



Malaysia Competition Commission

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HEAD OF LEGAL, MALAYSIA COMPETITION COMMISSION

2014

PRESENTATION OVERVIEW

Evolution of Competition Act 2010 (CA2010)

Objectives, significance and role of CA 2010

Competition Act 2010: Prohibition

MyCC, businesses and public's roles

Pillar of the CA 2010 and its application

BACKGROUND OF THE COMPETITION LAW IN MALAYSIA

1993

Fair Trade Bill first drafted

8MP & 9MP

Mandate for development of competition policy & law

2005

Cabinet approved Fair Trade Policy

10 June 2010

Competition Act 2010 & Competition Commission Act 2010 gazetted

1 April 2011

Malaysia Competition Commission (MyCC) established

1 Jan 2012

Competition Act 2010 came into force

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COMPETITION ACT 2010 [ACT 712]

PREAMBLE

An Act to promote **economic development** by promoting and **protecting the process of competition**, thereby protecting the interests of **consumers** and to provide for matters connected therewith

Came into force on 1 January 2012

SCOPE OF LAW

Applies to **all commercial activities, both within and outside Malaysia** which has an effect on competition in any market in Malaysia



SCOPE OF LAW (ACTIVITIES NOT INCLUDED)

“Commercial activity” means any activity of commercial nature but does not include:-

1. Any activity, directly or indirectly in the exercise of governmental authority;
2. Any activity conducted based on the principle of solidarity; and
3. Any purchase of goods or services not for the purposes of offering goods and services as part of an economic activity

SCOPE OF LAW (EXCLUSION)

- Commercial activities regulated under:
 - **Communications and Multimedia Act 1998 [Act 588]**
 - **Energy Commission Act 2001 [Act 610]**
 - **Petroleum Development Act 1974 [Act 144] and the Petroleum Regulations 1974 [P.U. (A) 432/1974] – Amendment of First Schedule Order 30 DECEMBER 2013**
- Agreement or conduct that comply with any legislative requirement
- Collective bargaining activities in respect of employment terms & conditions
- Services of general economic interest or having the character of a revenue-producing monopoly



PRESENTATION OVERVIEW

Evolution of Competition Act 2010

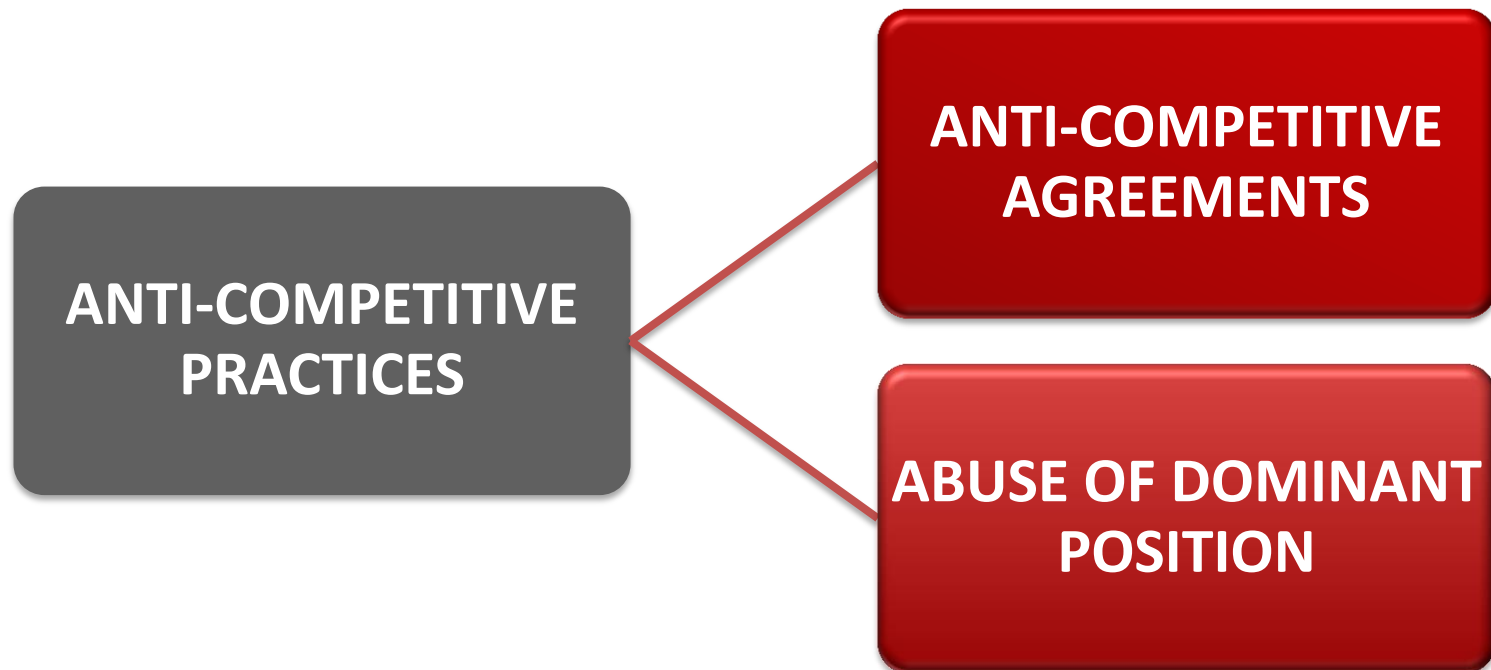
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MAIN PROHIBITIONS



