



Section 40 of the Competition Act 2010 [Act 712]

Decision on an Infringement by the Competition Commission (hereinafter referred to as “the MyCC”)

The MyCC has arrived at the decision that the action of the Cameron Highlands Floriculturist Association (hereinafter referred to as “the CHFA”) to increase the prices of flowers by 10%, effective 16 March 2012 for its members is an infringement of a prohibition under section 4(2) of the Competition Act 2010 where members of the CHFA through the CHFA had entered into a horizontal agreement between enterprises to *fix, directly or indirectly, a purchase or selling price.*

6 December 2012

Case Number: MyCC/0003/2012(ACA)

INDEX

No.	Matter	Page
CHAP. 1	FACTS OF THE CASE	
	A. Case Background	3
	B. Parties Involved	3
	C. Chronology of Investigation by the MyCC	7
CHAP. 2	APPLICABLE LAWS	
	A. Prohibition under section 4(2) and Application of Laws on Enterprises	13
	B. Evidence in respect of the Related Agreement, the MyCC's Analysis On Available Evidence And Conclusion	14
CHAP. 3	PROPOSED DECISION ON INFRINGEMENT	15
CHAP. 4	DECISION ON INFRINGEMENT	17

CHAPTER 1: FACTS OF THE CASE

A. Case Background

1.1. On 4 March 2012, the President of the Cameron Highlands Floriculturist Association (hereinafter referred to as “the CHFA”), Mr. Lee Peng Fo issued a statement published in the online portal of *The Star* that the CHFA will increase the prices of flowers by 10% effective from 16 March 2012. Mr. Lee Peng Fo as the President of the CHFA also mentioned that all its one hundred and fifty (150) members agreed to the said increase.

1.2. Based on that statement, the Competition Commission (hereinafter referred to as “the MyCC”) as the body enforcing the Competition Act 2010 (hereinafter referred to as “the Competition Act”) conducted an investigation relating to this matter. Results from the investigation conducted indicated that the CHFA members have engaged in an anti-competitive practice to fix, directly or indirectly, the selling price of their floricultural products by entering into a horizontal agreement between them which has the object or effect of significantly preventing, restricting or distorting competition in the floriculture market.

B. Parties Involved

The Cameron Highlands Floriculturist Association

1.3. The CHFA is an association registered on 13 April 1991 under section 7 of the Societies Act 1966 with the registration number 3351/91 (Perak). The address of the CHFA as stated in the *Undang-*

Undang Bagi Pertubuhan Pengusaha Bunga-Bunga Cameron Highlands (Rules of the CHFA) is Pejabat Pertanian Brinchang, 39100 Cameron Highlands, Pahang. The CHFA members are trading in the floriculture industry such as planting, distributing and exporting of flowers¹ in Cameron Highlands, Pahang.

1.4. The list of names of the CHFA members are as in Schedule 1²:

Schedule 1

Name of Members			
1.	Eternal Fragrant	15.	Lee Peng Beng
2.	You Land Nurseries Sdn. Bhd.	16.	Chiang Kay Cheong
3.	Khor Ah Bah	17.	Low Pik Hoon
4.	Khaw Chai Fat	18.	Leong Ming Kong
5.	Yong Leong Khim	19.	Leong Tat Chi
6.	Tang Mok Sang	20.	Kang Teik Hua
7.	Joseph Wong Yok Sit	21.	Ng Ching Hong
8.	Golden Mountain Farm	22.	Yong Yok Hang
9.	Sally Florist Nursery	23.	Lau Eng Ang @ Lew Eng Ang
10.	Chong Goang Shong	24.	Ho Kiaw
11.	Yam Ming Cheng	25.	Lim Kiat Seng
12.	Tan Ah Cheong	26.	Mu Woon Chin
13.	Wong Ting Eng	27.	Ng Cheow Fah
14.	Lee Khuan	28.	Khor Siak Foo

¹ Source of information – Department of the Registry of Societies Malaysia, Perak.

