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Competition Act 2010 [Act 712]

Decision of the Competition Commission

Finding of Non-Infringement under section 39 of the Competition Act 2010 - My Egg Consortium Sdn. Bhd.

May 2015

(Ref No: MyCC/0004/2012)

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## 1. INTRODUCTION

1. In November 2012, the Competition Commission ('the Commission') initiated an investigation under section 15 of the Competition Act 2010 ('the Act') into a suspected infringement of section 4(2) of the Act by the My Egg Consortium Sdn Bhd ('the My Egg') a set-up by the Federation of Livestock Farmers' Association Malaysia ('the FLFAM').
2. It was alleged by the anonymous complainants, the My Egg was set up by members of the FLFAM in 2010 with the objective to reduce the supply of chicken eggs in the local market to ultimately push up the egg prices.
3. The complainants alleged that the My Egg procured eggs from major producers representing more than 75% of the total production of eggs in West Malaysia. The My Egg was said to export chicken eggs in huge quantities to the international market such as Hong Kong and Angola, thus reducing supply and increasing the demand, which will eventually drive up egg prices<sup>1</sup>.
4. Additionally, The Star newspaper article entitled "Old hens lay-ed off" dated 25 October 2012, reported:

*"Federation of Livestock Farmers' Association layer unit chairman Yap Hoong Chai said....farmers would typically cull*

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<sup>1</sup> Undated anonymous complaint

*about 10% of their older layer hens each cycle (of one to three months, depending on the farm size) to make room for younger, more productive hens, but have recently been culling up to 10% more hens.*

*Yap added: "The additional culling is only a temporary measure. When we manage to balance supply and demand, farmers should be able to fully replace the culled layers within a couple of cycles."*

5. Upon investigation and based on its findings, the Commission found that there is no evidence of infringing conduct by the My Egg. Therefore, the Commission decided there is no infringement of a prohibition under Part II of the Act by making a Finding of Non-Infringement under Section 39 of the Act.
6. The Commission hereby issues its decision stating the facts on which it has based its decision and its reasons thereof.

## **2. PROCEDURE**

7. The Commission commenced an investigation under section 15 of the Act following a number of anonymous complaints received on 10 July 2012, 6 Sept 2012 and a newspaper article reported in The Star on 25 October 2012 entitled "Old hens lay-ed off".

8. The complaints and the news report created reasons for the Commission to suspect that the My Egg has infringed or is infringing section 4(2) of the Act through the members of the FLFAM by possibly colluding to export eggs and culling of layer hens to reduce the supply of eggs in the domestic market thus driving up local egg prices.
9. During the course of investigation, the Commission issued a number of section 18 notices to obtain documents and information such as minutes of the association meeting from the FLFAM and the representative of the My Egg.
10. The President of the FLFAM, the Chairman of the Layer Unit of FLFAM and a former employee were interviewed to obtain statement(s). The Commission also obtained data on egg production from the Department of Veterinary Science (DVS) and price data from the Ministry of Domestic Trade, Co-operatives and Consumerism (KPDNKK).

### **3. FACTS**

#### **Federation of Livestock Farmers' Associations of Malaysia ('FLFAM')**

11. The FLFAM is an umbrella association comprising of 15 smaller regional associations from all over Malaysia. It is registered with the Registrar of Societies and has the Registration Number: 1417 and postal address at No 93- A, Jalan SS 15/5A, Subang Jaya, Selangor, Malaysia.

12. The FLFAM is mainly involved in doing advocacy work with the Government regarding issues that impact the various livestock industries. The FLFAM also remains in regular contact with the DVS for the determination of ceiling prices for eggs by the Government during festive seasons.

### **My Egg Sdn. Bhd. ('My Egg')**

13. A private limited company registered in Malaysia and established on 24 February 2010<sup>2</sup>. It was created through the initiative of the Layer Unit Committee of FLFAM in order to assist some egg producers in Malaysia to export their eggs to various countries around the world such as Thailand, Hong Kong and even Angola.
14. The My Egg helps farmers with logistics, health certificates, phone calls and processing of all relevant documents.