ANTI-COMPETITIVE AGREEMENTS

Section 4 (1) of the Competition Act 2010

A **HORIZONTAL** or **VERTICAL AGREEMENT** between **ENTERPRISES** is prohibited insofar as the agreement has the **OBJECT** or **EFFECT** of **SIGNIFICANTLY** preventing, restricting or distorting competition in any **MARKET** for goods or services.

ANTI-COMPETITIVE AGREEMENTS

HORIZONTAL AGREEMENTS

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

PRODUCTION LEVEL



e.g., between chicken producers
between sugar manufacturers

DISTRIBUTION CHAIN

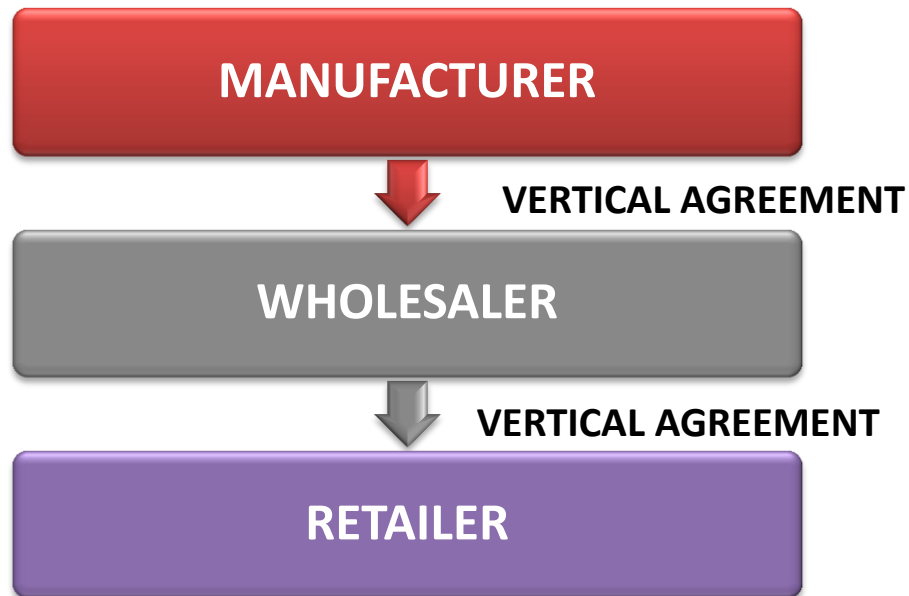


e.g., between retailers
between wholesalers

ANTI-COMPETITIVE AGREEMENTS

VERTICAL AGREEMENTS

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



ANTI-COMPETITIVE AGREEMENTS

“AGREEMENT”

