

## **CHAPTER 5: DOES MALAYSIA NEED A COMPETITION POLICY?**

### **5.0 Current Areas That Address Competition In Malaysia**

Efforts towards deregulation, liberalisation and privatisation spearhead Malaysia's commitment towards creating a competitive environment for the economy. This is also echoed in its efforts to adhere to WTO and AFTA requirements to open up the economy to international trade.

### **5.1 Current Competition Statutes In Malaysia**

In Malaysia, competition areas of particular concern are with regard to restrictive business practices such as collusive tendering, market allocation or quota, refusal to supply, cartel price fixing, predatory pricing amongst many others, which are strongly suspected, but which the existing laws cannot completely prohibit or control. Other areas of particular concern are with regard to issues of market power arising from corporate mergers, takeovers and restructuring activities by enterprises that may increase the local market concentration. Malaysia does not have a specific Act on Competition, therefore it does not have an administrative authority, which solely determines appropriate business ethics and trade practices. There is, however, an array of approximately 38 statutes, which regulate trading and business activities as well as protects consumer interests. Under these laws, a consumer or trader may seek redress through the appropriate Ministry, public agency or via the Civil Courts. These laws include the Companies Act 1965, the Control of Supplies Act 1961, the Trade Descriptions Act 1972, the Food Act 1983, the Hire Purchase Act 1967, the Weights and Measures Act 1972, the Direct Sales Act 1993 amongst many others. All of these

acts exist on a piecemeal basis and are governed mostly by the Ministry of Domestic Trade and Consumer Affairs. (Please refer to Appendix 1 for brief descriptions of the various acts that address competition in Malaysia).

## **5.2 Current Agencies That Govern Competitive Activities In Malaysia**

There are also other legislations that reside within independent commissions like the Securities Exchange Commission (SEC), the Communications and Multimedia Commission (CMC), Bank Negara Malaysia (BNM) and the Foreign Investment Council (FIC) – all of which are more industry and area specific. For example, the Malaysian Code on Take-Overs And Mergers 1998 fall under the jurisdiction of the SEC while Sections 133-134 of the CMC Bill addresses the lessening of competition in the communications market. Bank Negara Malaysia governs the general banking practices in the country including any relevant mergers and acquisitions. More recent legislation is the Consumer Protection Bill 1999 (tabled in Parliament), which had established a Consumer Claims Tribunal to provide a more user-friendly consumer redressal mechanism under the Ministry of Domestic Trade and Consumer Affairs.

## **5.3 Does Malaysia Need A Competition Policy?**

Peter Lloyd from the University of Melbourne cites that the reasons why Malaysia should adopt a national competition law are the same as other countries because in the absence of a comprehensive national law, businesses will naturally raise prices and lower the quality of goods and services. 'Markets are not self-policing in terms of competition standards because there are opportunities and incentives for businesses to

act in an anti-competitive way<sup>54</sup>. And although we recognise that the Malaysian government has already provided a general pro-competitive stance towards competition policies (in its statements to APEC for example), it is important to outline what are some of the specific arguments that support a more systematic national framework. We make our arguments on the desirability of a competition policy for Malaysia on the following grounds:

- to reduce market distortion (especially evident in developing countries where profit maximising behaviour and effective competition is marred by scarce and inaccurate information),
- to ensure that natural monopolies do not arise from the privatisation and deregulation efforts, and
- to formulate a framework that can cater for the development goals instead of being coerced into a suggested framework later by the agencies that promote globalisation (e.g. WTO).

#### **5.4 Market Distortion Argument**

Economic literature is fond of calling upon the use of the market mechanism and competition as an instrument to promote efficiency and economic growth. However, the markets are not self-policing in terms of competition standard because there are opportunities and incentives for businesses to act in an anticompetitive way, evident especially in natural monopolies. One of the most frequently used arguments in support of competition policy in developing countries is the **market distortion argument**. 'It is argued that competition policy and law has an important role to play in redressing prices in distorted markets. In the absence of an antitrust legislation, the market is

