



سوروهنجاي فرساينغن بروني دارالسلام  
Suruhanjaya Persaingan Brunei Darussalam  
Competition Commission of Brunei Darussalam

# COMPETITION GUIDELINES FOR BUSINESS

Your Business Guide to Comply with the Competition Order 2015



These Guidelines provide basic overview of the Competition Order 2015 and shall not be used as a substitute of the Order.

All businesses are required to comply with the Order and those found guilty of an offence under the Order may face serious consequences such as financial penalty.

Therefore, businesses are advised to take any necessary steps to ensure compliance with the Order and employees at all levels shall be made aware of these competition guidelines.

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## In a nutshell: How healthy competition can benefit consumers and businesses?

Competition in the market is jeopardized when businesses collude and make agreements not to compete with each other. Healthy competition benefits everyone — be you a consumer or a business. This results in:



## The Competition Order 2015



The Competition Order 2015 prohibits and deters businesses in all sectors from adopting anti-competitive conducts which prevent, restrict or distort competition in any market in Brunei Darussalam.

The Order has the objective of promoting market efficiency and enhancing consumer welfare in Brunei Darussalam. It encourages competition for businesses in the market in order to drive greater productivity, increase innovation and enhance consumer choices and products quality.

The Order seeks to provide a pro-business environment where businesses can compete freely and are protected from harmful anti-competitive practices by other firms in the industry and suppliers. It also helps to build up good governance, and fair and honest business dealings. The Competition Order 2015 will help businesses in the Brunei community to compete based on merits and be more responsive to the needs of a changing world.

The Competition Order was passed in 2015 and was gazetted on 29th March 2015.

### Does the Order apply to your business?

The Competition Order 2015 is applicable to all commercial activities in Brunei Darussalam with the exception of activities which fall in the categories listed in the Exclusion list in The Third Schedule of the Order (See page 16).



## Phased Implementation

The Competition Order 2015 will be adopted in phases beginning with the enforcement of the first key prohibition which is 'Anti-competitive Agreements'. Businesses are given a transition period to adjust and prepare for compliance from the date to be announced by the Authority. While the key prohibitions will not apply immediately, businesses should ensure that they comprehend the broad scope of the law and take necessary measures to comply.

## Key Prohibitions

The Competition Order 2015 prohibits three anti-competitive behaviours:



**Anti-competitive Agreements**  
Section 11



**Abuse of Dominant Position**  
Section 21



**Anti-competitive Mergers**  
Section 23

## 1. Anti-competitive Agreements

Anti-competitive agreements are commonly known as **cartels**.



Section 11 of the Competition Order 2015 prohibits agreement between businesses that has an object and effect to limit, prevent, distort or restrict competition in Brunei Darussalam. This applies regardless of how the agreement was reached and regardless of whether the agreement entered is made within or outside Brunei Darussalam.



### LEAVE THE DISCUSSION!

If you find yourself in the middle of a discussion about an anti-competitive agreement or commercially sensitive information, just say no and leave the conversation.



### Did you know?

There are many ways in which you can reach an agreement:

- Talking about commercially sensitive information (prices and output) over coffee with a friend who is also your competitor,
- Non-verbal cues such as winking or nodding to discreetly express your approval of the agreement,
- Informal text-messaging or social media interactions, or simply
- Being in hearing-distance of a conversation and not expressing your rejection of the agreement.

## Anti-competitive Agreements your business should watch out for:

### Price Fixing

Price fixing occurs when competitors directly or indirectly agree to increase or maintain the prices of goods or services, instead of competing to offer the best value of money for their consumers.



This includes decisions made by associations to increase prices of products or services, to impose charges or to set guidelines on how much to charge.

### Case: Price Fixing

15 enterprises in the Sibu Confectionary and Bakery Association (SCBA) were found to have engaged in anti-competitive agreements.



During the SCBA's Second Annual General Meeting, the enterprises met and discussed an agreement to increase the prices of confectionary bakery products by 10 to 15 percent. Evidence of this discussion was recorded in the association's minutes of meeting, and was published in a local newspaper.

The arrangement was viewed by the Malaysia Competition Commission (MyCC) as having the object to restrict competition. When competitors collude, prices are inflated and consumers pay more than they are supposed to. The 15 enterprises of the SCBA were fined a total penalty of RM 247,730.

Source: <http://www.mycc.gov.my/sites/default/files/15%20members%20of%20SCBA.pdf>

## Bid Rigging

Bid rigging is commonly known as tender collusion.