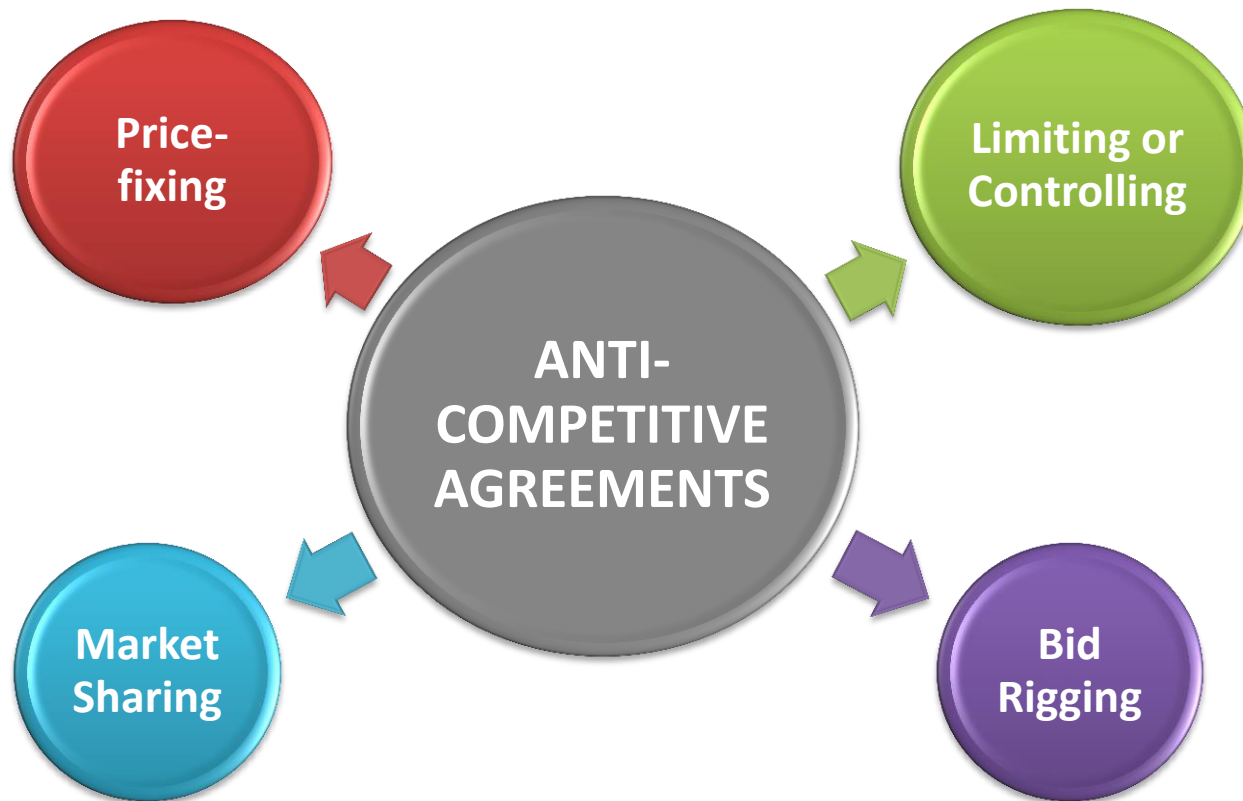
- **Need not** be in the form of formal agreement
 - Contract, arrangement, understanding, *whether or not legally enforceable*
 - **“concerted practices”** or **“gentleman's handshake”**
 - Decision of associations



ANTI-COMPETITIVE AGREEMENTS

“ENTERPRISE”

- **any entity** carrying on commercial activities relating to goods or services, and for the purposes of this Act, *a parent and subsidiary company shall be regarded as a single enterprise if, despite their separate legal entity, they form a single economic unit within which the subsidiaries do not enjoy real autonomy in determining their actions on the market;*



Example: The Federal Court ordered **Malaysia Airlines Cargo Sdn Bhd** to pay A\$6 million plus costs for **price fixing** as part of a cartel following action by the **ACCC**, bringing the total penalties ordered against the alleged international cartel to A\$58 million.
(Source: *ACCC v Malaysian Airline System Berhad & anor*)

ANTI-COMPETITIVE AGREEMENTS

OTHER TYPES OF AGREEMENTS

Resale Price Maintenance (RPM)

- A producer / manufacturer's specifying that its product be retailed at:-
- a fixed or minimum price
- maximum pricing or
- recommended retail pricing which serves as a focal point

Exclusive Supply Agreement

- Supplier obliged to sell only to one buyer.
- Whether it is anti competitive depends on a few factors such as market power of the buyer, duration of the exclusivity and availability of inter - brand competition

ANTI-COMPETITIVE AGREEMENTS EXEMPTION

EXEMPTIONS



INDIVIDUAL

Section 6



BLOCK

Section 8

RELIEF OF LIABILITY

SECTION 5

- 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

Competition Act 2010, Section 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.

