



Malaysia Competition Commission

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cum Graduate School of Business, USM

***Seminar on Instituting The Competition Act 2010- The Role of Universities and Academics
24 September 2013, Kuala Lumpur Convention Centre (KLCC)***

OVERVIEW OF THE COMPETITION ACT 2010

MyCC's Initiatives

Part 1 - Evolution of Competition Act 2010

Part 2 - Competition Act 2010

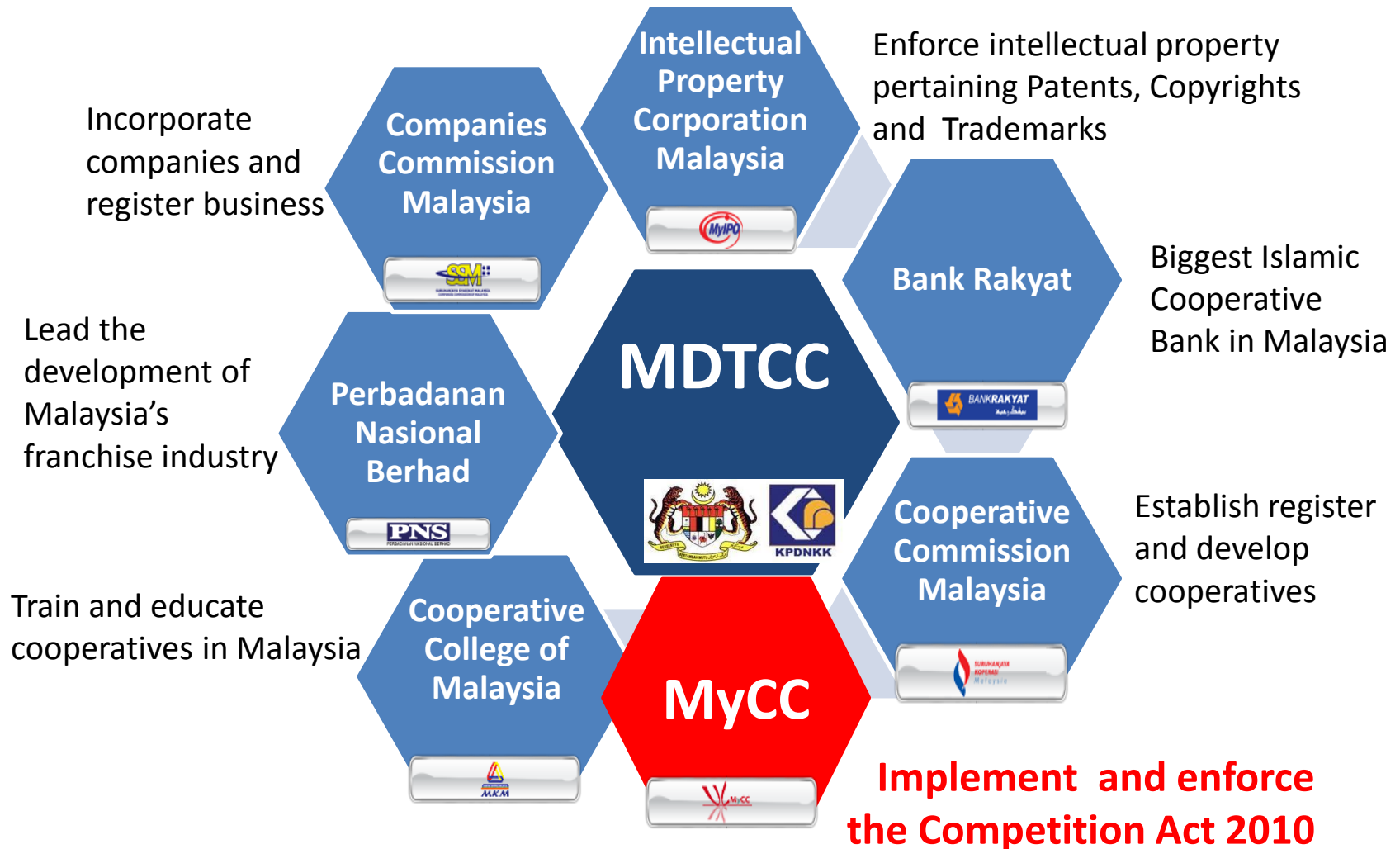
Part 3 - Malaysia Competition Commission (MyCC)

Part 4 - MyCC 's Initiatives on Education Agenda

Part 5 - Strategies to Promote Competition Act 2010

Ministry of Domestic Trade, Co-Operatives & Consumerism (MDTCC)

promote growth of the domestic trade and protecting the consumer's interest



*DEVELOPMENT OF CA 2010

Oct 2005

- Fair Trade Practices Policy was approved by Cabinet on 26 October 2005. Ministry formed a consultative group known as CG25 comprising representatives from key government agencies, several chambers, associations and also civil servants to draft the bills.

Sept – Oct
2009

- Further discussion was held with respective stakeholders before the final change in policy, which focused on competition aspects only.

April 2010

- New policy and bill was submitted to the Cabinet and approved on 2 April 2010. Royal assent was given on 2 June 2010 and was **gazzeted 10 June 2010**. 18 months grace period was given to allow companies to comply with the law as well as to allow sufficient time for the Ministry to form the commission

Sept 2010

- Interim Unit was set up in the Ministry in September 2010 to plan for the establishment of the Competition. An implementation committee was set up to assist in the initial programmes of the interim competition unit which include the establishment of the Commission and conducting advocacy programmes

** Excludes anti-competitive practices under the Communications and Multimedia Commission Act 1998 & Energy Commission Act 2001*

DEVELOPMENT OF CA 2010 ...

