

No. S 8

**COMPETITION ORDER, 2015
(S 1/2015)**

**COMPETITION (TRANSITIONAL PROVISIONS FOR SECTION 11
PROHIBITION) REGULATIONS, 2020**

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PROHIBITION) REGULATIONS, 2020**

In exercise of the power conferred by section 74 of the Competition Order, 2015, the Minister of Finance and Economy, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Regulations —

Citation and commencement

1. These Regulations may be cited as the Competition (Transitional Provisions for Section 11 Prohibition) Regulations, 2020 and shall be deemed to have commenced on 1st January 2020.

Interpretation

2. In these Regulations, unless the context otherwise requires —

“application” means an application under regulation 4;

“application period” means the period from 1st January 2020 to 30th June 2020 (both dates inclusive);

“interim period” means the period from 1st July 2020 to the date on which the Commission notifies its decision on an application to the applicants;

“penalty” means the financial penalty that the Commission may impose under section 42(2)(e) on any party to an agreement that infringes the section 11 prohibition;

“transitional period” means the period from 1st January 2020 to 30th June 2020 (both dates inclusive).

Immunity from penalty

3. (1) No penalty shall be imposed by the Commission on a party to an agreement made on or before 31st May 2019, for an infringement by the agreement of the section 11 prohibition —

(a) during the transitional period;

(b) subject to regulations 6(3) and 7(1) and (2), during any extension of the transitional period granted to the party;

(c) subject to regulation 7, where the party has made an application and the Commission notifies its decision on the application on or after 1st July 2020, during the interim period; and

(d) subject to regulation 7(4), where the party has made an application and the application is refused, during any period specified by the Commission under regulation 5(4) or by the Tribunal under section 61(8) on an appeal under regulation 9, for the party to bring the infringement to an end.

(2) Sub-regulation (1) does not apply to any infringement by any agreement of the section 11 prohibition which continues or occurs after the expiry of the applicable period referred to in sub-regulation (1).

Application for extension of transitional period

4. (1) The parties to an agreement made on or before 31st May 2019 may in respect of the agreement jointly apply to the Commission for an extension of the transitional period if they are of the view that the agreement infringes the section 11 prohibition and they require the extension to bring the infringement to an end.

(2) The application —

(a) shall be made during the application period;

(b) shall be made by all the parties to the agreement;

(c) subject to sub-regulation (5), shall be submitted in such form or manner as the Commission may specify;

(d) subject to sub-regulation (6), shall include the documents specified in sub-regulation (4); and

(e) shall be accompanied by a fee of \$1,000 which shall be paid during the application period in the manner specified by the Commission.

(3) The application shall also —

(a) specify one representative who is authorised by all the parties to act on their behalf in respect of any matter relating to the application;

(b) describe the parties to the agreement;

(c) describe the purpose and nature of the agreement;

(d) describe the goods or services involved;

(e) specify the basis for the parties' belief that the agreement was made on or before 31st May 2019 and still has effect;

(f) specify the duration of the agreement;

(g) explain the agreement's infringement of the section 11 prohibition;

(h) explain the parties' inability to bring the infringement to an end within the transitional period;

(i) specify the period of extension applied for; and

(j) explain the grounds for the parties' belief that the infringement can be brought to an end within the period of extension.

(4) The documents specified for the purpose of sub-regulation (2)(d) are —

(a) proof of the representative's authority to act on behalf of all the parties;

(b) if the agreement is in writing, the original agreement;

(c) if the agreement is in writing and in a language other than Malay or English, the original agreement together with a Malay or English translation of the agreement, and a verification document made in accordance with the Commission's requirements, as specified by the Commission verifying that the translation corresponds to the original text of the agreement; and

(d) a copy of the latest annual report and the audited annual balance-sheet and profit and loss accounts of each of the parties.

(5) Where the Commission is satisfied that the parties are unable to submit the application in the form specified by the Commission under sub-regulation (2)(c), the Commission may allow the parties to submit the application in such other form as it may specify.

(6) Where the Commission is satisfied that the parties are unable to submit any of the documents specified in sub-regulation (4), the Commission may waive the requirement for the document or require the parties to submit such other document in substitution as it may specify.

(7) The Commission may, at any time after the application is made, require the parties to furnish any other information (including any document) as the Commission thinks fit.

(8) Where any of the parties know of any material change in any information contained in the application or any information furnished to the Commission under sub-regulation (7), he shall without delay communicate that change to the Commission.

(9) In this regulation, a reference to parties or parties to an agreement is a reference to persons who are parties to the agreement at the time the application is made.

