



# WHAT YOU NEED TO KNOW ABOUT COMPETITION POLICY IN ASEAN

*PROMOTING AND PROTECTING THE COMPETITIVE PROCESS*



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# WHAT IS COMPETITION POLICY?

Competition policy can be broadly defined as a governmental policy that promotes or maintains the level of competition in markets, and includes governmental measures that directly affect the behaviour of enterprises and the structure of industry and markets. Competition policy includes competition law.

Competition law prohibits anti-competitive practices. Examples of anti-competitive practices include:

## **PRICE-FIXING**

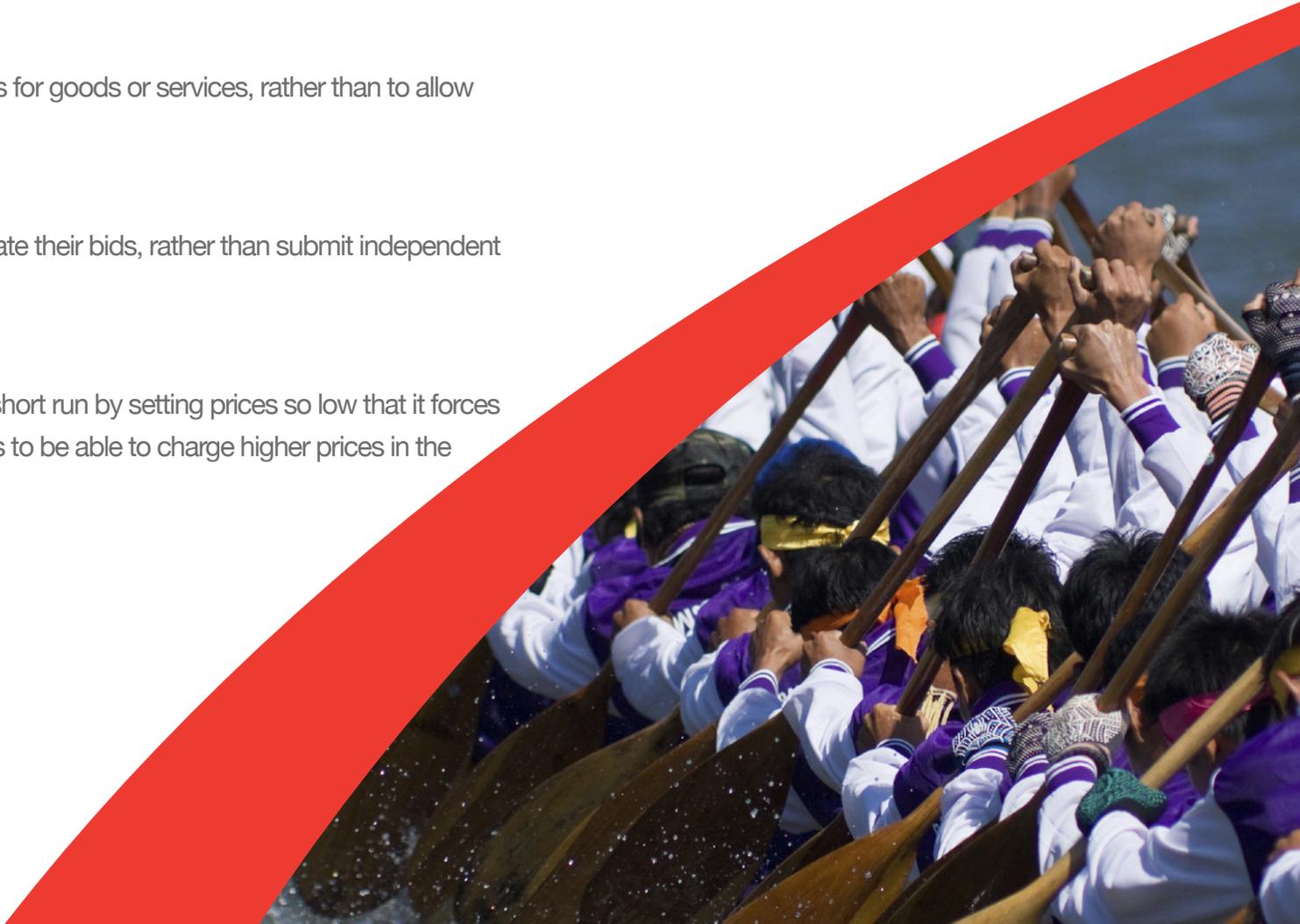
- Competitors collude with one another to fix prices for goods or services, rather than to allow prices to be determined by market forces.

## **BID-RIGGING**

- Parties participating in a tender process co-ordinate their bids, rather than submit independent bid prices.

