

Malaysia

[Please introduce here the name of your country]

COMPETITION FRAMEWORK

Competition Law	<p>The Competition Act of 2010, Act No. 712. Amended in 2016 by P.U. (A) 44/2016.</p> <p>The Competition Commission Act of 2010, Act No. 713.</p> <p><i>[Please Introduce the name of the laws constituting the National Competition Law Regime. Include the year of enactment and the corresponding amendments as well]</i></p>
Competition Authority	<p>The Malaysian Competition Commission (MyCC). Established by the Competition Commission Act of 2010 and started operations in April 2011. https://www.myc.gov.my/</p> <p><i>[Please introduce here the name of the competition authorities that are part of the enforcement process of the laws mentioned in the previous question. In that regard, please specify the norms that established those agencies, the year in which they started operation, and their website. Include tribunals only if they have a role in the process of founding guilt and imposing sanctions. This point specifically excludes judicial authorities that only have judicial review powers]</i></p>

POLICY-MAKING AGENTS

-DIVERSIFICATION-

How many agencies are responsible for competition enforcement?	<p>The MyCC is the only body with a general mandate to investigate and enforce competition laws. MyCC is limited to imposing administrative liability generally capped at 10% of the turnover of an enterprise during the period in which the infringement occurred. While the Competition Law makes reference to criminal sanctions, currently such sanctions are limited to actions relating to obstructing an investigation. In such cases, MyCC must make criminal referrals to the state prosecutorial service.</p> <p><i>[Please mention how many authorities have a general mandate to enforce competition in your jurisdiction. Include a brief reference on their duties e.g.: if they impose criminal, civil or administrative liability. The purpose is that readers can quickly understand, which are the agencies charged with competition enforcement in the jurisdiction, the difference between them, and if they have concurrent, overlapping, or exclusionary authority. Include the relevant provisions on which their powers are based. Exclude in this point sector regulators or enforcers]</i></p>
Do sector regulators have a competition policy enforcement mandate?	<p>Malaysian Communication and Multimedia Commission is responsible for competition within the telecommunications industry due to the Communications and Multimedia Act of 1998.</p> <p>The Malaysian Energy Commission regulates competition within the utilities and pipeline industries via the Energy Commission Act of 2001.</p> <p>The Malaysian Aviation Commission regulates competition within the civil aviation industry via the Malaysian Aviation Commission Act of 2015.</p> <p><i>[Please introduce the name agencies that have powers to enforce any aspect of competition law, including merger control, in specific sectors. Introduce the relevant provisions on which their powers are based]</i></p>
Have the Competition Authority and other agencies signed protocols or memoranda of understanding with sector regulators?	<p>Yes. MyCC has signed MOU's with other government agencies such as the Malaysian Anti-Corruption Commission regarding enforcement and joint investigation. Additionally, the Minister may direct the Commission regarding interworking arrangements between the Commission and any other authority in Malaysia. The Competition Commission Act, § 39.</p> <p><i>[Please mention here any provision or interinstitutional agreement that allows the competition authorities to coordinate behavior to effectively enforce competition law]</i></p>

DISAGGREGATED FUNCTIONS—PROSECUTORIAL

MODEL		
Are there different authorities or agencies that make the decision to investigate and the final ruling in the cases?	Yes <i>[Answer: Yes or No]</i>	The Commission retains the authority to investigate. However, the Minister of Domestic Trade and Consumer Affairs can direct MyCC to investigate specific cases. Additionally, while MyCC retains decision making power over administrative remedies, criminal prosecutions must be referred to the state prosecutorial service. The Competition Act, § 14(2); [If the answer is yes, please explain briefly the enforcement process, and include the relevant provisions. The purpose of this question is to understand the enforcement model of the jurisdiction and establish how many independent authorities are involved in the enforcement process and what are their functions]
Are disputes presented for decision to judiciary authorities?	No. <i>[Answer: Yes or No]</i>	<i>[If the answer to your question is "yes", please introduce the name of the judiciary authorities that are involved and their role until the final decision in the process is achieved; exclude from this question judiciary authorities whose role in the process is the judicial review of administrative decisions]</i>
Do private rights of action to challenge competition law infringements exist in your jurisdiction	Yes <i>[Answer: Yes or No]</i>	"Any person who suffers loss or damage directly as a result of an infringement of any prohibition under Part II shall have a right of action for relief in civil proceedings in a court under this section against any enterprise which is or which has at the material time been a party to such infringement." The Competition Act, § 64. <i>[If the answer is "yes", please explain briefly the process and who are the persons entitled to exercise those rights; mention the relevant provisions]</i>

