



# MALAYSIA

## What are the thresholds for notification?

The Competition Act 2010 (CA 2010) is the main legislation governing general anti-competitive behavior in Malaysia, which prohibits anti-competitive agreements and abuse of dominant position in the market. However, the CA 2010 does not provide for a requirement for parties to notify the Malaysian Competition Commission (MyCC) with regard to a proposed merger and acquisition. That said, there are sector specific laws and guidelines in the aviation services sector and the communications and multimedia sector, which provides for a voluntary notification regime in respect of mergers and acquisitions. Parties who wish to undertake a merger, or have undertaken a merger in the aviation service market are encouraged to make a notification under the Malaysian Aviation Commission Act 2015 (MACA 2015) to the Malaysian Aviation Commission (MAVCOM) if parties are of the view that the anticipated merger or merger may result in a substantial lessening of the competition in the market, in light of the provisions under MACA 2015, the Guidelines on the Substantive Assessment of Mergers and the Guidelines on Notification and Application Procedure for an Antici. As for licensees under the Communications and Multimedia Act 1998 (CMA 1998), they are encouraged to apply to the Malaysian Communications and Multimedia Commission (MCMC) for an assessment of the proposed merger. MCMC has also issued a guideline for entities self-

assessment on whether they have met the notification threshold through its Guidelines on Mergers and Acquisition.

## Which party is obliged to notify?

- In the aviation service market, a party to the merger may make a notification and an application to MAVCOM for an anticipated merger or for a merger that has already been completed for a decision as to whether the merger in question infringes or will infringe the prohibitions under MACA 2015 if the merger party is of the view that the merger may result in a substantial lessening of competition.
- Licensees under the CMA 1998 are encouraged to apply to MCMC for an assessment of the proposed merger, especially if any of the merger parties is a licensee that holds a dominant position in the communications market (as defined in the Guidelines on Mergers and Acquisitions issued by MCMC) or if the merger or acquisition results in a licensee obtaining a dominant position in the market (as defined in the Guidelines on Mergers and Acquisitions issued by MCMC).

## What is the time limit to notify?

- For an anticipated merger in the aviation services market, a party to the merger may make a notification and application to MAVCOM when the merger parties have a bona fide intention to proceed with the anticipated merger, details of the anticipated merger are

available, and the anticipated merger has been made public by any party or made public by MAVCOM through the publication of a summary of the application. On the other hand, for mergers that have been completed, a party to the merger may make a notification and application to MAVCOM at any time, preferably as soon as possible after the merger is completed.

- For anticipated mergers or acquisitions in the communications and multimedia sector, licensees are encouraged to make an application to MCMC prior to the completion of the merger or acquisition transaction.

## Could I carry out the transaction before it is cleared by the competition authority(ies)?

Generally, a merger transaction may be carried out prior to obtaining clearance from the MyCC, MAVCOM or MCMC.

However, parties to the merger must ensure that a merger transaction does not infringe the prohibitions under the CA 2010, MACA 2015 or CMA 1998 (as the case may be) as any merger or acquisition transaction carried out in the respective sectors without prior clearance may be subject to investigation by MyCC, MAVCOM or MCMC in administering and enforcing the provisions of the CA 2010, MACA 2015 or CMA 1998.

## Is it possible to obtain a letter of comfort before notification?

N/A.

# MALAYSIA CONTINUED

## What's the maximum time for obtaining a decision during Phase I?

- For mergers in the aviation services sector, duration of Phase I assessment will be determined by MAVCOM on a case-by-case basis depending on the complexity of the matter, and cooperation of the merger parties.
- For mergers and acquisitions in the communications and multimedia sector, the maximum time for obtaining a decision during Phase 1 is 30 business days from MCMC's receipt of the application.

## What's the maximum time for obtaining a decision during Phase II?

- For mergers in the aviation services sector, duration of Phase II assessment will be determined by MAVCOM on a case-by-case basis depending on the complexity of the matter, and cooperation of the merger parties.
- For mergers and acquisitions in the communications and multimedia sector, the maximum time for obtaining a decision during Phase 2 is 120 business days from the date of commencement of assessment.

## Is there a possibility to propose remedies to the authority(ies)?

- MAVCOM may publish its proposed decision of its findings for public consultation, whereby any person may submit feedback within 30 days from the date of the publication of the proposed decision. Such feedback, and any representation by the applicant will be given due consideration by MAVCOM before making its final decision.
- MCMC will issue to the licensee a Statement of Issues prior to making a final decision specifying the grounds on which the MCMC believes may contravene the CMA 1998. The licensee will then be given 30 days to provide the MCMC with submissions in response, and such submission will be considered by MCMC before making a final decision.

## Which authority deals with challenging the decision and deadline?

- Any party aggrieved by a decision of MAVCOM may make an appeal to the Malaysian High Court within 3 months from the date on which the decision of MAVCOM was communicated to him.
- Any party aggrieved by a decision of MCMC may make an appeal to the Appeal Tribunal as established under the provisions of the CMA 1998.

## Future amendment to CA 2010 in relation to merger control

- Draft proposed amendments to the CA 2010, which includes the prohibition in relation to merger control were published by MyCC in June 2024.
- However, as at January 2024, the draft proposed amendments have yet to be tabled in Parliament.

### WHO TO CONTACT

Hoi Jack S'ng  
Lee Hishammuddin Allen  
& Gledhill  
T: +6 03 6208 5908  
E: hjs@lh-ag.com