## **PREDATORY PRICING**

- A dominant firm deliberately incurs losses in the short run by setting prices so low that it forces one or more undertakings out of the market, so as to be able to charge higher prices in the future.





# COMPETITION POLICY IN ASEAN

Institutions and laws related to competition policy have been established in some (but not all) ASEAN Member States.

In 2007, the ASEAN Economic Ministers endorsed the establishment of the ASEAN Experts Group on Competition (AEGC) as a regional forum to discuss and cooperate on competition policy and law. A set of Regional Guidelines on Competition Policy and a Handbook on Competition Policy and Law in ASEAN for Business was also developed in 2010. The Handbook was subsequently updated in 2013 to capture ASEAN's progress in the implementation of competition policy and law in the region.

Under the ASEAN Economic Community Blueprint, ASEAN Member States agreed on the following actions:

- i. Endeavour to introduce competition policy in all ASEAN Member States by 2015;
- ii. Establish a network of authorities or agencies responsible for competition policy to serve as a forum for discussing and coordinating competition policies;
- iii. Encourage capacity building programmes/activities for ASEAN Member States in developing national competition policy; and
- iv. Develop a regional guideline on competition policy by 2010, based on country experiences and international best practices with the view to creating a fair competition environment.

# WHAT ARE THE BENEFITS OF COMPETITION?

An efficient market, supported by a strong competition policy framework, translates into competitive prices for goods and services. Competition spurs businesses to be more productive, innovative and responsive in order to compete for consumers. As a result, consumers are able to benefit from a wide range of products and services, as well as obtain better quality offerings and value for money.

## CONSUMER WELFARE

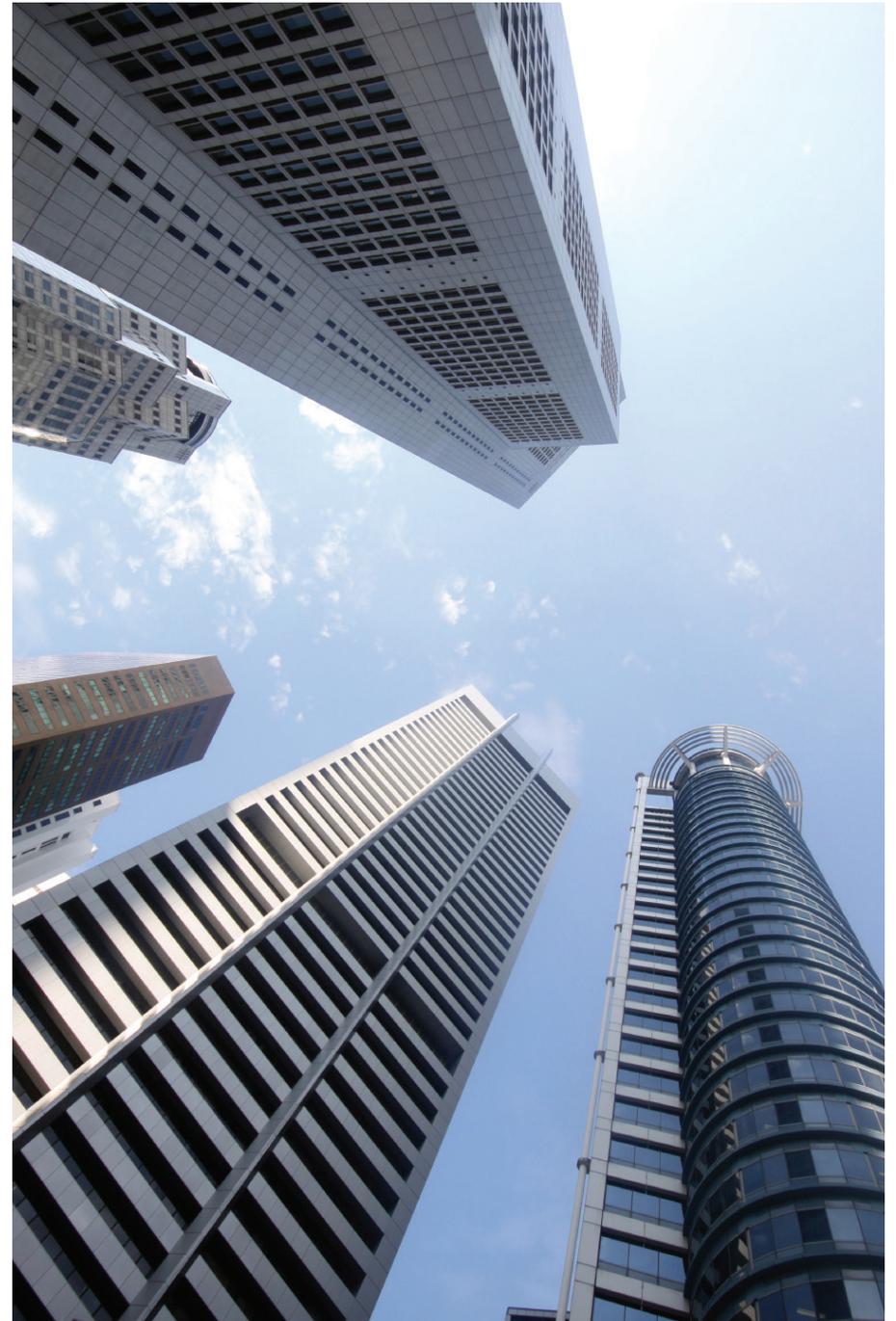
- More choices for consumers
- Goods and services offered at competitive prices by competitors
- Improved quality, service and innovation

