



Malaysia is located in Southeast Asia. It is composed of two distinct parts, a peninsula bordering Thailand and the northern one-third of the island of Borneo. The peninsula is called West Malaysia and that part of Borneo which belongs to Malaysia is referred to as East Malaysia, both of which are separated by the South China Sea.

During the late 18th and 19th centuries, Great Britain established colonies and protectorates in the area of current Malaysia. These were occupied by Japan from 1942 to 1945. In 1948, the British-ruled territories on the Malay Peninsula formed the Federation of Malaya, which became independent in 1957.

Malaysia was formed in 1963 when the former British colonies of Singapore and the East Malaysian states of Sabah and Sarawak on the Northern coast of Borneo joined the Federation. The first several years of the country's history witnessed political instability, occasioned by Indonesia's efforts to control Malaysia; Philippine's claims to Sabah; and Singapore's secession from the Federation in 1965.

Economy

Malaysia is a small, open economy that is heavily dependent on FDI. Its growth, to a large extent, relies on exports from the manufacturing sector. Output from the electronics and electrical sub-sectors are important sources of export.

Malaysia has espoused a policy of economic openness and a willingness to adopt economic liberalisation. Capital controls and a fixed exchange rate were adopted following the economic and financial crisis in 1998. The capital controls were relaxed as the economy recovered. Although the ringgit is still pegged to the US dollar, the Government is committed to liberalising its financial and capital markets.

PROFILE	
Population:	24.8 million***
GDP (Current US\$):	103.2 billion***
Per Capita Income: (Current US\$)	3,780 (Atlas method)*** 9,120 (at PPP)**
Surface Area:	329.8 thousand sq. km
Life Expectancy:	73 years**
Literacy (%):	88.7 (of ages 15 and above)**
HDI Rank:	59***
Sources:	
- World Development Indicators Database, World Bank, 2004	
- Human Development Report Statistics, UNDP, 2004	
(**) For the year 2002	
(***) For the year 2003	

Competition Evolution and Environment

In May 1969, there were racial riots in Malaysia. This is attributable to the economic exclusion and resulting resentment experienced by the ethnic Malays (*Bumiputra*). Following this incident, the Government initiated the New Economic Policy (NEP). The NEP was meant to eradicate poverty and to redress economic inequalities. Both policies were intended to improve the well being of the *Bumiputra*, or sons of the soil, to ensure that they enjoyed greater participation in the economy, owned more equity and were better represented in the professions.

The NEP, in terms of implementation, implied that:

- Trustee companies representing the interests of Bumiputra were entitled to purchase equity in selected commercial and industrial companies;
- Compliance was expected in the employment of Bumiputra within the public sector, and to a lesser extent in the private sector;
- The *1975 Industrial Coordination Act* was an instrument to control the entry of firms into industry, thus

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¹ Comments received from Cassey Lee, Professor in University of Malaya and Derek Ireland, Director and Senior Economist, Chreod Ltd.

emphasising satisfactory Bumiputra ownership and employment;

- Bumiputra companies had an advantage in certain categories of government procurement; and
- Bumiputra were entitled to preferential treatment in government-owned institutions of higher education.

The NEP was directed at achieving re-distribution, so as to correct ethnic imbalances. The stretch of the NEP was wide. Furthermore, the NEP necessitated an interventionist state. Immediately after gaining independence (1957), Malaysia embarked on a system that incorporated indicative planning. This was a plan process where the Government set broad policy directions and allowed an active role for the private sector. Considerations of social development (amidst ethnic inequalities) and social justice were added justification for state interventionism.

Although the Government introduced its privatisation policy in the 1980s, this did little to reduce their interference. The *Privatisation Guidelines* required that at least 30 percent of equity in privatised projects should be allocated to Bumiputra companies. Even those companies that were privatised had government presence in their governance structure. This was effected through the presence of the Ministry of Finance or Economic and Planning Unit on the Board of Directors.

Generally, privatisation policies are intended to reduce the heavy hand of the Government. The rationale of privatising companies is meant to allow for the free play of market forces. This has not always been the case in Malaysia. It would be expected that the purpose of heralding privatisation was to introduce greater efficiency and accountability within the system. Following the financial crisis of 1998, some of the projects that had been privatised, but which later proved to be unprofitable, were re-nationalised. Some of these companies include Malaysian Airlines System (MAS), the national airlines, and Indah Water Konsortium (IWK), the national sewage system.