Apr 2011

- Chairman of the Commission was appointed on 1 April 2011.

May 2011

- Nine other members of the Commission were appointed on 1 May 2011

June 2011

- CEO and other Commission officers were appointed in June 2011

Jan 2012

- The Competition Act 2010 came into force

IMPLEMENTATION OF THE COMPETITION LAW IN ASEAN COUNTRIES

Indonesia
Singapore
Thailand
Vietnam
Malaysia

• **Implemented**

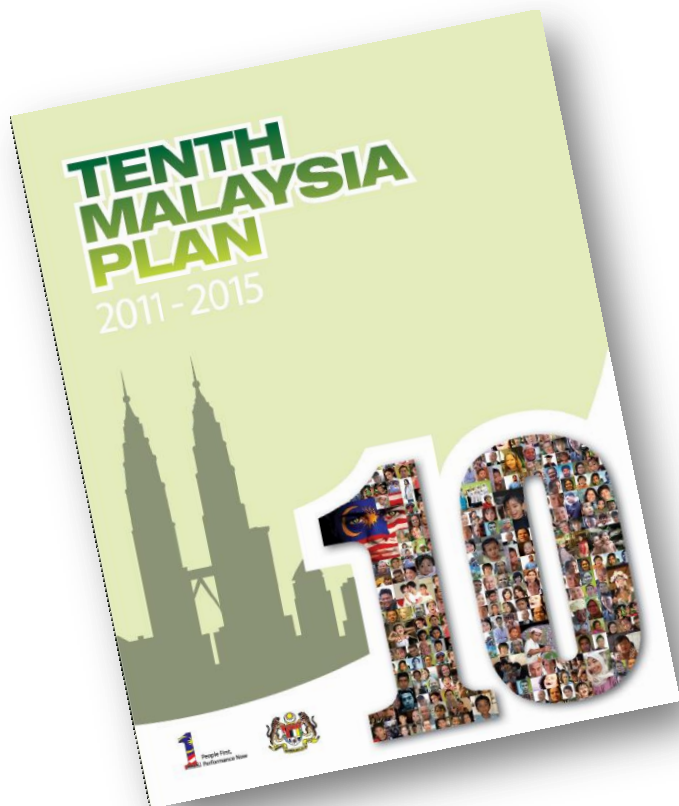
Myanmar
Lao PDR
Brunei
Cambodia
Philippines

• **Yet to implement**
• **By 2015**



*140 countries
worldwide are
already
implementing the
law*

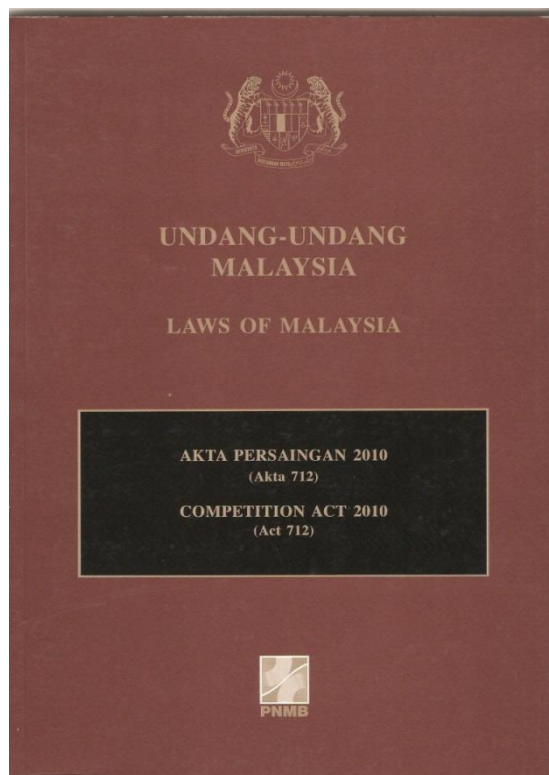
MESSAGE FROM YAB Prime Minister



*"**Healthy competition** is needed to make the **economy more efficient** and dynamic. For this, the Competition Law will be introduced to provide a **regulatory framework against market manipulation and cartel practices** that may affect **market efficiency**..."*

YAB Dato' Seri Najib Tun Razak ,
Prime Minister of Malaysia in tabling the 10th
Malaysia Plan

COMPETITION ACT 2010 (ACT 712)



