

# MyCompetition

Promoting Competition, Protecting You

**NEWS**

## **Advocacy**

Media Training on  
Competition Law

MyCC Classroom

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## **On the World Stage**

Competition Law Workshop  
on Market Definition

# **Abuse of DOMINANCE**



02/ 2018 : JUL - DEC 2018

## KEYPOINTS MESSAGES

### Keypoints Messages



**Dato' Seri Mohd Hishamudin Md Yunus**  
*MyCC CHAIRMAN*

#### CHAIRMAN

I am very honoured to have been elected as the new chairman of the Malaysia Competition Commission under the purview of the new government. I look forward to lead this Commission as I strongly believe that competition will lead towards enhancing our nation's economic development.

Being a relatively new regulatory body, it has not always been smooth sailing but I am sincerely committed to lead the agency with a vision to take the performance of MyCC to a greater level. There is a lot more to be done before we can consider ourselves on par with our associates with more mature jurisdictions from the more advanced countries.

MyCC has always focused on combating anti-competitive practices especially ones that are considered as hard core cartels. MyCC will always strive towards achieving its mission to promote competition and market dynamism as well as to safeguard against anti-competitive practices and abuse of market power.

Currently, monopoly has been the talk of the town in this country which is raised due to the downturn of the nation's economy and the rising cost of living. As the enforcer of the Competition Act, MyCC will act on enterprises that abuse its dominant position as it is a breach of the the law and lessens competition.

The Commission has recently conducted a forum on monopoly for the public sector by respective parties. The sharing session turned out better than we expected. Hence, we are planning to conduct such event on a yearly basis to gain more feedback and insights towards resolving issues on monopolies in Malaysia.

The Commission will be firm in correcting these anti-competitive market behaviours that will ultimately result in equal opportunities and a level playing field for businesses in order to innovate better and increase its efficiency. To end this, I would like to offer my thanks to our Commissioners, CEO Iskandar Ismail and his team, as well as to every one of our local and international counterparts.



**Encik Iskandar Ismail**  
*MyCC CEO*

#### CHEIF EXECUTIVE OFFICER

It is not going to be easy to lead the Competition Commission to greater heights, however, I believe that with the support from the government and hardwork of the people at MyCC, it can be achieved.

Over the years, the Commission has faced many challenges in expanding the Commission in order to take up more responsibilities and work at an optimum level to solve issues on competition.

It will take us years to make Malaysians understand about competition law and policy and its relevancy on Malaysia's growth.

The public in Malaysia may be unaware on the importance of complying with the competition law as the impact or benefit of it is not passed directly to consumers.

One of our recent achievements was the reinstatement of fines against MAS and Air Asia along with a few other cases in line for 2019.

The MyCC plans to keep growing in strength and we look forward to an even more memorable 2019, when we will continue to drive competitiveness and highlight its importance to the nation's development plan.

I hope that this latest issue will provide more information on the activities carried out by the Commission towards the end of 2018.

For editorial submissions and enquiries, please email [ccd@mycc.gov.my](mailto:ccd@mycc.gov.my)

Publisher & Distributor  
The Malaysia  
Competition Commission (MyCC)  
Level 15, Menara SSM@Sentral,  
No.7, Jalan Stesen Sentral 5,  
Kuala Lumpur Sentral 50623  
Kuala Lumpur

For further details on the MyCC, please visit:  
The MyCC's official website  
[www.mycc.gov.my](http://www.mycc.gov.my)

# We Protect Competition, Not Competitors

Competition law is the magna carta of free market economy. It seeks to promote and protect the process of competition from anti-competitive conducts such as the abuse of dominant position that disrupts the proper functioning of the market. The word 'competition' itself conveys a message that the Malaysia Competition Commission (MyCC) is concerned with the 'competitive process' as a whole rather than the interests of specific competitors. The MyCC's role under the Competition Act 2010 is to regulate the firms' behaviour in the market to ensure that every enterprise is free to compete on a level playing field without any competitive restraints.

In an open and free market, there will be winners and losers. Efficient enterprises will stay while inefficient ones will leave the market. MyCC will not interfere with this natural process as protecting the inefficient enterprises means protecting the competitors, not the competition. However, there are circumstances where even an efficient firm may not be able to compete because of anti-competitive conducts practiced by other market players who have market power. Only in this situation, the MyCC will intervene to correct this market distortion by penalising the enterprise for behaving in such an anti-competitive manner.

The Act does not prohibit an enterprise from being a monopoly or dominant in the market. Enterprises are free to compete in order to grow bigger or acquire larger market shares. However, when an enterprise becomes dominant, the Act requires it to comply with an obligation not to abuse its dominant position. The enterprise with a dominant position or market power has more tendencies to interfere with the competitive process than a non-dominant enterprise or enterprise without a market power. For example, while enjoying its monopolistic or dominant position, the dominant enterprise at the upstream level may start to consider about how to leverage its market power to a new market.

In an open and free market, there will be **winners** and **losers**. Efficient enterprises will stay while inefficient ones will leave the market.

