



Malaysia Competition Commission

***“Overview on the Competition
Act 2010: How it may affect your
businesses?”***

**Dhaniah Binti Ahmad
Head of Legal Unit
The Ritz Carlton, 22 March 2012**

BRIEFING OVERVIEW



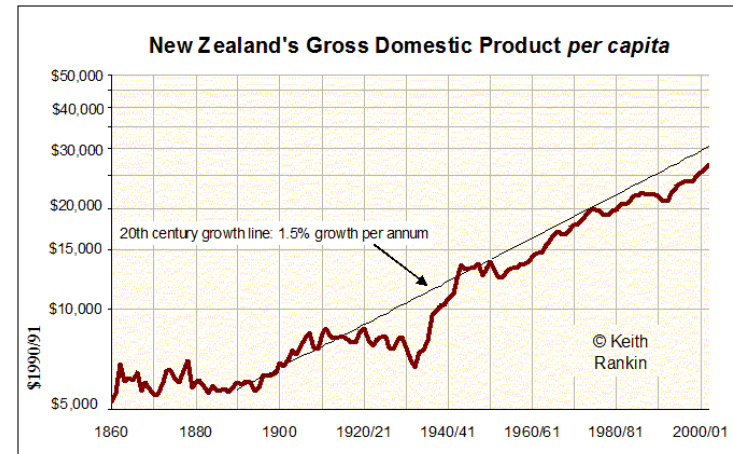
- **Objective of the Law**
- **Scope of Law**
- **Main Prohibitions**
 - Anti Competitive Agreement
 - Abuse of Dominant Position
- **Commission's Powers**
- **Penalty for Infringement**
- **Some Cases**



WHAT IS THE OBJECTIVE OF THE LAW?



- **PROMOTE ECONOMIC GROWTH by**
- **PROMOTING AND PROTECTING THE PROCESS OF COMPETITION**
- **PROTECTING THE INTERESTS OF CONSUMERS.**



BUSINESS GROW WITH COMPETITION

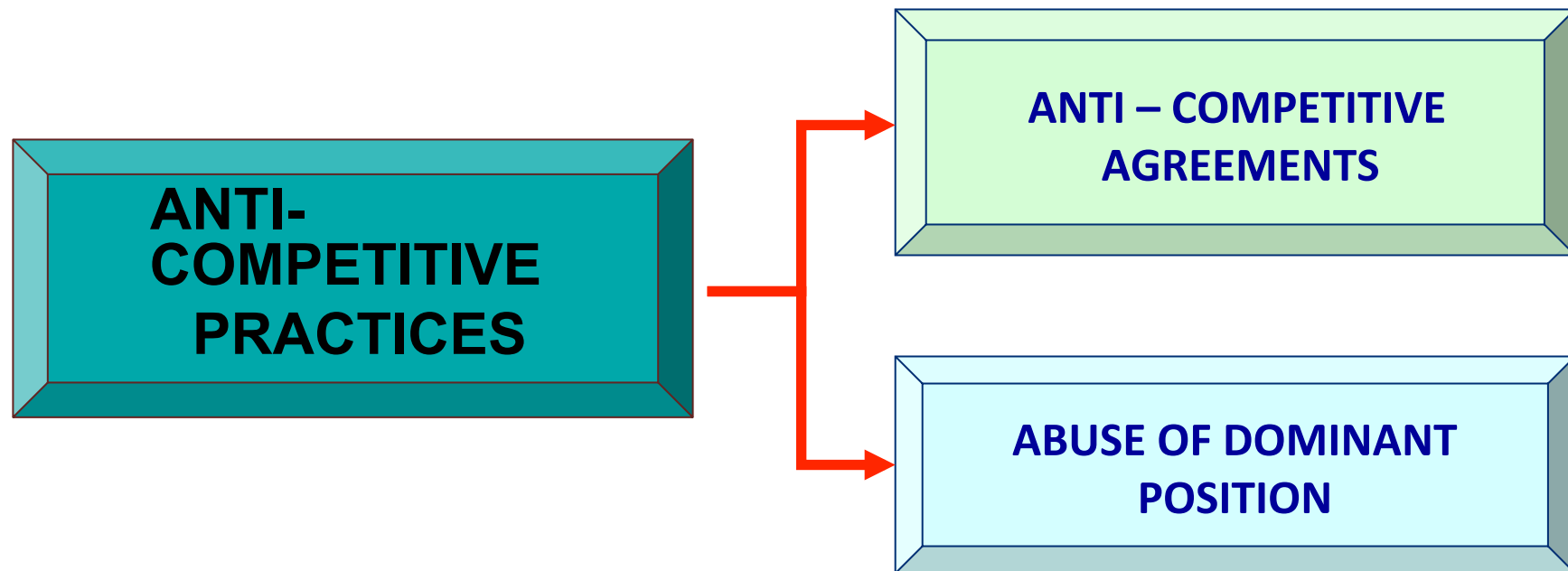


SCOPE 2 - EXCLUSION



- ◎ **Sectors under Communication and Multimedia Act 1998 and Energy Commission Act 2001**
- ◎ Agreement or conduct engaged in in order to comply with a legislative requirement
- ◎ Collective bargaining activities in respect of employment
- ◎ An enterprise entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly

MAIN PROHIBITIONS?