### **Essential Data**

15. The DVS provided the Commission with data on egg production through its DVS Industry Report 2013/2014<sup>3</sup>. This data indicates the output of broilers and chicken eggs in Peninsular Malaysia from 2004 till 2014. The DVS also provided Data on Excess Supply of Egg Production, Consumption, Export and Pricing 2003-2014.

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<sup>2</sup> (Company No: 890839-H)

<sup>3</sup> [http://www.flfam.org.my/images/statistics\\_5\\_1b.jpg](http://www.flfam.org.my/images/statistics_5_1b.jpg)

16. The Commission also obtained the Government Controlled Price during Festive Seasons for the years 2012-2014 from the KPDNKK.

#### **4. FINDINGS BY THE COMMISSION**

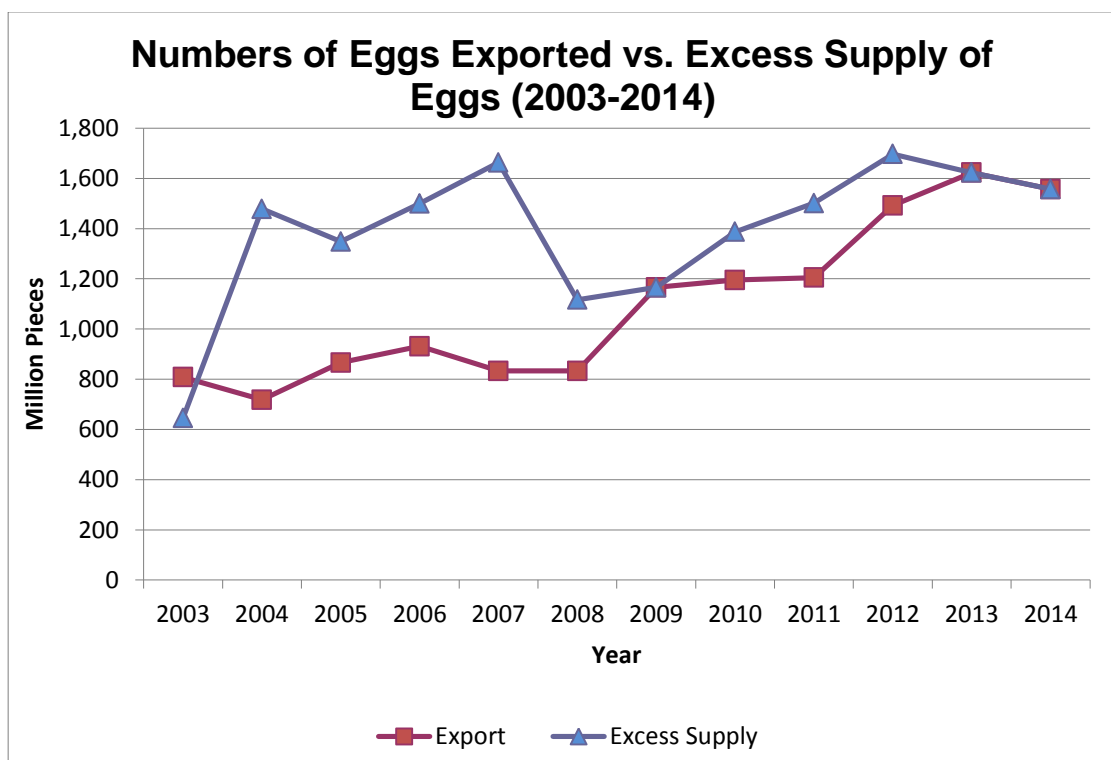
17. In establishing whether there is an infringement under section 4(2) of the Act, the Commission undertook a thorough economic analysis of all the various data obtained from the DVS and the KPDNKK. Based on the analysis, the Commission found there was an excess supply of eggs production in Malaysia before and after the establishment of the My Egg.
18. The Commission found that throughout the year 2000 to 2011, excess domestic supply ranged from 0.645 billion to 1.663 billion eggs. In the period post establishment of the My Egg, analysis indicates that excess supply doubled. It was established, Malaysia is self-sufficient in the production of eggs as there are excess eggs in the local market over the past 11 years.
19. As evident from the data obtained by the DVS, the Commission found there has been a substantial increase in the unit of eggs produced since 2009. The rate of increase ranged from between 1.5% in 2009 to 22.19% in 2013 as Table 1<sup>4</sup> shows.