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:-

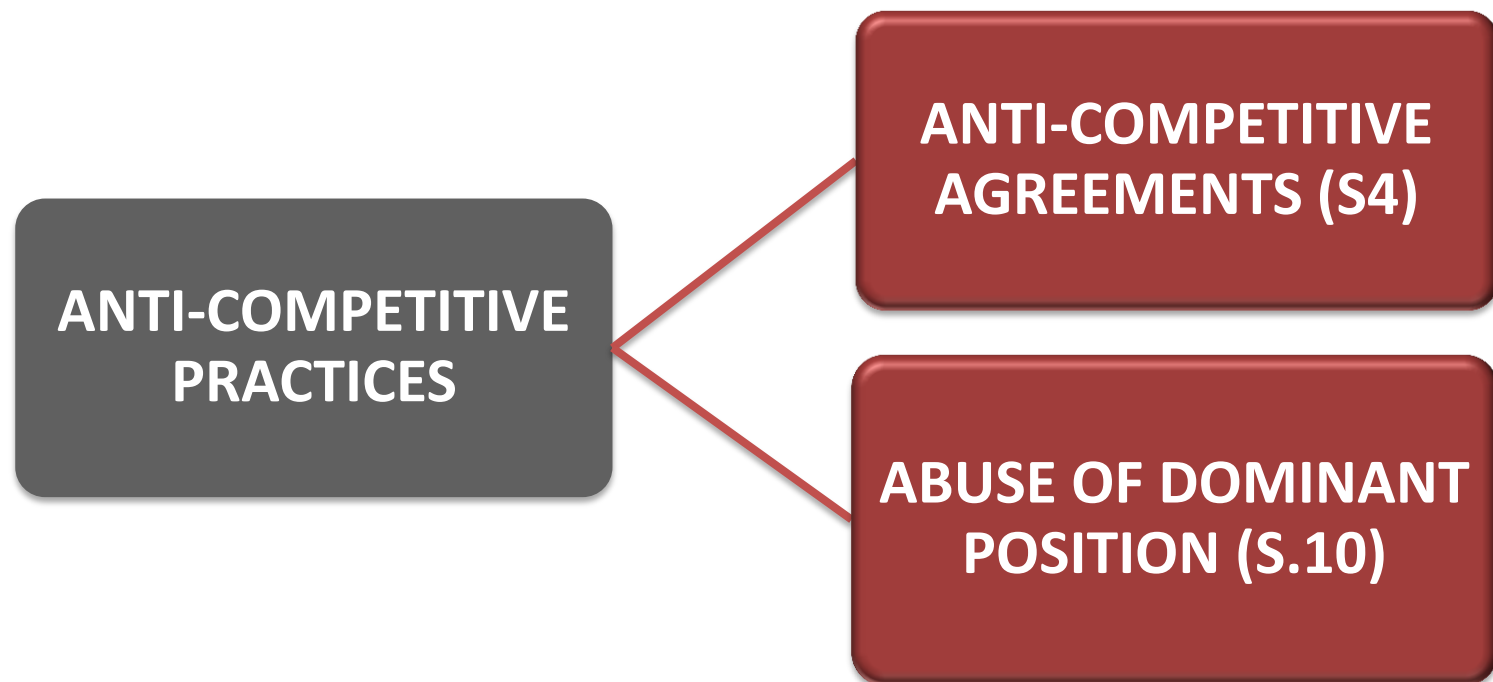
1. Any activity, directly or indirectly in the exercise of governmental authority;
2. Any activity conducted based on the principle of solidarity; and
3. Any purchase of goods or services not for the purposes of offering goods and services as part of an economic activity

OBJECTIVES & BENEFITS

Enterprises to be more efficient, innovative and responsive to consumer demand



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

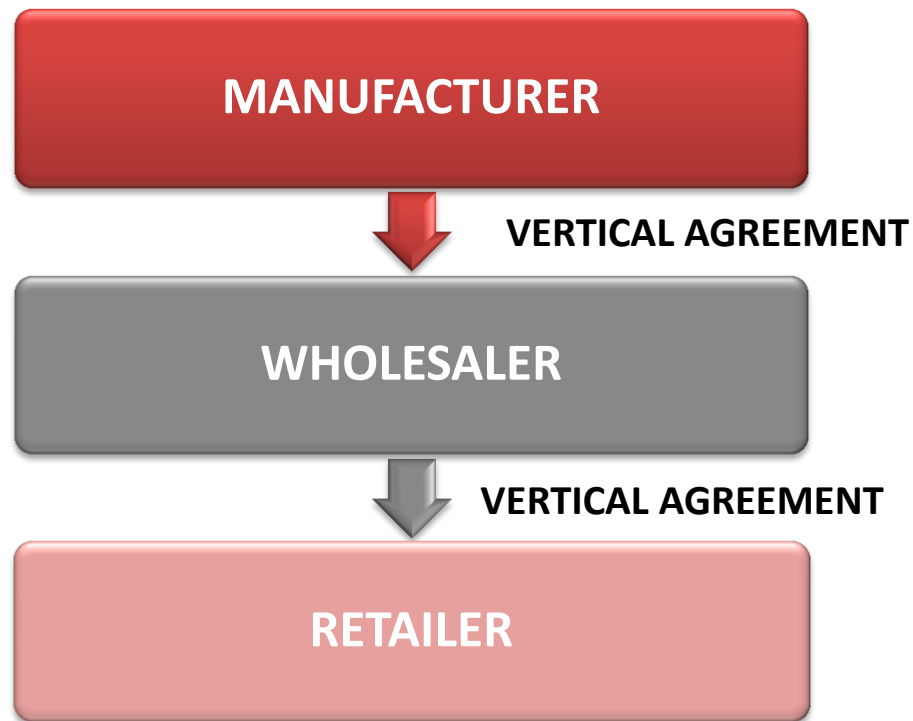


e.g., between retailers
between wholesalers

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



Source: Protect your Business. Know the Dos and Don'ts of the Competition Act, Competition Commission Singapore

NOT ALLOWED:

- ☒ Manufacturers fix the price of goods at which to sell to retailers
- ☒ Bidders for a government tender take turns to win the bid
- ☒ Two producers of canned drinks agree that that one will only sell its products in West Malaysia and the other in East Malaysia

ANTI-COMPETITIVE AGREEMENTS

Some agreements in competition law cannot be entered into whether you are big or small



Price-fixing

- Ex: The Netherlands Competition Authority – carried out dawn raids on two universities as they were suspected of harmonising tuition fees for second degrees- evidence that fees they charged is higher than their cost.
- (<http://www.universityworldnews.com>)
- {



Controlling Production

- Ex: Three colleges supply training services to an industry association. They are unhappy with level of fees paid and agree will stop providing training to association if association is not willing to pay a higher amount of fee as required by them.

