

# MyCompetition NEWS

Promoting Competition, Protecting You



## The Balancing Act

Ensuring Professionalism and Quality  
Through Competition

Issue 3 | Jan - June 2014

# MESSAGES



“The MyCC’s outreach efforts are in line with our mission to nurture and drive a culture of competition through the education of stakeholders and the effective application of the competition law without fear or favour.”

Krauskopf, Antonio Capobianco from OECD and Ahmad Junaidi from the Commission for the Supervision of Business Competition (KPPU).

The first term of the Commission members ended in April and May of this year, and the set of new Commissioners appointed are a mix of new and old. Therefore, I wish to thank our outgoing Commissioners – Tan Sri Abdul Ghani Patail, Dato’ Saripuddin Kasim, Tan Sri Dato’ Dr Michael Yeoh, Prof Datin Dr Hasnah Haron, and Abdul Malek Ahmad for their services during their tenure, and welcome our new members Dato’ Dr Gan Khuan Poh, Dato’ Azmi Lateh and Dr Zakariah Abdul Rashid.

As we enter the second half of 2014, I firmly believe that the MyCC will continue to make breakthroughs in enhancing understanding of competition law, and create a conducive environment for competition in Malaysia.

**Tan Sri Dato’ Seri Siti Norma Yaakob**  
Chairman, Malaysia Competition Commission

I am pleased that in 2014, the MyCC’s reputation and authority have been enhanced both locally and abroad, through advocacy, outreach activities and enforcement of the law. As we began to investigate more cases, interpretation of the law and approaches to dealing with stakeholders were key issues of discussion at the Commission meetings.

Many organisations both domestically and internationally have invited the MyCC for their briefings, conferences and seminars. One of them was the 10th anniversary of the Competition Programme by the Organisation for Economic Co-operation and

Development (OECD) and Korea Policy Centre. The MyCC CEO, Shila Dorai Raj, moderated a session discussing competition issues in the distribution of pharmaceuticals at the OECD 13th Global Forum for Competition.

Additionally working visits by the Commission are an important mode of networking and knowledge exchange and to date we have conducted one such visit, which was to the *Rekabet Kurumu* (Turkish Competition Authority). We have also received visiting competition experts, namely Hassan Qaqaya from the United Nations Conference of Trade and Development (UNCTAD), Prof. Patrick



and the UK shared their experiences from an enforcer's perspective as well as from an economist's point of view. As a follow up, the MyCC will conduct one-to-one consultation and further discussions before any major policy decision is taken on this issue.

Advocacy is the soft approach to enforcement. While on the one hand we carried out all these advocacy programmes to stakeholders, on the other the MyCC continued to investigate and enforce the law. Since the *Competition Act 2010* was enforced in 2012 until the first six months of this year, the number of active cases came up to 31.

The final decision on the MAS-AirAsia case was also announced in April this year while interim orders were issued to a group of icemakers found infringing the law through price fixing activities. The MyCC also accepted an Undertaking from the Central Committee Members of the Pan-Malaysia Lorry Owners Association (PMLOA) concerning its pricing practices on transportation charges.

As we are a young agency, our capacity building efforts for the staff continues. Various programmes held overseas by other enforcement agencies were attended by us while major conferences were attended by some Commission members and me. These provided valuable networking opportunities and introduced the MyCC to some new ways of addressing challenges faced by a competition authority.

On behalf of the MyCC's executive team, I reiterate our commitment to ensuring effective and efficient application of competition law and economics to bring about a more progressive nation.

**"PROMOTING COMPETITION,  
PROTECTING YOU"**

**Shila Dorai Raj**  
CEO, Malaysia Competition Commission

The first six months of 2014 saw the MyCC continue with its strategic priorities that include raising awareness on the importance of compliance with the *Competition Act 2010*. We have worked with important agencies such as Bank Negara Malaysia and *Majlis Tindakan Ekonomi Malaysia* (the Malaysian Economic Action Council – MTEM) as part of our advocacy efforts. Numerous other associations and GLCs also sought out the MyCC for briefing and consultation sessions.

The culmination of our working relationship with the Central Bank saw the signing of an MoU with Bank Negara Malaysia, which addresses cooperation in enforcing the *Competition Act 2010* in the financial sector. The MyCC is taking this approach of coordination and cooperation with sector regulators to ensure consistency and effectiveness in enforcing the law.

A major public consultation with professional bodies was held on 19th May 2014. This followed the study on the fixing of prices or fees by Professional Bodies on 131 associations in 35 sectors. There was much anxiety and worry among the professional bodies and to some extent lack of understanding on the implications of the law vis-à-vis scale of fees and price fixing by some professional bodies. Two invited speakers from Singapore

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# ADVOCATES FOR EXCELLENCE

## Introducing the Commissioners of the MyCC

**S**et up under the Competition Commission Act 2010, the Malaysia Competition Commission (MyCC) has been tasked with overseeing and enforcing the Competition Act 2010 (CA2010), as well as to carry out other activities aimed at enhancing and promoting competition in the country. These include advising the Minister of Domestic Trade, Co-operatives and Consumerism (as well as other relevant government bodies and agencies), performing advocacy work and conducting studies and research on competition.