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<sup>4</sup> Source : Data obtained from DVS Industry Report 2013/2014  
[http://www.flfam.org.my/images/statistics\\_5\\_1b.jpg](http://www.flfam.org.my/images/statistics_5_1b.jpg)

Year	Broiler (Birds)	Growth Rate% <sup>5</sup>	Chicken eggs-Units	Growth Rate%*
2004	414,350,008		6,871,061,160	
2005	437,054,987	5.48	7,420,599,487	8.00
2006	427,225,469	-2.25	7,237,692,613	-2.46
2007	513,799,017	20.26	7,772,670,290	7.39
2008	491,413,930	-4.36	7,516,050,893	-3.30
2009	516,231,809	5.05	7,628,783,615	1.50
2010	524,035,048	1.51	8,564,601,148	12.27
2011	614,496,996	17.26	8,920,889,949	4.16
2012	639,997,602	4.15	9,103,145,498	2.04
2013	657,095,676	2.67	11,123,141,506	22.19

20. The graph labelled Figure 1 below clearly indicates the volume of exported eggs in comparison to the excess supply of eggs for years 2003-2014<sup>6</sup>. The excess supply of eggs was greater than exports analysis indicates.



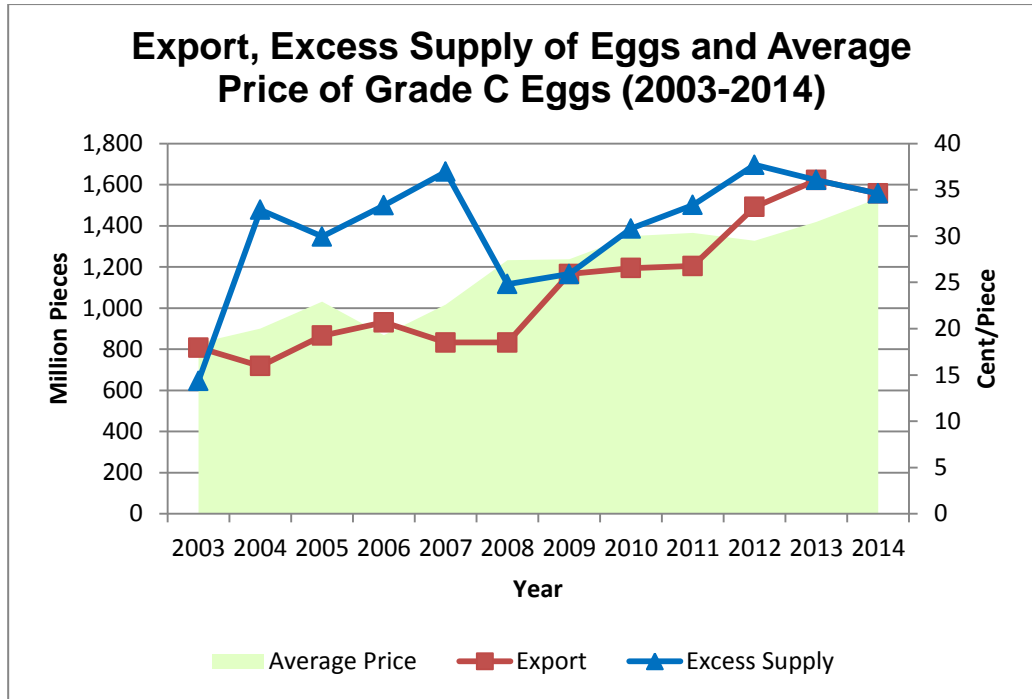
**Figure 1: Export and Excess Supply of Eggs in Domestic Market**

