



Competition Act 2010 [Act 712]

Decision of the Competition Commission

Finding of Non-Infringement under Section 39 of the Competition Act 2010

12 February 2015

(Reference No: MyCC.700.2.008.2014)

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A. INTRODUCTION

1. On 7 October 2014, the Competition Commission ('the Commission') upon the direction by the Minister of Domestic Trade, Cooperatives and Consumerism ('the Minister') commenced an investigation under Section 14(2) of the Competition Act 2010 ('the Act') in relation to a complaint lodged by one Tan Kok Ping via an email dated 13 September 2014 that was addressed to the Minister.
2. The complainant alleged that there was a monopoly of renovation contracts by a single contractor at Pangsapuri Perdana which is located at Jalan Bukit Idaman 2, Selayang, Selangor Darul Ehsan ('Pangsapuri Perdana').
3. Upon investigation and based on its findings, the Commission found that the complaint has no basis. The Commission therefore decided that there is no infringement of a prohibition under Part II of the Act. The Commission hereby issues its decision stating the facts on which it has based the decision and its reasons for making such a decision.

B. PROCEDURE

4. The Commission commenced an investigation under Section 14(2) of the Act when it was directed by the Minister to investigate the complaint lodged which alleged the following:

- that one Malay clerk of Mah Sing Group Berhad gives an exclusivity right to one contractor named 'Othman' to conduct renovation works for all units at Pangsapuri Perdana;
 - that other contractors are not allowed to conduct renovation works in any unit at Pangsapuri Perdana; and
 - that 'Othman' will charge the renovation fees double the fees charged by other contractors for renovation works as commission will be paid to the said Malay clerk.
5. During the course of its investigation of the complaint, the Commission issued a written notice to obtain documents and information from Nova Century Development Sdn. Bhd. which acts as the developer as well as the management of Pangsapuri Perdana. The Commission also conducted a site visit to obtain more information pertaining to the allegation stated in the complaint.

C. THE FACTS OF THE CASE

6. On 13 October 2014, one (1) Commission Officer conducted a site visit to Pangsapuri Perdana. The Commission Officer met one of the owners of Pangsapuri Perdana and was informed that the owners of Pangsapuri Perdana are free to appoint any contractor to carry out renovation works at Pangsapuri Perdana.
7. The said owner further informed the Commission that he himself had appointed his own contractor to conduct renovation works at his unit. His contractor does not have any connection with Nova

Century Development Sdn. Bhd. as well as Mah Sing Group Berhad.

8. During the same visit, the Commission Officer met a few other contractors who were carrying out renovation works at Pangsapuri Perdana. These contractors informed the Commission Officer that they do not have any connection with Nova Century Development Sdn. Bhd., Mah Sing Group Berhad or even 'Othman'. These contractors were appointed by the owners themselves. They further informed that they have not encountered any problem throughout the period the renovation works were carried out.
9. The Commission Officer further found out from two (2) employees of the management that a refundable deposit of RM1,000.00 has to be paid to the management should the owners wish to renovate their respective units. The owners however are free to appoint their preferred contractors as the management does not give any preference to any contractor.
10. On 17 October 2014, the Commission contacted one Puan Shida of Mah Sing Group Berhad whereby she confirmed that Nova Century Development Sdn. Bhd. is the developer of Pangsapuri Perdana.
11. Nova Century Development Sdn. Bhd. is a subsidiary of Mah Sing Group Berhad. A search conducted at the Suruhanjaya Syarikat Malaysia shows that Mah Sing Group Berhad is the sole shareholder of Nova Century Sdn. Bhd.

12. On 23 October 2014, the Commission vide a written notice directed Nova Century Development Sdn. Bhd. to provide documents which could facilitate the Commission's investigations.
13. In its letter dated 14 November 2014, Nova Century Development Sdn. Bhd. confirmed that it has never appointed any contractor to be the sole contractor to conduct any renovation work at Pangsapuri Perdana. Nova Century Development Sdn. Bhd. also provided a copy of a Sale and Purchase Agreement that it has entered into with its purchaser in relation to a unit at Pangsapuri Perdana as well as a copy of the Deed of Mutual Covenants between Nova Century Development Sdn. Bhd. and its purchaser.
14. The Commission has reviewed these documents and did not find any exclusivity clause which restricts the right of the owners of Pangsapuri Perdana to appoint any contractor to conduct renovation works. The Commission also did not find any clause that appoints a single contractor by the name of 'Othman' at Pangsapuri Perdana as alleged by the complainant.
15. The Commission had also contacted the complainant vide emails dated 10 October 2014 and 13 October 2014 to seek clarification and further information on his complaint. However, the complainant has failed to respond to these emails.

D. FINDINGS BY THE COMMISSION

16. On the basis of the findings of the investigation, the Commission has found that the allegations stated in the complaint do not have merit. No exclusivity was given to any contractor to conduct any renovation work at Pangsapuri Perdana by Nova Century Development Sdn. Bhd. This is evidenced from the documents and information gathered by the Commission. The Commission has also found that no restriction was imposed on any owner at Pangsapuri Perdana to appoint any contractor for the purposes of carrying out renovation works for their units.
17. Under the Act, being a monopoly or a dominant enterprise is not, in itself, prohibited. However, an abuse of that dominant position is prohibited under the Act.
18. In establishing whether there has been an abuse of a dominant position, the Commission will have to conduct a two-fold test:
 - establish whether the enterprise being complained about is dominant in a relevant market in Malaysia; and
 - if the enterprise is dominant, establish whether the enterprise has engaged in or is engaging in a conduct that consists of an abuse of dominant;
19. In this particular case, the allegations cannot be substantiated. The evidence gathered does not show that any exclusivity is given to any contractor. Also, it does not appear that any contractor is in a

dominant position in carrying out any renovation work at Pangsapuri Perdana.

E. CONCLUSION

20. The Commission concludes that there is no infringement of a prohibition under Part II of the Act.