



Competition Act 2010 [Act 712]

Decision of the Competition Commission

Finding of Non-Infringement under section 39 of the Competition Act 2010 by the members of the Sarawak Restaurants Association

April 2015

(Ref No: MyCC/0046/2013)

TABLE OF CONTENTS

1.	INTRODUCTION	3
2.	PROCEDURE	3
3.	FACTS & EVIDENCE	4
	Sarawak Restaurant Association	4
	The Borneo Post News Article	4
4.	FINDINGS BY THE COMMISSION	6
5.	CONCLUSION	8

1. INTRODUCTION

1. In December 2013, the Competition Commission ('the Commission') initiated an investigation under section 14(1) of the Competition Act 2010 ('the Act') into a suspected infringement of section 4(2)(a) of the Act by the members of the Sarawak Restaurants Association ('SRA').
2. Upon investigation and based on its findings, the Commission found that there is no evidence of infringing conduct by the members of the SRA. Therefore, the Commission decided there is no infringement of a prohibition under Part II of the Act.
3. The Commission hereby issues its decision stating the facts on which it has based its decision and its reasons thereof.

2. PROCEDURE

4. The Commission commenced an investigation under section 14(1) of the Act when the Commission became aware of an article published in the Borneo Post¹ on 28 November 2013 titled "Dining to be dearer next year - Association chief". The article quoted the statement of the Chairman of the SRA, Kapitan Hu Hee Juan that the customers can expect to pay more by between 10 and 15 per cent for food catering outside restaurants and at least five per cent for in-house dining.

¹ <http://www.theborneopost.com/2013/11/28/dining-to-be-dearer-next-year-association-chief/>

5. The article created reasons for the Commission to suspect that the members of the SRA have infringed or are infringing section 4(2)(a) of the Act by agreeing to fix prices of food and beverages in Kuching, Sarawak.
6. During the course of investigation, the Commission issued a number of section 18 notices to obtain documents and to obtain statements from the Chairman of the SRA. The Commission also conducted an interview with the Chairman. A meeting was also held with representatives of the Borneo Post.

3. FACTS & EVIDENCE

Sarawak Restaurant Association (SRA)

7. The SRA is registered with the Registrar of Societies and has the Registration Number: PPM SK 992/73.
8. Its postal address is at Lok Thian Restaurant, 317-319, Bangunan Bee San, Jalan Padungan, 93100 Kuching, Sarawak.

The Borneo Post News Article

9. On 28 November 2013, the Commission came across an article published in the Borneo Post titled "Dining to be dearer next year- Association Chief". Essentially, this article stated that restaurant operators will be making adjustments

to their food and beverage prices starting January 2014 claiming escalating costs such as the minimum wage policy and the hike in petrol prices.

10. The article further quoted the Chairman of the SRA, Kapitan Hu Hee Juan as saying customers can expect to pay more by between 10 and 15 percent for food catering outside restaurants and at least 5 percent for in-house dining.
11. The Commission vide its section 18 Notice dated 10 December 2013 requested for various documents to assist in its investigation.
12. In his reply to the Commission dated 18 December 2013, Kapitan claimed that the article published by the Borneo Post on 28 November 2013 is baseless and unfounded. In his statement, Kapitan further claimed that although the issue was raised in the SRA meeting held on 13 November 2013 but there was no resolution or decision made by the members of the SRA to fix price. Kapitan also stated that the contents of the article were never put to him for verification before its publication.
13. After receipt of the Commission's section 18 Notice, Kapitan proceeded to clarify the SRA's position by issuing another statement which led to the publication of the article "No price fixing for restaurants" on 12 December 2013².

² <http://www.theborneopost.com/2013/12/12/no-price-fixing-for-restaurants/>

14. The 12 December 2013 article quoted Kapitan as saying that the SRA has never agreed to increase prices on food catering outside restaurants and for in-house dining. He was also quoted to say that the Competition Act 2010 forbids such an action to ensure free market competition prevails.
15. In the minutes of the Committee Meeting of the SRA dated 13 November ('the Minutes'), Kapitan was said to have emphasised that according to the current legislation, associations are not allowed to fix the prices for their members.

4. FINDINGS BY THE COMMISSION

16. 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 members of the SRA involved are enterprises 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.
17. A review on the Minutes found that there was no evidence to show that a decision or resolution was passed by the

members of the SRA to increase prices between 10 and 15 percent for food catering outside restaurants and at least 5 percent for in-house dining.

18. Therefore, there was no agreement that has been entered into by the members of the SRA to fix prices and further prevent, restrict or distort competition in the market.
19. In fact, it was clear from the Minutes that the Chairman had emphasised to the members of the SRA the prohibition to fix prices under the law and the need for the members of the SRA to independently determine their prices.
20. A thorough assessment of the documents received, the statement given by Kapitan and the contents of the second newspaper article strongly point to the fact that the Chairman, Kapitan was misquoted. The misrepresentation that led to the investigation by the Commission by the contents of the 28 November 2013 newspaper article is clarified.
21. The subsequent action taken by Kapitan to release another statement to clear the misquotation alludes to the SRA's non-involvement in the alleged price fixing agreement.

5. CONCLUSION

22. There is no evidence to suggest a price-fixing agreement took place between the members of the SRA.

23. In light of this, the Commission concludes that there is no infringement of a prohibition under Part II of the Act.