ANTI COMPETITIVE AGREEMENT

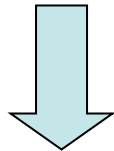


- Sec. 4 (1) – A **HORIZONTAL** or **VERTICAL AGREEMENT** between **ENTERPRISES** which has the **OBJECT** or **EFFECT** of **SIGNIFICANTLY** preventing, restricting or distorting competition in any **MARKET** for goods or service is prohibited.
- Sec.4(2) – A **HORIZONTAL** agreement to **fix prices or trading conditions, share market or sources of supply, limit or control production, market access, technical development or investment or perform bid rigging** is **DEEMED** to have the **OBJECT** of **SIGNIFICANTLY** preventing, restricting or distorting competition in any market for goods or services

WHAT IS HORIZONTAL AGREEMENT?

- **Agreement between enterprises each of which operate at the same level in the production or distribution chain.**

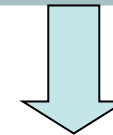
PRODUCTION LEVEL



Eg Between Sugar Manufacturers
Between Chicken Producers



DISTRIBUTION CHAIN



Between Wholesalers
Between Retailers



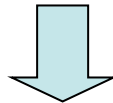
WHAT IS VERTICAL AGREEMENT?



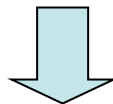
- An Agreement between enterprises each of which operate at a different level in the production or distribution chain



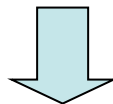
MANUFACTURER



DISTRIBUTOR



WHOLESALER



RETAILER



ENTERPRISE



- Any entity carrying on commercial activities relating to goods or services
- Parent & subsidiary will be regarded as single enterprise where the subsidiary do not enjoy real autonomy in determining their actions on the market



WHAT IS AN AGREEMENT?



- Any form of **contract**, arrangement or **understanding**, whether or not legally enforceable between enterprises and includes a **decision by an association** and **concerted practices**



CONCERTED PRACTICES



- Any form of coordination between enterprises which knowingly substitutes practical co-operation between them for the risk of competition and includes any practice which involves direct or indirect contact or communication, the object or effect of which is either –
 - (a) to influence the conduct of one or more enterprise in a market; or
 - (b) to disclose the course of conduct which an enterprise has decided to adopt or is contemplating to adopt in a market, in circumstances where such disclosure would not have been made under normal conditions of competitions



RELIEF OF LIABILITY



- **Section 5 – Enterprise may relief its liability for infringement for prohibition under section 4 – the reason being:**
 - (a) significant identifiable technological, efficiency or social benefits
 - (b) benefits could not be provided without the anti-competitive agreement
 - (c) the detrimental effect of the agreement is proportionate to the benefits
 - (d) competition is not eliminated completely



RELIEF OF LIABILITY



- **Section 5 – Enterprise may relief its liability for infringement for prohibition under section 4:-**
 - (a) significant identifiable technological, efficiency or social benefits
 - (b) benefits could not be provided without the anti-competitive agreement
 - (c) the detrimental effect of the agreement is proportionate to the benefits
 - (d) competition is not eliminated completely



ABUSE OF DOMINANT POSITION



Sec. 10 - An enterprise is prohibited from engaging, whether independently or collectively, in any conduct which amounts to an abuse of a dominant position in any market for goods or services.



WHAT IS DOMINANT POSITION

Where 1 or more enterprises possess such **significant market power** to adjust prices, outputs or trading terms **without effective constraint from competitors**



WHAT IS ABUSE

Section 10 (2) Abuse includes:

- Directly or indirectly imposing unfair purchase or selling price or trading conditions to customer or supplier
- Limit or control production, market access etc
- Refusing to supply to a particular enterprise or group of enterprises
- Apply different condition to equivalent transactions with other trading partners to an extent that may:
 - discourage new market entry/expansion by existing competitor
 - force an equally efficient existing competitor out of market
 - harm the market while participating in both upstream and downstream market
- Tying and bundling
- Predatory behaviour



REASONABLE COMMERCIAL JUSTIFICATION

- Conducts defined as ABUSE and prohibited may be allowed if there are reasonable commercial justifications or represent a reasonable commercial response to the market entry or market conduct of a competitor.



