



**PERSATUAN AMPUNYA JENTERA PEMBINAAN BERAT MALAYSIA
(MALAYSIA HEAVY CONSTRUCTION EQUIPMENT OWNERS' ASSOCIATION)**

马来西亚重型建筑机械业主公会

No. Perakuan Pendaftaran: 1227/91

Add: No.32-01, Jalan 9/23A, Medan Makmur, Off Jalan Usahawan, 53200 Setapak, Kuala Lumpur.

Tel/Fax : 603-41436830 Email : info@pajpbm.com Website : www.pajpbm.com

COMPETITION ACT 2010

Undertaking by the members of the Malaysia Heavy Construction Equipment
Owners' Association

Enterprises giving this Undertaking

1. This Undertaking is given to the Competition Commission ("the Commission") by the Committee of the Malaysia Heavy Construction Equipment Owners' Association (Reg. No.1227/91) ("MHCEOA") of No 32-01, Jalan 9/23A, Medan Makmur, off Jalan Usahawan, 53200 Setapak, Kuala Lumpur pursuant to section 43 of the Competition Act 2010 ("the Act")
2. This is in accordance with Clause 7.5 of the Constitution of the MHCEOA, in which the MHCEOA has the power to enter into any contract with a government body and the responsibility lies with the Committee.
3. The members of the MHCEOA are as listed on the MHCEOA's website.¹

Background

4. On 9 January 2013, the MHCEOA made an announcement which was reported in the Sin Chew Daily on 10 January 2013 as "Cost for Leasing of Machinery to Increase by 15%". The MHCEOA thereafter published the said news article on its website www.pajpbm.com.
5. The Commission also found, the Constitution of the MHCEOA includes a clause; Clause 3.6 which reads "To draw up and maintain code of ethics and guidelines for hiring fees and tender of contracts by the members".

¹ <http://pajpbm.com/category/members-info>



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6. The announcement of the MHCEOA's decision to increase the machinery rental charges by 1 February 2014 and the subsequent publication of the press article on the MHCEOA's website are conduct which may contravene section 4 of the Act.
7. The Commission found that the drawing up of a guideline to set hiring fees as per Clause 3.6 of the Constitution is not consistent with and may contravene section 4 of the Act.
8. It is incumbent upon all enterprises operating in Malaysia including the members of the MHCEOA to conduct competition assessments and to take concrete steps in order to ensure compliance with the Act.
9. The Committee of the MHCEOA admitted and acknowledged that the press article published in the Sin Chew Daily on 10 January 2013 and its publication thereof on the MHCEOA's website may contravene section 4 of the Act.
10. The Committee of the MHCEOA further admitted and acknowledged that the drawing up of guidelines for hiring fees of heavy construction equipment as per Clause 3.6 of the MHCEOA's Constitution may also contravene section 4 of the Act.
11. The Commission takes such price related announcements seriously. In the light of this, the MHCEOA, on 13 May 2015 removed the said press article from its website.
12. The Commission has agreed to record these Undertakings, the Commission's acceptance thereof and to close the investigation without making any finding of infringement, on the terms contained herein, pursuant to section 43 read together with section 16(3)(a) of the Act. The date of the Commission's



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acceptance of these Undertakings having been communicated to the MHCEOA and its members and shall hereinafter be referred to as "the Effective Date".

The Undertaking

13. The Committee of the MHCEOA has offered the undertakings contained in this Undertaking Document (hereinafter referred to as "these Undertakings") with a view to strictly comply with the Commission's directive on the potential competition infringements as mentioned in paragraphs 6 and 7 above.

14. The Committee of the MHCEOA hereby undertake:
 - i. To remove Clause 3.6 of the Constitution of the MHCEOA (within three months from the Effective Date).
 - ii. To refrain from reinstating a similar clause into the Constitution.
 - iii. To refrain from making similar press statements in relation to selling or hiring fees or any such announcement to that effect.
 - iv. To refrain from entering into any agreement or reach any decision in contravention of the Act.
 - v. To circulate a copy of the Undertaking Document to members of the MHCEOA.
 - vi. To publish the Undertaking Document on a prominent platform on the MHCEOA's website.
 - vii. To simultaneously publish the Undertaking in two major newspapers in Malaysia in accordance with the requirements set in Appendix A. The newspapers in which the notification is to be published are the Sin Chew Daily and The New Straits Times.