ANTI-COMPETITIVE AGREEMENTS



Market Sharing

- Ex: Institutes A and B are each funded to deliver two courses-hairdressing and horticulture courses. There is limited demand for the two courses. Institutes met to discuss and agree Institute A offers horticulture course and Institute B offers hairdressing course.



Bid-Rigging

- Ex: Request for Tenders 1 and 2 have been issued within Institute A and Institute B's area of expertise. Institute A and B agree that each will only submit for one bid only.

These types of agreements increase prices along the entire supply chain, stifles innovation, prevents small businesses from entering the market and lessens competition. The end result is higher prices and reduced choices of products and services for consumers.

EXEMPTIONS (S.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; and
- 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

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**



Examples: Excessive pricing , refusal to supply, refusal to deal, market exclusion



ABUSE OF DOMINANT POSITION

Excessive Pricing

- Where a dominant firm sets a price for a good or service which bears no reasonable relation to the economic value of that good or service.

Predatory Pricing

- Where a dominant firm sets low prices to drive its competitors out of the market. Once existing competitors have been eliminated and new firm are deterred the dominant firm will raise its prices.

Refusal to Deal

- Type of boycott in which a dominant firm conspires to isolate and eventually eliminate a current or potential competitor by refusing to buy from or sell to it.

Market Foreclosure/ Exclusion

- Market foreclosure is the exclusion that results when a downstream buyer is denied access to an upstream supplier.

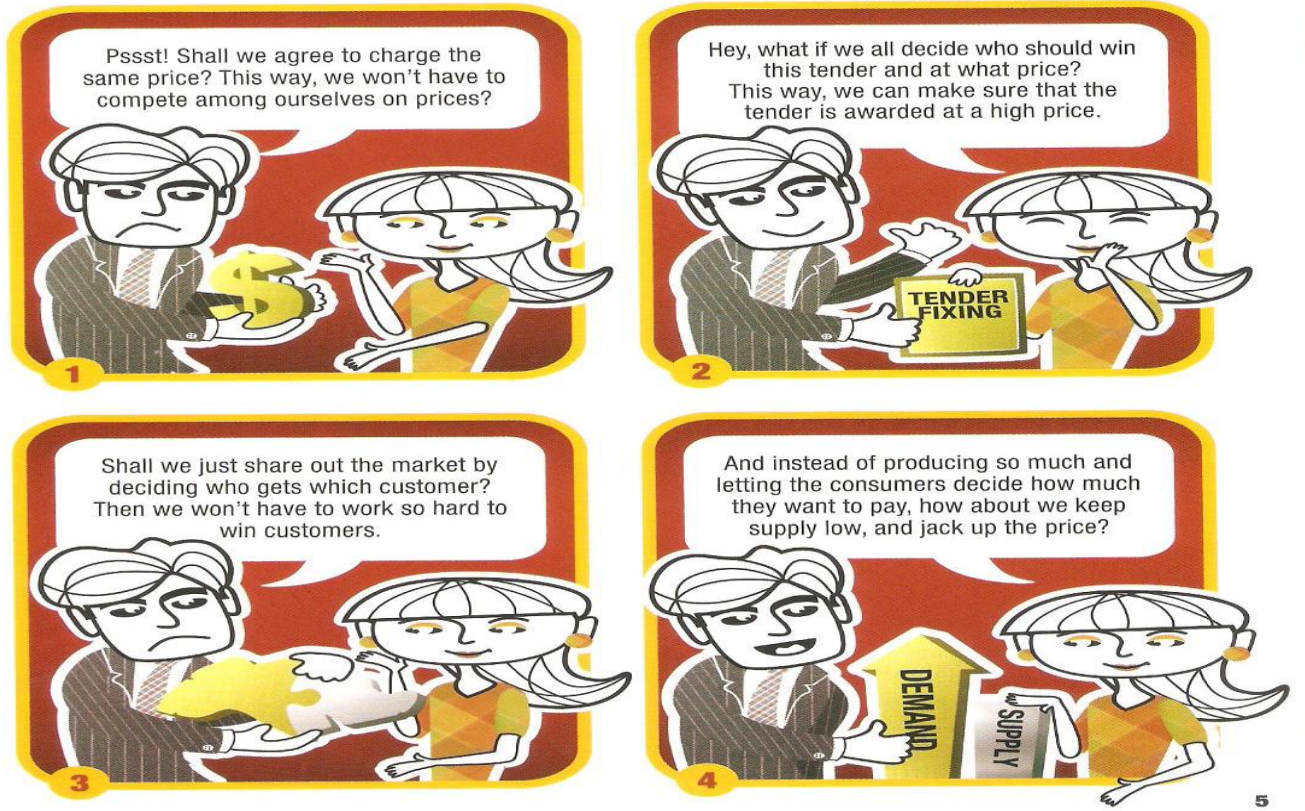
PREDATORY PRICING

- Example: Institute A is a leading provider of health and safety training courses to corporate customers, and becomes aware that another service provider is planning to enter the market. In response, Institute A sets course fees below its costs of providing the course to deter the other service provider from competing with it. The other service provider stops its plans and decides not to offer those courses as it is unable to compete.
- On the basis that the Institute has substantial market power, this conduct is considered unlawful as it is improperly taking advantage of that power to eliminate a possible competitor.