Several observations can be made regarding the role of the state in Malaysia. First, although the Government attempted to implement privatisation, this was not done completely in that the Government was often not prepared to release its grip over the conduct of many companies. Second, economic interventionism was largely used to support the re-distributive policies espoused by the NEP. Third, the Government has evinced reluctance in designing and implementing a regulatory framework that would permit the free play of the private sector. Regulation, with regard to competition is a case in point, an issue that we now turn to.

Regulatory Framework

To date, Malaysia does not have a competition policy or law. This is not to say that the Government does not recognise the merits of such policy and law. In 1993, the

Ministry of Domestic Trade and Consumer Affairs (MDTCA) announced its intention to draft a Fair Trade Practices Bill. This did not materialise. Indeed, in the *Eighth Malaysia Plan 2001-2005* (8MP), the most recent of the country's planning documents, there is an explicit statement accepting the need to encourage competition.

The 8MP clearly enunciates the Government's recognition of the usefulness of a competition law and policy and the contribution that it can make towards the economy as a whole. This is clearly expressed in the following statement:

“During the Plan period (2001-2005), efforts will be made to foster fair trade practices that will contribute towards greater efficiency and competitiveness of the economy. In this context, a fair trade policy and law will be formulated to prevent anticompetitive behaviour such as collusion, cartel price fixing, market allocation and the abuse of market power. The fair trade policy will, among others, prevent firms from protecting or expanding their market shares by means other than greater efficiency in producing what consumers want”.

Sectoral Regulation and Anticompetitive Business Practices

Sectoral Regulation

Since Independence, the economic sectors in Malaysia have been regulated primarily at the sectoral level. Regulation of competition in these sectors mainly took the form of government control over entry conditions (via licences and permits) and in some sectors, prices. This sectoral approach to competition regulation has continued even after the implementation of a major privatisation program since the mid-1980s.

However, in the regulatory reforms that took place following privatisation, new regulatory agencies were established in a few sectors, such as ports, airports, energy, communications and multimedia. Whilst economic regulation (e.g. entry, prices) continued to be the main focus of regulation in these sectors, the regulatory reforms in a few sectors have expanded the scope of regulation to include competition policy. These sectors include the communications and multimedia sector, and the energy sector.

The communications and multimedia sector, for example, has the advantage of competition regulation. This sector is protected by the following statutes:

- Communications and Multimedia Act 1998 (CMA); and
- Communications and Multimedia Commission Act 1998 (CMCA).

The CMA expressly prohibits rate fixing, market sharing, boycotting of competitors, and tying. This Act has been established, under its ambit, the Communications and Multimedia Commission (CMC). Two shortcomings are worthy of note. First, the CMA points out that

anticompetitive conduct by firms can be tolerated if ‘national interest’ demands it. Second, the CMC cannot make a judgement as to whether or not a firm’s conduct amounts to anticompetitive behaviour. This decision is solely within the mandate of the Minister concerned.

The energy sector is also served by a commission, the Energy Commission, which looks into issues relating to competition. This Commission is provided for by the Energy Commission Act 2001 (ECA). The ECA points out that one of the principal duties of the Commission is to promote competition. The ECA states that the function of the Energy Commission is:

“...to promote and safeguard competition and fair and efficient market conduct, or in the absence of a competitive market, to prevent the misuse of monopoly power or market power in respect of the generation, production, transmission, distribution and supply of electricity and the supply of gas through pipelines”.

As it stands, only the communications and multimedia, and, energy sectors have regulation relating to competition. An approach to competition that is sector-based, and limited to two sectors, is clearly not satisfactory. Further, as mentioned earlier, consumer protection under the various Acts is, again, confined to the financial and distributive trade sectors. This, too, needs review.

Having made these observations, it must be stressed that the Malaysian Government has reiterated its support for a domestic competition policy and law. In a statement issued subsequent to the National Workshop on Competition Policy and Law, organised by the Ministry of Domestic

Trade and Consumer Affairs and United Nations Conference on Trade and Development (UNCTAD), in 2000, it is mentioned that:

“...the MDTCA has prepared a draft policy paper as well as a draft law on fair trade/competition in Malaysia. The Ministry has also set up a Working Committee and a Working Group on fair trade/competition involving relevant ministries/agencies, chambers of commerce and institutions of higher education in order to determine the overall concept, needs and domestic/multilateral scope for the fair trade or competition law”.

