IN THE HIGH COURT OF MALAYA IN SHAH ALAM

IN THE STATE OF SELANGOR DARUL EHSAN, MALAYSIA

APPLICATION FOR JUDICIAL REVIEW NO.: BA-25-22-05/2023

In the matter of Order 53 of the Rules of Court 2012 and further provisions;

And

In the matter of the Competition Act 2010;

And

In the matter of Section 25 and the Schedule of the Courts of Judicature Act 1964;

And

In the matter of the Competition Commission Act 2010;

And

In the matter of an application for an order of certiorari, mandamus, declaration and damages related to

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the Final Decision of the Competition Commission dated 26.07.2021 and the Decision of the Competition Tribunal dated 24.02.2023

BETWEEN

1. **SAL AGENCIES SDN.BHD.**
   [NO. SYARIKAT: 200801015109 (816399-T)]

2. **WCS WAREHOUSING SDN. BHD.**
   [NO. SYARIKAT: 201001016644 (900346-P)]

3. **REGIONAL SYNERGY (M) SDN. BHD.**
   [NO. SYARIKAT: 199901003612 (478512-V)]

4. **INTREXIM SDN. BHD.**
   [NO. SYARIKAT: 201301034997 (1064825-M)]

5. **PIONEERPAC SDN BHD**
   [NO. SYARIKAT: 201001027450 (911369-K)] **…APPLICANTS**

AND

1. **TRIBUNAL RAYUAN PERSAINGAN**

2. **SURUHANJAYA PERSAINGAN …RESPONDENTS**

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GROUNDS OF JUDGMENT

INTRODUCTION

1. This is the Applicants' application for Judicial Review seeking an order of certiorari to quash the decision of the Competition Appeal Tribunal (CAT) dated 24 February 2023 and the Final Decision issued by MyCC dated 26 July 2021.

2. Upon perusal of the cause papers and careful consideration of the parties' written and oral submissions, I dismissed the Applicants' application. These are the reasons for my decision.

BACKGROUND FACTS

3. In June 2017, the Malaysian Competition Commission (MyCC) received a complaint that a group of warehouse operators at Port Klang, namely SAL Agencies Sdn Bhd (SAL), WCS Warehousing Sdn Bhd (WCS), Regional Synergy Sdn Bhd (Regional Synergy), Intrexim Sdn Bhd (Intrexim), Pioneerpac Sdn Bhd (Pioneerpac), Prima Warehousing Sdn Bhd (Prima), and Interocean Warehousing Sdn Bhd (Interocean) (collectively referred to as "the Warehouses"), had signed a "Heavy Lift Surcharge Acknowledgement Memorandum" dated 22 May 2017 (Surcharge Memorandum).

4. The Surcharge Memorandum allegedly fixed new surcharges for handling long-length and heavy-lift import and export cargoes at Northport and Westport.

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5. Believing there were reasonable grounds to suspect a breach of section 4 of the Competition Act 2010 (CA 2010), MyCC initiated a formal investigation in October 2018. Pursuant to section 25 of the CA 2010, MyCC obtained search and seizure warrants and conducted unannounced inspections at the Warehouses' premises on 10 and 11 October 2018.

6. MyCC issued ten (10) statutory notices under section 18(1)(a) and (b) of the CA 2010 for documents and information. It also interviewed representatives of the Warehouses, as well as officers of the Port Klang Authority (PKA) and Maltaco M.S. Sdn Bhd.

7. On 9 January 2020, MyCC issued a Proposed Decision stating its preliminary view that the Warehouses had infringed section 4 of the CA 2010 by engaging in a price-fixing agreement. It detailed its reasons, suggested financial penalties, and invited written and, if requested, oral representations.

8. Written representations were subsequently submitted, and the Applicants opted not to request an oral hearing, although Interocean did and others were invited to observe. Among other points, the Applicants argued that MyCC lacked authority over operators in the Port Free Zone, that the Warehouses operated under the instruction and approval of PKA, that the penalty calculation was flawed, and that they qualified for relief under section 5 of the CA 2010.

