

Key points on MyCC's proposed amendments to the My Competition Act:

- Economic wide merger control regime will be applied to any commercial activities, within and outside of Malaysia which has an effect on competition in any market in Malaysia. Some exclusions apply to activities regulated by MCMC, MAVCOM, Energy Commission, Bank Negara etc.
- A merger is when:
 - i. Two or more previously independent enterprises combine into one single enterprise and cease to exist as separate legal entities
 - ii. The acquisition of direct or indirect control of the whole or part of one or more enterprises;
 - iii. The acquisition of assets of one enterprise by another enterprise results in the acquiring enterprise replacing or substantially replacing the enterprise whose assets are being acquired, in the business o
 - iv. The creation of a joint venture to perform, on a lasting basis, all the functions of an autonomous economic entity
- MyCC proposes a hybrid control regime, which is a mix of mandatory notification of anticipated mergers and voluntary notification of anticipated mergers
- Mandatory notification is triggered when the anticipated merger exceeds the threshold prescribed by MyCC and the enterprise is obliged to notify the Commission before consummation of the merger.
- Voluntary notification is when the anticipated merger does not exceed the threshold. An avenue is provided to voluntarily notify the Commission of an anticipated merger- to enable a review if the merger may result in substantially lessening of competition.
- With regard to MyCC's proposed 120 working day merger review period, AMCHAM proposes that 120 working days is the maximum, in line with international practices.
- Merger violations:
 - i. Failure to notify an anticipated merger that exceeds the threshold
 - ii. Consummating a merger before receiving the approval and sharing of commercially sensitive information
 - iii. A merger or anticipated merger that may result in substantial lessening of competition in any market for goods and services
 - iv. Failure to provide information or documents for purpose of conducting a merger review
 - v. The penalty for merger violation is a financial penalty of up to ten per cent of the value of the merger transaction or anticipated merger transaction



- AMCHAM will be seeking clarification from MyCC if an entity fails to notify an anticipated merger that has exceeded the threshold and goes ahead and consummates the merger; points of fact.
- The proposed amendments provide for the administering of a whistleblower regime to encourage sharing of relevant information and may include financial reward to a whistleblower. Safeguards and clear guidelines to be in place.
- The projected timeline for the amendments to come into force are:
 - i. (i) December 2022 for provisions on investigation and enforcement powers and procedures;
 - ii. (ii) October 2023 for the introduction of the Merger Control Regime.