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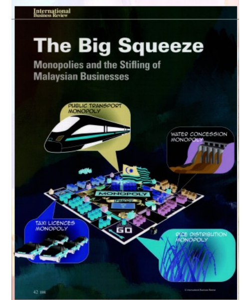

The Big Squeeze

Monopolies and the Stifling of Malaysian Businesses

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By definition, a monopoly is a company or group which controls all or nearly all of the market for a given product or service. As any competition is rendered ineffective, a major problem is that consumers are at the mercy of the monopoly which can raise prices or lower quality or both, without any worry of being affected by negative market reaction. While both the EU and the United States have competition or anti-trust laws to prevent predatory monopolies from taking form, such a concept has only recently been introduced to Malaysia. Furthermore, despite the passing of a Competition Act and the setting up of the Malaysia Competition Commission, monopolies still dominate certain sectors of Malaysia's economy.

Enforcing Competition

Passed by Parliament in May 2010 and gazetted in June of that year, the Competition Act came into force on the 1st of January 2012. On paper, the Act seems like one which has a lot of scope and teeth. For instance, it has extra-territoriality – meaning that it also applies to foreign/overseas-based companies that conduct business in Malaysia, while penalties for those that are found guilty of breaching competition laws are also quite hefty.

These include a fine not exceeding 10% of worldwide group turn-over, while offences such as obstruction of investigations and/or concealment of activities may be penalised with a fine of RM5m for companies and a fine of RM1m and/or imprisonment of up to 5 years for individuals. Also included in the powers reserved for the Malaysia Competition Commission (MYCC) is the ability to seize documents for investigation, even without a warrant.

This 'on-paper' toughness of the MYCC may not necessarily be reflected in reality. An article entitled *Challenges lie ahead for Malaysia's new competition commission*, written by Loong Caesar and Cara Yasmin Kamaruddin of Raslan Loong which was published in *International Financial Law Review (IFLR)* highlights the problems the MYCC faces.

Not least among these is that, "The Commission's limited manpower, resources and low general public awareness of competition and compliance issues in Malaysia are foreseeable challenges for the Commission to overcome." The article goes to say that "It has yet to be seen if the Commission will be able to effectively undertake its various functions."

Another potential weakness of the MYCC is that it does not govern all competition matters in Malaysia. For instance, regulation of energy as well as telecommunications and multimedia sectors are under the Energy Commission Act 2001 and the Communications and Multimedia Act 1998. Nor does the MYCC have the power to act in a case of a monopoly-forming merger, as oversight of all merger matters falls under the purview of the Securities Commission.

Perhaps one of the main causes for monopolistic situations in the country is the failure of the government to – until recently – enforce competition. In fact, cynics claim the decision to do so was driven more by the need to reassure foreign investors of Malaysia's sincerity in preserving an open market.

Furthermore, more often than not, the monopolies in Malaysia are either government-linked or owned or controlled by parties/individuals close to the government. The blame for the situation could be directed at the way privatisation was conducted, as industries previously owned by the state were privatised but not opened to competition. In other words, it was just a mere conversion of ownership from statutory body to limited liability company, while other inherent weaknesses such as human capital remained the same.

The Phone Cartel

Sometimes, a company may not be a monopoly in name but is one in deed. Telekom Malaysia (TM) is a good example of this. While it no longer has the monopoly of fixed telecommunications lines, it has remained far and away THE dominant market leader. In Q2 2012 for instance, the Malaysian Communications and Multimedia Commission (MCMC) recorded 3.958 million fixed lines in the country. Contradicting this is TM data which reports that it had 3.977 million fixed-line subscribers as of June 2012.

The discrepancy between the figures given by the MCMC and TM was explained as possibly different

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accounting procedures by both parties. A report by Universiti Utara Malaysia (UUM) indicates that of 2004, TM's share of the fixed line market in Malaysia was 97% – a monopoly by any other name – while its share of the Internet and mobile was lower at 54% and 39% respectively.

Despite the decline of fixed line voice telephony in recent years, owing to the advent of other services such as mobile, and VOIP (voice over internet protocol), fixed lines in Malaysia are still necessary for wired broadband services, for which TM has a virtual monopoly in the forms of Streamyx and its high-speed broadband (HSBB) service Unifi. Although Maxis does offer fixed lines and fibre optic connection, it lacks TM's reach and penetration.

The lack of competition already creates trouble in industries like telecommunications, which are necessary for the conduct of everyday business. Of course, some might say that there are alternatives, although presently they are not very ideal. Of greater concern though are monopolies in essential services.

Water, Water Everywhere

Water distribution is one such example. In the state of Selangor – the most industrialised in the nation – the concession for this is owned by Syabas, which is 70% owned by Puncak Niaga Holdings, which is also the parent company of PNSB which is one of three companies treating raw water in Selangor's dams.

The Syabas concession, which lasts for 30 years from 2004, was signed that same year by the previous state government, the Federal government and Puncak Niaga. One point of contention between the present state government (which took control after the 2008 elections and retained power in 2013), was that the agreement allowed Syabas to raise water tariffs by what it deemed to be unreasonable margins – 37% in 2009, 25% in 2012, and 20% in 2015.

