



Malaysia Competition Commission

Public Consultation & Seminar on Fixing of Prices/Scale of Fees by Professional Bodies

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PNS Auditorium, PNS Tower, Kuala Lumpur

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PUBLIC CONSULTATION & SEMINAR ON FIXING OF PRICES/SCALE OF FEES BY PROFESSIONAL BODIES UNDER THE COMPETITION ACT 2010

Part 1 – What are Professional Bodies?

Part 2 – Findings

**Part 3 – Position of Professional Bodies
Under Competition Act 2010**

Part 4 – Future Directions

PRESENTATION OVERVIEW

Part 1 - What are Professional Bodies?

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Overview of the Market Review on Issues Relating to the Fixing of Prices / Fees By Professional Bodies

Q4 2012

The MyCC commissioned consultant to begin the market review

Q2 2013

The findings of the research project on price fixing by professional bodies were approved by the Commission on 16 July

Q3 2013

Report of the results of the study was uploaded to the MyCC website on 19 August

Q3 2013

Letter to the 5 sectors identified (NO legal authority to fix prices/fees) - to provide an explanation for these practices were sent on 14 August

Q4 2013

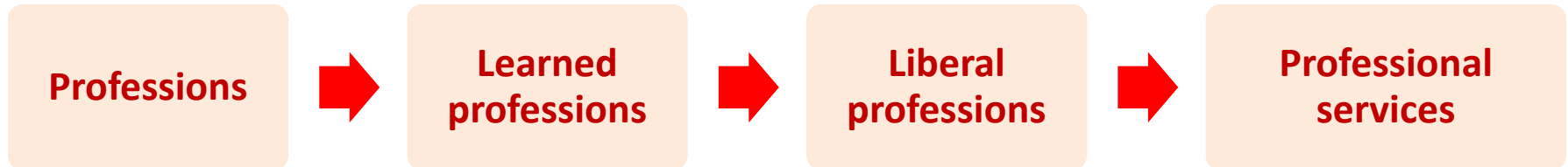
The MyCC has received comments from professional bodies

Q2 2014

Public Consultation with Professional Bodies on 19 May 2014

Definition of “Professional Bodies”

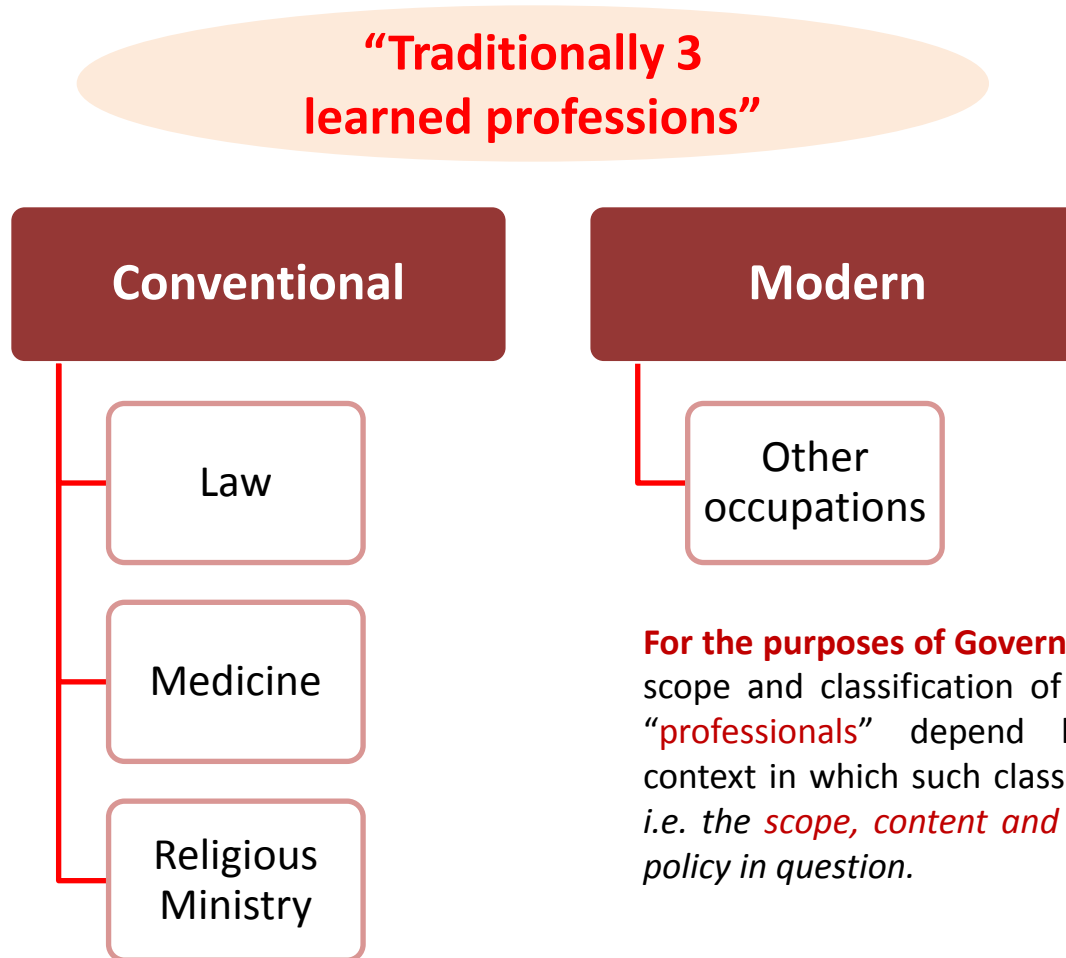
- There is no legal definition of “professional bodies” in Malaysia.
- Black’s Law Dictionary defines a “professional” as *“a person who belongs to a learned profession or whose occupation requires a high level of training and proficiency.”*



