



Malaysia Competition Commission

HELPING SMEs UNDERSTAND THE COMPETITION LAW

14 NOVEMBER 2016

SESSION 1: COMPETITION LAW IN MALAYSIA



Malaysia Competition Commission

PRESENTATION OVERVIEW

PART 1

ESTABLISHMENT OF MALAYSIA COMPETITION COMMISSION (MyCC)

Malaysia
Competition
Commission (MyCC)
was formed on
1 April 2011



5 years old



Competition Act 2010
and Competition
Commission Act 2010
came into force on
1 January 2012



MALAYSIA COMPETITION COMMISSION (MyCC)

An independent body established under the Competition Commission Act 2010 to enforce the Competition Act 2010.

Main roles include:

- Advocacy
- Investigation & Enforcement
- Market review
- Exemption
- Compliance & Leniency

COMPETITION ACT 2010 (ACT 712)

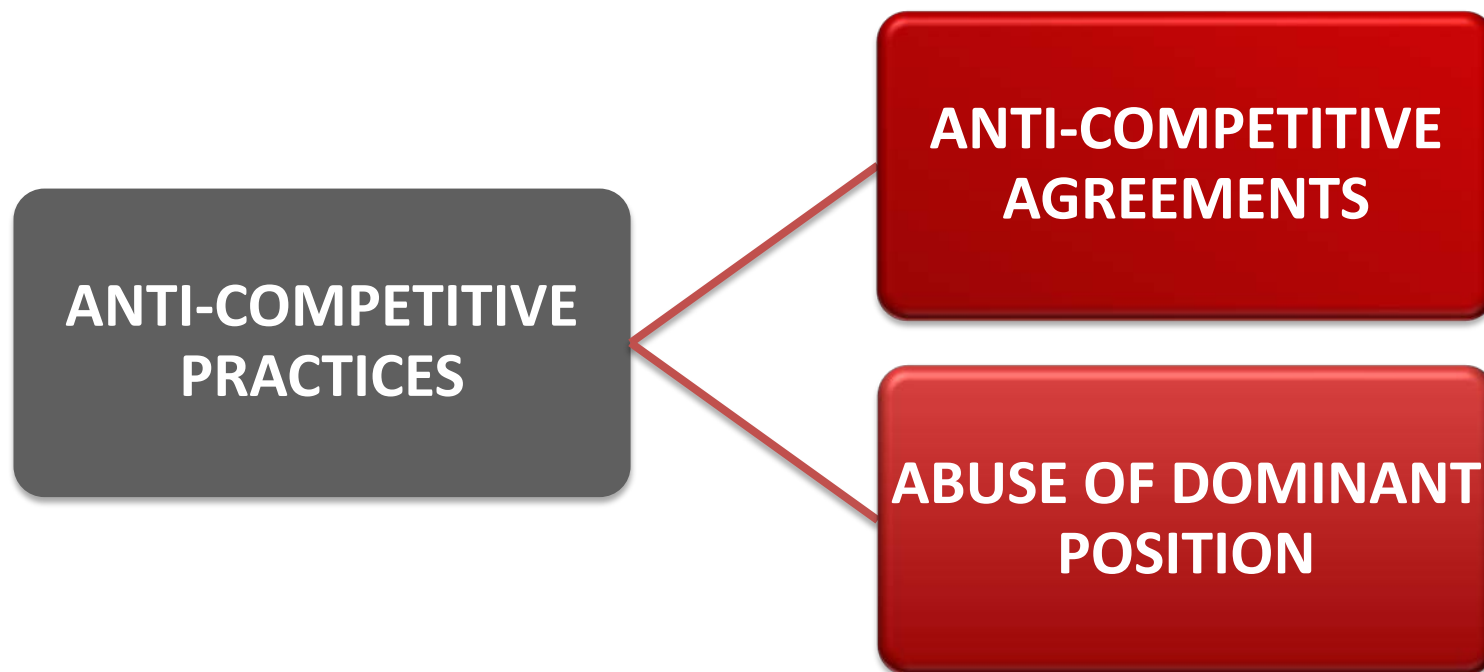
An Act to promote economic development by promoting and **protecting the process of competition**, thereby protecting the interests of consumers and to provide for matters connected therewith

