the provision by way of sale, grant or conferment of the services;

“this Act” includes any subsidiary legislation made under this Act;

“vertical agreement” means an agreement between enterprises each of which operates at a different level in the production or distribution chain.

Application

3. (1) This Act applies to any commercial activity, both within and subject to subsection (2), outside Malaysia.

(2) In relation to the application of this Act outside Malaysia, this Act applies to any commercial activity transacted outside Malaysia which has an effect on competition in any market in Malaysia.

(3) This Act shall not apply to any commercial activity regulated under the legislation specified in the First Schedule and the Minister may, by order published in the *Gazette*, amend the First Schedule.

(4) For the purposes of this Act, “commercial activity” means any activity of a commercial nature but does not include—

- (a) any activity, directly or indirectly in the exercise of governmental authority;
- (b) any activity conducted based on the principle of solidarity; and
- (c) any purchase of goods or services not for the purposes of offering goods and services as part of an economic activity.

PART II

ANTI-COMPETITIVE PRACTICES

Chapter 1

Anti-competitive agreement

Prohibited horizontal and vertical agreement

4. (1) A horizontal or vertical agreement between enterprises is prohibited insofar as the agreement has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services.

(2) Without prejudice to the generality of subsection (1), a horizontal agreement between enterprises which has the object to—

- (a) fix, directly or indirectly, a purchase or selling price or any other trading conditions;

- (b) share market or sources of supply;
- (c) limit or control—
 - (i) production;
 - (ii) market outlets or market access;
 - (iii) technical or technological development; or
 - (iv) investment; or
- (d) perform an act of bid rigging,

is deemed to have the object of significantly preventing, restricting, or distorting competition in any market for goods or services.

(3) Any enterprise which is a party to an agreement which is prohibited under this section shall be liable for infringement of the prohibition.

Relief of liability

5. Notwithstanding section 4, an enterprise which is a party to an agreement may relieve its liability for the infringement of the prohibition under section 4 based on the following reasons:

- (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 enterprise concerned to eliminate competition completely in respect of a substantial part of the goods or services.

Individual exemption

6. (1) An enterprise may apply to the Commission for an exemption with respect to a particular agreement from the prohibition under section 4.

(2) The Commission may, by order published in the *Gazette*, grant the exemption if, in the opinion of the Commission, the agreement is one to which section 5 applies.

(3) An exemption granted under this section is referred to as an “individual exemption”.

(4) The individual exemption granted by the Commission may be—

(a) subject to any condition or obligation as the Commission considers it appropriate to impose; and

(b) for a limited duration as specified in the order.

(5) An individual exemption may provide for it to have effect from a date earlier than that on which the order is made.

Cancellation or variation of individual exemption

7. (1) If the Commission is satisfied that—

(a) there has been a material change of circumstance since it granted an individual exemption; or

(b) an obligation has been breached,

the Commission may, by order published in the *Gazette*—

(i) cancel the individual exemption;

(ii) vary or remove any condition or obligation; or

(iii) impose additional condition or obligation.

(2) If the Commission is satisfied that—

(a) the information on which the Commission based its decision to grant an individual exemption is false or misleading in a material particular; or

(b) any condition has been breached,

the Commission may, by order published in the *Gazette*, cancel the individual exemption.

(3) Any action taken by the Commission under subsection (1) shall have effect from the date the order is made.

(4) An individual exemption which is cancelled—

(a) by virtue of paragraph (2)(a) shall be void *ab initio*; or

(b) by virtue of paragraph (2)(b) shall have effect from the date the condition is breached.

Block exemption

8. (1) If agreements which fall within a particular category of agreements are, in the opinion of the Commission, likely to be agreements to which section 5 applies, the Commission may, by order published in the *Gazette*, grant an exemption to the particular category of agreements.

(2) An exemption granted under this section is referred to as a “block exemption”.

(3) An agreement which falls within a category specified in a block exemption is exempt from the prohibition under section 4.

(4) The Commission in granting the block exemption may impose any condition or obligation subject to which a block exemption shall have effect.

(5) A block exemption may provide that—

- (a) if there is a breach of a condition imposed by the block exemption, the Commission may, by notice in writing, cancel the block exemption in respect of the agreement from the date of the breach;
- (b) if there is a failure to comply with an obligation imposed by the block exemption, the Commission may, by notice in writing, cancel the block exemption in respect of the agreement;
- (c) if the Commission considers that a particular agreement is not one to which section 5 applies, the Commission may, by notice in writing, cancel the block exemption in respect of the agreement from such date as the Commission may specify;
- (d) the block exemption shall cease to have effect at the end of a period specified in the order; or
- (e) the block exemption is to have effect from a date earlier than that on which the order is made.

Procedure for block exemption

9. The Commission shall, before granting a block exemption—

- (a) publish details of the Commission's proposed block exemption;
- (b) give at least thirty days from the date of publication to allow any submission to be made by members of the public in relation to the proposed block exemption; and
- (c) give due consideration to any submission made.

Chapter 2

*Abuse of dominant position***Abuse of dominant position is prohibited**

10. (1) An enterprise is prohibited 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.

