

Author:

[E-mail✉ Wan May Leong](mailto:wanmayleong@nishimura-asahi.com)

[E-mail✉ Daisuke Maeshiro](mailto:daisuke.maeshiro@nishimura-asahi.com)

The Malaysia Competition Commission (the “**MyCC**”) has indicated its intention to introduce merger control provisions on several occasions. In furtherance of this intention, the MyCC has initiated the amendment process of the Competition Act 2010 of Malaysia, with a plan to table it in the Parliament by the end of 2021.

The Competition Act 2010 of Malaysia (the “**Act**”) has been in force for about 10 years (since 1 January 2012). The Act prohibits:

- anti-competitive agreement; and
- abuse of dominant position,

but there is no merger control regime in Malaysia, except for certain regulated industries like the aviation and communications & multimedia sectors.


The MyCC has commented that, due to the absence of a merger control framework in the Act, its hands are tied with regard to regulating monopolization and merger. Indeed, the MyCC has noted that “Malaysia is the only country in South-East Asia that does not have merger control provisions under its national competition law”. As an example of such absence’s effects, in the same year of Grab-Uber merger wherein Uber sold its South-east Asian business to Grab for a 27.5 per cent stake in Grab in 2018, the Competition and Consumer Commission of Singapore found that the merger was anti-competitive and fined the companies a total of SGD 13 million (approximately USD 9.8 million); at around the same time, the Philippines Competition Commission, which had approved the Grab-Uber deal but imposed commitments on Grab, imposed a financial penalty of 16 million pesos (approximately USD 297,000) on Grab in 2018 alone for failing to maintain its pre-merger operations. By contrast, in the absence of a merger control regime in Malaysia, the MyCC had limited power to take action against the merger, relying instead on monitoring Grab’s post-merger activities to determine if there is any anti-competitive behavior. In October 2019, the MyCC proposed a fine of over RM 86.77 million (approximately USD 21 million) on Grab for abusing its dominant market position by imposing restrictive clauses on its drivers. Such decision is currently being challenged under Grab’s judicial review application.

The MyCC is currently amending the Act to introduce merger control provisions which it hopes to table in the Parliament by the end of 2021. We expect the merger control framework in Malaysia to impose certain mandatory elements that will empower the MyCC to regulate changes in market structure, rather than just a toothless voluntary scheme. Once in force, parties will have to reconsider the timeline and structure of their proposed deals in Malaysia.

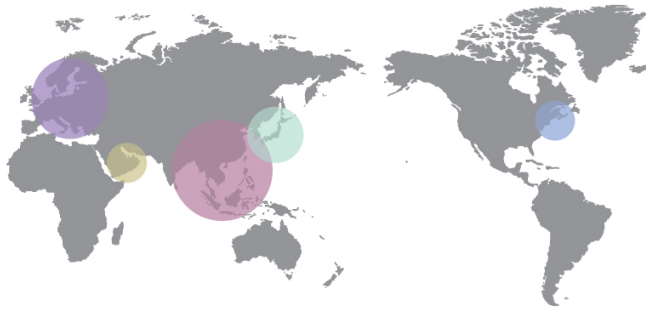
Nonetheless, with the COVID-19 crisis in Malaysia and months-long suspension of the Malaysian Parliament sittings, it remains to be seen if the MyCC will be able to move forward with the merger control amendments by the end of this year.

In order to respond to the business needs of our clients, we publish newsletters on a variety of timely topics. Back numbers can be found [here](#). If you would like to subscribe to the N&A Newsletter, please fill out [the N&A Newsletter subscription form](#).

This newsletter is the product of its authors and does not reflect the views or opinion of Nishimura & Asahi. In addition, this newsletter is not intended to create an attorney-client relationship or to be legal advice and should not be considered to be a substitute for legal advice. Individual legal and factual circumstances should be taken into consideration in consultation with professional counsel prior to taking any action related to the subject matter of this newsletter.

