



COMPETITION LAW GUIDELINES

TABLE OF CONTENT

I.	INTRODUCTION	3
	A. MHB’s Policy and purpose of these Guidelines	3
	B. Basic Principles of Competition laws.....	3
	C. Main Categories of Competition laws Violations	4
	D. Consequences of Competition Law Violations.....	4
II.	PRINCIPLES OF THE COMPETITION LAWS	5
	A. Prohibition of Restrictive Agreements or Practices	5
	B. Prohibition of Abusive Market Behavior	6
	C. Prohibition of Business Combination that May Substantially Reduce Competition	7
III.	PRACTICAL GUIDELINES TO AVOID COMPETITION LAW VIOLATION	8
	A. Contacts with Competitors	8
	B. Contacts with Customers and Suppliers	9
IV.	OTHER COMPETITION LAW CONSIDERATION	13
	A. Cooperation with Enforcement Authorities	13
	B. Internal Document and Other Communications	13
	C. Communications with Your Legal and Compliance Department, LCSC Division	15

I. INTRODUCTION

A. MHB' POLICY AND PURPOSE OF THESE GUIDELINES

MHB has a policy of fully complying with the competition laws of every country in which it operates. The purpose of this document is to outline the main competition laws applicable in most jurisdictions around the world and to provide guidelines to ensure that you strictly comply with these rules in your day-to-day business.

As a MHB employee, you must individually ensure that your actions towards business partners (e.g., customers and suppliers), competitors and enforcement authorities at all times reflect fair and proper business practices and are in compliance with the laws and regulations governing free and fair competition.

It is MHB' policy that an employee participating in the violation of competition rules will be punished for any misconduct. Any behaviour even suggestive of illegal anti-competitive activity is against MHB' policy and any employee engaging in such conduct should expect to face disciplinary action by MHB. In case of doubt concerning the compliance of your activity with antitrust rules, you must contact the Legal and Compliance Department of your business division ("the Legal and Compliance Department") of the Legal Corporate Secretarial and Compliance (LCSC) or external legal counsel.

These guidelines are not intended to make you an expert in competition laws, nor do they give you an answer to every question you will encounter in your work. However, MHB does expect you to acquire sufficient understanding of these laws to recognize situations that may involve competition law issues and refer such questions to MHB' legal counsel.

B. BASIC PRINCIPLES OF COMPETITION LAWS

In most countries around the world, competition laws are aimed at ensuring that all market participants comply with the principles of free and fair competition.

Rules governing competition now exist throughout most of the industrialized world, and the most developed and strictest legislations concerning competition are found in the EU and the U.S. Almost every country around the world, including Malaysia, has competition rules of its own.

The main objective of competition laws is to protect and foster free and fair competition among companies at all levels of trade. These laws are based primarily on the theory that consumers benefit by getting the best product at the lowest price through competition and that society's productive resources are best allocated and utilized by subjecting companies to the rigours of a competitive market. ***Where competitors agree to fix prices, limit production, divide markets or allocate customers, consumers and society generally suffer. The same is true where one company through improper means dominates a market and abuses the power to fix or control prices and exclude competition.*** In both cases, consumers and society lose the benefits of free competition. Competition laws protect businesses and consumers from unfair business dealings that threaten to deprive consumers of the benefits of competition.

Within the EU, Community rules and national rules on competition co-exist. Similarly, in the U.S., federal antitrust laws co-exist with State antitrust laws. National or State competition laws are generally similar to EU Competition Law and/or the U.S. Antitrust Law.

As a general rule, domestic competition laws apply to all companies doing business in that country, regardless of whether these companies are established in these countries or not (the so-called “extra-territoriality” principle).

C. MAIN CATEGORIES OF COMPETITION LAW VIOLATIONS

Competition and antitrust rules share three main prohibitions:

1. Agreements or other coordinated activities with competitors, customers or suppliers that limit competition;
2. Abuse of a dominant position (e.g., in the EU, South Africa and Malaysia); monopolization or attempted monopolization (e.g., in the U.S.);
3. Concentrations between companies that may substantially lessen competition;

While most of the general principles set out in these guidelines apply in the majority of the jurisdictions (including, e.g., the EU, South Africa and Malaysia), certain specific rules may apply in some of the countries where MHB has a base or conducts business dealings.