Grant or refusal of application

5. (1) The Commission may, on receiving an application —

(a) grant the applicants an extension of the transitional period for such period and subject to such conditions as it thinks fit; or

(b) refuse the application.

(2) Any condition imposed by the Commission under sub-regulation (1)(a) shall, unless otherwise specified by the Commission, be deemed to be imposed jointly and severally on all the applicants.

(3) Without prejudice to the generality of the Commission's power under sub-regulation (1), the Commission may refuse the application if —

(a) the application is not made in accordance with regulation 4;

(b) the Commission has reasonable grounds for suspecting that any information submitted to the Commission under regulation 4 is incomplete, false or misleading in a material particular;

(c) the fee of \$1,000 is not paid in accordance with regulation 4(2)(e);

(d) the Commission's request for any information under regulation 4(7) is not complied with; or

(e) the Commission has reasonable grounds for believing that there has been a material change in any information furnished to the Commission under regulation 4, and such change is not notified to the Commission under regulation 4(8).

(4) If the Commission refuses an application under sub-regulation (1), the Commission may specify a period of time for the applicants to bring to an end any infringement by the agreement of the section 11 prohibition.

Early termination of extension of transitional period

6. (1) The Commission may, at any time before the expiry of an extension of the transitional period granted to the parties to an agreement, terminate the extension if —

(a) it has reasonable grounds for suspecting that any information provided to the Commission under regulation 4 was incomplete, false or misleading in a material particular;

(b) it has reasonable grounds for believing that there has been a material change of circumstance since the granting of the extension;

(c) any of the parties contravenes any condition imposed on that party by the Commission under regulation 5(1)(a) or by the Tribunal under section 61(8) on an appeal under regulation 9; or

(d) the Commission receives a complaint about the agreement from any person who is not a party to the agreement, which, in the opinion of the Commission, ought to be investigated.

(2) Before terminating an extension of the transitional period under sub-regulation (1), the Commission shall —

(a) give written notice of its intention and its grounds for the proposed termination to each of the parties; and

(b) give the parties at least 14 days to make written representations to the Commission.

(3) Any termination of the extension of the transitional period shall take effect on a date specified by the Commission and, subject to regulation 7(1), as of that date, the parties shall no longer enjoy the immunity given by regulation 3(1).

(4) Any document required or permitted to be given, sent or served under this regulation shall be given or sent to or served on each of the parties and regulation 8(1) shall not apply.

Effect of incomplete, false or misleading information on immunity from penalty

7. (1) Where the Commission terminates an extension of the transitional period granted to the parties to an agreement under these Regulations on the ground specified in regulation 6(1)(a), the Commission may remove the immunity given to the parties by regulation 3(1) during any or both of the following —

(a) the interim period;

(b) any extension of the transitional period before the termination.

(2) Where, subsequent to the expiry of any extension of the transitional period granted to the parties to an agreement under these Regulations, the Commission has reasonable grounds for suspecting that any information provided to the Commission under regulation 4 was incomplete, false or misleading in a material particular, the Commission may remove the immunity given to the parties by regulation 3(1) during any or both of the following —

(a) the interim period;

(b) any extension of the transitional period.

(3) Where the Commission refuses any application by the parties to an agreement on the ground specified in regulation 5(3)(b), the Commission may remove the immunity given to the parties by regulation 3(1) during the interim period.

(4) Where, subsequent to any refusal of an application by the parties to an agreement, the Commission has reasonable grounds for suspecting that any information provided to the Commission under regulation 4 was incomplete, false or misleading in a material particular, the Commission may remove the immunity given to the parties by regulation 3(1) during any or both of the following —

(a) the interim period;

(b) any period specified by the Commission under regulation 5(4) or by the Tribunal under section 61(8) on an appeal under regulation 9, for the parties to bring the infringement by the agreement of the section 11 prohibition to an end.

Service of documents

8. (1) Unless a contrary intention appears, any document required or permitted under these Regulations to be given or sent to, or served on, any party to an agreement is deemed to have been duly given or sent to, or served on, the party if given or sent to, or served on, the representative specified in the application made by the party.

(2) Any document required or permitted to be given or sent to, or served on, any person under these Regulations may be —

(a) delivered personally at his last known address;

(b) sent to him at his last known address by ordinary post; or

(c) sent to him by facsimile or, with his consent, electronic mail.

Appeal

9. Any party to an agreement in respect of which an application has been made may appeal to the Tribunal under section 59(1) against any decision of the Commission under regulation 5(1) or (4), 6(1) or 7.

Made this 24th. day of Rabiulawal, 1442 Hijriah corresponding to the 10th. day of November, 2020.

**HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN,
BRUNEI DARUSSALAM
Minister of Finance and Economy.**