Commission members of the MyCC are highly respected figures with distinguished experience in public, private, academic or legal fields. They are entrusted with upholding the spirit and practice of competition in the country. MyCompetition News introduces the MyCC Commissioners for 2014-2017.

### Criteria for Selection

According to the *Competition Commission Act 2010*, the members of the MyCC are appointed by the Prime Minister on the advice of the Minister of Domestic Trade. Aside from the Chairman, there should also be four members from the civil service – including a representative of the Ministry of

Domestic Trade, Co-operatives and Consumerism as well as no less than three but not more than five from the private sector. These members should also have expertise in the fields of business, law, economics, public administration, competition or consumer protection.

## The Members of the MyCC – 2014-2017

**Chairman**  
**Tan Sri Dato' Seri Siti Norma Yaakob**  
*Former Chief Judge of Malaya*

The Chairman of the MyCC, Tan Sri Dato' Seri Siti Norma Yaakob brings to the table four decades of experience in the Malaysian legal system, which culminated in her being named the Chief Judge of Malaya – the third-highest rank in the judiciary. Her knowledge of law coupled with her reputation for incorruptibility and commitment to justice and fairness were among the factors that were taken into consideration when naming her to this position.



**Datuk Dr Rahamat Bivi Yusoff**  
*Director-General, Economic Planning Unit (EPU)*

As the DG of the EPU, Datuk Dr Rahamat is responsible for formulating development plans for the nation and seeing through their implementation, progress, evaluation and revision. She is highly knowledgeable in the field of economy, finance, and development and has served the public sector in various capacities for over 30 years. Her expertise will greatly assist the MyCC in devising strategies that will align competition law to the needs of economic advancement.

**Datuk Dr Rebecca Fatima Sta Maria**  
*Secretary-General,  
Ministry of International Trade and Industry (MITI)*

The administrative head of MITI, Datuk Dr Rebecca Fatima Sta Maria oversees foreign investment and trade as well as industrial development policies. She is the Chair of the ASEAN High Level Task Force for Economic Integration and was key in drawing up the *ASEAN Economic Community (AEC) Blueprint* which focuses on integrating the region's markets. As a member of the MyCC, she contributes her expertise on how healthy competition can enhance Malaysia's attractiveness in trade and investment.



**Dato' Azmi Lateh**  
*Deputy Secretary General, Ministry of Domestic Trade,  
Co-operatives and Consumerism (MDTCC)*

Representing the MDTCC in MyCC, Dato' Azmi Lateh brings his substantial experience of 31 years in various roles in numerous government departments to his new role as a Commissioner for the MyCC. As the Deputy-Secretary General of MDTCC, Dato' Azmi's strong understanding of the inner workings of the government sector gives him a unique insight and the wherewithal to ensure that the Commission carries out its duties sincerely and responsibly.



## **Ragunath Kesavan**

*Lawyer and former President of the Malaysian Bar Council*

Ragunath Kesavan is driven by a passion for advocating the rights of people, which was especially evident during his time as the head of the Malaysian Bar Council. His strong zeal for fair play is reflective of the overall mission of the MyCC to ensuring competitive practices in Malaysia, while his legal knowledge enables him to contribute with authority to the formulation of policies, guidelines and investigations of cases where the CA2010 has been infringed.

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## **Dato' Dr Gan Khuan Poh**

*Economist and Corporate Consultant*

An economist with more than three decades of experience in both the public and private sectors including the Economic Planning Unit and in academia, Dato' Dr Gan Khuan Poh's extensive knowledge in the areas of economics, finance and ICT is highly beneficial to the MyCC Board. In particular, his research into the Economics of Regulation and Competition, Distribution Economics and Economic Development in Emerging Economies is expected to come in good stead.

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## **Prof Dato' Dr Sothi Rachagan**

*Chief Executive / Vice Chancellor,  
Perdana University*

A former Dean of University Malaya's Faculty of Law where he taught consumer and competition law, and the immediate past-President of the International Association of Consumer Law, Dato' Sothi is passionate about consumer rights. His research experience and sound analysis of consumer and competition issues help strengthen the MyCC's focus on nurturing a competitive climate for business so as to ultimately benefit consumers.

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## **Dr Zakariah Abdul Rashid**

*Executive Director, Malaysian Institute of Economic Research (MIER)*

The former Deputy Dean and Head of Economics Department at Universiti Putra Malaysia's (UPM) School of Postgraduate Studies, Dr Zakariah Abdul Rashid has published many articles and edited academic journals as well as lectured at seminars and conferences on development, international, Islamic and regional economics, among others. In addition, he has been a consultant to many research institutes and has played a key role on many economics-based projects. His in-depth familiarity with the field of Economics will help the MyCC during their deliberations.

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*Each member serves for a period of three years, and may be reappointed to the Commission for up to two consecutive terms. In addition, owing to the stature of their position, they are held to the highest standards of personal and professional conduct, and as such enhance the MyCC's reputation as the nation's spearhead for competitiveness which will lead to excellent economic and business performance.*

*A round-up of some of the events and activities organised or attended by the MyCC in the course of its duties.*

## Strengthening Cooperation

On 6th and 7th February, a delegation from the MyCC – comprising Chairman Tan Sri Dato' Seri Siti Norma Yaakob, Commissioner Tan Sri Dato' Dr Michael Yeoh, Corporate Communications Unit Head Rowena Wong, and Legal Unit Executive Zairan Ishak – paid a working visit to the *Rekabet Kurumu* (Turkish Competition Authority) in Ankara. This is part of the MyCC's efforts to enhance itself through learning and adopting international best practices.



