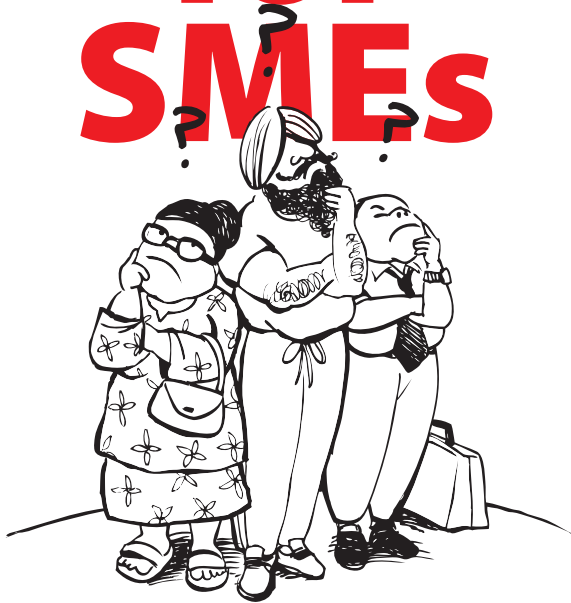




**SURUHANJAYA PERSAINGAN MALAYSIA  
MALAYSIA COMPETITION COMMISSION**

# **FAQs for SMES**



## 1 I RUN A SMALL FAMILY BUSINESS. DOES THE COMPETITION ACT 2010 (CA 2010) APPLY TO MY BUSINESS?

**YES.** The CA 2010 applies to all entities that carry on 'commercial activities'. Almost all activities of Malaysian businesses (big and small) will be 'commercial activities' and therefore covered by the CA 2010.

Your trade association may be able to help you understand how the CA 2010 applies to your business and in your industry.

## 2 WHY AREN'T SMEs EXCLUDED OR EXEMPTED FROM THE CA 2010?

The CA 2010 does not exclude or exempt SMEs. However, in some cases, the CA 2010 will apply differently to small businesses. No business (big or small) is allowed to fix prices, share markets, engage in bid rigging, or limit production or supply. However, some agreements which would be prohibited for big businesses are likely to be allowed for small businesses.

The MyCC has stated that agreements between competitors (with a combined market share of less than 20%) or non-competitors (where each party has a market share of less than 25%) are unlikely to have a significant effect on the market, and will therefore be permitted.

## 3 I AM A MEMBER OF A TRADE ASSOCIATION. IF MY TRADE ASSOCIATION ADVISES ME TO RAISE PRICES, CAN I DO THIS?

**NO.** A decision of a trade association to raise prices will be a **price fixing** agreement and prohibited by the CA 2010. The Cameron Highlands Florist Association (CHFA) has already been found guilty of price fixing where the members, through the CHFA, agreed to raise prices by 10%. Price fixing is one of the most serious breaches of competition law.

*REMEMBER: All decisions regarding the price at which you sell your goods and services must be made by you, independently.*

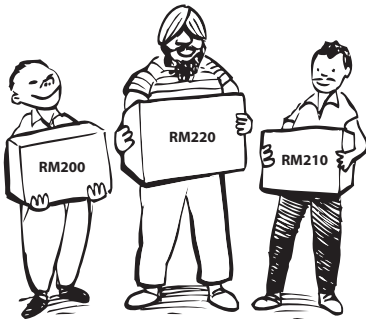
## 4 I DO NOT KNOW WHAT PRICE TO CHARGE FOR MY GOODS IN THE MARKETPLACE, SO I ASK MY TRADE ASSOCIATION TO TELL ME. CAN I DO THIS?

**NO.** See 3 above.

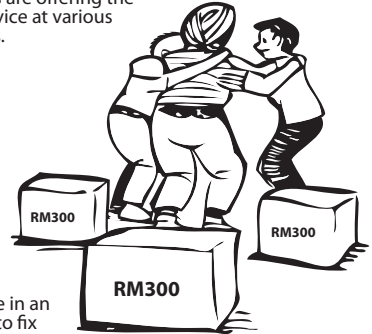
# 5 MY COMPETITORS AND I SHARE INFORMATION ABOUT OUR SELLING PRICES AS OTHERWISE WE DON'T KNOW WHAT PRICE TO CHARGE. CAN WE DO THIS?

**NO.** Sharing commercially sensitive information about the prices which you intend to charge for your goods or services will be regarded as a **price fixing** agreement and be prohibited by the CA 2010.

