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**Competition Act 2010 [Act 712]**

**Decision of the Competition Commission**

**Finding of Non-Infringement under Section 39 of the Competition Act 2010 of Dongwha Fibreboard Sdn. Bhd. and Evergreen Fibreboard Bhd.**

**7 February 2017**

**(Reference No.: MyCC(ED)700-1/2/6/2015)**

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## 1. INTRODUCTION

1. On 15 June 2015, the Commission received an anonymous complaint alleging that there was a collusion to fix the buying price of rubber wood small logs by Dongwha Fibreboard Sdn. Bhd. (“Dongwha”) and Evergreen Fibreboard Bhd. (“Evergreen”) which are the two (2) largest Medium Density Fibreboard (“MDF”) producers in Malaysia.
2. Pursuant to the investigation conducted by the Commission, the Commission found that there was insufficient evidence to suggest that there was a horizontal agreement entered into by both Dongwha and Evergreen to engage in a price fixing in relation to the selling and purchasing of rubber wood small logs which is contrary to the Act.
3. Both Dongwha and Evergreen are therefore not liable for an infringement under the Act.

## **2. PARTIES SUBJECT TO THE PROCEEDINGS**

### **2.1 The Complainant**

4. The identity of the complainant cannot be ascertained as the complaint letter received by the Commission on 15 June 2015 was sent anonymously.

### **2.2 The Target Enterprises**

#### **a) Dongwaha Fibreboard Sdn. Bhd.**

5. Dongwaha Fibreboard Sdn. Bhd. [Company Registration Number: 188056-K] is a company engaged in the manufacture and sale of MDF, resin products and paper treatment.
6. According to Dongwaha's records as filed with the Companies Commission of Malaysia, Dongwaha was established on 14 November 1989 and was formerly known as Golden Hope Fibreboard Sdn. Bhd.
7. Dongwaha is a wholly-owned subsidiary of Dongwaha Malaysia Holdings Sdn. Bhd. [617880-D], an investment holding company which has several subsidiaries involved in the manufacturing and selling of MDF. Dongwaha has two (2) subsidiaries operating under the name of Dongwaha MDF (M) Sdn. Bhd. located at Lot 833 Mukim Padang Meha,

09400 Padang Serai, Kedah and Dongwha Chemical (M) Sdn. Bhd. located at 2998, Jalan Raya Merbok, 08400 Merbok, Kedah.

**b) Evergreen Fibreboard Bhd.**

8. Evergreen Fibreboard Bhd. [Company Registration Number: 217120-W] is a company engaged in the manufacture and sale of MDF and wooden furniture.
9. Its principal place of business is at PLO 22, Parit Raja Industrial Area, Parit Raja, Batu Pahat, Johor. supply of labelling and packaging materials and solutions, otherwise known as label stock.
10. Evergreen was established on 15 May 1991 was previously known as Evergreen Fibreboard Sdn. Bhd. before changing to its current name on 14 April 2014. Evergreen is a public listed company.
11. Evergreen has two (2) subsidiaries operating under the name of Evergreen Fibreboard (JB) Sdn. Bhd. located at PLO 416, Jalan Suasa, Kawasan Perindustrian Pasir Gudang, Johor and Evergreen Fibreboard (Nilai) Sdn. Bhd. located at Lot 8782, Jalan Bukit Kuang, Kampung Batu Tiga, 08300 Gurun, Kedah.

### 3. PROCEDURE

12. Pursuant to the complaint received, the Commission conducted an extensive investigation under section 15(1) of the Act.
13. During the course of the investigation, as of 9 September 2016, the Commission issued 14 notices pursuant to sections 18(a) and (b) of the Act to require the provision of information and/or documents and to make a statement based on the information and documents requested or in relation to any queries made by the Commission officers to 10 parties.
14. The parties included the Association of Malaysia Bumiputra Timber and Furniture Entrepreneurs (“PEKA”), Malaysian Timber Industry Board (“MTIB”) and Rubber Industry Smallholders Development Authority (“RISDA”) logging contractors, sawn timber mill operators and timber trading houses.