For instance, an enterprise which is the sole supplier of a certain product or service to other enterprises in the downstream market may end-up establishing its own business or subsidiary competing with the downstream enterprises. In order to maintain its strong presence in both upstream and downstream levels, the dominant enterprise may engage in anti-competitive conducts such as discriminatory practices and giving competitive advantage to its own subsidiary, thus distorting and hampering competition in the downstream market.

So how does MyCC deal with this kind of behaviour? The role of MyCC is to ensure the openness of the market by preventing any abusive conduct that may impede the ability of other market players to compete. However, this does not mean that MyCC protects the competitors. Enterprises at the downstream level may be as equally efficient as the dominant enterprise's business. However, it will still not be able to compete in the market because of dominant enterprises' anti-competitive conduct, along with its subsidiary who is subjected to the same conduct that does not correspond with natural market conditions.

Protecting the process of competition also means protecting the interest of consumers. The term 'consumers' from the perspective of the Act include both intermediaries and end consumers. Hence, before penalising an enterprise for its conduct, MyCC will not only consider the extent to which that particular conduct impedes the ability of efficient enterprises to compete but also whether it creates harmful or potential harmful effect on consumers, such as leading to higher price, shortage of supply or delay in the provision of services. Taking into consideration the consumers' interests improves the credibility of the MyCC in the eyes of the public. It also increases the trust and confidence of the public that MyCC is the true guardian of the competitive process and does not protect specific competitors.

I am very honoured to have been elected as the new chairman of the Malaysia Competition Commission under the purview of the new government. I look forward to lead this Commission as I strongly believe that competition will lead towards enhancing our nation's economic development.

The Competition Act has so far been enforced in line with these competitive principles. As a regulator, it is not the role of MyCC to deter an enterprise from dominating the market and enjoying its dominant or monopolistic position. Nevertheless, MyCC will continuously monitor the behaviour of the dominant enterprise to ensure that it does not engage in anti-competitive conducts which could hamper competition in any market and injure consumers' interests. On the same side of the coin, MyCC will not protect enterprises simply because they are weak, inefficient or unable to compete with the more efficient enterprises in the market. Our role is to protect competition, not competitors!



## MALAYSIA COMPETITION COMMISSION PROPOSES TO FINE DAGANG NET RM17.4M FOR ABUSE OF ITS MONOPOLISTIC POSITION

On 10 July 2018, the Malaysia Competition Commission ("the Commission") had issued a Proposed Decision against Dagang Net Technologies Sdn Bhd ("Dagang Net") for provisionally infringing Section 10(1) read with Section 10(2)(c) of the Competition Act 2010 by allegedly abusing its position as a monopoly in the provision of trade facilitation services under the National Single Window, refusing to supply the said electronic mailboxes to end users of the Sistem Maklumat Kastam and also imposing barriers to entry to the extent that may harm competition.

The investigation on Dagang Net was commenced pursuant to complaints received by the Commission. The investigation has provisionally found that Dagang Net had abused its dominant position by refusing to supply new and/or additional electronic mailboxes to end users who utilised front-end software from software solutions providers which were not considered to be Dagang Net's authorised business partners.

Furthermore, Dagang Net was also provisionally found to have imposed an exclusivity clause on its business partners which would have had the effect of distorting competition in an upcoming market by creating barriers to entry for Dagang Net's competitors in the said market which would have made the said competitors less than efficient when competing with Dagang Net.

In relation to the case of Dagang Net, the Commission proposed to impose a financial penalty of RM17,397,695.30. In addition, the Commission proposed to impose a directive on Dagang Net to cease and desist its infringing conduct and any future conduct which may disrupt competition in the present and future market. The Commission also proposed that the directors and senior management of Dagang Net and its related companies to undergo competition law compliance programme within three (3) months of the issuance of the Proposed Decision.

The Proposed Decision is a written notice setting out the facts on which the Commission 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.

The Commission will make its final decision after it has considered the representations from the said enterprise alongside all the available information and evidence.

## HIGH COURT AGREES WITH MyCC

On December 20, 2018, the Kuala Lumpur High Court reinstated the decision of the Malaysia Competition Commission (MyCC), which imposed a fine of RM10 million each on Malaysia Airlines System Bhd (MAS) and AirAsia Bhd (AirAsia) for breach of market-sharing prohibition under the Competition Act 2010.

Judge Datuk Nordin Hassan held that the decision by the Competition Appeal Tribunal (CAT) in allowing the appeal by MAS and AirAsia to set aside the fine of RM10 million each imposed by MyCC was tainted with errors of law and unreasonableness.

Judge Datuk Nordin also held that the tribunal had failed to consider the collaboration agreement entered between the two air carriers over sharing markets in the air transport services sector had the effect of distorting competition.

He also said that the applicant had locus standi to initiate the review application, as the action filed by MyCC was before the establishment of the Malaysian Aviation Commission (MAVCOM) and as such, the applicant's right to commence the judicial was not affected.

