



مہارت و تحقیق دان کا عبوان ایکونومی
ECONOMIC PLANNING AND DEVELOPMENT
PRIME MINISTER'S OFFICE | BRUNEI DARUSSALAM

BRUNEI COMPETITION ORDER, 2015

Competition and Consumer Affairs Department
Department of Economic Planning and Development
Prime Minister's Office

Structure

- Key Provisions of Competition Order, 2015
 - Objectives
 - The 3 key prohibitions
 - Application of the law
 - Exemptions and exclusions
 - Enforcement authority
 - Investigative power, penalty and other provisions
- The Dos and Don'ts for Trade Associations
- Case Studies
- Key Takeaways

What is Competition Order?

The law which deters business practices which **restrain or restrict a fair competition process** in a market.

Prohibits **3 key anti-competitive** conducts

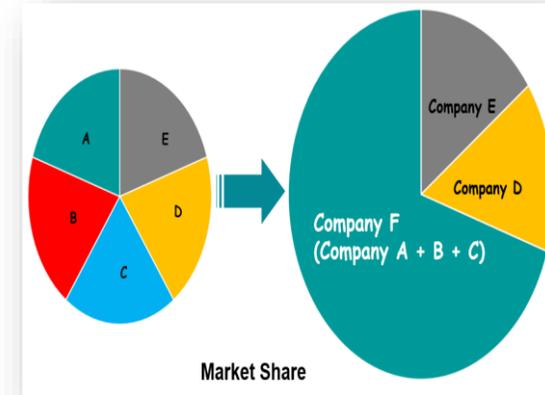


Anti Competitive Agreement
Section 11

First phase



Abuse of Dominant Power
Section 21

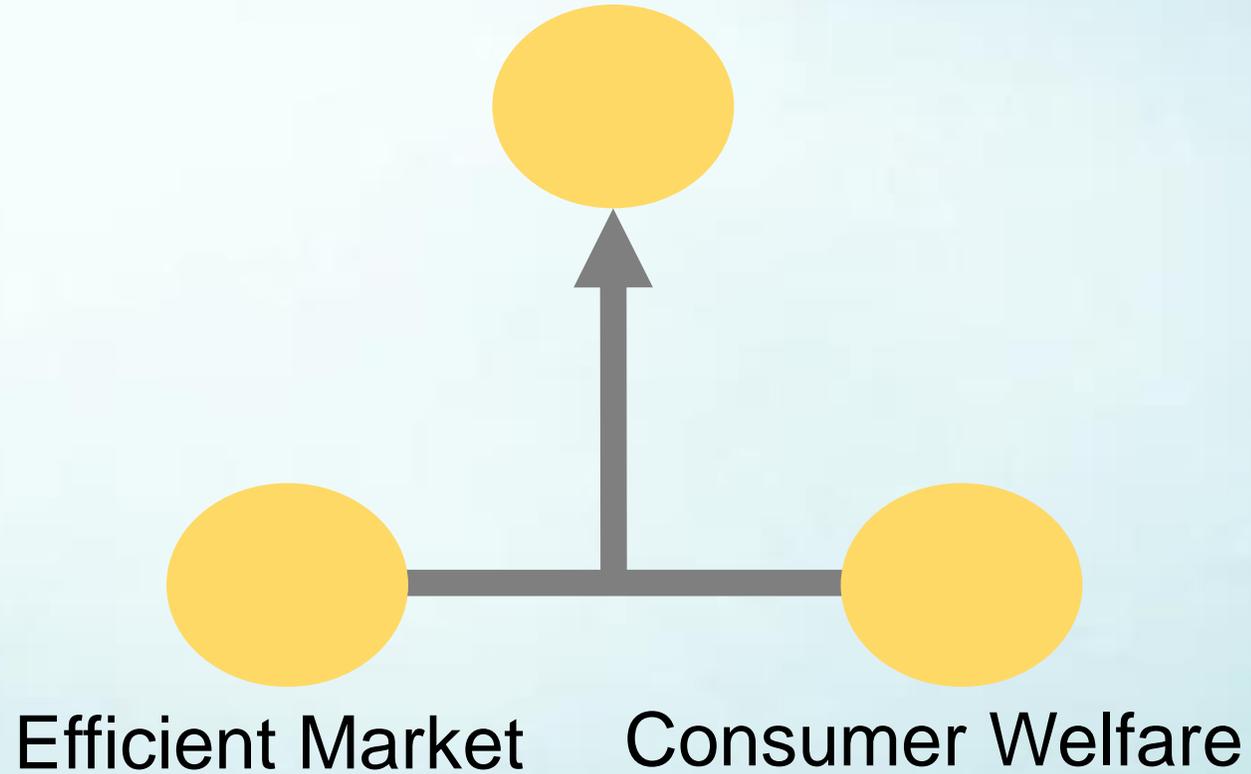


Anti-Competitive Mergers
Section 23

Section 21 and 23 will be enforced at a later stage

Objective

Economic Development



1st Prohibition: Anti-competitive Agreements (Cartel)



Regardless of the size, there are four conducts businesses should never agree with their competitors.

