

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia

T +603 6208 5888

F +603 6201 0122/0136

E enquiry@lh-ag.com

W www.lh-ag.com

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MAVCOM Publishes Guidelines on Voluntary Notification Regime for Anticipated Mergers and Mergers Under MACA 2015

Malaysian Aviation Commission Act 2015

| by Eleena Abd Wahab |

Although the Competition Act 2010 (CA 2010) is the main piece of legislation governing general anti-competitive behaviour in Malaysia that prohibits anti-competitive agreements and abuse of dominant position in the market, the framework of the CA 2010 does not provide for any form of merger control in relation to a proposed merger and acquisition in the general market.

The Malaysian Aviation Commission Act 2015^[1] provides for a voluntary merger notification regime for anticipated mergers and completed mergers within the aviation service market.^[2] Parties to a merger may apply for a decision by the Malaysian Aviation Commission^[3] as to whether such merger in question will result in the substantial lessening of competition in any aviation service market as prohibited under the Act.

Under its powers conferred by the Act,^[4] the Commission published two sets of guidelines in April 2018 to provide clarification for players in the aviation service market as to when and how a notification of an anticipated merger or merger should be made to the Commission, and provide a more thorough explanation of the prohibition of mergers that have resulted or may be expected to result in substantial lessening of competition.^[5] These Guidelines aim to provide a clearer explanation on the execution, enforcement and implementation of Part VII (Competition) of the Act:

(a) The Guidelines on Substantive Assessment of Mergers

This set of Guidelines sets out a non-exhaustive list of criteria and factors that are taken into account by the Commission in

evaluating whether an anticipated or completed merger in the aviation service market would result in the substantial lessening of competition as prohibited under the Act. Such criteria include, among others, market power and market concentration, entry of new competitors, economic efficiencies and social benefits.

(b) The Guidelines on Notification and Application Procedure for an Anticipated Merger or a Merger

This set of Guidelines provides a detailed explanation of the notification and application procedures under the voluntary notification regime for anticipated mergers^[6] and completed mergers.^[7] Such Guidelines also explain the options of applying for an exemption^[8] or appeal^[9] made available to the merger parties under the Act.

These two sets of Guidelines are meant to supplement and complement Part VII (Competition) of the Act. Other Guidelines issued by the Commission relevant to issues relating to anti-competition include the Guidelines on Aviation Service Market Definition, the Guidelines on Abuse of Dominant Position, the Guidelines on Anti-Competitive Agreements, the Guidelines on the Determination of Financial Penalties, and the Guidelines on Leniency Regime.

Eleena Abd Wahab (eaw@lh-ag.com)

If you have any queries, please contact the author or her team partner [Ooi Bee Hong](mailto:obh@lh-ag.com) (obh@lh-ag.com).

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^[1] Sections 55 and 56 of the MACA 2015 provide for a voluntary notification regime

^[2] Please see the Guidelines on Aviation Service Market Definition as published by MAVCOM, available at <<https://www.mavcom.my/wp-content/uploads/2018/01/180116-Guidelines-on-Aviation-Service-Market-Definition.pdf>>

^[3] Commonly referred to as MAVCOM

^[4] Section 65 of the Act sets out the Commission's authority to issue and publish guidelines as may be expedient or necessary for the better carrying out of the provisions of Part VII (Competition) of the Act

^[5] Pursuant to sections 54 to 62 of the MACA 2015

[\[6\]](#) Anticipated mergers are governed by s 55 of the MACA 2015

[\[7\]](#) Mergers are governed under s 56 of the MACA 2015

[\[8\]](#) Section 59(2) the Act

[\[9\]](#) Section 88 of the Act