The Selangor state government claims that the agreement is too heavily lop-sided in favour of Syabas, and that the concessionaire has failed to reduce non-revenue water sufficiently. As such in 2009, it refused to approve the 37% tariff increase, an act which saw Syabas take the state to court.

From a social point of view, a monopoly control of the distribution and price of water runs the risk of the marginalised of society not being able to receive potable water without intervention from the government, which ironically is the situation which privatisation is meant to prevent. From a business point of view, the granting of rights to a concessionaire to raise water tariff may also result in the lowering of the state's attractiveness to investors, who may look elsewhere to set up operations.

Choking Entrepreneurship

Monopolies and their close cousins, cartels, distort market realities by preventing competition either through predatory pricing or through highly one-sided contracts and concession agreements. Furthermore, there is a view in Malaysia that monopolies and oligopolies are created by the very same government that is trying to prevent them.

Taxi permits are a good example. In Malaysia, instead of giving permits to individual drivers, taxi licences are given to companies which then rent

A dam in Kuala Kubu Bahru in the central Malaysian state of Selangor. Since 2004, water distribution in Selangor – the most developed of Malaysia's 13 states – has been monopolised by SYABAS owing to an agreement signed by the previous state government and SYABAS' parent Puncak Niaga. However, the present state government is seeking to take over SYABAS by buying out Puncak Niaga's stake, and has accused Puncak Niaga of mismanagement.

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them out at a daily rate to drivers, which is usually around RM40 to RM50. The criticism of this system is that it creates a cartel where a few companies are in control of taxi licenses, thus preventing and stifling individual entrepreneurship. It is also burdensome to the drivers as the daily rental cost is an extra expense that they can do without.

The problem with a monopoly (or in this case an oligopoly) like taxi permits is that there is no reason to have one in the first place. The companies only hire out the permits and sometimes the taxis, but they do not provide benefits such as Employees' Provident Fund (EPF) contributions or health insurance.

Danger Factors

The greatest danger that monopolies or cartels pose is best reflected in the old warning against putting all of one's eggs into a single basket. By concentrating important sectors of the economy into the hands of a few, Malaysia risks a potential nightmare scenario where a too-big-to-fail firm is created - a corporation that is so imbedded into the socio-economic structure that its collapse will bring about economic catastrophe. The usual solution is for the government to bail out the ailing company using public funds, thus adding to the national debt. Either way, it is a lose-lose situation.

Such was the scenario which Opposition MP Tony Pua raised in the Malaysian Parliament in June 2012. Pua referenced the collapse of Renong in the late 1990s during the Asian Financial Crisis, which cost the Treasury RM10b as the government was compelled to bail the company out. Renong then was involved in the highway, rail, telecommunications and property industries, and its collapse threatened a domino effect on the Malaysian economy, which was already under heavy strain.

Pua's words were not just a lesson in history but a warning against the repeat of another Renong situation. Unfortunately, despite being once bitten, the Malaysian government is not twice shy. However, instead of Tan Sri Halim Saad, former executive chairman of Renong and golden boy of Malaysian business, the favoured son of the day is Tan Sri Syed Mokhtar Al-Bukhary.

Malaysias 8th richest man, Syed Mokhtar's business interests are vast and wide ranging. For instance, through MMC Corporation in which he has a 52% stake, he indirectly controls power generation through Malakoff Corporation, oil and gas drilling through MMC Oil & Gas, and logistics through MMC's ownership of the two largest ports in Johor – the Port of Tanjung Pelepas and Johor Port, as well as Senair Airport Terminal Services. MMC also has a stake in the MMC-Gamuda joint-venture which is the main contractor for the Klang Valley Mass Rapid Transit (KV MRT) project.

Another Syed Mokhtar company is DRB-Hicom, of which he owns 55.9%. Key companies in its portfolio include Edaran Otomobil Nasional, the parent company of national carmaker Proton, waste management firm Alam Flora, and even Pos Malaysia the national postal service. And then there is Tradewinds, where he holds 43% of the shares. This company in particular has a controlling interest in Bernas, which holds the monopoly on rice purchase, import and distribution in the country.

For many Malaysians, rice is a staple of their diet and it is worrying that one man can have so much power and influence on the market. The same can be said about our dependency on so many things which are indirectly controlled by Syed Mokhtar such as waste collection, postal services, and power generation.

Just as worrying is the high gearing of these companies. As Tony Pua pointed out in Parliament, as of May 2012, Tan Sri Syed Mokhtar Al-Bukhary's companies were reported to have debts of RM34.3b with cash of just RM7.8b. The question therefore is what happens if Syed Mokhtar over-reaches himself? A situation like that would probably make Renong look like a walk in the park.

It is interesting to note that during the run-up to Malaysia's 13th General Election, the manifesto of the Federal Opposition Pakatan Rakyat (PR) coalition promised to abolish monopolies should it take power. Although it failed to form the government, its share of the popular vote outstripped that of the incumbent Barisan Nasional (BN) at 51.4% to 48.6%. Given the sentiments, it would be wise for Prime Minister Datuk Seri Najib to adopt certain aspects of the PR manifesto. A good start would be to tackle the monopolies, create a level playing field in the country, and end the absurd scenario where a few hold so much sway over the many.

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