

Getting Ahead

Towards A Competitive Malaysia





"I invite all stakeholders – both in the public and private sectors – to join us as we strive to champion competition."

As the Malaysia Competition Commission (MyCC) enters its third year of operations, reflections on the many activities it has embarked upon for the last two years has been most encouraging and inspiring.

Although still in its fledgling state, it cannot be denied that the MyCC has made an impact as to the awareness of healthy competition. This is largely due to the many advocacy and programmes conducted by the team of dedicated officers led by Chief Executive Officer, Shila Dorai Raj.

Even then the efforts are still not enough for a newly established Commission. Concerted efforts are still on going to enhance the knowledge of the public, particularly the Small and Medium Enterprises (SMEs) on the importance of competition, and to

clarify misconceptions that activities like price-fixing and bid rigging are acceptable forms of doing business.

As such, our advocacy programmes will continue to be conducted this year with particular focus on areas outlined in our 2013 strategy plan such as bid rigging, anti-competitive conduct by professional bodies or trade associations, and competition issues regarding SMEs.

In addition to continuously conducting capacity building exercises for the MyCC officers, we have also developed publications and guidelines for the benefit of business owners and the public at large. To date we have published guidelines on *Market Definition, Complaints Procedures, Chapter 1 and Chapter 2 Prohibitions*, and also a *Handbook for the General*

Public in addition to brochures and Frequently Asked Questions (FAQs).

In working towards the objective of turning Malaysia into a globally competitive nation, we cannot work alone. I therefore invite all stakeholders – both in the public and private sectors – to join us as we strive to champion competition. This publication – *MyCompetition News* – will be our voice to the public.

Ultimately, a competitive Malaysia is a progressive Malaysia.

Tan Sri Dato' Seri Siti Norma Yaakob

Chairman, Malaysia Competition Commission

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Q&A

Have a question on procedures and policies of the Malaysia Competition Commission? MyCompetition News reproduces some of the most asked questions that members of the public and businesses pose to the MyCC.

Q: *I represent a foreign registered company which does business in Malaysia. Does the Competition Act 2010 apply to our overseas activities or only to those in Malaysia?*

A: The Competition Act 2010 has extra-territorial application and therefore your company's activities overseas fall under its purview, as stated in Section 3(1) which reads:

"This Act applies to any commercial activity, both within and subject to Subsection (2) outside Malaysia."

A reading of Section 3(2) shows:

"In relation to the application of this Act outside Malaysia, this Act applies to any commercial activity transacted outside Malaysia, which has an effect on competition in any market in Malaysia."

Through the application of extra-territorial status to the Competition Act 2010, we ensure that anti-competitive actions taken outside the immediate jurisdiction of Malaysia will not hinder competition in the country.

Q: *I have information about a breach of the Competition Act. What can I do?*

A: If you suspect or know of a violation of the Competition Act 2010, it is best to submit a complaint to the MyCC. You may do so by filling the Complaint Form which is available for download at the MyCC website (www.mycc.gov.my).

The form should contain the following:

1. Information about the complainant
2. Information about the party or parties which is/are the subject of the complaint.
3. A brief description of the alleged breach of the Competition Act 2010.
4. Any other relevant or supporting documents/information.

The completed form may be sent by email to complaints@mycc.gov.my. Alternatively, you may fax it to 603-2272 2293 or 603-2272 1692 and attention it to the CEO.

You can also post it to:

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

Last but not least, you may submit the Complaints Form in person at the MyCC office at the address indicated above.

The MyCC commits itself to acknowledging receipt of complaints within three working days.

UPCOMING EVENTS

1st MyCC Competition Law Conference

Date: 25th – 26th Sept 2013

Venue: Kuala Lumpur Convention Centre

The "1st MyCC Competition Law Conference – New Standards for Business in Malaysia" brings together experts on Competition Law from across the world to share knowledge and exchange insights with delegates.

For more information, visit www.mycccompetitionconference.com.my.

Launch of Handbooks

Date: Q3 2013

Venue: Kuala Lumpur

The MyCC will be releasing handbooks for businesses such as *Competition Act 2010: A Guide for Business* and *Guidelines for Compliance* in the 3rd quarter of 2013.