*** Please fill the next sections for each of the authorities mentioned in the prior sections excluding sector regulators**

MALAYSIA COMPETITION COMMISSION (MyCC)				
STATUS OF THE COMPETITION AUTHORITY				
Accountability	Please, answer "Yes" in the boxes of this line if any of the duties on the right column apply to the authority, and "No" if they do not.	Answer with X/√ as it applies		Please, in the boxes of this line mention the relevant provisions in which the obligations are based.
Does the Competition Authority have obligations before the executive?	Yes	√	Obligations to report to the executive on on-going investigations upon request.	The Competition Commission Act § 19. <i>[Introduce the relevant provisions]</i>
			The decisions of the Competition Authority may be vetoed by a ministry or by the executive branch.	<i>[Introduce the relevant provisions]</i>
		√	The executive has to report on an annual basis to the executive.	The Competition Commission Act, § 37. <i>[Introduce the relevant provisions]</i>
Does the Competition Authority have obligations before the legislature?	No	X	Obligation to publish an annual report on its activities.	<i>[Introduce the relevant provisions]</i>
		X	Obligation to stand before parliament and to respond to congressmen on an annual basis.	<i>[Introduce the relevant provisions]</i>

		X	Its activities are monitored by an independent auditor or by oversight committees.	<i>[Introduce the relevant provisions]</i>
Does the Competition Authority have obligations before the judiciary or independent agencies?	Yes	X	Decisions of the Competition Authority are subject to judicial review.	<i>[Aside from the relevant provisions please mention the judicial authority charged with the review]</i>
		√	Decisions of the Competition Authority are subject to review or control of an independent authority different than the judiciary?	The Competition Act, § 44. <i>[Aside from the relevant provisions, please mention the authority charged with the review]</i>
		Other obligations/ comments: Please introduce any other obligation or comment that you consider relevant. Review of MyCC decisions is completed by the Competition Appeal Tribunal which is the sole and final appeal body for MyCC decisions. The Competition Act, § 44. <i>[Introduce any comment that you consider relevant regarding the status of accountability of accountability of the competition authority]</i>		
Independence		Please, answer "Yes" or "No"		
Are the criteria for appointment and removal of the head/board members clear and transparent?	No	While appointment provisions are clear, removal can be for the vague cause of "the effective and economical performance of the Commission." <i>[Please introduce the relevant provisions, and if the answer to this question is "no", explain briefly why in your opinion the criteria are not clear or transparent]</i>		
Does the executive have powers to decide on specific cases based on public interest?	No	<i>[Please introduce the relevant provisions, and if the answer to the question is "yes", explain in which cases the executive can decide on public interest bases]</i>		
Does the executive retain decision-making powers over the Competition Authority?	Yes	The executive, through the Minister of Domestic Trade and Consumer Affairs, retains authority over MyCC including all rulemaking authority, the ability to modify and veto guideline documents, and the ability to direct MyCC to pursue specific investigations.		
Is the Competition Authority obliged to publish reasoned decisions to ensure transparency?	Yes	The Competition Act, § 40(3). <i>[Please introduce the relevant provisions]</i>		
Is there a provision of the national budget allocated by law to the Competition Authority to ensure its proper functioning?	No	MyCC draws its funding from the Competition Commission Fund which is made up of appropriated funding, funds collected through enforcement/fees/proceedings, interest on the fund, and loans. The annual budget of MyCC is approved by the Minister of Domestic Trade and Consumer Affairs. The Competition Commission Act, Part V. As of 31 December 2020, the fund was valued at RM 19.8 million. <i>See 2020 Annual Report.</i> <i>[Please introduce the relevant provisions and the budget assigned to the authority for the current year and the next if it is already approved]</i>		
Can the Competition Authority be financed by its own means (notification fees, fines, etc.)?	Yes	MyCC may retain all funds collected through enforcement actions, fees, or other legal proceedings. The Competition Commission Act § 27. <i>[Please introduce the relevant provisions and mention the means by which the authority can be financed on its own]</i>		
GOVERNANCE OF THE COMPETITION AUTHORITY				
Is the Competition Authority governed by a single chairman or by a collegiate body?	Collegiate Body. MyCC consists of between eight and ten members including a chairperson, four members representing the government (one of whom is a representative of the Ministry of Domestic Trade and Consumer Affairs), and between three and five members who have expertise in business, industry, commerce,			