#### 4. BACKGROUND TO THE ALLEGATIONS

15. On 15 June 2015, the Commission received an anonymous complaint whereby it was alleged that the Target Enterprises, namely Dongwha and Evergreen who are the two (2) largest MDF producers in Malaysia are engaged in price fixing of the buying price of the rubber wood small logs.
16. The Complainant had mentioned that Target Enterprises often met one another to discuss matters of controlling the buying price of rubber wood small logs. It was also alleged that in February 2015, the General Manager of Dongwha and the General Manager of Evergreen had met with the purpose of entering into a pact to control the price of rubber wood and collude in oppressing the small holders and contractor of rubber wood. As a result of the alleged meeting, Dongwha had lowered the buying price of rubber wood resources.
17. It was further alleged that in the first quarter of 2015, Dongwha had lowered the buying price of rubber wood several times. However, during the course of the investigation, evidence gathered by the Commission did not suggest or indicate that the abovementioned conduct was due to any anti-competitive agreements between the Target Enterprises but in fact due to market forces.
18. The Complainant had further alleged that the Target Enterprises had attempted to recruit other companies such as Besgard, Sengyip Furniture (“SYF”), Robin Resources and Havea Board to join the price

fixing pact. However, during the course of the investigation, there was no evidence to suggest that this was the case.

19. The market affected by the alleged complaint is the label making industry whereby the upstream market comprises of manufacturers of labelling and packaging materials and solutions, otherwise known as label stock, which is the raw material from which the downstream market, comprising of label makers, uses to manufacture several varieties of labels depending on the type of label stock raw material used.

## **5. FINDINGS OF THE INVESTIGATION**

### **5.1 Overview of the Market**

20. Based on the information provided by the Complainant and the preliminary assessment conducted prior to the investigation, the market affected by the alleged conduct is the MDF market. The market in Malaysia is, due to logistical reasons, divided into the Northern (which comprises of the state of Kedah only) and Southern (which comprises of the states of Negeri Sembilan, Melaka and Johor regions).
21. The upstream level market comprises of logging contractors who acquire rubber wood trees from small rubber estate holders via tenders to cut and clear the said rubber wood trees planted in various size hectares on the rubber estate during the replantation period.
22. The said rubber wood logs are then sorted into big logs and small logs, the former of which are sold to saw mill operators who will further process the wood sawn rubber timber which will then be sold to local furniture manufacturers and/or exported.
23. Rubber wood small logs, which usually comprise of the rubber woods branches and other parts not related to the main trunk of the rubber wood is sold to the downstream players of the market, which comprises mainly of MDF manufacturers who will process the said rubber wood

small logs into woof fibres which are thereafter combined with wax and resin to form MDF panels and furniture.

24. It should be noted that, besides logging contractors, the upstream level of the market also comprises of timber trading houses that purchase the said rubber wood big and small logs from the said loggers who then sell them to saw mill operators and MDF manufacturers in the downstream level of the market.
25. The alleged harm here occurs where the MDF manufacturers i.e. the Target Enterprises, in the downstream level of the market and the consumers of rubber wood small logs, collude to set the purchase price for rubber wood small logs and as such eliminates competition between themselves at the downstream level of the market, to the detriment of the contractor loggers i.e. the upstream players in the market as well as small rubber estate holders.
26. During the course of the investigation, it was observed in the Southern Region, there were several logging contractors competing in the upstream market for the purchase of rubber wood small logs while in the Northern Region, it was found that Dongwha was the biggest buyer of rubber wood small logs.

## **5.2 Inquiries with PEKA**

27. The Commission had made inquiries with PEKA on 24 January 2016, whereby PEKA, through its representative Mr. Ahmad Zabidi Bin Abdul

Rashid, the Executive Secretary of PEKA, had mentioned that the rubber wood industry is an open market and pricing for the purchase of rubber wood is unregulated.