Research Grant Recipient Announcement

Date: Q3 2013

Venue: Kuala Lumpur

The MyCC will be announcing the successful applicants for its Research Grant Programme (RGP) to fund research, market surveys, and case studies on competition issues.

For further details on the MyCC, please visit:

The MyCC's official website
www.mycc.gov.my



www.youtube.com/MyCompetitionNews



www.facebook.com/theMyCC

MyCC Highlights



Then Deputy Minister of Domestic Trade, Co-operatives and Consumerism Dato' Tan Lian Hoe (fourth from the right) at the launch of the handbook. Other attendees include MyCC Chairman Tan Sri Dato' Seri Siti Norma Yaakob (third from the right), MyCC Commissioners Ragunath Kesavan, Abdul Malek Ahmad, Tan Sri Dato' Dr Michael O.K. Yeoh and Prof Datin Dr Hasnah Haron (first to fourth from the left), MyCC CEO Shila Dorai Raj (far right), and Dato' Daud bin Tahir – the then Deputy Secretary General of Domestic Trade, Co-operatives and Consumerism (second from the right).

Launch of Competition Act 2010: Handbook for General Public

In accordance with its mission to promote competition in the country, the MyCC launched the *Competition Act 2010: Handbook for General Public* on the 16th of July 2012. The unveiling was witnessed by Dato' Tan Lian Hoe – then Deputy Minister of Domestic Trade, Co-operatives and Consumerism. Speaking at the launch, Dato' Tan lauded the handbook saying "Publications such as the *Competition Act 2010: Handbook for General Public* are instrumental in raising awareness of the Competition Act, and educating the general public about their rights and responsibilities under the Act." The handbook was conceptualised to be compact yet concise – a one-stop guide to understanding competition law in Malaysia.

MyCC Office Opening

On the 17th of January 2013, the MyCC officially moved into its new headquarters at Menara Suruhanjaya Syarikat (SSM) Malaysia in KL Sentral. The event was graced by Datuk Rohani Abdul Karim – the then Deputy Minister of Domestic Trade, Co-operatives and Consumerism, and attended by senior board and management members of MyCC. Speaking at the opening, MyCC Chairman Tan Sri Dato' Seri Siti Norma Yaakob revealed the agency's plans for 2013, including increasing advocacy to SMEs, organising the first Competition Law Conference in Malaysia, and also stepping up the focus against bid rigging.



MyCC staff with the then Deputy Minister of Domestic Trade, Co-operatives and Consumerism, Rohani Abdul Karim (fifth from the left) during the opening of the new MyCC headquarters. Also in the picture are MyCC Chairman Tan Sri Dato' Seri Siti Norma Yaakob (fourth from the left), Deputy Secretary General of the Ministry of Domestic Trade, Co-operatives and Consumerism, Dato' Basaruddin bin Sadali (third from the right) and MyCC CEO Shila Dorai Raj (fourth from the right).



MyCC Chairman Tan Sri Dato' Seri Siti Norma Yaakob receives a souvenir from Ir Muhammad Nawir Messi – Chairman of KPPU.

Indonesia Visit

Representatives of the Malaysia Competition Commission led by Chairman Tan Sri Dato' Seri Siti Norma Yaakob and CEO Shila Dorai Raj, visited the offices of Indonesia's *Komisi Pengawas Persaingan Usaha* (KPPU – Indonesian Business Competition Supervisory Commission) on the 14th and the 15th of February 2013. On the first day, MyCC officials were briefed on how the KPPU handled investigation, cases, examinations and litigation, while on the second day, they were given demonstrations of the KPPU's skills in economic research and policy assessment.

A round-up of some of the events and activities organised or attended by the Malaysia Competition Commission in the course of its duties.



From left to right: MyCC Commissioners – Prof Datin Dr Hasnah Haron and Abdul Malek, MyCC Chairman – Tan Sri Dato’ Seri Siti Norma Yaakob, MyCC CEO – Shila Dorai Raj, MyCC Commissioner Tan Sri Dato’ Dr Michael O.K. Yeoh, and MyCC Officer – Pakeeza Mohammed Junus.