MyCC filed the judicial review application naming CAT as the first respondent, while MAS and AirAsia were named as the second and third respondents.

MyCC sought to quash the decision by CAT on February 4, 2016, which allowed the appeal by MAS and AirAsia to set aside the fine of RM10 million each imposed by MyCC for breach of market-sharing prohibition under the Competition Act 2010.

Initially, MAS and AirAsia had appealed against the MyCC's decision on April 11, 2014, which found that both airlines were in breach of the market-sharing prohibition under Section 4(2)(b) of the Act by entering into an agreement which saw the two airlines sharing markets in the air transport services sector within Malaysia.

MyCC has the power to fine both airlines 10% of their global revenue for infringing the Act, but levied a far lesser penalty because the airlines were cooperative during the investigation.

The RM10 million fine each by MyCC was based on flights mounted by both AirAsia and MAS in the four months between January 1 and April 30, 2012, on routes encompassing Kuala Lumpur-Kota Kinabalu, Kuala Lumpur-Kuching, Kuala Lumpur-Sandakan and Kuala Lumpur-Sibu.

AirAsia would file an appeal at the Court of Appeal.

## MDTCA MINISTER DIRECTED INVESTIGATION ON TYRES AND BEVERAGE COMPANIES

The Malaysia Competition Commission (MyCC) has initiated investigations on tyres and beverage companies in Malaysia for possible anti-competitive behaviours.

This was following the direction of the Minister of Domestic Trade and Consumer Affairs (MDTCA), Dato' Saifuddin Nasution Ismail, who was informed of the issuance of price increase notices issued by certain industry players in July and August 2018 prior to the implementation of Sales and Services Tax (SST) on 1 September 2018. The Minister instructed MyCC together with the Enforcement Division of MDTCA to conduct investigations to determine whether these actions raised concerns under the relevant laws.

Acting on the direction, MyCC and the Enforcement Division of MDTCA jointly inspected several tyres companies. This was followed by inspections by MyCC on the related associations.

A separate ground inspection was also carried out by the MyCC against a beverage manufacturer following its action of issuing a price revision notice to supermarkets and hypermarkets in Malaysia.

The investigation by the MyCC on these parties concerns Section 4 of the Competition Act 2010 while the investigation by the Enforcement Division of MDTCA was pursuant to the Price Control and Anti-Profiteering Act 2011. Notices have been issued to the parties to produce certain data and documents within a deadline set by both authorities in order to assist further investigation.

The Minister instructed **MyCC** together with the **Enforcement Division of MDTCA** to conduct investigations to determine whether these actions raised concerns under the relevant laws.

## BREAKING SUGAR MONOPOLY

The government has broken the monopoly of sugar import in the country as part of the new federal government's efforts to disrupt the monopoly in several sectors. This effort is in tandem with the government's endeavour to control the rising cost of living.

Food and beverage manufacturers could now apply for a sugar import permit. As such, one of the manufacturers in Sarawak had successfully obtained a permit to import sugar.

Under the previous policy, only two companies in the peninsula were given the permit to import raw sugar and refine it in the country. Thus, manufacturers had to buy refined sugar at RM2.80 per kg from companies in the peninsula. Now, armed with the import permit, manufacturers could buy sugar from abroad for less than RM2 per kg.



# Perspectives on Monopoly: Is It Good or Bad?

The dangers of monopolistic behaviour were recognised by Adam Smith, known as the **father of economics**

Standard economy theory suggests that a well-functioning market economy delivers significant benefits. It leads to job creation and lower prices, and as a consequence, higher living standards and economic growth. A well-functioning economy is not always fully competitive as it is perfectly rational for entities to seek to strengthen their market positions and increase profits. Unfortunately, this process also serves to limit competition. When entities begin to display monopolistic behaviour, consumers are the biggest losers, while economic growth is ultimately constrained.

The dangers of monopolistic behaviour were recognised by Adam Smith, known as the father of economics. As he puts it in the *Wealth of Nations*, "A monopoly granted either to an individual or a trading company has the same effect as a secret in trade and manufactures. The monopolists, by keeping the market under-stocked, sell their commodities much above the natural prices, and raise their (own) emoluments, greatly above their natural rates." He went on to say that, "when people of the same trade meet, it always ends in conspiracy against the public, or in some contrivance to raise prices."

While such meetings cannot be prevented, it is the job of policy-makers to manage and regulate their outcomes. For Malaysia, it is MyCC that plays this crucial and challenging role through their implementation of the 2010 Competition Act.

From the perspective of economics, the question of regulating monopoly power comes down to a comparison of costs and benefits. Economists views on how to achieve an effective balance between monopoly power and competition have evolved considerably over time, along with the policies and practices of regulation that are based on them. Sound economic argument can justify the need for non-competitive larger-scale operations in some settings, including those of so-called natural monopoly.

