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Competition Act 2010 [Act 712]

Decision of the Competition Commission

Infringement of section 10 of the Competition Act 2010 by My E.G.  
Services Berhad

24 June 2016

(MyCC File Reference: MyCC (ED) 700-1/1/2/2015)

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## 1. INTRODUCTION

1. This is a Decision pursuant to section 40 of the Competition Act 2010 (“the Act”) issued against My E.G. Services Berhad (“MyEG”) for an infringement of section 10(2)(d)(iii) of the Act.
2. The Commission initiated an investigation under section 15(1) of the Act based on numerous complaints<sup>1</sup> received, alleging that MyEG had abused its dominant position in the provision and management of online *Pas Lawatan (Kerja Sementara)* or (“PLKS”) (“Foreign Workers Permit”) renewals.
3. It is the Commission’s finding that MyEG together with its subsidiary My E.G. Commerce Sdn. Bhd. (“MyEG Commerce”) had infringed section 10(2)(d)(iii) of the Act by abusing its dominant position in harming competition in the downstream market in which MyEG’s subsidiary, MyEG Commerce is participating as an insurance agent for online PLKS renewal applications. Different conditions were imposed to equivalent transactions with its competitors to the extent that it has harmed competition in the downstream market for the sale of Mandatory Insurances.

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<sup>1</sup> Complaints were filed by Mr. Ron Lim Teck Koon on 5 January 2015 and 14 May 2015; Ms. Grace Sia on 6 January 2015; ACCCIM together with 24 national level chambers of commerce/trade associations on 14 January 2015; Datin Paduka Dr. Tan Yew Kew and Mr. Lee Chean Chung on 14 January 2015; and Mr. Mohd. Shoki Ariffin on 26 January 2015.

## **2. THE TARGET ENTERPRISES SUBJECT TO THE PROCEEDINGS**

### **2.1 MyEG AND MyEG COMMERCE**

4. MyEG [Company Registration No.: 505639-K] is a company registered in Malaysia. MyEG is involved in the business of the development and implementation of the electronic government services project and the provision of other related services for the electronic Government services project, as well as investment holding<sup>2</sup>.
5. MyEG Commerce [Company Registration No.: 785179-P] is a wholly-owned subsidiary of MyEG<sup>3</sup> and is principally engaged in the business of providing auto insurance intermediary services and other related ancillary services<sup>4</sup>.
6. Based on the Companies Commission of Malaysia reports on both MyEG and MyEG Commerce, the Commission found that both enterprises have two (2) common directors and they are Mr. Raja Munir Shah Bin Raja Mustapha and Mr. Wong Thean Soon.

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<sup>2</sup> See Companies Commission of Malaysia report on the MyEG dated 14 January 2015.

<sup>3</sup> MyEG holds all of the 300,000 total issued shares of MyEG Commerce.

<sup>4</sup> See Companies Commission of Malaysia report on the MyEG Commerce dated 11 June 2015.

7. MyEG and MyEG Commerce have a common principal business address at Lot 6.05, Level 6, KPMG Tower, 8 First Avenue, Persiaran Bandar Utama, Bandar Utama, 47800 Petaling Jaya, Selangor.
8. MyEG and MyEG Commerce is a single enterprise as defined under section 2 of the Act<sup>5</sup>. MyEG Commerce is a wholly-owned subsidiary of MyEG and despite their separate legal entity, they form a single economic unit. The fact that there are common directors also indicates that MyEG Commerce as a subsidiary does not enjoy real autonomy in determining its actions in the market.
9. Datuk P.S. Jaya (NRIC No.: 660519-03-5757) and Encik Chong Chien Ming (NRIC No.: 740818-07-5345) are the Project Director and the Financial Controller of MyEG respectively, particularly in respect of the online PLKS renewal services.
10. Datuk P.S. Jaya and Encik Chong Chien Ming were the principal officers representing MyEG and MyEG Commerce throughout the investigation. The Commission had also interviewed other officers of MyEG as listed in paragraph 73 of this Decision.

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<sup>5</sup> Under section 2 of the Act, a parent and subsidiary company shall be regarded as a single enterprise if, despite their separate legal entity, they form a single economic unit within which the subsidiaries do not enjoy real autonomy in determining their actions on the market.

### 3. FACTS OF THE CASE

#### 3.1 PLKS RENEWAL SERVICES

11. Foreign workers are granted a one year PLKS in order for them to work in Malaysia<sup>6</sup>.
12. If any employer of foreign workers intends to renew their PLKS, the employer would have to do so through *Jabatan Imigresen Malaysia* (Immigration Department of Malaysia or JIM).

#### **First Phase – PLKS renewals for domestic helpers**

13. The Government had launched the Electronic Government as one of the multimedia applications of the Multimedia Super Corridor to reinvent itself to lead Malaysia into the Information Age as well as to further the political, social, cultural and economic development goals of Vision 2020.
14. In 2011, MyEG proposed for the provision of an online system for the renewal of PLKS in two phases. The first phase was for the renewal of PLKS for domestic helpers only and the second phase to be expanded to cover all foreign workers<sup>7</sup>.

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<sup>6</sup> See: Foreign Workers section on JIM's official website:

<http://www.imi.gov.my/index.php/en/main-services/foreign-worker>

<sup>7</sup> See: Puan Farah Adura Hamidi's Statement dated 31 July 2015.

15. On 7 February 2011, *Kementerian Dalam Negeri* (Ministry of Home Affairs or KDN) agreed to implement the online renewals of PLKS for domestic helpers<sup>8</sup> and it was implemented on 11 June 2011. At this stage, JIM counters were still in operation to process all such applications including renewals for the domestic helpers<sup>9</sup>.
16. KDN, by a letter of appointment dated 14 November 2011 approved MyEG's first phase of the proof of concept for the implementation of the online renewal of PLKS for the domestic helpers<sup>10</sup>.
17. On 24 February 2012, an agreement was signed between the Government and MyEG for a period of four years from 1 June 2011<sup>11</sup>.
18. The scope of this agreement was mainly for MyEG to design, develop, procure, construct, install, test, commission, implement, manage, own, operate and maintain the System<sup>12</sup> for the services (as defined under the agreement) and for

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<sup>8</sup> See: Encik Azman Azra'Bin Abdul Rahman's Statement dated 31 July 2015.

<sup>9</sup> See: *Lampiran A of Draf Laporan Pelaksanaan: Pembaharuan Pas Lawatan Kerja Sementara Secara Online Jabatan Imigresen Malaysia oleh My E.G. Services Berhad.*

<sup>10</sup> See: Letter from KDN to MyEG dated 14 November 2011.

<sup>11</sup> See: Agreement entered into between the Government of Malaysia and My E.G. Services Berhad on 24 February 2012 on Online Foreign Worker Permit Renewal (Domestic Helper).

<sup>12</sup> 'System' as defined in the Agreement means the Equipment, the Solutions, system software, applications, telecommunication network including any other items necessary for the provision of the Services required of the MyEG as a "Service Provider" as may be modified, upgraded, added to or replaced during the Contract Period.



MyEG to provide the renewal of Visa Pass (Temporary Employment) – Domestic Helper (Maid) and renewal sticker printing.

19. The agreement had expired on 22 May 2015. However, as to date, MyEG continues to provide the online renewal system.

### **Second Phase – Expansion of contract to include PLKS renewals for foreign workers from all work sectors**

20. On 27 July 2012, KDN notified MyEG<sup>13</sup> that the second phase of the concept was approved and it would be implemented by way of a Proof of Concept (“POC”)<sup>14</sup> period of three months.
21. On 13 December 2013, MyEG notified KDN to report on its successful POC and indicated its willingness to sign a new expanded contract with the Government for the provision of an online system for the renewal of PLKS for foreign workers from all work sectors<sup>15</sup>. In the said letter, MyEG also requested for an extension of the POC period before the new expanded contract is signed<sup>16</sup>.

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<sup>13</sup> See: Appendix 2 of the draft *Perjanjian Bagi Perkhidmatan Online Pembaharuan Pas Lawatan Kerja (PLKS) Bagi Jabatan Imigresen Malaysia Antara Kerajaan Malaysia dan My E.G. Services Berhad (No. Syarikat 505639-K)*.

<sup>14</sup> A Proof of Concept is the trial period for the Government to assess the benefits and effectiveness of any services provided to it by any party before it signs a contract with the service provider.

<sup>15</sup> See: Letter from MyEG to KDN dated 13 December 2013.

<sup>16</sup> Ibid.

22. In a letter dated 2 July 2014 to JIM, KDN agreed to expand MyEG's scope of contract to include the renewal of PLKS for foreign workers from all work sectors as an alternative service channel for employers of foreign workers<sup>17</sup>. This new agreement is currently in a draft format and has yet to be signed by both the Government and MyEG<sup>18</sup>.

### **3.2 IMPLEMENTATION OF A PROOF OF CONCEPT FOR THE STANDARDISATION OF PLKS RENEWALS FOR ALL FOREIGN WORKERS FROM ALL SECTORS THROUGH ONLINE SERVICES**

23. On 17 November 2014, KDN issued a letter to MyEG and JIM stating the decision made by the Minister of Home Affairs for MyEG to implement a POC for the renewal of PLKS for all foreign workers from all sectors through online services on the following terms<sup>19</sup>:

- (i) MyEG shall implement the POC for all foreign workers from all work sectors;
- (ii) The POC period was scheduled to last for three months starting from 1 December 2014 to 1 March 2015;

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<sup>17</sup> See: Letter from KDN to JIM dated 2 July 2014.

