



سوروهنجاي قرساغيغن برونئي دارالسلام
COMPETITION COMMISSION
BRUNEI DARUSSALAM

An Introduction Competition Order 2015

Towards a more efficient market and sustainable growth

Competition and Consumer Affairs Department
Executive Secretariat to the Competition Commission Brunei Darussalam

- Competition Order 2015 exists to provide businesses with equal opportunities to participate fairly in the national economy
- Competitive markets will increase the size of the pie and generate more wealth and consumer welfare
- The role of attracting consumers as to the different qualities, prices and characteristics between different categories of goods and services lays with the firms competing on the market
- Consumers have the right to go to any supplier who offers goods and services



A law that prohibits
business practices which **restrict**
a fair competition process
in a market.

“to promote & protect competition in markets in Brunei Darussalam, to promote economic efficiency, economic development & consumer welfare...”

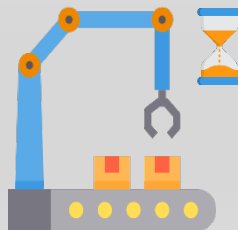
– Section 1 (3), Competition Order

Efficient market

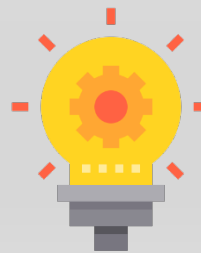
Consumer welfare



Supply



Productivity



Innovation



> Consumer choices
Lower prices



Quality of goods
& services

Key Prohibitions

Section 11



Anti Competitive Agreement (Cartels)

1 Jan 2020

Section 21



Abuse of Dominant Position

Will be enforced at a later stage

Section 23



Anti-Competitive Mergers

1st Prohibition: Anti-Competitive Agreements (Cartels)



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- Agree to act together instead of competing
- Agreements are designed to reduce competition to drive up profits

The 4 Don'ts:

- 1) Price Fixing
- 2) Bid Rigging
- 3) Market Sharing
- 4) Limiting supply



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Price Fixing

- **Agreeing to fix or maintain price** (verbal or written agreement)
- **Keep prices high** compared to a competitive market
- **Sharing market information** like pricing, profit, through associations / informal discussions

Exchanging commercially sensitive information is part of cartel

- Information exchange via trade associations is common;
- Certain information sharing harms the competitive process;
- Commercially sensitive information includes:
 - information on price (future price);
 - customers, costs and quantities;
 - market strategies of competitors.

Sector: Confectionary and Bakery

Country: Malaysia

Companies: 24 members of the Sibu Confectionery and Bakery Association (the 'SCBA')

Case story:

- The 24 competing companies were found to agree to **increase prices of products by 10-15% in Sibu area.**
- This narrows and eliminates competition in market.
- This agreement gives the parties opportunity to impose higher prices to maximize profitability without any competition.

Penalty: RM\$439,000 (approx. BND\$145,522)



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Bid Rigging



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- Any **agreement** (written or oral) between bidders that **limits or reduces competition in a tender**
- Bidders agree amongst themselves **who should win the tender and at what price**

Sector: Electrical services

Product: Electrical Services for Formula 1 in Singapore

Companies: Cyclect Group, HPH Engineering and Peak Top Engineering

Type(s) of bid rigging: Complementary Bidding

Case story: CCS's investigation revealed that the Cyclect Group prepared and submitted relatively higher prices for HPH's and Peak Top's bids than its own "winning" bids.