Representing Malaysia

MyCC Chairman Tan Sri Dato’ Seri Siti Norma Yaakob, MyCC Commissioners Tan Sri Dato’ Dr Michael O.K. Yeoh, Prof. Datin Dr. Hasnah Haron, and Abdul Malek, along with CEO Shila Dorai Raj and officer, Pakeeza Mohammed Junus, represented Malaysia at the 12th meeting of the OECD Global Forum on Competition which was held in Paris, France from the 28th of February to the 1st of March 2013. The Forum focused on issues such as competition and the reduction of poverty, competition issues in television and broadcasting, and also saw the release of the OECD ICN survey on international enforcement cooperation.

Developing Strategy and Tools For Regional Advocacy

The MyCC participated in the 1st meeting of the Working Group (WG) on Developing Strategy and Tools for Regional Advocacy, which was held on the 3rd and 4th of April 2013 in Singapore. Comprising members of the ASEAN Experts Group on Competition, topics discussed by the WG included developing an interactive AEGC web portal and conceptualising materials for advocacy campaigns in the area of competition policy and law for ASEAN member states. Representing the MyCC were Rowena Wong – Head of Corporate Communication Unit, and Ayuda Sari Ismail – Strategic Planning and International Affairs Division Executive.



Teo Wee Guan – Director, Strategic Planning, Competition Commission of Singapore (CCS) and Chairman of WG Advocacy, and Thitapha Wattanapruttipaisan – ASEAN Secretariat (fourth and fifth from the right) flanked by the project consultant and delegates from the ASEAN member states.



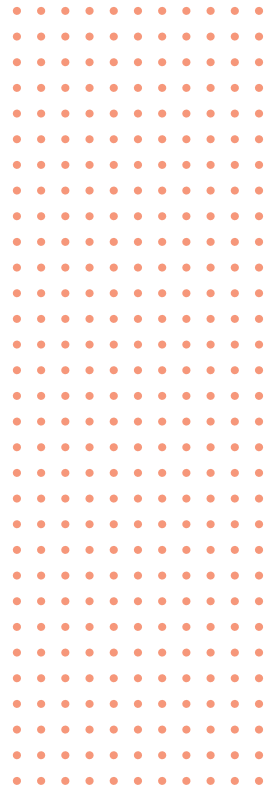
MyCC Chairman – Tan Sri Dato’ Seri Siti Norma Yaakob (front centre) – and CEO Shila Dorai Raj (third from the left) with Dr Frederic Jenny – Chairman of the OECD Committee on Competition (third from the right), Dr Allan Fels – former Chairman of the Australian Competition Consumer Commission (second from the right), Dr Shyam Khemani – former adviser on competition policy at the World Bank (fourth from the right), Pradeep S. Mehta – founder Secretary-General of CUTS (fourth from the left). (1st row, from left) MyCC Commissioners Prof Datin Dr Hasnah Haron and Abdul Malek (first and second from the left), and Alice Pham – Director of CUTS Hanoi Resource Centre (far right).

Training on Competition Policy and Law

A training programme on Competition Policy and Law was held on the 8th and 9th of June by the MyCC and the CUTS Institute for Regulation & Competition (CIRC) for officials of ministries and agencies, as well as Commission Members, MyCC staff, and members of the media. Distinguished representatives from the CIRC and the Organisation of Economic Cooperation and Development (OECD), as well as other multilateral bodies conducted the sessions, of which there were two – one focusing on economics and the other being a media training workshop.

Looking Out For The Malaysia Competition Commission

The 6th of May 2010 marked a milestone in the Malaysian business landscape as Parliament passed the Competition Act 2010 (CA2010) thus elevating Malaysia into the status of one of the few nations in the world which have competition laws. With the country aiming to become a fully-developed, high-income nation by the year 2020, it is important that the Malaysian economy is one that is healthy and competitive. After all, competition drives efficiency and innovation in businesses, and in turn they are able to attract higher levels of investment both domestic and foreign. Therefore, the Economic Transformation Programme (ETP) has identified the implementation of competition law as one of its Strategic Reform Initiatives.