“Professions” typically has 3 main characteristics:

- a) Possession and use of expert and specialized knowledge;
- b) Strict control of entry into profession; and
- c) Existence of a professional code or conduct of ethics.

Definition of “Professional Bodies” (Continue)



For the purposes of Government policy - the scope and classification of “**professions**” or “**professionals**” depend heavily on the context in which such classification is made, *i.e. the scope, content and objectives of the policy in question.*

Research Result

- **Practice of Price-Fixing by Bodies/Associations in the Services Sectors Malaysia**
 - *Research was carried out on **131 bodies/associations** that are grouped into **34 sectors**.*
 - *The grouping of these sectors is guided by the relevant law pertaining to the sectors (where available) and the WTO Services Sectoral Classification.*

The 35 Sectors Studied are as Follows:

Architects	Engineers	Quantity surveyors	Land Surveyors	Valuers, Appraisers and Estate Agents
Town Planners	Accountants	Legal Practitioners	Company Secretaries	Medical Practitioners
Dental Practitioners	Optometrists	Pharmacists	Allied health professionals	Midwives and nurses
Chemists	Scientists	Veterinary surgeons	Counselors	Alternative Dispute Resolutions (ADR) Arbitrators
Alternative Dispute Resolution (ADR) Mediators	Landscape Architects	Social workers	Logistic & Transport Executives	Material scientists/specialists
Public relation executives	Intellectual property practitioners	Environment consultant	Investors relations executives	Life Insurance advisers & financial planners/practitioners
Actuaries	Agricultural specialists	Forestry specialists	Plantation managers	Food analyst

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Finding No. 1 -

- **10 sectors are found to** be governed by respective bodies/associations that are empowered by legislation to regulate such sectors and scales of fees are established for their members:

SECTOR / GOVERNING BODY	GENERAL POWER TO REGULATE	SPECIFIC POWER TO FIX SCALE OF	SCALE OF FEES
1. Architects: Board of Architects Malaysia	X S35 of the Architects Act 1967	X S4(1)(d) & (dd) of the Architects Act 1967	Architect (Scale of Minimum Fees) Rules 2010 [P.U.(A) 53/2010]
2. Engineers: Board of Engineering Malaysia	X S4 of the Registrations of Engineers Act 1967	X S4(1)(d) of the Registrations of Engineers Act 1967	I - Notification of Scale of Fees [P.U.(B) 548/1998] ii- Notification of Scale of Fees for Housing Development [P.U.(B) 288/1997]

