
NEWS RELEASE

THE MALAYSIA COMPETITION COMMISSION PROPOSES TO FINE DAGANG NET RM17.4M FOR ABUSE OF ITS MONOPOLISTIC POSITION

KUALA LUMPUR, 11 July 2018 – On 10 July 2018, the Malaysia Competition Commission (“the Commission”) had issued a Proposed Decision against Dagang Net Technologies Sdn Bhd (“Dagang Net”) for provisionally infringing Section 10(1) read with Section 10(2)(c) of the Competition Act 2010 by allegedly abusing its position as a monopoly in the provision of trade facilitation services under the National Single Window, refusing to supply the said electronic mailboxes to end users of the *Sistem Maklumat Kastam* and also imposing barriers to entry to the extent that may harm competition.

The investigation on Dagang Net was commenced pursuant to complaints received by the Commission. The investigation has provisionally found that Dagang Net had abused its dominant position by refusing to supply new and/or additional mailboxes electronic mailboxes to end users who utilized front-end software from software solutions providers which were not considered to be Dagang Net’s authorised business partners.

Furthermore, Dagang Net was also provisionally found to have imposed an exclusivity clause on its business partners which would have had the effect of distorting competition in an upcoming market by creating barriers to entry for Dagang Net’s competitors in the said market which would have made the said competitors less than efficient when competing with Dagang Net.

The granting of concessions which may result in monopolies direct or indirectly is within the power and discretion of the Government. However, where there are incidences of abusive conduct by a monopoly, the Commission will not hesitate to take stern action in line with its powers under section 10 of the CA to eliminate such anti-competitive behaviour. This case therefore reflects the Commission’s effort in addressing the issue of abusive conduct by monopolies in Malaysia and supports the

Government's effort to foster transparency, corporate governance and ethical business conduct.

A robust competition regime would bring significant and holistic long and short-term benefits to the consumer in terms of competitive pricing, improved quality of products and services, enhanced innovation and offer wider choices for the consumer.

In relation to the case of Dagang Net, the Commission proposed to impose a financial penalty of RM17,397,695.30. In addition, the Commission proposed to impose a directive on Dagang Net to cease and desist its infringing conduct and any future conduct which may disrupt competition in the present and future market. The Commission also proposed that the directors and senior management of Dagang Net and its related companies to undergo a competition law compliance program within three (3) months of the issuance of the Proposed Decision.

The Proposed Decision is a written notice setting out the facts on which the Commission makes its assessment and its reasons for arriving at the Proposed Decision. It is issued to the enterprises concerned to assist them in making representations and provide any other information to support their representations to the Commission.

In this regard, the enterprise concerned has thirty days (30) from the date of receipt of the Proposed Decision to make their representations to the Commission. The Commission will then make its final decision after it has considered the said representations and all the available information and evidence.

The Act 2010 came into force on 1 January 2012 and as such, businesses ought to have complied with the provisions of the Act.

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Corporate Affairs Division

Malaysia Competition Commission

About Malaysia Competition Commission (Commission)

Established in April 2011, Commission is an independent body responsible for enforcing the Competition Act 2010, which was implemented to create healthy competition which would in turn stimulate productivity and innovation, thus creating wider choices of products for consumers with better quality and reasonable prices.

The Act applies to all commercial activities undertaken within and outside Malaysia that affect competition in the Malaysian market. It provides a regulatory framework including powers to investigate, adjudicate and impose penalties on the perpetrators of the competition laws.

For more information on the Act and the MyCC's activities, you can log on to www.mycc.gov.my.

EDITOR'S NOTES:

Section 2 of the Competition Act 2010 defines "dominant position" as follows: "Dominant position means a situation in which one or more enterprises possess such significant power in a market to adjust prices or outputs or trading terms, without effective constraint from competitors or potential competitors."

1. Details of Section 10 of the Competition Act 2010:

Abuse of dominant position is prohibited

10. (1) *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.*

(2) Without prejudice to the generality of subsection (1), an abuse of a dominant position may include—

(a) directly or indirectly imposing unfair purchase or selling price or other unfair trading condition on any supplier or customer;

(b) limiting or controlling—

(i) production;

(ii) market outlets or market access;

(iii) technical or technological development; or

(iv) investment, to the prejudice of consumers;

(c) refusing to supply to a particular enterprise or group or category of enterprises;

(d) applying different conditions to equivalent transactions with other trading parties to an extent that may—

(i) discourage new market entry or expansion or investment by an existing competitor;

(ii) force from the market or otherwise seriously damage an existing competitor which is no less efficient than the enterprise in a dominant position; or

(iii) harm competition in any market in which the dominant enterprise is participating or in any upstream or downstream market;

(e) making the conclusion of contract subject to acceptance by other parties of supplementary conditions which by their nature or according to commercial usage have no connection with the subject matter of the contract;

(f) any predatory behaviour towards competitors; or

(g) buying up a scarce supply of intermediate goods or resources required by a competitor, in circumstances where the enterprise in a dominant

position does not have a reasonable commercial justification for buying up the intermediate goods or resources to meet its own needs.

2. Details of Section 36 of the Competition Act 2010:

Proposed decision by the Commission

36. (1) *If, after the completion of the investigation, the Commission proposes to make a decision to the effect that one of the prohibitions under Part II has been or is being infringed, the Commission shall give written notice of its proposed decision to each enterprise that may be directly affected by the decision.*

(2) *The notice shall—*

(a) *set out the reasons for the Commission's proposed decision in sufficient detail to enable the enterprise to whom the notice is given to have a genuine and sufficient prospect of being able to comment on the proposed decision on an informed basis;*

(b) *set out any penalties or remedial action that the Commission proposes to apply; and*

(c) *inform each enterprise to whom the notice is given that the enterprise may, within such reasonable period as may be specified in the notice—*

(i) *submit written representations to the Commission; and*

(ii) *indicate whether the enterprise wishes to make an oral representation before the Commission.*