COMMISSION' S POWERS



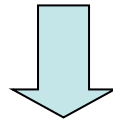
- Grant Exemption
- Conduct Investigation
- Issue Directives and Decision
 - Leniency Application
 - Proposed Decision
- Conduct Hearing
- Impose Penalties



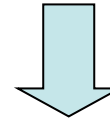
GRANTING OF EXEMPTIONS



EXEMPTIONS



INDIVIDUAL



BLOCK

CRITERIA FOR EXEMPTION

- Significant identifiable technological, efficiency or social benefit
- Benefit could not be provided without anti-competitive effect
- Detrimental effect proportionate to benefits provided
- Does not eliminate competition

INVESTIGATION POWERS

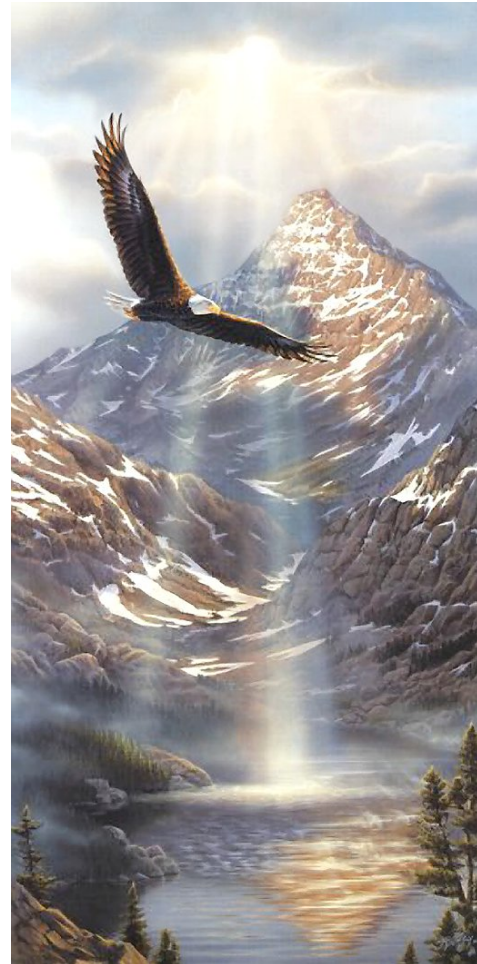


- ◎ **With or Without Search Warrant**
- ◎ **Reasonable hour of day or night**
- ◎ **Enter by force, if necessary**
- ◎ **Seize record, book, account, document, computerized data etc**
- ◎ **Not practical to remove - shall seal**
- ◎ **Body search with strict decency.....seize all things other than the necessary clothing found on the person**

LENIENCY REGIME



- Upon admission of involvement in an infringement of any prohibition
- Upon provision of any information or other form of co-operation in an investigation
 - Enterprises may enjoy total immunity or reduction of penalty depending :
 - the stage at which an involvement was admitted;
 - the stage at which any information or other co-operation was provided



CONDUCT HEARING



- How Conducted
 - Individual
 - Single
 - Close/Open to public
- Who can participate
 - Company representative
 - Legal Counsel
 - Others with consent of Commission



BUSINESS GROW WITH COMPETITION

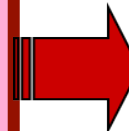


IMPOSE PENALTY



INFRINGEMENTS (MAIN PROHIBITION)

**MAXIMUM 10 % OF THE
WORLDWIDE TURNOVER**

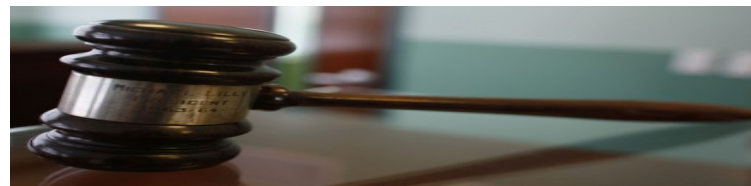


ENTERPRISE

ENFORCEMENT OF DECISION



- Failure to comply with the direction or a decision, Commission may bring proceedings before the High Court
- If the person has failed to comply with the direction or decision, High Court shall make an order requiring to comply the direction or decision
- If the failure includes a failure to pay the penalty imposed, High Court shall order the penalty be paid with interests
- Any breach would tantamount to CONTEMPT OF COURT



DO I HAVE RIGHTS OF PRIVATE ACTION ?



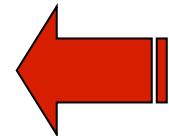
- YES! If you suffer loss or damage directly as a result of the infringement
- Regardless of whether you have dealt directly or indirectly with the enterprise
- Parallel avenue



PENALTIES

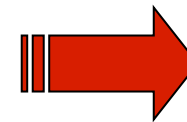
GENERAL OFFENCES

FIRST OFFENCE - RM 5 MILLION,
SUBSEQUENT OFFENCE - RM10 MILLION



**BODY
CORPORATE**

FIRST OFFENCE –
RM 1 MILLION OR 5 YEARS IMPRISONMENT,
SUBSEQUENT OFFENCE -
RM 2 MILLION OR 5 YEARS IMPRISONMENT



INDIVIDUAL

CASES



- **Six Pest Control Companies** fined total of **S\$262,759.66** by CCS for bid rigging and collusive tendering arrangements.
- **MAS** fined **RM3.09m** by KFTC for price fixing of fuel charges in the air cargo business.
- **16 Express bus operators and Express Bus Agencies Association** fined **S\$1.69m** by CCS for price fixing of Malaysia-Singapore coach tickets.
- **Eleven Modelling agencies** fined a total of **\$361,000.00** by CCS engaged in anti-competitive conduct by agreeing to fix the rates of modelling services in Singapore.

THANK YOU



www.mycc.gov.my