	<p>law, economics, public administration, competition, consumer protection, or another suitable qualification as determined by the Minister of Domestic Trade and Consumer Affairs. The Competition Commission Act § 5.</p> <p><i>[Answer “single chairman” if the directive organ of the authority is composed of one person. Answer “collegiate body” if the authority’s directive organ is composed of two or more members, regardless if this organ is directed or presided by a chairman or president. Also mention how many board members or directors are part of the Direction Body]</i></p>	
How are the members of the Authority’s directive organ chosen?	<p>The MyCC members are appointed by the Prime Minister at the recommendation of the Minister of Domestic Trade and Consumer Affairs. The Competition Commission Act § 5.</p> <p><i>[Please describe the electing process for choosing the members of the directive organ. Include relevant provisions; mention the branch government involved in this process]</i></p>	
Is there a fixed period during which removal is prohibited?	No	<p>Commission members can be removed at any time by the Prime Minister in the interest of “the effective and economical performance of the Commission.” The Competition Commission Act § 11(a).</p> <p><i>[If your answer is “yes”, please introduce the duration of the tenure and the relevant provisions. If the answer is no, please refer if there are specific and restricted grounds under which the members of the Directive body can be removed; mention if they are elected for a term and introduce the relevant provisions]</i></p>
Is the tenure of the heads renewable?	Yes	<p>MyCC members serve a three-year term. These terms are renewable, but a single member cannot serve more than two terms consecutively. The Competition Commission Act § 9.</p> <p><i>[Please, introduce the relevant provisions]</i></p>
Are the heads required by law to have certain minimum qualifications (degree in law or economics, age, experience)?	Yes	<p>Between three and five members of MyCC are required to have “experience and knowledge in matters relating to business, industry, commerce, law, economics, public administration, competition, consumer protection or any other suitable qualification as the Minister [of Domestic Trade and Consumer affairs] may determine.” The Competition Commission Act § 5(1)(c).</p> <p><i>[If your answer is “yes”, please make reference to the qualifications required by law and the relevant provisions]</i></p>
ARCHITECTURE		
Is the Competition Authority a stand-alone agency with an independent physical location or is it part of a bigger entity such as a ministry?	Part of a Bigger Entity	<p>MyCC is responsible to the Minister of Domestic Trade and Consumer Affairs, who may give the Commission directions of a general character.</p> <p><i>[If your answer is “part of a bigger entity”, please explain briefly how the bigger entity is organized]</i></p>
POLICY DUTIES		
Does the Competition Authority have an exclusive mandate on competition or multiple mandates?	Exclusive	<input checked="" type="checkbox"/> Concurrent consumer protection mandate.
		<input checked="" type="checkbox"/> Concurrent IP mandate.
		<i>[Other mandates: Include any other mandates entrusted to the Competition Authority]</i>
PORTFOLIO INSTRUMENTS		
Law Enforcement		
Does the Competition Authority have powers to investigate cartels?	Yes	<p>Yes. The Competition Act prohibits anticompetitive horizontal and vertical agreements, which include price fixing, market allocation, limits on production/market access/technological development/investment, and bid rigging. The Competition Law, § 4. In the case of a violation, MyCC may impose administrative remedies including directives and a financial penalty which may not exceed ten percent of the worldwide turnover of the enterprise over the period during which the infringement occurred. The Competition Act, § 40(4).</p> <p><i>[If the answer is “yes”, please mention the type of liability that the actions of the agency seek: civil, criminal, administrative. Introduce the relevant provisions; briefly explain if the powers of the authority are limited to certain types of cartels and what kind of sanctions can be imposed]</i></p>