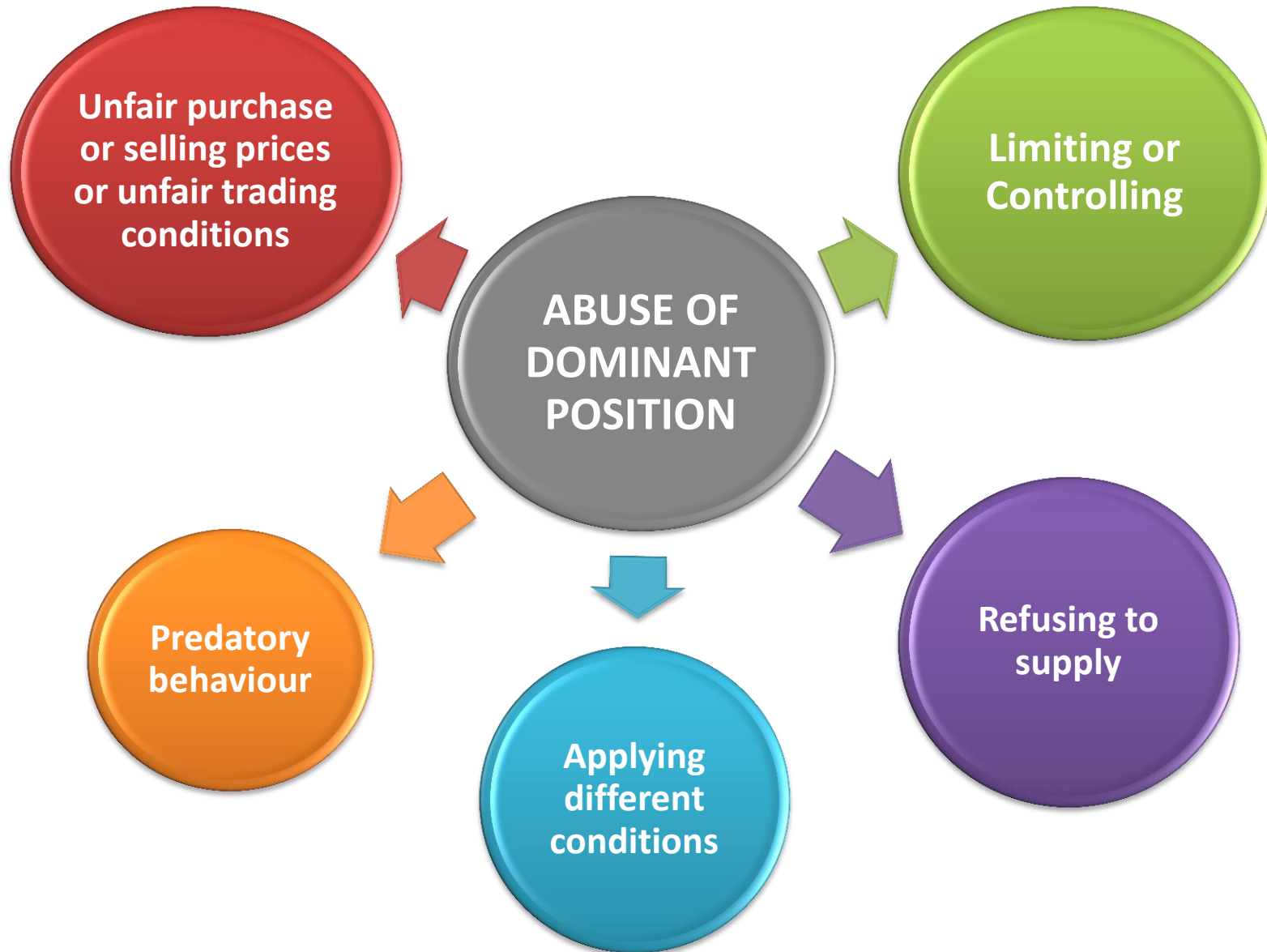


ABUSE OF DOMINANT POSITION

“DOMINANT POSITION”

A situation in which one or more enterprises possess such **significant market power** to adjust prices, outputs or trading terms **without effective constraint from competitors**

Note: 60% market share indicative of dominance



ABUSE OF DOMINANT POSITION

(continued)

Reasonable Commercial Justification

Conduct defined as **ABUSE** and prohibited may be allowed if there are **reasonable commercial justification** or represents a **reasonable commercial response** to the market entry or market conduct of a competitor.