Scope of the CA 2010: Applies to **all commercial activities, both within and outside Malaysia** which has an effect on competition in any market in Malaysia

SCOPE OF LAW (EXCLUSION)

- **Commercial activities regulated under:**
 - **Communications and Multimedia Act 1998**
 - **Energy Commission Act 2001**
 - **Petroleum Development Act 1974**
 - **Aviation Commission Act 2015**
- **Agreement or conduct carried out in order to with any legislative requirement**
- **Collective bargaining activities in respect of employment terms & conditions**
- **Services of general economic interest or having the character of a revenue-producing monopoly**

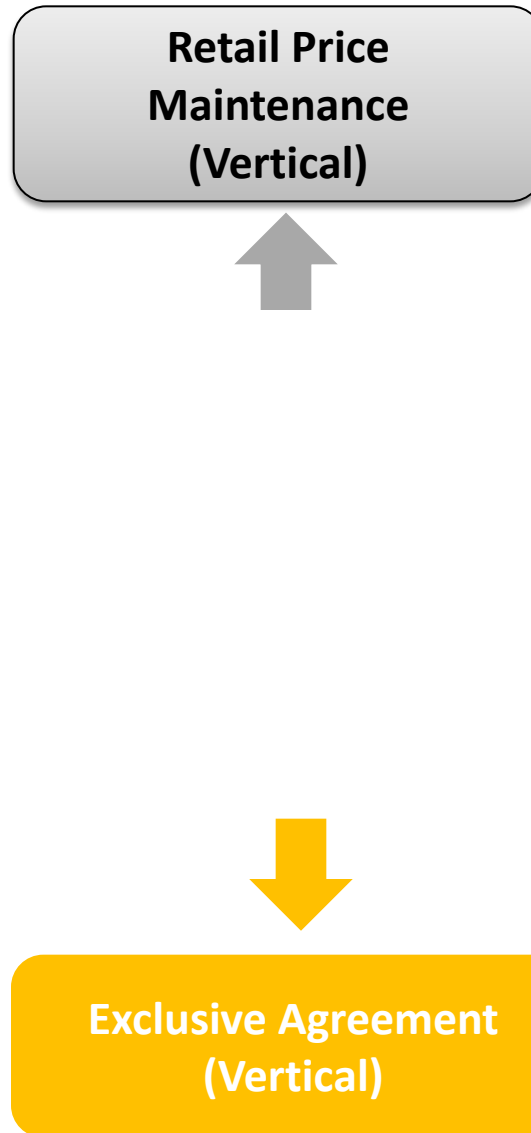
MAIN PROHIBITIONS OF CA 2010



ANTI-COMPETITIVE AGREEMENTS

Section 4 (1) of the Competition Act 2010

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.



ABUSE OF DOMINANT POSITION

Section 10 of the Competition Act 2010

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.

