



Competition Act 2010 [Act 712]

Decision of the Competition Commission

In the matter of the complaint relating to the alleged Infringement of Section 10(1) of the Competition Act 2010 by Megasteel Sdn. Bhd.

15 April 2016

(No. MyCC/002/2012)

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1. INTRODUCTION

1. This is a Decision pursuant to section 39 of the Competition Act 2010 (“the Act”) issued against Megasteel Sdn. Bhd. (“Megasteel”).
2. On 9 October 2012, the Competition Commission (“the Commission”) initiated an investigation under section 15(1) of the Act upon receipt of a complaint.

1.1 Nature of Complaint and Details of the Complainant

3. The complaint was filed by Melewar Industrial Group Berhad¹ (“the Complainant”) alleging Megasteel as the sole supplier of its raw materials i.e. Hot Rolled Coil (“HRC”) is charging higher than the international price of HRC. Furthermore, the Complainant also alleged that Megasteel is competing with the Complainant in the Cold Rolled Coil (“CRC”) market and often undercut the Complainant’s price.
4. Mycron Steel CRC Sdn. Bhd. (“Mycron”), a subsidiary of the Complainant was incorporated on 6 January 1989. It commenced production of CRC in June 1990 and was the first company in Malaysia to do so².

¹ Melewar Industrial Group Berhad was established on 24 February 1969.

² Source: Excerpt from Mycron Steel Berhad’s website at www.mycronsteel.com. Mycron Steel Berhad is another subsidiary of Melewar Industrial Group Berhad which was incorporated on 24 July 2003 as a public limited company mainly for the purpose of investment holding and the provision of management services to its subsidiaries.

1.2 Proposed Decision by the Commission

5. Pursuant to its investigation, the Commission thereafter served its Proposed Decision dated 30 October 2013 on Megasteel in accordance with section 36 of the Act.
6. The Commission in its Proposed Decision held that Megasteel had abused its dominant position in the HRC market by charging or imposing, a price for its HRC that amounts to a margin squeeze that has an actual, or potential, effect of constraining the ability of reasonably efficient competitors in the downstream CRC market to earn a sufficient margin.
7. In the Commission's Proposed Decision, the Commission defined the relevant market to be the domestic upstream market for all forms of HRC within Malaysia (which are domestically produced and supplied by Megasteel).
8. The Commission had also formed the view that Megasteel holds a dominant position in the HRC market in Malaysia. This view was inferred based on the fact that Megasteel has been the only producer and supplier of HRC in Malaysia on the date the Proposed Decision was issued.
9. It is to be noted that Southern Steel Sdn. Bhd., another producer and supplier of HRC in Malaysia, only started its production of HRC in 2015. There are two (2) other enterprises³ that were granted with the manufacturing licenses for HRC by

³ Please refer to paragraph 26 for the names of the two enterprises.

the Ministry of International Trade and Industry (“MITI”) but are still in the process of setting up their mills.

10. For the purposes of this Decision, the Commission takes into account all the relevant facts prior to and after the Commission’s investigation, including Megasteel’s written as well as oral representations.

1.3 Written Representation by Megasteel

11. In response to the Commission’s Proposed Decision, Megasteel submitted its written representation to the Commission on 12 December 2013.
12. Megasteel submitted that the Commission’s relevant market should include imported HRC and HRC embedded in imported CRC as they are the direct and effective demand-side substitutes for the locally produced HRC.
13. Megasteel also argued that it is not dominant and does not enjoy 68% of market share in the HRC market. It argued that imported HRC (both direct and indirect) constitutes approximately two-thirds of the HRC market in Malaysia.
14. Megasteel further contended that there was no margin squeeze as the Commission has not analysed thoroughly the competitive conditions in the downstream CRC market.