Does the Competition Authority have powers to investigate unilateral Conduct?	Yes	<p>Yes. MyCC has the authority to investigate and impose penalties for abuse of a dominant position. The Competition Law, § 10. In the case of a violation, MyCC may impose administrative remedies including directives and a financial penalty which may not exceed ten percent of the worldwide turnover of the enterprise over the period during which the infringement occurred. The Competition Act, § 40(4).</p> <p><i>[If the answer is “yes”, please mention briefly if the competition authority is invested with the power to pursue exploitative and exclusionary effects, also make reference to relevant provisions, the type of liability that the actions of the authority seek, and what kind of sanctions can be imposed]</i></p>
Does the Competition Authority have the powers to conduct <i>ex-ante</i> merger review?	No	<i>[If the answer is “yes”, please explain briefly the process and which are the remedies that authority can seek or impose and mention the relevant provisions]</i>
Is the notification of merger transactions mandatory?	No	<i>[If the answer is “yes”, please explain whether all the transactions shall be notified or if there is a threshold; mention relevant provisions]</i>
Can the parties close the transaction before the final decision of the Authority (suspensory effect of merger notification)?	No	<i>[Please mention the relevant provisions and add any explanation that you deem necessary]</i>
Does the Competition Authority have the power to carry out <i>ex-post</i> merger investigations?	No	<i>[Please mention relevant provisions]</i>
Does the Competition Authority have the power to impose remedies on <i>ex-post</i> merger investigations?	No	<i>[If the answer is yes, please mention the remedies that the Authority can impose; mention relevant provisions]</i>
Does the Competition Authority have powers to conduct dawn raids at premises?	Yes	<p>While MyCC officers need a warrant to enter a private premises, the warrant can be granted for entry at any time of day. The Competition Act, § 27(1).</p> <p><i>[If the answer is “yes”, please mention whether the dawn raids shall be authorized by a judge, and mention the relevant provisions]</i></p>
Can the Competition Authority investigate <i>ex officio</i> cases?	Yes	<p>Yes. However, the decision to investigate is still limited to reasonable suspicion. The Competition Act, § 14(1).</p> <p><i>[Please, mention the relevant provisions]</i></p>
Does the Competition Authority have powers to accept leniency applications?	Yes	<p>MyCC’s leniency regime is statutorily enumerated and can be afforded to enterprises which admit their involvement in cartel behavior and provide information or other cooperation which assists MyCC in the finding of an infringement. The percentage reduction in penalty is dependent on the order of notice to the Commission and the stage of the illegal activity. The Competition Act, § 41.</p> <p>Per MyCC’s Leniency Regime Guidelines, a 100% penalty reduction is granted to only the first applicant that meets the statutory requirements for leniency. Subsequent applicants may be granted a reduction on a “value added” basis and are more likely to receive a greater reduction the earlier in the investigation they come forward. Leniency only covers administrative liability and not any civil or criminal liability.</p> <p>To apply for leniency, the individual or enterprise must contact the MyCC leniency officer and in doing so may obtain a marker indicating their place in line. The marker is valid for 30 days during which time the applicant must complete their leniency application which includes, objectives of the cartel, activities of the cartel, scope of the infringement, specific dates and times of cartel activities including meetings, available documents, names of individuals involved or with relevant information, and other information. An individual or entity will then have a conditional grant of leniency subject to</p>

