



سوروهنجاڤي قرساعيشن برونبي دارالسلام

COMPETITION COMMISSION

BRUNEI DARUSSALAM

# Guidelines

## EXTENSION OF TRANSITIONAL PERIOD

These Guidelines are intended to be an introductory text and guidance document on how the Commission enforces and administers the provisions under the Competition Order (“Order”). These Guidelines, however, are not a substitute for the Order or any Regulations made pursuant to the Order. They are not exhaustive, and do not set a limit on the investigation and enforcement activities of the Competition Commission of Brunei Darussalam (“CCBD”). In applying these Guidelines, the facts and circumstances of each case will be considered in totality. These Guidelines may be revised should the need arise. In the event that any of the provisions in these Guidelines are inconsistent or incompatible with the provisions of the Order, the provisions of the latter shall take precedence.

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## 1. Introduction

- 1.1. The Competition Order (“Order”) includes the provision of a transitional period, commencing 1 January 2020 until 30 June 2020, automatically given to parties whose agreements were made before 1 June 2019, and any **extension to the transitional period applied by such parties**, as well as early termination thereof by the Competition Commission Brunei Darussalam (“CCBD”).
- 1.2. These Guidelines outline the transitional arrangements that will be provided for in the Transitional Period. The CCBD will allow parties to agreements made before 1 June 2019 additional time, up to 30 June 2020, to review these agreements and bring them into compliance with the Order. This will apply not only to agreements in existence for more than 5 years prior to the Order’s commencement, but all agreements made before 1 June 2019. Parties to agreements made before 1 June 2019 will also be given the option to apply to the CCBD, for a longer transitional period to effectuate compliance. Where the application so merits, the CCBD will generally grant a transitional period of up to one year. The CCBD will not impose a financial penalty during the aforementioned time periods.

## 2. Transitional Period

- 2.1. Any parties whose agreements were made before 1 June 2019 and are in breach of the Section 11 prohibition (“parties”), shall be immune from any penalty during the period of 1 January 2020 until 30 June 2020 (“transitional period”), if the agreement was still ongoing throughout the transitional period, due to the parties’ inability to bring the agreement to an end by the start of the enforcement of the Order, 1 January 2020.
- 2.2. The transitional period is then provided for such parties for them to review, renegotiate or amend, where necessary, their agreements or otherwise comply with the requirements of the Section 11 prohibition.

## 3. Extension of Transitional Period

- 3.1. Shall the parties believe that they are unable to bring their agreements to an end or unable to amend their agreements in such a way that it would comply with the requirements of the Section 11 prohibition, by the end of the transitional period, the parties may apply for an extension to the transitional period during the application period commencing 1 January 2020 until 30 June 2020.

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- 3.2. The extension of transitional period only applies to agreements which are made before 1 June 2019. It will not apply to agreements made on or after 1 June 2019.
- 3.3. The extension of transitional period will apply only to agreements which infringe the Section 11 prohibition (Anti-Competitive Agreements).

### **4. Application for an Extension of Transitional Period**

- 4.1 All the parties involved in the agreements must agree to jointly apply for the extension of transitional period. An application cannot be made if any one party to an agreement does not want to apply for an extension of transitional period. If a party's obligation under the agreement has been completed, it is not necessary to secure his acquiescence for the application.
- 4.2 A joint representative must be appointed to act for and on behalf of the parties.
- 4.3 The information required from the parties in the application for an extension of transitional period will be on the following matters:
  - (a) A description of the anti-competitive agreement which is the subject of the application (including the nature, content, purpose, date(s), duration, descriptions of the undertakings involved and their roles);
  - (b) A description of the goods or services involved as fully and accurately as possible;
  - (c) Basis for the parties' belief that the agreement was made before 1 June 2019 and is on-going supported by documentary evidence where relevant, such as correspondence between the parties;
  - (d) The provisions or effects of the agreement which would in the parties' view be non-compliant with the Section 11 prohibition and give reasons for that view;
  - (e) An explanation of the reason for the inability of the parties to comply with the Section 11 prohibition by 30 June 2020 (for e.g. explain why the transitional period itself is insufficient for the parties to negotiate or amend the agreement or otherwise comply with the Section 11 prohibition, the reasonable steps.