**Public Relations Section, Nishimura & Asahi** [E-mail](#) 

**Nishimura & Asahi has 18 offices throughout Japan and in the markets that matter, with Asia as the starting point.**



## New York

Nishimura & Asahi NY LLP  
 Tel +1-212-830-1600  
 E-mail info\_ny@nishimura.com  
 Managing Partner/Chair (New York) Katsuyuki Yamaguchi  
 Vice Chair (New York) Megumi Shimizu  
 Partner Stephen D. Bohrer  
 NY LLP Partners Kaoru Tatsumi  
 Yusuke Urano

## Dubai

Tel +971-4-386-3456  
 E-mail info\_dubai@nishimura.com  
 Counsel Masao Morishita

## Tokyo

Otemon Tower, 1-1-2 Otemachi, Chiyoda-ku, Tokyo 100-8124 Japan  
 Tel +81-3-6250-6200 +81-3-6250-7210 (Nishimura & Asahi LPC Principal Office)

## Nagoya

Tel +81-52-533-2590  
 LPC Partner Hiroki Fujii

## Osaka

Tel +81-6-6366-3013  
 LPC Partners Taisuke Igaki  
 Yuichiro Hirota  
 Hiromune Usuki  
 Masanori Ban

## Fukuoka

Tel +81-92-717-7300  
 LPC Partners Tsuneyasu Ozaki  
 Kengo Takaki  
 Yasuko Maita  
 Yoshinobu Nakagawa

## Frankfurt (main office)

Nishimura & Asahi Europe  
 Rechtsanwalts-gesellschaft mbH  
 Tel +49-(0)69-870-077-620

## Düsseldorf (branch office)

Nishimura & Asahi Europe  
 Rechtsanwalts-gesellschaft mbH  
 Tel +49-(0)211-5403-9512

E-mail info\_europe@eml.nishimura.com  
 Co-representatives Noriya Ishikawa  
 Dominik Kruse

## Bangkok

Tel +66-2-126-9100  
 E-mail info\_bangkok@nishimura.com  
 Co-representatives Chavalit Uttasart  
 Hideshi Obara  
 Jirapong Sriwat

## Beijing

Tel +86-10-8588-8600  
 E-mail info\_beijing@nishimura.com  
 Chief Representative Azusa Nakashima  
 Representative Masashi Shiga

## Shanghai

Tel +86-21-5280-3700  
 E-mail info\_shanghai@nishimura.com  
 Chief Representative Takashi Nomura  
 Representatives Seita Kinoshita  
 Satoshi Tojo

## Singapore

Tel +65-6922-7670  
 E-mail info\_singapore@nishimura.com  
 Co-representatives Masato Yamanaka  
 Shintaro Uno  
 Partners Masataka Sato  
 Yuji Senda  
 Ikang Dharyanto

Note: We are in formal law alliance with Bayfront Law LLC, a Singapore law practice, under name of Nishimura & Asahi-Bayfront Law Alliance.

## Okada Law Firm (Hong Kong)<sup>\*2</sup>

Tel +852-2336-8586  
 E-mail s.okada@nishimura.com  
 Representative Saori Okada

## Hanoi

Tel +84-24-3946-0870  
 E-mail info\_vietnam@eml.nishimura.com  
 Representative Akira Hiramatsu

## Ho Chi Minh City

Tel +84-28-3821-4432  
 E-mail info\_vietnam@eml.nishimura.com  
 Representative Kazuhide Ohya  
 Partners Vu Le Bang  
 Ha Hoang Loc

## Taipei

Nishimura & Asahi Taiwan  
 Tel +886-2-8729-7900  
 E-mail info\_taipei@nishimura.com  
 Co-Representatives Ing-Chian Sun  
 Sheng-Chieh Chang

\*1 Associate office \*2 Affiliate office

## Jakarta<sup>\*1</sup>

Walalangi & Partners  
 Tel +62-21-5080-8600  
 E-mail info@wplaws.com  
 Representative Luky Walalangi

Rosetini & Partners Law Firm

Tel +62-21-2933-3617  
 E-mail info\_jakarta@nishimura.com  
 Partner Noriaki Machida

## Yangon

Tel +95-1-8382632  
 E-mail info\_yangon@nishimura.com  
 Representative Yusuke Yukawa  
 Vice Representative Isamu Imaizumi