Challenges in Enforcing Competition Law in Malaysia and Possible Reform

This Conference — which promises to be a defining event of the Bar Council and the Malaysia Competition Commission (“MyCC”) — is not to be missed. Apart from covering the current state of competition law in Malaysia, it will also address possible reform that is on the horizon. Crucially, there will be a discussion of MyCC’s position on the existence of certain monopolies over goods or services in Malaysia and the possible introduction of merger control, and the implications for corporate Malaysia and legal practice.

The introduction of merger control would bring a sea change in legal practice relating to transactional and deal work. In jurisdictions with merger control, over 2017 and 2018 alone the following large transactions are noteworthy:

- In early November 2018, Disney’s USD71.3 billion acquisition of 21st Century Fox was only approved by the European Commission’s Directorate-General for Competition (“DG Comp”) subject to Disney selling off its entire business and interests in European history and documentary television channels;
- The fifth attempt at the merger of the London Stock Exchange and Deutsche Boerse (valued at EUR29 billion) was blocked by DG Comp due to competition concerns that the proposed merger may create a de facto monopoly; and
- In 2017, Facebook was fined EUR110 million for providing incorrect or misleading information during DG Comp’s investigation of Facebook’s acquisition of WhatsApp.

This Conference will also feature the new Minister of Domestic Trade and Consumer Affairs, the new Chairman of MyCC, and the new Chief Executive Officer of MyCC. Come and interact with the enforcers and other practitioners of competition law to get an insight into the latest trends and current themes, issues and cases in competition law. Also, find out more about the Competition Appeal Tribunal, MyCC’s leniency programme, and other guidelines and policies.

This Conference is a must-attend event for all members whose legal practice may be affected by these developments.
**Programme Outline**

(Each session includes a question-and-answer segment.)

8:15 am Registration and Breakfast

9:00 am National Anthem: “Negaraku”

9:05 am Welcoming Address

9:10 am Opening Speech by YB Datuk Seri Saifuddin Nasution Ismail, Minister of Domestic Trade and Consumer Affairs

9:20 am Signing of a Memorandum of Understanding: MyCC with Universiti Putra Malaysia and Universiti Utara Malaysia

9:35 am Refreshments

9:50 am Introductory Remarks by YB Datuk Seri Mohd Hishamudin Md Yunus, Chairman, MyCC

10:00 am Session 1: Cartels and Leniency

MyCC has made the fighting of cartels its highest priority, because the effect of cartels on the unwitting consumer can be devastating. Malaysians who realise the negative effect of cartels are often unable to identify the responsible party, and are unaware of how to deal with this issue. On the other hand, some business enterprises continue to be unaware that their practices infringe the Competition Act 2010 (“Act”), and regard cartels as common and normal business practice.

Competition regulators around the globe have been promoting leniency to those who admit their wrongful conduct and, in Malaysia, section 41 of the Act allows enterprises to apply for leniency by admitting their infringement under section 4, where they are then required to provide significant assistance to MyCC. Penalty reductions of up to 100% can be granted to successful applicants, depending upon the circumstances of the case.

This session will focus on how to move forward in this area.

**Speaker:** Zairan Ishak, Principal Assistant Director, Enforcement Division, MyCC

11:15 am Session 2: Powers of the Competition Appeal Tribunal

**Speaker:** Assoc Prof Dr Wan Liza Md Amin @ Fahmy, Competition Appeal Tribunal

12:15 pm Lunch

1:45 pm Session 3: Anti-Monopoly Forum

Consumers realise the negative effects of monopolistic enterprises that abuse their market power. The possible lack of choices, increase in prices, exclusivity agreements and other abusive conduct may continue, unless there is strong regulation of monopolies.

MyCC has investigated suspected abusive monopolies, and this has resulted in the issuance of a decision against MyEG, for example (though this is still under judicial review before the courts), but is this enough? Some monopolistic / oligopolistic enterprises in Malaysia are created based on Government policies that may need to be reviewed.

