



Competition Act 2010 [Act 712]

Decision of the Competition Commission

Finding of Non-Infringement under Section 39 of the Competition Act 2010

26 October 2015

(Reference No: MyCC/0049/2013)

TABLE OF CONTENTS

A.	INTRODUCTION	3
B.	PROCEDURE	4
C.	BACKGROUND	
	Facts of the Case	5
D.	THE INVESTIGATION	7
E.	CONTINUOUS MONITORING	12
F.	FINDINGS BY THE COMMISSION	13
G.	CONCLUSION	16

A. INTRODUCTION

1. On 27 December 2013, the Commission commenced its investigation upon the direction by the then Minister of Domestic Trade, Cooperatives and Consumerism, YB Datuk Sri Hassan Bin Malek on an article published by The Star¹.
2. The said article reported that the President of the Federation of Stationers and Booksellers Association of Malaysia ('PPPABM'), Encik Tey Tong Seng had made an announcement that the prices of stationeries and books are expected to increase by 20% to 30% in the first quarter of 2014 due to the rise of the output costs.
3. Upon investigation and based on its findings, the Commission found that the alleged conduct does not result into an infringement of any prohibition under Part II of the Competition Act 2010 ('the Act').
4. The Commission hereby issues its decision stating the facts on which it has based the decision and its reasons for making such a decision.

¹ 27 December 2013, Newspaper Cutting *The Star: Stationery Prices Expected To Go Up. Products to cost at least 20% to 30% more within first quarter of next year.*

B. PROCEDURE

5. The Commission commenced an investigation under Section 14(2) of the Act when it was directed by the then Minister of Domestic Trade, Cooperatives and Consumerism, YB Datuk Sri Hassan Bin Malek to investigate the said announcement published by The Star which reported that the prices of stationeries and books are expected to increase by 20% to 30% in the first quarter of 2014 due to the rise of the output costs.
6. The Commission conducted a random survey on the prices stationeries and books some time around December 2013.
7. The Commission also issued a written notice under Section 18(1) of the Act on 7 January 2014 to obtain documents and information from the PPPABM including the agenda and minutes of meeting held by the PPPABM.
8. The Commission further held a meeting with the PPPABM's representatives on 13 January 2014 to obtain more information pertaining to the allegation.

C. BACKGROUND

Facts of the Case

9. On 23 December 2013, two Chinese newspapers, *Sin Chew Daily*² and *NanYang Press*³ reported that the President of the PPPABM, Encik Tey Tong Seng had made an announcement that the prices of stationeries and books are expected to increase by 20% to 30% in the first quarter of 2014 due to the rise of the output costs.
10. Thereafter, the other local newspapers particularly, *China Press*⁴ and *The Star*⁵ made coverage on the same announcement.
11. Based on the article published by *The Star* on 27 December 2013, the then Minister of Domestic Trade, Cooperatives and Consumerism, YB Datuk Sri Hassan Bin Malek directed the Commission to investigate this matter.
12. *The Star* newspaper further reported that the then Minister had classified the PPPABM's intention to raise the prices of

² 23 December 2013, Newspaper Cutting *Sin Chew Daily: Unable To Cope With The Rising Cost, Price Of Stationery And Books Expected To Increase By 30%*.

³ 23 December 2013, Newspaper Cutting *NanYang Press: Notice Received From Supplier, Price Hike For Some Stationery Next Month*.

⁴ 24 December 2013, Newspaper Cutting *China Press: Close Monitor To The Price of Stationery Based On Source of Supply*.

⁵ Supra note 1.

stationeries and books as a cartel activity which is an infringement under the Act⁶.

⁶ 27 December 2013, Newspaper Cutting *The Star: Stationers And Booksellers Behaving Like Cartel, Says Hasan Malek.*

D. THE INVESTIGATION

13. A search conducted at the Registrar of Societies showed that the PPPABM is a federation registered under Section 7 of the Societies Act 1988 on 6 June 2007.
14. The registered address of the PPPABM is No.10A, Jalan Kanci, Pudu, 55100 Kuala Lumpur⁷.
15. The PPPABM's objectives as provided for under Rule 3 of the PPPABM's Constitution are as follows:
 - a) *to promote, provide and maintain high standard and quality of service in and amongst dealers of stationery, book, paper and other related business.*
 - b) *to foster unity and friendly feelings amongst members and to promote the common interest and welfare of the members.*
 - c) *to safeguard the interests of member and make representations to Government or business organisation.*
 - d) *to promote and co-ordinate development of the stationery and books industry and contribute effectively to the economic development of the country.*

⁷ Constitution of the PPPABM.

e) to provide arbitration facilities among members if agreed and requisitioned in writing by the parties concerned.

f) to accept donation and gifts or make donations or gifts for patriotic, educational, religious, charitable or other deserving purposes.

g) to organize events, function, activities or programs to raise funds for the Association and/or to foster goodwill and understanding among the members.

h) to purchase, take lease, rent, acquire and own property for use of the Association in line with its objectives.”

16. Further, Rule 4 of the Constitution of the PPPABM provided that the PPPABM's membership is open to any registered association either at the state or district level which has the similar objectives as the PPPABM.

17. Some time around December 2013, the Commission conducted a random survey on the prices of books and stationery within Kuala Lumpur area. The survey was conducted by way of a short interview in person with the personnel of nine (9) stationery shops⁸.

⁸ The stationery shops involved are Hi-Scan Wholesale Sdn. Bhd., Hapas Enterprise, BB Art and Stationery, Malaysia Books Centre, Marsden Law Book Sdn. Bhd., SS Mubarak & Brothers Sdn. Bhd., Syarikat United Books Sdn. Bhd. and MBO Book Centre Sdn. Bhd.