28. Mr. Ahmad Zabidi Bin Abdul Rashid had also mentioned that the Target Enterprises are big consumers of rubber wood in the market and that, in his opinion, the Target Enterprises may possibly be colluding as part of a cartel to fix the purchase price of rubber wood as they have good relations with one another.
29. Mr. Ahmad Zabidi Bin Abdul Rashid also informed the Commission that PEKA does not receive any complaints from any party with regards to the price fixing conduct by the Target Enterprises.

### **5.3 Inquiry with MTIB**

30. The Commission made inquiries with MTIB on 11 April 2016 and 27 June 2016. MTIB is a statutory body responsible for the development of the timber industry.
31. The Commission was informed by Mr. Mohd Kheiruddin Mohd Rani, the Director of Trade Development at MTIB, that MTIB had also received the same anonymous complaint which alleged a price fixing pact between the two Target Enterprises.

32. Mr. Mohd Kheiruddin Mohd Rani further mentioned that based on the complaint, the market that would most likely be affected by the alleged conduct of the Target Enterprises would be the MDF market specifically the prices of small rubber wood logs, as the Target Enterprises are the biggest consumers of the said raw material, consuming up to between 60% and 70% of rubber wood small logs in Malaysia for the production of MDF.
33. Mr. Mohd Kheiruddin Mohd Rani also revealed that MTIB had previously met with a logging contractor who had complained to MTIB that one of the Target Enterprises had breached of an agreement for the supply of rubber wood small logs as, allegedly, price agreed upon was RM90.00 per metric tonne. However, the said Target Enterprise had allegedly subsequently unilaterally lowered the said price to RM 70.00 per metric tonne.
34. Mr. Mohd Kheiruddin Mohd Rani also opined that, due to the fact that the Target Enterprises have a large consumption of rubber wood small logs in the market, the influence that they exert on the market may indicate that they could be controlling and/or manipulating the price of rubber wood small logs. However, MTIB does not have any evidence to prove this statement.

## 5.4 Southern Region I

35. Between 9 and 11 May 2016, the Commission met with the following parties to obtain their statements and relevant documents pursuant to a Notice to Request for Information under section 18(1)(a) and (b) of the Act:
- (i) Mr. Farosham Bin Naizamohideen, a director at Impressive Transforms Sdn. Bhd.;
  - (ii) Hj. Azharin Bin Hj. Nizam Mohideen, the sole proprietor of SZ Bumi Enterprise;
  - (iii) Mr. Yeo Ayk Ke and Ms. Siah Lee Chu, the managing director and the head of the Purchasing Department respectively at Yeo Aik Wood Sdn. Bhd.; and
  - (iv) Mr. Peter Gan Tiong Swee, the Operations General Manager at Sern Kou Furniture Industries Sdn. Bhd.
36. Based on the statements obtained from the above parties, it was found that besides the Target Enterprises, other consumers of rubber wood small logs in the Southern Region including Heveaboard Berhad, Segamat Panel Boards Sdn. Bhd., Robin Resources (Malaysia) Sdn. Bhd., IMAX Resources Berhad and SYF Resources Berhad.
37. These companies are also the manufacturers of MDF as well as rubber wood particle boards. They compete with the Target Enterprises at both the same level of the distribution chain as well as for the buying of rubber wood small logs. However, the Target Enterprises were seen

as having the highest consumption of rubber wood small logs in the market.

38. The prices for rubber wood small logs in the Southern Region, at the time the statements and documents, which included tax invoices, were obtained, were between RM92.00 to RM105.00 per tonne.
39. The suppliers i.e. the logging contractors supply the rubber wood small logs to the consumers based on the best and/or highest price offered by the consumers as well as by taking into account the cost of transportation to transport the said rubber wood small logs to the consumers' premises.
40. The above parties were of the opinion that the current price trend was declining i.e. lower selling prices after the year 2012. The prices were seen to be affected by the supply of rubber wood in the market i.e. when there is an oversupply, the prices will be driven down and vice versa when there is a shortage the prices will go up. Besides supply in the market, other factors such as weather, which may affect the output of the suppliers, and petrol prices (for the transportation of rubber wood logs), may also affect the prices of rubber wood small logs.
41. Some of the parties above were also of the opinion that the Target Enterprises may be engaging in price fixing by lowering the purchase price of rubber wood small logs especially when there was high supply of rubber wood small logs and little to no demand in the market.