(2) Without prejudice to the generality of subsection (1), an abuse of a dominant position may include—

(a) directly or indirectly imposing unfair purchase or selling price or other unfair trading condition on any supplier or customer;

(b) limiting or controlling—

(i) production;

(ii) market outlets or market access;

(iii) technical or technological development; or

(iv) 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) any 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.

(3) This section 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.

(4) The fact that the market share of any enterprise is above or below any particular level shall not in itself be regarded as conclusive as to whether that enterprise occupies, or does not occupy, a dominant position in that market.

Chapter 3

Market review

Power to conduct market review

11. (1) The Commission may, on its own initiative or upon the request of the Minister, 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.

(2) The market review includes a study into—

- (a) the structure of the market concerned;

- (b) the conduct of enterprises in the market;
- (c) the conduct of suppliers and consumers to the enterprises in the market; or
- (d) any other relevant matters.

Determination of market review

12. (1) Upon conclusion of the market review, the Commission shall publish a report of its findings and recommendations.

(2) The report of the Commission shall be made available to the public.

Chapter 4

Exclusion

Exclusion

13. (1) The prohibition under Part II shall not apply to the matters specified in the Second Schedule.

(2) The Minister may, by order published in the *Gazette*, amend the Second Schedule.

(3) The Minister shall, before making an amendment to the Second Schedule—

- (a) publish a notice of his intention to make the amendment and the proposed amendment;
- (b) give at least thirty days from the date of the notice to allow any submission to be made by members of the public in relation to the proposed amendment; and
- (c) give due consideration to any submission made.

PART III

INVESTIGATION AND ENFORCEMENT

Investigation by the Commission

14. (1) The Commission may conduct any investigation as the Commission thinks expedient where the Commission has reason to suspect that any enterprise has infringed or is infringing any prohibition under this Act or any person has committed or is committing any offence under this Act.

(2) The Commission shall, on the direction of the Minister, investigate any suspected infringement of any of the prohibition or commission of an offence under this Act.

Complaint to the Commission

15. (1) The Commission may, upon a complaint by a person, conduct an investigation on any enterprise, agreement or conduct that has infringed or is infringing any prohibition under this Act or against any person who has committed or is committing any offence under this Act.

(2) The complaint shall specify the person against whom the complaint is made and details of the alleged infringement or offence under this Act.

Close of an investigation

16. (1) If a complaint has been made to the Commission under section 15 in relation to an infringement, the Commission may make inquiries on the complainant for the purpose of deciding whether the Commission should, in its discretion, investigate the matter.

(2) If the Commission, after such inquiries mentioned in subsection (1), decides not to investigate such complaint, it shall as soon as practicable and in such manner as it thinks fit, inform the complainant of the decision and the reasons for the decision.

(3) Notwithstanding subsections (1) and (2), the Commission may, after deciding to investigate the complaints under section 15, at any time, decide to close an investigation of an infringement under this Act, if the Commission is of the opinion that—

- (a) it would be inappropriate to continue the investigation in view of the provision of an undertaking pursuant to section 43; or
- (b) in all the circumstances the continuation of the investigation would not constitute the making of the best use of the Commission's resources.

(4) When deciding to close an investigation, the Commission shall publish a statement that the investigation has been closed, and set out a brief summary of the Commission's reasons for closing that investigation.

Power of investigation

17. (1) A Commission officer shall have all the powers of investigation and enforcement under this Act.

(2) For the avoidance of doubt, it is declared that for the purposes of this Act, the Commission officer investigating any commission of an offence under this Act shall have all or any of the powers of a police officer in relation to police investigation in seizable cases as provided for under the Criminal Procedure Code [*Act 593*].

Power to require provision of information

18. (1) The Commission may, by notice in writing, require any person whom the Commission believes to be acquainted with the facts and circumstances of the case—

- (a) to provide or produce to the Commission, within the period and in the manner specified in the notice, any information or document which is relevant to the performance of the Commission's powers and functions; or

- (b) to make a statement to the Commission providing an explanation on any information or document referred to in paragraph (a) within the period and in the manner specified in the notice.

(2) Where the Commission directs any person to produce any document under subsection (1) and the person is not in custody of the document, the person shall—

- (a) state, to the best of his knowledge and belief, where the document may be found; and
- (b) identify, to the best of his knowledge and belief, the last person who had custody of the document and to state, to the best of his knowledge and belief, where the last-mentioned person may be found.

(3) Any person required or directed to provide information under subsection (1) or (2) shall ensure that the information provided is true, accurate and complete and such person shall provide an express representation to that effect, including a declaration that he is not aware of any other information which would make the information provided untrue or misleading.

Commission may retain document

19. (1) The Commission may take and retain for such duration as it deems necessary, possession of any document obtained under this Part.

(2) The person who provided the document is entitled to be supplied, as soon as practicable, with a copy certified by the Commission to be a true copy of the document.

(3) Notwithstanding the provisions of any other written law, the certified copy of the document shall be admissible as evidence as if it were the original document.

(4) If the Commission is satisfied that the retaining of the document is no longer necessary, the Commission may, as soon as practicable, return the document to the person who provided the document.

Access to records, etc.

20. (1) A person shall, if at any time directed by the Commission, allow the Commission access to his records, books, accounts or other things for the purposes of carrying out any of the Commission's functions or powers under this Act.

(2) Any person who fails to comply with the direction under subsection (1) commits an offence.