This refers to situations with high fixed costs and economies of scale, which require huge investments to reach optimal production levels. This may justify the presence of a dominant market player. In these cases, rather than enforce competition policy, governments may adopt policies that encourage or protect them. This is especially likely to be the case when the sector involved is deemed of national or strategic importance.

Infrastructure provision is the classic natural monopoly, along with other public services such as electricity, water and security, which also have high fixed costs and additional welfare considerations as public goods. National development strategies based on import substitution policies may also entail the protection and nurturing of key national industries and entities. Such an approach has been implemented successfully in East Asia and elsewhere over the past few decades. Special treatment is also often afforded to national airlines, widely seen as national champions deserving of government protection and support. Here in Malaysia, although they do have their own regulators, the telecoms and energy sectors are exempted from the provisions of the Competition Act.

Such exemptions are very common in competition legislation. Although there have been some movements away from protected monopolistic providers of public services recently in more mature industrialised economies, cases abound historically of effective industrialisation based explicitly on protective government support for monopoly conditions. This approach was implemented in Germany and Japan in the first half of the twentieth century, relatively successful from an economic point of view, although the associated concentration of industrial power is also thought to have contributed to the rise of fascism in both countries. Both countries adopted more competitive policies after the war, as part of the broader post-war strengthening of competition law in the European Union and in the US. The 1957 Treaty on the Functioning of the European Union included competition law as one of its key provisions, while in the US, there was a revival of existing anti-trust legislation. This period of more active implementation there culminated in the successful break-up of the communications entity AT&T in the early 1980.

As well as more democratic political tendencies in post war decades, this also reflected the growing recognition among economists at this time of the welfare and economic costs of a lack of competition. But there has since been a movement away from this more activist competition policy, and towards a much lighter regulatory touch, or what the *Washington Post* called 'extremely permissive enforcement'. This is particularly true in the US, as reflected in the approval by regulators of numerous large-scale mergers over the past two decades. The *Economist* estimates that concentration has increased in two thirds of the 900-odd sectors of the US economy since 1997, with a wave of USD10 billion worth of mergers taking place since 2008. Given the global dominance of US companies, greater concentration in the US results in greater concentration globally.

This policy trend has again been based to some extent on changing economic thinking, including the argument that the costs of regulating monopoly behaviour may be so high that they outweigh any welfare benefits. Free market-leaning economists since the 1980s have been increasingly convinced of this. Since the cost of regulation is likely to be high, as it involves various transaction costs and creates its own distortions, and as the impacts of successful regulation are anyway still contested, the balance of costs and benefits may be judged to lie in less regulation and allowing the market to find its own equilibrium. Even if this is a sub-optimal outcome, it may still be the best available in welfare and efficiency terms.

A further argument relevant to any cost benefit analysis is that the extraordinary profits being made by concentrated corporate power in some sectors are necessary to fund their cutting-edge scientific R&D. Such arguments are sometimes used in merger or anti-competition cases to help justify claims that any profits generated by the resulting monopoly status will anyway be reinvested into such valuable innovation.

The creation of extraordinary benefits based on some form of monopoly protection can be used as grounds to apply for an exemption to Malaysia's competition law. Economists also believe that any excessive profits being made by dominant players will and do eventually attract competitors, and so ultimately the distortions created by excessive market power are likely to be self-correcting as new entrants drive down prices, restoring optimal welfare outcomes. Such arguments, put forward convincingly by well-regarded economists in recent decades, have helped to influence regulators to pursue a permissive competition policy.

There is now growing recognition, however, that the greater concentration of entities in the US, and therefore globally, has resulted in the very negative welfare and efficiency impacts that competition policy is designed to prevent. This can be seen in both the direct impacts of dominant player abuses on price and wages, as well as in more indirect impacts resulting from the restriction of competition. Prices in the US have risen in a number of sectors following consolidation, including healthcare and communications, while consumer choice has also been greatly restricted in many sectors. More indirect impacts on innovation and entrepreneurship are reflected in a declining rate in the growth of new entities, with the creation of small and medium entities reportedly at its lowest level since the 1970s. Even though the higher profits enjoyed by dominant players do help to fund R&D and other investments, competition itself serves as an apparently indispensable spur to innovation and efficiency, and its absence ultimately constrains productivity growth.

However, an act already exists, the Competition Act 2010 (CA 2010), which is a powerful tool that can address not only monopolies and dominant companies but also cartel activities like price fixing and bid-rigging. Not many people are aware that the CA 2010, which came into force on January 2011, has wide-ranging powers. The MyCC set up to implement this law has powers of investigation and can fine offending individuals or companies up to 10% of their worldwide turnover. MyCC has, among others, the power not only to investigate cartel activities or dominant entities if there is a complaint but also to advise the Minister or any other public or regulatory body on all matters concerning competition. MyCC could also carry out general studies on issues related to competition, known as market studies. Any recommendation arising from the study could be channelled to the appropriate authority for further action or attention.

