



Federation of Malaysian Manufacturers

grow
transform

Malaysia Competition Commission (MyCC) Seminar

14 November 2016 ♦ Dewan Mahkota, Level 5 Block B
Platinum Sentral, Bangunan SME Corp, Kuala Lumpur

Helping Malaysian SMEs Understand Competition Law

Session 2: How SMEs Benefit from Competition Law?

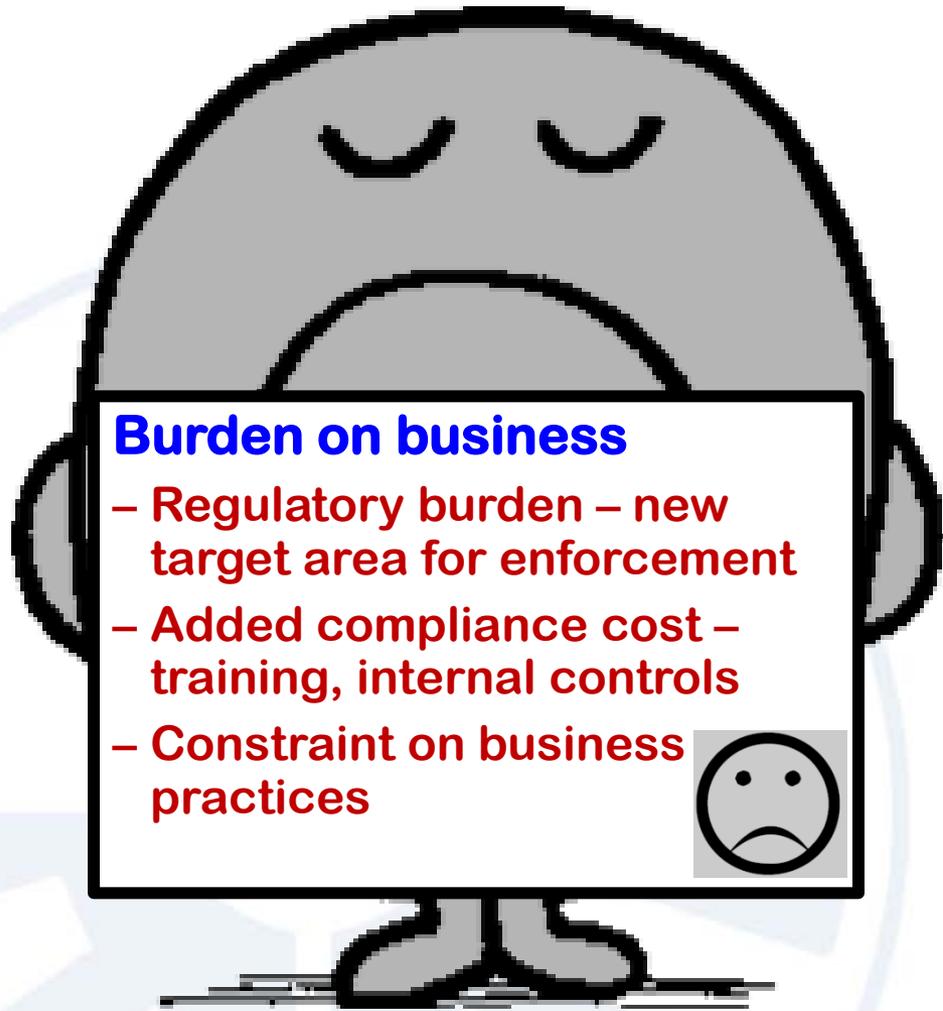
**YBhg Dato' IR (Dr) Andy Seo
Vice President, FMM**

Chairman, FMM SMI's Working Committee



What is Competition Law to SMEs

Un-Enlightened SME



Burden on business

- Regulatory burden – new target area for enforcement
- Added compliance cost – training, internal controls
- Constraint on business practices



ENLIGHTENED SME



Protection against

- Abusive or anti-competitive behaviour by big firms
- Artificial market barriers

Lower costs of inputs in more competitive environment





But, majority UN-ENLIGHTENED

- Minimal understanding / awareness of Competition Law is NOT PECULIAR to Malaysian SMEs
 - Even UK with modern competition law since 1998 still faces problem
- BDRG Continental research report for Competition and Markets Authority, UK dated 15 May 2015:
 - Most do not fully understand
 - Very few considered the law might affect their business
 - Rely on intuitive moral & ethical framework in viewing business practices
 - Anti-competitive practices assessed on impact on customers
 - Price fixing is easiest to understand
 - Market sharing and bid rigging less black & white
 - SMEs time-poor → want to be told what they CAN and CANNOT do;
GREY AREAS without CLEAR GUIDANCE to be AVOIDED



Useful Insights on SMEs from BDRC Report

| Anti-competitive Practices | SME's Understanding & Perspective |
|----------------------------|---|
| Price fixing | <ul style="list-style-type: none">• Easiest to understand – regard as immoral & illegal• Impact on consumer obvious• Viewed as bad idea – competitors will reduce price• Lack of trust limits interest to fix price with competitors |
| Market sharing | <ul style="list-style-type: none">• More challenging & controversial to conceptualise• Required example to understand fully• Seemed immoral but impact to market not obvious<ul style="list-style-type: none">– if cartel, immoral– if open market, strategic alliance eg against larger firm• Seen as “passive” & less wrong – softer offence, fine line |
| Bid rigging | <ul style="list-style-type: none">• Most have heard of bid rigging but mainly high risk sectors like construction• Need trust and close relationship between competitors• Impact clear – illegal, associated with bribery• Customer often has role – collusion with supplier |



