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STRENGTHENING COMPETITION THROUGH MARKET REVIEW

KUALA LUMPUR, 9 January 2018 – The Malaysia Competition Commission (MyCC) has published two market reviews under the Competition Act 2010 (CA 2010) on pharmaceutical sector and building materials in the construction industry which are available on its website. The report is finalized after taking into consideration the views and feedback received from the stakeholders and public.

These sectors were selected based on prior analysis on general understanding and knowledge of existing market conditions in Malaysia and other jurisdictions, particularly sectors with a high probability for practices in cartels or collusion as well as abuse of dominance that affect the production and provision of essential goods or services, and the concerns on consumer's welfare on cost of living and social benefits.

The market review on pharmaceutical sector focuses only on prescription medicines within two level of supply chain which are the manufacturers of generic medicines and importers of originator and generic medicine (first level) and the wholesalers and distributors (second level).

MyCC's Chief Executive Officer, Dato' Abu Samah bin Shabudin said, "Although access to medicine has not traditionally been addressed through competition law, this scenario has been changed. Competition authorities in various jurisdictions are playing a large role in using competition law to improve the price, availability and transfer of health technologies."



SURUHANJAYA PERSAINGAN MALAYSIA
MALAYSIA COMPETITION COMMISSION

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On the other hand, the market review on building materials in the construction industry was conducted due to the concerns raised by relevant government agencies in relation to the rising cost of living and less affordable housing in Malaysia. Therefore, in this market review focuses on four building materials namely steel, cement, ready-mixed concrete and sand which accounted close to 60% of the estimated value of top 8 building materials used in construction projects in 2016. The findings from this market review show that the four building materials are not the main factor that influence the rising cost of housing.

The final reports of the said market reviews are made available on the MyCC website at www.mycc.gov.my.

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Corporate Affairs Division

Malaysia Competition Commission

About Malaysia Competition Commission (MyCC)

Established in June 2011, MyCC is an independent body responsible for enforcing the Competition Act 2010, which was implemented to create healthy competition which would in turn stimulate productivity and innovation, thus creating wider choices of products for consumers with better quality and reasonable prices. The Act applies to all commercial activities undertaken within and outside Malaysia that affect competition in the Malaysian market. It provides a regulatory framework including powers to investigate, adjudicate and impose penalties on the perpetrators of the competition laws. For more information on the Act and the MyCC's activities, log on to www.mycc.gov.my

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ANNEXE A

Notes to Editor:

Information on Section 4, 10, 11 and 12 of the Competition Act 2010. Further information on the two market reviews as per below.

Section 4: Prohibited horizontal and vertical agreement

4. (1) A horizontal or vertical agreement between enterprises is prohibited insofar as the agreement has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services.
- (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.
- (3) Any enterprise which is a party to an agreement which is prohibited under this section shall be liable for infringement of the prohibition.

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Section 10: Abuse of dominant position

10. (1) An enterprise is prohibited from engaging, whether independently or collectively, in any conduct which amounts to an abuse of a dominant position in any market for goods or services.
- (2) Without prejudice to the generality of subsection (1), an abuse of a dominant position may include—
- (a) directly or indirectly imposing unfair purchase or selling price or other unfair trading condition on any supplier or customer;
 - (b) limiting or controlling—
 - (i) production;
 - (ii) market outlets or market access;
 - (iii) technical or technological development; or
 - (iv) investment, to the prejudice of consumers;
 - (c) refusing to supply to a particular enterprise or group or category of enterprises;
 - (d) applying different conditions to equivalent transactions with other trading parties to an extent that may—
 - (i) discourage new market entry or expansion or investment by an existing competitor;
 - (ii) force from the market or otherwise seriously damage an existing competitor which is no less efficient than the enterprise in a dominant position; or
 - (iii) Harm competition in any market in which the dominant enterprise is participating or in any upstream or downstream market;
 - (e) making the conclusion of contract subject to acceptance by other parties of supplementary conditions which by their nature or according to commercial usage have no connection with the subject matter of the contract;
 - (f) any predatory behaviour towards competitors; or

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- (g) buying up a scarce supply of intermediate goods or resources required by a competitor, in circumstances where the enterprise in a dominant position does not have a reasonable commercial justification for buying up the intermediate goods or resources to meet its own needs.
- (3) This section does not prohibit an enterprise in a dominant position from taking any step which has reasonable commercial justification or represents a reasonable commercial response to the market entry or market conduct of a competitor.
- (4) The fact that the market share of any enterprise is above or below any particular level shall not in itself be regarded as conclusive as to whether that enterprise occupies, or does not occupy, a dominant position in that market.

Section 11: Power to conduct market review

- 11. (1) The Commission may, on its own initiative or upon the request of the Minister, conduct a review into any market in order to determine whether any feature or combination of features of the market prevents, restricts or distorts competition in the market.
- (2) The market review includes study into –
 - (a) the structure of the market concerned;
 - (b) the conduct of the enterprises in the market;
 - (c) the conduct of suppliers and consumers to the enterprises in the market; or
 - (d) any other relevant matters.

Section 12: Determination of market review

- 12. (1) Upon conclusion of the market review, the Commission shall publish a report of its findings and recommendations.
- (2) The report of the Commission shall be made available to the public.

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Additional information on the two Market Reviews

1. The scope of study for pharmaceutical market review is as follow:
 - i. Overview of the pharmaceutical sector
 1. Overall growth of the sector
 2. Import, export and trade balance
 3. Market structure and supply chain
 4. Existing legislation and regulations
 - ii. Profile of the industry players and generic drug manufacturers in Malaysia
 - iii. Competition level in the pharmaceutical sector
 1. Market share and market concentration
 2. Top industry players in Malaysia
 3. Market dominance and its impact to the economy
 - iv. Competition concerns in the pharmaceutical sector
 1. Anti-competitive conducts (e.g. cartel or abuse of dominant position) among the industry players
 2. Accessibility to drugs in Malaysia
 3. Any existing policy or law that impedes competition in the sector
 - v. Conclusion and Recommendations

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2. The scope of study for market review on building materials in the construction industry is as follow:
 - i. Overview of the existing legislation and regulations in relation to import, export, manufacturing and distribution levels.
 - ii. Overview of the market structure and supply chain.
 - iii. Profile of industry players that are involved in manufacturing and distribution levels.
 - iv. Identify the prices across local manufacturing and distribution levels.
 - v. Competition in the manufacturing, distribution and retail levels on the following aspects:
 - (a) Market share and market concentration
 - (b) Market dominance and its impact on the sector
 - vi. Competition concerns in the manufacturing, distribution and retail levels in relation to:
 - (a) Anti-competitive conducts (e.g. cartel or abuse of dominant position) among the industry players
 - (b) Any existing policy or law that impedes competition in the industry
 - vii. Recommendations and conclusion