- 1) **DON'T** fix price
- 2) **DON'T** share market
- 3) **DON'T** control supply
- 4) **DON'T** rig bids

A background image showing a group of business professionals in a meeting. One person in the foreground is wearing a dark suit and has their hand on a document. Another person in the background is wearing a light-colored suit and is holding a pen over a document. The scene is brightly lit, suggesting an office environment.

Price Fixing

- Agreeing to fix or maintain price including verbal or written agreement
- **Sharing competitively sensitive information** like pricing, profit, cost structure, customers through associations / informal discussions
- Exchanging information which allows undertakings to become aware of the market strategies of competitors raises concerns under the Order.

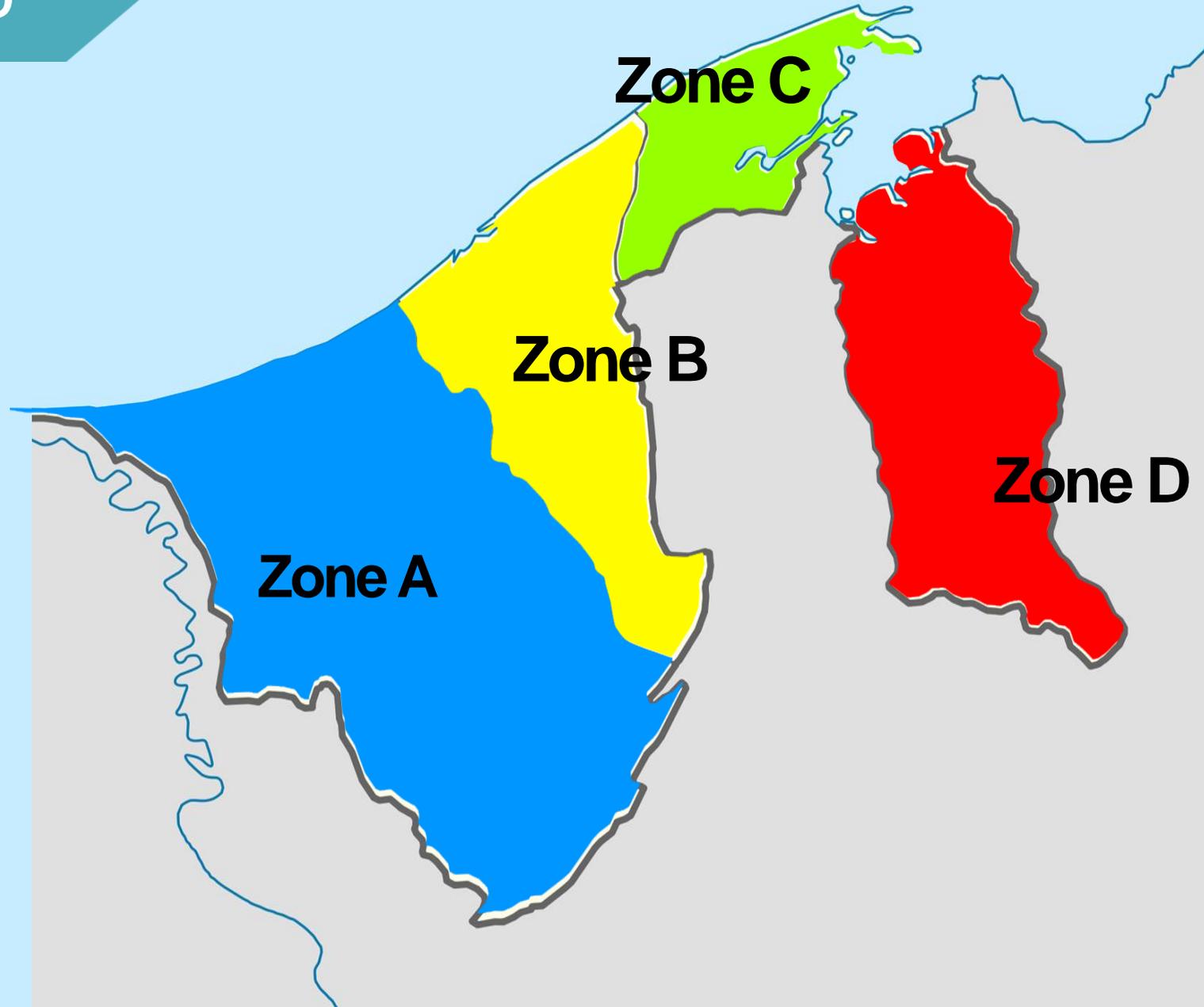
Price Fixing Case

- Sibu Confectionary and Bakery Association (SCBA) found to engage in anti-competitive conduct.
- Agreed to increase the prices of confectionery and bakery products by 10 to 15 percent in Sibu area.
- Evidence in the minute of the SCBA Second Annual General Meeting (AGM).
- Agreement during the AGM to increase prices were also published in one of the local newspapers.
- The Malaysia Competition Commission (MyCC) has fined a total penalty of RM247,730 to 24 enterprises involved in price fixing agreement.



Market Sharing

- Divide up consumers by geographical area or consumer type
- Agree not to compete



Market Sharing Case



- Three companies in express freight industry: TNT Australia, Ansett Industries and Mayne Nickless arrived at an agreement through five series of meetings.
- They agreed to allocate customers and share market
- One of the agreement was to not poach on each other's customer.