MyCC is also part of the “Jawatankuasa Bagi Kajian Semula Dasar Monopoli Perkhidmatan dan Pembekalan”, which is tasked to address issues stemming from certain monopolies. The question to be considered is — how might the everyday consumer be impacted by enterprises such as MyEG, BERNAS, Pharmaniaga and PUSPAKOM?

**Panellists:**
Dominique Lombardi, Partner, Competition & Antitrust and Trade, Rajah & Tann Singapore
Adlin Abdul Majid, Partner, Messrs Lee Hishammuddin Allen & Gledhill
Adlan Abd Razak, Senior Lecturer, Faculty of Law, Universiti Teknologi MARA
Rohizwan Ahmad, Legal Director, JT International Sdn Bhd

**Moderator:**
Wong Tat Chung, Partner, Messrs Wong, Beh & Toh

3:15 pm Session 4: Merger Control Forum

There should be a strong merger control regime to prevent a substantial lessening of competition in the relevant markets arising from mergers or combinations.

Currently, the Securities Commission is entrusted with regulating and systematically developing Malaysia’s capital markets, including takeovers, mergers and compulsory acquisition. However, the Securities Commission is ultimately responsible to investors, and is not mandated to regulate any competition issues that may result from mergers or combinations.

MyCC is currently working with ASEAN competition authorities to implement merger controls. To this end, extensive studies are being conducted on how to amend the Act in order to allow MyCC to respond to mergers and combinations in Malaysia, in order to take appropriate action against those organisations that may negatively impact competition or result in a substantial lessening of competition.

Case studies will include the Grab-Uber merger.

**Panellists:**
Iskandar Ismail, Chief Executive Officer, MyCC
Dr Wan Khatina Nawawi, Director of Economics, Malaysia Aviation Commission
Anand Raj, Partner, Messrs Shearn Delamore & Co.

**Moderator:** Devanesan Evanson, Chief Executive Officer & Executive Director, Minority Shareholders Watch Group

5:00 pm End
CONFERENCE ON

Challenges in Enforcing Competition Law in Malaysia and Possible Reform

27 Nov 2018 (Tuesday)

YB Datuk Seri Saifuddin Nasution Ismail
Minister of Domestic Trade and Consumer Affairs

Shah Alam, after serving as a magistrate in Penang and Kuala Lumpur; and Senior Assistant Registrar and Deputy Registrar in the Kuala Lumpur and Seremban High Courts from 1996 to 2007. She was a senior lecturer in the International Islamic University Malaysia for 10 years.

Appointed as a member of the Competition Appeal Tribunal (“CAT”) on 18 Aug 2014, she has attended hearings and decision-making in high-profile appeal cases from decisions made by MyCC such as Malaysia Airlines, AirAsia and MyEG Services.

Ybhg Dato’ Seri Mohd Hishamudin Md Yunus
Chairman, MyCC

Dominique Lombardi
Partner, Competition & Antitrust and Trade, Rajah & Tann Singapore

Dominique Lombardi is the Deputy Head of Rajah & Tann Singapore LLP’s Competition & Antitrust and Trade Practice. A foreign lawyer, she has more than 20 years of experience in competition / antitrust laws, equally shared between Europe and the ASEAN region. Dominique has worked both in private practice and as an in-house lawyer, with her expertise covering all aspects of competition / antitrust laws – merger control, international cartels (including multijurisdictional leniency), vertical restraints and abusive conduct – as well as deregulation law.

Separately, Dominique is an adjunct lecturer on competition law at Sorbonne-Assas International Law School – Asia (Singapore Campus).

In 2018, Dominique was conferred the Knight of the French National Order of Merit.

Zairan Ishak
Principal Assistant Director, Enforcement Division, MyCC

Zairan Ishak is currently the Principal Assistant Director in MyCC’s Investigation and Enforcement Division. He has been involved in various investigations of cartel and market-sharing activities such as those conducted by container depot operators in Penang, Malaysia Airlines and AirAsia. His experience includes assisting MyCC in drafting the proposed decision against the General Insurance Association of Malaysia and its 22-member companies.