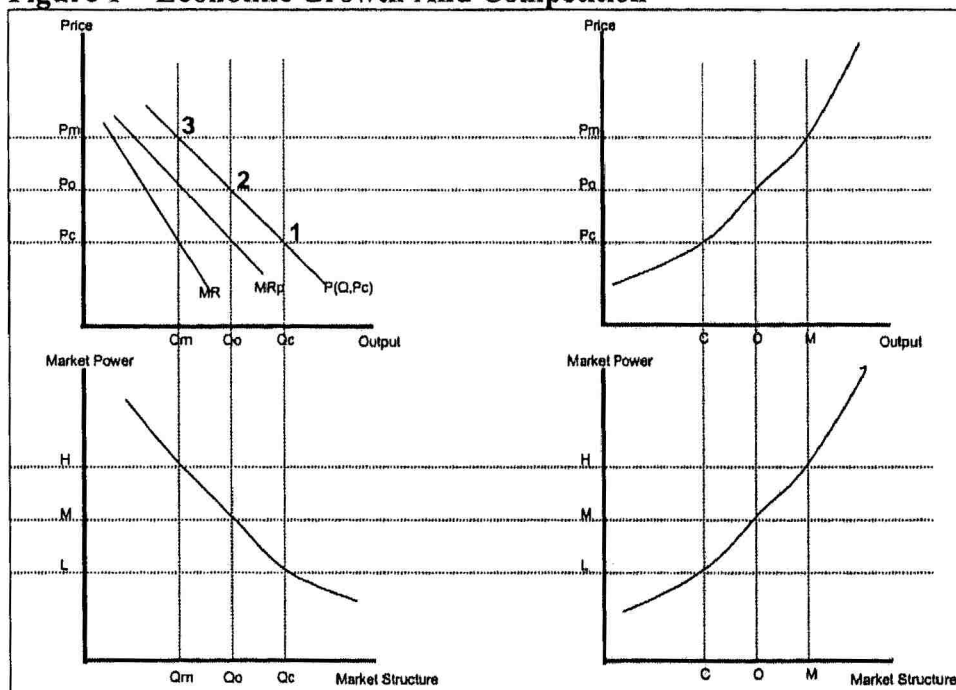
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<sup>54</sup> Peter J. Lloyd, 'A competition policy for Malaysia?', Seminar at University Malaya 2001, page 5

likely to lead to a misallocation of present and future resources, or to an allocation which is not in the best interest of society in the long run<sup>55</sup>. Giovanni Nicola De Vito (from the Italian Antitrust Authority) has published an article sponsored by UNCTAD called *Market Distortion and Competition: The Particular Case Of Malaysia (October 1995)* to determine the relationship between concentration and efficiency as well as to examine if there are any trade off effects between growth and competition particularly in developing countries like Malaysia.

Firstly, Giovanni uses a simple theoretical Cournot model to depict a domestic market composed of  $n$  number of identical firms and where growth is a simple function of output. Figure 1 shows that in the absence of any market distortions, the market can achieve an equilibrium state without any antitrust intervention; where Point 1 is the market structure of pure competition, Point 2 is the market structure for oligopoly and Point 3 is the market structure of pure monopoly.

**Figure 1 – Economic Growth And Competition**



55 Giovanni Nicola De Vito, 'Market distortions & competition: The particular case of Malaysia', page 1, UNCTAD 1995

Source: Giovanni Nicola De Vito, *Market Distortion and Competition: The Particular Case Of Malaysia*, UNCTAD 1995

Giovanni goes on to explain that this theoretical state of equilibrium only holds if there are no market distortions. In developing countries like Malaysia, however, there are widespread market imperfections that impinge on this process. They include:

- **Scarcity of information** – In developing countries, 'producers are often uncertain about the size of local markets, the presence of other partners and the availability of inputs. Consumers may be uncertain about the quality and availability of products and their substitutes. Furthermore, the necessary tools to deliver this information to producers and consumers are lacking. Under such circumstances, profit and utility-maximising behaviour tend to be based on incorrect information, and hence on the misallocation of resources<sup>56</sup>'.
- **Lack of effective competition** – Due to the smaller domestic market size of developing countries, most producers will tend to merge to obtain economies of scale and form industries with monopolistic tendencies. Industries with these characteristics will tend to control output causing an inefficient allocation of resources (via lower output and higher prices than pure competition), thus reducing consumer welfare. This is on top of possible barriers to entry erected to limit the number of firms that can compete in the same market.
- **Presence of externalities** – Industries that have high social cost in developing countries (such as healthcare and education) will require government assistance in creating linkages that would allow them to grow (infant industry argument).