<sup>18</sup> See: Draft *Perjanjian Bagi Perkhidmatan Online Pembaharuan Pas Lawatan Kerja (PLKS) Bagi Jabatan Imigresen Malaysia Antara Kerajaan Malaysia dan My E.G. Services Berhad (No. Syarikat 505639-K)*.

<sup>19</sup> See: Letter from JIM to all State Directors dated 27 November 2014.

- (iii) The POC will only apply to PLKS renewal applications in Peninsular Malaysia for the time being;
- (iv) The renewal process period for PLKS renewal applications should meet the stated target of one to two days only;
- (v) The delivery mechanism of the PLKS stickers to the employers has to be implemented by the appointed parties and every individual in the process will have to undergo security screening;
- (vi) MyEG will also have to verify and ensure the authenticity of every Insurance Guarantee it accepts; and
- (vii) The implementation of the POC would have to improve the capability and increase efficiency and add value to both users and the Government.

24. The following terms and conditions were also communicated in the same letter:

- (i) The POC would be carried out without any cost to the Government and is non-binding;

- (ii) The POC would be implemented without any form of exclusivity or monopoly to MyEG;
  - (iii) Results of the POC would be forwarded to the Government for assessment in order to implement the next course of action; and
  - (iv) The Government has the right to terminate the POC at any time or not to extend the POC if it is not productive or beneficial to the Government.
25. On 27 November 2014, the then Director General of Immigration, Dato' Mustafa Ibrahim issued a letter to all State Immigration Directors (in Peninsular Malaysia) informing them that the implementation of the POC for MyEG's online services will be carried out effective 1 December 2014<sup>20</sup>. Therefore from this date onwards, all renewals of PLKS can only be done online.
26. Prior to 5 January 2015, employers of foreign workers in Peninsular Malaysia who had wanted to renew their foreign workers' PLKS had the option of renewing the PLKS either manually at the JIM's counters (by themselves or through agents) or online via the MyEG's online system.

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<sup>20</sup> See: Letter from JIM to all of its State Directors on the implementation of Proof of Concept MyEG online system dated 27 November 2014.

27. On 5 January 2015, JIM closed its manual counters to facilitate the Government's decision to implement a new standardized PLKS renewal system in Peninsular Malaysia. This system made it mandatory for PLKS renewal applications to be done only via MyEG's online system. Therefore, MyEG was the sole service provider for the renewal of PLKS on behalf of JIM<sup>21</sup>.
  
28. There was public outcry and several complaints relating to the delay in getting the renewals and the tedious process that the employers had to go through. In light of the numerous complaints made by the public, on 23 January 2015, the Government reopened the counters for manual processing of the applications<sup>22</sup>.
  
29. Dato' Mustafa Ibrahim, the then Director General of Immigration stated that the reopening of the counters was only until 28 February 2015 to allow employers more time to familiarise themselves with the MyEG's online PLKS renewal system.

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<sup>21</sup> See: Letter from JIM to all of its State Directors on the implementation of Proof of Concept MyEG online system dated 27 November 2014.

<sup>22</sup> See: Excerpt from themalaymailonline on "Putrajaya reopens migrant worker permit counters after backlash" dated 23 January 2015 at <http://www.themalaymailonline.com>; and Excerpt from The Star Online on "Counter service back, but only until Feb 28" dated 24 January 2015 at <http://www.thestar.com.my>.

30. Subsequently on 25 February 2015, the Government decided to allow JIM counters to remain open beyond the Government's initial deadline of 28 February 2015<sup>23</sup>.
31. On 27 February 2015, Dato' Mustafa Ibrahim stated that JIM's counters would continue to remain open until a more comprehensive plan is developed and the issues related to the online system are resolved<sup>24</sup>.
32. JIM subsequently issued a press statement<sup>25</sup> on 29 April 2015 confirming that effective 2 May 2015 all PLKS renewals would be processed online through MyEG only.
33. The Government's justification for the mandatory online system for PLKS renewals was amongst other reasons due to over congestion as well as to prevent "runners" or individual agents who purportedly assist individual owners in renewing PLKS for their foreign workers in return for exorbitant charges<sup>26</sup>.
34. The Commission has no issue with any provision of service being outsourced or privatised by the Government to any enterprise as a sole concession holder. The Commission

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<sup>23</sup>See: Excerpt from The Star Online on "Counters to open beyond Feb 28" dated 26 February 2015 at <http://www.thestar.com.my>.

<sup>24</sup> Ibid.

<sup>25</sup> See: *Kenyataan Media Jabatan Imigresen Malaysia* dated 29 April 2015 on *Pelaksanaan Pembaharuan Pas Lawatan Kerja Sementara (PLKS) Online Secara Menyeluruh*.

<sup>26</sup> See: Excerpt from <http://www.malaysiandigest.com> dated 6 January 2015 on "Employers Forced To Use Online Service".

acknowledges that there are many economic benefits and justifications for the privatisation of such services as concessions were expected to contribute to economic and development and consumer welfare.

35. Concessions are often granted as a private operator is expected to run the business more cost-efficiently than the Government. If cost-efficiencies are passed on and service coverage is broadened, consumers and enterprises benefit<sup>27</sup>.
36. Being dominant by itself is not a breach of the Act. However, as a sole concession holder there is a higher burden on MyEG to comply with the Act. There is an obligation on MyEG to grant equal access to its facilities and therefore promotes competition in the downstream market.

### **3.3 MANDATORY INSURANCES FOR PLKS RENEWALS**

37. In order for a PLKS renewal application to be successful, the employer has to fulfil several conditions including the purchase of three mandatory insurance policies for the foreign worker<sup>28</sup>, namely:

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<sup>27</sup> See: United Nations Conference on Trade and Development: Public monopolies, concessions and competition law and policies

<sup>28</sup> See Foreign Workers section on the JIM's official website for all the conditions:

<http://www.imi.gov.my/index.php/en/main-services/foreign-worker>

- (i) Foreign Workers Insurance Guarantee (“FWIG”);
- (ii) Foreign Workers Hospitalization and Surgical Scheme (*Skim Perlindungan Insuran Kesihatan Pekerja Asing* (“FWHS”)); and
- (iii) Foreign Workers Compensation Scheme (*Skim Pampasan Pekerja Asing* (“FWCS”)).

These three insurances are collectively referred to as “Mandatory Insurances”.

- 38. The premiums for FWIG, FWHS and FWCS are determined by Central Bank of Malaysia (*Bank Negara Malaysia* or BNM) at RM50.00, RM120.00 and RM72.00 respectively.
- 39. FWIG may be obtained from any insurance company in Malaysia whereas FWHS and FWCS may only be obtained from a panel of insurers approved by the Ministry of Health<sup>29</sup> and the Ministry of Human Resources<sup>30</sup>, respectively.

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<sup>29</sup> List of panel insurance companies registered with the Ministry of Health to provide FWHS  
<http://www.spikpa.com.my/Home/SenaraiIns.aspx>.

<sup>30</sup> List of panel insurance companies registered with the Ministry of Human Resources to provide FWCS  
<http://jtksm.mohr.gov.my/index.php/my/perkhidmatan-yang-ditawarkan/pengurusan-pekerja-asing/pampasan-pekerja-asing#2-senarai-panel-penanggung-insurans-skim-pampasan-pekerja-asing-sppa>



40. The purchases of the Mandatory Insurances by employers are mainly done through agents. Direct transactions with the insurance companies are normally done by employers with a larger number of foreign workers.

### **3.4 MyEG AS AN AGENT OF RHB INSURANCE**

41. MyEG Commerce entered into an Agency Agreement with RHB Insurance dated 5 November 2008 to act as an agent of RHB Insurance to transact agency business as stated in the Second Schedule of the Agreement<sup>31</sup>.
42. Clause 4 of the Agency Agreement states that MyEG will be paid a commission by RHB Insurance for every business transacted.
43. The Commission found that there was a Frequently Asked Questions (“FAQ”) published by MyEG on its website stating that it would be a mandatory requirement for FWIG to be purchased through MyEG effective 1 December 2014<sup>32</sup>. When the Commission highlighted this FAQ to MyEG, it admitted that such a FAQ existed but the position that it has now taken is that

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<sup>31</sup> See: Agency Agreement entered into between RHB Insurance Berhad (Co. No. 38000-U) and MyEG Commerce dated 5 November 2008.

<sup>32</sup> See: Response by PIAM to the Commission’s Notice to Request for Information and Documents pursuant to Section 18(1) Competition Act 2010 dated 26 June 2015.

it was an old FAQ which was no longer in its database. MyEG further informed the Commission that its position on the FAQ was clarified in its press release dated 9 January 2015<sup>33</sup>.

44. In respect of FWCS and FWHS, although these insurances may be purchased through other insurance companies, MyEG in its FAQ stated that the employers are advised to purchase these insurances through MyEG for easier and faster renewals.
45. Subsequently, as of 10 November 2015, MyEG also became an agent of AmGeneral Insurance Berhad, Syarikat Takaful Malaysia Berhad, Berjaya Sampo Insurance Berhad and Pacific & Orient Insurance Co. Berhad.
46. Therefore, MyEG Commerce is also competing against other insurance agents representing these insurance companies as well as other insurers in the downstream market for the provision of the Mandatory Insurances.
47. The appointment of MyEG as a sole concession holder in the provision and management of PLKS renewals is not by itself a breach of the Act. The Commission takes a strong position that a dominant enterprise such as MyEG should abide by the Act to comply fully with the provisions of the Act. The fact that MyEG is now an agent for other insurance companies raised greater

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<sup>33</sup> See: Encik Chong Chien Ming's statement dated 10 August 2015.

concerns as MyEG is also gaining more market share which could potentially allow it to also be in a dominant position in the downstream market.