Finding No. 1 (Continue)

SECTOR / GOVERNING BODY	GENERAL POWER TO REGULATE	SPECIFIC POWER TO FIX SCALE OF	SCALE OF FEES
3. Quantity Surveyors: Board of Quantity Surveyors Malaysia	X S26 of the Quantity Surveyors Act 1967	X S 4(d) of the Quantity Surveyors Act 1967	i- For Government projects: Scale of Fees For Consulting Quantity Surveyor (Revised 2004) issued by the Ministry of Finance, to be read together with the Notification made under the Registration of Quantity Surveyors Act 1967 [P.U.(B) 510/1986]. ii- For non-Government projects: Notification made under the Registration of Quantity Surveyors Act 1967 [P.U.(B) 510/1986].
4. Land Surveyors: (a) The Land Surveyors Board (Peninsular Malaysia & Labuan)	X S21(1) of the Licensed Land Surveyors Act 1958		Regulation 26(1) and 13 th Schedule of the Licensed Land Surveyors Regulations 2011 [P.U.(A) 331]

Finding No. 1 (Continue)

SECTOR / GOVERNING BODY	GENERAL POWER TO REGULATE	SPECIFIC POWER TO FIX SCALE OF	SCALE OF FEES
(b) Sabah Surveyors Board	X S19(1) of the Surveyors Ordinance 1960 [No. 22 of 1960]		The 2nd Schedule of the Surveyors (Registration and Administration) Regulations 1989.
(c) Land Surveyors Board, Sarawak	X S31(1) of the Land Surveyors Ordinance 2001 [Chapter 40]	X S31(2) of the Land Surveyors Ordinance 2001 [Chapter 40]	Rule 36(1) and the 1 st Schedule of the Land Surveyors (Conduct of Cadastral Land Surveys) Rules 2003.
5. Valuers, Appraisers and Estate Agents: Board of Valuers, Appraisers and Estate Agents	X S32 of the Valuers, Appraisers and Estate Agents Act 1981		Rule 48(1) and 7th Schedule of the Valuers, Appraisers and Estate Agents Rules 1986 [P.U.(A) 64/86].

Finding No. 1 (Continue)

SECTOR / GOVERNING BODY	GENERAL POWER TO REGULATE	SPECIFIC POWER TO FIX SCALE OF	SCALE OF FEES
6. Town Planners: Board of Town Planners Malaysia	X S8 of the Town Planners Act 1995 [Act 538]	X S8(c) of the Town Planners Act 1995 [Act 538]	Scale of Professional Fees and General Conditions of Engagement 2005
7. Accountants: Malaysia Institute of Accountants	X S10(a) of the Accountants Act 1967		<ul style="list-style-type: none"> i - By-Laws (On Professional Ethics, Conduct and Practice) of the Malaysian Institute of Accountants ii - The Recommended Practice Guide 7 (Revised): A Guide to Charging for Professional Assurance Services (Circular MF/2010) – non-binding benchmark for professional accountants in public practice services.

Finding No. 1 (Continue)

SECTOR / GOVERNING BODY	GENERAL POWER TO REGULATE	SPECIFIC POWER TO FIX SCALE OF	SCALE OF FEES
8. Legal Practitioners: (a) The Malaysian Bar ⁷	X S6 of the Legal Profession Act 1976	X S113(3) of the Legal Profession Act 1976	Solicitors' Remuneration Order [P.U.(A) 520/2005]
(b) Chief Judge of Sabah & Sarawak + Sabah Law Association	X	X Para.17(c) of the Advocates Ordinance (Sabah Cap. 2)	Advocates' Remuneration Rules 1988 (G.N.S 17 of 1988)
(c) Chief Judge of Sabah & Sarawak + Advocates Association of Sarawak	X	X S17(c) of the Advocates Ordinance Sarawak 1958 (Sarawak Cap.110)	Advocates' Remuneration Rules 1988 [Swk. L.N.(F) 72]