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ROLE OF MyCC



PENALTIES

If there is an infringement, the Commission

- Shall issue cease and desist order
- May specify steps to bring an end to the infringement
- May impose financial penalty:

maximum 10 % of the worldwide turnover

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

PRIVATE RIGHTS

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

ROLE OF BUSINESSES and PUBLIC

Enhance knowledge of Competition Act

Understand types of agreements that are prohibited

Develop knowledge on compliance

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LACK OF AWARENESS BROUGHT TO DOWNFALL

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2014 : Proposed decision to Ice Manufacturers for price fixing

Facts of the case:

- News announcement on 24 December 2013 – all the **26 manufacturers agreed** to increase edible ice tube by RM0.50 and block ice by RM2.50 from 1 January 2014.
- MyCC initiated investigation on 26 December 2013
- Found infringement section 4(2)(a) – price fixing
- Final Interim Measure: The parties to cease and desist from implementing the decision beginning 20 January 2014.
- Proposed decision on 20 February 2014 with financial penalties from RM1,200 to RM106,000.

MARKET SHARING

3 2013: MAS - AirAsia for market sharing

Facts of the case:

- 9 August 2011, MAS, AirAsia and AirAsia X (AAX) entered into a Comprehensive Collaboration Framework ('the Collaboration Agreement') with the aim to sharpen the focus of core competencies, deliver better product and choice for customers and ultimately create greater value for all stakeholders.
- Based on ex-officio, public outcry and a complaint
- However, both airlines have infringed section 4(2)(b) of the Competition Act 2010 by entering into the Collaboration Agreement that has as its object i.e. the sharing of markets in the air transport services sector within Malaysia provided by both airlines.
- Removed reference to the object stated in supplemental agreement dated 2 May 2012
- Final decision: A financial penalty of RM10,000,000.00 on MAS and AirAsia respectively.

PROSECUTION BASED ON YOUR SUCCESS?

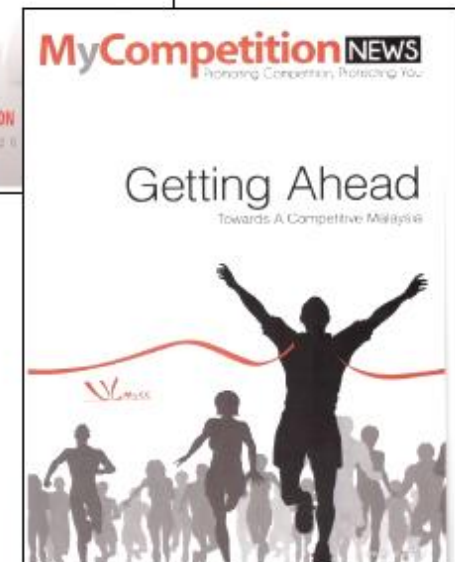
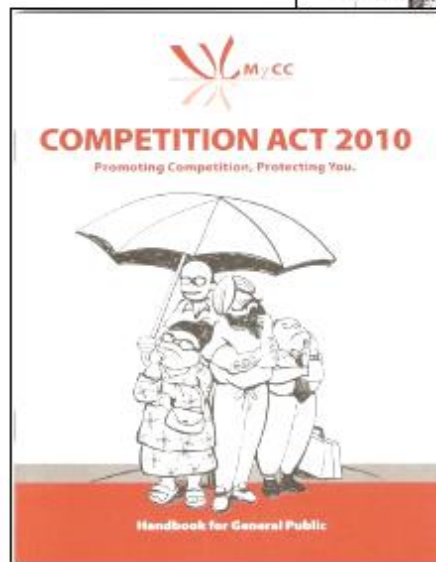
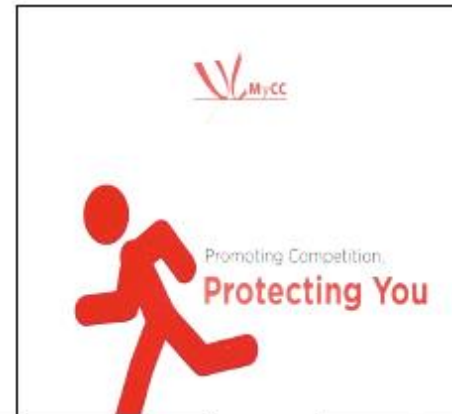
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2013: Megasteel Sdn Bhd – Abuse of Dominant Position for margin squeeze conduct