Zairan graduated from King’s College London in Economics for Competition Law, and obtained his Bachelor of Legal Studies (Hons) degree from Universiti Teknologi MARA (UiTM), Shah Alam.

Assoc Prof Dr Wan Liza Md Amin @ Fahmy
Competition Appeal Tribunal

Assoc Prof Dr Wan Liza Md Amin @ Fahmy is currently a lecturer at the Faculty of Law, UiTM,

Devanesan Evanson
Chief Executive Officer & Executive Director, Minority Shareholders Watch Group

Adlan Abdul Majid has a background in

Wong Tat Chung
Partner, Competition & Antitrust and Trade, Rajah & Tann Singapore

Wong Tat Chung was admitted to the Bar of New York State in 1978. He joined Rajah & Tann Singapore in 2012 and is one of the founding partners of its new Singapore office.

His fields of practice include corporate finance, mergers and acquisitions (“M&A”), initial public offerings, infrastructure, privatisations, and debt and capital markets. He has been involved in both domestic and cross-border transactions. His experience and practice are focused on the financial services sector, and he has represented many financial institutions.

Adlan graduated with an LLB (Hons) degree in Business Law from the University of Manchester in 2000 and an LLM degree from the University of Huddersfield in 1996, and an LLM degree in Business Law from King’s College, University of London in 2007. He is an Accredited Member of the Singapore Institute of Business Valuers, a member of the Singapore Management University’s Centre for Corporate Governance and the American Bar Association’s International Law Section. He is also a member of the Commercial Law Committee, and chairs various of its subcommittees. He is one of the vice chairs of the banking and financial institutions subcommittee.

He is a qualified accountant (FCCA) and is also a Chartered Financial Analyst. Adlan is a member of the Singapore Institute of Management and the Singapore Management University’s alumni association.

Serviced by: Ravi Nekoo and Richard Wee Thiam Seng, Co-Chairpersons, Bar Council Professional Standards and Development Committee
Adlin Abdul Majid  
*Partner, Messrs Lee Hishammuddin Allen & Gledhill*

Adlin Abdul Majid has a background in technology, media, and telecommunications, having spent close to a decade with a Malaysian government agency, advising on a range of local, regional and international information and communications technology issues. She was involved in developing the legal and regulatory framework for the nation’s Multimedia Super Corridor status. Her areas of practice include a focus on all aspects of the Personal Data Protection Act 2010. Adlin also has an International Law Office Client’s Choice Award to her name.

Adlan Abd Razak  
*Senior Lecturer, Faculty of Law, Universiti Teknologi MARA*

Adlan Abd Razak has been a law lecturer at the Faculty of Law, UiTM, since 1997, and is now teaching competition law to undergraduate students. He was a member of the drafting team that drafted the Competition Act 2010 and the Competition Commission Act 2010.

Adlan graduated with an LLB (Hons) degree in Business Law from University of Huddersfield in 1996, and an LLM degree in International Economics Law from University of Warwick in 1997. He became an advocate and solicitor of the High Court in Malaya in 2004. He is currently pursuing his doctorate degree in Competition Law in UiTM.

Rohizwan Ahmad  
*Legal Director, JT International Sdn Bhd*

Rohizwan Ahmad joined Japan Tobacco International (“JTI”) Malaysia in 2013 as its Legal Director, managing the legal affairs of the various entities under the group. In 2017, his portfolio in JTI was expanded to include Singapore’s operations.

Immediately prior to joining JTI, he was the Head of the Legal & Compliance Department of Mercedes-Benz Malaysia, where he also oversaw the compliance operations of Mercedes-Benz Indonesia. He has worked in a few organisations in Malaysia, and did a stint as an advocate and solicitor in a law firm after he was admitted as an advocate and solicitor of the High Court in Malaya in 2002.