9. After considering the representations, MyCC delivered its Final Decision on 26 July 2021. The nine-member Commission found that the Warehouses had infringed section 4 of the CA 2010 by

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participating in an agreement aimed at preventing, restricting, or distorting competition in the market for handling long-length and heavy-lift cargo at Port Klang between 22 May 2017 and 9 January 2020. It ordered them to cease implementing the agreed surcharges and to set any future charges independently. Financial penalties were imposed on each operator as follows-

a. SAL - RM144,609.35
b. WCS - RM207,733.24
c. Regional Synergy - RM336,369.13
d. Intrexim - RM36,316.46
e. Pioneerpac - RM206,773.40
f. Prima – RM26,363.03
g. Interocean – RM84,848.21

10. The Applicants (except Prima and Interocean) appealed to the CAT on 25 August 2021. After a seven-day hearing, the CAT dismissed the appeals on 24 February 2023. The CAT agreed that there had been an infringement of section 4 of the CA 2010, rejected the claim for relief of liability under section 5 of the said Act, confirmed MyCC's jurisdiction over activities in the Port Free Zone, and found no error in the Commission's factual findings. As no specific grounds of appeal were taken against the quantum of penalties, the CAT did not revisit that issue.

11. Nearly two years after the Final Decision, on 23 May 2023, the Applicants filed this Judicial Review application to challenge both the MyCC Final Decision and the CAT's decision. Leave to proceed was granted by this Court on 18 October 2023.

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APPLICANTS' GROUNDS FOR JUDICIAL REVIEW

12. The Applicants set out the following grounds in support of their judicial review application:

    a. The MyCC has acted beyond its jurisdiction, as it does not have control over the Applicants in the Port Klang free zone.

    b. The Applicants did not violate section 4 of the CA 2010.

    c. The Applicants are entitled to relief of liability under section 5 of the CA 2010, if they are found liable for infringing section 4 of the CA 2010.

    d. MyCC had arbitrarily imposed the penalty without giving the Applicants the right to be heard and the chance to mitigate.

    e. The Respondents were wrong in their factual finding, and the Applicants argued that at all material times, PKA had allowed them to implement the surcharges.

MYCC'S GROUNDS FOR OPPOSING THE JUDICIAL REVIEW APPLICATION

13. In opposing the Judicial Review application, MyCC argued that the Applicants' judicial review has no merit for the following reasons:

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a. The Applicants were given an opportunity to respond to the Proposed Decision, both regarding liability and the penalties that MyCC proposed to impose, so there was no breach of natural justice.

b. MyCC also found that the Surcharge Memorandum was an agreement primarily aimed at restricting, preventing, or distorting competition, constituting a breach of section 4 of the CA 2010. The Applicants, however, failed to satisfy the criteria for relief under section 5 of the Act: their claims of public benefit were unsupported and lacked sufficient evidence.

c. In reaching its decision, MyCC carefully analysed all relevant facts, including the involvement of the PKA, the alleged benefits of the Surcharge Memorandum, and the Applicants' right to respond to the Proposed Decision. The Applicants cannot avoid MyCC's jurisdiction by relying on the Port Klang Free Zone; section 3(4) of the Act does not shield them from liability for anti-competitive conduct.

d. Finally, there are no grounds to shift responsibility to PKA. PKA was never required to gazette the Applicants' proposed rates, and any approval it granted was contingent upon the issuance of a GM Circular. Since no such circular was ever issued or gazetted, the Applicants lacked the authority to impose the fixed surcharges.

