



SURUHANJAYA PERSAINGAN MALAYSIA  
MALAYSIA COMPETITION COMMISSION

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NEWS/ECONOMY DESK

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## NEWS RELEASE

### **MyCC ACCEPTS UNDERTAKING FROM THE SAND OPERATORS OF FOUR DISTRICTS IN KELANTAN.**

**KUALA LUMPUR, 6<sup>th</sup> October 2017**– The Malaysia Competition Commission, (“MyCC”) has accepted an undertaking from a group of sand operators in Kelantan concerning the alleged fixing of sand prices for the territories of Kota Bharu, Pasir Mas, Tanah Merah and Machang in Kelantan.

Price fixing is prohibited under Section 4 (2) (a) of the Competition Act 2010 (“Act”) as it reduces competition in the market, resulting in higher prices paid by the consumer. This and other anti-competitive behaviours which harm consumer welfare is the main focus of the MyCC as the regulator of competition law in Malaysia.

To address the MyCC’s concerns, the operators have undertaken to rescind the issued price list of sand dated 10 January 2017, terminate any other anti-competitive behaviour in relation to the price list as well as issue a press release of their undertaking to the major newspapers.

“The MyCC has successfully resolved this case related to price fixing of sand which would benefit the consumers in particular, the *rakyat* of Kelantan. Any price cartel is prohibited under the Act as it hinders efficiency, innovation and entrepreneurship and thereby consumers will not enjoy competitive pricing and choices. Therefore, the MyCC will not hesitate to take action against any cartel to protect the consumer of Malaysia. We encourage the public to come forward with any information on possible cartels or anti-competitive behaviours,” said Dato’ Abu Samah Shabudin, Chief Executive Officer of the MyCC regarding the matter.



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The Undertakings are also available for public viewing on the MyCC website, [www.mycc.gov.my](http://www.mycc.gov.my). The press statement of the operators together with the undertaking are attached herewith as Appendix A.

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**For media enquiries, please contact:**

Tel: +603 2273 2277

**Corporate Affairs Division**

**Malaysia Competition Commission**

#### **EDITOR'S NOTES:**

##### **About Malaysia Competition Commission (MyCC)**

1. 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, at 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 anti-competitive practices/conduct under the competition laws. For more information on the Act and the MyCC's activities, log on to [www.mycc.gov.my](http://www.mycc.gov.my).



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### **Details of Section 43 of the Act: Power to accept undertaking**

2. The Act allows an enterprise to make legally binding undertaking without the need for a finding of an infringement by the MyCC. The MyCC has discretion whether to accept such undertaking and will take a number of factors into consideration when determining whether to accept the undertaking or not.

These factors include, but are not limited to, the gravity of the infringement; the level of genuine cooperation received from the enterprise in assisting the MyCC (also referred to as the Commission) with its investigation and whether accepting the undertaking will efficiently and effectively address the competition concerns.

The Commission's power to accept an undertaking are stated in section 43 of the Act, as follows:

*43. (1) The Commission may, subject to the conditions that the Commission may impose, accept from an enterprise an undertaking to do or refrain from doing anything as the Commission considers appropriate.*

*(2) If the Commission accepts an undertaking under subsection (1), the Commission shall, in relation to an infringement, close the investigation without making any finding of infringement and shall not impose a penalty on the enterprise.*

*(3) Any undertaking accepted by the Commission under this section shall be a document available for inspection by the public in a manner determined by the Commission.*

*(4) The provisions of any undertaking accepted by the Commission under this section shall be enforceable by the Commission as though those provisions had been set out in a decision given to the enterprise providing that undertaking pursuant to section 40.*



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**Details of Section 4 of the Act are as follows:**

3. 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.*