If the intention to have a competition policy and law is slow to see realisation, it is because the Government has several concerns. One of the considerations is to ensure that the distributive considerations voiced in the NEP are achieved. The Government also wishes to pursue measures that will promote the growth of domestic firms.

Finally, the Government wants to protect domestic firms from the competitive pressures that will emanate from MNCs. In sum, the Government hopes to achieve a development path that is in line with national aspirations, rather than one that is based on the dictates of efficiency and fair trade.

Anticompetitive Business Practices

The problem of gathering evidence of anticompetitive conduct is somewhat akin to the “chicken and egg problem”. Without a competition law, it may be difficult to gather information on possible anticompetitive conducts, but without such evidence, it is difficult to justify the Law in the first place.

Box 21.1: Few Glimpses of Anticompetitive Practices in Malaysia

- The Federal Land Development Authority (FELDA) was established in July 1956 as a Federal statutory body under the Land Development Ordinance No. 20, 1956. It was originally set up to channel funds into the development of the remoter parts of the country.

Since 1960, FELDA has been directly responsible for development activities that include land clearing, planting of main crops, development of villages, selection and relocation of settlers, management of projects, provision of credit, processing, marketing services and facilitating social and community development. In 1980, a company called FPM was established, with Behn Meyer having significant interests in it.

However, this company has received the exclusive right of providing fertilizers to FELDA. FELDA, which used to be a government-run scheme to improve the livelihoods of farmers, in, obviously, a lucrative market. Because of this exclusive arrangement, local manufacturers do not have access to the FELDA market.

- Megasteel and Titan Plastics are state-owned monopolies that produce steel and plastic for use by auto-parts producers. Auto-parts producers have the option to import their inputs or buy them locally. It is necessary to acquire import permits to purchase the required steel and plastic from overseas suppliers. This is a lengthy process that involves much red tape. The more convenient option is to buy the inputs from Megasteel and Titan Plastics, but these companies are reputed to charge prices above world prices.
- Purchasers of cars report that they are required to buy accessories that they do not wish to possess, or are restricted to the purchase of specific brands of which the suppliers have exclusive arrangements. The consumers are also ‘advised’ to take hire-purchase loans from certain banks and buy their car insurance from prescribed companies in order to avoid delays in the delivery of the cars. These practices constitute tied and forced selling.

Box 21.2: The Malaysia's Cement Industry

The cement industry in Malaysia grew spectacularly until the nation was hit by the Asian crisis. In the last decade, Malaysia has witnessed some of the largest building and infrastructure projects in the region. These included the Petronas Twin Towers (the tallest building, to date, in the world), the Light Rail Transit System and the new Telekom Headquarters. In short, the demand for concrete was tremendous during this period.

Now, however, the economy is still not at its pre-crisis levels of performance. This has an obvious impact on the demand for cement.

The Government has set a ceiling price of US\$52.53 per tonne on cement. However, there is excess capacity in the market and current prices are US\$46.42 to US\$47.748 per tonne (February 8, 2003, *The Star*).

Under present conditions, the ceiling price is not effective.

Malayan Cement is one of the main players in the cement industry in Malaysia, having some 50 percent of the market share. The French company, Lafarge AS has a 52 percent stake in Malayan Cement. Studies do not indicate any concrete evidence of anticompetitive behaviour in the country.

Nevertheless, sources suspect that Malaysian manufacturers of cement may be indirectly affected by Lafarge's international cartel arrangements. There are suspicions that Lafarge may be denying clinker from its operations in Indonesia to Malaysian companies. Thus, forcing local companies to buy their inputs from more distant locations. This, of course, would add to the cost of production for other Malaysian manufacturers of cement.

In the past, the Ministry has relied on evidence collected abroad to support its case for a national competition policy. This clearly has to change. For a policy of such potentially significant impact on the domestic economy, some strong evidence on anticompetitive conduct and their costs are required. Taking this into account, the Ministry has commissioned some preliminary studies assessing the extent of anticompetitive conduct in the country.

The preliminary empirical evidence gathered by the Ministry of Domestic Trade and Consumer affairs does indicate that a significant number of industries in manufacturing sector are highly concentrated. They include several sub-sectors in the food, wood, chemical, rubber, plastic, and transport industries. Whilst these are not of direct anticompetitive conduct, they provide some suggestion that anticompetitive conduct certainly does exist.