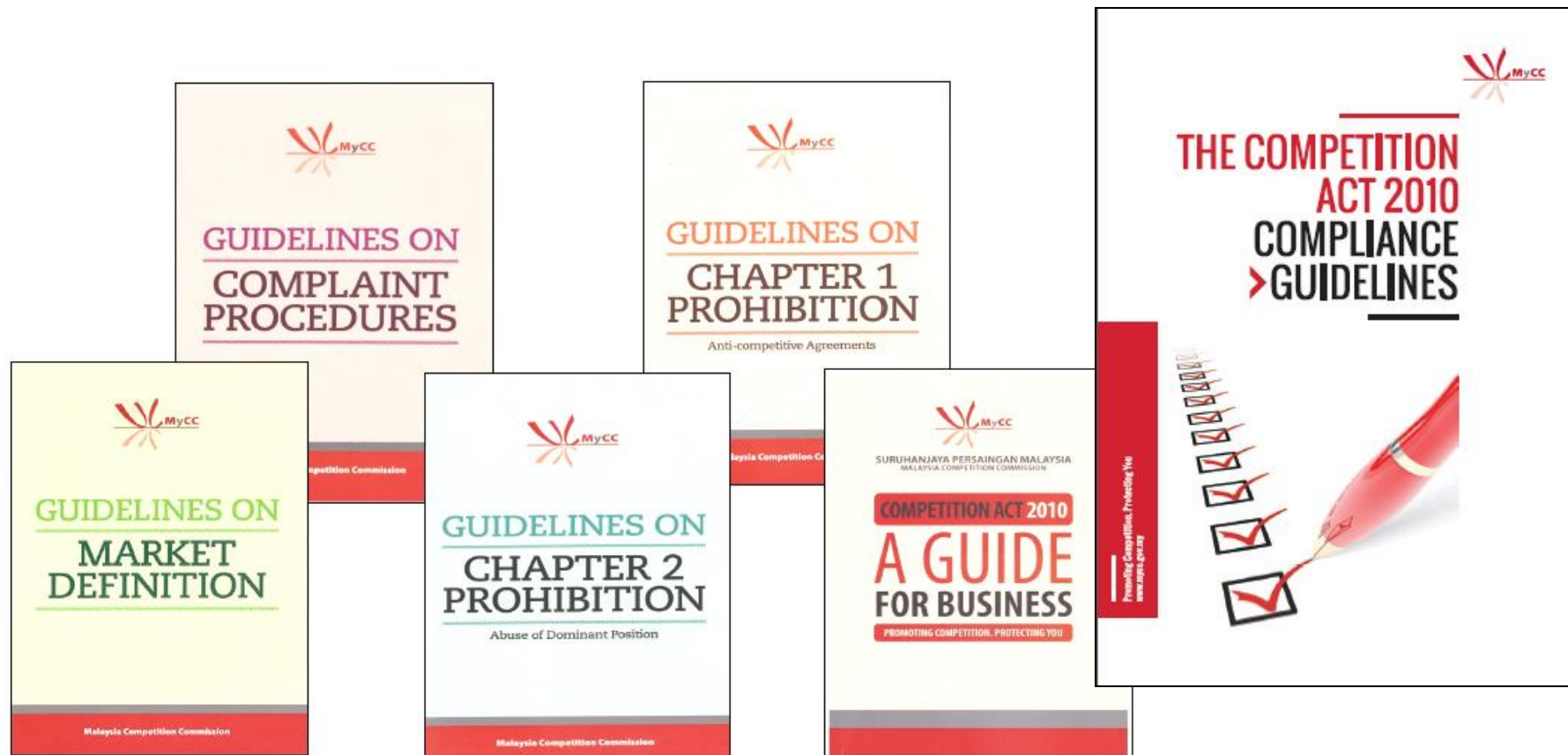
Facts of the case:

- Based on a complaint from Melewar Industrial Group Bhd
- Megasteel's practice of charging or imposing a price for its Hot Rolled Coil ('HRC') in upstream market that is disproportionate to the selling price of its Cold Rolled Coil ('CRC') in the downstream market, amounts to a margin squeeze that produces anti-competitive effects in the market (Section 10(1))
- Regarded as abusive – leverage its market power
- The only HRC domestic manufacturer (dominant) and there's restriction in import for HRC
- HRC is an essential input for CRC
- Proposed decision: A financial penalty amounting RM4,500,000.00 (1 November 2013)

MyCC'S GUIDELINES



MyCC'S GUIDELINES



THANK YOU



www.mycc.gov.my

