

## **Competition Law and Affirmative Action in Malaysia: Complementarity or Conflict?**

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### **ABSTRACT**

This paper examines the interface between competition law and affirmative action in Malaysia. It analyses the different goals of competition law and explains how that may accommodate Malaysia's race-based affirmative action programme (or also known as the pro-Bumiputera policies) introduced via the New Economic Policy (NEP) post 1969 racial riot and adopted in 1971. This paper finds Malaysian competition legislative enactment, that is the Competition Act 2010 (CA 2010), does not make any explicit reference to Malaysia's affirmative policies. Based on an analysis of the existing provisions of the CA 2010, this paper finds that Chapters 1 and 2 prohibitions can be used against 'ethnic cartels' which have the effect of preventing Bumiputera enterprises from participating in the market. This is by allowing the CA 2010 to open up the market to those enterprises providing them the opportunity to participate at all levels of production chain and putting an end to the phenomenon that they have to crowd into the least profitable level.

*Keywords:* Affirmative Action, Competition Law, Ethnic Cartels, Malaysian Competition Act 2010

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### **INTRODUCTION**

Malaysia, which gained its independence from Britain in 1957, has implemented race-based affirmative action policies in various forms and the most well-known is the New Economic Policy (NEP). The NEP was introduced after a series of racial riots that rocked the country in 1969. Being multi-racial, multi-religious and multi-

lingual, Malaysia (and its predecessor, Malaya) have suffered a long history of inequitable distribution of wealth between the Malay majority and the Chinese minority. This phenomenon has colonial roots but the resulting affirmative action policies have created polarising effects with their proponents<sup>1</sup> and opponents<sup>2</sup> vehemently defending their position on such policies.

There is a plethora of writings on the history, nature and development of the NEP namely by Gomez, Saravanamuttu and Mohamad (2013) and Sundaram and Wee (2014, pp. 20-39). The NEP was introduced to eliminate poverty and reduce wealth and income inequalities between different ethnic groups in Malaysia (Gomez, Saravanamuttu, & Mohamad, 2013, p. 1). But the policy later evolved into promoting a culture of political patronage and rent-seeking with a heavy State participation in the economy (Gomez, Saravanamuttu, & Mohamad, 2013, pp. 8-9; Sundaram & Wee, 2014, pp. 20-39). However, there is a dearth of studies on how Malaysia's affirmative action policies, particularly the NEP, interact with the regulation of competition in the Malaysian market despite the significant impact the NEP has on the market.

Vern (2013) reviews the Competition Act 2010 (the CA 2010) and discusses the conflict between NEP and other

related affirmative action policies with the CA 2010. Unfortunately, his analysis only covers "State-induced" anti-competitive practices such as those concerning government procurement and government-sanctioned monopolies through government linked companies (GLCs). The analysis does not extend to the anti-competitive practices of private enterprises which participate in ethnic economies which are rampant in countries like Malaysia. The role of competition law in addressing such market injustices has been explored by Cao (2004) who rejects the appropriateness of affirmative action in reducing market inequalities among different ethnic communities. The failure to address market inequality and discrimination in a competition law discourse will be unfair because it allows an attack on State intervention for socio-economic or developmental reasons in favour of economic efficiency but market discrimination by private enterprises remains unchecked.

Therefore, the interactions between competition law and affirmative action must be examined in the light of the Malaysian law. This paper will first discuss the interface between competition law and affirmative action. It will then investigate how such inter-relationships affect Malaysia vide the CA 2010 which is the main competition legislation governing the markets in Malaysia. This will lead to a discussion on how the CA 2010 addresses ethnic cartels. The paper raises some important points on how inefficient

<sup>1</sup>For views that support affirmative action, see (Khalid, 2014), (Chua, 2003).

<sup>2</sup>For views critical of affirmative action, see (Gomez, Saravanamuttu, & Mohamad, 2013).

producers may benefit from the inclusion of affirmative action considerations into competition law and how the law could respond to such an issue. The conclusion summarises main findings.

### **THE INTERFACE BETWEEN COMPETITION LAW AND AFFIRMATIVE ACTION**

There is a need to look at how competition law interacts with affirmative action. But first, the different goals of competition law and affirmative action as two distinct regulatory regimes need special attention.

