



SURUHANJAYA PERSAINGAN MALAYSIA
MALAYSIA COMPETITION COMMISSION

RECENT DEVELOPMENT OF COMPETITION LAW IN MALAYSIA

SEMINAR COMPETITION SERIES 2019
HYATT REGENCY, KOTA KINABALU, SABAH
9 AUGUST 2019

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SENIOR ASSISTANT DIRECTOR, LEGAL DIVISION, MyCC

MALAYSIA COMPETITION COMMISSION (MyCC)

- **Competition Act 2010 [Act 712] (CA 2010)**
- **Competition Commission Act 2010 [Act 713] (CCA 2010)**
- **Gazetted on 10 June 2010.**



MyCC is an independent body formed on 1 April 2011.



CA 2010 was enforced on 1 January 2012.



OVERVIEW OF THE COMPETITION ACT 2010

- **MyCC is an independent body formed under the CCA 2010 to enforce the CA 2010**
- **An agency under the Ministry of Domestic Trade and Consumer Affairs (MDTCA)**

MyCC has the power to enforce the CA 2010 on all commercial activities conducted by any enterprise which offer goods and services to consumer in the market.

Main prohibitions of the CA 2010:

- **Section 4 - Anti-Competitive Agreements**
- **Section 10 - Abuse of Dominant Position**

QUASI-JUDICIAL BODY

ENFORCEMENT BY OTHER AUTHORITIES

Investigation by
Authority

Prosecution in Court

Adjudicated by Court

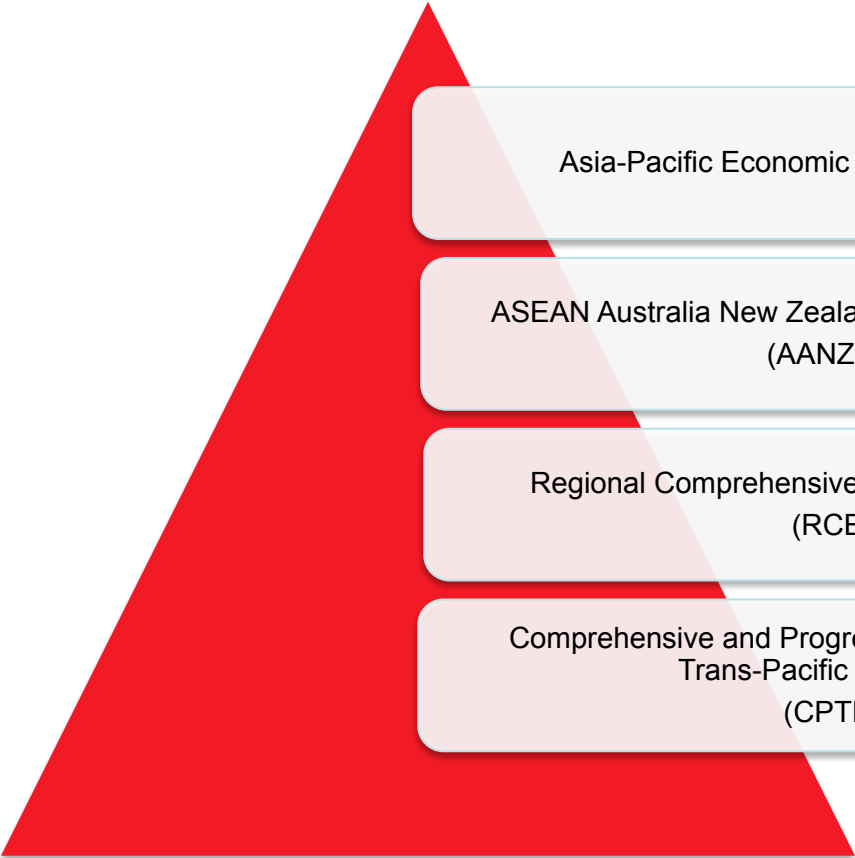
ENFORCEMENT BY MYCC

Investigation by
MyCC

Decision by MyCC

Enforcement by
MyCC

INTERNATIONAL AND OTHER ACTIVITIES

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Asia-Pacific Economic Cooperation (APEC)