- Another agreement was to tackle the issue of switching customers by intentionally providing poor service to them so that they would return to the previous supplier, who in turn charged higher prices upon their return.
- The practices were believed to have been conducted in the span of 20 years. Penalties of \$11 million were imposed.



- Agreeing to limit the quantity of goods or services
- Shortages will indirectly increase price to maximize profit

Supply Control

Market Control Case

- Tasmanian Atlantic Salmon Growers Association (TASGA) engaged in discussion regarding excess salmon supply which result to decrease in price and reduction in profits.
- During the meeting, the Association collectively agreed to reduce Salmon supply by 10% in order to “stabilize” the revenue.
- The meeting decision was informed to all members of Association.
- The Association was given a notice of warning and was instructed to cease the agreement.



Bid Rigging

- Conspiring competitors raise prices to purchasers
- Manipulate procurement process
- Elimination of competition through pre-determination of winner



Bid Rigging Case

- Five IT companies was found to have conducted bid rigging in IT supply tender and installation.
- Detected due to unusual common errors in the tender applications submitted by the companies, which included spelling mistakes and omission of the same key information.
- From investigation reports, Hong Kong Competition Commission (HKCC) discovered that one of the IT companies have shared information on prices and tender template to other companies for reference via email.
- The companies colluded and submitted bids that were designated to lose, either unattractive or non-conforming to tender specifications.
- HKCC found proof of email and WhatsApp exchange between the companies.



Exemption Application (Section 11)

Apply to Minister through the Competition Commission of Brunei Darussalam shall the agreement meet the exemption criteria:

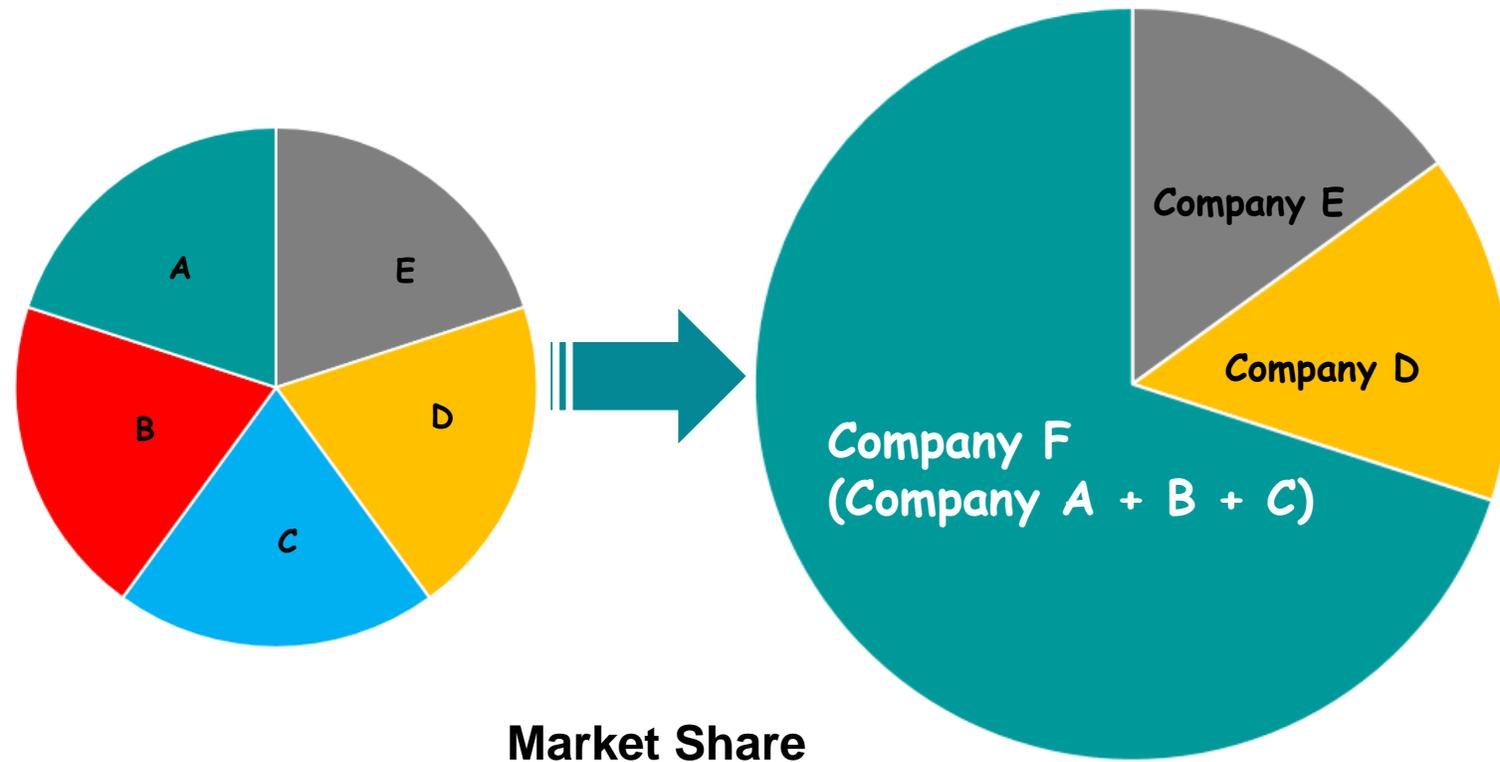
- Improving production or distribution
- Promoting technical or economic progress
- Promotes innovation, productivity, long term economic efficiency
- Transparent public policy and public interest ground

2nd Prohibition: Abuse of Dominant Power

- Being a dominant player in a market is NOT anti-competitive
- Conducts such as
 - **Predatory pricing**
 - **Refusal to supply/limiting production to the prejudice of consumers**
 - **Exclusionary dealings**
- Rule of reasons applies
- Defining Relevant Market to determine market power



3rd Prohibition: Anti-competitive Mergers



Mergers are prohibited
ONLY
if the merged entity lessens
or restricts competition in the
market

Any anticipated mergers or
mergers need to be notified
to the Commission for
consideration and decision

Scope of Application

Applicable

Commercial activities
across sectors

Not applicable

- Government functions
- Statutory bodies

Exclusions

Third Schedule Competition Order

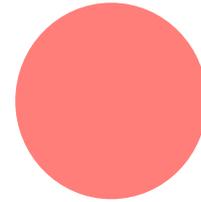
- Service of general economic interest and public policy
- Compliance with legal requirements
- Conflict with international obligations
- Goods and services regulated by other competition law e.g. Telco by AITI
- Specified activities: supply of waste management services, scheduled bus services, supply of goods and services stated in the Monopolies Act
- Clearing house under the Banking Order, 2006
- Vertical agreements – agreements involving different level of production or distribution chain
- Agreements with net economic benefit
- Provisions directly and necessary to implementation of mergers

Enforcement Authority



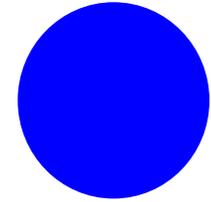
**Competition and
Consumer Affairs
Department (CCAD)**

Investigative and administrative
receives complaints, advocates



**The Competition
Commission Brunei
Darussalam**

Conducts hearings, case
decisions and penalties



**A Competition
Appeal Tribunal**

Hears appeal cases
decided by the Competition
Commission

Leniency Regime

- Leniency is applicable only for infringements in Section 11 prohibition (agreements).
- Reduction of penalties (up to max 100 percent) for businesses that voluntarily admit its involvement in an infringement and provided information and cooperation to the Commission.
- Different percentages of reductions are given depending on whether the undertakings are the first to notify the Commission and the stage of investigation.

