



Competition Law in Malaysia

Nasarudin Abdul Rahman & Haniff Ahmad



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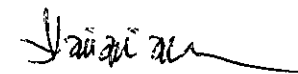
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Preface

The market is a very important component within the society. The market has great influence on the society as it is where goods and services change hands and wealth is created. Regulating competition in the market against anti-competitive behaviour which includes cartels will thus be very important to everyone. Since the entry into force of the Competition Act 2010 in Malaysia on January 1, 2012, the law regulating market competition in the country has experienced a metamorphosis moving from a piecemeal state to a comprehensive legal framework, complete with its substantive rules, procedural requirements, administrative provisions and more importantly sophisticated institutions, namely the Malaysian Competition Commission (MyCC) and the Competition Appeal Tribunal (CAT). Before 2012, the known legal provisions on competition are limited to very few sectors such as the Communications and Multimedia Act 1998 which is addressed to a limited extent by this book. With the introduction of the Competition Act 2010, a statute that prohibits anti-competitive agreement and abuse of dominant position in the overall economy came into existence.

Over a short period of time, interest in competition law has soared, not only among government officials, regulators, lawyers, economists and members of the business community, but also members of the public. Thanks to the advocacy work of various parties, particularly the MyCC, the SMEs are beginning to be exposed to the law as well.

However, just as the other newly introduced fields of law, competition law faces challenges in many ways. The preparedness of Malaysia in enforcing the law is now being watched by stakeholders and spectators in Malaysia and beyond. Tracking the development of the law, this book presents a humble expression of knowledge that elucidates the background surrounding the Competition Act 2010. It analyses the content of the 2010 Act despite the limited availability of case law on its main principles. The analysis takes into account the fact that many facets of the 2010 Act were influenced by the European Union (EU) law, hence the heavy presence of EU case law throughout the book. The authors of this book are always aware that law interacts with economics very closely in competition law. As the authors are not trained in economics, the discussion on various microeconomic concepts in this book is an attempt to see them from a lawyer's perspective, although oversimplification is something that the authors have tried very hard to avoid.

One of the biggest challenges in the making of this book is to keep abreast with the latest developments. On February 4, 2016, the MyCC's infringement findings in the MAS-AirAsia case (which concerns anti-competitive agreement) were set aside by the CAT. Although not included in this book, this development will have an effect on the analysis of anti-competitive agreement in Chapter 4 of this book which alludes to the MyCC's decision that found that both MAS and AirAsia had infringed section 4 of the Competition Act 2010 which prohibits anti-competitive agreement. The grounds of the CAT decision were not publicly available at the time of the writing of this book.

Further, the government has already expressed its intention to amend the Competition Act 2010. It is, however, hoped that amendment of the substantive concepts or provisions will be limited in scope and that the focus of the amendments would rather be on procedural provisions.

There are a number of non-infringement decisions by the MyCC which have not been included in this book. They are the MyCC's findings of non-infringement in favour of (i) members of the Sarawak Restaurants Association, (ii) Federation of Stationers and Booksellers Association of Malaysia, and (iii) Nova Century Development Sdn Bhd (for Pangsapuri Perdana, Selayang). These findings were an exercise of the MyCC's powers pursuant to the Competition Act 2010 as well as the Competition Commission Act 2010. The rationale for their non-inclusion is that these decisions were rather straightforward and did not contribute to new legal analysis of the relevant provisions of the Competition Act 2010.

Finally, the authors admit that coming out with a book on law which is at its nascence means we have to take the risk of making unintended mistakes. It was a difficult decision for us as we anticipate readers to critique our work professionally; thus with much humility, we acknowledge that all errors and mistakes in this book are totally ours. We express our heartfelt gratitude to our family members, friends, colleagues and student assistants for lending their hands to us in making this book a successful project. Our many thanks also go to Kevin Ooi and Leena Sammugam of Sweet & Maxwell for editing and commenting on the manuscript, and patiently waiting for the numerous drafts and comments to be incorporated into this book.

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Gombak, Malaysia

February 2016

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