ASEAN Australia New Zealand Free Trade Agreement
(AANZFTA)

Regional Comprehensive Economic Partnership
(RCEP)

Comprehensive and Progressive Agreement for the
Trans-Pacific Partnership
(CPTPP)



INTERNATIONAL AND OTHER ACTIVITIES



Competition Policy
and Law Group
(CPLG)
–Asia-Pacific
Economic
Cooperation
(APEC)



International
Competition
Network (ICN)



Organisation for
Economic
Co-operation and
Development
(OECD)



Intergovernmental
Group of Experts
(IGE) on
Competition Law
and Policy - United
Nations
Conference on
Trade and
Development
(UNCTAD)



East Asia Top Level
Officials' Meeting
on Competition
Policy (EATOP)



ASEAN Experts
Group on
Competition
(AEGC) - The
Association of
Southeast Asian
Nations (ASEAN)

STATISTICS OF COMPLAINTS, ETC

	2012	2013	2014	2015	2016	2017	2018	2019	TOTAL RECEIVED	TOTAL CLOSED
COMPLAINT	8	69	80	75	51	64	138	68	553	442
EX-OFFICIO	2	10	13	6	9	6	0	2	48	42
MINISTERIAL DIRECTION	1	2	3	1	3	0	3	1	14	10

Note: Total Financial Penalties imposed is RM30,583,522.85

LIST OF COMPLETED CASES

PROPOSED DECISION		FINAL DECISION		APPEAL / JUDICIAL REVIEW		UNDERTAKING	
<u>Section 36</u>		<u>Section 39 (No Infringement)</u>		<u>Section 40 (Infringement)</u>		<u>Section 43</u>	
1) General Insurance Association of Malaysia (PIAM) and its 22 members – 22 February 2017		1) 1 Tube Ice Manufacturer – 30 January 2015		1) Cameron Highland Floriculturist Association (CHFA) – 6 December 2012		1) Barbers Association – 30 January 2014	
2) Dagang Net Technologies Sdn. Bhd. – 10 July 2018		2) Pangsapuri Perdana – 12 February 2015		2) Malaysia Airline System Berhad, AirAsia Berhad & AirAsiaX Sdn. Bhd. – 31 Mac 2014		2) Pan Malaysia Lorry Owners Association (PMLOA) – 7 May 2014	
3) Akademi Seni Budaya dan Warisan Kebangsaan (ASWARA) – 4 March 2019		3) 9 Members of Sibü Confectionary and Bakery Association (SCBA) – 16 April 2015		3) Tube Ice Manufacturers (Tube Ice) – 30 January 2015		3) Giga Shipping Sdn Bhd & Nexus Mega Carriers Sdn Bhd) – 1 October 2014	
		4) Sarawak Restaurant Association – 16 April 2015		4) Sibü Confectionary and Bakery Association (SCBA) – 12 February 2015		4) Malaysia Heavy Construction Equipment Owners' Association (MHCEOA) – 12 October 2015	
		5) My Egg Consortium Sdn. Bhd. – 4 Jun 2015		5) Container Depot Operators (CDO Penang) – 1 June 2016		5) Containerchain Malaysia Sdn. Bhd. – 30 June 2016	
		6) Federation of Stationers and Book Sellers Association of Malaysia – 26 October 2015		6) MY E.G. Services Sdn. Bhd. (MyEG) – 24 June 2016		6) Sand Operators for the four District Namely Kota Bharu , Pasir Mas, Tanah Merah and Machang, Negeri Kelantan – 25 September 2017	
		7) Megasteel Sdn. Bhd. – 15 April 2016		7) Daycare & Tuition Centre – 8 February 2018			
		8) Dongwha Fibreboard Sdn. Bhd. dan Evergreen Fibreboard Bhd. (Woodsellers) – 7 February 2017					
		9) Avery Dennison Materials Sdn. Bhd. and UPM Raflatac Sdn. Bhd. (Labelstock Makers) – 7 February 2017					
				<u>Judicial Review</u>			
				1) MAS & AirAsia – 20 December 2018 (Reinstated decision of MyCC))			
				2) MyE.G. Services Berhad – 22 Janury 2019 (Dismissed MyEG's application)			
				<u>Court of Appeal (On-going)</u>			
				1) MAS & AirAsia			
				2) MyE.G. Services Berhad			