## ECONOMIC EFFICIENCY

- Efficient use and allocation of scarce resources
- Lower business costs
- More efficient marketplace and well-functioning markets

## GROWTH, PROGRESS AND PROSPERITY

- Promoting economic growth
- Greater efficiency drives higher levels of output and productivity gains
- Attracting investment and creating jobs



# WHAT DOES COMPETITION LAW COVER?

Competition law generally prohibits three types of anti-competitive conduct:

## **ANTI-COMPETITIVE AGREEMENTS**

- Cartels and collusive behaviour – price-fixing, bid-rigging, output-limitations and market-sharing
- Exchange of commercially-sensitive information like prices among competitors

## **ABUSE OF A DOMINANT POSITION**

- Exclusionary conduct which eliminates competition from competitors through means unrelated to competitive merit such as:
  - Predatory behaviour, including predatory pricing, towards competitors
  - Exclusive dealing - forcing other businesses into working exclusively with itself
  - Refusals to supply or to provide access to indispensable essential facilities necessary for downstream competition

## **ANTI-COMPETITIVE MERGERS\***

- Mergers that substantially lessen competition

\* Some ASEAN Member States may not have merger provisions in their competition law.

# WHY COMPETITION LAW COMPLIANCE MATTERS

In developing competition policies, ASEAN Member States will introduce appropriate legislation to act against anti-competitive behaviour. Such legislation, including general competition policy statutes and sectoral regulations, will deter market participants from engaging in anti-competitive practices.

Significant penalties apply where corporations and/or individuals have been found to have engaged in anti-competitive behaviour. Competition authorities have the power to investigate allegations of anti-competitive conduct and impose financial penalties for infringement of competition rules.

Infringing competition law can adversely affect you and your business in many ways:

## **REPUTATION HARMED**

- Loss of reputation and goodwill from exposed anti-competitive conduct

## **LOSS OF BUSINESS**

- Competition authorities may impose directions to cease the anti-competitive conduct in order to comply with competition policy

## **FINANCIAL PENALTIES**

- In light of a breach of competition policy, your company may face significant financial penalties

## **THIRD-PARTY CLAIMS**

- Third-party claims may arise from those who have sustained losses due to your anti-competitive behaviour