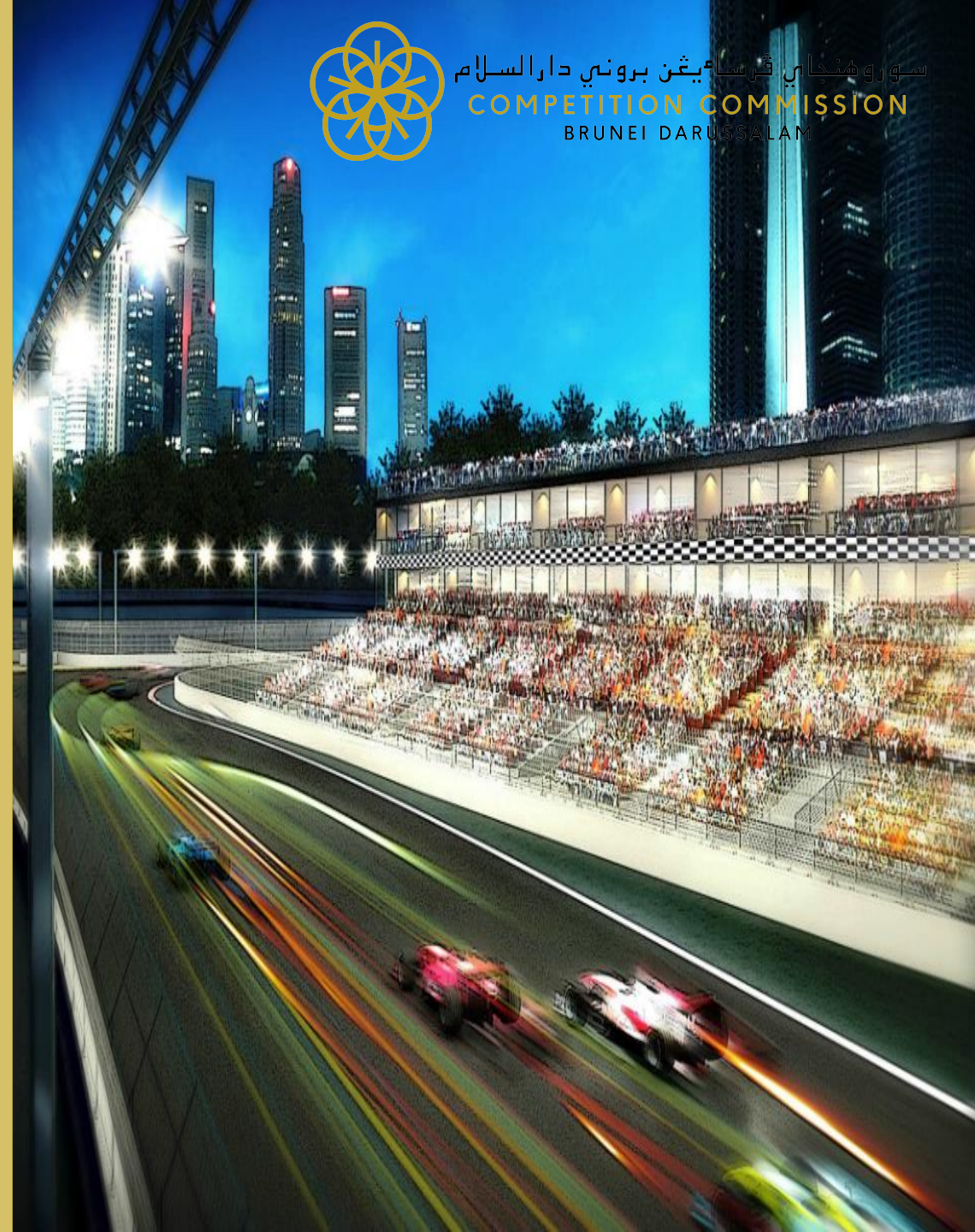
The bid prices were about 25 to 30 per cent higher than Cyclect Electrical's. Cyclect Group had previously sub-contract to HPH and has a personal relationship with Peak Top's director.

Penalty: All 3 parties were fined.

Cyclect Group was fined S\$559,297, HPH was fined S\$28,128 and Peak Top, S\$21,693.



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Market Sharing



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- Divide up consumers by geographical area or consumer type
- Agree not to compete
- Consumer forced to pay more with less choice



Sector: Fresh Chicken



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Country: Singapore

Companies: Gold Chic Poultry Supply and its related firm; Hua Kun Food Industry; Hy-fresh Industries; Kee Song Food Corporation; Ng Ai Food Industries; Sinmah Poultry Processing; Toh Thye San Farm; & Lee Say Group and Tong Huat Group (affiliated companies)

Case story:

- Competition Commission Singapore (CCS) found that the 13 chicken distributors have agreed to increase price (\$0.10 - \$0.30 per kg)
- Also agreed not compete for each other's customers in the market of supply of fresh chicken products in Singapore.
- Customers had "limited option" to switch to more competitive companies

Penalty: BND\$26.8 million





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- Agreeing to limit the quantity of goods or services
- Keep prices high by limiting supply of goods (artificial shortage)

Supply Control

Key Prohibitions



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**Anti Competitive
Agreement (Cartels)**

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**Abuse of Dominant
Position**

Will be enforced at a later stage

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**Anti-Competitive
Mergers**

2nd Prohibition: Abuse of Dominant Position

- Nothing wrong being dominant; nothing abusive being profitable
- Abusive conducts:
 - Predatory pricing
 - Refusal to supply/limiting production to the prejudice of consumers
- Two-step test:
 - Whether a company is dominant in a relevant market (substitutability test) ; and
 - Whether it abuses its dominance
- Needs **economic-based assessment** to determine whether the act has, or likely to have, an adverse effect to competition.