It refers to the manipulation of tender processes and/or documents by businesses who agree in advance on who should win the tender, and/or to make sure the tender is awarded at a high price.

Bid rigging comes in a variety of forms, such as:

- agreeing to take turns at being the winner ("Bid Rotation"),
- agreeing not to submit a bid ("Bid Suppression"), or
- agreeing to submit a less attractive tender to lose ("Cover Bidding").

### Case: Bid Rigging

Two major global pharmaceutical companies, GSK and Sanofi, were found to have formed a cartel in order to get the government tender in supplying Meningitis vaccines, which is required for the annual pilgrimage of Hajj.



Both companies colluded to divide the entire tendered quantities. They quoted significantly higher prices without any significant increase in cost of production, so that they can earn super normal profits. Without any other bids for the tender, consumers were forced to pay the higher prices for the vaccines.

The case was brought to the Competition Commission of India (CCI) via a complaint from Bio-Med, another company. The two companies were found guilty. The CCI imposed a total penalty of USD \$9.4 million (approximately BND \$13.2 million) and issued cease and desist orders against GSK and Sanofi.

Source: [http://www.cci.gov.in/sites/default/files/262013\\_0.pdf](http://www.cci.gov.in/sites/default/files/262013_0.pdf)

## Market Sharing



In a market sharing agreement, competitors agree to divide up the market either by geographical area or by the types of customer.

They agree to only sell at their designated area in the market, without competing with others. This limits the number of suppliers in the market, leading to consumers having to pay more for goods and services.

### Case: Market Sharing

Three companies – Pioneer Concrete, Boral Resources and CSR – in the pre-mixed concrete market in Australia were found to have been involved in market sharing from 1989 until 1994.

The companies allocated consumers to certain suppliers and agreed not to compete for their business, and on specified major construction projects. In order to maintain these market shares, they employed an accountant to monitor each other. This caused consumers to lose their bargaining power and to have less choice in the concrete market.

The companies discussed these agreements during more than 50 regular meetings and phone conversations. They were found guilty and the Australian Competition and Consumer Commission (ACCC) imposed penalties on each company totaling AUD \$19.8 million (approximately BND \$21.8 million).

Source: <https://www.accc.gov.au/business/anti-competitive-behaviour/cartels/cartels-case-studies-legal-cases>



## Supply Control



Supply control involves an agreement between competitors to limit the quantity of goods or services made available to the market. Shortage of goods or services will lead to increase of prices, as there is not enough supply to meet the large demand in the market.

### Case: Supply Control

Members of the Tasmanian Atlantic Salmon Growers Association (TSGA) made an agreement in 2002 that all members would cull stocks by 10 percent.



The salmon industry was in a financial difficulty and supply was outstripping demand; TSGA reasoned that the output limitation would meet demand and stop the price from falling. TSGA had pursued legal advice, but did not correctly brief its lawyers. Because of this, they believed the agreement was not in breach of the competition law.

The Australian Competition and Consumer Commission (ACCC) concluded that TSGA was guilty of supply control. However, due to the difficult state of the industry, and the fact that legal advice was sought and co-operation shown, the ACCC decided that penalties were unnecessary. Instead, the ACCC obtained a court order that the association create a compliance program and trade practice-training sessions, and that the association stop any future culls.

Source: <https://www.accc.gov.au/business/anti-competitive-behaviour/cartels/cartels-case-studies-legal-cases>

## 2. Abuse of Dominant Position

Being dominant in a market is not an offence. However, under section 21 of the Competition Order 2015, businesses which have a substantial degree of market power in any market are prohibited from **abusing its dominant position** through conducts which may prevent or hamper any other businesses from competing in the market. This includes conducts such as:



Predatory pricing — when a dominant player deliberately charges a very low price below costs, with the intention of forcing other companies out of the market. Although consumers may benefit from lower prices in the short run, their welfare will decrease in the long run due to less competition that leads to higher prices, and reduced quality and choice;



Exclusive dealings and refusal to supply — when a dominant player refuses to supply to a particular company or customer without objective justifications. For example, a supplier may only sell to a retailer if the retailer does not buy from any other supplier; or



Applying dissimilar prices or conditions to customers without objective justifications.



