

# LAW & PRACTICE

## Critical Analysis and Legal Reasoning

SYLVIA KIERKEGAARD (ed.)

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# Law & Practice: Critical Analysis and Legal Reasoning

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## **Competition Law in Malaysia: Issues and Challenges in regulating market behaviour**

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**Abstract.** The fundamental objective of competition law is to protect the process of rivalry between firms in the market. It prohibits any anti-competitive behaviour such as cartel, abuse of dominant position and mergers that have the effect of lessening competition. However, in practice regulating firms' behaviours in the market is not an easy task. It requires both legal and economic analysis to determine which conducts are or are not allowed under the competition law regime. This paper seeks to identify and analyse the important provisions of "anti-competitive agreements" and "abuse of dominant position" under the Malaysian Competition Act 2010 (CA). It is observed that the CA has been heavily influenced by the UK and EU competition law. Despite the similar concepts applied, the actual implementation of the law may differ. This paper seeks to explore the issues and challenges that the Malaysian competition authority might be facing in enforcing competition rules which are largely drawn from foreign ideas.

### **1. Introduction**

There are now more than 100 countries that have adopted competition law in the world. As countries globalised and open their markets, increasing numbers of nations have now enacted and implemented competition law. The key objective of competition law is to regulate the firm's behaviour in the market to ensure efficient allocation of resources and to protect consumer's welfare. It aims to promote competitive forces in the market by dismantling anti-competitive conducts and eliminate exploitation of dominant market players. It has been long established that a competitive market would lead to maximum welfare for both consumers and producers, especially in terms of lower price, greater choices and quality, innovation and cost efficiency.

However, regulating firm's behaviour is not easy. There is a possibility of under-inclusiveness (that is, that anti-competitive behaviour will be found not to be illegal) or over-inclusiveness (that is, that pro-competition behaviour will be found illegal). This dilemma arises because dominant market power is undesirable. The competition authority needs to differentiate whether certain conducts are the result of anti-

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