Confidentiality

21. (1) Any person who discloses or makes use of any confidential information with respect to a particular enterprise or the affairs of an individual obtained by virtue of any provision of this Act commits an offence.

(2) Nothing in subsection (1) shall operate to prevent the disclosure of information where—

- (a) the disclosure is made with the consent of the person from whom the information was obtained;
- (b) the disclosure is necessary for the performance of the functions or powers of the Commission;
- (c) the disclosure is reasonably made during any proceedings under this Act provided that such disclosure is not made against any direction by the Commission or the Competition Appeal Tribunal before which the proceedings are taking place;
- (d) the disclosure is made in connection with an investigation of an infringement or an offence under this Act; or
- (e) the disclosure is made with the authorization of the Commission to any competition authority of another country in connection with a request by that country's competition authority for assistance.

(3) For the purposes of this section, "confidential information" means trade, business or industrial information that belongs to any person, that has economic value and is not generally available to or known by others.

Privileged communication

22. (1) No person shall be required, under any provision of this Part, to produce or disclose any communication between a professional legal adviser and his client which would be protected from disclosure in accordance with section 126 of the Evidence Act 1950.

(2) Where—

- (a) the Commission makes a requirement under section 18 of an advocate and solicitor in respect of any information or document; and
- (b) the information or document contains a privileged communication made by or on behalf of or to the advocate and solicitor in his capacity as an advocate and solicitor,

the advocate and solicitor is entitled to refuse to comply with the requirement unless the person to whom or by or on behalf of whom the communication was made or, if the person is a body corporate that is under receivership or is in the course of being wound up, the receiver or the liquidator, as the case may be, agrees to the advocate and solicitor complying with the requirement, but where the advocate and solicitor so refuses to comply with the requirement, the advocate and solicitor shall forthwith furnish in writing to the Commission the name and address of the person to whom or by whom the communication was made.

Giving false or misleading information, evidence or document

23. A person who fails to disclose or omits to give any relevant information or evidence or document, or provides any information, evidence or document that he knows or has reason to believe is false or misleading, in response to a direction issued by the Commission, commits an offence.

Destruction, concealment, mutilation or alteration of records, etc.

24. A person who—

- (a) destroys, conceals, mutilates or alters; or
- (b) sends or attempts to send or conspires with any other person to remove from its premises or send out of Malaysia,

any record, book, account, document, computerized data or other thing kept or maintained with intent to defraud the Commission or to prevent, delay or obstruct the carrying out of an investigation or the exercise of any power by the Commission under this Act commits an offence.

Search and seizure with warrant

25. (1) If it appears to a Magistrate, upon written information on oath from the Commission officer and after such inquiry as the Magistrate considers necessary, that there is reasonable cause to believe that—

- (a) any premises has been used for; or
- (b) there is in any premises evidence necessary to the conduct of an investigation into,

the infringement of any prohibition or the commission of an offence under this Act, the Magistrate may issue a warrant authorizing the Commission officer named in the warrant at any reasonable time by day or night and with or without assistance, to enter the premises and if need be by force.

(2) Without affecting the generality of subsection (1), the warrant issued by the Magistrate may authorize the search and seizure of any record, book, account, document, computerized data or other thing which contains or is reasonably suspected to contain information as to any infringement or offence suspected to have been committed.

(3) A Commission officer conducting a search under subsection (1) may, for the purpose of investigating into the infringement or offence, search any person who is in or on the premises.

(4) A Commission officer making a search of a person under subsection (3) may seize or take possession of, and place in safe custody all things other than the necessary clothing found upon the person, and any of those things which there is reason to believe were the instruments or other evidence of the infringement or offence may be detained until the discharge or acquittal of the person.

(5) Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

(6) If, by reason of its nature, size or amount, it is not practicable to remove any record, book, account, document, computerized data or other thing seized under this section, the Commission officer shall by any means seal such record, book, account, document, computerized data or other thing in the premises or container in which it is found.

(7) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (6) or removes any record, book, account, document, computerized data or other thing under seal or attempts to do so commits an offence.

Search and seizure without warrant

26. If a Commission officer is satisfied upon information received that he has reasonable cause to believe that by reason of delay in obtaining a search warrant under section 25 the investigation would be adversely affected or evidence of the commission of an infringement or offence is likely to be tampered with, removed, damaged or destroyed, the Commission officer may enter the premises and exercise in, upon and in respect of the premises all the powers referred to in section 25 in as full and ample a manner as if he were authorized to do so by a warrant issued under that section.

Access to computerized data

27. (1) Any Commission officer conducting a search under this Act shall be given access to computerized data whether stored in a computer or otherwise.

(2) For the purpose of this section, the Commission officer shall be provided with the necessary password, encryption code, decryption code, software or hardware or any other means required for his access to enable the comprehension of the computerized data.

Warrant admissible notwithstanding defect

28. A search warrant issued under this Act shall be valid and enforceable notwithstanding any defect, mistake or omission therein or in the application for such warrant and any record, book, account, document, computerized data or other thing seized under such warrant shall be admissible in evidence in any proceedings under this Act.