MyCC Chairman Tan Sri Dato' Seri Siti Norma Yaakob exchanging a memento with *Rekabet Kurumu* (Turkish Competition Authority) Chairman Prof Dr Nurettin Kaldirimci. Standing by is then MyCC Commissioner Tan Sri Dato' Dr Michael Yeoh.



## Reaching Out

The MyCC was invited by Petronas Chemical Derivatives to conduct a seminar on the *Competition Act 2010* (CA2010) on 27th February. The talk was attended by 60 staff from the legal, corporate and risk management departments of Petronas Chemical Derivatives. The seminar was part of the MyCC's outreach effort to raise awareness of the CA2010 among corporations in Malaysia.

MyCC Economic Unit Executive Norhafiza Shafie explains the provisions of the CA2010 to staff of Petronas Chemicals Derivatives.

## Championing Competition

In line with its objectives to be a world-class competition authority, the MyCC participates in various international conferences. For instance, on the 27th and 28th February, more than 100 delegates from around the world attended the annual Organisation for Economic Co-operation and Development (OECD) Global Forum on Competition in Paris. The meeting focused on measures aimed at curbing corruption and boosting competition and its related issues – particularly in the distribution of pharmaceuticals. Representing Malaysia were MyCC CEO – Shila Dorai Raj and Director of Investigation and Enforcement – Iskandar Ismail. The MyCC CEO also moderated a breakout session dedicated to Competition Issues in the distribution of pharmaceuticals.

In a separate event held in Marrakech, Morocco, MyCC CEO Shila Dorai Raj, and MyCC Head of Legal Unit, Dhaniah Ahmad, also represented the MyCC at the International Competition Network (ICN) Annual Conference, from 22nd to 25th April this year. The conference provides an international platform for ICN members, Non-Governmental Advisors (NGAs) and other competition experts to build expertise and share experiences.



MyCC CEO Shila Dorai Raj (second left) and Head of Legal Unit, Dhaniah Ahmad (right) with Khazanah Research Institute Director of Research Wan Khatina Nawawi (left) at the International Competition Network (ICN) Annual Conference.

# HIGHLIGHTS



MyCC Investigation and Enforcement Division Executive Suren Rajah (centre) receiving a token of appreciation from a representative of MaPMA.

## Advocacy Efforts

On 8th March, several members of the Malaysia Paper Merchants Association (MaPMA) attended a seminar on the CA2010 organised by the Association at the Bukit Jalil Golf & Country Resort in Kuala Lumpur. It was held to enhance knowledge of the Act and the importance of guarding against anti-competitive practice among MaPMA members.

The seminar was helmed by MyCC Investigation and Enforcement Division Executive Suren Rajah, who also fielded questions from attendees after his presentation.

## Sharing the Know-How

MyCC members were given a briefing on British Competition Law and Competition Appeal Tribunal (CAT) procedures by the UK Foreign & Commonwealth Office (FCO) at a roundtable session held at the MyCC office on 13th March. The talk titled *Introduction to Competition Law and CAT Procedures* was presented by CAT Director of Studies Dr Adam Scott and Legal Secretary George Lusty.

The invited experts also discussed competition law and policy, as well as the work processes of the UK CAT, which is a specialist judicial body whose function is to hear and decide cases involving competition or economic regulatory issues.



MyCC Commissioner Ragunath Kesavan (left) presenting a token of appreciation to CAT Director of Studies Dr Adam Scott.



Then MyCC Commissioner Abd Malek Ahmad speaking at the OECD workshop titled *International Co-operation in Cross-Border Competition Cases* in Seoul, South Korea.

## International Collaborations

In commemoration of the 10th Anniversary of the Competition Programme organised by the Organisation of Economic Cooperation and Development (OECD) and the Korea Policy Centre, a celebration and workshop was held in Seoul, South Korea from 19th to 21st March.

Then MyCC Commissioner Abd Malek Ahmad represented Malaysia at the event, where representatives from competition authorities in the Asia Pacific exchanged views and ideas on enhancing international cooperation in cross-border competition cases. Aside from Malaysia and OECD member states, other countries represented were India, Indonesia, Pakistan, Mongolia, Papua New Guinea, Singapore, China and Vietnam.

## Enhancing Asean Partnership

MyCC's Strategic Planning & International Affairs Division Executive – Ayuda Sari Ismail – and Management Services Division Head – Erin Tang – represented the Commission at the 13th Meeting of the ASEAN Experts Group on Competition (AEGC) in Bangkok, Thailand.

Held from 19th to 21st March, the meeting involved discussions on how Asean member states can improve cooperation with each other in matters of competition. In addition, it also saw the handing over of the AEGC Chair from the Philippines to Thailand, which will hold that post until March 2015.



Delegates of the 13th meeting of the ASEAN Experts Group on Competition (AEGC) in Bangkok, Thailand. The MyCC was represented by Ayuda Sari Ismail (seated, third from right) and Erin Tang (seated, far left).