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LEGAL PRINCIPLES ON JUDICIAL REVIEW

14. The principles of Judicial Review were stated by Lord Diplock in the case of **Council of Civil Service Unions & Ors v Minister of Civil Service [1985] AC 374**, which the Federal Court later adopted in **R Rama Chandran v The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145**, as follows:

> **"In this context, it is useful to note how Lord Diplock (at pp 410–411) defined the three grounds of review, to wit, (i) illegality, (ii) irrationality, and (iii) procedural impropriety. This is how he put it:**
>
> > **By 'illegality' as a ground for Judicial Review I mean that the decision maker must understand directly the law that regulates his decision making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of a dispute, by those persons, the judges, by whom the judicial power of the state is exerciseable.**
> >
> > **By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness' (see *Associated Provincial Picture Houses Ltd v Wednesbury Corp [1948] 1 KB 223*). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied**

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his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the courts' exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in *Edwards v Bairstow [1956] AC 14*, of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though undefinable mistake of law by the decision maker. 'Irrationality' by now can stand on its own feet as an accepted ground on which a decision may be attacked by Judicial Review.

I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failing to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to Judicial Review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.

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Lord Diplock also mentioned 'proportionality' as a possible fourth ground of review which called for development."

15. The Federal Court, in the case of **Ranjit Kaur a/p S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd [2010] 6 MLJ 1**, stated as follows**:**

"The Rama Chandran decision has been regarded or interpreted as giving the reviewing court a license to review without restrain decisions for substance even when the said decision is based on finding of facts. However, post Rama Chandran cases have applied some brakes to the courts' liberal approach in Rama Chandran. The Federal Court in the case of *Kumpulan Perangsang Selangor Bhd v Zaid Noh [1997] 1 MLJ 789; [1997] 2 CLJ 11* after affirming the Rama Chandran decision held that there may be cases in which for reason of public policy, national interest, public safety or national security the principle in Rama Chandran may be wholly inappropriate.

The Federal Court, in *Petroliam National Bhd v Nik Ramli Nik Hassan [2004] 2 MLJ 288; [2003] 4 CLJ 625*, again held that the reviewing court may scrutinise a decision on its merits but only in the most appropriate of cases and not every case is amenable to the Rama Chandran approach. Further, it was held that a reviewing judge ought not to disturb findings of the Industrial Court unless they were grounded on illegality or plain irrationality, even where

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the reviewing judge might not have come to the same conclusion."

FINDINGS OF THE COURT

16. Based on the legal principles of judicial review, this Court will examine the issues raised by the Applicants in this case.

Whether there is a breach of Natural Justice

17. The Applicants premised their case on the *audi alteram partem* rule, the right to be heard, and stated that MyCC and the CAT had denied them this right. They presented three lines of argument.

18. Firstly, the right to be heard should have been granted prior to the issuance of the Proposed Decision to allow them to influence MyCC's thinking at the formative stage.

19. Second, they were denied any real opportunity to defend themselves against the alleged charges and to mitigate the proposed financial penalties. The Applicants referred to Article 135(2) of the Federal Constitution and argued that the right to make mitigation representations is a constitutional guarantee.

20. Third, the Applicants stated that MyCC acted as "investigator, prosecutor, judge and jury," which resulted in a serious procedural impropriety and rendered the process fundamentally unfair.

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21. However, this Court must consider these complaints within the framework of the clear procedure set out in the CA 2010.

22. Sections 14 to 18 of the CA 2010 empower MyCC to investigate suspected infringements and gather evidence through notices, interviews, searches, and seizures.

23. Under section 36 of the CA 2010, if MyCC believes an infringement might have occurred, it must issue a notice of Proposed Decision. This is not a final ruling, but a preliminary document that states the proposed findings and penalties, and clearly informs the affected enterprises of their right to submit written representations and, if they wish, to make oral representations.

24. Section 37 of the CA 2010 states that if an enterprise requests an oral session, MyCC must convene one.

25. Only after considering those representations can MyCC determine an infringement under section 40 of the CA 2010 and issue directions or penalties.

26. This statutory sequence indicates that the right to be heard is meant to be exercised after the Proposed Decision and before the Final Decision. The Proposed Decision serves as the basis for representations; it does not itself affect legal rights and cannot be enforced under section 42 of the CA 2010. The Proposed Decision remains susceptible to challenge under sections 36(2)(c) and 37 of the CA 2010.