18. Of all the nine (9) stationery shops, only one was aware of the announcement concerning the price increase to the stationery and books.
19. Nevertheless, all of them informed that there was no increase to the prices of stationery and books at the material time due to one or more of the following reasons:
 - (i) to adopt a competitive pricing strategy in the business; and/or
 - (ii) only selected item was affected as a result of price hike such as the comic books; and/or
 - (iii) no notice was received from the publisher to increase the price of locally published books and magazines.
20. On 7 January 2015, the Commission vide a written notice under Section 18 of the Act directed the PPPABM to provide documents and information which could facilitate the Commission's investigations. It was found that none of the documents showed that there was a decision or discussion by the PPPABM at any time to raise the prices of stationeries and books collectively.
21. Mr. Tey Tong Seng, the President of PPPABM in his reply dated 13 January 2014 to the written notice contended the following:

- (i) the alleged announcement made by him is entirely of market circumstances and behaviours, without any resolution or collective decision made or arrived at the meeting of the PPPABM;
 - (ii) the PPPABM did not convene any meeting to discuss the prices of stationery as this is beyond any obligation provided for under the Societies Act 1966; and
 - (iii) the PPPABM reiterated that there was no meeting convened in December 2013.
22. In furtherance to the above, a meeting was held between the Commission and the representatives of the PPPABM, namely Mr. Tey Tong Seng and Mr. Chee Pau San, the Secretary of PPPABM on 13 January 2014.
23. Mr. Tey Tong Seng stood by the explanation rendered in his reply and further highlighted that the PPPABM is a non-profit association and not a trading concern of any kind, thus it is not within the scope of the PPPABM's duty to determine the prices of the stationery and books. According to Mr. Tey, currently there are nine (9) State Stationers and Booksellers Associations duly registered with the Registrar of Societies of Malaysia as the members of PPPABM⁹.

⁹ Selangor and Kuala Lumpur Stationers and Booksellers Association, Sabah State Stationers and Booksellers Association, Pahang State Stationers and Booksellers Association, Sarawak State Stationers and Booksellers Association, Penang State Stationers and Booksellers Association, Negeri

24. Mr. Tey Tong Seng reiterated that the price fixing of such is decided by the various individual players in which this includes the members and non-members of the PPPABM based on the individual market place, situation, buying cost and operation cost respectively.

E. CONTINUOUS MONITORING

25. Consequent to the announcement made by the PPPABM, the market of the stationeries and books was under a watchful eye of the Commission throughout the year in 2014 and lasted until first semester of the school year 2015¹⁰.
26. The Commission also observed the impact of the pre and post implementation of Goods and Services Tax (GST) which was in force on 1st April 2015 to the relevant market activities, particularly in respect of the prices of stationeries and books.
27. The Commission found that there was no announcement made either by the PPPABM or its members in relation to the price increase of the stationeries and books. There was also no information which may lead to the PPPABM's attempt in committing an anti-competitive conduct with its members or the third party at the stage of observation.

¹⁰ The school year is divided into two semesters. The first begins in the beginning of January and ends in June; the second begins in July and ends in November.

F. FINDINGS BY THE COMMISSION

28. Several requirements have to be fulfilled in determining whether there is an infringement to Section 4(2)(a) of the Act by virtue of the alleged announcement made by the President of the PPPABM in respect of the PPPABM's intention to increase the prices of the stationeries and books, which are as follows:-
- (i) The members are 'enterprises' as defined under Section 2 of the Act;
 - (ii) There is a horizontal agreement between the members of the PPPABM; and
 - (iii) The agreement has the object of significantly preventing, restricting, or distorting competition in any market for goods and services.
29. On the basis of the findings of the investigation, the Commission has found no evidence to prove the alleged anti-competitive conduct. This is supported by the documents and information gathered by the Commission.
30. It is pertinent to note that no meeting was found to have been convened between the members of the PPPABM during or around December 2013 nor was there agenda planned for the discussion on the price increase of stationeries and books.

31. The Commission has reviewed the Constitution of the PPPABM and does not find any clause which allows the members of the PPPABM to discuss and/or decide on the prices of stationery items for its members and non-members either.
32. The result of the random survey which was conducted by the Commission in December 2013 revealed that all stationery shops' personnel during the interview confirmed that there was no increase in the prices of stationeries and books, let alone almost all of them were not aware of the alleged announcement made by the President of the PPPABM at the material time.
33. The Commission further observed that there was no announcement made neither by PPPABM nor its members in relation to the price increase of the stationeries and books. The Commission also found no information which may lead to the PPPABM's attempt in committing an anti-competitive conduct with its members or the third party throughout the year in 2014 and first half year of 2015.
34. In light of the above, the allegation cannot be substantiated. The evidence gathered does not appear to show any infringement of the Act.

35. The Commission is also satisfied that the alleged announcement made by the President of the PPPABM in relation to the price increase of the stationeries and books by 20% to 30% was nothing more but his personal view and did not represent the members of the PPPABM.

G. CONCLUSION

36. In view of the foregoing, the Commission concludes that there is no infringement of a prohibition under Part II of the Act.

37. Notwithstanding the findings above, the Commission views that the PPPABM and its members should be more vigilant in discharging its duty in accordance with its Constitution and shall comply with the Act at all times. The PPPABM and its members should at all time refrain from making any announcement in relation to price fixing or any decision to that effect which is in contravention of the Act in the future.