MIM President Tun Mohammed Hanif Omar presenting the certificate of conferment of Emeritus Fellow to MyCC Chairman Tan Sri Dato' Seri Siti Norma Yaakob. Looking on is MIM Chairman Datuk Seri Mohamed Iqbal Rawther.

## MyCC Chairman Honoured

The Malaysian Institute of Management (MIM) honoured MyCC Chairman Tan Sri Dato' Seri Siti Norma Yaakob on 27th March by conferring the title of Emeritus Fellow on her. The certificate was presented by MIM President Tun Mohammed Hanif Omar at a ceremony in Jaya 33, Selangor.

Prior to the conferment, Tan Sri Dato' Seri Siti Norma Yaakob conducted a dialogue with MIM members, where she highlighted several issues including the benefits of the CA2010, the MyCC's advocacy efforts, and answered queries on challenges faced by businesses with regards to competition law.

## Towards a Common Cause

On 5th June, the MyCC and Bank Negara Malaysia (BNM) signed a Memorandum of Understanding (MoU,) to work together towards protecting and promoting competition, while preserving the overall financial stability of the nation.

The agreement lays out the framework for consultation and resolution on anti-competitive business conduct prohibited by the *Financial Services Act 2013*, the *Islamic Financial Services Act 2013* and the *Competition Act 2010*.

The MoU was signed by MyCC Chairman Tan Sri Dato' Seri Siti Norma Yaakob and BNM Governor Tan Sri Dato' Sri Dr Zeti Akhtar Aziz.



From left: BNM Governor Tan Sri Dato' Sri Dr Zeti Akhtar Aziz, Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC) Secretary General Dato' Sri Alias Ahmad, MDTCC Minister Dato' Sri Hasan Malek and MyCC Chairman Tan Sri Dato' Seri Siti Norma Yaakob, at the signing ceremony of the MoU between the MyCC and Bank Negara Malaysia.

For the latest events, log on to [www.mycc.gov.my](http://www.mycc.gov.my). Please forward your requests for seminars on the *Competition Act 2010* to the Strategic Planning & International Affairs Division at [spiad@mycc.gov.my](mailto:spiad@mycc.gov.my).

# Q&A

Have a question on the procedures and policies of the Malaysia Competition Commission? **MyCompetition News** reproduces some of the most asked questions that members of the public and businesses pose to the MyCC.

**Q** *I am a member of a professional association, and have been using fees for a long time. How is it in my best interests to stop using them?*

**A** Although it may have been common practice for associations to set fee scales for services provided by members, since the gazetting of the *Competition Act 2010 (CA2010)*, this is now illegal. This is because the MyCC holds that a scale of fees is a violation of Section 4 of the CA2010 which prohibits horizontal price fixing. All commercial activities, including professional services, fall under the CA2010 and professional bodies are expressly forbidden from setting a scale of fees as it goes against the spirit and practice of competition.

Eliminating the scale of fees will result in members having to compete in justifying the charges they wish to set. This improves quality and efficiency, which benefits consumers. Apart from that, it also raises industry standards and enhances the economy in the long run.



**Q** *For a consumer like me, having fixed fees to refer to makes it easier for me to do my costing. How will removing scale of fees benefit me?*

**A** Having a variety of choices will give consumers the chance to choose what is best for them. A consumer is then able to choose the kind of professional services they can best afford. Also, with competition, service providers must improve their quality and efficiency to attract customers.

If all prices were fixed, a consumer will not have the choice of choosing the best type of services for themselves, while service providers will not have the incentive to provide better services since they will get the same fees.

For further information, please visit our website at [www.mycc.gov.my](http://www.mycc.gov.my)

# ADVOCACY IN ACTION

## The MyCC Engages Professional Bodies in Discussions Over Scale of Fees

**T**he maximum and minimum prices that a member of a professional body – such as doctors, dentists, lawyers and architects – charge for a service, is known as scale of fees and is used by a number of professions in Malaysia. However, under the Competition Act 2010 (CA2010), scale of fees may be considered to be a violation of Section 4 which prohibits price-fixing, as such practices are ultimately detrimental to the interest of consumers and fair competition. The MyCC as well as international experts explain why the scale of fees should be abolished in this special coverage.

While the Malaysia Competition Commission (MyCC) has the power to act against violations of the CA2010, there are a number of professional bodies that are legally empowered to set scale of fees. As such, the Commission engages in consultation and advocacy to present its case and convince such organisations to voluntarily abolish scale of fees, while at the same time, gain a better understanding of any reluctance to do so. One such exercise took place on 19th May at the PNS Tower in Kuala Lumpur, when the MyCC held a dialogue with representatives of various professional bodies.