The aim of a competition law is to promote and maintain the process of competition in the market. Competition refers to the process of rivalry among firms in the market and main purpose of competition law is to promote economic efficiency and takes centre stage in the regulation of market competition. As suggested by Vickers and Hay (1987, p. 2), “the prime purpose of competition law is to promote and maintain a process of effective competition so as to achieve a more efficient allocation of resources”. Affirmative action on the other hand, refers to regulation that seeks to correct past wrongs by creating measures that promote distributional objectives that can be reflected in fairer or more equitable distribution of wealth (Ezorsky, 1991). Thus, the rationales of such regulation are social. The question now is: do competition law and affirmative action operate in separate spheres?

Bakhoun (2011, p. 496) argues that economics does not operate in a vacuum

because the expected results of an economic theory, including economic efficiency, are dependent on the socio-economic, political, legal and cultural contexts unique to each individual States. This is his response to Eleanor Fox’s statement that there is an on-going split between universalists and relativists regarding what is supposed to be the goal of competition law (Fox, 2007). The universalist view which is championed by developed countries sees economic efficiency as the only goal of competition law whereas the relativist view which is supported by developing countries argues that that should not be case as the conditions in developed countries differ from those in developing countries (Bakhoun, 2011, p. 496). The over-emphasis on economic efficiency enables the law to protect efficient players although they subscribe to practices that promote market inequality. Can competition law address distributional concerns? This will require efficiency to be balanced with public interest which is the main reason for government regulation. It may be argued public interest includes the fight against inequality. This situation is explained by Stiglitz (2013, p. 42) that the failure of the market to align private incentives with social returns warrants government intervention. As the disparity between private incentives and social returns widens, so is the unequal wealth distribution among members of society.

As propounded by Fox (2000, p. 593), equality and distributional goals (of competition law) do not necessarily undermine economic efficiency. She

states “an economy that has been run by an elite group that has suppressed the majority, or by cronyism that has left out the majority, may be unable to meet its efficiency potential until a substantial level of equality in fact has been achieved” (Fox, 2000, p. 593). The (competition) law should emphasise on the realisation of the full efficiency potential of the nation, not the preservation of the domination of efficiency by one particular group inhabiting such a nation. The law should also ensure that opportunity or ability to participate in the market is distributed more equitably. If a group or segment of society is prevented from reaching and enjoying such an opportunity, the existence of efficiency will be meaningless (Fox, 2000, p. 593).

Stiglitz, when analysing how the market (especially that of the financial sector) and the government shape economic inequality, debunks the myth that “discrimination was impossible in a market economy”; in fact, his study shows that economic discrimination did occur in the American society against African Americans and Hispanics (Stiglitz, 2013, p. 85). More interestingly, he finds collusive behaviour of dominant groups (particularly Caucasians) has suppressed the economic interests of another group and such behaviour is made effective by punishments and sanctions in the event that a member of the dominant group refuses to subscribe to the discriminatory behaviour (Stiglitz, 2013, p. 86). This should be a premise on which one can argue against the use (or misuse) of the market to induce

unequal distribution of wealth between different ethnicities. Amy Chua (2003) is among those who specifically write about the market and its impact on ethnic inequalities.

Chua argues that in societies with a market-dominant ethnic minority (including Malaysia), the economic concentrations will be in the hands of a few although political institutions will still be controlled by the majority (Chua, 2003, pp. 6-12). This breeds economic inequality. The solutions proposed by Chua include affirmative action that seeks to level the playing field between market-dominant minorities and impoverished indigenous majorities, putting an end to political favouritism which according to Chua, contributed to wealth accumulation by market-dominant ethnic minorities (Chua, 2003, pp. 151-157). Chua’s thesis was critiqued by Cao (2004) who commented that ethnic groups like the Chinese in South East Asia gained wealth and success in business because of their middlemen status which gave them the ability to create social capital despite having to endure persistent discrimination and oppression (Cao, 2004, p. 1052). The middlemen status distinguishes the Chinese from the whites in Southern Africa and Latin America “whose wealth is derived from brutal colonial policies” i.e. the latter being the direct beneficiaries of colonialism (Cao, 2004, p. 1048). The Chinese in Colonial Malaya had suffered market discrimination by the British who imposed restrictions to maintain European monopoly in important

industries including the tin mining industry (Yuen, 2013, pp. 106-123). But one must remember that the indigenous people suffered even more injustices than ethnic minorities. In Colonial Malaya, the indigenous Malays were prevented from venturing into the more profitable rubber plantation. They could only participate in the less profitable paddy cultivation instead, but the Chinese were given full opportunities to develop the rubber plantation industry in Malaya (Khalid, 2014, pp. 59-62) (Fujimoto, 1983).