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MyCC v. MAS & AIRASIA

- MAS and AirAsia was investigated by MyCC for market sharing infringement.
- At the end of investigation, MyCC issued its decision holding that MAS and AirAsia had infringed the prohibition under **s 4(2)(b) CA 2010** by entering into a collaboration agreement with the object of which is the **sharing of market** within the air transport sector in Malaysia.
- CAT allowed the appeal by MAS and AirAsia and overruled MyCC's Final Decision.
- MyCC filed a Judicial Review Application on 18 February 2016 at the High Court against the decision of CAT. High Court thereafter reinstated the decision of MyCC as well as the RM10 million penalties on both airlines on 20 December 2018.
- MAS, on 16 January 2019, had filed an appeal to the Court of Appeal against the decision of the High Court. This matter is still on-going.



MyCC v. MyEG

- MyCC discovered that MyEG had been abusing its dominant position as the sole concession holder for the online *Pas Lawatan Kerja Sementara (PLKS)* renewal services in Peninsular Malaysia (upstream market) and in the market for the sale of the Mandatory Insurances for online *PLKS* renewal application (downstream market).
- A total of **RM9,644,700.00** financial penalty imposed against MyEG.
- MyEG appealed to CAT but the decision of MyCC was upheld by CAT on 28 December 2017, with additional daily penalties imposed.
- MyEG filed a Judicial Review Application in High Court, in which the High Court dismissed MyEG's application on 22 January 2019.
- This case is currently under appeal.



LATEST PROPOSED DECISION



- General Insurance Association of Malaysia (PIAM) and its 22 members formed a cartel.
- Proposed Decision (PD) was issued on 22 February 2017 with a penalty of RM213.45M.
- The Oral Representation was concluded on 18 June 2019.