Members of MyCC (2011-2014)



**Chairman
Tan Sri Dato' Seri
Siti Norma Yaakob**

Former Chief Judge
of Malaya



**Tan Sri
Abdul Gani Patail**

Attorney-General of
Malaysia



**Datuk Dr Rahamat
Bivi Yusoff
(Since Feb 2012)**

Director-General
Economic Planning
Unit



**Datuk Dr Rebecca
Fatima Sta Maria**

Secretary-General
of the Ministry of
International Trade
and Industry



**Dato' Saripuddin
Kasim**

Secretary-General
of the Ministry of
Domestic Trade,
Co-operatives and
Consumerism



Your Interests

The Role of the MyCC

Aside from passing the CA2010, Parliament also passed the Competition Commission Act 2010 which established the Malaysia Competition Commission (MyCC) as an agency under the Ministry of Domestic Trade, Co-operatives and Consumerism to act as the watchdog and enforcer of the CA2010.

Apart from implementing and enforcing competition law, MyCC also conducts advocacy work where it promotes the importance of competition, carries out studies and research on issues related to competition in business sectors or the Malaysian economy as a whole, and also educates the public on why competition is important for economic growth as well as being beneficial to consumers.

Furthermore, it advises the Minister of Domestic Trade, Co-operatives and Consumerism as well as other

Our Vision

“We shall be the authority nurturing and driving a conducive competition culture. We shall be a credible, reliable and efficient functional authority and partner, acknowledged for our high organisational strength and capability in reforming the business environment from a competition standpoint.”



Prof. Dato' Dr. Sothi Rachagan

Chief Executive /
Vice Chancellor,
Perdana University



Rangunath Kesavan

Lawyer and former
President of the
Malaysian Bar Council



Tan Sri Dato' Dr Michael Yeoh

CEO of the Asian
Strategy & Leadership
Institute (ASLI)



Abd Malek bin Ahmad

Executive Director of
an IT and 3-D
animation firm



Prof. Datin Dr. Hasnah Haron

Lecturer, Graduate
School of Business,
Universiti Sains
Malaysia

Our Mission

“To ensure a conducive competition culture in line with international best practices. We shall nurture and drive such a culture through the education of stakeholders and the effective application on the competition law without fear or favour.”

public and regulatory bodies on competition matters. This includes alerting concerned bodies if current or proposed legislation have anti-competitive effects.

In short, the MyCC is the one-stop authority on all things related to competition in Malaysia.

Setting Up the Framework

It is only apt then that heading the Commission is someone who has garnered a deserved reputation for integrity. She is Tan Sri Dato’ Seri Siti Norma Yaakob – the former Chief Judge of Malaya, and she was appointed to the post on the 1st of April 2011. Serving alongside her as Commission members are nine distinguished individuals drawn from the public and private sectors, academia and civil society, who were named to their posts on the 1st of May 2011.

Each member has been appointed to the Commission by the Prime Minister on the recommendation of the Minister of Domestic Trade, Co-operatives and Consumerism, and will serve for a term of three years. They will be eligible for re-appointment for a maximum of two consecutive terms.

The day-to-day running of the MyCC comes under the purview of its CEO – Shila Dorai Raj – who was named to that position in June 2011. Under her are five departments – Management Services, Strategic Planning and International Affairs, Investigation and Enforcement, Corporate Communication, and Legal. Then, in December 2011, the MyCC released four guidelines to help the public and business sectors understand their rights and responsibilities under the CA2010.

These are *Guidelines on Complaint Procedures, Market Definition, and Chapter 1 and Chapter 2 Prohibitions*. They were the result of six public consultation sessions where the views of more than 500 participants from different sectors of society were sought. With these guidelines in place, the MyCC was ready to move into action once the CA2010 came into force on the 1st of January 2012.

Powers and Responsibilities

The MyCC has been entrusted with powers to investigate and penalise anti-competitive acts by organisations such as price fixing, bid rigging, cartel forming, and other monopolistic activities. In order to help it carry out its duties, it has also been empowered with the ability to issue fines on those who infringe the Competition Act, with the maximum tariff being 10%



CEO Shila Dorai Raj runs the day-to-day operations of the MyCC.