² Source of information - the CHFA.

29.	Ching Yun Meng	55.	Ee Kim
30.	Chow Hooi San	56.	Low Ah Cheng
31.	Khor Chin Chak	57.	Choong Shen Men
32.	Lai Ah Chai	58.	Khor Eng Tong
33.	Fong Chok Sing	59.	Teh Chin Lim
34.	Tan Ah Soon	60.	Chai Ming Chong
35.	Kwan Chey Seng	61.	Lee Tack Chai
36.	Tan Kar Hooi	62.	Beh Chai Heng
37.	Jeffrey Tan	63.	Low Or Chin
38.	Loh Foo Yang	64.	Ho Yen
39.	Lam Ya Sang	65.	Yam Ken Lap
40.	Yeong Su Kok	66.	Hoo Eng
41.	Chong Fui Jin	67.	Chan Kok Fou
42.	Khor Ean Hing	68.	Tang Yee Hoong
43.	Leong Sai Kong	69.	Khor Ching Fatt
44.	Tan Hee Cheen @ Than Hee Cheen	70.	Khor Cheng Huang
45.	Tan Siak Kee	71.	Khor Chee Sing
46.	Chong Kam Shui	72.	Ho On Sang
47.	Tan Joo Seng	73.	Tung Kam Wah
48.	Low Eng Huat	74.	Chow Wah
49.	Low Eng Hang	75.	Lam Mui Ngai
50.	Chan Teng Hong	76.	Cheng Park Chee
51.	Wong Kuan Yeow	77.	Jeffrey Tang Yue Wah
52.	Chong Lap Way	78.	Tan Kek Soo
53.	Chye Bee Lim	79.	Chan Boon Kuang
54.	Kam Kong @ Chan Kam Kong	80.	Poh Boon Sing

81.	Sing Kok	108.	Low Beng Chow
82.	Au Kok Weng	109.	Heng Poi Jin
83.	Kho Wah	110.	Wong Teng Wong
84.	Fong Weng Him	111.	Teoh Koy Chow
85.	Tan Theng Kow	112.	Tan Yaw Hoaw
86.	Cheon Fook Heng	113.	Heng Poi Hong
87.	Cheng Kim Huat	114.	Cheng Kim Hock
88.	Cham Boon Chay	115.	Choo Poh Sen
89.	Khaw Chai Ha	116.	Leong Kok Kian
90.	Long Ah Koong	117.	Leong Kook Hong
91.	Koo Chai King	118.	Ng Meng Sia
92.	Khaw Chye Hock	119.	Lee Yew Nam
93.	Khaw Chai Choon	120.	Lee Ewe Meng
94.	Khaw Thong Har	121.	Tan Ah Taa
95.	Khoo Kin Ching	122.	Foong Fook Loo
96.	Tan Weng Goo	123.	Pang Liang Choon
97.	Koh Hang Hooi	124.	Yong Leong Meng
98.	Ching Siew Yuen	125.	Khor Chee Yang
99.	Khoo Siak Kian	126.	Lum Yin Chun
100.	Chai Min Sia	127.	Wong Nee
101.	Chye Moi Poh	128.	Lee Peng Fo
102.	Lau Pek Ong	129.	Phoon Mon Hoy
103.	Lau Pek Ming	130.	Khor Kong Weng
104.	Wong Chin Foo	131.	Lee Choon Keat
105.	Khor Hiang Keow	132.	Ooi Chee Way
106.	Ko Yoon Seong	133.	Ooi Chee Yoong
107.	Yip Chooi Har		

1.5. The objectives of establishing the CHFA as contained in the the Rules of the CHFA are as follows:

- 1.5.1. to increase production output through the exchange of experiences in the floriculture industry;
- 1.5.2. to represent its members in any discussion with the government or other registered societies;
- 1.5.3. to promote the welfare and businesses of its members;
- 1.5.4. to protect and foster its members' interest; and
- 1.5.5. to foster close relations among its members..