15. Megasteel also argued that it was not afforded procedural fairness during the investigation stage of the complaint and was not given access to the Commission's investigation file and documents.
16. Megasteel claimed that it had a reasonable commercial justification or response when it imposed its CRC pricing lower than its production cost during the alleged infringement period as it was actually making losses.
17. The last contention put forth by Megasteel is in relation to the penalty computation by the Commission whereby it was argued that the Commission had excessively penalised Megasteel.

1.4 Oral Representation by Megasteel

18. On 21 July 2014, pursuant to section 37 of the Act, the Commission convened an oral representation session for Megasteel.
19. During the oral representation session, Megasteel outlined its abovementioned arguments rebutting the Commission's preliminary findings as stipulated in the Proposed Decision.
20. Megasteel further appealed for a reduction and/or waiver of the financial penalty proposed to be imposed on the basis that there are mitigating factors that the Commission did not take into account when imposing such a penalty.

1.5 Written Representation by the Complainant

21. Meanwhile, the Complainant submitted its written representations to the Commission on 9 September 2015.
22. Essentially, the Complainant agreed with the Commission's preliminary findings as stated in the Proposed Decision.
23. The Commission upon taking into consideration Megasteel's written as well as oral representations, particularly the new facts raised, acknowledges that the relevant market has to be redefined from all forms of HRC to scrap metal-based HRC. This will be elaborated further in Section 3 below on "The Relevant Market".

2. GOVERNMENT POLICY AND ITS IMPLICATION ON THE STEEL INDUSTRY

24. Pursuant to the Industrial Master Plan and Industrial Development Plan, the Government has been giving protection to industries. An infant industry such as the steel industry also enjoys this protection so that it can continue to operate in a sustainable manner in the country.

25. As a result, up until 2015, Megasteel had become the sole producer and supplier of scrap metal-based HRC in the upstream market.

26. MITI had granted HRC manufacturing licenses to four (4) enterprises, namely:

- (i) Megasteel;
- (ii) Maegma Steel (HRC) Sdn. Bhd.;
- (iii) Eastern Steel Sdn. Bhd.; and
- (iv) Southern Steel Sdn. Bhd.

27. In the downstream market, there are five (5) CRC manufacturers (also known as the “Re-rollers”) namely:

- (i) Megasteel;
- (ii) Mycron;
- (iii) CSC Steel Sdn. Bhd.;
- (iv) Yung Kong Galvanising Industries Bhd.; and
- (v) Eonmetall Industries Sdn. Bhd.

28. HRC is an essential raw material required to produce CRC. There are two broad categories of HRC in the market whereby the higher quality of HRC is an iron ore-based HRC while the lower quality of HRC is a scrap metal-based HRC.
29. The Re-rollers can either purchase HRC from Megasteel or import the same from overseas depending on the quality of HRC required for their specific purposes.
30. MITI allows the Re-rollers to import HRC subject to the following three (3) conditions:
- (i) Import duty payment;
 - (ii) Approved Permit issued by MITI; and
 - (iii) Certificate of Approval from the Construction Industry Development Board Malaysia (“CIDB”) and Standards and Industrial Research Institute of Malaysia (“SIRIM”) for the imports of steel products for construction and non-construction purpose respectively.
31. In addition, the Re-rollers can also apply for an import duty exemption from MITI if they fulfil the following conditions:
- (i) The products are not produced locally for the local market;
 - (ii) The finished products are to be exported; and
 - (iii) The finished products are not taxable.

32. A '50:50' ratio was also set pursuant to a "Mutual Commercial Arrangement" ("Arrangement") agreed upon by Megasteel and the Re-rollers whereby in order to be exempted from being imposed with import duty, the Re-rollers are also required to purchase imported HRC versus locally sourced HRC (iron ore-based HRC versus scrap metal-based HRC) at '50:50 ratio'⁴.
33. MITI however will take into consideration the amount of HRC that the Re-rollers purchased from Megasteel should they apply for an import duty exemption in the subsequent year.
34. This Arrangement was in place in order to ensure Megasteel's sustainability and constant demand for its HRC. However, in practice, it does not work since the Re-rollers are allowed to import HRC subject to the conditions imposed by MITI. As a result, the market is heavily distorted.
35. The Re-rollers produce and supply CRC according to particular specifications that are required by their customers. There are two broad categories of CRC in the market whereby the higher quality of CRC is produced using higher quality of HRC while the lower quality of CRC is produced using lower quality of HRC.
36. Mycron produces a large amount of higher quality CRC for its clients and does not agree with the Arrangement. Mycron was then granted 100% import duty exemption from the Economic Council on 24 June 2014.