Key Prohibitions



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**Anti-Competitive
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3rd Prohibition: Anti-Competitive Merger



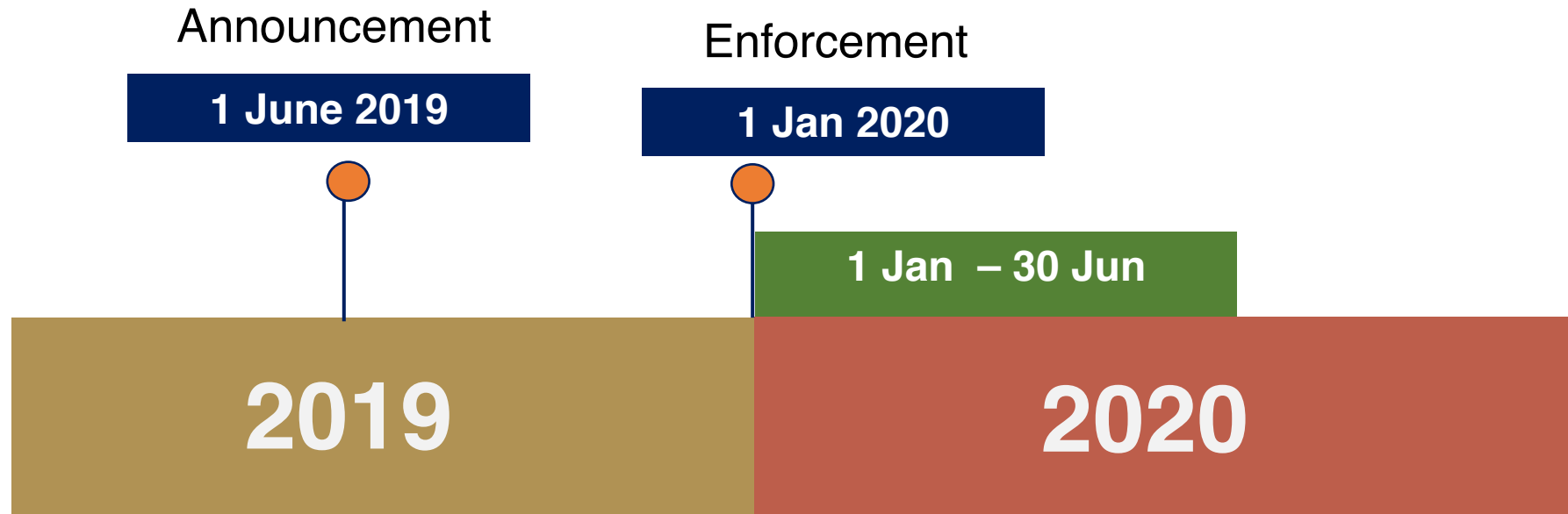
Mergers are prohibited ONLY if the merged entity **lessen or restrict competition in the market**

Any anticipated mergers or mergers to be notified to the Commission for consideration and decision

Transitional Period: 1 Jan – 30 Jun 2020



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Transitional period

Time frame to allow businesses to make adjustment **ONLY for agreements made before 1 June 2019**

- ✓ All commercial entities across sectors
- ✗ Government and Statutory Body functions and those acting on behalf of Government and Statutory Body

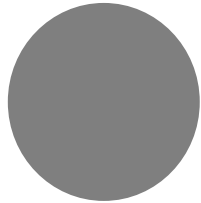
Block Exemption

The Commission may recommend to the Minister to issue block exemption to certain sector upon assessment of net economic benefit and public interest

Exclusion

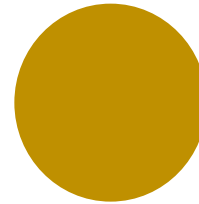
- Applicable to Section 11- Anti-Competitive Agreement
- Activities specified in **Third Schedule**:
 - Services of general economic interest
 - Compliance with legal requirements
 - Vertical arrangement
 - Avoidance of conflict with international obligations
 - Public Policy
 - Agreements with net economic benefit
 - Goods and Services regulated by other competition law

Competition Commission of Brunei Darussalam



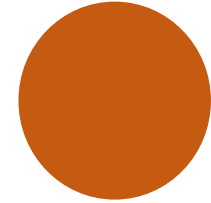
The Competition and Consumer Affairs Department (CCAD)

Investigative and administrative
receives complaints, advocates



The Board of Commissioner

Conducts hearings, case
decisions and penalties



The Competition Appeal Tribunal

Hears appeal cases
decided by the
Competition Commission

Advocacy

- Raising Awareness Competition culture
- Voluntary compliance
- Policy advisory



Power to Conduct Market Review

- Examine competition issues in the market
- Review if the market is functioning well
- Explore causes of insufficient competition



Power to Investigate



Access information or documents

Power to accept undertaking and commitment



Settlement

Power to design remedy and sanction

- Alter behaviour / conditions
- Cease order
- Fine not exceeding 10% business turnover in Brunei for a maximum of 3 years



- For businesses to disclose anti-competitive conducts that they had been involved with.
- Businesses may be granted up to full immunity from any penalties in exchange to information disclosure and cooperation.



Key Takeaways



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- Companies should take their business decisions **independently** of their competitors
- Arrangement with competitors that **restrict competition** are **illegal**
- Your compliance will build **business growth, reputation** and a **healthy business environment**





Executive Secretariat to the Competition Commission Brunei Darussalam

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