While history may repeat itself, the term “ethnic economy” is key to understanding the dynamic relationships between competition law and race-based affirmative action. An ethnic economy exists when the economy is owned by ethnic members and they predominantly hire members of the same ethnic group (Du Bois, 1907; Waldinger & Aldridge, 1990; Cao, 2004, p. 1057). Where an ethnic economy persists, entrepreneurship, skills and competitiveness will not be enough to break the market domination by a particular ethnic minority especially when the latter conducts businesses with members of the same ethnic group only. It is this situation that brings our attention to competition law or regulation. Cao states “persistent ethnic disparities may be locked in as a result of monopoly power or anticompetitive conditions” which happen through “ethnically based trading networks which are impenetrable to outsiders” and “ethnically based vertical and horizontal integration” (Cao, 2004, p. 1083). Within

the realms of competition law, Cao argues that such a law can be steered towards addressing ethnic disparities by regulating monopolies, predatory pricing and vertical integration (Cao, 2004, p. 1090). These three areas reflect the US competition law but are not all found in the Malaysian competition law. An analysis of the Malaysian competition legal regime will direct us to the specific areas in which affirmative action concerns may or may not be addressed by competition law in Malaysia.

## **INTERFACING COMPETITION LAW WITH AFFIRMATIVE ACTION IN MALAYSIA**

The primary source of Malaysian competition law is the Competition Act 2010 (CA 2010). The CA 2010 prohibits any agreement that restricts, distorts or prevents competition in the Malaysian market (anti-competitive agreements) and abuse of dominant position. The CA 2010 however, does not address anti-competitive mergers. As regards affirmative action policies, no explicit mention is made in the CA 2010 including the NEP. This means Malaysia takes a different approach from South Africa whose competition regulation makes explicit reference to affirmative action.

The CA 2010 has an economic bias. Its preamble stipulates that its primary objective is to protect the process of competition based on the belief that effective competition will result in economic efficiency and innovation, and a secondary

objective is to promote consumer interest. Both objectives may come in conflict with affirmative action unless the beneficiaries of such affirmative action policies are economically efficient. However, the two objectives of the CA 2010 are tied to a wider objective that is the objective of promoting economic development. This means ensuring competition and economic efficiency alone is not sufficient because it has to achieve a higher end i.e., economic development (Ahamat & Rahman, 2014, p. 178). Affirmative action is an integral part of economic development. Policies such as the NEP strive to reduce poverty and increase the income of the less market-dominant indigenous communities in Malaysia and thus affirmative action may continue to be relevant alongside competition law if one takes a contextual look at the CA 2010. Nevertheless, conflicts between economic efficiency and economic development considerations are likely (Ahamat & Rahman, 2014, p. 178) and the application of multiplicity of objectives by competition law enforcement may lead to ineffective enforcement and political capture. The political capture arguments have been refuted by Stiglitz (2013) who breaks the myth that political capture is only limited to regulation. He commented that the financial institutions in the United States, among the biggest money makers in the US, have been actively asking the authorities to provide exemptions from regulation using their economic and financial might to lobby the government against the use of competition in the sector

that it participates (Stiglitz, 2013, p. 43). This suggests that political capture can also be associated with deregulation.

## **THE USE OF COMPETITION ACT 2010 AGAINST ETHNIC CARTELS**

Cartel is an agreement between competitors (who may or may not form associations) to control (among others) prices, total industry output, market shares, market territories and division of profits (Khemani & Shapiro, 1993, pp. 18-19). The purpose of cartels is to exclude competitors from the market. Cartels are notorious enough that they have been mentioned in writings that discuss competition law from the socio-economic or developmental angles. They are found in various sectors of basic necessities where cartelising producers exploit small farmers and producers and even consumers through purchasing cartels, boycotts and even physical threats in Latin American and African countries, some of which still experience widespread poverty (Mehta & Nanda, 2004; Evenett, Alvarez, & Wilse-Samson, 2007; Fox, 2007, p. 117).