Finding No. 1 (Continue)

SECTOR / GOVERNING BODY	GENERAL POWER TO REGULATE	SPECIFIC POWER TO FIX SCALE OF	SCALE OF FEES
9. Medical Practitioners: Malaysian Medical council	X S36(1) of the Medical Act 1971		<ul style="list-style-type: none"> i - For medical practitioners in the private healthcare facilities and services, the scale of fees are made under the Private Healthcare Facilities and Services Act 1998 [Act 586]: ii - Private Healthcare Facilities and Services (Private Medical Clinics or Private Dental Clinics) Regulations 2006 [P.U.(A) 137/2006] iii - Private Healthcare Facilities and Services (Private Hospitals & Other Private Healthcare Facilities) Regulations 2006 [P.U.(A) 138/2006].
10. Dental Practitioners: Malaysian Dental Council	X S43(1) of the Dental Act 1971		<ul style="list-style-type: none"> i - For dental practitioners in the private healthcare facilities and services, the scale of fees are made under the Private Healthcare Facilities and Services Act 1998 [Act 586]: ii - Private Healthcare Facilities and Services (Private Medical Clinics or Private Dental Clinics) Regulations 2006 [P.U.(A) 137/2006] iii - Private Healthcare Facilities and Services (Private Hospitals & Other Private Healthcare Facilities) Regulations 2006 [P.U.(A)138/2006].

Finding No. 2 -

- **3 sectors** in which the governing authorities are empowered by a specific provision to fix scales of fees but have yet to do so:

SECTOR/GOVERNING BODY	SPECIFIC POWER TO FIX FEES/PRICES	SCALE OF FEES
1. Midwives and Nurses:		
(a) The Malaysian Nursing Board	X S 5(1)(g) of the Nurses Act 1950 – power to fix fees lies in the Minister through regulations	None
(b) The Malaysians Midwives Board	X S5(1)(f) of the Midwives Act 1966	None
2. Counsellors:		
Malaysian Board of Counsellors	X S 12(h) of the Counsellors Act 1998	None
3. Food Analysts:		
Malaysian Food Analysts Council	X S5(1)(c) of the Food Analysts Act 2011	None

Finding No. 3 -

- **5 sectors** in which the governing bodies are given the general power to regulate the sector but no scales of fees have been fixed:

SECTOR/GOVERNING BODY	GENERAL POWER TO REGULATE THE SECTOR	SCALE OF FEES
1. Optometrists: Malaysian Optical Council	X S42(1) of the Optical Act 1971	None
2. Pharmacists: Pharmacy Board Of Malaysia	X S22(1)(j) of the Registration of Pharmacists Act 1951	None
3. Chemists: Malaysian Institute Of Chemistry	X S8 of the Chemists Act 1975	None
4. Veterinary Surgeons: Malaysian Veterinary Council	X S39(1) of the Veterinary Surgeons Act 1974	None
5. Medical Assistants: Medical Assistants (Registration) Board Malaysia	X S22 of the Medical Assistants (Registration) Act 1977	None

Finding No. 4 -

- **5 sectors** prescribe fees/prices for their members even though they are not empowered by any law:

SECTOR/GOVERNING BODY	LEGAL AUTHORITY TO FIX PRICES/ FEES	SCALE OF FEES
1. Company Secretaries The Malaysian Institute of Chartered Secretaries and Administrators (MAICSA)	None	Yes
2. Arbitrators (a) Malaysian Institute of Arbitrators (MIARB)	None	Rule 28.1 of the MIARB Rules 2000 and MIARB Scale of Arbitrator’s Fees
(b) Malaysian Institute of Architects (PAM)	None	PAM Arbitration Rules 2010
3. Mediators (a) Malaysian Institute of Arbitrators (MIARB)	None	MIARB Mediation Rules 2003