1.6. The President of the CHFA, Mr. Lee Peng Fo and Mr. Yong Leong Meng who is the CHFA Executive Secretary are referred to in this Decision under section 40.

C. Chronology of Investigation by the MyCC

4 March 2012

1.7. The President of the CHFA, Mr. Lee Peng Fo issued a statement that was published in the online portal of *The Star* whereby the CHFA will increase the prices of flowers by ten per cent (10%) with effect from 16 March 2012. Mr. Lee Peng Fo as the President of the CHFA also mentioned that all its one hundred and fifty (150) members agreed to the said increase.

28 May 2012

1.8. Pursuant to that statement, the MyCC sent a letter to Mr. Lee Peng Fo on 28 May 2012 emphasising that the agreement between the CHFA members to increase the prices of flowers by ten per cent (10%) constitutes an infringement under the Competition Act.

1.9. The CHFA was also informed that the MyCC is willing to discuss the matter with the CHFA and an investigation on the same will only be conducted if the CHFA does not withdraw the said statement before 14 June 2012.

14 June 2012

1.10. Since no action was forthcoming from the CHFA, on 14 June 2012, a letter was addressed to the Director of the Registry of Societies, Perak (hereinafter referred to as “the ROS, Perak”) by the MyCC to obtain information regarding the Committee Members of the CHFA, the Rules of the CHFA and the CHFA’s Certificate of Registration for the MyCC’s further action.

1.11. On the same date, the ROS, Perak replied to the MyCC’s letter and enclosed a copy of the CHFA’s Certificate of Registration, a copy of the Society’s Constitution and a copy of the list of the Committee Members of the CHFA for the year 2009/2011 as requested by the MyCC.

20 June 2012

1.12. Thereafter, a letter addressed to the President of the CHFA was sent to formally inform the CHFA that due to the absence of any response from the CHFA to the MyCC's letter dated 28 May 2012, the MyCC has decided to conduct an investigation on the CHFA under section 14 of the Competition Act.

1.13. In the same letter, the MyCC, by the powers conferred to it under sections 17 and 18 of the Competition Act required the CHFA to submit the following documents before or on 27 June 2012:

- a certified true copy of the Rules of the CHFA;
- a list of names and addresses of the CHFA members; and
- the minutes of the CHFA meeting wherein the decision to increase the prices of flowers by 10% was made.

4 July 2012

1.14. On the same date, the MyCC also sent a letter addressed to the Chief News Editor, *Star Publications (M) Bhd.* to seek confirmation that the report published on 4 March 2012 in the online portal of *The Star* was prepared by Mr. Edmund Ngo and the statement that the CHFA will increase the prices of flowers by ten per cent (10%) as mentioned in that report was actually made by Mr. Lee Peng Fo, the President of the CHFA.

5 July 2012

1.15. Further to that, on 5 July 2012, the MyCC received a reply from the CHFA requesting to submit the documents required by the MyCC in its letter dated 20 June 2012 before or on 11 July 2012.

6 July 2012

1.16. On 6 July 2012, the MyCC wrote to the CHFA informing its approval towards the latter's requirement. The content of the letter also reiterates the CHFA's responsibility under the law to submit the documents and information as required.

10 July 2012

1.17. On 10 July 2012, the MyCC received the following documents from the CHFA:

- A copy of the Minutes of the Meeting on the Price Increase of Cameron Highlands Cut Flowers which was held by the CHFA on 28 February 2012 at 8.00 p.m. and attended by thirty-two (32) members of the CHFA;
- A copy of the Undang-Undang Bagi Pertubuhan Pengusaha Bunga-Bungaan Cameron Highlands; and
- The list of names of the CHFA members.