More direct evidence further indicates that the more prevalent types of restrictive business practises that can be found in the manufacturing sector include exclusive dealing and resale price maintenance. In addition, there is also some evidence of collusion to set floor prices in the sector.

Even with such evidence at hand, it is difficult to conclusively argue that such restrictive business practices are detrimental to consumers or the affected firms. Given that domestic empirical evidence is not always going to be sufficient, competition advocacy may be important for the effective implementation of the national competition policy.

Some anticompetitive practices such as resale price maintenance, price collusion, tied selling and cartel agreements have been detected. There is also evidence that the market structure in certain sectors of the economy in Malaysia is increasingly oligopolistic in nature.

Although there is no published survey on the presence and extent of restrictive business practices (RBPs) in Malaysia, observations tend to support the presumption that there are adequate grounds for investigation and, perhaps, action. Box No. 20.1 contains a partial sample of such cases.

Studies indicate that the prevalence of RBPs seems to bear some correlation with the level of concentration in firms. In Malaysia, the following industries in the manufacturing sector are concentrated:

- Oil and gas;
- Car assembly;
- Tyres and tube manufacturing;
- Food and food-related products;
- Plastic products; and
- Hydraulic cement.

The oil and gas industry, as well as the automotive industry are both protected by the Government since they are national champion projects. On the other hand, the other industries mentioned are controlled by a small number of MNCs. Thus, there are grounds to suspect and investigate the practice of RBPs, something that could be done satisfactorily if there were a competition law and authority to examine the cases brought forth.

Consumer Protection

One could argue that competition policy, broadly speaking, has two objectives: 1) regulating the conduct of firms, and ensuring that they do not engage in anticompetitive acts; and 2) ensuring that consumers are able to enjoy the highest level of surplus possible. The Malaysian Government has not disregarded consumer welfare. The protection of consumer interests has been embedded in the following statutes:

- Money Lenders Act, 1951;
- Hire-Purchase Act, 1967;

Box 21.3: MNCs' Effects on Domestic Retailers

Large, foreign-owned retailers like Tesco Stores, Carrefour, Makro Cash and Carry, and Jaya Jusco, make up close to 10 percent of the total retail market share in Malaysia. These foreign-owned companies are confined to the Klang Valley (that is, the area surrounding Kuala Lumpur, Malaysia's capital city). In effect, this means that there is a very high concentration of MNCs operating in the Klang Valley.

These MNCs affect the sales of local retailers. Large, local retailers, like Metrojaya and Ocean, registered huge net losses that are attributed to the presence of the MNCs. In response, the Malaysia Retailers Association has suggested that the large Malaysian retailers like Parkson, Ocean, Metrojaya, and The Store collude or merge in order to survive in the business

Source: *New Straits Times*, April 17, 2003

- Trade Descriptions Act, 1972;
- Weights and Measures Act, 1972;
- Direct Sales Act, 1993; and
- Consumer Protection Act, 1999.

It must be stressed that these Acts do not cover the anticompetitive conduct of firms. A further weakness of these statutes is that they are restricted in their coverage to certain sectors within the economy, viz. the distributive trade and financial sectors.

Concluding Observations and Future Scenario

There is a need for Malaysia to seriously examine the need to introduce a competition policy regime and the appropriate legal framework. While it is indeed true that the Government has, for some time now, been entertaining the idea of introducing competition policy and law, not much has been accomplished in concrete terms.

There seems little doubt that the anticompetitive behaviour of firms needs to be arrested. However, attendant issues need to be resolved. These include the following:

- ensuring that the competition authority is free from political influence and manipulation;
- ensuring that the rights of consumers are upheld in terms of employment and equity, in addition to concerns with respect to price, breadth of choice and quality;
- formulating an industrial policy that relies on the competitive strengths that the country can offer; and
- adopting a policy that does not disrupt national economic and social objectives, particularly as it affects disadvantaged communities and small-scale industries.

If the Government can shed more clarity on some of the above-mentioned issues, it would allay fears that competition policy and law will restrict the growth and development of the economy, acting against public interest. In fact, Malaysia will be perceived as a more attractive destination for investment if it is seen to value transparency, good governance and competition.

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