		<p>the conclusion of the investigation and continued cooperation.</p> <p><i>[If the answer is “yes”, please mention if there is any limitation for the applicants, what are the benefits, and mention the relevant provisions. Include any commentary that you consider relevant about the leniency program]</i></p>	
Does the Competition Authority have powers to accept seek criminal punishment?	No	<p>Criminal penalties only exist for offenses relating to obstructing an investigation of MyCC. In such a case, MyCC would need to refer prosecution to the state prosecutorial service.</p> <p><i>[If the answer is “yes”, please mention the different kinds of sanctions that the agency can impose]</i></p>	
Advocacy			
Can the Competition Authority issue opinions on draft legislation?	Yes	<p>The Commission may “alert the minister to the actual or likely anti-competitive effects of current or proposed legislation and to make recommendations to the Minister, if appropriate, for the avoidance of these effects.” The Competition Commission Act § 16(b).</p> <p><i>[if the answer is yes, please specify if there is any kind of limitation to the agency’s authority to issue opinions, include relevant provisions]</i></p>	
Is the executive and/or the legislature obliged to request the opinion of the Competition Authority when drafting legislation that may impact competition?	No	<p><i>[if the answer is yes, include relevant provisions]</i></p>	
Rulemaking			
Can the Competition Authority issue guidelines?	Non-Binding	✓	Guidelines on the calculation of fines.
		X	Guidelines on merger control.
		✓	Guidelines on the economic analysis of abuse of dominance cases.
Can the Competition Authority issue binding regulation on competition?	Yes	<p><i>[Please, explain which kind of regulation and mention the relevant provision on which the powers are based]</i></p>	
Research & Reporting			
Can the Competition Authority carry out market studies?	Yes	<p>MyCC may “carry out, as it considers appropriate, general studies in relation to issues connected with competition in the Malaysian economy or particular sectors of the Malaysian economy.” The Competition Commission Act § 16(g).</p> <p><i>[If the answer is “yes”, include relevant provisions]</i></p>	
Can the Competition Authority report to the legislature on the results of market studies?	Yes	<p><i>[If the answer is “yes”, include relevant provisions]</i></p>	
DECISION-MAKING FUNCTIONS			
Aggregated Functions			
Does the Competition Authority make the decision to investigate and make guilty findings?	Yes	<p>MyCC makes the decision to investigate as well as makes findings of guilt insofar as administrative remedies can be applied. However, the Minister of Domestic Trade and Consumer Affairs can direct MyCC to investigate specific cases. Additionally, while MyCC retains decision making power over administrative remedies, criminal prosecutions must be referred to the state prosecutorial service. The Competition Act, § 14(2)</p> <p><i>[If the answer is “yes”, include relevant provisions]</i></p>	
Does the Competition Authority impose punishments?	Yes	<p>Yes. In the case of a violation, MyCC may impose administrative remedies including directives and a financial penalty which may not exceed ten percent of the worldwide turnover of the enterprise over the period during which the infringement occurred. The Competition Act, § 40(4).</p> <p><i>[If the answer is “yes”, please mention the different kinds of sanctions that the agency can impose]</i></p>	
Is there a single body that carries out the investigation and the guilty findings within the Competition Authority?	Yes	<p>MyCC and its employees – which are directly managed by the Commission – are the sole body carrying out the investigation and making a determination. An investigation can be</p>	

		<p>instituted when reasonable suspicion of a violation is present. Individuals or entities may make a complaint to trigger an investigation. No firm time limits exist for an investigatory period, but MyCC enjoys broad police rights and power to demand documents under threat of criminal charges. MyCC may, if necessary, issue an interim order to cease certain activities if it considers it necessary as a matter of urgency or public interest. The Commission will, after investigation, make a proposed decision that outlines the reasoning and proposed sanction and inform the investigated parties. A hearing will then be held giving the informed parties the ability to make an oral representation regarding the investigation. MyCC then either finds infringement or no infringement occurred. In the case of non-infringement, the Commission must immediately inform all parties – including the complainant – of the decision and the reasoning for it. In the case of an infringement, MyCC must issue an order to cease the illicit activity and may impose financial penalties. All parties must be notified of the decision within 14 days of making it and publish the decision including the reasoning behind it. The Competition Act, §§ 14-40.</p> <p><i>[Regardless of the answer please explain briefly the enforcement process until the final decision is issued, include relevant provisions, and if the answer is “No” mention how the head of the body that carries out the investigation is elected and removed. The main idea of this last point is to establish whether the investigation authority is, in fact, independent from the decision-making body]</i></p>
<p>Can the Competition Authority’s decisions be appealed to a court?</p>	<p>No</p>	<p>Appeals can only be made to the Competition Appeal Tribunal. The Competition Act, § 44.</p> <p><i>[Please, mention the judicial authority who is charged with the review, make reference to the relevant provisions, and if there is any requirement to exercise the right of the judicial review]</i></p>
<p>Please add commentaries or information that you consider relevant and were not covered in any of the previous sections and questions.</p>	<p>In addition to the telecommunications, utilities, and civil aviation industries, the Competition Law does not apply to the petroleum industry “in so far as the commercial activities regulated under [the] legislation are directly in connection with upstream operations comprising the activities of exploring, exploiting, winning and obtaining petroleum whether onshore or offshore of Malaysia.”</p>	