
NEWS RELEASE

HIGH COURT SIDES WITH MyCC ON THEIR DECISION AGAINST MyEG

KUALA LUMPUR, 24 JANUARY 2019 – The Malaysia Competition Commission (MyCC) is the primary competition authority responsible for safeguarding the competition process in Malaysia. It is empowered by the Competition Act 2010 to investigate any abuse by dominant players or monopoly in the market. At the same time, MyCC works closely with the government to review the position of monopolies in Malaysia through the *Jawatankuasa Kajian Semula Dasar Monopoli Perkhidmatan dan Pembekalan*. This review includes services provided by MY E.G. Services Bhd.

In light of the above, MyCC would like to inform that the High Court of Kuala Lumpur on 22 January 2019, upheld the decision of MyCC against MY E.G. Services Berhad and MYEG Commerce Sdn. Bhd. (hereinafter collectively referred to as MyEG) under section 10(2)(d)(iii) of the Competition Act 2010 for abusing its dominant position.

In dismissing the judicial review application by MyEG, High Court Judge Datuk Hajjah Azizah Hj. Nawawi agreed with the Competition Appeal Tribunal's findings which reaffirmed MyCC's decision that MyEG had abused its dominant position by imposing different conditions in equivalent transactions in the purchase of mandatory insurances for the renewal of *Pas Lawatan (Kerja Sementara)* (PLKS) for foreign workers. Consequently, MyEG was ordered to pay a penalty of RM 9.337 million in total for such infringement. This includes a penalty of RM 307,200.00 and daily penalties from 7 October 2015 to 22 January 2019 amounting to RM 9.030 million. At the same time, MyEG is still liable for a daily penalty of RM 7,500.00 per day until they comply with the directives imposed by MyCC in its decision.

“This case is a testament to MyCC’s commitment, without fear or favour, to take stern action against abusive monopoly or dominant players in the market. We will continue to support the government in ensuring that the market is free from any harmful or wasteful monopoly” said Iskandar Ismail, Chief Executive Officer of the MyCC.

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Established in April 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, you can log on to www.mycc.gov.my.

EDITOR'S NOTES:

Extract from Section 10 of Competition Act 2010:

Abuse of Dominant Position

Abuse of Dominant Position is Prohibited

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
- (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.