## **4. THE RELEVANT MARKET**

### **4.1 ONLINE PLKS RENEWAL SERVICE (UPSTREAM MARKET)**

48. As mentioned earlier, on 5 January 2015, JIM had closed all the manual counters and employers were required to renew their foreign workers' PLKS through the MyEG's online system. However, JIM had reopened its counters on 23 January 2015 until 1 May 2015 due to public outcry.
49. On 2 May 2015, JIM had closed all the counters again. As a result of the closure all the PLKS renewals can now only be processed online for Peninsular Malaysia. Therefore, there is no alternative method for employers to renew their foreign workers' PLKS except through the MyEG's online system.
50. As a result, the number of foreign workers' PLKS processed by MyEG from January to June 2015 has recorded an exponential increase to 346,700 permits from 11,584 permits for the entire year of 2014. This equates to a tremendous 30 times increase in the number of permits renewed via MyEG notwithstanding that the data taken into account is only from January to June 2015 and not for the whole year of 2015.

51. By virtue of the agreement entered into between JIM and MyEG, MyEG is now the sole provider for the provision and management of online PLKS renewals in Peninsular Malaysia.
52. MyEG's position as a dominant enterprise at the upstream market is not in itself an infringement of the Act. However, MyEG must ensure that it complies with the Act and there is no form of abuse of its dominant position even in the downstream market that it is participating through MyEG Commerce.

#### **4.2 MANDATORY INSURANCES FOR ONLINE PLKS RENEWAL APPLICATIONS (DOWNSTREAM MARKET)**

53. The Mandatory Insurances may be purchased by the employers via the insurance agents or directly from the insurance companies.
54. As mentioned earlier, MyEG is an agent for RHB Insurance and it is competing against other insurance agents including agents representing RHB Insurance and other insurers in the sale of Mandatory Insurances for online PLKS renewal applications. MyEG Commerce is also the top agent for RHB Insurance<sup>34</sup>. Data provided by the other insurance companies<sup>35</sup> showed that

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<sup>34</sup> See: Mr. Bong Young Choy's Statement dated 28 July 2015.

<sup>35</sup> Ace Jerneh Insurance Berhad, Allianz General Insurance Malaysia Berhad, Zurich Insurance Malaysia, Lonpac Insurance Berhad, Etiqa Insurance Berhad, Berjaya Sampo Insurance Berhad, MSIG Insurance (M) Berhad, Overseas Assurance Corporation (M) Berhad and MPI Generali Insurans Berhad.

most of their gross written premiums from the sales of the Mandatory Insurances have decreased over the period of December 2014 to June 2015 compared to the same period one year ago.

55. The data provided by RHB Insurance indicated that RHB Insurance has been gaining market share in the sales of Mandatory Insurances for PLKS renewals whilst other competing insurance companies are losing their market share in the same market. This was caused by the agency agreement entered into between MyEG Commerce and RHB Insurance.
56. The sales of Mandatory Insurances by RHB Insurance has increased by 245 percent from RM9,858,223.00 over the period of December 2013 to June 2014 to RM33,977,833.00 over the period of December 2014 to June 2015.
57. Therefore, the 10% commission that was gained by MyEG from RHB Insurance for the sale of the Mandatory Insurances has also increased from RM211,334.00 in year 2014 to RM2,029,658.00 within the short period of January to June 2015. It equates to almost a 10 times increase in the commission that was earned by MyEG notwithstanding that the data taken into account is from January to June 2015 and not for the whole year of 2015.

58. The Commission held that the relevant market is the downstream market which is the market for the sale of Mandatory Insurances for online PLKS renewal application in Peninsular Malaysia.
  
59. Therefore, it is the Commission's finding that MyEG had been abusing its dominant position as the sole concession holder in the provision and management of online PLKS renewal services in Peninsular Malaysia (upstream market) in the market for the sale of the Mandatory Insurances for online PLKS renewal application (downstream market), by imposing different conditions to equivalent transactions with its competitors to an extent that it has harmed competition in the downstream market in which MyEG Commerce is participating.

## **5. NATURE OF COMPLAINTS FILED WITH THE COMMISSION**

### **5.1 COMPLAINTS FILED BY THE COMPLAINANTS**

60. The Commission received numerous complaints from various persons<sup>36</sup>.
61. It was alleged that MyEG had abused its dominant position in the provision and management of online Pas Lawatan (Kerja Sementara) or (PLKS) (Foreign Workers Permit) renewals.
62. MyEG as the sole provider for the renewal of PLKS applications had abused its position to “force” the employers of foreign workers to purchase the insurances through MyEG. Even when the employers are allowed to purchase the insurances from their preferred insurance companies or insurance agents, it was alleged that MyEG had imposed unfair and unreasonable conditions on such parties.

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<sup>36</sup> See: Footnote 1.



## **6. PROCEDURE**

### **6.1 THE INVESTIGATION**

63. Pursuant to the complaints received, the Commission carried out its investigation under section 15(1) of the Act. During the course of investigation, the Commission issued Notices pursuant to section 18 of the Act to several parties requiring the provision of information and documents.

64. The Commission also interviewed a number of persons involved in the industry, including representatives of MyEG, representatives of the insurance companies, insurance agents as well representatives from JIM and KDN<sup>37</sup>.

### **6.2 PROPOSED DECISION**

65. On 6 October 2015, the Commission served its Proposed Decision on MyEG.

66. In its Proposed Decision, the Commission outlined that MyEG, being the only platform for the provision and management of online PLKS renewals made it compulsory for the employers of foreign workers to purchase the FWIG through MyEG. MyEG

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<sup>37</sup> See: Heading 7 of this Decision on Witnesses Interviewed by the Commission.

was also found to have induced the employers of the foreign workers to purchase both FWHS and FWCS through MyEG if the employers would want to have faster and easier renewal.

67. In this regard, MyEG had invariably created difficulties by adding additional steps for the employers to purchase the Mandatory Insurances through other insurance companies.
68. The Commission's provisional finding was that MyEG has infringed section 10 of the Act for abusing its dominant position in harming competition in the downstream market in which MyEG's subsidiary, MyEG Commerce is participating as an insurance agent for online PLKS renewal applications. MyEG had imposed different conditions to equivalent transactions with its competitors to an extent that it has harmed competition in the downstream market for the sale of Mandatory Insurances.
69. The duration of infringement period for MyEG is as follows:
  - (i) 5 January 2015 to 22 January 2015; and
  - (ii) 2 May 2015 to 6 October 2015.

70. The Commission had proposed to impose a financial penalty of RM307,200.00 and additional financial penalty of RM15,000.00 for each day MyEG fails to comply with the following remedial actions:

- (i) MyEG Commerce to terminate the existing agency agreements relating to the Mandatory Insurances and shall not enter into a similar nature of agency agreement; and
- (ii) MyEG to provide an efficient gateway to all insurance companies selling the Mandatory Insurances which allows them to compete at the same level.

### **6.3 WRITTEN REPRESENTATION**

71. Upon being served with the Proposed Decision, MyEG submitted its written representation to the Commission dated 18 November 2015.

### **6.4 ORAL REPRESENTATION**

72. Pursuant to MyEG's indication that it wished to make an oral representation before the Commission, an oral representation session was thereafter convened on 18 February 2016.

## **7. WITNESSES INTERVIEWED BY THE COMMISSION**

73. The following were the witnesses interviewed by the Commission in the course of its investigation:

### **MyEG and MyEG Commerce**

- (i) Datuk P.S. Jaya – Project Director of MyEG;
- (ii) Encik Chong Chien Ming – Financial Controller of MyEG;
- (iii) Encik Nor Adnan Zainal Abidin – Project Director of MyEG;
- (iv) Encik Jack Chia - Head of Marketing of MyEG;
- (v) Puan Laura Peh – Co-Head of Corporate of MyEG;
- (vi) Encik Muhd Safiy Bin Roslan – Executive Corporate Sale of MyEG;
- (vii) Puan Sarah Veronica – Customer Service Executive;
- (viii) Encik Azahari Abdul Aziz – Help Desk Manager of MyEG;

(ix) Encik Sunny Chung;

***Persatuan Insurans Am Malaysia* or (General Insurance Association of Malaysia or PIAM)**

(i) Encik Mark Lim;

(ii) Puan Annette Lim;

(iii) Puan Joy Lim;

(iv) Puan Mahinder Kaur;

**JIM**

(i) Puan Farah Adura Hamidi – Director, Foreign Workers' Division;

**KDN**

(i) Encik Azman Azra' Bin Abdul Rahman – Principal Assistant Secretary of KDN;

## **Insurance Companies**

- (i) Puan Fah Kim Tai – MPI Generali Insurans Berhad;
- (ii) Encik Wong Kuan Fatt – MPI Generali Insurans Berhad;
- (iii) Encik Ng Kok Kheng – Overseas Assurance Corporation (Malaysia) Berhad;
- (iv) Encik Fazlur Azmi Bin Abdul Malek – Etiqa Insurance Berhad;
- (v) Encik Tan Chee Meng – Lonpac Insurance Berhad;
- (vi) Encik Chuang Chee Hing – Lonpac Insurance Berhad;
- (vii) Puan Fiona Yew – Ace Jerneh Insurance Berhad;
- (viii) Encik Steven Lim Nam Teng – Zurich Insurance Malaysia;
- (ix) Encik Bong Young Choy – RHB Insurance;
- (x) Encik Ooi Chuan Keat – Allianz General Insurance Malaysia Berhad;