**“Professional services have an important role to play in improving the competitiveness of the Malaysian economy. The disappearance of anti-competitive regulatory restrictions in this sector would mean that consumers could be offered more competitive and better-quality services on advantageous terms”**

**Senator Dato’ Seri Ahmad Bashah Md Hanipah**  
Domestic Trade, Co-operatives &  
Consumerism Deputy Minister





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**“The MyCC and Malaysia Productivity Corporation will work together to study whether the existing restrictions pursue a clearly articulated and legitimate public interest objective.”**

**Tan Sri Dato' Seri Siti Norma Yaakob**  
MyCC Chairman

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**“Scaled fees should be abolished and market forces be allowed to decide the prices. Because this is what meritocracy is all about, letting customers go for the best and pay based on the quality provided. A lot of successful countries like the Netherlands, New Zealand and Germany practise this. At the same time, consultation efforts such as these are important, because they allow the MyCC to hear the thoughts and views from the other side, and from them, make the most informed decision.”**

**Datuk Abdul Latif Abu Seman**  
Malaysia Productivity Corporation  
Deputy Director-General



The welcome and keynote addresses were given by MyCC Chairman Tan Sri Dato' Seri Siti Norma Yaakob and Deputy Minister of Domestic Trade, Co-operatives and Consumerism Senator Dato' Seri Ahmad Bashah Md Hanipah. The former acknowledged the role of professional bodies in improving the nation's competition environment, while the Deputy Minister urged professional bodies to work with the MyCC to come up with a win-win solution.

## Removing the Scale of Fees

After an overview of the CA2010 by MyCC Legal Unit Head Dhaniah Ahmad, MyCC CEO Shila Dorai Raj presented the Commission's research on professional bodies and scale of fees, stating that through the study of 34 sectors of professional bodies they found several bodies that follow a scale of

fees despite not being regulated by law to do so. She also commended the governing bodies of midwives and nurses, counsellors and food analysts who were given authority to fix a scale of fees but had not done so.

She then revealed that after the MyCC had published their findings, the Malaysia Institute of Chartered Secretaries and Administrators (MAICSA) ceased their recommended fees as they were one of the sectors not regulated by law to possess one.

The MyCC CEO also informed those present, that studies indicate a free market is not a hindrance and will eventually lead to an overall larger revenue for professional bodies. Besides that, she affirmed that the MyCC will take into consideration all the effects of removal of scale of fees on consumers and professional bodies alike and that the MyCC

*(Continued on page 14)*



**Left:**  
MyCC CEO Shila Dorai Raj, speaking at the public consultation.

**Above:**  
MyCC Commissioner, lawyer and former Bar Council Malaysia President, Rangunath Kesavan acts as a moderator during the panel discussion with the invited speakers.

## THE ECONOMIST'S VIEW

*A Senior Affiliated Consultant at Charles River Associates (CRA), China, David Stallibrass was the first international competition economist to provide expert testimony in a Chinese court, and has advised on numerous projects for both public and private clients there.*

*In addition, he is attached to the Competition Law Center at the University of International Business and Economics, and the Competition Law Center of the Graduate University of the Chinese Academy of Sciences, both located in Beijing. MyCompetition News spoke to him during the MyCC's public consultation with professional bodies event to gain his insights on competition law and scale of fees.*

### **Drawing on your experiences of working in UK and China, do you believe that there are any differences between how competition law is enforced in developed and developing economies?**

Every country needs to develop laws that suit its culture, institutions and economy. However, the objective of Competition Law in every country, whether developed or developing, is pretty much the same – to promote growth through promoting competition.

Nevertheless, every country also has very different methods of enforcement and some practices which may be considered normal in one country, may not be in another. For example, in Malaysia, a number of professional bodies have their fee structures encoded in a

regulatory law, while in China, the government has set up the National Development and Reform Commission which has set a guideline of fees. However, this is not the way in the UK or Singapore.

Scale fees should be treated like every single other agreement between firms, such as is in the UK and Singapore, and should not be given a special exception.

### **What are the negative socio-economic effects of scaled fees, especially if practised by professional bodies, and how would removing scaled fees improve the situation?**

There are two major negative social effects of scale fees. The first one is that, in so far as they raise prices or hinder the ability of firms to offer



a wide range of prices, they prevent poor or less well-off people getting access to services such as legal, financial or medical advice.

In developing countries where people are beginning to have a little bit of spare money, if there isn't flexibility in fees, then people's expectations of what growth will give them will be dashed and that has a substantial negative effect.

The second area is in other businesses. Scale fees prevent people from entering business, coming up with new businesses and business models and even offering a lower price for services, if that's what they want to do.

# FEATURE

(from page 12)

will collaborate with the Malaysia Productivity Corporation (MPC) to come up with a comprehensive approach towards the removal of scale of fees.

## External Expert Viewpoint

To further reinforce the case against scale of fees, the MyCC also invited two experts – Herbert Fung, the Competition Commission Singapore's (CCS) Director of Business and Economics, and China-based Competition Economist David Stallibrass.

Herbert Fung revealed that lawyers and architects in the city-state have already voluntarily stopped using scaled fees. This was done after the first case in 2006 against real-estate agents which led to other professional bodies withdrawing their scale of fees.

He also cited the Singapore Medical Association (SMA) which had withdrawn their guidelines, and in replacement, doctors display the prices for services, thus allowing patients to compare and make a choice. Fung revealed that the CCS and SMA now relate to each other better.