42. The parties above also observed that both the Target Enterprises have a manufacturing plant in the Nilai, Negeri Sembilan which is within close proximity of each other and that it was possible that the employees of the Target Enterprises were in contact with one another.
43. Several of the parties above also mentioned that in the Northern Region, mainly in the state of Kedah, Dongwha was considered as the biggest consumer rubber wood small logs and as such prices for the said rubber wood small logs are drastically lower as compared to prices in the Southern Region, with many of the above mentioned parties stating that the prices of rubber wood small logs in the Northern Region was between RM 50.00 to RM 60.00 per tonne.

## **5.5 Northern Region**

44. Between 18 and 20 May 2016, the Commission met with the following parties in Kedah to take their statements:
- (i) Mr. Lim Kean Boon, a director at Hock Chuan Enterprises Sdn. Bhd.;
  - (ii) Mr. Lee Chan Huop, a director at Ikatan Indah Wood Industries Sdn. Bhd.;
  - (iii) Mr. Chan Beng Tian, a managing director at Sik Sawmill Sdn. Bhd.;
  - (iv) Mr. Lim Kiang Chang, a director at Pertanaman Kim Hong;

- (v) Ms. Ong Hwei Hsing, a director at Woodpac Sdn. Bhd.;
  - (vi) Mr. Ong Kok Iuen, a director at Woodpac Sdn. Bhd.; and
  - (vii) Mr. Ooi Chin Lee, a manager at Kilang Papan Soon Lee.
45. Based on the statements obtained from the parties above, the Commission found that besides Dongwha, other consumers of rubber wood small logs in the Northern Region (mainly in the state of Kedah) included Evergreen, which has a chipping factory in Gurun and Pioneer OSB Sdn. Bhd. However Dongwha is considered to be the biggest consumer of rubber wood small logs due to them having the two largest MDF manufacturing plants in Merbok and Kulim, Kedah respectively.
46. The prices for rubber wood small logs in the Northern Region, at the time the statements and documents, which included tax invoices, were taken, were between RM65.00 to RM75.00 per tonne. The above parties found that the current price trend i.e. lower selling prices after the year 2012 was in decline after the year 2012.
47. The prices were seen to be affected by the supply of rubber wood in the market i.e. when there is an oversupply prices will be driven down and vice versa when there is a shortage the prices will go up.
48. It should be noted that a number of the above parties mentioned that besides the consumers mentioned above, previously, a significantly large consumer of rubber wood small logs were sugar refineries in Kedah, which utilized boilers in the refinery processes. The rubber

wood small logs were used as fuel for the said boilers. However, the said refineries had recently, up to 2 to 3 years ago, replaced the rubber wood small logs with natural gas as fuel for their boilers, which in turn led to a surplus of rubber wood small logs in the market in Kedah.

49. Besides supply, other factors such as weather, which may affect output of the suppliers, the cost of rubber wood small log extraction (between RM50.00 to RM70.00 per rubber tree) as well as the cost of transportation of the said rubber wood small logs from the logging camp to the consumers' processing plant/ depot.
50. It should be noted that several of the parties above mentioned that their main business was that of the rubber wood sawn timber, i.e. big logs, which were either exported or sold to local furniture manufacturers and made up around 70% their revenue while the rubber wood small logs made up the remainder 30% of their revenue.
51. Some parties have also mentioned that they have refused to sell the rubber wood small logs if they found that prices were too low and did not cover their cost for extraction and transportation of the said rubber wood small logs. The said unsold and unused rubber wood small logs would simply be discarded at the logging camp.
52. Some of the parties above have also mentioned that Dongwha had previously, around three (3) to five (5) years ago, requested the Federal Government of Malaysia to ban the export of wood chips, citing

Evergreen's construction of a wood chipping plant in Kedah, where the wood chips produced would subsequently be exported to Thailand and was causing a shortage in the rubber wood small logs market in Kedah and inherently driving up the prices for rubber wood small logs.