- (xi) Puan Christine Teh Chooi Hoon – Berjaya Sompo Insurance Berhad;
- (xii) Puan Jenny Yeoh Yeok Len – MSIG Insurance Berhad;

### **Insurance Agents**

- (i) Encik John Thevanantham – MPI Generali Insurans Berhad;
- (ii) Puan Ivy Yeap Eng Geau – Overseas Assurance Corporation (Malaysia) Berhad;
- (iii) Puan Yoo Kah Lai – Overseas Assurance Corporation (Malaysia) Berhad;
- (iv) Puan Soh Siew Lee – Overseas Assurance Corporation (Malaysia) Berhad;
- (v) Puan Peggy Ung – Lonpac Insurance Berhad;
- (vi) Encik Ong Kah Seng – Ace Jerneh Insurance Berhad;
- (vii) Puan Janice Chen Yoke Mui – Ace Jerneh Insurance Berhad;

- (viii) Encik Teng Hao Xin – Allianz General Insurance Malaysia Berhad;
- (ix) Encik Razmin Aznir Bin Rahim – Allianz General Insurance Malaysia Berhad;
- (x) Encik Lim Seng Hong – Allianz General Insurance Malaysia Berhad;
- (xi) Encik Hong Wil Liam – Allianz General Insurance Malaysia Berhad;
- (xii) Puan Siew Kuan Thye – Allianz General Insurance Malaysia Berhad;
- (xiii) Puan Lim Jee Fung – Allianz General Insurance Malaysia Berhad;
- (xiv) Puan Norhayati Hussin – Allianz General Insurance Malaysia Berhad; and
- (xv) Puan Norlinda Mohd Zain – Allianz General Insurance Malaysia Berhad.



## 8. SECTION 18 NOTICE ISSUED TO PIAM

74. The Commission issued a section 18 Notice to PIAM to require information and documents in relation to the PLKS renewal applications.
75. PIAM is a national trade association of all licensed direct and reinsurance companies for general insurance in Malaysia<sup>38</sup>.
76. PIAM informed the Commission that it had written to BNM and KDN on 10 and 12 December 2014 respectively, on the mandatory requirement imposed by MyEG for the purchase of FWIG through MyEG for PLKS renewals<sup>39</sup>.
77. PIAM stated that the mandatory requirements had adversely affected its members from providing and selling FWIG.
78. PIAM also informed the Commission that its members raised the following issues in relation to the usage of the MyEG's online PLKS renewal system<sup>40</sup>:

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<sup>38</sup> See: PIAM's website at [www.piam.org.my](http://www.piam.org.my).

<sup>39</sup> See: Response by PIAM to the Commission's Notice to Request for Information and Documents pursuant to Section 18(1)(a) Competition Act 2010 dated 26 June 2015.

<sup>40</sup> See: PIAM's response to the Commission's Request for Information pursuant to section 17(2)(i) of the Act dated 1 April 2015.

- (i) Issuance of work permit issuance involving insurances from non-panel insurers will take a longer time as compared when they are purchased from MyEG;
- (ii) Verification of FWIG should be done electronically instead of manually over the telephone. Furthermore, FWHS and FWCS do not require MyEG's verification and as such, do not need to be uploaded by customers to its system; and
- (iii) In the instance of renewal applications for multiple workers, the small capacity of MyEG's system may result in delayed and interrupted transactions for customers as the customers need to upload the insurance details of their foreign workers multiple times. This may result in customers preferring to buy insurance directly from MyEG to mitigate the difficulties and delays in obtaining PLKS renewals.

79. PIAM also stated that its members were facing the following operational and administrative problems when dealing with the insurance aspect for renewals of PLKS<sup>41</sup>:

- (i) No definite processing turnaround time determined by MyEG;

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<sup>41</sup> Ibid.

- (ii) Issues on the uploading of files onto the MyEG's system
  - 1. Restricted to JPEG/PDF file format
  - 2. File size must not exceed 200KB
  - 3. Uploading time depends on the speed of the internet connection
  - 4. Constant delay
  - 5. Uploading needs to be repeatedly done for employers who have more than one worker
  
- (iii) Issues on insurance requirement
  - 1. Procedure for verification or confirmation of policy issued by non-panel insurer of MyEG
  - 2. Amendments not to be made on the insurance policy.

80. In the renewal process, the employer for the renewal process would have to upload a scanned copy of the employee's insurance policies to the MyEG's online system in order for MyEG to verify the validity of the said insurance policies. However, this verification process is not required if the employer purchases insurance through MyEG.

81. On 23 January 2015, PIAM arranged a meeting with MyEG in order to discuss the operational and administrative problems faced by its members in relation to the online PLKS renewals. PIAM requested MyEG to lift the mandatory requirement for FWIG to be purchased through MyEG in order to allow its

members to provide FWIG to employers who wish to purchase the same from it.

82. PIAM, by way of a letter to MyEG dated 9 April 2015<sup>42</sup>, had sought explanation on the continued administrative problems faced by insurers/employers. They subsequently followed up on the same matter with a reminder on 28 April 2015.
83. On 30 April 2015, PIAM had also written to KDN and JIM<sup>43</sup> highlighting the continued administrative problems faced by insurers/employers. A reminder was sent to KDN and JIM on 4 June 2015<sup>44</sup>.
84. MyEG in its response<sup>45</sup> stated that it has taken the following measures to address the problems faced by PIAM in verifying the insurances purchased via the different channels:
  - (i) If the insurance policy is purchased through MyEG – no verification is required as the information is entered directly into the MyEG's system and the insurance policy is generated by MyEG.

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<sup>42</sup> See: Letter from PIAM to MyEG dated 9 April 2015.

<sup>43</sup> See: Letters from PIAM to KDN and JIM dated 30 April 2015.

<sup>44</sup> See: Letters from PIAM to KDN and JIM dated 4 June 2015.

<sup>45</sup> See: Fifth Written Response by MyEG dated 15 July 2015.

- (ii) If it purchased through the agents of other insurance companies – MyEG has established direct contact with the relevant personnel within the insurance companies and the verification will be conducted via telephone calls or electronic mails (“emails”).
  - (iii) If it is purchased through RHB Insurance or its agents – MyEG has established direct contact with the relevant personnel within RHB Insurance and the verification will be conducted via telephone calls or emails.
85. As of 10 June 2015, the Commission found that that the operational and administrative issues have yet to be resolved and addressed by MyEG<sup>46</sup>.
86. MyEG, by way of a letter dated 3 July 2015 to PIAM, requested PIAM to allow MyEG to represent all principal insurers which according to MyEG would allow any insurance companies from being on-boarded onto the MyEG’s system<sup>47</sup>.

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<sup>46</sup> Ibid

<sup>47</sup> See: Letter from PIAM to MyEG dated 12 August 2015.

87. PIAM replied to the MyEG's letter on 12 August 2015 stating that a waiver from the two-principal rule cannot be allowed as this would create an unlevel playing field with the other registered agents. PIAM also reiterated in the same letter that it welcomed the direct online verification system to be established by MyEG and proposed that MyEG adopt a system similar to the Foreign Workers Centralised Management System by Bestinet<sup>48</sup>.

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<sup>48</sup> See: Sixth Written Response by MyEG dated 4 August 2015.

## **9. REPRESENTATIONS BY MyEG**

88. MyEG wholly denied the allegations put forth by the Commission in its Proposed Decision.

### **Mandatory Purchase of FWIG through MyEG**

89. MyEG submitted that it had never made it mandatory to the users to purchase FWIG through MyEG.

90. MyEG further claimed that any confusion amongst the users had been resolved in its press release to Bursa Malaysia dated 9 January 2015 which was also reported in various mainstream newspapers. MyEG highlighted that it was not in a dominant position when the JIM counters were still opened i.e. prior to the closing of the counters by JIM on 5 January 2015.

91. MyEG submitted that the FAQ that stated “*For IG, it must be purchased through MyEG*” was the old version and upon closing of the counters by JIM, the new version of FAQs had already been uploaded onto MyEG’s FAQs page which does not have any indication that the users are required to only purchase the Mandatory Insurances from MyEG.

92. MyEG argued that the confusion arose when the users were directed to the old URL by the cookies upon entering specific keywords into their search engine.
93. MyEG submitted that it had given an explanation to the Commission during the meeting on 10 August 2015 where the Help Desk Manager, Encik Azahari Abdul Aziz had clarified the matter to the Commission. MyEG also submitted that it does not keep internal logs or records as to the exact date in which the FAQs were amended as the FAQs would be amended by MyEG as and when the need arises. MyEG also asserted that this does not amount to an admission of guilt or a contravention of the Act in any manner.
94. MyEG submitted that the letter by BNM to PIAM dated 16 February 2015 stated that *“MyEG has since amended the FAQ on its website for foreign workers permit renewal on the purchase of insurance guarantee, foreign workers compensation scheme and foreign workers hospitalisation and surgical scheme”*.
95. With reference to its Fifth Written Response dated 15 July 2015, MyEG submitted that it is clear that MyEG had always been accepting FWIGs purchased from other insurance companies. The total number of foreign workers permit renewal processed by MyEG in January 2015 was 30490 and out of the



total number of PLKS renewed, 25655 FWIGs were purchased from RHB Insurance. This indicated that 4835 FWIGs were purchased from other insurance companies and were subsequently processed by MyEG.