The Government's recent announcement that monopolies would also be reviewed was good news. Monopolies have no incentive to lower prices, raise the quality of products or increase their line of service or goods simply because they have the competitive edge over every other entities. Of course, some monopolies are good, like the utilities market which are regulated by the Government to ensure that there are no disruptions in the supply of services. The fact that the Government wants to review other monopolies and introduce a policy on monopolies is indeed encouraging.

Therefore, since MyCC has been given such wide-ranging powers, it must be fully utilised to assist the Government in addressing the structural imbalance caused by corruption, nepotism and those of the same kind. Section 4(1) and (2) of the Act address anti-competitive agreements while Section 10 addresses abuse of dominant positions. The objective of the law is "to promote economic development by promoting and protecting the process of competition, thereby protecting the interests of consumers."

It is hoped that the existing tools already available would be used. MyCC should also be more proactive, visible and transparent so that the public will know that the Act is in effect and that the above-mentioned issues would be handled by MyCC and not MACC. MyCC also offers a leniency programme which would be useful for entities or anyone involved in bid-rigging cases. They could be eligible for immunity if they are the first to report to MyCC. Subsequent reporting also warrants lenient treatment but several factors would be considered by MyCC before leniency is granted. As time goes by, many other government policies which could be deemed to be anti-competitive in nature will need to be addressed and reviewed. This will take time but a great step has already been taken and hope the CA 2010, with its noble objective, will in time become a powerful tool to address the distorted market structure and usher in a competitive environment to benefit not only consumers but also the business environment.

The granting of concessions which may result in monopolies direct or indirectly is within the power and discretion of the Government. However, where there are incidences of abusive conduct by a monopoly, the Commission will not hesitate to take stern action in line with its powers under section 10 of the CA to eliminate such anti-competitive behaviour. This case therefore reflects the Commission's effort in addressing the issue of abusive conduct by monopolies in Malaysia and supports the Government's effort to foster transparency, corporate governance and ethical business conduct. A robust competition regime would bring significant and holistic long and short-term benefits to the consumer in terms of competitive pricing, improved quality of products and services, enhanced innovation and offer wider choices for the consumers.





## Conference of Tackling the **Bid-Rigging** and **Monopoly** Challenges in the Public Sector

25th October 2018 (Thursday), Bangi-Putrajaya Hotel, Selangor

A total of 210 participants from the Procurement Department of the Government's various sectors and agencies have attended the conference.



### Session 1

Title: **Bid Rigging Leads to Lack of Public Procurement?**

Speakers: **Encik Azman Mahmud@Bahari and Encik Zairan Ishak**



### Session 2

Title: **Revolution Towards Improving Public Procurement**

Moderator: **Assoc. Prof. Dr. Haniff Ahamat, Lecturer, Universiti Kebangsaan Malaysia**

#### Panelist:

- i. Encik Rosli Yaakub, Committee of Governance Inquiry, Procurement and Financial
- ii. Puan Swaibatul Aslamiah Haji Hussain, Deputy Director of the Financial Audit, National Audit Department
- iii. Encik Ahmad Fauzi Sungip, Government Policy and Procurement Section, Ministry of Finance Malaysia
- iv. PKPJ Encik Mohamad Tarmize Abd Manaf, Malaysian's Anti-Corruption Commission



### Session 3

Title: **Monopoly Complicates the Market?**

Speaker: **Yang Berusaha Tuan Iskandar Ismail, Chief Executive Officer, MyCC**



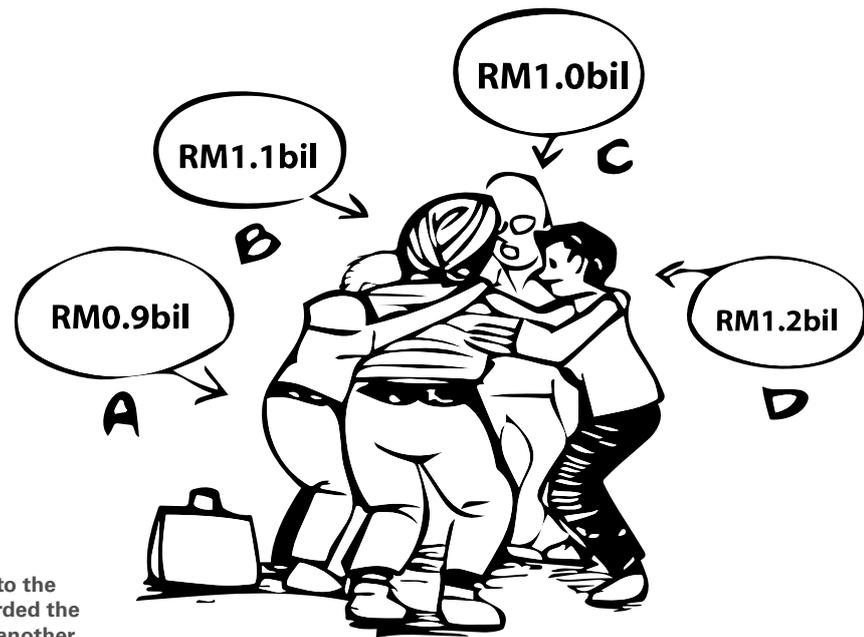
### Session 4

Title: **Can Monopoly Assists the Economic Management Effectively and Efficiently?**