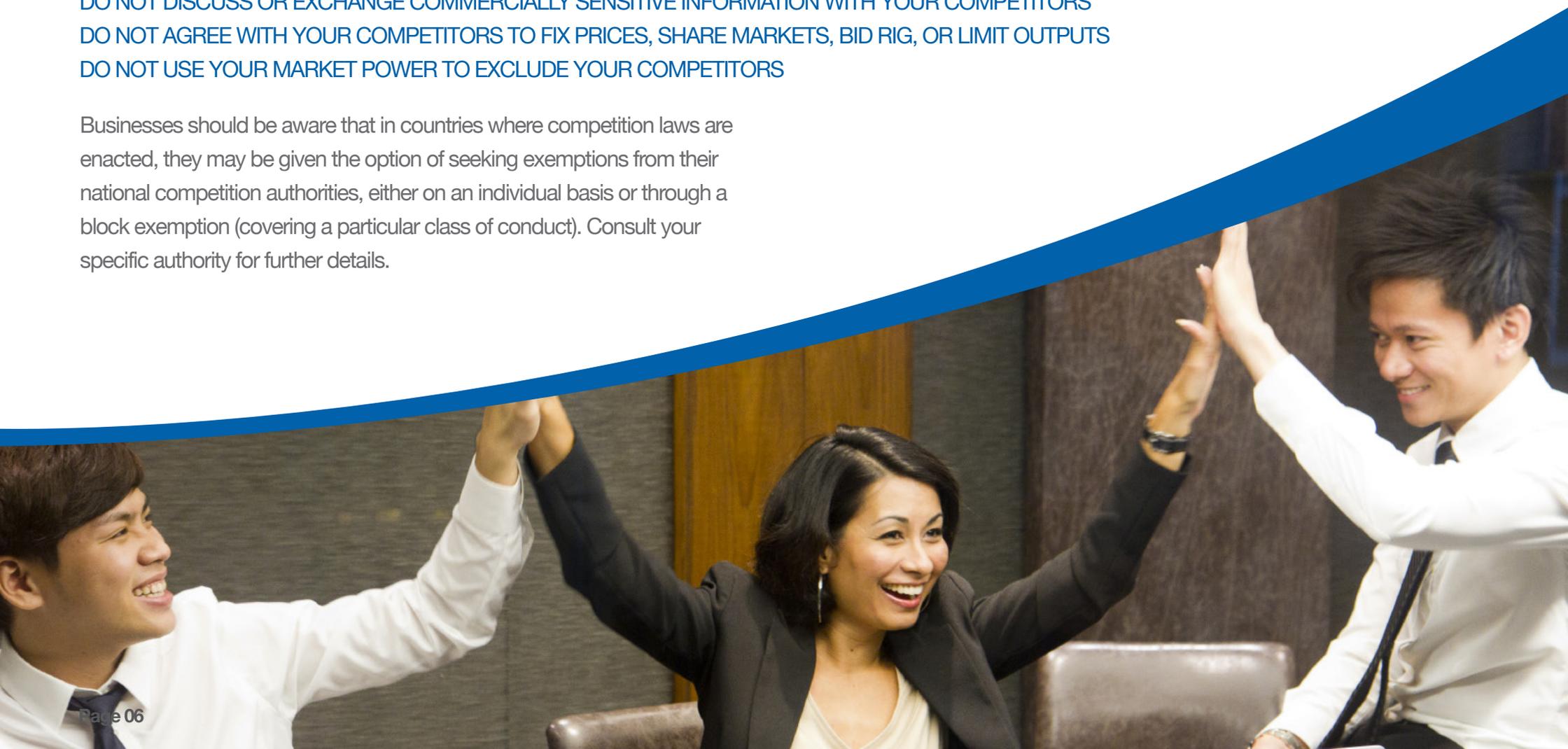
# HOW TO AVOID INFRINGING COMPETITION LAW?

It is the responsibility of all companies to comply with competition law. Companies need to be aware of the consequences of infringing competition rules.

Here are ways you can avoid flouting competition rules:

- DO NOT DISCUSS OR EXCHANGE COMMERCIALLY SENSITIVE INFORMATION WITH YOUR COMPETITORS
- DO NOT AGREE WITH YOUR COMPETITORS TO FIX PRICES, SHARE MARKETS, BID RIG, OR LIMIT OUTPUTS
- DO NOT USE YOUR MARKET POWER TO EXCLUDE YOUR COMPETITORS

Businesses should be aware that in countries where competition laws are enacted, they may be given the option of seeking exemptions from their national competition authorities, either on an individual basis or through a block exemption (covering a particular class of conduct). Consult your specific authority for further details.





# YOU CAN MAKE A DIFFERENCE

Everyone can help make ASEAN more competitive by following these steps.

- Make commercial decisions independently
- Distance yourself from other industry players who are suspected of engaging in anti-competitive practices
- Implement a comprehensive internal competition compliance programme
- Educate yourself, your staff and business partners on competition law
- Seek guidance from your national competition authorities if you are concerned that your business practices may be anti-competitive

If you would like to know more about how you can foster a more competitive and efficient marketplace, or may have encountered anti-competitive practices, please contact the relevant competition authority in your country – see page 8 for more details.

# FOR MORE INFORMATION

We encourage all businesses and consumers in the ASEAN member states to find out more about competition policy developments in the ASEAN region. To learn more about how competition policy issues in the region will affect you or your business, please visit: [www.aseancompetition.org](http://www.aseancompetition.org).

For specific information on your country's competition policies, please visit:

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**Cambodia: Legal Affairs Department, Ministry of Commerce**

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Website: [www.moc.gov.kh](http://www.moc.gov.kh)

**Indonesia: Commission for the Supervision of Business Competition (KPPU)**

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**Malaysia: Malaysia Competition Commission (MyCC)**

Tel: +603 22732277

Website: [www.mycc.gov.my](http://www.mycc.gov.my)

**Myanmar: Department of Commerce and Consumer Affairs, Ministry of Commerce**

Email: [myanmarcca@gmail.com](mailto:myanmarcca@gmail.com)

Website: [www.dica.gov.mm](http://www.dica.gov.mm)

**Philippines: Office for Competition, Department of Justice**

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Website: [www.ccs.gov.sg](http://www.ccs.gov.sg)

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to ASEAN**

ASEAN Political - Security

The Association of Southeast Asian Nations (ASEAN) was established on 8 August 1967. The Member States of the Association are Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

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