## THE SINGAPORE EXPERIENCE

*Herbert Fung, the Director of Business and Economics at the Competition Commission Singapore (CCS) has supervised a range of cases, including the abolishment of the Singapore Medical Association Guidelines of Fees. Prior to joining CCS in 2008, he was the Senior Economic Advisor at the Telecommunications Authority in Hong Kong and before that, an Associate of Equity Research at Credit Suisse.*

### **What are your thoughts on the MyCC's efforts in promoting fair competition in Malaysia, especially in organising this public consultation and seminar?**

I think that this public consultation is very constructive for the development of professional services in Malaysia. Fee scales by professional bodies is a pertinent issue and it is imperative to create a platform for professionals to learn more about competition law, and for the MyCC to understand the unique environments of various professions better and develop a more informed decision-making process on professional fee scales.

### **What was the major impact of the withdrawal of the Guidelines of Fees (GOF) for Doctors in Private Practice in Singapore?**

The GOF was withdrawn by the SMA in 2007, and today there is vibrant price and non-price competition for a wide variety of medical procedures. At the same time, alternative mechanisms to the GOF are in place to foster the transparency of medical fees and safeguard the interest of patients, such as the publication of average hospital bills by our Ministry of Health.

### **What was the impact of the removal of the Conveyancing Fee Guidelines by the Law Society of Singapore?**

The Conveyancing Fee Guidelines were withdrawn voluntarily by the Law Society of Singapore in 2009. It noted that all fees should be freely negotiated between solicitors and their clients without guidelines from the Law Society Council (other than statutory guidelines), and there was no reason to treat conveyancing transactions differently. CCS has not come across competition issues on conveyancing services since then.

### **What were the challenges faced by CCS when handling both of these cases and how were they overcome?**

The first challenge of CCS was to establish a general position on professional fee guidelines, given the varying characteristics and market



conditions of the different professions. The second was to identify and devise alternative solutions to replace professional fee guidelines, so fee transparency could be maintained without harming competition. They were overcome through constant engagement and dialogue with the relevant stakeholders.

### **What other measures are being taken by CCS to remove the scaled fees of professional bodies?**

CCS educates and encourages businesses and trade associations to inculcate transparency and fairness in their pricing decisions for the benefit of consumers, without compromising on the competitive process. If they are concerned they are infringing the Competition Act, they may file a Notification for Decision or Guidance with CCS, because each case has to be evaluated individually. It can be time-consuming, but the process is important and also allows CCS to understand the competitive pressures unique to each industry.

### **What are your recommendations to the MyCC to assist them in their efforts to remove scaled fees of professional bodies?**

A competition authority needs to continuously engage all relevant stakeholders. We must talk to them continuously and advocate the value proposition of competition in the context of professional services. And we must not flinch from taking a clear stand against professional fee scales, as these are clearly harmful to competition, without countervailing benefits.

**“This public consultation helped me to understand that scale of fees if not done properly will not benefit consumers. I feel that dentists would be more comfortable if there is no scale of fees and if it were up to the individual dentist to decide the price, promoting fair market. Within the council, however, there are mixed feelings, and maybe what should be provided is a recommended range which the public can then accept, reject or bargain.”**

**Dr Chow Kai Foo**  
Assistant Honorary General Secretary,  
Malaysian Dental Association



**“This seminar is timely, and I am glad that the MyCC is opening up, reaching out to professional bodies and creating more understanding. Architects are beginning to get a clearer picture and we hope this issue can be resolved in due course.”**

**Ar Saifuddin Ahmad**  
Board Member,  
Board of Architects Malaysia

## A UK Perspective

While Fung spoke from a regulator’s point of view, the case against scale of fees from an economic perspective was given by David Stallibrass, who has more than 10 years of experience in the field of Antitrust and Competition Economics. He highlighted how scale of fees is harmful to the economy and reviewed the outcome of their removal on all parties involved.

Stallibrass stressed that the existence of a scale of fees will reduce the incentive to be efficient and it will be difficult to provide services or products to different segments of society. He also empathised with consumers who earn below the average income, as they would be denied access to services if the scale of fees is set too high.

This can also harm businesses as fee scales that are high can result in excess capacity and low scale fees can result in lower overall income. He further validated that in the UK, since the *Competition Act* came into place in 1998, there has been no further debate by any professional body regarding scale of fees.

The one-day event ended with a panel discussion between Fung, Stallibrass and MPC Deputy Director-General Datuk Abdul Latif Abu Seman, who also spoke at the event. Moderated by MyCC Commissioner Ragnath Kesavan, the session also gave members of the audience the opportunity to share their thoughts and concerns on the topic.

*For many of the representatives from the various professional bodies in attendance, the consultation allowed them to improve their perception about the effect of the removal of scale fees for their particular profession. The event was also a good platform for the MyCC to engage with stakeholders and showcase its advocacy and outreach efforts.*

# COUNTING THE CHICKENS

## MyCC Reviews The Broiler Market in Peninsular Malaysia

**A**s well as implementing and enforcing competition law under the provisions of the Competition Act 2010 (CA2010), the Malaysia Competition Commission (MyCC) is also tasked with conducting studies and reviews on competition issues in the Malaysian business sector. One such study was conducted on the domestic broiler (chicken bred specifically for human consumption) market, with the final report released in March 2014. MyCompetition News highlights a report by the MyCC.