*REMEMBER: You must not share commercially sensitive information with your competitors. All decisions regarding the price at which you sell your goods and services must be made by you, independently.*



Several businesses are offering the same product/service at various competitive prices.



They then conspire to engage in an anti-competitive agreement to fix the selling price.



As a result, the price fixing causes product/service prices to be **ARTIFICIALLY HIGH**.



Consumers end up being **FORCED TO PAY** higher prices.

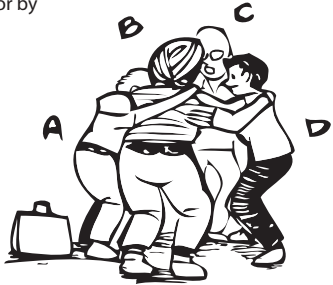
# 6 I AM NOT MAKING ANY MONEY SELLING MY GOODS IN BOTH KUALA LUMPUR AND SELANGOR. I WANT TO STOP SELLING IN KUALA LUMPUR AND TO ASK MY COMPETITOR TO STOP SELLING IN SELANGOR. THIS WAY WE CAN EACH SELL MORE GOODS IN OUR AREAS. AM I ALLOWED TO DO THIS?

**NO.** This is a **market sharing** agreement and is prohibited by the CA 2010. Market sharing is one of the most serious breaches of competition law.

*REMEMBER: You must not agree with anyone else where, or to whom, you will sell your goods.*



Dividing the market either geographically or by customer types.



Only operating in areas they have been assigned to.



## 7 MY SUPPLIER TELLS ME AND MY COMPETITORS WHAT PRICE TO SELL HIS GOODS AT IN THE MARKETPLACE. IF I DON'T SELL AT THE PRICE HE STATES, HE SAYS HE WILL STOP SUPPLYING ME. IS HE ALLOWED TO DO THIS?

**NO.** This is a form of price fixing known as **resale price maintenance (RPM)** and is prohibited by the CA 2010.

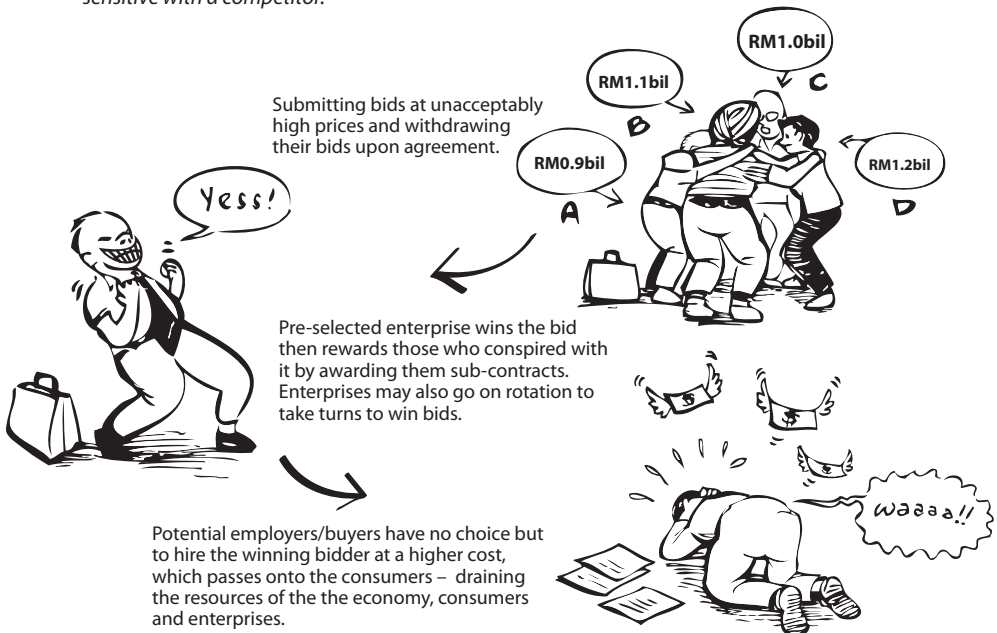
A manufacturer or supplier may provide 'recommended' price lists. Recommended prices are permissible, provided they do not become the fixed price or a focal point for pricing.

*REMEMBER: All decisions regarding the price at which you sell your goods and services must be made by you, independently.*

## 8 SOME OF MY COMPETITORS AND I TAKE TURNS TENDERING FOR GOVERNMENT CONTRACTS. CAN WE DO THIS?

**NO.** This is known as **bid rigging** and is prohibited by the CA 2010. Bid rigging is one of the most serious breaches of competition law.