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- 4.4 The application form should also be submitted with the following documents:
- (a) A copy of the applying company / organisation's company registration;
  - (b) Letter of authorization proving the representative's authority to act on behalf of all the parties;
  - (c) The original agreement, if the agreement is in writing;
  - (d) If the agreement is in writing and in a language other than the English Language, the original agreement together with an English translation of the agreement, and a verification document made in accordance with the CCBD's requirements;
  - (e) Copy of the evidence supporting the application (e.g. minutes of meeting, business documents, circulars, correspondence, note of telephone conversation). Clearly identify any confidential information and explain why this information should be treated as confidential;
  - (f) Additional pages describing the request, if needed;
  - (g) A copy of the latest annual reports and the audited annual balance-sheet and profit-loss accounts of each parties;
  - (h) Annex A of the application form with the application fee of \$1,000.
- 4.5 The CCBD may also, at any time after the application is made, require the parties to furnish any other information (including any documents) as the CCBD thinks fit.
- 4.6 The application form may be downloaded in the CCBD website and must be submitted to the CCBD via its Executive Secretariat at the address stated in the application form.
- 4.7 The application for an extension of transitional period should be made during the application period commencing 1 January 2020 until 30 June 2020.
- 4.8 The CCBD may refuse an application, where parties do not comply with the application requirements.
- 4.9 If the CCBD has reasonable grounds for suspecting that any information provided to the CCBD is incomplete, false or misleading in a material particular, different actions may be taken by the CCBD according to when the suspicion takes place, as detailed below:
- (a) **After granting the extension:** terminate the extension granted and subsequently remove any or both of the immunity given during the time

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taken for CCBD to make its decision and / or the extension period before the termination.

- (b) **After the expiry of the extension granted:** remove any or both of the immunity given, specified under items 10.ii. and / or 10.iii in this Guideline.
- (c) **During decision making:** Refuse the application and remove the immunity given during the time taken for CCBD to make its decision.
- (d) **Subsequent to refusing an application:** remove any or both of the immunity given during the time taken for the CCBD to make its decision and / or the period given under item 11.3.iii. in this Guideline and / or the period given by the Competition Appeal Tribunal for any appeal made.

### 5. Application Fee

- 5.1. The prescribed fee for applying for an extension of transitional period is amounting BND\$1,000.

### 6. Confidential Information

- 6.1. The CCBD will endeavor to respect the confidentiality of the Applicant and the information furnished as required under Section 70 of the Order.
- 6.2. Applicants should:
  - (a) Clearly identify any confidential information;
  - (b) Provide this information in a separate annex clearly marked 'confidential information'; and
  - (c) Explain why this information should be treated as confidential
- 6.3. However, in some cases, the CCBD may need to disclose information when there is a lawful order by any court or Tribunal, or when the CCBD deems necessary.

### 7. Processing Time

- 7.1. The time taken by the CCBD to give its decision on the application will depend very much on the nature and complexity of the application, as well as the volume of applicants which have been filed at that point in time. The CCBD may seek clarification, or request additional information if this is necessary to determine an application.

## **8. Length of Extension Granted**

- 8.1. The CCBD may grant a transitional period of up to one year from the date of the CCBD's decision on the application. The CCBD may consider granting a longer transitional period in exceptional circumstances. Please refer to item 13 in this Guideline for more information on the CCBD's criteria for granting an extension of transitional period.

## **9. Terms and Conditions**

- 9.1. The CCBD may impose terms and conditions, when it grants a transitional period. Such terms and conditions will depend on the facts of the case including the nature of the agreement. If parties fail to comply with such terms and conditions the CCBD may terminate the extension of transitional period granted.

## **10. If Application is Granted**

- 10.1. If the CCBD grants an extension of transitional period, it will not impose a financial penalty for:
- (a) The period from 1 January 2020 to 30 June 2020;
  - (b) The time taken by the CCBD to decide the application;
  - (c) The extension of transitional period granted;
  - (d) If the extension of transitional period is terminated by the CCBD, the period of time granted by the CCBD for the parties to cease the agreement or otherwise comply with the Section 11 prohibition.

## **11. If Application is Refused**

- 11.1. The CCBD may refuse an application for extension of transitional period for the following reasons:
- (a) The application does not fulfil the requirements for application for extension of transitional period as specified under item 4 in this Guideline;
  - (b) The CCBD suspects that any information during application for extension is incomplete, false or misleading;
  - (c) The application fee is not received by the CCBD during the application;
  - (d) The CCBD's request for further information is not complied with within specified time-limit; or

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- (e) The CCBD believes there is a material change in any information given to the CCBD during application for extension, and the change is not notified immediately to the CCBD.
- 11.2. If an application for an extension of transitional period is refused (i.e. the CCBD does not grant any extension of transitional period), the CCBD may give the parties a period of time from the date of its decision, for the parties to take steps to cease the agreement or to otherwise comply with the Section 11 prohibition of the Order.
- 11.3. If the party is not granted any extension to the transitional period applied, the CCBD will not impose a penalty for:
- (a) The period from 1 January 2020 to 30 June 2020;
  - (b) The time taken by the CCBD to decide the application; and
  - (c) The period of time granted by the CCBD to the parties to cease the agreement or otherwise comply with the Section 11 prohibition, if any.