### Background

In Peninsular Malaysia, broiler meat is the most frequently consumed type of meat owing to cultural or religious reasons, and therefore a review of whether anti-competitive practices are being carried out, is of great public interest.

The review focused on the current structure of the domestic broiler market, and the interactions of farmers, wholesalers and retailers across the broiler supply chain. This is divided into the upstream segment comprising feed mills and breeder and broiler farming, while the downstream segment involves processing, distribution, wholesaling and retailing of broilers.

As a result of its study, the MyCC uncovered conduct and policies that may be considered preventing, restricting or distorting competition in the broiler market. Based on its findings, the MyCC also suggested recommendations.

### Permitted Maximum Price

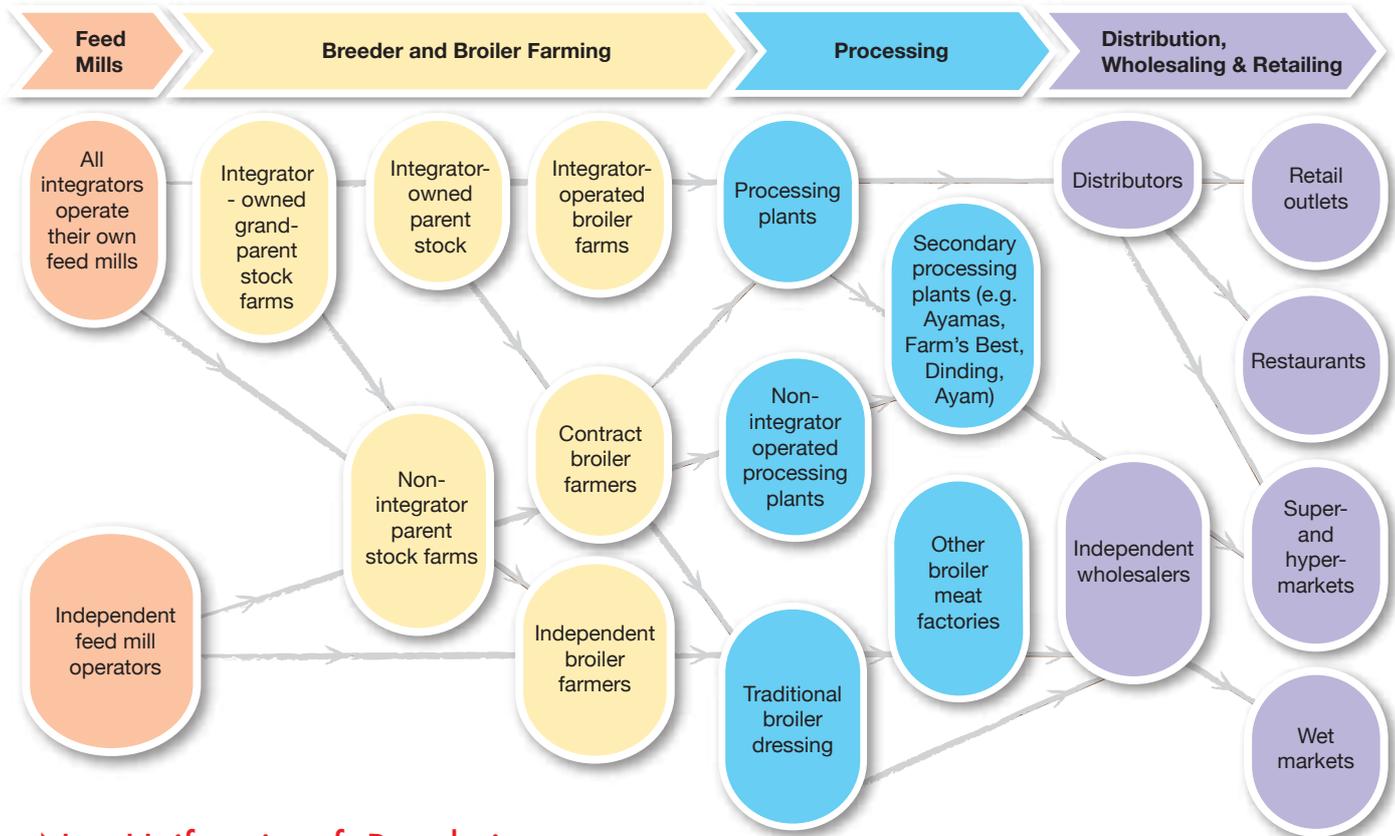
It observed that the Ministry of Domestic Trade, Cooperatives and Consumerism (MDTCC) holds open consultations with all broiler market players to decide on the 'permitted maximum' broiler prices



during festive seasons. In addition, it holds that retailers' compliance with the 'permitted maximum' price, could be a tacit form of collusion between and among wholesalers and retailers.

The MyCC recommends that this approach should be revised and replaced with discreet consultations and, as necessary, supervision of individual broiler businesses. It also urges the MDTCC to assess the effects of its regulation on the pricing behaviour of farmers, wholesalers, and retailers during festive seasons.

## Broiler Supply Chain



### Non-Uniformity of Regulations

Source: Adapted from Department of Veterinary Sciences

Another issue is that each state has a different set of procedures for enforcing *Enakmen Perlindungan Unggas 2005* (Poultry Farming Enactment 2005). These differences in regulatory requirements may have the effect of impeding or hindering market entry and expansion.