Drawing on the socio-economic condemnation of cartels, there is the notion of 'ethnic cartel', which has been seen by many economists as a type of economic discrimination, used by the more economically dominant White Americans to obtain economic gains from the discriminatory practices in the market at the expense of the less dominant Black Americans (Becker, 1957, 1971; Krueger, 1963; Chiswick, 1995, pp. 15-17; Sundaram, 2006, p. 38). The application of

such notion of cartel was generally limited to discrimination in the labour market (for example discrimination between employees of different ethnicities) (Krueger, 1963; Sundaram, 2006, p. 38) but it was later made applicable to the relations between enterprises or firms in the market. Thurrow (1969) identifies White cartels against the Blacks to include “capital discrimination” (blocking Black Americans’ access to capital) and “price discrimination” (Black American buyers are charged a higher price while Black American sellers get lower prices).

Malaysia is no stranger to these types of cartels where it is common to find Malay companies and firms prevented from entering or forced to exit the market as a result of boycotts, refusals to supply, price discrimination and other forms of cartel; but the main problem is with detecting the cartel, as most of the occurrences of ethnic cartel could only be established through anecdotal and indirect evidence. Most information on this practice could only be obtained from informal sources including privileged communication between businesses and business associations with the relevant ministries and regulatory bodies, including the Ministry of Domestic Trade, Cooperatives and Consumerisms and the Malaysian Competition Commission (MyCC). But some light can be shed by studies on the level of market concentration in specific sectors. A study by Mohamed, Shamsudin, Abdu Latif and Muazu (2013, p. 1465) reveals that market is concentrated in the poultry sector and

such market condition creates barriers to new entrants. This study is complemented by Adlan Abdul Razak (2014) who links price increase of chicken in Malaysia with possible anti-competitive practices in the relevant market. This is one of the many sectors which experience high likelihood of such market conditions – other products include fertilisers, animal feed, retail etc. Ethnic cartel is imminent with certain communities controlling the supply chain from production to retail and blocking entry into the market companies from different communities, or forcing those companies to crowd into less profitable level(s) of the chain (which could be retail).

The question now is: can the CA 2010 be effectively used against ethnic cartel? Ethnic or discriminatory cartel as understood by Thurrow refers to both collusive and unilateral conduct which is subject to Section 4 and Section 10 of the CA 2010 respectively.

As regards collusive conduct, Section 4(2) of the CA 2010 allows for the creation of prohibition targeting cartel. The provision prohibits price fixing, market sharing and output limitation by the object of the behaviour, not its effect. This means the MyCC does not need to look at the effect of the behaviour on the market. However, collusive firms and companies can argue based on Section 5 of the CA 2010 (on relief of liability) that their conduct has efficiency, technology or social benefits (though there are other cumulative requirements that have to be met, which will not be discussed in this

paper). This creates a dilemma. What if members of an ethnic cartel are efficient? Will an action against them reduce economic efficiency? It can be said that this goes against the philosophy of competition law but as explained in Section 2 of this paper, competition law objectives are not necessarily universal whereby they may be relative to the specific conditions of a particular country (Bakhoun, 2011, p. 496). Economic efficiency and consumer welfare may need to be balanced by creating access for economically deprived groups and communities to the market. The conditions in Malaysia warrant special attention to be paid to the existence of ethnic cartels here. Fox (2000, p. 593) has explained that apart from efficiency in competition, one should consider opportunity to participate because inefficient firms and companies may become efficient over time if they are given such an opportunity. This philosophy should not be considered alien to the CA 2010 as it reflects the position in the EU competition law which places emphasis on the process of competition, not its outcomes. The latter reflects average welfare gains to consumers from competition in the market (Fox, 2003; Andriychuk, 2009).

There is a second type of conduct known as unilateral conduct. A cartel is usually understood as involving more than one party but the concept of ethnic cartel as understood by Thurrow also includes unilateral behaviour. This requires the discussion to include prohibition under Section 10 of the CA 2010 which deals with abuse of dominant position. Under Section

10(1), it is illegal for a dominant firm or company to abuse its dominant position. Such abusive conduct can be performed individually or collectively. Therefore, as will be seen below, many instances of ethnic cartels that attract the prohibition under Section 10 involve more than one dominant enterprise and it is possible that they may attract the prohibition under Section 4 simultaneously. The prohibition of abuse of dominant position can be excluded if there is a reasonable commercial justification to the conduct of the dominant (Section 10(3)).