Additional Notes:

In Malaysia, the Petroleum Development Act 1974 confers to PETRONAS certain statutory exclusive rights and decision-making powers that are not applicable to MHB’s business.

D. CONSEQUENCES OF COMPETITION LAW VIOLATIONS

- **Fines.** Breaching competition laws can result in extremely serious financial penalties. For instance, in the EU, the European Commission may impose a fine of up to 10% of the annual worldwide turnover of the entire group, while in the U.S., fines for corporations can amount to US\$100 million, twice the total gain to the conspirators, or twice the total loss to the victims, whichever is greater. In Malaysia, pursuant to Section 40(4) of the Competition Act 2010, the Competition Commission may impose a financial penalty up to 10% of the worldwide turnover of an enterprise.
- **Prison sentence.** Violation of U.S. and South African antitrust laws and certain national competition laws in the EU (e.g., the UK) may lead to criminal convictions of the involved employees. In Malaysia, by virtue of Section 61 of Competition Act 2010, the Competition Commission may sentence an offender for an imprisonment term not exceeding five years.

- **Damages.** In addition, customers, competitors and/or consumers who have been harmed by the anticompetitive conduct of a company can issue a damage claim against the participants to the infringement before national civil courts. Actions for damages have existed for a long time in the U.S. and are now becoming increasingly more common in the EU, especially in the form of follow-on actions (*i.e.*, actions which follow a prior finding of an infringement by a competition authority).
- **Adverse publicity and waste of internal resources.** Competition law infringements can cause considerable damage to MHB in terms of reputation (*i.e.*, negative press coverage) and lead to significant additional costs, in particular, legal fees. Furthermore, an investigation by Competition Authorities is burdensome and time-consuming and entails a waste of internal resources in terms of time and money.
- **Contractual implications.** Finally, certain antitrust violations may also have other civil consequences such as the nullification of contracts or of provisions that infringe EU law (including for example in key licenses or supply contracts) or require remedial action (like making good any illegal price increase imposed on customers).

These Guidelines cannot cover all facts and circumstances that you may encounter in your daily business dealings. Therefore, you are urged to contact first the Legal and Compliance Department and then the CGICU/external legal counsel if you have any doubts as to the lawfulness of any situation or business dealing as regards competition laws.

II. PRINCIPLES OF COMPETITION LAWS

A. PROHIBITION OF RESTRICTIVE AGREEMENTS OR PRACTICES

Competition law provisions applicable throughout the world generally ***prohibit all agreements between enterprises, decisions by associations of enterprises or concerted practices, which have as their object or effect the prevention, restriction or distortion of competition to a material extent within the territory in which any such provision is applicable.***

Please note that the type and wording of the agreement is irrelevant: ***not only formal, but also informal agreements***, fall under the said prohibition; ***not only written, but also verbal agreements and so called “Gentlemen’s agreements”***, fall within the scope of the prohibition of restrictive agreements and practices.

Anticompetitive agreements are divided into two categories: vertical and horizontal restraints.

- i. Horizontal restraints are agreements or coordinated practices between companies acting on the same level of trade, *i.e.*, agreements between competitors. Horizontal restraints on key competitive parameters (*e.g.*, prices, quantities, clients, sale territories) have generally been found automatically to be unlawful regardless of whether they have actually been implemented and/or have any effect on the market.

- ii. Vertical restraints are agreements restricting competition between companies acting on different levels of trade, *i.e.*, agreements between a company and its distributors, customers, licensees or suppliers. The lawfulness of vertical restraints largely depends on the market context (in particular, market shares of the parties to the agreement and economic justifications) and often requires a precise legal analysis.

B. PROHIBITION OF ABUSIVE MARKET BEHAVIOR

Under competition laws, it is ***illegal for companies with strong market power (a “dominant position”) to exploit their market position*** in an abusive way that may affect trade. A company is generally considered to have a dominant position if it is the principal supplier or purchaser of a given set of products or services in a geographic area, and if it is able to exercise a significant degree of market power over its customers or suppliers.

Market power may be held by one company individually or by two or more companies collectively. Although market share is not the only factor in determining whether dominance exists, it nevertheless provides a reliable proxy to assess the enterprise’s market power. Generally speaking, a company will not be considered dominant if its market share is below 30%. Market shares between 30% and 50% may be indicative of market power/dominance. A case-by-case assessment is therefore required. Finally, market shares above 50% typically give rise to a presumption of dominance.

