

NEWS RELEASE

MyCC PROPOSES TO FINE GRAB RM86 MILLION FOR ABUSIVE PRACTICES

KUALA LUMPUR, 3 OCTOBER 2019 – The Malaysia Competition Commission (MyCC) has issued a Proposed Decision against Grab Inc., GrabCar Sdn. Bhd. and MyTeksi Sdn. Bhd. (all hereinafter referred to as ‘Grab’) for collectively breaching section 10 of the Competition Act 2010 (the Act). MyCC has provisionally found that Grab abused its dominant position by imposing a number of restrictive clauses on its drivers which prevented the drivers from promoting and providing advertising services for Grabs’ competitors in the e-hailing and transit media advertising market.

MyCC further notes that the restrictive clauses had the effect of distorting competition in the relevant market that is premised on multi-sided platforms by creating barriers to entry and expansion for Grab’s existing and future competitors.

Following the merger between Grab and Uber in late March 2018, Grab became the dominant player in the e-hailing market in Malaysia. Since the merger, MyCC has received numerous complaints against Grab. Based on those complaints, MyCC has assessed the matter and commenced its investigation against Grab.

“It is important that barriers to entry for new players remain low and for existing players to have the ability to grow and compete on merits to ensure that competition can remain healthy in the e-hailing market and other related markets. It is the opinion of MyCC that Grab’s conduct not only affect e-hailing drivers and competitors but also the consumers in the long run. This is not the final decision. Thus, Grab has the opportunity to present its defence to MyCC in due course.” said Encik Iskandar Ismail, Chief Executive Officer of the MyCC

MyCC proposed to impose a financial penalty of RM86,772,943.76 against Grab as well as a daily penalty of RM15,000 per day from the date of service of the Proposed Decision should they fail to take remedial actions as directed by the Commission in addressing the competition concerns.

The Proposed Decision which is issued in line with Section 36 of the Act is a written notice setting out the facts on which MyCC makes its assessment and its reasons for arriving at the Proposed Decision. It is issued to the enterprises concerned to assist them in making representations and provide any other information to support their representations to the Commission.

In this regard, the enterprise concerned has thirty days (30) from the date of receipt of the Proposed Decision to make their representations to the Commission. The Commission will then make its final decision under section 39 or 40 of the Act after it has considered the said representations and all the available information and evidence. The Act 2010 came into force on 1 January 2012 and as such, businesses ought to have complied with the provisions of the Act.

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For media enquiries, please contact:

Noor Khalijah Mazlan, Tel +603 2273 2277 (ext 702),

Email: khalijah@mycc.gov.my

Communications and Advocacy Division

Malaysia Competition Commission

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 competitive prices.

The Act applies to all commercial activities undertaken within and outside of Malaysia that affect competition in the Malaysian market. It provides a regulatory framework including powers to investigate, adjudicate and impose penalties on the infringing parties.

For more information on the Act and MyCC activities, 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.

Extract from Section 36 of Competition Act 2010:

36. (1) If, after the completion of the investigation, the Commission proposes to make a decision to the effect that one of the prohibitions under Part II has been or is being infringed, the Commission shall give written notice of its proposed decision to each enterprise that may be directly affected by the decision.

(2) The notice shall—

- (a) set out the reasons for the Commission's proposed decision in sufficient detail to enable the enterprise to whom the notice is given to have a genuine and sufficient prospect of being able to comment on the proposed decision on an informed basis;
- (b) set out any penalties or remedial action that the Commission proposes to apply; and
- (c) inform each enterprise to whom the notice is given that the enterprise may, within such reasonable period as may be specified in the notice—
 - (i) submit written representations to the Commission; and
 - (ii) indicate whether the enterprise wishes to make an oral representation before the Commission.

Extract from Section 39 of Competition Act 2010:

39. Where the Commission has made a decision that there is no infringement of a prohibition under Part II, the Commission shall, without delay, give notice of the decision to any person who is affected by the decision stating the facts on which the Commission bases the decision and the Commission's reason for making the decision.

Extract from Section 40 of Competition Act 2010:

40. (1) If the Commission determines that there is an infringement of a prohibition under Part II, the Commission—

- (a) shall require that the infringement to be ceased immediately;
- (b) may specify steps which are required to be taken by the infringing enterprise, which appear to the Commission to be appropriate for bringing the infringement to an end;
- (c) may impose a financial penalty; or
- (d) may give any other direction as it deems appropriate.

(2) The Commission shall, within fourteen days of its making a decision under this Part, notify any person affected by the decision.

(3) The Commission shall prepare and publish reasons for each decision it makes under this section.

(4) A financial penalty shall not exceed ten percent of the worldwide turnover of an enterprise over the period during which an infringement occurred.