Source: University of Ballarat , Australia “ Competition and Consumer Law Compliance Manual”
(www.policy.ballarat.edu.au)

ABUSE OF DOMINANT POSITION

WHAT DISCUSSIONS CAN GET ME INTO TROUBLE?

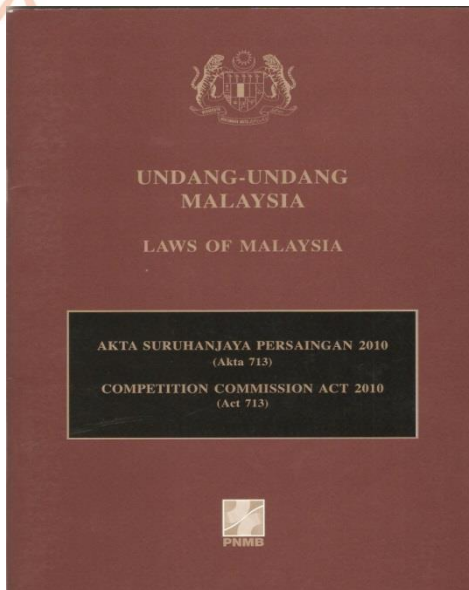


Source: Protect your Business. Know the Dos and Don'ts of the Competition Act, Competition Commission Singapore

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.



S. 16: An independent body established under the Competition Commission Act 2010 to enforce the Competition Act.

Main roles include:

- | | |
|---|---|
| <ul style="list-style-type: none"> • Advocacy-educate the public • Investigation & Enforcement • Market review | <ul style="list-style-type: none"> • Publications of Guidelines • Advise Minister on Competition Issues |
|---|---|

S.5: MyCC Board (9 members)

Chairman: Tan Sri Dato Seri Norma Yaakob

- | | |
|--|--|
| <ul style="list-style-type: none"> • 4 members representing the Government: <ul style="list-style-type: none"> - Attorney General of Malaysia - Secretary General MDTCC - Secretary General MITI - Director-General EPU | <ul style="list-style-type: none"> • Not less than 3 but not more than 5 other members - lawyers, academic, business leaders |
|--|--|

FUNCTIONS OF COMPETITION COMMISSION, S.(16)

- 1) Advise the Minister or any other authority on matters concerning competition
- 2) Alert the Minister to the actual or likely anti-competitive effects of current or proposed
- 3) Advise the Minister on international agreements pertaining competition matters
- 4) Implement and enforce the provisions of the competition laws
- 5) Issue guidelines in relation to implementation and enforcement of the competition laws
- 6) Act as an advocate for competition matters
- 7) **Carry out general studies in relation to issues connected with competition in the Malaysian economy or particular sectors of the Malaysian economy**
- 8) Collect information for the performance of Commission's functions
- 9) Publish and raise awareness concerning competition laws
- 10) Inform and educate the public regarding competition laws
- 11) Consider and make recommendations to the Minister on reforms to the competition laws; and
- 12) Carry on activities as are necessary and proper for the administration of the Commission.



MyCC'S INITIATIVES

Working Committee Advocacy

Chair : Y.Bhg Prof Dato' Sothi Rachagan

Members : Representatives from FMM, PEMANDU, NGO , AG Chambers, KPDNKK, MyCC

Work Plan 2012-2014:

Key Stakeholders:

- ✓ Executive, Legislature, Judiciary at federal, state and local level;
- ✓ Enterprises and Associations of Enterprises;
- ✓ Consumer Associations and civil society organizations;
- ✓ Professionals and Associations of Professionals; and
- ✓ **Universities and think tanks.**

Priority Sectors:

- ✓ Food production, import and distribution;
- ✓ Transport such as taxies, buses, mass rapid transit, railways, air travel, hauliers and shipping;
- ✓ Healthcare Institutions, including the pharmaceutical industry;
- ✓ Professional services;
- ✓ Housing developers; and
- ✓ Financial institutions;

MyCC'S INITIATIVES

- **Assist universities to educate university students to acquire skills and knowledge on competition. Encourage competition courses/programme or training to be offered by the Universities.**
- Organise capacity building workshops for key stakeholders in priority sectors
- Organise training programmes for SMEs and government officials
- Organise local and international seminars and conferences:
 - *International: OECD & Korea Policy Centre Workshop & First MyCC International Conference (25-26 Sept 2013)*
 - *Local: with local Universities and today with MPN and Universities*

MyCC'S INITIATIVES

- Establish a Resource Centre- collect market studies and other competition advocacy materials from competition agencies in other countries
- Met with MOE to propose inclusion of competition studies as priority in MOHE fundamental research grant scheme (FRGS).
- Open tender for universities, think tanks and consultants to bid for research grants on market studies. Announcements will be made in October 2013.

MyCC'S PUBLICATIONS



GUIDELINES ON COMPLAINT PROCEDURES



GUIDELINES ON CHAPTER 1 PROHIBITION

Anti-competitive Agreements



GUIDELINES ON MARKET DEFINITION

Malaysia Competition Commission



GUIDELINES ON CHAPTER 2 PROHIBITION

Abuse of Dominant Position

Malaysia Competition Commission



SURUHANJAYA PERSAINGAN MALAYSIA
MALAYSIA COMPETITION COMMISSION

COMPETITION ACT 2010

A GUIDE FOR BUSINESS

PROMOTING COMPETITION. PROTECTING YOU

MyCC'S PUBLICATIONS



10 SOALAN LAZIM (FAQ) SURUHANJAYA PERSAINGAN MALAYSIA



Promoting Competition,
Protecting You



COMPETITION ACT 2010

Promoting Competition, Protecting You.