53. The proposed ban was opposed by the Malaysian Rubberwood Trade Industries Association on the ground that, if implemented, the export ban would have allowed Dongwha to monopolize the market for wood chips, and by extension, the rubber wood small logs, as it would be the only consumer in Kedah since Evergreen could no longer export their woodchips to Thailand. The ban on the export of wood chips was not implemented by the Federal Government.
54. Some parties from the above have further mentioned that when Evergreen initially opened their chipping factory in Gurun, the prices for rubber wood small logs were seen as being competitive between Dongwha and Evergreen but this is currently not the case due to Evergreen's declining consumption of rubber wood small logs in the Northern Region.
55. Regarding Pioneer OSB, most of the parties above observed that it is still new and its consumption of the rubber wood small logs does not really affect the purchase price of the rubber wood small logs. However, this may change in the future if Pioneer OSB chooses to expand its operation.

56. Several parties whose statements were obtained have also indicated that they were aware that the price of the rubber wood small logs were much higher in the Southern Region and they were of the opinion that this was due to the fact that the Southern Region have more consumers of the rubber wood small logs and thus more competition among them for the rubber wood small logs.
57. After meeting with the contractor logger and/or saw mill operators in the Northern Region, the IT refocused its investigation to the Southern Region particularly in Negeri Sembilan.

## **5.6 Southern Region II**

58. Between 15 July 2016 and 2 September 2016, the Commission met with the following parties in Negeri Sembilan to take their statements:
- (i) Mr. Chok Thiam Yee, a Director at CTY Plantations and Trading Sdn. Bhd.;
  - (ii) Mr. Lum Yat Chong, the Proprietor of L & T Success Enterprise;
  - (iii) Mr. Gan Swee Boon, a Director at Genuine Fortune Sdn. Bhd.;
  - and
  - (iv) Mr. Tan Ah Lim, a Director Firama Jaya Sdn. Bhd.
59. Based on the statements obtained from the parties aforementioned, it was established that a number of factors affected the price of small logs, namely the current market supply and demand, the weather as

well as the cost of transportation of the said rubber wood small logs from the logging camp to the consumers' processing plant/ depot.

60. The price of rubber wood small logs are directly affected by the supply and demand in the market, whereas when there is lower supply of the small logs and high demands, the price of the small logs will increase. Conversely, when there is a higher supply of small logs and low demands, the price of small logs will decrease.
61. Another factor which intrinsically affects the price of small logs is the weather as during the rainy season, there will be less supply of the rubber wood small logs in market with in turn increases the price of the small logs. On the other hand, during the dry season, the supply of the rubber wood will be higher due to the fact that labour and machinery equipment involved in felling of the rubber wood trees will not be affected in the dry season.
62. The location of the rubber estate also affects the price of small logs whereby small logs which are sourced from rubber estates which are further away from the consumer's plant/depot will fetch a higher price due to the additional transportation cost incurred by the supplier.
63. Based on the statements and documents obtained from the parties listed above, it was also found that the prices of small logs offered by the consumers, i.e. the MDF manufacturers of small logs to the suppliers i.e. logging contractors are dependent on the amount

supplied. It is the industry norm whereby a supplier who provides a high volume of small logs would receive better rates compared to a supplier who provides a small volume of small logs.