The MyCC recommends that state-based Departments of Veterinary Sciences (DVS) should seek standardisation of the farming land licensing requirements and operating procedures across all states.

seasons where, aside from charging the 'permitted maximum' price announced by the MDTCC for the supply of broilers, integrators/non-integrators\* have also made it mandatory for buyers to pay for the services provided by their employees for catching the number of chickens required.

The MyCC is contemplating investigating such conduct, and/or consulting with the Price Control Unit of MDTCC to investigate the business behaviour of broiler farmers during festive seasons, under the Price Control and Anti-Profiteering Act 2011.

### Asymmetric Pricing

It was also discovered that changes in broiler retail prices respond more strongly to increases in farm prices rather than decreases.

The MyCC will consider conducting a specific review of the market factors that could or will underpin asymmetric pricing.

*The broiler sector in Peninsular Malaysia has expanded in recent years through higher levels of private investment and entrepreneurship. In order to "promote economic development by promoting and protecting the process of competition," the MyCC will continue to monitor the market behaviour of all parties in the broiler supply chain.*

### Additional Charges

Furthermore, the MyCC was informed by some wholesalers of a pricing practice during festive

\* Integrators are enterprises that own and operate feed mills, grandparent and parent farms (including hatcheries) as well as broiler farms.

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## CASE STUDIES

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*Since the beginning of 2012 when the Competition Act 2010 came into force, the MyCC has investigated several incidents of anti-competitive practice. In the following section, we highlight some recent examples and report the actions taken by the MyCC to uphold the spirit of competition in Malaysia.*

### THE FINAL DECISION IS OUT

Malaysia Airline System (MAS) and AirAsia Berhad (AirAsia) Penalised for Market Sharing



The Malaysia Competition Commission (MyCC) has reached its final decision regarding the case against MAS and AirAsia. The two airlines were found by the MyCC to have infringed section 4(2)(b) of the *Competition Act 2010* (CA2010), that forbids market sharing. They had divided domestic routes among themselves and were hit with a penalty of RM10 million each.

Both airlines faced the possibility of being fined 10% of their respective global revenue from January to April 2012, the time of the infringement. However, taking into consideration their cooperation in investigations as well as their voluntary removal of the routes and market focus, the MyCC reduced the fine substantially.

Even so, both MAS and AirAsia, are now appealing to the Competition Appeal Tribunal against the RM10 million fine.

The move by the MyCC has sent strong signals to the market that it is serious in ensuring fair trade among industries, and the decision was commended by the Public Accounts Committee.

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### COLD AS ICE

**Ice Manufacturers Infringe Price Fixing Section of Competition Act**

26 ice manufacturers were found to have violated Section 4(2)(a) of the CA2010 by fixing the price of edible tube ice at RM0.50 per bag and block ice at RM2.50 per block in Kuala Lumpur, Selangor and Putrajaya. They were imposed a penalty of RM283,600 in a proposed decision by the MyCC early this year.

Although the MyCC does not police price hikes, under the Commission's scope it may act on any infringement of the CA2010. Any increase is found

to be a breach of Section 4 of the Act that prohibits fixing, directly or indirectly, a purchase or selling price or any other trading conditions for goods and services.

If businesses increase prices due to market conditions, this should be done independently, without consultation or collusion, as an infringement may result in maximum penalties up to 10% of their turnover.

# STOP THE PRICE HIKE!

## Pan-Malaysia Lorry Owners Association Halts Increase in Fees

In late 2013, the MyCC issued a proposed interim measure to the Pan-Malaysia Lorry Owners Association (PMLOA). This followed an investigation into a probable infringement of the CA2010 after the announcement by PMLOA to increase transportation rates by 15% due to fuel subsidy issues.

The measure demanded that the involved parties suspend and desist from the increase. It also required the PMLOA to abstain from making any further increments to or fixing of transportation charges, in order to avoid economic damage within the transportation industry and protect the public interest.

The PMLOA's subsequent announcement to void the increase in transportation charges, was well accepted by the MyCC. The final direction to PMLOA included amending their constitution to remove terms that allow for the discussion and determination of any chargeable prices for lorry enterprises.

Besides investigating four other alleged price-fixing by associations and enterprises, the MyCC has been cracking down on industry associations who facilitate anti-competitive conduct. It will also be monitoring price hikes in the transport industry, following the government's decision to cut fuel subsidies, when there is evidence of anti-competitive behaviour.



*The MyCC will continue to investigate cases and issue warnings or penalties where necessary, as part of its ongoing drive to rid Malaysia of anti-competitive practices. By enforcing the Competition Act 2010, the MyCC hopes to enhance competition for the benefit of businesses, consumers and the economy.*

For full details and latest updates, please log on to the MyCC website.



SURUHANJAYA PERSAINGAN MALAYSIA  
MALAYSIA COMPETITION COMMISSION

# GET IN ON THE ACT

As the regulator for competition issues, the Malaysia Competition Commission (MyCC) has published numerous handbooks to help businesses and individuals know their rights, and understand the *Competition Act 2010*.



All publications may be downloaded from the MyCC website.

## PROMOTING COMPETITION, PROTECTING YOU

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