The Competition Act 2010: Handbook for General Public uses illustrations to enable the public to understand the importance of competition.



being the *Competition Act 2010: Handbook for General Public* which was released on the 16th of July 2012. This publication is an easy-to-comprehend guide on the importance of competition, the Competition Act 2010, the role and responsibilities of the MyCC, and of course the rights of the public.

However, some misconceptions about the MyCC should be cleared. For one, it is not a consumer rights body. Furthermore, it does not regulate the telecommunications and multimedia, and the energy sectors as these come under the purview of the Communications and Multimedia Act 1998 and the Energy Commission Act 2001 respectively.

At the end of the day the passing and enforcement of the Competition Act 2010 and the establishment of the Malaysia Competition Commission mark an important step in Malaysia's drive to become a regional leader in business excellence.

of worldwide turnover during the period of infringement. In other words, if a company is found guilty of having violated the CA2010 for two years, it may be charged 10% of its total global revenue for those two years, and this applies to both Malaysian and foreign-registered companies.

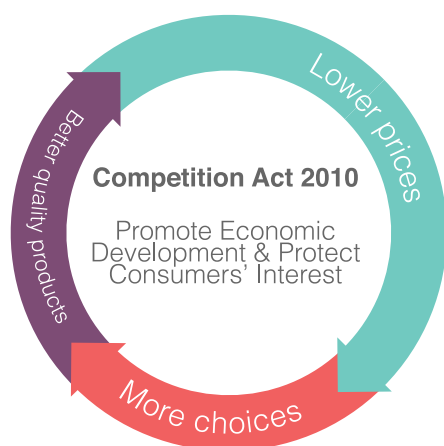
Of course the MyCC is not just bark and bite; it also educates and informs. Advocacy work is of great importance to it, especially among the SMEs as knowledge of competition law is still relatively low in that particular business sector.

Taking into consideration that SMEs make up 97% of all companies registered in Malaysia, the MyCC's focus on them is to be expected.

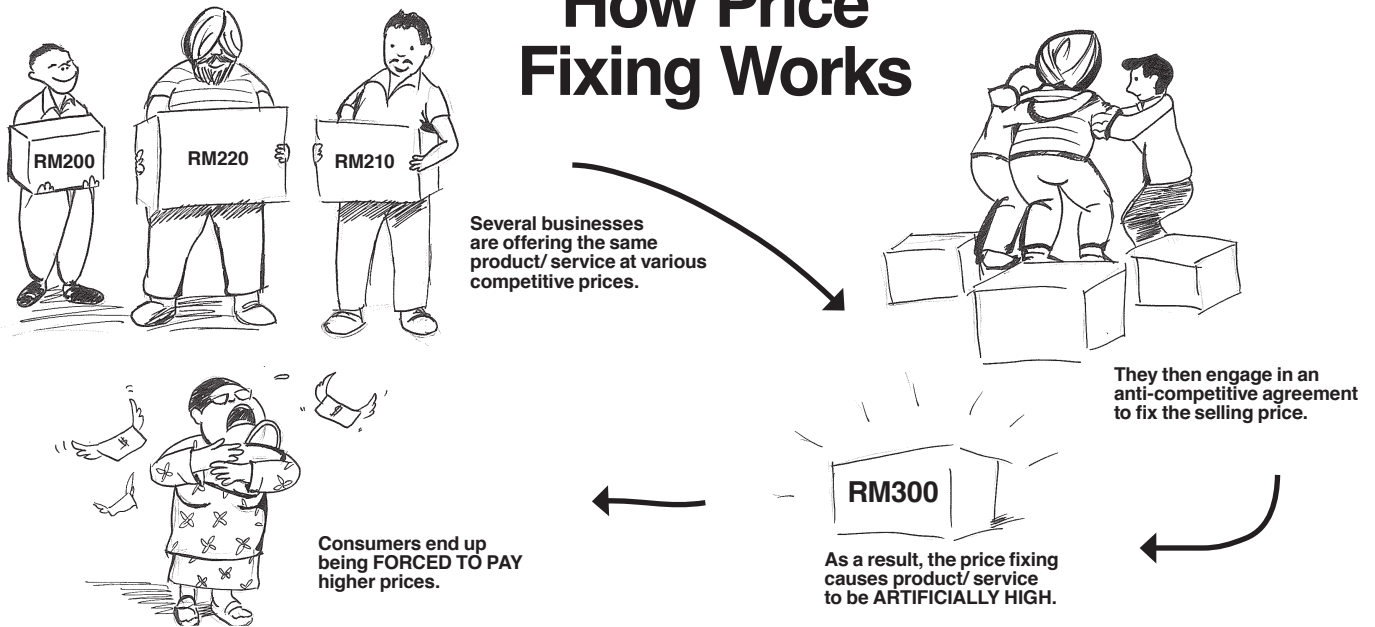
In fact such is the scale and scope of the advocacy programmes carried out by the MyCC that ignorance can no longer be an excuse. It also reaches out to members of the general public, with one example