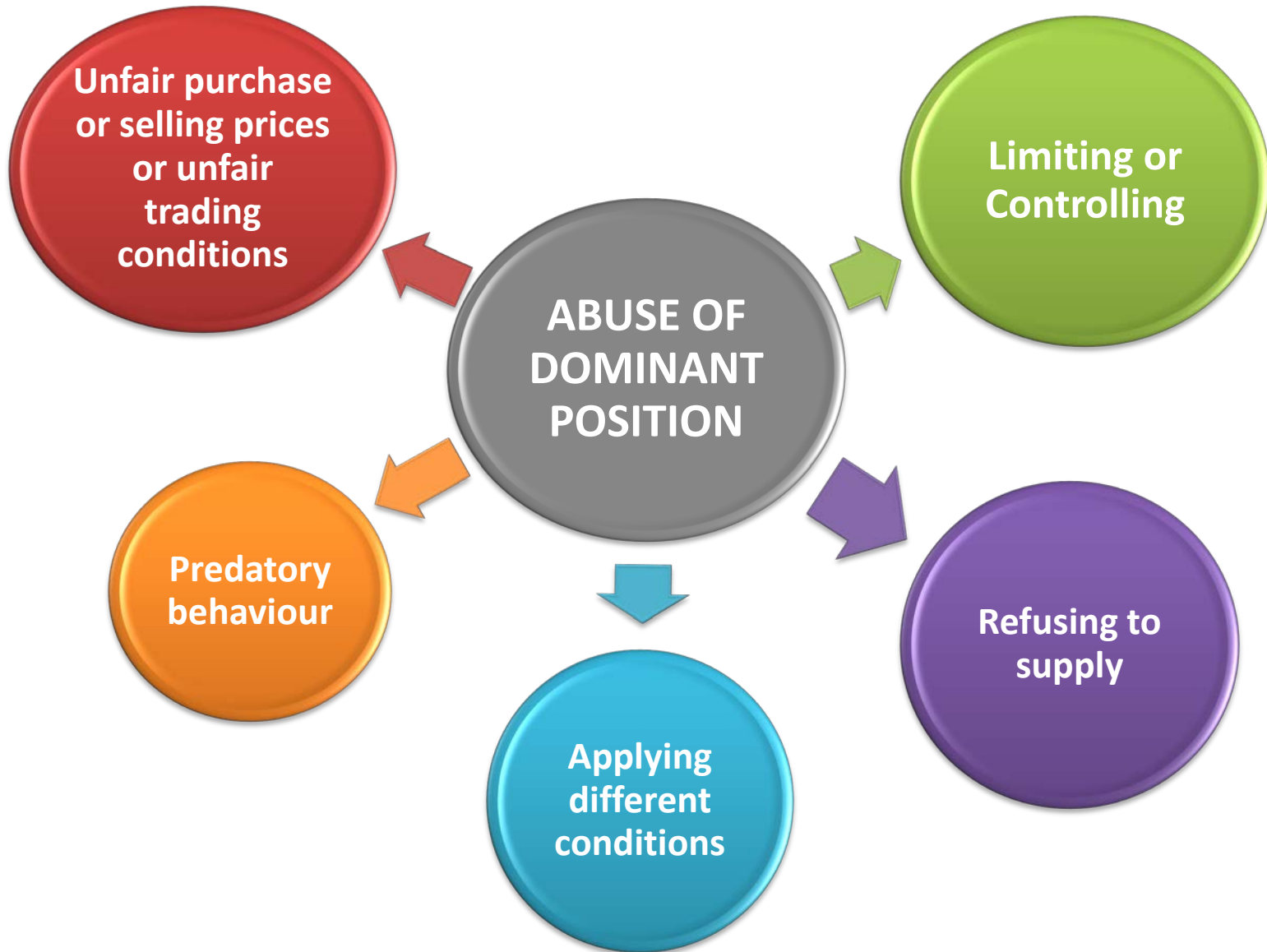


“DOMINANT POSITION”

A situation in which one or more enterprises possess such **significant market power** to adjust prices, outputs or trading terms **without effective constraint from competitors**

Note: 60% market share indicative of dominance

Being dominant (including monopoly) in any market is not an infringement!



PENALTY

If there is an infringement, the Commission

- Shall issue cease and desist order
- May specify steps to bring an end to the infringement
- May impose financial penalty: **MAXIMUM 10 % OF THE WORLDWIDE TURNOVER**



PART 2

TYPES OF INVESTIGATION

- **Complaint (Section 15 of CA 2010)**
- **Ex-Officio/Own Initiative (Section 14(1) of CA 2010)**
- **Direction of the Minister (Section 14(2) of CA 2010)**