1.18. Based on the observations made on the Minutes of the Meeting on the Price Increase of Cameron Highlands Cut Flowers which was submitted, the MyCC found that the decision to increase the price of flowers was a result of increases in all production inputs such as workers' salaries, fertilisers, costs of electricity, plastic and etc. At the same time, the decision was also made by taking into account that the last price increase for flowers was done in 2008.

1.19. At the same meeting, the CHFA Executive Secretary, Mr. Yong Leong Meng shared his data specifically with regard to the prices of primary inputs in the floriculture industry. The data are as in Schedule 2³:

Schedule 2

Matter	Year 2008	Year 2011	Percentage Of Increase
Plastic	RM8.50/kg	RM10.80/kg	27.06%
Wood	RM3100/tonne	RM3450/tonne	11.29%
Electrical energy	RM0.397/KW	RM0.430/KW	8.31%
Foreign worker	RM20/day	RM30/day	50.00%
Fertiliser	RM850/ tonne	RM1050/ tonne	23.50%

³ This information is obtained from Minutes of the Meeting Regarding the Price Increase of Cameron Highlands Cut Flowers held by CHFA on 28 February 2012.

1.20. Based on the matters stated above, the CHFA Adviser, Mr. Cheong Yun Meng suggested that the prices of cut flowers be increased and his suggestion was unanimously agreed upon by all the members who attended the meeting. All of them then decided to increase the prices of Cameron Highlands cut flowers by 10% and the increase was to come into force on 16 March 2012 for flowers sold in Malaysia and abroad, except Japan.

1.21. Apart from that, the MyCC also found that the CHFA has one hundred and thirty-three (133) members. This was evident from the list of the names of its members submitted by the CHFA. The total number is not consistent with the statement issued by the President of the CHFA Mr. Lee Peng Fo as published in the online portal of *The Star* on 4 March 2012. In that report, Mr. Lee Peng Fo mentioned that all its one hundred and fifty (150) members agreed to the increase.

4 September 2012

1.22. The MyCC then received a confirmation from Mr. Yong Leong Meng who is the Executive Secretary of the CHFA regarding the confusion. Based on a meeting held on 4 September 2012 at the MyCC office, Mr. Yong Leong Meng informed that the actual number of the CHFA members is one hundred and fifty (150). In this regard, Mr. Yong Leong Meng further clarified that the list of names of the CHFA members as submitted to the MyCC previously was incomplete.

CHAPTER 2: APPLICABLE LAWS

A. Prohibition under Section 4(2) and Application of Laws on Enterprises

2.1. Section 4 of the Competition Act states the following:

“(2) Without prejudice to the generality of subsection (1), a horizontal agreement between enterprises which has the object to—

- (a) fix, directly or indirectly, a purchase or selling price or any other trading conditions;*
- (b) share market or sources of supply;*
- (c) limit or control –*
 - (i) production;*
 - (ii) market outlets or market access;*
 - (iii) technical or technological development; or*
 - (iv) investment; or*
- (d) perform an act of bid rigging,*

is deemed to have the object of significantly preventing, restricting, or distorting competition in any market for goods or services”.

2.2. The term “agreement” in the Competition Act is defined as—

“any form of contract, arrangement or understanding, whether or not legally enforceable, between enterprises, and includes a decision by an association and concerted practices”.

2.3. In reference to the abovementioned definition, it is clear that a decision made by an association is also considered as an agreement. It is the intention of the Competition Act to widen the meaning of an agreement to also cover all the decisions made by an association without limiting it to just an ordinary agreement.

2.4. In this case, the decision made by the CHFA to increase the prices of Cameron Highlands cut flowers by 10% and the increase is to be enforced on 16 March 2012 for flowers sold in Malaysia and abroad, except Japan, is considered as an agreement. A copy of the Minutes of the Meeting on the Price Increase of Cameron Highlands Cut Flowers held on 28 February 2012 as submitted by the CHFA to the MyCC is referred to as evidence that there exists an agreement that was approved by the CHFA members.

