



NEWS RELEASE

KOTA KINABALU HIGH COURT DISMISSED THE APPLICATION FOR JUDICIAL REVIEW ON CONDITIONAL BLOCK EXEMPTION ORDER

KUALA LUMPUR, 08th April 2015 – The Kota Kinabalu High Court (“Court”) had dismissed the application for the judicial review on the conditional Block Exemption Order (“BEO”) granted by the Malaysia Competition Commission (“MyCC”) for liner shipping agreements in July 2014. The liner shipping agreements are in respect of Vessel Sharing Agreements and Voluntary Discussion Agreements made within Malaysia or has an effect on the liner shipping services in Malaysia.

The applicants namely, the Federation of Sabah Industry, the Kota Kinabalu Chinese Chambers of Commerce and Industry, the Sabah Housing and Real Estate Developers Association as well as the Sabah Timber Industries Association have filed a judicial review application to quash the MyCC's BEO last year. The applicants claimed that their members will be affected by the implementation of the BEO as it will change shipping costs which in turn will affect the import or export and retail prices of goods as well as commodities in Sabah.

“The MyCC’s decision to grant the BEO was based on comprehensive studies conducted on the industry, and after consultations with stakeholders including the relevant government agencies, such as the Ministry of Finance (MOF), the Ministry of Transport (MOT), the Ministry of International Trade and Industry (MITI) and the Economic Planning Unit (EPU). A nationwide public consultation was also held over a period of a few months in 2013 and submissions from all stakeholders were taken into account in drawing up the BEO”, said the MyCC Chairman, Tan Sri Dato’ Seri Siti Norma Yaakob.



After much deliberation on the judicial review application, the Court found that there are no merits in the applicant’s application for the relief in this judicial review. The BEO is granted under section 8 of the Competition Act 2010 and the MyCC is satisfied all requirements under section 5 of the Act have been fulfilled.

“The MyCC has taken into account all possibilities as well as the effects the implementation of the BEO before we granted the same. The MyCC’s objective is to protect the interests of the public by upholding the spirit of competition”, said the MyCC CEO, Dr. Mohd Khalid Abdul Samad.

The BEO follows the block exemption application made by the Malaysia Shipowners Association (MASA), Shipping Association of Malaysia (SAM) and Federation of Malaysian Port Operators Council (FMPOC) filed with the MyCC previously.

For more information on the MyCC, please log on to www.mycc.gov.my.

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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 affects 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 MyCC activities, log on to www.mycc.gov.my.

Notes to Editor:

Below is information on Section 4, 5, and 8 of the Competition Act 2010.

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.

Section 5: Relief of liability

5. Notwithstanding section 4, an enterprise which is a party to an agreement may relieve its liability for the infringement of the prohibition under section 4 based on the following reasons:
- (a) there are significant identifiable technological, efficiency or social benefits directly arising from the agreement;
 - (b) the benefits could not reasonably have been provided by the parties to the agreement without the agreement having the effect of preventing, restricting or distorting competition;
 - (c) the detrimental effect of the agreement on competition is proportionate to the benefits provided; and
 - (d) the agreement does not allow the enterprise concerned to eliminate competition

completely in respect of a substantial part of the goods or services.

Section 8: Block exemption

8. (1) If agreements which fall within a particular category of agreements are, in the opinion of the Commission, likely to be agreements to which section 5 applies, the Commission may, by order published in the Gazette, grant an exemption to the particular category of agreements.
- (2) An exemption granted under this section is referred to as a “block exemption”.
- (3) An agreement which falls within a category specified in a block exemption is exempt from the prohibition under section 4.
- (4) The Commission in granting the block exemption may impose any condition or obligation subject to which a block exemption shall have effect.
- (5) A block exemption may provide that—
- (a) if there is a breach of a condition imposed by the block exemption, the Commission may, by notice in writing, cancel the block exemption in respect of the agreement from the date of the breach;
 - (b) if there is a failure to comply with an obligation imposed by the block exemption, the Commission may, by notice in writing, cancel the block exemption in respect of the agreement;
 - (c) if the Commission considers that a particular agreement is not one to which section 5 applies, the Commission may, by notice in writing, cancel the block exemption in respect of the agreement from such date as the Commission may specify;
 - (d) the block exemption shall cease to have effect at the end of a period specified in the order; or
 - (e) the block exemption is to have effect from a date earlier than that on which the order is made.