STATISTICS OF SECTION 14 & 15 OF CA 2010

	2012	2013	2014	2015	2016	TOTAL RECEIVED	TOTAL CLOSED
COMPLAINT	8	68	80	75	45	276	254
EX-OFFICIO	2	10	15	7	8	42	36
MINISTER DIRECTION	1	2	1	1	1	6	4

CURRENT ASSESSMENT AND INVESTIGATION

	Assessment	Investigation
Total	11	15

INVESTIGATION CASES FROM 2012 UNTIL 2016

Total	Active	Closed
57	15	42

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LIST OF COMPLETED CASES

Completed Cases				
Final Decision		Appeal		Undertaking
<u>Section 39</u>	<u>Section 40</u>	<u>Decided</u>	<u>On going</u>	<u>Section 43</u>
1) 1 Tube Ice Manufacturer	1) Cameron Highland Floriculturist Association (CHFA)	1) MAS & AirAsia (At Judicial Review stage)	1) CDO Penang 2) MyEG	1) Barbers Association
2) Pangsapuri Perdana	2) MAS & AirAsia			2) Pan Malaysia Lorry Owners Association (PMLOA)
3) 9- Sibu Confectionary and Bakery Association (SCBA)	3) Tube Ice Manufacturers (Tube Ice)			3) Giga Shipping Sdn Bhd & Nexus Mega Carriers Sdn Bhd)
4) Sarawak Restaurant Association	4) Sibul Confectionary and Bakery Association (SCBA)			4) Malaysia Heavy Construction Equipment Owners' Association (MHCEOA)
5) My Egg Consortium Sdn. Bhd.	5) Container Depot Operators (CDO Penang)			
6) Federation of Stationers and Book Sellers Association of Malaysia.	6) MyE.G. Services Berhad. (MyEG)			
7) Megasteel				

OTHER ACTIONS BY MYCC

Direction	Warning
<ol style="list-style-type: none"> 1) Malaysian Dental Association (MDA) 2) Malaysian Institute of Arbitrators (MiARB) 3) Malaysia Institute of Architects (PAM) 4) Institute of Landscape Architects Malaysia (ILAM) 	<ol style="list-style-type: none"> 1) Persatuan Pengasuh Berdaftar Malaysia (PPBM) 2) Persatuan Taska /Penjaga Bayi: Selangor ; Wilayah Persekutuan; Kedah; Pulau Pinang; Kelantan; Pahang; Terengganu; Johor; Melaka; Sabah; Sarawak 3) 2 Persatuan Penternak Ikan Tawar 4) Kuching Bakery Association ; 5) Sarawak Restaurant Association 6) Federation of Goldsmith & Jewellers Association of Malaysia (FGJAM) 7) Federation of Livestock Farmers’ Associations of Malaysia (FLFAM) 8) Malaysian Corrugated Carton Manufacturers Association (MACCMA) 9) Malaysian Tourist Guide Council (MTGC)

ENFORCEMENT BY OTHERS

Investigation by Authority

Prosecution in Court

Adjudicated by Court

ENFORCEMENT BY MYCC

Investigation by MyCC

Decision by MyCC

Enforcement by MyCC

UNDERTAKING (SECTION 43)

- Section 43 of CA 2010 allows an enterprise to make legally binding undertaking to the Commission. 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.
- The Commission has the discretion whether to accept the proposed undertaking
- In determining to accept the proposed undertaking, the Commission will look at, amongst others, the level of genuine cooperation, the numbers of enterprises involved, the strength and importance of the case and whether accepting the Undertakings will efficiently and effectively address the competition concerns.

LENIENCY REGIME (SECTION 41)

This regime provides for reduction of up to a maximum of 100% of any penalties which would otherwise have been imposed. To qualify, an enterprise-

- Applicant admitted infringement of subsection 4(2); and
- Applicant provided co-operation which significantly assist the investigation of infringement by other enterprise.