The MyCC has to establish two grounds namely dominance and abuse. Again, this paper will not provide a detailed explanation on how dominance is determined but instead focuses on the types of abusive conduct by an ethnic cartel. Section 10(2) of the CA 2010 proscribes *inter alia* the following conduct, if resorted to by a dominant firm: (a) imposing unfair trading conditions on supplier or customer, ... (c) refusal to supply to a particular enterprise or a group of enterprises, (d) market discrimination, ... (f) predatory behaviour and ...

Regarding “imposing unfair trading conditions on supplier or customer”, it is important to note that such trading conditions include charging excessively high prices to a dominant enterprise’s customer or excessively low prices to a dominant enterprise’s supplier (monopsony). Instances of Bumiputera businesses being slapped with excessively high premise rentals or Bumiputera farmers

having to pay high prices of fertilisers and animal feed have been reported to be common and the CA 2010 allows penalty for such behaviours. However, it will be unfair to generalise and blame the Chinese unjustifiably to resorting to such abusive conduct as these unacceptable conduct may even originate from Bumiputera-related corporate entities (including GLCs) or foreign companies (particularly hypermarkets). This may weaken the nexus between the relevant types of abuse and ethnic cartel.

Behaviour (c) is about refusal to supply to a particular enterprise or a particular group of enterprises. This conduct may be relevant to the issue of ethnic cartels in Malaysia because the particular group of enterprises may refer to enterprises formed by a particular ethnic group. Refusals to supply have been reported to be prevalent in some markets such as the fish and vegetable product markets. In some states in Malaysia such as Selangor, the middlemen controlled the supply of fish and vegetable through container transport. There have been occasions when the middlemen who are mostly non-Bumiputeras (particularly Chinese) did not allow fish and vegetables to be unloaded at the Selangor Wholesale Market (Pasar Borong Selangor) causing supply to concentrate at the rival Selayang Wholesale Market (Pasar Borong Selayang) (Nuh, 2015, p. 2). This has affected Bumiputera sellers because most of them operate in the Selangor Wholesale Market while the vegetable and fish business in Selayang Wholesale Market is dominated

by non-Bumiputera sellers. Apart from Section 10 (prohibition of abuse of dominant position), this conduct may also attract the prohibition of anti-competitive agreement by object under Section 4(2) as an agreement to limit output.

Behaviour (d) is best explained using the term “market discrimination”. Section 10(2)(e) of the CA 2010 provides that the following can be abusive if it is done by a dominant party such as – applying different conditions to equivalent transactions with other trading parties to an extent that may:

- (i) discourage new market entry or expansion or investment by an existing competitor;
- (ii) force from the market or otherwise seriously damage an existing competitor which is no less efficient than the enterprise in a dominant position; or
- (iii) harm competition in any market in which the dominant enterprise is participating or in any upstream or downstream market;

The different conditions applied to different trading partners include the charging of different prices to different purchasers from different ethnic groups. This problem has been widely debated as it cuts across ethnic politics and business in Malaysia where Malay entrepreneurs have long complained that they receive less favourable prices than their Chinese competitors. One of the complaints relates to the hand phone retail business at a shopping mall which was controlled only by

two 'towkays' (bosses) although there were numerous kiosks run by both Bumiputera and Chinese enterprises (Utusan Malaysia, 2012). The two enterprises charged lower prices to Chinese kiosk operators while higher prices were charged to Bumiputera kiosk operators. This may constitute an ethnic cartel prohibited by Section 10 (collective abuse of dominant position). It is possible that the Chinese dominant enterprises despite being suppliers do not participate in the downstream market. The question now is: what if they price-discriminate among unrelated competitors (both Chinese and Bumiputera) within that market? Paragraphs (i) and (ii) of Section 10(2)(e) talks about discouraging market entry or forcing out from the market *of an existing competitor* which means the allegedly abusive dominant enterprise must compete with the victim of the price discrimination. However, paragraph (iii) refers to discrimination that harms competition in any market in which the dominant enterprise is participating *or* in any upstream or downstream market. The implication of the word 'or' is that if discrimination by the dominant enterprise harms competition in the downstream or upstream market, abuse can still be detected, despite the enterprise not having presence in such a market.