List of record, book, account, etc., seized

29. (1) Except as provided in subsection (2), where any record, book, account, document, computerized data or other thing is seized pursuant to this Act, the Commission officer making the seizure—

(a) shall prepare—

- (i) a list of the record, book, account, document, computerized data or other thing seized and shall sign the list; and
- (ii) a written notice of the seizure containing the grounds for the seizure and shall sign the notice; and

(b) shall, as soon as practicable, serve a copy of the list of the record, book, account, document, computerized data or other thing seized and the written notice of the seizure to the occupier of the premises which have been searched, or to his agent or servant at those premises.

(2) The written notice of the seizure shall not be required to be served pursuant to paragraph (1)(b) where the seizure is made in the presence of the person against whom proceedings under this Act are intended to be taken, or in the presence of the owner of such property or his agent, as the case may be.

(3) If the premises are unoccupied, the Commission officer shall post a copy of the list of the record, book, account, document, computerized data or other thing seized conspicuously on the premises.

Release of record, book, account, etc., seized

30. If any record, book, account, document, computerized data or other thing has been seized under this Act, the Commission officer who effected the seizure may release the record, book, account, document, computerized data or other thing to the person he determines to be lawfully entitled to it, if the record, book, account, document, computerized data or other thing is not otherwise required for the purpose of any proceedings under this Act or for the purpose of any prosecution under any other written law, and in such event neither the Commission officer effecting the seizure, nor the Federal Government, the Commission or any person acting on behalf of the Federal Government or the Commission shall be liable to any proceedings by any person if the seizure and the release of the record, book, account, document, computerized data or other thing had been effected in good faith.

No cost or damages arising from seizure to be recoverable

31. No person shall, in any proceedings before any court in respect of any record, book, account, document, computerized data or other thing seized in the exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of such proceedings or to any damages or other relief unless such seizure was made without reasonable cause.

Obstruction**32.** Any person who—

- (a) refuses any Commission officer access to any premises which the Commission officer is entitled to have under this Act or in the execution of any duty imposed or power conferred by this Act; or
- (b) assaults, obstructs, hinders or delays any Commission officer in effecting any entry which the Commission officer is entitled to effect under this Act or in the execution of any duty imposed or power conferred by this Act,

commits an offence.

Tipping off**33.** (1) Any person who—

- (a) knows or has reasonable grounds to suspect that a Commission officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of this Act and discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation; or
- (b) knows or has reasonable grounds to suspect that a disclosure has been made to a Commission officer under this Act and discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure,

commits an offence.

(2) Nothing in subsection (1) makes it an offence for an advocate and solicitor or his employee to disclose any information or other matter—

- (a) to his client or the client's representative in connection with the giving of advice to the client in the course and

for the purpose of the professional employment of the advocate and solicitor; or

(b) to any person in contemplation of, or in connection with and for the purpose of, any legal proceedings.

(3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any illegal purpose.

(4) In proceedings against a person for an offence under this section, it is a defence to prove that—

(a) he did not know or suspect that the disclosure made under paragraph (1)(b) was likely to prejudice the investigation; or

(b) he had lawful authority or reasonable excuse for making the disclosure.

Threat and reprisal is prohibited

34. (1) No person shall—

(a) coerce or attempt to coerce any person to refrain from doing any act referred to in subsection (3); or

(b) subject any person to any commercial or other disadvantage as a reprisal against the person for doing any act referred to in subsection (3).

(2) For the purposes of and without prejudice to the generality of paragraph (1)(b), the commercial or other disadvantage may include a threat of late payment of amounts properly due to the person, the unreasonable bringing or conduct of litigation against the person, the cancellation of orders with the person, or the diversion of business from, or refusal to trade with, the person.

(3) The acts referred to in subsection (1) are as follows:

(a) making a complaint to the Commission under section 15; and

- (b) co-operating with, or offering or agreeing to co-operate with, the Commission in connection with any investigation by the Commission.

(4) Any person who contravenes this section commits an offence.

PART IV

DECISION BY THE COMMISSION

Interim measures

35. (1) This section applies if the Commission has commenced but not completed an investigation under section 14.

(2) If the Commission has reasonable grounds to believe that any prohibition under this Act has been infringed or is likely to be infringed and the Commission considers that it is necessary for it to act under this section as a matter of urgency for the purpose of—

- (a) preventing serious and irreparable damage, economic or otherwise, to a particular person or category of persons; or
- (b) protecting the public interest,

it may give such direction as it considers to be appropriate and proportionate for that purpose.

(3) A direction given under subsection (2) may include requiring or causing any person—

- (a) to suspend the effect of, and desist from acting in accordance with, any agreement which is suspected of infringing any prohibition under Part II;
- (b) to desist from any conduct which is suspected of infringing any prohibition under Part II; or
- (c) to do, or refrain from doing, any act, but which shall not require the payment of money.

(4) The Commission shall, before giving a direction under subsection (2)—

- (a) serve a written notice to the person to whom it proposes to give the direction; and
- (b) give that person an opportunity to make written representations within a period of at least seven days from the date of the written notice.

(5) A notice under subsection (4) shall indicate the nature of the direction which the Commission proposes to give and its reasons for giving the direction.

(6) The Commission may at any time withdraw a direction given under subsection (2).

(7) Without prejudice to subsection (6), any direction given under subsection (2) shall cease to have effect—

- (a) on the date of the decision by the Commission upon completion of the investigation under section 14; or
- (b) twelve months from the date the direction was given,

whichever is earlier.