Relying on pure market mechanism achieve equilibrium is unlikely in this scenario

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<sup>56</sup> Giovanni Nicola De Vito, *Ibid*, page 4

as producers will not be able to provide these services 'at prices below their marginal costs or even free of charge'<sup>57</sup>.

In short, **the tendency for market mechanism to fail in developing countries like Malaysia is high. Therefore, the need for government intervention in the form of some sort of competition legislation is required to provide information where it is scarce (for example, size of markets and industry concentration) and to mould the local industrial market structure so that it is more conducive for competitive activities.**

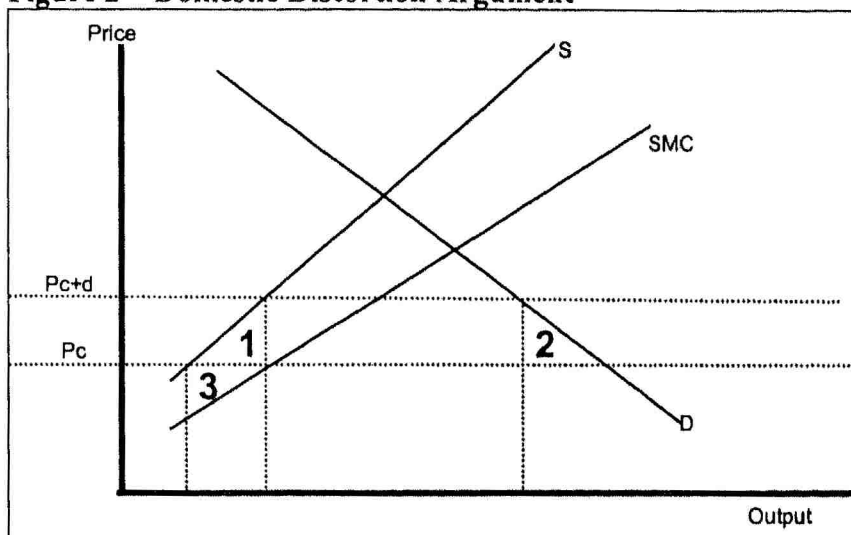
In another theoretical example, Giovanni further elaborates that in the areas where the industrial concentration is high, these market distortions will be exaggerated even more (**the domestic distortion argument**). To illustrate this point, in Figure 2 we assume that a market distortion called  $P_c + d$  where  $P_c$  is the world competitive price and  $d$  is tariff/non-tariff measure applied at the borders (a form of trade policy). If we maintain the private marginal cost (given by  $S$ ) and social marginal costs (given by  $SMC$ ) remain the same, this distortion will cause a losses in production (depicted by area 1) and consumption (depicted by area 2). This reduces welfare and causes negative externalities. However, if the social marginal cost is below the world competitive price, then, there will be a production gain instead of a loss (depicted by area 3). 'By this reasoning, we can see that for a given distortion the gains exceed the losses, so that the divergence between private and social marginal costs offers a justification for some degree of assistance. In the presence of a highly concentrated market structure, however, the distortion might be amplified because the producers, taking advantage of

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57 Giovanni Nicola De Vito, *Ibid*, page 4

their market power, would increase domestic prices above the  $P_c+d$  level, cancelling out the divergence between social and private production costs. In this case, government interventions could be completely offset, only achieving greater market distortions<sup>58</sup>. The domestic distortion argument also provides a compelling case for trade and antitrust policies to be mutually reinforcing.

**Figure 2 – Domestic Distortion Argument**



Source: Giovanni Nicola De Vito, Market Distortion and Competition: The Particular Case Of Malaysia, UNCTAD 1995

To empirically test this theoretical model, Giovanni collected some socio-economic and structural data from Malaysian manufacturing industries between 1985 and 1990 and ran a *one-way variance t statistic* test to determine if there was any correlation between the growth rates and industrial structure, i.e. concentrated and less concentrated industries. (See Tables I-IV in Appendix 2 for details on the data collected). When he ran the correlation test (refer to Table 2 and 3 below), the results show that there is a 'positive relationship between CR4M-TTW and a negative correlation between CR4M-CC4M, (assuming that the concentration level hypothesis provides a complete explanation for the effectiveness of distortions). Specifically, the results seem to

58 Giovanni Nicola De Vito, *Ibid*, page 5

indicate that highly concentrated sectors present higher barriers to entry and that they are the same sectors in which tariffs applied at the border achieved a significant phenomenon of restriction of import flows<sup>59</sup>.