A situation of individual dominance generally arises where other conditions are met, such as (i) the company’s competitors have much smaller market shares and customers have no effective countervailing power; and (ii) barriers to entry (*e.g.*, regulations, minimum investment size, lack of available input/intellectual property or distribution facilities) into this particular market are high, thereby limiting potential entry for new competitors. An assessment of market power under competition law therefore requires a detailed economic assessment of the dynamics of competition in the marketplace.

Generally, a company acting independently can act as it chooses, unless it becomes so dominant in a given market that it is considered to have “special duties” *vis-à-vis* its competitors, suppliers and customers. ***Such “special duties” may prevent a company from engaging in certain business practices that would be considered as normal commercial conduct if the company were not dominant*** (*e.g.*, refusals to sell, promoting certain products as loss leaders or at very low prices, giving certain types of rebates or selling at certain conditions that result in “tying” customers, concluding exclusive arrangements with suppliers or customers, discriminating between different distributors, licensees, or customers, or in certain cases refusing to give access to certain intellectual property rights or assets to a competitor or customer). Note that it is not the dominant position in itself that is anti-competitive, but rather the way in which the dominant company acts on the market *vis-à-vis* its competitors, customers or suppliers.

C. PROHIBITION OF BUSINESS COMBINATIONS THAT MAY SUBSTANTIALLY REDUCE COMPETITION

While mergers and acquisitions can expand markets and bring benefits to the economy and consumers (e.g., development of new products, reduction of production or distribution costs), some combinations may reduce competition, usually by creating or strengthening a dominant player. This is likely to harm consumers through higher prices, reduced choice or less innovation. Competition Authorities can block a transaction if it could significantly reduce competition on any relevant market.

As a general rule, a transaction is subject to a notification duty in certain jurisdictions if it meets the thresholds (generally relating to the turnover achieved by the parties in the last financial year) set forth by the relevant merger control provisions of those jurisdictions. If a notification duty is triggered, these rules apply to all mergers no matter where in the world the merging companies have their registered office, headquarters, activities or production facilities.

In most jurisdictions around the world, companies that meet the thresholds of merger control are prohibited from putting into effect their transaction before receiving clearance from the Competition Authorities (so-called “standstill obligation”). ***Breaching the standstill obligation can subject the companies to heavy fines.***

To ensure that all required regulatory filings concerning any acquisitions of businesses or business units and Joint Venture agreements with other companies are timely made, any plan to enter into such a transaction must be first submitted to the Legal and Compliance Department and then to the CGICU/external legal counsel at the earliest possible stage.

III. PRACTICAL GUIDELINES TO AVOID COMPETITION LAW VIOLATIONS

A. CONTACTS WITH COMPETITORS

MHB' policy concerning relations with competitors is clear: no information of any competitive significance may be discussed or exchanged, and no formal or informal agreement may be entered into, with any representative of any competitor on any occasion, except as expressly permitted in these guidelines.

In light of the above, you must act independently of MHB's competitors. This means that you must not attempt to influence the current or future behaviour on the market of MHB' competitors. Furthermore, it is clear that, to compete effectively, MHB must obtain information and intelligence on the commercial activities of its competitors. To do this, you may collect competitive information from a variety of sources, including internal MHB sources, MHB distributors, end users, as well as newspapers, trade journals, industry analysis, etc. However, you should never try to obtain such information directly from competitors. Where you receive information from a competitor, or which you think has or might have been sent from a competitor, you should immediately contact first the Legal and Compliance Department, LCSC/external legal counsel.

You should always document the source of competitive or confidential information, so that you can show that the information did not come from a competitor.

In the framework of the contacts with competitors, you must also bear competition rules in mind regardless of how informal a meeting with a competitor is. Many legal problems concerning competition have arisen from what the parties involved considered to be "off-the-record" discussions. ***A verbal agreement to limit competition is just as unlawful as a written agreement.***

Any contact, regardless of how informal it is (e.g., at an informal dinner, on a golf course, in a hotel elevator), that may influence the behavior of our competitors on the market is likely to breach competition laws. Note that even one isolated unlawful contact with competitors may amount to a violation of competition law.