Proposed decision by the Commission

36. (1) If, after the completion of the investigation, the Commission proposes to make a decision to the effect that one of the prohibitions under Part II has been or is being infringed, the Commission shall give written notice of its proposed decision to each enterprise that may be directly affected by the decision.

(2) The notice shall—

- (a) set out the reasons for the Commission's proposed decision in sufficient detail to enable the enterprise to whom the notice is given to have a genuine and sufficient prospect of being able to comment on the proposed decision on an informed basis;

- (b) set out any penalties or remedial action that the Commission proposes to apply; and
- (c) inform each enterprise to whom the notice is given that the enterprise may, within such reasonable period as may be specified in the notice—
 - (i) submit written representations to the Commission; and
 - (ii) indicate whether it wishes to make an oral representation before the Commission.

Oral representation

37. If an enterprise informs the Commission, within the period specified in the notice given under section 36 that it wishes to make an oral representation, the Commission shall, before taking any relevant decision—

- (a) convene a session for the oral representation to be held at a date, time and place determined by the Commission; and
- (b) give written notice of the date, time and place to—
 - (i) the enterprise concerned;
 - (ii) any person who had lodged a complaint with the Commission concerning the practice that was the subject of the Commission's investigation; and
 - (iii) any other person whose presence at the session of the oral representation is considered necessary by the Commission.

Conduct of hearings

38. (1) Notwithstanding section 37, the Commission may at any time conduct a hearing for the purpose of determining whether an enterprise has infringed or is infringing any prohibition under Part II.

(2) If the Commission determines that a hearing is to be held, it shall give at least fourteen days notice in writing to the enterprise concerned and to other interested third parties—

- (a) recording its decision to convene the hearing;
- (b) specifying the date, time and place for the holding of the hearing; and
- (c) stipulating the matters to be considered at the hearing.

(3) When the Commission decides to hold a hearing, it shall also decide—

- (a) whether to hold individual hearings with each of the enterprises and any other interested third parties separately or to hold a single hearing attended by all the enterprises involved and the interested third parties; and
- (b) whether to hold a hearing—
 - (i) in public; or
 - (ii) in a closed session, for the purpose of protecting confidential information.

(4) The hearing shall be governed by and conducted in accordance with the procedural rules for the time being in effect, as published by the Commission.

(5) The Commission shall keep a record of the hearing as is sufficient to set out the matters raised by any person participating in the hearing.

(6) An enterprise may be represented at a hearing by—

- (a) any of its authorized officers or employees;
- (b) any advocate and solicitor;
- (c) any person falling within the description specified for that purpose in the Commission's procedural rules; or
- (d) any other person, with the consent of the Chairman.

Finding of non-infringement

39. Where the Commission has made a decision that there is no infringement of a prohibition under Part II, the Commission shall, without delay, give notice of the decision to any person who is affected by the decision stating the facts on which the Commission bases the decision and the Commission's reason for making the decision.

Finding of an infringement

40. (1) If the Commission determines that there is an infringement of a prohibition under Part II, it—

(a) shall require that the infringement to be ceased immediately;

(b) may specify steps which are required to be taken by the infringing enterprise, which appear to the Commission to be appropriate for bringing the infringement to an end;

(c) may impose a financial penalty; or

(d) may give any other direction as it deems appropriate.

(2) The Commission shall, within fourteen days of its making a decision under this Part, notify any person affected by the decision.

(3) The Commission shall prepare and publish reasons for each decision it makes under this section.

(4) A financial penalty shall not exceed ten percent of the worldwide turnover of an enterprise over the period during which an infringement occurred.

Leniency regime

41. (1) There shall be a leniency regime, with a reduction of up to a maximum of one hundred percent of any penalties which would otherwise have been imposed, which may be available in the cases of any enterprise which has—

- (a) admitted its involvement in an infringement of any prohibition under subsection 4(2); and
- (b) provided information or other form of co-operation to the Commission 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.

(2) A leniency regime may permit different percentages of reductions to be available to an enterprise depending on—

- (a) whether the enterprise was the first person to bring the suspected infringement to the attention of the Commission;
- (b) the stage in the investigation at which—
 - (i) an involvement in the infringement was admitted; or
 - (ii) any information or other co-operation was provided; or
- (c) any other circumstances which the Commission considers appropriate to have regard to.

Enforcement of direction or decision

42. (1) The Commission may bring proceedings before the High Court against any person who fails to comply with a direction given by the Commission under section 35 or a decision under section 40.

(2) If the High Court finds that the person referred to in subsection (1) fails to comply with the direction or decision, the High Court shall make an order requiring the person to comply with the direction or decision.

(3) For the purposes of subsection (2), where the High Court finds that the failure to comply with the decision includes a failure to pay a penalty within the specified period, the High Court shall, in addition to ordering that person to pay the penalty, order the person to pay interest at the normal judgment rate running from the day following that on which the payment was due.

(4) Any breach of an order of the High Court made pursuant to this section shall be punishable as a contempt of court.

Power to accept undertaking

43. (1) The Commission may, subject to the conditions that the Commission may impose, accept from an enterprise an undertaking to do or refrain from doing anything as the Commission considers appropriate.