### Be careful of the following if you hold a dominant position in a market:

- implementing loyalty programmes or exclusivity agreements with customers;
- applying different prices and sale conditions to business customers who are essentially the same in relation to credit worthiness and volumes purchased;
- using a product as an incentive for a customer to purchase another product;
- selling products or services below cost;
- refusing to supply a product or service without good reason; and
- entering into joint buying or production agreements.

### Case: Abuse of Dominance

The national motorcycle market leader in Thailand was accused of abusing its dominant position. The motorcycle company owned an estimated market share of 75 percent based on their sales value; this amounted to approximately 24 million THB (almost BND \$1 million) during the fiscal year of 2002. The company was accused of forcing the general distributors:



- to sell ONLY that company's motorcycles,
- to remove other competitors' advertising boards, and
- to enter into exclusive agreements to turn away from other manufacturers.

These anti-competitive conducts of the market leader limit the varieties of motorcycles available. Since the distributors can only buy from the dominant company, they are also forced to accept whatever price the company chooses. Consumers are faced with decreased choice, potentially lower quality and higher prices.

The Trade Competition Commission of Thailand found that the company was in breach of the competition law and reported the case to the public prosecutor with a recommendation to open criminal proceedings.

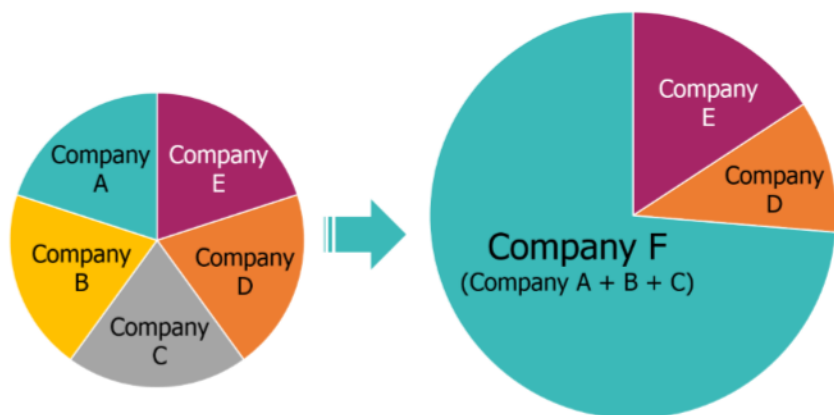
Source: [http://otcc.dit.go.th/?page\\_id=2945](http://otcc.dit.go.th/?page_id=2945)

### 3. Anti-competitive Merger

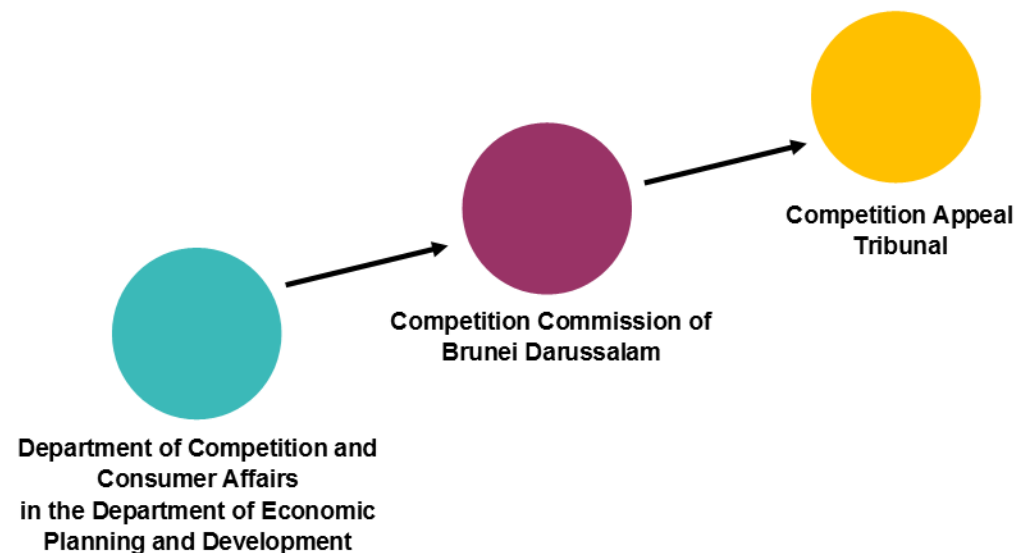


Mergers do not necessarily raise competition concerns under the Competition Order 2015. Section 23 of the Order only prohibits any mergers that lead to a restriction of competition or substantial lessening of competition in Brunei Darussalam.