Percentage of reductions depends on-

- Whether the enterprise is the first enterprise to disclose to the Commission the infringement
- The stage in the investigation at which the involvement was admitted or any information/co-operation provided

Note : See Guidelines on Leniency Regime published on 14 October 2014;
<http://mycc.gov.my/wp-content/uploads/2014/10/Guidelines-on-Leniency-Regime.pdf>

RECENT CASES

26 Tube Ice Manufacturers

- ❑ 26 December 2013: 26 Ice Manufacturers in Selangor, Kuala Lumpur and Putrajaya published an advertisement announcing price hikes of tube ice and block ice
- ❑ 21 January 2014: The Commission has issued its proposed interim measures against the 26 tube ice manufacturers on a possible infringement of Sec 4(2)(a) of the Competition Act 2010.
- ❑ 20 February 2014: The Commission has issued a proposed decision to 26 tube ice manufacturers. The proposed financial penalties on all the parties involved is RM283,600.
- ❑ After having heard the ice manufacturers, the Commission reached a final decision that twenty five (25) ice manufacturers have infringed Section of the Act. The Commission imposed a financial penalty to the amount of RM252,250 on the twenty five (25) ice manufacturers. All of them have paid the fine.

RECENT CASES

24 members of Sibu Confectionary and Bakery Association

- ❑ 20 November 2013: The Commission first became aware of the infringement through an article titled “Announcement of price hike draws attention of MyCC” published by Borneo Post Online. The Commission found that the members of the SCBA had agreed to fix the prices of confectionery and bakery products during the 2nd SCBA’s AGM held on 17 November 2013.
- ❑ 30 September 2014: The Commission issued a Proposed Decision in relation to a price fixing agreement between 24 enterprises who are members of the SCBA. The Commission proposes to impose a total financial penalty of RM 439,000.00 on the enterprises.
- ❑ After much deliberation on the written and oral representation, the MyCC has made a finding that fifteen (15) enterprises have infringed section 4(2)(a) of the Competition Act. The MyCC have imposed a total financial penalty of RM247,730 on the infringing enterprises.

RECENT CASES

Pan Malaysia Lorry Owners Association (PMLOA)

- ❑ 11 September 2013: Press statement by PMLOA President was released in the Star Newspaper titled “Lorry owners increase fees by 15%”. MyCC initiated investigation on the same day.
- ❑ 20 September 2013: the Commission took proactive measures by issuing proposed interim measures to PMLOA, its members and related enterprises to cease and desist from implementing the decision.
- ❑ 23 October 2013: MyCC issued final directions to the interim measures against the same parties to carry out certain measures
- ❑ On 7 May 2014, the Commission (‘MyCC’) accepted an Undertaking from the Central Committee Members of the Pan-Malaysia Lorry Owners Association (‘PMLOA’) concerning its pricing practices on transportation charges.

RECENT CASES

Giga Shipping Sdn Bhd & Nexus Mega Carriers

- ❑ 7 October 2013: A complaint against Giga and Nexus filed by a competitor. Giga and Nexus are major providers of logistic and shipment services (the 'services') by sea for motor vehicles from ports in Peninsular Malaysia to ports in Sabah, Sarawak and Labuan.
- ❑ The Commission investigated suspected infringements of Sections 4(1) and 10(1) of CA 2010. The Commission was concerned that the exclusive agreements between Giga/Nexus and its customers may have had the effects of foreclosing customers to competitors .
- ❑ 1 October 2014: The Commission has accepted Undertakings in accordance with Section 43 of the Competition Act 2010 (the 'Act') from Giga Shipping Sdn Bhd and Nexus Mega Carriers Sdn Bhd. The Undertakings are in relation to exclusive agreements between the two enterprises with vehicle manufacturers, distributors and retailers.