You must not use third parties as intermediaries to communicate with competitors. Special care should also be exercised when it appears that a competitor may be trying to communicate with you or send "signals" through third parties such as agents, contractors, shippers or forwarders. Attempts by competitors to use third parties as conduits to exchange or facilitate the exchange of competitively sensitive information should be rejected. Likewise, you should not use third parties to communicate information or policies that this Guidelines would otherwise prohibit if communicated directly.

In this respect, you **must never** discuss or exchange information with a competitor on any of the following topics:

- pricing and other terms of sale (e.g., discounts);
- production or other costs;

- profit margins and data;
- purchase prices and dealings with suppliers;
- marketing action;
- identity and dealings of customers;
- production volumes and strategy;
- sharing markets in terms of products, customers or geographical areas;
- refusal to supply a certain customer;
- refusal to purchase from a particular supplier; and
- new products or investment plans.

More in general, you should limit your contacts with competitors to what is strictly necessary for the purpose of that particular contact (e.g., a discussion about a new legislation to be adopted).

Joint cooperation agreements between competitors (e.g., joint research and development, joint manufacturing or marketing and joint product development) can produce efficiencies. However, they can also restrict competition. ***Therefore, any such planned agreement should always be submitted first to the Legal and Compliance Department and then to the CGICU/external legal counsel for clearance.***

- **Trade association meetings**

Joining a trade association meeting is, in principle, allowed. Topics that **may** lawfully be discussed at trade association meetings include:

- Proposals for the adoption of new legislation, lobbying for a modification of existing legislation with public authorities;
- Organization of and participation in exhibitions;
- Statistics showing the evolution of production costs or volumes, sales volumes or prices, **provided that** such statistics are based on **historical** (at least 12 months old) **and aggregated** (at least 4 participating companies) data exclusively;
- Development and use of shared quality symbols, provided that all manufacturers whose products meet the quality standards are allowed to use such symbols and that the individual manufacturer's marketing is not limited.

However, meetings or other trade association activities that involve sharing competition sensitive information with competitors are strictly prohibited under competition laws. Thus, you may never discuss the topics mentioned above relating to prohibited contacts with competitors at trade association meetings.

If a discussion on one of these topics is initiated at a trade association meeting you must request that the discussion be dropped and, should the other members refuse to do so, you must leave the meeting and make sure that the minutes of the meeting state your opposition to the discussion and your departure from the meeting.

In particular, when dealing with competitors and members of trade associations, you **must never**:

- enter into any discussion, exchange of information, agreement or understanding with competitors concerning prices, costs, production, clients, bids or marketing;
- engage in any discussion at meetings with competitors that do not adhere strictly to the topics on the agenda; and
- engage in any casual or social conversation with competitors that even superficially touches upon such business topics.

Conversely, in the framework of trade associations' meeting, you have to:

- compete vigorously, independently and ethically;
- make sure that a written agenda is prepared **before** any meeting that competitors will be attending and that a copy of the agenda is sent to you in advance of the meeting (consult first the Legal and Compliance Department and then the CGICU/external legal counsel);
- request clearance from the Legal and Compliance Department and the CGICU/external legal counsel before attending any trade association meeting or individual contact with a competitor;
- keep precise minutes of meetings with competitors;
- state your objection and leave the room if a prohibited subject is raised at a trade association meeting; and
- make sure that all written communications however informal with competitors have a clearly lawful purpose and have been reviewed first by the Legal and Compliance Department and then by the CGICU/external legal counsel.

B. CONTACTS WITH CUSTOMERS AND SUPPLIERS

Although collusion between competitors generally constitutes the most serious violation of competition laws and are generally illegal, certain other types of arrangements with customers or suppliers are also forbidden. In a nutshell, you must not unduly interfere with MHB' customers' business or impose unfair trading terms upon them. Conversely, you must not accept that MHB' freedom to run its own business be unduly limited by anticompetitive practices of its suppliers.