(2) If the Commission accepts an undertaking under subsection (1), the Commission shall, in relation to an infringement, close the investigation without making any finding of infringement and shall not impose a penalty on the enterprise.

(3) Any undertaking accepted by the Commission under this section shall be a document available for inspection by the public in a manner determined by the Commission.

(4) The provisions of any undertaking accepted by the Commission under this section shall be enforceable by the Commission as though those provisions had been set out in a decision given to the enterprise providing that undertaking pursuant to section 40.

PART V

COMPETITION APPEAL TRIBUNAL

Establishment of the Competition Appeal Tribunal

44. There is established a Competition Appeal Tribunal, which shall have exclusive jurisdiction to review any decision made by the Commission under sections 35, 39 and 40.

Constitution of the Competition Appeal Tribunal

45. (1) The Competition Appeal Tribunal shall consist of the following members:

(a) a President; and

(b) between seven and twenty other members appointed by the Prime Minister on the recommendation of the Minister.

(2) The Prime Minister shall, on the recommendation of the Minister, upon nomination by the Chief Justice of the Federal Court, appoint a judge of the High Court to be the President of the Competition Appeal Tribunal.

(3) The Prime Minister shall appoint persons who, in his opinion, have relevant expertise in industry, commerce, economics, law, accountancy or consumer affairs to be members of the Competition Appeal Tribunal.

(4) In recommending the members of the Competition Appeal Tribunal to the Prime Minister, the Minister shall consider proposals and recommendations by any Government agency or any other body having expertise in any matter referred to in subsection (3).

(5) The President and members of the Competition Appeal Tribunal shall hold office for a term not exceeding six years.

Allowances

46. The President and members of the Competition Appeal Tribunal appointed under section 45 may be paid—

- (a) a daily sitting allowance during the sitting of the Competition Appeal Tribunal;
- (b) a lodging, travelling and subsistence allowance; and
- (c) such fixed allowances or other allowances,

as the Minister may determine.

Resignation and revocation of appointment

47. (1) The President or any other member of the Competition Appeal Tribunal may resign his office by giving sixty days' written notice to the Prime Minister.

(2) The Prime Minister may, at any time, revoke the appointment of the President or any other member of the Competition Appeal Tribunal if—

- (a) he is of unsound mind or otherwise incapable of performing his duties or managing his affairs;
- (b) he becomes bankrupt or insolvent;
- (c) there has been proved against him, or he has been convicted on, a charge in respect of—
 - (i) an offence involving fraud, dishonesty or moral turpitude;
 - (ii) an offence under any law relating to corruption; or
 - (iii) any other offence punishable with imprisonment (in itself only or in addition to or in lieu of a fine) for more than two years;

- (d) he is guilty of serious misconduct in relation to his duties;
- (e) he fails to comply with his obligations under section 49;
or
- (f) his performance has been unsatisfactory for a significant period of time.

Vacation of office and new or temporary appointment

48. (1) The office of the President or any other member of the Competition Appeal Tribunal shall be vacated if—

- (a) he dies;
- (b) he resigns or otherwise vacates his office before the expiry of the term for which he is appointed; or
- (c) his appointment is revoked under section 47.

(2) The Prime Minister shall appoint another person in accordance with section 45 to replace the President or any other member of the Competition Appeal Tribunal during the vacancy in the office of the President or member of the Competition Appeal Tribunal.

(3) The Prime Minister may appoint temporarily another person in accordance with section 45 to act as the President or any other member of the Competition Appeal Tribunal—

- (a) during any period when the President or a member is absent from duty or from Malaysia; or
- (b) if the President or a member is, for any other reason, unable to perform the duties of his office temporarily.

(4) No act done or proceedings taken by the Competition Appeal Tribunal in exercise of its powers or the performance of its functions shall be affected on the ground of any vacancy in the membership of the Competition Appeal Tribunal.

Disclosure of interest

49. (1) A member of the Competition Appeal Tribunal shall disclose, as soon as practicable, to the President any interest, whether substantial or not, which may be in conflict with the member's duties as a member of the Competition Appeal Tribunal in a particular matter.

(2) If the President is of the opinion that the member's interest is in conflict with the member's duties as a member of the Competition Appeal Tribunal, the President shall inform all the parties to the matter of the conflict.

(3) If none of the parties to the matter objects to the conflict, the member may continue to execute duties as a member of the Competition Appeal Tribunal in relation to that matter.

(4) If a party to the matter objects to the conflict, the member of the Competition Appeal Tribunal shall not continue to execute his duties as a member of the Competition Appeal Tribunal in relation to that matter.

(5) If the member is prohibited from executing his duties under subsection (4), the President shall appoint another member of Competition Appeal Tribunal to execute the duty in relation to that matter.

(6) If the President has any interest, whether substantial or not, which may be in conflict with his duty as the President of the Competition Appeal Tribunal in a particular matter, he shall refrain from executing his duty as the President in relation to that matter.

(7) The failure of the President to refrain from executing his duty under subsection (6) or the failure of a member to disclose his interest shall—

- (a) invalidate the decision of the Competition Appeal Tribunal unless all parties agree to be bound by the decision; and
- (b) subject the President or the member to the revocation of his appointment under section 47.