Finding No. 4 (Continue) -

SECTOR/GOVERNING BODY	LEGAL AUTHORITY TO FIX PRICES/ FEES	SCALE OF FEES
(b) Malaysian Mediation Centre (MMC)	None	Malaysian Mediation Centre’s rate of mediator’s fees
(c) Malaysian Institute of Architects (PAM)	None	PAM Mediation Rules
4. Landscape Architects Institute of Landscape Architects Malaysia (ILAM)	None	Institute of Landscape Architects Malaysia Scale of Fees
5. Dental Practitioners Malaysian Dental Association (MDA)	None	Malaysian Dental Association Recommended Scale of Fees

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Professional Bodies Under the CA 2010

- Under Competition Act 2010 [Act 712], price-fixing made by the State (through legislation) or professional bodies specifically empowered by the legislation, would fall under the exclusion under **Section 13 and paragraph (a) of the Second Schedule of the Competition Act 2010 [Act 712]**.
- Competition Act 2010 [Act 712] prohibits price-fixing by professional bodies that do not have any lawful authority to do so. However, exemptions may be granted if the Competition Commission is satisfied that the elements in **Section 5 (a) – (d) of the Competition Act 2010 [Act 712]** are fulfilled.

Malaysian Practices in Regulating Prices / Fees

- The scale of fees for a sector regulated by law is contained in the statute itself, or any other legal instrument made under any statute or other lawful authority and having legislative effect; and
- A governing body that has regulatory authority over a sector establishes a scale of fees for that sector (either through its specific power to fix prices/fees for that sector, or its general powers to regulate the said sector).

Malaysian Practices in Regulating Prices / Fees (Continue)

- In the event that a body/association in the services sectors establishes a scale of fees without being empowered by any lawful authority to do so, such conduct of price-fixing is prohibited under the Competition Act 2010 [Act 712] and does not fall within the exclusion under Paragraph (a) of the Second Schedule of the Competition Act 2010 [Act 712].

Acknowledge That:

- Professional bodies may wish to provide assistance to new and inexperienced members by recommending benchmark prices as a guide. However, it has been suggested that professional bodies can still assist members without resorting to pricing mechanisms which are anti-competitive in nature, such as working out members' profit margin and overhead costs.
- It is also feared that highly competent professionals would leave the profession because they feel that they are not being rewarded enough.⁷⁰ There are, however, empirical studies that indicate that free competition is not a hindrance and actually leads to a more overall wealth creation.

Application of CA 2010 Must be Considered Together with other Important Factors such as:

a) Other Government policies/objectives and public interests –

- The regulation of professional markets may also pursue specific Government policies and objectives as well as public interest goals, other than the correction of market failures. A balance should be struck between economic factors (avoiding restrictions of competition) and what is considered as non-economic factors.

Application of CA 2010 Must be Considered Together with other Important Factors such as (Continue):

b) Other historical, cultural, institutional and social factors –

- It is noted that competition law policy is often “based on a multiple set of values that are neither easily quantifiable nor reduced to a single economic objective. These values may reflect a society’s wishes, culture, history, institutions and other factors that cannot be ignored nor should necessarily be ignored.

Position of other Jurisdictions

- Other jurisdictions have adopted varying positions regarding professional regulations (including price-fixing) that are made by the State or professional bodies with legal governing authority.
- It is noted that the United **States, the European Union and the United Kingdom** take a strict position on this matter, allowing anti-competitive professional regulations by law or delegated legal authority only in limited circumstances.
- On the other hand, **Canada** takes a less rigid approach of allowing anti-competitive professional regulations, even when the professional body only has a general legal mandate to regulate such profession (without the specific power to fix prices/fees).

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Future Directions:



1. Meeting with **5 sectors** identified in the study with NO legal authority to fix prices/fees to provide an explanation for these practices



2. Collaboration with the **Malaysian Productivity Corporation (MPC)**

Future Directions:



3. Since the document was uploaded on the MyCC website, the following was noted:

- i. **The MAICSA withdrew their recommended fees.**
- ii. **Several associations have requested meetings.**
- iii. **The MyCC requested 5 sectors to provide explanation.**



4. The MyCC will assess whether the price fixing/scale of fees should be exempted on a case-by-case basis.

THANK YOU



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