## **12. Early Termination of the Extension Granted**

- 12.1. The CCBD may, at any time before the expiry of an extension of the transitional period granted to the parties to an agreement, terminate the extension under these circumstances:
- (a) The CCBD suspects that any information provided to the CCBD was incomplete, false or misleading in a material particular;
  - (b) The CCBD believes that there has been a material change of circumstance since the granting of the extension;
  - (c) The CCBD receives a complaint about the agreement from any person who is not a party to the agreement, which, in the opinion of the Commission, ought to be investigated; and
  - (d) Any of the parties contravenes any condition imposed on the party by the CCBD or by the Tribunal.
- 12.2. The CCBD shall give written notice of its intention and its ground for the proposed termination to each of the parties and give the parties at least 14 days to make written representations to the CCBD.
- 12.3. Any termination of the extension of the transitional period shall take effect on a date specified by the CCBD, and as of that date, the immunity initially given to the parties during any extension of the transitional period before the termination, is removed.

### **13. Criteria for Granting an Extension of Transitional Period**

- 13.1. When deciding whether to grant a transitional period, the CCBD will consider, amongst other things, the nature of the agreement, how the parties propose to comply with the Section 11 prohibition and the time within which this can be done.
- 13.2. The CCBD is unlikely to grant extension of transitional period for agreements involving serious infringements of the Section 11 prohibition, for example price fixing, market sharing, bid rigging (collusive tendering) or output limitation, unless there are exceptional circumstances.

### **14. Appeals**

- 14.1. There will be right of appeal to the Competition Appeal Tribunal against a decision by the CCBD on an application – specifically matters relating to item 4 in this Guideline, the termination or refusal of a transitional period. Any party to the application may appeal.

## **ANNEX A: Extract from the Competition Order, 2015 and Competition (Transitional Provision) Regulations**

Section 74, Competition Order 2015 of Brunei Darussalam states:

The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations to provide for-

(b) such transitional, savings and other consequential, incidental and supplemental provisions as he considers necessary or expedient, including providing-

(i) for any transitional period (whether granted upon an application or otherwise), and any extension or early termination thereof;

Section 4, Competition (Transitional Provision) Regulations draft states:

In exercise of the power by Section 74 of the Competition Order, 2015, the Minister in the Prime Minister's Office and Minister of Finance II, with the approval of His Majesty the Sultan and Yang Di Pertuan, hereby makes the following Regulations -

### **Application for extension of transitional period**

(1) The parties to an agreement made before 1 June 2019 may in respect of the agreement jointly apply to the Commission for an extension of the transitional period if they are of the view that the agreement infringes the Section 11 prohibition and they require the extension to bring the infringement to an end.

(2) The application

- (a) shall be made during the application period (1 January 2020 until 30 June 2020);
- (b) shall be made by all the parties to the agreement;
- (c) subject to sub-regulation (5), shall be submitted in such form or manner as the Commission may specify;
- (d) subject to sub-regulation (6), shall include the documents specified in sub-regulation (4); and
- (e) shall be accompanied by the prescribed fee of BND\$1,000 which shall be paid during the application period in the manner specified by the Commission.

(3) The application shall also

- (a) specify one representative who is authorised by all the parties to act on their behalf in respect of any matter relating to the application;
- (b) describe the parties to the agreement;

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- (c) describe the purpose and nature of the agreement;
- (d) describe the goods or services involved;
- (e) specify the basis for the parties' belief that the agreement was made before 1 June 2019 and still has effect;
- (f) specify the duration of the agreement;
- (g) explain the agreement's infringement of the Section 11 prohibition;
- (h) explain the parties' inability to bring the infringement to an end within the transitional period;
- (i) specify the period of extension applied for; and
- (j) explain the grounds for the parties' belief that the infringement can be brought to an end within the period of extension.

(4) The documents specified for the purpose of sub-regulation (2)(d) are

- (a) proof of the representative's authority to act on behalf of all the parties;
- (b) if the agreement is in writing the original agreement;
- (c) if the agreement is in writing and in a language other than the English Language, the original agreement together with an English translation of the agreement, and a verification document made in accordance with the Commission's requirements, as specified by the Commission verifying that the translation corresponds to the original text of the agreement; and
- (d) a copy of the latest annual report and the audited annual balance-sheet and profit and loss accounts of each of the parties.

(5) Where the Commission is satisfied that the parties are unable to submit the application in the form specified by the Commission under sub-regulation (2)(c), the Commission may allow the parties to submit the application in such other form as it may specify.

(6) Where the commission is satisfied that the parties are unable to submit the documents specified in sub-regulation (4), the Commission may waive the requirement for the document or require the parties to submit such other document in substitution as it may specify.

(7) The Commission may, at any time after the application is made, require the parties to furnish any other information (including any document) as the Commission thinks fit.



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