Moderator: **Puan Adlin Abdul Majid, Lawyer, Lee Hishammuddin Allen & Gledhill**

#### Panelist:

- i. Encik Abdul Karim, Deputy Secretary, Administration and Finance Department, Ministry of Transport
- ii. Encik Shamsuddin Ismail, Division Secretary, Paddy and Rice Industry, Ministry of Agriculture and Agro-Based Industry
- iii. Encik Mohd Fauzee Abd Majid, Deputy Division Secretary, Procurement and Privatisation Department, Ministrof Health Malaysia



### Questions and Answers Session

**1. Is there any way to track the awarding of contracts to the third parties? For example, a enterprise has been awarded the tender, but the service to carry out the job is done by another company (subcontractor)?**

This matter is strictly against the law. In order to detect this, the officers who will oversee these contracts have to be alert and productive to ensure that the respective contractor is carrying out the work in accordance with the scope and quality as stated. The supervisor officers should also ensure the complete profile of the main contractor is identified and always beware of any activities given to the third parties.

**2. So many Integrity Pacts were signed, but corruption issues are still high. It seems as if the Integrity Pact is nothing but a compliance. What is the MACC's opinion about this?**

As of now, there is yet any law that states any government's agency or body that do not comply with the Integrity Pact is considered as an offense. As for the policy department of MACC, they are still under the process of improving the Integrity Pact's functionality and enforcement, especially in the Procurement Department.

**3. How well are the roles of the Committee of Governance Inquiry at this moment since every procurement made is said to be under certain control?**

Among the mistakes or deficiencies that can be shared is that we have to follow orders from our superiors which were unreasonable that affected the efficiency of the Governance Inquiry.

**4. How does MOF award the public agencies that managed to reduce the expenditure of the approved budgets, instead of reducing the budget after finding out that these agencies still have budget surplus at the end of the term?**

All decisions to reduce and increase the budget for any agency depends entirely on the agency's record and spending. MOF do not have any mechanism to give the award or approve the budget of an agency or a government body.

**5. What is MyCC's action about the merging issue of enterprises Grab and Uber?**

At this time, MyCC's Competition Act still do not have the power to take action on any merger and acquisition activities. MyCC is only entitled to investigate if there is any proof that Grab is the dominant player in the said sector and is abusing its dominant position under Section 10 of the Competition Act.

**6. How does the merging of enterprises create monopoly?**

When two or more enterprises practice mergers and acquisition, the competition in that trade sector will be affected, where the number of competitors will be reduced. They will become the dominant enterprise in the sector only if the effect of the merger makes it control a significant percentage in the business sector.

**7. We do not deny the importance of Bernas, Pharmaniaga and Puspakom in their respective industry. However, how exactly were these enterprises selected as monopolies?**

Bernas, Puspakom, and Pharmaniaga were not selected through an open tender. Instead, the Government had shortlisted a few potential enterprises to take over the tasks and had appointed them (Bernas, Pharamaniaga and Puspakom) as sessionaires. This is because the Government needs to ensure the performance of the job done by these third parties achieve the prescribed standards. Plus, there were not many choices of enterprises that were able to handle the job, especially from the financial aspect.

**8. How does a specific tender or quotation issued seems to only benefit a certain enterprise even though it was carried out openly?**

Quotation of different tools and equipment vary based on their brand, method of handling, functionality, usage and so on.

# Conference on the Challenges in Enforcing Competition Law in Malaysia and Possible Reform

27 November 2018 (Tuesday), Raja Aziz Addruse Auditorium, The Malaysian Bar Council

A total of 110 participants consisting of law officers and lawyers attended the program. The program began with the signing of an MoU between MyCC and UUM, witnessed by Minister of Domestic Trade & Consumer Affairs, YB Datuk Seri Saifuddin Nasution Ismail, Deputy Secretary General of the Ministry of Domestic Trade & Consumer Affairs as well as Deputy President of the Malaysian Bar Council. The program continued with the presentation of each session.



## Session 1

Cartels and Leniency by En. Zairan Ishak, Chief Assistant Director of MyCC

The speakers explained that the cartel activities are considered as the most affected behaviors but also mostly ignored by the public. Examples of cartel activity under Section 4 of Competition Act 2010 are price fixing, market sharing, market control or restriction and bid rigging issues. Leniency regime was established to give opportunity for traders to admit their mistakes and help MyCC to investigate other trader groups that involved in cartel activities.



## Session 2

Powers of the Competition Appeal Tribunal by Assoc. Prof. Dr. Wan Liza Md Amin @ Fahmy, Competition Appeal Tribunal (CAT)

The speakers explained about the function and roles of Competition Appeal Tribunal (CAT) as well as their jurisdiction. For traders who wish to appeal any decision issued by MyCC, they have to go through CAT.



