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Interaction Between Competition and Industrial Policies

Contribution

Malaysia Competition Commission

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Contribution by
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(a) What is the role that competition authorities can play for Governments to better deal with recent economic changes, such as digitalization, sustainable development, and the economic crisis?

1. Given the circumstances of the economic changes due to the digitalization, sustainable development, and the economic crisis, it is crucial for the competition authorities to play a role as facilitator that aims to improve the welfare of the people. Therefore, the competition authority may adopt both policy and enforcement routes in dealing with the recent economic changes.
2. In terms of digitalization, competition authorities play a critical role to stimulate competition and innovation among the industry players. In this context, Malaysia Competition Commission (MyCC) has been given a responsibility to ensure efficient and effective implementation as well as enforcement of the competition policies and laws in order to achieve level playing field in the digital economy under the Malaysia Digital Economy Blueprint.¹ Thus, besides carrying out its enforcement power, MyCC is tasked to assess the impact on competition in formulating laws and policies related to digitalization. Nevertheless, as the digitalization is a dynamic process, a careful assessment needs to be adopted to ensure the market can grow and prosper within the boundary of fair competition. Hence, one of the strategies that is stipulated by the MyCC in its Strategic Plan 2021-2025 is to carry out market study to develop understanding and identify potential competition concern in the digital economy specifically in the e-commerce sectors and other digital markets.²
3. In terms of sustainable development, competition authority should convey the message to the stakeholders on the importance of competition policy and law towards sustainability initiatives. One of the messages that is important to be communicated to the policymakers is the important role by the competition authorities to ensure the objective of sustainability in creating green environment can be

¹ Malaysia Digital Economy Blueprint.

<https://www.epu.gov.my/sites/default/files/2021-02/malaysia-digital-economy-blueprint.pdf> , page 54

² MyCC Strategic Plan 2021 – 2025.

https://mycc.gov.my/sites/default/files/pdf/newsroom/MyCC%20Strategic%20Plan%20Eng_Public%20Ver-21012022.pdf, page 23

achieved by enforcing the law in the event there are any potential infringement among the industry players to collude against the initiative to reduce the carbon emission and improve energy efficiency. Besides that, competition authority may assess the merit of the agreement among the players which may carry a greater benefit to the sustainability which are widely applied to the aspect of the environment and society. Moreover, in Malaysia, if the players may prove the cumulative effect of an agreement as per required under section 5 of the Competition Act 2010, the MyCC may grant either individual or block exemption to those players.

4. The recent global economic downturn stemming from the outbreak of the Covid-19 pandemic has naturally sparked the discussion regarding the role of competition authorities in fostering economic recovery after an economic crisis. The devastating impact of the pandemic on the local economy, especially among the more vulnerable rural entrepreneurs, include the disruption of business operation, fall in demand, shortage of logistic supply, increase in the production cost as well as the prolonged closure of premises. Thus, this unique situation might warrant an exemption, on the discretion of the competition authority and strictly on case-by-case basis, that certain coordination among the competing rural entrepreneurs or small-medium-enterprises (SMEs) might be permissible to enhance and accelerate economic recovery. In addition, the enforcement of competition law may provide a shield to the small players especially during the crisis whereby it protects them from being abused by the dominant player in the market, considering their hard-pressed situation.

(b) What are the challenges that competition authorities, particularly recently established ones, face in applying competition policies on industrial policies? What are the solutions to these challenges?

5. There are several challenges faced by the established competition authorities in applying competition policies on industrial policies. First, the challenge is a consequence of the perception on the incompatibility of the competition policies on industrial policies due to the view that the competition policy is regarded as liberalization policy meanwhile industrial policy is viewed as a protectionist policy. In addition, if the industrial policy is established earlier than the competition policy and authorities, it becomes a psychological struggle due to the establishment of the latter to be perceived as a challenge to the status quo of the former.
6. Second, stemming from the first factor, it affects the awareness and understanding of the policymakers and stakeholders on the role of competition policy in achieving the objective of industrial policy. Subsequently, it affects the degree of competition awareness and understanding by the policy makers in formulating and reviewing the industrial policy.
7. Based on the above challenges, it can be addressed via policy and advocacy route. First, via the policy route, competition authorities could work closely with other regulatory bodies responsible for industrial policy to ensure that competition concerns are taken into account when industrial policies are formulated. In the Malaysian context, the MyCC has been interacting closely with other government agencies, regulators, and ministries by issuing policy advice that has influenced senior officials, ministries, and policymakers positively and resulted in important changes in the policy approach and objectives, especially when these advices were provided early in the policy development process.
8. Second, via the advocacy route, the constant engagement with the industrial policymakers by the competition authorities are crucial to raise awareness on the competition policy as a part of an instrument to stimulate the growth of the industry. In addition, this engagement

may reduce the misconception about the conflicting objectives between industrial and competition policy among the stakeholders.