Handbook for General Public



SURUHANJAYA PERSAINGAN MALAYSIA
MALAYSIA COMPETITION COMMISSION

FAQs for SMEs



MyCompetition NEWS

Promoting Competition, Protecting You

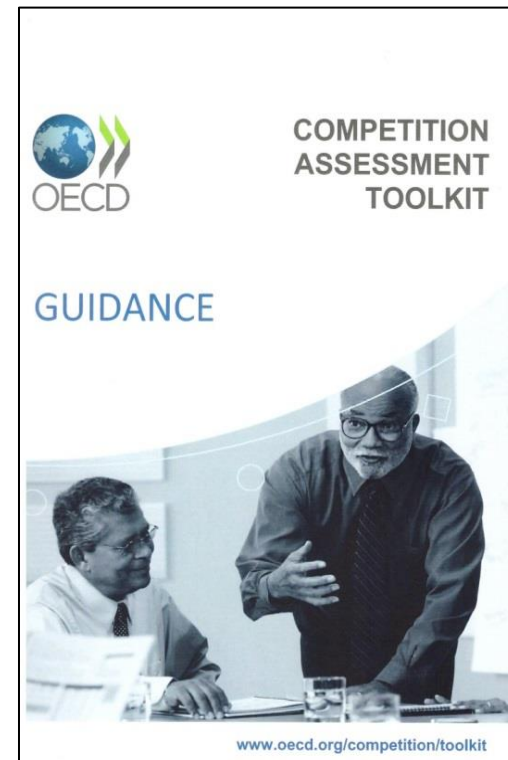
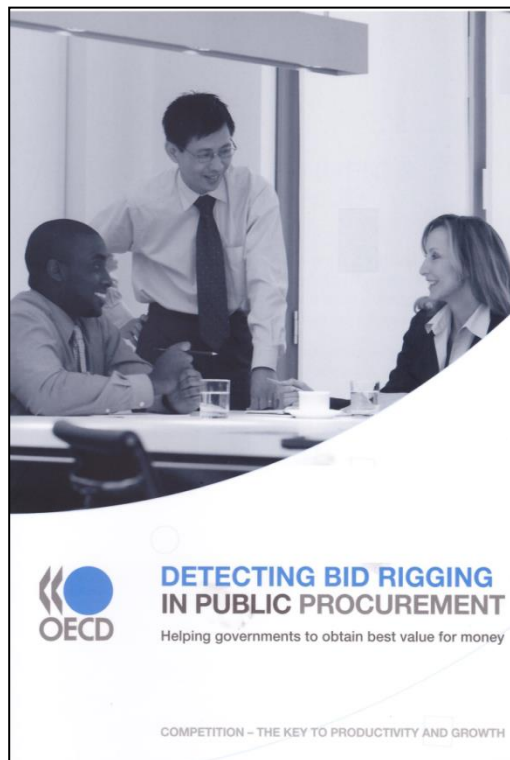
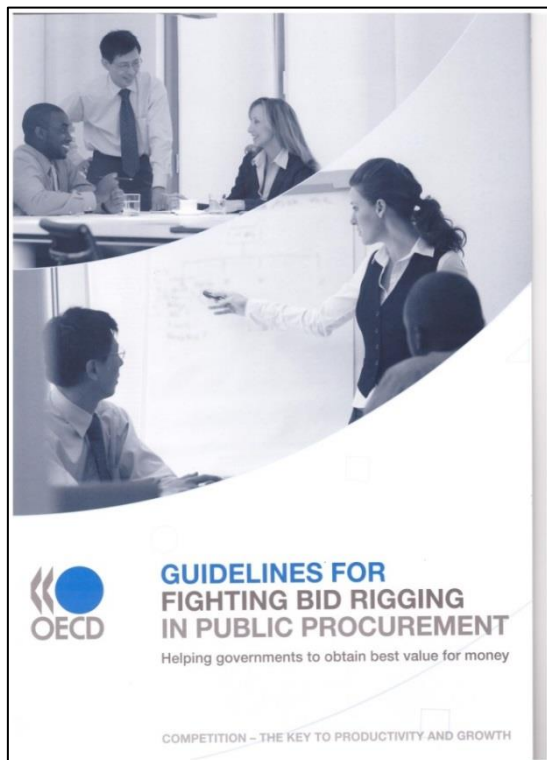
COMMISSION
Report 20
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Getting Ahead

Towards A Competitive Malaysia

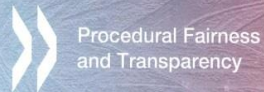


OTHER PUBLICATIONS



OTHER PUBLICATIONS

COMPETITION COMMITTEE



Key Points



2012

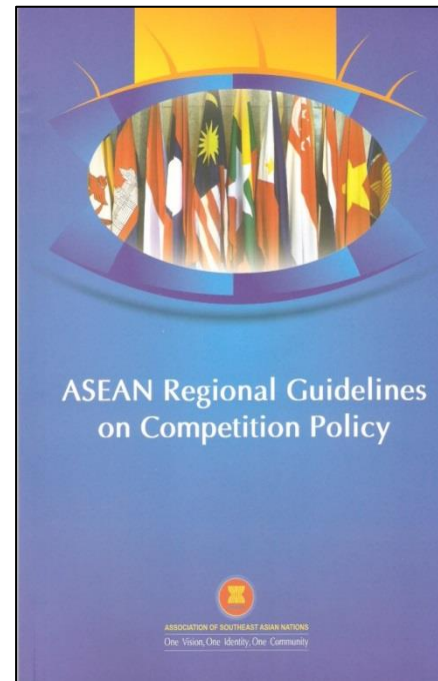
COMPETITION COMMITTEE



Key Findings



2011



COMPETITION COMMITTEE



Series Roundtables
on
Competition Policy

N° 128



2011

RESEARCH REPORTS/PUBLICATIONS

MyCC:

1. Report on issues relating to the fixing of prices /fees by professional bodies under the competition act 2010.
2. Baseline Study on Awareness of CA2010 in Malaysia

Articles/Textbooks:

1. Proceeding Paper- Competition Act 2010: Roles and Authorities of Competition Commission: Perception of Academicians of Indonesia and Malaysia, presented at Asian Academy of Management Conference 2013
2. Whish, R & Bailey, D. 2012. Competition Law, 7th ed. Oxford University Press
3. Lall, Ashish & McEwin, I.R. Competition and Intellectual Property Laws in the ASEAN “Single Market”. 2013. Chapter in The ASEAN Economic Community. Institute of Southeast Asian Studies.

MORE GUIDELINES TO COME

- ✓ Compliance Guidelines – will be launched at end of September
- ✓ Leniency regime – work in progress
- ✓ Penalty calculation – work in progress
- ✓ IP Guidelines – work in progress



MyCC's INITIATIVES

MyCC Probes PMBOA's Attempt To Manipulate Express Bus Ticket Market - Hasan

KUALA LUMPUR, June 18 (Bernama) - The Malaysia Competition Commission (MyCC) has been directed to probe the attempt by Pan Malaysia Bus Operators Association (PMBOA) to manipulate the express bus ticket market by limiting ticket production for Aidilfitri festive season.

Minister of Domestic Trade, Cooperatives and Consumerism Datuk Hasan Malek said PMBOA's attempt to manipulate the ticket market is an offence under the Competition Act 2010.

"Should this happen, it will seriously affect consumers, particularly Muslims who will usher Ramadan (fasting month) and celebrate Aidilfitri," he told reporters after visiting Perbadanan Nasional Berhad (PNS) head office here today.

PMBOA reportedly wanted to hike express bus tickets by 30 percent and chose not to sell tickets in July and August as long as the government did not meet their request.

Its president Datuk Ashfar Ali claimed that the ticket price hike was not due to Aidilfitri but a review once four or five years in line with the increase in operating cost which reached 36 percent.

Hasan said express bus companies would be liable to financial penalty of 10 percent of revenue, in line with the provisions of Section 14 (2) of the Competition Act.

He urged the Land Public Transport Commission (SPAD) to discuss with PMBOA to find a solution to the issue as soon as possible.

--BERNAMA

20 June 2013 Bernama Online

Flower growers to face action for price-fixing

INFRINGEMENT: MyCC to deliver decision on first case under Competition Act


KUALA LUMPUR: MALAYSIA is ready to make its first decision on anti-competitive behaviour under the Competition Act 2010, which came into force on Jan 1.

The Malaysia Competition Commission (MyCC) is investigating the Cameron Highlands Floriculturist Association (CHFA) for price-fixing. Any move to fix prices and restrict competition in the market is against the law. Based on the findings, the commission has made what it calls a "proposed decision" -- a notice to the affected party listing out the facts and the penalty that could be imposed. In cases involving infringement of the Competition Act, the investigation commences when a case merits an inspection and ends when penalty is imposed. MyCC's chief executive officer Shila Dorai Raj said that it initiated investigations based on a news report in March. The article, quoting CHFA's president, said that its members had agreed to increase prices by 10 per cent. CHFA has over 100 members who sell their flowers to distributors and wholesalers in Malaysia. MyCC is the body tasked with the job of investigating instances of cartels and abuse of the dominant position in the market. "We will provide the 'proposed decision' to the affected party," Shila said. This will allow CHFA the chance to comment or refute it.

"Essentially, a 'proposed decision' is almost final unless the party can rebut it," Shila said. Although the act came into force this year, the industry was given an 18-month lead time to prepare. Shila said MyCC was taking a "soft approach" in this case but warned that the decision nevertheless served as a warning that price-fixing was against the law. MyCC, she said, would continue to monitor the activities of all trade associations, including professional bodies, to ensure that they do not indulge in activities which could stifle competition among them and violate the Competition Act. Any violation may result in a financial penalty of not more than 10 per cent of the worldwide turnover of an enterprise over the period of an infringement. MyCC is now working on eight cases which merit a probe for possible infringement of the Competition Act 2010.

23 July 2012, NST

THE MALAYSIAN Insider
Saturday, 03 August 2013 Last Update: 06:02pm

Apps: 

News Malaysia Business World Showbiz Sports Features Opinion Bahasa

MALAYSIA

MYCC finalises study on possible fixing of fees charged by associations, professional bodies

AUGUST 03, 2013
LATEST UPDATE: AUGUST 04, 2013 12:53 AM

The Malaysia Competition Commission (MyCC), has finalised the results of its study on the fixing of prices and fee scales by associations and professional bodies, recently.

Its minister, Datuk Hasan Malek said the study by MyCC was to find out if the practices of professional bodies or associations were consistent with the Competition Act 2010.

He said MyCC, an agency under the Domestic Trade, Cooperatives and Consumerism Ministry, had also identified policy considerations relating to the designation of process or fees.