## Session 3:

Monopoly Forum

Moderator: **En. Wong Tat Chung, Messrs Wong, Beh & Toh**

### Speakers:

- Ph. Adlin Abdul Majid, Partner of Messrs Lee Hishamuddin Allen & Gledhill
- En. Adlan Abd Razak, Lecturer, Universiti Teknologi MARA
- Ph. Dominique Lombardi, Competition & Antitrust and Trade, Rajah & Tann Singapore
- En. Rohizwan Ahmad, Director of Law, JT International Trading Sdn Bhd

The panel discussed about the dominant companies and the offense of abusing a dominant position under Section 10 of Competition Act 2010. The panel also implied that Competition Act 2010 does not prohibit any companies to be a monopolist, but the offense of abusing a dominant position will make the Competition Act 2010 to be applied and issued.



## Session 4:

Mergers Control Forum

Moderator: **En. Devanesan Evanson, Minority Shareholders Watch Group**

### Speakers:

- En. Iskandar Ismail, Chief Executive Officer of MyCC
- En. Anand Raj, Partner of Messrs Shearn Delamore
- Dr. Wan Khatina Nawawi, Director of Economy, Malaysian Aviation Commission

The panels discussed about MyCC's effort to develop a new merger control act into the Competition Act 2010. They also described the components in the proposed drafting of the Act which includes the mergers, acquisitions, joint ventures and take over as well as the examples of other countries that have implemented the law in order to stress the importance of the act in Competition Act 2010.

## Roundtable Session on Implementation and Enforcement of Competition Act 2010

7 November 2018, Le Meridien, Kuala Lumpur

The programme was one of MyCC's ongoing initiatives to discuss matters concerning the implementation and enforcement of the Competition Act 2010 (CA 2010) including getting feedback and recommendations for improvements to the implementation of CA 2010 and the role of MyCC.

The Commission held this open discussion with its stakeholders to ensure that engagement with the relevant stakeholders will continue to prosper and to bring it to a greater level.

The roundtable session enabled the Commission to interact with its important stakeholders and obtain feedback regarding the Commission's role, functions and its effectiveness in enforcing the Competition Act 2010. The feedback received from these sessions will assist the Commission in enhancing its functions.

This discussion will also lead to a better understanding of the competition law. All the information, knowledge and experiences shared throughout the session will help to boost the competition spirit in Malaysia.

## MyCC Inks MoU with UUM to Promote Competition Law in Malaysia

On 27 November 2018, the Malaysia Competition Commission (MyCC) and Universiti Utara Malaysia (UUM) signed a Memorandum of Understanding (MoU) to introduce the subject Competition Law in UUM.

The MoU signed aims to facilitate the awareness regarding Competition Act 2010 amongst the UUM law and business school students through the incorporation of Competition Law in their academic syllabus. Furthermore, the memorandum also aims for strategic cooperation between the parties of competition law advocacy and research programmes.

The MoU was signed by the Malaysia Competition Commission Chairman, Dato' Seri Mohd Hishamudin Md Yunus and Universiti Utara Malaysia's Assistant Vice Chancellor, Associate Professor Dr. Muhammad Fuad Othman. The ceremony was witnessed by Minister of Domestic Trade and Consumer Affairs, YB Datuk Seri Saifuddin Nasution Ismail.

The MoU provides the Commission and UUM the opportunity to produce more competition law experts in the future. By having more competition law practitioners, the Commission believes that consumers will be more protected, businessman will flourish and thus contribute to the growth of the nation's economy.



# National Economic Outlook Conference 2019-2020

27-28 November 2018, Intercontinental Hotel, Kuala Lumpur

A total of 61 participants attended the conference which was held on 27 to 28 November 2018. The conference ran for two days and was officiated by YB Datuk Saifuddin Nasution Ismail Bin, Minister of Domestic Trade and Consumer Affairs. MyCC participated in a session on the second day, Market Efficiency, with a presentation on the paper entitled The Impact of Competition Policies and Enforcement on the Economy which was presented by Yang Berusaha Prof. Dr. Saadiah Mohamad, Member of the Malaysia Competition Commission.

Title: Market Efficiency: **The Impact of Competition Policies and Enforcement on the Economy**

## Speakers:

1. Yang Berusaha Prof. Dr. Saadiah Mohamad, Member of the Malaysia Competition Commission (MyCC)
2. Muhammad Ridhuan Bos Abdullah, Senior Lecturer, Universiti Utara Malaysia
3. Ali Salman, Chief Executive Officer, Institute for Democracy and Economic Affairs

The speakers discussed and agreed that the level of competition in the market needs to be improved. It is important to ensure sustainable economic growth through healthy competition, fair and equitable. The focus of the market (market concentration) can be affected by several factors such as technological change, liberalisation and government policies. Enterprises in a competitive industrial sector showed an increase in terms of number, but still did not reach the level of market efficiency that is considered satisfactory. This includes GLCs and GLICs.