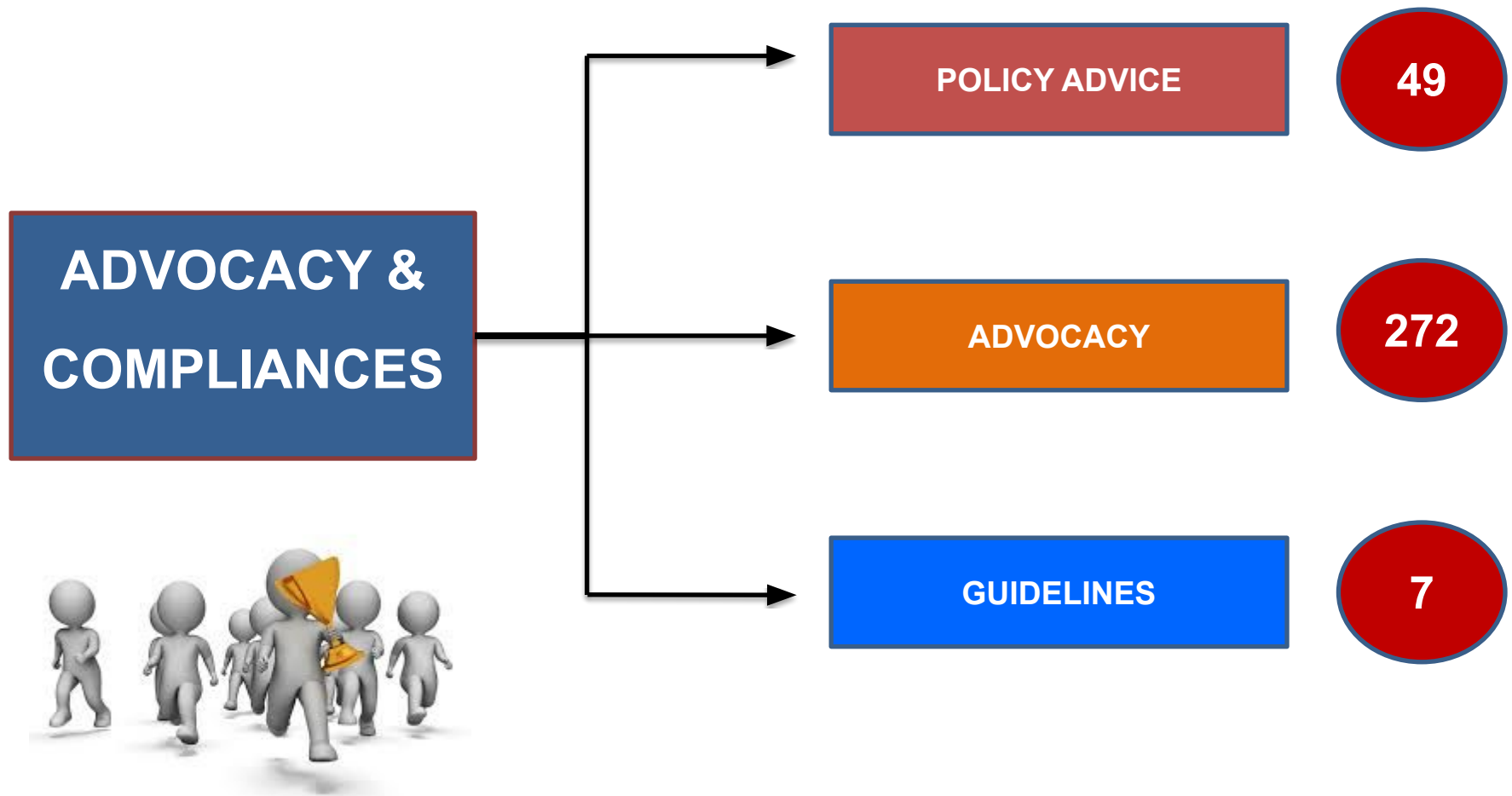


- MyCC issued a PD on 10 July 2018 against DagangNet for abusing its dominant position.
- A financial penalty of RM17.39M was imposed together with a directive to cease and desist.
- The Oral Representation was concluded on 29 July 2019.