Competition concerns may arise when two or more companies merge into a single entity with significantly high post-merger power over the market, hence becoming a monopoly or dominant player with the potential to abuse.



### The Authorities



### Department of Competition and Consumer Affairs

The investigative and administrative functions are undertaken by the Department of Competition and Consumer Affairs under the Department of Economic Planning and Development, Ministry of Finance and Economy.

The Department of Competition and Consumer Affairs is the National Competition Authority to receive competition-related complaints, and to handle and investigate competition-related cases received before bringing the cases to the Commission for hearing and decisions.



## Competition Commission of Brunei Darussalam

The Competition Order 2015 provides the provision for the establishment of the Competition Commission of Brunei Darussalam. The Commission is responsible for enforcing the Competition Order 2015 and is tasked with the functions to hear and decide on competition-related complaints.

Among others, the functions of the Commission also include:

- To make decisions to open a case/ investigation
- Determination of infringement to provisions of the Competition Order
- Determination of penalties or such other remedies as it thinks fits
- Conduct hearings as required with interested person or parties
- Provide recommendations to the Minister on applications for individual and block exemptions

## Competition Appeal Tribunal

The decisions made by the Commission are appealable to the Competition Appeal Tribunal. The decision of the Competition Appeal Tribunal is final.

## Investigative powers

The Competition Order 2015 provides the Authority with the power to investigate if there are any reasonable grounds for suspecting that the prohibitions in the Order have been or may have been infringed. The power enables the Authority to:



- Require the production of specified documents or information from any person or business by giving a written notice;
- Enter premises without warrant after giving advance written notice to the occupier, and take copies of the relevant documents; and
- Enter and search premises with a court warrant and seize any relevant documents and remove any equipment or article from the premises for examination.

## Decisions by Commission

Where, the Commission proposes that the prohibitions in the Order have been infringed, after completing an investigation and careful consideration of the documents produced and reports or statements made, the Commission shall:

- Give a written notice to the person likely to be affected by such decision, and
- Give such person an opportunity to make representation to the Commission

## Infringement

Where the Commission has made a decision that a person has contravened the Competition Order 2015, it may:

- Issue direction to such person to take an action, mitigate or eliminate any adverse effects and prevent the recurrence of the infringement; and/or
- Impose a penalty up to 10 percent of the turnover of the undertakings involved for a period, up to a maximum of three years.



**Did you know?**

If you breach the Competition Order,

- Your business may face third party claims from any person who has suffered loss or damage
- You have the right to private action in settling the conflict with third parties outside of court



## Exemptions

Agreements which are in principle anti-competitive may be exempted, provided that the agreements produce beneficial effects and contributes to:

- Improving production or distribution; and/or
- Promoting technical or economic progress.



Agreements which are otherwise prohibited are exempted only by way of a specific authorisation or permission by the Minister in charge of competition matters. There are conditions under which anti-competitive agreements may be exempted and the procedures to be followed in order to get the exemption.

## Exclusions

The Third Schedule of the Competition Order 2015 provides specific exclusions for the prohibitions of the Order as follow:

Applicable Prohibition(s)	Exclusions/Exemptions
<b>Anti-competitive Agreements</b>	Vertical agreement
	Agreement with net benefit
	Agreement which falls within the scope of block exemption
<b>Anti-competitive Agreements and Abuse of Dominant Position</b>	Undertaking entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly
	Agreement/conduct made in order to comply with legal requirements imposed by/under any written law
	Necessary agreement to avoid a conflict with international obligation of Brunei Darussalam
	Agreement made on the ground of public policy
	Agreement/conduct that relates to any goods or services regulated by other competition law or code of practice
	Agreement/conduct which relates to Clearing House established under the Banking Order, 2006
	Agreement/conduct that is directly related and necessary to the implementation of merger
	Agreement/conduct that results or would result in a merger

