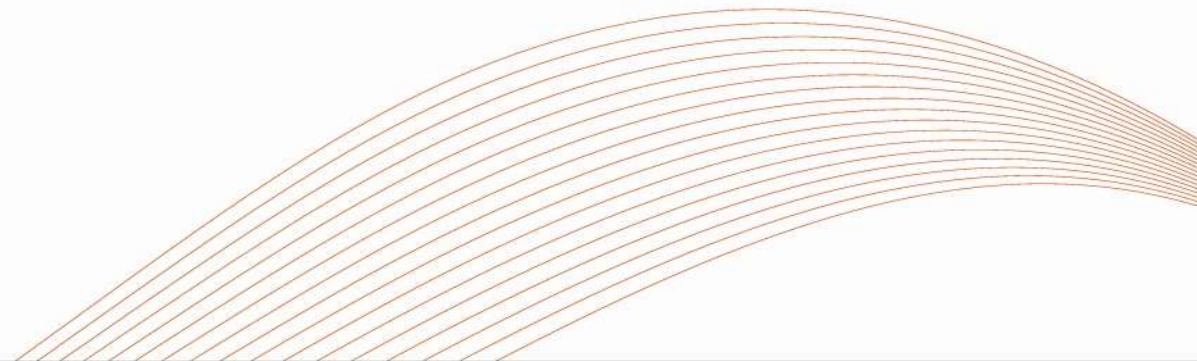




**Malaysia Competition Commission**





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# **CASE STUDY ON ABUSE OF DOMINANT POSITION**

**2 JUNE 2016**

**MyCC'S EXPERIENCE IN EXCLUSIONARY ABUSE CASES**

**LOW JIAH YEE**

# Case Study: Giga and Nexus Exclusive Dealing Case (2014)

**FACTS**

**INVESTIGATION AND FINDINGS**

**UNDERTAKING AND CONCLUSION**

**EFFECTS OF UNDERTAKING**

## FACTS



**Giga Shipping Services Sdn Bhd**

Provide shipment service for motor vehicles using Roll On/ Roll Off (Ro-Ro) vessels to transport motor vehicles from Peninsular to East M'sia.



**Nexus Mega Carriers Sdn Bhd**

The largest car carrier company in Malaysia with a fleet of 82 trucks.

## FACTS

- ❑ Giga and Nexus are vertically integrated service providers of logistic and shipment services to their customers in Malaysia:
  - Motor vehicle manufacturers
  - Distributers
  - Retailers
  
- ❑ In October 2013, MyCC received a complaint from Arca Transline Sdn Bhd (the new market entrant) alleging that Giga and Nexus had engaged in conduct that foreclosed Arca's entry into the market to provide for the transportation of motor vehicles using Ro-Ro vessels from peninsular Malaysia to various ports in East Malaysia.

## INVESTIGATION AND FINDINGS

- ❑ MyCC's investigation team during the course of investigation engaged with:
  - >40 motor vehicle manufacturers, distributors and retailers
  - Complainant
  - Port authority
  - Ancillary port services providers
  
- ❑ Based on the investigation, the Commission found the correlation between Giga and Nexus:
  - Giga and Nexus have common directors;
  - Nexus is a subsidiary of Giga with Giga holding approximately 80% of the shareholding in Nexus whilst the remaining 20% is held by persons through various company vehicles that have a shareholding in Giga.
  
- ❑ Giga forms a single economic unit with Nexus.

## INVESTIGATION AND FINDINGS

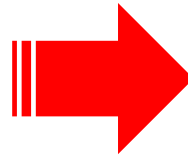
- ❑ Is Giga-Nexus a dominant player?
  - Yes. In fact, Giga-Nexus monopolizes the market concerning the provision of logistic and/or shipment services of motor vehicles from Peninsular Malaysia to East Malaysia.
  - In particular, 95 % of Giga-Nexus' customers (motor vehicle distributors and retailers) request a Door to Door service for shipment of motor vehicle from Peninsular Malaysia to East Malaysia while the remaining 5% request a Port to Port service as they have land transport in both peninsular Malaysia and East Malaysia.



## INVESTIGATION AND FINDINGS

### Door to Door Service

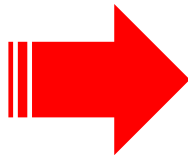
Peninsular Malaysia



East Malaysia



### Port to Port Service





## INVESTIGATION AND FINDINGS

### COMPETITION CONCERNS

- Sometime in 2010, both Giga and Nexus entered into agreements with their respective customers containing exclusive clauses or clauses with the effect of exclusivity which stipulate that they shall be the exclusive provider of the shipment services (Door to Door) for up to 3 years.
- In return, they agreed to give their customers lower prices arising from the volume of business generated by such agreements.

## COMPETITION CONCERNS

- ❑ These agreements which contain exclusivity clause may have the effects of:
  - foreclosing customers to other competitor(s) [such as Arca Transline]; and
  - preventing, restricting or distorting competition in the provision of the shipment services for motor vehicles from Peninsular Malaysia to East Malaysia
- ❑ Such agreements could infringe section 10(1) CA2010 which stipulates “*an enterprise is prohibited from engaging in any conduct which amounts to an abuse of dominant position in any market for goods or services.*”

## UNDERTAKINGS AND CONCLUSION

- ❑ Giga and Nexus offered undertakings through their solicitors:
  - Willing to address competition concern by revisiting its agreements with customers and remove the exclusivity clauses or clauses with the same/ similar effect.
  
- ❑ On 1<sup>st</sup> October, 2014, the Commission accepted the undertaking with the following conditions amongst others:
  - To remove all exclusivity clauses or clauses with the effect of exclusivity
  - Publish the undertaking in 5 major newspapers
  - Undertake to continue their competition law compliance program
  - Reimburse the competition commission's administrative costs

*[ The undertakings in full are published on [www.mycc.gov.my](http://www.mycc.gov.my) ]*

## EFFECTS OF UNDERTAKINGS

- ❑ How do the undertakings address the competition concerns?
  - It ensures competitors in the shipment and logistic services have the access to customers, while customers will gain from having more service providers to choose from.
  
- ❑ Can any action be taken by MyCC if parties comply with undertakings?
  - The Commission shall refrain from taking proceedings against the enterprises as long as they comply with the terms of the undertakings.
  - The Commission has closed the investigation without making any finding of infringement against the enterprises [Section 43 CA2010].

## EFFECTS OF UNDERTAKINGS

- Does this affect the rights of third parties from taking private action?
  - No. Third parties maintain their rights to take private action.
  
- Does this affect the right of the parties to defend themselves from third party action?
  - No. The parties can defend themselves from any action from any third party.

