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Dear valued clients and friends,

We are pleased to bring you the following update from our Competition Law & Antitrust Practice Group.

Merger control regime in Malaysia

Many jurisdictions have put in place legislation to regulate merger activities. There have been discussions that it is high time for Malaysia to implement a general merger control regime under the Malaysian **Competition Act 2010**. As it presently stands, general merger activities which do not fall within two specific sectors (will be discussed below) are not regulated and no prior sanction is required from the Competition Commission before a merger transaction takes place.

Merger activities in two industries are regulated; the aviation market falls under the Malaysian **Aviation Commission Act 2015** and the communications and multimedia market under the **Communications and Multimedia Act 1998**. Merger filing is voluntary under both industries.

In respect of the aviation industry, the Malaysia Aviation Commission has rolled out the following guidelines: -

(a) Guidelines on Substantive Assessment of Mergers (2018)
(b) Guidelines on Notification and Application Procedure for an Anticipated Merger or a Merger (2018)
(c) Guidelines on the Determination of Financial Penalties (2018)
(d) Application Form for an Anticipated Merger or a Merger (2018)

For the communications and multimedia industry, the guidelines on merger activities were implemented by the Malaysian Communications and Multimedia Commission last year.

(a) Guidelines on Mergers and Acquisitions (2019)
(b) Guidelines for the Authorisation of Conduct (2019)

It is interesting to note that there was a potential merger between two telecommunications giants in Malaysia last year involving Axiata and Telenor. That deal was reported to have been called off late last year.

In respect of non-regulated industries, the absence of a notification requirement does not mean that the potential merging parties do not have to consider the competition law impact of such a merger.

In 2018, Grabcar, an entity providing e-hailing services in Malaysia entered into an agreement with Uber Malaysia whereby Uber was to transfer all its local assets and business to Grabcar. Whilst the transaction was not caught under the **Competition Act 2010** in the absence of a merger control regime, Grabcar was investigated under Section 10 of the **Competition Act 2010** for abuse of its dominant position.

A proposed decision was issued against Grabcar which involved a financial penalty of RM 86 million. In addition to opposing the proposed decision, Grabcar also filed a judicial review application which was dismissed in March 2020, primarily on procedural ground that the proposed decision was not a final decision and Grabcar had not exhausted the avenues provided for under the Competition Act 2010.

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