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27. In this case, the facts were not in dispute. MyCC served the Proposed Decision on 9 January 2020.

28. The Applicants were provided with the Proposed Decision and were explicitly informed that they could submit both written and oral representations. They were given almost two months to respond.

29. On 11 March 2020, the Applicants, through their then solicitors, submitted detailed written representations challenging both the findings and the proposed penalties. In the same letter, they stated unequivocally that they did not wish to make oral representations. Only Interocean Warehousing requested an oral session. Nonetheless, MyCC invited the Applicants to observe that session, and they did so.

30. MyCC subsequently issued its Final Decision on 26 July 2021. The Final Decision addressed the Applicants' written representations in detail. A review of the Final Decision shows that the Applicants' submissions were fully considered.

31. Therefore, the lack of an oral hearing, which they themselves declined, cannot be considered a denial of natural justice.

32. The Applicants were given a full opportunity to present their case and to mitigate the proposed penalties through their written representations. They consciously waived the option of an oral session. On these facts, there was no procedural impropriety and no breach of the *audi alteram partem* rule.

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The infringement of section 4 of the CA 2010 was correctly established and affirmed.

33. The Applicants challenged MyCC's finding of an infringement on several grounds.

34. First, they argued that the "deeming provision" in section 4(2) of the CA 2010 should only apply if certain conditions are proven, and even then, it can be rebutted based on the facts.

35. Secondly, they argued that MyCC failed to show that the Surcharge Memorandum genuinely had the effect of significantly preventing or distorting competition. Specifically, they claimed that MyCC did not consider the parties' true intentions, failed to conduct a comprehensive market examination, overlooked the fact that Maltaco dominated the same trade area, and disregarded the minor impact of the Memorandum. They also contended that Maltaco should have been included in the relevant market.

36. Based on these arguments, the Applicants argued that MyCC never properly assessed whether the Surcharge Memorandum genuinely restricted competition, relied excessively on the deeming provision in section 4(2) of the CA 2010, unfairly branded the Applicants as a cartel, and failed to identify and evaluate other competitors such as Maltaco.

37. This Court agrees with MyCC's decision that the infringement in this case is classified as a "by object" infringement under section 4 of

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the CA 2010. In such instances, MyCC is not required to conduct a detailed analysis of the actual market effects.

38. The reason is clear. The Surcharge Memorandum itself reveals an agreement among the Warehouses, all competitors operating at the same market level, to fix handling charges for long-length and heavy-lift cargo at Port Klang.

39. The nature of the arrangement is self-evident. By agreeing on a standard set of charges, the Warehouses operated as a cartel. This eliminated the usual competitive pressure: customers no longer had a genuine choice of prices and were compelled to pay the same fixed rate regardless of which warehouse they used.

40. Price-fixing of this kind is, in many other jurisdictions, recognised as a serious and obvious form of anti-competitive behaviour. When the anti-competitive purpose of an agreement is so clear, no further effects analysis is necessary.

41. This Court therefore accepts MyCC's view that the Surcharge Memorandum, by its very nature, was anti-competitive and clearly falls within the prohibition in section 4 of the CA 2010.

42. The Applicants argued that MyCC did not consider their true intention in signing the Surcharge Memorandum. This Court is unable to agree. MyCC had obtained statements and reviewed evidence regarding the purpose of the Surcharge Memorandum (see paragraphs 173–178 of the Final Decision). Beyond their intention, the Applicants had no authority to enforce the Surcharge

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Memorandum, yet they proceeded to do so immediately after it was prepared. Only after complaints were made to the PKA were discussions held, and the PKA then clarified that the fixed rates would not be implemented unless a GM Circular was issued. No such circular was ever issued or gazetted.

43. MyCC also found, and this Court agrees, that the Applicants acted together as a cartel to pressure PKA into approving fixed rates (see paragraphs 214–224 of the Final Decision). This was despite MyCC's consistent position that any charges had to be properly gazetted before they could take effect.