Wong Tat Chung  
*Partner, Messrs Wong, Beh & Toh*

Wong Tat Chung was admitted to the Bar of England and Wales in 1986, and as an advocate and solicitor of the High Court of Malaya in October 1988.

His fields of practice include corporate finance, mergers and acquisitions and capital markets, and other corporate and commercial matters. He has been involved in both domestic and cross-border transactions. His experience and practice also include, for example, debt and equity securities offerings, corporate restructurings of insolvent companies, takeovers, initial public offerings, infrastructure, privatisations, and debt restructurings.

He is the Co-Chairperson of the Bar Council Corporate and Commercial Law Committee, and chairs various of its subcommittees. He is one of the vice chairs of the banking finance and securities committee of the Inter-Pacific Bar Association, and a member of the Company Secretarial, Practice Sub-Committee; the Accounting and Audit Sub-Committee; and the Insolvency Sub-Committee under the Corporate Practice Consultation Forum established by the Companies Commission of Malaysia.

Iskandar Ismail  
*Chief Executive Officer, MyCC*

Iskandar Ismail was recently appointed as the Chief Executive Officer for MyCC on 15 Oct 2018 after serving as the Director of the Investigation and Enforcement Division for more than five years. Admitted to the High Court in Malaya as an advocate and solicitor, he has served at Bank Negara Malaysia as a Prosecuting Officer.

Prior to joining MyCC, he was an Assistant Trial Attorney with the United Nations for the International Criminal Tribunal for Rwanda in Tanzania for eight years. He is currently listed in the Justice Rapid Response Expert Roster — a professional service provider to entities that have the jurisdiction or mandate to investigate, fact-find or carry out inquiries wherever mass atrocities may have occurred.

Dr Wan Khatina Nawawi  
*Director of Economics, Malaysia Aviation Commission*

Dr Wan Khatina Nawawi joined the Malaysian Aviation Commission (“MAVCOM”) team as its Director of Economics. Previously, she held the position of Director of Research at Khazanah Research Institute;
Economic Advisor to MyCC; Director of Research and Investment Strategy at Khazanah Nasional Bhd; and Senior Regional Economist at the National Economic Action Council (“NEAC”) of the Prime Minister’s Department.

She graduated with a Bachelor of Commerce degree in Asian Economics and Economics History from University of Melbourne. She possesses an MBA degree specialising in Strategy and Public Sector Management from Melbourne Business School; an MPA degree from Harvard University; and an MA degree in Economics for Competition Law and a PhD degree in Competition Law from King’s College London.

**Anand Raj**  
*Partner, Messrs Shearn Delamore & Co.*

Anand Raj was admitted as an advocate and solicitor of the High Court of Malaya in 1996 and has been a partner of Messrs Shearn Delamore & Co. since 2003. Anand’s practice areas include all aspects of tax and transfer pricing disputes and litigation, as well as competition law and antitrust. Anand is the Co-Head of the firm’s Antitrust Practice.

Anand was recognised as the 2017 Asia Tax Disputes and Litigation Practice Leader of the Year by ITR. He is consistently ranked in Tier 1 of ITR (2013–2018) and Chambers (2011–2018) tax law practitioners, and has also been listed in Who's Who Legal: Corporate Tax Lawyers 2016, 2017 and 2018. Anand has also been recognised in the International Who’s Who Legal: Competition Lawyers for 2013–2018 and has also been recognised as a leader in his fields by the Global Competition Review, Chambers Asia Pacific, The Legal 500 Asia Pacific, Asialaw Profiles, and other directories.

Anand is the Chairperson of the Bar Council Tax Subcommittee, and a member of the Competition Law Subcommittee. He is Chair of the International Fiscal Association, Malaysia Branch; the Co-Chair of the Inter-Pacific Bar Association’s Competition Law Committee; and inaugural Chair of LAWASIA’s Antitrust and Competition Law Subcommittee.

