



## COMPETITION ACT 2010 & THE OIL AND GAS INDUSTRY

The Competition Act 2010 prohibits anti-competitive agreements and the abuse of dominant position in the market. Competition law regulates (or rather protects) competition in the market by promoting economic efficiency, consumer welfare, and market participation, among others.

Section 3 of Competition Act (CA) 2010 outlines that this Act applies to any commercial activity within and outside Malaysia which has an effect on competition in any market in Malaysia.

There are two types of prohibition under CA 2010 and these are the Chapter 1 Prohibition, outlining **anti-competitive agreements** and Chapter 2 Prohibition which prohibits the **abuse of dominant position**.

An anti-competitive is an agreement between enterprises which operates at the same level or different levels in the production or distribution chain for goods or services that has the objective of significantly preventing, restricting or distorting competition in the market.

One significant example of anti-competitive agreement practice is cartels. Cartels can take form in an arrangement between competing firms designed to limit or eliminate competition between them.

In Oil and Gas industry, cartel activities may happen in some commercial activities. Examples of cartel activities in this industry includes price fixing, output limitation, bid rigging and information sharing.



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. In Chapter 2 Prohibition, dominant position in CA 2010 means an enterprise with significant market power engaging in any conduct that can distort the competitive process without reasonable commercial justification.

Abuse in dominant position in Oil and Gas industry transpires in few activities such as predatory pricing, strategic reserve manipulation and limiting infrastructure access.

It is sufficient to demonstrate that there is an anti-competitive effect which may potentially exclude competitors who are at least as efficient as the dominant enterprise.

Justifications for both Chapters' infringement rests on the basis of benefits and efficiency. For Chapter 1, there are four requirements to fulfill:

- Significant identifiable technological, efficiency or social benefits
- Benefits could not reasonably have been provided by the parties to the agreement without the anti competitive agreement
- Proportionate
- Does not allow the enterprise concerned to eliminate competition completely in respect of a substantial part of the goods or services

For Chapter 2, abusive conduct can be justified by reasonable commercial justification or reasonable commercial response to competitor.





Dominant enterprise may justify conduct leading to foreclosure of competitors on the ground of efficiencies that are sufficient to guarantee that no net harm to consumers is likely to arise.

In our country, Malaysia Competition Commission (MyCC) was established on 1 April 2011 with the purpose of enforcing the CA 2010. The MyCC can initiate an action against enterprises who infringes the Act through information and complaints received from consumers, including other enterprises, and the general public, on condition that the information and complaints give rise to suspicion of an infringement. The Commission will also take action;

- in accordance with the Minister's instruction; or
- on its own initiative after conducting a market review

Businesses in the oil and gas industry should be aware of the competition law issues and take steps to comply with the law.

- Have a clear understanding of the competition law rules
- Get legal advice before entering into any agreements with competitors
- Be aware of the potential for conflicts of interest
- Report any suspected anti-competitive behavior to the competition law authorities



Vigorous competition in the oil and gas industry is essential to the health of the country's economy. Not only does it promote greater economic welfare, it also strengthens firms' ability to meet the challenges of an increasingly competitive international marketplace. An effective and well understood competition law makes a vital contribution to this goal.

### Author



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### About Us

We are a firm comprising a young and energetic team with experience, industry knowledge and commercial pragmatism. Our key areas of practice include, but not limited to corporate restructuring and acquisitions, construction and engineering disputes, employment law, commercial and civil litigation and administration of estates.

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