Behaviour (f) (predatory behaviour) usually refers to the practice of pricing below cost. Pricing goods or services too low may be good for consumers but such pricing strategy will become predatory if used by a dominant enterprise or company

to push out competitors from the market. At the same time, a dominant enterprise may price below cost for many reasons such as to gain initial market share or existing enterprise may price a new product below cost initially to attract consumers.<sup>3</sup> In order to distinguish between pricing that is predatory and low pricing that is benevolent, one must look at whether the pricing is in relation to marginal cost namely the cost of producing the last unit of output.<sup>4</sup> There are different concepts of costs that the MyCC considers but they will not be elaborated in this paper except that the Malaysian competition regulatory body may consider whether price is below the cost and whether it excludes an as-efficient competitor (competitor who is as equally efficient as the dominant enterprise).<sup>5</sup>

The link between predatory behaviour and ethnic cartels in Malaysia is founded on complaints that dominant non-Bumiputera (particularly Chinese) businesses practise a strategy that suppresses prices to the detriment of the smaller Bumiputera competitors as the prices offered in the market are too low for them to recoup the costs incidental to the supply of their goods or services. One of them is expressed in the *hansard* to the CA 2010 (Dewan Rakyat Malaysia, 2010). A Sabah Member of Parliament raised a concern that Chinese express boat operators in Sarawak had

<sup>3</sup>Malaysian Competition Commission Guidelines on Chapter 2 Prohibition, para. 3.12.

<sup>4</sup>*Ibid.*, para. 3.13.

<sup>5</sup>*Ibid.*, para. 3.15.

reduced their boat fare too low that smaller Bumiputera operators had been forced out of the market and thus, making it easy for the cartels formed by the former to buy out the latter's business (Dewan Rakyat Malaysia, 2010, p. 153). It is still unclear whether the price charged by the dominant boat operators is below the types of costs that will bring the MyCC to an affirmative finding of predatory pricing, though the behaviour of ethnic cartels that falls under this category can also attract the prohibition of anti-competitive agreement under Section 4(2) i.e. price-fixing.

#### **COMPETITION LAW, AFFIRMATIVE ACTION AND INEFFICIENT COMPETITORS**

The CA 2010 and competition legislation in many jurisdictions place emphasis on the attainment of economic efficiency and the enhancement of consumer welfare (this has been discussed in Section 2 of this paper). However, with ethnic cartels, it is possible that the CA 2010 is used to promote market openness and participation to enterprises from outside the ethnic group which controls the supply chain in various Malaysian markets. In this regard, the MyCC may need to balance between enhancing consumer welfare and ensuring opportunity to participate in the market. Since the non-Bumiputera (particularly Chinese) enterprises are generally more efficient, the use of the CA 2010 against ethnic cartels must focus on Bumiputera enterprises which can potentially or actually participate in the market and should the anti-

competitive behaviour be reduced, they may strive to be as efficient as enterprises from market dominant ethnic communities. It will be difficult to use the CA 2010 to protect "tenderpreneurs" who are only active in procuring contracts or projects but lack the capacity to operate those contracts or projects. These tenderpreneurs have the tendency to hand over contracts or projects to non-Bumiputera (particularly Chinese) enterprises upon payment of a certain sum of money, leading to wastage of resources.

#### **CONCLUSION**

Despite the economic biases behind competition law, affirmative action justifications are warranted for they force open the market to market dormant communities before the communities are able to compete on a level playing field. Although the Bumiputeras (and Malays) became politically dominant post-independence, there was still a wide economic gap between Bumiputeras and non-Bumiputeras (particularly Chinese). To reduce such a gap, the Malaysian government has introduced affirmative action measures including those which seek to enhance the participation of Bumiputera enterprises in the market. However, this paper has shown those measures could be obstructed by ethnic cartels. This suggests that competition law, in particular the CA 2010, being racially neutral and is a good option to make the best of affirmative action. The CA 2010 allows the opening up of market to Bumiputera enterprises providing them the opportunity

to participate in all levels of production chain and ending the period where they have to crowd into the least profitable level. Nevertheless, conflicts between affirmative action and the Competition Act 2010 are still improbable. Government-linked companies (GLCs) have become one of the channels for operationalising affirmative action and certain conducts of the GLCs have been seen as harming market competition. This requires future researchers to examine how the conduct of GLCs may or may not come in conflict with prohibitions in both Section 4 (anti-competitive agreement) and Section 10 (abuse of dominant position).

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