### **Inducement via FAQs**

96. MyEG also strongly disagreed that there was any inducement by MyEG via its online system to “force” users to purchase the Mandatory Insurances through MyEG. The statement in its FAQs stating that “*For faster and easier renewal, you may purchase IG, FWCS and FWHS with MyEG*” does not indicate that MyEG is inducing its users to purchase the Mandatory Insurances from it. Instead, it is merely a statement of fact to highlight a more efficient method for time and cost savings if users choose to purchase the Mandatory Insurances from MyEG.
  
97. MyEG also submitted that it had voluntarily revised its FAQs to clarify that users are free to purchase the Mandatory Insurances from any insurance company of their choice. This was notified to the Commission on 8 August 2015.

## **Inducement via Requirement to Scan and Upload Policies for Verification**

98. MyEG submitted that it strongly disagreed that the requirement to verify the insurance policies invariably delays the process of the renewals. MyEG argued that it has to fulfil its requirements to JIM to verify each policy uploaded onto its system to prevent fraud which is ultimately for the interests of the users.

## **Inducement via Limitation in File Size Capacity**

99. MyEG submitted that it had already addressed its file size capacity from 200KB to 5MB per policy. The current file size capacity is sufficient for the users to upload the policies for the Mandatory Insurances without any restrictions.

## **Inducement via Processing Time for PLKS Stickers**

100. MyEG submitted that the issue relating to the turnaround time for the delivery of the PLKS stickers is due to the following external circumstances:
- (i) Permit expiry date less than 7 days;
  - (ii) Balance of the passport validity is less than 1 year;

- (iii) Passport has expired;
- (iv) FOMEMA medical check-up failed;
- (v) No valid insurance; or
- (vi) Foreign worker or employer has been blacklisted.

101. In the event any of the external circumstances above happens, the turnaround time for the delivery of the PLKS stickers would be affected.

**Applying Different Conditions to Equivalent Transactions with Other Competitors to an Extent that may Harm Competition in the Market in which MyEG is Participating**

102. MyEG argued that the increase in MyEG's sales growth is because of the more efficient method offered to the users. In addition, the sudden increase in the gross written premium received by MyEG was due to the public being caught unaware of the closure of the counters by JIM as no advance notice had been given. Understandably, many users would prefer to purchase the Mandatory Insurances online via MyEG due to the pending expiry of their PLKS as MyEG is able to provide a speedy and convenient renewal method for the users.

## **Infringement Period**

103. MyEG conceded that the starting point of the infringement, if any, should be taken as when the JIM's manual counters were closed. However, it strongly disagreed and denied that the infringement is continuing as at the date of the Proposed Decision.
104. MyEG asserted that the infringement period, if any, should be from 5 January 2015 to 9 January 2015. However, if the Commission wishes to take the period when the issues may not have been resolved by MyEG due to certain technicalities, MyEG conceded that the infringement period can potentially be from 5 January 2015 to 22 January 2015 before the JIM counters reopened.
105. MyEG asserted that it had rectified all technical glitches which gave rise to complaints from the insurance companies prior to 2 May 2015 and had not conducted itself in any manner which would result in an abuse of its dominant position.
106. MyEG further argued that the computation of the financial penalty of RM307,200.00 is excessive, taking into account that any potential period of infringement by MyEG is only for approximately 3 weeks.

### **Three (3) Options Proposed to be offered by MyEG**

107. MyEG proposed the following three (3) options to be implemented in order to ensure that the users will be able to enjoy a speedy and efficient renewal process.

- (i) Option 1: One stop Centre via MyEG as an Agent (1-step Process)

From 5 January 2015, MyEG had been in active discussions with several individual insurers who wish to appoint MyEG as an insurance agent. As of 10 November 2015, MyEG had already on-boarded five (5) insurance companies onto its system.

Mandatory Insurances purchases from these companies can be instantly verified. This instant verification process results in efficiency gains which are in line with the Commission's approach.

By acting as an agent to these insurance companies and offering a "one-stop-centre" to the users, there is no foreclosure of the market to other insurance companies as they are still free to sell the Mandatory Insurances to the users.

(ii) Option 2: Direct Online Verification System (2-step Process)

MyEG further proposed to offer a direct online verification system via a gateway to the customers where the renewal of the PLKS will go through a 2-step process:

Step 1: users to purchase the Mandatory Insurances from any insurance company of their choice on their own or via appointed insurance agents; and

Step 2: users to enter the details of the employees onto the gateway system where the policies will be instantaneously verified with the relevant insurance companies which have been integrated onto the system.

(iii) Option 3: Manual Uploading of Policies (3-step Process)

For insurance companies who do not wish to engage MyEG as an agent or do not wish to participate in the direct online verification system or have yet to be integrated onto the direct online verification system, MyEG also allows users who purchase the Mandatory Insurances from these insurance companies to manually

upload the policies onto MyEG's website for verification purposes.

### **Creating an Uneven Playing Field**

108. MyEG submitted that by exiting the downstream market, this will create an uneven playing field in the market for the provision of Mandatory Insurances amongst the insurance companies. The removal of MyEG from the downstream market will skew the market towards the incumbent insurance companies who will be able to leverage on their market shares to foreclose the market for the provision of Mandatory Insurances to the smaller players in the market.
109. By providing all three options to the users, MyEG submitted that users can exercise their informed choice as to the preferred method to renew the PLKS. Users are not restricted to only one method to renew their PLKS.

### **Risk of Having Third Party Intermediaries**

110. MyEG submitted that the direct online verification system does not eliminate the need for intermediaries, i.e. insurance agents, unless users opt to purchase the Mandatory Insurances directly from the insurance companies. By having the additional level of intermediaries, this increases the risk of a potential fraud case.

111. MyEG further submitted that it will also function as a “first line of defence” where MyEG will detect any fraud cases and immediately highlight them to the users.

### **Reducing Incentives to Compete Amongst Insurance Companies**

112. MyEG also submitted that by exiting from the downstream market, this will reduce the incentives amongst the insurance companies to compete effectively and efficiently with each other. The insurance agents may not have to compete as vigorously in the market while the users would not receive products at competitive prices from the insurance companies due the lack of competition in the market.

113. MyEG argued that the competition brought by MyEG Commerce would serve as a strong incentive and catalyst for the other insurance companies to provide better and more competitive pricing and products to the users and as a result, increase the level of competition in the market to the benefit of the users.

### **No foreclosure Effect on the Market**

114. MyEG asserted that by continuing to operate in the downstream market, there is no foreclosure effect on the market for the provision of Mandatory Insurances online.



115. The gain in the growth in the sales of Mandatory Insurances policies by RHB Insurance is merely the effect of an existing commercial decision made by RHB Insurance when it entered into the Agency Agreement with MyEG in 2008. Further, there is no foreclosure effect on the market as no insurance companies have been forced to exit the market for the provision of Mandatory Insurances online by virtue of RHB Insurance gaining growth in its shares.

## 10. LEGAL AND ECONOMIC ASSESSMENTS FOR SECTION 10(2)(d)(iii) INFRINGEMENT BASED ON REPRESENTATIONS BY MyEG

### 10.1 APPLICATION OF SECTION 10(2)(d)(iii) OF THE ACT

116. Section 10(1) and (2) of the Act state that:

***“Abuse of dominant position is prohibited”***

*10. (1) An enterprise is prohibited from engaging, whether independently or collectively, in any conduct which amounts to an abuse of a dominant position in any market for goods or services.*

*(2) Without prejudice to the generality of subsection (1), an abuse of a dominant position may include—*

- (a) directly or indirectly imposing unfair purchase or selling price or other unfair trading condition on any supplier or customer;*
- (b) limiting or controlling—*
  - (i) production;*
  - (ii) market outlets or market access;*
  - (iii) technical or technological development; or*
  - (iv) investment,*

- to the prejudice of consumers;*
- (c) refusing to supply to a particular enterprise or group or category of enterprises;*
  - (d) applying different conditions to equivalent transactions with other trading parties to an extent that may—*
    - (i) discourage new market entry or expansion or investment by an existing competitor;*
    - (ii) force from the market or otherwise seriously damage an existing competitor which is no less efficient than the enterprise in a dominant position; or*
    - (iii) harm competition in any market in which the dominant enterprise is participating or in any upstream or downstream market;*
  - (e) making the conclusion of contract subject to acceptance by other parties of supplementary conditions which by their nature or according to commercial usage have no connection with the subject matter of the contract;*
  - (f) any predatory behaviour towards competitors; or*
  - (g) buying up scarce supply of intermediate goods or resources required by a competitor, in circumstances where the enterprise in a dominant position does not have a reasonable commercial justification for buying up the intermediate goods or resources to meet its own needs.”*

Section 10(3) further states that:

*“(3) This section does not prohibit an enterprise in a dominant position from taking any step which has reasonable commercial justification or represents a reasonable commercial response to the market entry or market conduct of a competitor.”*

## **10.2 ABUSE OF THE DOMINANT POSITION**

117. MyEG as a concession holder is not only providing and managing online PLKS renewals but is also involved through MEG Commerce as an agent of RHB Insurance in the sale of Mandatory Insurances to the foreign workers.
118. MyEG is therefore in competition with the other insurance agents including the agents representing RHB Insurance and other insurers in the sale of the Mandatory Insurances in the downstream market.
119. The Commission found that the MyEG’s market share through MyEG Commerce in the sale of Mandatory Insurances was relatively small in percentage. Notwithstanding the above, the fact that MyEG is dominant in the market of provision and management of online PLKS renewals in Peninsular Malaysia allows MyEG to abuse its dominant position through MyEG Commerce by engaging in the following conduct:

**(i) Mandatory Purchase of FWIG Through MyEG**

120. As stated above, a PLKS renewal application shall be accompanied with the purchase of three Mandatory Insurances for the foreign workers<sup>49</sup>.

