

# The Dawn of Merger Control in Malaysia (MyCC's Proposals to Amend the Competition Act 2010)

As indicated in numerous press statements<sup>1</sup> issued by the Malaysia Competition Commission ("MyCC") in recent years, MyCC is undertaking an exercise to amend the **Competition Act 2010** ("CA 2010"), most notably to introduce a general merger control regime in Malaysia and to enhance its powers under the CA 2010.

On 25 April 2022, MyCC commenced a public consultation on the proposed amendments to the CA 2010 ("the Proposals"), inviting the public and relevant stakeholders to provide their views and feedback on the Proposals.

According to MyCC, the Proposals are intended to bring Malaysian competition law *"in line with international best practice standard (sic)"* and to enable MyCC to *"effectively perform its statutory functions"* as a competition law regulator.

Some of the more significant Proposals made by MyCC are as follows (this is just a selection and not an exhaustive list):

## a) The introduction of a merger control regime

MyCC has proposed a merger control regime which prohibits mergers or anticipated mergers that may result in a ***"substantial lessening of competition (SLC)"*** in any market for goods or services in Malaysia. The SLC test is the test adopted in the competition and antitrust assessment of mergers in many other jurisdictions including the EU.

Under the new merger control regime proposed by MyCC, it will be mandatory for enterprises to notify MyCC of any anticipated merger that, if consummated, exceeds the prescribed threshold. For mergers that do not exceed the

## Competition Law Update

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threshold prescribed in the CA 2010, enterprises may choose to file a voluntary notification for the purpose of commercial certainty.

Upon the conclusion of its merger review, the Proposals envisage that MyCC will have the power to issue a clearance decision for the merger/anticipated merger to proceed. Alternatively, MyCC may require that the anticipated merger be ceased immediately and may impose a financial penalty of up to 10% of the enterprise's worldwide turnover for the duration of the infringement.

## b) The proposal to amend section 43 of the CA 2010 — Power to accept undertakings in MyCC's investigations

MyCC has proposed that undertakings may only be accepted:

- i. for an infringement under section 4 or a prohibition under section 10 of CA 2010; and
- ii. **before** the issuance of MyCC's proposed decision following an investigation.

In our view, the Proposals to amend section 43 of the CA 2010 is particularly regressive and will discourage settlements in the future.

## c) The introduction of a whistleblower regime

MyCC has proposed a new whistleblower regime to encourage individuals to assist in its investigations by sharing relevant information with MyCC. It is unclear how this provision will sit with the general legislation in the **Whistleblower Protection Act 2010**.

## Our Team's Experience in Handling Merger Control Work

Our team handled Malaysia's first successful merger control notification under the **Malaysian Aviation Commission Act**

**2015** for the merger of Korean Air Lines Co. Ltd and Asiana Airlines Inc which was approved by the Malaysian Aviation Commission (“MAVCOM”) in September 2021. The test adopted by MAVCOM under the Malaysian Aviation Commission Act 2015 is to prohibit mergers which result in SLC in the relevant market, which is the same test contained in MyCC’s Proposals. To read the final MAVCOM decision, please click [here](#).

If you or your company have any questions or concerns in relation to the Proposals, or wish to make any representations to MyCC, please let us know as soon as possible and in any event no later than **25 May 2022** as MyCC’s deadline is 27 May 2022.

Please note that the Bill containing the Proposals has not yet been released. Hence, the foregoing is only a selection of some of the Proposals which have been made and is not exhaustive.

Kindly register your interest to receive more information on the seminars and events to be done by Shearn Delamore & Co. to update clients on developments in the area of merger control by contacting Mr. Anand Raj at [anand@shearndelamore.com](mailto:anand@shearndelamore.com).

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<sup>1</sup><https://tinyurl.com/2sp8y6ax>;  
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