

DECISION TO CLOSE AN INVESTIGATION INTO SUSPECTED INFRINGEMENT OF COMPETITION ACT 2010 IN THE PHARMACEUTICAL SECTOR ON THE GROUNDS OF SECTION 16 (3) (b)

EXECUTIVE SUMMARY

INTRODUCTION

MyCC has commenced an investigation against several pharmaceutical companies upon receiving numerous complaints under section 15(1) of the Competition Act 2010 (“the Act”) in 2013. MyCC has also initiated its ex-officio investigation against pharmaceutical companies under section 14 (1) of the Act in 2016.

The list of pharmaceutical companies that were alleged to abuse its dominance are as follows:

- i. Servier (M) Sdn. Bhd.;
- ii. Boehringer Ingelheim (Malaysia) Sdn. Bhd.;
- iii. Merck Sharp Dome (Malaysia) Sdn. Bhd.;
- iv. Pfizer (Malaysia) Sdn. Bhd.;
- v. EP Plus Group Sdn. Bhd.;
- vi. AstraZeneca Sdn. Bhd.;
- vii. Novartis Corporation (Malaysia) Sdn. Bhd.; and
- viii. Zuellig Pharma Sdn. Bhd.

As a focus of the investigation, MyCC identified and investigated whether the discriminatory conduct of the pharmaceutical companies in favour of the general practitioners (GP) as compared to the pharmacists in terms of price of drugs; amounted to infringement under section 10 of the Act.

OVERVIEW

1. During the course of the investigation, MyCC had issued several notices under section 18 of the Act to the respective pharmaceutical companies requesting the relevant information in relation to the allegation of price discrimination for a different type of drugs. MyCC had also actively engaged with the industry experts to gather and assess further the behaviour of the market players and the nature of the drugs involved.
2. The investigation on the alleged abuse of dominant position by the enterprises case required an assessment on the dominant position. Due to the uniqueness of the pharmaceutical products, MyCC has assessed the establishment of dominance for different type of drugs based on Anatomical Therapeutic Classification (ATC). Besides that, MyCC also considered other factors in defining the market including the dosage form, different routes of administration as well as side-effects of that particular drugs.

3. In establishing the theory of harm for every individual complaint, MyCC has the view that the discriminatory practice by pharmaceutical companies could be an inducement for the GP to prescribe their own drugs as compared to other competitors may have the restrictive effect on other pharmaceutical companies' competitive position. Thus, MyCC is required to assess whether this conduct may affect the competition process in the market.

4. Based on the assessment, there is insufficient evidence to show that the discriminatory conduct by the pharmaceutical companies affect the competition process in the market.

CONCLUSION

Having reviewed the facts and circumstances of the case, there is insufficient evidence for the MyCC to continue the investigation. Therefore, the MyCC has decided that continuation of the investigation in order to determine whether an infringement had occurred was not warranted, hence, would not constitute the making of the best use of the Commission's resources.

However, the decision to close the investigation should not be taken to imply that MyCC would stop monitor market practices in the pharmaceutical sector.

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