## Media Training on Competition Law

The objective of the workshop is to increase awareness of media practitioners on the importance of Competition Act 2010 and the role of the Malaysia Competition Commission (MyCC) in enforcing and implementing the Act, thus enhancing the media's knowledge to write better reports or news on competition issues with accuracy. This workshop has also provided participants with better understanding on anti-competitive behaviours in order to ensure the media could assist or facilitate the Commission by acting as watchdogs in detecting unhealthy conducts such as cartels or abuse of dominance by enterprises.

The media is regarded as the source of information and news, thus, engaging with the media by networking and building rapport with them is a must to spread the awareness on competition to the people.

The briefing on MyCC and the Competition Act was delivered by Encik Iskandar Ismail, CEO of MyCC followed by Encik Zairan Ishak, Senior Officer of the Investigation and Enforcement Division. The speakers have shared on the prominent cases MyCC has investigated and the lists of enterprises that have been penalised by the Commission.

The Commission also invited a veteran journalist of more than 30 years of experience, Mr. Krishnamoorthy Muthaly to brief the participants on Investigative Journalism, sharing his extensive knowledge and experience on the area to better enhance their journalism skills.

The workshop was attended by 40 journalists from various broadcasting stations and news media.

Aside from the briefings, the Commission has equipped the participants with activities where they conduct a social experiment on the general public around KL Sentral on their knowledge of the Competition Act and the MyCC. Armed with their skills as newsman or reporters, these activities help to uncover the public's opinion on competition in Malaysia. Killing two birds with one stone, they were also able to apply their investigative journalism skills throughout the social experiment.



## Competition Law Workshop on Market Definition - Co-hosted by MAVCOM and MyCC

Maya Hotel, Kuala Lumpur, 5-7 September 2018

The definition of a relevant product and geographic market is a necessary step in most competition cases. This workshop looked at the analytical and basic economics of market definition as well as the investigatory steps that can be taken to define relevant markets. Practical case examples from the members of the Organisation for Economic Cooperation and Development (OECD) were presented in order to illustrate the theoretical concepts. The participants were asked to contribute their own experience in case studies and to join the experts in hypothetical case exercises. The panel of speakers included expert speakers from European Commission, Korea and United Kingdom.

## Brief Summary of the Secondment to the Australian Competition and Consumer Commission (ACCC)

Two representatives from the Investigation and Enforcement Division of MyCC, Ms Nurul Afiqah Soohaimi and Ms Farha Nabiha Mustafa, have been seconded to the Competition Law Implementation Programme (CLIP)'s annual ACCC secondment and study programme for ASEAN Member States (AMS). The programme kicked off in Canberra on July 2018. The period of secondment began on 16th July 2018 and ended on 21st September 2018.

The programme aimed to help strengthen the ASEAN secondees' capabilities in case management, investigation processes (experience different stages of investigation), and their confidence in applying new tools and learnings in their home agency.

The programme has provided MyCC officials the opportunity to gain practical on-the-job experience through a 10-week secondment to ACCC. The secondees were also sponsored by ACCC to study competition law and economics online through the University of Melbourne's Global Masters of Competition and Consumer Law programme.

The programme aimed to help  
**strengthen the ASEAN  
secondees'** capabilities in case  
management, investigation  
processes



# Competition Summer School

In 10th of July 2018, all participants **made a visit to the EU headquarters in Brussels, Belgium**

9-20 July 2018, Bruges, Belgium

A total of 14 competition enforcement officers from some of the ASEAN countries and secretariat have participated in this intensive training course that emphasises on competition law and relevant economic principles in the European Union (EU). The course also shared the best practices that can be learned and practiced as deemed relevant by respective countries. This programme was part of a collaborative project of the EU and Competition Corporation EU-ASEAN Partnership. The course was held for 10 days at the College of Europe in Bruges, Belgium.

Throughout the course, leading academician and competition law practitioners have delivered lectures on important components of competition law in EU, as set out under the Treaty on the Functioning of the European Union and guidelines issued by the European Commission. These include topics on mergers and acquisitions, abuse of dominant position, restrictions of competition horizontally and vertically, control of the government's aid, state-owned enterprises and economic principles of competition law. The prominent anti-competitive cases in EU was also discussed openly during the course.

This course also discussed in depth on the control of companies merging and acquiring enforced by the EU and other ASEAN countries, as well as the benefits from the enforcement towards consumers and respective countries' economic development. Indirectly, this course was beneficial and act as an exposure for Malaysia as Malaysia is the only ASEAN country that has yet to apply this control.

In 10th of July 2018, all participants made a visit to the EU headquarters in Brussels, Belgium. The organiser has also arranged a meet up session on 18th of July 2018 with Tommaso Valetti, the Chief Competition Economist for Directorate-General for Competition Office in EU. The participants also used this opportunity to exchange opinions and experiences in carrying out the enforcement work in their respective countries. The EU through Johannes Laitenberger, the Director-General of DG Competition also conveyed his hope to see that these efforts and cooperation will be further continued in the future.