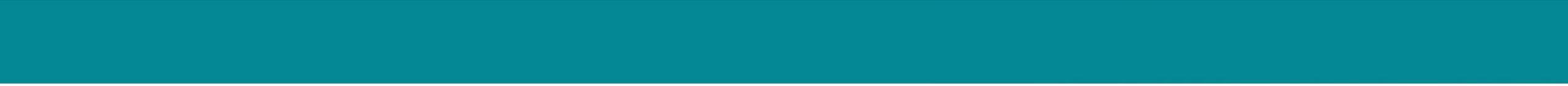
Powers conferred under Competition Order 2015

- **Powers to conduct market review:**
Identify if there is any feature or behaviour in the market that prevents, restricts or distorts competition
- **Investigative powers:**
Access and collect information or documents as proof of infringement under Competition Order 2015

Consequences of non-compliance



- **Fines**
10% business turnover for a maximum of 3 years
- **Cease and Desist Order**
Stop the illegal activity; import permit or license may be revoked
- **Business sued**
May face a third party claim
- **Reputation**
Loss of reputation and the goodwill of consumers and the public



Business Association Guidelines

Dos and Don'ts

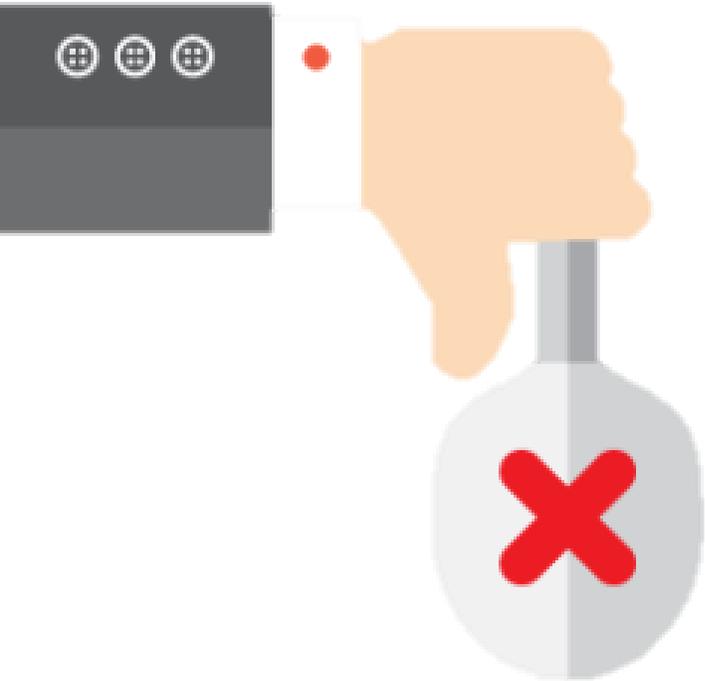


The Dos



- Educate members on the key prohibitions of the Competition Order 2015.
- Exercise care when collecting information from members and avoid facilitating the sharing of competitively sensitive information.
- Information should be handled by the staff of the association or a third party, independently from members.
- Ensure that each and every meeting has a clear legitimate purpose or agenda and ask members to leave the meetings or discussion where there is a sharing of sensitive market information
- Continue to help members understand developments relevant to the industry and promote the industry's interests to government and customers

The Don'ts



- Don't establish pricing or output recommendations or requirements to members.
- Don't prevent members from taking independent commercial decisions.
- Don't facilitate sharing of competitively sensitive information such as future pricing, discounts, rebates, terms of sale and outputs.
- Don't impose restrictions on members with regard to the terms and conditions on which they sell their products.
- Don't help members divide up their sales territories, including by geographic areas, types of customers or types of products.
- Don't coordinate collusive tendering by members.
- Don't use standard-setting to artificially create barrier to entry.

Key Takeaways

- Understand the three key prohibitions
- Compete fairly
- Avoid cartel – 4 *don'ts*
 - 1) **Don't fix price**
 - 2) **Don't share market**
 - 3) **Don't control supply**
 - 4) **Don't bid rig**
- Your awareness and support will promote a competition culture in Brunei Darussalam



Contact Us

Competition and Consumer Affairs Department
Department of Economic Planning and Development
competition.brunei@jpke.gov.bn

Farah Rahman

farah.rahman@jpke.gov.bn
7181827 / 2233344 ext 340

Izzati Jahari

nurulizzati.jahari@jpke.gov.bn
7133367 / 2233344 ext 230

Anisah Anwari

syakirah.anwari@jpke.gov.bn
7138122 / 2233344 ext 230

More information on Competition Order can be found at
<http://www.depd.gov.bn/SitePages/Competition%20Order.aspx>