**Table 2 – Pearson Correlation Coefficients (1990)**

	CR4M	TW	TC	CC4M	TTW
CR4M	1				
TW	-0.2075	1			
TC	-0.2588	-0.0699	1		
CC4M	-0.6450*	-0.1244	-0.0021	1	
TTW	0.5230*	-0.3031	-0.0981	-0.2255	1

\* Significant at a 1 per cent level

Source: Giovanni Nicola De Vito, Market Distortion and Competition: The Particular Case Of Malaysia, UNCTAD 1995

*Note on the explanation the ratios above:*

- *CR4 is the four-firm concentration ratio not adjusted for imports.*
- *CR4M is the four-firm concentration ratio adjusted for imports.*
- *CC4M is the ratio between CR4 and CR4M (or CR4/CR4M); where the value towards 1 refers to a closed market while values towards infinity refers to open market.*
- *TC is the mean tariff rate.*
- *TW is the nominal tariff rate (imported weighted averages).*
- *TTW is the ratio between TC and TW (or TC/TW).*

**Table 3 – Interaction Between Four-Firm Concentration Ratio And Nominal Tariff Rates By Malaysian Manufacturing Industries (1990)**

	Tariff $\geq 15.61$	Tariff $< 15.61$
<b>Four-Firm Concentration Ratio <math>\geq 40.79</math></b>	313. Beverage industries 323. Manufacture of leather 331. Manufacture of wood and cork 355. Manufacture of rubber products 369. Manufacture of other non-metal products 383. Manufacture of electrical machinery	311. Food manufacturing 352. Manufacture of other chemical products 353. Petroleum refineries 362. Manufacture of glass 384. Manufacture of transport equipment
<b>Four-Firm Concentration Ratio <math>&lt; 40.79</math></b>	321. Manufacture of textiles 324. Manufacture of footwear 332. Manufacture of furniture and fixtures 381. Manufacture of fabricated metal products 390. Other manufacturing industries	341. Manufacture of paper 342. Printing and publishing 351. Manufacture of industrial chemical 371. Iron and steel basic industries 372. Non-ferrous metal basic industries 382. Manufacture of machinery except electronics

Source: Giovanni Nicola De Vito, Market Distortion and Competition: The Particular Case Of Malaysia, UNCTAD 1995

59 Giovanni Nicola De Vito, Ibid, page 8



The test above suggest that despite low tariffs in highly concentrated sectors, imports flows were low suggesting that firms in the concentrated industry may have colluded to raise barriers to entry above and beyond the protection given by the trade policy. Thus, giving us a **compelling reason that trade policy alone may be insufficient in regulating restrictive behaviour in Malaysia. Some form of competitive legislation should be designed to complement existing trade policy and promote competition.**

### **5.5 Privatisation & Deregulation Creates Natural Monopolistic Industries**

There are numerous challenges to prevent monopolies from occurring in natural monopolies particularly within the developing countries like Malaysia. In the '*Antimonopoly Law Handbook - Competition policy for natural monopolies in a developing market economy*', Ordoover, Pittman and Clyde make a claim that policy makers will face difficulty in introducing competition because:

- Most of these businesses are state-owner enterprises (SOEs) that were heavily subsidised by the government to keep their prices artificially low. Introducing competition will more likely raise prices to reflect true economic cost instead of lowering them.
- Most of the goods and services are non-tradeables; therefore, relying on the forces of international trade to bring scale economies is highly unlikely.
- Most of these businesses have out-dated technologies, and would require heavy re-investment to bring it to competitive levels.
- Most of 'these sectors are often characterised by production technologies, and concomitant cost relationships, that favour high concentration. (And this is on top of the fact that industries in formerly planned economies are already overly

concentrated and excessively vertically integrated). Consequently, competitive forces cannot readily be relied upon to ensure that SOEs in these sectors, even if they are privatised, will keep prices close to costs and will have incentives to keep cost low<sup>60</sup>.