121. MyEG however, being the only platform for the provision and management of online PLKS renewals had in effect made it compulsory for the employers of the foreign workers to purchase the FWIG through MyEG effective 1 December 2014. The FAQ uploaded on its website as of 5 January 2015, stated the following:

*“14. Can I purchase my preferred insurance company for my foreign workers PL(KS) permit renewal?”*

*Insurance Guarantee(IG)*

*For IG, it must be purchased through MyEG”<sup>50</sup>.*

122. The Commission also found an undated FAQ online which was published on the MyEG’s website which states the same requirement<sup>51</sup>.

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<sup>49</sup> See Foreign Workers section on JIM’s official website for all the conditions:  
<http://www.imi.gov.my/index.php/en/main-services/foreign-worker>

<sup>50</sup> See: A screen shot of the FAQ made available on the MyEG’s website as of 5 January 2015.

<sup>51</sup> See: An undated FAQ published by MyEG on its website at [www.myeg.com.my](http://www.myeg.com.my).

123. MyEG's representative, Encik Chong Chien Ming, in a meeting held with the Commission on 30 January 2015, however claimed that customers may opt to purchase the Mandatory Insurances required for the renewals of PLKS from MyEG if they do not already have their own as MyEG aims to be a one-stop centre for its users. However, it is not mandatory for users to purchase the said insurances from MyEG and the customers' renewal of PLKS applications will still be processed if they had purchased their insurances from other insurers<sup>52</sup>.

124. In his statement to the Commission dated 23 March 2015, Datuk P.S. Jaya further stated the following:

*"11. In relation to the MyEG's meeting with the General Insurance Association of Malaysia (PIAM), and with reference to point 1 (i) in PIAMs notes of the meeting between MyEG and PIAM on 23 January 2015, I wish to clarify that MyEG has never restricted its customers in the purchases of any insurance from any insurer and that MyEG is open to working with all insurance parties.*

*12. It may seem that MyEG's system does not accept insurances, in this case, with reference to PIAMs notes, Foreign Workers Insurance Guarantees. However, I wish to clarify that this may be due to certain teething issues in*

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<sup>52</sup> Minutes of Meeting between the Commission and MyEG on 30 January 2015.

*MyEG's system, at the time, for example, the system could not accept insurance policies (which must be scanned and uploaded by the customers to its system for validation and verification purposes), due to its limited file capacity of its system. ....*<sup>53</sup>  
*[emphasis added]*

125. PIAM in its response to the Commission's Section 18 Notice to Require Provision of Information<sup>54</sup> however confirmed that there was a mandatory requirement to purchase FWIG through MyEG effective 1 December 2014.
126. PIAM also wrote to KDN on 12 December 2014<sup>55</sup> and BNM on 10 December 2014<sup>56</sup> in relation to this requirement which was stated in the FAQ posted on the MyEG's website. PIAM also received a reply from KDN on 27 March 2015 to clarify that MyEG has allowed the employers to choose the insurance covers required from any insurance company for the online transaction. However, verification will have to be carried out by MyEG to confirm the validity of the insurance with the insurer concerned<sup>57</sup>.

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<sup>53</sup> See: Datuk P.S. Jaya's statement dated 23 March 2015.

<sup>54</sup> See: Response by PIAM to the Commission's Notice to Request for Information and Documents pursuant to Section 18(1)(a) Competition Act 2010 dated 26 June 2015.

<sup>55</sup> See: Letter from PIAM to KDN dated 12 December 2014.

<sup>56</sup> See: Letter from PIAM to BNM dated 10 December 2014.

<sup>57</sup> See: Letter from KDN to PIAM dated 27 March 2015.

127. In his statement given to the Commission on 10 August 2015, Mr. Chong Chien Ming however stated that the FAQ stating the requirement for FWIG to be purchased through MyEG is an old version which is no longer in the MyEG's database<sup>58</sup>. However, MyEG did not provide any evidence to support its contention.
128. The Commission then sought clarification through interviews with various insurance companies on the said requirement. Ace Jerneh Insurance Berhad, Lonpac Insurance Berhad, Overseas Assurance Corporation, MSIG Insurance Berhad, Allianz General Insurance Berhad and MPI Generali Insurans Berhad confirmed that such a requirement for FWIG to be purchased through MyEG was imposed on the employers<sup>59</sup>. The insurance companies discovered this requirement some time between December 2014 and early January 2015.
129. Specific amendments were done to the FAQs by MyEG and this was confirmed by Bank Negara Malaysia via its letter to PIAM dated 16 February 2015 whereby the said letter stated the following:

*“2. We have clarified with My E.G. Services Berhad (MyEG) that it accepts foreign workers insurance guarantee (FWIG) issued by all insurers. In this regard, we note that MyEG has since amended the FAQ on its website for foreign workers*

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<sup>58</sup> See: Statement of Chong Chien Ming dated 10 August 2015.

<sup>59</sup> See: Witnesses Interviewed by the Commission at paragraph 72 of this Decision.



*permit renewal on the purchase of insurance guarantee, foreign workers compensation scheme and foreign workers hospitalization and surgical scheme.<sup>60</sup>*

130. The FAQ published by MyEG relating to Foreign Worker Permit Renewal have been revised a few times on the following dates; 13 January 2015, 29 January 2015, 30 January 2015 and 14 May 2015<sup>61</sup>.

131. As of 31 July 2015, the FAQ relating to Foreign Worker Permit Renewal stated the following:

*“5. Can I purchase my preferred insurance company for my foreign workers (PL(KS) permit renewal?*

**Insurance Guarantee (IG), Foreign Workers Compensation Scheme (FWCS) & Foreign Workers Hospitalisation & Surgical Scheme (FWHS)**

*For faster and easier renewal, you may purchase IG, FWCS and FWHS with MyEG.*

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<sup>60</sup> See: Letter from BNM to PIAM dated 16 February 2015.

<sup>61</sup> See: Fifth Written Response by MyEG dated 15 July 2015.

*If not, you will need to upload the scanned IG, FWCS and FWHS cover notes for us to verify with the respective insurance principals.*

132. The Commission's investigation also found that there was no mandate by the Government for MyEG to impose a condition for FWIG to be sold only through MyEG.
133. Despite the fact that MyEG submitted in its written as well as oral representations that the FAQ was an old FAQ and the confusion arose when the users, via the cookies were directed to the old URL upon entering specific keywords, MyEG did not provide any evidence to support its contention.
134. The explanation given by its Help Desk Manager, Encik Azahari Abdul Aziz during the meeting on 10 August 2015 did not provide any evidence to support MyEG's argument. The statement merely stated that MyEG does not keep internal logs or records as to the exact date in which the FAQs were amended.
135. Furthermore, it is important to note the existence of the screenshot of the FAQs as of 5 January 2015. Despite clarification being made via a press release on 9 January 2015, MyEG's FAQ page was only amended on 27 February 2015.

Confusion among the users is to be expected with the rather slow revision in force.

136. MyEG also asserted that 25655 FWIGs were purchased from RHB Insurance while 4835 FWIGs were purchased from other insurance companies. In this regard, MyEG has attached two (2) line graphs to show the comparison between these two (2) sources in its written representations.

137. The two (2) lines graph has reinforced that the total sales of Mandatory Insurances by MyEG was higher than other insurance companies in the market during January to February 2015 due to the information in the FAQ which induced users to purchase the Mandatory Insurances from MyEG.

**(ii) Inducement for Purchase of Foreign Workers Compensation Scheme and Foreign Workers Hospitalisation and Surgical Scheme through MyEG**

138. Meanwhile, for both FWHS and FWCS, MyEG had induced and is inducing the employers of foreign workers to purchase both FWHS and FWCS through MyEG if the employers would want to have a faster and easier renewal.

139. All FAQs uploaded by MyEG state words to the following effect:

*“For faster and easier renewal, you may purchase FWCS and FWHS with MyEG.*

*If not, you will need to upload the scanned FWCS and FWHS cover notes for us to verify with the respective insurance principals. You must also ensure that the insurance must be purchased two (2) months before the expiry date”.*

140. In this regard, MyEG had invariably created difficulties by adding additional steps for the employers to purchase the Mandatory Insurances through other insurances companies. Therefore, the other insurance companies as well as their agents who are competing with both RHB Insurance and MyEG are facing unfavourable conditions as it would invariably take a longer time to obtain PLKS approval as their policies would have to be verified.

141. The employers are required to scan and upload the policies for each foreign worker according to the scanning specification including the size of the file. Furthermore, the MyEG’s server file size capacity was small and could not facilitate the uploading of the required documents.

142. In its representations, MyEG clarified that the requirement to upload the policies of the Mandatory Insurances onto its system is to fulfil JIM's requirement. MyEG further claimed that it had resolved all issues within the first two (2) weeks of receiving the complaints. It argued that these were merely technical glitches due to an increase in volume and the need for the verification of the policies that have yet to be tested in real-time.
143. It is acknowledged that verification of the Mandatory Insurances will have to be carried out in accordance with the JIM's requirement to check on the validity and authenticity of the policies.
144. The Mandatory Insurances purchased directly from MyEG are automatically verified. However, if the Mandatory Insurances are purchased through the other insurance companies, verification will have to be carried out with the insurance companies. This process invariably delays the process of the renewal.
145. It was also highlighted that there was no specified turnaround time for the applications of PLKS renewals to be processed. An application for PLKS renewal submitted with an insurance obtained through MyEG was processed faster with the PLKS sticker being made available within two to three working days. Meanwhile, an application which was submitted with an

insurance not obtained through MyEG took a week or more for the PLKS sticker to be issued.