Applicable Prohibition(s)	Exclusions/Exemptions
<p><b>Anti-competitive Agreements and Abuse of Dominant Position</b></p>	<p>Undertaking of specified activities:</p> <ul style="list-style-type: none"> <li>a) Supply of waste management services, including the collection, treatment and disposal of waste;</li> <li>b) Supply of scheduled bus services under the Road Traffic Act (Chapter 68);</li> <li>c) Supply of goods and services specified in Monopolies Act (Chapter 73):                             <ul style="list-style-type: none"> <li>i. Licensed to collect within and exporting from Brunei Darussalam the skins of crocodiles, pythons and monitor lizards</li> <li>ii. Dealing of all kinds of firearms and ammunition and all kinds of defence equipment and armaments for lawfully established security forces of the Government of His Majesty the Sultan and Yang Di-Pertuan</li> </ul> </li> </ul>
<p><b>Anti-competitive Mergers</b></p>	<p>Merger appointed by any Minister or regulatory authority under any written law</p> <p>Merger approved by Authority Monetary of Brunei Darussalam (AMBD)</p> <p>Merger under the jurisdiction of any regulatory authority under any written law relating to competition, or code of practice relating to competition issued under any written law</p> <p>Merger where economic efficiencies outweigh the adverse effects due to the substantial lessening of competition in the relevant market in Brunei Darussalam</p>

## What can you do to protect your business?

### Apply for leniency

The Competition Order 2015 offers a leniency regime, with a reduction of up to 100 percent of any penalties, which would otherwise have been imposed. This is made available to undertakings who have admitted its involvement in anti-competitive agreements, or who have significantly assisted in the investigations of any prohibition.

This serves as an incentive for undertakings that are liable for infringing the Order to confess and provide evidence. Different percentages of reductions are available depending on whether the undertaking was the first person to admit its involvement, and the stage in the investigation at which the involvement was admitted.

### Be responsible for your own business compliance

To protect your business, you can also take measures to ensure your staffs are aware and in compliance of the Competition Order 2015, by implementing a set of policies or programs aimed at increasing competition compliance.

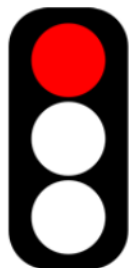
#### Tip Box:

Ways in which you can improve the success of your competition compliance program:

- Develop an internal framework that acts as a compliance guideline for staff
- Regularly review and evaluate the effectiveness of the program
- Preserve pro-competition policies and procedures
- Ensure the program is up-to-date with the provisions of the Order
- Maintain formal audits of sales and procurement processes
- Request for briefing sessions from the Competition and Consumer Affairs Department



## Know your do's and don't's



- Do not fix, increase, maintain or control prices of goods and services
- Do not share information or bidding strategy with your competitors when submitting your tender
- Do not agree to divide the market by allocating sales, customers or geographical territories
- Do not agree to limit the supply and output production of goods and services
- Do not enter into agreements that have enough impact on market to harm competition
- Do not discuss confidential business information with your competitors such as
  - Present or future pricing;
  - Profits calculation;
  - Discount tactics;
  - Production output;
  - Commercial or marketing plan; and
  - Terms and conditions of purchase and supply.
- Do not attend unscheduled meetings or gatherings unless you are clear of its legitimate purpose or agenda



**The Competition Order can be breached at anytime and anywhere, regardless of the setting and the form that it takes – it may be formal or informal. Agreements are reached even if they were in a form of wink or nod and took place in a social setting.**



- Understand the key prohibitions in the Competition Order
- Do compete on merits to win consumers
- Do make independent business decisions
- Do stay clear from any discussion that can get your business into trouble
- Do reject any anti-competitive offers or suggestions by making clear of your objection
- Do discuss only on non-confidential and non-sensitive information
- Always be cautious before exchanging any information with your competitors
- Exercise care when collecting information from members in an association



**If in doubt, seek independent legal advice or consider contacting the Department of Economic Planning and Development (JPKE) for guidance**

## How can breaching the Competition Order hurt your business?

Breaching the Competition Order can hurt your businesses in several ways:

- Businesses fined – your businesses will be fined up to 10 percent of its turnover in Brunei Darussalam for each year of breach, for a maximum of up to three years.
- Reputation affected – your business may suffer from a loss of its reputation and the goodwill of its consumers and the public.
- Banning order – your business may have to stop operations or modify its activities or conduct.
- Businesses sued – your business may face third party claims from any person who has suffered a loss or damage as a result of any breach of the Competition Order.

## Know someone who is breaking the law?

### Make a report (or file a complaint)

If you suspect or are aware of any businesses that may be in breach of the Competition Order 2015 or if you have any competition-related concerns, do not hesitate to voice it out to the Competition and Consumer Affairs Department at the Department of Economic Planning and Development, Ministry of Finance and Economy.

### More about the Competition Order 2015

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Ministry of Finance and Economy  
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