In Malaysia, local privatisations have brought about the establishment of private monopolies or oligopolies. Studies have shown that privatisation efforts do not necessarily lead to economic performance. 'The substitution of a private monopoly for a public one through privatisation does not increase competition and hence does not necessarily lead to greater efficiency or cheaper and better-quality services. An often-quoted case is the unit charge for local telephone calls, which was increased by 30 per cent just after STM was incorporated; by 1994 STM was suggesting that it would reduce its rates if government approval was given to it to dispense with providing subscribers with 100 free calls, which in effect, meant increased charges for the consumer (see *Aliran Monthly* 1994)<sup>61</sup>. According to the Ministry of Domestic Trade and Consumer Affairs, 'in the Malaysian scenario it is worrying that the relevant watchdog bodies of privatised industries do not function to promote competition in that particular sector. This clearly points towards the need for competition policy in Malaysia to exist alongside such privatisation measures<sup>62</sup>.

## **5.6 Globalisation Argument**

Competition policy has emerged as a major aspect of the global trade agenda due to pressure from the developed countries and the WTO in support of legislations that will

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60 Janusz Ordover, Russel W. Pittman and Paul S. Clyde, 'Competition policy for natural monopolies in a developing market economy', *Antimonopoly Law Handbook*

61 Edmund T. Gomez and Jomo K. Sundram, *Ibid*, page 89.

further decrease trade or tariff barriers in developing countries; particularly in the area of domestic protectionism policies that favour national companies. Competition policies are introduced and designed to prohibit advantages enjoyed by or given to local firms, so that foreign firms can "compete on equal terms" in the domestic environment. In the opinion of the Ministry of Trade and Domestic Affairs, 'the onus is on developing countries **to adopt their national policies to counter the emergence of such international agreements** such as competition policy and law, which is actively pressed for. These policies, which allow corporations in developed countries to have free and open access to the developing countries via competition, would prohibit developing countries from taking countervailing measures:

- (a) to shield their firms and industries from competition from massive MNCs
- (b) from pursuing measures to promote the growth of strong domestic corporations<sup>63</sup>.

Albeit a comparatively weak argument, the ministry is advocating that a framework is formulated to cater for Malaysia's development goals and proposed to at the global forum instead of being coerced into a "suggested" framework later.

Ironically, the phenomenal growth in FDI flows in Malaysia (particularly in the mid 1990s) has seen an increasing number of MNCs. Implementing a national competition policy may also works in Malaysia's favour because it can also curtail the powerful MNCs from exercising their market power in anti-competitive conduct against the local industries. Likewise, a national policy will regulate the mergers and acquisition investments made by these giant MNCs through some pre-notification procedure so that the level of concentration within an industry can be checked.

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<sup>62</sup> Discussions with the Ministry Of Domestic Trade & Consumer Affairs

<sup>63</sup> Ministry Of Domestic Trade & Consumer Affairs, 'Competition in Malaysia', page 12 at the brainstorming session on commerce and competition, Equatorial Hotel Penang 25-27 January 2002

### **5.7 Anecdotal Evidence Of Restrictive Business Practices**

According to the Ministry of Domestic Trade and Consumer Affairs, there is only anecdotal evidence of abusive behaviour in Malaysia. The most common of which is 'resale prices maintenance, which is practiced mainly by the manufacturing industry – especially by the producers of branded clothing apparels. While in the service industry, the tendency for price collusion is high. Such can be found among the Hair Dresser and Barbers Association, Photo Studio Association and professional bodies like the Malaysian Accountant Institute and the Bar Council in determining their professional fees<sup>64</sup>.

Zahira Mohd Ishan and Suhaila Abd Jalil from University Putra Malaysia spent some time providing a case **against the franchising industries in Malaysia**. They advocate that although franchisors and franchisees are governed under the Contract Act 1950 (Section 28) and the Franchise Act 1998, due to the overriding control that the franchisor has on the franchisee - there are many other practices that fall under the category of unfair conduct and restrictive practices. Some examples are 'tie-in sales, exclusive dealing arrangements, vertical restraints such as resale price maintenance and exclusive territories. Such clear example is IBM, which for many years leased its tabulating machines on the condition that customers also buy their requirements of punch cards from IBM rather than some dealer<sup>65</sup>. The reason this is an area of antitrust concern is that most of the time the buyer/franchisee is contractually required to purchase an input from the supplier/franchisor at a fixed price. It eliminates any form

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64 Zahira Mohd. Ishan and Suhaila Abd. Jalil, Ibid, page 9

65 Zahira Mohd. Ishan and Suhaila Abd. Jalil, Ibid, page 8

of competition from other suppliers for the buyer's business. The flip side to this argument, however, is that franchising enables the transfer of technology and know-how to franchisees who does not have much experience in the business. For a developing country like Malaysia where increasing the number of entrepreneurs are economic goals, franchising may be an area that should be exempted in any competition legislation until such a time that the national targets are met.