⁴ Report of Meeting between the Commission, MITI and MIDA on 28 February 2013.

37. The Commission was informed by MITI that the same exemption will also be granted to the other Re-rollers as long as they fulfill the criteria imposed by MITI.
38. The steel market is also distorted due to the fact that steel manufacturers from China and Indonesia have been dumping their excessive supplies of HRC in Malaysia at much cheaper prices compared to their domestic markets.
39. MITI had addressed the issue of dumping by imposing anti-dumping duties on imported HRC from China at the range of 6.35% to 12.19% and Indonesia at 11.2% respectively effective 25 February 2015.
40. The CRC market also faces the problem of dumping as the steel manufacturers from China, South Korea and Vietnam have been dumping their CRC products at much cheaper prices in Malaysia compared to their domestic markets.
41. Therefore, the Malaysian steel industry market is distorted as a result of the Government's industrial and trade policies as well as the issue of dumping.

3. THE RELEVANT MARKET

3.1 The Upstream Level – HRC Market

42. As described above, HRC is an essential input to produce CRC and Megasteel at all material times was the only enterprise that produced scrap metal-based HRC in the upstream market (up to year 2015), as a result of the Government's Industrial Policy.
43. However, taking into account the facts stated above, the relevant market for the upstream level has to be redefined from all forms of HRC as stated in the Proposed Decision to the scrap metal-based HRC in Malaysia. The Commission's earlier definition of the relevant market was inaccurate as Megasteel only produces the scrap metal-based HRC.
44. The Commission also acknowledges that the HRC market is distorted due to the protection given by the Government to Megasteel which allows Megasteel to have a dominant position in the upstream market.
45. Having a dominant position in the upstream level is not an infringement of the Act. However, Megasteel must not abuse its dominant position in compliance with the Act in the downstream level that it is participating.

3.2 The Downstream Level – CRC Market

46. Megasteel is a vertically integrated enterprise whereby it also participates and competes with the other four (4) Re-rollers in producing and selling CRC at the downstream market.
47. Based on the total sales of CRC in the year 2012, Mycron was the market leader commanding 47% market share followed by CSC with 38% of market share. Meanwhile, Megasteel, Yung Kong and Eonmetall hold 6%, 5% and 4% of the market share respectively.
48. As stated above, the downstream market is liberalized by the Government and the Re-rollers compete in producing and selling iron ore-based CRC and scrap metal-based CRC. It is reinforced through the competitive selling prices of CRC by all the five (5) Re-rollers in the year 2012.
49. The Commission takes note that Yung Kong offered the lowest average selling price of CRC from January to December 2012 at RM2,548.33 per metric tonne, followed by CSC (RM2,555.42), Mycron (RM2,560.03), Megasteel (RM2,572.17) and Eonmetall (RM2,711.50).
50. The data obtained by the Commission do not substantiate the Complainant's allegation that Megasteel often undercut its CRC prices. In addition, inconclusive data indicate that there is no practice of margin squeeze by Megasteel.

4. CONCLUSION

51. After careful reassessment of the case with more detailed information obtained through the written and oral representations submitted by Megasteel as well as further analysis made by the Commission, the Commission has come to the conclusion that Megasteel did not abuse its dominant position nor practice margin squeeze in the relevant domestic markets.

52. Based on the above, the Commission finds that there is no infringement of the Act by Megasteel.