44. In any case, even if the Applicants lacked a subjective intention to restrict competition, that does not make the Surcharge Memorandum non-anti-competitive. The absence of anti-competitive intent does not protect an agreement that has the purpose of restricting competition.

The deeming provision in section 4(2) of the CA 2010 was correctly applied.

45. Section 4(2) of the CA 2010 states that when competitors enter into a horizontal agreement with the aim of fixing prices, that agreement is deemed to have the purpose of substantially preventing, restricting, or distorting competition. This Court finds that the Surcharge Memorandum clearly falls within this description as it establishes standard charges for handling long-length and heavy-lift cargo.

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46. The CAT examined this issue thoroughly in paragraphs 65 to 80 of its decision and confirmed that MyCC had relied correctly on section 4(2) of the CA 2010.

47. The CAT found that the deeming provision is not a rebuttable presumption. Once MyCC established the factual conditions for its application, the provision operated automatically.

48. In reaching that conclusion, the CAT referred to the Supreme Court's decision in **Amanah Merchant Bank Bhd v Lim Tow Choon (Through Official Assignee) [1994] 1 MLJ 413**, which remains good law. That case explains that when there is a deeming provision, it is not meant to be a presumption, and therefore, it is not something that is rebuttable.

49. The CAT agreed with MyCC that the necessary conditions were met, that there was a horizontal agreement, it was made between enterprises operating at the same market level, and the agreement aimed to fix prices or trading conditions.

50. The Applicants were evidently competitors, and the Surcharge Memorandum, on its face, indicated an intention to impose a standard surcharge. The evidence demonstrated a concerted practice to fix prices.

51. In light of these proven facts and the correct interpretation of the law, this Court finds no basis to claim that MyCC's reliance on section 4(2) of the CA 2010 or the CAT's confirmation of that approach was unreasonable, irrational or procedurally improper.

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52. Even if one assumes for argument's sake that the deeming provision could be regarded as a rebuttable presumption, the Applicants have not provided any evidence to challenge it. The language of the Surcharge Memorandum clearly indicates a price-fixing arrangement that harms consumers by limiting their choices. MyCC also observed that consumer complaints arose after the memorandum was implemented without prior authorisation.

53. This Court therefore agrees that the Applicants' challenge to MyCC's application of section 4(2) of the CA 2010 is without merit. The Commission was entitled to invoke the deeming provision, and the CAT was correct in upholding that finding.

Relief from Liability under section 5 of the CA 2010

54. The Applicants argued that even if the Surcharge Memorandum constituted a breach of section 4 of the CA 2010, it should still be exempted under section 5 of that Act. They contended that the memorandum provided significant and identifiable social benefits and that, by fulfilling section 5(d) of the CA 2010, they had effectively satisfied the other requirements in sections 5(a) to (c) of the Act.

55. However, it is noted that to obtain relief from liability under section 5 of the CA 2010, all four conditions in section 5(a)–(d) must be satisfied together. This is clearly stated in paragraph 5.2 of MyCC's own Guidelines on the Chapter 1 Prohibition. Paragraph 5.2 states that:

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5.2 The onus of proving the identified technological, efficiency or social benefits lies on the parties to the agreement. The parties claiming for this relief are required to prove that the benefits gained are passed onto the consumers. The following requirements stipulated under Section 5 must be cumulatively met:

(a) there are significant identifiable technological, efficiency or social benefits directly arising from the agreement;

(b) the benefits could not reasonably have been provided by the parties to the agreement without the agreement having the effect of preventing, restricting or distorting competition;

(c) the detrimental effect of the agreement on competition is proportionate to the benefits provided; and

(d) the agreement does not allow the enterprise concerned to eliminate competition completely in respect of a substantial part of the goods or services.

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56. The Applicants, however, relied almost entirely on a bare assertion that the Surcharge Memorandum demonstrated social benefits. They primarily depended on the requirement in section 5(a) of the CA 2010, which is inadequate to establish a defence against liability.