Secretary to the Competition Appeal Tribunal and other officers

50. (1) The Minister shall appoint a Secretary to the Competition Appeal Tribunal.

(2) The Minister may designate such number of public officers as the Minister thinks fit to assist the Secretary.

(3) For the purpose of this Act, the Secretary and the officers designated under subsection (2) shall be deemed to be officers of the Competition Appeal Tribunal.

Appeal to the Competition Appeal Tribunal

51. (1) A person who is aggrieved or whose interest is affected by a decision of the Commission under section 35, 39 or 40 may appeal to the Competition Appeal Tribunal by filing a notice of appeal to the Competition Appeal Tribunal.

(2) A notice of appeal shall be made in writing to the Competition Appeal Tribunal within thirty days from the date of the decision of the Commission and the appellant shall give a copy of the notice to the Chairman of the Commission.

(3) The notice of appeal shall state in summary form the substance of the decision of the Commission appealed against, shall contain an address at which any notices or documents connected with the appeal may be served upon the appellant or upon his advocate and shall be signed by the appellant or his advocate.

Record of decision of the Commission

52. (1) The aggrieved person or the person whose interest is affected referred to in section 51 may, on his own initiative, request in writing to the Commission for a statement of the grounds of the decision of the Commission.

(2) Subject to subsection (3), the Commission shall, upon receiving the written request under subsection (1), provide a copy of the statement of its grounds to the aggrieved person or the person whose interest is affected upon payment of the prescribed fee.

(3) When a notice of appeal has been filed with the Competition Appeal Tribunal under section 51, the Commission shall, if it had not already written its grounds for its decision on the matter stated in the notice as requested by the appellant under subsection (1), record in writing its grounds for its decision and the written grounds shall form part of the record of the proceedings before the Competition Appeal Tribunal.

Stay of decision pending appeal

53. (1) Pending the decision of an appeal by the Competition Appeal Tribunal, a decision of the Commission shall be valid, binding and enforceable except where a stay of the decision of the Commission has been applied for by the appellant and granted by the Competition Appeal Tribunal.

(2) An application for a stay of decision shall be in writing and shall be made to the Competition Appeal Tribunal on or after the day on which the notice of appeal has been filed with the Competition Appeal Tribunal.

Composition of the Competition Appeal Tribunal

54. Every proceeding of the Competition Appeal Tribunal shall be heard and disposed of by three members or such greater uneven number of members of the Competition Appeal Tribunal as the President may in any particular case determine.

Sitting of the Competition Appeal Tribunal

55. (1) The Competition Appeal Tribunal shall sit on such dates and at such places as the President may from time to time determine.

(2) The President may cancel or postpone any sitting of the Competition Appeal Tribunal and may change the place of the sittings which has been determined under subsection (1).

(3) Any change to the date or place of any sitting of the Competition Appeal Tribunal shall be informed to the parties to the appeal by a written notice.

Procedure of the Competition Appeal Tribunal

56. The Competition Appeal Tribunal shall decide its own procedure.

Powers of the Competition Appeal Tribunal

57. (1) The Competition Appeal Tribunal shall have power—

- (a) to summon parties to the proceedings or any other person to attend before it to give evidence in respect of an appeal;
- (b) to procure and receive evidence on oath or affirmation, whether oral or documentary, and examine all such persons as witnesses as it considers necessary;
- (c) where a person is so summoned, to require the production of any information, document or other thing in his possession or under his control which the Competition Appeal Tribunal considers necessary for the purposes of the appeal;
- (d) to administer any oath, affirmation or statutory declaration, as the case may require;
- (e) where a person is so summoned, to allow the payment for any reasonable expenses incurred in connection with his attendance;
- (f) to admit evidence or reject evidence adduced, whether oral or documentary, and whether admissible or inadmissible under the provisions of any written law for the time being in force relating to the admissibility of evidence; and
- (g) to generally direct and do all such matters as may be necessary or expedient for the expeditious decision of the appeal.

(2) The Competition Appeal Tribunal shall have the powers of a subordinate court under the Subordinate Courts Act 1948 [Act 92] with regard to the enforcement of attendance of witnesses, hearing evidence on oath or affirmation and punishment for contempt.

Decision of the Competition Appeal Tribunal

58. (1) The decision of the Competition Appeal Tribunal, on any matter, shall be decided on a majority of the members.

(2) The Competition Appeal Tribunal may confirm or set aside the decision which is the subject of the appeal, 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.

(3) A decision of the Competition Appeal Tribunal is final and binding on the parties to the appeal.

Enforcement of decision of the Competition Appeal Tribunal

59. A decision given by the Competition Appeal Tribunal may, by leave of the High Court, be enforced in the same manner as a judgment or order to the same effect, and where leave is so given, judgment may be entered in terms of the decision.

Protection against suit and legal proceedings

60. No action, suit, prosecution or other proceedings shall lie or be brought, instituted or maintained in any court against—

- (a) the Competition Appeal Tribunal;
- (b) the President or any member of the Competition Appeal Tribunal;

- (c) the Secretary or any other officer of the Competition Appeal Tribunal; or
- (d) any person authorized to act for and on behalf of the Competition Appeal Tribunal,

in respect of any act or omission done or omitted by him or it in good faith in such capacity.