Useful Insights on SMEs from BDRC Report

| Anti-competitive Practices | SME's Understanding & Perspective |
|----------------------------|--|
| Resale price maintenance | <ul style="list-style-type: none">• SMEs felt not applicable to them – instead are victims• Viewed as unfair but not necessarily illegal |
| Abuse of dominance | <ul style="list-style-type: none">• Quite unlikely for SMEs• Could be done on local basis or in niche sector |
| Sharing sensitive info | <ul style="list-style-type: none">• SMEs do not see wrong when competition not hostile• Aware & often meet competitors in associations, events• Main issue confidentiality – unethical but not illegal• Benchmarking is standard practice |

Malaysian SMEs likely to share some of these views on competition law

- **FMM–MIER Business Conditions Survey 1H2013** – 36% respondents SMEs
 - Awareness level: 18% high, 44% moderate, 19% low, 20% not at all
 - Taken action to enhance awareness: 70%
 - Of the 70%, action taken: 68% training, 40% internal compliance audit
 - **VICTIM** rather than perpetrator of **Price fixing, Bid rigging & Limit to market access**



Promoting Competition Compliance

- **Some competition cases involving SMEs – price fixing**
 - Cameron Highlands Floriculturist Association
 - Malaysian Indian Hairdressing Saloon Owners Association
 - Sibu Confectionery & Bakery Association
 - Ice Manufacturers of Kuala Lumpur, Selangor & Putrajaya
- **Trade / Industry associations have an important role**
 - **BDRC Report (15 May 2015) “...best vehicles to engage SMEs”**
 - Tend to rely on associations for updates
 - Trust association to filter and communicate relevant info
 - **Competition & Markets Authority (CMA) survey (27 May 2015)**
“...83% of businesses meet competitors ...during meetings...”
 - **Canadian Competition Bureau (16 Aug 2016) “...Another current compliance focus for the Bureau is associations...”**
 - **Ms Shila Dorai Raj, then CEO of MyCC (19 Aug 2013) article**
“...associations ... able to provide assistance with compliance. SMEs in same industries likely to face common competition law risks...”



FMM Initiatives in Promoting Compliance

- **Competition policy caution statement – MAIN initiative**
 - ISO Quality Management requirement for Committee meetings
 - Read at start of **every meeting at HQ, Branch & Industry Group**
→ 1,000 meetings in 2015; over 248 meetings in Jan – Sept 2016
 - Alert against price fixing, sharing market & suppliers, limiting market access, bid rigging, sharing of sensitive information
 - Advised to stop or suspend meeting if uncertain whether meeting discussion / conduct raises competition issues
 - **Ripple effect**
 - ✓ Committee members local business leaders – **develop champions**
 - ✓ **Multi-level** awareness
 - Geographical: HQ to State (Branch) to regional committees
 - Structure: Committee & Industry Group to sub-Committee level
 - Company: different categories of staff – marketing, regulatory, production, human resource, logistics, etc
 - ✓ **Widening net** – change in Committee members, observers, etc
 - **Reinforcement effect** – reminded 3 – 4 times a year



FMM Initiatives in Promoting Compliance

- **Company Self Assessment Checklist on Compliance with CA**
 - **Based on MyCC Guidebook on Compliance**
 - **Launched by MyCC Chairman on 25 Nov 2014**
 - **Checklist helps companies:**
 - ✓ **Identify** anti-competitive activity – features listed in checklist
 - ✓ **Identify** high risk personnel – by job function & activity
 - ✓ **ACTION** item to close the gap for each anti-competitive activity
 - ✓ **Lead to MyCC** website & Guidelines for more information
 - ✓ **Features of Competition Compliance programme**
 - **Policy statement, Compliance manual, Training, Committee or Compliance officer**
 - **Minimum requirement for a SME compliance programme**
 - **ACTION** item to close the gap for each programme
 - ✓ **Performance rating** through scoring – facilitate measurement
 - ✓ **Benchmark score** – analysis of measurement – Where we stand?



FMM Initiatives in Promoting Compliance

- **Awareness Programmes – subject not top of SME list of concerns**
 - 4 briefings in 2011 – Selangor(2), Penang, ICC (*FMM is Secretariat*)
 - Seminar on Managing Competition Law Compliance, Oct 2013
 - Workshop on Preparing Companies for Competition Raid, Apr 2014
 - Joint briefing with MyCC, Nov 2014 (*launch of checklist*)
 - Tea talk Competition Law in ASEAN & Challenges for SMEs, Sept 2015
 - FMM Logistics Conference, Nov 2015
- **Moving forward → admittedly, more could be done but require:**
 - **Train the trainer** to enhance understanding & give correct advice
 - **Educational materials** for dissemination (online & hard copy)
 - ✓ Posters
 - ✓ UK Competition authority's 60-second 1 page summary
 - ✓ Short pamphlets which could be inserted into seminar kits
 - **Contribution of short articles** for FMM publication, including quick notes (reading at a glance) as space fillers
 - **Notification of updates / new material on MyCC website** – disseminated via e-circular or hyperlinks on FMM website



Thank you for your attention