Application of these Undertakings

15. These Undertakings shall be binding upon all members of the MHCEOA.



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Publication and Notice

16. The Commission will, from time to time, make public reference to these Undertakings in news or media statements and in the Commission's publications.
17. The Commission will make these Undertakings available for public inspection by publishing it on the Commission's website at www.mycc.gov.my.

General Provisions

18. This Undertaking Document between the parties in no way derogate the rights and remedies available to the members of the MHCEOA's customers, potential customers or other persons. Similarly, nothing contained in this Undertaking Document precludes the members of the MHCEOA, any enterprise (as defined under the Act), or any director, employee, officer or office bearer thereof from enforcing their rights or remedies in any proceedings or any other legal action that may involve them nor does anything contained herein constitute a waiver of such rights or remedies.
19. These Undertakings shall be enforceable by the Commission in accordance with section 43(4) of the Act.



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Dated this 12th day of October, 2015, Kuala Lumpur, Malaysia.

AGREED TO AND ACCEPTED BY:


**Persatuan Ampunya Jentera Pembinaan
Berat Malaysia (1227/91)**
**32-01, Jalan 9/23A, Medan Makmur,
Off Jalan Usahawan, 53200 Setapak,
Kuala Lumpur.**
.....**Tel/Fax: 03-41436830**.....

Signed by Mr Phuah Kim Yean, the President of
Malaysian Heavy Construction Equipment
Owners' Association, for and on behalf of
the Committee of the Malaysian Heavy
Construction Equipment Owners' Association


TAN SRI DATO' SERI SITI NORMA YAAKOB
Chairman
Malaysia Competition Commission (MyCC)

Agreed and accepted by and on behalf of the Competition Commission



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Appendix A.

Requirements:

1. Width: 7 inches and Length: 5 inches;
2. The announcement is to be placed on a prominent section of the two(2) chosen newspapers listed in the Undertaking at the MHCEOA's own cost;
3. To be published by 15 October 2015; and
4. The Committee Members of the MHCEOA shall use the following exact wordings and sentences for the announcement and the Committee Members of the MHCEOA must ensure the translation of the announcement in Chinese is accurate. Failure to ensure accuracy of the translation will result in the republication of announcement at the MHCEOA's own cost.

ANNOUNCEMENT

Take Notice that we, the Committee Members Malaysia Heavy Construction Equipment Owners' Association ("MHCEOA") hereby retract and rescind our decision to increase the machinery rental charges as reported in the Sin Chew Daily on 10 January 2013 entitled "Cost for Leasing of Machinery to Increase by 15%". We fully accept that such decision may contravene Section 4(2)(a) of the Competition Act 2010.

Take Further Notice that we, the Committee Members of MHCEOA had rescinded the said decision with immediate effect and thereafter had directed all the members of MHCEOA to cease and desist from implementing the decision. In addition, the Committee Members of MHCEOA hereby give an undertaking not to engage into any anti-competitive conduct in the future and shall direct that its members comply with the Competition Act 2010 at all times.



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公告

兹请注意我方-马来西亚重型建筑机械业主公会(MHCEOA)理事成员以此收回及取消我方增加机械租用费之决定如星洲日报于2013年1月10日所报导标题为“机械租用费将增加15%”.我方完全同意类似决定可能违反了2010年竞争法第4(2)(a)条文。

兹再请注意我方-MHCEOA 理事成员已经撤销了该项决定即时生效，之后已指示 MHCEOA 的全部会员停止执行该项决定。此外，MHCEOA 理事成员特此承诺以后将不会从事任何反竞争活动并指示其全体会员必须随时遵守 2010 年竞争法。