PART VI

GENERAL

General penalty

61. Any person who commits an offence under this Act for which no penalty is expressly provided shall, on conviction, be liable—

- (a) if such person is a body corporate, to a fine not exceeding five million ringgit, and for a second or subsequent offence, to a fine not exceeding ten million ringgit; or
- (b) if such person is not a body corporate, to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both, and for a second or subsequent offence, to a fine not exceeding two million ringgit or to imprisonment for a term not exceeding five years or to both.

Compounding of offences

62. (1) The Minister may, by regulations, prescribe any offence to be a compoundable offence and may prescribe the manner in which offences may be compounded.

(2) The Commission may, with the consent in writing of the Public Prosecutor, compound any offence committed by any person under this Act and prescribed to be a compoundable offence by making a written offer to the person suspected to have

committed the offence to compound the offence upon payment to the Commission of an amount of money not exceeding fifty per centum of the amount of maximum fine for that offence within such time as may be specified in the written offer.

(3) An offer under subsection (2) may be made at any time after the offence has been committed but before any prosecution for it has been instituted, and if the amount specified in the offer is not paid within the time specified in the offer or such extended time as the Commission may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (2), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made, and any record, book, account, document, computerized data or other thing seized in connection with the offence may be released by the Commission, subject to such terms and conditions as the Commission thinks fit to impose in accordance with the conditions of the compound.

(5) All sums of money received by the Commission under this section shall be paid into the Federal Consolidated Fund.

Offences by body corporate

63. (1) If a body corporate commits an offence under this Act, any person who at the time of the commission of the offence was a director, chief executive officer, chief operating officer, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management—

- (a) may be charged severally or jointly in the same proceedings with the body corporate; and

(b) if the body corporate is found to have committed the offence, shall be deemed to have committed that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—

(i) that the offence was committed without his knowledge, consent or connivance; and

(ii) that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

(2) If any person would be liable under this Act to any punishment or penalty for his act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any employee or agent of his, or of the employee of the agent, if the act, omission, neglect or default was committed—

(a) by that person's employee in the course of his employment;

(b) by the agent when acting on behalf of that person; or

(c) by the employee of the agent in the course of his employment by the agent or otherwise on behalf of the agent acting on behalf of that person.

Rights of private action

64. (1) 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 action for relief in civil proceedings in a court under this section against any enterprise which is or which has at the material time been a party to such infringement.

(2) The action may be brought by any person referred to in subsection (1) regardless of whether such person dealt directly or indirectly with the enterprise.

Power to make regulations

65. (1) The Minister may make such regulations as may be necessary or expedient for—

- (a) giving full effect to the provisions of this Act;
- (b) carrying out or achieving the objects and purposes of this Act; and
- (c) providing for any supplemental, incidental or consequential matters in relation to this Act.

(2) The Minister may, before making such regulations—

- (a) publish a notice of his intention to make the proposed regulations;
- (b) give at least thirty days from the date of the notice to allow any submission to be made by members of the public in relation to the proposed regulations; and
- (c) give due consideration to any submission made.

(3) The regulations made under this section may prescribe for any act or omission in contravention of the regulations to be an offence and may prescribe for penalties of a fine not exceeding one million ringgit or imprisonment for a term not exceeding five years or to both.

Power to issue guidelines

66. (1) The Commission may issue and publish such guidelines as may be expedient or necessary for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Commission may issue—

- (a) guidelines on the economic and legal analysis to be used in determining cases under this Act; and

- (b) guidelines on the principles to be used in determining any penalty or remedy imposed under this Act.

(3) The Commission may revoke, vary, revise or amend the whole or any part of any guidelines issued under this section.

Public Authorities Protection Act 1948

67. The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceedings against the Commission, the Chairman, any Commission officer, any member, officer, servant or agent of the Commission, the President, the Secretary or any member, officer, servant or agent of the Competition Appeal Tribunal in respect of any act, neglect or default done or omitted by him or it in such capacity.

FIRST SCHEDULE

[Section 3]

1. Communications and Multimedia Act 1998 [*Act 588*]
 2. Energy Commission Act 2001 [*Act 610*]
 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 legislations are directly in connection with upstream operations comprising the activities of exploring, exploiting, winning and obtaining petroleum whether onshore or offshore of Malaysia.
 4. Malaysian Aviation Commission Act 2015 [*Act 771*].
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SECOND SCHEDULE

[Section 13]

Activities not subject to Chapters 1 and 2 of Part II

Chapters 1 and 2 of Part II of this Act shall not apply to—

- (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 prohibition under Chapter 1 and Chapter 2 of Part II would obstruct the performance, in law or in fact, of the particular tasks assigned to that enterprise.
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LAWS OF MALAYSIA**Act 712****COMPETITION ACT 2010****LIST OF AMENDMENTS**

Amending law	Short title	In force from
P.U. (A) 384/2013	Competition (Amendment of First Schedule) Order 2013	01-01-2014
P.U. (A) 44/2016	Competition (Amendment of First Schedule) Order 2016	01-03-2016

LAWS OF MALAYSIA**Act 712****COMPETITION ACT 2010****LIST OF SECTIONS AMENDED**

Section	Amending authority	In force from
First Schedule	P.U. (A) 384/2013	01-01-2014
	P.U. (A) 44/2016	01-03-2016