57. More importantly, they failed to show that:

    a. The claimed benefits could not reasonably have been achieved without the Surcharge Memorandum restricting competition;

    b. Any loss of competition was proportional to the alleged benefits; and

    c. The Surcharge Memorandum failed to eliminate competition in a significant part of the market effectively.

58. Apart from the unsubstantiated statements in their written submissions, the Applicants provided no evidence to satisfy these key requirements. Their attempt to argue that proving section 5(d) of the CA 2010 alone was sufficient to satisfy the other three elements is entirely without legal or factual support. No element is more important than the others, as all must be proven collectively.

59. The Applicants also argued that MyCC should have conducted its own analysis under section 5 of the CA 2010 before issuing the Proposed Decision. This is a misconception. The Guidelines clearly state that the burden of proving that the exemption applies falls

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entirely on the party seeking it, in this case, the Applicants, not on MyCC.

60. At the stage of written representations, counsel for the Applicants relied solely on section 5(d) of the CA 2010. Since all requirements must be satisfied, MyCC was correct, as recorded in paragraph 226 of its Final Decision, to conclude that the Applicants had not demonstrated any entitlement to relief.

61. The Applicants further argued that the Surcharge Memorandum provided social benefits, asserting that it would standardise processes for customers, decrease complaints to the PKA, and make transactions more convenient by establishing a “one-stop shop”.

62. However, this claim was never backed by evidence. The Applicants merely made assertions without attempting to substantiate them.

63. Furthermore, the Applicants did not provide any evidence that the so-called standardised process delivered any actual benefit. They failed to explain how a “one-stop shop” could inherently constitute a social benefit, or demonstrate that the Surcharge Memorandum actually achieved such an outcome.

64. No survey, report, or data was presented to show that complaints to PKA had actually decreased or that customers saw any improvement. Section 5(a) of the CA 2010 requires the Applicants to prove a clear causal link between the Surcharge Memorandum and the claimed benefits. They failed to do so.

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65. This Court agrees with the Respondents that the evidence, if anything, indicates the opposite. MyCC found that after the standardised rates were introduced, there were numerous complaints from customers, and these were acknowledged by PKA. The Applicants were fully aware of these complaints because, in September 2017, PKA instructed them to cease implementing the standardised charges.

66. Under these circumstances, it was entirely reasonable for MyCC to conclude that no social benefit arose from the Surcharge Memorandum. On the contrary, the agreement caused consumer dissatisfaction and formal complaints, thereby undermining the very claim of public benefit on which the Applicants relied.

67. This Court, therefore, finds that the Applicants have not proven any of the conditions required under section 5 of the CA 2010, and their claim for relief from liability cannot succeed.

MyCC has the jurisdiction, and section 3(4)(a) of the CA 2010 is not applicable

68. The Applicants also argued that MyCC had acted beyond its powers because, in their view, the CA 2010 does not cover commercial activities conducted under the oversight of the PKA. They relied on section 3(4)(a) of the Act.

69. Section 3 of the CA 2010 states that the Act applies to all commercial activities both within and outside Malaysia. Section

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3(4)(a) of the Act qualifies this by excluding “any activity, directly or indirectly in the exercise of governmental authority”.

70. This exclusion is limited in scope. It applies solely to activities genuinely carried out in the exercise of governmental authority, such as law-making or direct regulatory actions. It is not a blanket provision that exempts every enterprise from the Act merely because it operates under or alongside a government body.

71. Enterprises under the supervision of a government authority will only be exempt from the CA 2010 if their commercial activities are conducted as part of exercising governmental authority. This aligns with the decision in **Poucet v Assurances Generales de France, Joined Cases C-159/91 and C-160/91**, which affirmed that it is the economic or non-economic nature of the activity that determines whether the undertaking is subject to competition law, not the fact that the body is public or established by statute.