**Devanesan Evanson**  
*Chief Executive Officer & Executive Director, Minority Shareholders Watch Group*

Devanesan Evanson is currently the Chief Executive Officer of the Minority Shareholders Watch Group (“MSWG”).

He is a qualified accountant (FCCA) and is also a Chartered Member of the Malaysian Institute of Accountants. He holds an LLB (Hons) degree from the University of London. He is a Fellow member of the Institute of Internal Auditors Malaysia (“FIIAM”).

Devanesan also sits on the Board of Agensi Kaunseling dan Pengurusan Kredit (“AKPK”) as an Independent Director, and is also the Chairman of the Audit Committee. AKPK is an agency under the auspices of Bank Negara, which provides credit counselling and debt management services for customers of financial institutions.

He is a Past President of the ACCA Advisory Committee, a Past President of the Institute of Internal Auditors Malaysia, and a former Council Member of the Malaysia Institute of Accountants.

Devanesan retired from Bursa Malaysia in 2010 after having served for 18 years. He started his career there as Head of Internal Audit and Risk Management. He was also, at one time, the Chief Regulatory Officer and, later, the Chief Market Operations Officer of Bursa Malaysia.
CONFERENCE ON

Challenges in Enforcing Competition Law in Malaysia and Possible Reform

27 Nov 2018 (Tuesday)
9:00 am to 5:00 pm

Raja Aziz Addruse Auditorium
Wisma Badan Peguam Malaysia
(Formerly known as Wisma Straits Trading)
Unit 2-02A, 2nd Floor
2 Leboh Pasar Besar, 50050 Kuala Lumpur

I would like to register for the event (all fields must be completed):

Name: ____________________________________________________________________________

(Tick where applicable)

- Member of the Bar (Membership No):______________________________________
- Pupil in Chambers (Petition No) : ___________________________________________
- Others (NRIC No): __________________________________________________________

Email: ____________________________________________________________________________

Name of Firm / Organisation: ____________________________________________________

Address: __________________________________________________________________________

____________________________________________________________________________________

____________________________________________________________________________________

____________________________________________________________________________________

Tel: ___________________________        Fax: ___________________________

Signature: ___________________________      Date: ___________________________

The personal information that you provide to the Bar Council, whether now or in
the future, may be used, recorded, stored, disclosed or otherwise processed by or
on behalf of the Bar Council for the purposes of facilitation and organisation of this
event, research and audit, maintenance of a participant database for the promotion of this event, and such ancillary services as may be relevant.

Payment options:

(1) Direct deposit to Hong Leong Bank Berhad,
    (Account No: 002-00-76072-4; SWIFT Code: HILBBMYKL); or
(2) Cheque or bank draft, payable to "Malaysian Bar Continuing Legal Education"; or
(3) Cash payment (up to RM250 only), at the ground floor of the Bar Council Secretariat.

All payments must be made in advance of the event, and
include all bank charges.  Registration will be confirmed
once proof of payment is provided by email or fax, and full payment is received.

Seats will be allocated on a first come, first served basis.

Cancellations must be made in writing.  There will be no
refunds for cancellations made after 22 Nov 2018
(Thursday) but substitutions are allowed.  The organiser
reserves the right to modify, cancel or postpone the event,
should circumstances arise that make such action
necessary, whereupon all registration fees paid will be
refunded.

Points for the Continuing Professional Development
("CPD") Scheme will not be awarded to Members of the
Bar and pupils in chambers who arrive more than 15
minutes late, are not present throughout the event, or
leave before its scheduled end.

Please direct all correspondence (including completed
registration forms and proof of payment) and enquiries to:

Roslan Mahanud / Nur Syafiq Che Isa
Tel: 03-2050 2111    Fax: 03-2050 2112
Email: cpd@malaysianbar.org.my

Issued by: Ravi Nekoo and Richard Wee Thiam Seng, Co-Chairpersons, Bar Council Professional Standards and Development Committee