“Competition drives enterprises to be more innovative and responsive to consumer demand, leading to an economy that operates more efficiently through lower pricing and choice. In turn, an enhanced economic performance encourages higher levels of private investment and job creation, perpetuating a cycle that will bring about a developed economy.”

Dato' Sri Ismail Sabri Yaakob – Minister of Domestic Trade, Co-operatives and Consumerism, 2011



How Price Fixing Works



Not So Sweet Smelling

The Cameron Highlands Floriculturist Association Case

As the agency entrusted with enforcing the Competition Act 2010 (CA2010), the Malaysia Competition Commission (MyCC) investigates cases of anti-competitive practices in Malaysian businesses. One of these is price fixing, and a case in point was the decision of the members of the Cameron Highlands Floriculturist Association (CHFA) to increase the price of flowers by 10%.

This incident came to the attention of the MyCC on the 4th of March 2012, when the President of the CHFA announced that the price of flowers sold by all 150 association members would be increased by 10% effective from the 16th of March 2012. This was a violation of Section 4(2) of the CA2010 which prohibits "a horizontal agreement between enterprises which has the object to fix, directly or indirectly, a purchase or selling price of any other trading condition."

In a decision made in a meeting on the 19th of July, it was proposed that the CHFA be instructed to cease and desist from fixing the prices of flowers,

undertake that its members will not engage in anti-competitive practices, and to make a statement in the media of the steps that it is taking to correct the situation.

Furthermore, a fine of RM20,000 would be imposed if the CHFA did not comply with the above conditions, along with subsequent penalties of RM1,000 for each day of non-compliance. This proposed decision was communicated to the CHFA on the 24th of October 2012, and the association was given 14 days to respond through writing, as well as indicate if it wished to make a verbal response.

The case was resolved on the 28th of October when the CHFA President was reported by *The Star* newspaper as saying that the price hike was no longer in force. He also revealed that the CHFA had apologised for its actions, saying that it was not aware that its action was a violation of the law, and that its representatives would visit the MyCC office to better understand the provisions of the CA2010.

Corporate Perceptions

In May 2012, The Federation of Malaysian Manufacturers conducted a survey of its members to ascertain whether they were at risk of anti-competitive acts which would violate the Competition Act 2010, as well as to assess their corporate compliance practices.

The questions were sent to 2,311 FMM members – ranging from large corporations to SMIs – however only 386 responded, with 65.8% from large companies, with the rest being from SMIs.

The survey asked respondents whether their organisations were at risk of the following anti-competitive acts – namely limiting/controlling production, limiting/controlling technical development, limiting/controlling access to markets or outlets, limiting/controlling investments, resale price maintenance, price fixing and bid rigging.

As the results (Fig 1) show, large corporations are of the opinion that they are more at risks of anti-competitive behaviour (particularly price fixing) compared to SMIs with the exception of resale price maintenance. Respondents, when asked if their companies had measures to address competition issues (Fig 2), revealed that most have some measures to address risk and compliance.