*REMEMBER: You must independently determine whether you will bid (or not bid) for a contract and what price you will bid. You must not share any details of your bid that are commercially sensitive with a competitor.*



## **9 MY SUPPLIER HAS APPOINTED DISTRIBUTORS THROUGHOUT MALAYSIA TO SELL HIS PRODUCT. HE HAS TOLD ME THAT I AM ONLY ALLOWED TO SELL IN MY DESIGNATED AREA – AND NOWHERE ELSE. IS HE ALLOWED TO DO THIS?**

**IT DEPENDS.** Manufacturers commonly impose restrictions (such as exclusivity) on distributors. The restrictions may or may not be permitted by competition law, depending on the effect that the restrictions have on competition in the relevant market(s). Each agreement will need to be assessed on a case-by-case basis. It is not possible to give a 'one size fits all' answer.

## **10 I AM A MEMBER OF A JEWELLERS TRADE ASSOCIATION. THE MEMBERS WANT TO GROUP TOGETHER TO BUY STATIONERY PRODUCTS. WE THINK WE WILL SAVE MONEY IF WE BUY IN BULK. IS THIS ALLOWED?**

**PROBABLY.** It is likely that you and the other members of the trade association only hold a very small share of the market for the purchase of stationery products. Joint buying is unlikely to harm competition but you should pass any cost savings onto your customers.

However, if an association of jewellers was to jointly purchase all of the gold requirements of its members, competition may be harmed as it is likely that the jewellers association will be buying a big share of the gold purchased in Malaysia.

## **11 ONE OF MY SUPPLIERS IS REFUSING TO SUPPLY TO ME UNLESS I BUY A MINIMUM QUANTITY.**

**IT DEPENDS.** Generally, you cannot force someone to do business with you. However, in certain circumstances, a refusal to supply by a supplier who holds a dominant position in the market may breach the CA 2010. For example, if the dominant supplier is abusing its dominant position by refusing to supply or only supplying if you meet certain conditions (such as reselling at a certain price or buying a minimum quantity). The supplier may be allowed to refuse supply if there is a good commercial reason for requiring you to buy a minimum quantity.



## 12 ONE OF MY SUPPLIERS WILL ONLY SELL HIS GOODS TO ME IF I ALSO BUY A SECOND PRODUCT THAT I DO NOT NEED. CAN HE DO THIS?

**IT DEPENDS.** The obligation to buy a second product may constitute an abuse of dominant position if the supplier of the first product is dominant. Alternatively, this type of agreement may have an effect on competition in the market, depending on the market shares of the supplier and the buyer. Each agreement will need to be assessed on a case-by-case basis. It is not possible to give a 'one size fits all' answer.



## 13 ONE OF MY SUPPLIERS HAS SET UP A BUSINESS THAT WILL COMPETE WITH ME. HE IS NOW SUPPLYING HIS GOODS TO ME AT A MUCH HIGHER PRICE, SO HIGH THAT I CANNOT COMPETE AGAINST HIS BUSINESS. WHAT CAN I DO?

**IT DEPENDS.** If your supplier holds a dominant position in the market for the goods supplied to you, the supplier may be abusing its dominant position by charging you a higher price so that you cannot compete with his new business. You should consider making a complaint to the MyCC.

## 14 IF ONE OF MY SUPPLIERS OR COMPETITORS IS ACTING UNFAIRLY, CAN I COMPLAIN?

**YES.** The CA 2010 can help SMEs who are being treated unfairly, particularly by big businesses.



If you believe a competitor or a supplier or even a customer is acting unfairly, you can lodge a complaint with the MyCC. Download the Complaint Form from the MyCC's website at **[www.mycc.gov.my](http://www.mycc.gov.my)** and submit the completed form, either in person or:

**By E-mail:**

**[complaints@mycc.gov.my](mailto:complaints@mycc.gov.my)**

**By Post:**

Address mail to:

**Chief Executive Officer  
Malaysia Competition Commission (MyCC)  
Level 15, Menara SSM@Sentral,  
No. 7, Jalan Stesen Sentral 5,  
Kuala Lumpur Sentral,  
50623 Kuala Lumpur.**

**By Fax:**

**Address to CEO and fax to +603-2272 1692**

*DISCLAIMER: This document does not contain legal advice. SMEs in doubt about how the CA 2010 applies to their business should seek assistance from their trade association and/or legal advice.*

**[www.mycc.gov.my](http://www.mycc.gov.my)**