### 5.8 Social Ethnic Objectives & Its Challenges

'The essential principle of competition policy is that of '*competitive neutrality*', that is all businesses should be able to compete on equal terms. No particular group or enterprises should be favoured as this reduces competition<sup>66</sup>'. The challenge to Malaysia is that it out rightly conflicts with the some of the social objectives outlined by the New Economic Policy (NEP) such as the restructuring of society to achieve inter-ethnic economic parity between the *bumiputra* and non-*bumiputra* classes. NEP basically legalises discriminatory pricing for the ethnic *bumiputra* class of citizens - for example, special housing prices (5%-7% discounts) for *bumiputra* purchasers and exclusivity of government contracts to the *bumiputra* class is anti-competitive in nature because it advocates price discrimination based on race and not the efficiency of providing the service/product to that particular class of customers or according to the meritocracy of their skills. Under the NEP, there is also 'discriminatory dual pricing in the allocation of shares; *bumiputra* individuals or institutions were allotted shares at par value, or charged only nominal premiums<sup>67</sup>'. All these activities saw a '50 per cent growth rate in Malay equity participation under the Second Malaysia Plan, amounting

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<sup>66</sup> Peter J. Lloyd, Ibid, page 4

<sup>67</sup> Edmund T. Gomez and Jomo K. Sundram, Ibid, page 32

to 8 per cent of total shares in 1975<sup>68</sup>. (Refer to Table 4 to recognise emphasis on the growth of economic parity between the *bumiputras* and non-*bumiputras* using discriminatory national measures).

**Table 4 – Ownership Of Share Capital (at par value) Of Limited Companies<sup>a</sup> (1990 in percentages).**

Ownership Group	1970	1990	1995
<b>Bumiputra</b>	<b>2.4</b>	<b>19.3</b>	<b>20.6</b>
<i>Bumiputra individuals and institutions<sup>b</sup></i>	<i>1.6</i>	<i>14.2</i>	<i>18.6</i>
<i>Trust agencies<sup>c</sup></i>	<i>0.8</i>	<i>5.1</i>	<i>2.0</i>
<b>Non-Bumiputra</b>	<b>28.3</b>	<b>46.8</b>	<b>43.4</b>
<i>Chinese</i>	<i>27.2</i>	<i>45.5</i>	<i>40.9</i>
<i>Indians</i>	<i>1.1</i>	<i>1.0</i>	<i>1.5</i>
<i>Others</i>	<i>-</i>	<i>0.3</i>	<i>1.0</i>
<b>Nominee companies</b>	<b>6.0</b>	<b>8.5</b>	<b>8.3</b>
<b>Foreigners</b>	<b>63.4</b>	<b>25.4</b>	<b>27.7</b>

<sup>a</sup> Excludes shares held by federal, state, and local governments.  
<sup>b</sup> Consists of investments owned by Bumiputras as direct investors and investments through institutions channelling Bumiputra funds such as Amanah Saham Nasional and the Amanah Saham Bumiputra schemes.  
<sup>c</sup> Refers to shares held through trust agencies such as Pemas, PNB and the SEDCs.

Source: Third Malaysia Plan, 1976-80 (Seventh Malaysia Plan 1996-2000)

The Outline Perspective Plan (OPP) has since replaced the NEP, however, it is also silent on when the social objectives on ethnic equity will be achieved so that the special privileges can be removed and that we can opt to for a more competitive and equitable economic environment. Introducing a competition policy will force social economic planning activities in Malaysia to focus on tangible targets for when these goals can be achieved so that special privileges removed in favour for a more equitable ground for competition and reward based on efficiency or meritocracy.

Related to the economic restructuring of the Malaysia society is the **politics of patronage** where businesses are awarded with contracts based on their affiliation to

68 Bowle, Alasdair, 'Redistribution with growth? The dilemmas of state sponsored economic development in Malaysia, Journal Of Developing Societies IV (1988).

political parties. The Star (31/10/88) reported that it was unethical for 'elected representatives to use their position to do business to the extent that they affect opportunities for other *bumiputras*' or any other legitimate business irrespective of ethnicity. (Refer to Table 5 of a study done on the possible affiliation between *bumiputra* leadership and politics). It suggests that there are anti-competitive conduct and discriminatory activities that favour of businesses that are politically connected.