2.5. Besides, the MyCC also considers that whether or not all the CHFA members complied with the decision made was of no relevance. Likewise, whether or not the decision made by the CHFA was applicable to all its members. This is due to the statement by Mr. Lee Peng Fo as published in the online portal of *The Star* that all its one hundred and fifty (150) members agreed to the said increase.

B. Evidence in respect of the Related Agreements, the MyCC's Analysis On Available Evidence And Conclusion

Minutes of the Meeting on the Price Increase of Cameron Highlands Cut Flowers held by the CHFA on 28 February 2012

2.6. The MyCC relied on the Minutes of the Meeting on the Price Increase of Cameron Highlands Cut Flowers held by the CHFA on 28 February 2012 where it was recorded that the Adviser to the CHFA, Mr. Cheong Yun Meng had suggested that the prices of cut flowers be increased and his suggestion was unanimously agreed upon by all the members present.

2.7. All the members present then decided to increase the prices of Cameron Highlands cut flowers by 10% and the increase shall come into force on 16 March 2012 for flowers sold in Malaysia and abroad, except Japan.

2.8. Following this decision, the President of the CHFA, Mr. Lee Peng Fo gave a press statement which was later reported in the online portal of *The Star* on 4 March 2012. This matter was confirmed by Mr. Yong Leong Meng who is the Executive Secretary of the CHFA in his statement to the MyCC on 4 September 2012 at the MyCC office.

CHAPTER 3: PROPOSED DECISION ON INFRINGEMENT

3.1 Based on the MyCC Meeting no. 6/2012 held on 19 July 2012, a decision was proposed as follows:

- (i) the CHFA is instructed to cease and desist the infringing act of fixing prices of flowers;
- (ii) the CHFA shall provide an undertaking that its members shall refrain from any anti-competitive practices in the relevant market;

- (iii) the CHFA shall issue a statement on the above mentioned remedial actions in the mainstream newspapers; and
- (iv) in the event that the CHFA fails to comply with the above mentioned remedial actions, a financial penalty amounting to RM20,000.00 shall be imposed on the CHFA. An additional RM1,000 will be imposed for each or part of each following day that the CHFA fails to comply.

3.2. This Proposed Decision was later served on the CHFA on 24 October 2012. In general, the Proposed Decision stated the facts of the case, the chronology of investigation conducted by the MyCC as well as the laws applicable under the Competition Act. The CHFA was later given a period of fourteen (14) working days from the date of the receipt of the Proposed Decision by the CHFA to:

- 3.2.1. submit a written representation to the MyCC; and
- 3.2.2. indicate whether the CHFA wishes to make an oral representation before the MyCC.

3.3. Subsequently, on 2 November 2012, a meeting was held between the representatives of the CHFA, i.e. Mr. Lee Peng Fo and Mr. Yong Leong Meng and the MyCC representatives to discuss on the steps to be taken by the CHFA in complying with the MyCC directions as contained in the Proposed Decision.

3.4. At that meeting, both Mr. Lee Peng Fo and Mr. Yong Leong Meng also mentioned to the MyCC representatives that the CHFA does not intend to submit any representation to the MyCC.

3.5. Pursuant to that, the MyCC received a letter dated 3 November 2012 from the CHFA officially stating the same.

CHAPTER 4: DECISION ON INFRINGEMENT

4.1. Upon considering the letter sent by the CHFA dated 3 November 2012 and based on the MyCC Meeting no. 9/2012 held on 26 November 2012, a decision was made as follows:

- (i) the CHFA is instructed to cease and desist the infringing act of fixing prices of flowers;
- (ii) the CHFA shall provide an undertaking that its members shall refrain from any anti-competitive practices in the relevant market; and
- (iii) the CHFA shall issue a statement on the above mentioned remedial actions in the mainstream newspapers.

(SHILA DORAI RAJ)
Chief Executive Officer
Competition Commission