



BRUNEI DARUSSALAM

Legislation and Jurisdiction

The Law

What is the relevant legislation?

Brunei Darussalam currently does not have a comprehensive legislation that regulates competition in general. In 2011, however, Brunei Darussalam started the process to prepare for a draft national competition law.

In this regard also, elementary competition-related provisions have been implemented in the telecommunications sector by the Authority for Info-communications Technology Industry of Brunei Darussalam (AITI) for its licensees under the Telecommunications Order 2001 (the Telecommunications Order). Licensees' behaviour in the telecommunications market are guided by the licence conditions, which includes a prohibition against anti-competitive behaviour. This Order is available from the Attorney General Chamber's website www.agc.gov.bn.

To whom does it apply?

The Telecommunications Order applies to entities that have obtained a license to operate as a service and/or infrastructure provider in the telecommunications industry except Government agencies who are carrying out sovereign functions. The converged competition code of practice being developed by AITI will apply to the same and be extended to cover broadcasting activities.

On the other hand, the national competition law that is currently being drafted is aimed to apply to all commercial activities in Brunei.

Which practices does it cover?

The AITI Order tasks AITI, in general terms, "to promote and maintain fair and efficient market conduct and effective competition between persons engaged in commercial activities connected with telecommunication technology in Brunei Darussalam" (Section 6(1)(c)). Furthermore, under the Telecommunications Order the AITI may give directions to telecommunication licensees, amongst others, to ensure fair and efficient market conduct (Section 27(1)(c)).

Meanwhile the draft national competition law covers the key prohibitions of anti-competitive behaviour.

Are there proposals for reform?

The national competition law for Brunei Darussalam is in the drafting stage.

AITI's converged competition code of practice will co-exist and generally be aligned with national policies with regards to general competition. The converged competition code of practice aims to promote efficiency and competitiveness in these sectors, promote fair and efficient market conduct and transparent market access, and further the advancement of technology and research and development in these sectors through the promotion of efficient market conduct.

The Authorities

Who is the enforcement authority?

There is no enforcement authority for the national competition law at the moment since the law is still in drafting.

Are there any sector-specific regulatory authorities (RAs) with competition enforcement powers?

AITI is responsible for the enforcement of competition in the telecommunications sector as part of obligations contained in the terms of licences issued under the Telecommunications Order. In light of convergence of the telecommunications and broadcasting sectors, AITI will also take on responsibility for managing competition in the broadcasting sector.

Anticompetitive practices

The Telecommunications Order allows AITI to give directions to telecommunications licensees to ensure fair and efficient market conduct. While the Order does not specifically refer to agreements or dominant position, the licences issued under the said Order contain provisions to regulate the following practices:

1. Unfair Competitive Practices
2. Undue Preference and Undue Discrimination
3. Anti-Competitive Arrangements
4. Exclusive Arrangements
5. Contracts with Third Party
6. Agreements that Restrict Competition
7. Pricing Abuse
8. Predatory Network Alteration
9. Abuse of Market Dominance in a Foreign Market

Procedures

Investigations

Upon passing the national competition law, there are plans to put in place clear guidelines to provide a proper procedural framework for general competition law enforcement. This also holds true for the converged telecommunications and broadcasting sectors.

At present, enforcement in the telecommunications market follows the rules and procedures set by AITI by virtue of its powers under the Telecommunications Order.

How does an investigation start, what are the procedural steps and how long does the investigation take?

Aggrieved parties are welcome to bring anti-competitive behaviour to AITI's attention and investigations will be conducted and decisions made on a case to case basis.

What are the investigation powers?

The investigative powers of AITI are laid down in Sections 7 and 18, and in the Second Schedule of the AITI Order, and in Part III of the Telecommunications Order.

Is it possible to obtain any informal guidance?

General guidance on Brunei Darussalam competition-related legislation for the telecommunications and broadcasting industries can be obtained at the following contacts:

Authority of Info-Communication Technology Industry (AITI)

Block B14, Simpang 32-5, Jalan Berakas,
Kampong Anggerek Desa BB3713,
Brunei Darussalam

 +673 – 2323232

 +673 – 2382447

 info@aiti.gov.bn

 www.aiti.gov.bn

Adjudication

What are the final decisions?

Final decisions which AITI may take are contained in Section 8 of the Telecommunications Order. This includes financial penalties, suspension or cancellation of licences.

What are the sanctions?

Sanctions which AITI may impose are contained in Section 8 of the Telecommunications Order. This includes financial penalties, suspension or cancellation of licences. Section 27 of the Telecommunications Order also allows AITI to issue directions to licensees if the situation warrants. This does not preclude civil rights of action such as injunctions.

Meanwhile under the draft national law, sanctions are envisaged to include financial penalties and structural/behavioural remedies for infringements of the anti-competitive prohibitions.

Judicial review

Can the enforcement authorities' decisions be appealed?

Under the Telecommunications Order, any telecommunication licensee aggrieved by any decision of AITI may appeal to the Minister of Communications, whose decision shall be final. The Minister of Communication may exercise his right to appoint an advisory panel to consider appeals received. This advisory panel may ask the aggrieved party for representations and make recommendations to the Minister.

In the draft national law, there are plans for the establishment of a Competition Appeal Tribunal which would be responsible for handling appeals on decisions made by the competition authority.