(c) How can the interaction frameworks and mechanisms between competition authorities and industrial policymakers be improved?

9. There are some ways in which interaction frameworks and mechanisms between competition authorities and industrial policymakers can be improved.
10. First, regular coordination and collaboration between competition authorities and industrial policymakers are crucial to identify competition concern, design a competition-biased policy and review the current policy whether it stimulates or limits the competition process in the market. For instance, MyCC has collaborated with Malaysia Productivity Corporation (MPC) to integrate the Competition Impact Assessment (CIA) framework into the Regulatory Impact Assessment (RIA) in reviewing existing and proposed policy, law and regulations.³ This integration aims to design a pro-competitive industrial policy to strive for productivity, even though at the initial stage, a degree of protectionism cannot be avoided. Hence, a timeframe must be clearly stipulated to ensure that the industrial policy should not result in the creation of a single provider or high market concentration in the long run. In Malaysia, the element of CIA is acknowledged under National Policy on Good Regulatory Practice whereby if the regulatory proposal is likely to restrict competition, the RIA must demonstrate that the benefits of the restriction outweigh the cost and there is absence of alternative means of achieving the same objective.⁴ In light of the above, the regulators should consult with MyCC on the possible impact of the proposed regulation on competition.
11. Second, communication and consultation between industrial policymakers and competition authorities should be regular, open, and transparent. This could involve holding regular consultations and meetings to discuss policy, share information, and develop a mutual understanding of objectives. Based on this understanding, an annual

³ OECD Competition Assessment Toolkit 1(Principles)
<https://www.oecd.org/daf/competition/46193173.pdf>

⁴ National Policy on Good Regulatory Practice (2021)

<https://irp.cdn-website.com/9c99ef26/files/uploaded/National%20Policy%20on%20Good%20Regulatory%20Practice.pdf>

Special Committee on Competition Meeting (“Special Committee”) comprises representatives from various key sectoral regulators such as Malaysian Communications and Multimedia Commission (MCMC), the Energy Commission (EC), the National Water Services Commission (SPAN), the Central Bank of Malaysia (BNM), the Securities Commission (SC), the Intellectual Property Corporation of Malaysia (MyIPO), the Companies Commission of Malaysia (SSM) and the Malaysian Aviation Commission (MAVCOM) spearheaded by MyCC was formed fundamentally to provide a platform to discuss recent developments related to competition issue across industries and the harmonization agenda between competition and industrial policy. In the recent Special Committee Meeting, the progress of law amendment exercise and enforcement that were carried out by MyCC in 2022 was shared to the members of the meeting. In addition, the positive outcomes arising from the joint effort between MyCC and MCMC since 2020 in addressing exclusivity arrangement between telecommunications service providers and property developers or building management companies in high-rise buildings becomes a catalyst for both parties to explore the idea to ink a Memorandum of Understanding (MOU) that would be beneficial to the parties and public at large.⁵

12. Third, another mechanism that is useful to improve the interaction between the competition authorities and industrial policymakers is via the conduct of market review. In conducting the market review, the competition authorities may engage with different stakeholders to search for issues and concerns related to many variables including regulation or potential anti-competitive behaviour that may impede the competition process in the market. The involvement of the industrial policymakers as a part of the steering committee in the said study may improve the interaction between both parties, whereby it becomes a weighing exercise in reviewing the current policy and proposing the next course of action in relation to certain matters pertaining to the level of competition in the industry. Furthermore, the conduct of market review and its finding is a powerful advocacy tool that can be utilized as the reference by both authorities and policymakers to improve the condition of the industry. This mechanism is proven to be effective in

⁵ “First Special Committee Meeting on Competition Post Pandemic” dated 22 September 2022.
<https://www.mycc.gov.my/sites/default/files/pdf/newsroom/NEWS%20RELEASE%20-%20FIRST%20SPECIAL%20COMMITTEE%20MEETING%20ON%20COMPETITION%20POST%20PANDEMIC.pdf>

the experience of MyCC whereby the findings and recommendation in the market reviews were highlighted to the Government and being given attention to improve the level playing field as well as reviewing any competitive constraints including high regulatory cost and policies that may hinder the competition process in the market.

13. Fourth, to ensure the level playing field among the players, competition authorities play an important role to complement the industrial policy via their enforcement power whereby it may take action against companies that are practicing anti-competitive behaviour either via anti-competitive agreement or abuse of dominant position.