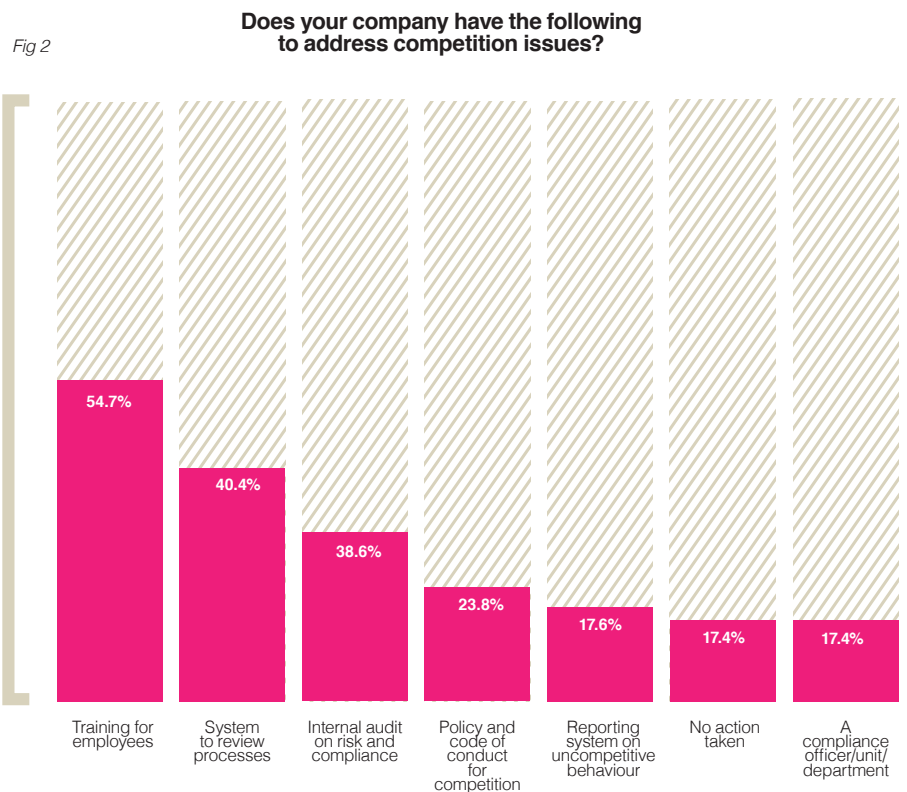
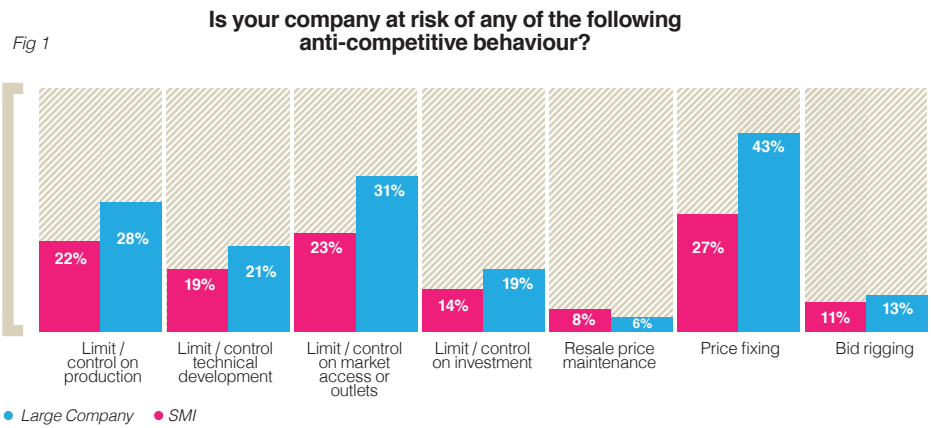
The most popular measure is employee training – 54.7% of respondents and only 17.4% have a compliance office or unit. A further breakdown showed that large corporations have more safeguards in place against anti-competitive behaviour. This could be because larger companies have more resources in terms of facilities and

human resources to put in place tools to address competition issues which SMIs might not have.

In conclusion, the FMM survey showed that while efforts to promote

competition are being made by large companies, much needs to be done with regards to SMIs.

For the full report kindly visit FMM’s website at www.fmm.org.my.



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