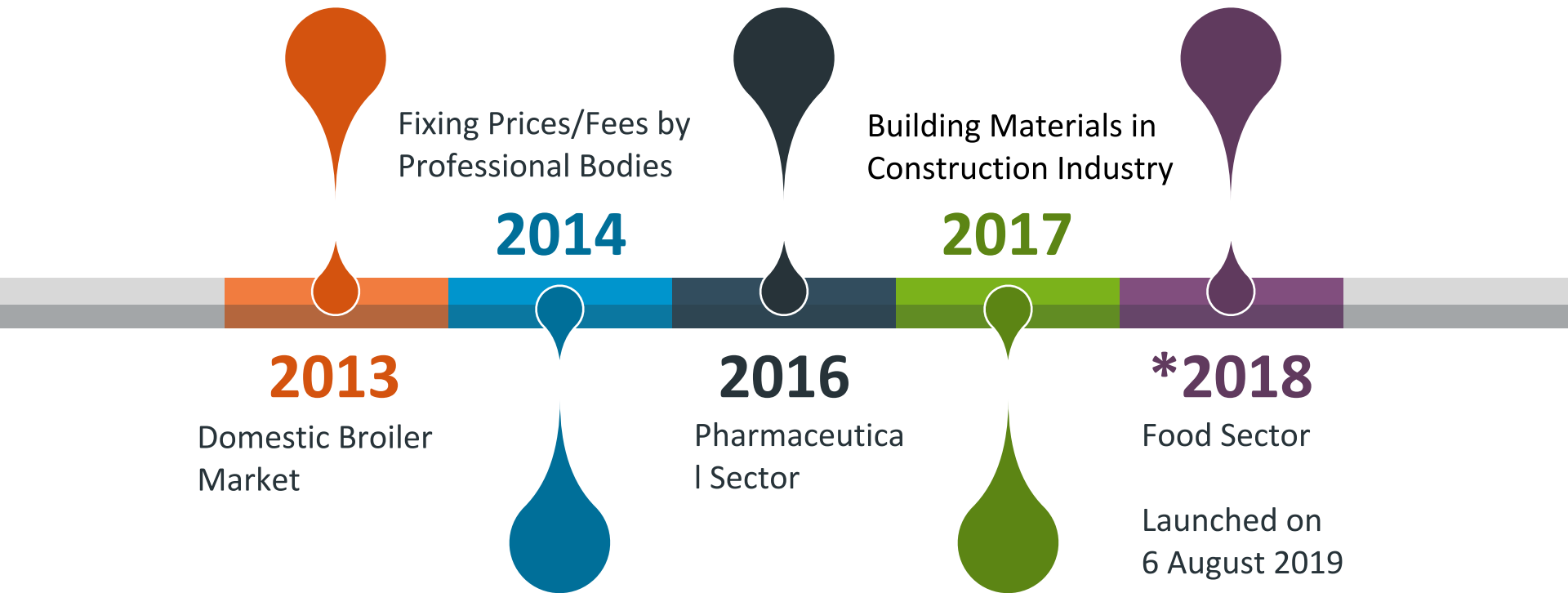
IT VENDORS

- **The first bid rigging case by MyCC.**
- PD was issued against 8 target enterprise for engaging in bid rigging conduct in three Request For Quotations (RFQs) and one tender.
- A total penalty of RM1.94M was imposed and an Oral Representation will be held in September 2019.

OTHER ACHIEVEMENTS BY MyCC SINCE 2011



MARKET REVIEW







MARKET REVIEW ON FOOD SECTOR UNDER THE CA 2010

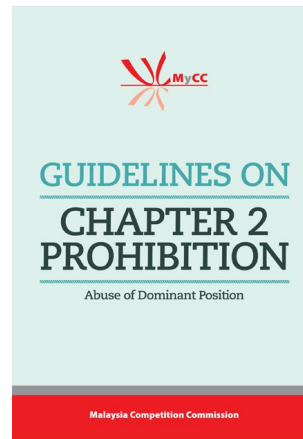
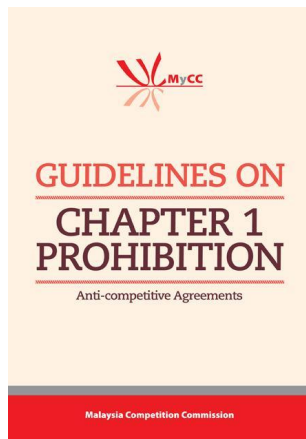
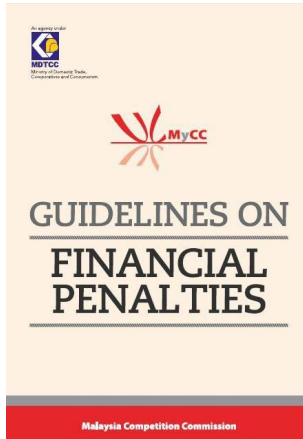


“Issues related to the food items' price hike range from the presence of middlemen, inefficiency among suppliers and misuse of Approved Permit (AP),” according to Domestic Trade and Consumer Affairs Minister Datuk Seri Saifuddin Nasution Ismail after launching the Report on Market Review at the Asian International Arbitration Centre (AIAC) on 6 August 2019.