**Table 5 – Distribution Of Bumiputra Directors By Occupation, Rank Status And Political Affiliation.**

	Percentage
<i>Occupation</i>	
Businessmen	27
Professionals	16
Politicians	20
Civil servants	22
Army/Police	5
Royalty	8
<i>Rank Status</i>	
With titles	55
Without titles	45
<i>Political Affiliation</i>	
With	90
Without	10

Source: Low Kam Yoke, The political economy of restructuring in Malaysia, University Malaya (1985)

By introducing competitive legislation with some pre-notification criteria of individuals with political responsibilities in the government, mergers or acquisition activities will be conducted with greater transparency – possibly reducing the number of rent-seeking and corruptive opportunities from occurring.

## **5.9 Social Welfare Objectives & Its Challenges**

Developing countries like Malaysia are also very concerned about affordability and accessibility to essential services such as healthcare, electricity and water. 'Currently in Malaysia, there is a move to fix prices for private hospitals and other private medical health care providers on the grounds that these services are essential and the process at

which they are provided should be *fair and reasonable*<sup>69</sup>. Peter Lloyd (University of Melbourne) argues that any attempt to fix the prices of these goods and service may restrict its supply, as the prices may not reflect a reasonable rate of return to the suppliers. As a result of shortage in supplies, the real demand cannot be satisfied and there will be a growing list of waiting customers whom the very price control was designed to provide for. As an alternative to price controls, he recommends that free entry and competition be allowed. However, to curtail the suppliers from charging exorbitant prices - there must be some mechanism that entertains complaints on prices to be investigated. Malaysia can leverage on the recently set-up Consumer Claims Tribunal, which entertains such consumer complaints.

In another example, assuming that providing telecommunication services to rural areas are not as profitable as central business areas; without price controls - one would expect that the telephony prices to the rural folk to be very expensive. Instead of imposing price controls which affects the efficiency of telephony pricing across all customers, the Communication and Multimedia Commission (CMC) in Malaysia is proposing to set-up a Universal Service Obligation (USO) or Universal Service Provision (USP) fund. The USP fund requires all telecommunication operators to contribute a certain portion to a central fund that is used to provide funding for rural telecommunication infrastructure. CMC has determined the amount to be approximately RM 300 million (for 1999) and it will be awarded to Telekom Malaysia (System of USP, Consultation Paper Dec 2000) to provide services uneconomic areas. 'An area is identified as uneconomic to serve when the avoidable cost of service (including an acceptable return on assets employed) are greater than the revenues that would have been foregone if it

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<sup>69</sup> Peter J. Lloyd, *Ibid*, page 9



were not served. For 1999, the total net cost of service areas that are uneconomic to serve was estimated to be RM141 million<sup>70</sup>. As opposed to price controls, this central fund system will achieve social welfare objectives without conflicting with the competitive process or policies.

### **5.10 Government Participation & Its Challenges**

‘Reduced government ownership of certain monopolies as a result of privatisation has not necessarily led to increased competition or significant changes in operations, for the government still owns the ‘**golden share**’ that gives it veto powers over all major management decisions<sup>71</sup>. For example, ‘ even after a decade of divestments, the government in 1995 still owned 77 per cent of TNB, 75 per cent of STM, 75 per cent of Petronas Dagangan – all of which operate as monopolies and 49 per cent of HICOM Holdings<sup>72</sup>. The challenges to implementing a competition policy in Malaysia in view of such large participation from the government is that business decision-making and the competitive process that “the most efficient firm should survive in the marketplace” may not hold. For example, Telekom Malaysia (let’s say the more efficient firm) may be requested to take over TIME Telekom (the less efficient firm) as a measure of industry consolidation since the largest shareholders belong to the government via some of its investments arms like Khazanah Holdings. Another way of viewing the same argument is if government merges both entities, there would be no check and balance mechanism (i.e. a competition framework) to determine the impact of the increased market power of the merged entities on consumer welfare or on market entry conditions without an independent antitrust council.

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70 Malaysian Communications & Multimedia Commission, ‘System of universal service provision–Consultation paper’, Dec 2000

71 Edmund T. Gomez and Jomo K. Sundram, *Ibid*, page 89