The following arrangements with customers and suppliers may run afoul of competition laws:

- **Resale price maintenance.** It is legal to *suggest* minimum resale prices to distributors or customers. However, resale price maintenance (*i.e.*, an agreement between MHB and one of its distributors or customers on the price at which the distributor or retailer must sell MHB' products to third parties) is considered *per se* illegal. You must avoid any type of threat, coercion or other effort to force a customer to adhere to a particular resale price or level of prices. Conversely, you should not discuss MHB' resale prices with suppliers for goods that MHB resells.
- **Discussing with distributors the pricing or marketing activities of another distributor.** When a manufacturer terminates a distribution agreement in response to complaints of other distributors, there is a risk that an unlawful conspiracy between the manufacturer and the other distributors may be inferred. You must therefore handle complaints from certain distributors about the pricing or marketing behaviour of any other distributor with great care. You should never inform complaining distributors about what action MHB will take with respect to another distributor or even indicate to them that any action will be taken.
- **Restriction on the territory into which, or on customers to whom, a distributor may sell goods.** A distributor and a supplier may agree that the distributor can only resell the products in a particular territory or to a particular class of customers under certain limited circumstances. Since an in-depth legal analysis is required to determine whether the requirements for the lawfulness of such arrangement are met, you are urged to submit all agreements that would contain such restrictions first to the Legal and Compliance Department and then to the CGICU/external legal counsel to ensure that these restrictions are properly structured and supported by legitimate business purposes.
- **Discounts.** As a general rule, competition laws do not limit the types of volume discounts that may be granted, unless they are granted for products in respect of which MHB could be found dominant. Even if MHB is **dominant** in a particular product market, volume discounts do not generally raise competition law concerns, provided that: (a) a customer knows from the outset how the discount will be calculated (*i.e.*, the discount is transparent); (b) the discount is linear (*i.e.*, based on the quantity of products purchased on an order-by-order basis); and (c) the discount is not conditional on a customer purchasing a large part of its requirements or exclusively from MHB. As the law on discounts is somewhat unclear and assessment of a given discount scheme depends to a large extent on the structure of that discount in its market context, you are urged to submit any proposed scheme first to the Legal and Compliance Department and then to the CGICU/external legal counsel for clearance.

COMPETITION LAW GUIDELINES

- **Bundling.** "Bundling" is making the sale of a product or service conditional on the purchase of separate and distinct products or services that a customer is not really interested in buying, or that it may wish to purchase from someone else. A company that is dominant in respect of a given product may not bundle that product with a separate product. The Legal and Compliance Department and the CGICU/external legal counsel can provide specific guidance as to whether a particular bundling arrangement is legal. You are therefore urged to consult first the Legal and Compliance Department and then the CGICU/external legal counsel before entering into any such arrangement with a customer.
- **Predatory Pricing.** Selling products at prices below average variable cost may raise competition law concerns if MHB is found to be dominant in any relevant product market. This may occur, for example, where MHB' products are sold at prices below the plant's production costs. You are urged to submit any "special deal" that you consider offering to a customer first to the Legal and Compliance Department and then to the CGICU/external legal counsel to ensure that the price terms you are envisaging are not abusive.
- **Exclusive dealings.** Exclusive dealing arrangements involve an obligation for customers to purchase all their requirements from one supplier. Although exclusive dealings are not automatically prohibited, exclusive dealing by dominant companies has generally been found to be abusive. The legality of exclusive dealing arrangements depends on specific factual circumstances and market context. Since an in-depth legal analysis is required to determine whether the requirements for the lawfulness of such arrangements are met, you are urged to submit all agreements that would contain such an exclusivity requirement first to the Legal and Compliance Department and then to the CGICU/external legal counsel for clearance.
- **Refusal to supply.** A manufacturer acting independently is generally free to decide to whom it will sell its products for any valid business reason. However, refusing to supply an existing customer may be unlawful where there is no business justification for doing so, in particular in a situation where MHB is the dominant supplier of that product. You should always consult the Legal and Compliance Department and the CGICU/external legal counsel whenever you are considering refusing to supply an existing customer or distributor.

In brief, when dealing with customers and supplier, you **must never**:

- discuss with customers or suppliers resale prices or seek to dictate or control our customers' resale prices;
- discuss with distributors the pricing or marketing activities of another distributor;
- place territorial restrictions on a customer without first consulting the Legal and Compliance Department and the CGICU/external legal counsel;
- condition the purchase of one product on the purchase of another without first consulting the Legal and Compliance Department and the CGICU/external legal counsel;
- attempt to limit a customer's freedom to buy or sell products from a competitor without consulting the Legal and Compliance Department and the CGICU/external legal counsel;
- terminate or refuse to sell to an existing customer without a legitimate business justification; or
- require exclusivity from a customer or grant exclusivity to a supplier unless this condition has been approved by the Legal and Compliance Department and the CGICU/external legal counsel.