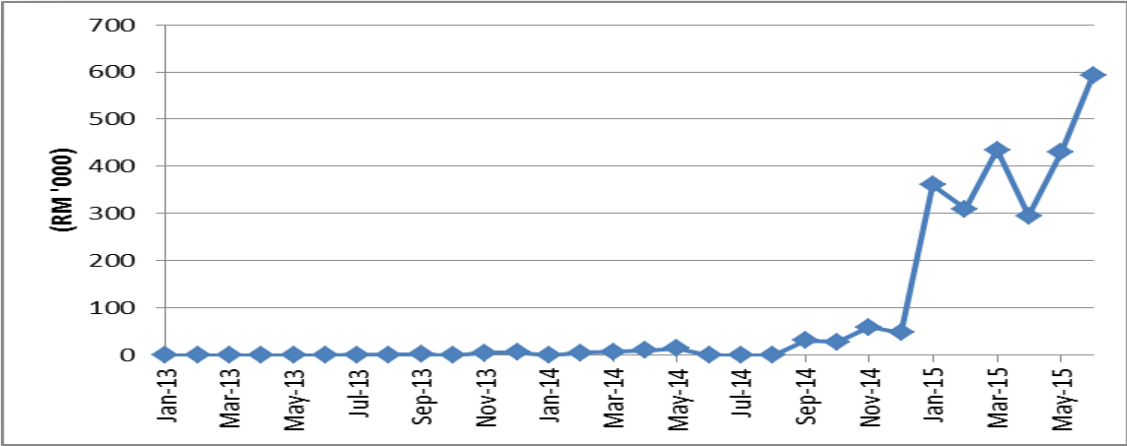
146. Based on PIAM's statement, Mr. Lim Kian Wei confirmed that representatives of the insurance companies as well as insurance agents were facing operational/administrative problems and no proper and consistent verification was done on all Mandatory Insurances purchased through other insurance companies.
147. In fact, various insurance companies' representatives and agents gave statements to the Commission that up until July 2015, no proper and consistent verification was done on all Mandatory Insurances.
148. In its representations, MyEG argued that the statement in the FAQs stating that "*For faster and easier renewal, you may purchase IG, FWCS and FWHS with MyEG*" is merely a statement of fact to highlight a more efficient method for time and cost savings if users choose to purchase the Mandatory Insurances from MyEG.
149. MyEG further explained that amendments were done to the same FAQs. However, despite the amendments being made, the same FAQs still state the requirement for extra steps to be taken by the employers if the employers choose to purchase

from other insurance companies. This is an inducement for users to purchase the Mandatory Insurances from MyEG

**(iii) Applying Different Conditions to Equivalent Transactions With Other Competitors to an Extent that may Harm Competition in the Market in Which MyEG is Participating**

150. With reference to Figure 1 below, it is apparent that the commission earned by MyEG from the sale of the Mandatory Insurances has increased tremendously over the period of January to June 2015. This is in line with the period when MyEG started to gain its dominant position in the upstream market since 5 January 2015. This further indicated that MyEG has been leveraging its market at the downstream market which is the sale of the Mandatory Insurances.

**Figure 1: Commission Earned by MyEG from Selling the Mandatory Insurances**



*Source: MyEG Commerce Sdn. Bhd.*

- 151. Figure 2 below shows that the sales of Mandatory Insurances are rather volatile over the period of December 2013 to June 2015. This indicated that the market for the sale of the Mandatory Insurances for online PLKS renewal application is competitive.
  
- 152. Notwithstanding the above, RHB Insurance, which used to capture lower than average monthly sales from December 2013 to February 2015, has experienced exponential growth in the sales of Mandatory Insurances in March 2015. Even though the sales subsequently declined in April and May 2015, the graph indicates that RHB Insurance via MyEG had gained remarkable



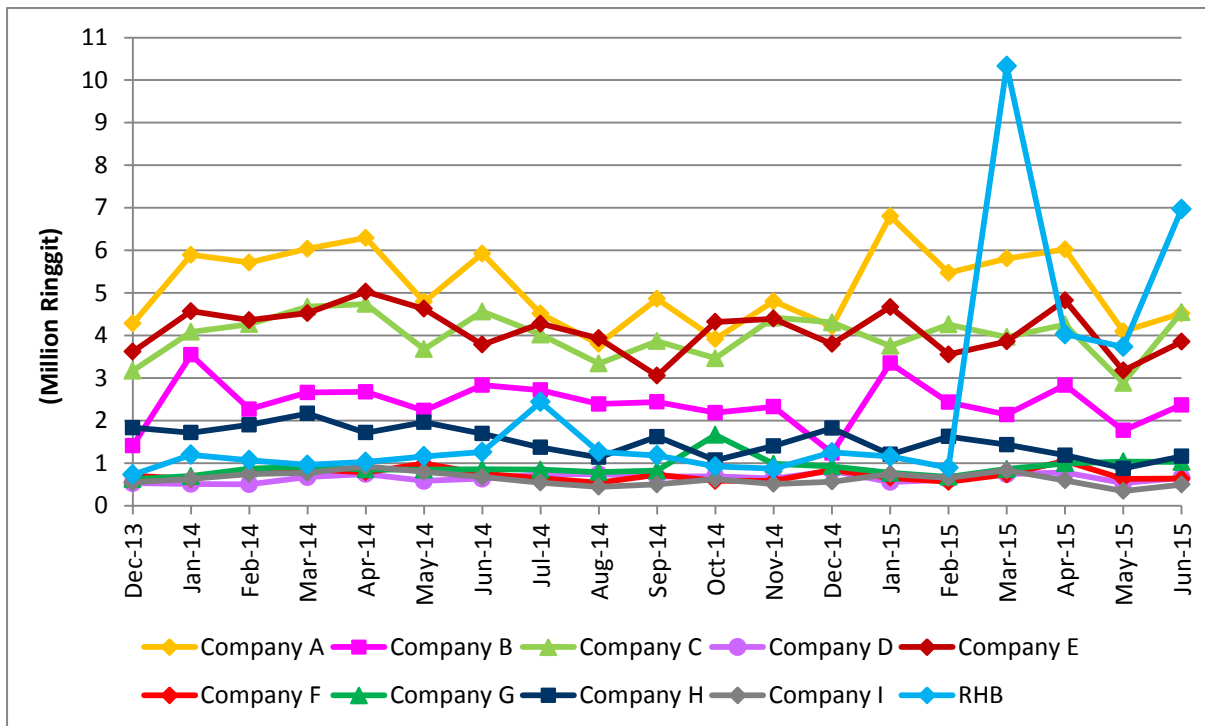
growth in the sales of Mandatory Insurances which overtook all the top three players in the market.

153. RHB Insurance via MyEG has captured increased sales within a short period whereas none of its competing insurance providers experienced any increase in sales despite the increase in number of foreign workers in Peninsular Malaysia.
154. In 2014, a total of 2,073,414 PLKS renewals<sup>62</sup> were issued for all work sectors in Peninsular Malaysia. Meanwhile, the number of permits issued in the first quarter of 2015 alone was 1,955,723 PLKS. It is expected to grow higher and overtake the total number of PLKS issued in 2014.
155. Therefore, it is the Commission's finding that the competition at the downstream market i.e. the market of the sale of Mandatory Insurances is distorted as a result of MyEG's conduct of imposing different conditions to equivalent transactions with its competitors.

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<sup>62</sup> See: Labour and Human Resources Statistics from Labour Department of Peninsular Malaysia, Ministry of Human Resources.

**Figure 2: Gross Written Premium of the Mandatory Insurances Sold by RHB Insurance versus other Insurance Companies**



Source: RHB Insurance and other insurance companies

### 10.3 PROVISION OF THREE OPTIONS OFFERED BY MyEG

156. In its written and oral representations dated 18 November 2015 and 18 February 2016 respectively, MyEG proposed to offer three (3) options to be implemented in order to provide a quick and efficient renewal process as specified in the above paragraph 106.

157. It is the Commission’s finding that these three (3) options will not resolve the anti-competitive concerns raised by the

Commission in its Proposed Decision. In fact, the Commission views that this would distort the competition at the downstream market even further as MyEG would still position itself in an advantaged position as opposed to its competitors in the sale of Mandatory Insurances market. The Commission therefore rejects these options as a solution to create a level playing field in the downstream market.

#### **10.4 CONCLUSION**

158. The Commission finds that MyEG has infringed section 10(2)(d)(iii) of the Act.

## **11. EFFICIENCIES AND COMMERCIAL JUSTIFICATIONS RAISED BY MyEG**

159. In its Sixth Written Response to the Commission dated 4 August 2015, MyEG raised efficiencies and commercial justifications in the event PIAM allows MyEG to represent all insurance companies.
160. Essentially, MyEG submitted that there will be cost savings, transparency, efficiency gains and convenience to customers.
161. MyEG also submitted that by serving as an insurance agent for multiple insurance companies, there is no foreclosure in the insurance market for the provision of the Mandatory Insurances as customers will always have the choice to purchase the policies from their preferred insurers. All insurance companies are given an equal opportunity to provide the Mandatory Insurances to the customers through MyEG.
162. MyEG also argued that there would not be any discrimination or favouritism to the different insurance companies as the MyEG's role as an agent will be similar to that of a gateway service provider where the MyEG's website will serve as a platform for the customers to select and purchase the Mandatory Insurances from the insurance company of their choice.