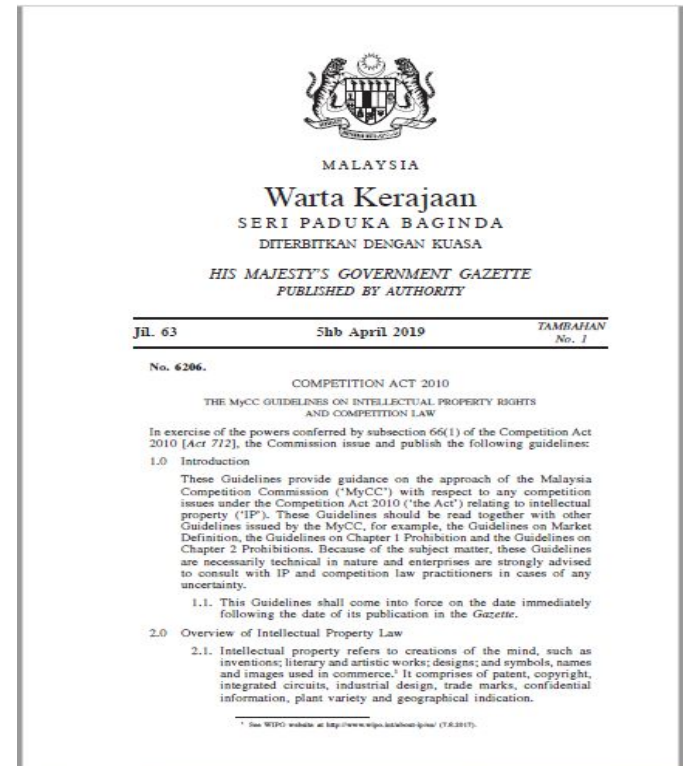
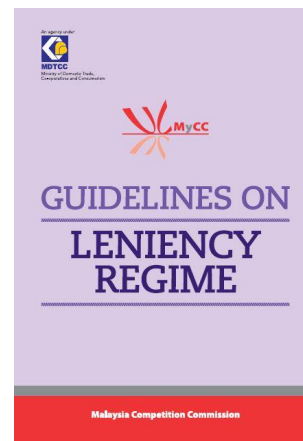
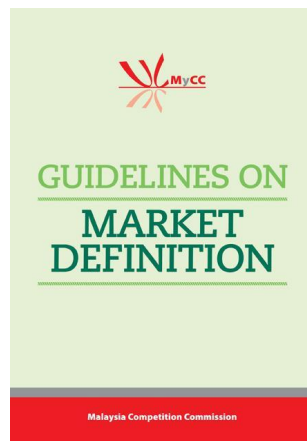
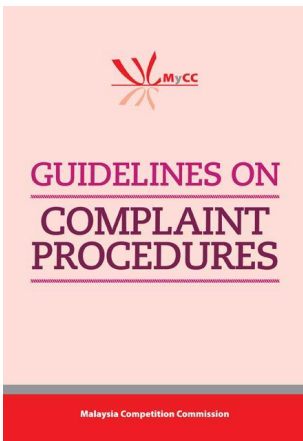
MARKET REVIEW ON FOOD SECTOR UNDER THE CA 2010

- This is the 5th Market Review conducted by MyCC.
- The five food items are beef, Indian mackarel (*ikan kembung*), infant formula, mustard leaf (*sawi hijau*) and round cabbage.
- The research commenced on 1 November 2018 and was completed on 31 July 2019.
-  Revitalizing the domestic beef production while diversifying the source of beef importation agencies.
-  Active consumer education to the market and demand-driven
-  Promote mothers to breastfeed their infants as recommended in the National Breastfeeding Policy of Malaysia
-  Encourage transparency in the AP approval system

GUIDELINES



GUIDELINES ON INTELLECTUAL PROPERTY RIGHTS AND COMPETITION LAW GAZETTED ON 5 APRIL 2019



OTHER ACTIVITIES



INTERNATIONAL COOPERATION

MyCC organized:

- ✓ 1st EU-ASEAN Competition Week in June 2019
- ✓ German-Malaysian Symposium On Competition Law in July 2019



MONOPOLY ISSUES

MyCC is part of a committee formed by the government to review the power of certain monopoly



WHOLESALE AMENDMENT OF THE ACTS

MyCC is in the process of amending its Acts which will incorporate the merger control power

FOSTERING COMPETITION IN MARKETS THROUGH MyCC AND CA 2010

**Opening markets with
pro-competitive regulations
and removing anti-competitive
sectoral regulations**

- ❖ Reform policies and regulations that strengthen dominance;
- ❖ Reform policies that are conducive to collusive outcomes; and
- ❖ Reform frameworks that distort the level playing field.

Effectively enforcing the CA 2010

- ❖ Tackle cartel agreements that particularly raise the costs of key inputs and final products;
- ❖ Eliminate abusive conduct (exploitative and exclusionary) by dominant player/s in the market; and
- ❖ Strengthen the CA 2010 with the incorporation of mergers enforcement to combat anti-competitive mergers.

THANK YOU



www.mycc.gov.my