64. As such, it is a common practice within the industry for a small volume supplier to provide its rubber wood small logs to consumers through a bigger supplier's account. This allows the small suppliers to receive better rates and higher profits when dealing through a bigger supplier's account. In return, the bigger supplier would charge a nominal fee to the small supplier for the transaction made.
65. From the statements and documents received, the Commission found that the prices offered by the consumers of the rubber wood small logs including the Target Enterprises and its competitors in the Southern Region, at the time the statements and documents were obtained, were frequently different from one another. This can be seen from Table 1 below.

Table 1: Sample of prices offered by rubber wood small logs between on February and March 2016

Rubber wood small log consumers/buyers	Date and Price range offered (RM)		
	February 2016	March 2016	April 2016
Dongwha	110.00	95.00 to 96.00	90.00
Evergreen	110.00	100.00	100.00
Heveaboard	92.00 to 97.00	97.00	97.00
Genuine Fortune	110.00 to 115.00	94.00	94.00

66. As can be seen from the above Table, the prices offered by the consumers/ buyers of the rubber wood small logs to logging contractors are different depending on which logging contract they buy rubber wood small logs from, with the variance ranging between RM 3.00 to RM 18.00 in the difference.
67. It was also indicated by some of the parties whose statement were obtained that some suppliers would allocate and shift their supplies to the consumer of small logs who offered the best price.
68. From the statements obtained, it was made known that other than Dongwha and Evergreen, the suppliers also sold rubber wood small logs to Heveaboard, Genuine Fortune, Segamat Panel Board and several others which are located in the Southern Region.
69. Some suppliers also stated that there are other consumers of small logs in Malaysia such as Robin Resources and Miko Fibreboard. However, due to the fact that the former two (2) companies' factories are located far from the Southern Region, suppliers would have to incur additional transportation cost and therefore rarely deal with them unless their costs were covered by the purchase price of the rubber wood small logs supplied.
70. Furthermore, it was also opined by a supplier whose statement was obtained that another plausible cause for the depreciation of rubber

wood small logs maybe due to the low demand of the MDF in the market.

## **5.7 Other findings**

71. From the above statements obtained from the parties in the Northern Region, it was found that prices are usually not negotiated between the consumers of rubber wood small logs and the suppliers i.e. logging contractors. Furthermore, there were no written contracts of any kind for the said purchase and agreement is usually done orally via telephone.
72. Conversely, in the Southern Region, it was found that negotiations for the price of small logs are possible between the consumers of rubber wood small logs and the large suppliers. It was also discovered that incentives in terms of better rates would be given if the suppliers are able to meet the said consumer's quota for the rubber wood small logs.
73. It was also discovered that in the sale of small logs, suppliers are not only limited to contractors but also include the rubber wood trading houses and saw millers.

## 6. LEGAL ASSESSMENT

### 6.1 Application of Section 4 of the Act

74. Section 4 of the Act states that:

- “(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*
  - (c) 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.”*

75. By virtue of section 4(1) of the Act, a horizontal or vertical agreement between enterprises is prohibited so far as the agreement has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services.
76. Section 4(2)(a) of the Act further provides that without prejudice to the generality of subsection (1), a horizontal agreement between enterprises which has the object to fix, directly or indirectly, a purchase or selling price or any other trading conditions is deemed to have the object of significantly preventing, restricting or distorting competition in any market for goods or services.
77. Any enterprise which is a party to an agreement which is prohibited under this section shall be liable for an infringement of the prohibition under section 4(3) of the Act.
78. Based on the facts of the case as well as the statements and documents obtained during the course of the investigation as indicated above, there was insufficient evidence to suggest that there was a horizontal agreement by the Target Enterprises, to engage in a price fixing in relation to the selling and purchasing of label stock materials which is contrary to the Act.

## **7. CONCLUSION**

79. Based on the above, there was insufficient evidence to suggest that there was a horizontal agreement entered into by the Target Enterprises to engage in a price fixing in relation to the selling and purchasing of the rubber wood small logs which is contrary to the Act.
80. Therefore, the Commission concludes that there is no infringement of a prohibition under Part II of the Act.