163. In summary, MyEG submitted that the online PLKS renewal by MyEG does not have any abuse of dominant position effect as there is no foreclosure of the market for the insurance companies. There is also no detrimental effect to the customers but instead provides significant benefits by reducing the need for “runners” and the risk of fraud.
164. The Commission is of the view that the reasons given by MyEG are not relevant to the conduct under investigation as required under section 10(3) of the Act.
165. The Act requires any entity in a dominant position to conduct itself to ensure that there is no abuse of its dominant position even if it requires additional steps or additional expenses to comply with the provisions under the Act in relation to the abuse of its dominant position.
166. MyEG in its written as well as oral representations submitted the potential occurrences if it is forced to exit the downstream market i.e. the sale of the Mandatory Insurances which are as follows:
- (i) Creating an uneven playing field;
  - (ii) Risk of having third party intermediaries;

(iii) Reducing Incentives to compete amongst insurance companies; and

(iv) No foreclosure effect on the market.

167. The premium of the Mandatory Insurances is fixed by BNM hence the issue of competitive prices by insurance companies raised by MyEG in its representations is irrelevant.

## 12. REMEDIES

168. Section 40(1) of the Act provides that:

*“If the Commission determines there is an infringement of a prohibition under Part II, it –*

*(a) shall require the infringement to be ceased immediately;*

*(b) may specify steps which are required to be taken by the infringing enterprises, which appear to the Commission to be appropriate for bringing the infringement to an end;*

*(c) may impose a financial penalty; or*

*(d) may give any other direction as it deems appropriate.*

169. Any financial penalty imposed by the Commission shall not exceed the statutory maximum established by section 40(4) which provides:

*“A financial penalty shall not exceed ten percent of the worldwide turnover of an enterprise over the period during which an infringement occurred.”*

170. The Commission hereby imposes a total financial penalty of RM2,272,200.00 on MyEG as at 24 June 2016. This amount comprises of the following:
- (i) A financial penalty of RM307,200.00 for the infringement periods of 5 January 2015 to 22 January 2015; and 2 May 2015 to 6 October 2015; and
  - (ii) A daily penalty of RM7,500.00 from 7 October 2015 to the date of this Decision, 24 June 2016 amounting to RM1,965,000.00.
171. The daily penalty is imposed on MyEG taking into account that the abusive conduct still subsists and MyEG failed to adhere to the directions imposed by the Commission in its Proposed Decision which is to provide an efficient gateway for all of its competitors at the downstream market.
172. The current daily penalty of RM7,500.00 is a reduced amount from the earlier quantum of RM15,000.00 mentioned in the Proposed Decision. This reduction was done based on the fact that the Commission accepts that MyEG should be allowed to participate and compete in the downstream market provided that it ensures a level playing field for all of its competitors and compliance with the relevant rules and regulations. The Commission had earlier made a provisional finding that MyEG



should exit from participating in the downstream market by terminating its agency agreement with RHB Insurance.

173. The Commission further directs MyEG to undertake to do the following:

- (i) MyEG to cease and desist **IMMEDIATELY** from imposing different conditions to equivalent transactions in the processing of Mandatory Insurances for online PLKS renewal applications;
- (ii) MyEG to provide an efficient gateway for **ALL** its competitors in the market for the sale of the Mandatory Insurances and allows the other competitors to compete at the same level within **SIXTY (60) DAYS** from the date of this Decision, 24 June 2016; and
- (iii) MyEG to provide an undertaking in the form and manner acceptable to the Commission, to be fully compliant with PIAM's rules and regulations within **SIXTY (60) DAYS** from the date of this Decision, 24 June 2016.

174. In the event MyEG does not comply with any of the above mentioned directions, the Commission is at the liberty to impose a higher daily penalty for the subsequent period of non-compliance.

## **12.1 DETERMINATION OF THE FINANCIAL PENALTY**

175. The Commission took into consideration the following factors in determining the amount of financial penalty imposed on MyEG:
- (i) Seriousness (gravity) of the infringement or impact of the infringement;
  - (ii) Duration of the infringement;
  - (iii) The relevant turnover of MyEG for the period of infringement;
  - (iv) Aggravating and mitigating factors; and
  - (v) The financial penalty imposed is not more than 10% of the MyEG's worldwide turnover.
176. The infringement by MyEG has distorted competition in the market of the sale of the Mandatory Insurances for online PLKS renewal applications (downstream market).
177. The infringement began when MyEG imposed different conditions to equivalent transactions during the period when JIM's manual counters were closed and no alternative channel was available for permit renewals.

178. The Commission, as stated earlier, hereby imposes a total financial penalty of RM2,272,200.00 on MyEG as at 24 June 2016. This amount comprises of the following:
- (i) A financial penalty of RM307,200.00 for the infringement periods of 5 January 2015 to 22 January 2015; and 2 May 2015 to 6 October 2015; and
  - (ii) A daily penalty of RM7,500.00 from 7 October 2015 to the date of this Decision, 24 June 2016 amounting to RM1,965,000.00.
179. The Commission took into account MyEG's turnover generated from the commission gained for the sale of Mandatory Insurances throughout the above mentioned infringement periods. For the purposes of the Commission's calculation on the financial penalty, the cut-off date is 6 October 2015 which is the date of the Proposed Decision being served on MyEG.
180. The daily penalty of RM7,500.00 is further imposed on MyEG starting from 7 October 2016 as the abusive conduct still subsists and MyEG has yet to provide an efficient gateway for all its competitors in the market of the sale of the Mandatory Insurances and allows the other competitors to compete at the same level. As such, the total daily penalty as at 24 June 2016 amounts to RM1,965,000.00.

181. The financial penalty does not exceed 10% of MyEG's worldwide turnover.

### 13. CONCLUSION

182. In view of the foregoing, the Commission concluded that MyEG has abused its dominant position by not ensuring a level playing field or by applying different conditions to equivalent transactions with its competitors to an extent that it has harmed competition in the market for the sale of Mandatory Insurances for online PLKS renewal applications in which MyEG, through its subsidiary MyEG Commerce is a participant.

183. Apart from the total financial penalty of RM2,272,200.00 imposed on MyEG as stated above, the Commission also specifies the following directions on MyEG:

- (i) MyEG to cease and desist **IMMEDIATELY** from imposing different conditions to equivalent transactions in the processing of Mandatory Insurances for online PLKS renewal applications;
- (ii) MyEG to provide an efficient gateway for **ALL** its competitors in the market for the sale of the Mandatory Insurances and allows the other competitors to compete at the same level within **SIXTY (60) DAYS** from the date of this Decision, 24 June 2016; and

- (iii) MyEG to provide an undertaking in the form and manner acceptable to the Commission, to be fully compliant with PIAM's rules and regulations within **SIXTY (60) DAYS** from the date of this Decision, 24 June 2016.

184. In the event MyEG does not comply with the above mentioned directions, the Commission is at the liberty to impose a higher daily penalty for the subsequent period of non-compliance.

**COMPETITION ACT 2010 [ACT 712]  
(Section 40)**

**SURUHANJAYA PERSAINGAN  
COMPETITION COMMISSION**

To:

MY E.G. SERVICES BERHAD / MY E.G. COMMERCE SDN. BHD.  
Lot 6.05, Level 6  
KPMG Tower  
8 First Avenue  
Persiaran Bandar Utama  
Bandar Utama  
47800 Petaling Jaya  
**SELANGOR DARUL EHSAN**

DATE OF NOTICE: <sup>24</sup> JUNE 2016

Dear Sir,

**NOTICE ("NOTICE") OF DECISION BY THE COMPETITION COMMISSION UNDER SECTION 40  
OF THE COMPETITION ACT 2010 [ACT 712]**

Pursuant to section 40 of the Competition Act 2010 [Act 712], the Commission has determined that **MY E.G. SERVICES BERHAD** ("MyEG") has infringed section 10 (2)(d)(iii) of the Competition Act 2010 by abusing its dominant position in harming competition in the downstream market in which MyEG's subsidiary, **MY E.G. COMMERCE SDN. BHD.** is participating as an insurance agent for online *Pas Lawatan (Kerja Sementara)* ("PLKS") renewal applications.

2. The Commission hereby gives written notice ("Notice") of its finding of an infringement to MyEG as set out in **Enclosure 1**. The reasons for the Commission's finding of an infringement are also set out in Enclosure 1 of this Notice.

3. The financial penalty imposed is set out in **Section 12 of Enclosure 1** of this Notice and shall be paid to the Commission within (30) days of receipt of this Notice. Payment is to be made by cheque addressed to the "Competition Commission".

4. Please do not hesitate to contact my officer, Puan Dhaniah Ahmad at [ghaniah@mycc.gov.my](mailto:ghaniah@mycc.gov.my) or Cik Low Jiah Yee at [jiahjee@mycc.gov.my](mailto:jiahjee@mycc.gov.my) or via telephone at 03-2273 2277 should you have any further queries regarding the same.

Notice Issued by

A handwritten signature in black ink, appearing to read 'Siti Norma Yaakob', written in a cursive style.

**(TAN SRI DATO' SERI SITI NORMA YAAKOB)**  
Chairman