PROTECTION OF CO-OPERATING PARTIES BY MyCC

- Yes, via Section 34 of CA 2010
- Protects the complainant and any other co-operating parties
- It is a criminal offence for any party to try to stop them from making a complaint or cooperating with MyCC, including making a threat to these parties or subjecting these parties to any commercial or other disadvantage as a reprisal

GENERAL PENALTY (SECTION 61)

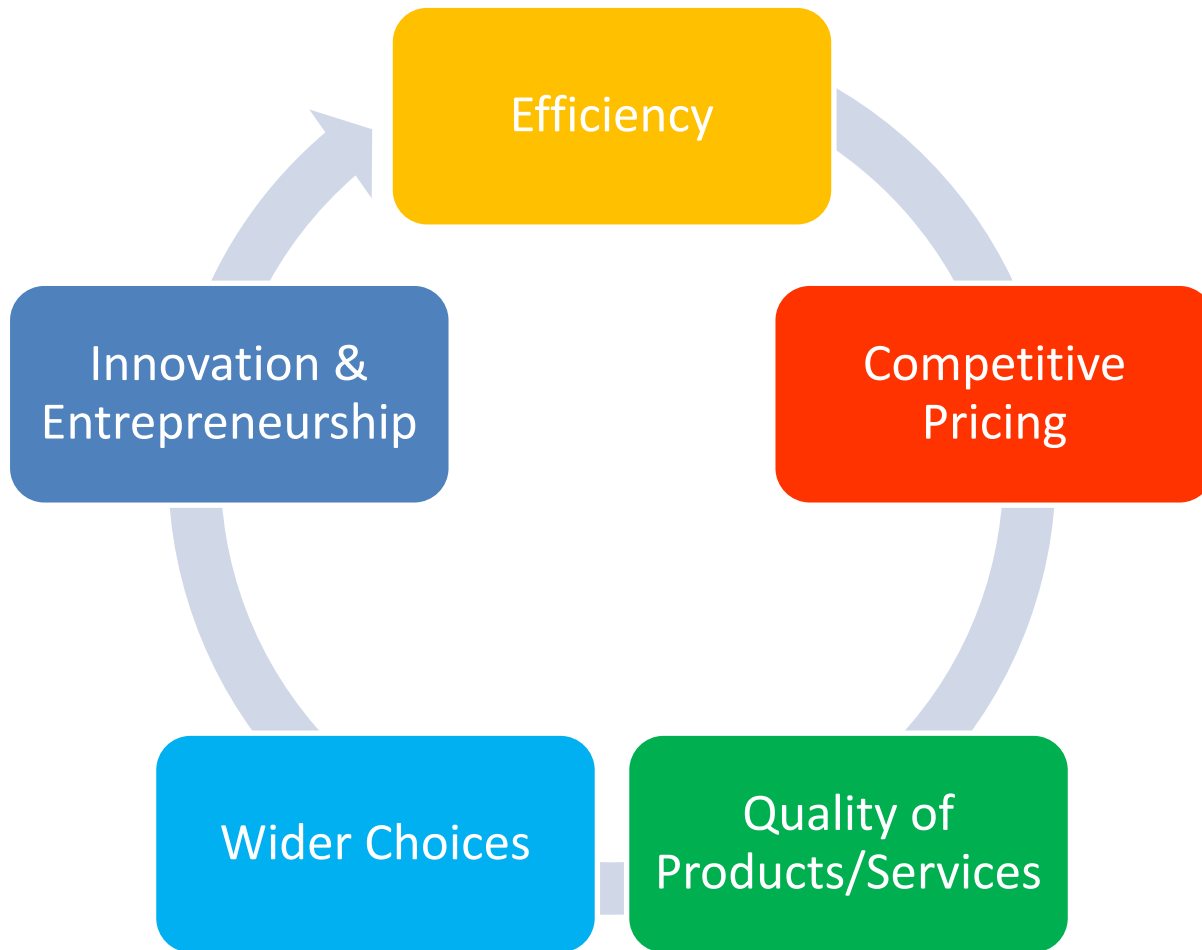
Body Corporate

- **First Offence:** RM 5 million
- **Subsequent Offence:** RM10 million

Individual

- **First Offence:** RM 1 million or 5 years imprisonment
- **Subsequent Offence:** RM 2 million or 5 years imprisonment

CONCLUSION



THANK YOU



www.mycc.gov.my