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**CENTRE FOR CO-OPERATION WITH NON-MEMBERS
DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS**

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OECD Global Forum on Competition

CONTRIBUTION FROM MALAYSIA

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**MINISTRY OF DOMESTIC TRADE AND
CONSUMER AFFAIRS,
MALAYSIA**

**CONCERNS REGARDING COMPETITION POLICY
AND ECONOMIC DEVELOPMENT IN MALAYSIA**

At the moment the crux of policy decision making on competition is whether a developing country like Malaysia should conform with the competition policy and laws of advanced countries and WTO principles or whether we should enact a competition policy /law analogous of the norm, but which nevertheless fulfils our socio-economic and developmental needs. It is significant to consider that even among advanced countries, there are major differences in the policies which they pursue, including aspects such as the underlying philosophy, various legislative practices and modes of policy interpretation.

At the moment, Malaysia does not have a comprehensive competition policy/law. However piece meal competition legislation does exist in the form of guidelines for the telecommunications sector by the Communications and Multimedia Commission (CMC) and in the Guidelines for Regulations of Acquisition of Assets, Mergers and Take-overs and also in the Malaysian Code of Take-overs and Mergers 1998. All three are under the jurisdiction of separate authorities. Further the CMC (which was set up by virtue of the Communications and Multimedia Act, 1998) has come up with two guidelines, firstly on Substantial Lessening on Competition and secondly on Dominant Position in a Communications Market.

During a recent forum discussing the draft policy framework on the proposed Fair Trade Act of Malaysia, several important aspects were discussed. In general terms, it was agreed that further extensive research on the subject matter needs to be carried out before a Fair Trade Act which is suitable to and workable with the socio-economic needs of the country could be formulated, without compromising Malaysia's international commitments. There is an urgent need on extensive research on several subject matters, namely :-

1. Mergers and Acquisitions, (M&A);
2. Restrictive Business Practices (RBP's);
3. Extensive sectoral regulatory framework; and
4. Exemptions/authorisations.

The dichotomy between domestic and market power needs to be addressed. Malaysia is of the opinion that dominance per se is acceptable, however abuse of that position is the aspect which should be focused on. The important question is regarding the level of acceptability of market share. Determining the right threshold level of market share in each industry for each country is not an easy task. For a developing country like Malaysia, foreign investment in the domestic market is of utmost importance, therefore the M&As aspect in the Malaysian competition law/policy needs to be formulated in such a way to be able to delicately balance between ensuring the continuance of FDIs in the economy and creating a competitive environment in the domestic market.

The main issues regarding RBP's and other types of anti-competitive market conduct lies in identifying those RBP's which are most damaging to a country like Malaysia and deciding upon which RBP's to be per se prohibited, as opposed to a rule of reason approach.

The existing sectoral legislations are not economic regulators and therefore do not take into account competitive or anti-competitive conduct when issuing or regulating licences. Also there is a question of converging existing piece meal legislation with the main overall or broad-based competition legislation.

Malaysia feels that our developmental and socio-economic growth needs can be addressed by providing adequate exemptions in the competition policy/law. It is felt that this temporary measure is necessary until certain domestic industries are better equipped to cope with international level competitiveness. Thereafter, such exemptions/ authorisations would be reviewed based on the needs of the country at that time.

Given the above scenario and current on-going competition policy/law advocacy in the WTO, APEC, UNCTAD and other fora, it is both urgent and important for developing countries like Malaysia to appraise the main issues which are relevant for our development and social welfare. More importantly, we should instil those values in our own "tailor-made" competition policy/law before we can address the issues being raised at the WTO debate. Specifically, in considering competition policy from a development perspective, the following elements have to be considered :

- emphasis shall be placed on dynamic rather than static efficiency as the main objective of the competition policy for Malaysia;
- there shall be a concept of workable or sustainable competition (rather than maximum competition) to promote long term growth of productivity;
- there shall be a related concept of optimal combination of competition and co-operation between firms so that we can achieve fast long term economic growth;
- the critical need to maintain the private sectors propensity to invest at high levels requires a steady growth of profits. For this to occur there is a need for the government's continued co-ordination of investment decision which in turn requires close co-operation between government and business; and
- There shall be recognition of the importance for developing countries' industrial policies and hence the need for coherence between industrial and competition policy.

While Malaysia recognises the urgency to conduct market and market conduct studies in order to ascertain the competition dynamics in Malaysia, nevertheless we are unable to identify any one, person or entity locally who is able to conduct a broad-based competition study. Furthermore, there are also financial constraints for such a study to be conducted. Therefore, technical assistance in the form of financing and the capacity to conduct such studies is required, especially since current instances of abuse of market power in Malaysia are merely anecdotal and not empirical in nature.

VIEWS ON TECHNICAL ASSISTANCE EXPERIENCES AND NEEDS

- a) Conferences and seminars have been able to provide insight into problems and issues faced by countries with competition policy and law as well as into issues which countries without a policy and law have faced.
- b) Single country events are able to address domestic issues in depth and more participants have the advantage to attend such programs. Regional events give a better perspective of like minded problems and issues faced as well as discussing the possibility of getting co-operation in the event that it is needed. The networking provides useful contacts in the event of a need.
- c) An assistance provider would need to understand the socio economic culture of the country as well as a detailed knowledge of the legal, institutional and economic system of the country. An experience of similar systems in other developing countries would be beneficial.
- d) Assistance from different sources depends very much on the topic covered. In the case of Malaysia, we would prefer to receive assistance from established competition authorities who have had hands on experience. We would also like to receive assistance from countries who had recently formulated competition polices. Private consultants who have had hands on experience in formulating competition policy and law are just as useful. Such consultants must however be able to translate our policy into the law taking into account our socio economic conditions.
- e) Most of the assistance received so far (about 80%) is from abroad in the form of seminars, conferences. We would like to conduct more seminars and workshops in our own country with the help of consultants from OECD, UNCTAD or established competition authorities.

Malaysia's current need

- Immediate assistance is needed to help draft the policy and law
- We also need to map out all economic and market regulators
- We also need help to identify secondary legislation/regulations/guidelines
- A resident advisor is urgently needed
- Attachment programs to established competition authorities as well as institutions advocating competition policy