<sup>5</sup> Growth Rate calculated by Commission

<sup>6</sup> Source: Department of Veterinary Services



21. The only exception was the year 2003 where export volume was greater than excess supply and this was due to a surge in demand by Asian countries due to the Severe Acute Respiratory Syndrome (SARS) epidemic which caused the culling of millions of live chickens throughout Asia.
22. In 2009, 2013 and 2014 yet again, the outbreak of Avian Flu caused a surge in international demand but as Figure 1 indicates, the volume of exports equalled that of excess supply of eggs therefore causing no impact in the supply of eggs in the local market.
23. This analysis drives the point that egg producers have not used exports to shrink the supply of eggs in the local market.
24. The plotting in Figure 2 below, illustrates the fluctuation of price of eggs from 2003 to 2014. Research indicates that Grade C eggs are the most consumed eggs by mass consumers and most purchased by the local eateries and restaurants in Malaysia. Thus, this was chosen as a benchmark to analyse the average price against the export and excess supply.
25. The analysis in relation to price showed, although the price of eggs kept fluctuating and also increased over time, the price of eggs fell in 2012, the year the allegation was made.



**Figure 2: Export, Excess Supply of Eggs and Average Price of Grade C Eggs**

26. In the course of its investigation, the Commission has also found that during festive seasons, price of eggs are controlled. The Festive Season Price-Controlled Scheme was implemented in 2000 under the Price Control and Anti-Profitteering Scheme Act 2011 in order to prevent unscrupulous conduct by retailers during this high demand period.
  
27. This price regulation in essence points out that certain times of the year, when price of eggs is controlled, this is not reflective of a collusion or infringement of a prohibition under Part II of the Act but rather a mechanism introduced by the Government to ensure that consumers are not exploited.

28. In fact, analysis shows that excess supply of eggs was consistently greater than exports between 2009 and 2013 refuting allegations of shortage in supply in the local market.
29. A thorough assessment of the documentary evidence obtained from the FLFAM, makes no suggestion the members of the FLFAM<sup>7</sup> have collectively agreed to reduce the supply of eggs in the domestic market by the exportation/ dumping of eggs through the My Egg nor is there any evidence pinpointing coordinated culling of live chickens.
30. In establishing whether there is an infringement under section 4(2) of the Act, the Commission will have to conduct the following tests:
- (i) The My Egg is an enterprise as defined under section 2 of the Act;
  - (ii) There is a horizontal agreement between the enterprises; and
  - (iii) The nature of the agreement has the object of significantly preventing, restricting, or distorting competition in any market for goods and services.
31. A review of all evidence obtained, makes no indication that the My Egg; an enterprise has entered into any agreement to reduce the supply of eggs in the domestic market by the

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<sup>7</sup> Minutes of Meeting – FLFAM AGM and Central Committee meetings.

exportation/ dumping of eggs through the My Egg nor is there any evidence pinpointing agreement coordinated culling of live chickens.

## **5. CONCLUSION**

32. The Commission finds, based on these analysis, the allegation that the My EGG has been involved in dumping eggs in the overseas market in order to create shortage of eggs supplied in the domestic market and ultimately raise the price of local eggs to be unfounded and unsubstantiated.
33. There is no evidence to support the allegation that the My Egg was created with the object of reducing egg supply in Malaysia in order to raise the prices of eggs.
34. In light of this, the Commission concludes that there is no infringement of a prohibition under Part II of the Act.