"MyCC will also carry out public consultations for identified professional bodies. The result of the study will be uploaded to www.mycc.gov.my, soon," he said after a breaking of the fast for Seri Menanti constituents at the Gunung Pasir Mosque, in Kuala Pilah last night.

Present were Seri Menanti State Assemblyman Datuk Abd Samad Ibrahim, MyCC chairman Tan Sri Siti Norma Yaakob and chief executive officer Shila Doraj Raj. Hasan, who is also the Kuala Pilah MP, said that small and medium scale entrepreneurs should abide by the Competition Act 2010.

He said anti-competition practices such as fixing prices and sharing or dividing the market was an offence and culprits could be penalised up to 10 percent of the value of the trade-off of an enterprise.

Meanwhile, Shila said MyCC would organise the 1st MyCC Competition Law Conference 2013 on the topic, New Standard for Business in Malaysia at the Kuala Lumpur Convention Centre on September 25-26.

"The conference is among the advocacy programmes we will hold. It is to inform not only Malaysia, but also the whole world what we have done since MyCC was set up in 2011.

Advocacy materials which would also be launched include guide books for compliance with the Competition Act 2010 and Competition Act 2010 for businesses. - Bernama, August 3, 2013.

3 August 2013 Insider

Commission warns against price fixing

KUALA LUMPUR: The Malaysia Competition Commission (MyCC) has warned against price fixing in the wake of the recent fuel price hike.

The commission has been receiving enquiries and complaints concerning the role of associations in facilitating anti-competitive behaviour, in particular price fixing by its members.

"The MyCC clarifies that price hikes by themselves are not anti-competitive in nature.

"We have no role in policing price hikes but if they were a result of collusion through price fixing agreements, those are considered a contravention of Section 4 of the Competition Act 2010," it said in a statement.

Section 4 of the Competition Act 2010 prohibits enterprises – including associations – from fixing, directly or indirectly, a purchase or selling price or any other trading conditions for goods and services.

"The commission may impose a financial penalty, which is not more than 10% of the worldwide turnover of the enterprise over the period of the infringement, or impose any other direction that it considers appropriate to ensure future compliance by associations and business enterprises."

Those with information on price fixing activities can contact the commission at 03-2273 2277 or via e-mail at complaints@mycc.gov.my.

Log on to www.mycc.gov.my for details of the Act.

12 September 2013, The Star

Airlines infringed competition act, fined RM10 million each

KUALALUMPUR: The Malaysia Competition Commission (MyCC) has ruled that Malaysian Airlines System Bhd and AirAsia Bhd's 2011 collaboration agreement has violated the Competition Act 2010, and fined each company RM10 million.

In a statement yesterday, MyCC chairman, Tan Sri Siti Norma Yaakob, said the commission has found the airlines had infringed section 4(2)(b) of the Competition Act 2010 by entering into an agreement that has as its object the sharing of markets in the air transport services sector within Malaysia provided by both airlines.

"Market sharing is considered a serious infringement under the Act, as it is deemed to have the object of significantly preventing, restricting, or distorting competition in any market for goods and services.

"When businesses agree to share markets, they are agreeing to stop competing at the expense of the consumers," she said.

Siti Norma said the proposed financial penalties were less than 10 per cent of their respective worldwide turnovers between January and April last year.

"The financial penalties were adjusted based on mitigating



Tan Sri Siti Norma Yaakob

factors taken into account by MyCC such as cooperativeness in providing data and information; and the voluntary action taken by the parties to remove the reference to routes and market focus stated in the airlines' collaboration agreement in their supplemental agreement dated May 2, 2012.

It said both parties will have 30 days from the date the proposed decision was served to submit written representations or indicate their wishes to make oral representations before the MyCC.
— Bernama



7 September 2013, Borneo Post Sarawak

RANKINGS OF UNIVERSITIES

DPM: Find out why varsities fell in rankings

Universities told to ensure high performance

THE world rankings of Malaysian universities attract “due attention” and the institutions must analyse and determine the reasons behind their decline, Tan Sri Muhyiddin Yassin said.

“What is important is that the respective public universities look into ensuring that their performance and rankings do not deteriorate.

He also advised universities to focus more on publishing international journals and improving the performance of students in critical areas like science and technology.

13 September 2013, The Star

UM vice-chancellor Prof Tan Sri Dr Ghauth Jasmon said it continued to push for **higher quality research and publications** in the past year through its High Impact Research projects with the special funding.

“It is clear that UM's greatest gain has been in its **total citations**, which was our main weakness before this,” he added.

12 September 2013, The Star Online



Focus on research and publications to increase ranking

STRATEGIES AND APPROACHES: TOWARDS PROMOTING COMPETITION ACT

Ministry of Education/Universities

- Include competition studies as a priority research area by 2014
- Train academics on CA2010 and its impact on society and business
- Encourage Universities to offer a course/ programme on competition issues - *law faculty or business school*
- Share research findings with MyCC
- Encourage research students-Masters, PhD and DBA to do on competition issues.

Majlis Profesor Negara

- To be the conduit between Universities and MyCC to enhance the implementation of CA2010.
- Encourage joint publication and seminars on competition issues
- Set up a Centre of Collaboration between industry, universities and MyCC to look into research and academic programmes on competition. *Lecturers should be from disciplines of economics, business and law.*

Malaysia Competition Commission (MyCC)

- Share resources with universities
- Provide the opportunity to write case studies on competition issues to be used as teaching materials
- Offer expertise in teaching and learning at Universities
- Provide speakers at Conferences on Competition Issues
- Research grants to be continued

THANK YOU



www.mycc.gov.my