Conversely, you have to:

- apply uniform pricing policies and programs to competing customers; and
- request clearance from the Legal and Compliance Department and the CGICU/external legal counsel concerning any business dealing with a customer or a supplier that could raise competition concerns.

IV. OTHER COMPETITION LAW CONSIDERATIONS

A. COOPERATION WITH ENFORCEMENT AUTHORITIES

MHB' policy is to cooperate with the enforcement authorities in carrying out their law enforcement responsibilities. Be polite and cordial if contacted by Competition Authorities, but ***always refer them immediately to the CGICU/external legal counsel before answering any question or providing materials.***

B. INTERNAL DOCUMENTS AND OTHER COMMUNICATIONS

Internal documents are often the most important evidence in a competition law related investigation or litigation. This includes documents in hard copy and handwritten notes as well as electronic documents, such as e-mails and drafts that might be saved on a hard disk. ***Thus, it is extremely important that you exercise due care in the drafting and exchange of any document or correspondence to avoid any legal problem, including internal documents.***

COMPETITION LAW GUIDELINES

In light of the above, when dealing with internal documents, you must not:

- write down anything that could be misconstrued and give the appearance of improper conduct *vis-à-vis* competitors, business partners and customers or use “buzz words”, e.g., “market power”, “dominant position”, “destroy after reading”, “we have consulted with the market” or “we will destroy these guys”;
- exaggerate MHB’ market position or market power, e.g., “we are dominant in this area” or “competitor is scared and will follow our prices”;
- use language that could suggest coordination with competitors, e.g., qualify a competitor’s lower prices as “unethical” or a lost customer as “stolen” by a competitor, or refer to a trade association as a “club”;
- use expressions suggesting guilt, such as “destroy after reading”, or “top secret”; such terms are generally useless and attract attention to what you are saying;
- destroy any document or other piece of evidence – irrespective of how incriminating it may be for MHB – in case enforcement authorities conduct an unannounced inspection at one of MHB’ sites or MHB is otherwise being investigated by the authorities; and
- carefully document any source from which information concerning competitors was obtained, e.g., if you receive a competitor’s price list from a customer, mark the document as such to avoid any suspicion of improper contact with a competitor.

Conversely, you have to:

- treat every document that you create as if it will be read by an enforcement official or an opposing lawyer in a litigation;
- treat e-mail and other electronic documents the same as hard copy documents. Assume that electronic versions of documents will remain on the system indefinitely and will be available to the other side in any future investigation or case;
- ask the Legal and Compliance Department and the CGICU/external legal counsel to review documents that might have antitrust significance- in case of doubt about a document consult the CGICU/external legal counsel. In particular, ask the Legal and Compliance Department and the CGICU/external legal counsel to review meeting agendas prior to the meeting and drafts of meeting minutes afterwards. If feasible, have legal counsel attend the meetings and draft the meeting minutes; and
- send all correspondence received directly from a competitor, which deals with competitive information, to the Legal and Compliance Department and the CGICU.

C. COMMUNICATIONS WITH YOUR LEGAL AND COMPLIANCE DEPARTMENT OR MHB' COMPLIANCE, LCSC DIVISION

You have a duty to seek the advice of your Legal and Compliance Department, LCSC as soon as you identify a situation that you believe may involve MHB in a breach of competition rules.

Note that communications with your Legal and Compliance Department or the CGICU are not covered by legal professional privilege (*i.e.*, the documents sent and received can be disclosed in legal proceedings and can be used to prove the infringement). Legal privilege only covers: (i) communications with external legal counsels; and, (ii) communications/documents (internally) prepared exclusively for the purpose of obtaining legal advice from external counsels.

To help your Legal and Compliance Department, LCSC to provide the correct advice, you should disclose to it all the relevant facts of which you are aware, whether favourable or embarrassing. You should also be prepared to assist it in obtaining whatever additional information it may require.