72. Based on the facts, the Surcharge Memorandum cannot be seen as an activity “in the exercise of governmental authority”. By 30 May 2017, all the Warehouses had signed the memorandum following earlier discussions and drafting. They knew that LPK had not decided the rates in the memorandum and that PKA had not authorised them to impose those rates. Despite this, they finalised and put into effect the Surcharge Memorandum without PKA’s approval or involvement.

73. The Applicants attempted to rely on PKA’s later awareness of the proposed RM200 rate. This overlooks the crucial background: the

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Applicants had already implemented an unapproved RM350 rate for long-length handling; complaints about the RM350 rate were made to PKA, which considered the rate excessive; and although PKA later contemplated a proposal to set the rate at RM200, it clarified that its implementation depended on the issue of PKA's Circular. No such circular was issued, as the Ministry of Transport instructed otherwise.

74. Since there has never been any Circular approving the RM200 rate, and no government authority has authorised the Surcharge Memorandum, reliance on section 3(4)(a) is misplaced and cannot stand.

75. The Applicants further argued that, as licensed operators in the Port Free Zone, they fall solely under the Port Authorities Act 1963 (PAA) and that MyCC therefore lacked jurisdiction. This argument is unfounded. It is widely accepted that the PAA does not authorise PKA to investigate or rule on matters related to anti-competitive behaviour. Conversely, the CA 2010 is the specific legislation enacted to regulate anti-competitive conduct by commercial entities.

76. The principle that a specific statute prevails over a general one is well established. The Federal Court decisions in **Director of Customs, Federal Territory v Ler Cheng Chye [1995] 2 MLJ 600** and **Masenang Sdn Bhd v Sabanilam Enterprise Sdn Bhd [2021] MLJU 1656** demonstrate that when a later statute addresses a particular subject, it acts as an exception to earlier or more general legislation.

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77. Furthermore, nothing in the CA 2010 or the PAA excludes MyCC's jurisdiction over the anti-competitive conduct of the Applicants. The Parliament has set out in the First Schedule to the CA 2010 the sectors exempt from its application, such as communications, energy, petroleum, and aviation. Even after the Schedule was updated in 2016, the PAA was not included. This indicates that Parliament did not intend to exclude activities regulated by PKA from the scope of the Competition Act.

78. The CAT arrived at the same conclusion. In paragraphs 99 to 102 of its decision, it found that the fact that the Applicants' services were subject to PKA's control does not mean they were carried out in the exercise of governmental authority. It held that it is incorrect to say that the services or the Surcharge Memorandum were activities of that nature, and equally wrong to suggest that MyCC lacked jurisdiction over the Applicants.

79. In these circumstances, there is no evidence to suggest that the findings of MyCC and the CAT on this matter were unreasonable, irrational, or procedurally flawed. Section 3(4)(a) of the CA 2010 does not exempt the Applicants from the Act, and MyCC was entitled to exercise its statutory powers over their anti-competitive conduct.

CONCLUSION

80. Based on the above, this Court finds that MyCC and the CAT applied the correct legal tests, considered the relevant factors, and provided

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detailed reasons. The decisions were therefore well within a reasonable range of outcomes.

81. For the reasons stated, this Court finds no illegality, irrationality, or procedural impropriety that would justify granting this application for judicial review. Therefore, the Applicants' application for judicial review in Enclosure 1 is dismissed with costs of RM5,000.00, subject to Allocatur.

Dated 29 SEPTEMBER 2025

-sgd-
JAMHIRAH ALI
JUDGE
HIGH COURT OF MALAYA
SHAH ALAM
SELANGOR DARUL EHSAN

To the parties' solicitors:

For the Applicants : Mirdhulekha Muralidharan & Eirena Hoon
(Messrs David Gurupatham & Koay)

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For the Respondents: Muayyed bin Khairulmaimi

Kwan Will Sen

(Messrs Lim Chee Wee Partnership)

Alessandra - Rep from MyCC

Bawani - Rep from MyCC

Maymun Nalubega - Rep from MyCC

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